

# Legislative Assembly (Members' Staff) Member's Salary Cap Determination 2008 (No 2)

**Disallowable instrument DI2008-300**

**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

---

### 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 DI2008–124 which provided conditions under which members may employ staff and engage consultants or contractors, including annual salary allocations, for the 2008–2009 financial year.

This determination supersedes DI2008–124 and provides revised salary allocations and conditions for non-executive members for the specified period. The determination provides:

- (a) a separate allocation for the Greens' Parliamentary Convenor in the Assembly;
- (b) an increased allocation for the Leader of the Opposition; and
- (c) the authority for non-executive members to allocate part or all of their uncommitted salary allocation to another member, and to receive part or all of the uncommitted salary allocation from another member.

Schedule 1 to this determination sets out the annual salary allocations by position.

This determination also provides the authority for non-executive members to carry over up to a maximum of 10% of the member's salary allocation remaining unexpended from the 2007–2008 financial year.

## Conditions

Numbered clause 2 sets the commencement of the instrument as 30 October 2008, the date of commencement of members elected to the seventh Legislative Assembly.

Numbered clause 5 revokes disallowable instrument DI2008–124 on 30 October 2008.

Numbered clause 7(1) sets that the conditions apply to a member while the member holds a position listed in schedule 1 to the instrument during the specified period. The specified period has been amended to provide continuity in the event that the instrument is revoked after 30 June 2009. The amendment provides that the conditions determined by the instrument will cease to operate on 30 June 2009 or the date the instrument is revoked, whichever is the later. The following clauses have been amended accordingly to replace the reference to financial year with period, numbered clause 8(1), the definitions for carry over and working days in clause 8(3), clause 8(4) and clause 8(5)(a).

Numbered clause 7(2) sets that where a member holds two or more positions during this period, the conditions that apply to the period the member holds each relevant position will be considered separately.

Numbered clause 8(1) sets the condition that a member may only employ staff, or engage consultants or contractors, while the total amount payable for salary and payments do not exceed the prescribed salary cap while the member holds the relevant position. Numbered clause 8(1) has been amended to clarify the meaning of period and that the salary cap is an annual amount.

Numbered clauses 8(1) and 8(4) have been amended to delete reference to overtime. To remove any doubt, a note has been added to schedule 1 to clarify that, under the existing arrangements, the amount for the annual salary allocation in the formula includes any paid overtime, but excludes the LAMS Allowance payable under the *ACT Legislative Assembly Members' Staff Union Collective Agreement 2007-2010* and, where an employee elects, the long service leave allowance and annual leave loading.

Numbered clause 8(2) sets the formula for calculating the relevant salary cap. The formula provides that individual members may allocate part or all of the member's uncommitted salary allocation to another member, and to receive part or all of the uncommitted salary allocation from another member, in the form of a salary pledge. A note has been included to remove any doubt that if a member is neither a recipient member nor a pledging member, then the amount of the salary pledge in the formula is nil.

The formula also provides for the carry over by a member of unexpended salary allocation from the 2007–2008 financial year. Numbered clause 8(3) limits the carry over to no more than 10% of the member's annual salary allocation for that financial year. To remove any doubt about the applicable carry over in the circumstance where a member moves from one relevant position to another during the period, the clause also stipulates the carry over, if any, is that which exists in respect of the relevant position to which the member has moved.

Numbered clause 8(3) has been amended to include definitions for the terms salary pledge, pledging member and recipient member.

Numbered clause 8(4) provides that a member may, with the written agreement of the Chief Minister, hire staff and consultants and contractors outside the salary cap in certain circumstances. These circumstances are set out in numbered clause 8(5).

Schedule 1 sets the annual salary allocations for the relevant positions covered by the determination. These positions have been expanded to include a separate allocation for the Greens' Parliamentary Convenor in the Assembly.

The Dictionary at the end of the instrument has been amended to include a definition for Greens' Parliamentary Convenor, and a consequential amendment to the definition of "other member". The Dictionary has also been amended to delete reference to financial year as the applicable period is defined in numbered clause 7(1).