

QUEENSLAND — LEGISLATIVE ASSEMBLY – JURISDICTION REPORT

Establishment of Business Committee and Business Program Motions

On 23 August 2018, the Legislative Assembly amended the Sessional Orders to establish a Business Committee and provide for the consideration of a Business Program Motion.

Similar to the Victorian Legislative Assembly and New Zealand House of Representatives, the Business Committee's role is to consider how the House will deal with government business, in particular Bills, during a sitting week.

The Business Committee meets on Mondays prior to the start of the sitting week. The Business Committee is chaired by the Leader of the House and comprises of the Premier, the Manager of Opposition Business and a cross-bench member, or a delegate. Decisions of the Business Committee are non-binding.

The amendments to the Sessional Orders also provide that on the Tuesday of each sitting week, following Question Time, the Leader of the House may move, without notice, a Business Program Motion. A Business Program Motion provides for the allocation of time for any proceedings on a government Bill or other government business and may include allocation of time orders ('guillotine motions'). The Sessional Orders provide for the Business Program Motion to be debated, with a maximum of four speakers allocated five minutes each.

The Business Committee and Business Program Motions fits within the context of the House passing sessional orders to have the House sit from 9.30am to 7.30pm on Tuesdays and Wednesdays with a 6.30pm finish on Thursdays.

The government and opposition are at continual loggerheads over the business motion and the hours the House is sitting.

150th Anniversary of Parliament House

During August 2018, the Queensland Parliament celebrated the 150th anniversary of the opening of Parliament House in Brisbane.

On Saturday 11 August 2018, the Queensland Parliament opened its doors to over 3,000 members of the public as part of the anniversary celebrations. The open day commenced with an address by the Governor of Queensland, the Honourable Paul de Jersey AC, and included a number of performances by local Queensland groups and students. The open day gave the community an opportunity to experience the building's rich history and to tour areas of Parliament House that are not usually accessible by the public.

A number of other events were held throughout the month to celebrate the 150th anniversary including a commemorative dinner, several high teas, the publication of a book, - 'The People's House – Queensland's Parliament House in Pictures' and a historical seminar held in the Legislative Council Chamber

Twinning Activities

The Queensland Parliament is twinned with the National Parliaments of Papua New Guinea and Vanuatu, supported by funding from the United Nations Development Fund through the Pacific Parliamentary Partnerships program.

A number of twinning activities have taken place between Queensland and its twinning partners over the last year.

Most recently, between 16 and 18 June 2019, the Speaker of the Queensland Legislative Assembly led a delegation of seven members on a parliamentary trade mission to Papua New Guinea. From 24 and 26 June, the Speaker and another member of parliament visited the Parliament of Vanuatu. These visits were designed to strengthen the important parliament-to-parliament relationships with our South Pacific neighbours, and new parliamentary partnership agreements were signed with Papua New Guinea and Vanuatu.

Earlier in the year, the Deputy Clerk of the Queensland Parliament visited Port Vila to provide the new Clerk of the Vanuatu Parliament with advice and guidance on institutional and procedural processes.

The Queensland Parliament also welcomed the Acting Executive Director of the Parliament of Papua New Guinea to observe Queensland parliamentary committee proceedings.

Other capacity strengthening activities over the past year include visits by members of parliament and senior parliamentary officers to Vanuatu and Papua New Guinea to provide training and advice around the role of committees, and welcoming the Assistant Clerk Corporate from Vanuatu to Queensland Parliament to witness first hand our policies and processes on a wide range of corporate matters.

Inquiry into aged care, end-of-life and palliative care and voluntary assisted dying

On 14 November 2018, the Legislative Assembly resolved that the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee conduct an inquiry into aged care, end-of-life and palliative care. The terms of reference include assessing the Queensland community and health practitioners' views on the desirability of supporting voluntary assisted dying.

The committee is in the process of holding a number public forums, hearings and briefings as part of its inquiry, including in regional areas of Queensland such as Longreach, Hervey Bay, Bundaberg and Rockhampton. The committee's proceedings are also being broadcast live on Parliament TV.

The committee must report to the Legislative Assembly by 30 November 2019.

North Queensland Regional Parliament

The Queensland Government has advised that they will move that the Parliament hold a regional parliamentary sitting in Townsville from 3 to 5 September 2019 at the Townsville Entertainment and Convention Centre. This will be the fifth regional sitting of the Queensland Parliament following events in Townsville in 2002, Rockhampton in 2005, Cairns in 2008 and Mackay in 2011.

Planning is underway for the regional parliament program, which will include a full parliamentary sitting week, junior Indigenous Youth Parliament, regional Youth Parliament, information sessions and displays for members of the public.

Speaker's ruling – notice of motion of disallowance, subordinate legislation held invalid by court

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. Also, 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 and when the motion is called on, it is moved, debated and decided and if not moved, lapses. Under current Sessional Orders, disallowance motions take precedence every Tuesday evening from 5.00pm.

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 (Mr M Hart) 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 *Maryborough Solar Pty Ltd v The State of Queensland* [2019] QSC 135 ruled that s.73A(1)(a) and (b) of the *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). The exact form of the declaration is not disclosed in the available judgement, but it was foreshadowed that the appropriate relief may be in terms of a declaration that the whole of s.73A is invalid. For the purposes of the ruling the exact nature of the declaration is irrelevant.

There were four considerations that have led the Speaker, Hon Pitt, 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 with 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. In this respect it is noted that 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 Parliament and the courts have different, although slightly overlapping roles. The courts are concerned with the legality of subordinate legislation. As can be seen from 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.

It is noted that since the ruling, the Court of Appeal has upheld the Trial Judges' Ruling and held the regulation invalid.