

## EXPLANATORY STATEMENT

### **Instrument Number 332 of 2000**

#### **DETERMINATION MADE UNDER SECTION 11(2) OF THE *Legislative Assembly (Members' Staff) Act 1989***

#### **TERMS AND CONDITIONS OF EMPLOYMENT OF STAFF OF MEMBERS**

##### Legislative Context

The *Legislative Assembly (Members' Staff) Act 1989* ("the Act") provides for the employment of staff by Members of the Legislative Assembly. Section 10; subsection 10(1) of the Act gives the authority for Members to employ staff. Section 11; subsection 11(2) of the Act provides for the Chief Minister to determine in writing the terms and conditions of employment of staff of Members.

##### Outline

This Determination varies the terms and conditions of staff of Members as previously determined in Determination Number 81 of 2000, relating to contracts of employment entered into on or since 1 July 1997.

This Determination provides for staff employed under the *Legislative Assembly (Members' Staff) Act 1989*, upon termination of their employment under the Act, to be paid in lieu for long service leave accrued after 1 July 1997. The purpose of the amendment is to remove an anomaly regarding differing entitlements of staff to payment in lieu of long service leave.

Under the contract arrangements introduced on 1 July 1997 staff are able to elect either, to accrue long service leave, or to receive additional fortnightly payments instead of long service leave. Currently, staff who elect to accrue long service leave are generally not entitled to receive payment in lieu upon termination of their employment unless they are entitled to be paid severance benefits, or in the case of resignation, have completed a period of ten years' employment. For example, a person who elected to accrue long service leave who resigns after nine years and eleven months service, would not receive any payment in lieu for accrued leave, whereas a person who elects not to accrue long service leave is paid an additional annual allowance in lieu of that accrual, irrespective of their length of service.

Schedule 2 provides for the following changes in employment conditions. Paragraphs 8(c) and 8(d) of Schedule 2 to the Determination vary long service leave provisions for staff of Members to allow the payment in lieu of accrued long service leave upon termination of employment where staff have less than ten years service, and are not entitled to the payment of severance benefits. This provision shall apply retrospectively from 1 July 1997 to reflect the original intention of the flexible long service leave provisions.

Consistent with existing entitlements, long service leave accrued before 1 July 1997 would be paid in lieu only if the aggregate period of employment (including recognised prior service) at the date of termination is not less than ten years, or where severance benefits are paid (eg where a Member ceases to be a Member). A staff member with less than one year's service at the date of termination of their employment will not be eligible for payment in lieu for long service leave, consistent with similar conditions that apply in the ACT Public Service.

**Schedule to Instrument Number 332 of 2000**

**SCHEDULE 2**

**Terms and Conditions of Employment – Staff of Members**

**Definitions:**

“Contract of Employment” is defined to mean the form of agreement which is set out in the attachment to this Schedule.

“employee” is defined to mean an employee, who signs a Contract of Employment.

“Terms and conditions of employment” have the same meaning as provided for under the *Legislative Assembly (Members’ Staff) Act 1989* (“the Act”).

**(1) Use of the Contract of Employment**

- (a) Subject to the Act and the conditions set out below, terms and conditions of employment of an employee will be in accordance with the Contract of Employment.

**(2) Salary**

- (a) The gross annual salary shall be set in accordance with the Chief Minister’s Arrangements made under Section 10; subsection 10(2) of the Act. The gross annual salary shall consist of the annual salary plus the value of all non-cash benefits provided under paragraph 2(d) of this Determination.
- (b) The gross annual salary payable to an employee will be the salary provided in the Contract of Employment between the relevant Member and the employee.
- (c) The gross annual salary will be the salary for the purposes of calculating superannuation entitlements and payment in lieu of Long Service Leave.
- (d) An employee may choose to take his or her gross annual salary in accordance with the arrangements applying to Flexible Remuneration Packaging as:
  - (i) annual salary; or
  - (ii) a combination of annual salary and non-cash benefits, in accordance with the policy parameters issued by the employer, such as are available to non-public benevolent institution employees.
- (e) The total cost to the employer of each person’s annual salary, and non-cash benefits under this provision shall not exceed the gross annual salary payable under paragraph 2(a).

**(3) Payment for Extra Duty**

- (a) An employee will only be entitled to payment for extra duty if this is provided in the Contract of Employment and suitable records of attendance are maintained in accordance with paragraph 6.
- (b) Payment for extra duty will only be payable in exceptional and special circumstances on an as incurred basis and subject to the limitation of the staff salary allocation provided for in the Chief Minister's Arrangements made under Section 10; subsection 10(2) of the Act.

**(4) Leave Loading**

- (a) An employee is entitled to the payment of a leave loading as provided for in the Contract of Employment.
- (b) Leave loading may be paid as an additional annual allowance which will accrue and be paid by fortnightly instalments, or by a lump sum. In the case of a lump sum a pro-rata payment may be made when 5 days accrued leave is taken.
- (c) If an entitlement to a leave loading is provided, an employee shall be entitled to an amount of annual leave loading which is the lesser of:
  - (i) fortnightly salary divided by fortnightly hours, multiplied by the number of hours recreation leave accrued per year multiplied by 0.175; or
  - (ii) the maximum leave bonus, as at 1 January of the year of payment, as specified in accordance with the *Australian Government Employment Award (Recreation Leave - Additional Payment) Award 1986*, made by the Australian Industrial Relations Commission in accordance with the former *Industrial Relations Act 1988* (Cwlth), as varied from time to time.
  - (iii) In the case of part-time employees, the amounts specified in paragraph 4(c) are to be reduced by the ratio of part-time hours to full-time hours.

**(5) Superannuation**

- (a) An employee, who is a member of a superannuation fund administered by the Commonwealth, will not be entitled to have any employer funded superannuation contributions made on their behalf to any fund, apart from those required under the superannuation fund administered by the Commonwealth.
- (b) Subject to paragraph 5(a) the Contract of Employment will provide for payment of an employer contribution equal to 16% of annual salary to a complying superannuation fund, as set out in Section 45 of the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

**(6) Records of Attendance**

- (a) Employees are required to keep a record of their attendance in a form agreed with the relevant Member except where:
- (i) the Member agrees in writing that the duties of the employee do not warrant the keeping of such records; and
  - (ii) the employee is not eligible to receive payments in addition to salary (eg. overtime payments) which rely on attendance records.
- (b) Employees must work in accordance with the hours of work and working pattern agreed in the Contact of Employment.

**(7) Severance Benefits**

- (a) An employee whose employment is terminated other than through resignation or for an offence which in the view of the Chief Minister, or a person authorised by the Chief Minister for this purpose, would have led to dismissal is entitled to be paid:
- (i) a sum equal to four (4) weeks' salary irrespective of length of service; plus
  - (ii) a sum equal to two (2) weeks' salary for each completed year of continuous service, plus a pro-rata payment for additional completed months of service, up to a maximum of forty eight (48) weeks' salary.
- (b) The severance benefits set out in paragraph 7(a) shall not be payable to employees:
- (i) who are covered by the mobility provisions of Part IV of the *Public Service Act 1922* (Cwth);
  - (ii) who are taken to be on leave without pay from the Australian Capital Territory Public Service; or
  - (iii) who are engaged for fixed periods to fill a vacancy caused by a staff member being absent on leave, or to fill a substantive vacancy pending a permanent appointment.
- (c) A person who receives severance benefits under this provision and is subsequently re-employed under the Act, shall repay to the employer the severance benefit received to the extent that their re-employment covers the same period of time as their severance benefit.

For example, where a person's employment is terminated under this provision and is entitled to severance benefits equal to 10 weeks gross annual salary but is subsequently re-employed 8 weeks after termination then the amount of severance benefit repayable under this provision would be severance benefits equal to 2 weeks gross annual salary.

**(8) Long Service Leave**

- (a) Under the Contract of Employment the employee may elect to receive an additional annual allowance calculated at 2.5% of gross annual salary provided in paragraph 2(b), in lieu of the accrual of Long Service Leave. If an employee elects to receive an annual allowance in lieu of Long Service Leave the entitlement to accrue Long Service Leave is forgone during the period of employment covered by the Contract of Employment.
- (a) An employee who makes no election under paragraph 8(a) shall accrue Long Service Leave.
- (b) An employee who accrues Long Service Leave under a Contract of Employment entered into on or since 1 July 1997, whose employment under the Act is terminated, shall be entitled to payment in lieu for Long Service Leave accrued since 1 July 1997, provided they have completed not less than one year of full or part time service under the Act.
- (c) An employee who accrues Long Service Leave under a Contract of Employment entered into on or since 1 July 1997, and who has service before 1 July 1997 recognised for the purpose of Long Service Leave accrual under 11(b), whose employment under the Act is terminated, shall be entitled to payment in lieu for Long Service Leave accrued before 1 July 1997, provided their aggregate period of employment (including recognised prior service) at the date of termination is not less than ten years.

**(9) Sick Leave**

- (a) An employee may elect to receive either two (2) weeks full pay sick leave and two (2) weeks half pay sick leave per annum, or three (3) weeks full pay sick leave per annum as set out in item 14 of the Schedule to the Contract of Employment.

**(10) Recreation/Annual Leave**

- (a) An employee is entitled to receive an accrual of annual leave for each completed month of service. Accrual will be at the rate of one and two thirds ( $1 \frac{2}{3}$ ) of a day per completed month of service.

**(11) Recognition of Prior Service in Australian parliaments**

- (a) A Member and an employee may agree to enter into or vary a Contract of Employment to recognise prior Australian parliamentary service for the purposes of accrual of certain entitlements under the Contract of Employment.

- (b) Agreements under paragraph 11(a) are subject to the following conditions:
- (i) previous service must have been as a staff member of a Member or Senator of an Australian parliament;
  - (ii) previous service may count towards the accrual of sick leave and long service leave subject to availability under the Contract of Employment;
  - (iii) previous service for which a payment has, or should have, been made may not be recognised except in relation to relevant qualifying periods;
  - (iv) in order to be recognised, the previous service must have terminated no more than:
    - ⇒ two months prior to commencement of employment under the *Legislative Assembly (Member's Staff) Act 1989* in relation to sick leave benefits; and
    - ⇒ one year prior to commencement of employment under the *Legislative Assembly (Member's Staff) Act 1989* in relation to long service leave benefitsunless the Chief Minister agrees that an alternative period is appropriate in the circumstances.

**(12) Duties**

- (a) The duties of an employee will be the duties as provided in clause 4.2 of the Contract of Employment.

**(13) Exclusive Employment**

- (a) Employment will be exclusive in the terms provided in clause 6 of the Contract of Employment which allows for other forms of concurrent employment as long as it is with the agreement of the relevant Member.

**(14) Hours of Duty**

- (a) The hours of duty and working pattern of an employee, will be the hours of duty and working pattern as provided in clause 10 of the Contract of Employment

**(15) Review of Contract of Employment**

- (a) The Contract of Employment for an employee will be reviewed in accordance with clause 12 of the Contract of Employment.

**(16) Suspension and Discipline**

- (a) Suspension and discipline of an employee will occur in accordance with clauses 17 and 18 respectively, of the Contract of Employment.

**(17) Disclosure of Information**

- (a) An employee is subject to the disclosure of information arrangements as provided in clause 24 of the Contract of Employment.

**(18) Dispute Resolution**

- (a) Disputes relating to matters provided in the Contract of Employment will be resolved in accordance with the provisions of clause 28 of the Contract of Employment.