

Australian Capital Territory

Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2004 (No 2)

Disallowable instrument DI2004-124

made under the

Legislative Assembly (Members' Staff) Act 1989, s 10 (2) (Members may employ staff) and s 20 (3) (Members may engage consultants and contractors)

1 Name of instrument

This instrument is the *Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2004 (No 2)*.

2 Commencement

This instrument commences on the day after its notification day.

3 Dictionary

The dictionary at the end of this instrument is part of this instrument.

Note 1 The dictionary at the end of this instrument defines certain terms used in this instrument.

Note 2 A definition in the dictionary applies to the entire instrument unless the definition, or another provision of the instrument, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this instrument is explanatory and is not part of this instrument.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Revocation

Instrument DI2004-33 is revoked.

6 Determination for Act, s 10 and s 20

This instrument determines conditions subject to which a member may, on behalf of the Territory, hire staff, contractors or consultants under the Act, section 10 or section 20.

7 Application during rest of year ending 30 June 2005

- (1) The conditions determined by this instrument apply to a member while the member holds a position (the *relevant position*) mentioned in schedule 1 for a period or periods (the *period or periods of office*) within the time beginning on the day this instrument commences and ending on 30 June 2005.
- (2) If the member holds 2 or more relevant positions within the time mentioned in subclause (1), the conditions determined by this instrument apply in relation to the period or periods of office for each relevant position, considered separately.

8 Salary cap

- (1) A member may, on behalf of the Territory, hire staff, consultants or contractors during the period or periods of office only while the total amount payable for salary and payments, excluding overtime payments, to all staff, consultants and contractors under the member's hire while the member holds the relevant position during the financial year does not exceed the amount (the **salary cap**) worked out in accordance with the formula in subclause (2).

- (2) The formula for working out the salary cap is—

$$\text{salary cap} = \$ \frac{\text{annual salary allocation}}{261} \times \text{working days}.$$

- (3) In subclause (2):

annual salary allocation means the annual salary allocation stated in schedule 1 for the relevant position.

working days means the number of working days the member holds the relevant position in the financial year.

- (4) Despite subclause (1), the Chief Minister may, by written notice to a member, allow the total amount payable for salary and payments, excluding overtime payments, to all staff, consultants and contractors under the member's hire while the member holds the relevant position during the financial year to exceed the salary cap.
- (5) The Chief Minister may only allow the salary cap to be exceeded if—
- (a) an employee on the member's staff takes, or is to take, a period of paid leave exceeding 4 continuous weeks during the financial year; and
 - (b) the member hires, or is to hire, a replacement employee, contractor or consultant during the employee's absence on paid leave; and

- (c) the amount by which the salary cap is exceeded, or is to be exceeded, is no more than the amount of salary or payments, excluding overtime payments, payable to the replacement for work performed by the replacement during that period; and
- (d) the Chief Minister considers on reasonable grounds that—
 - (i) the requirement for leave is beyond the member's control; and
 - (ii) the member would be, or would have been, unable to exercise his or her functions as a member without hiring the replacement during the employee's absence on paid leave.

9 Overtime cap

- (1) A member may, on behalf of the Territory, authorise staff to work overtime during the period or periods of office only while the total amount payable (including amounts payable as back pay) to all staff under the member's hire for overtime worked while the member holds the relevant position during the financial year does not exceed the amount (the ***overtime cap***) worked out in accordance with the formula in subclause (2).
- (2) The formula for working out the overtime cap is—

$$\text{overtime cap} = \$ \frac{\text{annual overtime allocation}}{261} \times \text{working days} .$$

(3) In subclause (2):

annual overtime allocation means the annual overtime allocation stated in schedule 1 for the relevant position.

working days means the number of working days the member holds the relevant position in the financial year.

Note The payment of overtime is also subject to any award or certified agreement under the *Workplace Relations Act 1996* (Cwlth) providing conditions of employment for member's staff.

Dated 25 June 2004.

Jon Stanhope
Chief Minister

Schedule 1 Annual salary and overtime allocations

(see cls 7, 8 and 9)

column 1 item	column 2 position	column 3 annual salary allocation	column 4 annual overtime allocation
1	leader of the opposition	\$319 031	\$22 332
2	deputy leader of the opposition	\$128 367	\$8 986
3	crossbench member	\$166 151	\$11 631
4	other member	\$115 014	\$8 051

Dictionary

(see cl 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this instrument.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- function
- working day.

Note 3 Terms used in this instrument have the same meaning that they have in the *Legislative Assembly (Members' Staff) Act 1989* (see Legislation Act, s 148). For example, the following terms are defined in the *Legislative Assembly (Members' Staff) Act 1989*, s 3:

- Assembly
- office-holder.

crossbench member means a member other than any of the following:

- (a) a member of the Australian Labor Party;
- (b) a member of the Liberal Party of Australia.

deputy leader of the opposition means the deputy leader of the largest party in the Assembly not forming the Government.

financial year means the year beginning on 1 July 2004 and ending on 30 June 2005.

hire, in relation to an employee on a member's staff, or a contractor or a consultant, means—

- (a) employ the employee; or
- (b) engage the contractor or consultant.

leader of the opposition means the leader of the largest party in the Assembly not forming the Government.

member means a member of the Assembly other than an office-holder.

other member means a member other than any of the following:

- (a) the leader of the opposition;
- (b) the deputy leader of the opposition;
- (c) a crossbench member.

overtime means overtime for which an amount is paid or payable under an award or certified agreement under the *Workplace Relations Act 1996* (Cwlth).

overtime cap—see clause 9 (1).

period or periods of office—see clause 7 (1).

relevant position—see clause 7 (1).

salary cap—see clause 8 (1).