

Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2016 (No 1)

Disallowable instrument DI2016-274

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 DI2015-75 and puts in place new arrangements. The purpose of the determination is to update the arrangements in the Employment Agreement at schedule 1, under which office-holders may agree to employ staff under subsection 5(1) of the Act.

The following clauses have been deleted from schedule 1 since they are adequately covered by the *ACT Legislative Assembly Members' Staff Enterprise Agreement 2013-2017*, the Codes of Conduct for Ministerial Staff and Staff of Other Office-Holders, and by the Attachment to schedule 1:

- Clause 3 Type and Term of Employment
- Clause 4 Probation
- Clause 5 Duties
- Clause 6 Classification and Salary
- Sub-clauses 9.2 and 9.3 under Exclusive Employment
- Clause 10 Disclosure
- Clause 11 Hours of Work and Working Pattern
- Clause 12 Records of Attendance
- Clause 17 Suspension
- Clause 18 Discipline,

and the remaining clauses of schedule 1 to the instrument have been re-numbered accordingly.

The definition of award at subclause 1.1 of schedule 1 to the instrument has been amended, as the *ACT Legislative Assembly Members' Staff Award 2003* has been superseded by the *Australian Capital Territory Public Sector Enterprise Award 2016*.

The employee obligations at new clause 3 of schedule 1 to the instrument have been amended by replacing the wording '*reduces your ability*' in paragraph (c) with '*substantially affects your ability*', and by replacing the requirement at paragraph (e) that staff '*not misuse or misappropriate Territory property*', with the requirement that staff '*comply with any lawful and reasonable direction given by a person having authority to give the direction*'. This is to better reflect workplace requirements, and an important requirement of the Codes of Conduct for Ministerial Staff and Staff of Other Office-holders.

New clause 6 of schedule 1 to the instrument has been amended by replacing the wording '*Australian Parliamentary Service*' with '*employment with an Australian Parliamentarian*', and '*sick leave*' with '*personal leave*', to better describe the intent of the provision.

A new provision has been inserted at new clause 7 of schedule 1 to the instrument which clarifies staff entitlements in respect to paid parking.

Clauses 14, 15 and 16 of schedule 1 to the instrument have been combined into a single provision at new clause 8, since they all relate to Termination of Employment.

New clause 11 of schedule 1 to the instrument has been amended by replacing the wording '*two days*' in paragraph (b) with '*four days*' to accord with section 250(2) of the *Legislation Act 2001*.

Arrangements

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

Numbered clause 5 of the determination revokes determination DI2015-75.

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.