

Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2021 (No 2)

Disallowable instrument DI2021-276

Legislative Assembly (Members' Staff) Act 1989, s 10 (3) (Members may employ staff) and s 20 (4) (Members 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 members of the Legislative Assembly.

Subsections 10(1) and 20(1) of the Act give members the authority to employ staff, and engage consultants and contractors, respectively. Subsections 10(3) and 20(4) provide for the Chief Minister to determine in writing the conditions within which members may exercise that authority. Such a determination is a disallowable instrument.

Outline

The instrument revokes disallowable instrument DI2021-134 which provided conditions under which members may employ staff and engage consultants or contractors, including interim salary allocations from 1 July 2021 for the 2021–2022 financial year pending the negotiation of a replacement enterprise agreement for staff employed under the Act.

A replacement enterprise agreement has now been approved by staff. The enterprise agreement provides for pay increases to staff of 1.35% with effect from 9 December 2021 and a further 1.35% with effect from 9 June 2022. The instrument determines revised allocations for members which provide for the payment to staff of these pay increases for the 2021-2022 financial year.

The instrument provides the authority for a member to allocate part or all of the member's uncommitted salary allocation to another member, and to receive part or all of the uncommitted salary allocation from another member. The instrument also provides the authority for a member to carry over up to a maximum of 10% of the member's salary allocation remaining unexpended from the 2020–2021 financial year.

Conditions

Numbered clause 2 sets the commencement of the instrument as 9 December 2021.

Numbered clauses 3 and 4 contain technical provisions.

Numbered clause 5 revokes disallowable instrument DI2021-134.

Numbered clause 6 sets that the instrument determines the conditions that apply to the hire, by members, of staff, contractors and consultants under the Act.

Numbered clause 7(1) sets that the conditions apply to a member while the member holds a position listed in schedule 1 to the instrument during the specified period. The specified period commences on 9 December 2021 and ends on 30 June 2022, or the date on which the instrument is revoked, whichever is the later.

Numbered clause 7(2) sets that where a member holds two or more positions during this period, the conditions that apply to the period the member holds each relevant position will be considered separately.

Numbered clause 8(1) sets the condition that a member may only employ staff, or engage consultants or contractors, while the total amount payable for salary and payments do not exceed the specified salary cap while the member holds the relevant position.

Numbered clause 8(2) sets the formula for calculating the relevant salary cap. The formula provides that individual members may allocate part or all of the member's uncommitted salary allocation to another member, and to receive part or all of the uncommitted salary allocation from another member, in the form of a salary pledge. The formula also provides for the carry over by a member of unexpended salary allocation from the 2020–2021 financial year.

Numbered clause 8(3) limits the carry over to no more than 10% of the member's annual salary allocation for the 2020–2021 financial year. To remove any doubt about the applicable carry over in the circumstance where a member moves from one relevant position to another during the period, the clause also stipulates the carry over, if any, is that which exists in respect of the relevant position to which the member has moved.

Numbered clause 8(4) provides that an amount payable for salary to a staff member for a period of leave may be excluded from a member's salary cap where specified conditions are met. Subclauses (a) to (d) set out the specified conditions.

Numbered clause 8(5) requires that an amount may only be excluded from a member's salary cap if the Clerk of the Legislative Assembly is satisfied that all of the specified conditions have been met.

Numbered clause 9(1) provides that a member may make staff, consultants or contractors under the member's hire available to other members or office-holders.

Numbered clause 9(2) provides that for the purposes of remaining within a member's salary cap, the member may reimburse another member or office-holder an amount equal to the salary or payments paid for the services of staff, consultants or contractors provided to the member under a secondment arrangement between the member and other member or office-holder.

Schedule 1 sets the new salary allocations for the relevant positions covered by the instrument for the 2021-2022 financial year, which includes a separate allocation for members who have been designated to perform the role of the Government whip, the Opposition whip, and the ACT Greens whip.