

EXPLANATORY MEMORANDUM

INSTRUMENT NO. 77 OF 1999

DETERMINATION MADE UNDER SECTION 11 (2) OF THE *LEGISLATIVE ASSEMBLY (MEMBERS' STAFF) ACT 1989*

TERMS AND CONDITIONS OF EMPLOYMENT OF STAFF OF MEMBERS

Legislative Context

The *Legislative Assembly (Members' Staff) Act 1989* (the Act) provides for the employment of staff by Members of the Legislative Assembly. Section 10(1) of the Act gives the authority for Members to employ staff. Section 11(2) provides for the Chief Minister to determine in writing the terms and conditions of employment of staff of Members.

Outline

This determination varies the terms and conditions of staff of Members as previously determined in determination 198 of 1997. The variation applies only to staff employed under the "new" contract of employment previously set out in Schedule 2 of determination 198 of 1997.

This determination provides for several changes to the conditions of employees which are designed to increase the flexibility available to Members in negotiating appropriate conditions of employment with their staff. Members must meet the additional costs of the changes from within staff salary allocations.

The Schedule to the determination also makes a number of technical changes to the contracts of employment which have no impact on the entitlements of staff.

The Schedule provides for the following changes in employment conditions:

Conditions of Employment

Payment of Extra Duty

Clause 3(a) of the Schedule varies the entitlement to payment of extra duty to include a requirement that suitable records of attendance are maintained. This amendment reflects changes to clause 6 of the Schedule which relaxes the requirement for some employees to maintain records of attendance.

Leave Loading

Clause 4(a) of the Schedule changes the provisions relating to Leave Loading to require that this be an entitlement under the contracts and that the point of negotiation between Members and staff is whether the payment is received in fortnightly installments or as a lump sum.

Under previous arrangements the payment of Leave Loading was not an automatic entitlement in the contract and, if made available, could only be paid by fortnightly installments.

Clause 4(b) of the Schedule provides that where the Leave Loading is paid as a lump sum a pro-rata payment may be made when 5 days accrued leave is taken.

Records of Attendance

Clause 6(a) of the Schedule removes the requirement for compulsory maintenance of attendance records which previously existed. The new arrangement allows Members to agree in writing that the keeping of attendance records by specified staff is not required. This provision recognises that some staff work varied hours without supervision and are not entitled to additional payments which depend on records of attendance eg. overtime.

Sick Leave

Clause 9 of the Schedule provides an option for staff to elect to receive their sick leave entitlement as either three weeks full pay sick leave per annum or as two weeks each of full pay and half pay per annum. The previous arrangements required all employees to receive a standard entitlement of two weeks each of full pay and half pay per annum. This new arrangement provides an additional choice to staff.

Recreation/Annual leave

Clause 10 of the Schedule makes provision for staff to be credited with Recreation/Annual Leave on a monthly basis as it accrues. Under previous arrangements Recreation/Annual Leave was credited only once per annum on 1 January of each year. The new arrangement allows greater ongoing access by staff to leave credits and greater flexibility in the planning of leave.

Recognition of Prior Service

Clause 11(a) of the Schedule provides Members with the discretion to agree with their staff that previous service as staff of Members and Senators in any Australian Parliament will count as service for the purpose of determining some entitlements under contracts under the *Legislative Assembly (Members' Staff) Act 1989*. It also provides that such agreements should be in writing. This is a new provision intended to assist Members in the recruitment of staff. The new arrangements are consistent with similar arrangements which exist for officers of the ACT Public Service.

Clause 11(b) of the Schedule to the Instrument outlines the restrictions within which Members are able to agree to recognition of service.

Clause 11(b)(1) provides that Members may exercise the discretion to recognise prior service where an employee's initial engagement under the *Legislative Assembly (Member's Staff) Act 1989* occurred during or after the fourth Assembly. It is intended that Members may exercise this discretion retrospectively in respect of staff employed since the beginning of the fourth Assembly.

Clause 11(b)(ii) provides that the Member may only agree to recognise service with an Australian parliament.

Clause 11(b)(iii) provides that prior service may only be recognised for the purpose of entitlements to sick leave and long service leave.

Clause 11(b)(iv) restricts the recognition of any previous service for which an entitlement or benefit has already been paid or could have been paid. This is intended to avoid any duplication of benefits or unnecessary carry over of leave liabilities but does not restrict the recognition of service in relation to any qualifying periods for sick leave and long service leave.

Clause 11(b)(v) provides the definitions of breaks in service which would prevent recognition of service for the purposes of sick leave and long service. There is also provision for greater breaks in service to be accepted subject to the agreement of the Chief Minister. The relevant periods, and the flexibility to vary them in some circumstances, are consistent with those which apply to prior service recognition within the ACT Public Service.

Attachment

The Attachment to the Schedule, the *Legislative Assembly (Member's Staff) Employment Contract*, has been varied to reflect the new conditions of service.

The Attachment to the Schedule, the *Legislative Assembly (Member's Staff) Employment Contract*, has also been varied to correct some minor technical errors and rectify some administrative problems which have arisen since the contracts were introduced. These technical changes are not intended to affect the conditions of employees beyond those changes set out above.

Schedule to the Attachment

The Schedule to the Attachment, the *Legislative Assembly (Member's Staff) Employment Contract*, has been varied to reflect the new conditions of service.

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