

The Senate

Procedure Committee

Disorder outside formal proceedings

Third report of 2018

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Committee on Procedure
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Senate Standing Committee on Procedure

Membership of the Committee

Senator the Hon Scott Ryan (President of the Senate, Deputy Chair)

Senator Sue Lines (Deputy President and Chair of Committees, **Chair**)

Senator the Hon Mathias Cormann (Leader of the Government in the Senate)

Senator the Hon Penny Wong (Leader of the Opposition in the Senate)

Senator Catryna Bilyk (Tasmania)

Senator David Bushby (Tasmania)

Senator the Hon Jacinta Collins (Victoria)

Senator the Hon Mitch Fifield (Victoria)

Senator Jane Hume (Victoria)

Senator Rachel Siewert (Western Australia)

Procedure Committee

Third report of 2018

Disorder outside formal proceedings

Background

The President referred the following matter to the committee:

The adequacy of Senate orders and practices to deal with disorderly conduct occurring in the Senate chamber, which does not form part of formal proceedings and is not raised in the Senate at the time.

The President noted that the matter arose from the exchange between two senators on 28 June 2018, about which he made a statement when the Senate resumed on 13 August. A copy of the correspondence, incorporating the President's statement, is shown at appendix 1.

Discussion

The committee endorsed the approach taken by the President in this matter and his statement. In particular, the committee strongly endorsed the President's observations:

... 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.

The committee noted the technicality that the exchanges which led to the statement occurred outside of the formal proceedings of the Senate. As the President noted, this

does not mean that such exchanges cannot be dealt with by the chair in accordance with the standing orders. However, the committee agreed that it was generally undesirable to change the basis for dealing with disorder. Standing order 197 requires points of order to be raised at the time of the incident to which they relate, ensuring those involved are in the Senate when the matter is addressed. The committee agreed to draw senators' attention to this requirement, but also recognised that a senator may not be in a position to draw interjections or other disorderly conduct to the attention of the Chair at the time in all circumstances.

The committee also reminds senators that any senator may raise points of order, including in relation to matters they have observed but not been directly involved in. Finally, the committee reminds senators that they have the capacity to make personal explanations, by leave, under standing order 190. This presents an opportunity to deal with such matters outside the strictures of the process for determining points of order.

Senator Sue Lines

Chair

Appendix 1



PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE

SENATOR THE HONOURABLE SCOTT RYAN

REF: D18/103057

Senator Sue Lines
Deputy President of the Senate
Parliament House
Canberra ACT 2600

Dear Senator Lines

I am writing to you as Chair of the Procedure Committee, pursuant to standing order 17(3), to refer to the committee the following matter for consideration:

The adequacy of Senate orders and practices to deal with disorderly conduct occurring in the Senate chamber, which does not form part of formal proceedings and is not raised in the Senate at the time.

This matter arises from the exchange between two senators on 28 June 2018, about which I made a statement when the Senate resumed on 13 August. A copy of my statement, which provides background for the reference, is attached.

If the committee considers that any changes to the rules or practices for dealing with such matters are desirable, I would appreciate the committee reporting to the Senate on the matter.

Yours sincerely

SCOTT RYAN
21 August 2018

Statement by the President

Parliamentary Language

The PRESIDENT (10:01): On Thursday, 28 June an exchange between two senators occurred in the chamber and became the subject of substantial public debate and commentary. I believe it is appropriate to address this now, as the Senate resumes for its current session. The facts are these. An exchange occurred between Senators Hanson-Young and Leyonhjelm. I did not hear any of the comments made, nor were they drawn to the attention of the chamber at the time. Technically they did not form part of the Senate proceedings. The issue was raised with me later that day by Senator Di Natale, and I pursued a resolution to the matter privately. It was then subsequently brought to the attention of the chamber. No specific action was sought from the chair at that time, and it is now a matter of public record.

In my view, had the exchange occurred as reported as part of the proceedings of the Senate, there is no doubt that the chair would have required certain comments to be withdrawn. I have no authority as President to force an apology or apply a sanction to any senator. Such actions are matters for the Senate. Since these events, I have considered the application of standing orders and custom and practice to events that occur in the chamber but that do not form part of formal proceedings. The relevant standing orders regarding the conduct of senators are, firstly, No. 193(3), Rules of debate:

A senator shall not use offensive words against either House of Parliament ... or any member of such House ... and all imputations of improper motives and all personal reflections ... shall be considered highly disorderly.

This provision specifically applies to the formal proceedings, to debate in this chamber. However, standing order 203 is broader and is entitled 'Infringement of order'. Specifically, part (1) of that outlines:

If a senator:

(b) is guilty of disorderly conduct;

(c) uses objectionable words, and refuses to withdraw such words;

the President may report to the Senate that the senator has committed an offence.

Standing order 197 provides that a senator may at any time raise a point of order 'arising in the proceedings then before the Senate', meaning it must be raised at the time of the incident. It has been the practice in this chamber to allow senators to raise a point of order about language used in exchanges that is not recorded in Hansard as part of the formal proceedings of the Senate. When outside the hearing of the chair, this has been followed by a request to withdraw inappropriate language if the language was used. Importantly, the practice of allowing this to be addressed immediately ensures those present are in the chamber when the matter is addressed. If

a statement is not recorded in Hansard and was outside the hearing of the chair, the chair and chamber are reliant upon the honesty of senators involved, with the understanding that it is always possible for statements to be misheard or misattributed.

Therefore, in my view, it is the established practice of this chamber that the standing orders do not apply simply or strictly to formal proceedings or records in the chamber but to other interactions as well. Any senator, not just those subject to them or involved in any exchange, has the capacity to draw comments to the attention of the chair and the chamber. I intend to write to the Deputy President, as Chair of the Procedure Committee, and ask the committee to give consideration to handling matters that occur in the chamber but that are not part of the formal proceedings and are not raised in the Senate at that time.

More generally, 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.

Finally, it is sometimes said that parliament is at its best when dealing with issues of conscience and all senators speak freely and personally on such issues. Throughout this week we will have the opportunity to again demonstrate that.

