



THE LAW SOCIETY
OF NEW SOUTH WALES

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4 September 2019

The Director
NSW Legislative Council Procedure Committee
Parliament House
Macquarie Street
Sydney NSW 2000

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

Dear Sir/Madam,

NSW Broadcast of Proceedings Resolution

The Law Society of New South Wales appreciates this opportunity to contribute to the NSW Legislative Council Procedure Committee (the "Committee") inquiry into the current broadcast of proceedings resolution ("the resolution"). The Law Society's Public Law Committee contributed to this submission.

The Law Society supports a revision of the current resolution to ensure compatibility with contemporary media and to account for the many technological advances that have occurred since the resolution was last revised in 2007. Against this backdrop, the Law Society's observations and recommendations are discussed below.

1. Impact of rising social media platforms

The Law Society notes that the resolution has typically been used to guide the broadcasting of proceedings through mainstream media fora. However, the rapid growth in social media platforms as a key source of contemporary broadcasting over the last decade has implications for the relevance and effectiveness of the current resolution in practice. Information obtained from proceedings which is broadcast through mainstream media sources in accordance with the resolution, can now be adapted and distributed on social media platforms rapidly and largely without restraint or regulation. Arguably, the current resolution is therefore not equipped to achieve its intended purpose, to place controls on the broadcast of all proceedings and maintain the integrity of information arising through parliamentary proceedings.

As a matter for the Committee's further consideration, a distinction could be drawn between conventional broadcasting and broadcasting via social media platforms to address their unique contextual factors and requirements. The potential parliamentary privilege issues raised would also require further consideration.

2. Balancing the public interest in transparency with protection of individuals

The Law Society notes that the paramount consideration of any amendment to the current resolution should be the public interest in ensuring transparent government deliberation.

However, despite the availability of closed hearings, we note 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. We consider this a small but significant risk and one that calls for better protection for individuals.

The Law Society suggests that the Committee consider implementing a modest delay of the broadcasting of proceedings to allow the opportunity to censor information that could be harmful to an individual, insofar as is possible. To be effective, this would obviously require constant monitoring of the recording of proceedings, and would therefore be dependent on available resources. Importantly, we note the potential benefits of this provision in encouraging participation of witnesses who, in the absence of such a protection, might otherwise be deterred from participating.

3. Modernisation of provisions contained in the resolution

The Law Society is of the view that certain provisions within the current resolution require modernisation. Sections 2(d) and 3(e) of the resolution require that broadcasting excerpts and photographs must not be used for: (i) political party advertising or election campaigns; (ii) the purpose of satire or ridicule; or (iii) commercial sponsorship or commercial advertising. In practice, information from broadcast proceedings may be able to be used for the purpose of satire or ridicule on social media platforms, with minimal scope for regulation. As such, provisions prohibiting broadcast material being used for satire or ridicule may no longer be relevant or effective in the contemporary context.

This view is consistent with the Commonwealth position. In December 2013, two resolutions relating to the broadcasting of parliamentary proceedings were passed by the Senate and the House of Representatives.¹ The Resolution on the Broadcasting of Senate and Committee Proceedings and the Resolution on the Broadcasting of Proceedings omitted restrictions on the use of broadcast material for the purposes of satire or ridicule.

The Law Society also echoes the views expressed by the Australian Human Rights Commission (AHRC) in a 2013 submission on the issue, which urged the Senate to give full consideration to the right to freedom of expression and the right to participation in public affairs, protected by articles 19 and 25 of the International Covenant on Civil and Political Rights (ICCPR) respectively. In its submission, the AHRC took the position that:

... the 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.²

As the AHRC submission also notes, the United Nations Human Rights Committee have commented on the close relationship between articles 19 and 25, which give rise to an implied right to free press and other media comment on public issues without censorship.³

¹ Senate Environment and Communications Legislation Committee, Parliament of Australia, *Report: Parliamentary Proceedings Broadcasting Amendment Bill 2013* (2014).

² 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.

³ Human Rights Committee, *General Comment NO. 34: Article 19: Freedom of opinion and expression*, UN Doc CCPR/C/GC/34 (2011), para 13.

The Law Society therefore recommends that (ii) be removed from both section 2(d) and 3(e) of the resolution to ensure the ongoing relevance of the resolution, consistency with the Commonwealth resolution, and observance of rights contained in the ICCPR.

Thank you again for the opportunity to contribute to this inquiry. Should you have any questions in relation to this submission, please contact Claudia Elvy, Policy Lawyer, on (02) 9926 0354 or email Claudia.Elvy@lawsociety.com.au.

Yours sincerely,



Elizabeth Espinosa
President