

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

Organisation: Shooters, Fishers and Farmers Party

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Submission by The Hon Mark Banasiak MLC on behalf of the Shooters Fishers and Farmers Party to the updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism.

Dear Chair and members of the Procedures Committee,

In contemporary discourse, it is becoming increasingly challenging to define and navigate the boundaries of racism and sexism, particularly within the context of free speech in parliamentary settings under the Westminster system of parliamentary privilege. The ever-evolving nature of societal norms, coupled with complex cultural dynamics, which are increasingly displaying anxiety, angst, anger and fear, makes it crucial for the NSW Legislative Council to carefully maintain and support open and free dialogue.

The fluidity of language and the nuances inherent in addressing issues of race and gender don't require nuanced approaches within parliamentary debates. While there is some consensus on the condemnation of overtly discriminatory discourse, such as hate speech or harassment, the interpretation of more subtle or implicit forms of prejudice can be subject to interpretation and debate as is currently being demonstrated especially by some of The NSW Greens members of the NSW Legislative Council.

In this context, 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. Ultimately it is the NSW public that will decide at the ballot box if a Member of the Legislative Council or a party's speech or behaviour is acceptable or not.

It is essential to acknowledge that the line between legitimate critique and offensive rhetoric can be subjective and context-dependent. What one individual perceives as an innocuous remark may be hurtful or discriminatory to another. While Dr Cohn's regular and on-going defence of "*unbroken*" minority gender identification and sexual preferences, which form a tiny percentage of the NSW population may offend some members, she is prepared to blame the victim i.e., NSW males conforming with traditional Australian male norms. While this may have been offensive to some members in the Legislative Council, (me included) it highlights the tolerant hallmark of our western democracies where diverse viewpoints can and should be shared respectfully, fostering understanding among members. In yet another example, I and my colleague find the Animal Justice Party continual references to such things as "*turkey masturbation*" offensive and an unnecessary descent into outright crudeness, bordering on unparliamentary language. The most insulting thing said recently was referring to hunters participating in bestiality of dead animals, which is not only disgusting and insulting to non-indigenous hunters, but it would never be raised for indigenous hunters.

Yet, in the spirit of free speech we make light of all this and let it pass. In doing so others must also be prepared to accept discourse that challenges and at times confronts members to ensure open and free speech is maintained, not constrained, managed, and manipulated because of the possibility of offence 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. It is increasingly becoming a more common tactic in public debate for some that disagree with an opposing sides general position to claim offence in an attempt to silence or cancel out a person's ability to contribute to public debate, rather than 'win' a

debate based on the successful articulation of an argument. Parliament must ensure that it is a bastion of real free speech in a world that is increasingly controlling free speech under the guise of offence taken and misinformation.

I draw members' attention to the excellent paper on parliamentary privilege presented by Stephen Frappell in 2019. There are a few points from it that are key for the Procedure Committee to consider in this inquiry, it states:

“While freedom of speech in Parliament in New South Wales remains sacrosanct, the Houses may themselves impose limitations on the freedom of speech of members, including the rules of debate and the sub judice convention. In addition, the Houses themselves have the power to discipline members who, by their spoken word, offend the House.”¹

It is important to pause and reflect on what is meant by the word "House". It would generally be agreed that, in most instances, when reference is made to the "House" it means the agreement of a majority of members to a motion, statement or action—not a singular person or a few peoples' interpretation, or misinterpretation, of words that are spoken. Further to this point, the paper by Mr Stephen Frappel further states:

“The New South Wales Legislative Council adopted such an approach in 1997 and 1998 in relation to a statement made in the House by the Hon. Franca Arena. The statement and allegations therein made by Ms Arena were deemed to of be of such gravity as to warrant the waiving of privilege by legislation and external investigation.”²

Once again, this was a determination of the House—that is, the majority of members. Therefore, it may be said that the member's attempt to police the words that are said in this place that the member disagrees with can only be policed if the majority of the House is offended.

I refer members to the concise guide to rulings of the President and Chair of Committees for further consideration in this matter in terms of existing powers of the President as arbiter of debate and keeper of good order in the Legislative Council, particularly rulings on the matter of **Standing Order 96 Offensive Expressions**³

These rulings clearly set out a procedure for the President of the day to deal with offensive comments promptly and effectively, combined this with the rulings regarding conduct of members specifically **Standing Order 196- suspension of member for gross disorder**

In conclusion it is our submission that there are adequate provisions within the Standing Orders that deal with offensive language and conduct that can be enacted upon by the President in the first instance and Members of the chamber if and when required, combined with guiding rulings from past presidents, and chairs of committees. The Shooters, Fishers and Farmers Party recommend that there needs to be no changes to Standing Orders, rather a continued adherence to the existing orders is sufficient in managing the good order of the house and respectful debate.

¹ [Parliamentary Privilege in New South Wales - Stephen Frappell - 2019 Law Down Under conference.pdf \(nsw.gov.au\)](#)

² *ibid*

³ [Concise guide to rulings of the President and Chair of Committees.pdf \(nsw.gov.au\)](#)