



Legislative Assembly (Members' Staff) Act 1989

**TERMS AND CONDITIONS OF EMPLOYMENT OF STAFF OF OFFICE-HOLDERS
PURSUANT TO SECTION 6(2)**

Instrument No. DI2002-124

Pursuant to subsection 6(2) of the *Legislative Assembly (Member's Staff) Act 1989* ("the Act"):

- (1) I REVOKE Determination Number 50 of 2001 approved on 27 March 2001; and
- (2) I DETERMINE that persons employed under Part 2 of the Act shall be employed in accordance with the terms of employment set out in the Schedule to this determination.

This Determination has effect from 1 July 2002, except insofar as it affects the rights of an employee in a manner prejudicial to that employee or imposes liabilities on an employee in respect of any act or omission before the date of notification of this Determination.

Dated this 27th day of June 2002

Jon Stanhope MLA
Chief Minister

SCHEDULE

Schedule to the Determination Setting out Terms and Conditions of Employment Of Staff of Office-Holders Pursuant to Subsection 6(2)

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 subsection 5(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 total remuneration provided in clause 7.1 of the Contract of Employment between the relevant Office-Holder and the employee calculated on an annual basis.
- (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) Extra Duty/Electoral Allowance

- (a) An employee is entitled to payment of an allowance in recognition that staff generally, perform electoral duties and work hours in excess of the hours of duty as provided in clause 10.1 of the Contract of Employment.
- (b) The allowance is to be paid to staff in lieu of overtime payment and time off in lieu of extra hours worked.
- (c) The allowance will be paid by fortnightly instalments at the rate of \$3000 for a full year for a full-time employee. Where the number of working days during the period of the Agreement set out in item 3 of the Schedule to the Contract of Employment is less than 261, the full year allowance will be paid on a pro-rata basis calculated in direct proportion to the number of working days during the period specified in the Contract of Employment.
- (d) In the case of part-time employees, the amounts specified in paragraph 3(c) are to be reduced by the ratio of part-time hours to full-time hours.

(4) Leave Loading

- (a) An employee is entitled to the payment of a leave loading as provided for in clause 19.1 of 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 five (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) 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 6(a) shall not be payable to employees:
 - (i) who are covered by the mobility provisions of Part IV of the *Public Service Act 1922* (Cwlth);
 - (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.

(7) Long Service Leave

- (a) Under clause 22.1 of the Contract of Employment the employee may elect to receive an additional annual allowance calculated at two and one half percent (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.
- (b) An employee who makes no election under paragraph 7(a) shall accrue Long Service Leave.

- (c) 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 (1) year of full or part time service under the Act.
- (d) 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 paragraph 10(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 (10) years.

(8) Sick Leave

- (a) Under clause 20.1 of the Contract of Employment 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 13 of the Schedule to the Contract of Employment.

(9) Recreation/Annual Leave

- (a) Under clause 21.1 of the Contract of Employment 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 2/3) of a day per completed month of service.

(10) Recognition of Prior Service in Australian Parliaments

- (a) An Office-Holder 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 as provided in clause 23.1 of the Contract of Employment.
- (b) Agreements under paragraph 10(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.

(11) Duties

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

(12) 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 Office-Holder.

(13) 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.

(14) 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.

(15) 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.

(16) Disclosure of Information

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

(17) 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.

**LEGISLATIVE ASSEMBLY (MEMBERS' STAFF) EMPLOYMENT CONTRACT –
STAFF OF OFFICE-HOLDERS**

Note: This Agreement is of no legal effect without the prior endorsement of the Chief Minister or, if it relates to the employment of staff by the Speaker, the Clerk of the Assembly.

This Agreement sets out the terms on which I will employ you, pursuant to subsection 5(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 1 of the Schedule to this Agreement and “your” and “yours” have corresponding meanings;
- (b) “I” means the person specified in item 2 of the Schedule to this Agreement, for and on behalf of the Australian Capital Territory and “my”, “mine” and “me” have corresponding meanings;
- (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) the Act;
- (b) any Determinations;
- (c) any Directions;
- (d) this Agreement; and
- (e) other applicable laws

2.2 Where there is an inconsistency between any of the documents or laws specified in clause 2.1, those documents or laws will have the following order of precedence:

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

3. TERM

3.1 This Agreement is for the period specified in item 3 of the Schedule to this Agreement 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 4 of the Schedule to this Agreement pursuant to Part II of the Act.

4.2 Your duties are as set out in item 4 of the Schedule to this Agreement 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 your 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 UNDERTAKINGS

5.1 You undertake that you:

- (a) are and will continue to be a fit and proper person to be an employee under this Agreement; and
- (b) have discussed with me the issue of prior criminal convictions and have disclosed to me your convictions (if any). I agree to keep such information strictly confidential.

6. EXCLUSIVE EMPLOYMENT

- 6.1 During the period of this Agreement, you must 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 fortnightly salary as provided in item 5 of the Schedule to this Agreement;
- Extra Duty/Electoral Allowance as provided in item 8 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 6 of the Schedule to this Agreement.

10. HOURS OF WORK.

- 10.1 You are employed to work the number of hours set out in item 7 of the Schedule to this Agreement.
- 10.2 You are expected to work such reasonable hours as are required to meet the requirements of your job.
- 10.3 You will work in accordance with the working pattern set out in item 7 of the Schedule to this Agreement.

11. EXTRA DUTY/ELECTORAL ALLOWANCE

- 11.1 You are entitled to receive an allowance as provided in item 8 of the Schedule to this Agreement. The allowance will be paid by fortnightly instalments at the rate of \$3000 for a full year for a full-time employee. The allowance will be calculated on a pro-rata basis where the hours of work set out in item 7 of the Schedule to this Agreement are less than full-time or the number of working day during the period set out in item 3 of the Schedule to this Agreement is less than 261.

12. REVIEW

- 12.1 I will conduct a 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 11 of the Schedule to this Agreement.
- 13.2 If you do not agree to the changes in your total remuneration notified to you under clause 12.2(b) you may, by fourteen (14) days written notice to me, terminate this Agreement. The fourteen (14) days written notice must be provided so that it concludes prior to the thirty (30) days provided in clause 12.3.

14. AUTOMATIC TERMINATION

- 14.1 Subject to the Act, this Agreement terminates automatically if any of the circumstances specified in subsections 8(1) or 8(2) 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* (Cwlth).
- 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* (Cwlth).
- 15.3 On termination of employment, however occurring, you will immediately deliver to me all work-related property belonging to me or to the Australian Capital Territory which is in your possession or control.

16. SEVERANCE BENEFITS

- 16.1 Your rights and obligations in respect of the severance benefits are as set out in the relevant Determination made by the Chief Minister pursuant to subsection 6(2) of the Act.

17. SUSPENSION

- 17.1 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.
- 17.2 The notice of suspension will include:
- (a) the reason(s) for the suspension; and
 - (b) the review or expiry date for the suspension.

18. DISCIPLINE

- 18.1 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.

19. LEAVE LOADING

19.1 You are entitled to the leave loading as set out in item 10 of the Schedule to this Agreement.

20. SICK LEAVE

20.1 You are entitled to sick leave in accordance with item 13 of the Schedule to this Agreement.

21. RECREATION/ANNUAL LEAVE

21.1 You are 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 2/3) of a day per completed month of service

22. LONG SERVICE LEAVE

22.1 You may elect to accrue long service leave or be paid an annual allowance of two and one half percent (2.5%) of the value of your gross annual salary, which will accrue and be paid by fortnightly instalments, in accordance with item 9 of the Schedule to this Agreement.

23. RECOGNITION OF PREVIOUS AUSTRALIAN PARLIAMENTARY SERVICE

23.1 I may agree to recognise your previous Australian parliamentary service for the purpose of determining the accrual of certain entitlements. My agreement shall be set out in item 12 of the Schedule to this Agreement or otherwise provided in writing.

24. DISCLOSURE

24.1 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.

24.2 You will use your best endeavours to prevent the use or disclosure of any such information referred to in clause 24.1 above by third parties.

24.3 Upon cessation of your employment, you will hand over to me all information, in any form, of the kind specified in clause 24.1 in your possession or control.

25. NO WAIVER

25.1 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.

26. GOVERNING LAW

26.1 This Agreement is to be governed by the law of the Australian Capital Territory.

27. NOTICES

27.1 All notices, consents, approvals, agreements or other communications by or to the respective parties to the Agreement 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.

27.2 All notices, consents, approvals, agreements or other communications delivered in accordance with clause 27.1 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.

28. DISPUTE RESOLUTION

28.1 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.

28.2 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.

28.3 Either of us may be represented in a mediation by a duly qualified legal practitioner or other representative.

28.4 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 _____
(date) (month) (year)

Signed by the Office-Holder

In the presence of

Signed by the employee

In the presence of

Signed _____ Chief Minister or Clerk of the Assembly
(delete whichever is appropriate)

Date

(To be signed and dated by the Chief Minister before execution by the Parties, or, if this agreement relates to the employment of staff by the Speaker, to be signed and dated by the Clerk of the Assembly before execution by the Parties)

SCHEDULE

Item 1

Name of employee:

Address of employee:

Date of Birth of employee:

Item 2

Name of Office-Holder:

Item 3

Period of Agreement:

Item 4

Position Employed and Duties to be Performed:

Item 5

Gross Fortnightly Salary (actual salary, not full-time equivalent):

Note: This includes any non-cash benefits to which the employee is entitled under flexible remuneration arrangements, but excludes any extra duty/electoral allowance provided in Item 8.

Item 6

Superannuation Arrangements (include name of fund and, if an existing member, relevant membership details):

Item 7

Fortnightly Hours of Work (full-time is 73.5 hours per fortnight):

Working Pattern (days and times that work will be performed if less than full time):

Item 8

Extra Duty/Electoral Allowance (paid on a fortnightly basis):

Item 9

Long Service Leave (employees may elect for an annualised allowance to be paid in lieu of accrual of long service leave):

Annualised Allowance - Yes/No (strike out the answer that does not apply)

Item 10

Leave Loading (either paid by fortnightly instalments or by lump sum):

Fortnightly Instalments

} (strike out the answer that does not apply)

Lump Sum

Item 11

Period of Notice for Resignation:

Item 12

Recognition of Previous Australian Parliamentary Service

Yes/No (strike out the answer that does not apply)

If yes, supply details of previous employment.

Item 13

Sick leave

Two weeks full and two weeks half pay per annum

} (strike out the answer that does not apply)

Three weeks full pay per annum