Inquiry into the provisions relating to disorder

House of Representatives Standing Committee on Procedure
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Inquiry into the provisions relating to disorder in the House of Representatives.
Foreword

The Standing Committee on Procedure resolved on 30 March 2017 to inquire into the provisions of the House of Representatives standing orders relating to disorder. This inquiry saw its genesis in discussions with the Speaker and other Members regarding the general order of the House and whether there was an appetite for revising or expanding the remit of the Chair to sanction Members for disorderly behaviour.

From Federation, the main sanction available to the Speaker (or the occupant of the Chair) to deal with disorderly behaviour has been to ‘name’ a Member, after which the Member is suspended from the service of the House for a length of time (the period of time has varied over the life of the Australian Parliament). This sanction is serious, both in execution and impact, however may have not been appropriate in instances where the disorderly behaviour was more of a distraction than a disruption.

Accordingly, in 1994 and on the recommendation of this Committee’s predecessor, the House adopted the procedure whereby the Speaker can direct a disorderly Member to leave the chamber for one hour under standing order 94(a). This has led to a considerable decline in the number of Members named and suspended. However, the increasing number of Members directed to leave the Chamber under standing order 94(a) suggests that while it remains an effective mechanism for removing a source of disorder, it may hold little value as a deterrent for disorderly conduct. On the other hand, Members do consider being named and suspended as a serious sanction.

The Committee was conscious of the influence of the Westminster tradition on the Australian Parliament and sought to explore the provisions used elsewhere for managing disorder. Accordingly, similar parliaments were canvassed to determine whether any of the alternative mechanisms used in
those parliaments would be suitable or appropriate for use in the House of Representatives. Also, as has been this Committee’s practice in the past, a private roundtable was held for interested Members to discuss the inquiry and whether there was consensus, or otherwise, on a way forward.

The Committee found that standing order 94(a) has proven to be an effective way to quickly remove a disorderly Member. In cases of more serious disorderly conduct, the option of naming and suspending a Member is available and remains an appropriate sanction. Finally, in cases of grave disorder, the Speaker may suspend the sitting or adjourn the House.

At the end of the inquiry process, the Committee came to the conclusion that while alternative mechanisms do exist elsewhere, the overarching opinion of Members is that the current mechanisms sufficiently provide for the maintenance of order in the House. Additionally, any change to the current provisions may pose an unnecessary risk to robust debate and the outcome of decisions of the House.

Mr Tony Pasin MP

Chair
Membership of the Committee

Chair
Mr Tony Pasin MP

Deputy Chair
Mr Milton Dick MP

Members
Ms Terri Butler MP  Mr Andrew Gee MP
Mr Ian Goodenough MP  Mr Steve Irons MP
Ms Joanne Ryan MP
Committee Secretariat

Secretary

Mr Justin Baker (to 8 September 2017)
Mr Jason Sherd (from 11 September 2017)

Inquiry Secretary

Mr Jeff Norris

Research Officer

Ms Katie Ellis (to 1 September 2017)
Ms Naomi Swann (from 12 September 2017)

Administrative Officer

Ms Penny Branson
Ms Jessica Jonceski
1. Introduction

1.1 The Committee resolved on 30 March 2017 to inquire into and report on the provisions relating to disorder in the House of Representatives.

1.2 The inquiry allows the Committee to identify whether the current provisions of the standing orders are adequate or appropriate to maintaining the dignity and decorum of the House, while analysing any relevant examples of domestic or international parliaments that may have alternate mechanisms to those currently exercised under standing orders 88-96.

Conduct of the inquiry and structure of the report

1.3 The inquiry was published on the parliamentary website, and the Committee sought evidence from key stakeholders. The Committee requested submissions to the inquiry from within this House as well as from Presiding Officers of other Australian state and territory legislatures and similar Westminster parliaments. The Committee invited views on those parliament’s procedures for dealing with disorder and requested comments on any changes to provisions relating to disorder and whether they were perceived to be advantageous.

1.4 The Committee also conducted a private roundtable hearing with interested Members of the House of Representatives, to canvass the issues being considered and capture the general feeling regarding the efficacy and appropriateness of the current standing order provisions.

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1 Letters were sent to the Speaker of the House, Leader of the House, Manager of Opposition Business, President of the Senate, and to the Presiding Officers of other Australian state and territory legislatures and of similar Westminster parliaments (United Kingdom, Canada, and New Zealand).
1.5 Chapter 2 outlines the current House of Representatives standing orders relating to disorder and provides a background to the current sanctions against disorderly conduct and their development over time.

1.6 Chapter 3 considers key elements identified in evidence received by the Committee. It also details the sanctions used by other Australian and international parliaments in dealing with disorderly conduct.

1.7 Chapter 4 puts forward the Committee’s conclusions on the provisions relating to disorder in the House of Representatives.
2. Background

2.1 Section 50, subparagraph ii of the Constitution provides the authority for each House of the Parliament to make the rules and orders with respect to the order and conduct of business and proceedings. These are ultimately delivered in the standing orders.

Standing orders relating to order and disorder

2.2 Standing order 60 states that order in the House shall be kept by the Speaker or the occupier of the Chair of the House at the time. Likewise, as provided by standing order 187, order is kept in the Federation Chamber (formerly named the Main Committee) by the Deputy Speaker or the occupier of the Chair of the Federation Chamber at the time.

2.3 The standing orders relating to disorder (standing orders 88 to 96) detail the behaviours that are considered disorderly and the actions available to the Speaker or occupant of the Chair to enforce order in the House.

2.4 Under standing order 91, a Member’s conduct is considered disorderly if the Member has:

- persistently and wilfully obstructed the House;
- used objectionable words, which he or she has refused to withdraw;
- persistently and wilfully refused to conform to a standing order;
- wilfully disobeyed an order of the House;
- persistently and wilfully disregarded the authority of the Speaker; or
- been considered by the Speaker to have behaved in a disorderly manner.

2.5 Other behaviours considered disorderly include the act of calling for a quorum when one already exists, and suggesting that the Speaker has ulterior motives or bias in deliberative decisions or in actions.
2.6 Standing order 187 describes the procedures for the maintenance of order in the Federation Chamber. Disorder in the Federation Chamber may be addressed in the House following a report from the Deputy Speaker.

Current sanctions against disorderly conduct

2.7 Chapter eight of the standing orders sets out general rules for debate and behaviour in the Chamber. Standing orders 94 to 96 in particular outline the sanctions available to the Speaker in dealing with disorderly conduct. These range from a direction to leave the Chamber for one hour (introduced in 1994), to the ‘naming’ of a Member, which results in a motion for the suspension of that Member from the service of the House for a period of time.

Naming and suspension

2.8 The naming of a Member under standing order 94(b) is, in effect, an appeal to the House to support the Chair in maintaining order. Once named, a motion for the Member to be suspended from the service of the House must be moved (usually it is the Leader of the House or the Minister leading for the Government at the particular time who moves the motion for the suspension of the Member). If the motion is carried, the Member is suspended for:

- 24 hours on the first occasion;
- three consecutive sittings following the day of suspension for the second occasion in the same calendar year; or
- seven consecutive sittings following the day of suspension for the third and subsequent occasions in the same calendar year.

2.9 The period of suspension after a Member is named has changed three times since the first sitting of Federal Parliament in 1901, mainly to ensure that suspension periods are linked to sitting periods and not calendar days.

2.10 The naming of a Member usually occurs immediately after an offence has been committed but this is not always possible. For example, Members have been named at the next sitting as a result of incidents that occurred at the adjournment of the previous sitting of the House.

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1 House of Representatives Practice, 6th edition, p. 537.
2.11 Members have been named and suspended from the House 318 times since Federation.\(^3\) Eighty-seven of those occasions have occurred since the introduction of 94(a) withdrawals in 1994.

Table 2.1 Instances of Members named and suspended since the 37th Parliament

<table>
<thead>
<tr>
<th>Parliament</th>
<th>Opposition Member</th>
<th>Government Member</th>
<th>Non-aligned Member</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>37th</td>
<td>10</td>
<td>1</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>38th</td>
<td>10</td>
<td>3</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>39th</td>
<td>11</td>
<td>0</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>40th</td>
<td>14</td>
<td>0</td>
<td>2*</td>
<td>16*</td>
</tr>
<tr>
<td>41st</td>
<td>7</td>
<td>0</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>42nd</td>
<td>14</td>
<td>0</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>43rd</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>44th</td>
<td>7</td>
<td>1</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>45th (up to 27 October 2017)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Chamber Research Office, House of Representatives

*Includes two Senators named and suspended from a joint sitting in the House of Representatives Chamber.

2.12 A Member suspended from the service of the House is excluded from the Chamber, its galleries and the room in which the Federation Chamber is meeting, and may not participate in Chamber-related activities. Thus petitions, notices of motion and matters of public importance are not accepted from a Member under suspension. A suspended Member is not otherwise affected in the performance of his or her duties.

2.13 In earlier years, notices of questions were accepted from a Member after their suspension, although this has not been the recent practice.\(^4\) Notices of

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motions standing in the name of a suspended Member have been called on, and, not being moved or postponed, have been lost, and discussions of matters of public importance have not proceeded as the proposer was suspended from the service of the House.\(^5\)

2.14 Suspension from the service of the House does not exempt or prevent a Member from serving on a committee of the House. The payment of a Member’s salary and allowances is not affected by a suspension.\(^6\)

**Direction to leave the Chamber**

2.15 Standing order 94(a) enables the Speaker to direct a disorderly Member to leave the Chamber for a period of one hour. This grants the Speaker power to order the withdrawal of an offending Member on those occasions when it is considered that formal naming and suspension would be inappropriate, excessive or too disruptive to the business of the House.

2.16 This standing order has been in force since 1994 and was first recommended by the Procedure Committee in 1986.\(^7\) The committee recommended that a provision be inserted into the standing orders enabling the Chair to order a disorderly Member to withdraw from the House for one hour or the remainder of the sitting (whichever was lesser). In 1992 the committee recommended that the Speaker specify the period for withdrawal, but that the Member be allowed to enter the Chamber to vote in divisions.\(^8\) The committee once again recommended a one hour withdrawal in 1993, without the ability to vote in divisions.\(^9\) The latter suggestion is ultimately the mechanism that was adopted as standing order 94(a).

2.17 In its 1993 report, the Committee noted the seriousness of naming a Member and that the process was time-consuming and itself disruptive. It considered that order in the House would be better maintained if the Speaker were to have available a disciplinary procedure of lesser gravity, but of greater speed of operation. The Committee saw its proposed mechanism as a means of removing a source of disorder rather than as a punishment, enabling a

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\(^7\) Standing Committee on Procedure: *Third report: the standing orders and practices which govern the conduct of question time*, November 1986, p. 70.

\(^8\) Standing Committee on Procedure: *The standing orders governing disorder and strangers*, October 1992, p. 5.

\(^9\) Standing Committee on Procedure: *About time: Bills, questions and working hours*, October 1993, p. 28.
situation to be defused quickly before it deteriorated, and without disrupting proceedings to any great extent.\textsuperscript{10}

2.18 Whilst the 1992 report suggested that the suspended Member should be able to participate in divisions during suspension, the later report in 1993 recommended that ‘the Member concerned be barred from participating in all activity in the Chamber and Main Committee for the period of his or her withdrawal, including divisions and quorums.’\textsuperscript{11} The inability of a Member to participate in Chamber activity does not extend to committee activity or affect their access to the rest of the parliamentary precinct.

2.19 The standing orders contained a withdrawal provision from March 1950 to August 1963 to ‘deal with disorder based on House of Commons procedure’ where the Member was not permitted to return during the same sitting except by permission of the Chair. This provision was redrafted on recommendation of the Standing Orders Committee in its 1962 report,\textsuperscript{12} to make it clear that it did not apply to ordinary offences and that the Member was required to be named immediately after withdrawal.

2.20 To varying degrees, the use of standing order 94(a) has been constant since its introduction. Up until 27 October 2017, the standing order has been invoked 1685 times, with a significant increase in its use in recent parliaments. See Table 2.2 below for more detail.

2.21 Eighteen sittings have resulted in eight or more Members being ejected under the standing order, all of which have occurred since 2005. The most ejections in a single sitting day occurred on 27 November 2014, when eighteen Opposition Members were ordered to withdraw during questions without notice (Question Time).

2.22 The power to order a Member to withdraw under standing order 94(a) is used most commonly during Question Time. Up until the end of the 44th Parliament, 83.4 per cent of withdrawals under standing order 94(a) occurred during Question Time.\textsuperscript{13}

\textsuperscript{10} Standing Committee on Procedure: \textit{About time: Bills, questions and working hours}, October 1993, p. 28.

\textsuperscript{11} Standing Committee on Procedure: \textit{About time: Bills, questions and working hours}, October 1993, p. 28.

\textsuperscript{12} Standing Orders Committee, \textit{Report together with proposed revised standing orders of the House of Representatives}, August 1962.

Table 2.2  Instances of Members ordered to withdraw under standing order 94(a) since introduction in the 37th Parliament

<table>
<thead>
<tr>
<th>Parliament</th>
<th>Opposition Member</th>
<th>Government Member</th>
<th>Non-aligned Member</th>
<th>Total</th>
<th>Average per sitting day</th>
</tr>
</thead>
<tbody>
<tr>
<td>37th</td>
<td>14</td>
<td>2</td>
<td>0</td>
<td>16</td>
<td>0.1</td>
</tr>
<tr>
<td>38th</td>
<td>52</td>
<td>5</td>
<td>1</td>
<td>58</td>
<td>0.3</td>
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<tr>
<td>39th</td>
<td>100</td>
<td>10</td>
<td>0</td>
<td>110</td>
<td>0.5</td>
</tr>
<tr>
<td>40th</td>
<td>69</td>
<td>10</td>
<td>2</td>
<td>81</td>
<td>0.4</td>
</tr>
<tr>
<td>41st</td>
<td>206</td>
<td>9</td>
<td>0</td>
<td>215</td>
<td>1.1</td>
</tr>
<tr>
<td>42nd</td>
<td>137</td>
<td>15</td>
<td>2</td>
<td>154</td>
<td>0.9</td>
</tr>
<tr>
<td>43rd</td>
<td>243</td>
<td>28</td>
<td>2</td>
<td>273</td>
<td>1.5</td>
</tr>
<tr>
<td>44th</td>
<td>501</td>
<td>14</td>
<td>0</td>
<td>515</td>
<td>2.7</td>
</tr>
<tr>
<td>45th (up until 27 October 2017)</td>
<td>248</td>
<td>15</td>
<td>0</td>
<td>263</td>
<td>3.0</td>
</tr>
</tbody>
</table>

Source: Chamber Research Office, House of Representatives

**Disorder in the Federation Chamber**

2.23 If disorder occurs in the Federation Chamber the Deputy Speaker does not have the power to name a Member but may direct the Member or Members concerned to leave the room for 15 minutes under standing order 187. Alternatively he or she may suspend or adjourn the sitting. Following the suspension or adjournment, or the refusal of a Member to leave when so directed, the Deputy Speaker reports the disorder to the House. Any subsequent action against a Member under standing order 94 may only be taken in the House.

**Urgent action**

2.24 The Speaker can order a grossly disorderly Member to leave the Chamber immediately under standing order 94(c), if the Speaker determines that there is an urgent need to protect the dignity of the House. When the Member has
left, the Speaker must immediately name the Member, and shall put the question for suspension without a motion being necessary.

2.25 This particular power has never been used, but the equivalent standing order prior to 1963 (standing order 303) was used on 26 occasions before the distinction was made in the standing orders in 1963 about what constituted disorderly conduct in the House.

**Grave disorder**

2.26 In the event of grave disorder occurring in the House, the Speaker, without any question being put, can suspend the sitting and state the time at which he or she will resume the Chair; or adjourn the House to the next sitting (standing order 95).

2.27 This power has been invoked on multiple occasions, most recently when protesters in the public gallery interrupted Question Time on 30 November 2016. On this occasion the Speaker suspended proceedings until the ringing of the bells.\(^{14}\)

**Removal of persons**

2.28 The Serjeant-at-Arms can remove a visitor or person other than a Member who disturbs the operation of the Chamber or the Federation Chamber, or take them into custody. If the Serjeant-at-Arms takes a person into custody, the Speaker must report it to the House without delay (standing order 96).

**Developments over time**

2.29 The majority of the current standing orders outlined above have remained substantially intact since their introduction into the original standing orders in 1901. The concept of managing disorder from the Chair and naming a Member for misconduct are principles shared across many Westminster parliaments, stemming from the practices of the UK House of Commons.

2.30 The introduction of the ‘Direction to leave the Chamber’ power under standing order 94(a) in 1994 (then standing order 304A), is the only substantive expansion of disorder powers under the standing orders since 1901. Most other changes have either clarified or refined existing procedures (such as defining disorderly behaviour, changing the periods of suspension or responding to the creation of the Federation Chamber).

Committee comment

2.31 The principles embodied within the standing orders enable the Speaker to maintain order within the Chamber, with the implied discretion of the House that comes from the authority of the standing orders themselves. Whether the Speaker chooses to exercise those powers is entirely dependent on the occupant of the Chair and the circumstances that contribute to any disorderly behaviour. This stands true for the Chair of the Federation Chamber as well.

2.32 The relatively stable nature of the disorder provisions reflect the intention of the House to maintain order through the Speaker; however, the inclusion of the one hour exclusion under standing order 94(a) reflects the House’s desire for a mechanism that could maintain order and minimise disruption, without escalating to the more serious sanction of naming the Member.

2.33 To expand these powers further could potentially allow for more effective control of behaviour within the Chamber, or more flexibility in minimising disruption; however it could also impinge on the ability of the House to legislate and vote effectively in circumstances where a Member may be excluded under any new powers.

2.34 These potential effects and the experiences of relevant similar parliaments are covered in Chapter 3.
3. Evidence

3.1 As outlined in Chapter 2, the common genesis of Westminster principles for managing disorder stem from the historical precedent of the United Kingdom House of Commons. The rich history behind the development of practice and procedure within that Parliament lends credence to the mechanisms used within the House of Representatives today.

3.2 Different Westminster-style parliaments may share a common heritage, but they often evolve and mature in different ways and the Committee is conscious that these developments may lead to divergent practices that could help inform the development of any new powers or practices for the House.

3.3 To this end, the Committee corresponded with a number of similar Westminster-style parliaments regarding this inquiry. The submissions received helped the Committee understand both the common threads of standing orders regarding managing disorder, as well as the divergent paths that different legislatures can take when circumstances necessitate change.

3.4 The Committee also gathered the opinions of a number of current Members of the House of Representatives in a private forum, to gauge the general feeling towards the way in which the Chamber is currently managed, and whether there is a need for, or even a desire for, change.

Practice and procedure in other parliaments

3.5 The sanctions and procedures for dealing with disorder are relatively similar across other Australian parliaments and some other international parliaments, although there are some differences. Most have procedures for
naming and suspending a Member, with some variation in the period of suspension or the penalties applied.\(^1\)

3.6 Presiding Officers in a large number of these jurisdictions have the ability to order a Member to withdraw from their respective Chamber (similar to standing order 94(a)). The period of time ranges between 30 minutes and up to 24 hours, with many requiring the Member to withdraw for the remainder of the sitting (until the Chamber stands adjourned). There are also some jurisdictions that leave the time of withdrawal at the discretion of the Chair (normally with an upper limit).

3.7 The majority of parliaments researched also include a power to suspend or adjourn proceedings as a result of grave disorder, or to have a Member or visitor removed by the Serjeant-at-Arms (or equivalent parliamentary officer).

3.8 The following table provides a summary of the sanctions for disorder relating to withdrawal or suspension for the parliaments that provided submissions or were researched for the inquiry:

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\(^1\) For example, the Australian Senate suspends Senators for the remainder of the sitting day for the first offence, seven sitting days and 14 sitting days for multiple offences in the same calendar year.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Chamber</th>
<th>Withdrawal period</th>
<th>Suspension period(s)(^1)</th>
<th>Comments/Additional impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia (Federal)</td>
<td>Senate</td>
<td>N/A</td>
<td>Remainder of sitting day; Seven sitting days; Fourteen sitting days.</td>
<td>Odgers’ notes: ‘The procedures relating to disorder are salutary in that the responsibility for maintaining order is imposed on the whole Senate, rather than the chair or any other particular authority. This principle is reflected in the rule that any senator may move a suspension motion, and the Senate must vote on it.’(^2)</td>
</tr>
</tbody>
</table>

\(^1\) For multiple offences in the same calendar year.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Chamber</th>
<th>Withdrawal period</th>
<th>Suspension period(s)$^1$</th>
<th>Comments/Additional impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory</td>
<td>Legislative Assembly</td>
<td>N/A</td>
<td>Three sitting hours; Two sitting days; Three sitting days</td>
<td>Member may participate in committee proceedings but may not lodge notices, questions, petitions or matters of public importance.</td>
</tr>
<tr>
<td>New South Wales</td>
<td>Legislative Council</td>
<td>A period of time as the Chair may decide but not beyond the end of the sitting.</td>
<td>Any period the House decides (until the House terminates suspension and/or Councillor apologises).</td>
<td>Withdrawal may be ordered if Councillor called to order three times in one sitting.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Chamber</td>
<td>Withdrawal period</td>
<td>Suspension period(s)¹</td>
<td>Comments/Additional impacts</td>
</tr>
<tr>
<td>---------------------</td>
<td>--------------------------</td>
<td>--------------------------------------------</td>
<td>-----------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>New South Wales</td>
<td>Legislative Assembly</td>
<td>Up to 3 hours or remainder of the sitting day.</td>
<td>Two sitting days; Four sitting days; Eight sitting days.</td>
<td>Removal may be directed if Member called to order three times in one sitting. Removal excludes Member from Parliamentary precincts and Member cannot take part in any proceeding of the House or its committees, even if committee business is being conducted outside of the precincts.</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>Legislative Assembly</td>
<td>One hour.</td>
<td>Twenty-four hours; Two meeting days; Three meeting days.</td>
<td>Members ordered to withdraw can vote in divisions or be counted for quorum.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Chamber</td>
<td>Withdrawal period</td>
<td>Suspension period(s)¹</td>
<td>Comments/Additional impacts</td>
</tr>
<tr>
<td>--------------------</td>
<td>--------------------------</td>
<td>-------------------------------------------------------</td>
<td>-----------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Queensland</td>
<td>Legislative Assembly</td>
<td>Up to one hour or remainder of the sitting day.</td>
<td>As specified in motion to suspend, not exceeding seven sitting days, or fourteen days if the Member refuses to obey the direction of the Speaker.</td>
<td>Option to allow withdrawn Member to vote in divisions. Suspended Members excluded from parliamentary precinct.</td>
</tr>
<tr>
<td>South Australia</td>
<td>Legislative Council</td>
<td>N/A</td>
<td>Remainder of sitting; One week; One month.</td>
<td>Member must withdraw from the precincts of the Council upon suspension.</td>
</tr>
<tr>
<td>South Australia</td>
<td>House of Assembly</td>
<td>N/A</td>
<td>Remainder of sitting; Three sitting days; Eleven sitting days.</td>
<td></td>
</tr>
<tr>
<td>Tasmania</td>
<td>Legislative Council</td>
<td>N/A</td>
<td>Twenty-four hours; Seven days; Twenty-eight days.</td>
<td>Member must withdraw from the precincts of the Council upon suspension.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Chamber</td>
<td>Withdrawal period</td>
<td>Suspension period(s)(^1)</td>
<td>Comments/Additional impacts</td>
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<tr>
<td>-----------------</td>
<td>------------------------</td>
<td>-------------------</td>
<td>----------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Tasmania</td>
<td>House of Assembly</td>
<td>Any period up to 24 hours.</td>
<td>Twenty-four hours; Seven days; Twenty-eight days.</td>
<td>Members ordered to withdraw can vote in divisions or be counted for quorum.</td>
</tr>
<tr>
<td>Victoria</td>
<td>Legislative Council</td>
<td>Up to thirty minutes.</td>
<td>Remainder of that sitting or period decided by House.</td>
<td>Members ordered to withdraw can vote in divisions. Time for withdrawal carries over to next sitting if not expired at adjournment.</td>
</tr>
<tr>
<td>Victoria</td>
<td>Legislative Assembly</td>
<td>Up to one and a half hours.</td>
<td>Remainder of that sitting or period decided by House.</td>
<td>Members ordered to withdraw can vote in divisions. Time for withdrawal carries over to next sitting if not expired at adjournment.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Chamber</td>
<td>Withdrawal period</td>
<td>Suspension period(s)(^1)</td>
<td>Comments/Additional impacts</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------------</td>
<td>-------------------</td>
<td>--------------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Western Australia</td>
<td>Legislative Council</td>
<td>N/A</td>
<td>One sitting day; Four sitting days; Thirteen sitting days.</td>
<td>Suspended Members excluded from Chamber and galleries, committee meetings and may not have a notice of motion given or moved, a question asked or a petition presented on their behalf during the suspension.</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Legislative Assembly</td>
<td>Remainder of sitting day.</td>
<td>Two sitting days; Four sitting days; Thirteen sitting days. If Member continues to offend before leaving, may incur a penalty of three further sitting days per offence.</td>
<td>Withdrawal may be ordered if Member called to order three times in one sitting. Suspended Members are excluded from the Chamber, galleries &amp; committees. Notices may not be given (including through another Member), questions on the Notice Paper in the name of the Member are postponed and may not be answered.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Chamber</td>
<td>Withdrawal period</td>
<td>Suspension period(s)(^1)</td>
<td>Comments/Additional impacts</td>
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<tr>
<td>New Zealand</td>
<td>House of Representatives</td>
<td>Up to remainder of sitting day.</td>
<td>Twenty-four hours; Seven days; Twenty-eight days.</td>
<td>Members ordered to withdraw may not return to Chamber to ask/answer questions, nor have another Member ask a question on their behalf, but can vote in divisions. If a Member suspended refuses to leave the Chamber, they are (without further question being put) suspended for the remainder of the calendar year. Members receive a salary penalty for the period of the suspension on second, third and subsequent offences.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Chamber</td>
<td>Withdrawal period</td>
<td>Suspension period(s)¹</td>
<td>Comments/Additional impacts</td>
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<tr>
<td>Canada</td>
<td>House of Commons</td>
<td>Remainder of sitting day.</td>
<td>Period specified by the House.</td>
<td>Speaker can refuse to recognise a Member and even skip over questions for that party during question period.</td>
</tr>
<tr>
<td>Canada</td>
<td>Senate</td>
<td>N/A</td>
<td>N/A</td>
<td>In cases of grave disorder, Speaker may suspend sitting for up to three hours.</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Chamber</td>
<td>Withdrawal period</td>
<td>Suspension period(s)(^1)</td>
<td>Comments/Additional impacts</td>
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<tr>
<td>United Kingdom</td>
<td>House of Commons</td>
<td>Remainder of sitting day.</td>
<td>Five sitting days; Twenty sitting days; until the House resolves that the suspension terminates.</td>
<td>Salary of suspended Members withheld for the duration of the suspension. Member may voluntarily withdraw from Chamber for remainder of sitting without invoking a standing order. Member may be forced to vacate their seat if suspended for more than ten sitting days, following a report from the Committee on Standards.(^3)</td>
</tr>
</tbody>
</table>

\(^3\) Vacation of seat may be forced under the *Recall of MPs Act 2015* (UK).
<table>
<thead>
<tr>
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<th>Suspension period(s)¹</th>
<th>Comments/Additional impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Kingdom</td>
<td>House of Lords</td>
<td>N/A</td>
<td>As specified by motion in the House.</td>
<td>Motion to suspend (or expel) must follow a recommendation from the Committee for Privileges and Conduct in cases where the Member has breached the Code of Conduct.</td>
</tr>
<tr>
<td>South Africa</td>
<td>National Assembly</td>
<td>Remainder of sitting day.</td>
<td>Five sitting days; Ten sitting days; Twenty sitting days.</td>
<td>Member ordered to withdraw must leave the precincts of parliament.</td>
</tr>
<tr>
<td>India</td>
<td>Lok Sabha (Lower House)</td>
<td>Remainder of sitting day.</td>
<td>Period not exceeding the remainder of the session.</td>
<td>Member suspended must leave the precincts of parliament.</td>
</tr>
</tbody>
</table>

¹ Motion to suspend (or expel) must follow a recommendation from the Committee for Privileges and Conduct in cases where the Member has breached the Code of Conduct.
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</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>Rajya Sabha (Upper House)</td>
<td>Remainder of sitting day.</td>
<td>Period not exceeding the remainder of the session.</td>
<td>Member suspended must leave the precincts of parliament.</td>
</tr>
</tbody>
</table>

Source: Multiple standing orders and submissions.
3.9 The table above outlines the different provisions of similar parliaments, though the common thread of sanctions for managing disorder are evident throughout the examples outlined.

3.10 The discretion of the Chair to order a Member to withdraw from the Chamber for a short period, as well as the practice of naming and suspending a Member following a motion agreed by the House, are shared across most of the jurisdictions. However, there are some recurring variations:

- Whether a Member retains voting rights during a period of suspension;
- Whether a Member can continue to participate in non-Chamber duties (committees etc.);
- Whether a Member is required to leave the entirety of the parliamentary precinct during the period of suspension; and
- Whether a Member forfeits salary during the period of suspension (normally after a naming).

3.11 It is also of note that eight of the twenty-two parliaments (36.4 per cent) identified do not have a formal ‘withdrawal’ provision, leaving only the more serious option of ‘naming’ a disorderly Member.

Evidence from Members

3.12 The Committee agreed that in order to capture the wider opinion of Members regarding the current sanctions available to manage disorder, there was a need for direct consultation. Accordingly, the Committee held a private roundtable to discuss the effectiveness of the current standing orders. This roundtable was available for all Members of the House of Representatives to attend on an ‘open’ basis.

3.13 In order for honest and open feedback, the roundtable was transcribed, but the transcript remains in-camera and any general comments made below are not attributed to any individual Member.

3.14 The general consensus amongst the Members in attendance was that the current provisions for managing disorder within the House still substantively fulfilled their intended function:

- 94(a) – to quickly remove a distracting disorderly Member without further serious ramifications; and
- 94(b) – the more serious mechanism of ‘naming’ a Member to get the House’s support to remove a disorderly Member for a longer period of time.
3.15 The Members present were not convinced of the need for further sanctions. Most Members felt that there were unacceptably elevated levels of 94(a) suspensions, especially during Question Time; however, noting that the number of ejections varied greatly across individual Members, as well as under respective Speakers.

3.16 The contested nature of whether a 94(a) suspension was a deterrent was acknowledged as being intrinsically linked to the nature and makeup of the Chamber. If a government has a slim majority (like in this current Parliament), their Members are less likely to conduct themselves in a disorderly fashion, in case their suspension puts their voting majority at risk.

3.17 This balance is also affected by a Member’s scheduled participation in Chamber business. Members acknowledged that if they had a question scheduled, or were due to speak on a bill or during the Matter of Public Importance discussion, they were less likely to ‘speak up’ during Question Time. There was also acknowledgement of the perception that being ejected from the Chamber multiple times could be seen as reducing their representative role for their electorate.

3.18 Inversely, some Members identified that being ejected under standing order 94(a) could be seen as a ‘badge of honour’, or may be used as a mechanism for being recognised by their electorate as passionate on a particular subject. If a question was asked of a Minister on a specific topic, and a Member was ejected during their answer, they may even use that as evidence of their advocacy on that subject.

3.19 Ultimately though, as acknowledged during the roundtable, ‘…each individual has their choice how they want to behave in the chamber’.

3.20 Discussion occurred around whether Members who had been ordered to withdraw a number of times over a given period could potentially face a longer period of exclusion. However, there was little support for such a measure, with Members advocating for more informal controls and liaison between Whips and the Speaker to manage behaviour.

3.21 There was acknowledgement of the theatre of Question Time and that it was not an accurate reflection of the normal workings of Parliament. Also, universal acknowledgement was forthcoming of the good job that the current Speaker was doing in maintaining order, especially during escalating tensions in Question Times over recent months.
Committee comment

3.22 The Committee noted with interest the different and varied methods with which similar parliaments manage disorder within their respective Chambers, noting their common Westminster heritage, and their shared focus on managing disorder.

3.23 Of further note were the mixed methods in which similar parliaments manage the type of minor disorder that the House manages through standing order 94(a) suspensions. The differentiation in time periods for suspensions, as well as the differences in the effects that such suspensions have on a Member’s voting or participation rights was noted with interest.

3.24 The Committee acknowledged that in a number of jurisdictions, the Chair has some discretion with regard to the length of time a Member is ordered to withdraw. The power to eject a disorderly Member for anywhere up to the end of the sitting is significant, particularly if this includes removal of voting privileges or exclusion from the parliamentary precinct.

3.25 This variable sanction base shows that different Westminster-style parliaments, though often sharing the same heritage and rules of conduct from the UK House of Commons, have developed in different ways over their lifetime, existing now as separate entities with divergent cultures and means to manage disorder.

3.26 Similarly, the observations of Members of the House of Representatives gathered at the roundtable private hearing conducted for the inquiry highlighted that the perception of how disorder is managed can vary even within a parliament. While some Members may see merit in strengthening sanctions against disorderly conduct, others perceive such proposals as a threat to the nature of debate in the House of Representatives and the rights of Members to fulfil their duties.
4. Conclusions

4.1 The Committee commenced this inquiry to test the appetite within the House of Representatives for potential change to the standing order provisions related to disorder.

4.2 The question of whether the standing orders needed clarifying, expanding or supplementing was tested against other similar Westminster-style parliaments and with Members directly.

4.3 Whilst there are common themes amongst similar jurisdictions when it comes to the more serious sanction of ‘naming’ a Member, the most divergence occurs around the less serious ‘withdrawal’ provisions. This differentiation relates to whether those jurisdictions have such a provision, the length of withdrawal and any related restrictions (expulsion from precincts, voting rights etc).

4.4 The current two-tiered sanction system within the House of Representatives provides the Speaker with flexibility to respond to disorder in the House depending on the severity of the offence. Standing order 94(a) allows the Speaker to remove a distracting and disorderly Member quickly and without further disruption. For more serious offences, standing order 94(b) provides the Speaker with the option of ‘naming’ a Member and, with the support of the House, removing the Member from the Chamber for 24 hours on the first occasion, and for three days or seven days on subsequent occasions.

4.5 The reducing incidence of namings since the introduction of standing order 94(a) (as evidenced in Table 2.1) suggests that its use has either aided in removing the disorder that would have led to a naming in the past, or that Speakers in those parliaments have potentially controlled disorderly behaviour in a more efficient manner.
4.6 Such commentary has to be tempered with acknowledgement of the reality that different parliaments have differing levels of order in their proceedings, and these will be managed by Speakers (or occupants of the Chair) in different ways. The statistics can only highlight behaviour of Members to a certain degree. Further, the makeup of the House in the 43rd Parliament and in the current Parliament should be considered when looking at the figures (with numbers between government and non-government being so close, the Chair may be less willing to name a Member).

4.7 Ultimately, as outlined in Chapter 3, there are a variety of ways in which Westminster-style parliaments manage disorder. Their common genesis in the UK House of Commons has diverged into multiple forms of tiered sanctions, but still with the common ‘naming’ for more serious offences.

4.8 The withdrawal sanctions that may exist in those other parliaments and the ancillary effects of a naming (such as exclusion from parliamentary precincts) are a reflection of the evolution of those legislatures and the way in which they decide to govern themselves; as all of these parliaments set their own rules in their standing orders.

4.9 Similarly, the Australian House of Representatives sets its own rules, and the current two-tiered sanction structure is a result of that evolution. Having been twenty-three years since the introduction of the current standing order 94(a) provision, the Committee saw it as a fitting time to do a ‘temperature test’ of the Members for their support of potential change, but in the end, this support was found to be lukewarm at best. The Committee therefore suggests that the current provisions remain unchanged.

Tony Pasin MP

Chair

26 October 2017
A. List of Submissions

1. House of Assembly, Tasmania
2. Legislative Council, New South Wales
3. House of Commons, Canada
4. Legislative Council, Western Australia
5. Hon. Tony Burke MP, Manager of Opposition Business
6. Legislative Assembly, Queensland
7. House of Commons, United Kingdom
8. Legislative Assembly, New South Wales
9. Legislative Assembly, Australian Capital Territory
10. House of Representatives, New Zealand