



# MATTERS OF PROCEDURAL INTEREST

## No. 16 — January to June 2019

Prepared by Chamber and Procedural Services Office

### QUEENSLAND LEGISLATIVE ASSEMBLY PROCEDURAL BULLETIN

## WORK OF THE HOUSE

Further information about the work of the Legislative Assembly is available on the parliament's internet website.

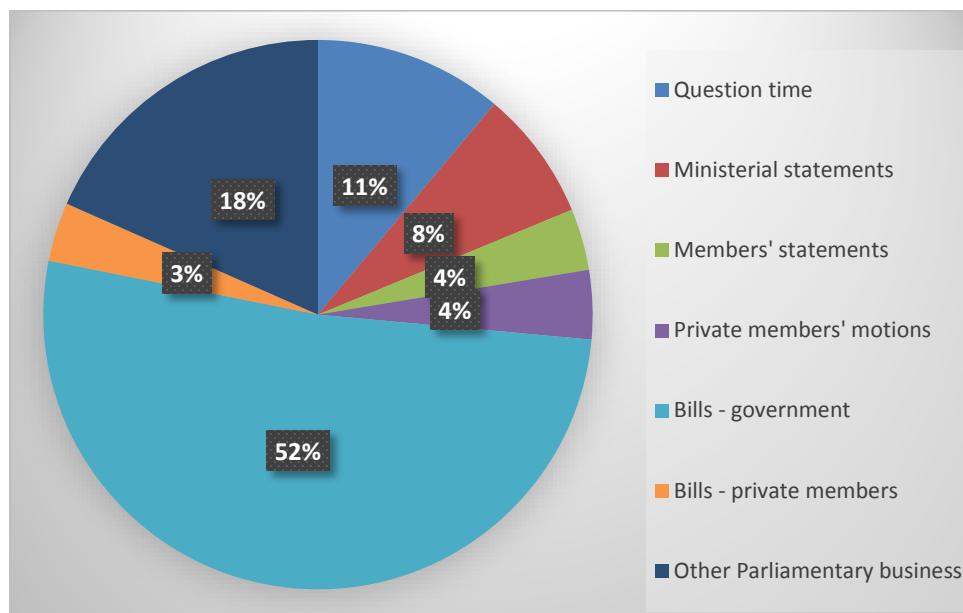
Click here to view: [Work of the House statistics](#)

### Overview comparison

|   | 1 Jan to 30 Jun 2019        |            |              | 1 Jul to 31 Dec 2018        |            |              |
|---|-----------------------------|------------|--------------|-----------------------------|------------|--------------|
| <b>Sittings</b>                             |                             |            |              |                             |            |              |
| Sitting days                                | 22                          |            |              | 18                          |            |              |
| Average duration per sitting day [hrs:mins] | 9:59                        |            |              | 9:49                        |            |              |
| <b>Legislation</b>                          |                             |            |              |                             |            |              |
|   | <b>1 Jan to 30 Jun 2019</b> |            |              | <b>1 Jul to 31 Dec 2018</b> |            |              |
|   | <b>Govt</b>                 | <b>PMB</b> | <b>Total</b> | <b>Govt</b>                 | <b>PMB</b> | <b>Total</b> |
| Bills introduced                            | 19                          | 3          | 22           | 16                          | 5          | 21           |
| Bills passed                                | 19                          | 1          | 20           | 17                          | 0          | 17           |
| Bills referred to committees                | 19                          | 3          | 22           | 15                          | 5          | 20           |
| Bills reported on by committees             | 19                          | 6          | 25           | 13                          | 4          | 17           |

### Business conducted

The following chart shows a breakdown of the business conducted during the period 1 January to 30 June 2019.





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## MEMBERS

### Warnings and suspension of members

During the period from January to June, the Speaker issued a large number of warnings to members about their conduct and ordered members to withdraw from the Chamber for a specified period on 31 occasions. This was particularly high compared with recent years, with 12 orders to withdraw in 2018, two orders to withdraw in 2017 and six orders to withdraw in 2016.

Record of Proceedings: 12 February 2019, p59  
14 February 2019, p224 and p226  
26 March 2019, p624, p625 and p626  
27 March 2019, p731 and p732  
2 April 2019, p921  
3 April 2019, p1021  
1 May 2019, p1317 and p1320  
2 May 2019, p1417  
14 May 2019, p1510 and p1516  
15 May 2019, p1615, p1617, p1618 and p1685  
16 May 2019, p1719 and p1726  
11 June 2019, p1823, p1825 and p1826  
12 June 2019, p1879  
13 June 2019, p1972  
14 June 2019, p2229 and p2232  
**Standing Order 253A**

### Banners, signs and other things containing matter associated with political cause prohibited on precinct

During a public assembly on 15 March 2019, the Member for Maiwar was in the crowd and then returned and was seen on level B above the porte cochere. He was seen clapping and waving to the crowd and had two children with him who both had Greens signs displayed. The Member was also wearing a black T-shirt with protest slogans.

Section 50 of the *Parliamentary Service Act* (PSA) enables the Speaker to make directions to regulate the behaviour and conduct of persons entering the Parliamentary Precinct. The directions can take the form of by-laws. Under Speaker's by-laws, banners, signs or other things that are or contain matter associated with a political cause or campaign are a proscribed item and cannot be brought into the precinct. Clothing such as protest T-shirts have to be removed, covered by a jacket or turned inside out. The rationale for these directions and by-laws is to keep the precinct free of protest and preserve its dignity.

Pursuant to section 50(7) of the PSA, the by-laws do not apply to Members of the Legislative Assembly in the conduct of their parliamentary business. The rationale for this exclusion is that the Legislative Assembly should deal with its Members, not authorised officers.

As the Member for Maiwar's conduct could not be dealt with under the by-laws, the Speaker referred this matter under Standing Order 268(2) to the Ethics Committee. The matter is before the Ethics Committee awaiting a decision.

Record of Proceedings: 26 March 2019, p605  
**Standing Order 268**



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#### Conduct in chamber

During question time on 1 May 2019, a large group of Opposition Members waved placards whilst the Premier was answering a question. The Speaker noted that this behaviour disrupted proceedings and amounted to misconduct. Members participating were in prima facie contempt of Standing Order 266(11), misconducting oneself in the presence of the House, and Standing Order 266(25), planning or executing a disruption of a proceeding of the Assembly.

After reviewing the video footage, the Speaker found that, although approximately 20 or more members were involved, on the balance of probabilities only four Members could be clearly identified as being involved in this misconduct and disruption. Three of the Members were also already subject to a warning. The four Members identified were given until the end of the sitting day to unreservedly apologise to the House for their actions or the Speaker would consider referring the matter to the Ethics Committee pursuant to Standing Order 268(2). All four Members apologised unreservedly.

Record of Proceedings: 2 May 2019, p1399  
**Standing Order 266**

#### Document containing unparliamentary language and conduct in chamber

On 30 April 2019, the member for Kawana tabled some documents during the debate on Matters of Public Interest. Documents sought to be tabled should not contain unparliamentary language that would not be permitted in a debate. The Speaker ordered the return of documents to the Member who subsequently tabled redacted versions of the documents.

Consequent to the Member for Kawana's matter of public interest, the Speaker was made aware of disruption in the chamber. After reviewing the audio of the incident, the Speaker concluded that the member for Maryborough was grossly disorderly and misconducted himself in the chamber and that the Member for Buderim interjected in a provocative and disorderly fashion which disrespected the authority of the chair. The Speaker stated that he expected both Members to rise to withdraw and apologise to the House for their conduct. Both Members subsequently withdrew and apologised unreservedly for their conduct in the House.

Record of Proceedings: 30 April 2019, pp1277-78  
**Standing Order 266**

#### No debate on motion to dispose of order of the day

On 3 April 2019, the Member for Kawana rose to speak to a motion moved by the Leader of the House to postpone a government order of the day. The Member was unable to speak to the motion as Standing Order 76 required that the motion be put without debate or amendment.

Record of Proceedings: 3 April 2019, p1092  
**Standing Order 76**



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#### Disrespecting the Chair

On 28 March 2019, the Speaker reminded Members that it is grossly disorderly and potentially a contempt, to disrespect the authority of the Chair. He noted that Deputy Speakers while in the Chair have the same authority as the Speaker and are to be accorded the same respect. The Speaker noted that the Member for Southern Downs was disrespectful to the authority of the Deputy Speaker on the preceding sitting day and called on the Member to withdraw his comments which were disrespectful to the Deputy Speaker.

Record of Proceedings: 28 March 2019, p811  
**Standing Order 266**

#### MOTION OF DISALLOWANCE

Section 49 of the *Statutory Instruments Act 1992* (SI Act) provides that subordinate legislation must be tabled in the Legislative Assembly within 14 sitting days after it is notified. If subordinate legislation is not tabled in accordance with the section, it ceases to have effect.

Section 50 of the SI Act provides that the Legislative Assembly may pass a resolution disallowing subordinate legislation if notice of a disallowance motion is given by a member within 14 sitting days after the legislation is tabled in the Legislative Assembly. If the disallowance motion is not moved on the day for its consideration, the motion lapses. If the resolution is passed, the subordinate legislation ceases to have effect. The section also provides that if the resolution has not been disposed of at the end of 14 sitting days after notice is given (whether by withdrawal or lapsing of the disallowance motion or in another way) the subordinate legislation ceases to have effect.

Standing Order 59 complements the provisions in the SI Act by providing that, when notice of a motion to disallow a statutory instrument or guideline pursuant to the Act has been given, such motion shall be considered within seven sitting days after notice has been given. The notice of motion is set down to be considered during the time set aside for the debate of Private Members' Bills or other General Business. Such motions take precedence during that time until disposed of. When the motion is called on, it is moved, debated and decided. Under current Sessional Orders, disallowance motions take precedence every Tuesday evening from 5.00 pm.

The *Electrical Safety (Solar Farms) Amendment Regulation 2019*, Subordinate Legislation No. 46 of 2019, was made by the Governor in Council on 4 April 2019, notified on the Queensland legislation website on 5 April 2019 and tabled in the House on 30 April 2019. The regulation is purportedly made under the *Electrical Safety Act 2002*. The regulation inserted s.73A into the *Electrical Safety Regulation 2013 (Qld)*. The effect of s.73A is to require work involving photovoltaic modules at solar farms to be undertaken by a licensed electrical worker.

On 14 May 2019 the Member for Burleigh gave notice of a motion to disallow the regulation pursuant to s.50 of the SI Act and Standing Order 59. However, an event occurred which raised the issue as to whether the disallowance motion is still able to be moved, debated and resolved. On 29 May 2019 Justice Bradley of the Supreme Court of Queensland in the case of *Maryrorough Solar Pty Ltd v The State of Queensland* [2019] QSC 135 ruled that s.73A(1)(a) and (b) of the



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*Electrical Safety Regulation 2013 (Qld)* (inserted by the *Electrical Safety (Solar Farms) Amendment Regulation 2019*) were invalid because the provisions were beyond the regulation-making power conferred by the *Electrical Safety Act 2002* (that is, the provisions are ultra vires). It was foreshadowed that the appropriate relief may be in terms of a declaration that the whole of s.73A is invalid.

There were four considerations that led the Speaker to rule that the motion could still be moved. Firstly, the judicial decision does not remove the provisions from the regulation in the same way as a disallowance motion. The effect of a judicial decision ruling the subordinate legislation invalid is not the same.

Secondly, the court's ruling is not binding on higher courts nor on another court within the same jurisdiction. It is conceivable that another Supreme Court Judge could come to a different conclusion in a different case. It is also possible that the decision could be overruled on appeal. On Thursday, 30 May 2019 the Industrial Relations Minister announced that the State Government would lodge an appeal against the decision invalidating the regulation relating to solar farms. The Minister also indicated that the government would, at the same time, apply for a stay of the decision pending the outcome of the appeal. There is a risk of absurdity for a Speaker to rule a notice of motion for disallowance of subordinate legislation out of order on the basis of a judicial decision invalidating the subordinate legislation when a higher court could overturn the original decision.

Thirdly, s.50 of the SI Act effectively gives a member a statutory right to give notice of and move a disallowance motion. That right is backed by legal ramifications if the motion is not dealt with appropriately by the Assembly – essentially the regulation is deemed to have been disallowed.

Lastly, the Speaker noted that the Parliament and the courts have different, although slightly overlapping, roles. The courts are concerned with the legality of subordinate legislation. The Speaker noted that under the *Legislative Standards Act 1992* and the *Parliament of Queensland Act 2001*, the role of Parliament is much wider. Parliament can be concerned with legality but it can also be concerned about underlying policy.

On 25 June 2019 the Court of Appeal in the case of the *State of Queensland v. Maryborough Solar Pty Ltd* [2019] QCA 129 upheld the trial Judge's ruling and held the regulation invalid. Following the Court of Appeal's decision, the *Electrical Safety Amendment Regulation (No. 1) 2019*, which repealed s.73A of the earlier regulation, was approved by Governor in Council on 18 July 2019 and commenced on 19 July 2019.

Ruling tabled out of session on 6 June 2019

## PRIVILEGE

Between January and June 2019, the Ethics Committee reported on three alleged breaches of parliamentary privilege by members of the Assembly – deliberately misleading the House. Three elements need to be established for a member to have committed the contempt of deliberately misleading the House: one, the statement must have been misleading; two, the member making the statement must have known at the time the statement made was incorrect; and, three, the member must have intended to mislead the House. In all three matters the committee found that the members referred had not intentionally misled the House and therefore no finding of contempt was made.



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## LEGISLATION

### Bills declared urgent

A Bill may be declared urgent and pass through all stages in a very short timeframe, e.g. a Bill may:

- not be referred to a portfolio committee for examination, or
- be referred to a portfolio committee to report to the House in a period less than six weeks.

A motion to declare a Bill urgent may be debated.

On 11 June 2019, the Revenue and Other Legislation Amendment Bill was declared urgent upon its introduction and not referred to a committee for examination. The Bill was considered in a cognate debate with the Appropriation (Parliament) Bill and the Appropriation Bill, with separate questions put for the second reading of each of the three Bills. No time limits applied to the remaining stages of the Bill. The Bill was passed on 14 June 2019.

Record of Proceedings: 14 June 2019, p2233  
**Standing Order 137**

### Same question rule

#### *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill*

Standing Order 87(1) states that, unless the Standing Orders otherwise provide, a question or amendment shall not be proposed which is the same as any question which, during the same session, has been resolved in the affirmative or negative.

The *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018* passed through the House on 17 May 2018. At that time the Member for Maiwar's *Electoral Legislation (Political Donations) Amendment Bill* was also before the House. Both the Act and the Bill deal with the issue of the prohibition of political donations. The House, in passing the Act, had already addressed the question of political donations, in particular, whether property developers should be prohibited from making political donations.

The Speaker considered that the Member for Maiwar's Bill put forward a genuinely alternative proposition – namely, whether the prohibition on political donations should also apply to for-profit corporations. The Speaker ruled that the Member for Maiwar's Bill did not offend the same question rule. However, he noted that the Member's Bill was introduced prior to the passing of the Act and that technical amendments would be needed during consideration in detail should the private member's bill be read a second time to ensure the Bill is compatible with the amendments made to the relevant legislation by the Act.

Speaker's ruling tabled: 27 March 2019  
**Standing Order 87**



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#### *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill*

On 19 September 2018, the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018* was passed by House. On 31 October 2018 the Member for Maiwar introduced the *Civil Liability (Institutional Child Abuse) Amendment Bill* and on 15 November 2018 Attorney-General and Minister for Justice introduced the *Civil Liability and Other Legislation Amendment Bill*.

All three bills dealt with the issue of redress and damages for persons who have experienced institutional child abuse. The Speaker noted that the Government Bill and the Member for Maiwar's Bill were compatible with the Act as they dealt with a different aspect of the same redress and civil damages scheme for institutional child abuse. The Government Bill and the Member for Maiwar's Bill both sought to place a duty of care and associated civil liability on institutions to prevent the abuse of children in their care. The Government Bill was focused on child sexual abuse, whereas the Member for Maiwar's Bill was focused on a broader definition of child abuse which includes serious physical abuse. The Speaker ruled that the Member's Bill proposes a genuinely alternative proposition and that the same question rule was not enlivened in relation to the second reading of the Bills.

Speaker's ruling tabled: 3 April 2019  
**Standing Order 87**

#### *Working with Children Legislation (Indigenous Communities) Amendment Bill*

On 17 October 2018, the Member for Traeger introduced the *Working with Children Legislation (Indigenous Communities) Amendment Bill 2018*. On 13 November 2018 the Attorney-General and Minister for Justice introduced the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018*. Both bills proposed amendments to the issuing of blue cards for the protection of children and young people. The Speaker noted that the Member for Traeger's Bill related to blue cards in discrete Aboriginal and Torres Strait Islander communities only, an issue not dealt with directly by the Government Bill. The Speaker ruled that the same question rule was not enlivened.

Speaker's ruling tabled: 3 April 2019  
**Standing Order 87**

### Outside scope of consideration in detail

On 14 June 2019, the Member for Everton asked a question during consideration in detail on clause 64 of the *Revenue and Other Legislation Amendment Bill 2019*. Clause 64 of the Bill refers to the requirement that the Commissioner of Taxation be employed under the *Public Service Act 2008*. During consideration in detail of this clause, the Member asked the Treasurer a question regarding the number of entrenchments under a reprioritisation target. The Speaker ruled the question out of order because it was outside the scope of consideration in detail.

Record of Proceedings: 14 June 2019, p2226  
**Standing Order 149**



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### QUESTIONS WITHOUT NOTICE

#### Imputations in question

Under Standing Order 115, questions without notice shall not contain imputations. In February 2019, two Members asked a question without notice to the Premier. Both were ruled out of order by the Speaker as imputations were contained in the questions.

Record of Proceedings: 14 February 2019, p231  
27 February 2019, p428  
**Standing Order 115**

#### Members to address the Speaker

Standing Order 247 provides that 'Members wishing to speak shall rise and address the Speaker'. This means that Members should not address each other directly across the chamber and that all statements should be made through the Chair. In March 2019, a Member asked a question without notice to the Premier which was ruled out of order by the Speaker as the question was asked directly to the Premier and not asked through the chair.

Record of Proceedings: 28 March 2019, p828  
**Standing Order 247**

### QUESTIONS AND ANSWERS

#### Questions on Notice – seeking legal opinion

Standing Order 115 provides that a Question on Notice shall not ask for a legal opinion.

On 1 November 2019 the Member for Oodgeroo asked a Question on Notice of the Minister for Health and Minister for Ambulance Services about the latest age of gestation permitted for an abortion as a result of recent abortion law reform. On 12 February 2019 the Speaker ruled the Question on Notice out of order as it asked for a legal opinion in contravention of Standing Order 115(c)(ii).

Record of Proceedings: 12 February 2019, p3  
**Standing Order 115**

On 12 February 2019, the Member for Kawana asked a Question on Notice of the Minister for Education and Minister for Industrial Relations seeking the specific behavior which would enliven an application to be filed by an agency under a legislative provision. On 25 February 2019, the Speaker ruled the Question on Notice out of order because it asked for a legal opinion as to the scope and application of the legislative provision in contravention of Standing Order 115(c)(ii).

On 14 February 2019, the Member for Condamine asked a Question on Notice of the Attorney-General and Minister for Justice about the repercussions and cooling off periods relating to power of attorney actions and decisions. On 25 February 2019, the Speaker ruled the Question on Notice out of order as it asked for a legal opinion as to the application of the relevant legislation and the general law in contravention of Standing Order 115(c)(ii).





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### SESSIONAL AND STANDING ORDERS

#### Sessional orders

On 16 May 2019, amendments to the sessional orders came into effect which included the days and hours of sitting and order of business for the budget week.

Record of Proceedings: 16 May 2019, pp1761-63  
**Sessional Order 1A**