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PARLIAMENT OF TASMANIA

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**REPORT OF THE  
STANDING ORDERS COMMITTEE  
ON**

**Recognition for Members who  
are Mothers of  
Infant Children**

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*Brought up by the Minister for Health and ordered by the House of Assembly to be printed.*

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**MEMBERS OF THE COMMITTEE**

Hon. Elise Archer MP (Chair)  
Hon. Michael Ferguson MP  
Hon Bryan Green MP  
Hon. David Llewellyn MP  
Mr Mark Shelton MP

## 1. INTRODUCTION

- 1.1 The prospect of a Member of the House giving birth later in the year enlivened consideration by the Committee of the application of the *Standing Orders and Rules of the House of Assembly* (SOs) in so far as enabling a female Member, who is the mother of an infant child, to properly participate in the proceedings of the House.

## 2. STANDING ORDERS

- 2.1 The relevant Standing Orders of the House of Assembly are as follows:-

***Strangers not admitted to certain parts of the House***

*412. No Members of this House shall bring any Stranger into any parts of the House appropriated to the Members of this House, while the House, or a Committee of the Whole House, is sitting.*

***Strangers, how admitted to body of House***

*413. The Speaker only shall have the privilege of admitting Strangers to the Body of the House.*

***Strangers may be ordered to withdraw***

*414. If at any sitting of the House, or in a Committee of the Whole House, any Member takes notice that Strangers are present, the Speaker, or the Chair of Committees, as the case may be, shall forthwith put the Question that Strangers be ordered to withdraw, which Question shall be decided without Debate: Provided that the Speaker, or the Chair, may, whenever thought fit, order the withdrawal of Strangers from any part of the House.*

- 2.2 The first two-mentioned SOs are in the form originally prescribed in 1857, and the last-mentioned is in a form prescribed in 1912. These provisions were not therefore made in contemplation of the current circumstances, or indeed, the likelihood of women as Members.
- 2.3 SO 412 proscribes any Member from admitting any person who is not a Member (known a 'Stranger' in Parliaments of Westminster tradition) to areas "appropriated to the members of this House" on sitting days. Such areas are interpreted as: the floor of the Chamber itself; the Lobby (as you enter the Chamber); and the stairs leading from the 'Landing' to the Chamber. Such proscription by extension, establishes exclusivity for use of such areas for Members only.
- 2.4 SO 413 provides an authority for the Speaker to admit Strangers without reference to the House. Such authority has been exercised in circumstances such as the admission of a distinguished visitor to the floor of the Chamber. The House of course, is also able to authorise the admission of Strangers by Order and there are many precedents for this. However, it is always on a case by case basis.
- 2.5 SO 414 provides the procedure by which the observation of Strangers is dealt with.
- 2.6 At present, absent any specific authority from the Speaker, or pursuant to an Order of the House, were a Member to bring their infant child into the areas abovementioned, including the floor of the Chamber, they would be in breach of SO 412 and upon notice being taken pursuant to SO 414, the Speaker would be obliged to put the question that the Stranger be required to withdraw.

### 3. ISSUES CONSIDERED

- 3.1 Exclusive access to the floor of the Chamber only by Members, Officers and Parliamentary staff is a longstanding privilege and reinforces the principle that that space is appropriately reserved on sitting days for the business of the House.
- 3.2 Parenting responsibilities (envisaged to be a female Member who is a breastfeeding mother, or where she has no alternative but to have the infant with her at work on a sitting day) will inevitably impact upon a Member's ability to vote in a division, to be counted for the purpose of a quorum, or to otherwise participate in the proceedings of the House.
- 3.3 Restricting participation only to being permitted to vote in a division may be regarded as not entirely inclusive as it excludes a Member from fully participating in the proceedings of the House. It does not take into account the entire role of a Member and their entitlement to participate in debates of particular importance or importance to them (e.g. as a Shadow Minister or spokesperson).
- 3.4 The principle matters to be considered by the Committee were first, whether a female Member may bring their infant child onto the floor of the House and second, whether such access should be unconditional or restricted to particular procedures, for example voting in a division, or otherwise only briefly when the child is being fed or asleep (and therefore not likely to cause disruption to the proceedings of the House).
- 3.5 Some other jurisdictions have considered this issue:
- Senate; NSW Legislative Council; ACT Legislative Assembly and Victorian Legislative Assembly – make an exception to the prohibition of strangers on the floor of the House for a “Member breastfeeding an infant”.
  - House of Representatives and Northern Territory Legislative Assembly – allow a Member who is a nursing mother to vote in divisions by proxy.
- 3.6 The House of Representatives Standing Committee on Procedure relatively recently came to the following conclusions but have not implemented them as yet:-

*Members returning to work after having a baby should have the opportunity to participate fully in the work of the House. The proxy vote is an important provision but a member caring for an infant should also be allowed into the Chamber to vote and to participate in debates.*

*There may be debates of national or personal significance that a member may particularly wish to attend, such as legislation they have an interest in, debates of significance to their electorates or the valedictory speech of a colleague. The fact that a member needs to care for their infant during a debate should not preclude their attendance.*

*It is important that the practices and procedures of the House are consistent with changing community expectations with regard to supporting women's participation in the workforce and balancing work and family responsibilities.*

*The Committee is therefore recommending that the House amend standing order 257<sup>1</sup> to allow Members to bring their infant into the Chamber or the Federation*

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<sup>1</sup> HR SO No. 257 – Admission of Senators and Visitors

(a) Only the Speaker shall have the privilege of admitting visitors into the lower galleries, and may admit distinguished visitors to a seat on the floor of the Chamber.

(b) No Member may bring a visitor into any part of the Chamber, or that part of the room where the Federation Chamber is meeting, which is reserved for Members.

(c) Senators shall have the privilege of being admitted into the Senators' gallery without invitation. When present in the Chamber or galleries they must observe the Speaker's instructions regarding good order.

Chamber. The proposed amendment is specifically intended to include a member breast or bottle feeding an infant, but does not require that an infant be feeding as a pre-requisite to its presence in the Chamber. <sup>2</sup>

- 3.7 The option of a 'proxy vote' is not available to this jurisdiction by virtue of the provisions of section 25(2) of the Constitution Act 1934 which prescribes that "all questions shall be decided by a majority of the votes of the Members present..."

#### **4. OPTIONS CONSIDERED**

- 4.1 The following options were considered by the Committee at its meeting of Wednesday, 26 October last.

##### **Option 1 - No change**

- 4.2 SO 413 prescribes that the Speaker has the privilege of admitting Strangers to the body of the House at any time.
- 4.3 Given that this provision was made without any contemplation of the issue at hand, reliance on this as the authority for what will be a significant change of practice was not considered as appropriate.

##### **Option 2 - Pairing**

- 4.4 The Whips may agree a set of protocols whereby a female Member, who is nursing an infant child, is paired for divisions. This option alone would not require any change to the SOs, however, it deals only with the particular proceedings associated with divisions.
- 4.5 An automatic pair might be considered which lasts for the duration the child is considered an infant (recommended to be defined as up to 12 months of age). It would be used entirely at the discretion of the female Member who may not be able to get to the Chamber and chooses to keep feeding or otherwise caring for their child, or if the child is crying and will cause a disruption to the House.

##### **Option 3 - Excepting the infant child of a female Member from the interpretation of 'Stranger' to enable the child to be fed or continue to be fed**

- 4.6 This option would allow a Member to bring their child into the Chamber at any time to enable them only to feed, or continue to feed, the infant child. This may be facilitated by an amendment to SO 412 by adding the following new paragraph:-
- (2) Paragraph (1) does not apply to a female Member feeding their infant child.*
- 4.7 This option would allow for emergency situations where the Member is part-way through feeding their infant child. In other jurisdictions there is anecdotal advice that it is infrequently used and only in cases where absolutely necessary.
- 4.8 As stated previously an 'infant child' should be defined so the SOs do not allow children beyond a certain age into the Chamber, and thus maintains the original intent that the Chamber is reserved for specific people only.

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<sup>2</sup> House of Representatives Standing Committee on Procedure, "Provisions for a more family friendly Chamber", November 2015, pp. 13-14.

#### **Option 4 - Excepting the infant child of a Member from the interpretation of 'Stranger'.**

- 4.9 This option extends the scope of Option 3 by enabling a female Member to bring their child into the Chamber at any time to make a contribution but only if the infant child is asleep or being fed, and provides the scope envisaged by the House of Representatives Standing Committee on Procedure. This is the most inclusive practice and recognises the value placed on a woman's right to return to work and fully participate in the proceedings of the House.
- 4.10 This may be facilitated by an amendment to SO 412 by adding the following new paragraph:-  
*(2) Paragraph (1) does not apply to a female Member feeding, or otherwise caring for, their infant child (who is under twelve months of age) who is not disrupting the proceedings of the House.*
- 4.11 This provision ensures that the Speaker maintains control of order in the House and, should the infant child become disruptive, be able to direct that the child be removed from the Chamber if necessary.
- 4.12 The Committee also considered the question of the availability of maternity leave to Members. At present, SOs 48 to 51 prescribe the rules associated with the granting of leave of absence to Members for any reason. Absent any change to these SOs, a Member wishing to take maternity leave, would need to have such leave granted by vote of the House on a motion being made.
- 4.13 The Committee considered the option of providing automatic maternity leave of absence to a Member without the need for a vote of the House. Such leave would allow a mother to take up to 12 weeks' leave (the period of paid Maternity Leave prescribed in the State Service Award) to commence from notification provided to the Speaker in writing.
- 4.14 This may be facilitated by an amendment to SO 48 by adding the following new paragraph:-  
*(2) Except that, a Member shall be entitled to 12 weeks' maternity leave of absence, such leave to be taken in a consecutive period from the date of its commencement.*

#### **5. RECOMMENDATIONS**

- 5.1 Having deliberated upon the proposed options, the Committee was of the unanimous opinion that the greatest opportunity be afforded to Members who are mothers of infant children for their continued participation in the proceedings of the House.
- 5.2 The Committee further agreed that provision should be made for a period of maternity leave of absence to be available as a discrete category from the leave of absence generally available to members pursuant to SO 48.
- 5.3 The Committee recommends as follows:-

##### **Recommendation 1**

The Committee recommends that the Party Whips consider agreeing a set of protocols whereby a Member, who is a nursing mother, is paired for divisions.

##### **Recommendation 2**

The Committee recommends that SO 412 be amended by adding the following new paragraph:-

*(2) Paragraph (1) does not apply to a female Member feeding, or otherwise caring for, their infant child (who is under twelve months of age) who is not disrupting the proceedings of the House.*

**Recommendation 3**

The Committee recommends that SO 48 be amended by adding the following new paragraph:-

*(2) Except that, a Member shall be entitled, without a vote of the House to 12 weeks' maternity leave of absence, such leave to be taken in a consecutive period from the date its commencement is notified to the Speaker in writing.*

**Hon. E. N. ARCHER MP  
CHAIR OF THE COMMITTEE  
15 November 2016**