

‘It’s a bit unfair on the bin chickens, don’t you think?’: Unparliamentary language as self-regulated freedom of speech

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Abstract: This paper discusses how parliament regulates its own speech through rulings and practice regarding unparliamentary language. Drawing on a review of the instances of unparliamentary language raised in the House of Representatives in 2022-23, and a range of examples from the Parliament of Australia, it highlights the importance of context in understanding the boundaries of parliamentary language. This in turn uncovers the tensions inherent in the parliament’s roles as the site of political debate and as the arbiter of the bounds of that debate.

INTRODUCTION

This paper discusses how parliament regulates its own speech through rulings and practice regarding unparliamentary language. Standing Orders for the House of Representatives and Senate of the Australian Parliament prohibit ‘disrespectful references², or the use of ‘offensive’ language in referring³, to other members or senators, or to the monarch, Governor-General or members of the judiciary. Both houses also include use of ‘objectionable words’, and the refusal to withdraw them, as

¹ We thank our colleagues in the Department of the House of Representatives Procedure Office, especially Natalie Cooke, for their assistance on this paper.

² House of Representatives Standing Orders (HOR SO) 89 & 90.

³ Senate Standing Order (SSO) 193.

examples of disorderly conduct⁴. However, despite the apparent simplicity of these rules, there are layers of complexity.

This paper begins by outlining why it is important that parliamentary debates are conducted in an orderly manner, and why it is equally important that the parliament itself sets the bounds of what that means. Those boundaries are set in a range of ways, including through rulings from the chair and the official transcripts of proceedings. Vitally, neither debates nor rulings occur in a vacuum, and in different contexts, different standards may be set.

The issue is further complicated in committee hearings, where witnesses may be granted considerable latitude in not just their language, but in their reflections on individual members or senators or decisions of the parliament.

This paper draws on a review of the instances of unparliamentary language raised in the House of Representatives in 2022-23. In addition, it examines a range of examples from the Parliament of Australia, in particular the House of Representatives, to demonstrate the importance of context in understanding the boundaries of parliamentary language, and will highlight the tensions inherent in the parliament's roles as the site of political debate and as the arbiter of the bounds of that debate.

UNPARLIAMENTARY LANGUAGE: WHAT IT IS, WHY IT IS IMPORTANT & WHY PARLIAMENT IS THE ONLY ARBITER OF WHAT IT IS

The concept of unparliamentary language originates from the early history of Westminster, where restrictions on the expression of free speech were self-imposed over time after a significant struggle to attain freedom of speech. Elizabethan parliaments in particular were significantly curtailed by the Queen's restrictions on freedom of speech.⁵ Eventually, this led to the enactment of the Bill of Rights of 1689, Article 9 declaring 'That the freedom of speech and debates or proceedings in

⁴ HOR SO 91 (b), SSO 203 (c).

⁵ Rosemary Sgroi, 'Freedom of speech in Elizabethan Parliaments: The History of Parliament', accessed at: <<http://www.historyofparliamentonline.org/periods/tudors/freedom-speech-elizabethan-parliaments>>.

Parliament ought not to be impeached or questioned in any court or place out of Parliament'.⁶ This pronounced the assertion of the rights and privileges of parliament to determine in what manner its business was conducted.

Commentary by Paul Seaward suggests that two factors informed the evolution of the principle of unparliamentary language. He suggests that, firstly, a culture evolved in Westminster from the sixteenth century which promoted the model of a quiet and serious parliamentarian who approached their role with the appropriate gravity demanded of the parliament.⁷ Secondly, Seaward suggests that the contemporary conventions regarding gentlemanly violence likely informed the development of the principle. Instances where a member accuse another of lying were likely interpreted as a prompt for a challenge and subsequent duel, indicating the seriousness of such a charge.⁸ Given the propensity of challenges and duels to eventuate in physical violence and death, unflattering reflections on other members or lack of civility in the chamber held a significant risk to the business and order of the parliament.

Interestingly, Seaward notes that the procedural evolution of unparliamentary language in the House of Commons in particular has tended to fixate on particular words as inherently unparliamentary, rather than consideration of such language by context. While John Hatsell, an eighteenth-century clerk, asserted the importance of context in determining whether language used is unparliamentary, Seaward argues that subsequent Speakers 'routinely condemned individual expressions as unparliamentary, conveying the impression that it was the word, rather than the word in context, that was damaging'.⁹ As demonstrated in Australian examples below, such interpretation has survived to an extent.

⁶ 1 Will. & Mary, sess. 2, c.2.

⁷ Paul Seaward, 'Lies, Personalities and Unparliamentary Expressions, The History of Parliament: British Political, Social & Local History'. Accessed at: <<https://historyofparliamentblog.wordpress.com/2021/04/29/lies-personalities-and-unparliamentary-expressions/>>.

⁸ Seaward, 'Lies, Personalities and Unparliamentary Expressions'.

⁹ Seaward, 'Lies, Personalities and Unparliamentary Expressions'.

The Australian context: The House of Representatives and the Senate

The Parliament derives its power to determine its powers, privileges and immunities by virtue of section 49 of the Constitution. Section 50 further determines that both Houses are vested with the power to the resolve the ‘order and conduct of its business and proceedings either separately or jointly with the other House’.

In the Australian context, the use of unparliamentary language is governed, in both Houses of the parliament, by Standing Orders relating to Disorder. The House of Representatives Standing Orders (SOs) outline the following instances of Disorder:

A Member must not refer disrespectfully to the Queen, the Governor-General, or a State Governor, in debate or for the purpose of influencing the House in its deliberations.

A Member must not use offensive words against:

either House of the Parliament or a Member of the Parliament; or

a member of the Judiciary.

All imputations of improper motives to a Member and all personal reflections on other Members shall be considered highly disorderly.¹⁰

Standing Order 91 further highlights that ‘a Member’s conduct shall be considered disorderly if the Member has ... used objectionable words, which he or she has refused to withdraw’. Other than the specific instances highlighted in SOs 88-90, the SOs do not explain how ‘objectionable words’ should be defined. House of Representatives Practice (Reps Practice), however, expands on this, noting that the decision rests with the Chair:

¹⁰ HOR SO 88-90.

*The determination as to whether words used in the House are offensive or disorderly rests with the Chair, and the Chair's judgment depends on the nature of the word and the context in which it is used.*¹¹

This is in line with SO 60: 'The Speaker, or the occupier of the Chair of the House at the time, shall keep order in the House'. Similarly, the Deputy Speaker, or Chair in the Federation Chamber, is responsible for keeping order in the Federation Chamber.

Where language or conduct that is out of order is identified, it can be raised either by a Member as a point of order for the Speaker or Chair's determination, or by the Speaker themselves. The Speaker or Chair is empowered by SO 92 to intervene in situations where a Member's conduct is considered to be offensive or disorderly, in addition to enabling the Speaker to determine whether a Member's conduct was offensive or disorderly if drawn to their attention by another Member. If the Speaker determines that the language or conduct breaches the SOs, the most common response is to request that the offending Member to withdraw the unparliamentary language or conduct, which in most cases is generally complied with. A range of other disciplinary measures are available to the Speaker via SO 94, such as a direction to leave the Chamber for a one-hour period, and naming and moving to suspend the Member.

Reps Practice also notes that 'A Member is not allowed to use unparliamentary words by the device of putting them in somebody else's mouth, or in the course of a quotation'.¹² As we note later in this paper, this determination is not always strictly followed.

The Senate Standing Orders (SSOs) contain similar guidance to the House:

A senator shall not reflect on any vote of the Senate, except for the purpose of moving that the vote be rescinded.

A senator shall not refer to the King, the Governor-General or the Governor of a state disrespectfully in debate, or for the purpose of influencing the Senate in its deliberations.

¹¹ David Elder, *House of Representatives Practice (HRP)*, 7th Edition. Canberra: Department of the House of Representatives, 2018, p. 514.

¹² Elder, HRP, p. 514.

*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.*¹³

While many of the same disciplinary options are available to the President of the Senate in responding to unparliamentary language or conduct, censure motions are used with more frequency to respond to these issues than in the House.¹⁴ However, a censure motion is not a sanction available to either the President or the Speaker; it can only be initiated by a Member or Senator, placing the responsibility of bringing a censure motion on the relevant chamber as a whole rather than the Presiding Officer.

The role of the Presiding Officer

As highlighted by the relevant Standing Orders, the Presiding Officer (either the Speaker of the House or the President of the Senate) is the ultimate arbiter for determining what constitutes disorder and, consequently, unparliamentary language. As described by former Speaker the Hon Peter Slipper, the Speaker is the ‘ultimate authority’ of the House, and with it comes the responsibility of maintaining order.¹⁵ In the House, the Speaker can intervene where a Member’s conduct is determined to be offensive or disorderly by virtue of Standing Order 92. The current Speaker’s submission to the House of Representatives Standing Committee on Procedure inquiry into recommendations 10 and 27 of Set the Standard: Report on the independent review into Commonwealth Parliamentary Workplaces (henceforth, *Raising the Standard*), highlights the competing considerations when determining rulings on conduct:

¹³ SSO 193.

¹⁴ See, for example, the Senate’s censure of former Senator Fraser Anning on 3 April 2023. Note, however, that the inflammatory language Senator Anning used was external to the Chamber, which prevented the President’s intervention available under SSOs: *Journals of the Senate*, No. 142, 3 April 2023, p. 4834.

¹⁵ Cited in *Raising the Standard*, p. 12 [3.18].

The Speaker has an important duty to apply the Standing Orders in the Chamber. It is also the Speaker's duty to uphold the dignity of the House and ensure that Members treat each other with respect and courtesy, while engaging in healthy, democratic debate.¹⁶

In her submission to the inquiry, the Clerk of the House of Representatives noted that this lack of specificity allows for the Speaker to take a principles-based approach:

*The Speaker may be guided by relevant precedents and rulings by former Speakers, such as those cited in House of Representatives Practice. While it could be argued that the current absence of specific types of 'offensive' or 'objectionable' words in the standing orders is a concern, it does mean that the Speaker is not restricted if faced with unanticipated circumstances and can take context into account.*¹⁷

The Speaker's own submission highlighted that the broad outlines contained in the SOs enable the Speaker to reflect evolving community standards:

Speakers' rulings over time have changed. In the same way that standards of dress have evolved since the first sitting of Australia's Parliament, what constitutes acceptable language and behaviour has also evolved. For example, some inherently sexist language or behaviour may once have been somewhat tolerated but is no longer considered acceptable in contemporary Australia or in today's Parliament. Similar comparisons can be made regarding actions that discriminate or are exclusionary based on race, disability, or sexual orientation.¹⁸

The flexibility in practice enables the Speaker to adapt to both the context in the specific instance and to broader changes in society. As the SOs in relation to unparliamentary language and conduct have generally been interpreted to be applicable to a broad range of behaviour and language, they have been infrequently

¹⁶ Milton Dick MP, Speaker of the House, Procedure Committee Inquiry into Recommendations 10 and 27 of Set the Standard, *Submission 7*, p. 1.

¹⁷ Claessa Surtees, Clerk of the House, Procedure Committee Inquiry into Recommendations 10 and 27 of Set the Standard, *Submission 2*, p. 2.

¹⁸ Milton Dick MP, Speaker of the House, Procedure Committee Inquiry into Recommendations 10 and 27 of Set the Standard, *Submission 7*, p. 1.

amended.¹⁹ However, rulings on disorderly conduct necessarily respond to poor behaviour after it has already occurred whereas until recently there have been limited established rules to determine what expectations should be placed on parliamentarians' conduct and behaviour. Further, the limited appreciation by the broader community regarding the contextual importance can cause confusion, particularly in situations where words such as 'liar' are found to be problematic under SOs but discriminatory or inflammatory language are considered within the rules.

Notwithstanding the Presiding Officer's capacity to flexibly respond to the situation at hand when making rulings, such a mechanism can result in inconsistent rulings. As illustrated below, offensive language that may be considered a breach of SOs in the Chamber may not be ruled out of order in a different context or under a different Chair or Speaker. An example is the acronym 'WTF', which was deemed to be an unparliamentary term during debate on a bill on 14 February 2023 and withdrawn by the offending Member;²⁰ however, five days before, the same acronym had been used by a different Member, and attention was not drawn to it.²¹

Why is it important?

The importance of the Parliament's ability to determine the manner in which it conducts its business is demonstrated in a number of ways. Firstly, such powers represent an exercise of parliamentary privilege at its most fundamental. As noted above, sections 49 and 50 of the Constitution empower the Parliament to determine its powers, privileges and immunities, and how these features are practiced in governing its own administration. Accordingly, only the Parliament may determine what forms of language and behaviour fall within the confines of acceptable behaviour.

¹⁹ The last broad-scale review of the House of Representatives Standing Orders was in November 2003, which consolidated a number of Standing Orders. The House of Representatives Standing Committee on Procedure is currently undertaking an inquiry into the Standing Orders. In the Senate, a full review of the Standing Orders has not taken place since 1987, but inquiries on individual matters or SOs have been successful in recommending changes, most recently in *Report 2 of 2023* of the Senate Standing Committee on Procedure, which responded to Recommendation 10 of *Set the Standard* among other matters.

²⁰ Julian Hill MP, Commonwealth, *Parliamentary Debates*, House of Representatives, 14 February 2023, p. 759.

²¹ Jerome Laxale MP, Commonwealth, *Parliamentary Debates*, House of Representatives, 9 February 2023, p. 483.

Such a right cannot be understated, particularly in the context of Westminster parliamentary history. In the UK, the parliamentary right to freedom of speech was long contested, demonstrated by cases such as Sir Peter Wentworth MP's repeated imprisonment and eventual death in the Tower of London during the sixteenth century for breaches of the restrictions on freedom of expression imposed on the Commons by Elizabeth I.²² While the current Australian parliamentary landscape bears little resemblance to its contextual predecessors in this respect, the principle established at that time remains fundamentally relevant: that parliaments continue to assert and jealously guard their sovereignty, including freedom from tyranny of the Executive and Judicial branches of government.

Further, the need to control for unparliamentary language and disorder highlights a tension between parliamentarians' freedom of speech and capacity to undergo their duties unobstructed, and the need to maintain order in an often fast-moving and chaotic environment. This balance of rights is referred to in *Odgers' Australian Senate Practice* (Odgers), which stated that the prohibition on offensive words in the Senate is to ensure that 'debate is conducted in the privileged forum of Parliament without personally offensive language'.²³ The excerpt in Odgers hints at the extremity of freedom that parliamentary privilege provides parliamentarians at large; with considerable protections enabling free speech, it is imperative that these processes are not abused.²⁴

Finally, there are broader considerations of the need to model appropriate workplace behaviour and behave with decorum. Concerns regarding acceptable behaviour and language have long proliferated, particularly given the regular televisual presence of contentious parliamentary debates. The importance of 'setting an example' has been recognised by Presiding Officers, including a statement by the current Speaker noting to Members recently that 'Our general demeanour and the courtesy we show one

²² Sgroi, 'Freedom of speech in Elizabethan Parliaments'.

²³ Rosemary Laing (ed.), *Odgers' Australian Senate Practice*, 14th edition. Canberra: Department of the Senate, 2016, p. 268.

²⁴ One mechanism adopted for the purposes of encouraging moderated use of language in the Senate lies in the Resolution 8 of the Privilege Resolutions, which urges senators to responsibly exercise their freedom of speech.

another in the chamber matters'.²⁵ More expansively, the former Senate President the Hon Scott Ryan stated in August 2018:

... I ask senators to consider the following. This chamber is the prime deliberative chamber of the parliament. It is far better that positive attention is attracted by our words and contributions to debate. On several occasions in recent times, this has not been the case. The standing orders and rules of this place are limits, not guides. Just because something can be said or done does not mean it should be. Common decency cannot be codified. It depends on all of us considering the impact of our behaviour on others. While this workplace isn't like a normal one, it is still a place where we all must work together, even across issues of profound disagreement. We also work with officials and staff, and we should consider the impact of our behaviour on them.

*This is rightly a place of vigorous debate, but 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.*²⁶

This point was highlighted by *Set the Standard*, where it was argued that the current arrangements governing the conduct of Parliament 'do not adequately promote a safe and respectful environment'.²⁷ Recommendation 10 of *Set the Standard* recommended

²⁵ Milton Dick MP, Commonwealth, *Parliamentary Debates*, House of Representatives Thursday 22 June 2023, p. 64.

²⁶ Cited in Senate Standing Committee on Procedure, *Third Report of 2018: Disorder outside formal proceedings*, September 2018, p. 1.

²⁷ Australian Human Rights Commission, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, November 2021, p. 173.

the review of the Standing Orders of both Houses with a view to ‘eliminating language, behaviour and practices that are sexist or otherwise exclusionary and discriminatory [and] improving safety and respect in the parliamentary chambers’.²⁸ Both the House and the Senate Procedure Committees have responded to Recommendation 10, with the House Committee making a range of recommendations to amend the House SOs.

CONTEXT IS EVERYTHING: EXAMPLES OF UNPARLIAMENTARY LANGUAGE

For this paper, we focus on both quantitative analysis of unparliamentary language in addition to several case studies from the Parliament of Australia (the House of Representatives). This highlights how much context matters in the recording of unparliamentary language.

Study of 2022-23 instances of unparliamentary language in the House of Representatives

For the purposes of this paper, we examined all recorded instances where a Speaker has determined that a Member of the House of Representatives used unparliamentary language or conduct between 2 August 2022 (the first day of the 47th Parliament) to 22 June 2023.

There are limitations with this study, particularly in that it does not capture every instance of unparliamentary language but only where the Speaker has determined that the relevant SO has been breached and where Hansard has been able to capture the words expressed, which may not be inclusive of all unparliamentary language uttered. In addition, the sourced data is from the House of Representatives’ Chamber and the Federation Chamber, and does not include either the Senate or the Hansard transcripts of public hearings of parliamentary committees.

Between 2 August 2022 and 22 June 2023, there were 68 instances of unparliamentary language which the Speaker made a ruling on, in almost all instances requesting that

²⁸ Cited in House of Representatives Standing Committee on Procedure, *Raising the Standard: Inquiry into Recommendations 10 and 27 of Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, July 2023, p. 1 [para. 1.3].

the Member withdraw the offending language. There was only one instance where a Member refused to withdraw, and in two other cases, on appeal from a Member or Members, the Speaker undertook to consider and review specific instances. Of these, 15 instances of unparliamentary language were unrecorded by Hansard, which limits their evidentiary value.

Unparliamentary language is most common during Question Time, with 25 recorded instances during that time of the day during the reviewed period. The next most common times were during time reserved for Matters of Public Importance (12 instances) and during Bills debate (eight instances). In relation to the former two, this can be explained by the highly adversarial nature of Question Time, which can then flow on to Matters of Public Importance motions (which follow Question Time on sitting days except Mondays).

The content of unparliamentary language was largely in relation to personal reflections – that is, insults based on a person’s character or the like. Such instances comprised 35.29 per cent of recorded instances. The second- and third-most common forms of unparliamentary language relate to allegations of corruption and imputations of lying in relation to another Member. This is reflective of the historical origins of the concept, as discussed earlier in the paper.²⁹ However, while many Members referred to broader investigations (including Royal Commissions) which had made adverse findings, it is still considered disorderly to ascribe improper motives to another Member even where external processes may have done so.

Finally, gender is a significant parameter in instances of unparliamentary language; the majority of recorded instances were by male Members (sixty per cent as opposed to ten per cent by women; the remainder were unidentified speakers). This finding does not necessarily indicate that men are more likely to breach the rules of the House; higher rates of male Members using unparliamentary language may be reflective of their having more speaking opportunities than women, such as in positions of higher duties (e.g. as Ministers or as parliamentary Office Holders). This is supported when examining the individual Members who had the highest findings of unparliamentary

²⁹ Hansard did not capture the content spoken in 23.53 per cent of instances examined.

language against them, which primarily were those in senior positions and also were male, such as the Treasurer and the Leader of the Opposition.

Recent individual examples

A closer examination of instances of unparliamentary language highlight the importance of context in the Chair's determination of whether the SOs have been breached or otherwise. The following examples are included in exactly the form as recorded in Hansard (or other formal sources), for obvious reasons. Readers should be aware that some of the language below may be upsetting.

COMMITTEE HEARING AND REPORT

In late 2021, the House of Representatives Select Committee on Social Media and Online Safety heard from a witness in a public hearing regarding their experience of receiving online abuse. Hansard transcribed the witness verbatim:

In December 2013, around this time, actually, I woke up to my photo being misused on Reddit. Reddit is a horrible cesspit of the internet. I'm going to swear here because I'm going to quote the forum that it was used on. My photo was used on the 'what the fuck' forum. They were asking what the fuck had happened to my face. There were about 500 comments when I woke up, and they were all hideous.³⁰

The Committee Chair chose not to request a withdrawal. Given the context, the forum's title would have been nonsensical if withdrawn, but arguably the flavour of both the forum name and the reaction of users could have been conveyed even with a redacted transcript.

Subsequently, this extract was included in the Committee's report, tabled in the House in March 2022,³¹ suggesting that Committee members recognised that the power of the witness's experience and account of it carried sufficient weight to include it in full.

³⁰ Carly Findlay, *Committee Hansard*, Social Media and Online Safety Select Committee, 21 December 2021, p. 1.

³¹ House of Representatives Select Committee on Social Media and Online Safety, Report, p. 43.

CHAMBER SPEECH – INDIRECT QUOTE

As noted earlier, Reps Practice highlights that ‘A Member is not allowed to use unparliamentary words by the device of putting them in somebody else’s mouth, or in the course of a quotation’. Yet we can find instances where this prohibition is not followed – not just in committee hearings, but in the House itself.

In debate on the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2001, then-Member for Boothby Nicolle Flint made the following comments, recorded in Hansard with censoring asterisks:

I’m going to read some of this into Hansard because it needs to be recorded, because I will not be lectured by those opposite, as I’ve said before, when I know that they have even more serious problems than the ones that have already been revealed by the brave women who have come forward:

*He is a man who punches the wall next to his female staffer’s head calling her a “f***ing c**t” when she passes on news he doesn’t want to hear.*

*He is a man who calls his female colleague a “pig dog” when she disagrees with him and says in front of her staff “that’s why no one wants to f**k you”.*

This is female Labor staff members reporting the behaviour of current and former Labor MPs. The article continues:

*He is a man who says he’d “never f**k a woman without a thigh gap” and asks if I’ll show him mine while we sit waiting for a meeting I’m about to run to start in a room full of young men.³²*

A few months later, the same member made her valedictory speech, and again highlighted the abuse she had experienced. On this occasion, Hansard’s record contains all words as spoken in full:

³² Nicolle Flint MP, Commonwealth, *Parliamentary Debates*, House of Representatives, 2 September 2021, pp 9248-9249.

I want to be very clear about the sort of behaviour that I'm talking about. Men on the Left, some of whom are public figures of influence, have done the following: stalked me; suggested I should be strangled; criticised the clothes I wear and the way I look; repeatedly called me a whiny little bitch; repeatedly called me weak, a slut, a dick-hole—and I apologise for the language—and much, much worse over email, online, on YouTube, on Facebook, and on Twitter. They've commented that I should be raped, grudge-fucked, that I am doing sexual favours for all my male colleagues, that I should be killed, that I should kill myself, and many, many more things that I will not repeat here. These men have also consistently reminded me that I deserve everything that has happened to me.³³

Immediately before this, Flint had said:

It's tempting to describe the Leader of the Opposition with a single word, a four-letter word. It begins with L and ends with R. But that would be unparliamentary, so I won't.³⁴

It is notable that, even in a speech containing the above language, the Member was unwilling to use the 'unparliamentary' term of describing another Member as a 'liar', highlighting that reflecting on a Member remains the most prohibited form of speech in debate. It is also noteworthy that despite the Member's allusion to the use of an unparliamentary term, an act which could be ruled out of order, her comments were permitted without interjection.

CHAMBER DEBATE – DIRECT QUOTATION

When making a statement on the International Day for the Elimination of Violence against Women, Member for North Sydney Kylea Tink spoke of her experience of abuse since becoming an MP:

I've now been subject to gender based bullying and harassment online, as I suspect many of my colleagues have. I believe we'd all be subjected to a

³³ Nicolle Flint MP, Commonwealth, *Parliamentary Debates*, House of Representatives, 16 February 2022, pp 841-842.

³⁴ Nicolle Flint MP, Commonwealth, *Parliamentary Debates*, House of Representatives, 16 February 2022, p. 841.

*similar daily barrage of abuse from cowards hiding behind their keyboards. But even knowing this as I took on this role, some of the messages that I've received during this time have been truly breathtaking, with one of the more recent—and I'll apologise in advance for offence— saying, 'You ****ing ugly big nosed slut. And you're a fat ****. Climate change is bullshit.'*³⁵

Tink was not asked to withdraw or modify her language, and notably was *directly* quoting a message she'd received (as opposed to the general sense of messages relayed by Flint), and yet 'fuck' (as part of 'fucking') is here indicated with asterisks, as is another word, yet 'slut' and 'bullshit' are both transcribed.

A more recent example further highlights the inconsistencies in how debates are managed and transcribed. Speaking on workplace bullying, sexual harassment and sexual assault, Senator Pauline Hanson quoted from text messages allegedly sent by former Speaker Slipper to a staff member:

This was the first time a staffer had had the courage to publicly fight, instead of the long history of staff who have been mistreated and then encouraged to quietly go away. The Jenkins and Foster reviews have confirmed this very fact in black and white. Let me read you some of the text messages Peter Slipper sent to his staff member.

On 10 October 2011 he sent:

Funny how we say that a person is a cunt when many guys like cunts!;)

In a follow-up message that same day, the Speaker wrote:

They look like a mussel removed from its shell. Look at a bottle of mussel meat! Salty Cunts in brine!

[...]

³⁵ Kylea Tink MP, Commonwealth, *Parliamentary Debates*, House of Representatives, 29 November 2022, p. 3834.

The ACTING DEPUTY PRESIDENT (Senator Pratt): Point of order, Senator Hanson. Please pause the clock. Quoting from other sources does not make it any less disorderly in terms of reflecting on members of the other place. I would like to call your attention to the standing orders and for you to consider that in the remainder of your remarks.³⁶

[...]

The ACTING DEPUTY PRESIDENT: Senator Hanson, I call your attention to the standing orders in terms of reflecting on members of the other place.

Senator HANSON: They're not a member of the other place at this time, so therefore I have every right to disclose what was in text messages and before the courts.

The ACTING DEPUTY PRESIDENT: I'm sure that, under the standing orders, people will draw their own attention to the remarks that you have made. I'll let you continue.³⁷

Again, it is evident that reflecting on another member (in this case, a former member of the other House) merits more cause for warning than does quoting sexually explicit material. The matter is further muddled by, in this instance, Hansard including the full word which, in Tink's speech above, had been censored.

SENATE CHAMBER DEBATE – IMPUTATION OF RACISM

Finally, a scenario that took place in the Australian Senate in September 2023 drew out some of the difficulties in interpreting prohibitions on unparliamentary language. On 7 September 2023, Senator Lidia Thorpe put the view during debate that a statement made by Senator Alex Antic were racist:

Senator ANTIC: History tells us that civilisations and empires are transitory. There are increasing signs now that Western culture has reached a tipping point. Left-wing activism supposedly based on equity, diversity and inclusion

³⁶ Senator Pauline Hanson, Commonwealth, *Parliamentary Debates*, Senate, 8 August 2023, p. 79.

³⁷ Senator Pauline Hanson, Commonwealth, *Parliamentary Debates*, Senate, 8 August 2023, p. 80.

uses its allies in the media, the corporate sector and politics to prohibit any views it disapproves of. Too many of our modern leaders are not across this threat. They seem to think that defending our values is beneath them and that we have time on our side. We do not. Suicide and depression rates in our young people continue to skyrocket. We've failed to instil in them a sense of meaning and purpose, replacing it with empty modern ideologies like climate alarmism. On leaving school, young adults have little knowledge of history, the result of a curriculum denuded of Western history, replaced by critical race theory and a sense of victimhood. Sadly, too many have cowered before these ideologies, afraid of being called the various isms and phobias, and they're wreaking havoc across the West. If a principled defence of liberty was ever needed in this country, it was over the past 2½ years, yet we were told that those concerned with freedom were dangerous extremists. We need more brave men and women to stand up for future generations of Australians and hand them a culture that is greater than the one left to us. The relative prosperity and peace we've enjoyed have allowed us to become complacent, thinking that such a decline couldn't happen here, but the time has come for our leaders to stand up for what is right. Without urgent, strong leadership the West is doomed.

Senator Thorpe: Why do you have to be so racist?

Upon being determined by the Acting President that she was in breach of the SSOs, she highlighted what she viewed as a contradiction: that while racist or otherwise offensive or inflammatory language or ideas could be invoked by a Senator, another Senator calling them to account on their behaviour could be considered unparliamentary language.³⁸ Senator Mehreen Faruqi expressed support for Senator Thorpe's position, noting that she had been subject to racism within the Senate Chamber which had been poorly managed under SSOs. She particularly noted that determinations by Presiding Officers had not necessarily been considered in the context of the broader harm caused by such language.

³⁸ Commonwealth, *Parliamentary Debates*, Senate, 7 September 2022, pp 871-2.

While ultimately the matter moved on within the Chamber, two observations regarding this event can be made. Firstly, the original point of order did not address unparliamentary language but instead on a Senator's right to be heard in silence when they had the call, and it was only upon a colleague's raising the point of order regarding the allegation of racism that the discussion was prompted. This reflects the importance of context in understanding unparliamentary language, particularly in how Presiding Officers determine which instances to make rulings upon.

Secondly, such interactions – if not appropriately managed – can have a significantly broader impact, both in and outside the Chamber. Shortly after this interaction, Senator Hanson issued a tweet to Senator Faruqi, telling her to 'piss off back to Pakistan'.³⁹ After significant public and political commentary, Senator Faruqi moved a censure motion against Senator Hanson in relation to her comments where she raised the importance of respectful debate in the context of safety in the workplace.⁴⁰ In speaking in support of the motion, Senator the Hon Penny Wong made the following comment in relation to the importance of maintaining appropriate and respectful language:

Each of us in this place needs to take responsibility for our words and the impact of our words. Sometimes we say the wrong thing. Sometimes we do say the wrong thing, but we do have an individual and collective responsibility to act in a way that Australians would expect of us and that we would expect of our fellow Australians.

[...]

For our democracy to function well we must treat each other as equals. It is true that freedom of speech is a feature of democracy, but speech which is directed at people's heritage, race or religion is an attack on democracy, because fundamentally what it is saying is, 'You are not equal.' We must treat each other as equals, no matter the differences in our views. When we

³⁹ Australian Associated Press, 'Pauline Hanson denies 'Pakistan' tweet aimed at Mehreen Faruqi was racist', *The Guardian*, 1 June 2023. Accessed at: <<https://www.theguardian.com/australia-news/2023/jun/01/pauline-hanson-denies-pakistan-tweet-aimed-at-mehreen-faruqi-was-racist>>.

⁴⁰ Commonwealth, *Parliamentary Debates*, Senate, 27 September 2022, p 1235.

*fail to take such an approach, it is not only diminishing of the other; it is diminishing of us all.*⁴¹

CONCLUSION

As is evident from this paper, unparliamentary language is a complex issue for parliaments to manage. Parliaments need to balance competing priorities in regulating the terms and nature of their debates: raising standards of behaviour and creating a workplace which is more inclusive and reflective of the community; maintaining parliamentarians' appropriate use of privilege to discuss matters of importance; allowing debate without encouraging personal clashes. Parliaments, and particularly the Presiding Officers who manage debates, have an unenviable task in making determinations, often in the moment itself. Yet it is vital that parliaments themselves continue to be the only source of determining what language is and is not appropriate, and equally vital that these standards continue to evolve as society does.

⁴¹ Senator the Hon Penny Wong, Commonwealth, *Parliamentary Debates*, Senate, 27 September 2023, p 1238.