

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LEGISLATIVE ASSEMBLY (MEMBERS' STAFF) AMENDMENT BILL 2000

EXPLANATORY MEMORANDUM

**Circulated by authority of
Gary Humphries MLA
Chief Minister**

LEGISLATIVE ASSEMBLY (MEMBERS' STAFF) AMENDMENT BILL 2000

OUTLINE

This Bill amends the *Legislative Assembly (Members' Staff) Act 1989* to clarify the employment conditions of Members' staff. The Bill also sets in place new arrangements for the review of employment-related decisions and for reintegration assessment panels, to replace the interim arrangements which expire on 31 December 2000.

The Bill applies the employment conditions under the *Public Sector Management Act 1994* and Management Standards where employment conditions are not covered by the Act or by employment agreements. Under the amendments, the current employment arrangements and conditions of Members' staff would remain the same. Some conditions would continue to be drawn from the ACT Public Service without the ambiguity which may otherwise arise from variations in conditions across the Service under agency-based enterprise agreements.

New review and appeal arrangements proposed for the ACT Public Service in the Public Sector Management Amendment Bill 2000 would also apply to Members' staff, unless specific dispute resolution procedures are contained in their employment agreements. These new arrangements will apply only to those staff employed under agreements that retain links to ACT Public Service review processes. Most staff are covered by agreements which contain internal procedures for dispute resolution. These procedures allow staff to agree on a process with their employing Member, including identifying an independent mediator. Staff covered by these agreements are not affected by the elements of the Bill dealing with employment conditions.

The Bill replaces interim arrangements linking review and reintegration processes to the repealed Commonwealth *Merit Protection (Australian Government Employees) Act 1984*, but retains the link to ACT Public Service review and appeal arrangements. Under the Bill, staff employed under agreements which retain links to ACT Public Service review processes also have the option to agree to specific review processes being included in their employment contract, similar to staff covered by agreements containing internal procedures for dispute resolution. The Bill would allow these staff and their employing Member to adopt either option.

The Bill also retains the reintegration assessment rights of ACT public servants employed to work in Members' offices, in recognition of the value of the experience gained while working in the Legislative Assembly. These officers currently have a right to return to the ACT Public Service and may seek a 'reintegration' assessment for a higher level classification or salary when their employment under the *Legislative Assembly (Members' Staff) Act 1989* ceases.

Links to the assessment procedures under the repealed Commonwealth Merit Protection Act are removed. The Bill puts in place new reintegration assessment processes involving three-member panels convened by the Commissioner for Public Administration. The panels would make recommendations to the Commissioner on an appropriate 'non-executive' classification and rate of salary for officers upon their return to the ACT Public Service. The Commissioner would then determine the appropriate classification and rate of salary.

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A consequential amendment to the Public Sector Management Act is also required to permit a promotion outside of competitive merit processes following a reintegration assessment, after the transitional arrangements in the Act are repealed.

Financial implications

Merit Protection Agency dispute resolution services are provided under a fee for service arrangement. Future costs of reviews by the Commissioner would be provided on the same basis.

The cost of reintegration assessments are not expected to increase under the proposed arrangements. These costs will continue to be met by agencies.

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PART 1 – PRELIMINARY

Name of Act and commencement These clauses are formal requirements. They refer to the name of the Act, and the commencement of the Bill, which is to be on
Clauses 1 and 2 1 January 2001.

PART 2 – AMENDMENT OF THE LEGISLATIVE ASSEMBLY
(MEMBERS' STAFF) ACT

Act amended This Act amends the *Legislative Assembly (Members' Staff) Act 1989*
Clause 3 (the Act).

Interpretation Clause 4 is an interpretation clause.
Clause 4

Section 3 of the Act is amended by inserting the following definitions:

Part 2 employee means a person employed by an Office-Holder under Part 2 of the Act;

Part 3 employee means a person employed by a Member under Part 3 of the Act;

Public Sector Management Act means the *Public Sector Management Act 1994* and the Management Standards made under that Act; and

variable term of employment means a term of employment of a Part 2 or Part 3 employee relating to any matter except one covered by section 7 or 12 (Superannuation), or 8 or 13 (Termination of employment) of the Act.

Section 3 is also amended by inserting the following definitions which are drawn from the *Public Sector Management Act 1994*:

classification is defined as, in relation to an officer who holds an office – the classification of that office, in relation to an unattached officer – the classification that the officer has as an unattached officer determined in accordance with subsection 56(4) or section 69 of the *Public Sector Management Act 1994*;

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

officer means an officer of the ACT Public Service; and

relevant chief executive means the Chief Executive who has control of the administrative unit or Territory instrumentality in which the officer last held an office, or in relation to an officer who is required to assist a statutory office holder, the office holder.

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Substitution Clause 5	Section 6 dealing with <i>Terms and conditions of employment</i> of persons employed by Office-Holders is omitted and substituted with a new <i>Section 6 - Terms of employment</i> .
Terms of Employment Section 6	<p>New section 6 sets out the source of terms of employment of persons employed by Office-Holders under the Act.</p> <p>Subsection 6(1) provides that where employment matters are not covered by the Act or employment agreements then Division 7 of Part 5 of the <i>Public Sector Management Act 1994</i> applies (references to the relevant Chief Executive in the PSM Act should be taken to be to the relevant Office-Holder under this Act).</p> <p>Subsection 6(2) provides that the Chief Minister may, by determination in writing, vary the terms of employment of employees of Office-Holders.</p> <p>Subsection 6(3) provides that a determination made by the Chief Minister, under subsection 6(2), may apply to a specific individual or a class of persons.</p>
Substitution Clause 6	Section 11 dealing with <i>Terms and conditions of employment</i> of persons employed by Members of the Legislative Assembly is omitted and substituted with a new <i>Section 11 - Terms of employment</i> .
Terms of Employment Section 11	<p>New section 11 sets out the source of terms of employment of persons employed by Members under the Act.</p> <p>Subsection 11(1) provides that where employment matters are not covered by the Act or employment agreements then Division 7 of Part 5 of the <i>Public Sector Management Act 1994</i> applies (references to the relevant Chief Executive in the PSM Act should be taken to be to the relevant Member of the Assembly under this Act).</p> <p>Subsection 11(2) provides that the Chief Minister may, by determination in writing, vary the terms of employment of employees of Members.</p> <p>Subsection 11(3) provides that a determination made by the Chief Minister, under subsection 11(2), may apply to a specific individual or a class of persons.</p>
Substitution Clause 7	Part 3A dealing with <i>Officers and employees of the Government Service employed by Assembly Members</i> is retitled <i>Public servants employed by Members</i> , to better reflect the objectives of the Part.

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Substitution Sections 13A, 13B and 13BA are omitted and substituted with a new
Clause 8 *Section 13A – Rights of officers.*

Section 13A dealing with definitions relating to this Part is omitted. The definitions have been included as part of the general definitions under section 3 of the Act.

Section 13B dealing with the role of the Merit Protection Agency in reintegration assessment and section 13BA dealing with the application under this Act of transitional provisions relating to the repealed Commonwealth *Merit Protection (Australian Government Employees) Act 1984*, which cease to have effect on 31 December 2000, are omitted.

Rights of officers
Section 13A

New section 13A sets out the rights of officers of the ACT Public Service to seek a reintegration assessment and the procedural framework to apply.

Subsection 13A(1) provides that an officer (including an unattached officer), employed by an Office-Holder or a Member of the Legislative Assembly, may apply to the Commissioner for Public Administration for a determination in respect of their classification and salary upon return to the Service.

Subsection 13A(2) sets a prescribed timeframe for such an application by requiring that applications be made within 30 days, or a longer period as allowed by the Commissioner, from the date of termination of employment under this Act. Applications may also be made during employment under the Act.

Subsection 13A(3) sets out the requirements for the Commissioner to appoint a committee to consider the application and make recommendations to the Commissioner. This subsection also sets out the required composition of the committee.

Subsection 13A(4) allows the Commissioner to establish procedures for choosing an 'independent officer' for the committee.

Subsection 13A(5) allows the Commissioner to establish procedures the committee must follow in considering the application.

Subsection 13A(6) requires the Commissioner to determine a classification and rate of salary for the officer, and sets out the matters the Commissioner must consider in making the determination. The classification and rate of salary so determined cannot be less than the officer's former classification and rate of salary in the ACT Public Service.

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Rights of officers
Section 13A
(Cont.)

Subsection 13A(7) requires that the determination be in writing, and that a copy be provided to the officer.

Subsection 13A(8) provides that the determination has effect from the date the officer resumes duty as an officer.

Rights of employees
Clause 9

Section 13C dealing with *Rights of employees* is retitled *Rights of certain employees under the Public Sector Management Act*, to better reflect the objectives of the section.

A new subsection 13C(3) is inserted to link the definition of the term *employee*, used in the section, to the Public Sector Management Act. An *employee* under the *Public Sector Management Act 1994* means:

- (a) a Chief Executive;
- (b) an Executive;
- (c) a person engaged under Division 7 of Part 5 of the *Public Sector Management Act 1994*; or
- (d) a person who is an employee by virtue of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994*.

PART 3 – CONSEQUENTIAL AMENDMENTS

Consequential amendments of the Public Sector Management Act
Clause 10

This section deals with a consequential amendment to the *Public Sector Management Act 1994* to enable an officer to be promoted outside of a competitive merit process following a reintegration assessment, after the transitional arrangements under sections 13B and 13BA are repealed.

Section 65 of the *Public Sector Management Act 1994* is amended by inserting a new section 65A, *Exception for returning officers*, which provides for the specific requirements under which reintegration assessment decisions are exempt from the need to satisfy the merit principle under the *Public Sector Management Act 1994*. These requirements include that the officer was employed under the Act and that a determination was made by the Commissioner that the officer was to have a higher classification.