



2010

PARLIAMENT OF TASMANIA

**AUDITOR-GENERAL
SPECIAL REPORT No. 87**

Employment of staff to support MPs

June 2010

Presented to both Houses of Parliament in accordance with the provisions of
Audit Act 2008

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10 June 2010

President
Legislative Council
HOBART

Speaker
House of Assembly
HOBART

Dear Madam President

Dear Mr Speaker

SPECIAL REPORT NO. 87

Employment of staff to support MPs

This report, relating to my audit of the adequacy of rules and other documented requirements with respect to the recruitment of staff by MPs and compliance with the existing rules, has been prepared consequent to examinations conducted under section 23 of the *Audit Act 2008*.

Yours sincerely

H M Blake

AUDITOR-GENERAL

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Foreword

The final report of the Joint Select Committee on Ethical Conduct in July 2009 included findings very relevant to my audit regarding the employment of staff to support Members of Parliament. For example, the Committee found that, on the evidence presented:

- The Code of Ethical Conduct and Code of Race Ethics of the Assembly are valuable public declarations of the standards of conduct expected of Members of that House.
- Members of Parliament would benefit from participation in an appropriate program focused on the theory and practical application of ethics as they apply to politics specifically and the wider social context.
- The Code of Conduct for Government Members; the Cabinet Handbook; Government Members Handbook; Instruments of Appointment of Ministerial Staff; and the Caretaker Conventions provide appropriate prescriptions for the conduct of the targeted office holders.
- There is a significant need to formalise compulsory induction and on-going training for Ministers, ‘Government Members’ and their staff.

My overall conclusion from this audit is to strongly support these findings in general and specifically as they relate to the recruitment by Members of Parliament of family members.

H M Blake

Auditor-General

10 June 2010

List of acronyms and abbreviations

CoS	Chief of Staff
Clerk	Clerk of the House or of the Council
DPAC	Department of Premier and Cabinet
MLC	Member of the Legislative Council
MP	Member of Parliament
President	President of the Legislative Council
Speaker	Speaker of the House of Assembly

Executive summary

Executive summary

Background

In June 2009, a number of news items and opinion columns raised concerns about the then Member for Pembroke — Ms Allison Ritchie — having employed family members in her office. On 22 June 2009, the Premier wrote requesting that I review the processes used relating to staffing appointments for Ms Ritchie.

In view of this and similar requests, I agreed to perform the review, but widened the scope of the audit to include staffing for all Members of Parliament (unless otherwise noted Members of Parliament are referred to throughout this Report as MPs). I also took the opportunity to review the numbers of Ministerial and Opposition staff in view of my perception of an increasing role for Ministerial staff.

The objective of this assignment was to form an opinion on:

- the adequacy of rules and other documented requirements with respect to the recruitment of staff by MPs
- compliance by Ms Ritchie and other MPs with the existing rules and other documented requirements relating to the recruitment of family members
- the propriety of the processes followed to recruit staff working for Ms Ritchie and other MPs
- possible changes in accountability flowing from increasing Ministerial and Opposition staff numbers.

The scope of the audit covered:

- recruitment of parliamentary support staff for Ms Ritchie and current MPs, with a focus on employment of family members
- the period January 2007 to the present
- electorate office, ministerial and opposition staff were included but not staff working at the House of Assembly and Legislative Council.

Detailed audit conclusions

Rules, guidelines and practices

There is a community expectation that holders of public office should conform to the highest ethical standards.

Under most circumstances, MPs should not employ family members in their electorate offices. However, in situations where such employment is unavoidable, it should be recorded in returns made under the *Parliamentary (Disclosure of Interests) Act 1996*.

Compliance

Prior to December 2007, the Legislative Council had no formal policies and processes regarding recruitment of staff to work in MLC's electorate offices. So, it follows that in recommending the recruitment of her mother, Ms Ritchie did not break any rules. However, the recommendation of her mother's appointment, in the knowledge of a flawed assessment process, was not in accordance with the principles of openness and objectivity outlined in the *Code of Conduct*.

Similarly, although admitting to a 'close familial relationship' under the new Council policy, Ms Ritchie did not explain the nature of that relationship. However, she did take steps to have her mother replaced.

Ms Ritchie did not make a discretionary disclosure in her Ordinary Return under the *Parliamentary (Disclosure of Interests) Act 1996* nor did she make a return in accordance with the new policy.

No significant instances of unethical behaviour in the appointment of family members were noted for other MPs.

Ministerial and opposition staff

Recruitment processes for ministerial staff are, expectedly, less rigorous than for the public sector but this may not be appropriate given the increasing numbers and role of ministerial and opposition staff.

List of recommendations

The following table reproduces the recommendations contained in the body of this Report.

Rec No	Section	I recommend that ...
1	1.1.6	Each House of Parliament should develop a handbook — including a code of conduct and principles of public life — for all of their Members, incorporating relevant material from the Tasmanian Government Members' Handbook.
2	1.1.7	All political parties should publicly document and embrace codes of conduct and incorporate in their code of conduct the 'Principles of Public Life' or similar ethical principles.

3	1.1.9	<p>(with respect to Parliament):</p> <ul style="list-style-type: none"> • both relevant employing authorities for electorate office staff should only allow the recruitment of family members in electorate offices for short-term engagements following reasonable but unsuccessful attempts to engage someone else or if the person engaged works for no pay or other benefit • where a family member is so employed, this should be recorded in the Register of Interests.
4	1.2	<p>The Government should take steps to ensure that:</p> <ul style="list-style-type: none"> • training on recruitment of family members and related guidelines be provided to existing MPs and to new MPs on induction • training on the Government Members Handbook, the Code of Conduct for Government Members of Parliament and the Principles of Public Life be provided to existing Government Members and to new Members on induction • all MPs be provided with access to an independent resource for advice on ethical matters.
5	2.1.2	<p>The Ordinary return form used by both the Legislative Council and the House of Assembly should be changed to include a specific section in which Members can disclose situations where members of their family may have been engaged to work in their electorate offices.</p>
6	3.4	<p>Government and Opposition Parties should work together to:</p> <ul style="list-style-type: none"> • develop an objective framework facilitating sustainable democracy for establishing the number and levels of staff working in Ministerial offices • agree on an appropriate formula for setting staffing levels for Opposition parties.

Audit Act 2008 section 30 — Submissions and comments received

Audit Act 2008 section 30 — Submissions and comments received

Introduction

In accordance with section 30(2) of the *Audit Act 2008*, a copy of this report, or relevant extracts of this report, were provided to the government departments and individuals indicated below.

This Report was written in 2009 and the references to the Premier or other Members of Parliament relate to the government in office at that time.

The comments and submissions provided are not subject to the audit nor the evidentiary standards required in reaching an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with those who provided a response or comment.

Submissions and comments received

The Premier (Hon David Bartlett MHA)

I note your recommendations in relation to the Government.

As you are aware the Parliament has recently considered the Integrity Commission Bill 2009, and the Government is moving to establish the Commission as soon as practicable.

The Integrity Commission will address some of the issues you raise. In particular, a Parliamentary Standards Commissioner is to be appointed and that person's primary role will be to provide advice about conduct, propriety and ethics for MPs. They will also be involved in providing training to new and existing MPs.

You would also be aware that the parliamentary Joint Select Committee on Ethical Conduct reported in July this year [2009] and its report included recommendations about the *Parliamentary (Disclosure of Interests) Act 1996*, a code of ethical conduct for the Legislative Council and the development of guidelines applicable to all Members of Parliament in relation to the appropriate expenditure of public funds. In its response to the Committee's report the Government supported these recommendations. I also note that these recommendations relate to some of the recommendations in your draft report.

Secretary — Department of Premier and Cabinet

The report and your recommendations are noted, however the Department of Premier and Cabinet has no specific comments to make on the content of the report.

Clerk of the Council

I believe the contents of the draft report as they relate to matters of fact in connection with the Legislative Council are accurate.

I further have no comment to make in relation to the summary of findings as they appear to me to be reasonable.

Clerk of the Assembly

I have the following comments to make regarding your recommendations:

Recommendation No 1, Section 1.1.6:

The House of Assembly has a Code of Ethical Conduct and a Code of Race Ethics contained in the Standing Orders Nos 3 and 4. When Members are being sworn in as Members of the House after their election, Standing Order No. 2 (d) and (e) requires that they state they have subscribed to both codes.

They are as follows:

PART 2

PROCEEDINGS ON THE MEETING OF A NEW PARLIAMENT

2. On the first day of the meeting of a new Parliament, the House having met at the time and place appointed -

- (a) The Governor's Proclamation shall be read by the Clerk of the House;
- (b) The Writ of Election of each Member, with the Return endorsed thereon, shall be produced by the Clerk of the House, and laid upon the Table;
- (c) Members shall then be sworn or make affirmation as prescribed by law;
- (d) Members will then subscribe to the Code of Ethical Conduct contained in Standing Order No. 3;
- (e) Members will then subscribe to the Code of Race Ethics contained in Standing Order No. 4;
- (f) The House shall then proceed to the election of a Speaker;

(g) Prior to such election the Clerk shall act as Chair to the House.

**3. CODE OF ETHICAL CONDUCT
FOR MEMBERS OF THE HOUSE OF ASSEMBLY**

PREAMBLE

As Members of the House of Assembly we recognise that our actions have a profound impact on the lives of all Tasmanian people. Fulfilling our obligations and discharging our duties responsibly requires a commitment to the highest ethical standards.

STATEMENT OF COMMITMENT

To the people of this State, we owe the responsible execution of our official duties, in order to promote human and environmental welfare.

To our constituents, we owe honesty, accessibility, accountability, courtesy and understanding.

To our colleagues in this Assembly, we owe loyalty to shared principles, respect for differences, and fairness in political dealings.

We believe that the fundamental objective of public office is to serve our fellow citizens with integrity in order to improve the economic and social conditions of all Tasmanian people.

We reject political corruption and will refuse to participate in unethical political practices which tend to undermine the democratic traditions of our State and its institutions.

DECLARATION OF PRINCIPLES

Members of this Assembly must carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.

Members of this Assembly must act not only lawfully but also in a manner that will withstand the closest public scrutiny; Neither the law nor this code is designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.

Every Member is individually responsible for preventing potential and actual conflicts of interest, and must arrange private financial affairs in a manner that prevents such conflicts from arising including declaration of pecuniary interest in any matter being considered as part of their official duties as a Parliamentarian.

Members of the Assembly must carry out their official duties objectively and without consideration of personal or financial interests.

Members of the Assembly must not accept gifts, benefits or favours except for incidental gifts or customary hospitality of nominal value.

Members of the Assembly must not take personal advantage of or private benefit from information that is obtained in the course of or as a result of their official duties or positions and that is not in the public domain.

Members of the Assembly must not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.

Members of the Assembly must not use, or allow the use of, public property or services for personal gain.

Members of the Assembly, when leaving public office and when they have left public office, must not take improper advantage of their former office.

4. CODE OF RACE ETHICS

FOR MEMBERS OF THE HOUSE OF ASSEMBLY

As Members of the Tasmanian Parliament we agree:-

- (1) To act in a manner which upholds the honour of public office and the Parliament.
 - (2) To respect the religious and cultural beliefs of all groups living within Australia in accordance with the Universal Declaration of Human rights.
 - (3) To uphold principles of justice and tolerance within our multicultural society making efforts to generate understanding of all minority groups.
 - (4) To recognise and value diversity as an integral part of Australia's social and economic future.
 - (5) To help without discrimination all persons seeking assistance.
 - (6) To speak and write in a manner which provides factual commentary on a foundation of truth about all issues being debated in the community and the Parliament.
 - (7) To encourage the partnership of government and non-government organisations in leading constructive and informed debate in the community.
 - (8) To promote reconciliation with indigenous Australians.
-

Recommendation 4, Section 1.2

The third recommendation in this part I believe will be met by the Parliamentary Standards Commissioner established under the Integrity Commission Act 2009 (Sections 27 to 29) and the Chief Executive Officer of the Commission. (Section 30).

Recommendation 5, Section 2.1.2

To give formal effect to this recommendation would require legislative change, but if there was to be some form of voluntary disclosure before such a change was made, there is provision for discretionary disclosures to be made (Section 9)

In respect of the other Recommendations, the House of Assembly does not employ staff for its Members, so those recommendations are not relevant to the administration and of the remaining; it is for the Membership to act on the recommendations.

The House of Assembly, as you would know, does have its own handbook for Members. It does not at present knowingly incorporate any aspects of the “Government Members Handbook” as it has not been made available to us. We do give new Members an “induction” where various aspects of their responsibilities and entitlements and duties are explained to them.

Ms Ritchie

I welcome the Auditor-General’s confirmation that I breached no laws, rules or policies in the recruitment of staff to my electorate office.

Whilst I do not accept all of the opinions and conclusions drawn by the Auditor-General, I support his recommendations. In particular, I strongly support the concept of a full induction process for new parliamentarians to educate them as to what relevant policies and rules apply to them, and the procedures for hiring staff.

I am proud of my achievements as a parliamentarian, and maintain that I acted honestly and with integrity at all times. I am also proud that my electorate office was regarded as Tasmania’s most effective office in successfully representing and fighting for the interests of constituents.

The Auditor-General has confirmed that there were no applicable recruitment rules or laws in place when I entered Parliament. The report further recognises the extreme lack of guidance, support, and information provided to new parliamentarians.

I maintain that I was not required to make any disclosures and that the staff member discussed was not covered by the policy introduced on 1 January 2008 — given she was employed a number

of months earlier. This was confirmed in discussions I had with the Clerk of the Council at the time the policy was first circulated. Notwithstanding this discussion, I still took steps to replace the employee when under no obligation to do so.

I am disappointed that, despite the objective of the report requiring an examination of compliance of all MPs, the report fails to do so and instead focuses almost solely on my office.

Auditor-General's comment

In accordance with the procedures outlined in the Audit Approach section of the Introduction to this Report, all Members of Parliament were included in the survey and their responses evaluated.

Introduction

Introduction

Background

In June 2009, a number of news items and opinion columns raised concerns about the then Member for Pembroke — Ms Allison Ritchie — having employed family members in her office. On 22 June 2009, the Premier wrote requesting that I review the processes used relating to staffing appointments for Ms Ritchie. In view of this and similar requests, I agreed to perform the review, but widened the scope of the audit to include staffing for all Members of Parliament (unless otherwise noted Members of Parliament are referred to throughout this Report as MPs). I also took the opportunity to review the numbers of Ministerial and Opposition staff in view of my perception of an increasing role for Ministerial staff.

Audit objective

The objective of this assignment was to form an opinion on:

- the adequacy of rules and other documented requirements with respect to the recruitment of staff by MPs
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Audit scope

The audit scope covered:

- recruitment of parliamentary support staff for Ms Ritchie and current MPs, with a focus on employment of family members
- the period January 2007 to the present
- electorate office, ministerial and opposition staff were included but not staff working at the House of Assembly and Legislative Council.

Audit approach

I conducted a survey of all 39 MPs as of 22 June 2009. Ms Richie completed the same survey. I also inquired into policy documentation (as issued by the Government, the Legislative Council, the House, Department of Premier and Cabinet [DPAC] or by either Opposition Party) currently in place regarding the employment of family members.

In addition, I interviewed relevant persons including Ms Ritchie, the Premier's Chief of Staff (CoS), the Speaker and the President and both Clerks and the Secretary of DPAC .

Timing

Planning for this compliance audit began in June 2009. Fieldwork was completed in September and the report was finalised in October 2009.

However, the need to honour natural justice principles inevitably introduced delays beyond that time. Also, towards the end of 2009, tabling days were not available.

Thereafter, with a state election on the horizon, I considered it prudent to hold off tabling until a new government was formed.

Resources

The total cost of the audit excluding production costs was \$37 000.

1 Rules, guidelines and practices

1 Rules, guidelines and practices

In undertaking this audit, I had to consider a number of difficult ethical questions:

- Why should the election of a person to Parliament, potentially prejudice, or potentially improve, the employment aspirations of a member of their family?
- Are there circumstances in which the MP needs the loyalty and protection of their family in running their parliamentary affairs?
- Does the circumstance differ because the person being employed is not a public servant?
- What recruitment processes were reasonable for staff of MPs?

To assist in answering the above questions, I reviewed the legislative and other guidance available, relevant to recruitment of MP's staff with particular focus on recruitment of the family members of MPs.

1.1 *Guidelines related to appointment of family members in electorate offices*

I considered the relevant documentary guidance relating to the employment of support staff by MPs, including:

- legislation
- House of Assembly policies
- Legislative Council policies
- *Code of Conduct in the Tasmanian Government Members' Handbook.*

1.1.1 *Legislation*

The *Parliamentary Privilege Act 1898* provides authority for the employment of electorate office staff for both Houses although currently it is only being used for this purpose by the Legislative Council. The Act provides for both the President and the Speaker to appoint sessional or temporary employees subject to funding, but does not include provisions relating to recruitment processes or disclosure. This Act is also used by the President and the Speaker to jointly appoint staff who are employed by Legislature-General — the Joint Service Department providing services to both Houses of Parliament.

The *Parliamentary (Disclosure of Interests) Act 1996* requires MPs

to submit a Primary return upon election and an Ordinary return each year disclosing non-parliamentary income and personal interest in property, corporations and various other matters. Disclosures relating to family interests are not required, but may be made by MPs if they wish as a discretionary disclosure¹.

In its report of July 2009, Parliament's Joint Select Committee on Ethical Conduct found that the application of the *Parliamentary (Disclosure of Interests) Act 1996* should be extended to include people related to a MP. However, those findings did not necessarily include situations where a MP engages a family member to work for them.

In any case, as it stands, this Act does not impose requirements on MPs with respect to recruitment of family members.

1.1.2 *House of Assembly policies*

As noted under Section 1.1.1, under the *Parliamentary Privilege Act 1898*, the Speaker of the House may appoint staff to work in the electorate offices of MPs. However, appointments are not made under this Act but by the Premier, under the Crown prerogative, from the Ministerial and Parliamentary Support Budget — details of the appointment process are noted in Section 1.1.3. The Premier is, therefore, the employing authority.

The *Parliamentary Privilege Act 1898* is used by the Speaker only for the purposes of appointing staff who work for the House of Assembly.

The House provides all its MPs with a *Members' Handbook*. As expected, this handbook contains no information regarding the recruitment of staff for Members of the House of Assembly.

1.1.3 *Recruitment practices by Members of the House of Assembly*

The recruitment of staff who work in the electorate offices of all Members of the House of Assembly is managed by the Premier's Chief of Staff. Commentary is provided in Sections 3.3 regarding staff who work for Opposition parties.

When recruiting electorate office staff working for Government members of the House of Assembly, the current administration in the Premier's Office advised that the following processes are followed:

¹ In our Special Report No 60, *Contracts appointing Global Value Management*, we argued for strengthening of the legislation to extend the disclosure of interests to immediate family, in line with some other jurisdictions. To date there has been no change to the Act.

- advertise the position(s)
- establish a selection panel comprising three people, two from the offices of Ministerial and Parliamentary Support and one from the Premier's Office
- interview selected candidates against competency-based selection criteria
- rank candidates interviewed
- recommend an appointment to the MP
- recommend an appointment to Premier who makes the appointment.

Details are then provided to DPAC who handle the necessary paperwork and payment arrangements.

Under the previous administration, a less formal approach was taken — see Section 3.2.

1.1.4 Legislative Council policies

As noted in section 1.1.1, the President is the employing authority for appointing staff to work in electorate offices. Prior to the change initiated in December 2007 (refer below), Members of the Legislative Council (MLCs) could select, not appoint, staff. Even where selection panels may have been established for this purpose, such panels played an advisory role only.

Guidance for Members of MLCs is provided from various sources including a *Members' Guide*. However, prior to January 2008, the Legislative Council's *Members' Guide* contained no material to assist MLCs when recruiting staff.

While there were no documented recruitment policies, informal practices existed. These included practices which sought to avoid the recruitment by MLCs of members of their family although this practice was not communicated to all MLCs unless sought. This matter is further discussed in Chapter 2.

This informal arrangement was changed when the Clerk of the Legislative Council wrote to all MLCs providing them with a policy titled *Policy Relating to MLCs and the Engagement of Family Members to Provide Office Support* which became effective in January 2008. Under this policy, to which I had input:

- the President may approve the appointment of a Member's spouse or other family member on a short term basis only to cover the following circumstances:
 - absence at short notice, e.g. sickness or other urgent circumstance

- other planned absence, e.g. approved annual leave
- all approvals for staff assistance under this policy shall be recorded in the Member’s Register of Interests and also be reported in the Legislative Council’s annual report.

The *Code of Conduct for Government Members* is referred to in relevant sections of the policy.

In July 2009, the Clerk of the Legislative Council issued a Legislative Council Recruitment and Selection policy, supported by a document titled ‘Information for Applicants’. The policy deals comprehensively with the processes to be followed for the recruitment of staff working in the Legislative Council and for MLCs in electorate offices including how to deal with conflicts of interest. Requirements of the policy include:

- Selection panels should have no less than three persons.
- No person shall sit on a selection panel where one of the applicants is a family member (as defined within the policy).

This policy does not prevent a member of a MLC’s family from applying for a position in an electorate office. However, appointments will only be made in the limited circumstances described in the policy.

1.1.5 Legislative Council budgetary arrangements

Staff recruited to work in the electorate offices of MLCs are currently paid from the Council’s budget.

1.1.6 Code of Conduct in the Tasmanian Government Members’ Handbook (the Handbook)

Because I could find no formal arrangements prior to 1 January 2008 for the recruitment of family members by MLCs, I sought guidance from the *Tasmanian Government Members’ Handbook* (the Handbook). The Handbook was apparently introduced in 1998, with the current edition, Version 4, being issued in November 2007. In my view it is unfortunate the Handbook covers only Government Members and that a similar handbook does not exist for all MPs. In any event, I can see no reason why the Handbook’s principles would not be applicable for non-Government MPs.

The Handbook includes a *Code of Conduct* which sets out principles to assist Government Members in observing the expected standards of conduct in public office and to act as a benchmark against which

that conduct can be measured. Relevant principles include requirements for Members to:

- avoid taking advantage of their official position for private benefit (arguably including benefit to one's family)
- avoid conflicts of interest, including taking part in, or influencing, an official decision which could improperly advantage the Members personally, or a relative or associate
- resolve any conflict arising between private interests and public duty in favour of the public interest.

Further guidance is available in the section of the Code headed 'Principles of Public Life' which expects Government Members to demonstrate openness (transparency of process) and objectivity (decisions on merit)².

Clearly, recruitment of a family member by a government member is not compliant with the above principles unless a transparent, merit-based recruitment process has been followed including disclosure of actual or perceived conflicts of interest. Even then, I would argue that in most circumstances, recruitment of a family member is unlikely to be compliant.

Recommendation 1

I recommend that each House of Parliament develop a handbook — including a code of conduct and principles of public life — for all of their Members, incorporating relevant material from the Tasmanian Government Members' Handbook.

1.1.7 Guidelines for opposition parties

Currently, neither of the Opposition Parties applies an explicit code of conduct. However, it is the undocumented practice of both parties that:

- Applicants who are family members of any MP, will not be interviewed (this policy applies to applicants for work in both electorate offices and Opposition offices).

² In 1994, the Committee on Standards in Public Life was established by response to concerns about standards in public life in the UK. The committee developed the '**Seven Principles of Public Life**' (known as the Nolan principles) which it believed should apply to all in the public service. These principles are used in the *Code of Conduct*.

- Where a close friendly relationship is identified, the respective panel member must stand aside from the panel.

Recommendation 2

I recommend that all political parties publicly document and embrace codes of conduct and incorporate in their code of conduct the ‘Principles of Public Life’ or similar ethical principles.

1.1.8 Commonwealth Government rules

Rules that apply in the Commonwealth for Ministers and Parliamentary Secretaries are outlined in *Standards of Ministerial Ethics* issued by the Commonwealth Government. The Standard requires that:

Ministers’ close relatives and partners are not to be appointed to positions in their ministerial or electorate offices, and must not be employed in the offices of other members of the Executive Government without the Prime Minister’s express approval. A close relative or partner of a Minister is not to be appointed to any position in an agency in the Minister’s own portfolio if the appointment is subject to the agreement of the Minister or Cabinet.

I also established that ‘close relatives and partners’ include spouses, children, siblings, parents and cousins.

As expected from its title, the Commonwealth’s *Standards of Ministerial Ethics* does not address the recruitment of family members in electorate offices by Commonwealth MPs who are not Ministers. I am advised that nothing prevents this occurring.

1.1.9 Summary — electoral office staff

Legislation, rules, guidelines, codes of conduct and policies were not specifically applicable to all electorate staff or did not directly cover the recruitment of family members.

However, based on the principles outlined in the various documents, I believe a reasonable consensus view is that, at the very least, MPs should only engage family members as electorate office staff where a transparent, merit-based recruitment process has been followed including disclosure of actual or perceived conflicts of interest.

Even then, I would argue that for the protection of both the MPs and their family members, a MP should only be allowed to recruit a family member in their electorate in the following limited circumstances:

- in regional areas of Tasmania for short-term engagements following reasonable but unsuccessful attempts to engage someone else
- if the person engaged works for no pay or other benefit.

I concluded further that where the exceptions described occur, details should be included in the MP's Ordinary Return for purposes of the *Parliamentary (Disclosure of Interests) Act 1996*.

Recommendation 3

I recommend that:

- **both relevant employing authorities for electorate office staff should only allow the recruitment of family members in electorate offices for short-term engagements following reasonable but unsuccessful attempts to engage someone else or if the person engaged works for no pay or other benefit**
- **where a family member is so employed, this should be recorded in the Register of Interests.**

1.2 Awareness

In discussions with Ms Ritchie, she noted that she had received no information or training on policies in place by either the Council or the House regarding recruitment of staff in electorate offices. She could not recall being provided with a *Government Members Handbook* until appointment as a Minister in September 2008. She also stated that she had not seen the *Code of Conduct for Government Members of Parliament* until a two-page extract from the document was circulated with the new Legislative Council Policy in December 2007.

I was surprised that the contents of the *Government Members Handbook* and of the Code were not routinely made known to Government Members on election or advancement. To gauge MPs' general awareness of legislative and policy frameworks as well as the *Code of Conduct for Government Members of Parliament*, I conducted a survey. All Government Members indicated that they had read the *Code of Conduct for Government Members of Parliament*, although not necessarily at the time of their induction. While the Code did not apply to the other MPs, some had read it.

One recently elected MLC responded that the January 2008 Legislative Council policy had been outlined during induction processes. However, most MPs responded that they had not received information or training on policies regarding electorate office staffing either prior to the recruitment policy coming into effect or subsequently. Most favoured the provision of such training.

Recommendation 4

I recommend that the Government take steps to ensure that:

- **training on recruitment of family members and related guidelines be provided to existing MPs and to new MPs on induction**
- **training on the Government Members Handbook, the Code of Conduct for Government Members of Parliament and the Principles of Public Life be provided to existing Government Members and to new Members on induction**
- **all MPs be provided with access to an independent resource for advice on ethical matters.**

1.3 *Conclusion*

There is a community expectation that holders of public office should conform to the highest ethical standards.

Under most circumstances, MPs should not employ family members in their electorate offices. However, in situations where such employment is unavoidable, it should be recorded in returns made under the *Parliamentary (Disclosure of Interests) Act 1996*.

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2 Compliance

2 Compliance

This Chapter examines compliance with staff recruitment guidelines as outlined in Chapter 1. It separately deals with staff employed by:

- Ms Ritchie
 - her mother
 - other employees of Ms Ritchie
- other MPs.

2.1 *Staff employed by Ms Ritchie*

In May 2001, Ms Ritchie was elected as the Member of the Legislative Council for the Division of Pembroke that covers a largely suburban area of 54 km² on the eastern shore of Hobart's River Derwent. She was a Government MP from that time until her resignation in June 2009. That period included terms as a Parliamentary Secretary and Minister.

Over this period, up to 16 people worked for Ms Ritchie, some in her electorate office, others in her capacity as a Parliamentary Secretary or Minister. At various times, that included two sisters and her mother. Ms Ritchie's mother was engaged to work in her electorate office in August 2007 and that employment ceased in November 2008.

2.1.1 *Recruitment of Ms Ritchie's mother*

The facts

At the time that Ms Ritchie's mother was appointed, no documented recruitment procedures existed at the Legislative Council for staff working in electorate offices and, so, practices varied. On occasions, positions would be advertised and interviews held although this was not a requirement with MLCs able to simply advise the Clerk of the person they wished to be appointed. Thereafter, the Clerk would make a recommendation for the President to make the appointment under the *Parliamentary Privilege Act 1898*. Where the MLC volunteered that the person they wished to appoint was a family member, as noted in Section 1.1.4, the Clerk would discourage such an appointment.

I noted that on at least one previous occasion a staff member was appointed on the basis of an interview and recommendation by Ms Ritchie. However, in relation to the recruitment of her mother, Ms Ritchie initiated — what started out as, and appeared to be — a more formal process including the placement of an advertisement.

Of the applications received, four were shortlisted by Ms Ritchie. Of these applicants, one was her mother, Mrs Christine McIntyre, and another was also well known to Ms Ritchie. She had previously decided to establish a three-person interview panel including herself. Quite properly, Ms Ritchie declared a conflict, although the nature of which was not declared, and removed herself from the panel. Consequently, the interview panel now comprised two people, a Legislative Council staff member and Ms Ritchie's Office Manager, Carolyn Coward³.

Two of the short-listed candidates withdrew and, so, two people were eventually interviewed: Mrs McIntyre and the other candidate well known to Ms Ritchie.

When the Legislative Council staff member arrived to conduct the interviews, she was advised that one candidate (later identified as Ms Ritchie's mother) had been interviewed earlier than scheduled because she had been unable to attend at the agreed time citing child-minding commitments. The interview had already been conducted by Mr Luke Coward (a former ministerial staffer of Ms Ritchie⁴) with Carolyn Coward present. It is not clear to me why this decision, in the absence of the other appointed panel member, was made.

During the course of my enquiries, Ms Ritchie advised that:

- Mr Coward was familiar with the workings of her electorate office and therefore well placed to conduct the interview despite at that time having no connection with her office.
- Had she known of the circumstances, she would have required that the interview be re-scheduled to a time when the Legislative Council staff member could be present.

The other candidate was later interviewed by the panel. The only person present at both interviews was Carolyn Coward.

After the interviews, the Legislative Council staff member and Carolyn Coward discussed the outcome. Initially, the staff member from the Legislative Council expressed the view that Mrs McIntyre may not be reliable if she could not attend an interview planned in advance. Despite this, the Legislative Council staff member agreed that Mrs McIntyre should be preferred. At no stage did Ms Coward

³ Carolyn Coward is Ms Ritchie's sister.

⁴ When Luke Coward worked for Ms Ritchie, he was not married to Ms Ritchie's sister. When this interview was conducted, he was.

declare a conflict of interest and it is not known whether Mr Coward had done so.

In any event, since Ms Ritchie would effectively make the decision anyway, the panel's function was largely advisory. Ms Ritchie could have simply recommended the appointment of her mother, under the rules existing at that time.

Following discussion with the independent panellist, Ms Ritchie recommended Mrs McIntyre's appointment to the Clerk. There was no connection between the surnames of Ms Ritchie or her mother that would have alerted the Clerk. Ms Ritchie's mother was duly appointed.

Compliance with policies

As detailed in Section 1.1.1, there were no legislative or other documented requirements which prevented the recruitment of members of Ms Ritchie's family to work for her. There were also no legislative requirements requiring disclosure, although the *Parliamentary (Disclosure of Interests) Act 1996* did provide for discretionary disclosure of family interests.

As previously noted in Section 1.1.4, the Legislative Council had no documented recruitment policies but informal policies existed. These included practices which sought to avoid the recruitment by MLCs of members of their family although this practice was not communicated to all MLCs unless sought.

In March 2009, the President of the Legislative Council reviewed the appointment of Ms Ritchie's mother against Legislative Council rules. The President concluded that Ms Ritchie had not breached any formal Legislative Council rules as they existed at the time. I studied the process followed by the President and I concur with her conclusion.

Compliance with the Code of Conduct

I cannot similarly conclude when applying either the *Government Members Code of Conduct* or its principles to the circumstances surrounding Mrs McIntyre's appointment. Although there was no contravention of laws or of an existing documented recruitment policy, in my view, the process followed was not fully open, objective or transparent. To her credit, Ms Ritchie did more than was required by existing rules in that she advertised the position and involved an independent interviewer in the process. However, she failed to ensure a fair, merit-based selection process, specifically:

- The independent panelist did not interview Mrs McIntyre.

- Carolyn Coward appears to have had a strong role in decision making, despite having an undisclosed conflict.

It was not clear to me what Ms Ritchie knew and when she knew it. Nonetheless, it is my view that she should not have recommended her mother's appointment to the Clerk in the knowledge of a flawed assessment process.

It follows that she failed to comply with the principles outlined in the *Government Members Code of Conduct*, as discussed in Section 1.1.6. In my discussions with her, she advised that she had not received any information or training on the Handbook or Code of Conduct. Even so, with respect to the Code of Conduct:

- Knowledge of such a fundamental document is a reasonable expectation.
- The principles outlined are obvious public expectations of politicians. Ms Ritchie implicitly demonstrated at least some acceptance of this, by withdrawing from the original interview panel.
- Ms Ritchie was subject to the Code, regardless of her level of knowledge of it.

A number of recommendations would normally flow from these findings but in my opinion, the Legislative Council policy implemented in January 2008 already represents an appropriate response.

Compliance with the new Legislative Council recruitment policy

In response to the policy that came into effect on 1 January 2008 (see Section 1.1.4), Ms Ritchie immediately contacted the Clerk advising that a 'close familial relationship' existed between her and a staff member (Ms Ritchie's mother) seeking clarification regarding application of the new policy to her mother. She did not disclose the nature of that relationship. However, Ms Ritchie did:

- agree a replacement process with the Clerk
- advise the then President of her wish to make her mother's appointment temporary in line with the new policy which occurred in May 2008
- cease her mother's employment at the end of November 2008.

As noted previously, the President was not informed until March 2009 that the staff member was Ms Ritchie's mother.

2.1.2 *Declarations in the Register of Interests*

The *Parliamentary (Disclosure of Interests) Act 1996* does not mandate the disclosure by MPs of situations where a member of their family works in their electorate office. However, the change in policy introduced by the Legislative Council effective 1 January 2008 required disclosure. Specifically, and as noted in Section 1.1.4:

all approvals for staff assistance under this policy shall be recorded in the Member's Register of Interests and shall also be reported in the annual report of the Legislative Council.

I would have expected Ms Ritchie to:

- make the disclosure under the revised policy or
- make a discretionary disclosure in her 2007–08 Ordinary Return.

No such disclosure was made. Ms Ritchie indicated that a reason for not doing so was because there was no separate space on the Ordinary return requiring such disclosure. She advised that had there been, she would have complied.

Recommendation 5

I recommend that the Ordinary return form used by both the Legislative Council and the House of Assembly be changed to include a specific section in which Members can disclose situations where members of their family may have been engaged to work in their electorate offices.

2.1.3 *Other employees of Ms Ritchie*

As noted in the introduction to this Report, during her time in Parliament, up to 16 people worked for Ms Ritchie in her various capacities as a Member, Parliamentary Secretary or Minister. Most, including Ms Ritchie's two sisters, were funded by DPAC. Appointments were made under practices of the day, where public advertising was not always used and appropriately qualified people were sometimes directly appointed. More rigorous practices have now been introduced (see Section 3.2).

2.2 *Staff employed by other MPs*

Six MPs advised they had engaged family members to work in their electorate office or to assist with temporary work such as conducting research or speech writing. In all cases this was done on a short-term basis, following a process of endeavouring to find an alternative, non-family member without success or the person was

engaged on a non-remunerative basis or with the full knowledge of the relevant Clerk. With one exception of very short duration, the arrangements as described appear reasonable.

I also identified two situations where a family member of one MP had worked for another MP. I have no argument with that practice. However, as with any appointment of MP staff, an open and objective selection process should have occurred.

2.3 *Conclusion*

Prior to December 2007, the Legislative Council had no formal policies and processes regarding recruitment of staff to work in MLC's electorate offices. So, it follows that in recommending the recruitment of her mother, Ms Ritchie did not break any rules. However, the recommendation of her mother's appointment, in the knowledge of a flawed assessment process, was not in accordance with the principles of openness and objectivity outlined in the *Code of Conduct*.

Similarly, although admitting to a 'close familial relationship' under the new Council policy, Ms Ritchie did not explain the nature of that relationship. However, she did take steps to have her mother replaced.

Ms Ritchie did not make a discretionary disclosure in her Ordinary Return under the *Parliamentary (Disclosure of Interests) Act 1996* nor did she make a return in accordance with the new policy.

No significant instances of unethical behaviour in the appointment of family members were noted for other MPs.

3 Ministerial and opposition staff

3 Ministerial and opposition staff

3.1 *Background*

Ministerial and opposition staffers are not public servants although there are occasions where public servants are seconded to work for ministers while retaining their right to return to their host agency. Staff not on secondment are employed on contracts and they run the risk that should there be a change of government, or a change in minister, or even a change in circumstance within an existing office, they may find themselves out of a job. Therefore, it should not be expected, nor was it found to be the case, that the recruitment arrangements are as rigorous as those applying to public servants.

This Chapter considers recruitment practices for ministerial and opposition staff, as well as looking at changes in the number of ministerial and opposition staff in recent years.

3.2 *Recruitment practices for ministerial staff*

The Premier's Chief of Staff is responsible for the management of all ministerial staff including organisational structures, reporting arrangements, recruitment and levels of remuneration. These arrangements are funded from the Ministerial and Parliamentary Support budget and are managed with support from DPAC.

The process followed by the current administration is described in section 1.1.3. Prior to this, selection interviews were held with the objective of ensuring staff selected had appropriate technical and interpersonal skills. I established that public advertising was not always used at that time and that sometimes appropriately qualified people were 'tapped on the shoulder'.

In October 2008, the Premier's Chief of Staff commissioned a review of ministerial staffing arrangements by Oceana Consulting with the work understood to have been led by Michael Clarke. The scope of the review included staffing policies, legislative proposals, remuneration and mechanisms for assessing performance. The report included a recommendation, (with which I concur), that:

Recruitment of suitable staff on a merit-based, publicly advertised system is an essential first step to improve and maintain the quality and performance of ministerial staff.

As detailed in Section 1.1.3, I am advised that a merit-based, publicly advertised system is now applied.

3.3 *Recruitment practices for opposition staff*

I was advised that staffing of opposition offices (including individual electorate offices) is based on available budgets. Each Office determines its staffing establishment and classifies positions with support from DPAC. Positions are publicly advertised and selection panels established. Membership of selection panels depends on the position being filled but will always include the Chief of Staff (CoS), a MP (often the Leader) and a third person.

Applicants are interviewed with the objective of identifying the most competent person. Trust is an important competency. It is the undocumented policy of both parties that:

- Family members of any MP, will not be interviewed (this policy also applies to applicants for work in electorate offices).
- Any selection panel member with a close friendly relationship to an interviewee will pull out of the panel.

Once a suitable candidate is identified, a recommendation to appoint is made to the Premier's Chief of Staff and the appointment made by the Premier. DPAC then handles the necessary paper work and makes payment of salaries.

I thought that their practices were appropriate.

3.4 *Movements in numbers of ministerial and opposition staff*

As mentioned in the introduction to this Report, I have also been concerned with an apparent greater role for advisors in the machinery of government. For example, in my Special Report No. 84 *Funding the Tasmanian Education Foundation*, I noted that the interface between the Tasmanian Education Foundation and Government was primarily via ministerial staff.

Table 1 outlines movements in Ministerial staff over the period 1990–01 to 2007–08 based on numbers of active staff. I included staff working for the Leader of the Government in the Legislative Council and compared this to staff in offices of Opposition parties.

Table 1: Changes in staffing levels

Category	1990–91	2007–08	Increase %
Ministerial	66	123	86%
Opposition parties	16	26	63%
Totals	82	149	82%

Discussions with a number of parties suggested that there was no single reason for the 86 percent increase in ministerial staff. Possible explanatory factors included:

- reduction in the size of Parliament
- more complex business, legal and social environment
- higher levels of regulation
- increased and much quicker media scrutiny
- greater role for ministerial staff in the machinery of government.

Table 1 also shows an increase of 63 percent in opposition staff. I noted a decline relative to ministerial staff.

The Commonwealth applies a 21 percent formula for establishing the staffing levels for the Opposition compared to the Government. For Tasmania the proportion is currently 26 percent which possibly reflects the existence of two Opposition parties. A formula approach has merit because it would maintain parity over time.

Recommendation 6

I recommend that Government and Opposition Parties work together to:

- **develop an objective framework facilitating sustainable democracy for establishing the number and levels of staff working in Ministerial offices**
- **agree on an appropriate formula for setting staffing levels for Opposition parties.**

3.5 *Conclusion*

Recruitment processes for ministerial staff are, expectedly, less rigorous than for the public sector but this may not be appropriate given the increasing numbers and role of ministerial and opposition staff.

Independent auditor's conclusion

Independent auditor's conclusion

This independent conclusion is addressed to the President of the Legislative Council and Speaker of the House of Assembly. It relates to my audit of the circumstances surrounding the appointment of a relative to work for a Member of Parliament and a review of the employment arrangements for other Members of Parliament. My work was based on the objectives and scope detailed in the Introduction to this Report.

In developing the scope for this assignment and completing my work, the Legislative Council, House of Assembly, Department of Premier and Cabinet and Staff in the Premier's Office (collectively referred to as the entities and staff) provided me with all the information that I requested. There was no effort by any of these entities or staff to limit the scope of my work. This Report is a public document and its use is not restricted in any way by me or by any other person or party.

Responsibility of the entities and staff

Other than the House of Assembly, because they have no recruitment role as it relates to Members of the House of Assembly, the entities and staff are responsible for managing the arrangements as they relate to the recruitment of staff working for Members of Parliament. This includes the development of relevant policies, procedures and guidelines.

Auditor-General's responsibility

In the context of this assignment, my responsibility was to express a conclusion on whether or not the circumstances surrounding the appointment of a relative for a Member of Parliament, and the employment arrangements for other Members of Parliament, were reasonable.

I conducted my work in accordance with Australian Auditing Standard ASAE 3100 *Compliance Engagements*, which required me to comply with relevant ethical requirements relating to audit and review engagements and plan and perform the:

- audit to obtain reasonable assurance whether or not the circumstances surrounding the appointment of a relative for a Member of Parliament was reasonable
- review to obtain limited assurance whether or not the circumstances surrounding the appointment of staff working for other Members of Parliament were reasonable.

My work involved performing procedures to obtain evidence about the manner in which employees working for Members of Parliament were engaged. My procedures, based on the objectives and scope outlined in the Introduction to this Report were established by me without influence. The procedures depended on my judgement, based on my objectives and scope, and on my assessment of the risks of misstatement of the information obtained by me as part of this assignment.

I believe that the evidence I have obtained was sufficient and appropriate to provide a basis for my conclusions.

Auditor-General's conclusions

Based on the objectives and scope and for reasons outlined in the remainder of this Report, it is my conclusion that:

- as it relates to my audit of the recruitment of a member of staff to work in the electorate office of a Member of Parliament, no rules were broken but the appointment was not in accordance with the principles of openness and objectivity as outlined in the *Government Members Code of Conduct*
- as it relates to my review, which is not an audit, of the appointment of staff working for other Members of Parliament, nothing has come to my attention that causes me to believe that any significant instances of unethical behaviour occurred in the appointment of family members.

My findings resulted in six recommendations aimed at the development and consistent application of codes of conduct, recruitment and disclosure arrangements and for the development of agreed frameworks for recruiting staff working in the offices of Ministers and Opposition parties.

H M Blake
Auditor-General
10 June 2010

Recent reports

Recent reports

Date tabled	Special Report No.	Title
Apr 2007	65	Management of an award breach Selected allowances and nurses' overtime
Jun 2007	66	Follow-up audits
Jun 2007	67	Corporate credit cards
Jun 2007	68	Risdon Prison: Business case
Oct 2007	69	Public building security
Nov 2007	70	Procurement in government departments Payment of accounts by government departments
Nov 2007	71	Property in police possession Control of assets: Portable and attractive items
Apr 2008	72	Public sector performance information
Jun 2008	73	Timeliness in the Magistrates Court
Jun 2008	74	Follow up of performance audits April – October 2005
Sep 2008	75	Executive termination payments
Nov 2008	76	Complaint handling in local government
Nov 2008	77	Food safety: safe as eggs?
Mar 2009	78	Management of threatened species
May 2009	79	Follow up of performance audits April – August 2006
May 2009	80	Hydro hedges
Jun 2009	81	Contract management
Aug 2009	82	Head of Agency contract renewal
Oct 2009	83	Communications by Government and The <i>Tasmanian Brand</i> project
Oct 2009	84	Funding the Tasmanian Education Foundation
Nov 2009	85	Speed-detection devices
Nov 2009	86	Major works procurement: Nation Building projects, Treasurer's Instructions 1299 and 1214

Current projects

Current projects

Performance and compliance audits that the Auditor-General is currently conducting:

Title	Subject
Profitability, and economic benefits to Tasmania, of Forestry Tasmania	Evaluates Forestry Tasmania's long-term financial and economic performance.
Teaching of science in public high schools	Examines the quality of science teaching in Tasmanian high schools.
Public service productivity	The audit will express an opinion on productivity in the Tasmanian State Service in relation to the number of employees over a ten-year period. It will examine changes in efficiency of public sector outputs and whether core services have increased in quantity, quality or range.
Fraud control	Assesses the effectiveness of fraud controls in government entities.
College retention rates	Examines the reliability of the process used to produce college enrolment and attainment data.
Public Trustee — management of deceased estates	An audit of the Public Trustee to ensure compliance with its internal policies and procedures as they relate to administering deceased estates
Follow up of performance audits	Ascertains the extent to which recommendations from previous audits (namely four reports tabled from November 2006 to April 2007) have been implemented.