

Parliamentary Service By-law 2023

Explanatory notes for SL 2023 No. 123

made under the

Parliamentary Service Act 1988

General Outline

Short title

Parliamentary Service By-law 2023

Authorising law

Section 50 of the *Parliamentary Service Act 1988*

Policy objectives and the reasons for them

The *Parliamentary Service By-law 2013* (the By-law) was made in August 2013, and in accordance with the provisions of the *Statutory Instruments Act 1992*, is due to expire on 30 August 2023.

The By-law makes provision for the Speaker of the Legislative Assembly (the Speaker), and certain authorised officers, to give directions as to the behaviour and conduct of persons (other than members of the Legislative Assembly) entering or upon the parliamentary precinct.

The By-law is important for protecting the safety of persons attending the parliamentary precinct, members of the Legislative Assembly and parliamentary staff, and ensuring that members of the Legislative Assembly are free to perform their duties on the precinct without interference.

The objectives of the *Parliamentary Service By-law 2023* are to:

- remake the By-law in accordance with the requirements of the *Statutory Instruments Act 1992*
- insert a definition for the term ‘political statement’ to assist authorised officers in carrying out their duties in accordance with the By-law
- amend the definition of ‘authorised officer’ to include the role of ‘Director, Property Services and Facilities’
- amend the definition of ‘restricted item’ to include items such as replicas of explosives or weapons, and dangerous drugs.

Achievement of policy objectives

The By-law will achieve the policy objectives by enabling the Speaker to issue directions prescribing the behaviour and conduct of persons entering or on the parliamentary precinct. The By-law also provides for certain authorised officers, as defined in Schedule 1, to give directions not inconsistent with the directions of the Speaker.

Consistency with policy objectives of authorising law

The By-law is consistent with the following sections of the *Parliamentary Service Act 1988* (the Act):

- section 50(2) which provides that directions of the Speaker may take the form of by-laws prescribing behaviour and conduct made from time to time by the Speaker; and
- section 50(5) which provides that the Speaker may authorise the Clerk of the Parliament (the Clerk) or a parliamentary service officer or employee to give directions not inconsistent with any directions given by the Speaker.

Inconsistency with policy objectives of other legislation

The By-law is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

While the Act contemplates directions of the Speaker being made other than by way of a By-law, consolidating the directions in a By-law ensures that the directions of the Speaker are publically notified. This is consistent with section 50(3) of the Act, which provides that directions in the form of by-laws are deemed to have been directed to every person who thereafter enters or is upon the parliamentary precinct.

Benefits and costs of implementation

The By-law is beneficial as a means of publicly notifying persons of the directions of the Speaker; and facilitates security management with respect to persons entering or on the parliamentary precinct.

There are no costs to the Parliament or the Government in implementing the By-law as it clarifies and maintains existing practices to ensure the safety and security of persons entering or on the parliamentary precinct.

Consistency with fundamental legislative principles

The fundamental legislative principles as outlined in sections 4 of the *Legislative Standards Act 1992* provide that legislation must have sufficient regard to the rights and liberties of individuals. This includes an individual's right to privacy and peaceful assembly.

Clause 5 requires persons entering the precinct to provide certain personal information to an authorised officer for the purpose of issuing an entry pass to the precinct.

Clause 7 is a direction that requires persons be subject to scanning or searching upon entry, if directed by an authorised officer.

These provisions infringe upon a person's right to privacy however, they serve to maintain the safety of the parliamentary precinct and persons on it. The By-law also directs authorised officers to comply with new safeguards when searching persons.

Clauses 10 and 11 pertain to the display of political statements on the precinct. Political statements on clothing, banners or signs must not be displayed on the precinct, or attached to a building, fence or other structure without the permission of the Speaker or an authorised officer.

These provisions restrict the freedom of peaceful assembly but only on the parliamentary precinct itself. These provisions recognise the rights, powers and immunities of the Legislative Assembly and the Assembly's right to control its own proceedings and to conduct its proceedings free from interference.

Consultation

As the By-law is the embodiment of the directions of the Speaker, consultation was confined to the Office of the Speaker and the Parliamentary Service.

Notes on provisions

Part 1 – Preliminary

Clause 1 provides that the short title of the By-law is the *Parliamentary Service By-law 2023*.

Clause 2 provides that the purpose of the By-law is to give directions under section 50 of the Act by prescribing behaviour and conduct for persons entering or on the parliamentary precinct.

Clause 3 provides that the dictionary in Schedule 1 defines particular words used in this By-law.

Clause 4 provides that an authorised officer may give a direction under this part that is not inconsistent with the directions given by the Speaker under section 50 of the Act (including this By-law). The authorisation under subsection (1) is an authorisation pursuant to section 50(5) of the Act.

Part 2 – Behaviour and conduct

Clause 5 is a direction that requires persons entering the precinct to wear an entry pass issued by authorised officers. For the purposes of issuing a pass, a person must provide their name, address and phone number to the authorised officer; and produce photo identification to verify their identity.

The provision also provides a direction that persons entering or on the precinct should not give false information or give an entry pass issued to them to another person other

than an authorised officer. Persons are also required to return their passes to an authorised officer when leaving the precinct; or if not practicable, notify an authorised officer that the person is leaving the parliamentary precinct.

Clause 6 is a direction to persons not to enter or attempt to enter the precinct using someone else's entry pass or parliamentary identification card.

Clause 7 is a direction to persons entering the precinct to allow themselves to be subject to scanning and searching, if directed by an authorised officer. The provision defines the types of scanning and searching authorised officers may direct a person to comply with.

The provision inserts a new requirement that should a person be directed to allow an authorised officer to touch a garment the person is wearing to determine if the person is concealing a restricted item. The officer giving the direction must ensure, as far as reasonably practicable, the officer who is to touch the person's garment is of the same sex as the person.

The provision also directs that persons should not engage in behaviour or conduct directed at avoiding a scanning or searching direction.

Clause 8 is a direction that a person must not bring on to the precinct, or have in their possession on the precinct, a restricted item (as defined in Schedule 1) without the permission of the Speaker or an authorised officer. The definition of 'restricted item', has been amended to mean a proscribed thing under the *Police Powers and Responsibilities Act 2000*, Schedule 6.

Clause 9 directs that persons must, if directed by an authorised officer, place a prescribed item (as defined in the section) in the temporary custody of an authorised officer while on the precinct or a particular part of the parliamentary precinct (eg galleries of the Legislative Assembly chamber, or a room where a committee of the Legislative Assembly is meeting).

Clause 10 provides a new direction to clarify existing practice and requires persons entering the parliamentary precinct to cover or obscure political statements on clothing. If the item of clothing displaying a political statement cannot practicably be placed in the temporary custody of an authorised officer, the person must cover or obscure the political statement, and not uncover or reveal the political statement while on the precinct.

Clause 11 is a direction that a person on the parliamentary precinct must not, without the permission of the Speaker or an authorised officer, display a political statement on a banner, sign or other things (eg clothing); or attach a banner, sign or other thing displaying a political statement to a building, fence or other structure on the precinct.

Clause 12 is a direction that persons must not drive or park a vehicle on the parliamentary precinct without the permission of the Speaker or an authorised officer. The provision also requires persons to comply with notices of the Speaker or the Clerk with respect to driving or parking vehicles on the precinct; and to comply with any direction given by an authorised officer about the movement or parking of a vehicle.

Clause 13 is a direction that persons must not enter a restricted part of the parliamentary precinct without the permission of the Speaker or an authorised officer. 'Restricted area'

is defined in the section as parts of the precinct that are restricted to members of the Legislative Assembly and parliamentary staff by notice placed by or under the authority of the Speaker or the Clerk.

Clause 14 is a direction that persons must not vandalise or otherwise damage buildings that form part of the precinct; or property within the parliamentary precinct for which the parliamentary service has administrative responsibility.

Clause 15 is a direction that persons must not smoke on the parliamentary precinct other than in a nominated outdoor smoking place.

Clause 16 is a direction specifying other conduct or behaviour that is prohibited on the precinct including:

- intimidation or harassment of a member of the Legislative Assembly or another person
- placing a person on the precinct in danger
- disrupting the proceedings of the Legislative Assembly or its committees.

Part 3 – Other provisions

Clause 17 provides new safeguards for the searching of persons by authorised officers who give a direction to a person under clause 7(2). Authorised officers who give a direction under clause 7(2) must ensure, as far as reasonably practicable, minimal embarrassment is caused to the person; and take reasonable care to protect the dignity of the person.

The provision also provides that if an authorised officer reasonably suspects it is necessary to protect the dignity of a person subject to a direction under clause 7(2), and it is reasonably practicable, that any inspection of a person's belongings be conducted out of public view.

Clause 18 provides for the Clerk to issue authorised officers with an identity card that can be used for the purposes of identifying the person as an authorised officer. The provision also requires authorised officers to be able to produce their identity card when acting, and to return their identity card to the Clerk when they cease being an authorised officer.

Clause 19 repeals the Parliamentary Service By-law 2013, SL No. 171.

Schedule 1

The schedule defines terms used in the By-law.