

Legislative Assembly (Members' Staff) Speaker's Salary Cap Determination 2015 (No 2)

Disallowable instrument DI2015-241

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 within which office-holders may exercise that authority. Such a determination is a disallowable instrument.

Outline

This Instrument revokes disallowable instrument DI2015-172 which provided conditions under which the Speaker may employ staff and engage consultants or contractors, including the salary allocation for the 2015–2016 financial year, and puts in place new arrangements.

Under the new arrangement, the provision whereby the Chief Minister approves the Speaker exceeding the salary cap when a staff member goes on extended leave that is beyond the Speaker's control, is replaced by provision whereby the amount of salary payable for such extended leave may be excluded from the amount payable under the salary cap when the specified conditions are met. These conditions are the same as those that previously applied.

Under the previous arrangement the salary cap supplementation only applied if the Speaker's salary cap was exceeded and only to the extent that the Speaker's salary cap was exceeded. There is potential for disadvantage to arise under this arrangement, either where the Speaker's salary cap is not exceeded or is only partly exceeded, in reducing the funds that would otherwise be available within the salary cap to meet other staffing commitments.

The potential for the abovementioned disadvantage is overcome by the new arrangement, since the total amount of salary payable for the extended leave will not count for salary cap purposes provided all of the specified conditions are met. From an operational perspective, the Clerk of the Legislative Assembly is best placed to ascertain whether all of the specified conditions have been met.

The new arrangements are expressed to operate from 1 July 2015. The retrospective effect of the commencement provision contained in this instrument has a non-prejudicial effect on persons other than the Territory or a territory authority.

Conditions

Numbered clause 2 sets the commencement of the instrument as 1 July 2015.

Numbered clause 5 revokes disallowable instrument DI2015-172.

Numbered clause 8(4) has been amended to replace the requirement for the Chief Minister's written approval for the Speaker to exceed his or her salary cap, with provision for an amount payable for salary to a staff member for a period of leave to be excluded from the Speaker's salary cap where specified conditions are met. Subclauses (a) to (d) set out the specified conditions, which are as previously prescribed by clause 8(5). The previous subclause (c) has been deleted since the requirement for the salary cap to be exceeded and the amount by which the salary cap is exceeded is replaced by the new arrangement as described above.

Numbered clause 8(5) has been replaced by the requirement for the Clerk of the Legislative Assembly to be satisfied that all of the specified conditions have been met before an amount is excluded from the Speaker's salary cap.