

Can language rules improve everyday respect in the parliamentary chambers?

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INTRODUCTION

In November 2021, the Australian Sex Discrimination Commissioner, Kate Jenkins, tabled a report outlining 28 recommendations to 'ensure that Commonwealth parliamentary workplaces are safe and respectful and that the nation's Parliament reflects best practice in the prevention and handling of bullying, sexual harassment and sexual assault'.¹ The *Set the Standard* report reflects the evidence gathered from over 1700 individuals and 33 organisations and collectives, through surveys, interviews, written submissions and focus group discussions. Among its key findings, the report points to the role of 'power imbalances, gender inequality and exclusion'² in normalising and perpetuating misconduct. Contributors to the report pointed to what they called a 'toxic workplace culture'.³ To rectify this, the Commission made a series of recommendations relating specifically to diversity, equality and inclusion. The Commission recommended that: efforts be made to diversify the cadre of politicians, as well as political and parliamentary staff in Australia; there be stronger mechanisms

¹ Australian Human Rights Commission (AHRC), *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* Sydney: AHRC, 2021, p. 1.

² AHRC, *Set the Standard*, p. 160.

³ AHRC, *Set the Standard*, pp. 84, 95, 124.

by which to measure and report on that diversity; and ‘everyday respect’ be improved in the parliamentary chambers (Recommendations 5 to 10).⁴

While the parliament has been in the process of implementing the *Set the Standard* recommendations, women from the Coalition parties have publicly invoked calls for ‘everyday respect’ in both the House of Representatives and the Senate. In October 2022, a female Coalition MP accused the Prime Minister of ‘aggressive’ ‘bullying’ during Question Time.⁵ In March 2023, a female Coalition Senator called on a male Senator to withdraw comments made in the course of a debate on the appearance of neo-Nazi at anti-transgender rights protests, and the attendance of Liberal Party members at those protests.⁶ On both occasions, political tensions were high.

These instances beg the question of whether it is actually possible to improve everyday respect in the Australian parliamentary chambers, particularly in moments of heightened political sensitivity or adversarialism. I would argue that respect is possible, but that it requires a more sophisticated conversation, both in parliament and with the Australian public. In this brief commentary piece, I reflect on the use of ‘unparliamentary language’ rules and their potential to address the power imbalances, gender inequality and exclusion that in the Commissioner’s view drive misconduct. I argue that improving everyday respect in the parliamentary chambers requires both formal rule change and norm change, and that there is hope for constructive change.

ARE PARLIAMENTARY RULES GENDER DISCRIMINATORY?

Rule changes occur infrequently, and usually modestly, in the Australian parliamentary chambers.⁷ There are, however, exceptions to this general approach. In 2004, the House of Representatives Standing Orders were ‘totally revised and renumbered’. In this review, gender-neutral language conventions were adopted; where the rules had

⁴ AHRC, *Set the Standard*, pp. 172-73.

⁵ Josh Butler, ‘Coalition MP Michelle Landry accuses Anthony Albanese of ‘bullying’ her in parliament’. *The Guardian*, 27 October 2022.

⁶ Lauren Evans, ‘Senator Sarah Henderson addresses ‘abhorrent and offensive’ comments she claims Murray Watt made during Nazi debate’. *SkyNews Australia*, 24 March 2023.

⁷ Keith Dowding, Patrick Leslie and Marija Taflaga, ‘Australia: Speaker time in an adversarial system’ in Hanna Bäck, Marc Debus and Jorge Fernandes (eds) *Politics of Legislative Debates*, Oxford: Oxford University Press, 2021, pp. 130-151.

previously referred to Members with a masculine pronoun (e.g. ‘he’, or ‘Chairman’), from the beginning of the 41st Parliament, these were replaced with more gender-neutral language (e.g. ‘he or she’, and ‘Chair’). The emphasis on gender-neutrality reflected conventions adopted by the Office of Parliamentary Counsel, as well as wider conversations about sex discrimination, that had begun in the early- to mid-1980s.

The gender neutrality of legislation (and, by extension, rules of procedure) has recently come into question. Despite ostensibly gender-neutral rules, parliamentarians experience the chamber in different ways – not only based on gender, but on race, disability, and age, among other indices of intersectionality.⁸ Legal academic Ramona Vijayarasa has noted that apparently gender-neutral legislation has facilitated and aggravated the ‘perpetuation of gender stereotypes and traditional practices’, and thereby gender discrimination.⁹ Similarly, Canadian academics Cheryl Collier and Tracey Raney specifically point to the ‘myth of neutrality’ as that which privileges male norms of behaviour, particularly in Westminster parliaments.¹⁰ Indeed, the myth of gender neutrality, combined with adversarial politics and parliamentary privilege conventions, constructs a pervasive political and cultural denial of gender-based discrimination.

WHEN GENDER NEUTRAL RULES CAUSE HARM

In October 2018, Greens Senator Sarah Hanson-Young called out repeated incidents of bullying, intimidation and sexual harassment in the Senate in an essay entitled *En Garde*.¹¹ The essay spotlights an episode with Senator David Leyonhjelm during a debate concerning violence against women in which he jeered that she should ‘stop

⁸ Nirmal Puwar, *Space Invaders: Race, Gender and Bodies Out of Place*. Oxford and New York: Berg, 2004; Mona Lena Krook, ‘Westminster Too: On Sexual Harassment in British Politics’, *Political Quarterly* 89(1) 2018, pp. 65-72; Kerryn Baker, ‘Melodrama, fisticuffs and generally aberrant behaviour’: Gender, norms of behaviour and workplace culture in the New Zealand Parliament’. *Australasian Parliamentary Review*, 36(2) 2021, pp. 130-147.

⁹ Ramona Vijayarasa, ‘In pursuit of gender-responsive legislation: Transforming women’s lives through the law’ in Ramona Vijearasa (ed) *International Women’s Rights Law and Gender Equality: Making the Law Work for Women*, London: Routledge, 2021, p. 3.

¹⁰ Cheryl N Collier, Tracey Raney, ‘Understanding Sexism and Sexual Harassment in Politics: A Comparison of Westminster Parliaments in Australia, the United Kingdom, and Canada’, *Social Politics: International Studies in Gender, State & Society*, 25(3), 2018, pp 432–455.

¹¹ Sarah Hanson-Young, *En garde*. Sydney: Melbourne University Press, 2020.

shagging men'. Senator Leyonhjelm refused to apologise for his taunt in the Senate, and in subsequent public media engagements explained that his remarks were not sexist, but rather 'normal Australian behaviour'.¹²

The episode was not an exception. As a Matter of Public Importance (MPI) in November 2018, the Senate debated 'The increasing attacks on Australia's traditional freedoms'.¹³ Among the 'traditional freedoms' considered under threat, the conservative senators proposing this item for debate were most concerned with freedom of speech. Earlier in the day, Greens party leader Senator Richard Di Natale had been expelled from the chamber for refusing to withdraw remarks made to conservative Senator O'Sullivan after he suggested that 'there's a bit of Nick Xenophon in [Senator Hanson Young]'. While Senator O'Sullivan withdrew his comments, adding that he 'did not mean that to be a double reference',¹⁴ Senator Di Natale did not withdraw his remarks expressing disgust at Senator O'Sullivan's turn of phrase. Later supporting her expelled party leader, Senator Hanson-Young observed:

I want to make it very clear that I am thankful to Senator Di Natale for standing up and calling them out. That is what real men do. Real men don't insult and threaten women, they don't slut-shame them and they don't attack them and make them feel bullied in their workplace. I have sat in this chamber for weeks and weeks—months—and heard the disgusting slurs and attacks coming from a particular group in this place, and I for one am sick of it, and I know many of my female colleagues on all sides of politics are sick of it, too.¹⁵

The MPI debate that followed became a thinly veiled attack on Senator Hanson-Young; the proposer of the motion, Senator Cori Bernardi, declared:

¹² Hanson-Young, *En garde*, pp. 29-31.

¹³ President of the Senate, Senator Hon. Scott Ryan, Commonwealth, *Parliamentary Debates*, Senate, 27 November 2018, pp. 8719-8732.

¹⁴ Senator O'Sullivan, Commonwealth, *Parliamentary Debates*, Senate, 27 November 2018, p. 8691.

¹⁵ Senator Hanson-Young, Commonwealth, *Parliamentary Debates*, Senate, 27 November 2018, p. 8694.

When I look at Senator Hanson-Young, I don't see a woman; I see a senator. Gender should be blind in this chamber, yet Senator Hanson-Young wants to make it a perpetual grievance—that somehow she's being maligned ... But we should not be silencing these [traditional freedoms] through victimhood, through shaming, however you want to call it—through this perpetual indulgence of identity politics. It is counterproductive, and it is doing us harm.¹⁶

There is clearly a political debate about the role of 'identity politics' in Australia, but globally, links have been made between sexist language and violence against women in politics. A 2016 global survey from the Inter-Parliamentary Union found that almost 82 per cent of the responding women parliamentarians had suffered some form of psychological violence, including 44 per cent who said they had received threats of death, rape, beatings or abduction during their parliamentary term. The same report found that over 60 per cent of those (predominantly women) who had been subjected to sexist behaviour and/or violence in parliament believed those acts had been intended primarily to dissuade them and their female colleagues from continuing in politics.¹⁷

EXPLICITLY GENDER SENSITISING RULES OF DEBATE

In the 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.

In the House of Representatives, standing orders 89 (Offensive words) and 90 (Reflections on Members) cover the same points. In her chapter on 'unparliamentary

¹⁶ Senator Cori Bernardi, Commonwealth, *Parliamentary Debates*, Senate, 27 November 2018, p. 8720.

¹⁷ Inter-Parliamentary Union (IPU), *Sexism, harassment and violence against women parliamentarians*. Geneva: IPU, October 2016.

language', Cornelia Ilie contextualises its use by noting that members of parliament are required to abide by codes of conduct; that despite the resort to 'gladiatorial combat' 'MPs are expected to observe the general principles of selflessness, integrity, objectivity, accountability, openness, and leadership'.¹⁸ Discourse, in parliamentary chambers, is intentionally in the third person – that is, directed to the presiding officer – so as to avoid personalising insults. Ilie argues that this indirectness has both seen greater acceptance of 'unparliamentary language', and its intensification as a form of offensive attack.¹⁹

To date, in the absence of a code of conduct in Australia, the rules regarding offensive, unparliamentary language have not kept up to date with new norms of workplace behaviour. In fact, traditionally the rules have been more concerned with who the words might be about (MPs and Senators, judges), than the words themselves. There has never been a tight definition of the words that might be considered offensive, although there has been some monitoring of the words used in the chamber.²⁰ This means that while Members and Senators may have a general sense of what might be offensive, there is no clear direction by which presiding officers' might determine orderly conduct. There is no clear set of standards that presiding officers can point to in encouraging 'good' behaviour, or in eliminating misconduct. In their current form, the rules are neither explicitly gender nor diversity sensitive.

To do so, I argue, requires changes to the standing orders to more explicitly link sexist, racist, homophobic and otherwise exclusionary words with offensive and therefore unacceptable language. Such a change would align the parliament's rules of procedure with anti-discrimination law – specifically the Sex Discrimination Act 1984 and the Racial Discrimination Act 1975 – which outline acts of discrimination that are considered unlawful in the broader community.²¹ In a parliamentary context, unparliamentary language would include derogatory or discriminatory references to Members' and Senators' gender, sexuality, race, disability or age. With these explicit

¹⁸ Cornelia Ilie, 'Unparliamentary Language: Insults as Cognitive Forms of Ideological Confrontation' in Rene Riven, Roslyn Frank and Cornelia Ilie (eds) *Language and Ideology Volume II: Descriptive Cognitive Approaches*, Philadelphia: John Benjamins Publishing Company, 2001, p. 239.

¹⁹ Ilie, 'Unparliamentary Language', p. 240.

²⁰ Words that have been withdrawn in the course of parliamentary debate are often collated and compiled by staff of the chamber departments.

²¹ I thank Sarah Moulds for this important point.

references in the standing orders, Senator Leyonhjelm's jeers would have been publicly identified as sexist, as would have Senator O'Sullivan's (alleged) faux pas. The difference between the two examples is that Senator Leyonhjelm's refusal to withdraw would have been in direct breach of the standing orders, and the Senate would have had to vote on his suspension from the chamber. Senator O'Sullivan of course withdrew but not because the chair connected his remarks with sexism. Indeed, it might have been the case that had the chair been able to make that connection, and publicly acknowledge the sexism inherent in Senator O'Sullivan's comment, Senator Di Natale might not have been so vehement in his reaction, leading to his suspension from the chamber.

When the chair is unable to articulate a direct link between exclusionary language and offensive words, that language is normalised and accepted. Indeed, the current gender neutrality of the standing orders means that the parliament normalises derogatory comments not just in the chamber, but more broadly in society, and accepts them as part of a wider narrative of 'robust debate in the chamber'. Yet, it is possible for parliamentarians to engage in robust debate without using sexist, racist, homophobic, exclusionary language. Clarifying that this language is unacceptable means that the chair has a clear sense of what should be called to *immediate* attention.

In fact, the very banter that might occur following the utterance of exclusionary language would define its acceptability. For example, a Member might say something that the chair considers contravenes that standing order. The chair may ask the member to withdraw the comment. That member may either accept the directive to withdraw, or may disagree that the comment was exclusionary. The public 'back and forth' becomes an opportunity for the parliament to reflect on its language and tone, and for the Australian community to judge that tone of debate.

Specifying that exclusionary language will not be tolerated in the parliament literally sets the standard. In some senses, it might be argued that the wider Australian discourse has moved beyond that which continues to be accepted in the chamber. Many phrases in common parlance 20 years ago are no longer in use. It is therefore important that the parliament at least keeps pace with these trends, if not actually represent a more inclusive model.

PARLIAMENTARY LEADERSHIP IN UPHOLDING THE STANDARD

Enshrining the standard in the standing orders however is not sufficient. There needs to be consequences for failing to abide by the standard. In both the Senate and the House of Representatives, standing orders allow for suspension. The two chambers differ in terms of the time in which a Member/Senator can be suspended from the chamber. The House of Representatives introduced in 1994 a procedure by which Members could be directed to leave the chamber for an hour for disorderly conduct,²² while the Senate continues to use the practice of suspending for the rest of the day.²³ The suspension of Members and Senators who refuse to withdraw exclusionary language would have the effect of signalling the parliamentary leadership's 'zero tolerance' for such language and such behaviour.

On this, there is a critical role for the Speaker of the House of Representatives and the President of the Senate, and the panel of individuals who take the chair in their absence. The parliamentary leadership will have to make the determination – be it political or procedural – that a parliamentarian found to have used exclusionary language be suspended. Suspension would not be automatic. It is possible that making these determinations will require some discussion among members of the Speaker's and President's panels: what constitutes exclusionary language, and how should the parliamentary leadership – composed of Members and Senators from different political persuasions – implement the standing orders in a consistent manner. I would suggest that such a discussion be facilitated by an expert in unconscious bias or the role of language in inciting violence. During my appearance before the House of Representatives Procedure Committee in February 2023, the Deputy Chair noted:

The Speaker's panel probably needs to be updated far more regularly than it has been. Since I've been back, I don't think there has been one Speaker's panel meeting to talk about the new determinations. It will probably need the Speaker to provide regular updates to the Speaker's panel, in order to execute these types of new standards that

²² David Elder, *House of Representatives Practice*, 7th Edition, Canberra, p. 536.

²³ Senate Standing Order 204.

*we have, because nothing has been done so far. I know that last year was difficult, but maybe that will set the practice for the new year.*²⁴

In that discussion, there was also some consideration of the issue that speakers and presidents frequently find it difficult to hear language considered to be unparliamentary, particularly in the very noisy periods of question time and MPIs. While this is understandable, it may also appear as an excuse for inaction. Yet exclusionary language can have devastating impact – both in the moment, and later on – for those to whom it is directed. Therefore, it is important for the chair to take seriously any potential offence. I have suggested to the House of Representatives Procedure Committee that when exclusionary language is brought to the attention of the chair, even in question time or an MPI, they acknowledge that members have heard something that is potentially exclusionary, and that they will investigate further with the members believed to be involved. Something to the effect of, 'I would like to see this member and that member in my office after question time.'²⁵ In that way, the chair signals that they are taking the matter seriously, and will have a conversation to resolve it in due course. In this way, the chair publicly recognises that offence may have been caused.

Should the Standing Orders be amended in this way, I would encourage a review of its operation in line with a review of the Code of Conduct currently being considered by the Joint Select Committee on Parliamentary Standards. Such a review process would be well supported by parliamentary staff who already monitor 'unparliamentary language'. There could also be a yearly reflection on the language was used in chamber debates and the consequences of that language, and these reflections could be used in the induction training of new presiding officers and members of speakers'/presidents' panels.²⁶

²⁴ Ross Vasta, Commonwealth, *Parliamentary Debates*, House of Representatives Procedure Committee, 13 February 2023, p. 3.

²⁵ Sonia Palmieri, Commonwealth, *Parliamentary Debates*, House of Representatives Procedure Committee, 13 February 2023, p. 8.

²⁶ This point was further supported by Professor Michelle Tuckey and Dr Sarah Moulds during their appearance before the House of Representatives Procedure Committee on 2 December 2022.

CONCLUSION

Given the longstanding acceptance and normalisation of exclusionary language in Australian parliamentary chambers, it will take rule changes and concerted leadership to address the widespread incidence of inequality and misconduct uncovered by Commissioner Kate Jenkins.²⁷ At a minimum, the standing orders should be more explicit about a zero tolerance of sexism, racism, homophobia and other forms of exclusion. Making that zero tolerance explicit is important not only for the safety and wellbeing of all parliamentarians, but also because it defines ‘good’ standards to the Australian community.²⁸ As I have noted in this commentary, I believe the presiding officers have a critical role to play in upholding the new standard.

Cultural change is also required. There is a need to reflect on the unwritten rules, norms and practices in the chambers that (inadvertently) seep out into other areas of the parliamentary workplace. While this commentary has considered changes to written rules, there is also a need to reflect on the ideas and practices that allow and tolerate a degree of theatricality in the chambers in the name of robust political debate. This theatricality may include various expressions of anger, (mock) hatred, or other confronting behaviour that is generally believed unacceptable in most other workplaces. This norm of adversarialism is accepted in the chamber as a legitimate form of ‘political combat’. This acceptance is, in part, sustained because of an assumption that (all) Members and Senators can – and will – switch off their theatricality as soon as they leave the chamber. The evidence presented in *Set the Standard* suggests that this assumption may be fair in most cases, but not all. This is why more intentional mechanisms are required to improve everyday respect in the chambers. Norm changes take more honest conversations that recognise fundamental inequalities in the multiple workplaces of parliament, and in taken for granted practices. It is likely that the Australian parliament needs specific – and public – fora in which those honest conversations can take place.

²⁷ AHRC, *Set the Standard*, pp. 148-159.

²⁸ On the term ‘good’, see Sarah Childs, *The Good Parliament*, Bristol: Bristol University, 2016.