

1998

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LEGISLATIVE ASSEMBLY (MEMBERS' STAFF) (AMENDMENT) BILL 1998

EXPLANATORY MEMORANDUM

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**Kate Carnell MLA
Chief Minister**

Legislative Assembly (Members' Staff) (Amendment) Bill 1998

Outline

This bill amends the *Legislative Assembly (Members' Staff) Act 1989* (LA(MS) Act). The LA(MS) Act is the legislation by which Members of the Legislative Assembly (Executive and Non- Executive) employ staff on behalf of the Territory to assist them in official duties.

The LA(MS) Act provides that staff of the Chief Minister, Ministers and the Speaker (Office-Holders) are employed under Part II and staff of Members are employed under Part III of the Act. Under sections 5(2) and 10(2) respectively the Chief Minister approves arrangements by which Members are able to employ their staff, this primarily involves Members managing within the resource allocations provided to them for the employment of staff.

On 1 July 1997 the Chief Minister introduced a range of new employment arrangements which enhanced the capacity of Members to be more flexible in the way in which they employ staff to meet the needs of the operations of their offices. The Chief Minister foreshadowed in introducing those arrangements that she would further enhance the flexibility available to Members by amending the LA(MS) Act to enable the engagement of consultants and contractors in Members offices in addition to the existing capacity to employ staff.

The Bill introduces a new Part IIIB to the LA(MS) Act which will, in Division 1, enable Office-Holders to engage consultants and contractors, Division 2 will enable Members to engage consultants and contractors. The scope of these engagements will be limited to the provision of services necessary and incidental to the performance of parliamentary duties.

As well as providing for the engagement of consultants and contractors the Bill also provides termination arrangements along similar lines to those existing in the Act for staff of Office-Holders and Members. The substantial differences being that there is a limit on the length of engagement of a consultant or contractor to 3 years for each agreement, and, if the Chief Minister decides to extend the engagement due to an Office-Holder or Member ceasing to be an Office-Holder or Member, then the Chief Minister is able to terminate the extended engagement.

Revenue/Cost Implications

The introduction of the amendment would be at no additional cost to the budget as Members are provided with a global allocation within which they are required to manage and this will not be supplemented to enable the employment of consultants or contractors - this will still need to be met from within existing allocations.

Formal Clauses

Clauses 1, 2 and 3

Deal with and define the "Principal Act" The Act will commence on gazettal

Clause 4

Amends the long title of the Principal Act so that there is the clear intention that members will be able to engage consultants and contractors as well as being able to employ staff

Clause 5

Amends the Principal Act so that the definition of an office-holder also includes a person in respect of whom a determination by the Chief Minister under section 4 or 13CA is in force

Clause 6

Is a technical amendment which makes it possible that an office-holder in the Assembly who may not necessarily be a member at the time is able to employ staff either under Part II or Part III of the Act

Clause 7

Provides for the inclusion of a new Part IIIB to the Principal Act dealing with the engagement of consultants and contractors

PART IIIB - CONSULTANTS AND CONTRACTORS

Division - Office-Holders

Clause 13CA

Provides the same powers of determination making in regard to parliamentary duties as section 4 of the Principal Act

Clause 13CB. (1)

Enables an office holder to engage a consultant or contractor to assist them in the performance of ministerial or parliamentary duties

Clause 13CB. (2)

Provides that an agreement in writing entered into under (1) will be the contract for services

Clause 13CB. (3)

Ensures that any contract entered into between an office-holder and a consultant or contractor will only be in accordance with arrangements made by the Chief Minister. For example the Chief Minister may choose to allow members to use allocations provided for staff salaries to be used for the purposes of engagement of consultants and contractors. A second condition could be that this could occur provided the total resource allocation provided to members for staff salary allocations is not exceeded

Clause 13CC. (1)

Provides for the automatic termination of the contract if the office-holder dies, notwithstanding the provisions of (7) which allows the Chief Minister to direct that the contract has not terminated and should continue. This is a similar provision to that contained in section 8 (1) of the Principal Act

Clause 13CC. (2)

Provides for automatic termination of the contract if either the contracting office-holder ceases to hold office, or in the case of a member to which a section 13CA determination applies ceases to be member or the determination is revoked. The Chief Minister is able to direct that the contract has not terminated and should continue. This is a similar provision to that contained in section 8 (2) of the Principal Act

Clause 13CC. (3)

This provides clarification of when a member shall be considered to have ceased to be a member for the purposes of this section of the Act. This is a similar provision to that contained in section 8 (3) of the Principal Act

Clause 13CC. (4)

Enables an office-holder to terminate the agreement between themselves and the consultant or contractor by notice in writing. This is a similar provision to that contained in section 8 (4) of the Principal Act

Clause 13CC. (5)

Enables a consultant or contractor to terminate the agreement between themselves and the office-holder by notice in writing. This is a similar provision to that contained in section 8 (5) of the Principal Act

Clause 13CC. (6)

This section provides that if the engagement of the consultant or contractor does not terminate for the reasons outlined in (1),(2), (4) or (5), then the contract will terminate at the date specified in the agreement or at the expiration of 3 years which ever is the shorter. In effect this means that no agreement will operate for a period longer than 3 years

Clause 13CC. (7)

This section provides the capacity for the Chief Minister to direct that an agreement should continue to have effect even though the automatic termination provisions of (1) or (2) have come into effect. This could occur for example where the Chief Minister is of the view that a piece of work being prepared by a consultant or contractor should be completed in the interests of the Territory even though the relevant office-holder has ceased to hold office for the reasons in (1) or (2). The continuation would however be limited to a maximum of 3 years as provided in (6). Where the Chief Minister makes a direction under this section either the Chief Minister or the consultant or contractor is able to terminate the continued engagement subject to subsection (8)

Clause 13CC. (8)

Provides the capacity for either the Chief Minister or the consultant or contractor to terminate an extended engagement, under the provisions of subsection (7), by notice in writing

Clause 13CD.

Enables office-holders to, if they wish, engage consultants or contractors under Division 2 of the new part of the Act

*Division 2 - Members***Clause 13CE. (1)**

Enables a member to engage a consultant or contractor to assist them in the performance of parliamentary duties. There is a limitation on the scope for which the engagement may occur and there is no intention to allow any contract to deal with matters which are not associated with the members parliamentary duties. The section also provides that the agreement between the member and consultant or contractor must be in writing

Clause 13CE. (2)

Provides that an agreement in writing entered into under (1) will be the contract for services

Clause 13CE. (3)

Ensures that any contract entered into between an member and a consultant or contractor will only be in accordance with arrangements made by the Chief Minister. For example the Chief Minister may choose to allow members to use allocations provided for staff salaries to be used for the engagement of consultants and contractors. A second condition could be that this could occur provided the total resource allocation provided to members for staff salary allocations is not exceeded

Clause 13CF. (1)

Provides for the automatic termination of the contract if the member dies or ceases to be a member, notwithstanding the provisions of (6) which allows the Chief Minister to direct that the contract has not terminated and should continue. This is a similar provision to that contained in section 13 (1) of the Principal Act

Clause 13CF. (2)

This provides clarification of when a member shall be considered to have ceased to be a member for the purposes of this section of the Act. This is a similar provision to that contained in section 13 (2) of the Principal Act

Clause 13CF. (3)

Enables a member to terminate the agreement between themselves and the consultant or contractor by notice in writing. This is a similar provision to that contained in section 13 (3) of the Principal Act

Clause 13CF. (4)

Enables a consultant or contractor to terminate the agreement between themselves and the office-holder by notice in writing. This is a similar provision to that contained in section 13 (4) of the Principal Act

Clause 13CF. (5)

This section provides that if the engagement of the consultant or contractor does not terminate for the reasons outlined in (1), (3) or (4), then the contract will terminate at the date specified in the agreement or at the expiration of 3 years which ever is the shorter. In effect this means that no agreement will operate for a period longer than 3 years

Clause 13CF. (6)

This section provides the capacity for the Chief Minister to direct that an agreement should continue to have effect even though the automatic termination provisions of (1) has come into effect. This could occur for example where the Chief Minister is of the view that a piece of work being prepared by a consultant or contractor should be completed in the interests of the Territory even though the relevant member has ceased to hold office for the reasons in (1). The continuation would however be limited to a maximum of 3 years as provided in (5). Where the Chief Minister makes a direction under this section either the Chief Minister or the consultant or contractor is able to terminate the continued engagement subject to subsection (7)

Clause 13CC. (7)

Provides the capacity for either the Chief Minister or the consultant or contractor to terminate an extended engagement, under the provisions of subsection (6), by notice in writing

Clause 8

Repeals the current section 13D of the Principal Act and substitutes a new 13D which extends the definition of which instruments under this Act are disallowable instruments under the *Subordinate Laws Act 1989*

Clause 9.

Amends section 14 of the Principal Act to include the provisions of the new section IIIB