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# Queering Up the Debate: Freedom of Speech seen through a LGBTI lens

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## INTRODUCTION

*Her Majesty granteth you liberal but not licentious speech — liberty therefore but with due limitation.<sup>1</sup>*

Gays have had a long-standing love affair with musical theatre – some would argue since the time of the Greeks. So, let's kick off this paper by paraphrasing a line from the great Julie Andrews in the musical classic *The Sound of Music*.

*'Let's start at the very beginning, when you read, you begin with A-B-C,*

*When you engage with the Rainbow community you use L-G-B' ...*

and well, there are a few more letters that have been added over the years.

GLBTI Rights in Ageing Inc (herein referred to as GRAI) opts for the acronym LGBTI to refer to older people of diverse genders, sexualities and sex characteristics. This reflects their lived experience and recognises that some terms like 'queer' were used as a slur when they were younger.

GRAI also recognises that the initialism does not capture the full diversity of sexualities, bodies, identities, and experiences that exist within our community.

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<sup>1</sup>Lord Keeper, Sir Edward Coke, to the Speaker of the House of Commons (1593) in Elton, *The Tudor Constitution*, Cambridge: Cambridge University Press, 1982, p 274.

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Which will bring us back to the topic at hand – ‘Queering Up the Debate: Freedom of Speech seen through a LGBTI lens’.

This topic is personal for me. As a former member of the Queensland Parliament for three terms and as a bisexual man, I have been a part of that group of LGBTI individuals who have hidden their sexuality or gender identity out of fear. I have also witnessed firsthand how challenging debates about the LGBTI community can be. I have heard comments uttered; that thankfully were not recorded by Hansard, hissed by Members of Parliament or the heckles across the chamber from a member who doesn't have the call, all in an attempt to elicit a response or provide a headline for the media.

I have seen LGBTI community members sitting in the visitors' gallery, becoming outraged at the debate, and watched both sides stoke the fire for their own political purposes.

One might assume that in 2023, on the upcoming sixth anniversary of the passing of the Marriage Amendment Bill, that equality has been achieved and all is well for the LGBTI community in Australia. Sadly, that is not the case. LGBTI individuals still face higher levels of discrimination, stigma, and exclusion, leading to poorer health, economic, social, and mental health outcomes than their heterosexual peers.

But let us rewind to a time before marriage equality. The Bligh Labor Government's parting gift to Queensland was the *Civil Partnerships Act 2011* (Qld). One of the Newman Liberal National Party (LNP) Government's election promises was to repeal the Act, so just four months after it came into effect, on the long night of winter solstice in June 2012, the debate on the Civil Partnerships and Other Legislation Amendment Bill was well underway.

I had no intention of speaking on the bill, but after witnessing the weaponization of freedom of speech, I rose and, with just 263 words, delivered the shortest speech I ever gave in the parliament. In part I said:

*I rise because tonight has not been one of the finest nights of the Queensland parliament. It is not appropriate for us as legislators, for us as people who represent all Queenslanders regardless of their sexual*

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*orientation or regardless of their faith, to adopt a language that is so politically charged that it results in what we saw in our parliament tonight.*<sup>2</sup>

I have observed firsthand that whilst the privilege of freedom of speech should carry with it a corresponding obligation, in reality it was not always applied responsibly.

The parliamentary privilege of freedom of speech is often hailed as the most important of all privileges, described as ‘one of the cornerstones of democracy’.<sup>3</sup>

While freedom of speech is indeed a fundamental right, it is crucial to remember that the right to speak freely within the parliamentary chamber was never intended to be used as a shield to engage in hate speech or intimidation of marginalised communities like the LGBTI population.

The abuse and scapegoating of vulnerable people by political figures contribute to rising hate against LGBTI communities and attacks on their civil rights.<sup>4</sup> We have recently witnessed a surge in hate groups from all points on the political spectrum, from far-right neo-Nazis on the steps of the Victorian Parliament holding banners reading ‘destroy paedo freaks’ to the movement known as TERFs (trans-exclusionary radical feminism), feminists – which includes some lesbians, who reject the notion that trans women are women.

LGBTI discrimination and harassment are human rights issues that violate the fundamental rights of individuals based on their sexual orientation, gender identity, or sex.<sup>5</sup> The experiences of stigma, bullying, and marginalisation against LGBTI communities are serious problems that can lead to other human rights breaches. The impact of verbal abuse, bullying, and harassment can be just as severe as physical violence.

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<sup>2</sup> D Gibson, Queensland, *Parliamentary Debates*, Legislative Assembly, 21 June 2012, p. 991.

<sup>3</sup> Enid Campbell, *Parliamentary Privilege in Australia*, Melbourne: Melbourne University Press, 1966.

<sup>4</sup> Council of Europe, Committee on Equality and Non-Discrimination, *Report: Combating rising hate against LGBTI people in Europe*, Strasbourg, 27 September 2021. Accessed at: <<https://assembly.coe.int/LifeRay/EGA/Pdf/TextesProvisoires/2021/20210921-RisingHateLGBTI-EN.pdf>>.

<sup>5</sup> Australian Human Rights Commission Website, ‘Violence, Harassment and Bullying and the LGBTI Communities’, 2 October 2010. Accessed at: <[https://humanrights.gov.au/sites/default/files/content/pdf/bullying/VHB\\_LGBTI.pdf](https://humanrights.gov.au/sites/default/files/content/pdf/bullying/VHB_LGBTI.pdf)>.

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Which brings us to either the Parliamentary paradox or rank hypocrisy. Governments across Australia recognise the importance of promoting inclusivity, respecting diversity, and protecting the rights of all individuals regardless of their sexual orientation or gender identity. To achieve this outcome, legislation has been enacted to ensure a safe and inclusive society, address discrimination, and promote understanding and acceptance.

Yet within those same parliaments, we still see examples of derogatory and insulting remarks about LGBTI communities which reinforce intolerance and appear to sanction discriminatory behaviour.

Members of Parliament have claimed gay people infected children with AIDS, blame them for murders, and suggest that gay people have only existed 'for maybe 60 years.' – I'm not sure the Greeks would agree!

The remarks I refer to were given by Bob Katter MP during the same sex marriage debate, he also said that 'homosexual behaviour' is responsible for suicides. If Katter had bothered to check, Australian studies on LGBTI mental health note that it is societal attitudes, stigma, and discrimination which increase the risk of suicidal ideations, *not* a person's sexuality.

*Whilst members of Parliament must be free to speak their minds in Parliament,... To provide such an immunity or privilege to such persons is, indeed, likely to encourage, or at least facilitate, a disregard for the truth by those to whom the protection is given.<sup>6</sup>*

During that outrageous and homophobic rant, not a single member of the House rose to object. Not one warning was given by the Speaker. Why? Because under the standing orders, that kind of toxic language is permitted. How is it acceptable that such language is allowed to be used in parliamentary debate, especially when it can have an adverse impact on the mental health of members of the LGBTI community.

The use by Members of Parliament of toxic language, hate speech, and vilification has eroded confidence in our parliamentary systems. Trust is at an all-time low.

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<sup>6</sup> Royal Commission into Commercial Activities of Government (Final Report, November 1992) vol 2, 151 [5.8.6]

Research from the Museum of Australian Democracy, titled *Trust and Democracy in Australia*,<sup>7</sup> showed that in 2018 satisfaction in democracy had more than halved in a decade and trust in key institutions was eroding. If current trends continued, by 2025, it was projected that fewer than 10 percent of Australians will trust their politicians and political institutions, resulting in ineffective and illegitimate government.

The hate speech displayed by some Members of Parliament reveals a ‘moral blindness’ to what is ethical and in the community’s interest, focused solely on the political point-scoring contest or the pursuit of media attention.

*...the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.*<sup>8</sup>

Words matter, especially when those words can cause harm to the vulnerable and marginalised in our society as identified in the ‘harm principle’. The latest data from the *ABS National Study of Mental Health and Wellbeing (2020-2022)*<sup>9</sup> provides a crucial insight into the mental health challenges faced by different segments of our society, including for the first time those who identify as LGBTI.

The statistics reveal a troubling discrepancy: 50.3% of the LGBTI population report suffering from anxiety disorders, a stark contrast to the 17.2% among heterosexual respondents. Furthermore, when it comes to affective disorders, encompassing depressive episodes and other mood conditions, LGBTQI individuals are four times more likely to be affected than the general population.

This data is reinforced by the findings of La Trobe University’s *Privates Lives 3*<sup>10</sup> Australia’s largest national survey of LGBTI people which identified some alarming statistics:

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<sup>7</sup> Gerry Stoker, Mark Evans and Max Halupka, *Trust and Democracy in Australia: Democratic decline and renewal*, Democracy 25 Report 1, Canberra, December 2016. Accessed at: <[www.democracy2025.gov.au/documents/Democracy2025-report1.pdf](http://www.democracy2025.gov.au/documents/Democracy2025-report1.pdf)>.

<sup>8</sup> John Stuart Mill, *On Liberty*, Hackett Publishing, 1978, p. 13.

<sup>9</sup> Australian Bureau of Statistics. (2020-2022). National Study of Mental Health and Wellbeing. Accessed at <<https://www.abs.gov.au/statistics/health/mental-health/national-study-mental-health-and-wellbeing/latest-release>>.

<sup>10</sup> A O Hill, A Bourne, R McNair, M Carman, & A Lyons, ‘Private Lives 3: The health and wellbeing of LGBTIQ people in Australia’. ARCSHS Monograph Series No. 122. Melbourne, Australia: Australian Research Centre in Sex, Health

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- 39.5% of LGBTI people experience social exclusion,
  - 34.6% had encountered verbal abuse,
  - 23.6% suffered harassment such as being spat at or offensive gestures,
  - 11.8% experienced sexual assault, and
  - 3.9% of LGBTI people were physically attacked or assaulted with a weapon due to their sexual orientation or gender identity.<sup>11</sup>

Sadly, the *UN CRC25: Australian Child Rights Progress Report*<sup>12</sup> is not much better. It identified that 80% of LGBTI children report abuse at school, leading to reduced concentration, missed days at school, a drop in school grades and dropping out of school altogether.

With so many LGBTI people in Australia still feeling ostracized and unsafe, we must reflect on what can be done to reduce stigma, prejudice, discrimination, and abuse experienced by these diverse communities.

In today's world it is not sufficient to expect that Members of Parliament will self-govern and moderate their language accordingly. However, I am not naïve. Any reform project aimed at preventing the misuse of parliamentary privilege as a means to stop hate speech must be framed by the recognition not only of the scale of the problem but also its complexity.

To enhance public trust in parliamentary processes, parliaments have, in the past, taken various measures to recalibrate members' privileges in recognition that parliamentary privilege belongs to Parliament as an institution and not to individual members.

One example was the establishment of the Register of Members' Pecuniary Interests. The intent in making information publicly available was to promote transparency and

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and Society, La Trobe University, 2020. Accessed at:  
<[https://www.latrobe.edu.au/\\_\\_data/assets/pdf\\_file/0009/1185885/Private-Lives-3.pdf](https://www.latrobe.edu.au/__data/assets/pdf_file/0009/1185885/Private-Lives-3.pdf)>.

<sup>11</sup> Hill et al, 'Private Lives 3', p. 14.

<sup>12</sup> Australian Childs Rights Taskforce, *UN CRC25: Australian Child Rights Progress Report*, May 2016. Accessed at:  
<<https://www.unicef.org.au/stories/1-in-6-children-australia-is-not-the-lucky-country>>.

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accountability, ensuring that members act in the best interests of the public they represent.

Perhaps it is time Parliaments to take a lesson from our sporting codes<sup>13</sup> to ensure that Members of Parliament speak in the best interests of the public they represent.

The National Rugby League and the Australian Football League have strict codes of conduct that prohibit players from engaging in hate speech, vilification, or discrimination based on race, gender, sexual orientation, or other personal characteristics. Players who breach these codes of conduct can face disciplinary action, including fines, suspension, or termination of their contracts.

Would the imposition of fines by Privileges Committees for breaching a parliamentary code of conduct by engaging in hate speech, or other forms of vilification be an effective tool? It appears to work for our sporting players, so why not for Members of Parliament? By way of example, the Speaker during a debate could note the words spoken as potentially being in breach of the code of conduct and refer the matter to a privileges committee for review and return to the debate with minimal disruption. The committee then reviews Hansard to determine if it was in breach of the code, and if so, issues a fine and the matter is concluded.

I raise this partially tongue in cheek, but also with a desire for examining innovative approaches that demonstrate a commitment to promoting accountability and ethical conduct, rebuilding the public trust while maintaining the integrity of parliamentary processes.

It is time to recalibrate what Free Speech means, because in 2023 the deliberate vilification of LGBTI people masquerading as 'Freedom Speech in Parliament' is no longer acceptable.

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<sup>13</sup> Melissa Woods, 'Four NRL players cop fines and suspensions for bringing the game into disrepute'. *The Roar*, 5 October 2021. Accessed at: <<https://www.theroar.com.au/2021/10/05/four-nrl-players-cop-fines-and-suspensions-for-bringing-the-game-into-disrepute/>>.