

1989

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY (MEMBERS' STAFF) BILL 1989
EXPLANATORY MEMORANDUM

(Circulated by authority of Ms Rosemary Follett,
the Chief Minister)

LEGISLATIVE ASSEMBLY (MEMBERS' STAFF) BILL 1989

OUTLINE

1. The purpose of this Bill is to create a legislative scheme for :

- a) the engagement of consultants to provide services for Ministers of the Territory;
- b) the employment of staff by;
 - i) Ministers
 - ii) other office-holders in the Government and Opposition and
 - iii) Members of the Legislative Assembly.

2. It is divided into the following Parts -

- Part I - Preliminary
- Part II - Ministerial consultants
- Part III - Staff of office-holders
- Part IV - Staff of Members
- Part V - Miscellaneous

Part II, III and IV (the substantive Parts of the Bill) are largely based on the respective corresponding Parts of the Members of Parliament (Staff) Act 1984 of the Commonwealth.

3. Under Part II of this Bill, Ministerial consultants (either persons or companies) will be engaged by Ministers after approval by the Chief Minister of written agreements specifying the duties they will perform (clause 4). The terms and conditions of the engagement will be determined by the Head of Administration (clause 5) except for superannuation (clause 8). Engagements will be for periods of up to three years, with special provisions for the termination of the consultancy (clause 9).

4. Part III provides that the staff of office-holders (being the holders of the offices defined in clause 3) will be employed by written agreements (clause 11). The terms and conditions of employment are to be the same as the terms and conditions applying to an officer in the Australian Public Service (APS) having an equivalent classification to that specified in the employment agreement (clause 12) except for superannuation (clause 13) and the termination of the employment (clause 14) or as otherwise varied by the Chief Minister.

5. Under Part IV, staff employed by Members will be subject to the same requirements as those specified in Part III.

FINANCIAL STATEMENT

6. The Bill has no financial implications because it only formalises existing consultancy and staff arrangements.

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CLAUSE NOTES

PART I - Preliminary

Clause 1: Short Title

Cites the short title of the Act as the Legislative Assembly (Members' Staff) Act 1989.

Clause 2: Commencement

Provides that the Act commences on the day it is gazetted.

Clause 3: Interpretation

Deals with the interpretation of certain terms used in the Act.

Part II - Ministerial Consultants

Clause 4 - Minister may engage consultants

Provides that a Minister may, under written contract, engage a person, company or firm as a consultant. However, this power may be exercised only in accordance with arrangements approved, and conditions determined by the Chief Minister. A written agreement for the engagement of a consultant shall include provisions specifying the tasks that the consultant is engaged to perform under the supervision of the Minister or the administrative head of the Minister's Department.

Clause 5 - Terms and conditions of engagement

The terms and conditions (not specifically dealt with by the Act) applying to a person engaged as a consultant are to be determined by the Head of Administration. Similarly, terms and conditions applying to a company or firm are determined by that Head. Such terms and conditions are to be specified in the written agreement of engagement, and such an agreement may be varied in such manner as provided in the agreement.

Clause 6 - Natural persons may be engaged under contracts of employment or contracts for services

The clause permits a consultant to be engaged under a contract of employment or under a contract for the provision of services.

Clause 7 - Engagement of natural persons under contracts of employment

A consultant who is engaged under a contract of employment may be full-time or part-time. A term or condition of engagement of such a person may be specified by reference to the entitlement the person would have if an Act specified in the agreement (with or without modifications) applied.

Clause 8 - Superannuation

A Minister may determine that the written agreement applying to an individual engaged under a contract of employment will contain provisions determined by the Minister, in accordance with any arrangements approved by the Chief Minister, which provide superannuation benefits (or benefits of that nature) to the individual.

Clause 9 - Termination of engagement

The engagement of a consultant automatically terminates if the Minister by whom the consultant was engaged dies, ceases to hold ministerial office or changes portfolios, unless the Chief Minister directs in writing that the engagement shall be deemed not to have terminated, or to continue until a specified date (eg, to permit a winding-down period or to allow for other special circumstances). If a consultancy does not terminate as provided above, it will terminate at the end of the period (not exceeding 3 years) specified in the agreement under which the consultant was engaged.

Part III - Staff of Office Holders

Clause 10 - Determinations by Chief Minister

This clause enables the Chief Minister to determine that a Member, in the light of the nature of his or her parliamentary duties as a member of the Assembly, may employ staff under the Part.

Clause 11 - Office-holders may employ staff

This clause provides power for an office-holder, on behalf of the Territory, to employ persons under agreements in writing, in

accordance with arrangements approved by the Chief Minister and subject to any conditions determined by the Chief Minister. Under clause 3 office-holders are defined as Ministers and persons in respect of whom the Chief Minister has made a determination under clause 10.

Clause 12 - Terms and conditions of employment

Subclause (1) provides that, subject to certain exceptions the terms and conditions of employment of a person employed by an office-holder are to be the same as the terms and conditions applying to an office in the APS having an equivalent classification to that specified in the employment agreement.

Subclauses (2) and (3) enable the Chief Minister to vary by determination the terms and conditions applying under the Part.

Clause 13 - Superannuation

The clause provides that an employment agreement under clause 11 may include provisions, determined by the relevant office-holder, providing superannuation benefits in the same manner as clause 8.

Clause 14 - Termination of employment

This clause provides for termination of employment of a staff member where an office-holder dies, ceases to be an office-holder or the relevant determination by the Chief Minister is revoked. The clause also provides for termination by written notice by the office-holder to the person employed. Nonetheless, subclause (6) allows the Chief Minister to direct that the employment continue for a period .

Clause 15 - Power to employ electorate staff not affected

This clause provides that the power to employ staff exercised by office-holders under the Part is not to affect the power of an office-holder who is a Member to employ electorate staff.

Part IV - Staff Of Members

Clause 16 - Members may employ staff

This clause provides that a Member may, on behalf of the Territory, employ persons under agreements in writing. This power must be exercised in accordance with arrangements approved by the Chief Minister and is subject to such conditions as are determined by the Chief Minister.

Clause 17 - Terms and conditions of employment

Clause 18 - Superannuation

Clause 19 - Termination of employment

These clauses make similar provision to that made by clauses 12 to 14 in respect of persons employed by office-holders under Part III.

Part V - Miscellaneous

Clause 20 - Annual Report

This clause requires the Chief Minister to have an Annual Report prepared listing consultants engaged under clause 4, the terms of their engagements and the nature of their duties.

Clause 21 - Powers may be exercised by authorised person

This clause makes provision for Members to delegate a power conferred on the office-holder or member by Part III or IV of the Bill.

Clause 22 - Regulations

This clause gives the Executive a regulation making power.