Submission No 14

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

Organisation: Clerk of the House of Representatives, New Zealand

Date Received: 15 May 2024

Office of the Clerk of the
House of Representatives
Te Tari o te Manahautū o te Whare Māngai

Parliament House Parliament Buildings • Private Bag 18041 Wellington 6106 • +64 4 817 9475

15 May 2024

Hon Ben Franklin MLC
Chairperson
Procedure Committee
Legislative Council of New South Wales

Dear Mr Chairperson

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

Thank you for the opportunity to make a submission to the above inquiry. This submission discusses procedures and practices in use in the New Zealand House of Representatives around respectful behaviour in the Chamber.

Rules guiding respectful behaviour

In general terms, members have freedom of speech in debate and must exercise their own judgement as to how they use it. However, the privilege of freedom of speech belongs to the House as a whole. The House charges the Speaker with the duty to maintain order and decorum, and, for that purpose, imposes limits on the way members may exercise their speaking rights. The New Zealand House of Representatives, like many Westminster-derived parliaments, has restrictions on offensive or disorderly words, imputations of improper motives against a member, offensive references to a member's private affairs, and personal reflections (as well as other restrictions such as the bar on discussing sub judice matters).

The Speaker's obligation to maintain order may also require the Speaker to intervene when interjections become disruptive.

The New Zealand House of Representatives does not have specific procedures relating to sexism and racism. Sexist or racist comments directed at a member or group of members 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reference to people outside the House may well provoke disorder, which could be a basis for requiring the remark to be withdrawn. The privilege of free speech should be used responsibly.

Accusing a member of racism or sexism amounts to a personal reflection or an imputation of improper motives of a member. As such, members may not accuse other members of being racist or sexist. A distinction is recognised between criticising a person and criticising their views or policies. There is no prohibition on suggesting that a view or policy is racist or sexist.

In 2020, the agencies and parties at Parliament adopted a set of behavioural statements to set expectations for how people who work in the parliamentary workplace behave towards each other. Members are required to sign up to these statements as part of a triangular employment agreement for their staff. A protocol was subsequently adopted, which establishes the role of Commissioner for Parliamentary Standards. The Commissioner receives and inquires into complaints about members' conduct in the workplace. However, it is important to note that the behavioural statements and associated investigation procedure do not apply to conduct in parliamentary proceedings, and the Commissioner has no role in that context.

Sanctions for behaviour contrary to the Standing Orders

In New Zealand, the Speaker has authority under the Standing Orders for maintaining order and decorum in the Chamber. The Speaker often orders disorderly members to desist and may require an immediate, unqualified apology. Harsher penalties are available, though the Speaker resorts to them relatively rarely. If a member's conduct is highly disorderly, the Speaker may order them to withdraw from the Chamber for a period up to the remainder of the day's sitting. This means that the member cannot re-enter the Chamber at all during the exclusion period. A member who is ordered to withdraw before the end of question time is automatically excluded for the rest of question time—they cannot ask an oral question or have one asked on their behalf, but they can carry out other duties, such as voting (that is, the member is not suspended from the service of the House). If a Minister is ordered to withdraw, another Minister may answer a question on their

behalf, as the behaviour of one Minister should not reduce the Government's accountability to the House. When the Speaker orders a member to withdraw from the Chamber, the disorderly conduct is considered dealt with, and that generally is the end of the matter. Sometimes, if a member has continued to create disorder while leaving the Chamber, the Speaker (through the Serjeant-at-Arms) may require the member to return and apologise before withdrawing again.

In the exceptional event that the Speaker considers that a member's conduct is so grossly disorderly that simply ordering their withdrawal from the House would be an inadequate punishment, the Speaker can "name" the member and call on the House to judge the member's conduct. In this instance, the Speaker immediately puts the question that the member be suspended from the service of the House. This question is put without any amendment or debate. If the motion is carried, the member is suspended for 24 hours, or for seven days if this is the second time they have been suspended in the same term of Parliament, or for 28 days if it is the third or a subsequent occasion. In the latter two cases, the day the member is suspended is not counted as one of the seven or 28 days of suspension. By law, a deduction is taken from the member's salary for each day of their suspension. If a suspended member refuses to withdraw voluntarily from the House at once, the Speaker will call on the Serjeant-at-Arms to enforce the House's direction. A suspended member who refuses to obey the Speaker's order to leave the Chamber is automatically suspended from the service of the House for the rest of the calendar year.

In the 52nd Parliament, the then Speaker introduced a policy of awarding or deducting supplementary questions, in response to excessive disruptive noise from either side of the House in question time. This practice is not currently in use.

Yours sincerely

Dr David Wilson
Clerk of the House of Representatives