



# Tim Watts MP

FEDERAL LABOR MEMBER FOR GELLIBRAND



Committee Secretary

House of Representatives Standing Committee on Procedure

By email: [procedure.committee.reps@aph.gov.au](mailto:procedure.committee.reps@aph.gov.au)

11 April 2014

Dear Secretary,

Please accept my submission to the *Inquiry into the Use of Electronic Devices in the Chamber*.

I am happy to discuss with the members of the Standing Committee on Procedure if required.

Yours sincerely,

**Tim Watts MP**

**Federal Member for Gellibrand**



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to the *Inquiry into the Use of Electronic Devices in the Chamber*  
- April 2014



This inquiry into the use of electronic devices in the chamber is both timely and welcome. One of the few true revolutions we have experienced in a society over the past decade has been the impact of the spread of digital technology on the way people communicate. A key element of this transformation is the use of social media – an innovative and immediate way of connecting with people that is now used by up to 50% of the Australian population on a monthly basis.<sup>1</sup>

It is important that the Parliament, and individual Members of Parliament, are responsive to these changes and are engaged with this new mode of communication. The use of social media, particularly while in the chamber, is an important way that the Parliament and Members can reflect the changing communications habits of the Australian public and engage with constituents. Confusion exists, however, over the current regulation of electronic devices in the Chamber and this is an opportunity to clarify the existing framework.

#### *Assessing the adequacy of the current regulatory framework*

While portable electronic devices such as laptops and mobile phones have existed for some time, it is only in recent years that these devices have been able to wirelessly access the internet and social media. It is instructive to remember that the first iPhone was released in the same year that the Rudd Government was elected. In the barely six years since, the smart phone penetration rate in Australia has exploded to over 72%<sup>2</sup>. The relative newness of this practice explains the lack of clarity surrounding its regulation in Commonwealth parliamentary rules and procedure.

In recent years, it has become common for Members to use personal electronic devices to report on activities in the Chamber and receive feedback on their actions instantly from

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<sup>1</sup> In August 2013, 12 million Australians are monthly active users of Facebook, or over 50% of Australia's population of approximately 23 million. See Miles Godfrey, 'Facebook checked by 9 million Australians every day', The Sydney Morning Herald (online), 20 August 2013, <<http://www.smh.com.au/digital-life/digital-life-news/facebook-checked-by-9-million-australians-every-day-20130820-2s7wo.html>>; Australian Bureau of Statistics, *Population Clock* (10 April 2014) <<http://www.abs.gov.au/ausstats/abs%40.nsf/94713ad445ff1425ca25682000192af2/1647509ef7e25faaca2568a900154b63?OpenDocument>>.

<sup>2</sup> Telecompaper, "Smartphone penetration grows to 72% in Australia", 17 October 2013 <<http://www.telecompaper.com/news/smartphone-penetration-grows-to-72-in-australia--973504>>

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interested followers. Despite this, only recently have Speakers begun to comment on the use of the appropriate use of electronic devices in the chamber for social media. In considering Members' use of Twitter, former Speaker Burke acknowledged the impracticality of the Speaker constantly monitoring such social media usage:

"My role is to adjudicate on the proceedings of the House. 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."<sup>3</sup>

The former Speaker reminded Members that social media usage was not covered by parliamentary privilege and further, that reflections on the Speaker would be considered 'an important matter of order'.<sup>4</sup>

In November 2013, Speaker Bishop issued the most definitive ruling on the use of electronic devices to date:

"...we do allow electronic media to be used and that it is the responsibility of individual members to abide by the standing orders in the way in which they use those electronic and social media... the same rules pertain as to speaking in the House."<sup>5</sup>

An examination of the standing orders, however, yields little information on the regulation of social media when being used in the Chamber. Members' conversations with the House of Representatives Clerk's office have suggested that the standing orders apply only to formal proceedings in both the House of Representatives Chamber and Federation Chamber. As tweets and Facebook posts are not considered to be part of formal proceedings, the standing orders ought not apply. The only potential exception to this might be if a tweet or Facebook post disrupted proceedings.

As a result, rules applying to the use of social media both in and outside in the chamber must be extrapolated from parliamentary practice. A key example of this is the long standing

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<sup>3</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 13 March 2013, 1934 (Anna Burke, Speaker).

<sup>4</sup> *Ibid.*

<sup>5</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 21 November 2013, 1029 (Bronwyn Bishop, Speaker).

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practice prohibiting reflections upon the Speaker regardless of where they are made<sup>6</sup> and so by extension, also governing Members' statements on social media.<sup>7</sup>

The lack of explicit guidelines for the use of social media in any compilation of parliamentary practice and procedure creates the potential for confusion as to how, and to what extent, parliamentary practice applies to the use of electronic devices for the purposes of social media in the Chamber.

The Committee should take this opportunity to clearly set out the guidelines that apply to the use of electronic devices in the Chamber. In formulating these guidelines, consideration should be given to three underlying principles.

*Principles underpinning the regulation of electronic devices in the chamber*

At the most basic level, the parliamentary rules guiding the use of electronic devices in the chamber should encourage political engagement within Australian society. There is a considerable body of both political and academic thought suggesting *'the legitimacy of a democracy depends in part on the quality of deliberation that informs citizens and their representatives'*.<sup>8</sup> With the rise of digital technology, much of this deliberation is now occurring on social media outlets such as Twitter and Facebook. Indeed, a 2010 study by academics Grant, Moon and Grant examined the use of Twitter by Australian politicians and concluded:

"Put simply, Twitter is becoming, ever more, the political space in Australia in which ideas, issues and policies are first announced, discussed, debated and framed."<sup>9</sup>

The internet and social media create new forums for Australian citizens to comment, critique, and reflect upon government policy, allowing citizens to play an expanded role on the

<sup>6</sup> BC Wright (ed), *House of Representatives Practice* (Department of the House of Representatives, 6<sup>th</sup> ed, 2012) 196-198.

<sup>7</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 21 November 2013, 1029 (Bronwyn Bishop, Speaker).

<sup>8</sup> Mansbridge et al, 'A Systemic Approach to Deliberative Democracy', in John Parkinson and Jane Mansbridge (eds), *Deliberative Systems: Deliberative Democracy at the Large Scale* (Cambridge University Press, 2012) 1.

<sup>9</sup> Will J Grant et al, 'Digital Dialogue? Australian Politicians' use of the Social Network Tool Twitter' (2010) 45(54) *Australian Journal of Political Science* 579, 599.

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political stage.<sup>10</sup> If the Parliament and Members engage with these forums, they will foster political engagement and debate that will strengthen the health of our democracy. This was a point overwhelmingly highlighted by the Government 2.0 taskforce convened in 2009.<sup>11</sup>

Axel Bruns and Jason Wilson have also written of the added benefits of political engagement taking place through the medium of an impartial third party service such as Facebook and Twitter.<sup>12</sup> They argue this direct communication between politicians and citizens on these sites '*may be pointing the way to a more dramatic reorganisation of political communication*'<sup>13</sup> which has the potential for '*enhancing political engagement, increasing the responsiveness of political actors and institutions, and thus improving citizen consultation.*'<sup>14</sup>

As the highest chamber of democratic debate in Australia, the parliamentary rules governing the use of electronic devices in the chamber should promote engagement between members and their constituents through whatever modes of communication are preferred by the public.

*Recommendation 1:* The regulation of electronic devices should not hinder the use of social media by Members to engage with the Australian people.

Second, parliamentary rules governing the use of electronic devices should be clear and easily explained. Rules that are open to a variety of interpretations will inevitably lead to confusion and a lack of enforcement. This has been seen in the UK House of Lords, where rules regulating the use of electronic devices initially included a restriction on using electronic devices to search for information that is not "generally available" to other participants for use in a parliamentary debate.<sup>15</sup> Confusion quickly spread over what

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<sup>10</sup> See Axel Bruns, 'Life beyond the Public Sphere: Towards a Networked Model for Political Deliberation' (2008) 13 *Information Polity* 65, 68.

<sup>11</sup> Government 2.0 Taskforce, *Engage: Getting on with Government 2.0* (2009), xi- xii.

<sup>12</sup> Axel Bruns and Jason Wilson, 'Citizen Consultation from Above and Below: The Australian Perspective' in Christopher Reddick (ed), *Politics, Democracy and E-Government: Participation and Service Delivery* (Information Science Reference, 2010) version found at <[http://snurb.info/files/2010/Citizen%20Consultation%20from%20Above%20and%20Below%20\(chapter\).pdf](http://snurb.info/files/2010/Citizen%20Consultation%20from%20Above%20and%20Below%20(chapter).pdf)>

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Administration and Works Committee, *Use of Electronic Devices in the House: Follow Up Report*, House of Lords Paper No 298, Session 2010-2012, 4.

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information was considered “generally available”, and many pointed out the rule was difficult to enforce.<sup>16</sup> A review of the parliamentary rules removed this restriction.<sup>17</sup>

The application of standing orders and/or parliamentary practice will complicate this area from a procedural perspective, muddying the waters further about what is and is not considered appropriate communication. If standing orders apply, will members need to refer to each other by their official titles on Twitter while in the Chamber? Is the physical location of the MP at the time of the tweet relevant? How can we know when a tweet was sent from the Member’s electronic device in the chamber, a Member’s electronic device just outside the doors of the chamber or even outside the Parliament? If parliamentary practice applies, is the Speaker required to police every tweet to ensure she has not been adversely reflected upon? Can a tweet be considered sufficiently disorderly to require removal under s 94(a)?

Complicated rules will be open to misinterpretation and unintentional breach by Members. Any guidelines governing the use of electronic devices for social media should be as simple as possible.

*Recommendation 2:* Rules governing electronic devices in the chamber should be simple to follow.

Finally, from a practical perspective, parliamentary rules should not allow for the disruption of parliamentary business. The benefits of using electronic devices for engaging with the Australian people will be limited if they are used in a way that prevents the House from engaging in debate. An obvious example of this would be ringing phones or other kinds of notifications from tablets or laptops that interfered with debate or distracted Members.

*Recommendation 3:* Rules governing electronic devices should ensure they are used in a way that does not disrupt Parliament.

*Proposed framework for the use of electronic devices in the chamber*

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

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When considering the three principles outlined above, parliamentary guidelines on the use of electronic devices should be framed in a way that promotes democratic deliberation in Australian society, is simple, but does not allow for the disruption of Parliament. The simplest and most appropriate rule is for no parliamentary regulation to apply – ensuring the Speaker is not required to assume the almost impossible task of policing an immense amount of communication via social media.

A similar approach has been taken in the UK House of Commons, where difficulties of enforcement were similarly cited as justification for a more laissez-faire regime:

“We also recognise that it would be impossible for the Chair to police tweeting by Members and that the Chair should not be expected to rule on allegations that inappropriate tweeting is taking or has taken place...”<sup>18</sup>

This lack of regulation at a Parliamentary level does not mean communication on social media will degenerate into behaviour that brings Parliament into disrepute. Both self regulation and informal regulation by political parties will provide incentives for any communication by Members on social media to remain appropriate. The negative political impact of offensive tweets will ensure Members do not behave improperly, as does the existence of other legal mechanisms such as defamation law and discrimination law. Moreover, political parties will no doubt monitor the social media of their elected members,<sup>19</sup> providing an additional check on any inappropriate use by Members. It is unlikely that Members would be rewarded by their electorates for ‘trolling’ other Members or the Speaker.

Regulation should exist, however, in areas where the use of electronic devices would cause practical concerns by disrupting proceedings. Guidelines should require electronic devices to be switched on silent. Such a prohibition is easily understood and easily enforced by the Speaker.

The practical outcome of this should be the drafting of guidelines that detail these regulations to the chamber. These guidelines should be easy to find so that Members are

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<sup>18</sup> Procedure Committee, *Use of Hand-Held Electronic Devices in the Chamber and committees*, House of Commons Paper No 889, Session 2010-2011, 11.

<sup>19</sup> Narelle Miragliotta, ‘Politicians, Twitter and the Limits of the Virtual Political Public Sphere’ (2012) 31(2) *Social Alternatives* 6, 9.

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fully aware of their obligations in relation to social media. Specifying the principles upon which the guidelines are based in this document would further justify the balance struck and provide direction for any interpretation required.

*Recommendation 4:* Electronic devices should be allowed in the Chamber, provided they are switched on silent.

*Recommendation 5:* Guidelines should exist that detail these rules to Members, and the principles upon which these rules are derived.