

Legislative Assembly (Members' Staff) Variable Terms Of Employment Of Office-holders' Staff Determination 2015 (No 1)

Disallowable instrument DI2015-72

Legislative Assembly (Members' Staff) Act 1989, s 6 (2) (Terms 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 6(2) of the Act provides for the Chief Minister to determine in writing the variable terms of employment of staff of office-holders. Such a determination is a disallowable instrument.

Outline

The variable terms of employment of part 2 employees under the LAMS Act will principally be regulated by the *ACT Legislative Assembly Members' Staff Enterprise Agreement 2013-2017* ("the Agreement"), once the Agreement is approved by the Fair Work Commission. This includes entitlements in respect of leave.

Currently, the entitlements of part 2 employees in respect of long service leave are drawn partly from the Agreement, including the option of receiving an allowance in lieu of long service leave accrual, and partly from the Public Sector Management Standards ("PSM Standards"). The PSM Standards, however, presently exclude persons employed under the Act which, as a result, casts doubt over their entitlements in respect of long service leave accrual. Also the PSM Standards do not provide for the payment of long service leave as an allowance in lieu of leave accrual.

Whilst it is possible to consolidate all of the long service leave entitlements within the Agreement, the Fair Work Commission has recently queried the external source of authority for the allowance in lieu of long service leave accrual. This is despite this entitlement having been provided under LAMS industrial agreements since 2003.

The purpose of this determination is to provide certainty in relation to the long service leave entitlements of part 2 employees. The determination is comprehensive in respect of long service leave. It maintains the option for employees to receive an allowance in lieu of long service leave accrual together with the applicable long service leave accrual provisions of the PSM Standards.

Variable Terms

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

Numbered clause 5 of the determination specifies that the purpose of the instrument is to determine the variable terms of employment of part 2 employees.

Numbered clause 6 of the determination specifies that the variable terms of employment of part 2 employees in respect of long service leave are as set out in schedule 1 to the determination.

Schedule 1 to the determination details the variable terms of employment of part 2 employees in respect of long service leave.