

Legislative Assembly (Members' Staff) Deemed Date Of Termination Of Employment Of Members' Staff Direction 2015

Disallowable instrument DI2015-76

Legislative Assembly (Members' Staff) Act 1989, s 13 (5) (Termination of employment)

EXPLANATORY STATEMENT

Legislative Context

The *Legislative Assembly (Members' Staff) Act 1989* ("the Act") provides for the employment of staff by members of the Legislative Assembly. Subsection 10(1) of the Act gives members the authority to employ staff. Section 13 of the Act sets out the time when the employment of such persons terminates.

Subsection 13(5) of the Act provides that the Chief Minister may, by written instrument, direct that the employment of a person whose employment is terminated by the operation of subsection 13(1) shall be deemed not to have terminated and that the employment is deemed to have continued, or to continue, until a specified date. Such a direction is a disallowable instrument. Subsection 13(4) of the Act provides that a person may terminate their employment at any time by giving notice in writing.

Outline

At a general election the employment of part 3 employees under the Act is terminated by a combination of the operation of subsection 13(1) of the Act and section 10 of the *Australian Capital Territory (Self-Government) Act 1988*.

A direction was made on 31 March 2009 under subsection 13(5) of the Act, DI2009-48, which provides for a period of deemed continued employment of part 3 employees where the employing member has nominated for re-election at a general election. The purpose of the direction is to provide for the continuity of part 3 employees' employment between successive Assemblies where their employing member is returned and their employment contract is renewed.

The direction also provides for the deemed continued employment of part 3 employees for a lesser period where their employment is terminated by the operation of the Act because their employing member ceases to be a member of the Legislative Assembly in other circumstances. These circumstances include, for example, where the employing member does not contest a general election, or resigns, or retires or dies.

There is tension within the Act between subsection 13(4), which provides that a part 3 employee may resign at any time by giving notice in writing, and subsection 13(5) which provides that the employment of part 3 employees is deemed to continue until a specified date as outlined above. This tension gives rise to uncertainty concerning the ability of a part 3 employee to resign during a period of deemed continued employment.

The purpose of this direction is to remove any uncertainty arising from this tension. The Instrument revokes DI2009-48 and substitutes a new direction which provides that the deemed continued period of employment ends if a part 3 employee resigns during that period.

Direction

Numbered clauses 1 to 4 of the instrument contain technical provisions.

Numbered clause 5 of the instrument revokes direction DI2009-48.

Numbered clause 6 of the instrument directs that the employment of persons employed under part 3 of the Act is deemed to continue until a specified date.

Numbered clause 7 of the instrument specifies the class of persons to whom the direction applies as persons whose employment ceased, or would have ceased, by the operation of subsection 13(1) of the Act.

Numbered clause 8, paragraph (1) of the instrument specifies the date on which the person's deemed continued employment ceases, where the employing member has nominated for re-election at a general election.

Numbered clause 8, paragraph (2) of the instrument specifies the date on which the person's deemed continued employment ceases, where the employing member dies, or ceases to be a member in circumstances other than those covered by paragraph (1).

Numbered clause 8, paragraph (3) of the instrument specifies that the period of deemed continued employment constitutes notice for the purpose of the *Fair Work Act 2009* and payment for the purpose of any termination payments made under an applicable enterprise agreement in respect to part 3 employees who are not subsequently re-employed. This has been extended to include paragraph (2) of clause 8 in line with the applicable enterprise agreement.

Numbered clause 8, paragraph (4) of the instrument has been inserted. This specifies that the period of deemed continued employment under paragraph (1) and paragraph (2) ends if a part 3 employee resigns in accordance with subsection 13(4) of the Act during that period.