

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

Disallowable instrument DI2021-276

made under the

Legislative Assembly (Members' Staff) Act 1989, s 10 (3) (Members may employ staff) and s 20 (4) (Members may engage consultants and contractors)

1 Name of instrument

This instrument is the *Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2021 (No 2)*.

2 Commencement

This instrument commences on 9 December 2021.

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 Revocation

DI2021-134 is revoked.

6 Determination for Act, s 10 and s 20

This instrument determines conditions subject to which a member may, on behalf of the Territory, hire staff, contractors or consultants under the Act, section 10 or section 20.

7 Application during the period

- (1) The conditions determined by this instrument apply to a member while the member holds a position (the *relevant position*) mentioned in schedule 1 for a period or periods (the *period or periods of office*) within the time beginning on the day this instrument commences and ending on 30 June 2022 or the date this instrument is revoked, whichever is the later.
- (2) If the member holds 2 or more relevant positions within the time mentioned in subclause (1), the conditions determined by this instrument apply in relation to the period or periods of office for each relevant position, considered separately.

8 Salary cap

- (1) A member may, on behalf of the Territory, hire staff, consultants or contractors for a term that includes the period or periods of office only while the total amount payable for salary and payments, to all staff, consultants and contractors under the member's hire while the member holds the relevant position during the period, does not exceed the amount (the *salary cap*) worked out in accordance with the formula in subclause (2).
- (2) The formula for working out the salary cap is—

$$\text{salary cap} = \$ \frac{\text{salary amount} \times \text{working days}}{261} + \text{carry over} \pm \text{salary pledge}$$

Note If a member is neither a **recipient member** nor a **pledging member** the amount of the **salary pledge** in the above formula is nil.

- (3) In subclause (2):

carry over means the member's unexpended salary allocation, if any, carried over from the 2020-2021 financial year. The carry over cannot exceed 10% of the member's annual salary allocation for the 2020-2021 financial year.

Where a member moves from one relevant position to another relevant position during the period, *carry over* means the amount, if any, that the unexpended salary cap exceeds the annual salary allocation calculated on a pro-rata basis, in respect of the relevant position to which he or she has moved.

pledging member means the member who makes the salary pledge.

recipient member means the member who receives the salary pledge.

salary amount means the amount listed for the relevant position in column 3 of schedule 1 for the relevant period.

salary pledge means in the case of a pledging member that part of a pledging member's uncommitted salary allocation which is pledged to a recipient member and that is to be deducted from the salary cap and in the case of a recipient member the total of salary pledges made to the member and that is to be added to the salary cap.

working days means the number of working days the member holds the relevant position in the period.

- (4) Despite subclause (1), an amount payable for salary to a staff member for a period of leave may be excluded from the total amount payable for salary determined in accordance with subclause (1) if —
- (a) an employee on the member's staff takes, or is to take, a period of paid leave exceeding 4 continuous weeks during the period; and
 - (b) the member hires, or is to hire, a replacement employee, contractor or consultant during the employee's absence on paid leave; and
 - (c) the requirement for leave is beyond the member's control; and
 - (d) the member would be, or would have been, unable to exercise his or her functions as a member without hiring the replacement employee, contractor or consultant during the employee's absence on paid leave.
- (5) An amount may only be excluded from a member's salary cap under subclause (4) if the Clerk of the Legislative Assembly is satisfied that all of the conditions set out in subclause (4) have been met.

9 Reimbursement

- (1) A member may make staff, consultants or contractors under the member's hire available to another member or office-holder.
- (2) For the purposes of satisfying clause 8(1) a member may reimburse to another member or office-holder an amount representing the salary and payments paid to the staff, consultants and contractors of another member or office-holder for the services those staff, consultants or contractors provide to the member under a secondment arrangement between the member and the other member or office-holder.

Dated 8 December 2021

Andrew Barr
Chief Minister

Schedule 1 Salary amounts

(see cls 7 and 8)

column 1 item	column 2 position	column 3 salary amount
1	leader of the opposition	\$851,990
2	deputy leader of the opposition	\$224,712
3	party whip	\$206,082
4	other member	\$192,298

Note Each amount listed in column 3 of the above table includes any paid overtime, but excludes the LAMS allowance payable to employees employed under the applicable enterprise agreement and, where an employee elects, the long service leave allowance and annual leave loading.

Dictionary

(see cl 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this instrument.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- function
- working day.

Note 3 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
- office-holder.

deputy leader of the opposition means the deputy leader of the largest party in the Assembly not forming the Government.

hire, in relation to an employee on a member's staff, or a contractor or a consultant, means—

- (a) employ the employee;
- (b) engage the contractor or consultant; or
- (c) enter into an arrangement with another member or office-holder for the secondment of an employee, consultant or contractor of the other member or office-holder for the provision of services to the member.

leader of the opposition means the leader of the largest party in the Assembly not forming the Government.

member means a member of the Assembly.

other member means a member other than any of the following:

- (a) the leader of the opposition;
- (b) the deputy leader of the opposition;
- (c) an office-holder;
- (d) the party whip.

party whip means a member who has been designated to perform the role of Government whip, or Opposition whip, or ACT Greens whip.

period or periods of office—see clause 7 (1).

relevant position—see clause 7 (1).

salary cap—see clause 8 (1).