

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

**Organisation:** Department of the Senate, Parliament of Australia

**Date Received:** 1 May 2024

---



D24/29249

1 May 2024

Mr Ben Franklin LC Member  
Chair  
Procedure Committee  
Legislative Council  
NSW Parliament

By email: [ProcedureCommittee@parliament.nsw.gov.au](mailto:ProcedureCommittee@parliament.nsw.gov.au)

Dear Mr Franklin

### **Respectful behaviour in the Chamber**

Thank you for the invitation to make a submission relating to respectful behaviour in the Chamber.

#### **Standing orders**

Like most parliamentary chambers the Senate has explicit rules intended to support the chair in maintaining order and a formal process for dealing with persistent or wilful infringement of order. Most significantly, Senate standing order 193 requires that: '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'.

*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'. Once a withdrawal occurs, the matter is closed and 'a senator is not entitled to refer to [the withdrawn words] or debate them subsequently'.<sup>1</sup>

The process for dealing with persistent infringement of order is set out in standing order 203. Standing order 203(1) provides that 'if a senator...uses objectionable words, and refuses to withdraw such words...the President may report to the Senate that the senator has committed an offence'. This is known as 'naming' the senator and the senator is then called upon to make an explanation or apology, after which any senator may move that the offending senator be suspended. This procedure operates

---

<sup>1</sup> *Odgers' Australian Senate Practice*, 14<sup>th</sup> edition, 2016, pp. 270–271.

similarly to the procedure described in standing order 197 of the New South Wales Legislative Council except that the chair has no independent authority to require a senator to withdraw from the chamber (even temporarily). In this regard, *Odgers' Australian Senate Practice* notes:

The procedures relating to disorder are salutary in that the responsibility for maintaining order is imposed on the whole Senate, rather than the chair or any other particular authority. This principle is reflected in the rule that any senator may move a suspension motion, and the Senate must vote on it.<sup>2</sup>

There are of course other standing orders which support orderly debate by mandating a degree of formality in the Senate's proceedings (for example by requiring acknowledgement of the chair and for contributions to be directed through the chair). However, as there are similar rules applicable in all Australian legislatures I won't detail those here.

### **Presidents' rulings**

In addition to the standing orders, the practice of the Senate is to treat rulings of the President which have not been dissented as binding. *Odgers' Australian Senate Practice* notes that 'It is for the chair to determine what constitutes offensive words, imputations of improper motives and personal reflections', and that the chair 'has regard to the connotations of expressions and the context in which they are used'.<sup>3</sup> As a result, the rulings of successive Presidents contribute to the interpretation of what constitutes offensive words and allows that concept to evolve.

The issue of how a modern chamber should balance the protection of its members to engage freely in debate against the need to prevent contributions which are personally offensive (and thus tend to undermine order) has arisen several times in recent Parliaments. On 13 August 2018, President Ryan made a statement relating to acceptable behaviour in the Senate in which he indicated where he considered that balance should be struck:

...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.<sup>4</sup>

This approach was strongly endorsed by the Senate Procedure Committee in its *Third report of 2018*, which also emphasised that although the exchange that prompted the President's statement had

---

<sup>2</sup> *Odgers' Australian Senate Practice*, 14<sup>th</sup> edition, 2016, p. 279.

<sup>3</sup> *Odgers' Australian Senate Practice*, 14<sup>th</sup> edition, 2016, p. 269.

<sup>4</sup> [Senate Hansard](#), 13 August 2018, p. 4439.

occurred outside the formal proceedings of the Senate, 'this does not mean that such exchanges cannot be dealt with by the chair in accordance with the standing orders'.<sup>5</sup>

More recently, following an exchange between senators the previous day, President Lines and Deputy President McLachlan made a joint statement relating to parliamentary conduct. In this statement, in addition to calling on all senators 'to engage in debate respectfully and to refrain from inflammatory and divisive comments and to uphold mutual respect for each other in this chamber', they also noted the importance of taking points of order relating to offensive language at the time the statements are made.<sup>6</sup>

As well as advancing the interpretation of the relevant standing orders, these statements by Presiding Officers help to set a benchmark for the standard of behaviour expected in the Senate.

### **Recent practice**

In addition to the formal rules which support maintaining order in the Senate, the President, Deputy President, temporary chairs and party leaders often intervene in informal ways to resolve disputes and encourage respectful behaviour. It has been the practice of successive Presidents to attempt to avoid resorting to the process of naming a senator wherever possible, by giving senators the opportunity to come to order. This has included explaining the consequences of the process, including possible suspension for the remainder of the day. Similarly, party leaders, have sometimes sought leave to make statements, or spoken to a point of order, in an effort to broker satisfactory resolution of an issue which has contributed to the disorder.

### **Behaviour Code**

On 8 February 2023, the Senate endorsed the Behaviour Code for Australian Parliamentarians proposed by the Joint Select Committee on Parliamentary Standards in response to the Jenkins review into Commonwealth parliamentary workplaces.<sup>7</sup> The code requires parliamentarians to 'treat all those with whom they come into contact...with dignity, courtesy, fairness and respect', and prohibits among other things 'discrimination in all its forms including on the grounds of race, age, sex, sexuality, gender identity, disability, or religion'.<sup>8</sup> The Independent Parliamentary Standards Commission (IPSC), once established, would be responsible for managing alleged breaches of a behavioural code adopted by the Houses. The members of the Parliamentary Leadership Taskforce responsible for implementing the Jenkins review recently indicated that they expected the IPSC to be operational by October 2024.<sup>9</sup>

As the legislation to establish the IPSC has not yet been introduced, it is not known at this stage whether and, if so, how the powers and functions of the IPSC will interact with parliamentary proceedings. Even if responsibility for such matters remains solely the domain of the House, it would be expected that adoption of the behaviour code will have a normative effect on the behaviour of

---

<sup>5</sup> Senate Procedure Committee, *Third report of 2018*, p. 2.

<sup>6</sup> *Senate Hansard*, 9 November 2023, pp. 5293–5294.

<sup>7</sup> *Senate Hansard*, 8 February 2023, p. 142.

<sup>8</sup> Joint Select Committee on Parliamentary Standards, *Final report*, November 2022, p. 104.

<sup>9</sup> *Senate Hansard*, 7 February 2024, pp. 2–6.

parliamentarians and be reflected in the approach the President and temporary chairs take to applying the Senate's longstanding rules relating to the maintenance of order.

I would be happy to provide any further information which may assist the committee.

Yours sincerely,

(Richard Pye)  
Clerk