

Legislative Assembly (Members' Staff) Variable Terms Of Employment Of Members' Staff Determination 2021 (No 1)

Disallowable instrument DI2021-185

Legislative Assembly (Members' Staff) Act 1989, s 11 (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 10(1) of the Act gives members the authority to employ staff. Section 11(3) of the Act provides for the Chief Minister to determine in writing the variable terms of employment of employees employed under part 3 of the Act ('part 3 employees'). Such a determination is a disallowable instrument.

Outline

The variable terms of employment of part 3 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.

Currently, the leave entitlements of officers who take Leave Without Pay from the ACT Public Service (ACTPS) to work for a member are frozen until the officer returns to the ACTPS, and the officer accrues a separate leave entitlement while employed by the member. This means that officers are currently unable to utilise their accrued ACTPS leave entitlements, including personal leave and annual leave, during their period of employment with a member. Employment with a Commonwealth department or instrumentality is currently not recognised for the purpose of accrual of leave entitlements.

The purpose of this determination is to provide for the portability of accrued personal leave, annual leave and long service leave entitlements when officers take Leave Without Pay from the ACTPS to work for a member, and for accrued leave entitlements to be transferred back to the ACTPS when the officer returns to the ACTPS. The determination also extends the portability of accrued leave entitlements to include employment with a Commonwealth department or instrumentality.

To remove any doubt, the determination provides that on ceasing employment with a member, 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 member, 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. The date of commencement of the instrument in clause 2 has been set as 1 July 2021.

Numbered clauses 5 and 6 specify that the purpose of the instrument is to determine the variable terms of employment of part 3 employees.

Numbered clause 7(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 a member.

Numbered clause 7(1)(a) specifies that the ACTPS officer'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(1)(b) specifies that the ACTPS officer'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 member, and that the officer is able to use that leave subject to the approval of the member or an authorised person.

Numbered clause 7(1)(c) provides that on ceasing employment with a member, 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(1)(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 in accordance with arrangements approved by the Head of Service.

Numbered clause 7(1)(d) provides that on the ACTPS officer's return to the ACTPS, any accrued personal leave, annual leave and long service leave, minus any leave that has been utilised, will be transferred back to the ACTPS.

Numbered clause 8(2) specifies the variable terms of employment that are to apply to part 3 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 3 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 3 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 3 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 a member.

Numbered clause 8(2)(d) provides that a part 3 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 member 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.