

Legislative Assembly (Members' Staff) Variable Terms Of Employment Of Ministerial Staff Determination 2016 (No 1)

Disallowable instrument DI2016-276

Legislative Assembly (Members' Staff) Act 1989, s 6 (3) (Terms of employment)

EXPLANATORY STATEMENT

Legislative Context

The *Legislative Assembly (Members' Staff) Act 1989* ("the Act") provides for the employment of staff by members of the Legislative Assembly. Subsection 5(1) of the Act gives members the authority to employ staff. Section 6(3) of the Act provides for the Chief Minister to determine in writing the variable terms of employment of staff of members. Such a determination is a disallowable instrument.

Outline

The variable terms of employment of part 2 employees, including ministerial employees, under the LAMS Act are principally regulated by the *ACT Legislative Assembly Members' Staff Enterprise Agreement 2013-2017* ("the Agreement"). This includes entitlements in respect of leave.

Currently, the leave entitlements of public servants who take Leave Without Pay from the ACT Public Service (ACTPS) to work for a Minister are frozen until he or she returns to the ACTPS, and the employee accrues a separate leave entitlement while employed by the Minister. This means that these employees are currently unable to utilise their accrued ACTPS leave entitlements, including personal leave and annual leave, during their period of employment with a Minister.

The purpose of this determination is to provide for the portability of accrued personal leave, annual leave and long service leave entitlements when public servants take Leave Without Pay from the ACTPS to work for a Minister. The determination also provides for accrued leave entitlements to be transferred back to the ACTPS, when he or she returns to the ACTPS. To remove any doubt, the determination provides that on ceasing employment with a Minister, an ACTPS officer has a right to return to the ACTPS at his or her substantive classification as an officer. In recognition of skills and experience gained while employed by a Minister, the determination also provides that an ACTPS officer has a right to apply for a determination of his or her classification and rate of pay as an officer upon return to the ACTPS.

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 specified part 2 employees.

Numbered clause 6 of the determination specifies the class of part 2 employees to be persons who are employed by Ministers.

Numbered clause 7 of the determination specifies the variable terms of employment that are to apply to persons who are granted Leave Without Pay from the ACTPS to undertake employment with a Minister.

Numbered clause 7(a) of the determination specifies that the person's period of Leave Without Pay will count as service for all purposes, and that the entitlements accrued and used during the period of Leave Without Pay are to be treated as if accrued or used in the ACTPS.

Numbered clause 7(b) of the determination specifies that the person's accrued personal leave, annual leave and long service leave at the time of commencing the period of Leave Without Pay will be transferred to his or her employment with the Minister, and that the person is able to use that leave subject to normal approval.

Numbered clause 7(c) of the determination provides that on ceasing employment with a Minister, an ACTPS officer has a right to return to the ACTPS at his or her substantive classification prior to commencing the period of Leave Without Pay. Clause 7(c) also provides that an ACTPS officer has a right to apply for a determination of his or her classification and rate of pay as an officer upon return to the ACTPS.

Numbered clause 7(d) of the determination provides that on return to the ACTPS, any accrued personal leave, annual leave and long service leave, minus any leave that has been used, will be transferred back to the ACTPS.