MATTERS OF PROCEDURAL INTEREST
No. 17 — July to December 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.

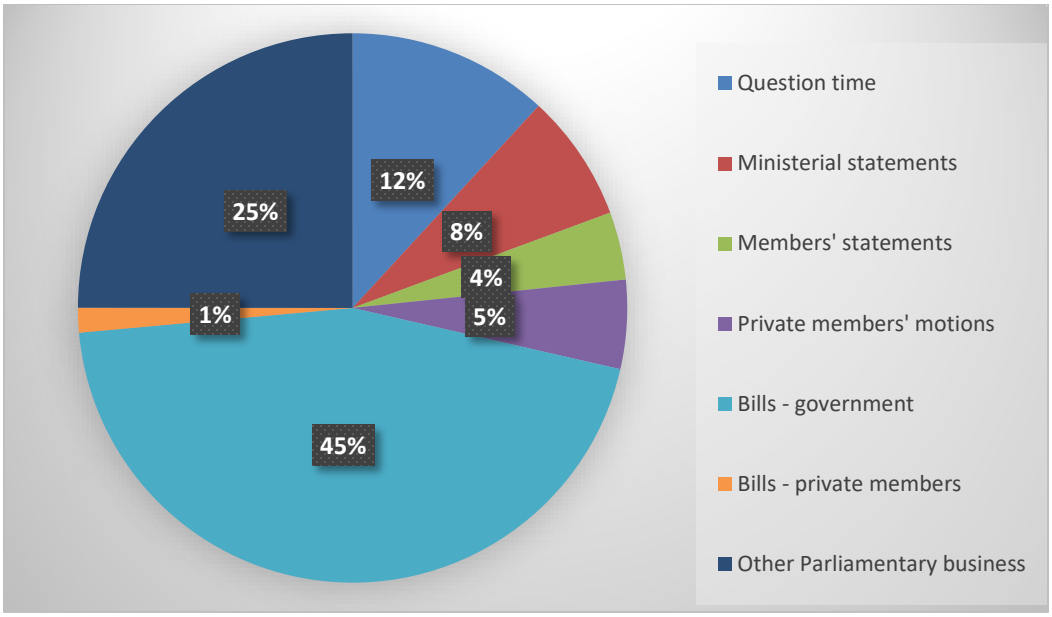
Click here to view: Work of the House statistics

Overview comparison

	1 Jul to 31 Dec 2019			1 Jan to 30 June 2019		
Sittings						
Sitting days	18			22		
Average duration per sitting day [hrs:mins]	9:33			9:59		
Legislation	**1 Jul to 31 Dec 2019**			**1 Jan to 30 Jun 2019**		
	Govt	**PMB**	**Total**	**Govt**	**PMB**	**Total**
Bills introduced	21	3	24	19	3	22
Bills passed	18	0	18	19	1	20
Bills referred to committees	21	3	24	19	3	22
Bills reported on by committees	18	2	20	19	6	25

Business conducted

The following chart shows a breakdown of the business conducted during the period 1 July to 31 December 2019.



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MEMBERS

Document containing unparliamentary language

On 5 September 2019 the member for Condamine tabled a document which contained unparliamentary language. Documents sought to be tabled should not contain unparliamentary language that would not be permitted in a debate. The member attempted to redact the material unsuccessfully. Officers of the Table Office assisted the Member to effectively redact the offending material in a new document. The Speaker ordered the return of documents to the member who subsequently tabled the new document.

Record of Proceedings: 5 September 2019, p2783

Responsibility of passholders, suspension of member's right to visitors

On 16 October 2019 Speaker Pitt made a ruling about the responsibility of passholders. Mr Speaker suspended a member's privileges to bring visitors to the parliamentary precinct for six months under section 50 of the *Parliamentary Service Act 1988* and asked the member to make an immediate apology to the House. This was in response to footage of the member for Mirani and a group of visitors to the parliamentary precinct under his responsibility.

Security footage showed several of the member's guests interfered with the desks of other members in the chamber by opening the compartments under the desk where members store personal belongings and, in some cases, interfering with the contents. Mr Speaker stated that this was not the first time he had written to the member about the behaviour of visitors he had responsibility for on the parliamentary precinct.

MOTION OF DISALLOWANCE

On 14 May 2019 the member for Burleigh gave notice of a motion to disallow the *Electrical Safety (Solar Farms) Amendment Regulation 2019*, Subordinate Legislation No. 46 of 2019. The motion was in accordance with section 50 of the *Statutory Instruments Act 1992* (SI Act).

The substantive provision in the *Electrical Safety (Solar Farms) Amendment Regulation 2019* was section 73A (Work involving PV modules at solar farms) which was inserted in the *Electrical Safety Regulation 2013* (the ES Regulation) and commenced on 13 May 2019.

On 29 May 2019 the Supreme Court of Queensland declared that section 73A of the ES Regulation was invalid and ultra vires (beyond the powers of) the *Electrical Safety Act 2002 (Maryrorough Solar Pty Ltd v The State of Queensland* [2019] QSC 135). This declaration had the immediate effect of voiding the operation of section 73A of the ES Regulation.

The issue then was whether the disallowance motion could be moved given the declaration by the court that the instrument was ultra vires.

On 6 June 2019 the Speaker ruled that the decision by the court did not affect the notice of motion for disallowance before the House and its consideration would take precedence the next Tuesday sitting evening when disallowance motions were considered and can be moved.

https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T826.pdf

There were four reasons for the Speaker's ruling:

1. The effect of a judicial decision ruling the subordinate legislation invalid is not the same. A court's ruling does not remove the provision from the statute books.
2. The court's ruling is not binding on higher courts, nor on another court with the same jurisdiction.
3. Section 5O 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. A Speaker should be guarded in ruling out of order a properly framed notice of motion for a disallowance that is within the statutory timeframes, simply because a view has been taken of the regulation in another forum.
4. The scheme for the notification, tabling and ensuring consideration of disallowance motions contained in the SI Act is fundamentally a scheme to ensure Parliament's oversight of its delegated authority. The courts are concerned with the legality of subordinate legislation. The role of Parliament is much wider. Parliament can be concerned with legality but it can also be concerned about underlying policy.

On 7 June 2019 an appeal by the State of Queensland against the Supreme Court's declaration was heard before the Court of Appeal. On 25 June 2019 the Court of Appeal affirmed the primary judge's decision in the matter: *State of Queensland v Maryrorough Solar Pty Ltd* [2019] QCA 129.

The Speaker noted that the Court of Appeal's decision raised no new issue and would not affect his earlier ruling. The reasons for that ruling persisted.

However, following the Court of Appeal's decision the *Electrical Safety Amendment Regulation (No. 1) 2019* was approved by Governor in Council on 18 July 2019 and commenced on 19 July 2019. The effect of this regulation was to repeal the operative provision of the *Electrical Safety (Solar Farms) Amendment Regulation 2019*, section 73A (Work involving PV modules at solar farms) which was inserted in the *Electrical Safety Regulation 2013*.

The repeal of the effective provision of the regulation raised a different issue as to whether a disallowance motion could be moved in respect of an instrument, the effective provision of which has been repealed. The four reasons for the Speaker's earlier ruling did not apply in respect of a repealed provision.

The Speaker noted that Odgers Senate Practice states:

> *Another question which has arisen is whether it is possible for the Senate to pass a motion disallowing instruments which have already been held to be invalid by a court. On 25 August 1983 the Attorney-General's Department submitted an opinion to the President that it was not possible for the Senate to do so. The Attorney-General subsequently took a point of order to this effect in the Senate, but no ruling was made in response to the point of order, and the notice of motion to disallow the regulations in question was withdrawn. A contrary opinion presented by Senate officers was that, just as invalid instruments may be repealed, they may also be disallowed by a House of the Parliament, either of those actions,*

repeal or disallowance, having the effect of terminating the existence of the invalid instruments.

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_15#h04.5 [Accessed 24 July 2019]

However, the Speaker also noted that, under the Commonwealth's *Legislation Act*, a successful disallowance motion has two consequences. The first is that the instrument is void from the time of the disallowance (and earlier subordinate legislation is revived). The second consequence is that the government cannot make another instrument the same in substance for six months from the date of the disallowance (s.48). Thus, the Senate may have allowed disallowance motions to be moved in relation to instruments that had already been repealed in order to ensure the second consequence – thus ensuring no resurrection by the government of the instrument.

The substantive operative part of the *Electrical Safety (Solar Farms) Amendment Regulation 2019* no longer exists, having been repealed and leaving only a remnant shell (historical legacy) of the regulation still on the books.

The Speaker outlined how many of the rules followed by the Legislative Assembly, often inherited from the UK Parliament, have been developed or evolved to guide the effective and efficient use of Assembly's time whilst still ensuring fairness to members in the minority and affording due process to important parliamentary functions. For example, the 'same question rule' embodied in Standing Orders (see SO 87 and SO 150) prevents the unnecessary repetition of matters already decided. The 'rule of anticipation' ensures issues are dealt with within the most effective proceeding whilst allowing the Speaker discretion to prevent misuse of the rule by notices of motion that seek to 'block' debate.

In this instance the Speaker pointed out that the operative part of the statutory instrument no longer existed (because it had been repealed). To allow the motion to proceed would not be an effective use of the time of the Assembly. The Speaker therefore ruled that the motion for the instrument's disallowance should not proceed.

The remaining issue was how the notice of motion on the Notice Paper should be removed. Once a motion has been moved it is in the possession of the Assembly and if ruled out of order is generally withdrawn (see for example following the ruling by Speaker Eliott V&P 1869, p340). The Speaker noted that, as the question in the notice had not been moved, it was arguably not yet in the possession of the Assembly. There are precedents where Speakers have ruled the notice of motion out of order and ordered the removal of the notice of motion from the Notice Paper. For example, where the notice of motion contained disputed statements of fact that were not authenticated, the member refused to amend the notice of motion and the Speaker was not content to let the item stand on the Notice Paper (see Speaker Mickel 27 October 2010 PD p3869).

In this instance the notice of motion was in order when given by the member. It was the underlying circumstances that had changed since the notice of motion was given which has resulted in the Speaker ruling that the motion should not proceed. The Speaker ruled that the member should be permitted the opportunity to withdraw the notice of motion in accordance with Standing Order 68. The Speaker noted that, if the notice of motion was not withdrawn, the Assembly may

order that the notice of motion be expunged from the Notice Paper under Standing Order 70.

Ruling tabled out of session on 8 August 2019

Notice of disallowance motion out of order

On 20 August 2019 the Speaker ruled that the disallowance motion of the member for Burleigh to disallow the *Electrical Safety (Solar Farms) Amendment Regulation 2019*, Subordinate Legislation No. 46 of 2019, be expunged from the Notice Paper under Standing Order 70. The Speaker referred to earlier precedents which held that it was out of order to discuss statutory instruments no longer in force. In each of those instances the member was unable to move the motion and the notice of motion simply lapsed.

Record of Proceedings: 20 August 2019, pp2328-29
Standing Order 70

Parts of disallowance motion out of order

On 11 October 2019 the Minister for Fire and Emergency Services wrote to the Speaker seeking a ruling on the member for Gregory's notice of motion to disallow the Fire and Emergency Services (Levy Groups) Amendment Regulation 2019, subordinate legislation No. 130 of 2019, given the subsequent amendment of the regulation after the notice was provided.

The notice of motion sought to disallow the whole regulation, not just the parts which were amended. Mr Speaker accordingly ruled that the member for Gregory's notice of motion to disallow subordinate legislation No. 130 of 2019 could proceed. He noted that the member for Gregory could withdraw his notice of motion if the mischief the disallowance motion sought to remedy was already dealt with by the amendment.

The Speaker reminded all members that debate on the motion was limited to the current operative provisions of the regulation as amended by subordinate legislation No. 191 of 2019. This meant that debate on any repealed provisions would be out of order. The member for Gregory was granted leave to withdraw his motion.

PRIVILEGE

Between July and December 2019, the Ethics Committee reported on four alleged breaches of parliamentary privilege by members of the Assembly. These matters contained allegations of: threatening or intimidating members; threatening or intimidating or disadvantaging a member, molestation of a member, compulsion by menace and improper influence; deliberately misleading the House; and bringing the House or a Committee into disrepute.

There was a finding of contempt in two of these matters, with the penalties ranging from the House taking no further action to the member apologising to the House.

One of those matters found the Premier, Hon Annastacia Palaszczuk, to be in contempt of parliament. The actions of the Premier that led to the finding of contempt followed former Senator Anning's controversial speech regarding his stance on immigration.

The specific actions that led to the Premier being in contempt were threatening to withdraw parliamentary resources from Katter's Australian Party members unless they made a statement to the Premier's satisfaction condemning Mr Anning's speech in the Senate; and withdrawing parliamentary resources from Katter's Australian Party members on the basis that they failed to make a statement to the Premier's satisfaction condemning Mr Anning's speech in the Senate.

The committee determined that these actions amounted to an improper interference with the free performance of the Katter's Australian Party members, and their duties as members. This finding of contempt was notwithstanding that the committee concluded there was no evidence that the Premier intended to commit any wrongdoing. The committee also noted the Premier's depth of feeling and personal closeness to the content of Mr Anning's speech was a mitigating factor. The penalty for the contempt was for the Premier to apologise to the House for her actions. Following this apology, the House briefly debated the matter, before resolving to accept the apology. This was the first time in Australia that a Premier has been found guilty of contempt.

LEGISLATION

Absolute majority required to pass bill

The Electoral and Other Legislation Amendment Bill 2019 proposed to amend the *Electoral Act 1992* to provide discretion for the Speaker of the House or the Governor to not fill a vacancy in the Legislative Assembly in the last three months before the next normal dissolution day, which from 2020 will be predetermined in accordance with the *Constitution (Fixed Term Parliament) Referendum Act 2015*.

This provision in the bill invoked section 4A of the *Constitution of Queensland 2001* insofar as it affects the constitution, powers or procedure of the parliament. In order for the bill to be passed and presented to the Governor for assent, it must be passed by an absolute majority – namely, 47 members of the 93 Member Legislative Assembly.

In order for the Clerk to be able to certify to the Governor that the Bill was passed with an absolute majority, the Speaker called for a division on the questions for the third reading and long title of the Bill and required the results of the division to be included in the Record of Proceedings.

Debating a Bill during an explanatory speech

Standing Order 129(3)(d) provides that a Bill is introduced by a minister or member by delivering a speech explaining the Bill.

On 4 September 2019 the member for Kawana rose on a point of order in relation to the Minister for Health and Minister for Ambulance Services debating the Bill in contravention of Standing Order 129(3)(d). The Speaker ruled that the minister was providing contextualisation of the circumstances that led to the development of the bill.

Record of Proceedings: 4 September 2019, p2641

Standing Order 129

Motion to dispose of order of the day ruled out of order

On 5 September 2019 the Manager of Opposition Business moved a motion that a government business order of the day be disposed of first (it was order of business No. 7 on the Notice Paper). Speaker Pitt ruled that the standing order is, by and large, for the use of the government. He referred to a ruling in 1971 by Speaker Nicholson that a postponement of government business could only be moved by a minister or member of the government.

The Speaker noted that, whilst nothing in standing order 76 on its face limits the exercise of the power to the government, it must be read in conjunction with other standing orders in chapters 14 and 16 and in the context of well-established parliamentary law. Whilst generally the fate of an order of the day is within the remit of the House, the House respects the rights of the member who is in charge of the order of the day and Speakers allow no interposers without the consent of the member in charge of the order of the day.

Mr Speaker noted that, as ministers could act for each other in respect of government business under standing order 60, there was authority for any minister to move motions with respect to government business. However, there is no authority for a private member to move a postponement or reordering of government business.

QUESTIONS WITHOUT NOTICE

Imputations in question

Standing Order 115 provides that a question without notice shall not contain imputations.

On 17 September 2019 the member for Scenic Rim asked a question without notice to the Premier asking why the Premier abandoned Queenslanders while communities were burning during the bushfires. The question was ruled out of order by the Speaker on the basis that it contained imputations.

Record of Proceedings: 17 September 2019, p2810
Standing Order 115

Seeking legal opinion

Standing Order 115 provides that a question without notice shall not ask for a legal opinion.

On 21 August 2019 the member for Surfers Paradise asked a question without notice to the Attorney-General and Minister for Justice asking whether the Crime and Corruption Commission had jurisdiction to deal with the Ministerial Code of Conduct and the standing orders of the House. The Speaker ruled the question out of order as it asked for a legal opinion in contravention of Standing Order 115(c)(ii).

Record of Proceedings: 21 August 2019, p2371
Standing Order 115

Seeking an expression of opinion

Standing Order 115 provides that a question without notice shall not ask for an expression of opinion.

On 17 September 2019 the member for Nanango asked the Premier whether the Premier accepts the Crime and Corruption Commission's recommendations that ministers who fail to properly declare their interests, should face criminal charges. In response to a point of order raised by the Leader of the House, the Speaker ruled that the way the question was framed was not asking for an opinion.

Record of Proceedings: 17 September 2019, p2802
Standing Order 115