

Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2012 (No 2)

Disallowable instrument DI2012-257

made under the

Legislative Assembly (Members' Staff) Act 1989, s 10 (3) (Members may employ staff) and s 20 (4) (Members may engage consultants and contractors)

1 Name of instrument

This instrument is the *Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2012 (No 2)*.

2 Commencement

This instrument is taken to have commenced on 6 November 2012.

3 Dictionary

The dictionary at the end of this instrument is part of this instrument.

Note 1 The dictionary at the end of this instrument defines certain terms used in this instrument.

Note 2 A definition in the dictionary applies to the entire instrument unless the definition, or another provision of the instrument, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this instrument is explanatory and is not part of this instrument.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Revocation

Instrument DI2012-129 is revoked.

6 Determination for Act, s 10 and s 20

This instrument determines conditions subject to which a member may, on behalf of the Territory, hire staff, contractors or consultants under the Act, section 10 or section 20.

7 Application during the period

- (1) The conditions determined by this instrument apply to a member while the member holds a position (the **relevant position**) mentioned in schedule 1 for a period or periods (the **period or periods of office**) within the time beginning on the day this instrument commences and ending on 30 June 2013 or the date this instrument is revoked, whichever is the later.
- (2) If the member holds 2 or more relevant positions within the time mentioned in subclause (1), the conditions determined by this instrument apply in relation to the period or periods of office for each relevant position, considered separately.

8 Salary cap

- (1) A member may, on behalf of the Territory, hire staff, consultants or contractors for a term that includes the period or periods of office only while the total amount payable for salary and payments, to all staff, consultants and contractors under the member's hire while the member holds the relevant position during the period, does not exceed the annual amount (the **salary cap**) worked out in accordance with the formula in subclause (2).
- (2) The formula for working out the salary cap is—

$$\text{salary cap} = \$ \frac{\text{annual salary allocation} \times \text{working days}}{261} + \text{carry over} \pm \text{salary pledge}$$

Note If a member is neither a **recipient member** nor a **pledging member** the amount of the **salary pledge** in the above formula is nil.

- (3) In subclause (2):

annual salary allocation means the annual salary allocation stated in schedule 1 for the relevant position.

carry over means the member's unexpended salary allocation, if any, carried over from the 2011–2012 financial year. The carry over cannot exceed 10% of the member's annual salary allocation for the 2011-2012 financial year.

Where a member moves from one relevant position to another relevant position during the period, **carry over** means the amount, if any, that the unexpended salary cap exceeds the annual salary allocation calculated on a pro-rata basis, in respect of the relevant position to which he or she has moved.

pledging member means the member who makes the salary pledge.

recipient member means the member who receives the salary pledge.

salary pledge means in the case of a pledging member that part of a pledging member's uncommitted salary allocation which is pledged to a recipient member and that is to be deducted from the salary cap and in the case of a recipient member the total of salary pledges made to the member and that is to be added to the salary cap.

working days means the number of working days the member holds the relevant position in the period.

- (4) Despite subclause (1), the Chief Minister may, by written notice to a member, allow the total amount payable for salary and payments, to all staff, consultants and contractors under the member's hire while the member holds the relevant position during the period to exceed the salary cap.
- (5) The Chief Minister may only allow the salary cap to be exceeded if—
- (a) an employee on the member's staff takes, or is to take, a period of paid leave exceeding 4 continuous weeks during the period; and

- (b) the member hires, or is to hire, a replacement employee, contractor or consultant during the employee's absence on paid leave; and
- (c) the amount by which the salary cap is exceeded, or is to be exceeded, is no more than the amount of salary or payments payable to the employee for the period of leave; and
- (d) the Chief Minister considers on reasonable grounds that—
 - (i) the requirement for leave is beyond the member's control; and
 - (ii) the member would be, or would have been, unable to exercise his or her functions as a member without hiring the replacement during the employee's absence on paid leave.

Dated

27 November 2012.

Katy Gallagher
Chief Minister

Schedule 1 Annual salary allocation

(see cls 7 and 8)

column 1 item	column 2 position	column 3 annual salary allocation
1	leader of the opposition	\$491,754
2	deputy leader of the opposition	\$178,348
3	crossbench member	\$219,891
4	other member	\$160,677

Note Each amount for annual salary allocation listed in column 3 of the above table includes any paid overtime, but excludes the LAMS allowance payable to employees employed under the applicable enterprise agreement and, where an employee elects, the long service leave allowance and annual leave loading.

Dictionary

(see cl 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this instrument.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- function
- working day.

Note 3 Terms used in this instrument have the same meaning that they have in the *Legislative Assembly (Members' Staff) Act 1989* (see Legislation Act, s 148). For example, the following terms are defined in the *Legislative Assembly (Members' Staff) Act 1989*, Dictionary:

- Assembly
- office-holder.

crossbench member means a member other than any of the following:

- (a) a member of the Australian Labor Party;
- (b) a member of the Liberal Party of Australia.

deputy leader of the opposition means the deputy leader of the largest party in the Assembly not forming the Government.

hire, in relation to an employee on a member's staff, or a contractor or a consultant, means—

- (a) employ the employee; or
- (b) engage the contractor or consultant.

leader of the opposition means the leader of the largest party in the Assembly not forming the Government.

member means a member of the Assembly.

other member means a member other than any of the following:

- (a) the leader of the opposition;
- (b) the deputy leader of the opposition;
- (c) a crossbench member;
- (d) an office-holder.

period or periods of office—see clause 7 (1).

relevant position—see clause 7 (1).

salary cap—see clause 8 (1).