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PROCEDURE COMMITTEE

Broadcast of proceedings resolution



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Broadcast of Proceedings

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Broadcast of Proceedings

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Terms of reference

That the Procedure Committee inquire into and report on:

- (a) the broadcast of proceedings resolution of continuing effect, adopted on 18 October 2007,
and
- (b) any other related matter.¹

¹ *Minutes*, NSW Legislative Council, 6 August 2019, p 306.

Committee details

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Hon Mark Buttigieg MLC	Australian Labor Party	
Ms Cate Faehrmann MLC	The Greens	
Hon Wes Fang MLC	The Nationals	
Hon Scott Farlow	Liberal Party	
Hon John Graham	Australian Labor Party	
Hon Emma Hurst MLC	Animal Justice Party	
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Chair's foreword

I am very pleased to present this report of the Procedure Committee on its inquiry into the Broadcast of Proceedings.

The broadcast of proceedings resolution of continuing effect was first adopted in 1991 and last adopted in revised form on 18 October 2007. Since that time, broadcasting technologies and practices have developed considerably, and other comparable jurisdictions have modernised their rules in this area.

While the broadcast resolution has served the Legislative Council well it is timely that it be reviewed and updated where appropriate. To that end, this report provides a roadmap for modernising the Legislative Council's broadcast of proceedings resolution with a view to promoting the openness and accessibility of parliamentary proceedings.

This report makes a number of recommendations, including that the broadcast resolution be underpinned by an introductory statement of principles to provide a general intent for how it should be applied. Where appropriate the language contained in the resolution has been modified so that it is practical and accessible.

One of the key proposed changes is, subject to certain conditions, to allow photographs to be taken of the Legislative Council while in session. Similarly, the report recommends that Legislative Council committees permit photographs to be taken of members and witnesses during committee hearings, provided they do not undermine the integrity of the committee process.

The committee is also recommending that the House trial a discretionary approach to the live streaming of special events in the chamber on social media, and that Legislative Council committee hearings continue to be disseminated on YouTube, or other appropriate social media platforms.

I thank members of the Procedure Committee for their consideration of this report and the secretariat for managing this inquiry.

Hon Matthew Mason-Cox MLC

President

Recommendations

Recommendation 1

14

That the Broadcast of Proceedings Resolution be amended, as set out in Appendix 1, to:

- add an introductory statement of principles
- where appropriate, modify the language used so that it is practical and accessible
- allow accredited press gallery photographers to photograph all proceedings in the Legislative Council while in session, subject to notifying the President beforehand who will in turn advise the House
- allow non-accredited members of the press gallery, to apply in writing to the President to take photographs of proceedings while the Legislative Council is in session, and if approved, on conditions determined by the President
- prohibit audio visual excerpts of Legislative Council proceedings being digitally enhanced or altered.

Recommendation 2

18

That the Broadcast of Proceedings Resolution be amended, as set out in Appendix 1, to omit reference to hearings held in the Legislative Council chamber and omit the procedural fairness provisions for committee inquiry participants contained in paragraph 5, which have been superseded by the Procedural Fairness Resolution for Committee Inquiry Participants adopted in 2018.

Recommendation 3

20

That Legislative Council committees adopt a new set of Filming and Photography Guidelines for Committee Hearings to provide that, unless the committee resolves otherwise:

- any member of the public, including members' staff, is permitted to take still photographs
- only members and witnesses may be photographed
- cameras may not be used to inspect or photograph members' documents or computer screens
- photographs must be taken from the audience, not be taken in an intimidating or intrusive manner and must not interfere with committee proceedings.

Recommendation 4

20

That Legislative Council committees permit members to take photographs during committee hearings, provided they do not undermine the integrity of the committee process, intimidate witnesses or other members, or be used to inspect or photograph members' documents or computer screens.

Recommendation 5

20

That the Broadcast of Proceedings Resolution be amended, as set out in paragraph 4 of Appendix 1, for committees to automatically authorise the filming, broadcasting and still photography of its public proceedings by accredited members of the parliamentary press gallery and by persons or organisations not accredited as members of the parliamentary press gallery, unless resolved otherwise.

Recommendation 6**30**

That:

- at the commencement of the 58th Parliament the Legislative Council trial a discretionary approach to the live streaming of special events, such as first and valedictory speeches and this be reviewed at the end of 2023 with a view to expanding the livestreaming of other House proceedings but not necessarily the entirety of all House proceedings
- the livestreams and recordings of Legislative Council committee hearings continue to be disseminated on YouTube, or other appropriate social media platforms
- the broadcast of proceedings resolution be amended, as shown in appendix 1, to authorise the broadcast and rebroadcast of certain House proceedings, and the broadcast and rebroadcast of committee public proceedings, on the Legislative Council and Parliament's social media channels.

Chapter 1 Introduction

Background to the inquiry and report overview

1.1 On 6 August 2019, the Hon John Ajaka, former President of the Legislative Council informed the House that on 20 June 2019 he had referred the following terms of reference to the Procedure Committee:

That the Procedure Committee inquire into and report on:

- (a) the broadcast of proceedings resolution of continuing effect, adopted on 18 October 2007, and
- (b) any other related matter.²

1.2 The broadcast resolution of continuing effect was first adopted in 1991 and last adopted in revised form on 18 October 2007.³ Since that time, broadcasting technologies and practices have developed considerably, and other comparable jurisdictions have modernised their rules in this area.

1.3 In the lead up to June 2019, during meetings of new committees established following the 2019 State Election, several members expressed interest in finding new ways to broadcast committee proceedings, with particular reference to live feeds over social media. The Chairs of these committees in turn wrote to the President to suggest that the issue be referred for further consideration by the Procedure Committee. This correspondence in part prompted the inquiry.

1.4 A draft report for this inquiry had been prepared for circulation to committee members in early 2020 but several factors intervened to pause the finalisation of the committee's recommendations:

- the COVID-19 pandemic saw committees move hearings online, reducing the demand for live broadcasting on social media and providing the means for recordings to be made of all committee proceedings
- the Parliament received funding to fast-track components of the Parliament-wide audiovisual services (AVS) project, including video on demand capability, the rollout of which commenced in 2021
- in May 2020, the Legislative Council commenced the webcasting of various committee hearings from regional centres
- since June/July 2021, Legislative Council committees have used YouTube to store and stream hearings – this practice was developed as a matter of necessity during the move to fully virtual hearings during the Delta lockdown
- in the case of *Fairfax Media Publications; Nationwide News Pty Ltd; Australian News Channel Pty Ltd v Voller [2020]*, it was found that the operators of Facebook pages may be deemed publishers of defamatory comments made by third-party Facebook users on items posted on those pages, with the decision subsequently being upheld on appeal in 2021

² *Minutes*, NSW Legislative Council, 6 August 2019, p 306.

³ *Minutes*, NSW Legislative Council, 18 October 2007, pp 279-281.

- in March 2022, the Parliament passed the Constitution Amendment (Virtual Attendance) Bill 2021 to amend the *Constitution Act 1902 (NSW)* so that a member in certain defined circumstances is taken to be present at a meeting of the House if attending using an audio-visual link
- the Legislative Assembly commenced broadcasting selected live proceedings of the House on Facebook and, soon after, commenced its own inquiry into a broadcasting resolution.

1.5 This report details the history of broadcasting in the Legislative Council and provides an overview of current practice, considers the broadcasting and photography of committee proceedings, and looks at current arrangements governing access to footage of House and committee proceedings and considerations relating to the live stream of proceedings over social media. It also documents the recent developments referred to above, as well as other initiatives such as the commencement of live captioning of Chamber and Committee proceedings in June 2022.

1.6 The report's recommendations have been developed within the context of what has happened over the past two years and the evidence received by the committee when the inquiry was first established in 2019.

Definitions

1.7 For the purposes of this report:

- 'broadcasting' refers to the broadcast, usually via radio or television, of parliamentary proceedings by authorised media organisations and via direct feeds provided to certain government buildings, discussed in detail below
- 'webcasting' refers to the broadcast of proceedings over the internet. Parliament webcasts the sittings of both Houses and public committee hearings held within the parliamentary precincts on its webpage
- 'live-streaming' refers to the recording and live broadcasting of proceedings independently of the authorised webcast published on the Parliament's website, usually via a social media platform.

Chapter 2 The Broadcast Resolution

History of broadcasting and overview of current practice

- 2.1 On 19 November 1991, the House authorised the broadcasting of proceedings to the Premier's Office and the State Office block on terms and conditions determined by the President from time to time.⁴
- 2.2 On 11 October 1994, a new resolution was adopted which authorised the broadcasting and re-broadcasting on radio and television stations of sound recordings of excerpts of proceedings, and the broadcasting and re-broadcasting by television stations of proceedings and excerpts of proceedings, on specified terms and conditions:⁵
- 2.3 Prior to 2002-03, any footage broadcast of the chamber was provided from television stations, who would pool footage on occasions when events in the Legislative Council were considered newsworthy.
- 2.4 Following the installation of a camera system in the chamber to improve broadcast capacity, a consultant, Greg Kay of Greg Kay Productions, was contracted by the Parliament from 2003 to provide live broadcast quality footage of proceedings. This was integrated with a titling system, so viewers of the broadcast could see the name of the speaker in debate and the title of the proceeding.
- 2.5 This broadcast included the provision of a 'clean' feed to the main television stations in the level 6 Press Gallery, so removing the need for camera crew to attend the sittings. The cameras were operated from a small broadcast room in the upper public gallery.
- 2.6 In 2011, a major upgrade of the ageing camera and microphone system in the chamber was undertaken by audio consultants PA People, following a tender process and funding was provided by Treasury. This included additional cameras to provide a range of angles not previously available, and an integration of the audio with Hansard recording.
- 2.7 Subsequently, a dedicated camera broadcast booth was constructed on level 6 to operate the camera systems in both the Council and Assembly chambers. This also enabled cameras to operate in the two main committee rooms – the Macquarie Room and the Jubilee Room – which were installed with leftover funds from the chamber upgrade.
- 2.8 In 2015 a tender process saw Corporate Technology Services (CTS) chosen as the successful camera operator provider to both parliamentary chambers, replacing Greg Kay. As with previous contracts, the contract with CTS (renewed in 2019) includes the provisions of the broadcasting guidelines as contractual terms, and also provides very clear requirements on aspects such as what can be filmed, for instance during divisions or relating to the public gallery.
- 2.9 In 2017-18, some components of the audio-visual system were replaced to reduce risk of failure with titling and camera control systems, including to address some issues with broadcasting from the committee rooms.

⁴ *Minutes*, NSW Legislative Council, 19 November 1991, p 280.

⁵ *Minutes*, NSW Legislative Council, 11 October 1994, pp 279-281.

Parliament on Demand

- 2.10** In 2021 the Parliament introduced Parliament on Demand. It is a video on demand service which provides authorised users (members, departmental staff and accredited members of the Press Gallery) with direct access to recordings of past proceedings via a portal on the intranet. Previously such footage was required to be provided by Media Monitoring in the Library on request, sometimes with significant delays when demand was high. Further discussion of matters relating to video on demand is at chapter 4.

Live captioning and Auslan interpretation

- 2.11** On 23 February 2022, the House referred to the Procedure Committee an inquiry into Auslan interpretation for broadcasting. The committee is to consider:

- the merits of introducing Auslan interpretation in the broadcasting of all or part of the Legislative Council's proceedings
- mechanisms by which the Legislative Council can act in accordance with the United Nations Convention on the Rights of Persons with Disabilities requiring equal access to information and communications (including through live sign language interpretation) signed by Australia in 2007.⁶

- 2.12** The procedure committee is due to report by November 2022 and matters pertaining to Auslan interpretation are not extensively canvassed in this report.

- 2.13** On 21 June 2022, a live captioning service for committee and chamber proceedings was launched. The captions are available via the livestream on the Parliament's website. On the same day, the House amended the resolution of continuing effect authorising the broadcast of proceedings to allow live captioning of the chamber broadcast.⁷

Voller defamation case

- 2.14** In 2019, Dylan Voller sued various media organisations for defamation. The organisations had posted articles about Voller on their Facebook pages, which allowed third-party Facebook users to leave defamatory comments about him in the comment section of the post, accusing him of committing violent crimes. Voller became known to the public following an episode of ABC's *Four Corners* that documented the treatment he and others received in a youth detention facility in the Northern Territory.

- 2.15** In June 2020, the NSW Court of Appeal found that a group of media organisations were considered to be publishers of comments made by third party users on their Facebook pages. The media organisations were therefore liable as publishers for allegedly defamatory remarks made in the comments section of posts on their Facebook pages. This was because they "encouraged and facilitated" the making of comments by having public Facebook pages.⁸

⁶ *Minutes*, NSW Legislative Council, 23 February 2022, p 2,972.

⁷ *Minutes*, NSW Legislative Council, 21 June 2022, p 3,461.

⁸ Fairfax Media Publications; Nationwide News Pty Ltd; Australian News Channel Pty Ltd v Voller [2020] NSWCA 102.

- 2.16** In December 2020, the media organisations were granted special leave to appeal the decision to the High Court of Australia. In September 2021 the High Court dismissed the appeal and ruled that the media organisations can be held responsible for defamatory third-party comments on their Facebook pages.⁹

Developments in the Legislative Assembly

- 2.17** Since 2020, the Legislative Assembly has, on occasion, livestreamed various proceedings on Facebook. This has been done in an effort to make the activities of the Assembly more accessible to the public. In such instances, the Assembly has typically passed a resolution authorising the livestreaming of the proceedings in question.¹⁰
- 2.18** An October 2021 report of the Legislative Assembly Standing Orders and Procedure Committee into the *Broadcasting Resolution for the Legislative Assembly* notes that "the decision to have the House authorise the livestream has been made out of an abundance of caution in relation to the copyright of footage and any privilege attached to that".¹¹
- 2.19** The report recommended that the Assembly adopt a revised resolution to "make clear that the House has authorised the broadcast of proceedings both by webcast on the internet and livestream on Parliament's social media channels and affirm that parliamentary privilege extends to such proceedings."¹²
- 2.20** The revised resolution was subsequently adopted on 19 October 2021.¹³

Constitution Amendment (Virtual Attendance) Act 2022

- 2.21** On 31 March 2022 the NSW Parliament passed the *Constitution Amendment (Virtual Attendance) Act 2022 (NSW)* (the Act). The legislation was introduced by former Greens member, Mr David Shoebridge and it enables members of Parliament in certain defined circumstances to attend meetings of Houses of Parliament remotely for the purposes of voting and quorum. Part 1, Section 3 (2) of the *Constitution Act 1902 (NSW)* now states:

... in relation to ascertaining a quorum for, or determining a question in, a House of Parliament, a Member of Parliament is taken to be present at a meeting of the House if the Member attends the meeting remotely using an audio visual link in accordance with—(a) the Standing Rules and Orders of the House, or (b) a resolution or sessional order of the House.¹⁴

- 2.22** Capability for members to participate remotely in sittings of the House was established in September/October 2021 following the Delta COVID outbreak. Under what known as a 'basic hybrid' model of sittings, members were able to participate remotely so long as sufficient

⁹ Fairfax Media Publications Pty Ltd v Voller [2021] HCA 27.

¹⁰ Legislative Assembly Standing Orders and Procedure Committee, *Inquiry into the Broadcasting Resolution for the Legislative Assembly*, October 2021, Parliament of NSW, p 2.

¹¹ Legislative Assembly Standing Orders and Procedure Committee, *Inquiry into the Broadcasting Resolution for the Legislative Assembly*, October 2021, Parliament of NSW, p 2.

¹² Legislative Assembly Standing Orders and Procedure Committee, *Inquiry into the Broadcasting Resolution for the Legislative Assembly*, October 2021, Parliament of NSW, p 2.

¹³ *Votes and Proceedings*, NSW Legislative Assembly, 19 October 2021, pp 1312-1313.

¹⁴ Part 1, Section 3 (2), *Constitution Act 1902 (NSW)*.

numbers of members were physically present in the chamber for quorum. The model facilitated remote participation via videoconference using Webex and temporary screens installed in the Chamber. A number of procedures were adopted to not only allow members to view debate remotely but to participate in certain proceedings, including moving amendments to bills and notices, tabling committee reports and giving notices.

- 2.23** Ensuring that there is capacity to have remote sittings of the House is done in accordance with the Parliament's Business Continuity Management Program and the Business Interruption Response Plan.
- 2.24** However, capacity for members to fully participate in fully remote proceedings is more technologically complex. For instance, systems would need to be established for secure voting. Relevant to this inquiry, the broadcast of fully remote sittings also requires development. It is understood that the Department of Parliamentary Services are currently exploring these issues.

The current Legislative Council Broadcast of Proceedings Resolution

- 2.25** The 2007 broadcast of proceedings resolution was adopted to address emergent issues in relation to webcasting and the still photography of proceedings. It authorises the broadcast of proceedings by others, essentially the media in the Press Gallery and occasional outside media who seek permission to take their own footage.
- 2.26** The broadcast resolution remains in place today and the key conditions under which proceedings can be broadcast are:
- transmission material must be used only for the purposes of fair and accurate reports of proceedings and must provide a balanced presentation of differing views
 - material must not be used for political party advertising or election campaigns, or for the purpose of satire or ridicule or commercial sponsorship or commercial advertising
 - material must be placed in context
 - where material is used on commercial stations, the station must ensure that advertising before and after excerpts is of an appropriate nature
 - events in the galleries which are not part of the proceedings are not to be used
 - photographs taken are not to be digitally enhanced or altered.¹⁵
- 2.27** The resolution also includes terms and conditions for the broadcast of committee hearings.
- 2.28** House proceedings, and committee proceedings wherever possible, are webcast on the Parliament's website with access contingent on accepting terms and conditions attached at appendix 2.
- 2.29** The broadcast of proceedings by the Legislative Council is covered by absolute privilege.¹⁶

¹⁵ *Minutes*, NSW Legislative Council, 18 October 2007, pp 279-281

¹⁶ Lovelock and Evans, *New South Wales Legislative Council Practice*, Federation Press, 2008, Leichardt, pp 274-275.

Press Gallery guidelines

- 2.30** Guidelines for the Press Gallery are issued by the Presiding Officers. The guidelines cover:
- requirements for Press Gallery membership and applicable rules
 - the availability of the live feed of proceedings and the terms and conditions for the broadcasting and rebroadcasting of proceedings
 - security and access in Parliament House
 - filming and reporting conditions within the Parliamentary precinct.¹⁷
- 2.31** Access to proceedings for the purpose of broadcasting is on the basis of an undertaking to observe these conditions. A breach of these conditions by a broadcaster may result in the suspension or withdrawal of permission by the President to broadcast excerpts of the proceedings of the House.¹⁸
- 2.32** Since 2007 Press Gallery members and authorised television networks have received a direct feed to their rooms on level six and rarely attend the Press Gallery in the chamber.
- 2.33** On occasion still photography in the chamber by photographers, who are accredited members of the Press Gallery, is permitted by the President subject to certain terms and conditions (as determined by the President).

The operation of the current resolution

- 2.34** Feedback from some Legislative Council members and their staff, as well as other stakeholders, has indicated that some of the wording and rules within the Council's broadcast resolution could be clearer, easier to follow and less restrictive.
- 2.35** Some of the issues identified with the resolution include:
- other comparable parliaments have taken steps to modernise some of their respective media and broadcasting rules
 - certain language is unclear and it is not underpinned by a set of principles that would guide its implementation
 - it limits the ability of members to disseminate information about parliamentary proceedings to their constituents
 - it is difficult to enforce and is potentially ill-equipped to place adequate controls on the broadcast of parliamentary proceedings in the social media era
 - it could better help facilitate a truer picture of what occurs in the House and its committees
 - it limits freedom of expression and the right to participation in public affairs.

¹⁷ NSW Parliament, *Guidelines and Services – Parliament of NSW Press Gallery*, November 2018.

¹⁸ *Minutes*, NSW Legislative Council, 18 October 2007, pp 279-281.

2.36 The sections that follow consider how certain parts of the Legislative Council's broadcast resolution could be amended with the objective of addressing some of the above concerns. Particular attention is given to issues relating to satire and ridicule, broadcasting principles, and still photography.

Satire and ridicule

2.37 The current broadcast resolution provides that broadcasting excerpts and still photographs of Legislative Council proceedings cannot be used for the 'purpose of satire and ridicule'.¹⁹

2.38 The New Zealand House of Representatives previously had a similar rule that banned the use of official television coverage for 'satire, ridicule, or denigration'.²⁰ The ban was lifted in 2017 and the Clerk of the New Zealand House of Representatives advised that it had never been used.²¹

2.39 The 2017 removal of the ban was prompted by a 2015 inquiry undertaken by the Privileges Committee of the New Zealand House of Representatives that considered the issue of satire and ridicule. The Privileges Committee found that the ban on satire and ridicule risked 'making Parliament seem out of touch and wary of criticism'.²²

2.40 The Privileges Committee also noted that the House could treat 'false or misleading' accounts of proceedings as a contempt, which could deal with any seriously damaging use of official coverage whether or not it was satirical.²³

2.41 The Senate and House of Representatives revised their broadcasting resolutions in 2013. The resolutions are complementary. One of the key changes was the removal of a rule in both Houses that had restricted the use of broadcast materials for satire or ridicule.²⁴

2.42 The Clerk of the House of Representatives and Clerk of the Senate stated that 'trying to enforce the [Senate and House satire and ridicule] restriction ... often led to further promotion of the offending image and invited ridicule'.²⁵ The Clerks also advised that 'enforcement actions now rely on [a prohibition in the broadcast resolutions] on digital manipulation of broadcast material and photographs of parliamentary proceedings'.²⁶

¹⁹ See sections 2(d) and 3(e) of the 'Broadcast of Proceedings', *Minutes*, NSW Legislative Council, 18 October 2007, pp 279-281.

²⁰ Submission 3, Office of the Clerk of the House of Representatives, New Zealand, p 2.

²¹ Submission 3, Office of the Clerk of the House of Representatives, New Zealand, p 2.

²² Submission 3, Office of the Clerk of the House of Representatives, New Zealand, p 2.

²³ Submission 3, Office of the Clerk of the House of Representatives, New Zealand, p 2.

²⁴ Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p 1.

²⁵ Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p 1.

²⁶ Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p 1.

2.43 The Law Society of New South Wales (the Society) presented two arguments for why the restriction on satire and ridicule is no longer necessary. Their first argument was that with the advent of social media it is no longer practicable to enforce such a rule:

In practice, information from broadcast proceedings may be able to be used for the purpose of satire and ridicule on social media platforms, with minimal scope for regulation. As such, provisions prohibiting broadcast material being used for satire and ridicule may no longer be relevant or effective in the contemporary context.²⁷

2.44 The Society's second argument concerned the right to freedom of expression and the right to participation in public affairs, as provided for by the International Covenant on Civil and Political Rights (ICCPR).²⁸

2.45 The Society referenced a submission made by the Australian Human Rights Commission (AHRC) to a 2013 Australian Senate inquiry that considered the issue of satire and ridicule and whether the rule should be removed.²⁹ The AHRC submission argued that the restriction was incompatible with the right to freedom of expression provided for in the ICCPR and as such could not be justified:

[T]he re-broadcasting of parliamentary proceedings for the purposes of satire or ridicule fall within the right to freedom of expression protected by article 19 of the ICCPR. Any restrictions on the re-broadcasting of these proceedings must therefore be necessary and proportionate to the aims pursued by such restrictions. The Commission cannot envisage a sufficient justification for a blanket prohibition on re-broadcasting parliamentary proceedings for the purposes of satire or ridicule.³⁰

2.46 The Clerks of the respective Houses of the Australian Parliament noted that parliamentary proceedings have been webcast since 1999. Initially this was done via licensed broadcast streams 'which enabled enforcement of the broadcast rules by sanctions to the broadcast agency'.³¹

2.47 This control receded with the transition to a publicly available webcast, despite the clear benefit of enhanced community engagement:

[T]he publicly available webcast, while enhancing the Parliament's capacity to engage with the community without relying on external broadcasters, does not have a ready means of enforcement attached.³²

²⁷ Submission 5, the Law Society of New South Wales, p 2.

²⁸ Submission 5, the Law Society of New South Wales, p 2.

²⁹ Submission 5, the Law Society of New South Wales, p 2.

³⁰ Submission 5, the Law Society of New South Wales, p 2; and Australian Human Rights Commission, Submission No 1 to the Senate Environment and Communications Legislation Committee, Submission on the Parliamentary Proceedings Broadcasting Amendment Bill 2013, 13 December 2013, 3.

³¹ Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p 6.

³² Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p 6.

2.48 The Clerks advised that the removal of the restriction on satire and ridicule 'was in part a reflection of this change in dynamic'.³³

A principles-based approach

2.49 As noted earlier, the Senate and House of Representatives revised their broadcasting resolutions in 2013. The resolutions reflect the key 'tenants' of the Australian Parliament's *Rules for media related activity in Parliament House and its precincts* which are underpinned by the following principles:

- openness and accessibility of the Parliament of Australia
- facilitation of fair and accurate reporting by the media of parliamentary proceedings
- respect for the privacy of members, senators, other building occupants and visitors to Parliament House
- non-interference with the operations of the Parliament or the ability of members, senators and other building occupants to fulfil their duties.³⁴

2.50 The revised resolutions and the principles that underpin them seek to 'provide a workable and fair framework in which [members, the media and other stakeholders] can conduct our procedures and interactions'.³⁵

2.51 A further objective of the revised resolutions was to ensure they address the 'changing nature of modern broadcasting requirements and community expectations...and effectively work in the public interest'.³⁶

Workplace Diversity and Inclusion Strategy

2.52 In 2019, the New South Wales Parliament implemented a Workplace Diversity and Inclusion Strategy with the objective of promoting an inclusive and accessible environment for members, staff and the community.

2.53 The Scottish Parliament has taken steps to widen the reach and accessibility of its proceedings: 'we provide live sign language translations for our key Chamber debates which are live streamed'.³⁷ This footage is then added to the Scottish Parliament's YouTube channel with closed captions within 24 hours.³⁸

2.54 The Scottish Parliament is also bound by the Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018. The regulation requires public sector bodies to

³³ Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p 6.

³⁴ Australian Parliament, 2016, *Rules for media related activity in Parliament House and its precincts*, p 4; and Hansard, House of Representatives, 9 December 2013, p 1,948.

³⁵ Hansard, House of Representatives, 9 December 2013, p 1,948.

³⁶ Hansard, House of Representatives, 9 December 2013, p 1,948.

³⁷ Submission 2, the Scottish Parliament, p 2.

³⁸ Submission 2, the Scottish Parliament, p 2.

make digital content accessible to audiences with restricted hearing or sight. They are reviewing their strategy for live captioning for their online content'.³⁹

2.55 As noted earlier, live captioning of Legislative Council proceedings went live in June 2022, and the Procedure Committees is currently undertaking an inquiry into Auslan interpretation for broadcasting.

Still photography

2.56 The main terms and conditions within the broadcast of proceedings resolution relating to access to the proceedings of the Legislative Council by still photographers are as follows:

- only accredited press gallery members may with the approval of the President take photographs of proceedings in the House
- photographs must be placed in context and not be used for political party advertising or election campaigns, or for the purpose of satire or ridicule or commercial sponsorship or commercial advertising
- photographs of individual members, not speaking in debate, are not permitted
- photographs of disturbances by visitors or any other persons is not permitted
- photographs must not be digitally enhanced or altered (note – no such provision exists for audio visual excerpts of Legislative Council proceedings)
- non-compliance may result in the suspension or withdrawal of accreditation.⁴⁰

2.57 In 2014, the Senate's Procedure Committee considered the appropriateness of a ban that had been in place since 2002 on photography in the Senate chamber. Under the ban, which only operated in the Senate, senators that did not have the call (for example, during interjections, votes and during discussion with other members on the outskirts of the chamber) could not be photographed. Photographers who flouted the rules risked being banned from the chamber.⁴¹

2.58 The Senate Procedure Committee report observed that the ban 'may be seen as unduly restrictive and inconsistent with the unrestricted broadcasting of the complete proceedings of the Senate through the internet'.⁴² It also recommended that the order providing for the ban cease to have effect.⁴³ The matter ultimately did not proceed beyond the Committee, however, so the ban remained in place.⁴⁴

2.59 The issue was revisited in mid-2016, pushed by the then Senator Hinch. The Procedure Committee was again asked to report on the matter and concluded that: 'Noting the different

³⁹ Submission 2, the Scottish Parliament, p 2.

⁴⁰ *Minutes*, NSW Legislative Council, 18 October 2007, pp 279-281.

⁴¹ Journals of the Senate, 13 October 2016, pp 329, 346; and Senate Procedure Committee, Third Report of 2014, p 2.

⁴² Senate Procedure Committee, Third Report of 2014, p 2.

⁴³ Senate Procedure Committee, Third Report of 2014, p 2.

⁴⁴ Senate Procedure Committee, First Report of 2016, p 1.

views within the committee as presently constituted, the committee leaves it to the Senate as a whole to determine the matter'.⁴⁵

- 2.60** The Senate subsequently agreed to a motion moved by Senator Hinch to lift the ban on 13 August 2016.⁴⁶
- 2.61** Still photography of the Senate and House of Representatives is currently allowed by registered photographers in the chamber galleries reserved for members of the Press Gallery.⁴⁷
- 2.62** The Hon Rose Jackson argued that the parliament would be more transparent and accessible if the restrictions on photographs (as well as filming) were lifted. Ms Jackson called for an open parliament where members and the public are permitted to record or take photos of proceedings in an unobtrusive manner.⁴⁸
- 2.63** Ms Jackson asserted that open photography and filming would promote engagement with Parliamentary debate and processes and argued that if members were uncomfortable with the lifting of the restrictions then the issue was their own behavior. Ms Jackson suggested that open photography and filming 'might encourage better standards of conduct'.⁴⁹

Committee comment

Satire and ridicule

- 2.64** The committee acknowledges that other jurisdictions have lifted restrictions on using video excerpts or photos of proceedings for the purpose of satire and ridicule. Although the reasons for lifting the ban are understood, the committee does not consider the reasons to be persuasive.
- 2.65** The restriction on satire and ridicule serves to protect the integrity and dignity of the institution. The House should retain the power to respond to serious attacks on the institution that have the potential to undermine the integrity, dignity and role of the House.

Supporting principles

- 2.66** The committee acknowledges the principles that underpin the broadcasting resolutions of the Senate and the House of Representatives as well as the Australian Parliament's media rules.
- 2.67** A principles-based framework provides the general intent of the provisions of a broadcasting resolution and how they should be applied. The committee supports such an approach in the Legislative Council. Any broadcasting resolution should be practical and work in the public interest. The broadcast resolution should also, to the extent practicable, aim to meet community expectations for accessibility of the proceedings of the House and its committees.

⁴⁵ Senate Procedure Committee, First Report of 2016, p 1.

⁴⁶ Journals of the Senate, 13 October 2016, pp 329, 346.

⁴⁷ Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p 2.

⁴⁸ Submission 1, the Hon Rose Jackson, p 2.

⁴⁹ Submission 1, the Hon Rose Jackson, p 2.

2.68 The committee recommends that the broadcasting of proceedings resolution include an introductory statement of principles and, where appropriate, the language within the resolution be modified so that it is practical and readily understood by stakeholders.

Still photography

2.69 With respect to the current restrictions placed on photography in the Legislative Council Chamber, the committee is persuaded by the Senate Procedure Committee which found that such restrictions are unnecessary and send the wrong message to the community regarding open access to the complete proceedings of parliament.

2.70 The committee believes that accredited press gallery photographers, with the approval of the President, should be allowed to photograph the activity of all members while the Legislative Council is in session. This change is consistent with the approach taken federally, namely that photography will only be open to press gallery members and not the public. With respect to non-accredited members of the press gallery, the committee is of the view that such people may apply in writing to the President to take photographs of proceedings while the Legislative Council is in session, and if approved the President is to determine the conditions under which they do so. These changes should be reviewed at the end of 2023 to ensure that it has worked as intended.

2.71 Although it is proposed to ease the restrictions on photography for accredited press gallery photographers, it should be stressed that the following existing terms and conditions must still be complied with:

- photographs must be placed in context and not be used for political party advertising or election campaigns, or commercial sponsorship or commercial advertising
- photographs must not be digitally enhanced or altered
- non-compliance may result in the suspension or withdrawal of accreditation.

2.72 The committee recommends that the broadcast of proceedings resolution be amended to:

- allow accredited press gallery photographers to photograph all proceedings in the Legislative Council while in session, subject to notifying the President beforehand who will in turn advise the House
- allow non-accredited members of the press gallery, to apply in writing to the President to take photographs of proceedings while the Legislative Council is in session, and if approved the President is to determine the conditions under which they do so.

Audio visual excerpts of proceedings

2.73 The committee notes that while photographs of Legislative Council proceedings must not be digitally enhanced or altered, no such provision exists for audio visual excerpts.

2.74 With Parliament on Demand now offering access to video recordings of past proceedings, the committee finds it appropriate that the broadcast resolution include a provision that prohibits audio visual excerpts of Legislative Council proceedings being digitally enhanced or altered.

- 2.75** It is recommended that the broadcast of proceedings resolution be amended to prohibit audio visual excerpts of Legislative Council proceedings from being digitally enhanced or altered.

The revised Broadcasting of Proceedings resolution

- 2.76** A marked-up broadcast of proceedings resolution that gives effect to the recommendations proposed in this chapter can be found at Appendix 1. It is noted that should the House agree to the proposed amendments to the broadcast of proceedings resolution, then the conditions of access for the webcast of Legislative Council House and committee proceedings, and Parliament on Demand (applicable to both Council and Assembly proceedings) will need to be revised.

Recommendation 1

That the Broadcast of Proceedings Resolution be amended, as set out in Appendix 1, to:

- add an introductory statement of principles
 - where appropriate, modify the language used so that it is practical and accessible
 - allow accredited press gallery photographers to photograph all proceedings in the Legislative Council while in session, subject to notifying the President beforehand who will in turn advise the House
 - allow non-accredited members of the press gallery, to apply in writing to the President to take photographs of proceedings while the Legislative Council is in session, and if approved, on conditions determined by the President
 - prohibit audio visual excerpts of Legislative Council proceedings being digitally enhanced or altered.
-

Chapter 3 The broadcast and photography of committee proceedings

This chapter considers issues pertinent to the broadcast and photography of committee proceedings. It documents current rules and practice and considers potential changes to these rules to better reflect the expectations and members and the community.

Current rules and practice

Broadcast of committee proceedings

- 3.1** Under section 4 of the Council's Broadcast of Proceedings Resolution, the House authorises each committee, by vote of that committee, to authorise the filming, broadcasting and still photography of its public proceedings:
- by accredited members of the Press Gallery
 - by a person or organisation that is not an accredited member of the Press Gallery, subject to them agreeing to comply with terms and conditions set out in the Broadcasting Resolution and/or those determined by the committee
 - in the Legislative Council chamber – this is discussed further in paragraph 2.3.⁵⁰
- 3.2** The Resolution also authorises each committee to order that part of its proceedings *not* be recorded or broadcast; and to give other instructions relating to observance of terms and conditions, so long as they are not inconsistent with those set out in paragraph 2 of the Resolution relating to the broadcast of proceedings in the House.⁵¹
- 3.3** While paragraph 4 authorises the broadcast of committee proceedings 'in the Legislative Council chamber', in practice, onsite hearings are routinely held in dedicated hearing rooms within the parliamentary precincts equipped with broadcast capability. The standard procedural resolutions adopted by committees at the start of each session of Parliament therefore 'authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007' and order that 'the committee webcast its public proceedings via the Parliament's website, where technically possible'.⁵²
- 3.4** Public hearings held onsite in the Macquarie, Jubilee, McKell and Preston Stanley Rooms are webcast. Media receive a live feed of all proceedings direct to their press gallery offices in the parliamentary precinct.
- 3.5** On rare occasion requests have been made to committees by persons other than the Press Gallery for permission to film proceedings – for example, an organisation may request

⁵⁰ *Minutes*, NSW Legislative Council, 18 October 2007, pp 279-281.

⁵¹ *Minutes*, NSW Legislative Council, 18 October 2007, pp 279-281.

⁵² NSW Legislative Council, Standing Committee on State Development, *Minutes No. 1*, 57th Parliament, 4 June 2019, p 3.

permission to film a spokesperson giving evidence. These requests are resolved at the discretion of the individual committee.

Webcasting of regional hearings

- 3.6** In May 2020, the Legislative Council commenced the webcasting of various committee hearings from regional centres when Portfolio Committee No. 2 – Health webcast hearings from Wellington and Dubbo as part of its inquiry into health and hospital services in rural, regional and remote New South Wales. A number of other committees have since followed. It is understood that the Legislative Council is the first house of parliament in Australia to offer the webcasting of regional hearings.
- 3.7** To provide the service, the Parliament has engaged a private company based in Wagga Wagga called the Streaming Guys. While the company is based in Wagga Wagga, they have employees/contractors throughout the State who are able to attend hearings and provide the service at relatively short notice. They use their own equipment which they transport in their own vehicles to the venues. Their webcast stream uses multiple mobile devices to broadcast the signal over the existing 4G network back to Parliament House. The signal is then streamed on the webcast in the usual way.
- 3.8** At the moment, the cost of engaging the Streaming Guys is being met from the AV project budget (discussed further in chapter 4). In the future, it may be that the Parliament looks at bringing the technology in-house, however that would require careful consideration of the costs involved. For example, it would almost certainly require at least two additional operators to travel with a committee to each regional hearing, together with the transport and set-up of significant equipment.

Changes to committee hearing practice and broadcasting during the COVID-19 pandemic

- 3.9** In response to the COVID-19 pandemic, all Legislative Council committees, have at times, had to take their inquiry work largely or fully online using the Cisco screens set up in the Macquarie and Jubilee Rooms and the Webex web conferencing and videoconferencing application developed by Cisco.
- 3.10** Following the initial outbreak of COVID-19 in early 2020, the Parliament was only able to support so called 'hybrid' hearings, whereby the chair, secretariat and Hansard were still required to attend the hearing room, whilst all other members and witnesses attended electronically.
- 3.11** Subsequently, when the Delta wave hit in June and July 2021, systems were improved to allow fully online hearings, with all members and witnesses appearing remotely. Proceedings were initially broadcast live directly to YouTube, before arrangements were put in place to revert the broadcast to the Parliament's own webcast. Committees at that time also commenced placing a recording of their hearings on YouTube, a trend that has continued since (further consideration pertaining to the broadcast of live feeds of House and committee proceedings is can be found in Chapter 4).

Procedural fairness for inquiry participants

- 3.12** Paragraph 5 of the Broadcast of Proceedings Resolution currently provides certain procedural fairness protections to witnesses who appear before a committee that has authorised the filming, broadcast or still photography of its proceedings.
- 3.13** The Resolution requires that witnesses be given a reasonable opportunity before a hearing to object to the broadcasting or televising of proceedings and, once received, the committee must consider the grounds of the objection having regard to the protection of the witness and the public interest in proceedings. If the committee resolves to broadcast the hearing notwithstanding the objection received, the witness must be informed before their appearance.
- 3.14** In 2017, the President referred to the Privileges Committee an inquiry into procedural fairness for inquiry witnesses.⁵³ The inquiry was prompted by a recommendation of the Select Committee on the Legislative Council Committee System in 2016, which noted that while Legislative Council committees act judiciously to protect their inquiry participants, there were no formal, publicly available procedures to ensure witnesses were accorded proper process and fair treatment. The committee recommended that an inquiry be established to specifically consider such protections.⁵⁴
- 3.15** The Privileges Committee tabled its report on 28 June 2018, recommending that the Council adopt a new resolution specifying the procedural fairness procedures to be followed by committees. These procedures include and extend beyond those captured in the Broadcast Resolution: also specifying the procedures for inviting and summoning witnesses, requesting attendance with a support person, and objecting to questions and other matters. The resulting Procedural Fairness for Inquiry Participants Resolution was adopted by the House on 25 October 2018.⁵⁵ A copy of the resolution is provided at Appendix 3.
- 3.16** The terms of paragraph 5 of the broadcast resolution have therefore been superseded by the new Procedural Fairness Resolution for Inquiry Participants.

Still photography

- 3.17** As noted in paragraph 2.1, still photography is permitted by members of the Press Gallery. Other media and individuals may request to take photographs but must first seek the prior permission of the committee and sign the 'Media Guidelines: Broadcast of Proceedings' (Appendix 5).
- 3.18** These guidelines provide that where filming or photography is permitted by the committee, only members and witnesses may be filmed, recorded or photographed; filming may not interfere with proceedings; cameras may not be used to inspect or photograph members' documents or computer screens; and other relevant conditions of use.

⁵³ *Minutes*, NSW Legislative Council, 12 September 2017, p 1874.

⁵⁴ Select Committee on the Legislative Council Committee System, *The Legislative Council committee system*, November 2016, p 6.

⁵⁵ *Minutes*, NSW Legislative Council, 25 October 2018, pp 3138-3140.

- 3.19** The secretariat also routinely take photographs of committee hearings and, where appropriate, site visits for use on social media. The secretariat encourages members and witnesses to use these photos for social media and other publicity as the photos taken comply with the guidelines referred to above.
- 3.20** The practice adopted by Legislative Council committees is common across Australian jurisdictions including the Tasmanian House of Assembly, the Victorian Legislative Assembly and Legislative Council and the Northern Territory Legislative Assembly.
- 3.21** While the practice set out above is generally complied with, committees and the secretariat have received increasingly frequent requests from people in the public gallery, other than accredited media, and members' staff, to take photographs of committee hearings.

Committee comment

Broadcast of committee proceedings and procedural fairness for inquiry participants

- 3.22** The committee notes that hearings are no longer held in the parliamentary chamber, but rather dedicated hearing rooms within the parliamentary precincts and off-site for regional hearings with provision for webcasting. The committee therefore recommends that paragraph 4 (c) of the resolution be omitted.
- 3.23** The committee acknowledges that the terms of paragraph 5 of the Broadcast of Proceedings Resolution have been superseded by the new Procedural Fairness Resolution for Committee Inquiry Participants, which was adopted by the House unanimously on the recommendation of the Privileges Committee.
- 3.24** On that basis, the committee further recommends that paragraph 5 be omitted from the Broadcast of Proceedings Resolution.

Recommendation 2

That the Broadcast of Proceedings Resolution be amended, as set out in Appendix 1, to omit reference to hearings held in the Legislative Council chamber and omit the procedural fairness provisions for committee inquiry participants contained in paragraph 5, which have been superseded by the Procedural Fairness Resolution for Committee Inquiry Participants adopted in 2018.

Still photography

- 3.25** The committee acknowledges that the practice adopted by Legislative Council committees reflects that of many Australian parliaments.
- 3.26** However, the committee is also mindful that committees play an important role in engaging with the community, travelling to regional areas and taking evidence from people firsthand on the issues that matter most to them. Notwithstanding the practice adopted in other jurisdictions, there is an opportunity for Legislative Council committees to take the lead in reviewing certain rules that can inadvertently operate to distance the community from the democratic process.

- 3.27** As a committee comprised of members who regularly travel across the state to gather evidence at public hearings, we know from experience that it is only natural that people may wish to take a photograph of a colleague or family member giving evidence, as a memento of a hearing. For some people, a committee hearing is a special opportunity to see members of parliament and parliamentary processes in the flesh.
- 3.28** The committee believes there would be merit in relaxing the restriction on photography in public committee hearings for a trial period to enable any person to take photographs of committee proceedings, so long as the photograph is taken from behind the Bar⁵⁶ – that is, the area separating the audience from the witnesses. Requiring photos to be taken from the audience will reduce the risk of witness intimidation and the risk of audience members taking photographs of members' documents, phones or computer screens.
- 3.29** To that end, the committee recommends that the Media Guidelines: Broadcast of Proceedings be replaced with a new set of Filming and Photography Guidelines for Committee Hearings. These new guidelines would provide that, unless the committee decides otherwise:
- any member of the public, including members' staff, is permitted to take still photographs
 - only members and witnesses may be photographed
 - cameras may not be used to inspect or photograph members' documents or computer screens
 - photographs must be taken from the audience, not be taken in an intimidating or intrusive manner and must not interfere with committee proceedings
- 3.30** Similarly, the committee recommends that members be permitted to take photographs during committee hearings, provided they do not undermine the integrity of the committee process, intimidate witnesses or other members, or be used to inspect or photograph members' documents or computer screens.
- 3.31** The committee notes the increasingly common practice of Legislative Council committees to authorise the filming, broadcasting and still photography of its public proceedings by accredited members of the parliamentary press gallery and by persons or organisations not accredited as members of the parliamentary press gallery (subject to the terms and conditions of the Broadcast of Proceedings Resolution, and other terms and conditions determined by the committee). It is therefore recommended that the Broadcast of Proceedings Resolution be amended, as set out in Appendix 1, to make it this the default for committees, unless resolved otherwise.

⁵⁶ The Bar of the House is the boundary which persons who are not members may not cross when the House is sitting and beyond which members may not speak or vote. In a committee hearing, the Bar denotes the boundary between the public gallery and the hearing table – the line is conceptual when hearings are held offsite, but is marked by a roped bollard during hearings held in parliamentary hearing room.

Recommendation 3

That Legislative Council committees adopt a new set of Filming and Photography Guidelines for Committee Hearings to provide that, unless the committee resolves otherwise:

- any member of the public, including members' staff, is permitted to take still photographs
- only members and witnesses may be photographed
- cameras may not be used to inspect or photograph members' documents or computer screens
- photographs must be taken from the audience, not be taken in an intimidating or intrusive manner and must not interfere with committee proceedings.

Recommendation 4

That Legislative Council committees permit members to take photographs during committee hearings, provided they do not undermine the integrity of the committee process, intimidate witnesses or other members, or be used to inspect or photograph members' documents or computer screens.

Recommendation 5

That the Broadcast of Proceedings Resolution be amended, as set out in paragraph 4 of Appendix 1, for committees to automatically authorise the filming, broadcasting and still photography of its public proceedings by accredited members of the parliamentary press gallery and by persons or organisations not accredited as members of the parliamentary press gallery, unless resolved otherwise.

Chapter 4 Access to footage of proceedings

This chapter considers current arrangements governing access to footage of House and committee proceedings and considerations relating to the live streaming of proceedings over social media.

Upgrade of the NSW Parliament's existing broadcast and audiovisual technology and services

- 4.1 In November 2019, Corporate Technology Services (CTS) prepared a 10-year strategic report (the report) for television broadcast and audiovisual technology and services for the NSW Parliament. The report reviewed the NSW Parliament's existing broadcast and audiovisual technology and services and benchmarked it against comparable parliaments.⁵⁷
- 4.2 The report acknowledged that the NSW Parliament's existing offering should be improved so as to 'transform the existing television broadcast and audiovisual technology and services into a highly critical service, benchmarked and equal to peers, which meets the expectations of members, staff and the public of NSW and Australia'.⁵⁸
- 4.3 The CTS report provided a roadmap for achieving improving an improved broadcasting system, with key objectives including:
- provision of video-on-demand
 - deployment of closed captioning
 - establishment of a dedicated audiovisual services team within the NSW Parliament
 - more timely replacement of technology in line with its intended lifecycle so as to achieve greater reliability with less risk of failure of critical systems.⁵⁹
- 4.4 In addition, the report provided a ten-year overall estimation of costs for the upgrade of the broadcast and audiovisual technology and services.⁶⁰ The report has helped to inform the preparation of a broadcast and audiovisual business case, which was submitted by the Parliament to Treasury in February 2020.
- 4.5 The case in support of upgrading both technology and service support to the Parliament has become even more urgent in the context of the COVID-19 pandemic. Over the past two years, various public health measures have posed barriers to members and the community participating in parliamentary proceedings in person. This demonstrates a need for innovation to ensure that the Parliament can continue its work during unprecedented circumstances and enable staff and members to plan ahead for extraordinary or emergency situations into the future.

⁵⁷ Corporate Technology Services, *Audiovisual Strategic Report & Forecast*, November 2019, p 3.

⁵⁸ Corporate Technology Services, *Audiovisual Strategic Report & Forecast*, November 2019, p 3.

⁵⁹ Corporate Technology Services, *Audiovisual Strategic Report & Forecast*, November 2019, p 4.

⁶⁰ Corporate Technology Services, *Audiovisual Strategic Report & Forecast*, November 2019, p 3.

4.6 The Department of Parliamentary Services has since received capital funding for the modernisation of the Audio Visual and broadcasting systems for the Parliament. To date, enhancements in this space have included:

- the establishment of a video on demand service
- live captioning accompanying the broadcast of House and committee proceedings
- webcasting of regional hearings.

Video on demand

4.7 In 2021, the Parliament introduced Parliament on Demand. It is a video on demand service which provides authorised users with direct access to recordings of past proceedings via a portal on the intranet.

4.8 The Parliament on Demand service currently provides access to past proceedings from 2021, with archives from earlier years to be made available in the future. Take up has been very high among members. Once the system has been further refined it is intended that it be made available to the general public.

4.9 Parliament on Demand and its offering for users to extract and use footage themselves, while welcome, does carry certain risks. The broadcast and publication of the footage on Parliament's website has the protection of parliamentary privilege, as authorised by the Legislative Council's broadcasting resolution. Use of the footage downloaded by members or others will effectively be a republication and is likely to only attract qualified privilege.

4.10 Conditions of use appear when users download from Parliament on Demand, in the same way that users connecting to a webcast of proceedings currently accept the conditions of use (attached at appendix 3).

Use of electronic devices and social media

4.11 Both the House and committees allow members to use electronic devices provided that their use does not interrupt or disturb proceedings. In the House, this approach has been clarified through Rulings of the President which state that mobile phones must be set to silent; use of laptops is acceptable provided they do not interrupt proceedings; use of camera features on phones is prohibited; the taking of phone calls is prohibited; and playing of music is prohibited.⁶¹

4.12 Looking to other jurisdictions, both the Senate and the House of Representatives permit members to use electronic devices in the Chambers, provided that such use does not interfere with proceedings. While members can use electronic devices in the Chamber, devices are not to

⁶¹ For example, Rulings: President Primrose, *Hansard*, NSW Legislative Council, 5 March 2009, p 13014; President Fazio, *Hansard*, NSW Legislative Council, 26 November 2009, p 19990; 11 November 2010, p 27415; President Harwin, *Hansard*, NSW Legislative Council, 13 March 2012, p 9380; 14 October 2015, 4167; 15 October 2015, p 4329.

be used to record proceedings, either by audio or visual means.⁶² The House of Representatives resolution further states:

- communication on social media regarding private meetings of committees or in camera hearings will be considered a potential breach of privilege
- communication via electronic devices, whether in the Chamber or not, is unlikely to be covered by parliamentary privilege; and
- reflections on the Chair by Members made on social media may be treated as matters of order just as any such reflections made inside or outside the Chamber.⁶³

4.13 Like the Australian Parliament, members of the New Zealand House of Representatives 'are free to use electronic devices in the Chamber as long as it is not disruptive to the business of the House'.⁶⁴ Members may not film or record proceedings and members have been reminded that social media posts made while in the Chamber are not official parliamentary proceedings and thus unlikely to be protected by privilege.⁶⁵

4.14 The Western Australian Legislative Council's *Guidelines for Photography and Filming in the Legislative Council* permit members to take photographs of parliamentary proceedings for personal purposes and for posting on social media and other platforms.⁶⁶

4.15 The Clerk of the Western Australian Legislative Council acknowledged that if a member publishes a video or photo of a proceeding it may attract public comments. The Clerk also advised that 'to date, there has not been any particular issue regarding the posting of parliamentary proceedings attracting adverse commentary'.⁶⁷

Social media

4.16 The use of social media to communicate about Parliament has grown significantly over recent years. The Department of the Legislative Council (the Department) has active Twitter and Facebook accounts and blogs regularly on WordPress as 'The House in Review'. These accounts are managed by a small team of departmental staff and are not operated by the Government, members of Parliament or political parties.

4.17 The Department's activity on the three above platforms includes information about what is happening in the Legislative Council, such as when Parliament is sitting and when key pieces of legislation and motions are being debated, the progress of committee inquiries, the availability of new publications, new educational resources and general interest content.

4.18 Likewise, for many members, social media is now an essential tool for engaging with the public and their constituents and most Legislative Council members are active across multiple social

⁶² Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, pp 2-3.

⁶³ Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p 3.

⁶⁴ Submission 3, Office of the Clerk of the House of Representatives New Zealand, p 3.

⁶⁵ Submission 3, Office of the Clerk of the House of Representatives New Zealand, p 3.

⁶⁶ Office of the Clerk of the Legislative Council, Western Australia, p 2.

⁶⁷ Office of the Clerk of the Legislative Council, Western Australia, p 2.

media platforms. Members' engagement with social media will likely increase given its popularity in modern society.

- 4.19** The Legislative Council's social media channels are closely monitored and moderated in line with the Parliament's Social Media Style Guide. This includes taking action to hide or remove content that is of a clear or potential defamatory nature, that is in breach of platform guidelines, or that breaches the Parliament's overarching participation guidelines, which state:

"The Parliament welcomes comments from our audiences provided they are relevant, respectful and appropriate. Comments that are abusive, obscene, defamatory, harassing, discriminatory, incite violence or crime, infringe copyright, advertise commercial products or are otherwise inappropriate will not be allowed."⁶⁸

- 4.20** Separately, Legislative Council content often appears in central parliamentary channels maintained by the Department of Parliamentary Services (for example, LinkedIn), and this content is monitored and moderated by the Department of Parliamentary Services. Meanwhile, when content is uploaded to the Parliament's YouTube channel, the default is to do so with commenting turned off.

Social media committee guidelines

- 4.21** In 2013 Legislative Council committees adopted interim guidelines on the use of social media and electronic devices. This followed an increase of some members using social media to communicate both House and committee proceedings to their constituents.⁶⁹ In these guidelines members were advised:

- That any comments made on social media are not covered by parliamentary privilege.
- Not to use social media to release confidential information and in particular, not to raise evidence given at in-camera hearings or during site visits, or matters discussed during deliberative meetings.
- That media statements on behalf of the committee may be made only by the Chair, unless the committee decides otherwise.⁷⁰

- 4.22** Legislative Council committees readopted the social media guidelines in the 56th Parliament (2015-2019). At the commencement of the 57th Parliament in May 2019, Legislative Council committees adopted guidelines providing that:

- Committee members use social media and electronic devices during committee proceedings unobtrusively, to avoid distraction to other committee members and witnesses.
- Media statements on behalf of the committee be made only by the Chair.⁷¹

⁶⁸ NSW Parliament, 2021, Social Media Style Guide, p 10.

⁶⁹ The guidelines were adapted from similar guidelines prepared by the Legislative Assembly of Victoria's Standing Orders Committee in December 2012.

⁷⁰ NSW Legislative Council, *Interim guidelines on the use of social media and electronic devices during committee proceedings*, 2013.

⁷¹ For example: NSW Legislative Council, Standing Committee on Law and Justice, *Minutes No. 1*, 57th Parliament, 30 May 2019, p 3.

Facilitating access to proceedings via live streaming

- 4.23** Some feedback from some Legislative Council members and their staff, as well as other stakeholders, has been critical of the current limitations on the broadcast of proceedings, in particular restrictions on the rebroadcast of proceedings and livestreaming on social media.
- 4.24** As noted in chapter 1, during meetings of new committees established following the 2019 State Election, several members expressed interest in finding new ways to broadcast committee proceedings.
- 4.25** In a submission to this inquiry, the Hon Rose Jackson argued that increasing disengagement with government and political process apparent amongst young people, evidenced by the lowest voter turnout since the 1920s at the last state election, could be changed by encouraging engagement and interaction with parliament and parliamentary processes through social media and other technologies.⁷²
- 4.26** It is noted that at the commencement of the 57th Parliament at least two new members broadcast their first speeches on social media.
- 4.27** In part, the above concerns have been addressed through:
- changes taken to committee hearing practice and broadcasting during the COVID-19 pandemic, including hearings being broadcast on YouTube (as noted in chapter 2),
 - the provision of video on demand for members who can then disseminate video clippings on social media.

Developments in international jurisdictions

- 4.28** Before 2020, parliaments in Australia largely avoided the livestreaming of proceedings, instead favouring instead either a video on demand service and live broadcast. This generally owed to procedural and privilege considerations. That has since changed, with Legislative Council committees regularly livestreaming hearings on YouTube, and the Legislative Assembly posting various house proceedings on Parliament's social media channels and amending its broadcasting resolution to affirm that parliamentary privilege extends to such proceedings (as noted in chapter 2).
- 4.29** Notwithstanding recent developments in the NSW Parliament, the Scottish Parliament and New Zealand House of Representatives have historically taken a more progressive approach to broadcast and live streaming.
- 4.30** The Scottish Parliament takes an active role in posting social media content and supporting its members in doing so, taking the view that that while there may be some inappropriate content this can be effectively managed and moderated. According to the Clerk and Chief Executive of the Scottish Parliament, the benefits of an active social media presence, with increased public engagement, is worth pursuing despite the potential risks:

Whilst there are some risks to this, given that you cannot legislate for the comments and replies that people make, the channels all have measures in place for dealing with these (such as deleting, banning and reporting people if necessary), and we moderate

⁷² Submission 1, the Hon Rose Jackson, p 1.

our content accordingly. We believe that the public engagement benefits, of widening our reach and making it easier for people to participate, outweigh the risks.⁷³

4.31 The Scottish Parliament's social media and broadcasting activity includes:

- live streaming all parliamentary proceedings (with closed captioning) from its official website and also regularly disseminating this via other channels such as Twitter and Facebook Live
- hosting video archive content on its official website and also uploading all footage of parliamentary proceedings to YouTube, with captions (with comments disabled because to moderate all video would be too resource intensive)
- posting information to its official Twitter and Facebook accounts (with all content moderated)
- having processes in place that can enable responses to social media comments (on its official accounts) that may raise safety and welfare concerns.⁷⁴

4.32 The only restriction placed on members using footage of parliamentary proceedings on social media is that 'the material should not be used for party political purposes primarily electioneering or campaigning on a party political matter'.⁷⁵

4.33 New Zealand also advised that while its broadcasting rules have not been significantly updated since 2007 (with one exception concerning satire and ridicule, discussed in Chapter 1), the House has adopted 'a more liberal interpretation of the rules' with the Speaker issuing guidance about members' use of social media.⁷⁶

4.34 An example of the 'liberal approach' is that for special events, such as maiden and valedictory speeches, the Speaker has authorised members to photograph or film from the floor of the House. This came about at the suggestion of the Privileges Committee and has now been 'adopted as a broad principle by the Serjeant-at-Arms and members are generally permitted to film or photograph such [special] occasions'.⁷⁷

4.35 Other features of the approach include taken in New Zealand include:

- house footage is streamed live on the Parliament website and archived on Vimeo
- streaming public select committee hearings live on Facebook and archiving them on individual committee Facebook pages
- all video content is open to public comment so as to increase public engagement – active moderation is required to maintain 'a space that is the best representation of Parliament' and this has required additional staff resourcing.⁷⁸

⁷³ Submission 2, the Scottish Parliament, p 2.

⁷⁴ Submission 2, the Scottish Parliament, pp 2-4.

⁷⁵ Submission 2, the Scottish Parliament, p 4.

⁷⁶ Submission 3, Office of the Clerk of the House of Representatives New Zealand, p 2.

⁷⁷ Submission 3, Office of the Clerk of the House of Representatives New Zealand, p 3.

⁷⁸ Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p1.

- 4.36** The Office of the Clerk of New Zealand the House of Representatives observed that in at least a few cases, members have engaged with streaming by asking questions in a hearing that were suggested in the comments on the stream – an engaging way for the public to feel truly involved with committee hearings.⁷⁹

Procedural and privilege considerations

- 4.37** Social media is ubiquitous in contemporary society and has been embraced by many members. The Office of the Clerk of the New Zealand House of Representatives, , in referring to a 2015 Privileges Committee inquiry that considered members' use of social media, argued that it provides members a great opportunity to circulate information about parliamentary activity. The Clerk further argued that members' use of social media should not be constrained:

Social media has been widely adopted by MPs and in 2015 the Privileges Committee inquired into the use of it to report on parliamentary proceedings. It found that social media presented unique opportunities for members to share news and information with the public and bring Parliament to the attention of a larger audience, and therefore recommended that members be neither discouraged from nor restricted in their use of social media.⁸⁰

- 4.38** However, the Clerk of the New Zealand House of Representatives, also acknowledged that social media posts made by members while in the Chamber are not official parliamentary proceedings and thus unlikely to be protected by privilege.⁸¹
- 4.39** The Australian Parliament similarly observed that communication via electronic devices and on social media 'whether in the Chamber or not, is unlikely to be covered by parliamentary privilege'.⁸² For example, 'reflections on the Chair by Members made on social media may be treated as matters of order just as any such reflections made inside or outside the Chamber'.⁸³
- 4.40** Broadcasting on social media may also pose other risks. For example, posts of proceedings may expose those featured to comment, ridicule or potentially bullying or threatening behavior via comment options that are not otherwise available on the broadcasting platforms currently utilised by the Parliament. There is also the issue of being held liable for comments made by third party users with respect to content posted on social media platforms (as determined in the Voller defamation case, detailed in chapter 2). While members of parliament are accustomed to the rough and tumble of politics and expect robust public commentary, witnesses to committee hearings may not be so accustomed.

⁷⁹ Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p6.

⁸⁰ Submission 3, Office of the Clerk of the House of Representatives New Zealand, p 3.

⁸¹ Submission 3, Office of the Clerk of the House of Representatives New Zealand, p 3.

⁸² Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p 2.

⁸³ Submission 6, Clerk of the House of Representatives and Clerk of the Senate, Parliament of Australia, p 2.

- 4.41** In the Legislative Council, witnesses to committees are advised that their evidence may be broadcast and given the opportunity to object to the broadcast or request an *in camera* hearing.⁸⁴ This is common across Australian jurisdictions.
- 4.42** The Office of the Clerk of the New Zealand House of Representatives advised that while there was initially concern raised at the time of the parliament's initial streaming pilot that it would have a chilling effect on witnesses, their experience since suggests that streaming public hearings has not affected witnesses and submitters, including vulnerable witnesses. Rather, witnesses often like the opportunity to share videos of their appearance on social media or with family and friends.⁸⁵
- 4.43** To protect people appearing before the committee, witnesses are warned that their evidence may be livestreamed to Facebook and witnesses are given the option to request that the livestream be halted. Two recent cases of submitters who asked not to be streamed were a trans woman who was worried that having her appearance streamed would damage her professional life, and Chinese pro-democracy activists, who preferred not to appear on video.⁸⁶
- 4.44** The Office of the Clerk advised that committee members tend to be happy to accommodate these requests, although committees have taken the view that 'public organisations who have a duty to appear should be subject to the same level of scrutiny and transparency across the board', so requests from those organisations not to be streamed have not been accepted.⁸⁷
- 4.45** The Law Society of New South Wales observed that, despite the availability of closed hearings, there is currently no safeguard for individuals in open parliamentary hearings who disclose sensitive information about themselves or another individual, which may then be permanently accessible to the public via social media platforms. The Law Society considered this a small but significant risk and one that calls for better protection for individuals, including the implementation of a modest delay in the broadcasting of proceedings to allow the opportunity to censor information that could be harmful to an individual.⁸⁸
- 4.46** The Information and Privacy Commission NSW argued in favour of public comments being enabled on the streaming of parliamentary proceedings as part of the democratic process and acknowledged social media as the medium for doing so. The Commission also noted that the use of social media to engage citizens in the democratic process needs to be considered against any possible risks, observing that '[a]s the major social media platforms are generally owned by foreign corporations, issues such as content control ownership, content sharing, copyright and defamation would need to be considered'.⁸⁹

⁸⁴ 'Procedures to provide procedural fairness for inquiry participants', *Minutes*, NSW Legislative Council, 25 October 2018, pp 3138-3140.

⁸⁵ Sub the Legislative Council trial a discretionary approach to the live stream of special events such as first and valedictory speeches mission 3, Office of the Clerk of the House of Representatives, New Zealand, p 6.

⁸⁶ Submission 3, Office of the Clerk of the House of Representatives, New Zealand, p 6.

⁸⁷ Submission 3, Office of the Clerk of the House of Representatives, New Zealand, p 6.

⁸⁸ Submission 5, The Law Society of New South Wales, p 2.

⁸⁹ Submission 4, Information and Privacy Commission NSW, p 2.

Committee comment

Access to footage of proceedings

- 4.47 The committee welcomes the establishment of an NSW Parliament video on demand service for house and committee proceedings. It is noted that the service is currently only available to members, departmental staff and the press gallery and the archive goes back as far as 2021. The committee urges the Parliament to work towards extending the service to the public and expanding the archive of available footage.

Livestream of proceedings

- 4.48 For many members, social media has become an essential tool for engaging with the public and their constituents. Members' use of social media is an important forum through which the public can be informed about the work of the Legislative Council and its committees, with members able to target specific interest groups.
- 4.49 The committee acknowledges that the Department of Parliamentary Services has received capital funding for the modernisation of the Audio Visual and broadcasting systems for the Parliament and various encouraging developments are occurring in this space. It is also noted that some of this work has been expediated because of the COVID-19 pandemic.
- 4.50 There are undoubtedly strong arguments to be made in respect of engaging audiences and increasing accessibility. It is noted that Legislative Council committees have been active in this space, livestreaming hearings on YouTube and making available recorded hearings on that platform.
- 4.51 However, there are still various risks that need to be considered. The development of modern technologies potentially raises privilege issues, as members or other committee participants who stream proceedings only have qualified privilege rather than the absolute privilege which applies to the Parliament's broadcast of proceedings via webcast.
- 4.52 It is the position of this committee that the benefits of disseminating parliamentary proceedings more widely on various social media platforms is worth pursuing despite the potential risks. There is appeal in the discretionary approach adopted by the Speaker of the New Zealand House of Representatives by allowing members to film and stream special events such as first and valedictory speeches. These debates are unlikely to be defamatory, controversial or otherwise give rise to issues regarding breach of privilege and are uniquely placed amongst those debates most likely to attract a wide and enthusiastic audience. The committee feels that there is benefit to amending the broadcast of proceedings resolution to authorise the broadcast and rebroadcast of certain House proceedings on the Legislative Council and Parliament's social media channels.
- 4.53 With respect to the livestreams and recordings of Legislative Council committee hearings being on YouTube, or similar platforms, this should be continued. However, it is noted that this development occurred in response to the COVID-19 pandemic and should be formally authorised by the House. The committee notes that content posted on social media by the Legislative Council is closely monitored and moderated.

4.54 It is therefore recommended that:

- at the commencement of the 58th Parliament the Legislative Council trial a discretionary approach to the live streaming of special events on social media, such as first and valedictory speeches and this be reviewed at the end of 2023 with a view to expanding the livestreaming of other House proceedings but not necessarily the entirety of all House proceedings,
- the livestreams and recordings of Legislative Council committee hearings continue to be disseminated on YouTube, or other appropriate social media platforms, and
- that the broadcast of proceedings resolution be amended, as shown in appendix 1, to authorise the broadcast and rebroadcast of certain House proceedings, and the broadcast and rebroadcast of committee public proceedings, on the Legislative Council and Parliament's social media channels.

Recommendation 6

That:

- at the commencement of the 58th Parliament the Legislative Council trial a discretionary approach to the live streaming of special events, such as first and valedictory speeches and this be reviewed at the end of 2023 with a view to expanding the livestreaming of other House proceedings but not necessarily the entirety of all House proceedings
 - the livestreams and recordings of Legislative Council committee hearings continue to be disseminated on YouTube, or other appropriate social media platforms
 - the broadcast of proceedings resolution be amended, as shown in appendix 1, to authorise the broadcast and rebroadcast of certain House proceedings, and the broadcast and rebroadcast of committee public proceedings, on the Legislative Council and Parliament's social media channels.
-

Appendix 1 Proposed revisions to the Broadcast of Proceedings Resolution

The current Broadcast of Proceedings Resolution was adopted in 2007. The Resolution has been annotated to reflect the changes proposed by the committee as follows: new text is in **bold**; text proposed to be omitted is ~~struck through~~; text moved or consolidated into other paragraphs is in *italics*.

Statement of principles

This resolution which provides for the broadcasting of proceedings is underpinned by the following principles:

- promoting the openness and accessibility of the NSW Parliament
- increasing the awareness of New South Wales citizens about the Legislative Council and the Parliamentary process
- facilitation of fair and accurate reporting by the media of parliamentary proceedings
- respect for the privacy of members and other building occupants and visitors to Parliament House
- non-interference with the operations of the Parliament or the ability of Members and other building occupants to fulfil their duties.

Sound and audio-visual broadcast of proceedings of the House

1. That this House authorises the sound and audio-visual broadcast **and rebroadcast** of the proceedings of the House:
 - (a) on the **Parliament's** broadcast system ~~within the precincts of Parliament House,~~
 - (b) by direct signal to the media gallery in Parliament House and authorised television networks,
 - ~~(c) to persons and organisations outside Parliament House approved by the President, on terms and conditions determined by the President from time to time, and~~
 - (c) by webcast on the internet
 - (d) by live-captioning
 - (e) **as otherwise approved by the President, and**
 - (f) **on the Legislative Council and Parliament's social media channels.**

Broadcasting

2. The live broadcast or rebroadcast of proceedings of the Legislative Council is authorised on the following conditions, and any other terms and conditions, not inconsistent with this paragraph, determined by the President: ~~from time to time:~~

- (a) *recordings and broadcasts must only be made from the sound or audio-visual signal provided by the Legislative Council,*
- (b) *excerpts may be taken from the proceedings of the House from the time of the meeting of the House until the adjournment of the House* **only footage of the House when in session may be broadcast,**
- (c) broadcasts of ~~excerpts~~ **footage** must be **placed in context**, used only for the purposes of fair and accurate reports of proceedings and must provide a balanced presentation of differing views,
- (d) ~~excerpts~~ **footage** must not be used ~~for~~:
 - (i) **for** political party advertising or election campaigns,
 - (ii) the purpose of satire or ridicule,
 - (iii) **for** commercial sponsorship or commercial advertising,
 - (iv) **to digitally enhance or alter the presentation of proceedings,**
- (e) ~~excerpts~~ **footage** of proceedings which are ~~subsequently~~ withdrawn may be broadcast if the withdrawal is also broadcast,
- ~~(f) excerpts must be placed in context,~~
- ~~(g) where audio excerpts of proceedings are used on radio and television, commentators must identify members by name,~~
- ~~(h) where audio excerpts of proceedings are used on television, their use may be that of audio over still frames, or overlay material,~~
- ~~(i) where excerpts are used on commercial stations, the station must ensure that advertising before and after excerpts is of an appropriate nature,~~
- (f) events in the galleries are not part of the proceedings and excerpts of those events must not be used,
- ~~(k) access to proceedings for the purpose of recording is on the basis of an undertaking to observe these conditions. A breach of these conditions by a station may result in the suspension or withdrawal of permission by the President for the station to broadcast excerpts of the proceedings of the House,~~
- ~~(l) the instructions of the President or delegated representatives, on the use of recorded excerpts, must be observed at all times, and~~
- (g) the President may approve filming, on request, by persons or organisations, according to the terms and conditions set out in this resolution.

Still photography

3. That this House authorises access to the proceedings of the Legislative Council by ~~still~~ photographers on the following terms and conditions:
- ~~(a) photographers from the print media who are accredited members of the parliamentary press gallery may, with the approval of the President, take photographs during question time and at other times,~~
- ~~(b) photographers who are accredited members of the parliamentary press gallery require the approval of the President and a signed undertaking to comply with the terms and conditions set out in this resolution,~~
- (a) photographers who are accredited members of the parliamentary press gallery, subject to notifying the President who will in turn advise the House, are permitted to take still photographs of proceedings while the Legislative Council is in session,**
- (b) accreditation passes are to be worn and clearly visible at all times whilst a photographer is on the parliamentary premises,
- (c) non-accredited members of the press gallery may apply in writing to the President to take photographs of proceedings while the Legislative Council is in session, and if approved the President is to determine the conditions under which they do so,**
- (d) photographs must be used **in context and** only for the purposes of fair and accurate reports of proceedings ~~and must provide a balanced presentation of differing views,~~
- (e) photographs must not be used for:
- (i) political party advertising or election campaigns,
 - (ii) the purpose of satire or ridicule,
 - (iii) commercial sponsorship or commercial advertising,
- ~~(f) photographs must be placed in context,~~
- ~~(g) photographs of individual members, not speaking in debate, are not permitted,~~
- (f) photographs taken with telephoto lenses or zoom lenses must not show any member closer than at 'head and shoulders' distance,
- (g) telephoto lenses or zoom lenses must not be used to inspect members' documents or computer screens, and close-up photographs of members' documents or computer screens must not be taken,
- (h) photographs of persons in the galleries must not be taken, with the only exception being photographs of distinguished visitors at the time they are welcomed to the House by the chair,
- (i) photographs of disturbances by visitors or any other persons is not permitted,
- (j) the use of flash or other sources of additional lighting ~~and motor driven cameras~~ is not permitted, and

- (k) photographs are not to be digitally **altered** or enhanced, ~~touched up or altered in any form,~~
- ~~(n) cropping from single or group photographs is not permitted;~~
- ~~(o) as a general rule, photographers should be as unobtrusive as possible and not disturb the view of visitors in the galleries;~~
- ~~(p) photographers shall observe the instructions of the President, or the President's delegate, at all times, and~~
- ~~(q) non-compliance with these conditions by a photographer or media organisation may result in the suspension or withdrawal of accreditation.~~

Sound and audio-visual broadcast and rebroadcast of proceedings and still photography of committee proceedings

4. That this House authorises the following as standard committee practice, unless resolved otherwise by a committee:
 - (a) the filming and broadcasting and still photography of its public proceedings by accredited members of the parliamentary press gallery,
 - (b) the filming and broadcasting and still photography of its public proceedings by a person or organisation not an accredited member of the parliamentary press gallery on an undertaking by the person or organisation, in writing, to comply with the terms and conditions set out in this resolution and any other terms and conditions determined by the committee,
 - (c) the broadcast and rebroadcast of its public proceedings on the Legislative Council and Parliament's social media channels,**
 - ~~(e) authorise the broadcast and rebroadcast of its public proceedings in the Legislative Council chamber on the terms and conditions set out in paragraph 2;~~
 - (d) the authority to give instructions for the observance of terms and conditions determined not inconsistent with this resolution, and
 - (e) the authority to order that part of its proceedings not be recorded or broadcast.
- ~~5. That if a committee authorises the filming or broadcast or still photography of proceedings, a witness who is to appear before the committee in those proceedings must be given a reasonable opportunity, before appearing in the proceedings, to object to the broadcasting or televising of proceedings. The witness may state the grounds of the objection. The committee must consider an objection having regard to the protection of the witness and the public interest in the proceedings. If the committee decides to permit the broadcast or rebroadcast of proceedings despite an objection of a witness, the witness must be informed before appearing in the proceedings of the committee.~~

Details of organisations and terms and conditions

- ~~6. That the President is to report to the House:~~
- ~~(a) details of the persons and organisations authorised from time to time to receive the sound and audio-visual broadcast, and~~
 - ~~(b) details of additional terms and conditions determined under this resolution.~~

Compliance

5. That:
- (a) access to proceedings for the purpose of recording and still photography is provided on the basis that the terms and conditions set out in this resolution are complied with,
 - (b) the instructions of the President or delegated representatives, must be observed at all times, and
 - (c) non-compliance with the terms and conditions of this resolution, and the instructions of the President or delegated representatives, may result in the suspension or withdrawal of accreditation.

Continuing effect

6. That this resolution is of continuing effect until amended or rescinded.

Appendix 2 Conditions of access to the webcast of House and committee proceedings

Conditions of Access

Broadcasts of proceedings of the Legislative Council, including broadcasts of its committees, are made available to provide greater community access to the Legislative Council.

Copyright of the broadcast material belongs to the Parliament of New South Wales and no unauthorised use may be made of that material.

The Legislative Council makes the broadcast available on the following conditions.

The material shall not be used for:

- i. political party advertising
- ii. election campaigns
- iii. satire or ridicule, or
- iv. commercial sponsorship or commercial advertising.

The television broadcasts are continuous and while in that complete and unaltered state are protected by parliamentary privilege.

Extracts or excerpts of the broadcast are protected if they constitute fair and accurate reports of proceedings.

The Parliament of New South Wales is not liable for any loss or damage arising from use of the material or from delays or interruptions to the service.

Appendix 3 Conditions of Access – Parliament on Demand

Conditions of Access

This broadcast of proceedings of a committee of the Parliament of New South Wales is made available to provide greater community access to proceedings of the NSW Parliament.

Copyright of the broadcast material belongs to the NSW Parliament and no unauthorised use may be made of that material.

The material shall not be used for:

1. Political party advertising;
2. Election campaigns;
3. Satire or ridicule; or
4. Commercial sponsorship or commercial advertising.

The broadcast is a complete recording of proceedings and while that complete and unaltered state is protected by parliament privilege, extracts or excerpts of the broadcast are protected if they constitute fair and accurate reports of proceedings.

The Parliament of NSW is not liable for loss or damage arising from the user of the material or from the delays or interruptions in service.

Appendix 4 Procedural Fairness for Inquiry Participants⁹⁰

1. That the House adopts the following procedures to provide procedural fairness for inquiry participants:
 1. **Inviting and summoning witnesses**
A witness will be invited to give evidence at a hearing unless the committee decides that a summons is warranted.
 2. **Information for witnesses**
A witness will normally be given reasonable notice of their hearing and will be provided with the inquiry terms of reference, a list of committee members and a copy of these procedures.
 3. **Opportunity to make a submission before a hearing**
A witness will normally be given the opportunity to make a submission before their hearing.
 4. **Opportunity to request a private (in camera) hearing**
A witness may request, before or during their hearing, that some or all of their evidence be heard in private (in camera). The committee will consider this request and if it declines, will advise the witness of the reasons why.
 5. **Publication of evidence taken in private (in camera)**
Prior to their private (in camera) hearing, a witness will be informed that the committee and the Legislative Council have the power to publish some or all of the evidence given. If the committee intends to publish, it will normally consult the witness, advise them of the outcome, and give reasonable notice of when the evidence will be published.
 6. **Attendance with a legal adviser**
With the prior agreement of the committee, a witness may be accompanied by and have reasonable opportunity to consult a legal adviser during their hearing. The legal adviser cannot participate in the hearing and will not be sworn in or give evidence, unless the committee decides otherwise.
 7. **Attendance with a support person**
With the prior agreement of the committee, a witness may be accompanied at their hearing by a support person. The support person will not be sworn in or give evidence, unless the committee decides otherwise.
 8. **Witnesses to be sworn**
At the start of their hearing a witness will, unless the committee decides otherwise, take an oath or affirmation to tell the truth, and the provisions of the Parliamentary Evidence Act 1901 will then apply.

⁹⁰ The Procedural Fairness for Inquiry Participants Resolution.

9. **Chair to ensure relevance of questions**

A committee chair will ensure that all questions put to witnesses are relevant to the inquiry.

10. **Questions to public officials**

Public officials will not be asked to give opinions on matters of policy, and will be given reasonable opportunity to refer questions to more senior officials or to a minister.

11. **Questions on notice**

A witness may request to take a question on notice and provide the answer in writing at a later date to be determined by the committee.

12. **Objections to answering questions**

Where a witness objects to answering a question, they will be invited to state the grounds for their objection. If a member seeks to press the question, the committee will consider whether to insist on an answer, having regard to the grounds for the objection, the relevance of the question to the inquiry terms of reference, and the necessity to the inquiry of the information sought. If the committee decides that it requires an answer, it will inform the witness of the reasons why and may consider allowing the witness to answer the question on notice or in private (in camera).

Witness appearing by invitation

- (a) If a witness who appears by invitation continues to refuse to answer the question, the committee may consider summoning the witness to reappear later, and will advise the witness that as they will be under oath and so subject to section 11 of the Parliamentary Evidence Act 1901, they may be compelled to answer the question.

Witness appearing under summons

- (b) The continued refusal by a witness, having been summoned, to answer the question while under oath, may constitute a contempt of parliament under the Parliamentary Evidence Act 1901, and the committee may report the matter to the Legislative Council.

13. **Evidence that may seriously damage the reputation of a third party**

Evidence about to be given

- (a) Where a committee anticipates that evidence about to be given may seriously damage the reputation of a person or body, the committee may consider hearing the evidence in private (in camera).

Evidence that has been given

- (b) Where a witness gives evidence in public that may seriously damage the reputation of a person or body, the committee may consider keeping some or all of the evidence confidential.

Opportunity to respond

- (c) Where a witness gives evidence that may seriously damage the reputation of a person or body, the committee may give the person or body reasonable access to the evidence, and the opportunity to respond in writing or at a hearing.

14. **Evidence that places a person at risk of serious harm**
Where a witness gives evidence that places a person at risk of serious harm, the committee will immediately consider expunging the information from the transcript of evidence.
 15. **Tendering documents**
A witness may tender documents during their hearing. The committee will decide whether to accept and to publish such documents.
 16. **Inviting and ordering the production of documents**
A witness will be invited to produce documents unless the committee decides that an order to produce the documents is warranted.
 17. **Requests for confidentiality**
A person or body may request that documents provided to a committee be kept confidential in part or in full. The committee will consider the request and if it declines, will advise the person or body of the reasons why, and give reasonable notice of when the documents will be published.
 18. **Transcripts**
A witness will be given the opportunity to correct transcription errors in their transcript of evidence. Amendments to or clarifications of evidence may be requested in writing.
 19. **Treatment of witnesses**
Witnesses will be treated with courtesy at all times.
 20. **Improper treatment of inquiry participants**
Where a committee has reason to believe that a person has been improperly influenced in respect of the evidence they may give to a committee, or has been penalised, injured or threatened in respect of evidence given, the committee will take all reasonable steps to ascertain the facts of the matter. If the committee is satisfied that such action may have occurred, the committee may report the matter to the Legislative Council.
 21. **Inquiry participants before the Privileges Committee**
Where the Privileges Committee inquires into a matter which may involve an allegation of contempt, the committee may adopt additional procedures as it sees fit in order to ensure procedural fairness and the protection of inquiry participants.
2. That this resolution have continuing effect until amended or rescinded.

Appendix 5 Media guidelines for committee hearings



LEGISLATIVE COUNCIL

MEDIA GUIDELINES BROADCAST OF PROCEEDINGS

The broadcast of public hearings is subject to guidelines set down by the Legislative Council known as the 'Broadcasting Resolution'. The main points are:

- The Broadcasting Resolution regulates all forms of media – the sound and audio-visual broadcast and webcast of proceedings as well as still photography.
- Only members of the Committee and the witnesses at the table may be filmed, recorded or photographed. People in the public galleries should not be the primary focus of any filming or photography.
- Filming, recording or photography should not interfere with Committee proceedings.
- Cameras should not be used to inspect or photograph Members' documents or computer screens.
- Broadcasts and photography must only be used for the purposes of fair and accurate reports of proceedings and should not be used for satire or ridicule. Broadcast excerpts must be placed in context and photographs must not be digitally altered.
- Persons reporting the proceedings of a Committee must take responsibility for what is published or what interpretation is placed on anything that is said before the Committee.
- The use of flash photography is not permitted.
- A Committee may order that part of its proceedings not be recorded or broadcast.
- The Committee may require a person or organisation who is not an accredited member of the Parliamentary Press Gallery to sign an undertaking to abide by the terms and conditions of the Broadcasting Resolution.

A full copy of the Broadcasting Resolution is attached.

The use of any material filmed, recorded or photographed during Committee proceedings which does not meet the requirements of the Broadcasting Resolution is entirely without the Committee's authorisation.

Signature

Name (Printed)

Phone number

Organisation and role

Date:

Appendix 6 Minutes

Minutes No. 1

Thursday 20 June 2019

President's Dining Room, 2.00 pm

1. Members present

Mr Ajaka (*Chair*)

Mr Borsak

Mr Harwin

Ms Hurst

Mr Khan

Mr Mallard

Mrs Mitchell

Mr Moselmane

Revd Mr Nile (from 2.13 pm)

Mr Searle

Mr Secord

2. Apologies

Ms Faehrmann

Mrs Maclaren-Jones

3. Correspondence

Resolved, on the motion of Mr Searle: That the committee note the following items of correspondence:

Received:

- Letter from the Premier to the President requesting that the Procedure Committee inquire into measures to modernise and improve the function and efficiency of the Legislative Council
- Letter from The Hon Taylor Martin MLC to the President requesting that the Procedure Committee inquire into the broadcast of proceedings resolution of continuing effect
- Letter from Ms Cate Faehrmann MLC to the President requesting that the Procedure Committee inquire into the broadcast of proceedings resolution of continuing effect.

4. Letter from the Premier

Resolved, on the motion of Mr Borsak: That the President write to the Premier:

- (a) indicating that the Procedure Committee had discussed her letter,
- (b) forwarding a copy of the Legislative Council's sessional orders highlighting the changes on 8 May 2019 and noting that the Procedure Committee will monitor and evaluate the operation of the changes during the Spring sitting period, and
- (c) noting that the Procedure Committee would keep abreast of any reforms adopted by the Legislative Assembly and would consider these, or any other proposals that the Premier may have in mind.

5. Inquiry into the broadcast of proceedings resolution

Resolved, on the motion of Mr Mallard:

That the Procedure Committee inquire into and report on:

- (a) the broadcast of proceedings resolution of continuing effect, adopted on 18 October 2007, and
- (b) any other related matter.

Resolved, on the motion of Mr Moselmane:

1. That the committee secretariat prepare an issues paper on the topic of broadcasting for discussion at the next meeting of the committee.
2. That the Chair write to all members of the Legislative Council and other relevant parties seeking submissions on the inquiry terms of reference.
3. That the Chair write to all Legislative Council committee chairs advising that the Procedure Committee has adopted terms of reference for an inquiry into the broadcast of proceedings resolution and that until such time that a new resolution is adopted, members must continue to adhere to the current resolution.

6. Other business

Mr Khan raised the consistency in the application of procedural rules for Legislative Council committees.

7. Adjournment

The Committee adjourned at 2.16 pm *sine die*.

David Blunt

Clerk to the Committee

Minutes No. 2

Wednesday 18 September 2019

President's Dining Room, 2.00 pm

1. Members present

Mr Ajaka (Chair)
 Mr Borsak
 Mr Buttigieg
 Ms Faehrmann
 Mr Harwin
 Ms Hurst
 Mrs Maclaren-Jones (from 2.09 pm)
 Mrs Mitchell
 Mr Moselmane
 Mr Searle
 Ms Sharpe

2. Draft minutes

Resolved, on the motion of Mr Searle: That draft minutes no. 1 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Sent:

- 28 June 2019 – Letters from the President to Chairs of Legislative Council Committees advising that committee members should adhere to the current broadcasting resolution.
- 28 June 2019 – Letter from the President to the Premier responding to the Premier's letter requesting that the Procedure Committee inquire into measures to modernise and improve the functions and efficiency of the Legislative Council.

- 24 July 2019 – Letter from the President to Hon Justin Field, Chair of Select Committee on the Proposal to Raise the Warragamba Dam Wall, advising that committee members should adhere to the current broadcasting resolution.

4. Conduct of committee proceedings

Resolved, on the motion of Mrs Mitchell: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

Submissions to inquiries are to be published, subject to the committee clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

Media statements on behalf of the committee be made only by the Chair.

5. Broadcast of proceedings resolution inquiry

5.1 Issues paper

The committee considered the issues paper prepared by the secretariat.

5.2 Submissions

Resolved, on the motion of Mr Searle: That the committee publish submission nos 1-7.

6. Consultation on highly contentious bills inquiry

The Chair tabled the terms of reference for the inquiry referred by the House on 20 June 2019.

The committee considered the reference and conduct of the inquiry.

Resolved, on the motion of Mrs Mitchell:

That:

1. The committee secretariat prepare an issues paper on the topic of consultation on highly contentious bills for discussion at the next meeting of the committee.
2. The secretariat email members with a list of stakeholders to be invited to make written submissions, and that members have two days from the email being circulated to nominate additional stakeholders.
3. The closing date for submissions be 8 November 2019.

7. Adjournment

The Committee adjourned at 2.11 pm, *sine die*.

David Blunt

Committee Clerk

Minutes No. 3

Wednesday 17 June 2020

Preston Stanley Room, 1.42 pm

1. Members present

Mr Ajaka (Chair)

Mr Borsak

Mr Buttigieg

Ms Faehrmann

Ms Hurst

Mr Khan

Mr Latham (participating)
 Mrs Maclaren-Jones
 Mr Mallard
 Mrs Mitchell
 Mr Roberts
 Mr Searle
 Ms Sharpe
 Mr Tudehope

2. Draft minutes

Resolved, on the motion of Mr Searle: That draft minutes no. 2 be confirmed.

3. Correspondence

Resolved, on the motion of Mr Searle: That the committee note the following items of correspondence:

Received:

- 14 October 2019 – Email from Mr Richard Pye , Clerk of the Senate to the Secretariat, advising that the Department of the Senate will not be making a submission to the Consultation on highly contentious bills inquiry.
- 15 October 2019 - Email from Ms Lori Gray, Assistant Private Secretary, The Scottish Parliament to the Secretariat, advising that the Scottish Parliament will not be making a submission to the Consultation on highly contentious bills inquiry.

4. Inquiry into ePetitions

The Chair tabled the terms of reference for the inquiry referred by the House on 24 March 2020. The Chair also tabled a briefing paper prepared by the Secretariat in relation to the ePetitions system being developed by the Legislative Assembly.

5. Inquiry into the broadcast of proceedings resolution

The committee noted that the report on the inquiry into the Broadcast of Proceedings is currently being drafted.

6. Inquiry into consultation on highly contentious bills

Resolved, on the motion of Mr Mallard: That the committee publish submission no. 1.

7. Inquiry into committee access to external experts

Resolved, on the motion of Mrs Maclaren-Jones: That the committee publish submission nos 1-12.

8. Consideration of Chair's draft report on inquiries into consultation on highly contentious bills and committee access to external experts

Consideration of the draft report was deferred until the next meeting.

9. Other business

Consideration of the draft report having been deferred, and given the time available, the President enquired with members whether there were any other matters they wished to raise. No matters being raised, the President invited the Clerk to provide an update to members on work being undertaken in the Legislative Council Procedure Office in relation to orders for the production of documents under SO52. The Clerk therefore advised members that the Procedure Office is currently:

- Finalising a set of drafting guidelines and an agenda for a workshop for members and their staff, along the lines of previous procedural workshops conducted in 2019, and with a view to identifying the sorts of information required by the Procedure Office in order to be able to assist members to appropriately target their SO52 motions.

- Finalising specifications for the development of a system that could facilitate electronic returns to orders for papers.

Discussion ensued. Mr Searle raised the proposal put forward by the Independent Legal Arbitrator for a round table in relation to the arbitrator process.

The President proposed that the Clerk prepare a briefing paper for members of the Committee to be tabled for the information of members at the next meeting.

10. **Adjournment**

The Committee adjourned at 2.16 pm until Wednesday 5 August at 1.30 pm.

David Blunt

Clerk to the Committee

Minutes No. 4

Thursday 3 September 2020

Preston Stanley Room, 10.04 am

1. **Members present**

Mr Ajaka (Chair)

Mr Borsak

Mr Buttigieg (from 10.06 am)

Mr Harwin

Ms Hurst

Mr Khan

Mrs Maclaren-Jones

Mr Mallard

Mrs Mitchell

Mr Roberts

Mr Searle

Ms Sharpe

Mr Shoebridge (substituting for Ms Faehrmann)

Mr Tudehope

2. **Substitutions**

Mr Shoebridge substituted for Ms Faehrmann.

3. **Draft minutes**

Resolved, on the motion of Mr Roberts: That draft minutes no. 3 be confirmed.

4. **Correspondence**

Resolved, on the motion of Mr Searle: That the committee note the following items of correspondence:

Received:

- 8 January 2020 – Email from Mr Percy Allan, Chair, Steering Committee, Evidence Based Policy Research Project, providing a further late submission to the inquiry.
- 8 July 2020 – Email from Mr Percy Allan, Chair, Steering Committee, Evidence Based Policy Research Project, clarifying that the Evidence Based Policy Research Project is separate from the newDemocracy Foundation and subsequent emails.
- 21 July 2020 – Email from Mr Percy Allan, Chair, Steering Committee, Evidence Based Policy Research Project, providing a further late submission to the inquiry.

- 18 August 2020 - Email from Mr Percy Allan, Chair, Steering Committee, Evidence Based Policy Research Project, providing a further late submission to the inquiry.

5. Consideration of Chair's draft report on inquiries into consultation on highly contentious bills and committee access to external experts

The Chair submitted his draft report which, having been circulated, was taken as being read.

The committee considered the report as a whole.

Resolved, on the motion of Mr Shoebridge: That the following paragraphs be inserted after 3.5:

3.6 The committee has reviewed the proposal from Professor Allan for a statement of public interest and sees some utility in the suggestion. The committee suggests that the Government consider the proposal to table a statement of public interest with each bill introduced. The committee will then review the standing orders in light of the Government's response to this report.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.45 be amended to read:

1.45 The model involves the recruitment of three additional senior research staff and the establishment of a panel of subject matter experts. The panel would be administered by the Parliamentary Library Research Services and accessed on an as needs basis.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.46 be amended to read:

1.46 The model estimates the cost of a subject matter expert, for a committee inquiry at \$40,000 and also assumes the allocation of one FTE Research Service officer to prepare an Issues Paper for each inquiry. On that basis, the estimated cost of providing research for four bill inquiries in a year is \$613,370.00, and the cost for seven bill inquiries is \$876,244.00.

Resolved, on the motion of Mr Shoebridge, that paragraph 3.14 be amended to read:

3.14 Based on the allocation of both a subject matter expert, and one FTE Research Service staffer to prepare an Issues Paper for each inquiry, the table below estimates costs for four inquiries in a year and seven inquiries in a year:

Resolved, on the motion of Mr Shoebridge, that paragraph 3.15 be amended to read:

3.15 On the other hand, the NSW Parliamentary Library Research Service submission to the inquiry into committee access to external experts provides a proposal for the establishment of an expert panel and additional resources for the Research Service to establish and administer the panel only.

Resolved, on the motion of Mr Searle, that paragraph 1.26 be amended to read:

1.26 Over the last 20 year period between three and 17 private members' bills have been introduced in the Council each year, with an increasing number in recent Parliaments. However, it is rare that the House has supported private members' bills, with the vast majority being defeated at the second reading stage, 47 passing the Legislative Council but not the Legislative Assembly, 47 passing the Legislative Council but not the Legislative Assembly, and only 20 proceeding through both Houses during that period.

Resolved, on the motion of Mr Buttigieg: That the draft report, as amended, be the report of the committee and the committee present the report to the House.

That the report be tabled on 15 September 2020.

That the submissions, minutes of proceedings and correspondence relating to the inquiry be tabled in the House with the report.

6. Inquiry into ePetitions

The Chair tabled a briefing paper prepared by the Secretariat in relation to the ePetitions system being developed by the Legislative Assembly.

Resolved, on the motion of Mr Shoebridge: That the Clerk continue to work with IT to develop an ePetitions system for the Council based on the current Legislative Assembly system.

Resolved, on the motion of Mr Shoebridge: That the Secretariat draft a report for consideration by the committee including:

- the rules and processes adopted by the LA
- any feedback from the LA on the operation of the ePetitions system
- any variations recommended or required based on current practices and procedures in the Council
- a sessional order for the implementation of ePetitions in the Legislative Council.

7. Briefing paper on orders for papers issues

The Chair tabled a briefing paper prepared by the Secretariat in relation to orders for papers. The committee noted that the briefing paper will be included as an agenda item at the next meeting.

8. Inquiry into the broadcast of proceedings resolution

The committee noted that the draft report on the inquiry into the Broadcast of Proceedings will be circulated prior to the next meeting.

9. Adjournment

The Committee adjourned at 11.07 am, sine die.

David Blunt

Clerk to the Committee

Minutes No. 6

Wednesday 23 June 2021

Jubilee Room, 1.35 pm

1. Members

Mr Mason-Cox (Chair)

Mr Borsak

Mr Buttigieg

Ms Fachrmann

Mr Harwin

Ms Hurst

Mr Mallard

Mrs Mitchell

Revd Mr Nile

Mr Roberts

Ms Sharpe

Mr Tudehope

2. Apologies

Mr Khan, Mr Tudehope

3. Draft minutes

Resolved, on the motion of Ms Sharpe: That draft minutes no. 5 be confirmed.

4. Outstanding matters before the committee

The Clerk, at the invitation of the Chair, updated the committee on outstanding matters before the committee.

Inquiry into broadcasting resolution

The committee agreed that a draft report be prepared and updated once sufficient time had passed for the new video-on-demand service and other technical developments to have been tried and any issues resolved.

Inquiry into the impact of the sessional order varying the scheduling of business and sitting days

The committee agreed that rather than a separate report the changes to the scheduling of business should be incorporated into the committee review of the standing and sessional orders.

Consultation on highly contentious bills

The committee noted that the House had resolved, on 20 June 2019, that, until the end of 2020, the newDemocracy Foundation be commissioned to facilitate community participation, such as a citizens panel or jury, in committee inquiries into highly contentious bills, and for the Procedure Committee to report on the trial. The committee further noted that in relation to the only bill referred to a committee during the trial period, and following extensive consideration and negotiations between the Foundation and the relevant committee, newDemocracy were not commissioned to facilitate community participation.

The Chair advised that a draft report would be prepared for the committee's consideration.

The Committee agreed that the issue could be further considered during the review of the standing and sessional orders.

5. **Inquiry into the standing and sessional orders**

The Chair tabled the resolution of the House of Wednesday 9 June 2021 referring the matter to the committee:

- (1) That the Procedure Committee inquire into and report on:
 - (a) whether the current sessional orders should be adopted as standing orders,
 - (b) whether any current standing orders require amendment, and
 - (c) whether any additional standing orders should be adopted.
- (2) That the committee propose a draft revised set of standing orders for consideration by the House.
- (3) That the committee report by the first day of the second sitting week of 2022.
- (4) That, in the event that the Procedure Committee fails to report by the due date, the President be authorised to table a draft revised set of standing orders for consideration by the House and subsequent approval by the Governor.

The committee noted the resolution of the House this day: That the resolution appointing the Procedure Committee be amended by inserting after paragraph (4):

- (1) That the committee have the power to appoint sub-committees.
- (2) That, notwithstanding anything to contrary in the resolution appointing the committee, Mr Searle be appointed as a member of the Procedure Committee in place of Ms Sharpe for the purposes of the committee's review of the standing and sessional orders.

Resolved on the motion of Mr Graham: That the members of the sub-committee for the inquiry into the standing and sessional orders be the Chair, Mr Borsak, Mr Roberts, Mr Searle, two additional Government members and one additional cross bench member.

Resolved on motion of Ms Mitchell: That the secretariat be authorised to prepare an issues paper, in the form of annotations to the current standing and sessional orders, for consideration by the sub-committee and report to the committee.

5. Other business

Mrs Mitchell noted that a member had filmed in her office without her consent. The Committee agreed that filming on members' floors and in offices be a matter for future discussion.

Meeting adjourned at 2.07pm

6. Next meeting

To be advised.

The Hon Matthew Mason-Cox MLC
President (Chair)

Minutes No. 8

Thursday 9 June 2022

Jubilee Room, 1.40 pm

1. Members

Mr Mason-Cox (Chair)

Mr Borsak

Mr Buttigieg

Mr Fang

Ms Boyd (substitute member for Auslan inquiry) (Ms Faehrmann left 1.43 pm)

Mr Farlow

Mr Graham

Ms Hurst

Mrs Mitchell

Revd Mr Nile

Mr Roberts

Mr Tudehope

2. Apologies

Ms Sharpe, Mrs Maclaren-Jones

3. Draft minutes

Resolved, on the motion of Mr Fang: That draft minutes no. 7 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 3 March 2022 – Email from Jacob Miller, Policy and Media Advisor, Office of Cate Faehrmann advising that Ms Boyd will substitute for Ms Faehrmann on the inquiry into Auslan interpretation for broadcasting (*attached*).

5. Inquiry into Auslan interpretation for broadcasting

The Chair noted that the terms of reference for this inquiry were tabled at the committee's last meeting on 28 March 2022. The committee considered the timeframe and conduct of this inquiry.

Ms Boyd tabled a list of suggested inquiry stakeholders.

Resolved, on the motion of Ms Boyd that the committee write to the Library Research Service to request an issues paper on the use of Auslan interpretation for broadcasting by other parliaments.

Resolved, on the motion of Mr Farlow: That the secretariat email members with a list of stakeholders to be invited to make written submissions (including those identified by Ms Boyd), and that members have two days from the email being circulated to nominate additional stakeholders.

Resolved, on motion of Mr Fang: That the closing date for submissions be 5 August 2022.

Resolved, on the motion of Mrs Mitchell: That the committee report by November 2022.

6. Inquiry into the operation of standing order 52

The Chair tabled the terms of reference for the inquiry received from the House on 7 June 2022. The committee considered the conduct of an inquiry.

The President indicated that a potential outcome of the inquiry could be that he issue a practice note with respect to the operation of certain procedures and processes under standing order 52.

The Clerk updated the committee on the e-returns project noting that the Department of the Legislative Council and the Department of Premier and Cabinet were working through various issues, including how members would access privileged returns electronically. Discussion ensued with Ms Boyd and Mr Buttigieg noting that there are programs that allow for the confidential viewing of electronic documents that cannot be reproduced.

Resolved, on the motion of Mr Graham: That:

1. The secretariat contact the following stakeholders to invite them make submissions:
 - The Independent Legal Arbitrator, the Honourable Keith Mason AC QC.
 - Mr John Evans PSM, former Clerk of the Parliaments and Clerk of the Legislative Council, and current Parliamentary Ethics Adviser.
 - Ms Kate Boyd, Deputy Secretary, General Counsel, NSW Department Premier and Cabinet
 - All members of the Legislative Council.
2. That members have two days from this meeting to nominate additional stakeholders.

Resolved, on the motion of Mr Graham: That: the closing date for submissions be 5 August 2022.

7. Live captioning of House and committee proceedings

The Chair noted that a live captioning service for committee and chamber proceedings is due to be launched very shortly with the House most likely go live on 21 June 2022.

The Chair circulated a draft amendment to the resolution of continuing effect authorising the broadcast of proceedings to allow live captioning of the chamber broadcast.

The Clerk updated the committee on communications with the Legislative Assembly regarding the implementation of live captioning.

Resolved, on the motion of Mr Roberts: That the committee support the draft amendment to the resolution of continuing effect authorising the broadcast of proceedings to authorise live captioning of the chamber broadcast being taken to the House.

8. Inquiry into the Broadcast of proceedings resolution

The Clerk updated that committee on the status of inquiry draft report. The Clerk noted that a draft report had been ready for circulation back in 2020 but was not proceeded with because of COVID and the various changes adopted by the House and committees to continue operating during the pandemic, for example hybrid House sittings and virtual committee hearings.

The Clerk advised that the report was being updated to reflect the developments over the past two years and would likely be ready for the committee's consideration in August.

9. Other business

The Chair updated the committee on the status of the Inquiry into the impact of the sessional order variations to the scheduling of business and sitting days. The Chair noted that the inquiry has largely been taken over by the Review of the Standing and Sessional Orders. However, as a report is still required it will be bundled together with the report on the further review of how the proposed standing orders have operated. The Chair noted that there is precedent of two references to the Procedure Committee being dealt with in the one report.

10. Next meeting

Sine die.

The Hon Matthew Mason-Cox MLC

President (Chair)

Draft Minutes No. 9

Thursday 21 September 2022

Jubilee Room, 1.34 pm

1. Members

Mr Mason-Cox (Chair)
Mr Buttigieg
Mr Fang
Ms Boyd (substitute member for Auslan inquiry)
Mr Farlow
Mr Graham (left at 2.05 pm)
Ms Hurst
Mrs Mitchell
Revd Mr Nile
Mr Roberts
Mr Tudehope (left at 2.05 pm)

2. Apologies

Ms Fachrmann, Mr Borsak

3. Draft minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 8 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 14 October 2021 – Correspondence from Mr Dave Layzell, Chair of the Legislation Review Committee, to the President and Chair of the Legislative Council Procedure Committee in relation to the Report No. 1/56 of the Legislation Review Committee - Inquiry into the operation of the Legislation Review Act 1987 and its recommendation that the Houses give consideration to amending their respective standing orders to require a member with carriage of a bill to address any matters identified by the Legislation Review Committee during debate on a bill (attached).

- 15 June 2022 – Correspondence from Mr George Roins, General Counsel and Company Secretary, Transport Asset Holding Entity of New South Wales in relation to concerns regarding production of documents subject to privilege without consultation (attached).
- 4 August 2022 – Correspondence from Mr David Blunt, Clerk of the Parliaments, concerning the committee's inquiry into standing order 52 and in relation to electronic returns to orders (previously circulated and attached).

Resolved, on the motion of Revd Nile:

- That the Committee note correspondence item no. 1.
- That the Committee consider correspondence item nos 2 and 3 in the context of the Inquiry into standing order 52.

5. Inquiry into the broadcast resolution

Chair's draft report was circulated with the meeting papers.

6. Consideration of Chair's draft report on the Inquiry into the broadcast resolution

The Chair submitted his draft report which, having been circulated, was taken as being read.

The committee considered the report as a whole.

Resolved, on the motion of Mr Graham: That the third dot point of amendment no. 1 be amended to read:

- allow accredited press gallery photographers to photograph all proceedings in the Legislative Council while in session, subject to notifying the President beforehand who will in turn advise the House.

Resolved, on the motion of Mr Graham: That the third dot point of recommendation 3 be omitted:

- individuals other than accredited media may not make video or audio recording of proceedings, except by express permission of the committee

Resolved, on the motion of Mr Graham: That paragraph 3.31 be omitted: "These relaxed rules should be trialled for the remainder of the 57th Parliament and in 2023 with a review on the operation of the rules undertaken at the start of 2024" and the following new paragraph and recommendation be inserted instead:

The committee notes the increasingly common practice of Legislative Council committees to authorise the filming, broadcasting and still photography of its public proceedings by accredited members of the parliamentary press gallery and by persons or organisations not accredited as members of the parliamentary press gallery (subject to the terms and conditions of the Broadcast of Proceedings Resolution, and other terms and conditions determined by the committee). It is therefore recommended that the Broadcast of Proceedings Resolution be amended, as set out in Appendix 1, to make it this the default for committees, unless resolved otherwise.

'Recommendation X: That the Broadcast of Proceedings Resolution be amended, as set out in paragraph 4 of Appendix 1, for committees to automatically authorise the filming, broadcasting and still photography of its public proceedings by accredited members of the parliamentary press gallery and by persons or organisations not accredited as members of the parliamentary press gallery, unless resolved otherwise.

Resolved, on the motion of Revd. Nile: That the:

- draft report, as amended, be the report of the committee and that the committee present the report to the House,
- committee secretariat correct any typographical, grammatical and formatting errors prior to tabling,

- (c) committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee., and
- (d) submissions, minutes of proceedings, discussion paper and correspondence relating to the inquiry be tabled in the House with the report.

7. **Inquiry into Auslan interpretation for broadcasting**

The committee noted the submissions received:

- 1 - *Mr Benjamin Cronshaw*
- 2 - *Legislative Assembly for the Australian Capital Territory*
- 3 - *Australian Deaf Elders Group*
- 4 - *Deaf Connect*
- 5 - *Deaf Australia*
- 6 - *Ms Darlene Thornton*
- 7 - *Ms Shirley Liu*
- 9 - *Clerk of the House of Representatives, New Zealand*
- 10 - *Dr Jessica Kirkness*
- 11 - *Centre for Culture and Technology, Curtin University*

Resolved on the motion of Ms Boyd: That the committee keep submission no. 8 from Miss April Joseph, confidential, as per the request of the author.

The committee noted the research paper prepared by the NSW Parliamentary Research Service as requested by the committee.

Resolved on the motion of Ms Boyd: That

- (1) That:
 - (a) a sub-committee be appointed for the inquiry into AUSLAN,
 - (b) the sub-committee be authorised to schedule hearings, contact witnesses and take evidence including in AUSLAN where necessary,
 - (c) the President be appointed as the Chair of the sub-committee,
 - (d) the sub-committee consist of one Government member, one Opposition member and one crossbench member, and
 - (e) a half-day hearing be held on Friday 14 October.
- (2) That the Procedure Committee table its report on its inquiry into AUSLAN by 10 November.

The Chairs advising that the following members had nominated for the sub-committee: Mr Mason-Cox, Ms Boyd, Mr Buttigieg and Mr Fang.

8. **Inquiry into the operation of standing order 52**

The committee noted the submission received:

- 1 - *Department of Premier and Cabinet*

The Committee noted correspondence from the Clerk concerning the committee's inquiry into standing order 52.

Resolved, on the motion of Revd Nile: That the Leader of the Government give a notice of motion to extend the reporting date of the inquiry to 10 November 2022.

7. **Inquiry into the trial of the new standing orders**

Resolved on the motion of Revd Nile:

- (1) That the reference from the House for the Committee to inquire into and report on the impact of the variations to the scheduling of business and sitting days be incorporated into the review of the standing and sessional orders.
- (2) That, as part of the review of changes to the standing orders, the committee review the operation of ePetitions, as recommended by Procedure Committee in its report on ePetitions, and recommend whether the provision should be adopted as standing orders.

8. Timeline for completion of current inquiries.

Resolved on the motion of Ms Sharpe: That the timeline circulated by the Chair and attached to the agenda for the completion of outstanding inquiries be adopted.

9. Inquiry into the trial of the new standing orders

Resolved on the motion of Revd Nile:

- (1) That the committee consult with members concerning the operation of the proposed new standing orders and report to the House, in accordance with the timeline proposed and circulated by the President, any corrections or changes required.
- (2) That the reference from the House for the Committee to inquire into and report on the impact of the variations to the scheduling of business and sitting days be incorporated into the review of the standing and sessional orders.
- (3) That, as part of the review of changes to the standing orders, the committee review the operation of ePetitions, as recommended by Procedure Committee in its report on ePetitions, and recommend whether the provision should be adopted as standing orders.

10. Next meeting

Sine die.

The Hon Matthew Mason-Cox MLC

President (Chair)

