

Legislative Assembly (Members' Staff) Variable Terms Of Employment Of Office-holders' Staff Determination 2021 (No 1)

Disallowable instrument DI2021-184

made under the

Legislative Assembly (Members' Staff) Act 1989, s 6 (3) (Terms of employment)

1 Name of instrument

This instrument is the *Legislative Assembly (Members' Staff) Variable Terms of Employment of Office-holders' Staff Determination 2021 (No 1)*.

2 Commencement

This instrument commences on 1 July 2021.

3 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.

4 Definition

In this instrument:

Act means the *Legislative Assembly (Members' Staff) Act 1989* ('the Act').

ACT Public Service means the service established under section 12(1) of the *Public Sector Management Act 1994*.

head of service means the person engaged as head of service under section 31(1) of the *Public Sector Management Act 1994*.

office-holder means an office-holder of the Legislative Assembly as defined in the *Legislative Assembly (Members' Staff) Act 1989*.

officer means a person who is an officer because of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994*, or who is appointed as an officer under division 5.3 or part 7 of the *Public Sector Management Act 1994*.

5 Revocation

DI2016-276 is revoked.

6 Approval for Act, s 6

This instrument determines the variable terms of employment of part 2 employees under the Act, section 6.

Note Staff are also employed subject to terms of employment under any award or enterprise agreement under the Fair Work Act 2009 (Cth) that applies to the staff of office-holders.

7 Class of persons to whom this determination applies

This determination applies to part 2 employees who are employed by office-holders.

8 Variable terms of employment

- (1) The following variable terms of employment apply to officers granted Leave Without Pay from the ACT Public Service to undertake employment with an office-holder:
 - (a) The period of Leave Without Pay is to count as service for all purposes, provided that entitlements accrued or utilised during the period of Leave Without Pay shall be treated as though accrued or utilised in the ACT Public Service.
 - (b) The officer's accrued personal leave, annual leave and long service leave at the time of commencing Leave Without Pay shall be transferred to his or her employment with an office-holder. The officer is entitled to use his or her transferred leave during his or her period of Leave Without Pay, subject to approval by the office-holder or by an authorised person.
 - (c) On ceasing employment with an office-holder at the end of a period of Leave Without Pay a part 2 employee who is also an officer has the right to:
 - (i) return to employment with the ACT Public Service at his or her substantive classification prior to commencing Leave Without Pay; and
 - (ii) apply to the Head of Service for a determination to be made of his or her classification and rate of pay as an officer upon return to the ACT Public Service, in accordance with arrangements approved by the Head of Service.
 - (d) On the officer's return to employment with the ACT Public Service, any accrued personal leave, annual leave and long service leave, less any utilised leave, will be transferred back to the ACT Public Service.
- (2) The following variable terms of employment apply to part 2 employees whose employment with a Commonwealth department or instrumentality an office-holder has agreed to recognised for leave purposes under item 11 of the employee's Employment Agreement:
 - (a) A part 2 employee who has employment recognised for personal leave purposes will, subject to the relevant allowable break period, be credited with any personal leave balance accrued with a Commonwealth department or instrumentality.

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- (b) A part 2 employee who has employment recognised for annual leave purposes will, subject to the relevant allowable break period, be credited with any annual leave balance accrued with a Commonwealth department or instrumentality.
 - (c) A part 2 employee who has employment recognised for long service leave purposes will, subject to the relevant allowable break period, have their service with a Commonwealth department or instrumentality counted towards the accrual of long service leave as though accrued during the employee's employment with an office-holder.
 - (d) A part 2 employee is entitled to use any such leave which has been transferred from a Commonwealth department or instrumentality under (2) (a), (b) or (c), in accordance with the applicable enterprise agreement, subject to the approval of the office-holder or an authorised person.
 - (e) Any service for which a payment has been made will not be recognised.

Dated

1 July 2021

Andrew Barr
Chief Minister