

**Submission
No 6**

BROADCASTING RESOLUTION FOR THE LEGISLATIVE ASSEMBLY

Organisation: Parliament of Australia

Date Received: 3 December 2020



2 December 2020

The Hon Jonathan O’Dea MP
Speaker of the NSW Legislative Assembly
by email: [REDACTED]

Dear Mr Speaker

Thank you for your letters inviting each of us to make a submission to the Standing Orders and Procedure Committee’s inquiry into a broadcasting resolution for the Legislative Assembly. Our joint submission follows.

The proceedings of the two Commonwealth Houses have been broadcast on radio by the ABC since 1946, as required by the *Parliamentary Proceedings Broadcasting Act 1946*. 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

Rules relating to media activities, including all filming and photography, were codified 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 two Houses’ Broadcasting of Proceedings resolutions, and the media rules, allow only parliamentary staff 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 to the Press Gallery and is also live streamed on the Parliament’s website. Members of the public are not allowed to bring electronic devices into the chamber galleries, and only still

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

photography is allowed by registered photographers in the chamber galleries reserved for members of the Press Gallery.

In relation to the issues raised in your letter of 16 October:

The scope of a broadcasting resolution

Our media rules are supported by complementary resolutions of both Houses made in December 2013 which reflect the key tenets of the rules; those resolutions are available [here](#) (House) and [here](#) (Senate).

Under the resolutions, each House has authorised the provision of sound and vision coverage of its proceedings, and the public proceedings of its committees, through the House Monitoring Service and the Parliament of Australia website.

Access to proceedings provided through the House Monitoring Service is subject to compliance with the following license conditions:

- only the following broadcast material shall be used:
 - sound and vision feed of the relevant House and its committees provided by the Parliament that is produced for broadcast, re-broadcast and archiving; and
 - official broadcast material supplied by authorised parliamentary staff.
- broadcast material shall be used only for the purposes of fair and accurate reports of proceedings, and shall not be used for: political party advertising or election campaigns; or commercial sponsorship or commercial advertising;
- reports of proceedings shall be such as to provide a balanced presentation of differing views;
- excerpts of proceedings which are subsequently withdrawn may be broadcast only if the withdrawal is also reported; and
- the instructions of the Presiding Officers or their delegates, which are not inconsistent with the provisions of the resolutions, shall be observed.

The resolutions also set out conditions applying to the broadcast of committee proceedings, and the ABC radio broadcast of the Houses.

The 2013 resolutions also had the effect of removing, for both Houses of Parliament, rules regarding the use of broadcast materials for satire or ridicule. On the one hand, those rules were considered somewhat archaic. In addition, trying to enforce this restriction in the past often led to further promotion of the offending image and itself invited ridicule.

Enforcement actions now rely principally on the prohibition on digital manipulation of broadcast material and photographs of parliamentary proceedings.

Defamation associated with comments made on social media, and guidelines for moderation

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; sanctions for individuals who are not pass holders to the parliamentary precincts are realistically limited to protections available to any member of the public.

While the Serjeant-at-Arms and 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 be removed, in practice the Presiding Officers' delegates do not play an active role in monitoring comments on parliamentary footage made on external social media sites. However, remedies including defamation action could be sought through the court system by others, including Members and Senators in a personal capacity.

Safeguards to ensure external parties comply with conditions for re-broadcasting material

Where a building occupant at Parliament House is deemed to have re-broadcast material in breach of the media rules (for example, through digital manipulation of the footage or use in political advertising) the Serjeant-at-Arms and/or Usher of the Black Rod will write to the individual and direct that the material be removed. Instances of continued or particularly egregious breaches can result in sanctions being imposed; for example, suspension of parliamentary passes for members of the Press Gallery.

As previously noted, sanctions against persons who are not parliamentary pass holders are limited. However, copyright action could be pursued in cases of inappropriate use of the broadcast. 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

External parties seeking permission to use parliamentary footage are informed that the Commonwealth of Australia owns the copyright, and makes copyright material available to the public subject to the terms of the [Creative Commons 3.0 licence](#).

Under the terms of the licence, the Commonwealth grants a royalty-free, non-exclusive licence to members of the public to reproduce and distribute the copyrighted works subject to certain conditions, including:

- the licensee must acknowledge that the copyright material is licensed for use under the Creative Commons 3.0 licence and provide a link to the terms of the licence;
- the licensee is not granted the right to sublicense the copyright material;
- the rights cannot be exercised in a commercial manner; and
- the licensee must properly attribute the copyright to the Commonwealth.

Application of parliamentary privilege to proceedings streamed on social media

Members and Senators are covered by absolute privilege in respect of statements made in the Houses, whether broadcast or not; absolute privilege also attaches to persons authorised by the Parliamentary Proceedings Broadcasting Act to broadcast or rebroadcast proceedings. Section 10 of the *Parliamentary Privileges Act 1987* provides qualified privilege for 'fair and accurate' reports of parliamentary proceedings as a defence in defamation proceedings.²

² For further background see *House of Representatives Practice*, pp. 122-123 and *Odgers' Australian Senate Practice*, 14th ed, pp. 106-107.

In relation to claims of privilege, 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. Section 6 of the Parliamentary Privileges Act removed the old contempt of defamation of parliament providing that words or acts shall not be taken to be an offence against a House by reason only that those words or acts are defamatory or critical of the Parliament, a House, a committee or a member.

On a related matter, both Houses permit their members to use electronic devices in the chambers, provided use of such devices does not interfere with proceedings. 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.

The House of Representatives resolution expressly states that:

- communication on social media regarding private meetings of committees or in camera hearings will be considered a potential breach of privilege; and
- communication via electronic devices, whether in the Chamber or not, is unlikely to be covered by parliamentary privilege.

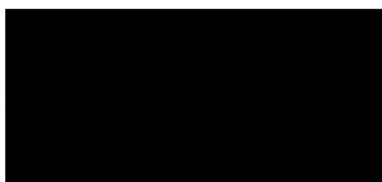
Archiving of footage on Parliament's webpage or social media pages, and requests for footage from external parties

Footage of proceedings of the two Houses, committee hearings (when broadcast), the House of Representatives Federation Chamber and certain special events is made available through the 'ParlView' facility on the Parliament of Australia website; see parlview.aph.gov.au.

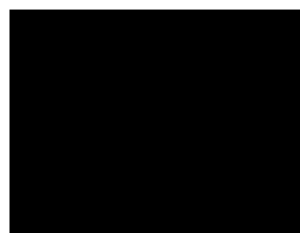
Visitors to the ParlView page are advised that archived content prior to 13 August 2012 will be made available over time, and that they may request archived material in a variety of media by contacting the Department of Parliamentary Services Broadcasting section. Stock and dubbing charges may apply.

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

Yours sincerely



THE HON TONY SMITH MP
Speaker of the House of Representatives



SENATOR THE HON SCOTT RYAN
President of the Senate