

# Legislative Assembly (Members' Staff) Variable Terms Of Employment Of Office-holders' Staff Determination 2021 (No 1)

Disallowable instrument DI2021-184

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

## EXPLANATORY STATEMENT

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### 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 office-holders 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 employees employed under part 2 of the Act ('part 2 employees'). Such a determination is a disallowable instrument.

### Outline

The variable terms of employment of part 2 employees under the Act are principally regulated by the applicable enterprise agreement made under the *Fair Work Act 2009*, currently the *ACT Legislative Assembly Members' Staff Enterprise Agreement 2018-2021* ('the Agreement'). This includes entitlements in respect of leave.

Determination DI2016-276 provided for the portability of accrued personal leave, annual leave and long service leave entitlements when officers take Leave Without Pay from the ACT Public Service (ACTPS) to work for a Minister. The determination also provided for accrued leave entitlements to be transferred back to the ACTPS, when officers return to the ACTPS. Employment with a Commonwealth department or instrumentality is currently not recognised for the purpose of the accrual of leave entitlements.

The purpose of this determination is to extend the portability of accrued leave entitlements to:

- all office-holders' staff; and
- employment with a Commonwealth department or instrumentality.

### Variable Terms

Numbered clauses 1 to 4 of the determination contain technical provisions. The date of commencement of the instrument in clause 2 has been set as 1 July 2021. The definition of 'office-holder' in clause 4 replaces that of 'Minister'.

Numbered clause 5 revokes the existing disallowable instrument DI2016-276.

Numbered clauses 6 and 7 specify that the purpose of the instrument is to determine the variable terms of employment of part 2 employees.

Numbered clause 8(1) specifies the variable terms of employment that are to apply to officers who are granted Leave Without Pay from the ACTPS to undertake employment with an office-holder. In clause 8(1) references to ‘employee’ have been replaced with ‘officer’ and references to ‘Minister’ have been replaced with ‘office-holder’. The remaining provisions of clause 8(1) remain unaltered.

Numbered clause 8(2) has been added. Clause 8(2) specifies the variable terms of employment that are to apply to part 2 employees whose employment with a Commonwealth department or instrumentality is to be recognised for leave purposes.

Numbered clause 8(2)(a) specifies that a part 2 employee will, subject to the relevant allowable break period, be credited with any personal leave balance accrued with a Commonwealth department or instrumentality.

Numbered clause 8(2)(b) specifies that a part 2 employee will, subject to the relevant allowable break period, be credited with any annual leave balance accrued with a Commonwealth department or instrumentality.

Numbered clause 8(2)(c) specifies that a part 2 employee will, subject to the relevant allowable break period, have their employment with a Commonwealth department or instrumentality counted towards the accrual of long service as though accrued during the employee’s employment with an office-holder.

Numbered clause 8(2)(d) provides that a part 2 employee is entitled to use any such leave transferred from a Commonwealth department or instrumentality in accordance with the applicable enterprise agreement, subject to the approval of the office-holder or an authorised person.

Numbered clause 8(2)(e) provides that any service for which a payment has been made will not be recognised, to prevent double-dipping.