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3 August 2017

Mr Tony Pasin MP
Chair
Standing Committee on Procedure
House of Representatives
By email: procedure.committee.reps@aph.gov.au

Dear Mr Pasin

Thank you for your letter of 22 June 2017, inviting a submission to the Standing Committee on Procedure's Inquiry into the Provisions relating to Disorder in the House of Representatives.

In considering the effectiveness of sanctions against disorderly conduct, the Standing Committee sought information regarding how provisions relating to disorder have developed in other jurisdictions, including whether any changes have been considered or implemented over time and whether these have been perceived to be advantageous.

Relevant information in relation to the Legislative Assembly of Queensland is outlined below.

Current rules relating to disorder

Chapter 39 of the Standing Rules and Orders of the Legislative Assembly deals with order and conduct of members. A copy of this chapter is provided at **Appendix A**.

The main provisions concerning sanctions for disorderly members are contained in Standing Orders 252 to 255 and are summarised below.

The Speaker has the power under Standing Orders 252 to 253A to order the withdrawal of a disorderly member from the Chamber for various periods, as follows: for the remainder of the sitting day (SO252); for the remainder of the sitting day, except for divisions (SO253); and for up to one hour (SO253A).

If a member persists, after warning, to behave disorderly eg. disregarding the authority of the Chair or wilfully obstructing the business of the House, the Speaker may name the member (SO254). This enables the House to consider a motion, usually moved by the Leader of the House, to suspend the member for a period not exceeding seven sitting days. If the member fails to obey the direction of the Speaker in relation to their suspension, the member may be suspended for a period of 14 sitting days. A member suspended under SO254 is excluded from the parliamentary precinct during the suspension period (SO255).

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Development of provisions in recent years

Standing Order 253A

Standing Order 253A was inserted into the Standing Orders on 28 October 2009. The insertion of this Standing Order was one of many amendments to the Standing Orders at the time, following consideration of a range of changes by the then Standing Orders Committee of the 52nd Parliament and following an election, the then Standing Orders Committee of the 53rd Parliament.

The concept of a Standing Order such as SO253A, the power to withdraw disorderly members for up to one hour, had specifically been flagged by Speaker John Mickel. Following his election as Speaker in April 2009, Speaker Mickel stated 'I believe that this House must, in order to remain relevant, regularly consider changes to its Standing Orders, practice and procedure.' He went on to outline particular matters, including the above, that he intended to put to the Standing Orders Committee.

In the Queensland Parliament, the power of the Speaker to order members to withdraw from the Chamber is utilised relatively infrequently. For example, in the current Parliament which commenced in March 2015, there have only been nine occasions where the Speaker has ordered a member to withdraw.

I note that since the introduction of Standing Order 253A in 2009, Speakers have ordered members to withdraw under this provision rather than 252 or 253. I believe the introduction of Standing Order 253A has been advantageous. It enables the Speaker to remove a disorderly member for a limited period, often during Question Time. The business before the House can continue in an orderly manner and once the relevant withdrawal period has expired, the member is able to participate in the remaining business being conducted during that sitting day.

Standing Order 254 and 255

On 14 April 2010, Standing Orders 254 and 255 were amended. The amendments followed the suspension of a member on 25 March 2010 for one week or seven calendar days.

In a statement to the House on the following sitting day, 13 April 2010, Speaker Mickel noted that there was a 'defect' in the Standing Orders, in that in practice, due to the sitting program, a suspension of seven calendar days meant that the member only missed the remainder of the day that they were suspended.

Speaker Mickel noted:

The penalty was, in my view, manifestly inadequate. I believe that standing order 254 should be urgently revised to change the period allowable for suspension from 14 calendar days up to seven sitting days, including all non-sitting days between. This change would hopefully provide sufficient deterrent to prevent or at least seriously discourage the behaviour witnessed last sitting week. I am therefore asking the Standing Orders Committee to immediately consider revising the penalties that are available for grossly disruptive and disorderly conduct so that the existing inadequate provision in standing orders can be remedied forthwith.

On 14 April 2010, the Standing Orders Committee resolved that Standing Orders 254 and 255 be amended. Accordingly, the same day, the Leader of the House moved a motion, without dissent, that Standing Orders 254 and 255 be amended to reflect that a member can be suspended from the House for a period not exceeding seven sitting days or a period of 14 sitting days should the member refuse to obey the direction of the Speaker.

- 3 -

Standing Order 255 was amended as a consequence of the amendment to SO254, to make clear that a member's exclusion from the parliamentary precinct applies from the time a motion under SO254 is passed until the suspension is completed. Therefore, if there is a gap between sitting days, the member is unable to attend the parliamentary precinct for the whole of the period, not only on the relevant sitting days. It should be noted that in Queensland, some members have onsite overnight accommodation, along with office facilities, within the parliamentary precinct. Therefore, members are prevented from accessing all facilities within the precinct during the period of their suspension.

The Sergeant-at-Arms escorts a suspended member from the parliamentary precinct after allowing the member to collect any personal items or parliamentary material.

It is rare for members to be suspended under SO254, with only six members suspended under this provision since July 2002, and only two members suspended since the amendments commenced in April 2010.

I trust this information is useful for your committee's inquiry and await the committee's report with interest.

Yours sincerely

HON PETER WELLINGTON MP
Speaker of the Legislative Assembly
Enc.

APPENDIX A

CHAPTER 39 ORDER AND CONDUCT OF MEMBERS

243. Order maintained by Speaker

The Speaker shall maintain order in the House.

244. Conduct in the Chamber

- (1) The Speaker shall determine any question with regard to the seats to be occupied by members.
- (2) A member must acknowledge the Speaker on entering and leaving the Chamber.
- (3) Whenever the Speaker rises during proceedings, members shall be silent and be seated so that the Speaker may be heard without interruption.
- (4) A member must not pass between the Chair and a member who is speaking, nor between the Chair and the Table, except during consideration in detail.
- (5) Once members have entered the Chamber they must take their seats and not stand in any of the passages or gangways.
- (6) Members shall acknowledge the Chair in passing to or from their seats when crossing the Chamber.
- (7) A member shall only refer to another member by their parliamentary title or electoral district.

245. Member unable to stand may speak sitting

A member unable conveniently to stand, by reason of sickness or disability, is permitted to speak sitting.

246. Quarrels not permitted

A member shall not at any time quarrel with another member during proceedings of the House.

247. Members to address the Speaker

- (1) Members wishing to speak shall rise and address the Speaker.
- (2) If more than one member rises, the Speaker shall call upon the member who, in the Speaker's opinion, rose first.
- (3) A member may move that any member who has risen "be now heard".
- (4) A member may move that a member speaking "be not heard" or "be not further heard".
- (5) A question in (3) or (4) shall be put without amendment or debate.

248. Point of order and matter concerning powers, rights and immunities

A member may at any time rise to speak to a point of order, or upon a matter concerning the powers, rights and immunities of the House suddenly arising, which shall, until disposed of, suspend the debate of every other question.

249. Point of order, how dealt with

- (1) When a point of order or other matter is raised by a member in accordance with SO 248, the member called to order shall cease speaking and resume their seat. Once the point of order or other matter has been stated, the Speaker may then rule upon the point of order or other matter.
- (2) The Speaker may also hear the opinion of any other members on the point of order or other matter.

250. Dissent from rulings of Speaker

- (1) A member may dissent from a ruling of the Speaker only by motion on notice.
- (2) Notice of motion in (1) must be given within one sitting day from the day on which the ruling was given.
- (3) The motion in (1) shall be considered within three sitting days of that on which the notice of motion was given.

251. Member speaking not to be interrupted except in certain circumstances

When a member is speaking, no other member may converse or make any noise or disturbance to interrupt that member unless it is:

- (a) to call attention to a point of order or a matter concerning the powers, rights and immunities of the House suddenly arising;
- (b) to call attention to lack of a quorum;
- (c) to call attention to the presence of strangers in the House; or
- (d) to move a closure motion pursuant to SO 88.

252. Power to order withdrawal of disorderly member from the Chamber for day

- (1) The Speaker may, after warning a member who in the Speaker's opinion continues to be grossly disorderly, order that member to withdraw immediately from the Chamber.
- (2) A member ordered to withdraw immediately from the Chamber under this Standing Order must do so forthwith, and must, during the remainder of the day's sitting, absent themselves from the Chamber.
- (3) Any member who having been ordered to withdraw under this Standing Order fails to comply, may without further warning, be named by the Speaker under SO 254.

253. Power to order withdrawal of disorderly member from the Chamber for day except for divisions

- (1) The Speaker may, after warning a member who in the Speaker's opinion continues to be grossly disorderly, order that member to withdraw immediately from the Chamber.
- (2) A member ordered to withdraw immediately from the Chamber under this Standing Order must do so forthwith, and must, during the remainder of the day's sitting remain absent from the Chamber. However, the member may enter the Chamber during the ringing of the bells for the purpose of voting in a division. Once the Speaker has declared the numbers, the member must withdraw immediately from the Chamber.
- (3) Any member who having been ordered to withdraw under this Standing Order fails to comply, may without further warning, be named by the Speaker under SO 254.

253A. Power to order withdrawal of disorderly member from the Chamber for up to one hour

- (1) The Speaker may, after warning a member who in the Speaker's opinion continues to be grossly disorderly, order that member to withdraw immediately from the Chamber for up to one hour.
- (2) A member ordered to withdraw immediately from the Chamber under this Standing Order must do so forthwith, and must, during the period nominated by the Speaker (up to one hour) remain absent from the Chamber.
- (3) Any member who having been ordered to withdraw under this Standing Order fails to comply, may without further warning, be named by the Speaker under SO 254.

255. Member named by Speaker for obstructing business

- (1) Whenever any member or members persist, after warning by the Speaker, in disregarding the authority of the Chair, or abusing the Rules of the House by persistently and wilfully obstructing the business of the House, or otherwise, the Speaker may name such member or members.
- (2) The Speaker shall not name more than one member at one time, unless two or more members, present together, have acted jointly in the relevant conduct.
- (3) The Speaker shall forthwith put the question on a motion being moved, to be decided without debate, amendment, or adjournment, that such member or members as named be suspended from the House for such time as may be specified in the motion, not exceeding seven sitting days.
- (4) If any member, or members, who have been suspended under this order from the service of the House, shall refuse to obey the direction of the Speaker, (when severally summoned under the Speaker's orders by the Sergeant-at-Arms to obey such direction), the Speaker shall call the attention of the House to the fact that recourse to force is necessary in order to compel obedience to the Speaker's direction. The member or members named as having refused to obey the Speaker's direction shall thereupon, and without further question put, be suspended from the House for a period of 14 sitting days.

256. Consequences of suspension under SO 254

When a member is suspended from the House under SO 254 they shall be excluded from the parliamentary precinct from the time the motion has been passed until the suspension is completed.³⁸

257. Speaker may suspend sitting

In the case of grave disorder arising in the House, the Speaker may without any question being put, suspend any sitting to a time to be determined by the Speaker.

258. Disorderly person may be removed³⁹

- (1) Where in the opinion of the Speaker, a person other than a member behaves in an offensive or disorderly manner or otherwise disrupts the proceedings of the House or any of its committees, the Speaker may require the person to leave the Chamber and the parliamentary precincts or the place of meeting of the committee and may authorise the removal of the person.
- (2) Where in the opinion of a Chairperson of a committee, a person other than a member behaves in an offensive or disorderly manner or otherwise disrupts the proceedings of a committee, the Chairperson may require the person to leave the place of meeting of the committee and may authorise the removal of the person from the place of meeting.

259. Wilful disobedience

- (1) A member who wilfully disobeys any order of the House may be ordered by the House to attend to answer for their conduct.
- (2) If a member fails to attend despite an order to attend in (1), or if their explanation for failing to attend is deemed unsatisfactory by the House, the House may either:
 - (a) if the member is in the parliamentary precinct, direct the Sergeant-at-Arms or another officer of the House to take such member into custody and bring that member before the House; or
 - (b) consider the member's conduct in their absence.

³⁸ Section 4 of the *Parliamentary Service Act 1988* defines the term parliamentary precinct.

³⁹ Section 50(1) of the *Parliamentary Service Act 1988* provides: All persons entering or upon the parliamentary precinct shall comply with the directions of the Speaker as to the behaviour, demeanour and conduct of such persons. Section 51 provides: A prosecution for an offence against s.50 shall be by way of summary proceedings under the *Justices Act 1886* upon the complaint of the Clerk.