



PARLIAMENT *of* AUSTRALIA
HOUSE *of* REPRESENTATIVES

OFFICE OF THE CLERK OF THE HOUSE

PO Box 6021, Parliament House, Canberra ACT 2600 | Phone: (02) 6277 4111 | Fax: (02) 6277 2006 | Email: clerk.reps@aph.gov.au

11 April 2014

EME

Mr D Randall MP
Chair
House Standing Committee on Procedure
Parliament House
Canberra ACT 2600

Dear Mr Randall

Thank you for your invitation to make a submission to the Committee's inquiry into the use of electronic devices in the Chamber and Federation Chamber for public communications. Attached is a brief submission from the Department of the House of Representatives.

I wish the Committee well in its deliberations. Please do not hesitate to contact me if I can assist in any way.

Yours sincerely

DAVID ELDER
Clerk

SUBMISSION FROM THE DEPARTMENT OF THE HOUSE OF REPRESENTATIVES

USE OF ELECTRONIC DEVICES IN THE CHAMBER FOR PUBLIC COMMUNICATIONS

Introduction

The use of technology in the chamber has developed over a number years, with both Members and staff now having ready access to various applications that facilitate the work of the House. With the advent of mobile computing devices, and the expansion of social media, Members are now able to communicate to a wider audience on political and social issues, and also increasingly to comment on the proceedings of parliament in real time. Although there has been some guidance from the Chair regarding use of some devices, the inquiry by the House Standing Committee on Procedure is timely in seeking to ensure that Members are aware of the guidance on use of such devices and to ensure that there is a general understanding of what is appropriate during parliamentary proceedings.

This paper examines current usage, issues that have arisen with the wide-spread use of electronic devices, and considers whether any further guidance should be available for Members in their use, particularly in regard to public communications.

Current usage

In 1997 Speaker Halverson advised Members they would be able to use lap-tops in the chamber, provided they are not disruptive to proceedings.¹ Although initially only operating in 'stand-alone mode', network connection (by cable) in August 2000, and then by wireless in August 2009 saw laptop usage increase significantly in the chamber. With the availability of PDAs, mobile phones, and now devices such as tablets, Members are able to use a range of technologies for research, as a substitute for having written notes when speaking, to contact their offices by email, and to engage in social media. A brief review of the current membership of the House at the end of March 2014 indicated that 134 of the 150 Members had either a Twitter or Facebook presence, with 93 (62%) having both. Only 16 members

¹ Speaker Halverson indicated: 'I would expect that the computers would be completely silent and that the Member with the call would not use the equipment while he or she has the call. In making this decision to permit computers in the chamber, I want to make it clear that if their use proves to be disruptive or a major distraction to the proceedings of the House, I will review the matter without delay'.

(approx. 10.6 %) had neither. Those with only a Twitter account numbered 12 (8%) and 29 Members only had a Facebook page (19.3%).

As with most technology, individual Members use it to a greater or lesser extent, depending on their personal preferences and technological interest. However, the growth in social media has enabled Members to interact with the community in a very direct way, allowing for almost instant communication of ideas and views to a very diverse range of groups and individuals, far beyond the reach of more traditional communication modes. The adoption of new technology reflects the reach of technology in the general population and the explosion of social media and alternative methods of accessing information and news. Potentially it adds a significant new element to proceedings in the Chamber and in committees as Members engage in external public conversations that are not formally part of the proceedings of the House or a committee.

Guidance for members on usage

The Procedure Committee has sought advice on whether the current regulatory arrangements governing use of electronic devices is sufficient, and secondly, whether there is sufficient understanding of those.

There are no specific Standing Orders governing the use of electronic devices in the chamber. However, three Standing Orders have some applicability:

- Standing Order 65 (b) states that 'When a Member is speaking, no Member may converse aloud or make any noise or disturbance to interrupt the Member'.
- Standing Order 89 states 'A Member must not use offensive words against (a) either House of the Parliament or a Member of the Parliament; or (b) a member of the Judiciary'.
- Standing Order 90 states that 'All imputations of improper motives to a Member and all personal reflections on other Members shall be considered highly disorderly'.

Since Speaker Halverson's original caution about use of laptops, a number of Speakers have provided further guidance to the House, with the view being taken that Members should be able to use laptops and mobile devices in ways that make more efficient use of their time, but so as not to infringe on the rights of others and the ability of the House to operate².

Specific issues raised over the years have included:

- the taking of a photograph by a member during proceedings – it has been held that 'any use of a camera would be inappropriate'³

² See for example, comments by Speaker Jenkins, HR Deb 27/10/2010, p. 1928-9; Speaker Andrew, HR Deb 16/9/2003, p. 20151;

³ Speaker Andrew, HR Deb 27/5/2004, p. 29398.

- speaking on mobile phones in the chamber is prohibited, on the basis of preventing disruption to proceedings; a phone ringing has led to a Member being asked to apologise to the House⁴
- concern over comments made via Twitter, critical of other members or the Speaker⁵.

As a general principle, while the method of communication or the device used may change, the standards that apply to behaviour in the Chamber should be sufficient to assist Members in their use of any electronic device. With the speed in technological advances, this approach would seem preferable to one tied to specific devices. For example, Speaker Andrew in 2003 advised that chamber that 'Text messaging on mobile phones falls within the same category of activity as sending and receiving email messages on laptops. Members and advisers are permitted to use laptop computers in the chamber and, similarly, they may use mobile phones for text messaging'.⁶ In other words, the activity, rather than the communication media, should be the issue.

Other jurisdictions

Other jurisdictions, not only in Australia but internationally have faced similar issues regarding the use of electronic devices. In very general terms, while there are some differences in what is permitted, and in some instances, the times usage may occur, the basic premise is that certain types of devices may only be allowed if they do not affect the proceedings and decorum of the chamber.

All Australian state and territory parliaments allow the use of electronic devices by Members in the chamber. In New Zealand, Speaker's rulings indicate that while the use of devices in the chamber is permitted, they must not disrupt the business of the House, and they must be switched to silent modes.⁷

The Rules of the Canadian Senate specify that an electronic device that produces any sound is not permitted (unless the device is used as a hearing aid)⁸. In the Canadian House of Commons, the use of laptops and other electronic devices is permitted provided their use is not disruptive. The use of cameras is not permitted.

The UK House of Commons has the following resolution regulating the use of electronic devices:

⁴ *House of Representatives Practice* (6th edn), p. 160.

⁵ See for example HR Deb 12/3/2013, p. 1627; HR Deb 11/2/2010, p. 1217.

⁶ Speaker Andrew, HR Deb 16/9/2001 p. 20151.

⁷ Assistant Speaker Robertson, 27 June 2012, contained in New Zealand Parliament's *Speaker's Rulings – Supplement, up to 30 June 2013*.

⁸ Rules of the Senate, No. 2-8 (accessed electronically at www.parl.gc.ca/About/Senate/senate-rules-03-e.htm on 25 March 2014).

That hand-held devices (not laptops) may be used in the Chamber, provided that they are silent, and used in a way that does not impair decorum, that Members making speeches in the Chamber or in committee may refer to electronic devices in place of paper speaking notes, and that electronic devices, including laptops, may be used silently in committee meetings, including select committees.

In an April 2012 report, the UK House of Lords Administration and Works Committee proposed a resolution in similar terms.⁹

In the US Congress, it was not until 2010 that House rules were amended to allow the use of mobile electronic devices, provided that it did not 'impair decorum'.¹⁰ When the change was made, the relevant explanatory notes stated that rather than trying to address devices by category (e.g. phones, computers), the rule focuses on their attributes (e.g. their impact on the decorum of the House).

As can be seen from the above commentary, the House of Representatives has been very forward in allowing the use of technology to assist Members in the conduct of their duties in the House. The existing rules of behaviour and order in the House appear sufficient to cover usage, focusing on respecting the rights of other Members and the due decorum of the House. There are, however, some areas where formal guidance might be useful for Members, particularly in relation to the ability which Members now have to engage in external public conversations by use of the devices.

Public perceptions

Although there have been limited commentary on Members using electronic devices in the chamber, there is the potential that the sight of Members concentrating on electronic devices rather than the debate may lead to criticism by members of the public now able to watch proceedings. Use of technology should be to facilitate Members' contribution to proceedings and allow them to discharge their parliamentary duties. Any behaviour that might diminish the dignity or standing of the House should be avoided.

Public comment, privilege and disorder

Members are absolutely privileged in regard to anything that is said in the course of proceedings in Parliament. However, absolute privilege may well not apply to comments by Members more widely. Section 16 of the *Parliamentary Privileges Act 1989* defines 'proceedings in Parliament' as 'all words spoken and acts done in the course of, or for

⁹ House of Lords Administration and Works Committee, *Use of electronic devices in the House: follow-up report* (published 27 April 2012).

¹⁰ US House of Representatives, Rules of the House, No. 5.

purposes incidental to, the transacting of the business of the House or a committee....'. Thus for any comments not made formally as part of the proceedings of the House or a committee to be covered by parliamentary privilege, it would be necessary to establish that they were for purposes incidental to the House or a committee transacting its business. Most such comments made by Members outside formal proceedings would not enjoy the protection of parliamentary privilege. Similarly Members repeating comments outside the House that they had made earlier in debate in the Chamber need to exercise great caution as these also may well not be found to be protected by parliamentary privilege.¹¹

Concerns were first raised about Members commenting during sittings via Twitter in 2009. The Speaker advised the House that such comments are not part of the proceedings of parliament and this point was reinforced in March 2013 when Speaker Burke reminded Members that 'any comments made on social media, even if made from the chamber precincts, are not covered by parliamentary privilege'. Speaker Burke stated that her role was to adjudicate on the proceedings of the House and that it 'is not practical to extend this role to adjudicating on a range of matters incidental to proceedings such as private communications, conversations or use of social media when it is thought that they have come from the chamber.' This raises the very practical issue that, while the Chair can enforce the standing orders in the House in relation to the observable behavior of Members, it cannot be expected that the standing orders can be enforced in relation to words and actions of which the Chair has no visibility or knowledge.

Speaker Burke also went on to caution that 'any use of social media by Members reflecting on any occupant of the chair that comes to my attention, would be dealt with as any other comment made outside the House that reflects on the chair: as an important matter of order'.¹² In this respect Speaker Burke was repeating the well-established parliamentary principle that reflections on the Chair by Members made inside or outside the Chamber are considered disorderly.¹³

It also is suggested that Members should be cautious in making comments via social media reflecting on other Members. If such comments are made during debate in the Chamber they are likely to be considered disorderly and may have repercussions for the Member involved. Such accusations regarding the behaviour of other Members made as part of formal proceedings should only be made by substantive motion. There is a community expectation that when Members are dealing with each other both inside and outside the Chamber, they will do so with respect. As noted earlier, comments on other parties via social media or otherwise outside the protection of parliamentary privilege also may leave a Member open to legal action.

¹¹ For a fuller discussion, see *House of Representatives Practice*, (6th edn), pp. 736-738.

¹² Speaker Burke, HR Deb 13/3/2013, p. 1934.

¹³ See *House of Representatives Practice*, (6th edn), p. 198.

The status of comments made via Twitter while Members have been in Parliament has been of concern in other jurisdictions. The Victorian Legislative Assembly tabled a report¹⁴ in December 2012 regarding the use of social media in the Assembly and reflections on the Office of Speaker. That report noted that comments made were not covered by Parliamentary Privilege, concluded that the practices and procedures already in place apply equally well to communications via social media as to the more traditional communication methods, and concluded that a greater emphasis should be placed on promoting an understanding of existing rules. The Committee recommended the adoption of guidelines which summarise the rules, although no action has as yet been taken on this.

A final matter for consideration relates to whether the use of an electronic device in particular circumstances could amount to a contempt of the House. Improper interference with the free performance by a Member of his or her duties or attempting to intimidate a Member may be considered a contempt. Following a photograph being taken of a Member, apparently by another Member using a mobile phone, and its subsequent publication in the press, the following matter was referred to the House Committee of Privileges and Members' Interests in March 2010:

Whether formal rules should be adopted by the House to ensure that the use of mobile devices during proceedings does not interfere with the free exercise by a House or a committee of its authority and functions, or with the free performance by a Member of his or her duties as Member.

The Committee had not reported when the House was dissolved in July 2010. However, the fact that this action was formally referred for investigation highlights the potential difficulties for Members when technology makes possible actions not previously available. This again is an area where Members would need to exercise caution.

Conclusion

Technology assists Members in many ways to discharge their duties as parliamentarians. The use of electronic devices is commonplace, but should always be done with due regard to the rights of other Members and the operations of the parliament. With the advent of social media and its wide adoption by Members, care needs to be exercised in its use. I consider it would be useful for Members to have one authoritative source of general guidance on use of electronic devices for public communication, rather than have to research the various statements by successive Speakers. The Procedure Committee may wish to consider recommending a resolution for the guidance of Members that would

¹⁴ Legislative Assembly of Victoria Standing Orders Committee, *Report into use of social media in the Legislative Assembly and Reflections on the Office of Speaker*, December 2012.

remind Members of their rights and responsibilities. I attach a possible resolution (at Attachment A) for the Committee's consideration.

Clerk's Office
April 2014

Attachment A

PROPOSED HOUSE RESOLUTION RELATING TO USE OF ELECTRONIC DEVICES IN THE CHAMBER

That the House:

1. permits Members' use of electronic devices in the Chamber, Federation Chamber and committees, provided that:
 - (a) use of any device should avoid interference or distraction to other Members, either visually or audibly, and should not interfere with proceedings – in particular, phone calls are not permitted and devices should be operated in silent mode;
 - (b) devices are not permitted to record the proceedings (either by audio or visual means);
 - (c) communication on social media regarding private meetings of committees or in camera hearings will be considered a potential breach of privilege; and
 - (d) use of devices should be as unobtrusive as possible and should be directly related to the Members' parliamentary duties; and
2. notes:
 - (a) that communication via electronic devices, whether in the chamber or not, is unlikely to be covered by parliamentary privilege; and
 - (b) reflections on the Chair by Members made on social media may be treated as matters of order just as any such reflections made inside or outside the Chamber.