

**INQUIRY INTO PROTECTION OF PUBLIC SECTOR  
WHISTLEBLOWER EMPLOYEES**

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LEGISLATIVE COUNCIL

THE HON. PETER PRIMROSE    PRESIDENT OF THE LEGISLATIVE COUNCIL



Mr Frank Terenzini MP  
Chair  
Committee on the Independent Commission Against Corruption  
Parliament House  
Macquarie St  
SYDNEY NSW 2000

Dear Mr Terenzini

**Inquiry into the protection of public sector whistleblower employees**

I refer to your correspondence dated 23 October 2008 inviting the Clerk of the Parliaments and myself to appear and give evidence at a public hearing of the Committee on the Independent Commission Against Corruption as part of its inquiry into the protection of public sector whistleblower employees.

Following consultation with the Clerk, I advise that we would be willing to appear and give evidence on Monday, 1 December 2008.

Please find a submission on behalf of the New South Wales Legislative Council in relation to the inquiry attached.

Yours sincerely

Peter Primrose  
President

## COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

### *INQUIRY INTO THE PROTECTION OF PUBLIC SECTOR WHISTLEBLOWER EMPLOYEES*

Submission by the New South Wales Legislative Council

#### INTRODUCTION

The Department of the Legislative Council is committed to providing clear and unequivocal protection to members' staff and parliamentary staff who report corrupt conduct, maladministration or serious and substantial waste of public money.

The reasons to support whistleblowing and whistleblowers are clearly set out in the Ombudsman's *Protected Disclosure Guidelines*. These guidelines apply across the Parliament, and are fully endorsed by the Legislative Council.<sup>1</sup>

This submission examines the responsibilities placed upon staff of the Department of the Legislative Council in relation to protected disclosures, the protection available to them should they choose to make a protected disclosure, and the procedures for making a protected disclosure in the Legislative Council. The submission is in six parts:

- Part 1 examines the provisions of the *Protected Disclosures Act 1994*, and the protections it provides to public sector whistleblowers
- Part 2 examines the position description and code of conduct for members' staff, and the obligations they place on members' staff in relation to protected disclosures
- Part 3 examines the position descriptions and code of conduct for parliamentary staff, and the obligations they place on parliamentary staff in relation to protected disclosures
- Part 4 examines the Parliament's Protected Disclosures Policy and other ethical conduct policies
- Part 5 examines the NSW Ombudsman's *Protected Disclosures Guidelines*, which set out the procedures to be put in place by an agency to implement an effective disclosures regime under the *Protected Disclosures Act 1994*
- Part 6 examines the procedures of the Legislative Council for managing protected disclosures and outlines disclosures dealt with by the Council since the introduction of the *Protected Disclosures Act*.

#### **PART 1: THE PROVISIONS OF THE *PROTECTED DISCLOSURES ACT 1994***

The *Protected Disclosures Act 1994* aims to encourage and facilitate disclosures by public officials in relation to corrupt conduct, maladministration or serious or substantial waste of public money.

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<sup>1</sup> NSW Ombudsman, *Protected Disclosure Guidelines*, 5<sup>th</sup> edn, pp A-3 – A-4

### Who may make protected disclosures?

To be protected under the *Protected Disclosures Act 1994*, a protected disclosure must be made by a public official. A public official includes a person employed under the *Public Sector Employment and Management Act 2002*. While section 4 of the *Public Sector Employment and Management Act 2002* specifically provides that the Act does not apply to 'any position of officer of either House of Parliament or any position under the separate control of the President or Speaker, or under their joint control', it also notes that parliamentary officers comprise a public sector service, to which certain public service wide employment policies apply.

While there is some ambiguity in these provisions, the position of the Department of the Legislative Council is that it should seek to observe public sector employment policies wherever possible. Accordingly, the Department of the Legislative Council has a protected disclosures regime available to members' staff and parliamentary staff consistent with the provisions of the *Protected Disclosures Act 1994*.

### What disclosures are protected?

The *Protected Disclosures Act 1994* provides protection to public officials who make disclosures, which concern:

- corrupt conduct;
- maladministration; or
- serious or substantial waste of public money.

Corruption is defined in sections 8 and 9 of the *Independent Commission Against Corruption Act 1988*. The definition used in the Act is very broad, but generally concerns the dishonest or partial exercise of official functions by a public official. Examples of corrupt conduct include: official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition), bribery, blackmail, obtaining or offering secret commissions, fraud, theft, perverting the course of justice and embezzlement.

Maladministration is defined at section 11(2) of the *Protected Disclosures Act 1994* as conduct that involves action or inaction of a serious nature that is: contrary to the law; or unreasonable, unjust, oppressive or improperly discriminatory; or based wholly or partly on improper motives.<sup>2</sup>

The term 'serious or substantial waste of public money' is not defined in the *Protected Disclosures Act 1994*. However, the Auditor-General has provided the following working definition:

... the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources.<sup>3</sup>

### To whom may protected disclosures be made?

Section 8 of the *Protected Disclosures Act 1994* provides that public officials may make protected disclosures to:

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<sup>2</sup> For more information see NSW Ombudsman, *Protected Disclosure Guidelines*, 5<sup>th</sup> edn, pp F-8 – F-10

<sup>3</sup> For more information see NSW Ombudsman, *Protected Disclosure Guidelines*, 5<sup>th</sup> edn, p F-11 – F-12

- a) An investigative authority. The relevant investigative authorities are:
- the Independent Commission Against Corruption (for disclosures concerning corrupt conduct),
  - the Ombudsman (for disclosures concerning maladministration),
  - the Audit Office (for disclosures concerning serious or substantial waste of public money),
  - the Police Integrity Commission,
  - the PIC Inspector, or
  - the Director-General of the Department of Local Government.
- b) The principal officer of a public authority or investigating authority, that is to say, the Clerk of the Parliaments, the Clerk of the Legislative Assembly or the Executive Manager of the Department of Parliamentary Services.
- c) Another officer of the public authority in accordance with any procedure established by the authority concerned for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by that authority or any of its officers.
- d) A member of Parliament or a journalist provided the applicable conditions set out in section 19 of the *Protected Disclosures Act 1994* are met.

Section 19 of the *Protected Disclosures Act 1994* provides that a disclosure to a member of Parliament or a journalist is only protected if the staff member making the disclosure has already made the same disclosure to the Clerk or the ICAC, Ombudsman or Audit Office. In turn, protection is only available if the information provided is substantially true and the Clerk or public authority to whom the matter was referred:

- decided not to investigate the matter;
- decided to investigate the matter but did not complete the investigation within six months of the original disclosure;
- has investigated the matter but did not recommend any action in respect of the matter;  
or
- has failed to notify the person making the disclosure, within six months of the disclosure, of whether or not the matter is to be investigated.

#### What protection is provided to whistleblowers?

Section 20 of the *Protected Disclosures Act 1994* provides protection to public officials who make a protected disclosure by imposing penalties (up to \$5,500 and/or 12 months imprisonment) on a person who takes detrimental action against another person in reprisal for the protected disclosure. Detrimental action is action which may cause, comprise or involve any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from or prejudice in employment; or
- disciplinary proceedings.

Under section 21 of the Act, a person who makes a protected disclosure may not be subject to any liability for making the protected disclosure and no action, claim or demand can be made of or against the person for making the disclosure.

Section 22 of the Act also guarantees the confidentiality of whistleblowers, except in certain specified circumstances.

## **PART 2: THE POSITION DESCRIPTION AND CODE OF CONDUCT FOR MEMBERS' STAFF**

### The position description of a secretary/research assistant

The staffing entitlements of members of Parliament are prescribed by determinations of the Parliamentary Remuneration Tribunal. As of March 2006, members of the Legislative Council who are not ministers are entitled to the assistance of one or two secretaries/research assistants. A secretary/research assistant is employed at the Clerk grade 4/5 range within the NSW public sector classifications scale.

The position description for a secretary/research assistant includes the following 'key accountability':

Comply with parliamentary codes and policies, covering issues such as code of conduct for staff, harassment-free workplace and ethical work practices.

Members' staff recruited to the position of secretary/research assistant are therefore required to understand and comply with the Code of Conduct for Members' Staff, outlined below, and other policies on ethical work practices, as outlined in Part 4 of this submission.

Full details on members' staffing entitlements, the description of the position of secretary/research assistant and other relevant information are set out in Chapter 9 of the *Legislative Council Members' Guide*, as reproduced at Attachment 1.

### The Code of Conduct for Members' Staff

The Code of Conduct for Members' Staff applies equally to permanent, temporary and relief staff of members of the Legislative Council and Legislative Assembly. The code is designed to help staff meet the high standards of integrity and ethical behaviour expected of a publicly funded employee, and to give staff a basis for making day-to-day decisions. It is also designed to convey the behaviour expected of members' staff.

The Code of Conduct for Members' Staff includes at paragraph 5.1 the following provision in relation to confidential disclosures:

Disclosures may be made, anonymously if necessary, to the Clerk of the Legislative Assembly or the Clerk of the Parliaments, to the ICAC, the Ombudsman or to the Auditor-General, in accordance with the *Protected Disclosures Act 1994*. The *Protected Disclosures Act* ensures that all staff members making protected disclosures are protected from reprisals, provided they meet the criteria set out in the Act.

All new staff in the Legislative Council are taken through an induction process which includes receipt and instruction on the Code of Conduct for Members' Staff. New staff must subsequently sign the employee declaration at the end of the Code to confirm that they have received, read and agree to abide by the Code.

The requirements of the Code of Conduct for Members' Staff are also cited in Chapter 9 of the *Legislative Council Members' Guide*, together with other employment information. Accordingly, members are also expected to be aware of the requirements of the Code of Conduct for Members' Staff, including the provisions relating to protected disclosures.

### **PART 3: THE POSITION DESCRIPTIONS AND CODE OF CONDUCT FOR PARLIAMENTARY STAFF**

#### The position descriptions for parliamentary staff

The position descriptions for parliamentary staff positions within the Department of the Legislative Council also include the requirement to comply with the relevant codes and policies concerning ethical conduct. As an example, the position description of a Council Assistant – Committees, includes the requirement to:

Comply with codes and policies concerning equal employment opportunity, cultural diversity and ethical conduct.

At a higher level within the organisation, the position of Director – Procedure includes in the position description:

Commitment and capacity to implement policies and practices relating to EEO, OH&S, ethical practice and cultural diversity.

Accordingly, parliamentary staff recruited to the Department of the Legislative Council are required to understand and comply with the Code of Conduct for Parliamentary Staff, outlined below, and other policies on ethical work practices, as outlined in Part 4 of this submission.

#### The Code of Conduct for Parliamentary Staff

The Code of Conduct for Parliamentary Staff applies to all permanent, temporary and casual employees in the Legislative Council under the separate control of the President of the Legislative Council, with the exception of members' staff who have their own code of conduct as outlined in Part 2. It also applies to Legislative Assembly staff and staff of the Department of Parliamentary Services.

This Code is designed to help parliamentary staff meet high standards of integrity and ethical behaviour, to give them a basis for making day-to-day decisions and convey the behaviour expected of parliamentary staff in their day-to-day employment.

The Code of Conduct for Parliamentary Staff includes at paragraph 5.1 the following provision in relation to confidential disclosures:

You have a duty to report to your manager or to the Clerk/s any suspected corrupt conduct, maladministration, criminal or serious and substantial waste of public funds. All disclosures of such conduct will be handled in confidence according to the Parliament's Protected Disclosures Policy.

Disclosures may also be made to the ICAC, the Ombudsman or to the Auditor-General, in accordance with the *Protected Disclosures Act 1994*. The *Protected Disclosures Act* ensures that all employees making protected disclosures are protected from reprisals, provided they meet the criteria set out in the Act.

New members of staff in the Department of the Legislative Council are taken through an induction process which includes receipt and instruction on the Code of Conduct for Parliamentary Staff. New staff must subsequently sign the employee declaration at the end of the Code to confirm that they have received, read and agree to abide by the Code.

#### **PART 4: THE PARLIAMENT'S PROTECTED DISCLOSURES POLICY AND OTHER ETHICAL CONDUCT RESOURCES**

In addition to the obligations placed on members' staff and parliamentary staff by the relevant position descriptions and codes of conduct as outlined above, members' staff and parliamentary staff are required to observe the Parliament's Protected Disclosures Policy, discussed below. In addition, they have access to a number of other sources of information on ethical conduct, also discussed below.

##### The Parliament's Protected Disclosures Policy

The Parliament's Protected Disclosures Policy is available on the Parliament's intranet site and is attached at Attachment 2.

The policy is in accordance with the NSW Ombudsman's *Protected Disclosure Guidelines*,<sup>4</sup> and includes amongst other things:

- a summary of what disclosures are protected under the *Protected Disclosures Act 1994*,
- what protection is provided to whistleblowers,
- when a disclosure is protected,
- the procedures for making a protected disclosure, and
- contact information for the ICAC, Ombudsman and Audit Office.

This Protected Disclosures Policy was originally issued by the Clerks in January 1996, and was most recently updated on 2 August 2007. It provides a readily accessible and concise point of reference for members' staff and parliamentary staff considering making a protected disclosure.

The Protected Disclosures Policy meets the requirements of the Premier's Memorandum No 96-24, which stipulated that public agencies should ensure that employees are informed of the protection provided by the *Protected Disclosures Act 1994* and the agency's procedures for making a protected disclosure. Although parliamentary officers are not bound by the requirements of such

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<sup>4</sup> NSW Ombudsman, *Protected Disclosure Guidelines*, 5<sup>th</sup> edn, p A-6



memoranda,<sup>5</sup> nevertheless the Parliament does seek to comply with broader public sector employment policies wherever possible.

#### The Parliament's Fraud and Corruption Control Policy

The Parliament's Fraud and Corruption Control Policy is also available on the Parliament's intranet site. The policy outlines the Parliament's approach to fraud and corruption management, prevention and detection.

The Fraud and Corruption Control Policy includes a definition of fraud and of corruption, based on the definition provided in sections 8 and 9 of the *Independent Commission Against Corruption Act 1988*, as outlined earlier. It also includes a discussion of protected disclosures, and refers staff to the Parliament's Protected Disclosure Policy as outlined above.

#### Other resources

Other relevant resources found on the Parliament's intranet site include:

- 1) *Identifying conflicts of interest in the public sector*. This ICAC brochure explains how to identify a conflict of interest, and the difference between actual, perceived and potential conflicts of interests.
- 2) *Identifying and managing conflicts of interest in the public sector*. This ICAC brochure suggests strategies for managing a range of conflicts of interest.
- 3) *Bribery = Crime*. This ICAC brochure explains the concept of bribery and gives guidelines for community members when dealing with government officials.
- 4) *The New South Wales Personnel Handbook*. Chapters 8 – 11 of the handbook provide advice to employees on how to identify corrupt conduct and maladministration and procedures to deal with protected disclosures.

Both members' staff and parliamentary staff are expected to be familiar with and to observe the requirements of these publications.

#### Staff induction and training

As noted previously, the Department of the Legislative Council provides a comprehensive induction to all members' staff and parliamentary staff at the commencement of their duty. This includes details of the relevant code of conduct as well as an explanation of policies and procedures relevant to their position, and how such resources can be located.

In addition, staff are also provided with access to specific training programmes. For example, in July 2005, the Legislative Council and Legislative Assembly conducted a joint workshop on ethical conduct, which included a module on the Code of Conduct for Parliamentary Staff, and the requirements and purpose of the code.

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<sup>5</sup> See section 4 of the *Public Sector Employment and Management Act 2002*

## PART 5: THE NSW OMBUDSMAN'S *PROTECTED DISCLOSURES GUIDELINES*

The NSW Ombudsman's *Protected Disclosures Guidelines*, first published in 1995, gives practical guidance to public officials with responsibility for implementing the provisions of the *Protected Disclosures Act 1994*. It is a comprehensive document available to all public sector agencies setting out best practice for dealing with protected disclosures, protecting whistleblowers and interpreting the *Protected Disclosures Act 1994*.

This is a valuable resource available to the President, Clerk and senior officers to assist them in fully understanding their responsibilities and obligations under the *Protected Disclosures Act 1994*.

The President and Clerk in particular acknowledge the need identified in the *Protected Disclosures Guidelines* for agency-wide commitment to dealing with *bona fide* disclosures, including a strong commitment and acceptance of management and staff to the right to make protected disclosures, and a strong commitment to investigate disclosures and to act appropriately on disclosures that are sustained.

## PART 6: THE PROCEDURES OF THE LEGISLATIVE COUNCIL FOR MANAGING A PROTECTED DISCLOSURE

As previously indicated, public officials, including both members' staff and parliamentary staff, may make a protected disclosure to the Clerk of the Parliaments. A protected disclosure may also be made to the Clerk of the Legislative Assembly, or the Executive Manager of the Department of Parliamentary Services.

In accordance with the Parliament's Protected Disclosures Policy, a disclosure may be made either verbally or in writing. If a disclosure is made in writing it should be submitted to the Clerk in a sealed envelope and clearly marked 'private and confidential'. If a disclosure is to be made verbally, a meeting with the Clerk should be requested.<sup>6</sup>

It is important that the information that staff provide is clear, accurate and factual. Staff should provide supporting documentation if available.

Following receipt of a protected disclosure, it is incumbent on the Clerk to determine whether the disclosure is protected. A checklist for determining whether a disclosure is a protected disclosure is included in the NSW Ombudsman's *Protected Disclosure Guidelines*.<sup>7</sup>

If the matter does fall within the definition of a protected disclosure, it is incumbent upon the Clerk to treat the matter in strict confidence (assuming confidentiality is a practical option), and to take reasonable steps to protect whistleblowers and other parties against any reprisals in the workplace.

In assessing whether to investigate a protected disclosure, the Clerk is required under the NSW Ombudsman's *Protected Disclosure Guidelines* to consider the seriousness of the allegations, whether the matter involves mismanagement or misconduct, and the potential for detrimental action to be taken against the whistleblower. However, in all instances:

<sup>6</sup> Parliament's *Protected Disclosures Policy*, p 2

<sup>7</sup> NSW Ombudsman, *Protected Disclosure Guidelines*, 5<sup>th</sup> edn, pp A-17

- The relevant facts must be established and documented;
- Appropriate conclusions need to be reached based on available evidence; and
- A suitable response needs to be determined.<sup>8</sup>

The Clerk may also refer a protected disclosure to the relevant authority under section 26 of the *Protected Disclosures Act 1994*.

In investigating a protected disclosure, the options may range from an internal audit of operations, an investigation into policies and procedures, or a formal investigation into alleged misconduct.<sup>9</sup> An investigation concerning alleged misconduct will involve giving the person accused of wrongdoing an opportunity to respond to the allegations made against him or her. However, the respondent is not entitled to any information about the person who made the allegations. It is important to note that other laws of procedural fairness also apply, as outlined in the Ombudsman's *Protected Disclosure Guidelines*.<sup>10</sup>

Internal investigations within the Legislative Council would generally be conducted either by the Clerk, or by a senior officer authorised by the Clerk. An outside investigator may also be engaged. It is also the Clerk's responsibility, or that of the senior authorised officer or investigator, to ensure that full and comprehensive records of the disclosure, the investigation and the handling of the disclosure are kept. All information obtained during an investigation is kept confidential on a case file with restricted access.

Following the conduct of an investigation, the Clerk or responsible officer is required to prepare a report on the matter, which must include recommendations to overcome or address any actual or potential shortcomings identified. The requirements in relation to the preparation of a report are outlined in the NSW Ombudsman's *Protected Disclosure Guidelines*.<sup>11</sup>

The Clerk is also required under section 27 of the *Protected Disclosures Act 1994* to indicate to the whistleblower what action he or she has taken or proposes to take within six months of the disclosure.

As indicated previously, staff may also make a protected disclosure directly to an investigative body: the Independent Commission Against Corruption, the Ombudsman or the Audit Office. However, because of the special nature of the Parliament and its members there are limitations on the powers of investigating authorities (particularly the NSW Ombudsman and Audit Office) to investigate the Parliament and its Members.

Without canvassing details, it is relevant to note that since the commencement of the *Protected Disclosures Act 1994*, the Clerk of the Parliaments has received two protected disclosures from staff.<sup>12</sup>

<sup>8</sup> NSW Ombudsman, *Protected Disclosure Guidelines*, 5<sup>th</sup> edn, pp A-17

<sup>9</sup> NSW Ombudsman, *Protected Disclosure Guidelines*, 5<sup>th</sup> edn, pp A-18

<sup>10</sup> See NSW Ombudsman, *Protected Disclosure Guidelines*, 5<sup>th</sup> edn, pp A-21-22

<sup>11</sup> NSW Ombudsman, *Protected Disclosure Guidelines*, 5<sup>th</sup> edn, pp A-22

<sup>12</sup> These protected disclosures should not be confused with grievances in relation to work related problems, generally employment matters, lodged with the clerks and dealt with in accordance with the *Grievance Policy* of the Parliament of New South Wales.

These protected disclosures have been administered in different ways, in accordance with the procedures as outlined above. One complaint was received verbally, while the other was received both verbally and in writing. According to the seriousness of the disclosure, both internal and external investigators were appointed to further investigate the issues involved. In each instance, the matter was dealt with in strict confidence, and reasonable steps were taken to protect the confidentiality of the whistleblowers.

The results of these investigations ranged from the withdrawal of the complaint through to substantial disciplinary action against those staff found to have breached the relevant code of conduct. Each investigation was documented and a final report prepared. In addition, as a result of each investigation, the Clerk took the opportunity to review existing procedures and structures, with outcomes including new recruitment and selection practises, financial processes, service provisions and communication flows.

**ATTACHMENT 1**

**CHAPTER 9 OF THE *LEGISLATIVE COUNCIL MEMBERS' GUIDE***

**CHAPTER 9**    **Members' staff**

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# Members' staff

This chapter provides information on members' entitlements in relation to staffing. The chapter then provides information on the employment and management of members' staff. The chapter outlines details on the Department of the Legislative Council's staff induction, day-to-day management of staff and training and development matters.

## Members' staffing entitlements

9.1 The staffing entitlements of members are prescribed by the determinations of the PRT. As at March 2006 the relevant provisions of the determination are:

Each member of the Legislative Council, who is not a Minister, shall be entitled to one staff Member. When the staff Member is on annual recreation leave or other extended period of leave, a relief staff member may be employed for the period of absence.<sup>168</sup>

Each member of the Legislative Council, who is not a Minister, and who is elected as a Cross Bench Member shall be entitled to two staff members.<sup>169</sup>

The Government and Opposition Whips, and the Whip of each recognised political party of not less than 10 members to each be provided with one member of staff.<sup>170</sup>

9.2 In summary, staff entitlements for members who are not Ministers are:

- Government/Opposition members                      1 staff member
- Cross Bench members                                      2 staff members
- Government and Opposition Whips                      2 staff members.

9.3 Some office holders receive additional staffing entitlements, through separate budget allocations, for example, the Leader of the Opposition and Deputy Leader of the Opposition receive additional staffing entitlements through the funding provided by the Premier's Department. These staff are not administered by the Department of the Legislative Council. All inquiries and arrangements for additional staff provided through the Premier's Department should be directed to Ministerial and Parliamentary Services on telephone 9228 4443. Shadow ministers do not receive any additional staffing entitlement.<sup>171</sup>

## The position of Secretary/Research Assistant

9.4 The position of Secretary/Research Assistant was established pursuant to the entitlement of members of the Legislative Council to employ staff. The position and its grading is based on senior electorate officer positions which exist for members of the Legislative Assembly.

### Salary range

9.5 The position of Secretary/Research Assistant is established as a Clerk grade 4/5 position within the NSW public sector classification scale. As at March 2007 the salary range is \$59,060 to \$66,797 per annum, including a \$6,166 all incidence of employment allowance (in lieu of overtime, flex time or rostered days off). Salaries are paid fortnightly by the Parliament's Accounts section.

### Full-time or part time employment

9.6 Any vacancy can be filled on a full-time (35 hours per week) or part-time basis (less than 35 hours per week) or job share basis. A number of employees can share a position where the total number of hours does not exceed 35 hours per week. The member needs to assess the allocation of office space, equipment and resources when considering part time arrangements as extra resources are not provided to accommodate persons in job share situations.

168 *Parliamentary Remuneration Tribunal, Annual Report and Determination of Additional Entitlements for Members of the Parliament of New South Wales, 13 July 2006, p 54*

169 *Parliamentary Remuneration Tribunal, 13 July 2006, p 54*

170 *Parliamentary Remuneration Tribunal, 13 July 2006, p 54, as amended by an Addendum, dated 7 August 2006*

171 *Parliamentary Remuneration Tribunal, 13 July 2006, p 18*

### Hours of work

- 9.7 The normal hours of duty for full-time staff are 35 hours per week at 7 hours a day. Most staff work 9.00 am to 5.00 pm with 1 hour for lunch. The all incidence of employment allowance paid to Secretary/Research Assistants recognises that staff may be required to work on sitting nights beyond 5.00 pm or at other times depending upon the needs of the member. Staff who are required to work beyond 8.00 pm as a result of the sitting of one or both Houses will be entitled to take a taxi to their registered home address within the Sydney Metropolitan District. Taxi vouchers can be obtained from the Procedure Office.
- 9.8 The recording of details on Cabcharge vouchers is necessary to ensure that the vouchers are used in accordance with approved guidelines. Correct recording also assists in subsequent queries with the taxi company over unusually high or altered taxi fare charges appearing on the monthly Cabcharge accounts. Consequently, staff are directed to ensure that all information, including departure and arrival travel times, is properly completed on each voucher. For more information on this policy, see the intranet at Admin Resources - Policies & Forms.
- 9.9 The hours of duty for part-time staff will depend upon the hours negotiated with the member. As noted above, a number of employees can share a position where the total number of hours does not exceed 35 hours per week.
- 9.10 Access to additional entitlements for staff employed on a part-time basis is limited to attending activities on days when they are formally employed to work. Any variation to the employment conditions of members' staff including days of work should be lodged with the Corporate Support unit.

### Conditions of employment

- 9.11 The position of Secretary/Research Assistant works from Parliament House.
- 9.12 The President is the employer of all staff of the Legislative Council by delegation from the Governor, under section 47 of the *Constitution Act 1902*. Employment with the Department of the Legislative Council is subject to the relevant employment legislation as well as public sector and Parliament House industrial agreements. The staff of the Department are not part of the NSW public service and their employment is not subject to the *Public Sector Employment and Management Act 2002*. The Department has however adopted administrative policies, procedures and guidelines consistent with the public sector. Accordingly, members' staff possess all the rights and responsibilities as apply to other public sector employees.
- 9.13 The conditions of employment of Secretary/Research Assistants flow on from those of electorate staff under the Crown Employees (Parliamentary Electorate Officers) Award<sup>172</sup> and are detailed in the Department's policy entitled *Recruitment and Determination of salary for Secretary/Research Assistants*, dated November 2005.
- 9.14 The permanent employment of all Department staff must be approved by the President.
- 9.15 Members' staff are eligible for 4 weeks recreation leave per year. As discussed below, a range of other leave entitlements are also available to members' staff, including maternity and parental leave, sick leave and study leave. The Corporate Support unit administers staff leave entitlements.
- 9.16 Staff employed for periods of less than three months are deemed short-term temporary staff and do not accrue general leave entitlements but receive 1/12 extra salary entitlement in lieu of leave. Where a staff member wishes to resign, the standard two weeks notice is required. Where a member ceases to be a member, Secretary/Research Assistants may be entitled to separation from service payments, job search leave and retraining assistance under the Department's *Separation from Service Policy*, dated February 2003.
- 9.17 Members' staff are required to comply the Parliament's policies, including the code of conduct for members' staff, and harassment-free workplace and ethical work practices. Staff must also follow defined occupational health, safety and injury management policies and procedures related to the work being undertaken, in order to ensure their own safety and the safety of others in the workplace.<sup>173</sup>

172 *Industrial Relations Act 1996*

173 *Key Accountabilities from Secretary/Research Assistant position description, found at [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)*



### Position description

- 9.18** The position description for Secretary/Research Assistants contains accountabilities for both administrative and research duties.
- 9.19** The position holder is required to provide the following **administrative support**:
- Establish and maintain information and records filing systems to provide current and accessible information.
  - Provide a high-level administrative and clerical support service, including information gathering activities, photocopying and faxing.
  - Draft complex correspondence on behalf of the member.
  - Prepare memoranda, press releases, itineraries, reports, minutes, and transcripts of meetings, interviews or conferences.
  - Provide information to members of the public, as required.
  - Liaise with and respond appropriately to queries received from constituents, members, and other external and internal sources.
  - Open, prioritise and respond to correspondence.
  - Organise and maintain a diary of functions, appointments, meetings and other commitments.
  - Screen and/or redirect telephone calls and maintain message books.
  - Manage the member's Parliamentary records and allowances.
  - Establish and maintain up-to-date contact lists, mailing lists and labels.
  - Prepare and dispatch periodic newsletters and other mail.
  - Arrange the member's parliamentary travel and accommodation.
  - Organise and maintain stationery requirements for the office.
  - Receive member's visitors and guests.
- 9.20** In addition, the position holder must undertake various **research duties**:
- Conduct research projects in relation to administrative matters by gathering relevant resource material and review and analyse information.
  - Provide research services and analysis in response to complex enquiries as required.
  - Respond to enquiries by conducting initial research and providing advice to the member.
- 9.21** The position of Secretary/Research Assistant is also required to have knowledge of **parliamentary procedure** to assist with drafting speeches and parliamentary questions, and to prepare drafting instructions for the Parliamentary Counsel's Office.

### Code of Conduct for members' staff

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- 9.22** The Code of Conduct for members' staff applies to all members' staff that are employed by the Parliament. It is designed to help staff meet the high standards of integrity and ethical behaviour expected of a publicly funded employee, while recognising the unique needs of members of Parliament.
- 9.23** The Code was developed considering the recommendations of the Independent Commission Against Corruption, the Ombudsman's Office, the model public sector code published by Premier's Department and staff consultations. The Code was also developed in consultation with the Public Service Association of NSW (PSA) and will be reviewed periodically.
- 9.24** This Code is designed to convey the behaviour expected of members' staff. It addresses the responsibility of members' staff in undertaking their role in supporting the electorate, the constituents and the parliamentary role of their member. Members must nevertheless take responsibility for all actions he or she directs staff to take. Members' staff are responsible for their own acts and omissions when not directed by their member. It is the responsibility of all staff to ensure their activities are not unlawful, against the public interest, against the interest of their member, or contrary to established policy or procedure.
- 9.25** The Code outlines appropriate behaviour in relation to the acceptance of gifts and benefits, conflicts of interest and secondary employment. The Code also stipulates that members' staff are not permitted to engage in activities of direct electioneering, or political campaigning, or political fundraising during their ordinary hours of work or as part of their role as an employee of the Parliament.

- 9.26 This Code applies equally to permanent, temporary and relief staff of members of the Legislative Council and the Legislative Assembly. Volunteers and people engaged in work experience programs with members are also required to agree to comply with the Code before they can commence work with the Parliament.
- 9.27 New staff must sign the employee declaration at the end of the Code which confirms that they have received, read and agree to abide by the Code.

## Recruitment options

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- 9.28 Members and their staff work closely together in what can be a high pressure and stressful environment. Some members' staff, particularly those working for members whose principal place of residence is outside the Sydney metropolitan area, can find themselves working on their own for lengthy periods of time. Members' staff have access to a range of confidential information and play a vitally important role in the successful operations of members (for example, some members' staff will play an important role in administering a members' entitlements, or in dealing with constituents). On the occasions when there is a breakdown in the working relationship between members and their staff, it is often a prolonged and stressful process for both parties before the matter is able to be resolved. It is therefore critically important that members recruit the right person for the job.
- 9.29 When recruiting new staff, members should ensure the candidate has the necessary experience and skills to undertake the position. A formal application and interview process can greatly assist in the selection of potential employees. In addition, asking applicants to undertake a written assessment can assist in determining the most appropriate candidate. If this is done, it is more likely that the right person for the job will be selected. Selection of staff should always be on the basis of **merit principles**, that is, the person selected should have the skills, knowledge and experience best matched to the job requirements.
- 9.30 The Department is ultimately responsible for the employment and administration of members' staff. Members are the managers of their staff and accordingly members are strongly encouraged to seek advice in relation to appropriate recruitment processes.

### Options for recruiting staff

- 9.31 Members have two options when recruiting staff: advertising the vacancy externally and conducting a competitive process, or directly appointing a person.
- 9.32 Members are encouraged to follow public sector practices and advertise the vacancy externally.
- 9.33 When advertising externally, members are encouraged to advertise vacancies on the *jobs.nsw – Government Jobs Online* website ([www.jobs.nsw.gov.au](http://www.jobs.nsw.gov.au)), in the Public Sector Notices, in *The Sydney Morning Herald* and on *seek.com.au* to ensure the widest possible field of applicants.
- 9.34 Advertising on the *jobs.nsw* website and the Public Sector Notices is free. If members wish to advertise a vacancy in *The Sydney Morning Herald*, or on *seek.com.au* the cost must be met from the Logistic Support Allocation (LSA). If members choose other media sources for advertising, the costs of advertising cannot be met from the LSA.
- 9.35 Where a member wishes to advertise a vacancy, the Corporate Support unit will assist members with:
- drafting and placing advertisements
  - receiving and acknowledging applications
  - notifying applicants of the outcome.
- 9.36 At the request of a member, Department staff can also:
- devise an appropriate computer aptitude test
  - participate in the selection process.
- 9.37 Offer letters to successful applicants are produced by the Corporate Support unit. The letters include information about conditions of employment such as salary, period of employment and hours of duty. Additional information, such as the position description, relevant policies and the code of conduct, is also provided to the successful applicant.

#### *Direct appointment*

- 9.38** Members have the option to directly appoint staff without a competitive selection process. However, in order to evaluate an applicant's ability to do the job and satisfy requirements, members are encouraged to:
- Ensure the applicant has the necessary skills and experience to undertake the responsibilities and duties of the position.
  - Evaluate the applicant's attitude, personality and appearance as well as teamwork, initiative and research capabilities.
  - Confirm and expand upon details provided in the application form or résumé.
  - Consider requiring the applicant to undertake a brief computer task to assess competence with relevant office technology.

#### **Temporary or permanent employment**

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- 9.39** Members can employ staff on a temporary, permanent or relief basis. Members are **strongly encouraged** to recommend an initial temporary employment offer of six months to provide an adequate period in which to assess the performance of the successful applicant.

##### **Temporary employment**

- 9.40** Staff can be employed on a temporary basis to enable a sufficient period in which to assess work performance. It is recommended that staff are employed for an initial three month period, with a further three month extension if conduct, attendance and work performance meet the standards required by the member. Staff employed for periods of less than three months are deemed short-term temporary staff who do not accrue general leave entitlements.
- 9.41** If a member remains unsure of the conduct, attendance and work performance of their temporary staff within this initial period, temporary employment can be extended for a further three months to allow for improvement. If a member is not satisfied with the performance of temporary staff within this period and there is little likelihood of improvement, the member may choose to terminate the employment. It is critical that members provide regular feedback to staff where concerns arise regarding work performance. The nature of the feedback and relevant details should be recorded in a diary or file note.
- 9.42** It should be noted that staff have the right to be permanently employed after two years of temporary employment with the same employer.
- 9.43** The Clerk's approval is required for the temporary employment of new staff members. The following documentation should be sent to the Clerk for approval:
- a completed 'Request for Employment – Secretary/Research Assistant' form (available on the intranet)
  - the candidate's résumé
  - relevant educational qualifications
  - birth certificate
  - evidence of permanent residency status if not an Australian citizen.

- 9.44** The recommended commencing salary rate should accord with the 'Recruitment and Determination of Salary for Members' Secretary/Research Assistants' policy (available on the intranet).

- 9.45** Once the Clerk has approved the member's recommendation to employ temporary staff, the member can make a verbal offer of temporary employment. The Corporate Support unit will prepare the letter of offer, and send all relevant information to the successful candidate. Corporate Support will also arrange for temporary staff to complete a Health Declaration Form and will request a criminal records check from the NSW Police.

##### **Permanent appointment**

- 9.46** Where a member wishes to permanently appoint staff, they are normally appointed on probation for a standard period of six months. This gives the member the opportunity to assess the new staff member's conduct, attendance and work performance.

- 9.47** Members are required to conduct a performance review with new staff at three months and again at six months. The Corporate Support unit will provide members with the necessary forms and information on the performance review. After the six month probation period, it is usual for members to recommend permanent appointment of staff who have successfully completed both performance reviews and have demonstrated they have the necessary skills and experience.
- 9.48** If the member is uncertain regarding suitability of the staff member, or the staff member's performance is deemed unsatisfactory, the probationary period can be extended for a further six months if desired. If the staff member's performance during the review periods is deemed unsatisfactory, with little likelihood of improvement, the employment can be terminated. It is critical that members provide regular feedback to staff where concerns arise regarding work performance. The nature of the feedback and relevant details should be recorded in a diary or file note.
- 9.49** Once a suitable candidate has been chosen, the same documentation listed above should be forwarded to the Corporate Support unit. The Clerk of the Parliaments will normally recommend approval for permanent appointment by the President.
- 9.50** The recommended commencing salary rate should accord with the 'Recruitment and Determination of Salary for Members' Secretary/Research Assistants' policy.
- 9.51** Once the President has formally approved the member's recommendation to employ new staff, the member can make a verbal offer of employment. The Corporate Support unit will prepare and send the letter of offer, and other relevant information, to the successful candidate. Corporate Support will also arrange for staff to complete a Health Declaration Form and will request a criminal records check from the NSW Police. They will also organise computer access and a security pass for new staff.

#### **Relief staff**

- 9.52** Since 2003, the PRT has made provision for relief staff to be engaged by members who are entitled to one staff member when the substantive staff member is on leave.<sup>174</sup> The 2006 determination states that:
- Each Member of the Legislative Council, who is not a Minister, shall be entitled to one staff Member. When the staff member is on annual recreation leave or other extended period of leave, a relief staff member may be employed for the period of absence.<sup>175</sup>
- 9.53** Members will need to complete a 'Request for Employment – Secretary/Research Assistant' form and send it together with supporting documentation to the Clerk for approval. A leave form for the substantive staff member should also be completed and accompany the 'Request for Employment' form sent to the Clerk.

#### **Induction and training**

- 9.54** The Corporate Support unit will provide new permanent and temporary staff employed for longer than three months with a one-on-one induction to working at the Parliament. The induction will run through the information provided in the Staff Induction Handbook and covers conditions of employment, selected policies, the staff Code of Conduct and the use of the Parliament's website. All staff will be provided with a copy of the Handbook and any other relevant policies and documents.
- 9.55** A comprehensive half-day Parliament-wide induction will also be held on a regular basis for new staff.
- 9.56** The Corporate Support unit will organise computer access and a security pass for all new staff. They will also arrange for a library tour and tour of Parliament to be conducted for all permanent and long-term temporary staff.
- 9.57** Staff should be encouraged and provided with opportunities to attend training courses considered relevant to their current position. There are many in-house and external courses offered which can assist staff in the performance of their duties, which in turn will assist in managing a member's office. Members are requested to facilitate the attendance of their staff at in-house programs.

<sup>174</sup> *Parliamentary Remuneration Tribunal, 30 June 2003*

<sup>175</sup> *Parliamentary Remuneration Tribunal, 13 July 2006, p 54*

- 9.58 The Department of the Legislative Council offers financial study assistance and study time for those staff undertaking relevant part-time study at tertiary institutions. Details are available on the intranet.
- 9.59 The Department will also meet staff training costs in relation to inductions and in-house training programs (for example, seminars on parliamentary procedure and training in the use of software on the Parliament's standard operating system).<sup>176</sup> However, attendance at conferences, and external training programs (for example, writing and media courses) must be met from the members' LSA.

### **Supervision of staff**

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- 9.60 Members are responsible for supervision of staff. Members are responsible for ensuring staff attend work and managing the performance of their staff.

#### **Providing feedback to staff**

- 9.61 A fundamental part of supervision is providing accurate and timely feedback. As the manager of staff, members have the responsibility of treating their staff with respect and providing timely constructive feedback in relation to work performed and/or work relationships. The Department promotes and acknowledges good performance by employees within the organisation. The Department fully supports an environment and workplace culture of teamwork and a sense of belonging to staff.
- 9.62 Regular constructive feedback to staff regarding their work performance and general attitude provides staff with an opportunity to gauge his or her effectiveness and make adjustments where necessary. Feedback and discussion with staff will allow members to better understand the needs of their staff, and ensure the efficient running of their office.

#### **Managing poor performance and unsatisfactory attendance**

- 9.63 If at any time the work performance, attendance or conduct and services of the staff is unsatisfactory, the member must document the issue and discuss expectations and strategies with the staff member with an emphasis on providing opportunities to demonstrate improvements in work performance. This should be reviewed at regular intervals.
- 9.64 If there is a lack of documentary evidence detailing the nature of the problem and any efforts made to address the situation, it is very difficult to discipline or dismiss staff, whether they are employed on a temporary basis or permanent and on probation. Supporting evidence of poor performance might include:
- Examples of the staff member's work.
  - Diary entries with start and finish times, indicating the staff member's unsatisfactory attendance at work.
  - Written reports, or emails from member to staff noting unsatisfactory performance, and any response from the staff member.
  - Examples of training provided to staff to assist with performance.

- 9.65 Members should consult with the Clerk Assistant – Corporate Support to discuss strategies for managing staff with poor performance, unsatisfactory attendance or conduct and services. Any consultation should be undertaken immediately, as early strategies to address problems are more likely to succeed and be more constructive.

- 9.66 Where the relationship breaks down between a member and their staff, the Department will, in the first instance, encourage and facilitate mediation. Where necessary, an independent mediator will be engaged to re-establish a professional working relationship.

#### **Disciplinary matters**

- 9.67 Where the conduct or performance of members' staff is unsatisfactory, a member may need to take disciplinary action in order to ensure their parliamentary duties are carried out in a lawful and efficient manner. There are a number of levels of disciplinary action, including increased supervision, counselling, provision of additional training, placing staff on a number of warnings, and, if necessary, termination of employment.

- 9.68** Disciplinary action can be taken against staff for a range of issues, including:
- Engaging in any form of misconduct (and contrary to the staff Code of Conduct discussed above).
  - Wilfully disobeying or disregarding any request or direction made or given by the member, President, Clerk or any other authorised person.
  - Negligence, carelessness, inefficiency or incompetence of staff in the discharge of his or her duties.
- 9.69** As noted above, where a member is concerned about staff conduct or performance, it is important that the member documents the situation and discusses the matter with the Corporate Support unit. Members should contact the Clerk Assistant – Corporate Support for advice on the appropriate disciplinary action to be taken, prior to discussing the matter with the staff member, as a process must be followed to ensure procedural fairness. The Corporate Support unit will provide the member with the necessary information on the appropriate level of disciplinary action to take, and the necessary procedures to follow.

### **Access to Parliament House**

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- 9.70** The Macquarie Street entrance is open at 8.00 am and closes at 6.00 pm on non-sitting days. After 6.00 pm, staff can exit onto Macquarie Street via the Disabled Ramp on level 6. Staff will need to press the red intercom button and request to exit the front gate. A Security Officer will remotely open the front gate. Staff are also able to exit from the Hospital Road entrance on level 6.
- 9.71** On sitting days the front door(s) and gate remain open for half an hour after the rising of the last House. The Hospital Road entrance must be used when the front doors are closed during demonstrations, and also serves as a 24-hour security access entrance.
- 9.72** Please note that staff must seek written authorisation from their member for after hours access to Parliament House (before 7.00 am and after 7.00 pm on weekdays or on weekends). Members should email, or provide written authorisation, to Parliamentary Security Services.

### **Travel by members' staff**

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- 9.73** The LSA may be used for staff travel costs,<sup>177</sup> where staff are required to travel either with the member or separately on parliamentary business.
- 9.74** When booking air travel, the same procedures are to be followed when booking members' travel, as outlined in chapter 4.
- 9.75** Staff travelling on parliamentary business with or on behalf of a member may claim reasonable accommodation and meal expenses from the member's LSA. The PRT states that:
- Staff employed by the Parliament who travel with their Member or separately for Parliamentary business purposes may be paid travel allowances in accordance with appropriate Public Service Award conditions.<sup>178</sup>
- 9.76** The PRT requires members to ensure records are maintained and that they clearly document the occasions that staff employed by the Department stayed in Sydney or other locations when travelling in connection with parliamentary duties.<sup>179</sup> Such documentation includes airline boarding passes for arrival and departure, or other documentary evidence of having travelled, stayed in accommodation and consumed meals, including invoices, restaurant bills and Cabcharge vouchers. The documentation should be provided to the Corporate Support unit.
- 9.77** The PRT specifically excludes the use of the LSA for staff travel for training purposes.<sup>180</sup>
- 9.78** As noted above, any variation to the employment conditions of members' staff including days of work should be lodged with the Corporate Support unit. For example, if a member wishes a part time staff member to travel on his or her usual day off to assist the member with parliamentary duties, then the member will need to formally vary the staff member's working days, otherwise the member will not be able to use his or her entitlements to meet the costs of staff travel and incidentals.

<sup>177</sup> *Parliamentary Remuneration Tribunal, 13 July 2006, p 38*

<sup>178</sup> *Parliamentary Remuneration Tribunal, 13 July 2006, p 42*

<sup>179</sup> *Parliamentary Remuneration Tribunal, 13 July 2006, p 42*

<sup>180</sup> *Parliamentary Remuneration Tribunal, 13 July 2006, p 42*

## Leave provisions

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**9.79** Staff are employees of the Department and are supervised by members. Part of this supervisory role includes the approval of leave. **All leave must be applied for by way of a leave form, which is to be signed by both the staff and by the member and submitted to the Corporate Support unit.** If staff are absent from work, it is the member's responsibility to ensure leave forms are submitted. Leave forms are available from the Corporate Support unit on level 8.

**9.80** The different types of leave available to members' staff are listed below. Part-time staff receive a pro-rata entitlement depending on the number of hours worked each week.

### *Adoption leave*

**9.81** A staff member who adopts a child and who is the primary carer to the child is entitled to payment for a period of up to 14 weeks and unpaid adoption leave of up to 12 months if the child has not started school at the date of the taking of custody.

### *Compulsory Christmas/New Year leave*

**9.82** Under a long-standing industrial agreement, the Parliament closes for business between Christmas and New Year. All staff are required to take leave (for example recreation, extended leave or leave without pay) during the closure.

### *Extended leave*

**9.83** After 10 years service the entitlement is 44 working days. Each completed year after that, another 11 days extended leave accrues. Extended leave may be taken after completion of seven years service at full, half or double pay.

### *Family and Community Service leave*

**9.84** Family and Community Service leave, or FACS leave, of two and a half days during the first year of service and five working days in any period of two years after the first year of service may be granted by the Clerk of the Parliaments to staff, for reasons related to family responsibilities, for the performance of community service, or emergencies.

### *Leave without pay*

**9.85** Staff may be granted leave without pay if the individual provides sufficient reason and it is convenient to both the member and the Department.

### *Maternity leave*

**9.86** Full-time female staff who will have completed 40 weeks of continuous service prior to the expected date of birth are eligible for 14 weeks on full pay or 28 weeks on half pay.

### *Parental leave*

**9.87** Staff who have completed 40 weeks continuous service prior to their spouse's or partner's expected date of giving birth are entitled to one week of paid parental leave, or two weeks at half pay, at the time of the birth of the child.

### *Personal carer's leave*

**9.88** When FACS leave has been exhausted, sick leave may be accessed to care for a family member. The entitlement to use paid sick leave is subject to staff being responsible for the care and support of the family member. Sick leave is available from the current year's annual sick leave entitlement plus sick leave accrued in the previous three years minus any sick leave taken.

#### Recreation leave

- 9.89 Full-time Secretary/Research Officers accrue four weeks (or 20 days) recreation leave per annum. Part-time staff are entitled to a pro-rata recreation leave depending on how many days worked per week.

#### Sick leave

- 9.90 Full-time Secretary/Research Officers are entitled to 15 days sick leave, granted on 1 January each year. Part-time staff receive a pro-rata sick leave entitlement depending upon the number of days worked per week.

#### Study leave

- 9.91 Study leave is available to staff undertaking relevant studies part-time.

### Employee Assistance Program

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- 9.92 The Parliament recognises that its employees are people with important relationships and interests beyond the time they spend at work each day. It is also recognised that sometimes staff face problems at home or at work which can make life difficult, and which may affect health, well-being and job performance.
- 9.93 A free, professional, confidential counselling and consulting service is provided by Davidson Trahair Corpsoych for all staff, their immediate family members and people in close relationships with them. This service is also available for members of Parliament. A 24 hour telephone counselling service is also available. The counselling service's number is 1300 360 364.
- 9.94 Trauma counselling is also provided by the Employee Assistance Program, in the event of staff dealing with sudden death, major accident or incidence of violence. In cases where trauma is involved, please contact the Clerk Assistant – Corporate Support as a matter of urgency, as assistance can be provided within 2 hours.

### Anti-Discrimination Act 1977

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- 9.95 The *Anti-Discrimination Act 1977* (NSW) (ADA) makes it unlawful to discriminate against a person on various specified grounds, such as race, sex, or marital status, in the course of various specified activities.
- 9.96 The Act specifically contains provisions relating to members of Parliament and sexual harassment.
- 9.97 As with the other grounds of discrimination under the ADA liability for sexual harassment arises only if the conduct occurs in certain contexts, such as in the course of employment, or the provision of accommodation, or the provision of goods and services.
- 9.98 The relevant provisions of the ADA are subsections (7) and (10) of section 22B. Subsection (7) provides that it is unlawful for a member of either House of Parliament to sexually harass a 'workplace participant' (for example, a staff member) or another member of Parliament, or for a workplace participant to sexually harass a member. Subsection (10) specifies that 'workplace' includes the whole of Parliament House, any ministerial office or electoral office of the member, or any other place that the member otherwise attends in connection with his or her Ministerial, parliamentary or electoral duties.
- 9.99 In addition to this direct form of liability of members, if sexual harassment were to be perpetrated by an individual on a member's staff, it is possible that the member concerned may be liable under section 52 of the Act. Section 52 provides that it is unlawful for a person to 'cause ... or permit another person to do an act that is unlawful by reason of a provision of this Act'. In this regard, the NSW Law Reform Commission has observed:

In so far as they [Ministers and members] have control or exercise power in the workplace, and thereby cause or permit discriminatory conditions of employment to arise, liability would be attracted by the provisions of the ADA [under section 52].<sup>181</sup>

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181 NSW Law Reform Commission, Report 92, Vol 1; November 1999, paragraph 4.52, and footnote 38



- 9.100 No special rules apply to proceedings involving members under the ADA to ensure the protection of parliamentary privilege or of confidential or sensitive documents. If the Board or tribunal were to seek to access or rely on material or documents in the member's possession in proceedings against the member, and those documents or material formed part of proceedings in Parliament or were necessarily incidental thereto, it would be appropriate for the member to claim privilege in respect of that material. Such a claim would appear to be supported by Article 9 of the *Bill of Rights 1688*, which applies in NSW by virtue of section 6 and Schedule 2 of the *Imperial Acts Application Act 1969*.
- 9.101 For further information about the ADA and how it applies to members, guidelines issued by the Anti-Discrimination Board on harassment and discrimination can be found on the intranet. Also on the intranet is the Parliament's Equal Employment Opportunity Policy.

### Occupational Health and Safety

- 9.102 Parliament has an obligation to provide a safe workplace for its employees. Members and staff have an obligation to follow safe work practices, to bring any risks to the attention of management as soon as practicable, and to report any injuries to the responsible officers as soon as practicable.
- 9.103 Staff must follow defined occupational health, safety and injury management policies and procedures related to the work being undertaken, in order to ensure their own safety and the safety of others in the workplace.<sup>182</sup>
- 9.104 As part of the requirement of the *Occupational Health and Safety Act 1983* there is a Parliament House Occupational Health and Safety Committee. Concerns about workplace safety may be discussed with any member of this committee. The Department's employer representative on the committee is the Director – Corporate Support, however in the first instance report concerns to the Principal Council Officer – HR Operations on ext. 2330.

### Non-staff persons working in members' offices

- 9.105 In April 2006 the Department of the Legislative Council established a policy for non-staff persons working in member's offices. The definition of 'non-staff person' is "a volunteer or other persons not employed by the Parliament, such as those employed directly by a member or the member's political party, who provide assistance in a member's office."<sup>183</sup>
- 9.106 While it is accepted that members sometimes require persons other than staff employed by the Department to assist them in their offices, members should be aware that the engagement of such persons can impact on the facilities and services of the Parliament. No additional office accommodation or equipment is provided for use by non-staff persons. Members considering engaging non-staff persons to work in their office should therefore consult with their Secretary/Research Assistant and ensure that appropriate arrangements are made to address any OH&S issues that may arise. Computer access is only provided to employees.
- 9.107 Members should note that the Presiding Officers have the right to control the access to the parliamentary precincts, including non-staff persons. Non-staff persons must have a security pass and ensure the pass is clearly visible at all times while in the parliamentary precinct. In addition, non-staff persons are required to adhere to the Parliament's OH&S policies.
- 9.108 For more information on non-staff persons working in members' offices, see the policy on the intranet at Admin Resources - Policies & Forms.

### University interns

- 9.109 For many years the Department has supported the participation of members of the Legislative Council in formal internship programs undertaken by universities, as part of public policy or social science programs, some of which are co-ordinated through the Education section.

<sup>182</sup> Key Accountabilities from Secretary/Research Assistant position description, found at [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)

<sup>183</sup> NSW Legislative Council, Policy on non-staff persons working in member's offices, April 2006, p 1

- 9.110** Generally speaking, interns need to be accommodated within a members' office. Members considering taking on an intern should therefore consult with their Secretary/Research Assistant and ensure that appropriate arrangements are made to address any OH&S issues that may arise.
- 9.111** In order for an intern to be granted a security pass or computer log in, the member will need to provide written confirmation of their agreement to the internship, together with correspondence from the co-ordinator of the internship program at the university confirming the student's enrolment and the nature of the internship. A form is available from the Corporate Support unit.

**ATTACHMENT 2**

**THE PARLIAMENT'S PROTECTED DISCLOSURES POLICY**

[Home](#) » [Admin Resources](#) » [Policies & Forms](#) » [Employment](#) »

## Protected Disclosures

### Introduction

The Protected Disclosures Act 1994 aims to encourage and facilitate disclosures by public officials in relation to corrupt conduct, maladministration or serious or substantial waste of public money.

The Act achieves this by:

- enhancing and augmenting established procedures for making disclosures;
- protecting persons from reprisals that might otherwise be inflicted upon them because of these disclosures; and
- providing a mechanism which ensures that disclosures can be properly investigated and dealt with.

### What Disclosures are Protected?

The Act provides protection to public officials who make disclosures which concern:

- corrupt conduct;
- maladministration; or
- serious or substantial waste of public money.

Corruption is defined in sections 8 and 9 of the Independent Commission Against Corruption Act 1988. The definition used in the Act is very broad, but generally concerns the dishonest or partial exercise of official functions by a public official.

Corruption can take many forms, including: taking or offering bribes, public officials dishonestly using influence, black-mail, fraud, election bribery and illegal gambling. These are just some examples.

Maladministration is defined in section 11 of the Protected Disclosures Act 1994 as conduct that involves action or inaction of a serious nature that is: contrary to the law; or unreasonable, unjust, oppressive or improperly discriminatory; or based wholly or partly on improper motives.

The Auditor-General has provided the following definition of "serious and substantial waste of public money":

*any uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in significant loss/wastage of public funds/resources.*

### What Protection is Provided?

The Act provides protection to public officials who make a protected disclosure. All employees of the Parliament are "public officials" under the Act.

A person who makes a protected disclosure is not subject to any liability for making a protected disclosure and no action, claim or demand can be made of or against the person for making the disclosure.

The Act also provides protection by imposing penalties (up to \$5000 and/or 12 months imprisonment) on a person who takes detrimental action against another person in reprisal for a protected disclosure.

Detrimental action is action which may cause, comprise or involve any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from or prejudice in employment; or
- disciplinary proceedings.

### When is a Disclosure Protected?

For a disclosure of information to be deemed a "protected disclosure" it must be made by a public official, either:

- to the head of the organisation; or
- in accordance with established reporting procedures within the organisation; or
- direct to either the ICAC, Ombudsman or Auditor-General.

Disclosures made to a journalist or Members of Parliament are protected if certain conditions are met. The person making the disclosure to a journalist or Member of Parliament must have made the same disclosure to the head of their organisation or in accordance with established reporting procedures within the organisation or direct to either the ICAC, Ombudsman or Audit Office. In this case protection is only available if the information provided is substantially true and the investigating authority or public authority to whom the matter was referred:

- has decided not to investigate the matter;
- has decided to investigate the matter but not completed the investigation within six months of the original disclosure;
- has investigated the matter but not recommended any action in respect of the matter; or
- has failed to notify the person making the disclosure, within six months of the disclosure, of whether or not the matter is to be investigated.

### **Procedures for Making Protected Disclosures**

In the first instance, disclosures should be made within the Parliament or direct to an investigating authority.

*Within the Parliament:* - Staff may make a protected disclosure either verbally or in writing. This may be done through:

The Clerk of the Legislative Assembly; or  
The Clerk of the Parliaments; or  
Both Clerks.

If a disclosure is made in writing it should be submitted to the Clerk/s in a sealed envelope and clearly marked "private and confidential". If a disclosure is to be made verbally, a meeting with the Clerk/s should be requested. All disclosures will be treated in the strictest confidence. However, in some circumstances the source of the disclosure will need to be revealed so that the matter can be fully investigated.

*To an Investigating Authority* - Staff may make a disclosure by contacting:

- the Independent Commission Against Corruption, if the disclosure concerns corrupt conduct; or
- the NSW Audit Office, if the disclosure concerns a serious and substantial waste of public money; or
- the NSW Ombudsman, if the disclosure concerns maladministration.

Address and phone numbers for each authority are listed below. The investigating authority will advise what action needs to be taken to make a disclosure.

Because of the special nature of the Parliament and its Members there are limitations on the powers of investigating authorities (particularly the NSW Ombudsman and Audit Office) to investigate the Parliament and its Members. If staff are making a disclosure to an investigating authority they should raise this issue and clearly indicate the involvement of the Parliament and/or the involvement of a particular Member/s. Please note that these limitations in no way reduce the protection provided to staff of the Parliament who make a protected disclosure.

*To a Member of Parliament or Journalist* - Staff may make disclosures to a Member of Parliament or journalist, but these disclosures are only protected in some circumstances (see *When is a Disclosure Protected?* above).

### **For More Information**

If you have any inquiries in relation to protected disclosures contact Employee Services in the Legislative Assembly (ext. 2570) or Corporate Support in the Legislative Council (ext. 2323).

Information can also be obtained from any investigating authority:

#### **Independent Commission Against Corruption**

ICAC  
GPO Box 500  
SYDNEY NSW 2001  
Tel: Duty Assessment Officer (02) 8281 5999 or 1800 463 909  
Email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)

#### **The Audit Office of New South Wales**

Level 15  
1 Margaret Street  
SYDNEY NSW 2001  
Tel: (02) 9275 7100

#### **NSW Ombudsman**

Level 24  
580 George Street  
SYDNEY NSW 2000  
Tel: (02) 9286 1000 or 1800 451 524

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