



2011

Legislative Council

STANDING ORDERS COMMITTEE

REPORT

Members of the Committee

Hon Sue Smith MLC (Chair)
Hon Greg Hall MLC
Hon Paul Harriss MLC

Hon Doug Parkinson MLC
Hon Tania Rattray MLC

Secretary: David Pearce

BACKGROUND

The Standing Orders Committee has considered two references made to it by the Legislative Council.

The first reference related to Question time and was agreed by the Legislative Council on Tuesday, 15 March 2011 in the following terms —

Resolved,

That the following proposed procedural orders relating to Questions without Notice be referred to the Standing Orders Committee for its consideration and report —

That no Question without notice shall be asked —

- (1) After the lapse of 15 minutes where no Member of the Legislative Council is a Minister of the Crown.
- (2) After the lapse of a further period in addition to the 15 minute period, to be determined by allocating a maximum of a further 10 minutes for each Member of the Legislative Council who is a Minister of the Crown.

The second reference related to the casting vote of the President and was agreed by the Legislative Council on Wednesday, 13 April 2011 in the following terms —

Resolved,

That the matter of the existing casting vote provisions of the President as provided for at Section 20 of the *Constitution Act 1934* and contained in the Legislative Council Standing Orders at Standing Order No. 140, be referred to the Standing Orders Committee for its consideration and report.

QUESTION TIME

The Standing Orders of the Legislative Council currently provide for a Question Time period of 30 minutes. The time allowed increased from the previous 20 minute limit following a trial period. His Excellency the Governor agreed to this permanent change to the relevant Standing Order on 29 November 2010. The Committee is of the view, that notwithstanding there are currently no Members of the Legislative Council who are Ministers of the Crown, the time allowed of 30 minutes for Questions without Notice was still appropriate.

The Committee recommends that there be no change to Standing Order No. 49 relating to the time period for Questions without Notice.

PRESIDENT'S CASTING VOTE

The Committee accepts that arguments can be advanced on both sides of the casting vote issue and that the casting vote is a serious matter for the occupant of the Chair at any time.

Legislative Council Standing Order No. 140 provides that —

“In the case of an equality of votes the President shall give a casting vote, and may state the reasons for his or her vote, which shall be entered in the Journals of the Council”.

The *Constitution Act 1934* at Section 20 provides that —

- “(1) The Council shall not be competent to despatch any business unless at least 7 Members thereof, including the President, or the person chosen to preside in his absence, are present.
- (2) All questions shall be decided by the majority of the votes of the Members present, exclusive of the President.
- (3) In the event of an equality of votes the President or such person as aforesaid shall have a casting vote”.

The Committee in its consideration of the existing casting vote provisions did examine the casting vote provisions in all other Australian parliamentary jurisdictions (see Attachment 1).

Of the fifteen Australian Houses of Parliament, twelve jurisdictions have casting vote provisions contained in their Standing Orders. Only three jurisdictions, namely the Australian Senate, the Victorian Legislative Council and the ACT Legislative Assembly make provision for a deliberative vote only. In each of these three jurisdictions a tied vote will result in the Question being passed in the negative.

The Committee also informed itself of the practice which applies in the United Kingdom House of Commons and the principles on which the Speaker in that House gives a casting vote.

In looking at the historical practice of Speakers of the United Kingdom House of Commons two main principles and one subsidiary principle were noted by the Committee —

- That the Speaker should always vote for further discussion, where this is possible;
- That, where no further discussion is possible, decisions should not be taken except by a majority; and

- That a casting vote on an amendment to a Bill should leave the Bill in its original form.

The Committee further considered the following two additional aspects —

- The long held custom and practice of the Tasmanian Legislative Council with regard the President's casting vote; and
- The points made in the Second reading speech of the former Honourable Member for Launceston on the Constitution Amendment (Legislative Council Proceedings) Bill 2011 which seeks to remove the casting vote provision of the President.

The Committee recognises that the observance of established custom and convention in the Tasmanian Legislative Council makes the exercise of a casting vote a less personal matter. Whilst the President is at liberty to vote like any other Member of the Legislative Council when votes are equal on a Division, that is according to personal views, it has been the practice in the Tasmanian Legislative Council for the President to vote in such a manner as to not make the decision of the Council final when this is practicable. This convention serves to avoid any imputation upon the impartiality of the Presiding Officer.

To expand a little further, particularly for the benefit of newer Members, the long established practice in this House is that the Chair should give all Honourable Members the maximum opportunity for full consideration of the measure before the House. In the case of a Bill, further consideration is available in the Committee stages, so that when there is an equality of Votes on a Second reading of a Bill Presidents consistently have used their Casting Vote to enable further consideration in Committee. This is notwithstanding what their personal views may be.

When there is no opportunity of further consideration in Committee or otherwise, for example on the consideration of a Substantive Motion, Presidents have established a precedent by not using their Casting Vote in a manner that would achieve for the Mover of the Motion that which the Honourable Member was unable to achieve in Debate.

The Committee is satisfied that the merits of a casting vote of the President, as opposed to a deliberative vote only, remain sufficient for the Committee to determine that the casting vote provision remain.

The Committee therefore recommends that there be no change to the relevant provisions of the *Constitution Act 1934* and Legislative Council Standing Order No. 140.



HON. SUE SMITH MLC (Chair)
President

1 December 2011

ATTACHMENT 1

PRESIDING OFFICER'S VOTING PROVISIONS

AUSTRALIAN PARLIAMENTARY JURISDICTIONS

PARLIAMENT	LOWER HOUSE NAME & PRESIDING OFFICER'S POWERS	UPPER HOUSE NAME & PRESIDING OFFICER'S POWERS
FEDERAL	<p>REPRESENTATIVES (148) HR Standing Orders: 135 (c) Any reasons given by the Speaker for exercising a <u>casting</u> vote in accordance with section 40 of the Constitution, must be entered in the Votes and Proceedings.</p>	<p>SENATE (76) Senate Standing Orders: 99 (1) The President and the Deputy President and Chairman of Committees shall in all cases be <u>entitled to a vote</u>.</p> <p>99 (2) The President and the Deputy President and Chairman of Committees when in the chair may vote by stating to the Senate or to the committee whether they vote with the "ayes" or with the "noes".</p> <p><i>This provision is important to the procedures of the Senate. In most parliamentary chambers, the presiding officer does not have a "deliberative" vote but may give a casting vote (often in accordance with parliamentary convention) if the vote is equal. If this rule were used for the Senate, it would deprive a State of one of its votes. Section 23 of the Constitution therefore gives the President a deliberative vote, but no casting vote. Instead, if the votes are equal, the decision is deemed to be "no".</i></p>
AUSTRALIAN CAPITAL TERRITORY	<p>LEGISLATIVE ASSEMBLY (17) LA Standing Orders: 161 On the call of the Assembly being commenced, every Member within the seats allotted to Members shall vote and Members may not move from their places until the result is announced. The Member presiding has a <u>deliberative</u> vote only.</p> <p>162 The Clerk shall then present the list to the Speaker who will declare the result to the Assembly. When the votes are equal, the question shall be resolved in the negative.</p>	

PARLIAMENT	LOWER HOUSE NAME & PRESIDING OFFICER'S POWERS	UPPER HOUSE NAME & PRESIDING OFFICER'S POWERS
NORTHERN TERRITORY	<p>LEGISLATIVE ASSEMBLY (25) LA Standing Orders: 172 Any reasons stated by the Speaker for exercising their <u>casting</u> vote shall be entered in the Minutes of Proceedings and in the Parliamentary Record.</p>	
NEW SOUTH WALES	<p>LEGISLATIVE ASSEMBLY (93) LA Standing Orders: 184 In the event of an equality of votes, the Member presiding shall give a <u>casting</u> vote and any reasons given may be recorded in the Votes and Proceedings.</p>	<p>LEGISLATIVE COUNCIL (42) LC Standing Orders 116 If the numbers voting for each side are equal, the Chair must give a <u>casting</u> vote. The Chair may give reasons for the casting vote and those reasons may be entered in the Minutes of Proceedings.</p>
QUEENSLAND	<p>LEGISLATIVE ASSEMBLY (89) LA Standing Orders: 107 (2) Every member present in the House when the question is put with the bars closed must vote except the Speaker, who shall have a <u>casting</u> vote if the votes are equal.</p>	
SOUTH AUSTRALIA	<p>HOUSE OF ASSEMBLY (47) HA Standing Orders: 180 When the votes are equal, the Speaker gives a <u>casting</u> vote. Any reasons that the Speaker gives for the casting vote are entered in the Votes and Proceedings.</p>	<p>LEGISLATIVE COUNCIL (69) LC Standing Orders: 231. In the case of an equality of votes, the President shall give a <u>casting</u> vote, and any reason given by the President shall be entered in the Minutes.</p> <p>Where the casting voice of the President has not been exercised, the concurrence or non-concurrence in the passing of the second or third reading of any Bill may be indicated by the President.</p> <p><i>In terms of the practice of Presiding Officers maintaining the status quo by the use of their casting vote in the event of an equality of votes, this is a matter that has varied from President to President. Given that most in contemporary times have been members of the governing party it has not been common.</i></p>

PARLIAMENT	LOWER HOUSE NAME & PRESIDING OFFICER'S POWERS	UPPER HOUSE NAME & PRESIDING OFFICER'S POWERS
TASMANIA	<p>HOUSE OF ASSEMBLY (25) HA Standing Orders: 211. In case of an equality of Votes, the Speaker shall give a <u>casting</u> vote, and may state the reasons for the Vote; and any reasons so stated shall be entered in the Journals of the House.</p>	<p>LEGISLATIVE COUNCIL (15) LC Standing Orders: 140. In the case of an equality of votes the President shall give a <u>casting</u> vote, and may state the reasons for his or her vote, which shall be entered in the Journals of the Council.</p>
VICTORIA	<p>LEGISLATIVE ASSEMBLY (88) LA Standing Orders: 167 If the numbers are equal, the Speaker has a <u>casting</u> vote. The Speaker may give reasons for the casting vote and those reasons are entered in the Votes and Proceedings.</p>	<p>LEGISLATIVE COUNCIL (44) LC Standing Orders: 16.03. The President or the Deputy President or Acting President when in the Chair will <u>in all cases vote</u> by stating to the Council whether they vote with the "Ayes" or "Noes".</p>
WESTERN AUSTRALIA	<p>LEGISLATIVE ASSEMBLY (57) LA Standing Orders: 204. When the votes are equal, the President shall give a <u>casting</u> vote. He may state his reasons for giving such vote, and they shall be recorded in the Minutes.</p>	<p>LEGISLATIVE COUNCIL (34) LC Standing Orders: Quorum 14. The presence of at least one-third of the members of the Legislative Council, exclusive of the President, shall be necessary to constitute a quorum for the despatch of business; and all questions which shall arise in the Legislative Council shall be decided by a majority of votes of the members present, other than the President, and when the votes are equal the President shall have the <u>casting</u> vote. Divisions 204. When the votes are equal, the President shall give a <u>casting</u> vote. He may state his reasons for giving such vote, and they shall be recorded in the Minutes.</p>