

INQUIRY INTO BROADCAST OF PROCEEDINGS RESOLUTION

Organisation: Clerk of the House of Representatives and Clerk of the Senate,
Parliament of Australia

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The Director, Procedure Committee
by email: ProcedureCommittee@parliament.nsw.gov.au

Thank you for the opportunity to provide a submission to the committee's inquiry into the Legislative Council's broadcasting resolution.

The proceedings of our two Houses have been broadcast on radio by the ABC since 1946, as required by the Parliamentary Proceedings Broadcasting Act. Since November 1988 all radio networks have been permitted to broadcast recorded excerpts from proceedings, subject to rules determined by the Joint Committee on the Broadcasting of Parliamentary Proceedings (the Broadcasting Committee). Access to the official broadcast for televising has been permitted since 1990 for the Senate and 1991 for the House of Representatives.¹

The Parliament of Australia codified the rules relating to media activities, including all filming and photography, in 2012 (updated in November 2016) in the publication *Rules for Media Related Activities in Parliament House and its Precincts* (available [here](#)). The rules, drafted by the Broadcasting Committee, were authorised by the Presiding Officers and are issued under the authority of section 6 of the *Parliamentary Precincts Act 1988*. The rules are administered on the Presiding Officers' behalf by the Serjeant-at-Arms and the Usher of the Black Rod.

The rules are supported by complementary resolutions of both Houses in December 2013 which reflect the key tenets of the media rules; those resolutions are available [here](#) (House) and [here](#) (Senate). The resolutions also had the effect of removing for both Houses of Parliament the rule regarding the use of broadcast materials in satire or for ridicule. Trying to enforce this restriction in the past often led to further promotion of the offending image and invited ridicule. Enforcement actions now rely on the prohibition on digital manipulation of broadcast material and photographs of parliamentary proceedings.

We have addressed below the particular questions you posed in your email of 17 July 2019:

Some Legislative Council members are enquiring about posting images of parliamentary proceedings on social media platforms, such as Twitter and Instagram, and posting video on live streaming sites such as Facebook live. It is likely that any parliamentary proceedings posted on these social media platforms would be open to public comment.

¹ For further background see *House of Representatives Practice*, 7th ed, pp. 119-123 and *Odgers' Australian Senate Practice*, 14th ed, pp. 105-107.

The Procedure Committee would be interested in the experiences of other jurisdictions in this area, including any steps taken to address any privilege issues.

Footage of Parliament is commonly posted to social media platforms and open to public comment. In the absence of rules pertaining to satire or ridicule, issues of privilege are less common and would be difficult to enforce.²

Where a parliamentarian or a building occupant posts images to social media in breach of the media rules, the Serjeant-At-Arms and/or Usher of the Black Rod write to the individual and seek the post be removed. Instances of continued or particularly egregious breaches can result in sanctions being imposed. For instance, access to the building has been removed for members of the Press Gallery for serious breaches of the media rules.

While the Serjeant-at-Arms and the Usher of the Black Rod promote awareness of the media rules, and could write to individuals to draw their attention to the rules and request that offending items (on social media, for example) be removed, it would be practically very difficult to pursue a member of the public for breaches of the media rules. However, other remedies (such as defamation) could be sought by others through the court system for serious breaches.

It should be noted that the two Houses' 'Broadcasting of Proceedings' resolutions, and the media rules, allow only parliamentary staff (Hansard) to broadcast proceedings of the chambers. The media rules state that 'No audio or visual recording or live streaming via camera or other electronic device by other persons is permitted'. A broadcast quality feed of proceedings is provided via optic cable to the Press Gallery and is also live streamed on the Australian Parliament House (APH) website. Members of the public are not allowed to bring electronic devices into the chamber galleries, and only still photography is allowed by registered photographers in the chamber galleries reserved for members of the Press Gallery.

In practice it can be difficult to determine whether Press Gallery members who are not registered photographers are using mobile phones to take images or video of chamber proceedings. However, the availability of the live stream to the Press Gallery and via the website means that the Presiding Officers have not received requests to stream proceedings on other live streaming sites.

Both Houses permit their members to use electronic devices in the Chambers, provided use of such devices does not interfere with proceedings (phone calls are not permitted). This was clarified in the House of Representatives through a resolution adopted in 2015, available [here](#), and in the Senate through rulings by the President, most recently in February 2017.

² Senators and Members are covered by absolute privilege in respect of statements made in the Houses, whether broadcast or not; absolute privilege also attaches to those persons authorised by the *Parliamentary Proceedings Broadcasting Act 1946* to broadcast or rebroadcast proceedings. Section 10 of the *Parliamentary Privileges Act* provides qualified privilege for 'fair and accurate' reports of parliamentary proceedings as a defence in defamation proceedings. See *House of Representatives Practice*, pp. 122-123 and *Odgers' Australian Senate Practice*, pp. 106-107.

Devices are not to be used to record proceedings, either by audio or visual means. The House of Representatives resolution further states that:

- 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.

How to manage committee witness expectations, and will knowing that their evidence might be permanently accessible via social media platforms (which could be commented on or digitally altered) be a deterrent to participation? This question particularly applies to vulnerable witnesses.

Witnesses to parliamentary committees are advised that their evidence may be broadcast. The broadcasting resolutions of December 2013 afford the following opportunity to witnesses:

“Where a committee intends to permit the broadcasting of its proceedings, a witness who is to appear in those proceedings shall be given reasonable opportunity, before appearing in the proceedings, to object to the broadcasting of the proceedings and to state the ground of the objection. The committee shall consider any such objection, having regard to the proper protection of the witness and the public interest in the proceedings, and if the committee decides to permit broadcasting of the proceedings notwithstanding the witness’ objection, the witness shall be so informed before appearing in the proceedings.”

Vulnerable witnesses, at the discretion of the committee, may have their evidence taken in camera or in a private session of the committee.

More broadly, section 12 of the *Parliamentary Privileges Act 1987* sets out penalties for attempting to influence a person in respect of their evidence to be given to a parliamentary committee; or for inflicting any penalty or injury to a person on account of evidence given, or proposed to be given, to a committee.

What realistic safeguards and sanctions are available to parliaments to ensure that members of the public comply with the broadcasting rules?

Sanctions for members of the public who are not pass holders to the parliamentary precincts are realistically limited to protections available to any member of the public. Remedies of defamation may be available where footage has been manipulated or criminal charges in the most serious cases of online harassment. Breaches of copyright could be pursued in cases of the broadcast being used for commercial purposes. The theoretical possibility that improper use of broadcast material could be dealt with as a contempt is countered by the high statutory threshold for such a finding in section 4 of the *Parliamentary Privileges Act*.

The following notice is included with downloads and access of online broadcasts:

CONDITIONS OF DOWNLOAD

Conditions of Access

This broadcast of proceedings of the Commonwealth Parliament, including broadcasts of its committees, is made available to provide greater community access to the national legislature.

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

The Commonwealth Parliament makes the broadcast material available on the following condition :

- The material shall not be used for:
 - political party advertising or election campaigning
 - 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 Commonwealth Parliament is not liable for any loss or damage arising from use of the material or from delays or interruptions to the service.

ACCEPT

CANCEL

Incidents or reasons that have led to other jurisdictions updating or modernising their broadcasting rules and practices.

Proceedings of the Parliament have been available on webcast since 1999. Moving from a system of licenced broadcast streams to a webcast of proceedings changed the dynamics of the broadcast rules, which have become progressively less restrictive. The use of licenced broadcast streams enabled enforcement of the broadcast rules by sanctions to the broadcast agency. Conversely the 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. The change in the broadcast rules to remove the references to satire and ridicule was in part a reflection of this change in dynamic.

We hope these comments will assist the committee with its inquiry.

Yours sincerely

RICHARD PYE
Clerk of the Senate

CLARESSA SURTEES
Clerk of the House of Representatives