



THIRTY-SEVENTH PARLIAMENT

REPORT 10
STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES
IN RELATION TO
THE INTERNET BROADCASTING
OF PROCEEDINGS OF THE
LEGISLATIVE COUNCIL CHAMBER

Presented by Hon George Cash MLC (Deputy Chairman)

May 2006

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Date first appointed: 24 May 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“6. Procedure and Privileges Committee

6.1 *A Procedure and Privileges Committee* is established.

6.2 The Committee consists of the President and the Chairman of Committees, the Deputy Chairmen of Committees (all *ex officio*), and any members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chairman, and the Chairman of Committees is the Deputy Chairman, of the Committee.

6.3 With any necessary modifications, SO 326A applies to a co-opted member.

6.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the House and its committees, and recommend to the House such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the House or its committees.

6.5 Unless otherwise ordered any rule or order under which a matter of privilege stands referred, or is referred, to a committee (however described) for inquiry and report is a reference to the Committee.”

Members as at the time of this inquiry:

Hon Nick Griffiths MLC (Chairman)

Hon Simon O’Brien MLC

Hon George Cash MLC (Deputy Chairman)

Hon Louise Pratt MLC

Hon Graham Giffard MLC

Hon Ken Travers MLC

Hon Ray Halligan MLC

Hon Giz Watson MLC (co-opted Member)

Hon Murray Criddle MLC (co-opted Member)

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REPORT OF THE STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

IN RELATION TO

THE INTERNET BROADCASTING OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL CHAMBER

1 REFERENCE AND PROCEDURE

- 1.1 On 11 May 2006 the Procedure and Privileges Committee (Committee) met to discuss a number of matters relating to the law and custom of Parliament and the rules of the procedure of the House.
- 1.2 This report canvasses the Committee's deliberations and recommendation in relation to the Internet broadcasting of proceedings of the Legislative Council Chamber.

2 BACKGROUND

- 2.1 Radio and television are now firmly established as important media for communicating proceedings of Parliament to the public. Regular sound broadcasting from both Houses began in 1982 followed by the televising of parliamentary proceedings in 1996. In 1996, both Houses agreed to televising question time and other significant events, subject to strict rules to ensure that the House retained control over how it was portrayed on television.
- 2.2 The rules were eventually relaxed to permit the parliamentary broadcasting unit to record the full parliamentary proceedings and allow accredited media outlets, whether by the medium of radio or television, to connect to the live feed to use as they saw fit.
- 2.3 The use of such technology has enabled the public, to a limited extent, to be better informed of the work of Parliament. However, since 1996 there have been a number of technological developments, in particular the Internet.

3 WHY WEBCAST?

- 3.1 The rationale behind the introduction of Internet broadcasting (webcasting) of parliamentary proceedings tends to focus on expanding public access to the operations of the Parliament, not simply through the formal record (Hansard), but being able to sit in the public gallery remotely. This has the advantages for people who:
 - a) have limited time and/or have interest in only a small part of business of the day;
 - b) live a long distance from the Parliament, particularly those in regional areas;

- c) have responsibilities that prevent travel (parents, carers); or
- d) have a disability.

3.2 However, disadvantages include:

- a) the majority of parliamentary business tends to be relatively routine, and is not engaging to the public;
- b) the audience has no idea when a particular debate will commence;
- c) demand for this service outside of some social and professional circles is low; and
- d) the high-speed connection to the Internet, particularly in regional areas, is limited thereby restricting access.

3.3 The Committee considers that Internet broadcasting has an important part to play in the modernisation of Parliament. The Committee notes that Parliaments across Australia¹ and overseas have adopted the new technology as the medium to broadcast parliamentary proceedings (Refer to Appendix 1). The technology provides Internet subscribers with an ability to watch live parliamentary proceedings from any location in the world. The Committee notes the United Kingdom Parliament also offers an on-demand archive, where material can be retrieved for viewing for up to 14 days after live transmission.

4 PARLIAMENTARY PRIVILEGE AND DEFAMATION ACTIONS

4.1 The Committee is aware the Legislative Council has been cautious in adopting the new technology due to legal uncertainty. During its deliberations, the Committee considered whether there were any legal implications, specifically in relation to the areas of parliamentary privilege and defamation law, in broadcasting via the Internet.

4.2 The Committee observes that parliamentary privilege does not cloak parliamentary publications with any form of protection. This was decided in 1839 in *Stockdale v Hansard*.² The court held that parliamentary privilege protected papers printed by order of the House for the use of its own Members, but that this protection did not extend to papers made available outside the House to members of the public. The *Parliamentary Papers Act 1891* was enacted to reverse this decision.

4.3 The Committee notes that the protection afforded to the publication of proceedings under the *Parliamentary Papers Act 1891* is limited to within Western Australia.

¹ The Western Australian Legislative Assembly has broadcast its proceedings since March 2000.

² (1839) 112 ER 116.

- 4.4 Recent legislative developments also impact on the matter of parliamentary privilege and defamation: the decision of the High Court in 2002 in the Gutnick case³ and the *Defamation Act 2005*.
- 4.5 In the Gutnick case the High Court found that until the material is comprehended by the reader then “no harm is done”. The High Court reiterated that publication is a bilateral act involving the publication of material and its later comprehension. By finding, that defamation only occurs in the country where the article is first published would not recognise the fact that the publication is a bilateral act.
- 4.6 The High Court found that, therefore, defamation takes place where the material alleged to be defamatory is in comprehensible form such that it can be read and where it is damaging to a plaintiff’s reputation. In the case of material on the Internet, the Court held that it is not in comprehensible form until downloaded onto the computer of a person who has used a web browser to pull the material from the web server.
- 4.7 Section 27 of the new *Defamation Act 2005* provides that it is a defence to the publication of defamatory matter if the defendant proves that the matter was published on an occasion of absolute privilege. The section lists certain publications that are published on occasions of absolute privilege.
- 4.8 The Committee notes that the definition extends the defence of absolute privilege to the publication of matter that would be subject to absolute privilege under the corresponding law of another Australian jurisdiction.
- 4.9 Section 27(2)(a) of the *Defamation Act 2005* broadly reflects the *Parliamentary Papers Act 1891* but extends absolute privilege by providing that a matter is published on an occasion of absolute privilege if:

*... the matter is published in the course of the proceedings of a **parliamentary body**, including (but not limited to) —*

- (i) the publication of a **document** by order, or under the authority, of the body;*
- (ii) the publication of the debates and proceedings of the body by or under the authority of the body or any law;*
- (iii) the publication of matter while giving evidence before the body; and*
- (iv) the publication of matter while presenting or submitting a document to the body; ...*

³ *Dow Jones & Company Inc v Gutnick*. [2002] HCA 56.

4.10 The Committee notes that section 4 of the *Defamation Act 2005* provides a wide definition of “parliamentary body” to include:

- (a) *a parliament or legislature of any country;*
- (b) *a house of a parliament or legislature of any country;*
- (c) *a committee of a parliament or legislature of any country;*
and
- (d) *a committee of a house or houses of a parliament or legislature of any country; ...*

4.11 Section 4 further provides “**document**” means any record of information, and includes:

- (a) *anything on which there is writing;*
- (b) *anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;*
- (c) *anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and*
- (d) *a map, plan, drawing or photograph.*

4.12 The Committee considers that while the *Defamation Act 2005* may provide protection to electronic data being transmitted via webcast within Australian jurisdictions, it may not provide any greater protection in countries where there is no corresponding law.

4.13 The Committee further notes the expression “proceedings” in the *Parliamentary Papers Act 1891* and the *Defamation Act 2005* presumably have the same meaning as “proceedings in Parliament” in article 9 of the *Bill of Rights*. Accordingly “proceedings” does not include comments which are made during proceedings in the House or a committee which do not form part of the debate. That is to say, “proceedings” do not include defamatory interjection made by another Member or by a spectator in the gallery. The Committee however considers this to be more theoretical rather than a real risk as the sound system should only broadcast the Member with the call.

5 ***PARLIAMENTARY PAPERS ACT 1891***

5.1 The Committee observes that the scheme of the *Parliamentary Papers Act 1891* is to provide protection to those persons the subject of civil proceedings who:

- publish material under the authority of the Houses of Parliament, for example, Hansard reporters (sections 1 & 2);
- print an extract or abstract of a report, paper or votes and proceedings (section 3) (refer to paragraph 5.4 below); and
- publish a speech, or extract of a speech made in Parliament by a Member of Parliament at the written request of that Member. These persons are identified as Hansard reporters, an employee of Parliament,⁴ the Government Printer and those employed at the Government Printing Office (section 3A).

5.2 The Committee observes that the protection afforded by sections 1, 2 and 3A of the *Parliamentary Papers Act 1891* applies to the “**publication**” of “*any report, paper, votes or proceedings of the Legislative Council or Legislative Assembly by such person or persons, or by his, her, or their servant or servants, by or under the authority of the Legislative Council or Assembly of the said Colony.*”

5.3 Two observations are made:

- a) The language is capable of being interpreted widely as applying to publication by any means, including radio, television or Internet broadcasting even though the technology was unknown in 1891, as Acts are always speaking to cater for the present; and
- b) This view is put beyond doubt by the definition of “publication” contained in section 5 of the *Interpretation Act 1984* which in paragraph (b) means “*any record, tape, wire, perforated roll, cinematograph film or images or other contrivance by means of which any words or ideas may be mechanically, electronically, or electrically produced, reproduced, represented, or conveyed*”.

⁴ It is noted that this does not include Officers of the House that are appointed by His Excellency the Governor.

- 5.4 The Committee further observes that the protection afforded by section 3 of the *Parliamentary Papers Act 1891*, equivalent to a defence of qualified privilege, applies to the *bona fide* and without malice “printing” of “*any extract from or abstract of such report, paper, votes or proceedings*”. The definition of “publication” in section 5 of the *Interpretation Act 1984*, paragraph (a), provides that all written and printed matter is a “publication”. However, the Committee is concerned that section 3 of the *Parliamentary Papers Act 1891*, may not afford the same protection to a person publishing an extract or abstract on the Internet as it would to a person “printing” such an extract or abstract.
- 5.5 The Committee observes that the *Defamation Act 2005* may provide protection in these circumstances to a person publishing an extract or abstract on the Internet but, even if this was the case, the *Parliamentary Papers Act 1891* should provide a qualified protection for Internet publication in addition to “printing”.
- 5.6 In light of the Committee’s recommendation that the Legislative Council broadcast its proceedings on the Internet and to ensure that the House’s privileges are maintained, the Committee has written to the Attorney General requesting that the *Parliamentary Papers Act 1891* be reviewed so as to clarify the scope of its protection in relation to the matters identified above.
- 5.7 To ensure webcasting proceedings of the House are cloaked with absolute privilege under the *authority of the Council* the Committee recommends that the House pass a resolution authorising the broadcast of the Legislative Council’s proceedings.

Recommendation 1: The Committee recommends that the House pass a resolution authorising the broadcasting of the Legislative Council’s proceedings.

This recommendation is captured in Recommendation 5.

6 COPYRIGHT

- 6.1 The Committee notes Parliament’s Internet site states that Copyright of Parliament materials resides with “the Parliament of Western Australia”. However, who is or what is the “Parliament of Western Australia” for the purposes of the copyright law? For example, who would have legal standing?
- 6.2 If the copyright rests with the “maker” then, in absence of any special provisions, no copyright would seem to rest in the two Houses. As neither House possesses legal personality, they could not themselves hold copyright although bodies could be established, by legislation, to whom the copyright could be assigned.

- 6.3 At the Committee's request the President has written to the State Solicitor seeking a legal opinion regarding ownership of the copyright for any broadcasting of parliamentary proceedings.

7 SUMMARY

- 7.1 The Committee considers the benefits of webcasting certainly outweigh any potential legal implications. The technology will make the work of the House, and its Committees, much more accessible than has so far been possible through traditional media. Webcasting provides an opportunity for the community to see the workings of the House without the necessity to attend the Parliament. This is particularly important to the regional community, if the necessary technology is available. Although, the experience for viewers using webcasting can never be the same as for visitors in the public gallery, webcasting does provide another avenue to engage the general public in politics, in particular, to access young people interested in politics.
- 7.2 The Committee notes the introduction of webcasting in the Legislative Assembly has shown that the service is useful for public servants, Members and their staff to monitor question time or progression of business in the Chamber.

8 REQUIREMENTS

- 8.1 The Committee notes the Parliamentary Services Department (Information Technology Services) has recently upgraded the webcasting system to expand the bandwidth and hardware to ensure appropriate access speed for users. There are no additional infrastructure costs to the Legislative Council in providing the service. However there are some additional operational requirements for staff in providing the text capturing indicating the subject matter before the House and its stage.
- 8.2 The Committee recommends the webcasting service be available as soon as reasonably practicable.

Recommendation 2: The Committee recommends that the webcasting service be available as soon as reasonably practicable.

This recommendation is captured in Recommendation 5.

8.3 The Committee notes that, currently, high-speed Internet connection is not widely available particularly in regional areas. This limits the number of Internet users who could access the video and audio proceeding. There is a large number of Internet subscribers still using old technology such as 56k modems to access the Internet.

8.4 Slow Internet connection would be adequate for audio but not video feeds. Therefore, it is recommended that Internet users have the option of selecting either audio and visual or audio only. This will maximise the number of Internet subscribers who can access the proceedings where they do not have high-speed Internet connection.

Recommendation 3: The Committee recommends that users have the option of selecting either audio and visual or audio only.

This recommendation is captured in Recommendation 5.

8.5 To assist viewers of the webcasting of parliamentary proceedings the Committee recommends that a capturing system be implemented to enable the display of the subject matter currently being debated, its stage and the Member who is speaking.

Recommendation 4: The Committee recommends that a capturing system be implemented to enable users to know the subject matter currently being debated, its stage and the Member who is speaking.

This recommendation is captured in Recommendation 5.

8.6 The Committee has written to the Executive Manager - Parliamentary Services requesting that consideration be given to introducing a service which automatically stores proceedings on-line as an archive, with the archive material accessible through an integrated, text-base search of the proceedings of the House for up to 14 sitting days. This new service would enable Internet users to view proceedings at their leisure and find the debate of interest. This service will overcome the problems, with the live feed, with not knowing when a particular debate may occur during the day or evening.

9 PROPOSED RESOLUTION OF THE HOUSE

Recommendation 5: To accommodate matters discussed in this report including Recommendations 1 to 4 the Committee recommends that the House pass a resolution in the following form:

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.*

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



Hon Nick Griffiths MLC
President of the Legislative Council
Chairman

30 May 2006

APPENDIX 1

Currently, a significant number of Parliaments are webcasting, or developing the capacity to do so.

Australian examples include:

- Federal Parliament
- New South Wales
- Queensland
- Western Australia (Assembly)

International examples include:

- Austria, including the State of Vorarlberg
- Brazil
- Canada
- Denmark
- Estonia
- European Union
- France
- Germany
- Greece
- Israel
- Italy
- Mexico
- Netherlands
- Norway
- Northern Ireland
- Poland
- Scotland
- Slovenia
- Sweden
- Wales
- Westminster
- United States of America