



LEGISLATIVE ASSEMBLY OF VICTORIA
STANDING ORDERS COMMITTEE

**Report into use of social media in the Legislative Assembly
and reflections on the Office of Speaker**

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Legislative Assembly of Victoria

Standing Orders Committee

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STANDING ORDERS COMMITTEE

Members

Hon Ken Smith MP, Speaker of the Legislative Assembly (Chair)

Mrs Christine Fyffe MP, Deputy Speaker

Ms Jacinta Allan MP, Member for Bendigo East*

Ms Ann Barker MP, Member for Oakleigh

Mr Colin Brooks MP, Member for Bundoora

Ms Danielle Green MP, Member for Yan Yean**

Mr David Hodgett MP, Member for Kilsyth

Hon Andrew McIntosh MP, Leader of the House

Mr Jude Perera MP, Member for Cranbourne***

Hon Jeanette Powell MP, Minister for Local Government

Staff

Mr Ray Purdey, Clerk of the Legislative Assembly

Mrs Liz Choat, Deputy Clerk of the Legislative Assembly

Ms Bridget Noonan, Assistant Clerk Procedure and Serjeant-at-Arms (Secretary)

* from 24 May 2011 to 28 February 2012 and from 28 November 2012

** from 28 February 2012 to 28 November 2012

*** until 24 May 2011

APPOINTMENT OF THE STANDING ORDERS COMMITTEE

Extracts from the *Votes and Proceedings* of the

Legislative Assembly

Thursday 7 April 2011

5 **COMMITTEE MEMBERSHIP —**

- ...
- (4) That a Select Committee be appointed to consider and report upon the standing orders of the House, such Committee to consist of the Speaker, Ms Barker, Mr Brooks, Mrs Fyffe, Mr Hodgett, Mr McIntosh, Mr Perera and Mrs Powell and that five be the quorum — [...] (*Mr McIntosh*) — put and agreed to.

Tuesday 24 May 2011

- 13 **STANDING ORDERS COMMITTEE —** Motion made, by leave, and question — That Mr Perera be discharged from attendance on the Standing Orders Committee and that Ms Allan be appointed in his place (*Mr McIntosh*) — put and agreed to.

Tuesday 28 February 2012

- 16 **STANDING ORDERS COMMITTEE —** Motion made, by leave, and question — That Ms Allan be discharged from attendance on the Standing Orders Committee and that Ms Green be appointed in her place (*Mr McIntosh*) — put and agreed to.

Wednesday 28 November 2012

- 5 **STANDING ORDERS COMMITTEE —** Motion made, by leave, and question — That Ms Green be discharged from attendance on the Standing Orders Committee and that Ms Allan be appointed in her place (*Mr McIntosh*) — put and agreed to.

MATTER EXAMINED BY THE COMMITTEE

Inquiry into use of social media in the Legislative Assembly and reflections on the Office of Speaker

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

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CHAIR'S INTRODUCTION

This inquiry has been unusual in a number of respects. It came about following a member using Twitter to express dissatisfaction about one of my rulings. Subsequently, I gave a commitment to the House to refer the issues of the use of social media, and reflections on the Chair, to the Standing Orders Committee.

The two issues have proved to be an interesting combination. The first covers the modern phenomenon of social media, and the second a longstanding rule used by Westminster parliaments. Unusually for the Committee, after it defined the scope of the inquiry, it called for submissions. Advertisements were placed in the print media and online, and Twitter was used to promote the inquiry.

The Committee gained an insight into how social media is being used generally for communications. It also investigated the approach other parliaments are taking.

Ultimately, it was interesting how the practices and procedures already in place apply equally well to communications via social media. The Committee concluded that the emphasis should be on promoting an understanding of existing rules, rather than needing to change any. It recommends the House adopts guidelines which summarise the rules.

My thanks go to all members of the Committee for the way in which they approached the inquiry and for their thoughtful contributions. I also acknowledge the advice and assistance provided by the clerks.

Hon Ken Smith MP
Speaker

RECOMMENDATIONS

1. The House reinforces the existing rules and practice by adopting the guidelines set out in the Appendix.
2. The guidelines are included in the orientation of new members of the Legislative Assembly and in the information provided to new members of the press gallery.

REPORT

Background

1. This inquiry arose from a situation that members on both sides of the House acknowledged was unusual. A member, dissatisfied with a ruling from the Speaker during question time, used Twitter to express his views about the ruling. The content of the tweet accused the Chair of bias. Viewing the tweet as a reflection on the Chair, the Speaker sought an apology.¹
2. This led to a lengthy debate in the House, during which members raised many points of order as to what rule the member may have breached. It was not immediately apparent to members that comments outside the House could be considered a reflection on the Chair.
3. The House recognised that this was an occasion where new technology was interacting with longstanding rules, and was bound to cause confusion for members. The Minister for Ports in the debate noted that ‘if people in a past era had written letters a week after a sitting of Parliament which reflected on the Chair, those matters would have been subject to consideration by the Speaker’.² The Member for Dandenong observed that the House relies on precedents and rulings, ‘There are precedents, but precedents can be interpreted in different ways when it comes to new technology’.³
4. Ultimately, the Speaker advised the House that it was an issue that could be considered by the Standing Orders Committee, though the Chair still required an apology from the member. An apology was not offered, and the Speaker suspended the member under SO 124.
5. On the next sitting day, the Speaker announced that the member had met with him in Chambers and offered an apology for the tweet being seen as reflecting on the Office of Speaker. The Speaker confirmed his commitment to the House that the use of social media and how it relates to the procedures of the House would be investigated by the Standing Orders Committee.⁴

Scope of the inquiry

6. The Committee met on 24 November 2011 to define the scope of its inquiry. On 6 December 2011 the Speaker reported to the House that:

The Standing Orders Committee has had a preliminary meeting to discuss members’ use of social media and the rule preventing reflections on the Chair. The committee will shortly call for submissions which, in summary, will cover: the use of hand-held devices, including for social media, from the chamber and committee

¹ *Legislative Assembly Hansard*, 9 November 2011 pp 5255–60.

² *Legislative Assembly Hansard*, 9 November 2011 p 5259.

³ *Legislative Assembly Hansard*, 9 November 2011 p 5258.

⁴ *Legislative Assembly Hansard*, 10 November 2011 p 5426.

hearings, whether existing standing orders need updating to reflect the use of social media and whether the rules preventing reflections on the Chair are still appropriate ...

At this stage the committee draws to the attention of all members that current rules prevent any reflections on the office of Speaker, other than by a substantive motion. This applies to all reflections, whether made in or outside the chamber. Any such reflections may also amount to a contempt and could have serious consequences for the member concerned.⁵

Conduct of the inquiry

7. The Committee commenced the inquiry by researching the practices of other jurisdictions. While information obtained was useful, it raised a number of queries and it also became apparent that all parliaments are grappling with the challenges and opportunities of social media.
8. The Committee determined that consultation was essential and that this should be widespread. Accordingly submissions were called for, seeking responses to four questions:
 - (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?
 - (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?
 - (3) Do the Assembly's procedures and rules need modernising to reflect the opportunities and challenges provided by social media?
 - (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?
9. The Committee placed a call for submissions in *The Age* and the *Herald Sun*, and also advertised details online and through Twitter. The initial deadline of 17 February 2012 was extended and all submissions were received by March 2012. These are available online from Parliament's [website](#). The Committee thanks all those who contributed and values their input.
10. The 10 submissions broadly expressed views against any restrictions on using social media, either by members or from the galleries. There was some concern mentioned at the image presented when many members use mobile phones during a debate, giving the perception that they are not 'paying attention'.

⁵ *Legislative Assembly Hansard*, 6 December 2011 p 6051.

However, the overall tenor of submissions was that hand-held devices offered a method of communication with the community and should not be restricted. Media representatives commented on the importance to them of being able to use social media as an immediate way of providing news and information, and see it as an opportunity to bring the Parliament to a wider audience.

11. Overall most submissions did not address question (4), relating to reflections on the Office of Speaker, in any detail.
12. Aside from considering the submissions, the Committee also arranged a briefing from social media experts. This provided an opportunity to explore trends, best practices, and examples of people's comments on social media which had caused them, or their employers/organisations, difficulties.

Analysis — use of social media

13. Taking into account all submissions, research and expert advice, the Committee concluded that the relevant issue is conduct when using social media, rather than the technology itself. Essentially it is another form of communication, although it can reach a much larger audience than traditional communication methods, often very quickly. The issue for consideration, therefore, became one of how social media is used from the Chamber and galleries, and not whether it is used.
14. The Committee accepts that this is a new and emerging use of technology and that the Legislative Assembly needs to adapt to its use. However, on examination, the existing rules and practices appeared to the Committee to be adequate to cover the use of social media.
15. Rulings already deal with the physical use of hand-held devices in the Chamber, such as requiring them to be in silent mode and not disturb other members. It has also long been known that members are not protected by parliamentary privilege for remarks made outside the Chamber. This includes comments made through social media and, for their own protection, it is essential that members fully appreciate the potential implications of such comments they make.

Analysis — reflections on the Office of Speaker

16. It has been a longstanding rule within Westminster parliaments that the Speaker's actions can only be criticised by substantive motion, and that breaches of this rule may be regarded as a contempt. The Committee recognises that the reason for the rule, and power to treat reflections as a contempt, may not be widely understood. It takes this opportunity to provide details.
17. The Speaker is the principal officer elected by the House. Although still a member of a political party, the Speaker must act independently from government, be impartial and protect the rights of the minority. The Speaker does not participate in debates or vote, except to give a casting vote. Similarly, the Speaker only serves on domestic committees dealing with administrative or

procedural issues, rather than on any committee with a politically contentious inquiry.

18. There are conventions in place which recognise the respect needed for the Office, such as members acknowledging the Speaker when entering the Chamber, and addressing their remarks through the Speaker. In addition, in recognition of the seniority of the role and the constraints placed on the Speaker, the Speaker is protected from adverse reflections, particularly of partiality, other than by a substantive motion. This protection, and the power of the House to deal with breaches, arise from the practice and precedents of the House of Commons.
19. From the outset, the Legislative Assembly derived its powers from the House of Commons. The first Act passed by the Victorian Parliament after the establishment of responsible government was the *Privileges Act 1857*. This defined the Houses' privileges, immunities and powers as the same as those held, enjoyed and exercised by the House of Commons. The *Constitution Act 1975* contains equivalent provisions, giving the Houses the same powers as were enjoyed by the House of Commons on 21 July 1856, so far as they are not inconsistent with any Victorian Act.
20. In the House of Commons, it is recognised that some privileges come from statute but many have been derived from 'the law and custom of Parliament'.⁶ The powers inherited by the Legislative Assembly include the ability to punish contempts. A contempt is defined as an:

... act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results ...⁷
21. The House of Commons has treated reflections on the Speaker as a contempt. *May* summarises the position as:

Reflections which have been punished as contempts have borne on the conduct of the Lord Chancellor in the discharge of his judicial duties in the House of Lords or that of the Chairman of Committees. In the same way, 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.⁸
22. Other Westminster parliaments follow the same precedents. Commentary on New Zealand practice states:

⁶ *May*, 3rd ed, 1855.

⁷ *May*, 24th ed, p 251.

⁸ *May*, 24th ed, p 263.

Some of the most serious reflections on members that can be made concern those against the character of the Speaker or any other presiding officer — in particular, accusations that presiding officers have shown partiality in discharging their duties. Reporting on a question of privilege concerning a reflection on the Speaker, the Privileges Committee has said, “[The] Speaker is in a special position. Being the embodiment of Parliament, reflections upon [the Speaker’s] character or conduct directly attack the very institution of Parliament itself, and have been dealt with accordingly here and in England”.⁹

23. Although it may not be widely understood, the rule applies not just to members but to the media, or anyone else who publicly reflects on the Office of Speaker. It is not restricted to remarks made within the House. There are examples from other jurisdictions which aptly illustrate the application of the rule in practice.
24. In New Zealand, reflections on the Chair have been censured on six occasions since 1967, five made by members and one by a newspaper. Briefly, the remarks were:
 - Accusations of racial prejudice
 - Criticism of the Speaker’s chairing of the House (two occasions)
 - Advocating the Speaker’s replacement and accusing him of weakness
 - A member criticising the Deputy Speaker’s failure to call him to speak and insinuating the Deputy Speaker was affected by his politics
 - Accusing the Speaker of selectively releasing personal information to disadvantage a political party.¹⁰
25. At Commonwealth level, the Speaker of the House of Representatives has noted ‘that it [is] a well-established parliamentary principle that reflections on the chair, inside or outside the Chamber, [are] highly disorderly’.¹¹ Since the passing of the Parliamentary Privileges Act 1987 (Cth) such reflections are considered as ‘important matters of order rather than as a contempt of the House’.¹²
26. In the House of Representatives there have been several examples of members, outside the Chamber, reflecting personally on the Speaker, including the Speaker’s actions and motivations. Most have been dealt with by withdrawals and apologies but, in 1987, a member was suspended for seven sitting days. In 1964 a journalist agreed to broadcast a retraction after implying the Speaker had given doubtful rulings and casting doubt on his impartiality.¹³
27. The only known examples in Victoria stem from the 1800s. One case related to newspaper comments reflecting on the Chairman of Committees¹⁴ and another

⁹ David McGee, *Parliamentary Practice in New Zealand*, 3rd ed, p 658.

¹⁰ *Ibid.*

¹¹ *House of Representatives Practice*, 5th ed, p 198.

¹² *Ibid.*

¹³ *Ibid.*, pp 197–8.

¹⁴ *Hansard*, 1858–9, vol IV, pp 567–74 and 587–96.

concerned a member's claim that the House was presided over corruptly.¹⁵ These were both debated by the House as breaches of privilege but, ultimately, apologies were accepted.

28. The Committee recognises that, over the years, what is acceptable reporting and commentary about members and politics generally has changed. The rule preventing reflections on the Office of Speaker is not there to stifle legitimate debate about politics and politicians. It is there to ensure the Office of Speaker is not undermined and the Speaker's ability to carry out his or her role is not compromised. To that end, the rule prevents suggestions of impartiality or impropriety, or any other adverse reflection, except when made in a substantive motion. It is analogous to the protection members of the House regularly seek from the Speaker, when they feel another member has impugned or personally reflected on them during debate. The Committee considers the rule to embody a very important principle and that it is still highly relevant today.

Need for guidelines

29. From its analysis, the Committee concluded that the existing rules are sufficient, both in relation to the use of social media and reflections on the Chair. The issue instead is one of promoting awareness and understanding of the rules, both amongst members and the media. The Committee believes that members and media representatives should understand the potential for them to be in contempt if they reflect on the Speaker, and feels the House could better promote this aspect of the rule.
30. With that conclusion in mind, the Committee felt it would be helpful for members and the media to be provided with guidelines summarising the relevant rules. Such guidelines could serve as a useful reminder to members that comments through social media are procedurally no different from remarks they may make in media interviews or in written communications. Similarly, guidelines would assist new members and media representatives by providing a clear summary of relevant rules.
31. Accordingly the Committee drafted guidelines and circulated these to members and the media for comment in June 2012. Only one adverse comment was received, suggesting that they are not 'tough enough'.
32. Subsequently the Committee made a minor change to make it clearer that members are not to use electronic devices to record proceedings. It also strengthened the guidance for the media by making it clear that they too could be in contempt for reflecting on the Office of Speaker. The guidelines, incorporating these changes, appear in the Appendix.
33. The Committee stresses that, although the guidelines are couched in terms of the use of social media, the rules preventing reflections on the Office of Speaker apply to communications of any kind.

¹⁵ *Hansard*, 1875–6, vol 23 p 2154.

Recommendations

34. The Committee feels that the existing rules and practice are sufficient but need to be better understood by members and the media. Accordingly it recommends that:

- 1. The House reinforces the existing rules and practice by adopting the guidelines set out in the Appendix.**
- 2. The guidelines are included in the orientation of new members of the Legislative Assembly and in the information provided to new members of the press gallery.**

Committee Room

11 December 2012

APPENDIX

Guidelines about the use of hand-held devices and social media

Use by members in the Chamber and committees

Members are asked:

1. To keep the electronic device on silent.
2. To avoid interference or distraction to other members, either visually or audibly, particularly the member speaking.
3. Not to divert attention from the member speaking.
4. Not to use the electronic device to record the proceedings (audio or vision).
5. To try to use the device unobtrusively, and bear in mind the need to balance use with creating a negative public image, particularly in question time and high profile debates.

Members are reminded:

1. Any comments made on social media are not covered by parliamentary privilege.
2. Use of social media to reflect on the Office of Speaker or Deputy Speaker, aside from being disorderly under SO 118, may amount to a contempt.*
3. Not to use social media to release confidential information about committee meetings or in camera hearings.

Use by the press gallery

Media representatives are reminded that all existing rules and conventions in regard to media interviews or in written communication, apply to their use of social media. That is, that any reflections they make on the Office of Speaker or Deputy Speaker may amount to a contempt.

*Any other public reflections may also be a contempt.