

Legislative Assembly (Members' Staff) Variable Terms Of Employment Of Office-holders' Staff Determination 2015 (No 1)

Disallowable instrument DI2015-72

made under the

Legislative Assembly (Members' Staff) Act 1989, s 6 (2) (Terms of employment)

1 Name of instrument

This instrument is the *Legislative Assembly (Members' Staff) Variable Terms of Employment of Office-holders' Staff Determination 2015 (No 1)*.

2 Commencement

This instrument commences on the day after its notification day.

3 Dictionary

The dictionary at the end of this instrument is part of this instrument.

Note 1 The dictionary at the end of this instrument defines certain terms used in this instrument.

Note 2 A definition in the dictionary applies to the entire instrument unless the definition, or another provision of the instrument, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this instrument is explanatory and is not part of this instrument.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Approval for Act, s 6

This instrument determines the variable terms of employment of part 2 employees under the Act, section 6.

Note Staff are also employed subject to terms of employment under any award or enterprise agreement under the *Fair Work Act 2009* (Cth) that applies to the staff of office-holders.

6 Variable terms of employment

The variable terms of employment of part 2 employees in respect of long service leave are as set out in schedule 1.

Dated 8 May 2015.

Andrew Barr
Chief Minister

Schedule 1 Long Service Leave

(see cls 6)

1 Purpose

Long service leave is available to employees to enable them to be absent from duty in recognition of their length of service under the Act.

Note Historically and in other jurisdictions long service leave may have been, or be, known by other names, including long leave, furlough or extended leave.

2 Eligibility

Long service leave is available to employees employed under the Act, including casual employees.

3 Entitlement

- (1) An eligible employee will accrue long service leave unless the employee elects in writing to receive an allowance, in accordance with subclause 10(10), instead of the accrual of long service leave.
- (2) An employee who accrues long service leave may be granted long service leave up to their available credit from the day they have completed seven years of eligible employment.
- (3) Long service leave is cumulative and there is no limit on the long service leave balance an employee may accrue.
- (4) Long service leave is measured in months.
- (5) For a category A employee who works full-time, long service leave accrues at a rate of three months for every 10 years of service.

Note After seven years a category A employee who works full-time will have a long service leave credit of 2.1 months.

- (6) For a category A employee who works part-time, or a category B employee, long service leave will accrue on a pro-rata basis.
- (7) For employees who will return to service following completion of their long service leave —
 - (a) their long service leave credit is calculated based on completed years of eligible employment; and
 - (b) the *calculation day* is the day after the last day of the last completed year of eligible employment.
- (8) The long service leave credit of a category A employee is calculated as follows:

$$\frac{3a}{10} - b$$

where —

a means the number of years of eligible employment accrued before the calculation day.

b means the aggregate number of months of long service leave previously granted to the employee at any time during their eligible employment.

- (9) The long service leave credit of a category B employee is calculated as follows:

$$\left[\frac{3c}{10} - d \right] + \left[\frac{3e}{10} - f \right]$$

where —

c means the aggregate number of years of eligible employment in a full-time capacity before the calculation day.

d means the aggregate number of months of long service leave previously granted to the employee in relation to the employee's full-time employment at any time during their eligible employment.

e means the aggregate number of years of eligible employment in a part-time capacity before the calculation day.

f means the aggregate number of months of long service leave previously granted to the employee in relation to the employee's part-time employment at any time during their eligible employment.

- (10) For calculating an employee's long service leave credit, if during a period of eligible employment an employee received a payment in lieu of long service leave, or an equivalent type of leave, the employee is taken to have been granted a period of long service leave equal to the period of long service leave that payment was made for.
- (11) If on the day an employee's long service leave is calculated the employee is concurrently employed in other eligible employment, the other employment does not count as eligible employment for the period that it was concurrent with employment under the Act.
- (12) Eligible part-time employment that is, or was, concurrent with eligible full-time employment does not count as eligible employment.
- (13) If an employee is, or was, concurrently employed under the Act in two positions both of which were in a part-time capacity, on a day when the employee works in both positions the employee's period of employment on that day will be the sum of both periods.

4 Recognition of prior service

- (1) An employee's prior service may be recognised as service that accrues long service leave if —
- (a) the previous service was as a staff member of a Member or Senator of an Australian parliament; and

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- (b) the previous service terminated no more than 12 months prior to the commencement of employment under the Act, unless the Chief Minister agrees that an alternative period is appropriate in the circumstances; and
 - (c) the office-holder provides a written agreement to the previous service being so recognised.
- (2) If an employee's prior service is recognised as service for calculating long service leave accrual —
- (a) the employee will accrue long service leave in accordance with clause 3 from the date the recognised prior service commenced; and
 - (b) the employee's long service leave credit will be reduced by —
 - (i) any period of long service leave taken during the recognised prior service; and
 - (ii) the period equivalent to any payment in lieu of long service leave made to the employee during the recognised prior service.
- (3) Where a payment has, or should have, been made in respect of prior service, the prior service shall not be recognised except in relation to relevant qualifying periods.

5 Continuity of service

Continuity of service for calculating long service leave accrual is not broken by —

- (a) a period of leave; or
- (b) a period of unauthorised absence of 12 months or less; or
- (c) a break in service to undertake full-time training for a period of 12 months or less; or
- (d) a break in service of 12 months or less, unless the Chief Minister agrees that an alternative period is appropriate in the circumstances.

6 Evidence and conditions

- (1) An employee should discuss with the office-holder as soon as practicable their intention to be absent on long service leave.
- (2) An employee must make an application to the office-holder to access their long service leave entitlement.
- (3) Having considered the requirements of this clause the office-holder may approve an employee's application to access long service leave.
- (4) The office-holder may grant long service leave to an eligible category A employee up to the employee's available credit.
- (5) The office-holder may grant long service leave to an eligible category B employee for one or more of the following —

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- (a) a period not exceeding the employee's long service leave credit accrued while working full-time.
 - (b) a period not exceeding the employee's long service leave credit accrued while working part-time.
- (6) Subject to the rules for category A and category B employees —
- (a) subject to operational requirements, long service leave may be granted at half pay, full pay, or double pay, with credits to be deducted on the same basis; and
 - (b) the minimum period of long service leave an employee may request is seven calendar days.
- (7) If the office-holder does not approve an application by an employee for long service leave because of operational requirements, the office-holder must consult with the employee to determine a mutually convenient alternative time (or times) for the employee to take the leave.

7 Rate of payment

- (1) The prescribed average number of hours for a category A employee is the greater of —
- (a) the employee's average number of hours of employment per week during the 12 months of eligible employment ending on the relevant day; or
 - (b) the employee's average number of hours of employment per week during the entire period of the employee's eligible employment.
- (2) The prescribed average number of hours for a category B employee is the greater of —
- (a) the employee's average number of hours of employment per week during —
 - (i) the 12 months (or the periods aggregating 12 months) that the employee was last employed in a part-time capacity before the relevant day; or
 - (ii) if the employee has less than 12 months of eligible employment in a part-time capacity, the period or periods when the employee has been employed in a part-time capacity; or
 - (b) the employee's average number of hours of employment per week during the entire period of the employee's eligible employment.
- (3) When determining an employee's prescribed average number of hours under subsection (1) or (2) the hours will be taken to be the hours calculated under subsection (1)(a) or (2)(a) unless the employee demonstrates that the hours under subsection (1)(b) or (2)(b) are greater.
- (4) A category A employee will receive the current rate of pay or relevant rate per week on the relevant day in relation to any part of long service leave they are granted if —
- (a) the employee's eligible employment has been in a full-time capacity; or

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- (b) the employee's eligible employment has been in a part-time capacity with no change in their ordinary hours.
- (5) If a category A employee's eligible employment has been in a part-time capacity and there has been a change during that period in the employee's ordinary hours the payment payable to the employee in relation to any part of long service leave they are granted is calculated by multiplying —
- (a) the relevant rate per hour for that part of the long service leave; and
- (b) the prescribed average number of hours.
- (6) If a category B employee is employed in a full-time capacity on the relevant day, the payment payable to the employee in relation to any part of leave that is granted —
- (a) in relation to eligible employment in a full-time capacity, is at the employee's current rate of pay on the relevant day; and
- (b) in relation to eligible employment in a part-time capacity, is at a weekly rate at the lower of —
- (i) the employee's current rate of pay per week in relation to that part of the leave; or
- (ii) the employee's rate of pay per week calculated as follows:

$$\frac{ab}{c}$$

where —

a means the employee's current rate of pay per week in relation to that part of the leave.

b means the prescribe average number of hours of the employee's employment.

c means the employee's number of hours of employment per week the employee worked on the relevant day.

- (7) If a category B employee is employed in a part-time capacity on the relevant day, the payment payable to the employee in relation to any part of leave that is granted —
- (a) in relation to eligible employment in a full-time capacity, is at the rate of pay that would be payable to the employee in relation to that part of the leave if the employee was working full-time on the relevant day; and
- (b) in relation to eligible employment in a part-time capacity, is at the rate of pay per week calculated by multiplying —
- (i) the relevant rate per hour for that part of the long service leave; and
- (ii) the prescribed average number of hours.

(8) Pay for long service leave does not include —

- (a) LAMS allowance; or
- (b) overtime payments; or
- (c) payments in the nature of a restriction, or on-call allowance.

8 Effect on other entitlements

- (1) Long service leave will count as service for all purposes.
- (2) When applying for long service leave an employee must seek approval if they propose to engage in outside employment during the leave.

9 Access to other entitlements

- (1) Public holidays and weekends that fall during periods of absence on long service leave are deducted from the employee's long service leave balance.
- (2) An employee who is ill or injured, or who cares for a member of the employee's immediate family or household who is ill or injured, for one day or more while on long service leave and who produces a certificate from a registered health professional who is operating within their scope of practice, may apply for personal leave.
- (3) If personal leave is granted to the employee, long service leave will be re-credited for the period of personal leave granted.
- (4) An employee may be granted long service leave during a period they would be eligible to be granted —
 - (a) unpaid maternity leave; or
 - (b) unpaid parental leave; or
 - (c) grandparental leave; or
 - (d) community service leave for voluntary community service.
- (5) An employee who is prevented from attending for duty under the *Public Health Act 1997*, part 6 may be granted long service leave during that period.

10 Payment in lieu of long service leave

- (1) An employee who accrues long service leave and whose employment under the Act ceases for a reason other than death, will receive payment for any pro-rata long service leave accrued provided the employee has completed not less than one year of employment under the Act, including any recognised service.
- (2) An employee who receives a payment in lieu of leave under subclause (1) will be paid an amount equal to the payment the employee would have received had they taken long service leave on the relevant day.
- (3) If an employee who accrues long service leave and whose period of employment under the Act is not less than one year dies, an amount equal to the payment the employee would have received had they taken long service leave immediately before they died will be paid to their dependant, or divided between two or more dependants.
- (4) If an employee dies and payment has not been made to a dependant of the employee in accordance with subclause (3), the approving authority must authorise payment of an amount payable to the dependants to the legal personal representative of the employee within 12 months of the death, or presumed death, of the employee.
- (5) If an employee with no dependants and no legal personal representative dies intestate, the amount payable under subclause (3) will be paid to the Territory.
- (6) The payment in lieu of long service leave under subclause (1) and subclause (3) must include an amount in respect of temporary performance where the employee has been paid to perform higher level work for a continuous period of 12 months or more ending on the relevant day.
- (7) An employee who accrues long service leave may, in writing, request the approval of the office-holder to the partial or full payment in lieu of their accrued leave credit.
- (8) The payment in lieu of leave made under subclause (7) will be based on the rate of pay the employee would have received had the employee taken the leave at the time the application was made.
- (9) If the employee is on temporary performance at the time an application under subclause (7) is made, payment in lieu of leave at the higher rate of pay will only be approved if the temporary performance would have continued for an equivalent period of leave.
- (10) An employee may elect, in writing, to receive an allowance instead of the accrual of long service leave. Where an employee so elects, the employee will be paid an allowance calculated at two and a half percent of the employee's annual salary, and the employee's entitlement to accrue long service leave will be foregone during the employee's period of employment under the Act.

Dictionary

(see cl 3)

Note 1 Terms used in this instrument have the same meaning that they have in the *Legislative Assembly (Members' Staff) Act 1989* (see Legislation Act, s 148). For example, the following terms are defined in the *Legislative Assembly (Members' Staff) Act 1989*, Dictionary:

- Assembly
- part 3 employee
- variable term of employment

Act means the *Legislative Assembly (Members' Staff) Act 1989*.

category A employee means an employee whose eligible service has either been entirely part-time or entirely full-time.

category B employee means an employee whose eligible service has been both part-time service and full-time service.

current rate of pay means the payment an employee received on the relevant day.

defence employment means —

- employment in the Reserve Forces or of the Citizen Forces either on a continuous full-time basis or for a period fixed in accordance with the *Defence Act 1903* (Cth), the *Naval Defence Act 1910* (Cth), or the *Air Force Act 1923* (Cth), as in force at the relevant time; or
- national service.

dependant means —

- a surviving domestic partner; and
- a former domestic partner; and
- a child under the age of 18 of the deceased employee; and
- any person who is financially dependent on the deceased employee at the time of the employee's death, or at the time of the payment of the death benefit; and
- any person with whom the deceased has an interdependency relationship.

eligible employment means —

- continuous employment under the Act; and
- continuous recognised prior service; and
- a period of leave without pay to count as service (other than personal leave without pay and leave in relation to defence employment); and

- (d) excludes —
- (i) employment remunerated by fees, allowances or commissions, honorarium or equivalent; and
 - (ii) appointment or engagement for the sole purpose of overseas employment; and
 - (iii) unauthorised absence.

employee means a person employed under part 2 of the Act.

month may include part of a month.

office-holder means an office-holder of the Legislative Assembly as defined in the *Legislative Assembly (Members' Staff) Act 1989* ('the Act').

overtime payment means a payment of overtime made under the relevant industrial instrument.

relevant day means —

- (a) in relation to an employee who has been granted long service leave, the day immediately before the day that leave commences; and
- (b) in relation to an employee who receives a payment in lieu of long service leave, the day immediately before the day they cease to be an employee.

relevant rate per hour means the rate per hour that salary would be payable to the employee on the relevant day.

Territory means the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988*.

year may include part of a year.