



SPEAKER

Ref: 14/134.67

The Hon Don Harwin MLC
President
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr President

Thank you for forwarding the terms of reference of the NSW Procedure Committee Inquiry into young children accompanying members into the House.

The Northern Territory Legislative Assembly Standing Orders Committee received a reference from a Member requesting the Committee give consideration to proxy voting for breastfeeding mothers in order to allow voting in a division while otherwise engaged in duties as a new mother.

The Committee considered the reference and has recommended to the Legislative Assembly two new Standing Orders, *Proxy Votes Allowed* and *Chamber access for Members Only*.

The Report was tabled on Thursday 21 April 2016. A copy of the Report with the new Standing Orders is attached.

Yours sincerely

Hon Kezia Purick MLA
Speaker

22nd 2016



Legislative Assembly of the Northern Territory

12th Assembly Standing Orders Committee

Final Report on Proposed Reform of the Standing Orders to Permit Proxy Voting or Breastfeeding in the Chamber

Committee Members

Hon John Elferink MLA (Chair)
Hon Kezia Purick MLA
Hon Gary Higgins MLA
Mr Gerry Wood MLA
Ms Natasha Fyles MLA
Ms Lauren Moss MLA

Committee Secretary

The Clerk of the Legislative Assembly

Introduction

The Member for Drysdale, Mrs Finocchiaro approached the Speaker on 4 December 2015 and wrote to the Chair of the Standing Orders Committee on 12 January 2016 requesting the Committee give consideration to proxy voting for breastfeeding mothers in order to allow voting in a division while otherwise engaged in duties as a new mother.

The Member updated her request with communication concerning reforms to the House of Representatives Standing Orders made on 2 February 2016 by forwarding for the Committee's attention various media reports on the development.

The Committee considered the matter and provided an interim report to the Legislative Assembly on Thursday 17 March 2016 where the Chair noted in his tabling statement that he had provided correspondence attached to the report which expressed his dissent that the matter had not been resolved by the time of the Committee reporting on other matters by that day.

Background

The Standing Orders Committee considered the matter of infants and breastfeeding during the Ninth Assembly when the Committee reported to the Assembly in June 2003 as follows:

The Committee considered the options for changing the Standing Orders to allow a Member to bring an infant into the Northern Territory Chamber for the purpose of breastfeeding following recent events in the Victorian Parliament.

The Committee was of the opinion that, as the relevant Northern Territory Legislative Assembly Standing Order is similar in wording to the Victorian Legislative Assembly Standing Order it was available for the Speaker at any time to rule that if a Member was

required to be in the chamber it was in order for that Member, if necessary, to bring an infant into the chamber to be breastfed.

Accordingly the Committee did not propose to recommend an amendment to the Standing Order at this time

This flexibility remains the situation in the Northern Territory; however it has never been tested. Voting by proxy is a different matter to nursing a child in the Chamber.

The Committee initially considered the matter in terms of proxy votes and the situation in other Australian parliaments, and then considered the matter of infants on the floor while being breastfed. The Committee noted, but did not consider in detail, the initiatives in other jurisdictions concerning infants accompanying parents on to the floor when the parent was a care giver but not necessarily breastfeeding.

ACT

In March 2003, the ACT Legislative Assembly amended its standing orders to provide that the word "visitor" does not apply to an infant being breastfed by a Member. Proxy votes are not accommodated.

Proxy votes would not be available under the relevant self-government act as it requires the Members to be present and voting. The Northern Territory version does not specify 'presence'.

NSW

The NSW Legislative Council makes an exception to the prohibition of strangers on the floor of the house for a "member breastfeeding an infant" and has recently been asked to consider whether this can be widened to enable a member with an infant under four years old to take that infant on to the floor when voting in a division. No other Australian jurisdiction reports they allow this.

The Legislative Council Procedure Committee is undertaking an inquiry arising from an incident which occurred during August 2015 where a member caring for a 19 month old infant wished to attend to vote in the House but was unable to bring her child onto the floor of the House due to the prohibition about strangers with the exception of infants being breastfed.

Submissions to that inquiry are due by 13 May 2016.

In the NSW Legislative Assembly there is no specific Standing Order comparable to the Council's SO 196(4); but there have been instances of an "infant presence" on the floor of the Chamber with no points of order being raised. These instances occurred during divisions.

Victoria

There is no resolution and no precedent for children or babies in the Legislative Council of Victoria.

Victoria's Legislative Assembly has the same rule regarding infants being breastfed that the NSW Legislative Council has.

In 2009, the Standing Orders Committee recommended that members with childcare responsibilities at Parliament House be allowed to sit in the lower public galleries with their children during divisions and have their vote counted from there, but this recommendation was not taken up by the House.

Australian Parliament

The Senate Procedure Committee Third Report of 2009 was as follows:

On 18 June 2009 the President requested that a child of a senator be removed from the chamber during a division. As a result of that occasion, the following suggested amendment of the standing order was referred to the committee for consideration and report by 7 September 2009: Paragraph (3) to be amended to read: (3) Paragraph (2) does not apply in respect of a Senator breastfeeding an infant, or, at the discretion of the President, a senator caring for an infant briefly, provided the business of the Senate is not disrupted.

The committee considered this proposed amendment. A majority of the committee believes that it would be undesirable to extend the existing exemption from the standing order, and therefore does not recommend the proposed amendment.

In the view of the majority of the committee, it would create an undesirable inroad on the principle that the floor of the Senate is reserved for senators and officers in immediate attendance on the Senate, and would create uncertainty as to the scope of the proposed exemption.

The House of Representatives adopted a resolution on 13 February 2008 (continuing until amended or rescinded 'in this or a subsequent parliament' that allows a Member who is a nursing mother to vote in divisions by proxy, by giving her proxy to the Chief Government or Chief Opposition Whip.

This has been used a number of times, including in the existing session of the parliament - there are a number of Members with infants.

On 2 February 2016 the House adopted a resolution permitting the bringing of infants onto the floor of the House when in the care of a parent of either gender.

South Australia

There is nothing in House of Assembly Standing Orders to provide for breastfeeding or children on the floor of the Chamber. Members with small children present have voted in divisions from the Chamber galleries.

Tasmania Queensland and Western Australia

The Tasmania House of Assembly does not have any similar standing orders - this issue has not arisen there.

The Queensland and Western Australia Assemblies do not have proxies or access for infants.

New Zealand

In New Zealand, there is no exception to the prohibition on strangers on the floor for infants. A room very near the Chamber has been provided for members' babies.

Committee Consideration of Options for the Northern Territory

The Committee has previously noted the draft Standing Order for a proxy vote proposed by the Member for Drysdale as a possible option. A proxy system could be adopted through an amendment to the Standing Orders or the Speaker could allow a child to attend for the purpose of a division.

The House of Representatives model assumes the Whip is not the nursing mother and that they are a party-aligned Member.

Their Resolution is:

- 1) *That the House, recognising that Members who are required to nurse infants may not always be able to attend in the Chamber to vote in divisions:*
 - (a) *agrees that, despite the provisions of the standing orders, a Member may give her vote by proxy for any division except that on the third reading of a bill which proposes an alteration of the Constitution if the Member is nursing an infant at the time of the division;*
 - (b) *determines that for the purposes of this resolution, a government Member may give her proxy to the Chief Government Whip, and that a non-government Member may give her proxy to the Chief Opposition Whip;*
 - (c) *determines that for the purposes of standing orders 129, 130 and 131 any proxy vote given in accordance with this resolution is to be treated as if it was a vote given by the Member present in the Chamber; and*
 - (d) *is of the opinion that the special provisions of this resolution should not be extended or adapted to apply to Members who are not able to be present in the Chamber for other reasons; and*
- 2) *That this resolution has effect and continues in force unless and until amended or rescinded by the House in this or a subsequent Parliament.*

The Member for Drysdale's proposal was worded as follows to fit Northern Territory circumstances:

The Assembly recognises Members who are required to nurse infants may not always be able to attend in the Chamber to vote in divisions and therefore agrees and determines as follows:

1. *That, despite the Standing Orders, a pre-registered Member nursing an infant at the time of the division may give their vote in writing to the Clerk at the Table for any division*
2. *Pre-registration means a Member with the responsibility for nursing an infant who has advised the Speaker in writing that they have this responsibility on Assembly meeting days*
3. *The proxy vote must be in writing on an approved form*
4. *A vote may be in a blanket form or on an individual form but not both.*
5. *If a blanket form has been received by the Clerk at the Table it overrides any attempt at individual proxy voting for the period the blanket form applies*

6. *A blanket form advises the Assembly that a Member is voting with either the Government or the Opposition on each and every division during the period of the blanket form's validity.*
7. *A pre-registered Member who has not lodged a blanket proxy form may lodge an individual form at each division*
8. *An individual form must refer to the time and date of the vote being undertaken and be signed by the Member on the approved form and may be conveyed to the Clerk at the table by any Member on behalf of the pre-registered Member prior to the conclusion of the division*
9. *The proxy vote in either blanket form or individual form must be conveyed in hard copy only to the Clerk at the Table on the form as approved by the Speaker and may not be conveyed to the Clerk by electronic means*
10. *For the purposes of Standing Orders any proxy vote given in accordance with this resolution is to be treated as if it was a vote given by the Member present in the Chamber*
11. *This resolution is not extended or adapted to apply to Members who are not pre-registered and/or are not able to be present in the Chamber for other reasons*
12. *This resolution has effect and continues in force unless and until amended or rescinded by the House in this or a subsequent Parliament.*

The Committee considered this proposal at its February and March meetings in exhaustive detail and determined not to proceed with a recommended resolution. At the April meeting of the Committee, the Committee resolved after much deliberation to support the approach with a proposed new Standing Order 132A as well as a more general discretionary Standing Order about Chamber access relating to Standing Order 245.

Existing Standing Order 245 states:

Chamber access for Members Only

Only Members are permitted on the floor the Chamber during meetings of the Assembly. On other days, the permission of the Speaker is required for a visitor to enter onto the floor of the Chamber.

After discussion of the option of having a proxy voting system or of bringing infants on to the floor of the Chamber the Committee had deferred consideration until the April meeting where the Speaker indicated she would have sought advice from the Australian Breastfeeding Association (ABA).

The Speaker subsequently requested the Committee Secretary write to the ABA seeking their advice on the matter. The secretary's letter is attached (Annexure A)

The ABA replied by letter dated 8 April 2016 and a copy of the reply is attached (Annexure B).

The ABA recommends the Assembly allow babies and children onto the floor of the Assembly to assist members breastfeed babies and *recommends the Assembly adopt practices that support the National Health and Medical Research Council's recommendation*

of exclusive breastfeeding for six months and continued breastfeeding for 12-24 months including:

- *Becoming a breastfeeding friendly workplace, thereby making the necessary changes to support women to breastfeed their babies. The Australian breastfeeding Association offers the only recognised accreditation for breastfeeding friendly workplaces in Australia.*
- *On-site childcare*
- *Facilities that enable infants to be brought to mothers for breastfeeding*
- *Enabling breastfeeding mothers to go to the infant for feeding*
- *Facilities that enable breastfeeding mothers to express and store breastmilk*

Changes to Standing Orders

Many of the proposals above concerning child care have previously been considered by the House Committee.

The Standing Orders Committee is only concerned with the procedural aspects of the matter relating to attendance and voting not to matters relating to child care.

The Committee considered its own stance in its February Report to the Assembly during the March sittings and despite its previous stated determination not to change Standing Orders prior to the 2016 election has proposed a change on this occasion.

Recommendation

The Assembly is invited to agree to the following Standing Orders to insert new Standing Order 132A and replace Standing Order 245:

New Standing Order 132A

Proxy Votes Allowed

Members may vote when not in attendance in the following circumstances:

1. *A pre-registered Member nursing an infant may give their vote in writing to the Clerk at the Table for any division*
2. *Pre-registration means a Member with the responsibility for nursing an infant who has advised the Speaker in writing that they have this responsibility on Assembly meeting days*
3. *The proxy vote must be in writing on an approved form*
4. *A vote may be in a blanket form or on an individual form but not both.*
5. *If a blanket form has been received by the Clerk at the Table it overrides any attempt at individual proxy voting for the period the blanket form applies*

6. *A blanket form advises the Assembly that a Member is voting with either the Government or the Opposition on each and every division during the period of the blanket form's validity.*
7. *A pre-registered Member who has not lodged a blanket proxy form may lodge an individual form at each division*
8. *An individual form must refer to the time and date of the vote being taken and be signed by the Member on the approved form and may be conveyed to the Clerk at the table by any Member on behalf of the pre-registered Member prior to the conclusion of the division*
9. *The proxy vote in either blanket form or individual form must be conveyed in hard copy only to the Clerk at the Table on the form as approved by the Speaker and may not be conveyed to the Clerk by electronic means*
10. *For the purposes of Standing Orders any proxy vote given in accordance with this resolution is to be treated as if it was a vote given by the Member present in the Chamber*
11. *This resolution is not extended or adapted to apply to Members who are not pre-registered and/or are not able to be present in the Chamber for other reasons*

New Standing Order 245

Chamber access for Members Only

Except with the permission of the Speaker, who may exercise discretion in the case of nursing parents with young infants, only Members are permitted on the floor the Chamber during meetings of the Assembly. On other days, the permission of the Speaker is required for a visitor to enter onto the floor of the Chamber.

**Hon John Elferink MLA
Committee Chair**

April 2015