

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

FAMILY FRIENDLY *WORKPLACE*

REPORT NO 8

April 2016

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RESOLUTION OF APPOINTMENT

In 1995 the Legislative Assembly for the Australian Capital Territory ('the Assembly') amended Standing Order 16, which established the Standing Committee on Administration and Procedure ('the Committee').

Standing Order 16 authorises the Committee to inquire into and report on, among other things, the practices and procedure of the Assembly.

TERMS OF REFERENCE

On 19 November 2015 the Assembly passed the following resolution:

That this Assembly:

- (1) notes:
 - (a) the ACT Government's commitment to breastfeeding friendly work and community places through both legislation and policy initiatives; and
 - (b) provisions in the standing orders and Companion document which provide for a Member to breastfeed their baby in the Legislative Assembly; and
- (2) refers to the Standing Committee on Administration and Procedure the following matters for consideration and report back to the Assembly by the last sitting day in May 2016:
 - (a) options and flexibility for breastfeeding women;
 - (b) emergency care for family members;
 - (c) accepted practice in regard to pairing arrangements; and
 - (d) consideration of proxy voting.

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RECOMMENDATIONS

RECOMMENDATION 1

The Committee recommends that the Whips of the parties represented in the Assembly develop a set of protocols/guidelines for the operation of pairs to encourage and support Members who are nursing mothers or who have carer responsibilities and also family friendly practices.

1. INTRODUCTION

- 1.1. On 19 November 2015, Mrs Giulia Jones, MLA moved the following motion:

That this Assembly requests that the Standing Committee on Administration and Procedure investigate how the Assembly instigate a system whereby breastfeeding women have the option to vote from within the Assembly by proxy, as well as having the option to vote in the Chamber with their baby, as preferred by the mother based on the needs of her baby and report back to the Assembly by the first sitting week in May 2016.

- 1.2. In speaking to the motion Mrs Jones expressed her view that too many limits were placed on women wishing to breastfeed babies, especially in the workplace. She stressed the importance of allowing mothers to manage their babies in the best possible way for each child, recognising that babies and mothers needs can vary and the need for flexibility.
- 1.3. While outlining the situation in other parliaments she noted that provisions existed within the ACT Legislative Assembly for a breastfeeding mother to take an infant onto the chamber floor but emphasised that she felt that it was less than ideal.
- 1.4. Mrs Jones reminded Members in the Chamber of the benefits of breastfeeding for both mothers and babies and the need for women to be able to actively participate in the workforce at the same time as supporting their young babies.
- 1.5. Ms Yvette Berry, MLA, Minister for Women, during the debate proposed an amendment to Mrs Jones' motion (which was agreed to by the Assembly), viz:

That this Assembly:

(1) notes:

- (a) *the ACT Government's commitment to breastfeeding friendly work and community places through both legislation and policy initiatives; and*
- (b) *provisions in the standing orders and Companion document which provide for a Member to breastfeed their baby in the Legislative Assembly; and*

(2) *refers to the Standing Committee on Administration and Procedure the following matters for consideration and report back to the Assembly by the last sitting day in May 2016:*

- (a) *options and flexibility for breastfeeding women;*
- (b) *emergency care for family members;*
- (c) *accepted practice in regard to pairing arrangements; and*
- (d) *consideration of proxy voting.*

- 1.6. Ms Berry noted in the debate that it was important for the government to assist employers, government and private sector, to support employees in meeting their responsibilities as

parents and carers. Ms Berry referred to the ACT Breastfeeding Strategic Framework 2010-15 which was developed by the Health Directorate in 2010.

“The overall aim of the framework is to identify strategies to increase the number of infants being exclusively breastfed from birth to six months and to encourage ongoing breastfeeding with complementary foods until at least 12 months of age.”¹

- 1.7. She noted that, while caring responsibilities had been a consideration in her decision to seek election, and that it had been at times a juggle, she did not have to choose between work and family.
- 1.8. Mr Rattenbury, MLA, spoke briefly in support of the amendment, and in closing Mrs Jones reiterated her position on proxy voting and better outcomes for all mothers.
- 1.9. Subparagraph (a) (i) (B) of the terms of reference for the Standing Committee on Administration and Procedure specifies that the Committee consider the “practices and procedure of the Assembly”, and in its consideration of the motion, as amended, the Committee was of the view that the proposal related only to Members of the Legislative Assembly. The Committee therefore would only be looking at the motion as it related to Members, not the wider community.
- 1.10. Members of the Committee were in full agreement as to the importance of support for mothers and babies in the workforce.
- 1.11. The Committee noted the report of the Australian House of Representatives Standing Committee on Procedure entitled “Provisions for a more family friendly Chamber” which was tabled in November 2015. The Australian House of Representatives now, like the ACT, allow breastfeeding babies onto the floor of the Chamber.

¹ Hansard, Legislative Assembly for the ACT 19 November 2015, p4237

2. HISTORY OF FAMILY FRIENDLY HOURS IN THE ACT LEGISLATIVE ASSEMBLY

2.1. From 1989 to 1995 the Assembly met at 2:30 pm on Tuesdays and 10:30 am Wednesdays and Thursdays. The automatic adjournment question was put at 9:30pm on Tuesdays and 4:30 pm on Wednesdays and Thursdays. On 4 May 1995 the Assembly amended the standing orders to have all sitting days commence at 10:30 am with the automatic adjournment at 5:00 pm. This has meant that there were no scheduled late night sittings.

2.2. In relation to family friendly hours, on 18 August 2004 the Assembly passed the following resolution:

“That this Assembly:

- (1) recognises the impact late night sittings of the ACT Legislative Assembly have on Members and staff and their families;
- (2) notes that the effectiveness of work and quality of debate diminishes during late night sittings;
- (3) agrees that a time limit and alternative sitting patterns need to be considered to ensure quality debate and effectiveness; and
- (4) requests that the Standing Committee on Administration and Procedure inquire into this issue.”.

2.3. The Standing Committee on Administration and Procedure did not proceed with the inquiry, as the last sitting day of the 5th Assembly was 8 days later. However, the 6th Assembly adopted amendments to the standing orders on 7 December 2004 changing the adjournment question to be put at 6.00 pm instead of the previous 5.00 pm and inserting the capacity for the Assembly to meet on a Friday at 9:30 am. In the debate on the motion, the later adjournment time was a recognition that the automatic adjournment question was most usually negated.

2.4. The table below shows the number of sitting days per financial year and the average time of rising.

Financial year	No of Sitting days	Ave hours per day	Sittings after 10pm	Ave rising Tuesdays	Ave rising Wed/Thurs
1988-1989	10	6	1	6:12 pm	4:12 pm
1989-1990	54	7	8	9:00 pm	5:10 pm
1990-1991	49	7	8	9:00 pm	5:45 pm
1991-1992	48	7	12	10:00 pm	5:42 pm
1992-1993	51	7	10	9:55 pm	6:48 pm
1993-1994	46	7	5	9:36 pm	5:30 pm
1994-1995	34	7	5	9:32 pm	5:42 pm

				Average time rising
1995-1996	45	7	2	5:33 pm
1996-1997	39	8	3	6:34 pm
1997-1998	34	8	1	6:32 pm
1998-1999	40	8	6	6:43 pm
1999-2000	41	8	8	7:11 pm
2000-2001	37	8	9	6:46 pm
2001-2002	34	9	4	6:22 pm
2002-2003	40	9	10	7:08 pm
2003-2004	43	10	16	8:08 pm
2004-2005	36	8	5	6:38 pm
2005-2006	41	8	2	6:04 pm
2006-2007	38	8	1	6:11 pm
2007-2008	40	9	7	7:10 pm
2008-2009	38	9	5	6:40 pm
2009-2010	41	9	2	6:32 pm
2010-2011	44	9	6	7:01 pm
2011-2012	42	9	1	6:38 pm
2012-2013	29	8	2	5:40 pm
2013-2014	36	8	-	5:59 pm
2014-2015	44	8	-	5:37 pm

As can be seen from the above table, this Assembly (8th 2012 to present) has had the least number of late night sittings than any previous Assembly.

3. CURRENT ARRANGEMENTS

STANDING ORDER 210

- 3.1. Standing order 210, in its original form, stated that: *While the Assembly is sitting a Member may not bring any visitor into, nor may any visitor be present in, any part of the Chamber appropriated to the Members of the Assembly.*
- 3.2. On 26 February 2003, Labor Member Kirstie Marshall, in the Victorian Legislative Assembly entered the Assembly Chamber holding her 11 day old infant and took her seat. The Speaker, under the standing orders, asked that the child be removed from the Chamber. The incident prompted significant debate in the national media.
- 3.3. On 13 March 2003 Mrs Helen Cross, Independent Member of the ACT Legislative Assembly, moved “That Standing Order 210 be amended as follows: add the following new paragraph (a) Standing order 210 shall have no application to a Member who is breastfeeding an infant.”.
- 3.4. In the debate and in the media, it was argued that the removal of Ms Marshall was not what was expected of “modern, progressive and democratic parliaments”² and that issues of discrimination were raised, among others, including political, health and societal attitudes.
- 3.5. During the debate, Mr Jon Stanhope MLA, Chief Minister, successfully amended the motion, which resulted in the following standing order:

Visitors not admitted into body of Chamber

210. While the Assembly is sitting a Member may not bring any visitor into, nor may any visitor be present in, any part of the Chamber appropriated to Members of the Assembly.
 - (a) the word “visitor” in Standing Order 210 shall not apply to an infant being breastfed by a Member.
- 3.6. The standing order was further amended on 6 March 2008 (in a wide-ranging review of all standing orders) to further clarify the intention of the provision.
- 3.7. The current standing order 210 is as follows:

While the Assembly is sitting no stranger, other than a nursing infant being breastfed by a Member, or an accredited Auslan interpreter, may be present in any part of the Chamber allocated to Members of the Assembly.
- 3.8. This allows a Member breastfeeding an infant to bring the baby onto the floor at any time that the Assembly is sitting and is not restricted to a Member’s attendance during a division. There have been no occasions when this has occurred prior to 2015.

² Hansard, Legislative Assembly for the ACT, 5th Assembly p1001

CARERS'/BREASTFEEDING ROOM

- 3.9. The ACT Legislative Assembly has been accredited as a “Breastfeeding Friendly Workplace” since 2009. The requirements for accreditation are:
- a private, comfortable space to breastfeed or express milk
 - time during the working day to breastfeed or express
 - support from employer and colleagues
- 3.10. The Carer’s/Rest Room is on the ground floor of the Assembly building and is designed to also enable staff who are unwell to have a room where they might rest and recover. It contains a baby-change table and comfortable chair for breastfeeding.
- 3.11. These facilities are available to all occupants of the building.
- 3.12. Members also have a private office which can provide a private, comfortable space to breastfeed or express milk.
- 3.13. All individual Members’ offices contain a kitchenette including a refrigerator which can be used for the storage of expressed milk.

REQUIREMENTS UNDER THE LAMS ACT

- 3.14. Section E12 of the ACT Legislative Assembly Members’ Staff Enterprise Agreement 2013-2017 stipulates the requirements the Assembly must provide to Members’ staff who are nursing mothers.
- E12.1 Employees who are breastfeeding will be provided with the facilities and support necessary to enable such employees to combine a continuation of such breastfeeding with the employee’s employment.
- E12.2 Where practicable the Assembly will establish and maintain a room for nursing mothers. Where there is no room available another appropriate space may be used.
- E12.3 Up to one hour, per day, paid lactation breaks that are non-cumulative will be available for nursing mothers.

REQUIREMENTS UNDER THE OFFICE OF THE LEGISLATIVE ASSEMBLY ENTERPRISE AGREEMENT 2013-2017

- 3.15. Section E13 of the Office of the Legislative Assembly Enterprise Agreement 2013-2017 stipulates the requirements the Assembly must provide to Office staff who are nursing mothers.
- E13.1 Employees who are breastfeeding will be provided with the facilities and support necessary to enable such employees to combine a continuation of such breastfeeding with the employee’s employment.

- E13.2 Where practicable the Office will establish and maintain a room for nursing mothers. Where there is no room available another appropriate space may be used.
- E13.3 Up to one hour, per day/shift, paid lactation breaks that are non-cumulative will be available for nursing mothers

ASSEMBLY SITTING HOURS

- 3.16. The Assembly sittings commence at 10 am, suspends for lunch at approximately 12:30 pm and an automatic adjournment motion is proposed at 6:00 pm³. The Assembly sat for 39 days in 2015 and on 18 occasions adjourned between 6:00pm and 7:15 pm. On the three days of the budget debate in August 2015 the Assembly adjourned no later than 9:53 pm.
- 3.17. There is a longstanding agreement among the Whips that a decision be made by approximately 4:30 pm each sitting day as to the proposed adjournment time and that that decision be communicated to Members and staff. The intention is to allow Members and staff to make arrangements with their families for the evening, particularly if there is to be a break for dinner.

³ Standing order 34

4. FAMILY FRIENDLY WORKPLACE

OPTIONS AND FLEXIBILITY FOR BREASTFEEDING WOMEN (MEMBERS)

- 4.1. The Legislative Assembly has been accredited by the Australian Breastfeeding Association as a Breastfeeding Friendly Workplace since 2009. Members with infants have access to the carer's room in addition to their private offices.
- 4.2. In relation to the sittings of the Assembly, all Members (and their staff) have the audio and visuals of the proceedings reticulated to their offices. Proceedings are also web-streamed live and an archive is available through "daily-on-demand".
- 4.3. Standing Order 210 allows a Member breastfeeding an infant to bring the baby onto the floor of the Assembly at any time the Assembly is sitting and is not restricted to a Members required attendance during a division. There have been very few occasions when this has occurred.
- 4.4. Practice has been that the number of sitting nights that require a dinner break have been limited to the budget debate week each year.
- 4.5. Members who are caring for a young infant, under the current arrangements have a number of options to participate and these are detailed below.

EMERGENCY CARE FOR FAMILY MEMBERS

- 4.6. Members enjoy very flexible arrangements in terms of required "office hours". There are no set hours and no hours of duty are specified. The Committee recognised the flexibility Members have in arranging their own work schedules and this includes the ability to take care of family members who require it.
- 4.7. In relation to the sittings of the Assembly Members are expected to be in the Chamber at least once to be considered present for the day. If Members are absent from a sitting without the leave of the Assembly they are recorded as absent and if they are absent for 4 sitting days they lose their seat. However, where a Member is unable to attend leave is almost always granted.
- 4.8. There exists in most modern parliaments an informal arrangement for the granting of pairs whereby a member who is unable to attend the Chamber is paired against a member from the opposite side for a specified period of time. Leave is also granted for illness of a MLA or close family member.
- 4.9. The arrangement for pairs is made between the party Whips. The usual reasons for requesting a pair are medical appointments, community presentations and visits, illness, family commitments, and interstate ministerial meetings. There is scope within the current unwritten protocols for pairs to be granted for Members to attend to family emergencies. This of course is not an issue during non sitting periods.

ACCEPTED PRACTICE IN REGARD TO PAIRING ARRANGEMENTS

- 4.10. There are no documented guidelines for informal pairing arrangements. A recent query from the Queensland Legislative Assembly through the Australian and New Zealand Association of Clerks-at-the-Table (ANZACATT) revealed that all Australian jurisdictions that responded (10 in total) had an informal pairing arrangement. In 4 of those jurisdictions pairs were noted in the Minutes only when a division was called.
- 4.11. In the Clerk of the House of Representatives' submission to the Standing Committee on Procedure's inquiry into provisions for a more family-friendly Chamber he noted that 4 jurisdictions – ACT, NSW Legislative Council, Commonwealth Senate and Victorian Legislative Assembly – permitted nursing mothers to have their children in the Chamber, three by standing order and one by Speaker's ruling.⁴
- 4.12. The decisions made by the Whips to grant pairs fall outside the formal procedures of the Assembly. It is an informal arrangement between the two major parties and there is currently no role for the Assembly.
- 4.13. The Committee was of the view that, to support Members who are nursing mothers, Whips of the parties represented in the Assembly should be encouraged to develop a set of protocols for the operation of pairs that will encourage family-friendly practices.

RECOMMENDATION 1

- 4.14. The Committee recommends that the Whips of the parties represented in the Assembly develop a set of protocols/guidelines for the operation of pairs to encourage and support Members who are nursing mothers or who have carer responsibilities and also family friendly practices.

CONSIDERATION OF PROXY VOTING

- 4.15. Proxy voting, as proposed by Mrs Jones, would allow a nursing mother, should she be unable to attend a division in the Chamber as she was feeding an infant, to advise the Whip of her intention regarding a vote.
- 4.16. The Commonwealth House of Representatives is one of two Australian jurisdictions to use proxy voting. Members of the House nursing an infant are able to give their vote by proxy for any division (there is one exception⁵) to their chief Whip.
- 4.17. This applies only to nursing mothers and has been used 34 times since its introduction in 2008.
- 4.18. The other legislature in Australia that allows proxy voting is Queensland. Section 19 of the *Parliament of Queensland Act 2001* allows for a member to name a proxy if they are in a state

⁴ House of Representatives Standing Committee on Procedure Report "Provisions for a more family-friendly Chamber" Submission from the Clerk of the House

⁵ Third reading on a bill that proposes to alter the Constitution which requires an absolute majority

of ill health that prevents the member from attending any sittings of the Assembly. Members must provide medical certificates from at least two doctors. Sections 19-24 provide for the eligibility, voting procedure, substitution and conclusion of the proxy. The proxy voting provision was introduced in 1922 by the then Labor government of Premier Ted Theodore. A slim majority had been further reduced by a bout of influenza, and on 1 August during a debate on a bill, the Opposition parties carried an amendment against the government. The Premier put the Parliament into recess and upon its recommencement he introduced the Legislative Assembly Act Amendment Bill, to make provision for proxy voting of members absent through ill health. The Opposition parties fought hard against the Bill, and when it was sent to the Governor for assent, His Excellency remonstrated strongly with the Premier against his demand that it be assented to forthwith. The provision was used extensively after its initial introduction but has only been used twice since that time, in the mid-1980s. There is no provision in Statute or Standing Orders that addresses breastfeeding and no precedent of a member breastfeeding in the chamber.

4.19. However the situation in the ACT Legislative Assembly is governed by Section 18 (2) of the *Australian Capital Territory (Self-Government) Act 1988* which states:

18 Procedure at meetings

(2) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting, unless a special majority is required by the standing rules and orders.

4.20. The terms “voting” and “present” preclude a vote from a Member not seated in the Chamber and so proxy voting in the ACT Legislative Assembly is not an option unless the *Australian Capital Territory (Self-Government) Act 1988* is amended.

Chair

April 2016