

Legislative Assembly (Members' Staff) Deemed Date Of Termination Of Employment Of Members' Staff Direction 2020 (No 1)

Disallowable instrument DI2020-251

Legislative Assembly (Members' Staff) Act 1989, s 13 (5) (Termination 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 10(1) of the Act gives members the authority to employ staff. Section 13 of the Act sets out the time when the employment of such persons terminates.

Subsection 13(5) of the Act provides that the Chief Minister may, by written instrument, direct that the employment of a person whose employment is terminated by the operation of subsection 13(1) shall be deemed not to have terminated and that the employment is deemed to have continued, or to continue, until a specified date. Such a direction is a disallowable instrument. Subsection 13(4) of the Act provides that a person may terminate their employment at any time by giving notice in writing.

Outline

At a general election the employment of part 3 employees under the Act is terminated by a combination of the operation of subsection 13(1) of the Act and section 10 of the *Australian Capital Territory (Self-Government) Act 1988*.

Pursuant to a direction made under subsection 13(5) of the Act, DI2015-76, the employment of part 3 employees is deemed to continue for a period where their employing member has nominated for re-election at a general election. The purpose of this was to provide for the continuity of employment for the employees of re-contesting members between successive Assemblies where their employing member is returned and their employment contract is renewed.

Currently the employment of employees of non-recontesting members ceases on polling day and, pursuant to disallowable instrument DI2016-300, they are subject to a period of exclusion from re-employment, in weeks and days, that is equivalent to the termination payment received. Depending on their length of employment this exclusion period can be lengthy. The purpose of this direction is to remove potential disadvantage to employees of non-recontesting members from having to serve an exclusion period from re-employment in a LAMS role, by providing the option for these employees to elect in writing to defer their termination payment and be deemed to be on leave without pay not to count as service for the period between polling day and the date of declaration of the poll. Their deemed continued period of employment ends if the employee resigns during that period. Their employment also ends if, at the end of the deemed continued period of employment, they are not employed by a returning or new member.

Direction

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

Numbered clause 5 of the instrument revokes direction DI2015-76.

Numbered clause 6 of the instrument directs that the employment of persons employed under part 3 of the Act is deemed to continue until a specified date.

Numbered clause 7 of the instrument specifies the class of persons to whom the direction applies as persons whose employment ceased, or would have ceased, by the operation of subsection 13(1) of the Act.

Numbered clause 8, paragraph (1) of the instrument specifies the date on which the person's deemed continued employment ceases, where the employing member has nominated for re-election at a general election.

Numbered clause 8, paragraph (2) of the instrument has been inserted. This specifies the date on which the person's deemed continued employment ceases, where the employing member has not nominated for re-election at a general election and the person has elected in writing to defer the payment of their termination payment and be deemed to be on leave without pay.

Numbered clause 8, paragraph (3) of the instrument specifies the date on which the person's deemed continued employment ceases, where the employing member dies, or ceases to be a member in circumstances other than those covered by paragraph (1) or paragraph (2).

Numbered clause 8, paragraph (4)(a) of the instrument specifies that the period of deemed continued employment under paragraphs (1) and (3) constitutes notice for the purpose of the *Fair Work Act 2009* and payment for the purpose of any termination payments made under an applicable enterprise agreement in respect to part 3 employees who are not subsequently re-employed.

Numbered clause 8, paragraph (4)(b) of the instrument has been inserted. This paragraph specifies that the period of deemed continued employment under paragraph (2), in respect of former employees of members who have not nominated for re-election at a general election and who elect in writing to defer their termination payment, will not count as service for the purpose of the accrual of any leave entitlements or any termination payment made pursuant to the applicable enterprise agreement. The purpose of this is to prevent any additional financial benefit accruing to these persons over above those of persons who do not so elect.

Numbered clause 8, paragraph (5) of the instrument specifies that the period of deemed continued employment ends if a part 3 employee resigns in accordance with subsection 13(4) of the Act during that period.