

Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2020 (No 3)

Disallowable instrument DI2020-295

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

EXPLANATORY STATEMENT

Legislative Context

The *Legislative Assembly (Members' Staff) Act 1989* (“the Act”) provides for the employment of staff, and the engagement of consultants or contractors, by members of the Legislative Assembly.

Subsections 10(1) and 20(1) of the Act give members the authority to employ staff, and engage consultants and contractors, respectively. Subsections 10(3) and 20(4) provide for the Chief Minister to determine in writing the conditions within which members may exercise that authority. Such a determination is a disallowable instrument.

Outline

The Instrument revokes disallowable instrument DI2020-146 which provided conditions under which members may employ staff and engage consultants or contractors, including salary allocations for the 2020–2021 financial year.

The instrument determines new allocations for non-Executive members following the declaration of the poll for the tenth Legislative Assembly. The allocations for Opposition Leader and Deputy Opposition Leader have been increased with the agreement of the Chief Minister from the previous allocation for the 2020–2021 financial year. The separate allocation for party whips has been extended to include the ACT Greens whip at the same level as the Government whip and the Opposition whip. In addition, the instrument removes the separate allocation for Crossbench members (there previously being one ACT Greens non-Executive MLA forming the Crossbench in the ninth Legislative Assembly) and sets the allocation for the other ACT Greens non-Executive members in the tenth Legislative Assembly at the same level as Government and Opposition backbench members.

The new allocations are to operate from 29 October 2020 the day immediately following the date of formal declaration of the poll and the date from which members of the tenth Legislative Assembly may employ staff. The retrospective date of effect of the instrument is non-prejudicial as the allocations for the Opposition Leader and Deputy Opposition Leader have been increased along with that of the ACT Greens whip. The removal of the separate allocation for Crossbench members is also non-prejudicial as none of the ACT Greens non-Executive members were members in the ninth Assembly, and so did not have a previous allocation for the 2020–2021 financial year. Their allocation commences on 29 October 2020.

Conditions

Numbered clause 2 sets the commencement of the instrument as 29 October 2020.

Numbered clauses 3 and 4 contain technical provisions.

Numbered clause 5 revokes disallowable instrument DI2020-146.

Numbered clause 6 sets that the instrument determines the conditions that apply to the hire, by members, of staff, contractors and consultants under the Act.

Numbered clause 7(1) sets that the conditions apply to a member while the member holds a position listed in schedule 1 to the instrument during the specified period. The specified period commences on 1 July 2020 and ends on 30 June 2021, or the date on which the instrument is revoked, whichever is the later.

Numbered clause 7(2) sets that where a member holds two or more positions during this period, the conditions that apply to the period the member holds each relevant position will be considered separately.

Numbered clause 8(1) sets the condition that a member may only employ staff, or engage consultants or contractors, while the total amount payable for salary and payments do not exceed the specified salary cap while the member holds the relevant position.

Numbered clause 8(2) sets the formula for calculating the relevant salary cap. The formula provides that individual members may allocate part or all of the member's uncommitted salary allocation to another member, and to receive part or all of the uncommitted salary allocation from another member, in the form of a salary pledge. The formula also provides for the carry over by a member of unexpended salary allocation from the 2019–2020 financial year.

Numbered clause 8(3) limits the carry over to no more than 10% of the member's annual salary allocation for the 2019–2020 financial year. To remove any doubt about the applicable carry over in the circumstance where a member moves from one relevant position to another during the period, the clause also stipulates the carry over, if any, is that which exists in respect of the relevant position to which the member has moved.

Numbered clause 8(4) provides that an amount payable for salary to a staff member for a period of leave may be excluded from a member's salary cap where specified conditions are met. Subclauses (a) to (d) set out the specified conditions.

Numbered clause 8(5) requires that an amount may only be excluded from a member's salary cap if the Clerk of the Legislative Assembly is satisfied that all of the specified conditions have been met.

Numbered clause 9(1) provides that a member may make staff, consultants or contractors under the member's hire available to other members or office-holders.

Numbered clause 9(2) provides that for the purposes of remaining within a member's salary cap, the member may reimburse another member or office-holder an amount equal to the salary or payments paid for the services of staff, consultants or contractors provided to the member under a secondment arrangement between the member and other member or office-holder.

Schedule 1 sets new allocations for the relevant positions covered by the determination for the 2020-2021 financial year. The allocations for Opposition Leader and Deputy Opposition Leader have been increased, and the separate allocation for members designated to perform the role of party whip has been extended to include the ACT Greens whip. The separate allocation for Crossbench members is removed and the allocation for the other ACT Greens non-Executive members is set at the same level as other backbench members. The removal of the Crossbench member allocation is non-prejudicial as none of the ACT Greens non-Executive members was a member in the ninth Assembly, and so did not have a previous allocation for the 2020–2021 financial year. Their allocation commences on 29 October 2020.

The Dictionary definition for *Crossbench member* is removed and the definition for *other member* and *whip* are amended accordingly.