

The Senate

Procedure Committee

Matters of public importance and urgency motions;

Use of cultural artefacts in debate;

Set the Standard – Recommendation no. 10

Second report of 2023

September 2023

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Second report of 2023

Standing Order 75 – Matters of public importance and urgency motions

- 1.1 On 16 June 2023 the President referred to the committee a letter from Senator Hanson relating to proposals for discussion or debate under standing order 75 (appendix 1). The letter asked the committee to consider removing the requirement for four (or more) senators, in addition to the proposer, to stand to indicate support for matters of public importance and urgency motions prior to those items being discussed or debated.
- 1.2 The history and rationale of the standing order is set out in the Annotated Standing Orders of the Australian Senate. In 2022, the standing order was amended to provide for two proposals to be dealt with each sitting Monday, Tuesday and Wednesday, with a total speaking time of 30 minutes for each debate or discussion, and each senator speaking for no more than 5 minutes.
- 1.3 As it currently operates, the procedure under standing order 75 gives special precedence to a discussion or debate at the relevant time, not by majority decision (as is normally the case) but at the request of five or more senators. The committee considers that threshold is appropriate and does not agree that the requirement should be removed.
- 1.4 However, the committee endorsed an Opposition suggestion to clarify the language of the standing order. In particular, the committee noted that the requirement for senators to stand in support should be interpreted to indicate support for the discussion or debate taking place, rather than necessarily indicating support for the substance of the proposal.
- 1.5 The committee asked that the procedural wording for the Chair to report proposals under standing order 75 be amended to clarify that point.

Cultural artefacts

- 1.6 At a meeting of the Procedure Committee on 29 March 2023, the Chair tabled a document from the President of the Senate relating to the use of cultural artefacts in the chamber (appendix 2).
- 1.7 The committee agreed that senators wishing to use cultural artefacts as part of proceedings should seek prior agreement from the President and Deputy President. If required, this information would then be passed on to the appropriate Temporary Chair.

Set the Standard – Recommendation no. 10

1.8 Recommendation 10 of *Set the Standard*, the report of the Independent Review into Commonwealth Parliamentary Workplaces,¹ proposed a review of standing orders and parliamentary conventions. The recommendation is in the following terms:

Everyday respect in the parliamentary chambers

The Presiding Officers should review the Standing Orders and unwritten parliamentary conventions, including their application in practice, with a view to:

- (a) eliminating language, behaviour and practices that are sexist or otherwise exclusionary and discriminatory
- (b) improving safety and respect in the parliamentary chambers.

1.9 Although the recommendation was that the Presiding Officers should review the standing orders and conventions, in the Senate this is the role of the Procedure Committee. The President referred the matter to the committee on 25 October 2022.

Background

1.10 The discussion in *Set the Standard* associated with the recommendation suggests reviewing the standing orders ‘with a view to eliminating sexism and other forms of exclusion in the chamber’, stating that the review:

could broaden the definition of ‘disorderly’ behaviour to include acts of bullying and sexual harassment witnessed in the chamber and could also consider sexist and otherwise discriminatory language as ‘offensive’, ‘objectionable’ and ‘unparliamentary’.

1.11 Additionally, the Commission suggests reviewing conventions and practices to give women, First Nations people, LGBTIQ+ people, CALD people, or people with disability greater visibility, for instance by alternating the call by gender and other indicators of diversity, or considering diversity in the formation of a quorum.

Discussion

1.12 *Set the Standard* suggests that Senate standing orders haven’t been reviewed since 1989. In fact, different parts of the standing orders have been reviewed since then. Relevantly, these have included:

In 2013, the Procedure Committee recommended removal of gender-specific language (esp. the use of ‘chairman’); 34 standing orders were amended accordingly.

¹ Australian Human Rights Commission, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, November 2021, p. 173.

In 2003, the committee recommended amendments to provide for senators breastfeeding in the Senate, and in 2016 expanded this to allow senators to care for infants in the chamber.

In 2017 and 2019 the Procedure Committee considered (but did not recommend) different proposals for parliamentary codes of conduct, including in 2017 a proposal to amend the Senate's rules of debate to prohibit 'adverse reflections on an individual or community on the basis of colour, national or ethnic origin, culture or religious belief'.

- 1.13 The review extracts a quote suggesting that the bullying or harassment of a senator or member 'on the sidelines, or even across the chamber' can't be raised with the chair as a point of order. This is not correct: *see* the committee's [Third report of 2018: Disorder outside formal proceedings](#). However, the committee accepts that there can be difficulties in doing so.
- 1.14 The standing orders, in conjunction with Presidents' rulings, provide a framework designed to prevent offensive language and behaviour, and particularly language and behaviour directed towards other senators. These are recognised as necessary restraints on freedom of speech in parliament.
- 1.15 Standing order 193(3) prohibits 'offensive words...imputations of improper motives...[or] personal reflections' directed to another senator or member. It provides that 'all personal reflections' upon senators or members 'shall be considered highly disorderly'. The purpose of the rule is to ensure that 'debate is conducted in the privileged forum of Parliament without personally offensive language': *Odgers' Australian Senate Practice*, 14th ed., p.268. Presidents' rulings about unparliamentary language flow from the duty of the chair to maintain order: standing order 184.
- 1.16 Otherwise, the standing orders do not generally seek to restrain the language used in debate. Some of the review's suggestions about eliminating exclusionary language challenge this principle. The specific suggestions about alternating the call by gender and other indicators of diversity, or considering diversity in the formation of a quorum, stand apart from traditional notions of parliamentary representation. In any case, the committee does not consider it necessary to pursue this suggestion, given the increasing diversity among senators.

Recommendations of the Joint Committee on Parliamentary Standards

- 1.17 As part of its consideration of recommendation 10, the committee had regard to the work of the Joint Committee on Parliamentary Standards. In November 2022, the joint committee recommended the adoption of behavioural codes for parliamentarians and for their staff, and behavioural standards for the parliamentary precincts and other parliamentary workplaces. The joint committee also made recommendations about the structure and functions of the proposed Independent Parliamentary Standards Commission (IPSC), and recommended that the proposed codes and standards be refined and adopted

into the standing orders of the Houses once the IPSC is established. The joint committee noted:

There was a consistent view from all stakeholders that codes should play a dual role in setting standards that are aspirational and high-level, as well as capturing the existing legal obligations for safe and respectful workplaces. [Report, 5.42]

1.18 As an interim measure, the Houses endorsed the codes and standards on 8 February 2023.

Conduct in the chambers

1.19 The joint committee noted that:

although parliamentary proceedings are exempt from outside sanction, that does not mean a participant is free from standards or repercussions for things they say or write. It means that the two [Houses] of Parliament are responsible for setting those standards, and imposing sanctions where standards have been breached.' [report, 4.113]

1.20 In other words, in relation to proceedings of the Senate and its committees (including joint committees), there is no difficulty in the Senate setting particular standards for conduct and applying restraints and remedies on senators who breach those standards. The current standards are principally contained in standing orders about the rules of debate (SO 193) and infringement of order (203). These are supplemented by standing order 184, which provides that order is maintained by the President. The rules and standards for committees are largely drawn from the same principles.

1.21 The committee sees the main purpose of reviewing the standing orders here is to assess whether they suffice to support safe and respectful debate and conduct in the Senate and, if not, to recommend changes to their interpretation or content.

1.22 If there are particular parts of the proposed Behavioural Code for Parliamentarians that senators consider should be applied directly to proceedings in the Senate, that can be addressed as proposed above; that is, by recommending changes to the interpretation or content of relevant standing orders.

1.23 Part of the framework of the standing orders involves a process for updating their interpretation through rulings from the Chair and reports of this committee. At this stage, the committee is of the view that the language of the standing orders and the processes for updating them makes them flexible enough to accommodate the language of the codes.

1.24 However, the committee notes that the implementation of the recommendations of *Set the Standard* is ongoing. Among the matters still in progress are:

- designing the proposed Independent Parliamentary Standards Commission (IPSC) to enforce the behavioural codes and standards

- finalisation and formal adoption of the behavioural codes and standards.
- 1.25 Elements of this work, and their intersection with the standing orders, are discussed, below. The committee remains open to assessing whether any changes to the standing orders are required as the remaining recommendations of *Set the Standard* are implemented.

Enforcement of the codes

1.26 In discussing the pathways for enforcement of codes, the joint committee notes that the Jenkins review has proposed that ‘...to protect political debate, allegations of misconduct on the floor of either chamber should be referred to the relevant Presiding Officer in the first instance, who may choose to make a referral to the IPSC.’² As noted above, the standing orders and practices of the Senate provide for the Chair to maintain order, including by dealing with points of order. The questions that follow are:

- whether there are types of misconduct in the Senate that cannot be dealt with by current processes and, if so, how should they be dealt with;
 - on what basis would the Chair refer conduct occurring in the Senate to the IPSC.
- 1.27 The joint committee notes that the ‘intersection of Behaviour Codes and parliamentary privilege is highly complex’ and identifies two possible issues:
- whether privilege means that codes or standards ‘would not apply to actions or words arising during protected parliamentary proceedings’
 - whether the IPSC can impose sanctions ‘where they might impact on future protected parliamentary proceedings’.³

1.28 That first point is easily dealt with. As noted above, it is clear that the Houses can set standards and sanctions for conduct in their proceedings. This includes dealing with bullying, harassment and sexual misconduct that might be alleged to have occurred during or alongside House or committee proceedings (as described in the joint committee report at p.83).

1.29 The question of the interaction between parliamentary proceedings and the sanctions that might be recommended or imposed by the IPSC is more complex. It is worth noting that the joint committee has recommended:

early consultation between the presiding officers, relevant privileges committees and the Independent Parliamentary Standards Commission, when established, to consider issues related to the intersection of the Behaviour Standards and Codes and parliamentary privilege.⁴

² JSC report, p.40; *Set the Standard* report, p.234

³ report, p.81

⁴ **Recommendation 12**, JSC Parliamentary Standards

1.30 This committee considers that it would be preferable to consider these issues in the process of finalising the codes and designing the IPSC, rather than after that body is established. It may be that the consultation should involve the Procedure Committees, rather than the Privileges Committees, given the current involvement of the Presiding Officers and Procedure Committees in implementing recommendations of *Set the Standard*.

Conclusion

1.31 The committee notes that the standing orders provide a framework designed, in part, to prevent offensive language and conduct directed towards other senators. As mentioned above, the committee considers that the current language of the standing orders, and the practices of the Senate in applying Presidents' rulings, are sufficiently flexible to enable that framework to cover matters identified in the report of the Joint Committee on Parliamentary Standards and evolving community standards.

1.32 The committee remains open to assessing the need for changes to the language and interpretation of the standing orders as the final recommendations of *Set the Standard* are implemented, including the passage of the PWSS and IPSC legislation and the consequent formalisation of the codes of conduct for parliamentarians and their staff.

1.33 The committee also discussed the importance of developing and applying appropriate sanctions for breaches of standing orders, noting the different procedural landscape of the two Houses. Part of the process of designing the IPSC will involve consideration of a sanctions regime to sit alongside the behavioural codes and standards. The committee will give further consideration to these matters when that work is more advanced.

1.34 The committee thanks the President and Deputy President for the work they have undertaken to date – particularly with the temporary chairs panel and with chairs of committees – to improve standards in the Senate and its committees. The committee notes that the President and Deputy President are committed to working with temporary chairs, with chairs of committees, with party leaders and whips, and with independent senators to ensure that any changes to the content or interpretation of standing orders that emerge from these processes are well understood.

Senator Andrew McLachlan CSC
Chair

APPENDIX 1



PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE
SENATOR THE HONOURABLE SUE LINES

D23/27419

Senator Andrew McLachlan CSC
Deputy President of the Senate
Chair of Procedure Committee
Parliament House
CANBERRA ACT 2600

Dear Senator McLachlan

I have received a letter from Senator Hanson, asking that I refer a matter to the Procedure Committee, pursuant to standing order 17(3). The matter relates to removing the requirement for senators to support matters of public importance and urgency motions.

I am happy to refer the matter as requested. A copy of Senator Hanson's letter is enclosed.

Yours sincerely

Senator Sue Lines
President of the Senate

16 June 2023



Senator Pauline Hanson
One Nation Senator for Queensland

Dear President

I am writing to request that the following matter be referred to the Senate Procedure Committee for consideration.

“Whether item 5 of the Standing Order 75 of the Australian Senate, which requires that a proposal for debate be supported by at least four senators, be removed.”

The reason being, independent Senators, or those belonging to minor parties, must appeal to other parties to assist with the required 4 other members to stand in order to have their MPI or Urgency Motion heard.

Considering procedure changed recently from allocating debate time by lottery to allocating debate time by proportion of representation, I do not believe it should also require it to be supported by 4 other senators.

If divisions can be called by 2 people or denying a motion by one, surely this request is feasible and would give all Senators an unhindered voice in parliament.

Thank you for your attention to this matter, and I look forward to your response.

Sincerely,

Senator Pauline Hanson

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APPENDIX 2



OFFICE OF THE PRESIDENT OF THE SENATE

PARLIAMENT HOUSE
CANBERRA

Senator Andrew McLachlan CSC
Deputy President of the Senate
Chair of Procedure Committee
Parliament House
CANBERRA ACT 2600

Dear Senator McLachlan

In the Senate chamber on Tuesday 21 March Senator Thorpe was ordered to remove a prop by a temporary chair, while speaking to a matter of public importance.

Senator Thorpe made a statement by leave the next day, in the following terms:

Yesterday, while talking to a matter of public importance, I was ordered to remove a prop: the message stick I brought into the chamber with engravings for lives lost through deaths in custody—441 lives. I would like to state to this chamber that a message stick is not a prop. It is a means of communication for my people. It is no different from the pieces of paper, the mobile phones, the iPads et cetera that everyone is allowed to carry in here. I would like to point out that the move was disrespectful to my people and culture and undermines cultural safety in this place. I will therefore approach the President and seek to find a way forward to ensure the practices in this place are respectful to First Nations people.

This is by no means the first time a senator has sought to use cultural artefacts as part of proceedings, although generally this has been for ceremonial purposes. These occasions have generally been facilitated by senators informally seeking the President's prior approval. You and I have discussed formalising this process to a degree, by ensuring senators seeking to use cultural artefacts as part of proceedings seek the agreement of the President and Deputy President to do so. I thought it would be appropriate to refer this arrangement to the Procedure Committee for discussion.

Yours sincerely

Senator the Hon Sue Lines
President of the Senate

Thursday 29 March 2023