

**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 House of Representatives, Parliament of  
Australia

**Date Received:** 3 May 2024

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Dear Mr Franklin

### **Inquiry into updating the standing orders to require respectful behaviour in the Chamber**

Thank you for the invitation to make a submission to the Procedure Committee's inquiry into updating the standing orders to require respectful behaviour in the Chamber, particularly as they relate to sexism and racism.

Behaviour in the Australian House of Representatives is governed by the standing orders, resolutions of the House and a body of practice. In particular, proscriptions on disorderly behaviour, including the use of offensive language, help guide behaviour and set standards in the House. This submission sets out the relevant standing orders and practice of the House and also outlines some recent developments that may be of interest.

#### **Practices and procedures relating to respectful behaviour in the Chamber**

The Speaker or the occupier of the Chair of the House at the time is responsible for keeping order in the House (standing order 60).<sup>1</sup> Similarly, order in the Federation Chamber is maintained by the Deputy Speaker or the occupier of the Chair of the Federation Chamber at the time (standing order 187). The standing orders relating to disorder (standing orders 88 to 96) list the behaviours that are considered disorderly and the actions available to the Speaker or occupant of the Chair to enforce order.

Members are prohibited from referring disrespectfully to the Sovereign, the Governor-General or a State Governor (standing order 88) or from using 'offensive words' against a Member of the Parliament, either House or a member of the judiciary (standing

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<sup>1</sup> The House of Representatives Standing and Sessional Orders as at 1 August 2022, along with the insert issued on 31 March 2023, are available online at [https://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/House\\_of\\_Representatives\\_Standing\\_and\\_Sessional\\_Orders](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/House_of_Representatives_Standing_and_Sessional_Orders).

order 89). All imputations of improper motives to a Member and personal reflection on other Members shall be considered highly disorderly (standing order 90).

A Member's conduct is considered disorderly (standing order 91) if the Member has:

- persistently and wilfully obstructed the House;
- used objectionable words, which he or she has refused to withdraw;
- persistently and wilfully refused to conform to a standing order;
- wilfully disobeyed an order of the House;
- persistently and wilfully disregarded the authority of the Speaker; or
- been considered by the Speaker to have behaved in a disorderly manner.

The Speaker is empowered to intervene when a Member's conduct is considered offensive or disorderly. The Speaker may also need to determine if a Member's conduct is offensive or disorderly when it is brought to their attention by another Member (standing order 92).

Exactly what constitutes 'offensive', 'objectionable' and 'unparliamentary' language is not defined in the standing orders and is a matter for the Speaker to determine. In ruling on a question about the interpretation or application of a standing order, the Speaker has regard to previous rulings and to the established practices of the House.<sup>2</sup> The Chair may ask the Member concerned to explain the sense in which the words were used. If a point of order has been raised and there is some uncertainty as to the words complained of, the Chair may ask the Member to identify exactly what words are being questioned.

Once the Chair has determined that offensive or disorderly words have been used, he or she asks that the words be withdrawn. The Speaker has also called for the withdrawal of words he or she has not heard. A Member who refuses to withdraw or prevaricates may be sanctioned for disregarding the authority of the Chair.<sup>3</sup>

### **Sanctions for disorderly conduct**

There are a number of sanctions available to the Speaker when dealing with disorderly conduct.<sup>4</sup> These range from a direction to leave the Chamber for one hour, to the 'naming' of a Member, which results in a motion for the suspension of that Member from the service of the House for a period of time. If a Member refuses to follow the Speaker's direction in case of disorderly conduct, the Speaker may order the Serjeant-at-Arms to remove the Member or take the Member into custody (standing order 94(f))<sup>5</sup>. A Member who has been directed to leave the Chamber or has been suspended is excluded from the Chamber, its galleries and

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<sup>2</sup> See standing order 3(e). A Member who disagrees with a ruling by the Speaker can object and move a motion of dissent (standing order 87).

<sup>3</sup> See *House of Representatives Practice*, 7th ed, pp. 514-5 for a more detailed discussion of the provisions relating to offensive words.

<sup>4</sup> While this section focuses on sanctions for Members, I note for completeness that in the event of grave disorder the Speaker may suspend the sitting, without putting any question, and either state the time at which he or she will resume the Chair or adjourn the House to the next sitting (standing order 95).

<sup>5</sup> There have been no cases of a Member being taken into custody by the Serjeant-at-Arms (see *House of Representatives Practice*, 7th ed, 2018, p. 541).

the Federation Chamber (standing order 94(e)), but not from proceedings of parliamentary committees.

### ***Direction to leave the Chamber***

A Member may be ordered to leave the Chamber for one hour (SO 94(a)).<sup>6</sup> This direction by the Speaker is not open to debate or dissent, and a Member failing to leave the Chamber immediately upon being ordered to do so may be named. Before sanctioning a Member, the Speaker will usually first call a Member to order or warn them, though there is no obligation for the Speaker to do so. Members who use unparliamentary language are most often requested to withdraw their remarks in the first instance, and sanctions might not proceed if the Member concerned withdraws their comments or apologises for their actions.

The Speaker's ability to direct a Member to leave for one hour came into force on 21 February 1994, following recommendations made by the Standing Committee on Procedure.<sup>7</sup> It is used in instances of disorder that may not rise to the significance of naming and suspension, enabling situations to be defused quickly and without disrupting proceedings to a great extent. While the number of Members named and suspended each Parliament has declined over recent years, the use of standing order 94(a) has grown significantly since its introduction.<sup>8</sup>

### ***'Naming' a Member***

When disorderly behaviour warrants it, the Speaker can name a disorderly Member and, on a motion being moved, the Speaker then puts the question 'That the Member be suspended from the service of the House'. This question must be resolved without amendment, adjournment or debate (standing order 94(b)).

If the Speaker determines that there is an urgent need to protect the dignity of the House, the Speaker can order a 'grossly disorderly' Member to leave the Chamber immediately (standing order 94(c)). The Speaker then names the Member and the question for suspension is put without a motion being necessary. If the question is resolved in the negative, the Member may return to the Chamber.<sup>9</sup>

When a Member is named and suspended, the term of the suspension is:

- 24 hours from the time of suspension on the first occasion;

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<sup>6</sup> While a direction to leave is usually stated aloud, the Speaker may direct a Member to leave by written note in order to avoid interrupting proceedings on certain occasions, such as the Treasurer's Budget speech or the Opposition Leader's speech in reply. Any further action is initiated at the beginning of the next sitting.

<sup>7</sup> *Votes and Proceedings*, 10 Feb 1994, pp. 754-779. See also House of Representatives Standing Committee on Procedure, *About Time: Bills, questions and working hours*, Canberra, October 1993, pp. 27-9 and *The Standing Orders Governing Disorder and Strangers*, Canberra, October 1992, pp. 4-5.

<sup>8</sup> In the 38th Parliament, the first full Parliament the provision was in effect, it was used 58 times. In the current, 47th, Parliament, it has been used 161 times to date, as at 26 April 2024.

<sup>9</sup> This standing order has only been invoked once, in 2008, since being adopted in its current form in 1963. (See *House of Representatives Practice*, 7th ed, p. 540 for historical details.)

- three consecutive sittings following the day of suspension on the second occasion in the same calendar year; and
- seven consecutive sittings following the day of suspension on the third or later occasions in the same calendar year.

Suspensions in previous sessions or directions to leave the Chamber for one hour are disregarded in this calculation (standing order 94(d)).

Suspension from the service of the House does not exempt a Member from serving on a committee and does not affect payment of the Member's salary or allowances.

### ***Managing disorder in the Federation Chamber***

While the proscriptions against disorderly conduct apply equally in the Federation Chamber, the actions outlined in standing order 94 are not available to the Deputy Speaker in the Federation Chamber, which is a debating committee of the House. The Deputy Speaker may direct a disorderly Member to leave the Federation Chamber for a period of 15 minutes; however, this exclusion does not extend to the Chamber. The Deputy Speaker may also report the conduct of a Member to the House. Any subsequent actions under standing order 94 must be taken in the House (standing order 187).

The Deputy Speaker may also suspend or adjourn proceedings in the event of disorder, either on their own initiative or on motion by any Member without notice. If the Federation Chamber is suspended or adjourned for this reason, or if a Member refuses to leave when so directed, the Deputy Speaker must report the disorder to the House (standing order 187(b)).

### **Recent actions and developments**

As you will be aware, over recent years there has been a focus on Commonwealth parliamentary workplaces, following an allegation in 2021 of a sexual assault in Parliament House two years before. This section focuses principally on elements relating to respectful behaviour in the Chamber that constituted an element of the response to that event.

The Australian Human Rights Commission was asked to conduct an Independent Review into Commonwealth Parliamentary Workplaces, which was led by then Sex Discrimination Commissioner Kate Jenkins. Commissioner Jenkins's report, presented on 30 November 2021, made 28 recommendations to ensure that parliamentary workplaces are safe and respectful, and reflect best practice in the prevention and handling of bullying, sexual harassment and sexual assault.<sup>10</sup>

One of the recommendations proposed that a joint committee develop a draft code of conduct for parliamentarians and that both Houses adopt a code of conduct within 12 months. The Joint Select Committee on Parliamentary Standards was established by both Houses in February 2022. The committee ceased to exist when the House was dissolved at the end of the last Parliament and was re-established in the 47th Parliament.

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<sup>10</sup> Australian Human Rights Commission, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, 2021.

The committee's final report, presented on 29 November 2022, proposed behaviour codes for parliamentarians, parliamentarians' staff and standards for Commonwealth parliamentary workplaces, and recommended that the House and the Senate formally adopt the code for parliamentarians and the standards for parliamentary workplaces (a copy is at Attachment A).<sup>11</sup>

Commissioner Jenkins's report also recommended that the Parliament should establish an independent parliamentary standards commission with delegated power that would, amongst other things, make recommendations on sanctions (in relation to parliamentarians, staff and others as relevant under the Standards of Conduct in the Parliamentary Precincts) and apply sanctions for a breach of the code of conduct for parliamentarians where such sanctions do not interfere with the functions of the Parliament. Parliamentary Leadership Taskforce reporting from February 2024 indicates that this is expected to be established by the end of 2024, subject to legislative process.<sup>12</sup>

On 8 February 2023, the Prime Minister moved that the House endorse the behaviour standards and codes which the committee had drafted; the motion was carried the following day.<sup>13</sup> In moving the motion, the Prime Minister noted that the code of conduct for parliamentarians would be adopted following the establishment of the independent parliamentary standards commission.<sup>14</sup>

On 7 August 2023, the Chair of the House Standing Committee on Procedure presented its report on two recommendations made by Commissioner Jenkins which related to the standing orders, practice and procedure.<sup>15</sup> Amongst the committee's six recommendations was a recommendation to give the Speaker discretion to direct a Member to leave the Chamber for either one hour or three hours, where there is continued or escalating disorderly conduct—an expansion of the current discretion to direct a member to leave for one hour.

The committee also considered parliamentary language and offensive words and noted:

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.<sup>16</sup>

However, the committee concluded that changing the standing orders to specify that such language is offensive would strengthen the Speaker's ability to rule such language out of

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<sup>11</sup> Joint Select Committee on Parliamentary Standards, *Final report*, Canberra, November 2022.

<sup>12</sup> A Parliamentary Leadership Taskforce, established to oversee the implementation of the recommendations of Ms Jenkins's report, provides regular updates on the progress of recommendations, available on line at [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Leadership\\_Taskforce/Progress\\_of\\_recommendations](https://www.aph.gov.au/About_Parliament/Parliamentary_Leadership_Taskforce/Progress_of_recommendations).

<sup>13</sup> *Votes and Proceedings*, 8 February 2023, p. 466 and 9 February 2023, p. 475.

<sup>14</sup> *House of Representatives Hansard*, 8 February 2023, pp. 307-8.

<sup>15</sup> *Raising the Standard: Inquiry into recommendations 10 and 27 of Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, Canberra 2023.

<sup>16</sup> *Raising the Standard*, p. 19.



order, set expectations about the tone of parliamentary debate and also indicate to the community that such words were not acceptable in any environment. It therefore recommended amending the standing orders to clarify that 'offensive words' which Members must not use against other Members include sexist, racist, homophobic and otherwise discriminatory words.<sup>17</sup> The Procedure Committee's recommendations have not yet been responded to.

While not directly related to the standing orders, another response to the 2021 allegations may also be of interest to your committee. The Parliamentary Workplace Support Service (PWSS), including an independent workplace complaints mechanism to review complaints about serious workplace incidents such as bullying, sexual harassment and sexual assault, was launched in September 2021. On 18 October 2021, the House adopted a resolution noting that all Members and their staff have obligations to comply with all applicable Australian laws and also setting out what happens after the Parliamentary Service Commissioner has made a finding that a Member has not cooperated with a review under the Independent Parliamentary Workplace Complaints Mechanism.<sup>18</sup> In September last year, legislation to make the PWSS an independent statutory agency, integrating the support and complaint resolution functions of the existing service, passed both Houses and received royal assent.<sup>19</sup>

I trust this information is of assistance to your committee in its deliberations.

Yours sincerely

Claressa Surtees  
Clerk of the House  
3 May 2024

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<sup>17</sup> *Raising the Standard*, p. 20.

<sup>18</sup> *Votes and Proceedings*, 18 October 2021, p. 2201.

<sup>19</sup> The *Parliamentary Workplace Support Service Act 2023* came into force on 1 October 2023. Since its establishment, the remit of the PWSS has expanded. It provides independent and confidential support to anyone who works or volunteers in a Commonwealth parliamentary workplace. Further information about the PWSS can be found on its website: [www.pwss.gov.au](http://www.pwss.gov.au).

## Attachment A: Draft Behaviour Standards and Codes proposed by the Joint Select Committee on Parliamentary Standards

**Welcome to this Commonwealth Parliamentary Workplace. Please be aware we have clear guidelines on how we must behave towards each other.**

Act respectfully, professionally and with integrity.

Encourage and value diverse perspectives and recognise the importance of a free exchange of ideas.

Recognise your power, influence or authority and do not abuse them.

Uphold laws that support safe and respectful workplaces, including anti-discrimination, employment, work health and safety and criminal laws.

Bullying, harassment, sexual harassment or assault, or discrimination in any form, including on the grounds of race, age, sex, sexuality, gender identity, disability, or religion will not be tolerated, condoned or ignored.

***Complaints made under this code will be taken seriously and dealt with confidentially and independently. Breaches will be met with effective sanctions.***

If you experience or witness unacceptable behaviour you are encouraged, and will be supported, to speak up.

You can access independent and confidential support and advice by contacting the Parliamentary Workplace Support Service on 1800 747 977 <sup>1</sup>

### **Behaviour Code for Australian Parliamentarians**

#### ***Purpose of Parliamentarians' Behaviour Code***

1) All Australian Parliamentarians have a shared responsibility as employers and leaders in the community to ensure that Commonwealth Parliamentary Workplaces meet the highest standards of integrity, dignity, safety and mutual respect.

2) All Australian laws must be upheld, including the employer obligations outlined in the *Members of Parliament (Staff) Act 1984*.

3) This code forms the Parliament's expectations for how we behave towards each other and others we engage with in the course of our work, while recognising the importance of a free exchange of ideas and parliamentary privilege, which is an integral part of our democracy.



### ***Code coverage***

4) Every Parliamentarian is required to understand and comply with this code and the Behaviour Standards for Commonwealth Parliamentary Workplaces. These codes and standards are enforceable and a breach of either code could lead to sanctions being imposed.

5) Both the code and the standards apply to Parliamentarians in the course of their role, including at social events, when travelling for work, and outside of normal business hours. This includes conduct engaged in by any means, including in person, or by electronic communication. Alcohol is no excuse for breach of this code or the standards.

6) Ensuring compliance with the code and the Standards is a core requirement of Parliamentarians discharging their work health and safety obligations as employers.

### ***Respect***

7) Parliamentarians must treat all those with whom they come into contact in the course of their parliamentary duties and activities with dignity, courtesy, fairness and respect.

8) Parliamentarians, as employers and leaders in the community have a leading role to play in fostering a healthy, safe, respectful and inclusive environment where all people feel safe and valued.

### ***Diversity***

9) Parliamentarians, as employers and leaders in the community, have a role in fostering and respecting diversity in their workplace, to ensure everyone feels safe and welcome to contribute.

10) Parliamentarians recognise the importance and value of diverse viewpoints, and that robust debate is conducted with respect for differing views, which are essential for a functioning democracy.

### ***Prohibited behaviours***

11) Bullying and harassment, sexual harassment and assault, discrimination in all its forms including on the grounds of race, age, sex, sexuality, gender identity, disability, or religion is unacceptable. Such behaviour will not be tolerated, condoned or ignored.

### ***Independent Parliamentary Standards Commission***

12) Anyone who believes this code has been breached is encouraged to raise their concerns about the breach.

13) Disclosures and complaints in relation to this code will be received confidentially and managed by an Independent Parliamentary Standards Commission (IPSC).

14) Advice and support regarding this code can be sought from the Office of Parliamentary Staffing and Culture (OPSC).

15) Parliamentarians have obligations to the Independent Parliamentary Standards Commission, to:

- (a) Cooperate with investigations and comply with sanctions imposed.
- (b) Maintain the confidentiality of the complaint process, unless authorised by the proposed IPSC (or otherwise required by law) to share or release information.
- (c) Act on allegations of misconduct made about their staff and to implement recommendations of the IPSC in relation to staff misconduct. Failure to do so may be a breach of this code and sanctions may apply.

***Complaints under this code***

16) A vexatious complaint or a complaint made in bad faith may itself be a breach of this code and may be subject to sanctions.

17) Any attempt to intimidate or victimise a reporter/complainant or to lobby, influence or intimidate the IPSC (its office-holders, staff or contractors) will be treated as a serious and aggravated breach of this code.

***Upholding the Code for Parliamentarians***

18) Parliamentarians must incorporate this code in their everyday workplace practice. This is done by:

- (a) undertaking any training or professional development as recommended or deemed necessary as an employer and leader within the community; and
- (b) complying with all workplace policies.