

**SUBMISSION TO THE STANDING ORDERS COMMITTEE OF THE LEGISLATIVE  
ASSEMBLY OF VICTORIA  
ON THE INQUIRY INTO THE USE OF SOCIAL MEDIA IN THE ASSEMBLY AND  
MEMBERS REFLECTING ON THE OFFICE OF THE SPEAKER**

Jeremy Travers, December 2011

**Overview**

I am grateful to the Committee for this inquiry as it provides for an opportunity for the issue of the use of social media in the House and reflections on the Speaker. I believe this is the first time that a Committee of Parliament in any Australian parliament has determined to inquire into the use of social media in particular.

As social media becomes a major part of ordinary life, Parliaments should adapt to the challenges and advantages of it. The major advantage of social media is that Members of parliament are able to update their constituents on parliamentary proceedings while there is a disadvantage that Members are able to use social media to say things that would not normally be permitted in the House.

As a 20 year old that uses Twitter quite often and a former parliamentary officer with the Legislative Assembly of New South Wales, I can relate to concerns that have been expressed in favour and against the use of social media in the chamber.

It is also appropriate that the Committee look at reflections on the Speaker. The Speaker is the servant as well as the master of the House and given a recent case that has been in the press recently, it is appropriate that this matter be examined.

In a nutshell, my submission states the following to the Committee:

- (1) There should be guidelines on the use of hand-held devices in the Legislative Assembly, mainly with respect to the following:
  - a. hand-held electronic devices should not be used for reading speeches in the Chamber,
  - b. these devices should not be used to display props to illustrate a point as this is against Westminster practice, and
  - c. that these devices should be used in a way that does not prevent basic courtesies being extended to other honourable members.
- (2) In my opinion, care must be taken when using social media in the chamber as any social media updates does not attract parliamentary privilege.

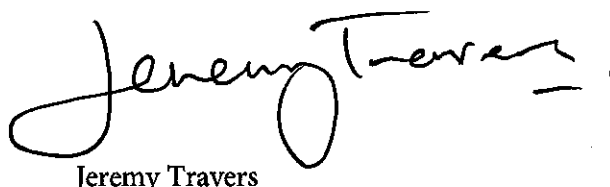
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- (3) If there are to be guidelines for the media using social media to comment on proceedings, they should be negotiated between Mr Speaker and the parliamentary press gallery.
- (4) Restrictions and guidelines that apply to written notes by visitors should also apply to social media, with an emphasis that anything that is put on social media websites is not legally protected as *Hansard* is the only official record of proceedings of Parliament.
- (5) The Assembly's procedures do not need to be modernised to reflect social media. I am of the view that the use of social media in the chamber should be determined by the Speaker in the form of a ruling, taking in the views of honourable members.
- (6) The current rules for reflections on the office of Speaker are appropriate. As it is considered to be unacceptable for the Speaker to defend himself outside of Parliament, these matters should be debated in the House and the House alone.
- (7) The Committee or the House may wish to refer the question of parliamentary privilege in Victoria to the Privileges Committee as it is relevant to this inquiry. An introduction of a bill similar to the *Parliamentary Privileges Act 1987* of the Commonwealth is something that the Privileges Committee could consider.

I should emphasise to honourable members of the Committee that all of the views expressed in this submission are mine and that the legal concerns I have expressed are nothing more than a personal opinion.

If the Committee has any enquiries or desires elaboration of the views I have expressed, I am more than happy to be contacted.

I wish the Committee well in its deliberations.



Jeremy Travers

13 December 2011.

**(1) Should any restrictions, or guidelines, apply to members' use of hand-held electronic devices in the Chamber and committees, including accessing social media to comment on the proceedings?**

1.1. Yes, there should be guidelines on the use of hand-held electronic devices in the Chamber and committees. Firstly, guidelines should be introduced into the Standing Orders to ensure that if hand-held devices such as iPads, iPhones and BlackBerries are used, they should be placed on silent or vibrate mode as to prevent those devices from interrupting the Member speaking. Secondly, I am of the view that the following basic principles should apply: (1) hand-held electronic devices should not be used for reading speeches in the Chamber, (2) these devices should not be used to display props to illustrate a point as this is against Westminster practice, and (3) that these devices should be used in a way that does not prevent basic courtesies being extended to other honourable members.

1.2. With respect to accessing social media, I am of the opinion that there should be no problem with accessing it in the chamber, providing that it does not violate the basic courtesies to the honourable member who is speaking.

1.3. In regards to using social media to comment on the proceedings, I also see no issue with that occurring. But there is one consideration that should be beared in mind; that is the fact that even though tweets or Facebook status updates may have been written in the chamber, parliamentary privilege is not attached to such tweets or Facebook status updates. Therefore, care must be taken when writing tweets or using other social media websites that would normally attract parliamentary privilege if they were said in the House and were recorded in *Hansard*.

1.3. For the information of the Committee, I attach at the conclusion of the submission a considered ruling by Mr Speaker Torbay that was made in the New South Wales Legislative Assembly on 1 April 2009<sup>1</sup>. The ruling relates to the use of mobile phones and telecommunication devices in the chamber. It does not deal with the issue of social media per se but additions could always be made. I submit to the Committee that this ruling is an appropriate starting point for any guidelines or restrictions for use of hand-held devices in the Chamber.

**(2) Should any restrictions, or guidelines, apply to the public and media using social media from the galleries to comment on proceedings or committee hearings?**

2.1. I believe that there is no difference between writing notes in the gallery and using social media in the gallery other than the obvious difference that anything that is put on social media websites is broadcast to a wide audience. In terms of restrictions or guidelines, I would recommend to the Committee that the restrictions and guidelines that apply to written notes

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<sup>1</sup> The source is page 14271 of the *New South Wales Parliamentary Debates* for 01.04.2009.

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by visitors also apply to social media, with an emphasis that anything that is put on social media websites is not legally protected as *Hansard* is the only official record of proceedings of Parliament.

2.2. In relation to the media, I believe very strongly in the right of the media to provide a balanced report of parliamentary proceedings. Many journalists use social media to report parliamentary proceedings and provide their views on those proceedings. I am of the view that any guidelines or restrictions on the use of social media by the press be worked out between Mr Speaker (or the Standing Orders Committee if the House so chooses) and the parliamentary press gallery. Ideally, these restrictions and guidelines should deal with (1) what can be tweeted or used on other social media networks, (2) the use of unauthorised photographs on Twitter and other social media networks, (3) providing a fair and balanced account of proceedings of the House and (4) appropriate sanctions if the guidelines are not complied with.

**(3) Do the Assembly's procedures and rules need modernising to reflect the opportunities and challenges provided by social media?**

3.1. The short answer to this question, in my view, is no. There is no precedent in any Westminster parliaments that I am aware of that supports this proposition. An appropriate alternative would be for the Committee to obtain the views of honourable members and make the appropriate recommendations to the House.

3.2. I draw the attention of the Committee to the Third Report of the House of Commons Procedure Committee for Session 2010-2011 entitled "Use of hand-held electronic devices in the Chamber and committees" (hereunto known in this submission as "the Report").<sup>2</sup> The Report considered the matter of the use of social media in the Commons chamber amongst other matters. I wish to provide the following quote (from paragraph 25 of the Report) for the Committee's information:

Whilst tweeting from inside the Chamber is clearly a more sensitive matter, we consider that it would be inconsistent to ban this one practice whilst advocating the approach based on decorum rather than activity which we advocate in this report.<sup>3</sup>

3.3. I quoted the Report because I agreed with it. It would be completely unreasonable for the House to ban the use of Twitter in the chamber. I am of the opinion that Twitter provides honourable members with an opportunity to be up to date with the views of constituents, even in debate.

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<sup>2</sup> See <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmproc/889/889.pdf> for the full Report.

<sup>3</sup> Third Report of the House of Commons Procedure Committee for Session 2010-2011, p. 11.

3.4. There is another issue I wish to raise and that is the purpose of the Standing Orders. I am of the view that the Standing Orders exist to regulate the orderly conduct of business in the House. The appropriate avenue for this matter is a ruling by Mr Speaker, who has responsibility under the Standing Orders, particularly standing order 115, to maintain order in the House. I recommend that honourable members be invited to submit their views on the use of social media in the chamber and for Mr Speaker to take those views into consideration if he makes such a ruling.

**(4) Is the current rule, preventing any reflections on the Office of Speaker, other than in a formal motion, still appropriate? If so, should the rule still apply to reflections made outside the House and to reflections made on social media?**

4.1. The current rule dealing with reflections on Mr Speaker is appropriate. Mr Speaker, as the servant of the House, should only be criticised in the House itself by means of a formal motion such as a dissent motion (if the issue relates to a Speaker's ruling), a censure motion or a motion of no-confidence (if the Speaker's conduct demands it). It would be a violation of the Westminster system for the Speaker's actions or decisions to be criticised outside the House. For example, it has been ruled by Speakers of the Legislative Assembly of New South Wales that a Speaker "cannot enter a controversy through the channels of the press"<sup>4</sup> and that "A member who resorts to a statement in the media, to remedy what he regards as an injustice by the Chair, undermines the dignity of Parliament and the office of Speaker"<sup>5</sup> Given these rulings, which are widely accepted in Westminster parliaments, I would deem it inappropriate for the Speaker's conduct and rulings being criticised outside the chamber given the fact that the Speaker cannot defend him or herself outside the chamber.

4.2. In relation to the rule still applying to reflections made outside the House, I believe that the rule should apply to these reflections largely from the rulings I quoted in the previous paragraph. It would not be proper for Mr Speaker to be criticised in a forum other than the floor of the Legislative Assembly itself. *Erskine May* makes it quite clear that any reflection:

...upon the character or actions of the Speaker may be punished as breaches of privilege.<sup>6</sup>

4.3. In my view, there is no difference between reflecting on the Speaker in the Chamber and reflecting on him outside the Chamber, whether it is verbally, via the press or tweeting.

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<sup>4</sup> Legislative Assembly of New South Wales, *Decisions from the Chair – Consolidated Rulings (Up to and including 3 December 2010)*, p. 23.

<sup>5</sup> Legislative Assembly of New South Wales, *Decisions from the Chair – Consolidated Rulings (Up to and including 3 December 2010)*, p. 23. See also *New South Wales Parliamentary Debates*, 17.10.1979, p. 1884.

<sup>6</sup> *May*, 23rd Edition, p. 220.

4.4. The question of privilege is another issue. The Committee (and/or the House) may consider that it is appropriate for the Privileges Committee to look at parliamentary privilege in Victoria generally and introducing appropriate legislation similar to the *Parliamentary Privileges Act 1987* of the Commonwealth. Section 19 of the *Constitution Act 1975* provides that the powers, privileges and immunities that applied to the House of Commons on 21 July 1855 apply to the Legislative Assembly and the Legislative Council. *Erskine May* states, on page 145, that:

...reflections on the character of the Speaker or accusations of partiality in the discharge of his duties and similar charges against the Chairman of Ways and Means or chairman of a standing committee or a select committee have attracted the penal powers of the Commons.<sup>7</sup>

4.5. In the modern times, I would argue that the penal powers are a bit extreme for a reflection on Mr Speaker that could easily be withdrawn in the Chamber. If there are to be changes to the Standing Orders with respect to these reflections, the sanctions for these reflections need to be strongly defined.

4.6. My own personal view is that these sanctions should be restricted to temporary suspension of a Member under Standing Order 124 or naming the Member under Standing Order 125. The reason why I believe that the penalties should be restricted is because every opportunity should be given to a Member every opportunity to represent his or her constituents in the House.

4.7. Having said that, I also believe that the office of Speaker should be treated with nothing but respect. Criticism of Mr Speaker's conduct should be restricted to the appropriate parliamentary forum and not in the public domain. For the reasons expressed in paragraphs 4.1 to 4.6 of this submission, I am of the view that the Committee should not recommend any change to the current rule for reflections on Mr Speaker or his office.

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<sup>7</sup> *May*, 23rd edition, p. 145.

**TAB Operations on Good Friday**

Petition requesting the closure of TAB operations on Good Friday, received from **Mr Malcolm Kerr**.

**Shoalhaven Mental Health Services**

Petition requesting the establishment of a dedicated mental health service in the Shoalhaven, received from **Mrs Shelley Hancock**.

**Grafton Bridge**

Petition requesting the construction of a new bridge over the Clarence River at Grafton, received from **Mr Steve Cansdell**.

**MOBILE PHONES AND TELECOMMUNICATIONS DEVICES**

**The SPEAKER:** I wish to make a statement in relation to the proper use of mobile phones and mobile devices such as BlackBerrys in the Chamber, in the press gallery, and in the other galleries of the House. Consistent with a previous ruling of 18 October 2007, I remind members that it is in order for members to refer to notes on their BlackBerrys, but not to read material verbatim from them, when addressing the House. I consider referring to a BlackBerry to be no different to referring to hard copies of written notes, to which the same rule applies. This rule is in place in order for the authorship of the material not to be brought into question.

It is also in order for BlackBerrys and mobile phones to be used to send messages and emails in the Chamber and in the press gallery so long as they are set on silent mode and the business before the House is not disrupted. Visitors in the galleries should not send text messages if that causes disruption. It is not in order for members, members of the press gallery and visitors in the public galleries to use the camera function on mobile devices to take unauthorised photographs in the Chamber. Further clarification on the rules that apply to photography in the Chamber is contained in the guidelines that I tabled in the House on 11 March 2009.

**BUSINESS OF THE HOUSE****Reordering of General Business**

**Mr BARRY O'FARRELL** (Ku-ring-gai—Leader of the Opposition) [3.28 p.m.]: I move:

That General Business Notice of Motion (General Notice) given by me this day [Payroll Tax] have precedence on Thursday 2 April 2009.

It is important for the Premier finally to understand that families and businesses across the State are doing it tough. In the November mini-budget, at a time when governments around the country and the world recognised the gathering global financial storm clouds and sought to assist families and businesses by cutting taxes and by investing in infrastructure projects, this inexperienced and incompetent State Government went in the opposite direction. In that mini-budget, infrastructure projects were cut, but the Leader of The Nationals could not elicit that admission from the Premier today. Funding for the south-west rail link, the north-west rail link and the Pacific Highway has been cut. They were projects that could and would have maintained and created jobs in New South Wales at a time when families are suffering and when businesses are struggling.

In the recent mini-budget, the State Government imposed increased taxes and charges upon families and businesses, which is completely the opposite to the action taken by the Federal Government last September, and in December and March this year. Wall-to-wall Labor governments do not deliver wall-to-wall consistent thinking. In Canberra there is a Federal Government that is seeking to assist, but in New South Wales there is a Government that is seeking to hurt. Families require assistance. That is why the Opposition seeks to reorder the business of the House to move a motion calling upon the State to put in place a stimulus package that will be centred around a cut in payroll tax. Two million of the State's three million workers work for businesses that are liable to pay payroll tax to the State.

For the information of members opposite who claim that the Government's approach is about protecting revenue, I point out it is not protective of revenue for a Premier to stand by as 37,100 jobs are lost from New South Wales, thereby losing revenue from which payroll tax is collected. We are losing revenue on payroll tax now through inaction. We could preserve that revenue by ensuring that in New South Wales we have a payroll tax regime that is competitive with the schemes that exist in Victoria and Queensland. If I may anticipate the speech that may be made by the Leader of the House and acknowledge that the State is putting in place payroll tax reductions, I may also point out that those reductions were announced before the global financial crisis hit.