

Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2016 (No 2)

Disallowable instrument DI2016-299

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 DI2016-274 and puts in place new arrangements. The purpose of the determination is to update the arrangements in the Contractor and Consultant Agreement at schedule 2, under which office-holders may agree to engage contractors and consultants under subsection 17(1) of the Act.

The Agreement has been updated, based on the current version of the ACT Government standard Services Agreement. In particular, the provisions relating to privacy requirements, and the disclosure of Contract Material, in the definitions and at clause 7 of the Agreement, have changed significantly to reflect the Territory's current obligations under the *Information Privacy Act 2014* (ACT). The balance of updates are generally to improve the clarity of particular provisions, and do not alter the substance of the obligations of the parties to any great extent.

In broad terms the following amendments to the standard Services Agreement have been made so as to account for the engagement of contractors and consultants by office-holders under the Act.

1. The office-holder is described under the description of parties on page 1 of the Agreement as the contracting party, on behalf of the Territory pursuant to section 17 of the Act.
2. The Background to the Agreement sets out the basis upon which the office-holder is empowered to engage the consultant or contractor.

3. The commencement of, or a variation to, the Agreement does not take effect until the date upon which the Agreement is endorsed by the Chief Minister, or in the case of the Speaker, the Clerk of the Legislative Assembly, or by a person authorised for this purpose (clauses 3 and 12.7 of the Agreement refer).
4. To make the parties' rights of termination under the Act more transparent, clause 10.3(2) has been included in the Agreement to highlight that the Act describes termination rights in addition to those rights specifically detailed in clause 10.
5. Clause 13 of the Agreement specifies that the Agreement is subject to the rights of termination set out in Division 5.1 of the Act. The clause also clarifies that, to the extent of any inconsistency between the Act and the Agreement, the requirements of the Act prevail.
6. An instruction note has been inserted at item 2 of Schedule 1 to the Agreement to make it clear that the maximum term of an Agreement under the Act is three years.

Arrangements

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

Numbered clause 5 of the determination revokes determination DI2016-274.

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 clauses 7 and 8 of the determination deal with the employment of staff by office-holders, which have not been altered.

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, which has been updated as outlined above.

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, which have not altered.