



Australian Capital Territory

Legislative Assembly (Members' Staff) Act 1989

A1989-19

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About this republication

The republished law

This is a republication of the *Legislative Assembly (Members' Staff) Act 1989* effective from 5 December 1999 to 30 December 2000.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation (Republication) Act 1996*, part 3, division 2 authorised the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation (Republication) Act 1996*, s 14 and s 16). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.



Australian Capital Territory

LEGISLATIVE ASSEMBLY (MEMBERS' STAFF) ACT 1989

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Updated as at 5 December 1999

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Australian Capital Territory

LEGISLATIVE ASSEMBLY (MEMBERS' STAFF) ACT 1989

An Act to provide for the employment of staff and the engagement of consultants and contractors by office-holders and members of the Legislative Assembly

PART I—PRELIMINARY

1. Short title

This Act may be cited as the *Legislative Assembly (Members' Staff) Act 1989*.¹

2. Commencement

This Act commences on the day on which the Act is notified in the *Gazette*.¹

3. Interpretation

In this Act, unless the contrary intention appears—

“Assembly” means the Legislative Assembly;

“office-holder” means—

- (a) a Minister;
- (b) the Speaker of the Assembly; or
- (c) a person in respect of whom a determination by the Chief Minister under section 4 or 13CA is in force;

“pensioner” means—

- (a) a person to whom an invalidity pension within the meaning of the Superannuation Act is payable or would, but for the pension having been suspended, be payable; or

- (b) a person to whom a pension under the *Superannuation Act 1922* of the Commonwealth is payable or would, but for the pension having been suspended, be payable, being a person who was retired on the ground of invalidity or of physical or mental incapacity to perform the person's duties;

“Superannuation Act” means the *Superannuation Act 1976* of the Commonwealth.

PART II—STAFF OF OFFICE-HOLDERS

4. Determinations by Chief Minister

The Chief Minister may, by writing, determine that, having regard to the parliamentary duties of a member of the Assembly, the member ought to be empowered to employ staff under this Part.

5. Office-holders may employ staff

(1) An office-holder may, on behalf of the Territory, employ, under an agreement in writing, a person as a member of the office-holder's staff.

(2) The power conferred on an office-holder by subsection (1) is not exercisable otherwise than in accordance with arrangements approved, in writing, by the Chief Minister, and the exercise of that power is subject to such conditions as are determined, in writing, by the Chief Minister.

6. Terms and conditions of employment

(1) Subject to any applicable determination made under subsection (2), the terms and conditions of employment of a person employed by an office-holder under this Part, other than terms and conditions (in this section referred to as “prescribed terms and conditions”) relating to any matter in relation to which—

- (a) a determination is to be made by the office-holder under section 7; or
- (b) express provision is made by section 8;

are the same as the terms and conditions applicable in relation to an officer performing the duties of an office in the Government Service having a classification specified in the agreement for the employment of the person.

(2) The Chief Minister may by writing determine that the terms and conditions of employment of a person employed under this Part (other than prescribed terms and conditions) are varied (whether by the variation of

particular terms and conditions or by the inclusion of new terms and conditions, not being prescribed terms and conditions) as specified in the determination.

(3) A determination under subsection (2) may be expressed to apply in relation to all persons employed under this Part, in relation to all persons included in a class of persons so employed or in relation to a specified person so employed.

7. Superannuation

(1) In this section—

“relevant person” means a person other than—

- (a) a person who, immediately before being employed under this Part, was an eligible employee within the meaning of the Superannuation Act; or
- (b) a pensioner.

(2) An agreement under section 5 for the employment by an office-holder of a relevant person as a member of the office-holder's staff may contain provisions determined by the office-holder in relation to the provision to the person of superannuation benefits or benefits in the nature of superannuation benefits.

(3) An office-holder is not empowered to determine provisions for the purposes of subsection (2) except in accordance with arrangements approved by the Chief Minister.

8. Termination of employment

(1) The employment of a person under this Part terminates if the office-holder by whom the person was employed dies.

(2) The employment of a person under this Part terminates if—

- (a) in the case of a person employed by an office-holder—the office-holder ceases to hold office; or
- (b) in the case of a person employed by a member of the Assembly in respect of whom a determination by the Chief Minister under section 4 is in force—the member ceases to be a member of the Assembly or the determination is revoked.

(3) For the purposes of paragraph (2) (b), a member of the Assembly shall be deemed not to have ceased to be such a member while he or she continues to be entitled to an allowance that was payable to him or her as such a member.

(4) An office-holder may at any time, by notice in writing given to a person employed by the office-holder under this Part, terminate the person's employment.

(5) A person employed by an office-holder under this Part may at any time, by notice in writing given to the office-holder, terminate the person's employment.

(6) Where the employment of a person under this Part is terminated by subsection (1) or (2), the Chief Minister may by writing direct that the employment of the person shall be deemed—

(a) not to have been so terminated; and

(b) to have continued, or to continue, until a specified date;

and, where the Chief Minister so directs, the employment of the person under this Part shall for all purposes be deemed to have continued, or to continue, until that date.

9. Power to employ staff not affected

Nothing in this Part affects the power of an office-holder to employ staff under Part III.

PART III—STAFF OF MEMBERS

10. Members may employ staff

(1) A member of the Assembly may, on behalf of the Territory, employ, under an agreement in writing, a person as a member of the staff of the member.

(2) The power conferred on a member of the Assembly by subsection (1) is not exercisable otherwise than in accordance with arrangements approved, in writing, by the Chief Minister, and the exercise of that power is subject to such conditions as are determined, in writing, by the Chief Minister.

11. Terms and conditions of employment

(1) Subject to any applicable determination made under subsection (2), the terms and conditions of employment of a person employed by a member of the Assembly under this Part, other than terms and conditions (in this section referred to as "prescribed terms and conditions") relating to any matter in relation to which—

(a) a determination is to be made by the member under section 12; or

(b) express provision is made by section 13;

are the same as the terms and conditions applicable in relation to an officer performing the duties of an office in the Government Service having a classification specified in the agreement for the employment of the person.

(2) The Chief Minister may by writing determine that the terms and conditions of employment of a person employed under this Part (other than prescribed terms and conditions) are varied (whether by the variation of particular terms and conditions or by the inclusion of new terms and conditions, not being prescribed terms and conditions) as specified in the determination.

(3) A determination under subsection (2) may be expressed to apply in relation to all persons employed under this Part, in relation to all persons included in a class of persons so employed or in relation to a specified person so employed.

12. Superannuation

(1) In this section—

“relevant person” means a person other than—

- (a) a person who, immediately before being employed under this Part, was an eligible employee within the meaning of the Superannuation Act; or
- (b) a pensioner.

(2) An agreement under section 10 for the employment by a member of the Assembly of a relevant person as a member of the staff of the member may contain provisions determined by the member in relation to the provision to the person of superannuation benefits or benefits in the nature of superannuation benefits.

(3) A member of the Assembly is not empowered to determine provisions for the purposes of subsection (2) except in accordance with arrangements approved by the Chief Minister.

13. Termination of employment

(1) The employment of a person under this Part terminates if the member of the Assembly by whom the person was employed—

- (a) dies; or
- (b) ceases to be a member of the Assembly.

(2) For the purposes of paragraph (1) (b) a member of the Assembly shall be deemed not to have ceased to be such a member while he or she continues to be entitled to an allowance that was payable to him or her as such a member.

(3) A member of the Assembly may at any time, by notice in writing given to a person employed by the member under this Part, terminate the person's employment.

(4) A person employed by a member of the Assembly under this Part may at any time, by notice in writing given to the member, terminate the person's employment.

(5) Where the employment of a person under this Part is terminated by subsection (1), the Chief Minister may, by writing direct that the employment of the person shall be deemed—

(a) not to have been so terminated; and

(b) to have continued, or to continue, until a specified date;

and, where the Chief Minister so directs, the employment of the person under this Part shall for all purposes be deemed to have continued, or to continue, until that date.

PART IIIA—OFFICERS AND EMPLOYEES OF THE GOVERNMENT SERVICE EMPLOYED BY ASSEMBLY MEMBERS

13A. Interpretation

In this Part, unless the contrary intention appears—

“Commissioner” means the Commissioner for Public Administration appointed under subsection 18 (1) of the *Public Sector Management Act 1994*;

“employee” means a person who is engaged as an employee in the Government Service;

“Merit Protection Agency” means the Merit Protection and Review Agency established by the *Merit Protection (Australian Government Employees) Act 1984* of the Commonwealth;

“officer” means an officer of the Government Service.

13B. Rights of officers

(1) An officer employed by a member of the Assembly may apply in writing to the Merit Protection Agency—

- (a) before the termination of the employment; or
- (b) before the end of the period of 30 days, or such further period as the Merit Protection Agency allows, after the termination of the employment;

for the making of a determination under this section.

(2) The Merit Protection Agency shall refer an application to a Re-integration Assessment Committee constituted under the *Merit Protection (Australian Government Employees) Act 1984* of the Commonwealth.

(3) The Committee shall enquire into the application and, having regard to—

- (a) the office in the Government Service or the Australian Public Service held by the officer immediately before being employed under this Act;
- (b) the duration of that employment;
- (c) the nature of the duties performed by the officer in that employment; and
- (d) any other matter that in the opinion of the Committee is relevant;

shall determine—

- (e) the classification (being a classification that is the same as, or higher than, the classification of the officer as an unattached officer at the time of the determination) that the officer is to have as an unattached officer in the Government Service; and
- (f) the rate of salary at which the officer is to be paid, unless there is only 1 rate of salary applicable in respect of that classification.

(4) A determination in relation to an officer shall be in writing and copies of the determination shall be given by the Committee to the Commissioner and the officer.

(5) A determination has effect, or is to be taken to have had effect, upon the termination of the employment of the officer to whom it relates.

13BA Application of Merit Protection (Australian Government Employees) Act

(1) The *Merit Protection (Australian Government Employees) Act 1984* (Cwlth) applies under this Act as if a reference in that Act to the Merit Protection and Review Agency were a reference to the Merit Protection Commissioner under the *Public Service Act 1999* (Cwlth).

(2) The *Merit Protection (Australian Government Employees) Act 1984* (Cwlth) applies under this Act subject to any modifications prescribed under the regulations.

(3) This Act applies as if—

- (a) a reference to the Merit Protection Agency were a reference to the Merit Protection Commissioner under the *Public Service Act 1999* (Cwlth); and
- (b) a reference to the *Merit Protection (Australian Government Employees) Act 1984* (Cwlth) were a reference to that Act as in force on 1 July 1999.

(4) This section and section 13B cease to have effect on 31 December 2000.

13C. Rights of employees

(1) Subject to subsection (2), for the purposes of the *Public Sector Management Act 1994*, an employee who is employed by a member of the Assembly is to be taken to be on leave without pay while the employment continues but the service of the employee under that employment shall be taken into account as if it were service as an employee.

(2) An employee—

- (a) who was selected for employment under the *Public Sector Management Act 1994*; or
- (b) whose employment under that Act was authorised;

on the condition that the employment—

- (c) should not continue after the end of a specified period; or
- (d) should not continue after the completion of specified work;

is to be taken to have ceased to be an employee at the end of that period or the completion of the work.

PART IIIB—CONSULTANTS AND CONTRACTORS

Division 1—Office-holders

13CA. Determinations by Chief Minister

The Chief Minister may, by writing, determine that, having regard to the parliamentary duties of a member of the Assembly, the member ought to be empowered to engage a consultant or contractor, or both, under this Division.

13CB. Office-holders may engage consultants and contractors

(1) An office-holder may, on behalf of the Territory, engage, under an agreement in writing, a consultant or contractor for the provision of services necessarily incidental to the performance of his or her ministerial or parliamentary duties.

(2) An agreement under subsection (1) shall be taken to be a contract for services.

(3) The power conferred on an office-holder by subsection (1) is not exercisable otherwise than in accordance with arrangements approved, in writing, by the Chief Minister, and the exercise of that power is subject to such conditions as are determined, in writing, by the Chief Minister.

13CC. Termination of engagement

(1) The engagement of a consultant or contractor under this Division terminates if the office-holder by whom the consultant or contractor was engaged dies.

(2) The engagement of a consultant or contractor under this Division terminates if—

- (a) in the case of a consultant or contractor engaged by an office-holder—the office-holder ceases to hold office; or
- (b) in the case of a consultant or contractor engaged by a member of the Assembly in respect of whom a determination by the Chief Minister under section 13CA is in force—the member ceases to be a member of the Assembly or the determination is revoked.

(3) For the purposes of paragraph (2) (b), a member of the Assembly shall be deemed not to have ceased to be such a member while he or she continues to be entitled to an allowance that was payable to him or her as such a member.

(4) An office-holder may at any time, by notice in writing given to a consultant or contractor engaged by the office-holder under this Division, terminate the engagement of the consultant or contractor.

(5) A consultant or contractor engaged by an office-holder under this Division may at any time, by notice in writing given to the office-holder, terminate the engagement.

(6) The engagement of a consultant or contractor that is not terminated—

- (a) by subsection (1) or (2);
- (b) by the office-holder under subsection (4); or
- (c) by the consultant or contractor under subsection (5);

terminates at the expiration of 3 years, or such shorter period, if any, as is specified in the relevant agreement as the term of the engagement.

(7) Where the engagement of a consultant or contractor under this Division is terminated by subsection (1) or (2), the Chief Minister may, by writing, direct that the engagement of the consultant or contractor shall be deemed—

- (a) not to have been so terminated; and
- (b) to have continued, or to continue, until a specified date, being a date not later than the date on which the engagement would have terminated by the operation of subsection (6);

and, where the Chief Minister so directs, the engagement of the consultant or contractor under this Division shall, subject to subsection (8), be deemed to have continued, or to continue, until that date.

(8) Where the engagement of a consultant or contractor is deemed to have continued or to continue under subsection (7)—

- (a) the Chief Minister may at any time, by notice in writing given to the consultant or contractor, terminate the engagement; and
- (b) the consultant or contractor may at any time, by notice in writing given to the Chief Minister, terminate the engagement.

13CD. Power to engage consultants and contractors not affected

Nothing in this Division affects the power of an office-holder to engage a consultant or contractor under Division 2 of this Part.

Division 2—Members

13CE. Members may engage consultants and contractors

- (1) A member of the Assembly may, on behalf of the Territory, engage, under an agreement in writing, a consultant or contractor for the provision of services necessarily incidental to the performance of his or her parliamentary duties.
- (2) An agreement under subsection (1) shall be taken to be a contract for services.
- (3) The power conferred on a member of the Assembly by subsection (1) is not exercisable otherwise than in accordance with arrangements approved, in writing, by the Chief Minister, and the exercise of that power is subject to such conditions as are determined, in writing, by the Chief Minister.

13CF. Termination of engagement

- (1) The engagement of a consultant or contractor under this Division terminates if the member of the Assembly by whom the consultant or contractor was engaged—
 - (a) dies; or
 - (b) ceases to be a member of the Assembly.
- (2) For the purposes of paragraph (1) (b), a member of the Assembly shall be deemed not to have ceased to be such a member while he or she continues to be entitled to an allowance that was payable to him or her as such a member.
- (3) A member of the Assembly may at any time, by notice in writing given to a consultant or contractor engaged by the member under this Division, terminate the engagement of the consultant or contractor.
- (4) A consultant or contractor engaged by a member of the Assembly under this Division may at any time, by notice in writing given to the member, terminate the engagement.
- (5) The engagement of a consultant or contractor that is not terminated—
 - (a) by subsection (1);
 - (b) by the member of the Assembly under subsection (3); or
 - (c) by the consultant or contractor under subsection (4);

terminates at the expiration of 3 years, or such shorter period, if any, as is specified in the relevant agreement as the term of the engagement.

(6) Where the engagement of a consultant or contractor under this Division is terminated by subsection (1), the Chief Minister may, by writing, direct that the engagement of the consultant or contractor shall be deemed—

- (a) not to have been so terminated; and
- (b) to have continued, or to continue, until a specified date, being a date not later than the date on which the engagement would have terminated by the operation of subsection (5);

and, where the Chief Minister so directs, the engagement of the consultant or contractor under this Division shall, subject to subsection (7), be deemed to have continued, or to continue, until that date.

(7) Where the engagement of a consultant or contractor is deemed to have continued or to continue under subsection (6)—

- (a) the Chief Minister may at any time, by notice in writing given to the consultant or contractor, terminate the engagement; and
- (b) the consultant or contractor may at any time, by notice in writing given to the Chief Minister, terminate the engagement.

PART IV—MISCELLANEOUS

13D. Disallowable instruments

An instrument referred to in section 4, subsection 5 (2), 6 (2), 8 (6), 10 (2), 11 (2) or 13 (5), section 13CA or subsection 13CB (3), 13CC (7), 13CE (3) or 13CF (6) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

14. Powers may be exercised by authorised person

An office-holder or member of the Assembly may, in writing, authorise another person to exercise, on his or her behalf, a power conferred on the office-holder or member by Part II, III or IIIB, and a person so authorised may exercise the power accordingly.

15. Regulations

The Executive may make regulations, not inconsistent with this Act prescribing matters—

- (a) required or permitted by this Act to be prescribed; or

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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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Legislative Assembly (Members' Staff) Act 1989

NOTES

1. The *Legislative Assembly (Members' Staff) Act 1989* in this reprint is No. 19, 1989 amended as indicated in the Tables below.
2. The *Legislation (Republication) Act 1996* authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. The amendments do not change the law. Amendments made under the Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Legislative Assembly (Members' Staff) Act 1989</i>	19, 1989	14 Nov 1989	14 Nov 1989	
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1989</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
(Reprinted as at 28 February 1995)				
<i>Legislative Assembly (Members' Staff) (Amendment) Act 1997</i>	6, 1997	22 Apr 1997	22 Apr 1997	—
(Reprinted as at 31 January 1998)				
<i>Legislative Assembly (Members' Staff) (Amendment) Act 1999</i>	15, 1999	14 Apr 1999	14 Apr 1999	—
<i>Public Sector Legislation Amendment Act 1999</i>	1999 No 70	3 Dec 1999	5 Dec 1999 (see s 2 and Cwlth <i>Gazette</i> 1999 No S584)	—

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
Title.....	rs. No. 15, 1999
S. 3.....	am. No. 38, 1994; No. 15, 1999
S. 5.....	am. No. 6, 1997
S. 6.....	am. No. 38, 1994
S. 9.....	am. No. 15, 1999
S. 10.....	am. No. 6, 1997

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NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 11	am. No. 38, 1994; No. 6, 1997
Part IIIA (ss. 13A-13C)	ad. No. 38, 1994
Ss. 13A, 13B	ad. No. 38, 1994
S. 13BA	ad. 1999 No 70 s 5
S. 13C	ad. No. 38, 1994
Part IIIB (ss. 13CA-13CF) ..	ad. No. 15, 1999
Ss. 13CA-13CF)	ad. No. 15, 1999
S. 13D	ad. No. 6, 1997
	rs. No. 15, 1999
S. 14	am. No. 15, 1999

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