# Guidelines on the use of social media in Parliament

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Social media provides parliamentarians with unique opportunities to engage directly with constituents and participate in public debate. With reports suggesting rising disillusionment and disengagement with the parliamentary process across Western democracies (Hansard Society, 2019), recent studies have demonstrated the ways in which parliamentarians are effectively engaging with social media in Australia (Grant, Moon & Grant, 2010; Bruns & Moon, 2018), United Kingdom (Agarwal, Sastry & Wood, 2019) and around the world (Bruns, 2016).

The opportunities that social media offers in engaging with the community and supporting 'democratic renewal' has also been recognised by parliaments, particularly the UK House of Commons (Hansard Society, 2013; Digital Democracy Commission, 2015). The Inter-Parliamentary Union's (IPU) *World e-Parliament Report 2018* highlighted that social networks such as Facebook are now the most used tool for parliamentary outreach and engagement, overtaking television or radio (p. 25). Committees, the traditional interface between the parliament and the public, are increasingly utilising the opportunities provided by social media to engage more and more people in the inquiry process (Liaison Committee [UK], 2015).

In response to the growing use of social media, a number of Westminster parliaments have examined whether existing practices and procedures need to be updated to keep up with advances in technology and social media (see: House of Commons [UK], Committee, 2011; Legislative Assembly [Vic], Standing Orders Committee, 2012; House of Representatives [Aus], Standing Committee on Procedure, 2014; House of Representatives [NZ], Privileges Committee, 2015). These inquiries have recognised that the rapid dissemination of information facilitated by social media presents both opportunities and risks for Members and recommend the development of specific guidelines on the appropriate use of social media. This paper examines these inquiries and broader debates to suggest what should be considered by jurisdictions in developing guidelines for Members, staff and the media on the appropriate use of social media, consistent with existing parliamentary law, practice and procedure.

## Existing social media guidelines for Parliaments

*International guidelines*

To assist Members and parliamentary staff in using social media in accordance with parliamentary procedures, the IPU has developed *Social Media Guidelines for Parliament* (2013). The Guidelines are not prescriptive and are intended to provide broad advice on the basic principles for Members and staff in engaging on social media (p. 8).

*Australian and New Zealand guidelines*

A number of ANZACATT jurisdictions have investigated introducing more specific guidelines on social media use, building on those developed by the IPU. Committees

of the Victorian Legislative Assembly and New Zealand House of Representatives have recommended the introduction of guidelines, but these have not yet been formally adopted (Legislative Assembly [Vic], Standing Orders Committee, 2012; Privileges Committee [NZ], 2015).

In 2000 the Australian House of Representatives Standing Committee on Privileges developed *Guidelines for members on the status and handling of their records and correspondence* (2000, pp 48–49) to assist Members 'in relation to the handling of their correspondence', including court orders, search warrants and freedom of information requests (Guidelines, 2000). A subsequent inquiry by the House of Representatives Standing Committee on Procedure in 2014 recommended that consideration be given to reviewing and updating the Guidelines to include communications by Members via electronic devices (p. 18). To date, the Guidelines have not been updated. Instead, the House adopted a resolution on the use of electronic devices (House of Representatives [Cwlth], 2015, pp 1243–1244). Other State jurisdictions have adopted a similar resolution regarding the use of electronic devices (see: Legislative Assembly [Qld], 2018, p. 112).

These resolutions and proposed guidelines provide a useful starting point for considering what should be included in guidelines on social media for Members, staff and the media across ASPG jurisdictions. The key issues that could be considered in developing guidelines are examined below.

## Parliamentary privilege

One of the key issues guidelines should address is the extent to which comments made by Members on social media may be protected by parliamentary privilege.

### *Proceedings in Parliament*

The question of whether social media comments attract parliamentary privilege hinges on whether they can be defined as 'proceedings in Parliament'. Article 9 of the *Bill of Rights* provides that absolute privilege applies to the 'debates and proceedings in Parliament' (Elder, 2017, p. 738). These protections are considered 'undoubtedly the most important of the privileges of parliaments and are essential in parliamentary democracies' (Campbell, 2003, p. 68).

'Proceedings in Parliament' are defined differently across jurisdictions (see: Jack, 2011, p. 235; Harris & Wilson, 2017, pp 726-727). At the Australian Commonwealth level, privilege is codified in section 16(2) the *Parliamentary Privileges Act 1987* which defines 'proceedings in Parliament' as 'all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee'. Enid Campbell notes that this section was 'designed the clarify the meaning of the term "proceedings in Parliament" for the purposes of Article 9 of the *Bill of Rights*, but it does not provide an exhaustive definition of the term' (Campbell, 2003, p. 14).

In other jurisdictions, such as the UK, parliamentary privilege has not been codified and 'proceedings in Parliament' has not been explicitly defined. In Australia, states such as South Australia follow this model (Davis, 2018). While the UK House of

Commons has not yet adopted a detailed definition of 'proceedings in Parliament', it has considered the meaning and scope of the term (Jack, 2011, p. 235). A 1999 inquiry by a Joint Committee of the UK Parliament recommended introducing a legal definition of 'proceedings in Parliament' similar to that set out in section 16(2) of the Australian *Parliamentary Privileges Act 1987* (Joint Committee on Parliamentary Privilege [UK], 1999, paragraph 129). A subsequent inquiry in 2013 noted that neither House endorsed the report nor its recommendations to codify privilege (Joint Committee on Parliamentary Privilege [UK], 2013, p. 4). That Committee concluded that defining 'proceedings in Parliament' was not needed and preferred adopting the 'doctrine of necessity' set out in the 2005 case of *Canada (House of Commons) v. Vaid* to test the connection of certain activities to the proceedings of the House (Joint Committee on Parliamentary Privilege [UK], 2013, paragraphs 20–28). The *Vaid* judgement determined that privilege matters should be tested against 'doctrine of necessity' whereby:

> … the assembly or member seeking its immunity must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body, including the assembly's work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their legislative work with dignity and efficiency (*Canada (House of Commons) v Vaid*, 2005) .

The UK Committee asserted that they key advantage of adopting the 'doctrine of necessity' rather than a strict legal definition was its flexibility:

> The working practices of Parliament change, and our understanding of what is or is not subject to Parliament's sole jurisdiction needs to adapt and evolve accordingly (Joint Committee on Parliamentary Privilege [UK], 2013, paragraph 25).

*Social media versus other forms of communication*

In examining whether social media comments should be considered 'proceedings in Parliament' and attract privilege, a useful comparison can be drawn with debates around other forms of communication. A number of parliaments and courts across jurisdictions have examined the extent to which parliamentary privilege extends to Members' records and correspondence (Campbell, 2003, pp 12–13). For example, in Australia, section 16(2) of the *Parliamentary Privileges Act 1987* was examined by the Queensland Court of Appeal in *O'Chee v. Rowley* which found that certain documents obtained by or provided to a Senator were protected under this broad definition (Elder, 2018, p. 739).

A 2000 report by the Australian House of Representatives Standing Committee on Privileges highlighted that the 'boundary between those records and correspondence that are "proceedings in Parliament" and those that are not is not always clear' (p. 12). The Committee concluded that there should be no further protections as the existing definition of 'proceedings in Parliament' in the *Parliamentary Privileges Act 1987* is 'already wide' and noted the 'extent to which records and correspondence would fall within the definition of proceedings in Parliament and hence enjoy the protection of parliamentary privilege is a matter for statutory interpretation' (p. 46). Drawing from the judgement in *O'Chee v. Rowley* and the UK Joint Committee on Parliamentary

Privilege, that Committee suggested a two-step test for determining whether records of correspondence should be considered 'proceedings in Parliament':

> 1. Has an act been done [by a member or his or her agent] in relation to the records or correspondence 'in the course of, or for purposes of or incidental to' the transacting of the business of a House [or a committee]?
>
> 2. If yes, then does the use proposed to be made of the records or correspondence amount to impeaching or questioning those 'proceedings in Parliament'? (p. 11).

The Committee acknowledged that any broadening of absolute privilege would present a greater risk of misuse and concluded that there should be no additional protection beyond that provided by the current law (p. 38; Elder, 2018, p. 739). Similarly, the 1999 report by the UK Joint Committee noted the complexities of establishing boundaries and definitions and did not recommend extension of absolute privilege to Members' correspondence (paragraphs 103-112; see also: Jack, 2011, p. 237).

*Comments on social media*

Recent inquiries have considered social media as another form of communication which can impact on, conflict with and challenge parliamentary practice in the same way as other more traditional forms. The key difference with social media, as noted by Joanne McNair, Table Research Clerk at the Legislative Assembly of Ontario, is its ability for rapid and wide dissemination of information:

> Today, anyone with a social media account can instantly report something untoward done or said by an elected official, bypassing traditional media sources completely, and word of that incident can spread to every part of the globe which has internet access at a speed previously unknown (p. 23).

Similarly, Val Barrett, Manager of Hansard, Communication and Library at the ACT Legislative Assembly, in her 2010 examination of the risks associated with the greater dissemination of video broadcasts of proceedings facilitated by new technologies, noted:

> No real differences have emerged in the risks attaching to different forms of dissemination, i.e. text, audio and video. What seems to be at issue is the opportunities that new technologies and networking sites provide to manipulate the record and to magnify any harm done by engaging a much wider audience than the traditional printed record ever reached, and the instantaneous nature of broadcasting (pp 112–113).

Like other forms of communication, parliaments have concluded that comments on social media, whether made from the chamber or elsewhere, do not meet the test for 'proceedings in Parliament' and therefore do not attract parliamentary privilege (Elder, 2018, p. 739). In 2013, the then Speaker of the Australian House of Representatives reminded Members that 'any comments made on social media, even if made from the chamber precincts, are not covered by parliamentary privilege' (House of Representatives, 13 March 2013, p. 1934). The IPU Guidelines suggest that it would be unlikely that parliamentary privilege would apply to comments posted publicly on

social media ‘simply because they were made from the chamber’, noting that it would only be a matter of time until this assumption was tested in parliament (2013, p. 15).

Recent committee inquiries have all affirmed that tweets or other social media posts made during sittings of parliament are not protected by privilege as they are not considered ‘proceedings in Parliament’. For example, in 2014, the Australian House of Representatives Standing Committee on Procedure concluded that the existing protections afforded by parliamentary privilege are ‘powerful’ and was not persuaded that any consideration should be given to extending the definition of ‘proceedings in Parliament’ to include electronic communications by Members from the chamber (p. 17).

Drawing from the particular definitions of ‘proceedings in Parliament’ in each jurisdiction, guidelines should clearly indicate that parliamentary privilege would not likely apply to statements made on social media, whether or not they are made from inside or outside the chamber. For example, the proposed New Zealand Guidelines highlight that comments made by Members may not be covered by parliamentary privilege, even if they have been made in the chamber or a committee meeting:

> Such comments are unlikely to be part of parliamentary proceedings or published under the authority of the House. Members may, therefore, be held legally liable for comments made on social media in the same way as they are for comments made outside the House (Privileges Committee [NZ], 2015, p. 14).

*Re-publishing or re-broadcasting of proceedings*

A more complex privilege issue relates to the re-publishing and re-broadcasting of proceedings in Parliament on social media. The recent adoption across most ASPG jurisdictions of live streaming and video-on-demand services provides the opportunity to post and share excerpts of proceedings on social media platforms soon after they occur. Members and journalists across jurisdictions often use their social media platforms and websites to share excerpts of broadcasts or Hansard transcripts. Excerpts of broadcasts are also increasingly used by parliamentary staff to promote the work of parliaments and committees on official social media platforms (see, for example: House of Assembly [SA], 2019).

The application of parliamentary privilege to the official broadcast and publication of proceedings differs across jurisdictions. In the UK the privilege of freedom of speech protecting what Members say in debate does not apply in the same degree to the publication of debates or proceedings outside Parliament, which is known as ‘qualified privilege’ (Jack, 2011, p. 224). Publication of excerpts of proceedings by Members do not attract this protection as these are considered separate publications:

> If a Member of either House publishes separately from the rest of the debate a speech made by him in the course of proceedings in Parliament, his printed statement becomes a separate publication, unconnected with any proceedings in Parliament and his is legally responsible for any defamatory matter it may contain (Jack, 2011, p. 224)

In jurisdictions where parliamentary privilege has been codified, absolute privilege may attach to the official publication or broadcast of proceedings in Parliament. In the

Australian Commonwealth, Members are protected by absolute privilege in respect to statements made in the House, whether or not they are broadcast, and also attaches to those persons authorised to broadcast or re-broadcast proceedings by the *Parliamentary Proceedings Broadcasting Act 1946* (Elder, 2018, p. 122). Hansard reports of proceedings are also absolutely privileged (Elder, 2018, p. 741). However, like the UK, privilege in Australia does not protect individual Members publishing their own speeches apart from the rest of debate, which is considered a separate publication (Elder, 2018, p. 741). Campbell notes that the general view is that 'republication or effective repetition by a member of what he or she has said in the course of parliamentary debate does not attract the protection of Article 9 of the *Bill of Rights'*; however, republication could attract qualified privilege as outlined by the High Court in *Lange v. Australian Broadcasting Corporation* (Campbell, 2003, p. 13).

ASPG jurisdictions that have authorised the broadcasting of proceedings have set out the terms of on which publication of Hansard and broadcasting are permitted, through either legislation, standing orders or resolutions. Many jurisdictions have also specifically authorised the re-broadcasting of proceedings. The Australian House of Representatives resolution of 9 December 2013 authorises the broadcasting and re-broadcasting of proceedings (Elder, 2018, p. 121). Other Australian jurisdictions have similar authorisations for the re-broadcasting of proceedings. In 2017, the Victorian Parliament introduced a new sessional order to address the re-broadcasting of proceedings (Legislative Assembly [Vic], 2017, pp 2848-2849). In introducing live streaming in late 2017, the South Australian House of Assembly authorised the broadcast and re-broadcast of proceedings and excerpts on terms and conditions determined by the Speaker (House of Assembly [SA], 2017, p. 11041).

However, Barrett highlights that the protections of qualified privilege are not as clear regarding the re-broadcasting of official proceedings by Members and media organisations, which may be subject to the principle of 'effective repetition' established in *Jennings* v *Buchanan* (p. 102). *House of Representatives Practice* notes that 'only qualified privilege may be held to attach to the broadcast of excerpts of proceedings' (Elder, 2018, p. 122). *Erskine May* notes that cases across the Commonwealth, such as *Jennings* v *Buchanan* in New Zealand, have raised the issue of 'how much protection is enjoyed by references outside the legislature to what had been said within its walls, short of full separate republication or repetition' (Jack, 2011, p. 224). In 2013, the UK Joint Committee on Parliamentary Privilege noted the uncertainty created by *Jennings v Buchanan* and similar cases for Members in the UK:

> These cases appear to have left Members of both Houses unsure of the extent to which they can subsequently repeat or refer to statements made by them in Parliament (statements which, as proceedings in parliament, are themselves protected by absolute privilege) (Joint Committee on Parliamentary Privilege [UK], 2013, p. 52).

The Committee recommended introducing statutory provisions to ensure that absolute privilege applies to all publications and broadcasts authorised by either House, and that qualified privilege 'applies to all fair and accurate reports of parliamentary proceedings in the same way as to abstracts and extracts of those proceedings' (p. 51), which should extend to Members themselves:

> In practice, this would mean that a Member who, for instance, published on his website links to his contributions to debates, whether in the online version of Hansard or the webcast of the sitting, would enjoy absolute privilege—while the specific link might be to the Member's personal speech, that speech would be part of a file in which the entire day's sitting or webcast (both issued under the authority of the House) was contained. If, on the other hand, the Member reproduced the verbatim text of a speech (that is, an extract from Hansard), the protection would be qualified, so any claimant would have to prove malice in order to bring a successful suit (p. 53).

The Australian House of Representatives Standing Committee on Procedure also examined the limits of privilege on re-publishing excerpts of speeches on social media. The Committee heard concerns from the then Clerk about the uncertainty of the application of privilege beyond occasions clearly comprising 'proceedings in Parliament', such as Members reproducing speeches on their websites (pp 15–16). The committee expressed concern that:

> … with the increasing use of devices by Members, and the instantaneous publication and re-publication of their comments, Members need to be aware of the limits on the protection of parliamentary privilege (2014, p. 16).

Drawing from the specific legislation and resolutions on the publication of transcripts and broadcasts of proceedings (where applicable), guidelines should highlight the limits of the protections of privilege to the re-publishing and re-broadcasting of excerpts of proceedings by Members on social media. To address the ambiguity around the protection available to Members for re-publishing of excerpts of official broadcasts on social media, jurisdictions could also consider whether privilege should be extended, or its limits more clearly defined.

**Use of electronic devices during proceedings**

Another of the key issues for consideration by any guidelines is the use of electronic devices, including laptops, tablets and smartphones, by Members in the chamber and during committee proceedings. The IPU Guidelines highlight that as at 2013, 75 per cent of parliaments allow tablets in plenary sessions and 65 per cent allow smartphones (2013, p. 14). A 2018 report by the IPU noted that 96 per cent of Members surveyed use a mobile device as a core tool in their parliamentary work (2018, p. 33). However, the IPU Guidelines note that there are no consistent or global standards on the use of technology by members in the chamber (2013, p. 14).

Electronic devices are now commonly used during proceedings, with Members using phones, tablets and laptops to read speeches, and refer to electronic documents and communications during debates. A 2011 report by the UK Procedure Committee acknowledged that the use of these devices are part of modern life and assist Members in their parliamentary duties (Procedure Committee [UK], 2011, p. 8). Electronic documents used during proceedings are generally treated in the same way as traditional hard copy documents. For example, in the South Australian House of Assembly, a Minster was recently asked to table the full text of an SMS message quoted from during question time (House of Assembly [SA], 2018, p. 2604).

Across the Commonwealth, a number of jurisdictions have issued guidance or rulings on the use of electronic device by Members during proceedings in the chamber and in

committees. The general principle parliaments have adopted is that electronic devices may be permitted, provided they do not impair decorum or disrupt the business of the House (House of Representatives [NZ], 2017, p. 16; Standing Orders Committee [Vic], 2012, p. 3). Committees in the UK and Australia have specifically examined the use of hand-held electronic devices in the chamber and committees and recommended passing resolutions allowing for their use, provided they do not 'impair decorum' (Procedure Committee [UK], 2011, p. 10; Standing Committee on Procedure [Aus], 2014, p. 20). The Australian House of Representatives adopted a resolution setting out when and how electronic devices may be used in the chamber (House of Representatives [Aus], 2015, p. 3553). The resolution notes that 'communication via electronic devices, whether in the Chamber or not, is unlikely to be covered by parliamentary privilege' and that any reflections on the Chair made by Members on social media would be treated the same as reflections made inside or outside the chamber (House of Representatives [Aus], 2015, pp 1243–1244).

Drawing from the specific resolutions and rulings in each jurisdiction, guidelines should advise Members on how and when electronic devices may be used in the chamber and committee proceedings. Members should also be advised that the same principles applying to hard-copy documents used in the House may be applied to documents on electronic devices used during proceedings.

*Photography and filming from the chamber*

Another issue any guidelines should consider is the use of devices to record or photograph proceedings, made possible with advances in smartphone technology. In New Zealand, the Privileges Committee highlighted that there were no specific rules around the use of cameras on such devices to film or photograph from the floor of the chamber. The Committee noted that social media and advances in technology allowed photos and film to be taken and shared unobtrusively during proceedings, citing a few 'regrettable' occurrences (Privileges Committee [NZ], 2015, p. 15).

In most jurisdictions, this practice has been prohibited by Speaker's Rulings or resolutions of the relevant house. For example, in the South Australian House of Assembly in 2008, the then Speaker ruled that photography by Members on the floor of the House of Assembly was disorderly and asked those Members responsible to apologise and dispose of the photographs (House of Assembly [SA], 2008, pp 3043–3044). More recently in New Zealand, a photograph was taken from the chamber and posted to Twitter in breach of the Speaker's rulings on photography. The Speaker reminded Members that photographs may only be taken with the Speaker's permission, and that 'publication compounded the breach' (House of Representatives [NZ], 2018, p. 2319).

However, the New Zealand Parliament has questioned whether photograph or filming from the chamber should be permitted in certain situations. The Privileges Committee recommended allowing photography or filming from the floor of the chamber specifically for the swearing in a of member, a maiden or valedictory statement, a waiata following the third reading of a Treaty of Waitangi claims settlement bill, or any other occasion approved by the Speaker (Privileges Committee [NZ], 2015, p. 15). The Committee recommended that the Speaker issue guidance for the use of filming

and photography in the chamber, including specifying occasions when this may be appropriate (Privileges Committee [NZ], 2015, pp 8–9).

In developing guidelines for Members, jurisdictions should take into consideration existing rulings and Standing Orders on photography and filming from the floor of the chamber or in committee proceedings. Parliaments could also consider the findings of the New Zealand Privileges Committee about whether filming and photography may be suitable in certain circumstances.

### Confidentiality of committee proceedings and evidence

Another risk posed by social media is the ability to disseminate the evidence or proceedings of a committee before it has been authorised for publication, or where a committee has resolved to take the evidence confidentially. Across jurisdictions, the proceedings of committees, including any working documents such as draft reports, must remain confidential and may only be released following authorisation from the committee or its appointing House (Jack, 2011, p. 838). Committees may also accept evidence confidentially and may resolve not to publish or report the evidence to the House (Jack, 2011, p. 826). As *Erskine May* notes, any disclosure of evidence or proceedings (including draft reports) which have not been reported to the House or authorised by the committee or its appointing House may be treated as a contempt (Jack, 2011, p. 838).

The draft New Zealand and Victorian guidelines highlight that disclosure on social media would be treated in the same way as disclosure by any other means. The draft Victorian guidelines warn Members not to release 'confidential information about committee meetings or in camera hearings' (Standing Orders Committee [Vic], 2012, p. 9). The proposed New Zealand guidelines emphasise that releasing the proceedings of committees, may be considered a contempt:

> Confidential select committee proceedings or reports should not be disclosed, contrary to Standing Orders, by any means, including social media. Any breach of the confidentiality of select committee proceedings or reports may amount to a contempt (Privileges Committee, 2015, p. 15).

Any proposed guidelines should address the unauthorised release of confidential evidence and proceedings based on the specific requirements in that jurisdiction. Guidelines should remind Members that the release of such evidence or documents (including draft repots) on social media would be treated the same as unauthorised disclosure through other means.

### Reflections on the Speaker and Members

Social media also allows Members to make reflections, often from the chamber, on the Speaker and other Members. In Australia, parliamentary inquiries into social media have followed instances where Members have used Twitter to comment on the conduct of the Speaker. In the Australian House of Representatives in 2013, the then Leader of Government Business expressed concerns about comments made by two Opposition Members on Twitter about the then Speaker. In that case, the Speaker reminded Members that 'on the use of electronic media, the same rules pertain as to speaking in the House' (House of Representatives [Aus], 2013, pp 1029-1031). In the

Victorian Legislative Assembly in 2011, a Member used Twitter to express his dissatisfaction with a ruling by the Speaker during question time. In that case the then Speaker viewed the tweet as a reflection on the Chair and sought an apology. The Member refused and was suspended from the House for 90 minutes (Victorian Legislative Assembly, 2011, pp 5255–60). The then Clerk of the Legislative Assembly noted that the incident highlighted that 'members' understanding of reflections on the chair was flimsy, and that the informal and instant nature of social media was amplifying that lack of understanding' (Purdey, 2013, p. 1).

In Westminster parliaments, reflections on the Speaker can only be made by substantive motion, and breaches of this rule have been treated as contempts (Jack, 2011, p. 396; Elder, 2018, pp 197–203; Harris & Wilson, 2017, p. 782). In some jurisdictions, reflections on Members character or conduct in their capacity as Members of Parliament may also be punished as contempts (Jack, 2011, p. 263, Harris & Wilson, 2017, pp 780–781). At the Australian Commonwealth level, the *Parliamentary Privileges Act 1987* abolished the category of contempt regarding words or acts that are defamatory or critical of the Parliament, a House, a committee or a Member (Elder, 2018, p. 752).

The Victorian Standing Orders Committee concluded that the rules about reflections on the Chair were sufficient and appropriate, but that Members needed to understand that 'comments through social media are procedurally no different from remarks they may make in media interviews or in written communications' (2012, p. 6). The draft Victorian guidelines suggest that Members be reminded that 'use of social media to reflect on the Office of the Speaker or Deputy Speaker, aside from being disorderly under SO 118, may amount to a contempt' (2012, p. 9). Similarly, the proposed New Zealand guidelines emphasise that any public reflections on the character or conduct of a member may amount to a contempt, including any public reflections made on social media (Privileges Committee, 2015, p. 15).

Guidelines should refer to the specific rules in each jurisdiction on reflections on the Speaker and on Members, and whether they may be considered contempts or offences. Guidelines should advise Members that any reflections made on social media, whether from inside or outside the chamber, will be treated in the same way as reflections made through other means.

**Use of photography and broadcast of proceedings by media and others**

One final issue to consider is the use of photography and broadcast of proceedings by the media and other parties. In most jurisdictions, Presiding Officers issue rules for media on filming and photography of proceedings, including media coverage of chamber and committee proceedings. In New Zealand, these are set out in the *Protocol for interviewing members, filming, and photographing in Parliament Buildings* issued by the Speaker and *Rules for filming and conditions for use of official coverage* set out in Standing Orders (Harris & Wilson, 2017, p. 92). The Presiding Officers of the Australian House of Representatives and Senate have issued *Rules for media related activity in Parliament House and its precincts*, consistent with resolutions of Houses and the *Parliamentary Proceedings Broadcast Act 1946.* These rules set clear

guidelines for the use of photographs taken of proceedings and broadcasting of proceedings, including that material must:

- be used for the purposes of fair and accurate reports of proceedings;
- not be digitally manipulated;
- not be used for political party advertising or election campaigns; or commercial sponsorship or commercial advertising (Parliament of Australia, 2016, pp 10–11).

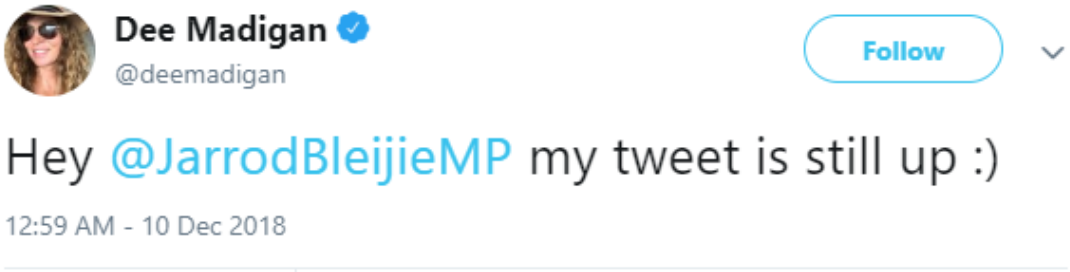
In other jurisdictions, rules on the use of broadcast and photography by media include additional requirements that material not be used for the purposes of satire or ridicule (see: House of Assembly [SA], Standing Order 400).

The interaction between social media and these rules was recently tested in Queensland following a tweet by advertising executive, Ms Dee Madigan (see Figure 1), which was referred to the Queensland Parliament's Ethics Committee for investigation.

**Figure 1 – Ms Dee Madigan Twitter Post, 9 May 2018**


The Committee found that the republication of the broadcast and caption constituted a breach of its Broadcast Terms of Conditions regarding 'ridicule' and was thus a contempt of Parliament (p. 5). However, despite the finding of contempt, Ms Madigan has refused to remove the Tweet (see Figure 2), raising questions about the impact of contempts on those outside of Parliament.

**Figure 2 – Ms Dee Madigan Twitter Post, 10 December 2018**




The Committee noted that a number of parliaments have reviewed the prohibition on 'satire and ridicule' and removed it, suggesting it may be timely for the Queensland Parliament to consider the matter (p. 5). In New Zealand in 2015, the Clerk and Chair of the Parliamentary Press Gallery proposed to the Privileges Committee that the prohibition on the use of official television coverage for 'satire, ridicule or denigration' should be removed, noting this rule had never been used and 'risks making Parliament seem out of touch and wary of criticism' (Privileges Committee [NZ], 2015, p. 11). Following this report, in 2017 the NZ Standing Orders Committee recommended that the ban on the use of coverage for satire, ridicule or denigration be lifted (Standing Orders Committee [NZ], 2017, p. 11).

Any guidelines should reference the specific rules for media photography and filming in that jurisdiction and indicate they also apply to posts by the media on social media. They should also note that the rules extend beyond the media to anyone using or sharing excerpts of parliamentary broadcasts online, as demonstrated by the Madigan case. The draft Victorian guidelines suggest that media representatives be reminded that the existing rules regarding media interviews or written communication apply to the use of social media. To this should be added rules around the re-broadcasting of excerpts of proceedings and the existing rules in each jurisdiction.

Parliaments may also wish to consider the findings of the Queensland Ethics Committee's inquiry and whether rules on the use of broadcasts for satire or ridicule are still relevant and necessary.

## Conclusion

Social media presents significant opportunities to parliaments and parliamentarians to connect directly with citizens and communities. However, the rapid dissemination of information to a wide audience made possible by social media does present some risks. Parliaments in the UK, Australia and New Zealand have highlighted the need for guidelines to better educate Members, staff and the media on the appropriate use of social media and the limitations on protections of parliamentary privilege.

In preparing guidelines, jurisdictions should take into account the differences in existing legislation and practices and areas of ambiguity and uncertainty about how information shared on social media may or may not be protected by parliamentary privilege. The ambiguity around the extension of privilege to the excerpts of proceedings in Parliament that can be readily shared in video and written form on

social media in particular raises questions about how this could be clarified. This reinforces the need, highlighted by parliaments across ASPG jurisdictions, that Members, staff, media – as well as parliamentary officers – should be made aware of these complex issues and the possible risks and penalties, specific to each jurisdiction.

**References**


Argarwal, P., Sastry, N. & Wood, E. (2019). 'Tweeting MPs: Digital Engagement between citizens and Members of Parliament in the UK', Paper presented at *13th International AAAI Conference on Web and Social Media (ICWSM)*, 11-14 June 2019.

Barrett, V. (2010). 'Publishing the Record of Parliamentary Proceedings: Identifying and Controlling the Risks', *Journal of Law, Information and Science*, vol. 20, no. 2, 2009/10, pp 98–118.

Bruns, A. & Moon, B (2018). 'Social Media in Australian Federal Elections: Comparing the 2013 and 2016 campaigns', *Journalism & Mass Communication Quarterly*, vol. 95, no. 2, pp 425-448.

Bruns, A., Gunn, E., Skogerbo E., Larsson, A. & Christensen, C. (2016). *The Routledge Companion to Social Media and Politics*, New York: Routledge.

Campbell, E. (2003). *Parliamentary Privilege*. Sydney: The Federation Press.

*Canada (House of Commons) v Vaid* (2005). S.C.R. 667, 2005 Supreme Court of Canada 30. Retrieved from: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2231/index.do

Davis, J. (2018). 'The South Australian Parliament and Parliamentary Privilege', *The Bulletin*, Law Society of South Australia, February 2018, pp 36–39.

Digital Democracy Commission (2015), *Open Up! Report of the Speaker's Commission on Digital Democracy*, 26 January 2015. Retrieved from: http://www.digitaldemocracy.parliament.uk/documents/Open-Up-DigitalDemocracy-Report.pdf

Elder D.R. (2018), *House of Representatives Practice*, 7th edition. Canberra: Department of the House of Representatives.

Grant, W., Moon, B. & Grant, B. (2010). 'Digital Dialogue? Australian Politicians' use of the social network tool Twitter', *Australian Journal of Political Science*, vol. 45, no. 4, 2010, pp 579–604.

Hansard Society (2013), *#futurenews – The Communication of Parliamentary Democracy in a Digital World*. London: Hansard Society. Retrieved from: https://assets.contentful.com/u1rlvvbs33ri/3x5fTrhbji6AQswyGMcwMA/48f494c8e1b4523dc7ab63f39027e69a/Publication__Future-News-the-Communication-of-Parliamentary-Democracy-in-aDigital-World.pdf

Hansard Society (2019). Audit of Political Engagement. London: Hansard Society. Retrieved from: https://assets.ctfassets.net/rdwvqctnt75b/7iQEHtrkIbLcrUkduGmo9b/cb429a657e97cad61e61853c05c8c4d1/Hansard-Society__Audit-of-Political-Engagement-16__2019-report.pdf

Harris, M. & Wilson, D. (2017). *McGee Parliamentary Practice in New Zealand*, Fourth edition. Auckland: Oratia Books.

Inter-Parliamentary Union [IPU] (2013). *Social Media Guidelines for Parliament*, Version 1.0, March 2013. Retrieved from https://www.ipu.org/resources/publications/reference/2016-07/social-media-guidelines-parliaments

Inter-Parliamentary Union [IPU] (2018), *World e-Parliament Report 2018*. Geneva: IPU.

Jack, M. ed. (2011). *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, Twenty-fourth edition. London: LexisNexis.

Laing, R. (2016). *Odger's Australian Senate Practice: As revised by Harry Evans*, Fourteenth edition. Canberra: Department of the Senate.

Madigan, D. (2018). @deemadigan Twitter Post, 9 May 2018. Retrieved from: https://twitter.com/deemadigan/status/994428251836637185

Madigan, D. (2018). @deemadigan Twitter Post, 10 December 2018. Retrieved from: https://twitter.com/deemadigan/status/1072053135869272065

McNair, J. (2014). 'The Implications of Social Media for Parliamentary Privilege and Procedure', *Canadian Parliamentary Review*, Winter 2014, pp 17–23.

New Zealand Appeals to the Privy Council (2004). *Jennings v Buchanan* [2004] NZPC 4; [2004] UKPC 36; [2005] 2 NZLR 577; [2005] 1 AC 115 (14 July 2004). Retrieved from: http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZPC/2004/4.html

Parliament of Australia (2016). *Rules for media related activities in Parliament House and its precincts*, November 2016. Retrieved from https://www.aph.gov.au/About_Parliament/Media_Rules_and_Filming_Applications

Parliament of Australia House of Representatives, Standing Committee on Procedure (2014). *Use of electronic devices in the Chamber and Federation Chamber.* Canberra: House of Representatives.

Parliament of Australia, House of Representatives, Standing Committee on Privileges (2000). *Report of the inquiry into the status of the records and correspondence of Members*. Canberra: House of Representatives.

Parliament of Australia, House of Representatives, Standing Committee on Privileges and Members' Interests (2000). 'Guidelines for members on the status and handling of their records and correspondence', Retrieved from: https://www.aph.gov.au/Parliamentary_Business/Committees/House/Privileges_and_Members_Interests/Role_of_the_Committee

Parliament of Australia. House of Representatives (2013). *Parliamentary Debates: Official Hansard.* Forty-Third Parliament, First Session, No. 3, 13 March 2013.

Parliament of Australia. House of Representatives (2013). *Parliamentary Debates: Official Hansard.* Forty-fourth Parliament, First Session, No. 2, 21 November 2013.

Parliament of Australia. House of Representatives (2015). *Votes and Proceedings.* Forty-fourth Parliament, First Session, No. 111, 26 March 2015.

Parliament of New Zealand, House of Representatives (2018). *Parliamentary Debates (Hansard)*, Fifty-second Parliament, vol. 727, 1 March 2018. Retrieved from: https://www.parliament.nz/mi/pb/hansard-debates/rhr/combined/HansDeb_20180301_20180301_04

Parliament of New Zealand, House of Representatives, Standing Orders Committee (2017). *Review of Standing Orders*. July 2017.

Parliament of New Zealand. House of Representatives (2017). *Speaker's Rulings*. October 2017.

Parliament of Queensland, Legislative Assembly (2018). *Standing Rules and Orders of the Legislative Assembly*. Retrieved from: https://www.parliament.qld.gov.au/en/work-of-assembly/procedures

Parliament of Queensland, Legislative Assembly, Ethics Committee (2018). *Inquiry into matters relating to a matter of privilege referred by the Speaker on 15 June 2018 relating to a breach of the Broadcast Terms and Conditions*. Report No. 181, 10 December 2018.

Parliament of South Australia, House of Assembly (2018). *Standing Orders*. Adelaide: Government Printer.

Parliament of South Australia. House of Assembly (2019). *Facebook*. Retrieved from: https://www.facebook.com/houseofassembly

Parliament of South Australia. House of Assembly (2008). *Parliamentary Debates (Hansard)*. Fifty-First Parliament, Second Session, 10 April 2008.

Parliament of Victoria, Legislative Assembly (2017*). Parliamentary Debates (Hansard)*. Fifty-Eighth Parliament, First Session, 20 September 2017.

Parliament of South Australia. House of Assembly (2018). *Parliamentary Debates (Hansard)*. Fifty-Third Parliament, Second Session, 26 September 2017.

Parliament of South Australia. House of Assembly (2018). *Parliamentary Debates* (*Hansard)*. Fifty-Fourth Parliament, First Session, 19 September 2018.

Parliament of Victoria, Legislative Assembly, Standing Orders Committee (2012). *Report into use of social media in the Legislative Assembly and reflections on the Office of Speaker*, No 209, Session 2010-12. Melbourne: Legislative Assembly of Victoria.

*Parliamentary Privilege Act 2014* (NZ).

*Parliamentary Privileges Act 1987* (Cwlth).

Purdey, R. (2013). 'Use of Social Media in the Parliament', Paper presented to 44th Conference of Presiding Officers and Clerks, Canberra, 30 June–4 July 2013.

UK Parliament, House of Commons, Procedure Committee (2011). *Use of hand-held electronic devices in the Chamber and committees*, Third Report of Session 2010-11, HC 889, 24 March 2011.

UK Parliament, House of Commons Liaison Committee (2015). *Building public engagement: Options for developing select committee outreach*, First Special Report of Session 2015-16, HC 470, 14 October 2015.

UK Parliament, Joint Committee on Parliamentary Privilege (1999). *Parliamentary Privilege Volume I – Report and Proceedings*, HL 43-1 / HC 214-1, Session 1998-1999, 9 April 1999.

UK Parliament, Joint Select Committee on Parliamentary Privilege (2013). *Parliamentary Privilege: Report of Session 2013-14*, HL30 / HC 100, Session 2013-2014, 18 June 2013.