

Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2015 (No 1)

Disallowable instrument DI2015-75

Legislative Assembly (Members' Staff) Act 1989, s 5 (3) (Office-holders may employ staff) and s 17 (4) (Office-holders 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 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(3) and 17(4) provide for the Chief Minister to determine in writing the conditions and arrangements within which office-holders may exercise that authority. Such a determination is a disallowable instrument.

Outline

This instrument revokes disallowable instrument DI2008-102 and puts in place new arrangements. The purpose of the determination is to update the arrangements under which office-holders may agree to employ staff under subsection 5(1), or engage consultants and contractors under subsection 17(1), of the Act.

A new condition has been inserted at clause 8 of the instrument which provides a period of exclusion from re-employment when a part 2 employee receives a termination payment. The period of exclusion is equivalent to the termination payment received in weeks and days. The reason for the period of exclusion is to avoid 'double dipping', that is, where an employee receives a termination payment one day and is re-employed the following day by the same or another Member of the Legislative Assembly. Typically this situation would arise at a general election, or in other circumstances, where the employment of staff is automatically terminated by the operation of the Act.

References in the instrument and schedules to the *Collective Agreement* and to the *Workplace Relations Act 1996* are replaced by *Enterprise Agreement* and *Fair Work Act 2009* respectively.

The definition of enterprise agreement in clause 1.1(d) of schedule 1 to the instrument has been amended by replacing the reference to a specific agreement with a more general reference to applicable industrial agreement made under the Fair Work Act.

The employee obligations at clause 7 of schedule 1 to the instrument have been amended to better reflect the contemporary employment requirements pertaining to staff of office-holders.

Arrangements

Numbered clauses 1 to 4 of the determination contain technical provisions.

Numbered clause 5 of the determination revokes determination DI2008-102.

Numbered clause 6 of the determination sets out the purpose of the instrument is to approve arrangements and conditions under which office-holders may, on behalf of the Territory, employ staff under section 5 of the Act, and engage consultants or contractors under section 17 of the Act.

Numbered clause 7 of the determination makes a requirement that office-holders may only employ staff under an agreement in the form provided in schedule 1 to the determination. Schedule 1 provides the template employment agreement for staff of office-holders.

Numbered clause 8 of the determination provides that where the employment of a part 2 employee is terminated by the operation of subsection 8(1) or 8(2) of the Act and the employee receives a termination payment in accordance with the applicable enterprise agreement, then the employee cannot recommence employment under the Act before the expiration of a period of time that is equivalent to the termination payment received. This is illustrated by the inclusion of an example.

Numbered clause 9(1) of the determination makes a requirement that office-holders may only engage a consultant or contractor under an agreement in the form provided in schedule 2 to the determination. Schedule 2 provides the template contractor and consultant agreement.

Numbered clause 9(2) of the determination sets out the requirements in relation to the authorisation of a contractor or consultant agreement and the requirement that the agreement accord with guidelines issued by the Procurement Board.