

# Legislative Assembly (Members' Staff) Speaker's Salary Cap Determination 2004 (No 1)

## Disallowable instrument 32

**Legislative Assembly (Members' Staff) Act 1989, s 5 (2) (Office-holders may employ staff) and s 17 (3) (Office-holders may engage consultants and contractors)**

## EXPLANATORY STATEMENT

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### Legislative Context

The *Legislative Assembly (Members' Staff) Act 1989* ("the Act") provides for the employment of staff, and the engagement of consultants or contractors, by office-holders (Ministers and "the Speaker") of the Legislative Assembly.

Subsections 5(1) and 17(1) of the Act give office-holders the authority to employ staff, and engage consultants and contractors, respectively. Subsections 5(2) and 17(3) provide for the Chief Minister to determine in writing the conditions within which office-holders may exercise that authority. Such a determination is a disallowable instrument.

### Outline

This Instrument revokes Disallowable Instrument DI2003–315 ("DI2003–315") which was notified on 4 December 2003.

The purpose of DI2003–315 was to provide conditions, pursuant to the Act, under which the Speaker may employ staff and engage consultants or contractors for the remainder of the 2003–2004 financial year. These conditions included an overtime cap within which the Speaker may authorise the payment to staff for overtime worked.

There is the potential for uncertainty as to whether the overtime cap, as expressed in DI2003–315, applies on a pro-rata basis from the date of certification of the *ACT Legislative Assembly Members' Staff Certified Agreement 2003–2004* ("the agreement") as intended.

The purpose of this Instrument is to remove any such doubt and to ensure the overtime cap is calculated correctly.

## Conditions

Numbered clause 9(1) provides that the Speaker may authorise staff to work overtime only while the total amount payable (including amounts payable as back pay) to all staff, while the Speaker holds the office during the 2003–2004 financial year, does not exceed the prescribed overtime cap.

Numbered clause 9(2) provides the formula for calculating the overtime cap.

This allocation for paid overtime is intended to replace the extra duty/electoral allowance from the date of certification of the agreement by the Australian Industrial Relations Commission. As the agreement was certified on 5 December 2003, the overtime cap is to be calculated as seven twelfths of the annual amount in the numerator of the formula. This has now been made explicit in the formula of the new Instrument.

Since this Instrument commences on the day after its notification, there is no retrospective prejudicial effect from the new Instrument.

A definition for *overtime* has also been included in the dictionary to the Instrument.