

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

**Disallowable instrument DI2004-33**

**Legislative Assembly (Members' Staff) Act 1989, s 10 (2) (Members may employ staff) and s 20 (3) (Members 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 members of the Legislative Assembly.

Subsections 10(1) and 20(1) of the Act give members the authority to employ staff, and engage consultants and contractors, respectively. Subsections 10(2) and 20(3) provide for the Chief Minister to determine in writing the conditions within which members may exercise that authority. Such a determination is a disallowable instrument.

### **Outline**

This Instrument revokes Disallowable Instrument DI2003–316 ("DI2003–316") which was notified on 4 December 2003.

The purpose of DI2003–316 was to provide conditions, pursuant to the Act, under which non-executive members 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 a member may authorise the payment to staff for overtime worked.

There is the potential for uncertainty as to whether the overtime cap, as expressed in DI2003–316, 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 a member may authorise staff to work overtime only while the total amount payable (including amounts payable as back pay) to all staff, while the member holds the relevant position 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 respective annual amount set out in the schedule to the Instrument. 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.