

**INQUIRY INTO UPDATING THE STANDING ORDERS TO
REQUIRE RESPECTFUL BEHAVIOUR IN THE CHAMBER,
PARTICULARLY AS THEY RELATE TO SEXISM AND
RACISM**

Organisation: Parliamentary Ethics Adviser

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The Honourable Ben Franklin MLC
President of the Legislative Council and
Chair of the Procedure Committee
Legislative Council
Parliament House
SYDNEY NSW 2000

Dear Mr President

Standing Orders and respectful behaviour in the Chamber

1. You have invited me to make a submission to your committee on the inquiry into updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism.
2. Whilst I appreciate that members may have concerns about respectful behaviour of members in the Chamber, I am not convinced that there needs to be a specific standing order requiring respectful behaviour relating to sexism and racism.
3. Section 10 of the Code of Conduct for the Council requires members to treat each other “with dignity, courtesy and respect, and free from any behaviour that amounts to bullying, harassment and sexual harassment.”
4. As I understand it there are various standing orders which facilitate controlling the behaviour of members in the House.
5. Standing Order 86 gives power to the President to maintain order in the House.
6. Under Standing Order 96 a member must not use offensive words against another member, and imputations of improper motives and personal reflections on members are considered disorderly.
7. Standing Order 99 permits any member to interrupt proceedings to draw attention to a point of order or privilege. The President may also interrupt proceedings at any time, when of the opinion that the member speaking is contravening the rules and orders of the House.
8. Standing Order 197 allows the President, after warning a member of disorderly conduct (as specified in the SO), to name the member and report the member’s offence to the House. A member named by the President may make an explanation or apology and withdraw from the Chamber if the Chair so requires.

A member can then, by motion without notice or debate, be suspended from the House.

9. What constitutes offensive words, imputations of improper motives and personal reflection on a member is a matter for the President to determine in the context of debate.
10. I am not presently aware of the rulings of the President, but I would expect that there may have been precedents and rulings dealing with respectful behaviour by members on sexism and racism.
11. I would be cautious about including in the standing orders a rule on offensive behaviour on sexism and racism. Once a prescriptive list was included there would be discussion on what else should be added, such homophobic, disability, discriminatory, bullying and harassment, and other derogative terms.
12. 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.
13. *Canada House of Commons Procedure and Practice* provides a useful summary of the role of the Chair in determining unparliamentary language:

“In dealing with 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. Thus, language deemed unparliamentary one day may not necessarily be deemed unparliamentary on another day. The codification of unparliamentary language has proven impractical as it is the context in which words or phrases are used that the Chair must consider when deciding whether or not they should be withdrawn. Although an expression may be found to be acceptable, the Speaker has cautioned that any language which leads to disorder in the House should not be used. Expressions which are considered unparliamentary when applied to an individual Member have not always been considered so when applied “in a generic sense” or to a party.”¹
14. Should the committee be minded to include a rule in the Standing Orders on respectful behaviour, I suggest that the wording should be general rather than precise to allow flexibility in rulings by the Chair on contemporary language and behaviour. For example:

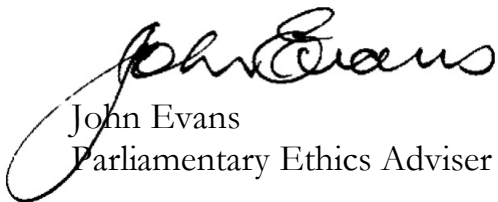
¹ *House of Commons Procedure and Practice Third Edition 2017 (Bosc and Ganon) Chapter 13 Rules of Order and Decorum, Unparliamentary Language*

A member participating in debate must behave and speak with dignity, courtesy and respect, and not use disparaging or provocative remarks where another member would be offended, humiliated, intimidated or aggrieved.

15. I do not think the problem is solely a matter of conduct for the House to regulate. Parliaments should be a role model institution and political parties in endorsing candidates for election should ensure that persons selected for election to the House have appropriate standards of behaviour. Parliamentary parties could also contribute by ensuring that offending members are brought to task for shortcomings in behaviour.

16. I would be pleased to meet with your committee should that be considered necessary.

Yours sincerely



John Evans
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