

Legislative Assembly (Members' Staff) Deemed Date Of Termination Of Employment Of Office-holders' Staff Direction 2015

Disallowable instrument DI2015-77

Legislative Assembly (Members' Staff) Act 1989, s 8 (6) (Termination of employment)

EXPLANATORY STATEMENT

Legislative Context

The *Legislative Assembly (Members' Staff) Act 1989* (“the Act”) provides for the employment of staff by office-holders (Ministers and “the Speaker”) of the Legislative Assembly. Subsection 5(1) of the Act gives office-holders the authority to employ staff. Section 8 of the Act sets out the time when the employment of such persons terminates.

Subsection 8(6) provides that the Chief Minister may, by written instrument, direct that the employment of a person whose employment is terminated by the operation of subsection 8(1) or 8(2) shall be deemed not to have terminated and that the employment is deemed to have continued, or to continue, until a specified date. Such a direction is a disallowable instrument. Subsection 8(5) of the Act provides that a person may terminate their employment at any time by giving notice in writing.

Outline

At a general election the employment of part 2 employees under the Act is terminated by a combination of the operation of subsection 8(2) of the Act and section 46(1A)(d)(i) and 11(1) of the *Australian Capital Territory (Self-Government) Act 1988*.

A direction was made on 16 December 2005 under subsection 8(6) of the Act, DI2005-292, which provides for a period of deemed continued employment of part 2 employees where their employment would otherwise have terminated by the operation of subsection 8(1) or 8(2) of the Act. The purpose of the direction is to provide for the continuity of part 2 employees' employment between successive Assemblies where their employing office-holder is returned and their employment contract is renewed, and in other circumstances where the employing office-holder ceases to hold office. These circumstances include, for example, where the employing office-holder does not contest a general election, or resigns, or retires or dies.

There is tension within the Act between subsection 8(5), which provides that a part 2 employee may resign at any time by giving notice in writing, and subsection 8(6) which provides that the employment of part 2 employees is deemed to continue until a specified date as outlined above. This tension gives rise to uncertainty concerning the ability of a part 2 employee to resign during a period of deemed continued employment.

The purpose of this direction is to remove any uncertainty arising from this tension. The Instrument revokes DI2005-292 and substitutes a new direction which provides that the deemed continued period of employment ends if a part 2 employee resigns during that period.

The direction also clarifies that the period of deemed continued employment constitutes notice for the purpose of the *Fair Work Act 2009* and payment for the purpose of any termination payments made under the applicable enterprise agreement.

Direction

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

Numbered clause 5 of the instrument revokes the direction DI2005-292.

Numbered clause 6 of the instrument directs that employment of persons employed under part 2 of the Act is deemed to continue until a specified date.

Numbered clause 7 of the instrument specifies the class of persons to whom the direction applies as persons whose employment ceased, or would have ceased, by the operation of subsection 8(1) or 8(2) of the Act.

Numbered clause 8, paragraph (1) of the instrument specifies the date on which the person's deemed continued employment ceases.

Numbered clause 8, paragraph (2) of the instrument has been inserted. This specifies that the period of deemed continued employment constitutes notice for the purpose of the *Fair Work Act 2009* and payment for the purpose of any termination payments made under an applicable enterprise agreement in respect to part 2 employees who are not subsequently re-employed.

Number clause 8, paragraph (3) of the instrument has been inserted. This specifies that the period of deemed continued employment under paragraph (1) ends if a part 2 employee resigns in accordance with subsection 8(5) of the Act during that period.