

# Constitution Amendment (Legislative Council Proceedings) Bill 2011

(No. 19): (*Private Member's Bill – Mr Wing*)

## Second Read Speech

Madam President

I move that the Bill be read a second time.

This relatively short Bill proposes to change section 20 of the *Constitution Act 1934* in three minor respects.

The first is to update the language in our State's Constitution to recognise that, as is the present case, the presidency of the Legislative Council may be occupied by a female Member.

The second is to amend the Constitution to provide that all votes in the Legislative Council are to be decided by a majority of the Members present, including the President.

The third change is to provide that, where there is an equality of votes, the question will pass in the negative.

Section 20 (2) of the Tasmanian Constitution Act 1934 (No. 94 of 1934) provides that:

“(2) all questions shall be decided by the majority of the votes of the Members present, exclusive of the President”.

Section 20 sub-section (3) provides:

“(3) in the event of equality of votes the President or such person as aforesaid shall have a casting vote”.

In Australian Parliamentary terms this places the President of the Legislative Council in Tasmania in the same position as Presiding Officers in all Australian Parliaments except the Senate, the Victoria Parliament and the Australian Capital Territory where, in all cases, the Presiding Officer has a deliberative vote only and in the event of an equality of votes the question passes in the negative.

The rationale for granting Presiding Officers a casting vote only is designed primarily to promote the perception of impartiality in the Presiding Officer.

In our Legislative Council a convention has developed where there is an equality of votes the President on a tied vote in Council would usually cast his or her vote in favour of the question before the Chair to enable further debate to take place in Committee.

If, the vote is still tied at the stage of the Third Reading the Presiding Officer would normally vote against the question on the basis that the proponent has been unable to convince a majority of Members to support the measure.

In recent years I have taken the opportunity to speak with a number of Presiding Officers in Australian Parliaments where the Presiding Officer has only a casting vote as to whether they would then vote in accordance with the convention usually followed in this House or whether they would vote in support of the measure being put forward by their Government or Party. All except one said they would vote along Party lines. The Presiding Officer who was the exception said he would exercise his own judgment.

In practice, therefore, the principle of enhancing the perception of impartiality by giving Presiding Officers a casting vote only is not observed in practice.

The effects of a Presiding Officer having a casting vote only are more serious in a House of Parliament with a small number of Members such as 15 in this House and 17 in the Legislative Assembly of the Australian Capital Territory. In such cases it means that where the Presiding Officer has a deliberative vote only a significant number of constituents in Tasmania and in the Australian Capital Territory are virtually being disenfranchised – even on legislation that may affect them directly.

That is seen to be a disadvantage and involving some impediment on their democratic rights.

I believe that this change is the more necessary since the 1998 reduction in the Legislative Council from 19 to 15 seats, which of course led to larger electorates, and therefore a larger disenfranchisement.

I favour our Chamber following the practice which has existed in the Australian Senate since 1901, in the Victorian Legislative Council since 2003 and also in the ACT that the President has a deliberative vote, but not a casting vote.

Australia's founding fathers felt it would not be fair or proper for the State which provided the President of the Senate to be denied a vote in the State's House purely because of that fact.

This philosophy is carried through in the provisions of Section 23 of the Australian Constitution which provides:

“23. Questions arising in the Senate shall be determined by a majority of votes, and each Senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative”.

It is acknowledged that arguments could be advanced on both sides of this issue. On balance, however, it appears clear that in practice in Australia, in most cases the principle of impartiality in voting is not being observed which weakens any arguments in support of restricting Presiding Officers in this House from having a deliberative vote.

On the other hand, because of the small number of Members in this House a higher percentage of our population is being disenfranchised when their Member is unable to vote than is the case in larger Parliaments.

I believe that if we allow our President to have a deliberative vote, we are giving his or her electorate a voice in the deliberations of this Chamber without in anyway undermining the impartiality of the Chair.

In Victoria, when that State’s Constitution Commission was looking at the question of reducing the size of the Upper House, it examined the question of voting by the President. It suggested that the practice in the Senate be adopted by giving the President a deliberative, rather than a casting vote.

The four reasons stated were

- The electoral balance determined by the electors would be preserved and observed in practice;
- No region or party would be deprived of a vote because of a Member’s election as a presiding officer;

- The incentive to force the Government of the day to provide the presiding officer would be lost;
- The House would be in a better position to choose the best candidate for the position of presiding officer, regardless of party affiliation.

The references to political parties are not as relevant to this Chamber, because there has always been a majority of Independent Members – and long may it be so.

But the points made about preserving the will and not denying any electorate a share of any vote because its Member happens to be the President apply equally relevantly in Tasmania.

Last week the Leader of the Government, The Hon. Doug Parkinson, asked what my attitude would be to referring this matter to this House's Standing Orders Committee. My reaction was that I thought that could be quite beneficial so that all aspects of this issue may be discussed both by the Committee and this House – especially as it may be desirable to consider some amendment to the Standing Order in this respect.

At the conclusion of my speech the Leader will move to that effect and that move will have my full support.

The measures represented in this Bill involve a small change, but an important one. In a small Chamber like ours it is right that all Members have a vote, and that all constituents are represented in votes. This Bill will ensure that happens.

I commend the Bill to the Council.