Report to Members of Parliament regarding Breach of Media Access Conditions

from Hon Fiona Simpson MP
Speaker of the Legislative Assembly

24 October 2012

Introduction

Honourable Members

It is with regret that I notify Members of a serious breach of the Media Access Conditions, which also has Parliamentary Privilege and Contempt considerations for Members.

Given the nature of this breach, particularly its implications with regards to the free performance by a member of the member’s duties as a member, I provide this report for your information.

Members who have inquiries regarding this matter are encouraged to contact me for further discussion.

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Overview

The following provides the framework for consideration of the matter at hand.

- The Parliament is often called the People’s House because it is the place where Members of Parliament (MPs) speak for their constituents – the people who directly elected them to speak on their behalf.

- The Speaker is charged with guarding the rights of MPs to fulfil their duties, on behalf of their constituents, and to be able to do so without threat, intimidation or their safety being threatened.

- The Chamber is a workplace, and MPs are entitled to have working documents in their place of work. This includes sensitive or private documents, confidential Ministerial briefings or constituent documents which include personal details.

- The Speaker is highly supportive of extending the broadcast and accessibility of the workings of the Legislative Assembly Chamber to a diversity of Media outlets and has taken recent steps to achieve this. The Queensland Parliament has six, high-definition broadcast cameras installed in the chamber to allow the broadcast of proceedings. There are also cameras in the Legislative Council (Red) Chamber and in Committee hearing rooms.

- The Speaker considers that the media play an important role in a democratic society, informing the public and ensuring coverage that is factual, free of bias and in the public interest.

- The four television networks based in Brisbane have previously been given access to bring network cameras into the Chamber for pooled vision, initially granted because the Queensland Parliament did not have its own broadcast cameras. This access was granted under strict conditions.

- Access to the Chamber, by network cameras, is not a matter of a right or entitlement. The presence of network cameras was conditional on abiding by the rules.

- The current conditions of access were negotiated with, and agreed to by, the Parliamentary Media Gallery in 2006 and have remained in place since then.
Matter at Hand

The four television networks have been granted access for camera operators to film pooled vision in the Chamber based on their compliance to Media Access Conditions.

Regrettably, on 13 September 2012, a serious breach both of trust and of the Media Access Conditions occurred as network cameras captured close up footage of papers on Members’ desks. The filming of these papers was a breach.

This footage was then also provided to another outlet, after which time it was broadcast. This broadcast was a further breach.

In addition to the breaches just described, the matter has raised a further concern. Given the amount of raw footage captured each day by network cameras for pooled vision, and given that Parliamentary Services do not have access to this footage, Members cannot receive a reasonable assurance from the Parliament that their confidential papers or documents will not be filmed by network cameras in the Chamber. This concern is separate and distinct from whether such footage is edited out of any final broadcast material.

With regard to the filming of a Member’s paper, this event also raised a consideration as to whether filming Members’ papers is a matter of Privilege and a contempt of Parliament.

I therefore sought the advice of the Clerk with respect to the matter.

1. Privilege
Advice received from the Clerk of the Parliament includes the following:

a member has individual rights and immunities (privileges) regarding documents prepared for a member for a parliamentary proceeding and, in some circumstances, a document being used by a member for a parliamentary proceeding. The rights may include the right of confidentiality in respect of the document. A breach of that right to confidentiality may constitute a breach of privilege and a contempt.

2. Conditions for Media Access
Advice received from the Clerk of the Parliament includes the following:

In my opinion, only the Speaker can determine whether there has been a breach of the Media Access Conditions (the “Conditions”).

However, the Conditions are very clear:

Rule 12 of the sub-conditions for camera operators in the Assembly Chamber state:

“12. No close-up shots of Members’ papers shall be permitted.”

The advice continues:

I note that Rule 12 is not predicated by the condition of confidentiality. That is, the Rule does not say “No close-up shots of confidential Members’ papers shall be permitted”. There is a very good reason for this. It is for the Member, not camera operators or media representatives post factum to determine confidentiality. In my opinion, therefore, the fact that the paper in this clip may not be confidential is irrelevant.

In the context of the conditions, also irrelevant is the particular member’s attitude to the shot. They (the member) may find the footage benign. However, the Rule is designed to protect the rights of all Members.
Related issues for consideration

1. Greater choice of camera angles versus Member’s confidentiality

Members would be aware that Sky News and A-PAC have been broadcasting the proceedings of Queensland Parliament for some time, having taken the broadcast feed from the Parliament via DVD and more recently, via a live feed. This allays the somewhat spurious concerns expressed by some television networks that Parliament’s feed was not broadcast quality.

The reason for network cameras to be in the chamber, in addition to the installed high-definition cameras, is then more a matter of having greater options with regards to camera angles and framing. However, the risk to confidentiality of Members’ documents along with possible issues of Parliamentary Privilege and Contempt, outweigh the matter of having a choice of shots for editorial selection.

2. Consistency with other Australian Jurisdictions

The Queensland Parliament is uncommon in its practice of having network cameras in the Chamber every day, while also operating its own broadcast quality cameras.

Chart 1 (below) shows the practices of other jurisdictions. It is clearly apparent that television networks in Brisbane have access over and above that which is granted in other jurisdictions that have their own parliamentary cameras.

<table>
<thead>
<tr>
<th>Parliament</th>
<th>Parliament Cameras operating</th>
<th>Network cameras in Chamber as standard practice</th>
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<td>ACT</td>
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Chart 1 – Comparison of Parliaments within Australia

In NSW, Vic, WA, TAS and NT, television filming in the Chambers is the exclusive responsibility of parliamentary staff. These Jurisdictions will allow network cameras to lodge a request to film in the chamber for express and particular purposes, or for exceptional occasions such as regional sittings or Parliament or failure of Parliamentary Equipment. ACT will permit entry when matters of interest are in the House and when a network has current approved access.

3. Availability of uncensored feed of parliament

The independent and non-political staff of the Parliamentary Services produce an uncensored broadcast of the proceedings of Parliament. This broadcast is made available to the Queensland public via the Parliament’s internet broadcast, and more recently, a live stream via Sky news to the Digital Video Network (DVN) which allows other broadcasters to receive the feed. A-PAC and Sky News Local variously have broadcast the live proceedings of Parliament since 21 August 2012.

This footage has also been offered to the four Metropolitan television networks, although it has been declined.
In addition, this footage is now available for broadcasters outside of Parliament to access via the DVN should they so choose.

Response to the Matter at Hand

A number of possible responses were considered by the Speaker after becoming aware of the breach and receiving legal advice.

The critical factors in the consideration were

- The serious nature of the breach which occurred when camera operators filmed close-up shots of Members’ papers, and that this issue raised the question of parliamentary privilege.
- The fact that this breach follows recent previous breaches for which the television media received a significant penalty.
- In correspondence dated 9 July 2012 which was addressed to the President of the Parliamentary Media Gallery and which was related to the penalty for the June breaches, I wrote the following: “Please be advised that future breaches of these or other clauses of the Media Access Policy will be considered most severely.” (Appendix 1)
- In correspondence dated 16 August 2012 to the President of the Parliamentary Media Gallery, I asked for written confirmation by 22 August 2012 that the Media Gallery accepted and would comply with the policy originally issued on 28 February 2006 and reissued on 29 May 2012. No written response was received. (Appendix 2)
- The fact that the footage, which is the subject of this report, was raw, unedited pooled vision raises a reasonable concern that this type of footage gathering may occur at other times, before being edited for broadcast.
- The responsibility of the Speaker to act as guardian of the rights, powers and immunities of the House.
- The inability of the Parliament to guarantee confidentiality of Members’ papers while network cameras are in the Chamber.
- The matter of confidentiality of Members’ documents being of greater concern than increased shot selection made possible by pooled network camera footage.
- The availability of uncensored, broadcast quality vision produced by the Parliamentary Services staff.
- Allowing the television journalists an opportunity to respond before a final decision is made.

Given these factors, I have issued the following notice of decision.

- Due to a serious breach of the Conditions of Access, the network cameras have been suspended from the Chamber.
- Given the risk to confidentiality of Members’ documents as evidenced by an identifiable and serious breach, television journalists from the Parliamentary Media Gallery will be required to show cause by 5pm, 1 November 2012 as to why their network cameras should be readmitted.

As always, the television stations are welcome to use the uncensored, broadcast quality vision produced by the Parliamentary Services staff. The decision as to whether they do so rests with them.
Appendix 1 – Correspondence regarding breaches of 21 & 21 June 2012

Ref: 132
9 July 2012

Mr Patrick Condren,
President of the Parliamentary Media Gallery,
Media Unit
Level 5
Queensland Parliamentary Annexe

Dear Mr Condren,

After a review of the media activity during and subsequent to the disturbances in the Parliamentary Gallery on the night of 21 June 2012, it is evident that all television broadcast media have breached Parliamentary Standing Orders and the Parliamentary Media Access Policy.

This occurred despite receiving a number of reminders as to the policy.

Previous to this disturbance, on the 29 May 2012, you met with my Executive Officer who confirmed with you that the Media Access Policy is a current document and sought your assistance as President of the Gallery to redistribute the policy amongst the accredited members of the Parliamentary Media Gallery.

Standing Orders and the Media Access Policy outline various penalties for non-compliance to these rules and directions.

The review of the media activity in relation to this disturbance indicates that there have been multiple breaches of the Media Access Policy. Specifically, the following clauses:

CONDITIONS FOR BROADCASTERS OF PROCEEDINGS

6. Acknowledgements
Events in the galleries are not a part of the proceedings and should not generally be covered. However, acknowledgement may be made of distinguished visitors in the Gallery if the Speaker, or their delegate, makes such a reference.

7. Speaker’s Instructions
The instructions of the Speaker of the Queensland Parliament, or the Speaker’s delegate, in respect of broadcasting, shall be observed.

8. Guidelines for Camera operators in the Legislative Assembly Chamber
The guidelines for camera operators below are to be followed at all times.
GUIDELINES FOR CAMERA OPERATORS IN THE LEGISLATIVE ASSEMBLY CHAMBER

9. Coverage of the Galleries and the advisers' seats is not generally permitted except when distinguished visitors are referred to by the Speaker or the Deputy Speaker. In this case, the camera may focus briefly on that section of the Gallery where the distinguished visitors are located.

10. In the event of unparliamentary behaviour or disturbance by strangers in the Gallery, the camera is to focus on the Chair or a slightly wider angle shot of the Chamber which incorporates the Chair but which does not show the offending incident.

And

13. Instructions from the Speaker, or the Speaker's delegate, in relation to the operation of the sound and vision equipment in the Queensland Parliament, shall be observed.

These clauses above have been breached in the first instance by the recording the footage, and in the second instance by the broadcast of this footage. This has occurred across all networks.

The Parliament will not tolerate this unacceptable form of behaviour, where Standing Order 286(c) and SO 286(d) are being ignored.

Due to the severity of these breaches, I must impose an equally severe penalty, whereby permission for the placement of television cameras in the chamber is revoked for nine (9) sitting days, that is until after 24 August 2012. Access to Parliament's broadcast service will remain.

Further penalties may also be considered for known repeat broadcasts of this footage.

As President of the Parliamentary Media Gallery, I ask that you now inform all accredited members of that gallery of the notice of breach, along with the penalty for breaching Standing Orders and the Media Access Policy.

In addition, I shall advise each network News Director that a Notice of Breach has been issued.

Please be advised that future breaches of these or other clauses of the Media Access Policy will be considered most severely.

Yours sincerely,

Hon Fiona Simpson MP
Speaker of the Legislative Assembly
Appendix 2 Correspondence regarding future compliance

Ref: 250
16 August 2012

Mr Patrick Condren,
President of the Parliamentary Media Gallery,
Media Unit,
Level 6
Queensland Parliamentary Annexe

Dear Mr Condren,

RE: Media Access Guidelines

I acknowledge your emailed correspondence to my Executive Officer dated 9 August, regarding the broadcast of and media access to the Legislative Assembly.

At this time no decision about the formulation of new Media Access Guidelines has been made. However, your comments are noted accordingly.

Your stated desire for a spirit of cooperation is appreciated. In your role as President of the Parliamentary Media Gallery, please confirm with me in writing that the Media Gallery accepts and will comply with the Media Access Guidelines as originally issued on 28 February 2006 and reissued on 29 May 2012. Written confirmation to this effect should be received by my office before 22 August 2012.

Separately, I also make you aware that the Office of the Speaker has not yet received a current list of the Accredited Members of the Media Gallery as set out in the Media Access Guidelines. It would be appreciated if this list is returned as early as possible.

Your compliance and assistance respective to these matters would be appreciated.

Yours sincerely,

Hon Fiona Simpson MP
Speaker of the Legislative Assembly

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