

INQUIRY INTO BROADCAST OF PROCEEDINGS RESOLUTION

Organisation: Office of the Clerk of the Legislative Council, Western Australia

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Hon John Ajaka MLC
Chair,
Legislative Council Procedure Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email to: ProcedureCommittee@parliament.nsw.gov.au

Dear Chair

Call for submissions: Broadcasting of proceedings resolution

Thank you for your invitation to provide a submission in relation to your Committee's inquiry into the broadcasting resolution. The Department of the Legislative Council (**the Department**) is pleased to provide this submission on the matters referred to in the terms of reference.

In May 2006 similar issues were considered by the Western Australian Legislative Council's Standing Committee on Procedure and Privileges and reported to the House.¹ At that time, the Committee was considering the role of emerging technologies in the modernisation of Parliament, and the possible legal consequences arising as a result of broadcasting its proceedings via the Internet. The Committee was particularly mindful of the implications for parliamentary privilege and defamation law given the 2002 decision of the High Court in the Gutnick case² and the introduction of the *Defamation Act 2005* (WA).

On 20 September 2006 the Legislative Council adopted the substantive recommendations of the report and agreed to the following resolution:

The Legislative Council authorises the broadcasting of the Legislative Council's proceedings as soon as reasonably practicable and requests that the facility:

- 1. ensure users have the option of selecting either audio and visual or audio only;*
- 2. contain a capturing system to enable users to know the subject matter currently being debated, its stage and the Member who is speaking;*
- 3. contain a service that automatically stores proceedings online as an archive, with the archived material accessible through an integrated, text-based search of the proceedings of the House for up to 14 sitting days.*

¹ Western Australia, Legislative Council, Standing Committee on Procedure and Privileges, Report 10, *The Internet Broadcasting of Proceedings of the Legislative Council Chamber*, (May 2006).

² *Dow Jones & Company Inc v Gutnick*. [2002] HCA 56.

The Legislative Council further authorises the Clerk to do all things reasonably necessary to implement the resolution.

The 2006 resolution of the House is still in effect and has not been reviewed since its adoption. In December 2015 the capacity to broadcast proceedings was extended to the committees' public hearings. Whether a public hearing is broadcast and/or streamed is at the discretion of the relevant committee.

To assist Members, staff, visitors to the Parliament and media organisations, the Department has produced and maintains a number of relevant guidelines relating to the broadcasting of its proceedings or use of parliamentary images. These guidelines (attached) include:

- Guidelines for Photography and Filming in the Legislative Council;
- Policy for Broadcasting Committee Hearings;
- Social Media Strategy;
- Conditions for Broadcasting;
- Guidelines for Camera Operators; and
- Guidelines for Access to Video Recordings of Parliamentary Program Material.

In response to your Committee's specific inquiries we provide the following information:

1. *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.*

In Western Australia Members of the Legislative Council maintain their own private and/or party authorised Facebook and Twitter accounts. With respect to those accounts, the maintenance/monitoring of material posted on those pages is a matter for the individual Member.

The *Guidelines for Photography and Filming in the Legislative Council* permit Members of the Council to take photographs of themselves for personal purposes and for use in electorate newsletters and in electronic (social) media so long as they comply with the conditions set out in the guidelines. If a Member publishes a photo or video of a proceeding it is likely that publication on Facebook or Twitter may attract public comments.

To date, there has not been any particular issue regarding the posting of parliamentary proceedings attracting adverse public commentary, however there has been one instance where an administrator of a public group on Facebook posted comments that implied a Member of the Council had given certain undertaking to the community which the Member refuted. Excerpts from those Facebook comments were subsequently used as evidence during a *Procedure and Privileges Committee* inquiry into a related matter of privilege³ (attached).

The Department maintains Facebook and Twitter pages on behalf of the Legislative Council. These social media accounts have been active since May 2010 and provide information regarding the business of the Council to interested members of the public. Generally this information focusses on

³ Western Australia, Legislative Council, Standing Committee on Procedure and Privileges, Report 52, *A matter of privilege raised by Hon Jim Chown MLC*, (September 2018).

the progress of legislation, activities of the President, and the activities of Council Committees. The Deputy Clerk and other nominated staff within the Department monitor the content posted on the sites and are occasionally required to remove posts and/or comments. On occasion, monitoring may also require that some commenters are barred from making further comments on the Council pages.

2. *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.*

The Council's committees have considered the possible deterrent to witness participation in public hearings where those hearings will be broadcast and streamed. The committees provide each potential witness with an information sheet prior to their attendance at a hearing. The information sheet provides an explanation of the protections afforded to witnesses by parliamentary privilege, and that witnesses may request that their evidence be taken in private.

Generally, it is recognised that these protections may not be readily understood by witnesses and they may apprehend their attendance before a committee. To allay any fears that a witness may have, committees have, on occasion, summonsed witnesses to attend a committee and give evidence in order to create the perception of 'compelled attendance', or have conducted hearings in private so that witness evidence is not broadcast.

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

The sanctions available to the Council are generally those available under the Council's standing orders and its contempt proceedings, subject to certain criteria. Realistically, however, the technological advances in internet broadcasting and streaming have made it difficult to safeguard against members of the public breaching the Council's guidelines or rules if they rebroadcast proceedings on a third party site.

At the broadcast archive page on the Parliament's website a disclaimer has been published advising that people wishing to rebroadcast any program material, including extracts or excerpts, should be aware that parliamentary privilege may not apply.

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

In 2017 a former journalist and news 'blogger' requested direct access to the WA Parliament's broadcasting unit in order to take a direct feed of the proceedings in each House and 'livestream' that feed directly on their site. This request prompted the Parliamentary Departments to review the broadcast access rights given to accredited media in WA and resulted in a few minor amendments to the policy definitions and the accreditation process.

If you have any further queries regarding the submission please contact Mr Grant Hitchcock, Advisory Officer (Procedure) on 9222 7891 or at email: ghitchcock@parliament.wa.gov.au.

Yours sincerely

Mr Nigel Pratt
Clerk of the Legislative Council