



LEGISLATIVE COUNCIL

PROCEDURE COMMITTEE

Updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism



Report 20

July 2024

Procedure Committee

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Chair: Hon Ben Franklin MLC



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Terms of reference

That the Procedure Committee inquire into and report on updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism.

The terms of reference were referred to the committee by the Legislative Council on Wednesday 7 February 2024.¹

¹ *Minutes*, NSW Legislative Council, 7 February 2024, pp 872-873.

Committee details

Committee members

Hon Ben Franklin MLC	The Nationals	<i>Chair</i>
Hon Robert Borsak MLC	Shooters, Fishers and Farmers	<i>Deputy Chair</i>
Ms Abigail Boyd MLC	The Greens	
Hon Jeremy Buckingham MLC	Legalise Cannabis Party	
Hon John Graham MLC	Australian Labor Party	
Hon Emma Hurst MLC	Animal Justice Party	
Hon Mark Latham MLC*	Independent	
Hon Taylor Martin MLC**	Independent	
Hon Tania Mihailuk MLC***	Pauline Hanson's One Nation	
Hon Sarah Mitchell MLC	The Nationals	
Hon Bob Nanva MLC	Australian Labor Party	
Hon Peter Primrose MLC	Australian Labor Party	
Hon Chris Rath MLC	Liberal Party	
Hon Rod Roberts MLC	Independent	
Hon John Ruddick MLC	Libertarian Party	
Hon Penny Sharpe MLC	Australian Labor Party	
Hon Damien Tudehope MLC	Liberal Party	

* The Hon Mark Latham MLC was appointed to the committee on 30 November 2023.

** The Hon Taylor Martin MLC was appointed to the committee on 19 April 2024.

*** The Hon Tania Mihailuk MLC was appointed to the committee on 30 November 2023.

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Chair's foreword

In recent years parliaments around the world have grappled with how to regulate respectful behaviour both inside and outside the Chamber, on the understanding that as pillars of democracy, it is incumbent upon every legislature to meet the exemplary standards of behaviour that the community rightly expects of them.

In the parliamentary context, three key sources combine to regulate respectful behaviour: first, the procedural provisions under the standing orders; second, the ethical provisions under the Code of Conduct for Members; and third, the legal provisions that apply to all persons and workplaces. I highlight here the Code of Conduct's requirement that members must treat each other, their staff and all those working in Parliament 'with dignity, courtesy and respect'.

This report is focused on procedural provisions, examining whether the standing orders of the Legislative Council should be updated to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism. Specifically, the report focuses on the prohibition on the use of 'offensive words' in standing order 96(3).

I thank my committee colleagues for their thorough and thoughtful discussion of the options for change, informed by the provisions of other Westminster-style jurisdictions that were documented in submissions. On behalf of the committee, I express our gratitude to all inquiry participants for their valuable contributions to the inquiry. I also thank the committee secretariat for their expertise and capable support.

Hon Ben Franklin MLC
President

Recommendations

Recommendation 1

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That standing order 96(3) be amended by sessional order by inserting 'or discriminatory' after 'A member may not use offensive', such that the standing order reads:

A member may not use offensive or discriminatory words against either House of the Legislature, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.

Recommendation 2

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That Presidents' rulings dealing with offensive or discriminatory words in the Chamber place a greater emphasis on the context in which the words are used, including the tone, manner and intent of the member speaking, as well as the effect of the comments in the Chamber.

Conduct of inquiry

The terms of reference were referred to the committee by the Legislative Council on Wednesday 7 February 2024.

The committee received 14 submissions.

Inquiry related documents are available on the committee's website, including submissions.

Chapter 1 Introduction

This chapter provides the background to this report, commencing with an overview of the role of the Procedure Committee, and the establishment and conduct of the inquiry. It then sets out the existing procedural provisions for dealing with respect in the chamber under standing order 96(3), which are complemented by the ethical provisions under the Members' Code of Conduct. It notes the context of the 2021-2022 independent review of bullying, sexual harassment and sexual misconduct in NSW parliamentary workplaces (hereafter the Broderick review), then the wider international context of numerous jurisdictions' formal reviews of parliamentary culture, and the recently released Commonwealth Parliamentary Association's standards for codes of conduct, intended to facilitate best practice for parliaments. The chapter concludes with a brief overview of the legal framework that applies to all persons and workplaces, which thus also regulates respectful behaviour in Parliament, including by members.

Role of the Procedure Committee

- 1.1 The Procedure Committee is appointed at the commencement of each Parliament under standing order 211. The committee considers amendments to the standing orders, proposals to change the practices and procedures of the House, and any other matter referred to it by the House or the President.²

Inquiry overview

- 1.2 On 7 February 2024, the Legislative Council resolved that the Procedure Committee inquire into and report on updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism.³
- 1.3 The terms of reference were adopted as part of a broader motion moved by Ms Boyd which noted that recommendation 3.5 of the Broderick review stated that members should 'lead discussion on updating the standing orders to require respectful behaviour in both Houses, particularly as they relate to sexism and racism'.⁴
- 1.4 The Procedure Committee subsequently resolved that it report by 6 August 2024. The terms of reference for the inquiry are reproduced on page v of this report.
- 1.5 A confidential briefing paper on parliamentary privilege, the freedom of speech and the conduct of members was prepared by the secretariat to assist members of the committee in examining the issues raised by the terms of reference. This paper forms the basis of chapter 2 of this report.

² Stephen Frappell and David Blunt, *New South Wales Legislative Practice* (Federation Press, 2nd ed, 2021) p 733.

³ *Minutes*, NSW Legislative Council, 7 February 2024, Item 20, p 877.

⁴ Elizabeth Broderick & Co, *Leading for Change: Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022*, (2022), p 78.

- 1.6 Members and other stakeholders were invited to make submissions. Fourteen submissions were received. The full list of submissions is reproduced at appendix 1.
- 1.7 The committee met on 16 May 2024 to discuss the issues raised in the confidential briefing paper, submissions and other documents, to inform the drafting of this report.

Standing order 96(3)

- 1.8 As explored in detail in the following chapter, whilst the immunity attaching to speech and debates in Parliament is absolute, the exercise of free speech by members is subject to control by the House itself in order to prevent that privilege from being abused. Two key controls are the rules of debate and the disciplining of members who use offensive words in the House.
- 1.9 Standing order 96 articulates a number of rules of debate. Paragraph (3) deals with the use of offensive words:
- A member may not use offensive words against either House of the Legislature, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.
- 1.10 It is the Chair's role to intervene where offensive or disorderly words are used. An aggrieved member may also take a point of order and direct the attention of the Chair to the words to which they object. The Chair will then determine whether or not the words complained of are offensive or disorderly and whether they should be withdrawn.⁵
- 1.11 According to the *Annotated Standing Orders of the New South Wales Legislative Council*, offensive words are words that are offensive to the common person, or that a member personally claims to have found offensive. Offensive expressions, or expressions to which members take offence, are regularly the subject of Chairs' rulings. Whether remarks are offensive or unparliamentary is for the Chair to determine, having regard to the context in which they were made. If the Chair rules the remark as offensive, the Chair can then compel the member to withdraw an offensive remark without qualification or reservation.⁶
- 1.12 It is a long-standing convention and the subject of many rulings that offensive words must be offensive in the generally accepted meaning of that word.⁷ Sexist or racist language arguably fall under the umbrella of this provision. The consideration of respectful behaviour, as it relates to sexism and racism, in Chair's rulings of the Legislative Council is explored below.

⁵ Legislative Council, *Know Your House: A Short Guide to Legislative Council Procedure*, May 2023, p 22.

⁶ Susan Want and Jenelle Moore, edited by David Blunt, *Annotated Standing Orders of the New South Wales Legislative Council*, (Federation Press, 2018), pp 306-307.

⁷ *Concise guide to rulings of the President and Chair of Committees*, NSW Legislative Council, February 2024, p 20.

Presidents' rulings on respectful behaviour

1.13 As indicated above, the current Legislative Council standing orders do not refer to sexist or racist language, but simply provide that '[a] member may not use offensive words ... against any member of either House'.

1.14 Two noteworthy Presidents' rulings have addressed standards of respectful behaviour in the Chamber, which is observed here to cover a broader range of actions than simply words or speech. Earlier this year, President Franklin determined that Members must maintain respectful behaviour when participating in the proceedings of the House.⁸

1.15 In 1992, President Willis highlighted that the orderly conduct of Parliament rests on the good sense and courtesy of members:

Members of Parliament occupy a very special and privileged position in our society, and nowhere more so than within the precincts of the Parliament. Parliament is not a school: there are no prefects; there are no schoolmasters; and the good and orderly conduct of the Parliament depends on the common sense, courtesy and observation of propriety by members. If that were not the case it would be open to any member to do things which may be found to be excessive by his or her colleagues. This line of propriety is very fine and completely ill defined. It relies entirely upon the good sense and courtesy of members.⁹

1.16 The determination whether words used in the House are offensive or disorderly rests with the Chair, and the Chair's judgment depends on the nature of the words used and the context in which they are used. In a well cited ruling from 1987, President Johnson observed:

Offensive words must be offensive in the generally accepted meaning of that word. Whether particular words are offensive or disorderly may often depend on the context in which they are used. If the Chair is of the opinion that words complained of are offensive or disorderly, the Member concerned will be called upon to conform to the rules of the House and retract the offensive expression and, in a serious case, make an apology to the House if required by the Chair. When ordered to withdraw a statement, a Member must withdraw without qualification or reservation.

1.17 The Chair can be expected to always deem unambiguously racist or sexist language as 'offensive words' within the meaning of standing order 96(3). There are various rulings of President Burgmann that 'members must not make sexist or racist remarks'.¹⁰ There is also a ruling from President Burgmann from 2002 that:

Members may not make sexist comments or sexist noises in the House. Cat noises made when women members are speaking is extremely sexist, and such behaviour will not be tolerated.¹¹

⁸ President Franklin, 28 June 2023, Hansard, p 8005, cited in *Concise Guide to Rulings of the President and Chair of Committees*, Legislative Council, February 2024, p 14.

⁹ President Willis, 14 October 1992, Hansard, p 6793, cited in *Concise Guide to Rulings of the President and Chair of Committees*, Legislative Council, February 2024, p 14.

¹⁰ President Burgmann, 30 May 2001, Hansard, p 13916, 15 December 2005, Hansard, p 20604; 17 October 2006, Hansard, p 2595; cited in *Selected President's Rulings: August 1975 to November 2017*, Legislative Council, p 63.

¹¹ President Burgmann, 19 November 2002, Hansard p 6917, cited in *Selected President's Rulings: August 1975 to November 2017*, Legislative Council, p 67.

- 1.18 Where difficulty may arise is where the language used may be more ambiguous. In these circumstances, it would fall back on the Chair to determine the matter, based on the context in which the words are used.

Code of Conduct for Members

- 1.19 In addition to the standing orders and their elucidation in Presidents' rulings, members' behaviour is guided by the requirements set out in the Code of Conduct for Members, which applies to all aspects of their public life.

- 1.20 The Code of Conduct creates a positive obligation on members to maintain respectful relationships with all those with whom they interact within the parliamentary workplace:

A Member must treat their staff and each other and all those working for Parliament in the course of their parliamentary duties and activities with dignity, courtesy and respect, and free from any behaviour that amounts to bullying, harassment or sexual harassment.¹²

- 1.21 This clause was adopted in March 2022 as part of the establishment of an Independent Complaints Officer (ICO) at the Parliament whose primary role is to receive and investigate complaints in relation to alleged breaches of the Code of Conduct. Under the resolution establishing the ICO, the ICO is not permitted to investigate conduct by members during the proceedings of the House, including allegations of bullying and harassment and other types of inappropriate behaviour. However, it would be open to any member to bring a substantive motion against a member for breach of Clause 10. Such a motion would admit a distinct vote and expression of the opinion of the House on the conduct of the member concerned.

The Broderick review

- 1.22 The Broderick review, commenced in July 2021 and completed in August 2022, and led by the former Sex Discrimination Commissioner, Elizabeth Broderick AO, placed a spotlight on the issue of respectful behaviour at NSW Parliament. The review involved a comprehensive examination of the Parliament's culture and the extent to which its workplaces are safe and inclusive. Its report underscored the imperative for 'parliamentary workplaces to be exemplars of respectful behaviour, with policies, processes and cultures aligned to contemporary workplace standards'.¹³

- 1.23 The review's recommendations addressed leadership, prevention and early intervention, cultural factors contributing to bullying and harassment, policy frameworks, reporting mechanisms and monitoring. Within the context of this inquiry, noteworthy actions linked to the review include:

¹² *Code of Conduct for Members*, para 10. *Minutes*, NSW Legislative Council, 24 March 2020, Item 53, pp 865-868; as amended 22 March 2022, Item 40, pp 3039-3045. References to standing orders were updated on adoption and approval of revised Legislative Council Standing Rules and Orders, 20 February 2023.

¹³ Elizabeth Broderick, *Leading for Change: Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022*, p 3.

- the inclusion of a requirement for respectful behaviour in the Code of Conduct for Members (see paragraphs 1.20-1.21 above)¹⁴
- the establishment of the Independent Complaints Officer (see paragraph 1.21 above)¹⁵
- reviewing and updating the policy framework covering bullying, harassment and sexual harassment, with extensive work having been undertaken to develop a comprehensive new policy
- a new and explicit focus on respect, inclusion and safety in all parliamentary workplaces.

International context

1.24 The Broderick review occurred within a broader international context: in response to evolving community standards and the global advent of the #MeToo movement, parliaments around the world have reviewed and reset standards for member conduct, recognising that both as foundational institutions and as workplaces, they must uphold the highest standards of behaviour. This section outlines key reviews in Westminster parliaments, then provides a brief overview of the Commonwealth Parliamentary Association's recently published Standards for Codes of Conduct for parliaments.

Reviews of parliamentary culture, bullying and harassment

1.25 Numerous jurisdictions have grappled with the issue of respectful behaviour as an aspect of parliamentary culture. The main mechanism by which this has been done is reviews and subsequent reports into bullying, harassment and sexual harassment in parliament.

1.26 Noteworthy reports from Westminster jurisdictions include:

- United Kingdom House of Commons – *The Bullying and Harassment of House of Commons staff: Independent Inquiry Report*, Dame Laura Cox DBE, October 2018 (also referred to as the Cox report)
- New Zealand Parliament – *Bullying and Harassment in the New Zealand Parliamentary Workplace: External Independent Review*, Debbie Francis, May 2019 (also referred to as the Francis report)
- Parliament of Australia, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, Australian Human Rights Commission, November 2021 (also referred to as the Jenkins report)

1.27 Each of the reports highlighted the prevalence of bullying and harassment in parliamentary contexts, particularly against women and minority groups. Each underscored the damage to a parliament's public standing as an institution when it is marked by poor standards of

¹⁴ This action predated the conclusion of the review: *Minutes*, NSW Legislative Council, 22 March 2022, Item 40, pp 3039-3045.

¹⁵ This action predated the conclusion of the review: *Minutes*, NSW Legislative Council, 22 March 2022, Item 40, pp 3039-3045.

behaviour. They also highlighted the clear legal obligation to ensure, like all other workplaces, that parliaments are respectful, inclusive and safe.

Commonwealth standards for codes of conduct

- 1.28** Consistent with the conclusions and recommendations of these reviews, the Commonwealth Parliamentary Association (CPA) published the *Standards for Codes of Conduct for Members of Parliament and the Parliamentary Workplace* during the course of this inquiry, in April 2024. The standards – upgraded in strength from benchmarks since their previous iteration – are designed to facilitate best practice in codes of conduct for parliaments across the Commonwealth, for the optimal functioning and integrity of the institution:

Codes of conduct for Members and standards of behaviour expected of all persons at the parliamentary workplace can help a parliament to function with integrity, to encourage ethical behaviour, and build public trust.¹⁶

- 1.29** Reflecting the legal framework emphasised in the reviews noted above, the document emphasises parliaments' role not only as legislatures but as workplaces, and thus their legal obligation to ensure the physical, emotional and psychological safety of all who work and visit there. It sets as a minimum standard that 'Every Member commits to making the Parliament a safe and respectful workplace for all Members, staff and visitors'.¹⁷

- 1.30** At the same time, the document acknowledges the unique feature of parliamentary privilege for the institution, and makes the case that a requirement under a code of conduct for members to exercise their freedom of speech responsibly does not detract from that freedom, nor from presiding officers' role in adjudicating debate. Moreover, it can help bring about cultural change:

The parliamentary sittings in the chamber and formal committee meetings constitute 'proceedings of parliament' that attract parliamentary privilege, most importantly, freedom of speech. A code of conduct should not override parliamentary privilege.

Nevertheless, acknowledging that the chamber and committees are part of the workplace, it is reasonable that a code of conduct requires Members to exercise their freedom of speech and privilege responsibly. This does not diminish the presiding officer's role in applying normal standing orders and practice to the content and tone of debate, but it may contribute to the overall culture of a safer and more respectful workplace for Members.¹⁸

Legal requirements

- 1.31** Having earlier documented the responsibilities of members under the standing orders and the Code of Conduct, and having explained the mainstream approach to respect as a workplace requirement, this section sets out the legal obligations with regard to discrimination and workplace safety that apply to all settings and workplaces, and thus also to parliament and

¹⁶ Commonwealth Parliamentary Association, *Standards for Codes of Conduct for members of parliament and the parliamentary workplace* (2024), p 3.

¹⁷ *Standards for Codes of Conduct for members of parliament and the parliamentary workplace*, p 18.

¹⁸ *Standards for Codes of Conduct for members of parliament and the parliamentary workplace*, p 20.

members. The relevant provisions of the *Anti-Discrimination Act 1977*, the *Sex Discrimination Act 1984* (Cth), the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2017* are noted in turn below.

Anti-Discrimination Act 1977

- 1.32** The *Anti-Discrimination Act 1977* (ADA) makes it unlawful to discriminate against a person on grounds which include their sex, race, age, disability, homosexuality, marital or domestic status, transgender status and carer's responsibilities. Sexual harassment, as well as vilification on the grounds of race, transgender status, homosexuality and HIV/AIDS is also unlawful.¹⁹
- 1.33** The ADA also makes sexual harassment unlawful in a wide range of workplaces, including in either House of Parliament. Under the provisions, workers including employees, members of parliament and other workplace participants are all covered by the ADA's protections.²⁰
- 1.34** Members and others in parliamentary workplaces are expressly addressed under section 22B of the ADA:
- (7) It is unlawful for a member of either House of Parliament to sexually harass—
 - (a) a workplace participant at a place that is a workplace of both the member and the workplace participant, or
 - (b) another member of Parliament at a place that is a workplace of both members.
 - (8) It is unlawful for a workplace participant to sexually harass a member of either House of Parliament at a place that is the workplace of both the member and the workplace participant.
 - (9) In this section—
 - place includes a ship, aircraft or vehicle.
 - workplace means a place at which a workplace participant works or otherwise attends in connection with being a workplace participant.
 - workplace participant means any of the following—
 - (a) an employer or employee,
 - (b) a commission agent or contract worker,
 - (c) a partner in a partnership,
 - (d) a person who is self-employed,
 - (e) a volunteer or unpaid trainee.
 - (10) Without limiting the definition of workplace, the workplace of a member of either House of Parliament is taken to include the following—
 - (a) the whole of Parliament House,
 - (b) any ministerial office or electoral office of the member,

¹⁹ Submission 10, Anti-Discrimination NSW, p 1.

²⁰ Submission 10, Anti-Discrimination NSW, p 1.

- (c) any other place that the member otherwise attends in connection with his or her Ministerial, parliamentary or electoral duties.

1.35 Discrimination is unlawful throughout employment, including during recruitment and dismissal processes, and it is unlawful to discriminate in the terms and conditions of employment, access to opportunities for promotion, transfer, training, or other benefits associated with employment, or by subjecting a person to any detriment.²¹

Sex Discrimination Act 1984 (Cth)

1.36 Under the *Sex Discrimination Act 1984* sex discrimination, sexual harassment and sex-based harassment that create a hostile workplace environment on the ground of sex is unlawful. Section 47C places a legal obligation on the Parliament to take reasonable and proportionate measures to eliminate, as far as possible, discrimination on the grounds of sex, sexual harassment, sex-based harassment, conduct creating a hostile work environment on the grounds of sex and related actions of victimisation, in parliamentary workplaces.²²

Work Health and Safety Act 2011

1.37 Under the *Work Health and Safety Act 2011* (WHS Act) the Parliament has a responsibility to protect workers and other persons against harm to their health, safety and welfare through the elimination of risks arising from work so far as is reasonably practical, and where elimination is not reasonably practicable, minimisation of the risks as far as reasonably practicable.

1.38 In fulfilling these responsibilities, regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work.²³ Where more than one person in a workplace has a duty under the WHS Act, the Act requires that each person must discharge their duty to the extent to which the person has the capacity to influence and control the matter.²⁴

1.39 As employers, members, the Presiding Officers and Department heads hold these legal responsibilities.

1.40 Additionally, under this act, individual workers must, while at work, take reasonable care for their own health and safety and must take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons.²⁵

1.41 Thus, the requirements under WHS Act apply to the whole parliamentary community, to create a safe workplace through their actions and behaviour.

²¹ Submission 10, Anti-Discrimination NSW, p 1.

²² *Sex Discrimination Act 1984*; see also Submission 10, Anti-Discrimination NSW, p 1.

²³ *Work Health and Safety Act 2011*, s 3.

²⁴ *Work Health and Safety Act 2011*, s 16.

²⁵ *Work Health and Safety Act 2011*, s 28.

- 1.42 Failure to protect, as far as reasonably practical, an employee from bullying, harassment or sexual harassment may be a criminal offence.²⁶

Work Health and Safety Regulation 2017

- 1.43 In line with the WHS Act, the *Work Health and Safety Regulation 2017* (WHS Regulation) makes further provision for the standards of work health and safety for all employers, including members. In 2022, the WHS Regulation was amended to establish a positive duty to control psychosocial risks under s 55D as follows:

- (1) A person conducting a business or undertaking must implement control measures—
- (a) to eliminate psychosocial risks so far as is reasonably practicable, and
 - (b) if it is not reasonably practicable to eliminate psychosocial risks—to minimise the risks so far as is reasonably practicable.

- 1.44 The WHS Regulation defines a psychosocial hazard as a hazard that—

- (a) arises from, or relates to—
 - (i) the design or management of work, or
 - (ii) a work environment, or
 - (iii) plant at a workplace, or
 - (iv) workplace interactions or behaviours, and
- (b) may cause psychological harm, whether or not it may also cause physical harm.²⁷

- 1.45 SafeWork Australia specifically recognises 'harmful behaviours' as psychosocial hazards, and that such behaviours can cause harm not only to the person to whom they are directed, but also to anyone witnessing the behaviour.²⁸ Those recognised by SafeWork Australia include:

- bullying
- harassment including sexual harassment or other personal characteristics including race, disability or religion
- violence and aggression
- conflict or poor workplace relationships or interactions.²⁹

- 1.46 Control measures to mitigate the risk of psychosocial hazards include 'changing ... workplace interactions to ensure respectful behaviours and relationships' and reducing the presence of other harmful behaviours.³⁰

²⁶ *Work Health and Safety Act 2011*, s 32 and 33.

²⁷ *Work Health and Safety Regulation 2017*, s 55a.

²⁸ Safe Work Australia, *Harmful Behaviours*, <https://www.safeworkaustralia.gov.au/safety-topic/managing-health-and-safety/mental-health/psychosocial-hazards>.

²⁹ Safe Work Australia, *Managing psychosocial hazards at work: Code of Practice* (July 2022), pp 17-18 and 21.

³⁰ Safe Work Australia, *Managing psychosocial hazards at work: Code of Practice* pp 24 and 48.

Chapter 2 Parliamentary privilege and the conduct of members

In its overview of the procedural, ethical and legal frameworks for the regulation of respect in the NSW Legislative Council and other legislatures around the world, a strong theme of the previous chapter was the acknowledgement by parliaments that they are legally required, like all other workplaces, to ensure that their workplaces are marked by respect. Parliaments' clear obligations are also being codified in formal ethical standards for members conduct. A further theme, that respectful behaviour by parliamentarians is a broad community expectation, is explored more in the following chapter.

This chapter takes up a key aspect of the committee's consideration of the issues being examined in this inquiry: parliamentary privilege, and in particular the immunity attached to freedom of speech in the proceedings of parliament, as it relates to members' conduct. The chapter begins by explaining parliamentary privilege and the immunity of freedom of speech, then turns to the limitations imposed by the House itself on that freedom, with a focus on the rules of debate and the power to discipline members who use offensive words. It concludes by noting the obligation that members have to ensure that they use the privilege of freedom of speech responsibly.

Parliamentary privilege and the immunity of freedom of speech in Parliament

2.1 Parliamentary privilege is the sum of certain powers, rights and immunities (the most important being freedom of speech) enjoyed by the individual Houses of the Parliament of New South Wales, together with their members and committees, as constituent parts of the Legislature. It exists to allow the Parliament and its members to carry out their legislative, representative and scrutiny functions in the interests of the public they represent.

Freedom of speech

2.2 Members of the Legislative Council enjoy the immunity of freedom of speech in debate in the Legislative Council. This immunity permits members to speak freely in debate in the Legislative Council (or in a committee meeting) whilst enjoying complete immunity from legal reprisal, including being sued or prosecuted in the courts, for statements they may make.

2.3 This is the principal immunity, and certainly the most publicly recognised immunity, possessed by parliaments generally. Whilst it is an immunity that belongs to parliaments generally, it is enjoyed by members individually.

2.4 In legal proceedings, it is for the courts – specifically the judges and justices hearing matters brought before the courts – to uphold the immunity. This is part of the wider compact between the legislative and judicial branches of government reached over several centuries in England and subsequently imported into the Australian context. The House itself asserts parliamentary privilege in disputes against the Executive government.

2.5 In modern times, the immunity of freedom of speech in parliament is often seen through the prism of Article 9 of *the Bill of Rights 1689*, in force in New South Wales by virtue of section 6 and schedule 2 of the *Imperial Acts Application Act 1969*. Using modern language, this famous article declares:

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

2.6 However, it is important to emphasise that the immunity would exist even in the absence of Article 9 and is in fact part of the wider compact between the legislative and judicial branches of government, according to which the courts will not allow examination of the internal proceedings of parliaments generally.

Scope

2.7 The immunity of freedom of speech in parliament is wide in scope. Adopting the language of Article 9, judges and justices are expected to prevent speech and debate in the Legislative Council from being either 'impeached' or 'questioned':

- Freedom of speech and debate are understood to be 'impeached' where an attempt is made to make a member or another person or witness directly liable in court or other similar proceedings for what they have said or done in parliament.
- Freedom of speech and debate are understood to be 'questioned' when what a member or witness has said or done in parliament is sought to be critically examined in court or other similar proceedings, even where the action may arise from events outside of parliament.

2.8 The immunity of freedom of speech in parliament is also absolute. Unlike qualified privilege under defamation law, it is not abrogated by the presence of malice or of fraudulent purpose or falsity.

Purpose

2.9 The purpose of the immunity of freedom of speech is to allow members of parliament to raise matters in the public interest and for parliament to debate those matters, whilst granting members an appropriate level of protection against threats or reprisals. It has been said that without it, parliaments would degenerate into polite but ineffectual debating societies.

2.10 More generally, the immunities, rights and powers of parliaments, collectively referred to as parliamentary privilege, are also an expression of the autonomy of parliaments generally, sitting within the doctrine of the separation of powers that operates in Westminster parliamentary systems. It ensures that the other branches of government – the executive and the judiciary – cannot interfere with the operations of individual parliaments.

Limitations imposed by the House on the freedom of speech and debate

2.11 Whilst the immunity attaching to 'speech and debates' in the Legislative Council is absolute, the exercise of free speech by members is still subject to control by the House itself in order to prevent the privilege from being abused. Two of those controls are the rules of debate and the disciplining of members who use offensive words in the House. (The third control is the sub-judice convention, not considered further in the context of this report).

The rules of debate

- 2.12** The Legislative Council has adopted in its standing orders various rules of debate.
- 2.13** Significantly in the context of this inquiry, standing order 96(3) provides:
- A member may not use offensive words against either House of the Legislature, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.
- 2.14** Members may only direct a charge against another member or reflect on their character or conduct by way of substantive motion which admits of a distinct vote by the House. In a significant ruling in 1987, President Johnson observed:
- Allegations of a personal nature against members can only be made upon a direct and substantive motion. Members must exercise their privilege of free speech with good sense and good taste, so as to maintain courtesy of language towards other members in debate. Personal references not only reduce the standard of debate, provoke retaliation and lead to disorder in the House, but degrade the Parliament in the estimation of the people.³¹
- 2.15** For example, an accusation that a member has lied is clearly an imputation of improper motive and should only be made by way of substantive motion. Similarly, an accusation that a member has misled the House, or an imputation that a member had false or unavowed motives, should only be made by substantive motion.
- 2.16** The rules of debate set out in the standing orders have been augmented by various rulings of the President. A detailed discussion of these rules is provided in Chapter 13 (Debate) of *New South Wales Legislative Council Practice*.³²

The power to deal with the conduct of members who use offensive words

- 2.17** The House also has the power to deal with the conduct of members who, by their spoken word, offend the House. Spoken words may be so injurious, grossly defamatory or malicious as to amount to a contempt.
- 2.18** In 1967, the United Kingdom House of Commons Select Committee on Parliamentary Privilege adjudged that:

[C]ontempt may (and has been held to) include the conduct of a Member or Officer, whether within or outside the Chamber or the precincts, which is so improper or disorderly as to amount to an abuse of the Member's or Officer's position. An example of such misconduct would be gross abuse by a Member of his rights and immunities, for example by maliciously making under cover of the absolute privilege afforded by the Bill of Rights a gross defamatory

³¹ President Johnson, 31 March 1987, Legislative Council *Minutes*, pp 9586, cited in *Concise Guide to rulings of the President and Chair of Committees*, Legislative Council, February 2024, p 43.

³² See also *Concise Guide to rulings of the President and Chair of Committees*, Legislative Council, February 2024, pp 48-54.

attack upon a stranger or upon another Member of the House. The House has power, by the exercise of its penal jurisdiction, to control such abuse.³³

2.19 There have been three occasions on which the Legislative Council has considered whether members, by their spoken word, have offended the House to such an extent that the House should take action in relation to the members' conduct:

- In September 1997, the Hon Franca Arena delivered a speech in the House in which she alleged that the Premier and the Commissioner of the Royal Commission into the New South Wales Police Service, amongst others, had been involved in a 'cover-up' of high-profile paedophiles. The allegations being of such gravity, the Parliament enacted special legislation to enable their investigation by a Special Commission of Inquiry. On the Special Commission reporting that the statements of Mrs Arena were without basis, and following an inquiry into the matter by the Standing Committee on Parliamentary Privilege and Ethics, the House resolved that the conduct of Mrs Arena fell below the standard the House is entitled to expect of a member and brought the House into disrepute, that Mrs Arena submit an apology in respect of the statements, and that, failing this, she be expelled from the service of the House. Ultimately, the House agreed to accept a 'statement of regret' from Mrs Arena in place of the apology.³⁴
- In September 1999, the Leader of the Opposition in the Legislative Council, the Hon Michael Gallacher, and another Opposition member, the Hon John Hannaford, made statements in the House concerning allegations of sexual harassment by the Lord Mayor of Sydney. The statements were referred to the Privileges Committee for inquiry and report as to whether the members' conduct in making the statements constituted an abuse of privilege. In its report, the committee indicated the appropriateness of developing principles to be applied in relation to the exercise of members' freedom of speech, but concluded that the application of such principles retrospectively would be improper. In those circumstances, the committee adjudged that 'any finding of abuse of privilege under present circumstances could be perceived as an unwarranted restriction on members' freedom of speech'.³⁵
- In September 2011, Mr David Shoebridge made a statement in the House concerning the actions of the Commissioner of Police in allegedly seeking to prevent the public release of information about a serial predator in a Sydney park. The statement was referred to the Privileges Committee for inquiry and report as to whether the member's conduct in making the statement constituted an abuse of privilege. In its report, the Privileges Committee found that the statement of Mr Shoebridge did not amount to an abuse of the privilege of freedom of speech, reiterating its observation from 1999 that no guidelines on the exercise of the privilege of freedom of speech had been adopted by the House.³⁶

³³ Select Committee on Parliamentary Privilege, UK House of Commons, Report, December 1967, para 60 cited in Frappell S and Blunt D (eds), *New South Wales Legislative Council Practice*, Second edition, Federation Press, p 318.

³⁴ *New South Wales Legislative Council Practice*, p 318.

³⁵ *New South Wales Legislative Council Practice*, p 155.

³⁶ *New South Wales Legislative Council Practice*, p 155.

Conclusion

- 2.20** Members undoubtedly have a responsibility to ensure that the privilege of freedom of speech is used responsibly and is not abused. Members should always consider the basis, cogency and responsibility of statements they make in the House. Equally, however, the complexity of these matters cited above, particularly the Arena matter, illustrate the challenges that are involved in ensuring that members exercise the immunity of freedom of speech responsibly.
- 2.21** The Privileges Committee has on various occasions recommended that the House take action to adopt a resolution setting out amongst other things the manner in which members are expected to exercise their freedom of speech.³⁷ The House has still not acted on the recommendation. By contrast, in 1988, the Australian Senate adopted a resolution that enjoined senators to use their great power of freedom of speech responsibly, and to take into account:
- the damage that allegations made in parliament can do to the subject of the allegations and the institution of parliament
 - the limited opportunities available to persons other than members of parliament to respond to such allegations
 - the need for senators to have due regard to the rights of others
 - the desirability of ensuring that any adverse reflections on a person are soundly based.

³⁷ For example, in 1996, the Privileges Committee recommended the adoption of a draft code of conduct for members that included a clause relating to the exercise of freedom of speech. See *New South Wales Legislative Council Practice*, p 93.

Chapter 3 Procedures for upholding respectful behaviour in other parliamentary chambers

Chapter 1 of this report made clear the international context to this inquiry: that parliaments around the world have been reckoning with their workplace cultures, both outside and inside of the chamber. Standards of behaviour occurring outside of the chamber are adjudged and upheld via mechanisms such as codes of conduct and commissioners for standards, as well as legislation that applies across all workplaces. In Chapter 2 the committee explained that notwithstanding the fundamental freedom of speech afforded by parliamentary privilege, members' behaviour during proceedings of parliament is subject to limitations imposed by the House itself, notably the rules of debate and the power to discipline members who use offensive words.

This chapter begins by documenting the community's expectation that members of parliament uphold the highest standards of behaviour – as noted in various formal reviews of parliamentary culture, as well as submissions to the committee. It then turns to the major focus: a summary of a number of Westminster-style jurisdictions' procedural provisions for the management of respectful behaviour in parliamentary proceedings, as set out in submissions to the inquiry. While submissions to the inquiry from other legislatures provided important information on their respective codes of conduct – which in chapter 1 were documented as an essential element of the framework for regulating respectful behaviour by members – for the purposes of this inquiry, the focus of this chapter is on procedural provisions for upholding respect. Equally, in light of the terms of reference, the focus is on legislatures' procedures regarding the Chair's determination of what constitutes disrespectful behaviour – embodied in offensive or unparliamentary language – rather than on procedures for how such behaviour, should it be determined, is dealt with.

Community expectations of behaviour in Parliament

3.1 As noted in chapter 1, the Broderick report highlighted the imperative for parliamentary workplaces, as pillars of democracy, to be models of respectful behaviour, noting that community expectations of member behaviour have not always been met.³⁸ This entreaty was common to each of the reviews of parliamentary culture, bullying and harassment around the world, including the Jenkins review of Australian parliamentary workplaces, which observed that a consequence of poor member conduct is a loss of community trust:

Trust is lost in the institution of Parliament when Commonwealth parliamentary workplaces (CPWs) do not meet these standards that are expected of the rest of the Australian population ... a safe and respectful parliamentary workplace is essential to public confidence and to modelling best practice for the community that they serve.³⁹

³⁸ Elizabeth Broderick, *Leading for Change: Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022*, p 3.

³⁹ Kate Jenkins, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (2021) p 12.

3.2 These points were also articulated in submissions to this inquiry, notably those of Anti-Discrimination NSW and the Government Whip, who argued that as elected representatives, members of Parliament should be held to exemplary standards.⁴⁰ The former stated plainly:

Society looks to its elected officials to show leadership and the behaviour of all public officials should be nothing short of exemplary. The public has the right to expect the highest standards from our parliamentarians.⁴¹

3.3 In line with this, the Parliamentary Ethics Advisor emphasised that 'Parliaments should be a role model institution'.⁴²

3.4 The Government Whip underscored that divergence from exemplary standards has the potential to 'exacerbate the disillusionment experienced by members of the public about the state of democracy'.⁴³ Acknowledging the fundamental privilege of freedom of speech in parliaments, he argued that robust debate can and should nevertheless be respectful:

Parliamentary privilege, including freedom of speech, is essential to the proper functioning of Parliament, however, this privilege must not be abused to harm others. While members in the chamber should always retain an ability to conduct robust, democratic, passionate, and healthy debate, there is no need for debate to be disrespectful, unsafe, abusive, or discriminatory.⁴⁴

Procedural provisions in relevant jurisdictions

3.5 Key stakeholders to this inquiry included the clerks or other representatives of various Westminster jurisdictions, who explained how respectful behaviour is managed within their Houses. Submissions were received from the following parliaments, whose procedures for regulating behaviour in the chamber are set out in turn below:

- Australian House of Representatives
- Australian Senate
- House of Commons, United Kingdom
- House of Lords, United Kingdom
- House of Commons, Canada
- Welsh Assembly
- Scottish Parliament
- House of Representatives, New Zealand
- Legislative Assembly, Victoria.

⁴⁰ Submission 11, Government Whip, p 1.

⁴¹ Submission 10, Anti-Discrimination NSW, p 2.

⁴² Submission 13, Parliamentary Ethics Adviser, p 2.

⁴³ Submission 11, Government Whip, p 1.

⁴⁴ Submission 11, Government Whip, p 1.

- 3.6** Common denominators across most Westminster Parliaments⁴⁵ include the concept of offensive or unparliamentary language and its effect on order in the Chamber, along with the Chair's responsibility to determine, either of their own volition, or on points of order, whether a breach of standing orders has occurred. In addition, Chairs' rulings on what words constitute offensive language elucidate the standing orders and serve to provide benchmarks against which behaviour can be adjudged.
- 3.7** As noted above, the summaries that follow focus on individual legislatures' procedures for what constitutes respectful behaviour, rather than on procedures for how such behaviour, should it be determined, is dealt with, which a number of jurisdictions also addressed in their submissions to the committee. In addition, while codes of conduct are integral to jurisdictions' frameworks for member conduct, these are not documented here.

House of Representatives

- 3.8** Standing orders 88 to 96 of the Australian House of Representatives make explicit reference to disorderly behaviour and the actions available to the Speaker or occupant of the Chair to enforce order. Such provisions place an emphasis on the Chairs' duty to maintain order in the House, expressly stipulated in standing order 60.⁴⁶
- 3.9** Standing order 89, akin to the NSW Legislative Council's standing order 96(3) provides:
- A Member must not use offensive words against:
- (a) either House of the Parliament or a Member of the Parliament; or
- (b) a member of the Judiciary.
- 3.10** Offensive language is not defined in the standing orders and is a matter for the Chair to determine. Appropriate rulings and established practices of the House are used in the Chair's determination of offensive language.⁴⁷
- 3.11** Under standing order 92 the Speaker is empowered to intervene when they consider the member's conduct offensive or disorderly. The Speaker may also make a determination when a member's conduct is brought to their attention.
- 3.12** Once a point of order on offensive words has been established the Chair may rule to require the withdrawal of the offensive language or order a sanction for disorderly conduct if withdrawal is refused.⁴⁸

⁴⁵ The noted exception here is the United Kingdom House of Lords, which operates under procedures of 'self-regulation' in which the House as a whole, rather than the Presiding Officer, rules on matter of order. See Submission 8, United Kingdom House of Lords.

⁴⁶ Submission 4, Department of the House of Representatives, Parliament of Australia, p 1.

⁴⁷ Submission 4, Department of the House of Representatives, Parliament of Australia, p 1.

⁴⁸ Submission 4, Department of the House of Representatives, Parliament of Australia, p 2.

Recommended enhancement to the standing order

3.13 Following the release of the Australian Human Rights Commission report, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (the Jenkins report, noted in chapter 1), the Standing Committee on Procedure considered two key recommendations of that review relating to the standing orders, practice and procedure.

3.14 Relevant to the current inquiry, the Standing Committee on Procedure recommended that the standing order be amended to clarify that offensive words include sexist, racist, homophobic and otherwise discriminatory words.

89 Offensive words

A Member must not use offensive words, including words that are sexist, racist, homophobic and otherwise exclusionary or discriminatory, against:

- (a) either House of the Parliament or a Member of the Parliament; or
- (b) a member of the Judiciary.⁴⁹

3.15 The committee observed that such language is proscribed by the standing order, albeit implicitly, and that this is plainly reflected in Speakers' rulings:

Words that are sexist, racist, homophobic or otherwise exclusionary or discriminatory are unacceptable in Parliament. Such words meet the definition of offensive words under standing order 89 and should not be used about other Members during debates. Successive Speakers have made their views on this clear.⁵⁰

3.16 The committee also noted that although captured under the current standing orders, explicitly specifying that sexist, racist, homophobic or otherwise exclusionary or discriminatory words are offensive would strengthen the Speakers' ability to rule them out of order, thus serving to 'set expectations about the tone of parliamentary debate and also indicate to the community that such words [are] not acceptable in any environment'.⁵¹

3.17 The House of Representatives submission, provided in May 2024, noted that the recommendations were yet to be responded to.⁵²

Australian Senate

3.18 Similar to Standing order 96(3) of the NSW Legislative Council, standing order 193 of the Australian Senate requires that:

⁴⁹ Standing Committee on Procedure, *Raising the Standard: Inquiry into recommendations 10 and 27 of Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, House of Representatives, July 2023, p xv.

⁵⁰ Standing Committee on Procedure, *Raising the Standard*, p 19.

⁵¹ Submission 4, Department of the House of Representatives, Parliament of Australia, pp 5-6.

⁵² Submission 4, Department of the House of Representatives, Parliament of Australia, p 5.

A senator shall not use offensive words against either House of Parliament or of a House of a state or territory parliament, or any member of such House, or against a judicial officer, and all imputations of improper motives and all personal reflections on those Houses, members or officers shall be considered highly disorderly.⁵³

- 3.19** *Odgers' Australian Senate Practice* notes that, further to the specific imputations prohibited by standing order 193, 'if a senator finds a remark personally offensive and considers himself or herself personally aggrieved, the chair may require its withdrawal to preserve the dignity of debate'. The chair need not wait for an objection where they regard expressions as 'clearly contrary to the standing order'.⁵⁴
- 3.20** *Odgers'* also notes that procedures relating to disorder highlight that maintaining order is an obligation on the whole Senate, rather than solely for the Chair. This principle is reflected by the fact that any senator may move a suspension motion, and the Senate must vote on it.⁵⁵
- 3.21** The Senate's submission also observed that the operation of a chamber and free debate does not supersede the need for acceptable behaviour. Rather, there is an intricate dynamic between the two, which are thus are balanced accordingly. This is evident in the below ruling, which was further endorsed by the Senate Procedure Committee in a 2018 report:

... personal abuse has no place in this chamber, particularly if it targets personal attributes, such as race or gender—nor does the use of abusive epithets or labels. The use of such language does nothing to facilitate the operation of a chamber and free debate within it, and we are all capable of vigorously arguing our case without resort to it. I intend to take a strict line on the use of such language, to uphold the dignity of the chamber and to ensure it is a place where all senators representing the people of their states and territories are able to freely contribute to debate and deliberations.⁵⁶

- 3.22** The Australian Senate submission emphasised how Presiding Officers' statements both advance the interpretation of the standing orders and set a benchmark for the standard of behaviour expected in the Senate. In addition, beyond formal procedures, informal interventions by the President, Deputy President, temporary chairs and party leaders are used to resolve disputes and encourage respectful behaviour.⁵⁷

United Kingdom House of Commons

- 3.23** While the House of Commons standing orders do not codify standards of behaviour, standing orders 42 and 46 give the Speaker power to act in the case of 'disorderly language or conduct'.
- 3.24** As with the Legislative Council, members' behaviour in the course of proceedings and in the Chamber is a matter for the Chair and for the House; conduct outside of proceedings is a

⁵³ Submission 1, Department of the Senate, Parliament of Australia, p 1.

⁵⁴ Submission 1, Department of the Senate, Parliament of Australia, p 1.

⁵⁵ Submission 1, Department of the Senate, Parliament of Australia, p 2.

⁵⁶ Submission 1, Department of the Senate, Parliament of Australia, p 2

⁵⁷ Submission 1, Department of the Senate, Parliament of Australia, p 3.

matter for the Parliamentary Commissioner for Standards and the Independent Expert Panel.⁵⁸

3.25 Standards of expected behaviour for members are a matter of practice and precedent set out in *Erskine May*, in the Speaker's guidance on Rules of Behaviour and Courtesies in the House of Commons, and in various resolutions of the House.⁵⁹

3.26 The House of Commons submission states that practice and precedent are heavily relied on so as to preserve the House's 'exclusive cognisance' or right to regulate its own proceedings, and that regulation of member behaviour should be context-specific, in the moment, and uphold the principle of freedom of speech. Within this framework, standards are able to evolve organically through time and to match contemporary standards.⁶⁰

3.27 Although the standing orders are largely silent on what constitutes disorderly or unparliamentary language or conduct, established principles articulated in *Erskine May* are that:

Good temper and moderation are the characteristics of parliamentary language. Parliamentary language is never more desirable than when a member is canvassing the opinions and conduct of their opponents in debate. The Speaker will accordingly intervene in such cases and will also intervene in respect of other abusive and insulting language of a nature likely to create disorder ... whether a word should be regarded as unparliamentary depends on the context in which it is used.⁶¹

United Kingdom House of Lords

3.28 The House of Lords places a heavy emphasis on the collective responsibility amongst members to maintain order and good conduct, and hence its 'self-regulation'. Unlike other Westminster jurisdictions, the presiding officer has no power to rule on matters of order. Rather, the preservation of order, is a matter for the House as a whole.⁶²

3.29 Standing order 31 allows for a remark to be ruled as 'personally insulting or offensive', provided that it is agreed to by the House. A motion under this standing order may be moved by any member of the House, although in practice is generally moved by a whip, and is open to debate.⁶³

3.30 Standing order 32 provides that if a member is perceived to receive any affront or injury from any other member of the House, they may appeal to the Lords in Parliament for reparation. If such is not adhered to and a 'quarrel' is entertained, the member in question may undergo severe censure of the Lords House of Parliament.⁶⁴

⁵⁸ Submission 7, House of Commons, United Kingdom, p 1.

⁵⁹ Submission 7, House of Commons, United Kingdom, p 2.

⁶⁰ Submission 7, House of Commons, United Kingdom, pp 4 and 6.

⁶¹ *Erskine May*, 25th Edition (2019), quoted in Submission 7, House of Commons, United Kingdom, p 5.

⁶² Submission 8, House of Lords, United Kingdom, p 1.

⁶³ Submission 8, House of Lords, United Kingdom, p 1.

⁶⁴ Submission 8, House of Lords, United Kingdom, p 2.

- 3.31** The Lords Code of Conduct provision regarding respect and courtesy explicitly applies inside as well as outside the Chamber:

Members are required to treat those with whom they come into contact in the course of their parliamentary duties and activities (including parliamentary proceedings) with respect and courtesy.⁶⁵

- 3.32** Bullying and harassment during proceedings also falls under the purview of the Commissioner for Standards who regulates the Code. In their consideration of the behaviour, the constitutional principle of freedom of speech in parliamentary proceedings remains paramount, such that there is a high threshold for the Commissioner to investigate conduct during proceedings which may have infringed on the Code. This was affirmed by a 2022 report by the Conduct Committee, which further emphasised the House's self-regulation with respect to behaviour in the House, whilst affirming that the Commissioners form part of the House's self-regulating system.⁶⁶

House of Commons of Canada

- 3.33** Under standing order 18 of the Canadian House of Commons, the use of offensive, provocative or threatening language in the House is 'strictly forbidden'.⁶⁷ In respect of 'unparliamentary language' the standing order states, 'No member shall ... use offensive words against either House, or against any member thereof.'
- 3.34** Such behaviour in proceedings is dealt with by the Speaker intervening or a member raising a point of order.⁶⁸
- 3.35** According to the *House of Commons Procedure and Practice*, when addressing unparliamentary language, 'the Speaker takes into account the tone, manner and intention of the Member speaking, the person to whom the words at issue were directed, the degree of provocation, and most important, whether or not the remarks created disorder in the Chamber'.⁶⁹ Of note here is that Speakers have ruled during questions that while the remarks themselves may not have been strictly unparliamentary, they were still provocative and causing of disorder.⁷⁰

Welsh Parliament

- 3.36** Standing order 13.9 of the Welsh Parliament (Senedd Cymru) sets out that the Presiding Officer (commonly known as the Llywydd) must call to order any member who:

(i) is guilty of discourteous or unbecoming conduct

⁶⁵ Submission 8, House of Lords, United Kingdom, p 2.

⁶⁶ Submission 8, House of Lords, United Kingdom, p 3. No member has yet been sanctioned under the Code of Conduct for behaviour during parliamentary proceedings.

⁶⁷ Submission 6, House of Commons of Canada, p 3.

⁶⁸ Submission 6, House of Commons of Canada, pp 3-4.

⁶⁹ Submission 6, House of Commons of Canada, p 3.

⁷⁰ Submission 6, House of Commons of Canada, p 6.

- (ii) is using disorderly, discriminatory or offensive language or language which detracts from the dignity of the Senedd.⁷¹

3.37 *Guidance on the proper conduct of Senedd business* explicitly identifies that disorderly language includes racist and sexist references and that:

The Presiding Officer will decide what constitutes disorderly language. Racist, sexist, or ageist references will be considered both discriminatory and offensive ... Members must at all times in their conduct promote respect for the Senedd and extend respect and courtesy to other Members.⁷²

3.38 The guidance also indicates:

Members must at all times in their conduct promote respect for the Senedd and extend respect and courtesy to other Members. Members must comply with any directions given by the Presiding Officer about conduct in the Siambr⁷³ and order in plenary meetings.⁷⁴

3.39 The Senedd's submission notes that there is no definitive list indicating what constitutes discourteous conduct or disorderly language, as each ruling is made in a specific set of circumstances, with context being a key consideration. Presiding Officers have ruled specific instances of discriminatory or disorderly language out of order, and the Senedd's submission details numerous instances of rulings on sexist and other discriminatory language.⁷⁵

Scottish Parliament

3.40 Standing order 7.3 of the Scottish Parliament requires that members 'at all times conduct themselves in a courteous and respectful manner', respecting the authority of the Presiding Officer.⁷⁶

3.41 In addition, the Code of Conduct for Members of the Scottish Parliament includes specific provisions on conduct in the Chamber, requiring that:

To maintain courtesy and respect, members should not behave in a way which interferes with the proper conduct of business in the Chamber. This includes ... Use of language and behaviour – Members shall at all times ensure that their choice of language in the Chamber is appropriate and meets the high standards expected by the general public.⁷⁷

⁷¹ Submission 9, Chief Executive and Clerk Welsh Parliament – Senedd Cymru, p 1.

⁷² Senedd Cymru, *Guidance on the proper conduct of Senedd Business* (issued by the Llywydd under Standing Order 6.17), October 2023 quoted in Submission 9, Chief Executive and Clerk, Welsh Parliament – Senedd Cymru, p 2.

⁷³ The Siambr is the Welsh Parliament's Chamber.

⁷⁴ Senedd Cymru, *Guidance on the proper conduct of Senedd Business* (issued by the Llywydd under Standing Order 6.17), October 2023 quoted in Submission 9, Chief Executive and Clerk, Welsh Parliament – Senedd Cymru, p 2.

⁷⁵ Submission 9, Chief Executive and Clerk, Welsh Parliament – Senedd Cymru, p 4.

⁷⁶ Submission 5, The Scottish Parliament, p 1.

⁷⁷ Submission 5, The Scottish Parliament, p 1.

New Zealand Parliament

- 3.42** The New Zealand House of Representatives has restrictions on offensive or disorderly words, however, this does not extend to specific procedures relating to sexism and racism. The standing order states, 'If any offensive or disorderly words are used, whether by a member who is speaking or by a member who is present, the Speaker intervenes.'⁷⁸
- 3.43** In his submission, the Clerk of the New Zealand House of Representatives distinguishes between remarks directed at members and at others, explaining that the former is likely to provoke a response from the Speaker:

Sexist or racist comments directed at a member are likely to bring about intervention by the Speaker. Debate points that may be considered racist or sexist towards people outside the House will not necessarily result in the Speaker's intervention. However, a racist, sexist or strongly insulting reference to people outside the House may well provoke disorder, which could be the basis for requiring the remark to be withdrawn.⁷⁹

Legislative Assembly, Parliament of Victoria

- 3.44** Victoria's Legislative Assembly has three key standing orders that govern respectful behaviour in the chamber:
- a prohibition against imputations or improper motives (imputations) and personal reflections on members other than by substantive motion — standing order 118
 - a requirement not to use offensive or unbecoming words in relation to other members — standing order 119
 - a process for objecting to words that are personally offensive, objectionable or unparliamentary — standing order 120.⁸⁰
- 3.45** Where a member infringes on any of these rules, the Chair may intervene or leave it to members to object via a point of order. The approach taken by Chairs varies depending on the severity of the offence, the nature of debate and so on. For objectionable and unparliamentary words, the Chair may order the member to withdraw the words and may order an apology. If a member finds words personally offensive, they may ask the Chair to order the words be withdrawn. The Legislative Assembly submission observes that, 'The rule about personally offensive words can be a difficult one for the Chair as members can feel offended during heated debates without standing order 120 necessarily being engaged.'⁸¹ In making such a determination the Chair considers: whether the words were made about an individual or group; whether they were personally or political offensive; whether the member is offended because they consider the comments are false; and whether the member is offended because they have a different perspective.⁸²

⁷⁸ Standing order 120, *Standing Orders of the House of Representatives*, New Zealand.

⁷⁹ Submission 14, Clerk of the House of Representatives New Zealand, p 2.

⁸⁰ Submission 2, Legislative Assembly, Parliament of Victoria, p 2.

⁸¹ Submission 2, Legislative Assembly, Parliament of Victoria, pp 2-3.

⁸² Submission 2, Legislative Assembly, Parliament of Victoria, pp 2-3.

Chapter 4 Options for reform

Previous chapters of this report have highlighted the legal imperative for parliament as a workplace to uphold respectful standards of behaviour, as well as the community's rightful trust in the institution of Parliament, and in individual members, to uphold exemplary standards of conduct. The previous chapter documented a number of Westminster-style jurisdictions' procedures for upholding respectful behaviour in the chamber.

This chapter draws on the evidence before the committee to identify three options for reform: first, the inclusion of specific wording in the standing orders to expressly proscribe discriminatory language; second, no change; and third, a greater emphasis on Presidents' rulings taking account of the context in which a member has spoken, including the intent of the speaker and the effect of the language used.

Option 1: Include specific wording in standing order 96(3)

4.1 The first option emerging from the evidence before the committee is the inclusion of specific wording in standing order 96(3) dealing with offensive words, such that the standing order would expressly prohibit language that is sexist, racist, homophobic or otherwise discriminatory.

4.2 As set out in chapter 3, this is the approach recently proposed by the House of Representatives Standing Committee on Procedure, which recommended that the relevant standing order be amended as follows:

A Member must not use offensive words, including words that are sexist, racist, homophobic and otherwise exclusionary or discriminatory, against:

(a) either House of the Parliament or a Member of the Parliament; or

(b) a member of the Judiciary.⁸³

4.3 Emphasising the community's high expectations of respectful behaviour from elected members individually and from parliament as a whole, the committee strongly affirmed that 'words that are sexist, racist, homophobic or otherwise exclusionary or discriminatory are unacceptable in Parliament.'⁸⁴ Whilst acknowledging that such words meet the definition of offensive words under the present standing order, as ruled by successive Speakers, the committee concluded that codifying such language as offensive would further strengthen the Speaker's ability to rule it out of order, would set clear expectations about the tenor of parliamentary debate, and would signal to the community that such language is unacceptable in any context.⁸⁵

⁸³ Standing Committee on Procedure, *Raising the Standard: Inquiry into recommendations 10 and 27 of Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, House of Representatives, July 2023, p xv.

⁸⁴ Standing Committee on Procedure, *Raising the Standard*, p 19.

⁸⁵ Standing Committee on Procedure, *Raising the Standard*, p 20.

- 4.4 The Government Whip's submission to the current inquiry highlighted this option, making the case that in regulating members' behaviour, the standing orders should keep up with community standards:

The Legislative Council standing orders should evolve to demand a level of respect from members that is commensurate with community expectations and to a contemporary standard. This inquiry provides an important opportunity to update the standing orders to require the standards of respectful behaviour already met and exceeded by the people of NSW in their day to day lives.⁸⁶

- 4.5 Whilst underscoring the need for a cautious approach, the Whip indicated that, 'The Government is open to an option being utilised in the Legislative Council similar to' what was recommended in the House of Representatives.⁸⁷

Option 2: No change to the standing orders

- 4.6 The second option emerging from the evidence before the committee is for no change.

- 4.7 The Shooters Fishers and Farmers Party expressed the view that that the Legislative Council's standing orders and accompanying rulings are already sufficient for the President to deal with offensive comments from members promptly and effectively. In doing so, it argued that codifying what constitutes unacceptable language would work against the principle of free speech so intrinsic to parliament, which the Council itself must actively defend:

The Legislative Council itself must play a pivotal role in defending free speech and not defining what constitutes acceptable speech and conduct while preserving the fundamental right to express differing opinions and perspectives, even though at times these opinions may be offensive to some members ... In an age where it is becoming increasingly challenging and complex to define racism and sexism, the NSW Legislative Council must remain vigilant in upholding the principles of free speech, erring on the side of more free speech, not less.⁸⁸

- 4.8 In a different vein, the Parliamentary Ethics Adviser, Mr John Evans PSM, urged caution about expressly prohibiting sexism and racism in the standing orders, suggesting that this could give rise to further discussions about what else should be explicitly prohibited.⁸⁹ Mr Evans' preference for retaining flexibility in Presidents' rulings is discussed in the third option below.

- 4.9 Mr Evans also observed that the regulation of member conduct is not only a matter for the House, but also for political parties. He emphasised that when endorsing candidates for election, parties should ensure that the individuals selected have appropriate standards of behaviour. Additionally, parties should themselves hold offending members to account.⁹⁰

⁸⁶ Submission 11, Government Whip, p 2.

⁸⁷ Submission 11, Government Whip, p 2.

⁸⁸ Submission 3, Shooters, Fishers and Farmers Party, p 1.

⁸⁹ Submission 13, Parliamentary Ethics Adviser, p 2.

⁹⁰ Submission 13, Parliamentary Ethics Adviser, p 2.

Option 3: Greater emphasis on context in Chairs' rulings

4.10 The final option identified in submissions is for a greater emphasis on Presidents' rulings taking account of the context in which language is used, including the intent and effect of the words spoken.

4.11 Whilst numerous legislatures noted in their submissions that the context in which potentially offensive words are spoken is an important consideration in Presidents' rulings, the Canadian House of Commons addressed the elements of context in detail, including the tone, manner and intent of the member speaking, as well as the effect of the comments, to enable a more holistic evaluation of behaviour:

When addressing unparliamentary language, "the Speaker takes into account the tone, manner and intention of the Member speaking, the person to whom the words at issue were directed, the degree of provocation, and most important, whether or not the remarks created disorder in the Chamber". This evaluation is context-dependent ... codifying unparliamentary language is impractical, as context matters most in determining its appropriateness.⁹¹

4.12 The Parliamentary Ethics Adviser highlighted the Canadian legislature's emphasis on context, making the case that this approach allows rulings to keep up with community standards, whilst preserving the ability to be flexible to every situation that Presiding Officers adjudge:

I consider that the best approach is to allow the President to make rulings on proper standards of behaviour in the Chamber in the light of evolving contemporary attitudes as to what constitutes respectful behaviour and language of members. This would continue to allow for flexibility in the rulings of the President.⁹²

Committee comment

4.13 After extensive reflection and deliberation, the committee recommends that the House amend standing order 96(3) by sessional order by inserting 'or discriminatory' after 'A member may not use offensive', such that the standing order reads:

A member may not use offensive or discriminatory words against either House of the Legislature, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.

4.14 Additionally, the committee endorses the approach taken in the Canadian House of Commons and highlighted by the Parliamentary Ethics Advisor, whereby the Presiding Officer, in addressing unparliamentary language, takes into account the tone, manner and intent of the member speaking, and the effect of the comments, to enable a more holistic evaluation of behaviour.

⁹¹ Submission 6, House of Commons of Canada, p 3, quoting *House of Commons Procedure and Practice*, Third Edition, 2017, p 624.

⁹² Submission 13, Parliamentary Ethics Adviser, p 2.

Recommendation 1

That standing order 96(3) be amended by sessional order by inserting 'or discriminatory' after 'A member may not use offensive', such that the standing order reads:

A member may not use offensive or discriminatory words against either House of the Legislature, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.

Recommendation 2

That Presidents' rulings dealing with offensive or discriminatory words in the Chamber place a greater emphasis on the context in which the words are used, including the tone, manner and intent of the member speaking, as well as the effect of the comments in the Chamber.

Appendix 1 Submissions

No.	Author
1	Department of the Senate, Parliament of Australia
2	Legislative Assembly, Parliament of Victoria
3	Shooters, Fishers and Farmers Party
4	Department of the House of Representatives, Parliament of Australia
5	The Scottish Parliament
6	House of Commons, Canada
7	House of Commons, United Kingdom
8	House of Lords, United Kingdom
9	Chief Executive and Clerk, Welsh Parliament – Senedd Cymru
10	Anti-Discrimination NSW
11	Government Whip
12	Confidential
13	Parliamentary Ethics Adviser
14	Clerk of the House of Representatives, New Zealand

Appendix 2 Minutes

Minutes no. 1

Wednesday 13 March 2024, 12.36 pm

President's Dining Room, Parliament House, Sydney

1. Members

Mr Franklin (*Chair*)

Mr Borsak (from 12.53 pm)

Ms Boyd

Ms Hurst

Mrs Mitchell

Mr Nanva

Mr Primrose

Mr Rath

Mr Roberts

Mr Ruddick

Ms Sharpe

2. Apologies

Mr Tudehope

3. Correspondence

The committee noted the following item of correspondence:

Received:

- 23 February 2024 – Correspondence from the Hon Greg Piper MP, Speaker of the NSW Legislative Assembly, Chair of the Standing Orders and Procedure Committee, to the Hon Ben Franklin MLC, President of the NSW Legislative Council, Chair of the Procedure Committee, advising that the Legislative Assembly Standing Orders and Procedure Committee is proposing to grant public access to proceedings of the Legislative Assembly through Parliament-on-Demand.

4. Tabling of resolution establishing the committee

The President tabled the resolution of the House establishing the committee, which reads as follows:

Procedure Committee

That, notwithstanding anything to the contrary contained in the standing orders:

Appointment

- (1) A Procedure Committee be appointed.

Membership

- (2) In accordance with standing order 211 (3) and (4), the committee consist of the following members:
 - (a) the President, Deputy President, Assistant President, Leader of the Government, Deputy Leader of the Government, Leader of the Opposition, Deputy Leader of the Opposition, the Government Whip, and the Opposition Whip, and
 - (b) representatives of The Greens, the Shooters, Fishers and Farmers Party, the Animal Justice Party, the Legalise Cannabis Party, Pauline Hanson's One Nation and the Liberal Democratic Party, nominated in writing to the Clerk, and any independent member.

Chair

- (3) The Chair of the committee be the President.

5. Conduct of committee proceedings

The committee considered adopting relevant standard provisions for inquiries, noting the longstanding practice that the Procedure Committee has generally not held hearings.

Resolved, on the motion of Ms Boyd: That unless the committee decides otherwise:

- submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
- attachments to submissions are to remain confidential,
- media statements on behalf of the committee are to be made only by the Chair.

6. Public access to proceedings through Parliament-on-Demand

Resolved, on the motion of Mr Primrose: That the President be authorised to respond to the correspondence from the Speaker received 23 February 2024, to indicate that the Procedure Committee also supports the next stage in the implementation of Parliament-on-Demand.

7. Inquiry into the giving of notices of motions under standing order 75

The committee noted the following terms of reference referred by the House on 29 November 2023:

- (1) That the Procedure Committee inquire into and report on the giving of notices of motions under standing order 75, to expedite the process to save time in the Chamber.
- (2) That the committee report by 24 May 2024.

7.1 Proposed timeline

Resolved, on the motion of Mrs Mitchell: That the committee adopt the following timeline for the administration of the inquiry:

- Call for submissions to commence – week of Tuesday 2 April 2024
- Closing date for submissions – Friday 10 May 2024
- Report deliberative – week of Monday 29 July 2024
- Committee to report by – Tuesday 6 August 2024 (first sitting day in August).

Resolved, on the motion of Ms Sharpe: That the Leader of the Government seek a resolution from the House to extend the reporting date to Tuesday 6 August 2024.

7.2 Discussion paper

Resolved, on the motion of Mr Nanva: That:

- the committee secretariat prepare a discussion paper to be published coinciding with the call for submissions, the content of which will include:
 - relevant discussion and recommendations from previous reports of the Procedure Committee including:
 - the 2016 inquiry into rules for notices of motions
 - the 2012 inquiry into procedures for the giving, moving and publication of notices of motion
 - summary of relevant procedures in other jurisdictions.
- the draft discussion paper be considered for publication by the committee via email.

7.3 Stakeholder list

Resolved, on the motion of Ms Hurst: That:

- the secretariat circulate to members the President's proposed list of stakeholders to be invited to make a submission
- members have two days from when the President's proposed list is circulated to make amendments or nominate additional stakeholders

- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

8. **Inquiry into updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism**

The committee noted the following terms of reference for the inquiry referred by the House on 7 February 2024:

That the Procedure Committee inquire into and report on updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism.

8.1 **Proposed timeline**

Resolved, on the motion of Ms Hurst: That the committee adopt the following timeline for the administration of the inquiry:

- Call for submissions to commence – week of Tuesday 2 April 2024
- Closing date for submissions – Friday 10 May 2024
- Report deliberative – week of Monday 29 July 2024
- Committee to report by – Tuesday 6 August 2024 (first sitting day in August).

8.2 **Briefing note**

Resolved, on the motion of Ms Boyd: That the committee secretariat prepare a confidential briefing note for the committee which includes:

- a summary of relevant practices in jurisdictions including across Australia and New Zealand, the United Kingdom and Canada
- discussion on parliamentary privilege and the conduct of members.

8.3 **Stakeholder list**

Resolved, on the motion of Mr Rath: That:

- the secretariat circulate to members the President's proposed list of stakeholders to be invited to make a submission
- members have two days from when the President's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

9. **Inquiry into procedures for dealing with disorder by members during committee proceedings**

The committee noted the following terms of reference referred by the House this day:

That the Procedure Committee inquire into and report on procedures for dealing with disorder by members during committee proceedings.

9.1 **Proposed timeline**

Resolved, on the motion of Mr Nanva: That the committee adopt the following timeline for the administration of the inquiry:

- Call for submissions to commence – week of Tuesday 2 April 2024
- Closing date for submissions – Friday 10 May 2024
- Report deliberative – week of Monday 29 July 2024
- Committee to report by – Tuesday 6 August 2024 (first sitting day in August).

9.2 **Briefing note**

Resolved, on the motion of Ms Hurst: That the committee secretariat prepare a confidential briefing note for the committee which includes:

- a summary of relevant practices in jurisdictions including across Australia and New Zealand, the United Kingdom and Canada

- discussion on the role and powers of the Chair in respect of disorderly conduct in the House and in committees

9.3 Stakeholder list

Resolved, on the motion of Mrs Mitchell: That:

- the secretariat circulate to members the President's proposed list of stakeholders to be invited to make a submission
- members have two days from when the President's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

10. Review of the recommendations from the inquiry into Auslan interpretation for broadcasting

The committee noted that in its 2022 report for this inquiry it recommended a pilot program to provide Auslan interpretation, and that an evaluation be conducted.

Resolved, on the motion of Ms Boyd: That the committee secretariat prepare a briefing paper on the implementation of the recommendations of the inquiry into Auslan interpretation for broadcasting.

11. Adjournment

The Committee adjourned at 12:57pm, *sine die*.

Rhea Goundar
Committee Clerk

Minutes no. 2

Thursday 16 May 2024, 12.40 pm

President's Dining Room, Parliament House, Sydney

1. Members

Mr Franklin (Chair)
Ms Boyd
Mr Buckingham
Mr Graham (from 12.54 pm until 1.47 pm)
Ms Hurst
Mr Martin (until 1.13 pm)
Mrs Mitchell (until 12.57 pm)
Mr Nanva
Mr Primrose
Mr Roberts
Ms Sharpe (from 12.54 pm until 1.20 pm)
Mr Tudehope

2. Apologies

Mr Latham

3. Previous minutes

Resolved, on the motion of Mrs Mitchell: That draft minutes no. 1 be confirmed.

4. Membership

The committee noted Mr Martin as a substantive member of the committee from 19 April 2024.

5. Correspondence

The committee noted the following items of correspondence:

Sent:

- 13 March 2024 - Correspondence from the Hon Ben Franklin MLC, President of the NSW Legislative Council, Chair of the Procedure Committee, to the Hon Greg Piper MP, Speaker of the NSW Legislative Assembly, Chair of the Standing Orders and Procedure Committee, responding to correspondence dated 23 February 2024, expressing the committee's support for the next stage in the implementation of Parliament-on-Demand.

Received:

- 10 April 2024 - Email from the Public Service Commission, to the Procedure Committee, declining the invitation to make a submission for the inquiry into updating the standing orders to require respectful behaviour in the Chamber.

6. Inquiry into the giving of notices of motions under standing order 75

6.1 Discussion paper

The committee noted, as agreed via email, the discussion paper published by the secretariat.

6.2 Stakeholder list

The committee noted, as agreed via email, that the following stakeholders were invited to make a submission to the inquiry:

- All Members of the Legislative Council
- Mr John Evans, Parliamentary Ethics Adviser.

6.3 Public submissions

The committee noted the following submissions were published by the committee clerk under the authorisation of the resolution of the committee of 13 March 2024:

- No. 1 - Shooters, Fishers and Farmers Party
- No. 2 - The Hon. Emma Hurst
- No. 3 - Government Whip.

6.4 Committee discussion

Members discussed issues raised in the discussion paper and submissions to inform the final report.

7. Inquiry into updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism

7.1 Briefing paper

The committee noted the confidential briefing paper, as well as the following two papers, distributed by the secretariat:

- House of Representatives Standing Committee on Procedure, *Raising the Standard, July 2023*,
- Commonwealth Parliamentary Association, *Standards for Codes of Conduct, for members of Parliament and the parliamentary workplace, 2024*.

7.2 Stakeholder list

The committee noted, as agreed via email, that the following stakeholders were invited to make a submission to the inquiry:

- All Members of the Legislative Council
- Mr John Evans, Parliamentary Ethics Adviser
- Clerks of each State and Territory of Australia, the Senate and the House of Representatives, and New Zealand
- Clerks of the UK, Welsh, Scottish, and Canadian Parliaments
- Independent Complaints Officer
- President, Anti-Discrimination Board NSW

- NSW Ageing and Disability Commissioner
- Public Service Commissioner
- Australian Human Rights Commission
- The Ethics Centre (formerly the St James Ethics Centre)
- Council for Civil Liberties
- Centre for Independent Studies
- Institute of Public Affairs
- Emeritus Professor Simon Rice, Sydney Law School
- The University of Sydney Law School
- UNSW Law and Justice
- Macquarie Law school
- Newcastle School of Law and Justice
- ANU College of Law
- UNE Law School
- University of South Australia Law School.

7.3 Public submissions

The committee noted the following submissions were published by the committee clerk under the authorisation of the resolution of the committee of 13 March 2024:

- No. 1 - Department of the Senate, Parliament of Australia
- No. 2 - Legislative Assembly, Parliament of Victoria
- No. 3 - Shooters, Fishers and Farmers Party
- No. 4 - Department of the House of Representatives, Parliament of Australia
- No. 5 - The Scottish Parliament
- No. 6 - House of Commons, Canada
- No. 7 - House of Commons, United Kingdom
- No. 8 - House of Lords, United Kingdom
- No. 9 - Chief Executive and Clerk, Welsh Parliament – Senedd Cymru
- No. 10 - Anti-Discrimination NSW
- No. 11 - Government Whip
- No. 14 - Clerk of the House of Representatives, New Zealand.

7.4 Committee discussion

Members discussed issues raised in the confidential briefing paper, House of Representatives report, CPA document and submissions to inform the final report.

8. Inquiry into procedures for dealing with disorder by members during committee proceedings

8.1 Briefing paper

The committee noted the confidential briefing paper distributed by the secretariat.

8.2 Stakeholder list

The committee noted, as agreed via email, that the following stakeholders were invited to make a submission to the inquiry:

- All Members of the Legislative Council
- Mr John Evans, Parliamentary Ethics Adviser
- Clerks of each State and Territory of Australia, the Senate and the House of Representatives, and New Zealand
- Clerks of the UK, Welsh, Scottish, and Canadian Parliaments.

8.3 Public submissions

The committee noted the following submissions were published by the committee clerk under the authorisation of the resolution of the committee of 13 March 2024:

- No. 1 - Office of the Legislative Assembly, Australian Capital Territory
- No. 2 - Department of the Senate, Parliament of Australia
- No. 3 - House of Commons, Canada
- No. 4 - Department of the House of Representatives, Parliament of Australia
- No. 5 - House of Commons, United Kingdom
- No. 6 - The Hon. Jeremy Buckingham
- No. 7 - House of Lords, United Kingdom
- No. 8 - Chief Executive and Clerk, Welsh Parliament – Senedd Cymru
- No. 9 - Government Whip
- No. 12 - Clerk of the House of Representatives, New Zealand.

8.4 Committee discussion

Members discussed issues raised in the confidential briefing paper and submissions to inform the final report.

9. Confidential inquiry submissions

Before considering requests from authors that the committee keep their submissions confidential, the committee directed the secretariat to seek confirmation of the publication status from authors, and any would consider publication.

10. Adjournment

The Committee adjourned at 12:57pm, *sine die*.

Rhea Goundar/Allison Stowe/Arizona Hart
Committee Clerk

Draft minutes no. 3

Tuesday 16 July 2024, 9.33 am

President's Dining Room, Parliament House, Sydney

1. Members present

Mr Franklin (Chair)
Mr Borsak
Ms Boyd
Ms Hurst
Mr Latham
Mr Martin
Mrs Mitchell
Mr Nanva (*via teleconference*)
Mr Primrose
Mr Rath
Mr Roberts
Ms Sharpe

2. Apologies

Mr Buckingham
Mr Graham
Mr Ruddick
Mr Tudehope

3. Previous minutes

Resolved, on the motion of Mr Borsak: That draft minutes no. 2 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Sent:

- 24 May 2024 - Email from the committee secretariat to Mr John Evans PSM, Parliamentary Ethics Adviser, seeking permission to publish his submission to the inquiry into updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism.

Received:

- 27 May 2024 - Email from Mr John Evans PSM, Parliamentary Ethics Adviser, to the committee secretariat, agreeing to the publication of his submissions to the inquiry into updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism, the inquiry into the giving of notices of motions under standing order 75, and the inquiry into procedures for dealing with disorder by members during committee proceedings.

5. Inquiry into procedures for dealing with disorder by members during committee proceedings

5.1 Public submission

The committee noted the following submission was published by the committee clerk under the authorisation of the resolution of the committee of 13 March 2024:

- No. 11 - Mr John Evans PSM, Parliamentary Ethics Adviser.

5.2 Confidential submission

Resolved, on the motion of Mr Borsak: That the committee keep submission no. 10 confidential, as per the request of the author.

5.3 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Procedures for dealing with disorder by members during committee proceedings* which, having been circulated, was taken as having been read.

Resolved, on the motion of Ms Sharpe: That paragraph 2.22 be amended by omitting 'although he stopped short of recommending that the committee could force a member to withdraw' and inserting instead ', though raised concern that committees lack an enforcement mechanism to force a member to withdraw when they have refused to do so'.

Resolved, on the motion of Mr Roberts: That Recommendation 1 be amended by omitting in paragraph 1 of the proposed sessional order 'in the course of any one committee meeting for disorderly conduct' and inserting instead 'for disorderly conduct in the course of any one committee meeting (not including a deliberative committee meeting)'.

Resolved, on the motion of Mr Borsak: That Recommendation 1 be amended by inserting at the end of the proposed sessional order the following new paragraph:

- '3. If a committee resolves to remove a member under paragraph (2), the committee must table a special report in the House.'

Mr Borsak moved: That Recommendation 1, as amended, be agreed to:

Recommendation 1

That the following sessional order be introduced for the remainder of the Parliament:

Disorderly conduct in committee proceedings

1. If the chair of a committee calls a member to order three times for disorderly conduct in the course of any one committee meeting (not including a deliberative meeting), the committee must immediately meet in private.

2. Any member of the committee (not including the chair) may then a move a motion that the member called to order be removed from the meeting for a period of time as the committee may decide, but not beyond the termination of the meeting.

3. If a committee resolves to remove a member under paragraph (2), the committee must table a special report in the House.'

Question put.

The committee divided.

Ayes: Mr Borsak, Ms Boyd, Mr Franklin, Ms Hurst, Mr Latham, Mr Martin, Mr Nanva, Mr Primrose, Mr Roberts, Ms Sharpe.

Noes: Mrs Mitchell, Mr Rath.

Question resolved in the affirmative.

Resolved, on the motion of Mr Borsak: That the following new recommendation be inserted after Recommendation 1:

'Recommendation X

That the House refer terms of reference to the Procedure Committee to review the operation of this sessional order after 12 months.'

Resolved, on the motion of Mr Borsak: That:

- (a) the draft report, as amended, be the report of the committee and that the committee present the report to the House, subject to the circulation of the draft minutes and the amended Chair's draft report via email following the report deliberative, and giving members 24 hours to raise any concerns,
- (b) upon tabling, all unpublished attachments to submissions be kept confidential by the committee,
- (c) upon tabling, all unpublished submissions, correspondence, and discussion paper related to the inquiry be published by the committee, except for those documents kept confidential by resolution of the committee,
- (d) the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling,
- (e) the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee,
- (f) dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting,
- (g) the President is to table the report by Thursday, 25 July 2024.

6. Inquiry into updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism

6.1 Public submission

The committee noted the following submission was published by the committee clerk under the authorisation of the resolution of the committee of 13 March 2024:

- No. 13 - Mr John Evans PSM, Parliamentary Ethics Adviser.

6.2 Confidential submission

Resolved, on the motion of Ms Sharpe: That the committee keep submission no. 12 confidential, as per the request of the author.

6.3 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism* which, having been circulated, was taken as having been read.

Ms Sharpe moved: That the following recommendation be inserted at the end of chapter 4:

'Recommendation 1

That standing order 96(3) be amended by sessional order by inserting 'or discriminatory' after 'A member may not use offensive', such that the standing order reads:

A member may not use offensive or discriminatory words against either House of the Legislature, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.'

The committee deliberated.

Question put.

The committee divided.

Ayes: Ms Boyd, Mr Franklin, Ms Hurst, Mrs Mitchell, Mr Nanva, Mr Primrose, Mr Rath, Ms Sharpe.

Noes: Mr Borsak, Mr Latham, Mr Martin, Mr Roberts.

Question resolved in the affirmative.

Resolved, on the motion of Mrs Mitchell: That the following recommendation be inserted at the end of chapter 4:

'Recommendation 2

That Presidents' rulings dealing with offensive or discriminatory words in the Chamber place a greater emphasis on the context in which the words are used, including the tone, manner and intent of the member speaking, as well as the effect of the comments in the Chamber.'

Resolved, on the motion of Ms Sharpe: That the secretariat insert after paragraph 4.12 new paragraphs to reflect the recommendations resolved by the committee.

Resolved, on the motion of Ms Sharpe: That:

- (a) the draft report, as amended, be the report of the committee and that the committee present the report to the House, subject to the circulation of the draft minutes and the amended Chair's draft report via email following the report deliberative, and giving members 24 hours to raise any concerns
- (b) upon tabling, all unpublished attachments to submissions be kept confidential by the committee,
- (c) upon tabling, all unpublished submissions and correspondence, and briefing paper related to the inquiry be published by the committee, except for those documents kept confidential by resolution of the committee,
- (d) the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling,
- (e) the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee,
- (f) dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting,
- (g) the President is to table the report by Thursday, 25 July 2024.

7. Inquiry into the giving of notices of motions under standing order 75

7.1 Public submission

The committee noted the following submission was published by the committee clerk under the authorisation of the resolution of the committee of 13 March 2024:

- No. 4 - Mr John Evans PSM, Parliamentary Ethics Adviser.

7.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Inquiry into the giving of notices of motions under standing order 75* which, having been circulated, was taken as having been read.

Resolved, on the motion of Ms Sharpe: That paragraph 3.6 be amended by inserting at the end of the first sentence ', to which the Government stated that this option was not under consideration.'

Resolved, on the motion of Mr Primrose: That the following new recommendation be inserted after paragraph 3.22.

'Recommendation X

That for the remainder of this Parliament, the House adopt a sessional order amending standing order 75 stipulating that members may only read up to three notices of motions in full on any one sitting day, with all other notices to be given in summary format if desired, and all notices to be lodged in writing with the Clerk.'

Resolved, on the motion of Mr Borsak: That the following new recommendation be inserted after paragraph 3.37:

'Recommendation X

That for the remainder of this Parliament, the House adopt a sessional order amending standing order 75 stipulating that members may give notice by handing the signed written notice to the Clerks-at-the-Table from the commencement of the meeting of the House until the conclusion of the giving of notices of motions during formalities.'

Resolved, on the motion of Mrs Mitchell: That the following new recommendation be inserted after paragraph 3.47:

'Recommendation X

That for the remainder of this Parliament, the House adopt a sessional order amending standing order 195(1) to stipulate that a private members' business notice of motion that has remained on the Notice Paper for 13 sitting days without being moved will be removed from the Notice Paper.

Resolved, on the motion of Mrs Mitchell: That:

- (a) the draft report, as amended, be the report of the committee and that the committee present the report to the House, subject to the circulation of the draft minutes and the amended Chair's draft report via email following the report deliberative, and giving members 24 hours to raise any concerns,
- (b) upon tabling, all unpublished submissions, correspondence, and discussion paper related to the inquiry be published by the committee, except for those documents kept confidential by resolution of the committee,
- (c) the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling,
- (d) the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee,
- (e) dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting,
- (f) the President is to table the report by Thursday, 25 July 2024.

8. Adjournment

The committee adjourned at 12.30 pm, *sine die*.

David Blunt
Committee Clerk

