

## INQUIRY INTO BROADCAST OF PROCEEDINGS RESOLUTION

**Organisation:** Information and Privacy Commission NSW

**Date Received:** 4 September 2019

---



information  
and privacy  
commission  
new south wales

Enquiries: Philip Tran  
Telephone: 1800 472 679  
**Our reference: IPC19/A000319**

The Director  
Procedure Committee  
Parliament House, Macquarie St  
Sydney NSW 2000

**Attention: The Director - Procedure Committee**  
**By email: [procedurecommittee@parliament.nsw.gov.au](mailto:procedurecommittee@parliament.nsw.gov.au)**

Dear Sir/Madam,

### **Inquiry into the broadcast of proceedings resolution**

The purpose of this correspondence is to provide a submission to the Inquiry into the broadcast of proceedings resolution. The following comments are provided for consideration by the Committee.

The following comments address issues of:

- The application of the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act), the *State Records Act 1998* (NSW) (SR Act) and the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act) to a House of Parliament;
- The impacts of the use of social media; and
- Updates to the Resolution to reflect technological advancement.

### **The application of the GIPA Act, the SR Act and PPIP Act to Parliament**

The Information Commissioner oversees information laws under the GIPA Act. The GIPA Act is concerned with 'government information held in a record by an agency'. 'Agency' is expressly defined as a Public Service agency, a Minister (including a person employed by a Minister), a public authority (which includes a State Owned Corporation), a public office established for a public purpose or on appointment of the Governor or Minister, a local council and a court. See clauses 2 and 3 of Schedule 4 of the GIPA Act which set out the meaning of 'public authorities' and 'public offices'.

The SR Act applies to records of public offices that the GIPA Act does not apply to, such as, the Cabinet and the Executive Council, the office of the Governor, a House of Parliament, a Royal Commission or a Commission of Inquiry. Accordingly under the GIPA Act formal, informal, proactive and authorised release of information will not apply to parliamentary proceedings. It is also noted that clause 4 of Schedule 1 of the GIPA Act conclusively presumes that there is an overriding public interest against disclosure of information the public disclosure of which would infringe the privilege of Parliament.

The Privacy Commissioner oversees privacy laws under the PPIPA Act and *Health Records and Information Privacy Act 2002* (NSW). Relevantly, the Information Protection Principles under the PPIP Act only apply to public sector agencies. A 'Public sector agency' is defined in section 3 and does not include a House of Parliament. Accordingly the PPIP Act will not apply to parliamentary proceedings.

'Public sector official' is defined in the PPIP Act as including, relevantly, 'a person who is an officer of the Legislative Council or Legislative Assembly or who is employed by (or who is under the control of) the President of the Legislative Council or the Speaker of the Legislative Assembly, or both'. Under the PPIP Act a 'public sector official' is subject to the offence provision in section 62 about corrupt conduct disclosure and use of personal information.

### **The impacts of the use of social media**

Social media has become ubiquitous in Australian society. According to the Australian Communications and Media Authority's *Communications Report 2017-18*, as of May 2018, 66 per cent of Australian adults had used social media in the last six months, 54 per cent had used social media and blogs to access news, and 17 per cent had used social media as their main source of accessing news.<sup>1</sup>

Public comment on parliamentary proceedings should be welcomed as part of the democratic process and the methods available for citizens to engage should evolve as technology and the way citizens engage with information evolves. Given the pervasiveness of social media, the broadcast of parliamentary proceedings on social media platforms would be a way of increasing citizens' participation into the democratic process.<sup>2</sup>

The use of social media to engage citizens in the democratic process needs to be considered against the risks of using that platform. Misuse of social media in this area would be contrary to the aims of democratic government. It is important to consider the terms and conditions of social media as they are relevant to information access and privacy governance. The *Privacy Act 1988* (Cth) is likely to apply to these platforms and application of that Act may be captured in the terms and conditions.

As 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.

Given the public nature of social posts there may be concerns over the release and sharing of personal information of users who like, comment, view or otherwise engage with a post of parliamentary proceedings. There would need to be consideration of how the social media platforms' algorithms will use the information that a user has engaged with a parliamentary proceedings post, and whether that would lead to the user being

---

<sup>1</sup> Australian Communications and Media Authority, *Communications Report 2017-18*, <https://acma.gov.au/-/media/Research-and-Analysis/Report/pdf/Communications-report-2017-18-pdf.pdf?la=en>, accessed 9:15 am 29 August 2019.

<sup>2</sup> See also Duffy and Foley, 'Social media, community engagement and perceptions of parliament: a case study from the NSW Legislative Council' (2011), *Australian Parliamentary Review*, Autumn 2011, Vol. 26(1), pages 198-206



targeted with other posts and/or advertising. This may be difficult to ascertain given the proprietary nature of those algorithms.

These issues are further compounded as 65 per cent of users do not normally read the privacy policy of any internet site.<sup>3</sup>

### **Updates to the Resolution to reflect technological advancement**

The IPC notes that the Resolution will need to be updated if broadcast of proceedings were to appear on social media. Currently, the Legislative Council has control over what is provided for recordings and broadcasts (clause 2(b)). To mitigate potential misuse of live or recorded broadcast of parliamentary proceedings, it is suggested that the Resolution be amended so that the Legislative Council retains these same controls over what is provided for broadcast on social media. This will need to be considered with the terms and conditions of the social media platform the parliamentary proceedings are broadcast on.

There would need to be amendment to the Resolution to expressly refer to how broadcasts and re-broadcasts on social media are to be handled. In its current form, the clauses governing the broadcast and rebroadcast of proceedings on television and radio (clause 2 (g), (h) and (i)) would not apply to broadcasts and rebroadcasts that would appear on social media platforms. Clause 2(k) would also need to be extended beyond "stations" and expressly refer social media platforms.

Visitors to the Parliament should also be advised of the rules surrounding broadcasting and photography of parliamentary proceedings.

The IPC is not aware of the experiences of other jurisdictions in this area however notes that the *Downloading and Sharing Terms and Conditions*<sup>4</sup> that apply to the downloading and sharing clips from parliamentlive.tv in the United Kingdom have express provisions dealing with the use of this information on social media.

If you have any questions regarding these comments, please contact Philip Tran, A/g Senior Project Officer on 1800 472 679 or by email at [philip.tran@ipc.nsw.gov.au](mailto:philip.tran@ipc.nsw.gov.au).

Yours sincerely

  
Elizabeth Tydd  
Information Commissioner

  
Samantha Gavel  
Privacy Commissioner

<sup>3</sup> Office of the Australian Information Commissioner, *Australian Community Attitudes to Privacy Survey 2017*, 14 May 2017

<sup>4</sup> <https://www.parliament.uk/site-information/copyright-parliament/pru-licence-agreements/downloading--sharing-terms--conditions/> accessed 8:30 am 30 August 2019

