

**Instrument NO. 138 OF 1997**

**AUSTRALIAN CAPITAL TERRITORY**

**DETERMINATION No 1/1997**

**Section 11(2)**

***LEGISLATIVE ASSEMBLY (MEMBERS' STAFF) ACT 1989***

Under sub-section 11(2) of the *Legislative Assembly (Members' Staff) Act 1989* (the Act) I revoke the Determinations made previously under sub-section 11(2) of the Act, listed in Schedule 1 to this Determination with the subject listed in Column 1, made on the date listed in Column 2 by the person named in Column 3

I determine that the terms and conditions of employment of persons employed under Part III of the Act are varied in the manner set forth in Schedule 2 to this Determination

This Determination shall have effect from 1 July 1997

Dated this

26<sup>th</sup>

day of

JUNE

1997



Kate Carnell  
Chief Minister

**SCHEDULE 1****Revocation of Determinations**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
Record of Attendance	4 December 1990	Trevor Thomas Kaine
Special Recreation Leave	1 April 1993	Rosemary Follett
Part-time employment	22 April 1993	Rosemary Follett
SES bonus in lieu of any performance based pay	18 February 1994	Rosemary Follett
Severance pay benefits	12 January 1995	Rosemary Follett
Senior Officer Grade A,B,C ACTGS Equivalent	1 July 1995	Kate Carnell
Senior Officer Grade A,B,C Annual Allowance	1 July 1995	Kate Carnell
Public Affairs stream - annual allowance	4 March 1996	Kate Carnell



## SCHEDULE 2

### Terms and Conditions of Employment

#### 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 mean an employee to whom this Determination applies

“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) The 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(2) of the (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, as described in the information on Flexible Remuneration Packaging of Staff employed by Members under the Legislative Assembly (Members’ Staff) Act 1989, 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 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.
- (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(2) of the Act

**(4) Leave Loading**

- (a) An employee will only be entitled to the payment of a leave loading if this is provided in the Contract of Employment
- (b) If an entitlement to a leave loading is provided, the amount of the leave loading will be paid as an additional annual allowance which will accrue and be paid by fortnightly instalments
- (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/ fortnightly hours x number of hours recreation leave accrued per year x 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 (Cth), as varied from time to time
  - (iii) In the case of part-time employees, the amounts specified in (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 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*) Cth).



**(6) Records of Attendance**

- (a) Employees are required to maintain a record of attendance in a form approved by the relevant Member
- (b) Employees will work in accordance with the hours of work and working pattern agreed in the Contact of Employment

**(7) Severance Benefits**

- (a) The following severance benefits shall be payable to employees, 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

<b>Length of Service under the Act</b>	<b>Severance Benefit</b>
Less than 1 year	2 weeks Gross annual salary
1 year or more but less than 2 years	6 weeks Gross annual salary
2 years or more but less than 3 years	8 weeks Gross annual salary
3 years or more but less than 4 years	10 weeks Gross annual salary
4 years or more but less than 5 years	11 weeks Gross annual salary
5 years or more but less than 10 years	12 weeks Gross annual salary
10 years or more	15 weeks Gross annual salary

- (b) The severance benefits set out in (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* of the Commonwealth,
  - (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 a severance benefit under this provision shall not be employed in the ACT Public Service either for a period which equates to the severance benefit received under this Determination or by agreement in writing to repay to the employer the proportion of the severance benefit which equates to the equivalent period which overlaps with the re-employment by the Territory.
- (d) 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 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 foregone during the period of employment covered by the Contract of Employment
- (b) An employee who makes no election under (a) shall accrue Long Service Leave

**(9) Duties**

- (a) The duties of an employee will be the duties as provided in clause 4 2 of the Contract of Employment

**(10) 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

**(11) 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

**(12) 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

**(13) Suspension and Discipline**

- (a) Suspension and discipline of an employee, will occur in accordance with clauses 16 and 17 respectively, of the Contract of Employment



**(14) Disclosure of Information**

- (a) An employee is subject to the disclosure of information arrangements as provided in clause 19 of the Contract of Employment

**(15) Dispute Resolution**

- (a) Disputes relating to matters provided in the Contract of Employment will be resolved in accordance with the provisions of clause 24 of the Contract of Employment



## **LEGISLATIVE ASSEMBLY (MEMBERS STAFF) EMPLOYMENT CONTRACT**

Note This Agreement is of no legal effect without the prior approved endorsement of the Clerk of the Legislative Assembly

This document sets out the terms on which you will be employed by me, pursuant to section 10(1) of the Legislative Assembly (Members Staff) Act 1989

### **1. DEFINITIONS**

1.1 In this Agreement, the following words have the following meanings

- (a) "You" means the person specified in Item One of the Schedule and "your" and "yours" has a corresponding meaning,
- (b) "I" means the person specified in item 2 of the Schedule, for and on behalf of the Australian Capital Territory and "my", "mine" and "me" has a corresponding meaning,
- (c) "Act" means the Legislative Assembly (Members Staff) Act 1989,
- (d) "Determination" means any relevant determination made pursuant to the Act,
- (e) "Agreement" means this Agreement and includes any attachments or schedules,
- (f) "Direction" means any relevant direction given pursuant to the Act

### **2. APPLICATION OF ACT, DETERMINATIONS AND DIRECTIONS**

2.1 The terms and conditions of your employment are regulated by

- (a) this Agreement;
- (b) the Act,
- (c) any Determinations,
- (d) any Directions, and
- (e) other applicable laws

2.2 Where there is an inconsistency with the terms of this Agreement and the terms of either the Act or any Determination or Direction, the terms of the Act or the Determination or Direction prevail





**3. TERM**

3 1 This Agreement commences on the date specified in Item 3 of the Schedule and continues for the period specified in Item 4 of the Schedule unless terminated earlier in accordance with this Agreement, the Act or any Determination

**4. POSITION AND DUTIES**

4 1 You are employed in the position specified in Item 5 of the Schedule pursuant to Part III of the Act

4 2 Your duties are as set out in Item 5 of the Schedule or such other duties as may be specified by me from time to time having regard to your skills, competence and training

In performing the duties set out in clause 4 2, you will

- (a) be punctual,
- (b) act with propriety, honesty and integrity,
- (c) act with fidelity and good faith to me,
- (d) perform diligently and to the best of your skill and ability,
- (e) obey all lawful commands reasonably incidental to the position or the performance of the duties,
- (f) comply with the terms and conditions of your employment,
- (g) notify me of any illness or medical condition affecting you which reduces your ability to carry out the duties or obligations under this Agreement,
- (h) notify me of any restrictions, by statute, court order, contract, or deed on your legal capacity to perform the full range of duties set out in clause 4 2,
- (i) not misuse or misappropriate Territory property

**5. EMPLOYEE WARRANTS**

5 1 The employee warrants that he or she,

- (a) is and will continue to be a fit and proper person, and
- (b) has discussed with the Member the issue of prior criminal convictions and has disclosed to the Member such convictions the Member has requested at the time



of the signing of this contract The Member agrees to keep such information strictly confidential

**6. EXCLUSIVE EMPLOYMENT**

- 6 1 During the period of this Agreement, you will not be employed or engaged by any other person in any other capacity without my prior written approval nor will you engage in any business or undertaking without my prior written approval
- 6 2 You must not accept any payment or other benefit in money or in kind from any person as an inducement or reward for any act or forbearance or in connection with your employment
- 6 3 You must avoid any conflict of interest and advise me of any potential conflict situation

**7. REMUNERATION**

- 7 1 You are entitled to the following total remuneration, subject to the terms of any Determination made by the Chief Minister under the Act
- Gross Annual salary as provided in Item 6 of the schedule to this Agreement,
  - Extra Duty as provided in Item 9 of the schedule to this Agreement, and
  - Annual Leave Loading as provided in Item 10 of the schedule to this Agreement

**8. FLEXIBLE REMUNERATION PACKAGING**

- 8 1 You are entitled to participate in arrangements for Flexible Remuneration Packaging in accordance with the existing arrangements for Flexible Remuneration Packaging

**9. SUPERANNUATION.**

- 9 1 You will be eligible to participate in Superannuation arrangements as set out in Item 7 of the Schedule

**10. HOURS OF WORK.**

- 10.1 You are employed to work the number of hours set out in Item 8 of the Schedule
- 10 2 You are expected to work such reasonable hours as are required to meet the requirements of your job
- 10 3 Payment for extra duty will only be available where it is agreed on a case by case basis and provided in Item 9 of the Schedule, where there are exceptional and special circumstances
- 10.4 You will work in accordance with the working pattern set out in Item 8 of the Schedule



## **11. LEAVE LOADING**

11 1 You are entitled to the leave loading as set out in Item 11 of the Schedule

## **12. REVIEW**

12 1 I will conduct review of your performance and Total Remuneration at least annually in consultation with you.

12 2 After the review I will inform you in writing within two (2) weeks of

(a) your performance to date, and

(b) whether, and if so what, changes will be made to your Total Remuneration

12.3 Any changes to your Total Remuneration will take effect thirty (30) days from my written notice to you under clause 12 2(b)

## **13. TERMINATION BY YOU**

13 1 You may terminate this Agreement for any reason whatsoever on giving the period of written notice specified in Item 12 of the Schedule

13 2 If you do not agree to the changes in your Total Remuneration you may, by fourteen (14) days written notice to me, terminate this Agreement The fourteen (14) days written notice should be provided so that it concludes prior to the thirty (30) days provided in 12 3

## **14. AUTOMATIC TERMINATION**

14 1 Subject to the Act, this Agreement terminates automatically if any of the circumstances specified in sections 8(1), 8(2) or 13(1) of the Act apply

## **15. TERMINATION BY THE EMPLOYER**

15 1 Subject to the Act, I may terminate the Agreement without notice or pay in lieu where you are guilty of misconduct justifying dismissal without notice in accordance with the Workplace Relations Act 1996 (Commonwealth)

15.2 In any other case, I may terminate this Agreement on payment of the severance payment prescribed in any Determination and by giving the required notice period in accordance with the Workplace Relations Act 1996 (Commonwealth)

15 3 On termination of employment, however occurring, you will immediately deliver to me all work related property belonging to the Australian Capital Territory which is in your possession or control



**16. SUSPENSION**

16 1 I may by written notice, suspend you from duty with or without pay at any time on terms and conditions specified by me if in my reasonable opinion you are or may be guilty of misbehaviour.

16 2 The notice of suspension will include

- (a) the reason(s) for the suspension, and
- (b) the review or expiry date for the suspension

**17. DISCIPLINE**

17 1 If, in my reasonable opinion you have committed a serious breach of the terms and conditions of this Agreement or you are guilty of misbehaviour, I may discipline you without terminating the Agreement by

- (a) withholding or reducing any of the benefits or payments to you under this Agreement for a specified period of time
- (b) suspending you without pay from any duties or obligations which would ordinarily be required to be performed by the Employee under this Agreement
- (c) Altering your duties
- (d) Taking any other action deemed appropriate by me

**18. LONG SERVICE LEAVE (Allowance in Lieu)**

18 1 You may elect to be paid an annual allowance of 2.5% of the value of your gross annual salary which will accrue and be paid by fortnightly instalments as set out in item 10 of the schedule to this Agreement

**19. DISCLOSURE**

19 1 You will not, except so far as is necessary and proper to perform your duties under this Agreement, or as required by law or by me, make public or disclose to any person any information relating to

- a) me and my affairs, or
- b) the Australian Capital Territory and its affairs.

19 2 You will use your best endeavours to prevent the use or disclosure of any such information referred to in paragraph 19 1 above by third parties

19 3 Upon cessation of your employment, you will hand over to me all information, in any form, of the kind specified in 19 1 in your possession or control

## **20. OTHER EMPLOYMENT MATTERS**

20 1 Your rights and obligations in respect of the following matters are set out in the attached Determination made by the Chief Minister pursuant to section 11 (2) of the Act

- (a) Records of Attendance
- (b) Severance Benefits

## **21. NO WAIVER**

21 1 Failure or omission by either of us to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of either of us to seek redress for any breach of any such provision

## **22. GOVERNING LAW**

22 1 This Agreement is to be governed by the law of the Australian Capital Territory

## **23. NOTICES**

23 1 All notices, consents, approvals, agreements or other communications by or to the respective parties to the Contract will be in writing and addressed to the relevant party at their usual address, or such other address as may from time to time be specified by the party in writing.

23 2 All notices, consents, approvals, agreements or other communications delivered in accordance with clause 23 1 are deemed to be duly given or made as follows

- (a) in the case of delivery in person - when delivered, or
- (b) in the case of delivery by post - on the first business day on which the notice would have been received in the ordinary course of the mail, or
- (c) in the case of delivery by facsimile transmission - either
  - (i) on receipt by the sender of a written communication transmission report from the sending facsimile machine indicating successful transmission to the recipient's facsimile number, or
  - (ii) if the time of receipt of the written communication transmission report from the sending facsimile machine indicating successful transmission to the recipient's facsimile number is after 4 00pm - at the commencement of business on the next business day



**24. DISPUTE RESOLUTION**

- 24 1 If a dispute arises out of or relates to this Agreement (other than a dispute relating to termination of employment), we will first endeavour to settle the dispute by mediation
- 24 2 The mediator will be as agreed between us. If we do not agree on the mediator within fourteen (14) days, the mediator will be as appointed by the Deputy Registrar of the Australian Industrial Relations Commission
- 24 3 Either of us may be represented in a mediation by a duly qualified legal practitioner or other representative
- 24 4 If the dispute is settled by mediation, reasonable costs of mediation will be paid by the Australian Capital Territory. In all other events, the costs of mediation will be determined by the mediator

Dated                      of                      19

Signed by the Member

In the presence of

Signed by the employee

In the presence of

Signed    Clerk of the Legislative Assembly

Date

(To be signed and dated by the Clerk before execution by the Parties)



## **SCHEDULE**

**Item 1**

**Name Employee:**

**Address of Employee:**

**Date of Birth of Employee:**

**Item 2**

**Name and Details of Member:**

**Item 3**

**Commencement Date:**

**Item 4**

**Period of Agreement:**

**Item 5**

**Position Employed and Duties to be Performed:**

**Item 6**

**Gross Annual Salary (paid by fortnightly instalments, except for non cash benefits):**

*Note: This includes any non-cash benefits to which the employee is entitled under flexible remuneration arrangements*

**Item 7**

**Superannuation Arrangements :**

**Item 8**

**Hours of Work:**

**Working Pattern:**

**Item 9**

**Extra Duty (paid on an as incurred basis):**



**Item 10**  
**Long Service Leave (if annualised allowance is to be paid)**

**Item 11**  
**Leave Loading (paid by fortnightly instalments):**

**Item 12**  
**Period of Notice for Resignation:**

