

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

**From:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>  
**Sent:** 18/09/2024 8:37 AM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Subject:** FW: Request for Legal Advice - LAMS Termination Payments (Supplementary advice)  
**Attachments:** Request for Legal Advice - LAMS Termination Payments (Supplementary advice).docx, Re: taxation advice - end of Assembly term termination payments

OFFICIAL

FYI

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**From:** Taylor, Nina  
**Sent:** Wednesday, September 18, 2024 6:31 AM  
**To:** Mimilidis, Jacob ; Szanto, Juliet ; Herron, Emma ; Szandurski, Kim  
**Subject:** Fwd: Request for Legal Advice - LAMS Termination Payments (Supplementary advice)

OFFICIAL

Hi all,

FYI below. They have unfortunately uncovered further inconsistencies.

# Sch 1 s 1.2

Thanks so much

Nina

---

**From:** Wright, Robert <[Robert.Wright@act.gov.au](mailto:Robert.Wright@act.gov.au)>  
**Sent:** Tuesday, September 17, 2024 7:48 PM  
**To:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>; Taylor, Nina <[Nina.Taylor@act.gov.au](mailto:Nina.Taylor@act.gov.au)>  
**Cc:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>; Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>; Tyrie, Jacob <[Jacob.Tyrie@act.gov.au](mailto:Jacob.Tyrie@act.gov.au)>; Henry, Tracey <[Tracey.Henry@act.gov.au](mailto:Tracey.Henry@act.gov.au)>  
**Subject:** Request for Legal Advice - LAMS Termination Payments (Supplementary advice)

OFFICIAL

Hi Martin and Nina

As discussed with Martin, the CPSU has raised an additional query with the ACT Executive in regard to the taxation treatments for LAMS termination payments in a number of situations. It would appear that OLA payroll taxation treatments differ from those applied by our OIRWS payroll team. The OLA payroll calculations rely on private legal advice (see attached). Following discussion with the CMO I consider it appropriate to seek a second reading of these taxation treatments by GSO.

I have attached a draft RLA for review by you as the subject matter experts and contacts for this request.

Kind regards

Robert Wright  
EGM Corporate CMTEDD

Sch 1 s 1.2

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Sch 1 s 1.2

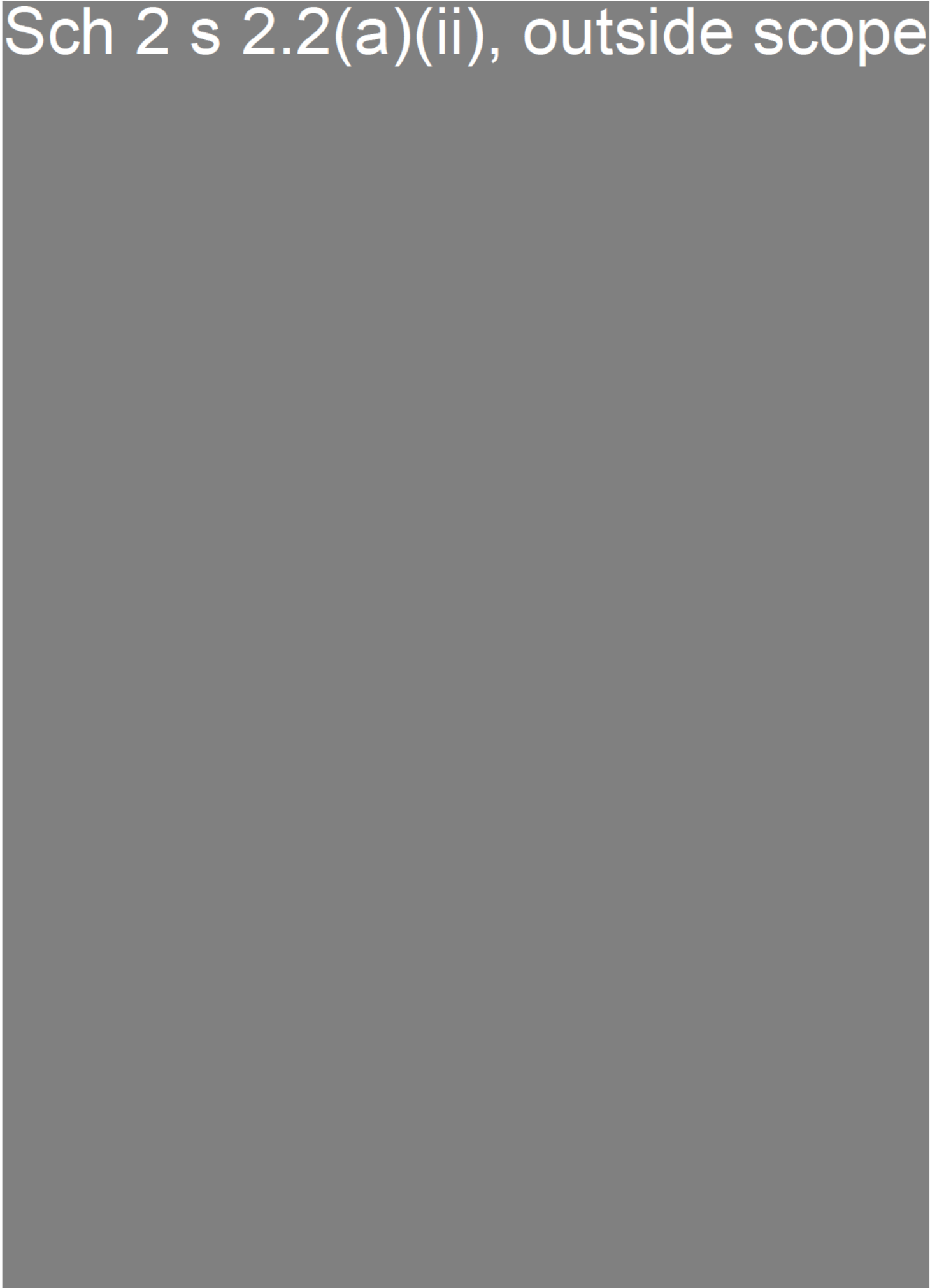
Sch 1 s 1.2

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Sch 2 s 2.2(a)(ii), outside scope



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Sch 1 s 1.2

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Sch 1 s 1.2, Sch 2 s 2.2(a)(ii)

Sch 1 s 1.2, Sch 2.2(a)(ii)

Sch 1 s 1.2, Sch 2.2(a)(ii)

**From:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Sent:** 01/10/2024 1:02 PM  
**To:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>  
**Cc:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Khem, Deepika" <Deepika.Khem@act.gov.au>; "Mullavey, Malcolm" <Malcolm.Mullavey@act.gov.au>; "Palic, Richard" <Richard.Palic@act.gov.au>  
**Subject:** FW: Circumstance change  
**Attachments:** LAMS ETP\_Example.pdf

UNOFFICIAL

Hi Lisa,

Draft comm points for both scenarios, ETP change and ETP change and calculation methodology change.

Note that attached is for ETP change only and will need adjusting for the second scenario.

Thanks

Martin

Martin Bolton | Executive Branch Manager | Payroll and HR Systems

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government

Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

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**From:** Khem, Deepika  
**Sent:** Tuesday, October 1, 2024 12:09 PM  
**To:** Bolton, Martin ; Mullavey, Malcolm ; Palic, Richard  
**Subject:** RE: Circumstance change

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Sounds good, I can easily update the example and colour code based on the advice regarding "exit status".

I have added a few things in red below to cover ourselves and leave it a bit grey... thoughts?

We can tweak further based on the final advice.

Dee

---

**From:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>

**Sent:** Tuesday, 1 October 2024 11:45 AM

**To:** Khem, Deepika <[Deepika.Khem@act.gov.au](mailto:Deepika.Khem@act.gov.au)>; Mullavey, Malcolm <[Malcolm.Mullavey@act.gov.au](mailto:Malcolm.Mullavey@act.gov.au)>; Palic, Richard <[Richard.Palic@act.gov.au](mailto:Richard.Palic@act.gov.au)>

**Subject:** Circumstance change

UNOFFICIAL

## What you think?

Depending on the advice around “exit status” I may need the severance to look different Dee and dif coloretc. Ill talk once we get the advice.

## ETP change only

Attached is a sample calculation designed to inform you of what will change and what will not change (subject to previous caveats) as a result of the revised tax treatment.

- Gross components, circled in blue will not change
- Tax amounts circled in red will potentially change and will be higher
  - The amount of tax will likely be higher in all cases
  - The tax amounts changes each fortnight as the calculation takes into account year to date income when calculating total tax.
  - Employees with higher earnings and a higher components of ETP/ leave payments will be more affected by the application of the revised method.

## ETP change and calculation methodology change

- Annual Leave and Long Service Leave components, circled in blue will not change
- Severance payments circled in blue may change
  - Your severance calculation will be based on your work status on exit, eg part time or full time.
  - Periods of part or full time will be irrelevant in that calculation due to exit status being the key variable.
- Tax amounts circled in red will potentially change and will be higher
  - The amount of tax will likely be higher in all cases
  - The tax amounts changes each fortnight as the calculation takes into account year to date income when calculating total tax

Martin Bolton | Executive Branch Manager Payroll and HR Systems, Shared Services

Phone: 02 620 58700 | Mobile: [Sch 2.2\(a\)\(ii\)](#) | Email: [martin.bolton@act.gov.au](mailto:martin.bolton@act.gov.au)

Shared Services and Property | Chief Minister, Treasury and Economic Development Directorate | ACT Government

Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)



**ACT**  
Government

# Termination Payment -LAMS Estimate for Financial Advice

Employee Name:	XXXXXX XXXXX	AGS:	123456
Proposed Exit Date:	05/11/2024	Salary at Exit:	\$150,000.00
		Other Applicable Allowances:	\$10,500.00

### Annual Leave and Long Service Leave

<b>Hourly rate used</b>	<b>\$83.72</b>		
Payment in lieu of Annual Leave	100.0000 hours	\$	8,371.91
Payment in lieu of long service leave			
Full time	1.0000 months	\$	13,375.00
Part time (based on an average of 22.05 hours per week)	2.0000 months	\$	16,050.00
<b>Total annual leave, annual leave loading and long service leave</b>		<b>\$</b>	<b>37,796.91</b>

Gross components will not change

Tax based on marginal tax Tax components will change → \$ 15,000.00

### Severance Payments

Severance Payments based on 6 Years and 9 months continuous service and an annual salary of \$ 160500

<b>Weekly rate used</b>	<b>\$3,076.68</b>		
Full-time	9.5 weeks	\$	29,228.46
Part-time	4 weeks (at avg hou 22.05 per week)	\$	7,384.03
Payment in lieu of notice:	4 weeks	\$	12,306.72
<b>Total</b>		<b>\$</b>	<b>48,919.21</b>
Taxable Component (ETP)		\$	48,919.21

Gross components will not change

Tax on ETP (based on whole of income) Tax components will change → \$ 15,654.00

<b>Total</b>			
<b>Total gross entitlement</b>		\$	<b>86,716.12</b>
<b>Less total taxation</b>		\$	<b>30,654.00</b>
<b>Total net entitlement</b>		\$	<b>56,062.12</b>

Can't be reemployed under LAMS Act until: 08/03/2025

Prepared:	Checked:	Team Leader:
Date:	Date:	Date:

Please note: this is an estimated figure of what you may receive as at your proposed exit date, this figure may vary upon cessation due to changes in leave balances, employment conditions or increases to your salary etc.

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**From:** "Mirzabegian, Sanaz"  
**Sent:** 01/10/2024 5:32 PM  
**To:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>  
**Cc:** "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Taylor, Nina" <Nina.Taylor@act.gov.au>  
**Subject:** Re: For Info - update on Request for legal advice: termination payments for LAMS Act staff

Yes, at a high level  
Sanaz Mirzabegian  
Executive Group Manager

**From:** Carmody, Lisa  
**Sent:** Tuesday, October 1, 2024 5:29:14 PM  
**To:** Mirzabegian, Sanaz  
**Cc:** Bolton, Martin ; Taylor, Nina  
**Subject:** RE: For Info - update on Request for legal advice: termination payments for LAMS Act staff

OFFICIAL

ok thanks

Did cmtedd corporate involve us in the further question articulation?

**Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy**

Mobile: [Sch 2 s 2.2(a)(ii)] | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)

**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

---

**From:** Mirzabegian, Sanaz  
**Sent:** Tuesday, 1 October 2024 5:26 PM  
**To:** Carmody, Lisa  
**Cc:** Bolton, Martin ; Taylor, Nina  
**Subject:** For Info - update on Request for legal advice: termination payments for LAMS Act staff

OFFICIAL

Hi Lisa, for visibility, the advice is not yet provided.

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals**

**Public Sector Employment**

**Office of Industrial Relations and Workforce Strategy**

**Chief Minister, Treasury and economic Development Directorate| ACT Government**

220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

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**From:** "Mirzabegian, Sanaz"  
**Sent:** 02/10/2024 12:52 PM  
**To:** "Wright, Steven" <Steven.Wright@act.gov.au>  
**Cc:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Subject:** FW: Urgent CPSU correspondence  
**Attachments:** MN to MC LC - Redudancy provisions - LAMS EA.pdf  
**Importance:** High

Hi Steven, please see attached. I've spoken with Lisa and Sch 1 s 1.2

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals**  
**Public Sector Employment**  
**Office of Industrial Relations and Workforce Strategy**  
**Chief Minister, Treasury and economic Development Directorate | ACT Government**  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

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**From:** Carmody, Lisa  
**Sent:** Wednesday, 2 October 2024 12:14 PM  
**To:** Mirzabegian, Sanaz ; Bolton, Martin  
**Cc:** CMTEDD, DDGOIRWS  
**Subject:** FW: Urgent CPSU correspondence  
**Importance:** High

**OFFICIAL**

**Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy**  
Mobile: Sch 2.2(a)(ii) | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

---

**From:** Maddy Northam Sch 2.2(a)(ii) @cpsu.org.au  
**Sent:** Wednesday, 2 October 2024 12:10 PM  
**To:** Sch 2.2(a)(ii) @act.gov.au; Carmody, Lisa <Lisa.Carmody@act.gov.au>  
**Cc:** Sch 1 s 1.4 >; Szandurski, Kim <Kim.Szandurski@act.gov.au>  
**Subject:** Urgent CPSU correspondence  
**Importance:** High

You don't often get email from Sch 2 s 2.2(a)(ii) @cpsu.org.au. [Learn why this is important](#)

**Caution:** This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good  
afternoon  
Sch 2.2(a)(ii)  
and Lisa

Please find attached urgent correspondence from the Community and Public Sector Union.

Regards  
Maddy Northam



**Maddy Northam** (She/Her) | Regional Secretary | National Secretariat | CPSU

m: Sch 2.2(a)(ii)

Member Service Centre: 1300 137 636 | [cpsu.org.au](http://cpsu.org.au)

The Community and Public Sector Union (CPSU) acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and the elders past and present.

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**Community & Public Sector Union**  
Maddy Northam | Regional Secretary

Sch 2 s 2.2(a)(ii)

ACT Government

Ms Lisa Carmody  
Deputy Director General  
CMTEDD Office of Industrial Relations  
ACT Government

Via email: Sch 2 s 2.2(a)(ii)@act.gov.au [lisa.carmody@act.gov.au](mailto:lisa.carmody@act.gov.au)

Sch 2 s 2.2(a)(ii)

Lisa

Dear Sch 2 s 2.2(a)(ii) and Ms Carmody,

### Genuine Redundancy – Legislative Assembly Members Staff

CPSU understands that the Office of the Legislative Assembly recently sought taxation advice pertaining to the treatment of staff employed under the Legislative Assembly Members Staff Enterprise Agreement 2023-2026 (The Agreement). Specifically, CPSU understands that the advice sought pertaining to how employee's employment is treated in the event of a change of Government or the employee's employment is no longer required. The CPSU also understands this advice is inconsistent with the usual approach adopted by the Government and also that conflicted with the separation advices provided to staff prior to caretaker.

As you would be aware, such a payment made to the employee under the Agreement is made up of two components. The first section is any outstanding entitlements, and the second section is provided for by section B7.1 of the Agreement.

For the avoidance of doubt, B7.1 notes:

*"B7.1 Subject to this clause and subclause B7.2, an employee whose employment is terminated by the operation of sections 8(1), 8(2), 8(4), 13(1) and 13(3) of the LAMS Act is entitled to be paid all of the following:*

*B7.1.1 A sum equal to 4 weeks salary irrespective of length of service.*

*B7.1.2 A sum equal to 2 weeks salary for each completed year of continuous service.*

*B7.1.3 A pro-rata payment for additional completed months of service, up to a maximum of 48 weeks' salary."*

Given the Agreement discusses the LAMS Act 1989, CPSU notes that the relevant clauses note:

*"8(1) The employment of a person under this part terminates if the office-holder by whom the person was employed dies.*

*8(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...*

*8(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.*

*13(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.*

*13 (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.”*

Given there is a significant potential for one of the aforementioned situations to occur at the upcoming ACT Government election, and the employee is terminated subject to these provisions, the following clause of the Agreement must be considered:

*B7.3 Where an employee is entitled to be paid redundancy pay under section 119 of the Fair Work Act, any termination payment made under subclause B7.1 will be reduced by an amount equal to that redundancy payment.*

This provision is relevant because of the taxation treatment of the redundancy payment (that is no tax is withheld).

CPSU understands that the advice sought by OLA suggested that in the event of this provision of the Agreement being triggered, it should not be considered to be a genuine redundancy. While the CPSU have not seen the advice, we suggest in reaching such a conclusion, it may not take into account the unique situation of how legislative Assembly Members Staff are treated and relevant caselaw.

CPSU notes the long standing and accepted custom and practise over the past 16 years of Enterprise Agreements, which have seen this clause triggered (and subsequently paid as a genuine redundancy) at the 2020 Election, the 2016 Election and the 2012 Election.

In not abiding by this custom and practise, this asserted action would remove a genuinely expected and calculated entitlement that employees have rightly and reasonably relied upon, on accepting what is genuinely and reasonably considered to be insecure employment.

CPSU further notes the decisions of the full bench which have considered the application of this matter, where in *CFMEU, CEPU & AMWU v Spotless* [2015] FWCFB 1162, the full bench determined that ‘the abolition of a position as a result of ordinary and customary turnover of labour is a redundancy’.

This decision by the Full Bench is supported by the decision of the Full Federal Court in *Berkeley Challenge Pty Ltd v United Voice* [2020] FCAFC 113, which goes on to describe a genuine redundancy with the following considerations:

1. the reasonable expectations of ongoing employment held by employees;
2. whether the termination due to ordinary and customary turnover of labour is common or usual; and
3. if it is usual practice for the particular kind of business to terminate the employment of its employees.

Given the provisions of section B7.2 of the Agreement (which outlines the exclusion of the termination payment due to ongoing employment), and the long and considered custom and practise under the LAMS Agreement, CPSU asserts that the redundancy is genuine under s119.

Given this, staff employed by an office-holder, or staff employed by a Member of the Assembly, in meeting the requirements of B7.1 of the Agreement, must be considered to be genuinely redundant.

The CPSU therefore seeks your assurance on behalf of affected members that the Government will honour the approach outlined to employees in their written advice issued prior to the commencement of caretaker and the historical custom and practice which accepts termination of employment in these circumstances is treated as a redundancy.

Should you wish to discuss this matter, please contact me on [Sch 2 s 2.2\(a\)\(ii\)](#), or [Sch 2 s 2.2\(a\)\(ii\)@cpsu.org.au](mailto:Sch 2 s 2.2(a)(ii)@cpsu.org.au)

Yours sincerely,

Sch 2 s 2.2(a)(ii)

Maddy Northam  
Regional Secretary

2/10/24

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Sch 1 s 1.2

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**From:** "Taylor, Nina" <Nina.Taylor@act.gov.au>  
**Sent:** 02/10/2024 3:51 PM  
**To:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Subject:** RE: Urgent: LAMS Fixed-term contracts

**OFFICIAL: Sensitive**

Hi Kim and Sanaz,

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I believe the decision in discussion with Russell at the time was that it would be okay to rely on the current processes for the moment and that a review of the LAMS EA, LAMS Act and LAMS employment contracts was required as a project in the future to make any relevant amendments following consultation of various stakeholders. I believe Russell had communicated this with MO at the time. Our team considered the upcoming caretaker and also the issues around who this work would fall under. This has then triggered further conversations in the team about relevant responsibility of this work. We hadn't yet received a decision about who this would sit with and hence hadn't put forward a proposal to the relevant directorates about next steps.

As discussed previously and in my correspondence, it would be useful to clarify responsibility in this space to allow the relevant areas to then commence work in this space and other work items related to LAMS, noting the directorates believe it is our team. If you decide this is our team, that's okay as well, however we would need to consider how this may impact other work items and also if our original plan noted above is still suitable – that the issue below should not be addressed on its own, but instead as a project considering updates to the LAMS EA, LAMS Act and LAMS employment contracts to ensure other items are captured and all relevant considerations have been explored that may impact the proposed changes below. We would then need to discuss when this project would be completed etc.

Happy to discuss further on my return from leave. Kind regards, Nina

---

**From:** Turner, Rachel  
**Sent:** Wednesday, October 2, 2024 2:16 PM  
**To:** Szandurski, Kim ; Mirzabegian, Sanaz  
**Cc:** Taylor, Nina ; Szanto, Juliet ; Rogers, Emma ; Mison, Matt ; Duncan, Tom ; Walsh, AmyL ; Henry, Tracey ; Wright, Steven  
**Subject:** Urgent: LAMS Fixed-term contracts  
**Importance:** High

**OFFICIAL: Sensitive**

Good afternoon Sanaz and Kim

As you would be aware, over recent weeks it has become apparent that LAMS employment provisions are being applied differently across Executive and Non-executive teams. As a result we have identified concerns about the Chief Minister Hiring Arrangement Determinations for both Office-holders and Members' staff. Specifically, whether the employment arrangements in Schedule 1 of the *Legislative Assembly Members (Members' Staff) Act* (LAMS Act) comply with the recent changes to fixed term employment under the *Fair Work Act 2009* (FWA).

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We acknowledge the potential reliance on the FWA exception for 'specialised skills for a specific task,' however it is important to recognise that many non-executive roles are often administrative in nature, not necessarily specialised and most do not exceed the high income threshold. Our commitment to compliance with both the FWA and the

LAMS Act is paramount as the ACT Legislative Assembly shapes laws and upholding these standards reflects our dedication to legal integrity and enhances the credibility of our institution.

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We understand that OIRWS is currently operating under resource constraints; however, CMTEDD holds the responsibility for administering the LAMS legislative frameworks and Chief Minister Determinations and in only a few weeks we will begin preparing contracts for LAMS staff for the 11<sup>th</sup> Assembly.

I am therefore seeking your advice and/or assurance that it is your view as per the advice received below that the "Legislative Assembly should continue to rely on the exception of 'Specialised skills for a specific task' under the *Fair Work Act 2009* (FW Act) when hiring future staff. This is the exception that LAMS staff are employees engaged for a specified task as described in clause B1 of the Legislative Assembly Members Staff Enterprise Agreement 2023 - 2026."

Please let me know if you would like to meet to discuss and/or if we can provide any assistance.

Regards

Rachel

**Rachel Turner**

Executive Manager, Business Support | Office of the Legislative Assembly

Phone: (02) 6205 0181 | Mobile: [Sch 2 s 2.2\(a\)\(ii\)](#)

Email: [rachel.turner@parliament.act.gov.au](mailto:rachel.turner@parliament.act.gov.au)

GPO Box 1020 Canberra ACT 2601

[www.parliament.act.gov.au](http://www.parliament.act.gov.au)



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Providing professional services and reliable, impartial advice to support, strengthen and promote the institution of parliament in the ACT.

---

**From:** Szanto, Juliet <[Juliet.Szanto@act.gov.au](mailto:Juliet.Szanto@act.gov.au)>

**Sent:** Friday, September 27, 2024 1:29 AM

**To:** Rogers, Emma <[Emma.Rogers@parliament.act.gov.au](mailto:Emma.Rogers@parliament.act.gov.au)>

**Cc:** Henry, Tracey <[Tracey.Henry@act.gov.au](mailto:Tracey.Henry@act.gov.au)>; Turner, Rachel <[Rachel.Turner@parliament.act.gov.au](mailto:Rachel.Turner@parliament.act.gov.au)>; Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>; Perkovic, Sophia <[Sophia.Perkovic@act.gov.au](mailto:Sophia.Perkovic@act.gov.au)>; Taylor, Nina <[Nina.Taylor@act.gov.au](mailto:Nina.Taylor@act.gov.au)>

**Subject:** RE: LAMS Fixed-term contracts

**OFFICIAL: Sensitive**

Hi Emma,

Thank you for noting your concerns here and providing us with your draft amendments to probation entitlements.

# Sch 1 1.2

# Sch 1 1.2

## Fixed term contracts:

While our team is happy to provide feedback and support in reviewing proposed updates to the LAMS employment contract instruments, we do not currently have the resources needed to undertake the revisions you are requesting below or support the notification process.

# Sch 1 1.2

and LAMS enterprise agreement (i.e. LAMS employment framework) require review. The review will need to pick up the use of 'fixed-term' employment categories in the employment contract and LAMS EA alongside the mechanism through which LAMS employment is terminated which sits in the LAMS Act.

Until this review occurs the Legislative Assembly should continue to rely on the exception of 'Specialised skills for a specific task' under the *Fair Work Act 2009* (FW Act) when hiring future staff. This is the exception that LAMS staff are employees engaged for a specified task as described in clause B1 of the Legislative Assembly Members Staff Enterprise Agreement 2023 -2026.

## Probation:

With regard to the proposed probation clause.

We do not see issue with the inclusion of this probation clause as it is aligned and compliments probation provisions already in the LAMS EA. The clause provides detail not in the LAMS EA covering commencement and the termination of an employee's probation which is informative and sets clear expectations for employees and Members. In the past, our team has noted that there were no immediate concerns with extending the probation of LAMS Staff as long as the total probation period was no longer than 6 months. We have also noted a lack of processes/steps to extend probation as something that might be addressed during enterprise bargaining or in the employment contract. Your proposed clause aims to close this gap in information.

However, I would caution against the inclusion of lines such as:

'(b) the length of the extension (up to a maximum of an additional 6 months);' and

When the probation period is extended beyond what is set under the *Fair Work Act 2009* - which is 6 months - then employment is annulled within this extended period, the employee has a right to bring an unfair dismissal case to Fair Work.

When advising on the ability to extend probation under similar *Public Sector Management Act 1994* (PSM Act) provisions, we always recommend that once the initial 6 months' probation period has past, even where probation has been extended under the PSM Act, that a performance management process be undertaken where performance is unsatisfactory. This may be informed by any relevant probation reports and noting any extension.

In considering the above, OIRWS supports the inclusion of this probation clause should OLA wish to undertake appropriate consultation and progress this change to the Chief Minister for approval.

Kind regards,

**Juliet Szanto | Industrial Relations and Employment Conditions Officer**  
Whole of Government Industrial Relations and Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**  
220 London Circuit Canberra City | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

---

**From:** Rogers, Emma <[Emma.Rogers@parliament.act.gov.au](mailto:Emma.Rogers@parliament.act.gov.au)>  
**Sent:** Thursday, September 26, 2024 11:09 PM  
**To:** Taylor, Nina <[Nina.Taylor@act.gov.au](mailto:Nina.Taylor@act.gov.au)>  
**Cc:** Szanto, Juliet <[Juliet.Szanto@act.gov.au](mailto:Juliet.Szanto@act.gov.au)>; Henry, Tracey <[Tracey.Henry@act.gov.au](mailto:Tracey.Henry@act.gov.au)>; Turner, Rachel <[Rachel.Turner@parliament.act.gov.au](mailto:Rachel.Turner@parliament.act.gov.au)>; Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>; Perkovic, Sophia <[Sophia.Perkovic@act.gov.au](mailto:Sophia.Perkovic@act.gov.au)>  
**Subject:** RE: LAMS Fixed-term contracts  
**Importance:** High

**OFFICIAL: Sensitive**

Hi Nina

Sch 1 1.2

**Emma Rogers**  
HR Projects | Business Support Branch  
E [emma.rogers@parliament.act.gov.au](mailto:emma.rogers@parliament.act.gov.au)

---

**From:** Szanto, Juliet <[Juliet.Szanto@act.gov.au](mailto:Juliet.Szanto@act.gov.au)>  
**Sent:** Wednesday, September 25, 2024 8:22 PM

Sch 1 s 1.2

# Sch 1 1.2

Many thanks,  
Jake

---

**From:** Sch 2.2(a)(ii) @act.gov.au  
**Sent:** Monday, April 8, 2024 2:44 PM  
**To:** Szandurski, Kim <Kim.Szandurski@act.gov.au>  
**Cc:** Sch 2.2(a)(ii) @act.gov.au; Noud, Russell <Russell.Noud@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>; Szanto, Juliet <Juliet.Szanto@act.gov.au>  
**Subject:** RE: Short Term Contract Changes Brief

Thanks Kim, and team.

Appreciate the quick advice on this.

Kind regards,

Sch 2.2(a)(ii)

---

**From:** Szandurski, Kim <Kim.Szandurski@act.gov.au>  
**Sent:** Thursday, April 4, 2024 5:28 PM  
**To:** Sch 2.2(a)(ii) @act.gov.au  
**Cc:** Sch 2.2(a)(ii) @act.gov.au; Noud, Russell <Russell.Noud@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>; Szanto, Juliet <Juliet.Szanto@act.gov.au>  
**Subject:** Short Term Contract Changes Brief

OFFICIAL

Dear Matt

Thank you for your time to discuss this matter the other week.

I confirm that we do not believe that the short-term contact changes will not have any substantial impact on staff at the Legislative Assembly.

We have reviewed the employment arrangements of Legislative Assembly staff and determined they are employees engaged for a specified task as described in clause B1 of the Legislative Assembly Members Staff Enterprise Agreement 2023 -2026 (LAMS EA). This means they would meet the exception of 'Specialised skills for a specific task' under the *Fair Work Act 2009* (FW Act) and the fixed- term contact limitations don't apply. The specific task referred to involves specialist skill, including advising and forming a close/exclusive working relationship with a specific member or office-holder of the ACT Legislative Assembly under whom the staff member is employed as per the *Legislative Assembly (Members' Staff) Act 1989* (LAMS Act). Employment to perform such a task is only available for a specific period of time being the term of office until election upon which there is no ongoing work available as the office holder or member ceases to hold their position in the Assembly.

# Sch 1 1.2

Please let us know if we can assist further.

Kind regards

Kim

**Kim Szandurski** | Executive Branch Manager (*she/her*)  
Public Sector Industrial Relations & Secure Local Jobs Code  
Office of Industrial Relations & Workforce Strategy  
Chief Minister, Treasury and Economic Development Directorate | ACT Government  
Level 5, 220 London Circuit | GPO Box 158 Canberra City ACT 2601 | Web: [www.act.gov.au](http://www.act.gov.au)  
Phone: +61 2 6207 0810 | Mobile: **Sch 2.2(a)(ii)** | Email: [kim.szandurski@act.gov.au](mailto:kim.szandurski@act.gov.au)

**From:** **Sch 2.2(a)(ii)** [act.gov.au](mailto:act.gov.au)>  
**Sent:** Friday, March 15, 2024 10:59:36 AM  
**To:** Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>  
**Cc:** CMCD DLO <[CMCDDLO@act.gov.au](mailto:CMCDDLO@act.gov.au)>; **Sch 2.2(a)(ii)** [act.gov.au](mailto:act.gov.au)>  
**Subject:** Short Term Contract Changes Brief

Hi Kim,

As discussed – Can you please get me some background information on whether the short term contract changes will have any impact on LAMS staff?

All staff are employed on fixed term (often 4 years) contracts, and a lot of them are over the income threshold – I couldn't see an exception that would clearly apply but would appreciate some advice on this.

Kind regards,

**Sch 2.2(a)(ii)**

Deputy Chief of Staff (Mon-Thu)  
Chief of Staff (Fri)  
Office of the Chief Minister  
Andrew Barr MLA



Sch 1 s 1.2

Sch 1 s 1.2

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Sch 1 s 1.2

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Sch 1 s 1.2

Australian Capital Territory

# Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 202~~41~~ (No 1)

Disallowable instrument ~~DI20241-~~

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' Hiring Arrangements Approval 202~~41~~ (No 1)*.

## 2 Commencement

This instrument commences on the day after notification. 1 July 2021.

## 3 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.

## 4 Definition

In this instrument:

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

*member* means a member of the Legislative Assembly other than an office-holder.

## 5 Revocation

~~DI2016-300~~ ~~DI2021-181~~ is revoked.

## 6 Approval for Act, s 10 and s 20

This instrument approves arrangements and conditions in accordance with which members may, on behalf of the Territory, employ part 3 employees, or engage contractors or consultants, under the Act, section 10 or section 20.

## 7 Staff employment

A member may only employ a part 3 employee under an agreement substantially in the form set out in schedule 1.

*Note* Employees are also employed subject to conditions of employment under any award or enterprise agreement under the *Fair Work Act 2009* (Cth) that applies to members' staff.

**8 Re-engagement**

A part 3 employee whose employment is terminated by the operation of subsection 13(1) of the Act, and who receives a termination payment under the applicable enterprise agreement, shall not recommence employment under the Act before the expiry of the period of time, in weeks and days, that is equivalent to the termination payment.

*Example* Where an employee is in receipt of a termination payment equal to six weeks' pay, not including superannuation or any other payment, the exclusion period is equal to six weeks.

*Note* There is nothing to prevent new employment arrangements being settled during the exclusion period with a view to employment recommencing immediately following the expiration of the exclusion period.

**9 Contractor and consultant engagements**

- (1) A member may only engage a consultant or contractor under an agreement substantially in the form set out in schedule 2.
- (2) A contract for services by which a member engages a consultant or a contractor—
  - (a) must be endorsed by the Clerk of the Legislative Assembly, or a person authorised by the Clerk for this purpose, before execution by the parties; and
  - (b) must be in accordance with guidelines issued by the ACT Government Procurement Board.

**Dated**

Andrew Barr  
*Chief Minister*

---

## **Schedule 1 Staff employment**

(see cl 7)

## EMPLOYMENT AGREEMENT – STAFF OF MEMBERS

Note: This Agreement is of no legal effect without the prior endorsement of the Clerk of the Legislative Assembly, or a person authorised by the Clerk for that purpose.

This Agreement sets out the terms on which I will employ you, pursuant to subsection 10(1) of the *Legislative Assembly (Members' Staff) Act 1989*.

### 1. DEFINITIONS

1.1 In this Agreement, the following words have the following meanings:

- (a) "Act" means the *Legislative Assembly (Members' Staff) Act 1989* ("the Act");
- (b) "Agreement" means this Agreement and includes any attachments or schedules;
- (c) "Award" means the Australian Capital Territory Public Sector Enterprise Award 2016 as varied from time to time;
- (d) "Enterprise Agreement" means the applicable industrial agreement made under the *Fair Work Act 2009* which applies to and covers persons engaged under the Act;
- (e) "Determination" means any relevant determination made pursuant to the Act;
- (f) "Direction" means any relevant direction given pursuant to the Act;
- (g) "I" means the person specified in item 2 of the Attachment to this Agreement, on behalf of the Australian Capital Territory, and "my", "mine" and "me" have corresponding meanings;
- (h) "You" means the person specified in item 1 of the Attachment to this Agreement and "your" and "yours" have corresponding meanings.

### 2. APPLICATION

2.1 The terms and conditions of your employment are as set out in:

- (a) the Enterprise Agreement;
- (b) the Award;
- (c) the Act;
- (d) any Determinations or Directions;
- (e) this Agreement; and
- (f) other applicable laws.

### **3. OBLIGATIONS**

#### **3.1 In performing the duties, you will:**

- (a) comply with the requirements of the applicable code of conduct for staff of members and ministers of the ACT Legislative Assembly as varied from time to time;
- (b) comply with the terms and conditions of your employment;
- (c) notify me of any illness or medical condition affecting you which substantially affects your ability to carry out your duties or obligations under this Agreement;
- (d) notify me of any restrictions by statute, court order, contract, or deed on your legal capacity to perform the full range of duties;
- (e) comply with any lawful and reasonable direction given by a person having authority to give the direction;
- (f) not harass a member of the public or another public employee, whether sexually or otherwise.

### **4. EMPLOYEE WARRANTIES**

#### **4.1 You warrant that you:**

- (a) are and will continue to be a fit and proper person to be an employee under this Agreement; and
- (b) have discussed with me the issue of prior criminal convictions and have disclosed to me your convictions, other than spent convictions. I agree to keep such information strictly confidential.

### **5. EXCLUSIVE EMPLOYMENT**

#### **5.1 During the period of this Agreement, you must not be employed or engaged by any other person in any other capacity without my prior written approval nor will you engage in any business or undertaking without my prior written approval.**

**6. RECOGNITION OF OTHER EMPLOYMENT FOR LEAVE ACCRUAL**

6.1 I may agree to recognise your employment with an Australian parliamentarian or with a Commonwealth department or instrumentality for the purpose of determining the accrual of certain leave entitlements. My agreement shall be set out in item 11 of the Attachment to this Agreement or otherwise provided to you in writing.

6.2 My agreement as provided in clause 6.1 is subject to the following conditions:

- (a) the employment must have been as a staff member of a Member or Senator of an Australian parliament, or as an employee or officer of a Commonwealth department or instrumentality;
- (b) the employment may count towards the accrual of annual leave, personal leave and long service leave subject to availability under item 11 of the Attachment to this Agreement;
- (c) leave entitlements for which a payment has, or should have, been made shall not be recognised except in relation to relevant qualifying periods;
- (d) if ceased, in order to be recognised, the employment must have terminated no more than:
  - (i) part of a working day prior to the commencement of employment under the Act in relation to annual leave benefits; and
  - (ii) two (2) months prior to commencement of employment under the Act in relation to personal leave benefits; and
  - (iii) one (1) year prior to commencement of employment under the Act in relation to long service leave benefits,

unless the Chief Minister agrees that an alternative period is appropriate in the circumstances.

**7. PAID PARKING**

7.1 To remove any doubt, you do not have any automatic entitlement to paid parking.

## **8. TERMINATION OF EMPLOYMENT**

- 8.1 You may terminate this Agreement in accordance with the Act and the Enterprise Agreement.
- 8.2 Subject to the Act, this Agreement terminates automatically if any of the circumstances specified in subsection 13(1) of the Act apply.
- 8.3 I may terminate this Agreement in accordance with the Act, the Enterprise Agreement, the Award and the *Fair Work Act 2009* (Cth).
- 8.4 On termination of employment, however occurring, you will immediately deliver to me all work-related property belonging to me or to the Australian Capital Territory which is in your possession or control.

## **9. NO WAIVER**

- 9.1 Failure or omission by either of us to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of either of us to seek redress for any breach of any such provision.

## **10. GOVERNING LAW**

- 10.1 This Agreement is to be governed by the law of the Australian Capital Territory.

## **11. NOTICES**

- 11.1 All notices, consents, approvals, agreements or other communications by or to the respective parties to the Agreement will be in writing and addressed to the relevant party at their usual address, or such other address as may from time to time be specified by the party in writing.
- 11.2 All notices, consents, approvals, agreements or other communications delivered in accordance with clause 11.1 are deemed to be duly given or made as follows:
- (a) if delivered by hand, upon delivery;
  - (b) if sent by prepaid mail, upon the expiration of four days after the date on which it was so sent;
  - (c) if sent by facsimile, upon the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address;
  - (d) if sent by electronic mail, upon the sender's computer recording that the message has been successfully transmitted to the recipient's electronic mail address.

Schedule 1 Staff employment

---

Page 5 of 5

Dated \_\_\_\_\_ of \_\_\_\_\_  
(date) (month) (year)

Signed by the Member

In the presence of

Signed by the employee

In the presence of

Signed \_\_\_\_\_ Clerk of the Legislative Assembly  
(or authorised person)

Date

(To be signed and dated by the Clerk of the Legislative Assembly, or a person authorised by the Clerk for that purpose, before execution by the Parties).

## ATTACHMENT TO THE EMPLOYMENT AGREEMENT

### Item 1 [Clause 1.1(h)]

- (a) **Name of employee:**
- (b) **Address of employee:**
- (c) **Date of Birth of employee:**

### Item 2 [Clause 1.1(g)]

**Name of Member:**

### Item 3

**Type of Employment:** (Eg. "fixed term", "casual")

*Note: Casual employees are not entitled to be paid a LAMS Allowance.*

### Item 4 [clause 8]

**Period of Agreement** (The period of Agreement is until termination conditions are met under the Act and the Enterprise Agreement unless a period of Agreement is stated):

### Item 5

**Period of Probation (must be specified where the employment is subject to probation):**

*Note: The probationary period would normally be 6 months or less. If the specified period is less than 6 months, where necessary, the period of probation may subsequently be extended up to 6 months.*

### Item 6

**Duties (must be consistent with the classification and salary specified in Items 7 and 8):**

*Note: (1) Specify the key duties from the relevant Work Level Standard; or*

- (2) If the person is engaged to undertake a specified project, provide a description of the project and/or scope of the project; and*
- (3) Specify the Identified duties to be performed where a Specialist Duties Payment is to be paid in accordance with the Enterprise Agreement.*

**Schedule 1**                      Staff employment

---

## Attachment Page 2 of 2

**Item 7**

**Classification (must be in accordance with the Enterprise Agreement):**

**Item 8**

*Note: (1) Specify the relevant commencing annual salary and salary point (increment) in accordance with the Enterprise Agreement.*

*(2) The annual salary includes any non-cash benefits to which the employee is entitled under flexible remuneration arrangements, but excludes any long service leave allowance and leave loading.*

*(2)(3) The person will begin employment on their commencing salary point and will progress to the next salary point on or immediately prior to the anniversary date of appointment in accordance with the Enterprise Agreement.*

*(3)(4) Specify the relevant Specialist Duties Payment, where applicable, in accordance with the Enterprise Agreement.*

**(a) Salary (full-time equivalent):**

*Note: Specify commencing salary per annum.*

**(b) Salary Point (~~1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup>~~):**

*Note: Specify commencing salary point*

**(c) Specialist Duties Payment (full-time equivalent), if applicable:**

**Item 9**

**Fortnightly Hours of Work (standard full-time hours are 73.5 hours per fortnight):**

**Item 10**

**Working Pattern (days and commencing and finishing times that work will be performed if less than full time):**

**Item 11** [Clause 6.1]

**Recognition of Employment with an Australian Parliamentarian or with a Commonwealth department or instrumentality for the accrual of annual leave, personal leave and long service leave**

- (a) **Yes/No (strike out the answer that does not apply)**
- (b) **If Yes, supply details of previous employment:**

## **Schedule 2 Contractor and consultant engagements**

(see cl 9 (1))

# AGREEMENT

Date

Parties

[INSERT MEMBER'S NAME]

AND

[INSERT FULL NAME OF  
CONTRACTOR INCL. ACN IF  
COMPANY]

[INSERT BRIEF TITLE OF SERVICES]

**Note to users:** any text in red is for your attention. When using this template to prepare an agreement you will need to complete and/or follow any user prompts and also read the instructional notes.

DELETE this note, all prompts and other notes before finalising the agreement

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**PARTIES:** **[INSERT MEMBER'S NAME]** of Legislative Assembly Building, Civic Square, London Circuit, Canberra City, on behalf of the Australian Capital Territory pursuant to section 20 of the *Legislative Assembly (Members' Staff) Act 1989 (ACT)* (**Member**)

**[INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION AND CHECK IT IS A LEGAL ENTITY]** of **[INSERT address (of registered office if for a company)]** (**Contractor**).

---

## BACKGROUND

- A. The Member is a member of the Legislative Assembly.
  - B. Section 20 of the *Legislative Assembly (Members' Staff) Act 1989 (ACT)* allows a member to engage a consultant or contractor for the provision of services necessarily incidental to the performance of his or her ministerial or parliamentary duties.
  - C. The Member is satisfied that the services set out in this Agreement are necessarily incidental to the performance of his or her ministerial or parliamentary duties.
  - D. The Member has agreed to purchase, and the Contractor has agreed to provide, the services on the terms and conditions in this Agreement.
- 

**IT IS AGREED** by the parties as follows.

## 1. Interpretation

### 1.1 Definitions

The following definitions apply in this Agreement, unless the context otherwise requires.

**Clerk** has the meaning given in the *Legislative Assembly (Office of the Legislative Assembly) Act 2012 (ACT)*.

**Confidential Text** any text of this Agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in **Item 7 Schedule 1**.

**Contractor Material** all material owned by the Contractor and used for the purpose of providing the Services, including documents, information and data stored by any means.

---

<b>Contract Material</b>	all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including all reports (whether in draft or final form), documents, information and data stored by any means.
<b>Contract Officers</b>	in relation to each party, the representatives whose names and contact details are specified in <b>Item 1 Schedule 1</b> , or as notified from time to time by one party to the other.
<b>Contract Information</b>	<p>the kind of information that:</p> <ul style="list-style-type: none"> <li>(1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Member or the Territory which are by their nature confidential;</li> <li>(2) is notified (whether in writing or not) by the Member to the Contractor as being confidential;</li> <li>(3) is specified in <b>Item 6 Schedule 1</b>; or</li> <li>(4) is Personal Information,</li> </ul> <p>but does not include information that:</p> <ul style="list-style-type: none"> <li>(5) is or becomes public knowledge other than by breach of this Agreement;</li> <li>(6) has been independently developed or acquired by the Contractor; or</li> <li>(7) has been notified by the Member to the Contractor as not being confidential.</li> </ul>
<b>Contract Price</b>	the amounts specified in, or calculated in accordance with, <b>Item 3 Schedule 1</b> .
<b>GST</b>	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Information Privacy Act</b>	the <i>Information Privacy Act 2014</i> (ACT).
<b>Insolvency Event</b>	<ul style="list-style-type: none"> <li>(1) in respect of a natural person: <ul style="list-style-type: none"> <li>(a) any orders, agreements or arrangements are made in respect of the affairs of the person in accordance with the <i>Bankruptcy Act 1966</i> (Cth); or</li> <li>(b) in the reasonable opinion of the Member the person is likely to be declared bankrupt</li> </ul> </li> </ul>

or lose control of the management of their financial affairs; or

- (2) in respect of all other entities:
- (a) any of the events listed in sub-sections 459C(2)(a) to (f) of the *Corporations Act 2001* (Cth) occur in respect of the entity; or
  - (b) any other event occurs which, in the reasonable opinion of the Member is likely to result, or has resulted, in the:
    - (i) insolvency;
    - (ii) winding up; or
    - (iii) appointment of a controller (as that term is defined in the *Corporations Act 2001* (Cth)) in respect of part or all of the property,
 of the entity.

For the purpose of subparagraph (2)(b), subsections 459C(2)(a) to (f) *Corporations Act 2001*(Cth) are to be read as if applying to all incorporated entities.

### Invoice

an invoice that:

- (1) if GST is payable in respect of the provision of the Services, is a valid tax invoice for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (2) clearly sets out details of the Services provided and of the amount that is due for payment, is correctly calculated and is in respect of Services that have been performed in accordance with this Agreement;
- (3) is accompanied by any other details or reports required under this Agreement; and
- (4) is rendered at the times specified in **Item 3 Schedule 1** (if any) and addressed to the Member's Contract Officer.

### Member Material

any material provided by the Member to the Contractor for the purposes of this Agreement including documents, equipment, information and data stored by any means.

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<b>Personal Information</b>	<p>is personal information as defined in section 8 of the Information Privacy Act, namely, information or an opinion about an identified individual or an individual who is reasonably identifiable:</p> <p>(1) whether the information is true or not; and</p> <p>(2) whether the information or opinion is recorded in a material form or not.</p> <p>but does not include personal health information (as defined in the Health Records (Privacy and Access) Act 1997 (ACT)) about the individual.</p>
<b>Prescribed Insurer</b>	an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and rated at AA or better by Standard & Poor's.
<b>Procurement Act</b>	the Government Procurement Act 2001 (ACT).
<b>Services</b>	the services described in <b>Schedule 2</b> .
<b>Special Condition</b>	any provision set out in <b>Schedule 3</b> .
<b>Specified Personnel</b>	any person named in <b>Item 4 Schedule 1</b> , or any other employee or agent of the Contractor, who is approved by the Member from time to time for the purpose of <b>clause 6</b> .
<b>Term</b>	the term specified in <b>Item 2 Schedule 1</b> , and if extended, the initial term and the extended term.
<b>Territory</b>	<p>when used:</p> <p>(1) in a geographical sense, the Australian Capital Territory; and</p> <p>(2) in any other sense, the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Cth).</p>
<b>TPPs</b>	the Territory Privacy Principles provided for in section 13 and set out in Schedule 1 of the Information Privacy Act.
<b>TPP Code</b>	a code of practice about information privacy which, having regard to section 21(1) and (3) of the Information Privacy Act, binds an agency that engages the Contractor in the provision of the Services.

---

## 1.2 General

In this Agreement, unless a contrary intention is expressed:

- (1) references to “Contractor” include any employees, agents or subcontractors of the Contractor;
- (2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (3) words in the singular include the plural and vice versa;
- (4) headings are for convenience only and do not affect the construction or interpretation of this Agreement;
- (5) an obligation imposed on more than one person binds them jointly and severally; and
- (6) the word “include” and any derivation is not to be construed as a word of limitation.

## 2. Services

The Consultant must perform the Services in accordance with the provisions of this Agreement and to a standard of care, skill and diligence expected of a person who regularly acts in the capacity in which the Consultant is engaged.

## 3. Term

### 3.1 Commencement

This Agreement commences on the date:

- (1) specified in **Item 2 Schedule 1** to this Agreement; or
- (2) on which the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it,

whichever is later.

### 3.2 Endorsement

This Agreement does not have effect until the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it. Until this Agreement is endorsed, neither party may:

- (1) exercise any rights under this Agreement;
- (2) enforce any obligations under this Agreement;
- (3) perform Services under this Agreement; or
- (4) in any way act pursuant to this Agreement.

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### 3.3 Extension

This Agreement ends on the date specified in **Item 2 Schedule 1** to this Agreement unless extended under **clause 12.7** or terminated under the provisions of this Agreement.

## 4. Contract Price

### 4.1 Invoice

The Member must pay the Contractor the Contract Price following its receipt of an Invoice and otherwise in accordance with **Item 3 Schedule 1**.

### 4.2 Incorrect payments

If, after payment, an invoice is found to have been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due by the Member to the Contractor under this Agreement.

## 5. Ownership and use of material

### 5.1 Ownership of material

Ownership of:

- (1) all Contract Material, including any intellectual property rights, vests on its creation in the Member;
- (2) all Member Material, including any intellectual property rights, remains with the Member; and
- (3) all Contractor Material, including any intellectual property rights, remains with the Contractor.

### 5.2 Licence of material

The Member grants to the Contractor a royalty-free, limited licence to use the Contract Material and Member Material for the Term.

- (1) The Contractor grants to the Member a royalty-free, perpetual, limited licence to use the Contractor Material.
- (2) For the purpose of this clause, “use” includes:
  - (a) such uses as are reasonably necessary for the Member to obtain the full benefit of the Services, including use of the Contract Material; and
  - (b) such uses as are reasonably necessary for the Contractor to undertake the Services or as otherwise agreed by the Member,and may include supply, reproduce, publish, perform, communicate, broadcast, adapt and copy as the context requires.

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### 5.3 Third party rights

The Contractor must ensure:

- (1) the use of any Contract Material or Contractor Material will not infringe the intellectual property rights of any third party; and
- (2) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Member's (or its agents') use of any Contract Material or Contractor Material.

### 5.4 Moral rights

The Contractor must, in relation to the authors of any work that comprises or forms part of the Contract Material:

- (1) use its best endeavours to include in the Contract Material an attribution of those authors; and
- (2) procure from those authors their genuine written consent for the Member to:
  - (a) attribute the authorship of the work to the Member or a third party where that attribution was inadvertent;
  - (b) not attribute the authorship of the author when using the work (including exhibiting or performing the work in or to the public); and/or
  - (c) materially alter the work in any way.

### 5.5 Safekeeping and preservation of material

The Contractor must ensure the safe-keeping and proper preservation of Contract Material and Member Material in its possession or control and deliver to the Member all Contract Material and Member Material on the expiration or termination of this Agreement (other than copies of material that the Member has authorised the Contractor to retain).

## 6. Contractor's personnel

The Contractor must:

- (1) in performing the Services, engage only persons who have the skills, training and expertise appropriate for the Services;
- (2) comply with all reasonable requirements notified by the Member regarding the suitability and fitness of persons engaged by the Contractor for the performance of Services;
- (3) ensure the Services are performed by Specified Personnel (if any) and provide replacement personnel acceptable to the Member at no additional charge and at the earliest opportunity if the Specified Personnel are unable to perform any of the Services; and

- 
- (4) if the Member requires, ensure that each person engaged in the performance of the Services executes a deed of confidentiality in a form acceptable to the Member (including with respect to not accessing or otherwise safeguarding Personal Information as applicable), and provide those executed deeds to the Member in accordance with any requirements that the Member notifies.

## **7. Non-disclosure of Contract Information**

### **7.1 Contractor's use of Contract Information**

The Contractor must:

- (1) use Contract Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (2) not transfer Contract Information held in connection with this Agreement outside the Territory or the Member, or allow any person (other than its authorised personnel) outside the Territory or the Member to have access to it, without the prior approval of the Member;
- (3) notify the Member immediately if the Contractor becomes aware that a disclosure of Contract Information is required by law, or an unauthorised disclosure of Contract Information has occurred; and
- (4) in respect of any Personal Information held in connection with this Agreement:
  - (a) comply with the TPPs and any applicable TPP Code and must not (and procure that any subcontractor engaged by the Contractor under this Agreement does not) act or engage in a practice that breaches a TPP or a TPP Code; and
  - (b) co-operate with any reasonable requests or directions of the Member arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the Information Privacy Act.

### **7.2 Contractor to protect Contract Information**

- (1) Except as provided in this Agreement, the Contractor must not disclose Contract Information to any person, nor deal with the Information in any way except for the purpose of this Agreement, without the prior written consent of the Member except to the extent that the Contract Information is:
  - (a) required or authorised to be disclosed by law;
  - (b) disclosed to the Contractor's solicitors, auditors, insurers or advisers;
  - (c) generally available to the public; or
  - (d) in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Member.

- 
- (2) The Contractor must take all reasonable measures to ensure that Contract Information accessed or held by it in connection with this Agreement is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose and that only its authorised personnel have access to Contract Information.
  - (3) The Contractor must do all things necessary to ensure that Contract Information accessible to the Contractor and the Contractor's personnel by virtue of the performance of this Agreement is not accessed, published or communicated in any way, including imposing upon the Contractor's personnel obligations of confidentiality with respect to Contract Information.

### **7.3 Acknowledgement of effect of Crimes Act**

The Contractor acknowledges that the publication or communication of any fact or document by a person which has come to its knowledge or into its possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Contractor is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT).

## **8. Confidential Text under Procurement Act**

### **8.1 Member may make Agreement publicly available**

In giving effect to the principles of open and accountable government, the Member may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Agreement may be a notifiable contract under the Procurement Act and, if so, the Member will be required to make the text of this Agreement available to the public, including by publication on a public contracts register.

### **8.2 Confidential Text**

If **Item 7 Schedule 1** states that this Agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in **Item 8 Schedule 1**, and **clause 8.3** applies.

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### 8.3 Member must not disclose Confidential Text

Except as provided in this Agreement, the Member must not disclose Confidential Text to any person without the prior written consent of the Contractor (which consent will not be unreasonably withheld) except to the extent that Confidential Text:

- (1) is required or authorised to be disclosed under law;
- (2) is reasonably necessary for the enforcement of the criminal law;
- (3) is disclosed to the Member's solicitors, auditors, insurers or advisers;
- (4) is generally available to the public;
- (5) is in the possession of the Member without restriction in relation to disclosure before the date of receipt from the Contractor;
- (6) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
- (7) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

## 9. Insurance and indemnity

### 9.1 Contractor's insurance

The Contractor must effect and maintain for the Term all insurance coverage required to be effected by it by law, public liability insurance and professional indemnity insurance in amounts not less than the amounts (if any) specified by **Item 5 Schedule 1**, and any other insurance specified in **Item 5 Schedule 1** with a Prescribed Insurer.

### 9.2 Indemnity

The Contractor indemnifies the Territory and the Member, its employees and agents against liability in respect of all claims, costs and expenses in relation to all loss, damage, injury or death to persons or property caused by the Contractor, in connection with the provision of the Services, except to the extent that the Member or the Territory caused the relevant loss, damage or injury.

### 9.3 Claims to be made good

The Contractor must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in **clause 9.2** and the Member may deduct the amount, or any part of it, from any moneys due or becoming due to the Contractor under this Agreement.

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## 10. Termination

### 10.1 Default

The Member may terminate this Agreement, at any time by notice to the Contractor, if the Contractor:

- (1) is the subject of an Insolvency Event;
- (2) fails to commence timely provision of the Services or to meet any timeframes specified in this Agreement; or
- (3) is in breach of a provision of this Agreement, where that breach:
  - (a) if capable of being remedied, is not remedied within the period specified in a notice by the Member; or
  - (b) is not capable of being remedied.

### 10.2 Termination for any reason or reduction of Services

The Member may, at any time by notice to the Contractor, terminate this Agreement or reduce the Services for any reason, and in that event:

- (1) the Member will be liable only for:
  - (a) payments under this Agreement for Services rendered before the date of termination; and
  - (b) subject to **clauses 10.2(2) and 10.2(3)**, any reasonable costs incurred by the Contractor and directly attributable to the termination or reduction of Services, but not in respect of loss of prospective profits;
- (2) on receipt of a notice of termination or reduction, the Contractor must:
  - (a) stop work as specified in the notice;
  - (b) take all available steps to minimise loss resulting from that termination or reduction of Services; and
  - (c) continue to perform any part of the Services not affected by the notice; and
- (3) in the event of a reduction of the Services, the Member's liability to pay the Contract Price will, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.

### 10.3 No prejudice

Nothing in this **clause 10** prejudices:

- (1) any other rights or remedies of the Member in respect of any breach of this Agreement; or
- (2) any rights or remedies available to the parties pursuant to Division 5.2 of the *Legislative Assembly (Members' Staff) Act 1989* (ACT).

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## 11. Dispute resolution

- (1) If a difference or dispute (**Dispute**) arises in relation to this Agreement either party may give notice to the other that a Dispute exists, which specifies details of the Dispute, and the parties agree that they will endeavour to resolve the Dispute by negotiations, or, if the Dispute has not been resolved within 28 days of the issue of the notice, undertake mediation with an independent mediator, the cost to be shared by the parties unless otherwise agreed.
- (2) Nothing in this **clause 11** will prejudice the rights of either party to institute proceedings to enforce this Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

## 12. General

### 12.1 Cooperation and good faith

Each party will:

- (1) fully cooperate with each other to ensure timely progress and fulfilment of this Agreement; and
- (2) act reasonably and in good faith with respect to matters that relate to this Agreement.

### 12.2 Conflict of interest

The Contractor warrants that no conflict of interest exists or is likely to arise in the performance of the Services and its other obligations under this Agreement and must, if a conflict or risk of conflict arises, notify the Member and comply with any requirement of the Member to eliminate or deal with that conflict or risk.

### 12.3 No employment, partnership or agency relationship

Nothing in this Agreement constitutes the Contractor, or its employees, agents or subcontractors as employees, partners or agents of the Member or the Territory or creates any employment, partnership or agency for any purpose and the Contractor must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Member or the Territory.

### 12.4 No assignment or subcontracting

- (1) The Contractor must not subcontract the performance of the Services or assign the whole or part of this Agreement without the prior written consent of the Member. If the Member gives its consent, the Member may impose any conditions.

- 
- (2) A change in the control of the Contractor or a company that controls the Contractor (except a company listed on an Australian stock exchange) is taken to be an assignment, the term “control” including the direct or indirect holding of more than 50% of the share capital of a corporation.
  - (3) If the Contractor breaches **clause 12.4(1)**, the Member reserves its rights, including requiring the Contractor to provide information regarding the proposed subcontractor’s or assignee’s capability to continue performing this Agreement or to provide security to ensure the proper performance of this Agreement.

### **12.5 Entire agreement**

This Agreement comprises the entire agreement between the parties in relation to the Services and supersedes any prior representations, negotiations, writings, memoranda and agreements.

### **12.6 Severability**

Any provision of this Agreement that is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

### **12.7 Variation**

This Agreement may be varied or the Term extended only by the written agreement of the parties prior to the expiration of this Agreement. A variation does not have effect until the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it. Until the Clerk, or a person authorised for this purpose, endorses the variation, neither party may:

- (1) exercise any rights under the variation;
- (2) enforce any obligation under the variation;
- (3) perform Services under the variation; and
- (4) in any way act pursuant to the variation.

### **12.8 No waiver**

Failure or omission by the Member at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights and remedies that the Member may have in respect of that provision.

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## 12.9 Governing law and compliance with the law

This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory. The Contractor must comply with the laws from time to time in force in the Territory in performing the Services.

## 12.10 Notices

Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contract Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (4) if sent by electronic mail, on whichever of the following occurs first:
  - (a) the other party's acknowledgement of receipt by any means;
  - (b) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address; or
  - (c) the expiration of two business days after the date on which it was sent without receipt of a notification that the delivery failed,

and if given in two or more ways, on the first of paragraphs (1) to (4) occurring.

## 12.11 Special Conditions

In the event of any inconsistency between any Special Condition and any other provision of this Agreement then, to the extent of any inconsistency, the Special Condition will prevail.

## 12.12 Survival of clauses

Clauses 7, 9.2 and 9.3 will survive the expiration or earlier termination of this Agreement.

## 13. Legislative Assembly (Members' Staff) Act 1989

This Agreement is subject to Division 5.2 of the *Legislative Assembly (Members' Staff) Act 1989 (the Act)*, which forms part of this Agreement. In the event of any inconsistency between a term of this Agreement and a provision of Division 5.2 of the Act then, to the extent of any inconsistency, the Act will prevail.

## SCHEDULE 1

### CONTRACT DETAILS

**Item 1. Contract Officers**

*See clauses 1.1 and 12.10*

For the Member:

[INSERT name of Contract Officer]  
[INSERT contact details – address and facsimile]

For the Contractor:

[INSERT name of Contract Officer]  
[INSERT contact details – address and facsimile]

**Item 2. Term**

*See clauses 1.1 and 3*

From [eg. the date of this Agreement] until [INSERT end date, note pursuant to section 21(5) of the *Legislative Assembly (Member’s Staff) Act 1989*, the term is limited to a maximum of 3 years].

**Item 3. Contract Price**

*See clauses 1.1 and 4*

- (1) Contract Price:            \$[INSERT]       (GST inclusive).
- (2) If the Contract Price is payable:
  - (a) as a lump sum, an Invoice may only be rendered following completion of the Services; or
  - (b) by instalments, Invoices may only be rendered in accordance with the following.

Instalment	When Invoice may be rendered
	<p>[If appropriate, the instalments may be linked to the completion of milestones listed in Schedule 2. If Contract Price is not payable by instalments, insert “Not used”.]</p>

- (3) Except if otherwise stated in this Agreement, the Contract Price is:
  - (a) payable within 30 days of receipt by the Member of an Invoice;

- 
- (b) inclusive of GST and all other taxes, duties and charges; and
  - (c) inclusive of all disbursements, including out-of-pocket expenses incurred by the Contractor.
- (4) [INSERT details if disbursements are to be paid in addition to the Contract Price, eg. specify categories of disbursements and upper limit payable by the Member or whether disbursements are to be approved in advance before the Member becomes liable].

**Item 4. Specified Personnel**

See clauses 1.1 and 6

Not applicable.

[OR, INSERT names if relevant.]

**Item 5. Other amounts and insurance**

See clause 9.1

- (1) Public liability insurance: [INSERT amount, eg. \$20 million] (in respect of each claim).
- (2) Professional indemnity insurance: [INSERT amount, eg. \$10 million] (in respect of each claim) and [INSERT amount, eg. \$10 million or a different amount] (in the annual aggregate).
- (3) [INSERT other type of insurance, if any].

[Note: The level of public liability insurance under this Agreement must be based on an assessment of risk.

Advice from the ACTIA may be obtained regarding whether professional indemnity insurance is required for the purposes of the Agreement and the appropriate level.

If professional indemnity insurance is required, the Contractor may be subject to a professional standards scheme created under the Civil Law (Wrongs) Act 2002 (ACT), which must be applied in determining the level of professional indemnity insurance for the Agreement. Seek ACTGS advice regarding how the Scheme affects the professional indemnity insurance requirements in the Agreement.

If professional indemnity insurance is required, consideration should be given to whether “run-off” cover is necessary. If so, the following words may be included in this Item 5: “The Contractor must maintain the professional indemnity insurance coverage required under this **Item 5** for an additional period of 6 years from the expiration of the Term. This Item survives the expiration or earlier termination of this Agreement.”

**Item 6. Contract Information**  
See clauses 1.1 and 7

Item 6 not used.

[OR, INSERT details of any information (other than Confidential Text) that the Member requires the Contractor to keep confidential in addition to what is already set out in the definition of Contract Information. If details in the definition of Contract Information are sufficient, RETAIN “Item 6 not used”.]

**Item 7. Confidential Text**  
See clauses 1.1 and 8

Item 7 not used.

[OR, INSERT “This Agreement is a “notifiable contract” under the Procurement Act and the following is Confidential Text” and then INSERT details of any text in the Agreement that either party requires the Member to keep confidential, eg. name and other personal details of Contract Officers or Specified Personnel, hourly rates or other individual components of the Contract Price.

[**Note:** If the Agreement is a notifiable contract under the Procurement Act, text may only be deleted from the public text of the Agreement if the Member is permitted to not disclose the text on the basis of one or more of the grounds set out in section 35(1) of the Procurement Act. The relevant grounds should be specified in Item 8 below.]

**Item 8. Grounds for confidentiality of Confidential Text**  
See clause 8

Item 8 not used.

[OR, MODIFY this Item as appropriate (see text below) and insert here.

“The Procurement Act, part 3 (Notifiable Contracts) applies to this Agreement. The Member is satisfied that the Confidential Text is “confidential information” for the purposes of that Act because disclosure of the text

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would:

**EXAMPLE ONLY**

- (1) be an unreasonable disclosure of Personal Information about a person; or
- (2) be an unreasonable disclosure of information about the business affairs of a person.”]

[**Note:** if the Agreement is a “notifiable contract” under the Procurement Act, in order for the Confidential Text to be kept confidential, the Member must be satisfied that at least one of the grounds for confidentiality set out in section 35(1) of the Act applies to the Confidential Text.

Also, note that if Item 7 is used, Item 8 must also be completed.]

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**SCHEDULE 2****THE SERVICES**

The Contractor must provide the Services as follows within any specified timeframes.

Item Number	Details of Services	Timeframe for Completion
1	[INSERT full details of Services to be performed including, eg. methodology, consultations, reports to be prepared and any timeframes for the performance of the Services eg. provision of draft and final reports etc.]	
2	[INSERT full details of Services to be performed including, eg. hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other on a regular basis in order to keep the other fully informed of the progress of work required under the Agreement.]	
3	[INSERT details as required.]	
4	[INSERT details as required.]	

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## SCHEDULE 3

### SPECIAL CONDITIONS

*See clause 12.11*

[If there are no Special Conditions, DELETE the following Items and INSERT “Not Used”.]

#### Item 1. Changes in control of Contractor

[**Note:** Only use this Special Condition if **clause 12.4(2)** is not sufficient and a wider set of circumstances in which a change in control of the Contractor is deemed to occur is required.]

In addition to the circumstances set out in **clause 12.4(2)**, for the purposes of **clause 12.4**, “control” includes the direct or indirect possession of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights) to:

- (1) directly or indirectly control the membership of the board of directors of the corporation; or
- (2) otherwise directly or indirectly direct or cause the direction of the management and policies of that corporation,

whether by means of trusts, agreements, arrangements, understandings, practices, greater industry experience, the ownership of any interest in shares or stock of that corporation or otherwise.

#### Item 2. Audit

[**Note:** Only use this Special Condition in circumstances where, in addition to the Auditor-General’s powers, there may be a special need for the Member to conduct audits and checks in relation to the Contractor’s provision of the Services and compliance with the Agreement]

Without limiting the powers of the Territory’s Auditor-General under the *Auditor-General Act 1996* (ACT) the Member (or its nominated representative) may, at its cost, inspect records kept by the Contractor and conduct audits and other checks, to monitor the Contractor’s delivery of the Services and compliance with this Agreement. The Contractor must act reasonably to cooperate with persons authorised to conduct an audits or checks.

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### Item 3. Complaints in relation to interference with privacy

[**Note:** it is recommended that this Special Condition be included in Schedule 3 until agencies that will be using this template have implemented TPP policies or codes of practice that make provision for the handling of complaints in relation to the handling of Personal Information by non-government agencies, such as the Contractor]

- 3.1 A complaint alleging an interference with the privacy of an individual in respect of any Services performed by the Contractor (**Complaint**) will be handled by the Member in accordance with the following procedures, unless otherwise provided for in a TPP privacy policy made under TPP 1.3 which applies to a Territory agency as relevant to this Agreement:
- (1) if the Member receives a Complaint it will immediately notify the Contractor of only those details of the Complaint necessary to minimise any breach or prevent further breaches of this Agreement;
  - (2) if the Contractor receives a Complaint it must immediately notify the Member of the nature of the Complaint but will only release Personal Information to the Member concerning the complainant with that person's consent; and
  - (3) after the Member has given or been given notice under (1) or (2), it will keep the Contractor informed of all progress with the Complaint concerning the actions of the Contractor.
- 3.2 This item survives the expiry or earlier termination of this Agreement.

DATE OF THIS AGREEMENT.....

SIGNED for and on behalf of the
[INSERT MEMBER'S NAME]
in the presence of:

)
)
) Signature of Member/authorised person\*
\*delete whichever is not applicable

Signature of witness

Print name

Print name

SIGNED by or for and on behalf of
[NAME & ACN OF CONTRACTOR]
in the presence of:

)
)
) Signature of director/ authorised officer/ individual\*
\*DELETE whichever is not applicable (see note below)

Signature of director/ secretary/ witness\*
\*DELETE whichever is not applicable (see note below)

Print name

Print name

Signature of second authorised officer\*
\*only use if Incorporated Association (see note below)

Print name



Note:

- Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange. Also date the cover page.
Company: Must be signed in accordance with section 127 of the Corporations Act 2001 (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Contractor's constitution.
Individual: Must be signed by the individual Contractor and witnessed.
Incorporated Association: Must be signed in accordance with the Contractor's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

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**ENDORSEMENT**

Disallowable Instrument DI [INSERT NUMBER] provides that an agreement under section 20 of the *Legislative Assembly (Members' Staff) Act 1989*, must be endorsed by the Clerk, or a person authorised by the Clerk for this purpose, before execution by the Parties.

The Clerk (or authorised person) endorses this Agreement:

.....  
Signature of Clerk (or authorised person)\*  
*\*delete whichever is not applicable*

\_\_\_\_\_  
PRINT FULL NAME

.....  
Date of endorsement

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Australian Capital Territory

# Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 2021 (No 1)

Disallowable instrument DI2021-181

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)**

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## 1 Name of instrument

This instrument is the *Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 2021 (No 1)*.

## 2 Commencement

This instrument commences on 1 July 2021.

## 3 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.

## 4 Definition

In this instrument:

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

*member* means a member of the Legislative Assembly other than an office-holder.

## 5 Revocation

DI2016-300 is revoked.

## 6 Approval for Act, s 10 and s 20

This instrument approves arrangements and conditions in accordance with which members may, on behalf of the Territory, employ part 3 employees, or engage contractors or consultants, under the Act, section 10 or section 20.

## 7 Staff employment

A member may only employ a part 3 employee under an agreement substantially in the form set out in schedule 1.

*Note* Employees are also employed subject to conditions of employment under any award or enterprise agreement under the *Fair Work Act 2009* (Cth) that applies to members' staff.

## **8 Re-engagement**

A part 3 employee whose employment is terminated by the operation of subsection 13(1) of the Act, and who receives a termination payment under the applicable enterprise agreement, shall not recommence employment under the Act before the expiry of the period of time, in weeks and days, that is equivalent to the termination payment.

*Example* Where an employee is in receipt of a termination payment equal to six weeks' pay, not including superannuation or any other payment, the exclusion period is equal to six weeks.

*Note* There is nothing to prevent new employment arrangements being settled during the exclusion period with a view to employment recommencing immediately following the expiration of the exclusion period.

## **9 Contractor and consultant engagements**

- (1) A member may only engage a consultant or contractor under an agreement substantially in the form set out in schedule 2.
- (2) A contract for services by which a member engages a consultant or a contractor—
  - (a) must be endorsed by the Clerk of the Legislative Assembly, or a person authorised by the Clerk for this purpose, before execution by the parties; and
  - (b) must be in accordance with guidelines issued by the ACT Government Procurement Board.

Dated 1 July 2021

Andrew Barr  
*Chief Minister*

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## **Schedule 1 Staff employment**

(see cl 7)

## EMPLOYMENT AGREEMENT – STAFF OF MEMBERS

Note: This Agreement is of no legal effect without the prior endorsement of the Clerk of the Legislative Assembly, or a person authorised by the Clerk for that purpose.

This Agreement sets out the terms on which I will employ you, pursuant to subsection 10(1) of the *Legislative Assembly (Members' Staff) Act 1989*.

### 1. DEFINITIONS

1.1 In this Agreement, the following words have the following meanings:

- (a) "Act" means the *Legislative Assembly (Members' Staff) Act 1989* ("the Act");
- (b) "Agreement" means this Agreement and includes any attachments or schedules;
- (c) "Award" means the Australian Capital Territory Public Sector Enterprise Award 2016 as varied from time to time;
- (d) "Enterprise Agreement" means the applicable industrial agreement made under the *Fair Work Act 2009* which applies to and covers persons engaged under the Act;
- (e) "Determination" means any relevant determination made pursuant to the Act;
- (f) "Direction" means any relevant direction given pursuant to the Act;
- (g) "I" means the person specified in item 2 of the Attachment to this Agreement, on behalf of the Australian Capital Territory, and "my", "mine" and "me" have corresponding meanings;
- (h) "You" means the person specified in item 1 of the Attachment to this Agreement and "your" and "yours" have corresponding meanings.

### 2. APPLICATION

2.1 The terms and conditions of your employment are as set out in:

- (a) the Enterprise Agreement;
- (b) the Award;
- (c) the Act;
- (d) any Determinations or Directions;
- (e) this Agreement; and
- (f) other applicable laws.

### **3. OBLIGATIONS**

#### **3.1 In performing the duties, you will:**

- (a) comply with the requirements of the applicable code of conduct for staff of members and ministers of the ACT Legislative Assembly as varied from time to time;
- (b) comply with the terms and conditions of your employment;
- (c) notify me of any illness or medical condition affecting you which substantially affects your ability to carry out your duties or obligations under this Agreement;
- (d) notify me of any restrictions by statute, court order, contract, or deed on your legal capacity to perform the full range of duties;
- (e) comply with any lawful and reasonable direction given by a person having authority to give the direction;
- (f) not harass a member of the public or another public employee, whether sexually or otherwise.

### **4. EMPLOYEE WARRANTIES**

#### **4.1 You warrant that you:**

- (a) are and will continue to be a fit and proper person to be an employee under this Agreement; and
- (b) have discussed with me the issue of prior criminal convictions and have disclosed to me your convictions, other than spent convictions. I agree to keep such information strictly confidential.

### **5. EXCLUSIVE EMPLOYMENT**

#### **5.1 During the period of this Agreement, you must not be employed or engaged by any other person in any other capacity without my prior written approval nor will you engage in any business or undertaking without my prior written approval.**

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## **6. PROBATION PERIOD**

- 6.1 The employment of a person under this agreement is subject to a period of probation specified in ITEM 5.
- 6.2 Probation begins on the day the period of this agreement commences and is taken to be confirmed after the date specified in ITEM 5 unless—
- (a) employment is earlier confirmed by the Member; or
  - (b) the appointment is earlier ended if, the Member is satisfied on reasonable grounds that the employee has not exercised their functions at a standard required for the position; or
  - (c) the probationary period is earlier extended if the Member is satisfied on reasonable grounds that the extension is reasonably required to assess the person's suitability for the position.
- 6.3 The employment of a person on probation must not be ended unless the person has been given at least 14 days written notice of—
- (a) the reason for ending the agreement; and
  - (b) the day the agreement will end.
- 6.4 The employment of a person on probation must not be extended unless the person has been given at least 14 days written notice of—
- (a) the reason for the extension; and
  - (b) the length of the extension (up to a maximum of an additional 6 months); and
  - (c) the day the probationary period will end.

**76. RECOGNITION OF OTHER EMPLOYMENT FOR LEAVE ACCRUAL**

**7.1** I may agree to recognise your employment with an Australian parliamentarian or with a Commonwealth department or instrumentality for the purpose of determining the accrual of certain leave entitlements. My agreement shall be set out in item 11 of the Attachment to this Agreement or otherwise provided to you in writing.

**7.2** My agreement as provided in clause 6.1 is subject to the following conditions:

- (a) the employment must have been as a staff member of a Member or Senator of an Australian parliament, or as an employee or officer of a Commonwealth department or instrumentality;
- (b) the employment may count towards the accrual of annual leave, personal leave and long service leave subject to availability under item 11 of the Attachment to this Agreement;
- (c) leave entitlements for which a payment has, or should have, been made shall not be recognised except in relation to relevant qualifying periods;
- (d) if ceased, in order to be recognised, the employment must have terminated no more than:
  - (i) part of a working day prior to the commencement of employment under the Act in relation to annual leave benefits; and
  - (ii) two (2) months prior to commencement of employment under the Act in relation to personal leave benefits; and
  - (iii) one (1) year prior to commencement of employment under the Act in relation to long service leave benefits,unless the Chief Minister agrees that an alternative period is appropriate in the circumstances.

**87. PAID PARKING**

~~8.17.1~~—To remove any doubt, you do not have any automatic entitlement to paid parking.

**98. TERMINATION OF EMPLOYMENT**

**98.1** You may terminate this Agreement in accordance with the Act and the Enterprise Agreement.

**98.2** Subject to the Act, this Agreement terminates automatically if any of the circumstances specified in subsection 13(1) of the Act apply.

**98.3** I may terminate this Agreement in accordance with the Act, the Enterprise Agreement, the Award and the *Fair Work Act 2009* (Cth).

**98.4** On termination of employment, however occurring, you will immediately deliver to me all work-related property belonging to me or to the Australian Capital Territory which is in your possession or control.

**109. NO WAIVER**

**109.1** Failure or omission by either of us to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of either of us to seek redress for any breach of any such provision.

**110. GOVERNING LAW**

**110.1** This Agreement is to be governed by the law of the Australian Capital Territory.

**121. NOTICES**

**121.1** All notices, consents, approvals, agreements or other communications by or to the respective parties to the Agreement will be in writing and addressed to the relevant party at their usual address, or such other address as may from time to time be specified by the party in writing.

**121.2** All notices, consents, approvals, agreements or other communications delivered in accordance with clause 11.1 are deemed to be duly given or made as follows:

- (a) if delivered by hand, upon delivery;
- (b) if sent by prepaid mail, upon the expiration of four days after the date on which it was so sent;
- (c) if sent by facsimile, upon the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address;
- (d) if sent by electronic mail, upon the sender's computer recording that the message has been successfully transmitted to the recipient's electronic mail address.

Dated \_\_\_\_\_ of \_\_\_\_\_  
(date) (month) (year)

Signed by the Member

In the presence of

Signed by the employee

In the presence of

Signed \_\_\_\_\_ Clerk of the Legislative Assembly  
(or authorised person)

Date

(To be signed and dated by the Clerk of the Legislative Assembly, or a person authorised by the Clerk for that purpose, before execution by the Parties).

**ATTACHMENT TO THE EMPLOYMENT AGREEMENT****Item 1** [Clause 1.1(h)]

- (a) **Name of employee:**
- (b) **Address of employee:**
- (c) **Date of Birth of employee:**

**Item 2** [Clause 1.1(g)]**Name of Member:****Item 3****Type of Employment:** (*Eg. "fixed term", "casual"*)*Note: Casual employees are not entitled to be paid a LAMS Allowance.***Item 4****Period of Agreement:****Item 5****Period of Probation (must be specified where the employment is subject to probation):***Note: The probationary period would normally be 6 months or less.***Item 6****Duties (must be consistent with the classification and salary specified in Items 7 and 8):***Note: (1) Specify the key duties from the relevant Work Level Standard; or**(2) If the person is engaged to undertake a specified project, provide a description of the project and/or scope of the project; and**(3) Specify the Identified duties to be performed where a Specialist Duties Payment is to be paid in accordance with the Enterprise Agreement.*

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Attachment Page 2 of 2

**Item 7****Classification (must be in accordance with the Enterprise Agreement):****Item 8**

*Note: (1) Specify the relevant annual salary and salary point in accordance with the Enterprise Agreement.*

*(2) The annual salary includes any non-cash benefits to which the employee is entitled under flexible remuneration arrangements, but excludes any long service leave allowance and leave loading.*

*(3) Specify the relevant Specialist Duties Payment, where applicable, in accordance with the Enterprise Agreement.*

**(a) Salary (full-time equivalent):**

**(b) Salary Point (1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup>):**

**(c) Specialist Duties Payment (full-time equivalent), if applicable:**

**Item 9****Fortnightly Hours of Work (standard full-time hours are 73.5 hours per fortnight):****Item 10****Working Pattern (days and commencing and finishing times that work will be performed if less than full time):****Item 11** [Clause 6.1]**Recognition of Employment with an Australian Parliamentarian or with a Commonwealth department or instrumentality for the accrual of annual leave, personal leave and long service leave**

**(a) Yes/No (strike out the answer that does not apply)**

**(b) If Yes, supply details of previous employment:**

## **Schedule 2 Contractor and consultant engagements**

(see cl 9 (1))

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# AGREEMENT

Date

Parties

\_\_\_\_\_  
**[INSERT MEMBER'S NAME]**

AND

**[INSERT FULL NAME OF  
CONTRACTOR INCL. ACN IF  
COMPANY]**

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**[INSERT BRIEF TITLE OF SERVICES]**

**Note to users:** any text in red is for your attention. When using this template to prepare an agreement you will need to complete and/or follow any user prompts and also read the instructional notes.  
DELETE this note, all prompts and other notes before finalising the agreement

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**PARTIES:** **[INSERT MEMBER'S NAME]** of Legislative Assembly Building, Civic Square, London Circuit, Canberra City, on behalf of the Australian Capital Territory pursuant to section 20 of the *Legislative Assembly (Members' Staff) Act 1989* (ACT) **(Member)**

**[INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION AND CHECK IT IS A LEGAL ENTITY]** of **[INSERT address (of registered office if for a company)]** **(Contractor)**.

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## BACKGROUND

- A. The Member is a member of the Legislative Assembly.
  - B. Section 20 of the *Legislative Assembly (Members' Staff) Act 1989* (ACT) allows a member to engage a consultant or contractor for the provision of services necessarily incidental to the performance of his or her ministerial or parliamentary duties.
  - C. The Member is satisfied that the services set out in this Agreement are necessarily incidental to the performance of his or her ministerial or parliamentary duties.
  - D. The Member has agreed to purchase, and the Contractor has agreed to provide, the services on the terms and conditions in this Agreement.
- 

**IT IS AGREED** by the parties as follows.

## 1. Interpretation

### 1.1 Definitions

The following definitions apply in this Agreement, unless the context otherwise requires.

<b>Clerk</b>	has the meaning given in the <i>Legislative Assembly (Office of the Legislative Assembly) Act 2012</i> (ACT).
<b>Confidential Text</b>	any text of this Agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in <b>Item 7 Schedule 1</b> .
<b>Contractor Material</b>	all material owned by the Contractor and used for the purpose of providing the Services, including documents, information and data stored by any means.
<b>Contract Material</b>	all material created, written or otherwise brought into

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	existence as part of, or for the purpose of performing the Services including all reports (whether in draft or final form), documents, information and data stored by any means.
<b>Contract Officers</b>	in relation to each party, the representatives whose names and contact details are specified in <b>Item 1 Schedule 1</b> , or as notified from time to time by one party to the other.
<b>Contract Information</b>	<p>the kind of information that:</p> <p>(1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Member or the Territory which are by their nature confidential;</p> <p>(2) is notified (whether in writing or not) by the Member to the Contractor as being confidential;</p> <p>(3) is specified in <b>Item 6 Schedule 1</b>; or</p> <p>(4) is Personal Information,</p> <p>but does not include information that:</p> <p>(5) is or becomes public knowledge other than by breach of this Agreement;</p> <p>(6) has been independently developed or acquired by the Contractor; or</p> <p>(7) has been notified by the Member to the Contractor as not being confidential.</p>
<b>Contract Price</b>	the amounts specified in, or calculated in accordance with, <b>Item 3 Schedule 1</b> .
<b>GST</b>	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
<b>Information Privacy Act</b>	the <i>Information Privacy Act 2014 (ACT)</i> .
<b>Insolvency Event</b>	<p>(1) in respect of a natural person:</p> <p>(a) any orders, agreements or arrangements are made in respect of the affairs of the person in accordance with the <i>Bankruptcy Act 1966 (Cth)</i>; or</p> <p>(b) in the reasonable opinion of the Member the person is likely to be declared bankrupt</p>

or lose control of the management of their financial affairs; or

- (2) in respect of all other entities:
- (a) any of the events listed in sub-sections 459C(2)(a) to (f) of the *Corporations Act 2001* (Cth) occur in respect of the entity; or
  - (b) any other event occurs which, in the reasonable opinion of the Member is likely to result, or has resulted, in the:
    - (i) insolvency;
    - (ii) winding up; or
    - (iii) appointment of a controller (as that term is defined in the *Corporations Act 2001* (Cth)) in respect of part or all of the property,
 of the entity.

For the purpose of subparagraph (2)(b), subsections 459C(2)(a) to (f) *Corporations Act 2001*(Cth) are to be read as if applying to all incorporated entities.

### Invoice

an invoice that:

- (1) if GST is payable in respect of the provision of the Services, is a valid tax invoice for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (2) clearly sets out details of the Services provided and of the amount that is due for payment, is correctly calculated and is in respect of Services that have been performed in accordance with this Agreement;
- (3) is accompanied by any other details or reports required under this Agreement; and
- (4) is rendered at the times specified in **Item 3 Schedule 1** (if any) and addressed to the Member's Contract Officer.

### Member Material

any material provided by the Member to the Contractor for the purposes of this Agreement including documents, equipment, information and data stored by any means.

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<b>Personal Information</b>	<p>is personal information as defined in section 8 of the Information Privacy Act, namely, information or an opinion about an identified individual or an individual who is reasonably identifiable:</p> <ol style="list-style-type: none"> <li>(1) whether the information is true or not; and</li> <li>(2) whether the information or opinion is recorded in a material form or not.</li> </ol> <p>but does not include personal health information (as defined in the Health Records (Privacy and Access) Act 1997 (ACT)) about the individual.</p>
<b>Prescribed Insurer</b>	<p>an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and rated at AA or better by Standard &amp; Poor's.</p>
<b>Procurement Act</b>	<p>the Government Procurement Act 2001 (ACT).</p>
<b>Services</b>	<p>the services described in <b>Schedule 2</b>.</p>
<b>Special Condition</b>	<p>any provision set out in <b>Schedule 3</b>.</p>
<b>Specified Personnel</b>	<p>any person named in <b>Item 4 Schedule 1</b>, or any other employee or agent of the Contractor, who is approved by the Member from time to time for the purpose of <b>clause 6</b>.</p>
<b>Term</b>	<p>the term specified in <b>Item 2 Schedule 1</b>, and if extended, the initial term and the extended term.</p>
<b>Territory</b>	<p>when used:</p> <ol style="list-style-type: none"> <li>(1) in a geographical sense, the Australian Capital Territory; and</li> <li>(2) in any other sense, the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Cth).</li> </ol>
<b>TPPs</b>	<p>the Territory Privacy Principles provided for in section 13 and set out in Schedule 1 of the Information Privacy Act.</p>
<b>TPP Code</b>	<p>a code of practice about information privacy which, having regard to section 21(1) and (3) of the Information Privacy Act, binds an agency that engages the Contractor in the provision of the Services.</p>

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## 1.2 General

In this Agreement, unless a contrary intention is expressed:

- (1) references to “Contractor” include any employees, agents or subcontractors of the Contractor;
- (2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (3) words in the singular include the plural and vice versa;
- (4) headings are for convenience only and do not affect the construction or interpretation of this Agreement;
- (5) an obligation imposed on more than one person binds them jointly and severally; and
- (6) the word “include” and any derivation is not to be construed as a word of limitation.

## 2. Services

The Consultant must perform the Services in accordance with the provisions of this Agreement and to a standard of care, skill and diligence expected of a person who regularly acts in the capacity in which the Consultant is engaged.

## 3. Term

### 3.1 Commencement

This Agreement commences on the date:

- (1) specified in **Item 2 Schedule 1** to this Agreement; or
- (2) on which the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it,

whichever is later.

### 3.2 Endorsement

This Agreement does not have effect until the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it. Until this Agreement is endorsed, neither party may:

- (1) exercise any rights under this Agreement;
- (2) enforce any obligations under this Agreement;
- (3) perform Services under this Agreement; or
- (4) in any way act pursuant to this Agreement.

### 3.3 Extension

This Agreement ends on the date specified in **Item 2 Schedule 1** to this Agreement unless extended under **clause 12.7** or terminated under the provisions of this Agreement.

## 4. Contract Price

### 4.1 Invoice

The Member must pay the Contractor the Contract Price following its receipt of an Invoice and otherwise in accordance with **Item 3 Schedule 1**.

### 4.2 Incorrect payments

If, after payment, an invoice is found to have been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due by the Member to the Contractor under this Agreement.

## 5. Ownership and use of material

### 5.1 Ownership of material

Ownership of:

- (1) all Contract Material, including any intellectual property rights, vests on its creation in the Member;
- (2) all Member Material, including any intellectual property rights, remains with the Member; and
- (3) all Contractor Material, including any intellectual property rights, remains with the Contractor.

### 5.2 Licence of material

The Member grants to the Contractor a royalty-free, limited licence to use the Contract Material and Member Material for the Term.

- (1) The Contractor grants to the Member a royalty-free, perpetual, limited licence to use the Contractor Material.
- (2) For the purpose of this clause, “use” includes:
  - (a) such uses as are reasonably necessary for the Member to obtain the full benefit of the Services, including use of the Contract Material; and
  - (b) such uses as are reasonably necessary for the Contractor to undertake the Services or as otherwise agreed by the Member,and may include supply, reproduce, publish, perform, communicate, broadcast, adapt and copy as the context requires.

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### 5.3 Third party rights

The Contractor must ensure:

- (1) the use of any Contract Material or Contractor Material will not infringe the intellectual property rights of any third party; and
- (2) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Member's (or its agents') use of any Contract Material or Contractor Material.

### 5.4 Moral rights

The Contractor must, in relation to the authors of any work that comprises or forms part of the Contract Material:

- (1) use its best endeavours to include in the Contract Material an attribution of those authors; and
- (2) procure from those authors their genuine written consent for the Member to:
  - (a) attribute the authorship of the work to the Member or a third party where that attribution was inadvertent;
  - (b) not attribute the authorship of the author when using the work (including exhibiting or performing the work in or to the public); and/or
  - (c) materially alter the work in any way.

### 5.5 Safekeeping and preservation of material

The Contractor must ensure the safe-keeping and proper preservation of Contract Material and Member Material in its possession or control and deliver to the Member all Contract Material and Member Material on the expiration or termination of this Agreement (other than copies of material that the Member has authorised the Contractor to retain).

## 6. Contractor's personnel

The Contractor must:

- (1) in performing the Services, engage only persons who have the skills, training and expertise appropriate for the Services;
- (2) comply with all reasonable requirements notified by the Member regarding the suitability and fitness of persons engaged by the Contractor for the performance of Services;
- (3) ensure the Services are performed by Specified Personnel (if any) and provide replacement personnel acceptable to the Member at no additional charge and at the earliest opportunity if the Specified Personnel are unable to perform any of the Services; and
- (4) if the Member requires, ensure that each person engaged in the performance of the Services executes a deed of confidentiality in a form acceptable to the

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Member (including with respect to not accessing or otherwise safeguarding Personal Information as applicable), and provide those executed deeds to the Member in accordance with any requirements that the Member notifies.

## **7. Non-disclosure of Contract Information**

### **7.1 Contractor's use of Contract Information**

The Contractor must:

- (1) use Contract Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (2) not transfer Contract Information held in connection with this Agreement outside the Territory or the Member, or allow any person (other than its authorised personnel) outside the Territory or the Member to have access to it, without the prior approval of the Member;
- (3) notify the Member immediately if the Contractor becomes aware that a disclosure of Contract Information is required by law, or an unauthorised disclosure of Contract Information has occurred; and
- (4) in respect of any Personal Information held in connection with this Agreement:
  - (a) comply with the TPPs and any applicable TPP Code and must not (and procure that any subcontractor engaged by the Contractor under this Agreement does not) act or engage in a practice that breaches a TPP or a TPP Code; and
  - (b) co-operate with any reasonable requests or directions of the Member arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the Information Privacy Act.

### **7.2 Contractor to protect Contract Information**

- (1) Except as provided in this Agreement, the Contractor must not disclose Contract Information to any person, nor deal with the Information in any way except for the purpose of this Agreement, without the prior written consent of the Member except to the extent that the Contract Information is:
  - (a) required or authorised to be disclosed by law;
  - (b) disclosed to the Contractor's solicitors, auditors, insurers or advisers;
  - (c) generally available to the public; or
  - (d) in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Member.

- 
- (2) The Contractor must take all reasonable measures to ensure that Contract Information accessed or held by it in connection with this Agreement is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose and that only its authorised personnel have access to Contract Information.
  - (3) The Contractor must do all things necessary to ensure that Contract Information accessible to the Contractor and the Contractor's personnel by virtue of the performance of this Agreement is not accessed, published or communicated in any way, including imposing upon the Contractor's personnel obligations of confidentiality with respect to Contract Information.

### **7.3 Acknowledgement of effect of Crimes Act**

The Contractor acknowledges that the publication or communication of any fact or document by a person which has come to its knowledge or into its possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Contractor is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT).

## **8. Confidential Text under Procurement Act**

### **8.1 Member may make Agreement publicly available**

In giving effect to the principles of open and accountable government, the Member may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Agreement may be a notifiable contract under the Procurement Act and, if so, the Member will be required to make the text of this Agreement available to the public, including by publication on a public contracts register.

### **8.2 Confidential Text**

If **Item 7 Schedule 1** states that this Agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in **Item 8 Schedule 1**, and **clause 8.3** applies.

### 8.3 Member must not disclose Confidential Text

Except as provided in this Agreement, the Member must not disclose Confidential Text to any person without the prior written consent of the Contractor (which consent will not be unreasonably withheld) except to the extent that Confidential Text:

- (1) is required or authorised to be disclosed under law;
- (2) is reasonably necessary for the enforcement of the criminal law;
- (3) is disclosed to the Member's solicitors, auditors, insurers or advisers;
- (4) is generally available to the public;
- (5) is in the possession of the Member without restriction in relation to disclosure before the date of receipt from the Contractor;
- (6) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
- (7) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

## 9. Insurance and indemnity

### 9.1 Contractor's insurance

The Contractor must effect and maintain for the Term all insurance coverage required to be effected by it by law, public liability insurance and professional indemnity insurance in amounts not less than the amounts (if any) specified by **Item 5 Schedule 1**, and any other insurance specified in **Item 5 Schedule 1** with a Prescribed Insurer.

### 9.2 Indemnity

The Contractor indemnifies the Territory and the Member, its employees and agents against liability in respect of all claims, costs and expenses in relation to all loss, damage, injury or death to persons or property caused by the Contractor, in connection with the provision of the Services, except to the extent that the Member or the Territory caused the relevant loss, damage or injury.

### 9.3 Claims to be made good

The Contractor must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in **clause 9.2** and the Member may deduct the amount, or any part of it, from any moneys due or becoming due to the Contractor under this Agreement.

---

## 10. Termination

### 10.1 Default

The Member may terminate this Agreement, at any time by notice to the Contractor, if the Contractor:

- (1) is the subject of an Insolvency Event;
- (2) fails to commence timely provision of the Services or to meet any timeframes specified in this Agreement; or
- (3) is in breach of a provision of this Agreement, where that breach:
  - (a) if capable of being remedied, is not remedied within the period specified in a notice by the Member; or
  - (b) is not capable of being remedied.

### 10.2 Termination for any reason or reduction of Services

The Member may, at any time by notice to the Contractor, terminate this Agreement or reduce the Services for any reason, and in that event:

- (1) the Member will be liable only for:
  - (a) payments under this Agreement for Services rendered before the date of termination; and
  - (b) subject to **clauses 10.2(2) and 10.2(3)**, any reasonable costs incurred by the Contractor and directly attributable to the termination or reduction of Services, but not in respect of loss of prospective profits;
- (2) on receipt of a notice of termination or reduction, the Contractor must:
  - (a) stop work as specified in the notice;
  - (b) take all available steps to minimise loss resulting from that termination or reduction of Services; and
  - (c) continue to perform any part of the Services not affected by the notice; and
- (3) in the event of a reduction of the Services, the Member's liability to pay the Contract Price will, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.

### 10.3 No prejudice

Nothing in this **clause 10** prejudices:

- (1) any other rights or remedies of the Member in respect of any breach of this Agreement; or
- (2) any rights or remedies available to the parties pursuant to Division 5.2 of the *Legislative Assembly (Members' Staff) Act 1989* (ACT).

---

## 11. Dispute resolution

- (1) If a difference or dispute (**Dispute**) arises in relation to this Agreement either party may give notice to the other that a Dispute exists, which specifies details of the Dispute, and the parties agree that they will endeavour to resolve the Dispute by negotiations, or, if the Dispute has not been resolved within 28 days of the issue of the notice, undertake mediation with an independent mediator, the cost to be shared by the parties unless otherwise agreed.
- (2) Nothing in this **clause 11** will prejudice the rights of either party to institute proceedings to enforce this Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

## 12. General

### 12.1 Cooperation and good faith

Each party will:

- (1) fully cooperate with each other to ensure timely progress and fulfilment of this Agreement; and
- (2) act reasonably and in good faith with respect to matters that relate to this Agreement.

### 12.2 Conflict of interest

The Contractor warrants that no conflict of interest exists or is likely to arise in the performance of the Services and its other obligations under this Agreement and must, if a conflict or risk of conflict arises, notify the Member and comply with any requirement of the Member to eliminate or deal with that conflict or risk.

### 12.3 No employment, partnership or agency relationship

Nothing in this Agreement constitutes the Contractor, or its employees, agents or subcontractors as employees, partners or agents of the Member or the Territory or creates any employment, partnership or agency for any purpose and the Contractor must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Member or the Territory.

### 12.4 No assignment or subcontracting

- (1) The Contractor must not subcontract the performance of the Services or assign the whole or part of this Agreement without the prior written consent of the Member. If the Member gives its consent, the Member may impose any conditions.

- 
- (2) A change in the control of the Contractor or a company that controls the Contractor (except a company listed on an Australian stock exchange) is taken to be an assignment, the term “control” including the direct or indirect holding of more than 50% of the share capital of a corporation.
  - (3) If the Contractor breaches **clause 12.4(1)**, the Member reserves its rights, including requiring the Contractor to provide information regarding the proposed subcontractor’s or assignee’s capability to continue performing this Agreement or to provide security to ensure the proper performance of this Agreement.

### **12.5 Entire agreement**

This Agreement comprises the entire agreement between the parties in relation to the Services and supersedes any prior representations, negotiations, writings, memoranda and agreements.

### **12.6 Severability**

Any provision of this Agreement that is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

### **12.7 Variation**

This Agreement may be varied or the Term extended only by the written agreement of the parties prior to the expiration of this Agreement. A variation does not have effect until the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it. Until the Clerk, or a person authorised for this purpose, endorses the variation, neither party may:

- (1) exercise any rights under the variation;
- (2) enforce any obligation under the variation;
- (3) perform Services under the variation; and
- (4) in any way act pursuant to the variation.

### **12.8 No waiver**

Failure or omission by the Member at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights and remedies that the Member may have in respect of that provision.

## 12.9 Governing law and compliance with the law

This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory. The Contractor must comply with the laws from time to time in force in the Territory in performing the Services.

### 12.10 Notices

Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contract Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (4) if sent by electronic mail, on whichever of the following occurs first:
  - (a) the other party's acknowledgement of receipt by any means;
  - (b) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address; or
  - (c) the expiration of two business days after the date on which it was sent without receipt of a notification that the delivery failed.

and if given in two or more ways, on the first of paragraphs (1) to (4) occurring.

### 12.11 Special Conditions

In the event of any inconsistency between any Special Condition and any other provision of this Agreement then, to the extent of any inconsistency, the Special Condition will prevail.

### 12.12 Survival of clauses

Clauses 7, 9.2 and 9.3 will survive the expiration or earlier termination of this Agreement.

## 13. Legislative Assembly (Members' Staff) Act 1989

This Agreement is subject to Division 5.2 of the *Legislative Assembly (Members' Staff) Act 1989 (the Act)*, which forms part of this Agreement. In the event of any inconsistency between a term of this Agreement and a provision of Division 5.2 of the Act then, to the extent of any inconsistency, the Act will prevail.

## SCHEDULE 1

### CONTRACT DETAILS

**Item 1. Contract Officers**

*See clauses 1.1 and 12.10*

For the Member:

[INSERT name of Contract Officer]  
[INSERT contact details – address and facsimile]

For the Contractor:

[INSERT name of Contract Officer]  
[INSERT contact details – address and facsimile]

**Item 2. Term**

*See clauses 1.1 and 3*

From [eg. the date of this Agreement]  
until [INSERT end date, note pursuant to section 21(5) of the *Legislative Assembly (Member's Staff) Act 1989*, the term is limited to a maximum of 3 years].

**Item 3. Contract Price**

*See clauses 1.1 and 4*

- (1) Contract Price:            \$[INSERT]   (GST inclusive).
- (2) If the Contract Price is payable:
  - (a) as a lump sum, an Invoice may only be rendered following completion of the Services; or
  - (b) by instalments, Invoices may only be rendered in accordance with the following.

Instalment	When Invoice may be rendered
	[If appropriate, the instalments may be linked to the completion of milestones listed in Schedule 2. If Contract Price is not payable by instalments, insert “Not used”.]

- (3) Except if otherwise stated in this Agreement, the Contract Price is:
  - (a) payable within 30 days of receipt by the Member of an Invoice;

- (b) inclusive of GST and all other taxes, duties and charges; and
  - (c) inclusive of all disbursements, including out-of-pocket expenses incurred by the Contractor.
- (4) [INSERT details if disbursements are to be paid in addition to the Contract Price, eg. specify categories of disbursements and upper limit payable by the Member or whether disbursements are to be approved in advance before the Member becomes liable].

**Item 4. Specified Personnel**

See clauses 1.1 and 6

Not applicable.

[OR, INSERT names if relevant.]

**Item 5. Other amounts and insurance**

See clause 9.1

- (1) Public liability insurance: [INSERT amount, eg. \$20 million] (in respect of each claim).
- (2) Professional indemnity insurance: [INSERT amount, eg. \$10 million] (in respect of each claim) and [INSERT amount, eg. \$10 million or a different amount] (in the annual aggregate).
- (3) [INSERT other type of insurance, if any].

[Note: The level of public liability insurance under this Agreement must be based on an assessment of risk.

Advice from the ACTIA may be obtained regarding whether professional indemnity insurance is required for the purposes of the Agreement and the appropriate level.

If professional indemnity insurance is required, the Contractor may be subject to a professional standards scheme created under the Civil Law (Wrongs) Act 2002 (ACT), which must be applied in determining the level of professional indemnity insurance for the Agreement. Seek ACTGS advice regarding how the Scheme affects the professional indemnity insurance requirements in the Agreement.

If professional indemnity insurance is required, consideration should be given to whether “run-off” cover is necessary. If so, the following words may be included in this Item 5: “The Contractor must maintain the professional indemnity insurance coverage required under this **Item 5** for an additional period of 6 years from the expiration of the Term. This Item survives the expiration or earlier termination of this Agreement.”

**Item 6. Contract Information**  
See clauses 1.1 and 7

Item 6 not used.

[OR, INSERT details of any information (other than Confidential Text) that the Member requires the Contractor to keep confidential in addition to what is already set out in the definition of Contract Information. If details in the definition of Contract Information are sufficient, RETAIN “Item 6 not used”.]

**Item 7. Confidential Text**  
See clauses 1.1 and 8

Item 7 not used.

[OR, INSERT “This Agreement is a “notifiable contract” under the Procurement Act and the following is Confidential Text” and then INSERT details of any text in the Agreement that either party requires the Member to keep confidential, eg. name and other personal details of Contract Officers or Specified Personnel, hourly rates or other individual components of the Contract Price.

[**Note:** If the Agreement is a notifiable contract under the Procurement Act, text may only be deleted from the public text of the Agreement if the Member is permitted to not disclose the text on the basis of one or more of the grounds set out in section 35(1) of the Procurement Act. The relevant grounds should be specified in Item 8 below.]

**Item 8. Grounds for confidentiality of Confidential Text**  
See clause 8

Item 8 not used.

[OR, MODIFY this Item as appropriate (see text below) and insert here.

“The Procurement Act, part 3 (Notifiable Contracts) applies to this Agreement. The Member is satisfied that the Confidential Text is “confidential information” for the purposes of that Act because disclosure of the text

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would:

**EXAMPLE ONLY**

- (1) be an unreasonable disclosure of Personal Information about a person; or
- (2) be an unreasonable disclosure of information about the business affairs of a person.”]

[**Note:** if the Agreement is a “notifiable contract” under the Procurement Act, in order for the Confidential Text to be kept confidential, the Member must be satisfied that at least one of the grounds for confidentiality set out in section 35(1) of the Act applies to the Confidential Text.

Also, note that if Item 7 is used, Item 8 must also be completed.]

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## SCHEDULE 2

### THE SERVICES

The Contractor must provide the Services as follows within any specified timeframes.

Item Number	Details of Services	Timeframe for Completion
1	[INSERT full details of Services to be performed including, eg. methodology, consultations, reports to be prepared and any timeframes for the performance of the Services eg. provision of draft and final reports etc.]	
2	[INSERT full details of Services to be performed including, eg. hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other on a regular basis in order to keep the other fully informed of the progress of work required under the Agreement.]	
3	[INSERT details as required.]	
4	[INSERT details as required.]	

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## SCHEDULE 3

### SPECIAL CONDITIONS

*See clause 12.11*

[If there are no Special Conditions, DELETE the following Items and INSERT “Not Used”.]

#### Item 1. Changes in control of Contractor

[**Note:** Only use this Special Condition if **clause 12.4(2)** is not sufficient and a wider set of circumstances in which a change in control of the Contractor is deemed to occur is required.]

In addition to the circumstances set out in **clause 12.4(2)**, for the purposes of **clause 12.4**, “control” includes the direct or indirect possession of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights) to:

- (1) directly or indirectly control the membership of the board of directors of the corporation; or
- (2) otherwise directly or indirectly direct or cause the direction of the management and policies of that corporation,

whether by means of trusts, agreements, arrangements, understandings, practices, greater industry experience, the ownership of any interest in shares or stock of that corporation or otherwise.

#### Item 2. Audit

[**Note:** Only use this Special Condition in circumstances where, in addition to the Auditor-General’s powers, there may be a special need for the Member to conduct audits and checks in relation to the Contractor’s provision of the Services and compliance with the Agreement]

Without limiting the powers of the Territory’s Auditor-General under the *Auditor-General Act 1996* (ACT) the Member (or its nominated representative) may, at its cost, inspect records kept by the Contractor and conduct audits and other checks, to monitor the Contractor’s delivery of the Services and compliance with this Agreement. The Contractor must act reasonably to cooperate with persons authorised to conduct an audits or checks.

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### Item 3. Complaints in relation to interference with privacy

[**Note:** it is recommended that this Special Condition be included in Schedule 3 until agencies that will be using this template have implemented TPP policies or codes of practice that make provision for the handling of complaints in relation to the handling of Personal Information by non-government agencies, such as the Contractor]

- 3.1 A complaint alleging an interference with the privacy of an individual in respect of any Services performed by the Contractor (**Complaint**) will be handled by the Member in accordance with the following procedures, unless otherwise provided for in a TPP privacy policy made under TPP 1.3 which applies to a Territory agency as relevant to this Agreement:
- (1) if the Member receives a Complaint it will immediately notify the Contractor of only those details of the Complaint necessary to minimise any breach or prevent further breaches of this Agreement;
  - (2) if the Contractor receives a Complaint it must immediately notify the Member of the nature of the Complaint but will only release Personal Information to the Member concerning the complainant with that person's consent; and
  - (3) after the Member has given or been given notice under (1) or (2), it will keep the Contractor informed of all progress with the Complaint concerning the actions of the Contractor.
- 3.2 This item survives the expiry or earlier termination of this Agreement.

**DATE OF THIS AGREEMENT** .....

**SIGNED** for and on behalf of the )  
**[INSERT MEMBER'S NAME]** )  
in the presence of: ) Signature of Member/authorised person\*  
\*delete whichever is not applicable

.....  
Signature of witness )  
Print name

.....  
Print name

**SIGNED** by or for and on behalf of )  
**[NAME & ACN OF CONTRACTOR]** )  
in the presence of: ) Signature of director/ authorised  
officer/ individual\*  
\*DELETE whichever is not applicable (see note below)

.....  
Signature of director/ secretary/ witness\* )  
\*DELETE whichever is not applicable (see note below) )  
Print name

.....  
Print name )  
Signature of second authorised officer\* )  
\*only use if Incorporated Association (see note below)

.....  
Print name



**Note:**

- Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange. Also date the cover page.
- Company: Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Contractor's constitution.
- Individual: Must be signed by the individual Contractor and witnessed.
- Incorporated Association: Must be signed in accordance with the Contractor's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

**ENDORSEMENT**

Disallowable Instrument DI [INSERT NUMBER] provides that an agreement under section 20 of the *Legislative Assembly (Members' Staff) Act 1989*, must be endorsed by the Clerk, or a person authorised by the Clerk for this purpose, before execution by the Parties.

The Clerk (or authorised person) endorses this Agreement:

.....  
Signature of Clerk (or authorised person)\*  
*\*delete whichever is not applicable*

\_\_\_\_\_  
PRINT FULL NAME

.....  
Date of endorsement

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

**From:** "Szanto, Juliet" <Juliet.Szanto@act.gov.au>  
**Sent:** 03/10/2024 2:31 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Cc:** "Angus, Sarah" <Sarah.Angus@act.gov.au>; "Perkovic, Sophia" <Sophia.Perkovic@act.gov.au>; "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>  
**Subject:** Overview of LAMS Employment Farmwork against other Jurisdictions  
**Attachments:** Attachment C Sch 1 s 1.2

## OFFICIAL

Good afternoon Sanaz,

I am following up on your request for further information regarding the treatment of Assembly staff in different jurisdictions.

### Operation of the Fair Work Act

The ACT, Commonwealth and the Northern Territory are covered by the Fair Work system. States are not covered by the system as they remain under their own state system so will not run into the issues that the ACT faces.

- S26 of the FW Act sets out which legislation is a general State industrial law and therefore does not have the FW Act applied (that is, they have their own IR legislation that remains superior):
- 26(3)(2) Each of the following is a **general State industrial law**:
  - the *Industrial Relations Act 1996* of New South Wales;
  - the *Industrial Relations Act 1999* of Queensland;
  - the *Industrial Relations Act 1979* of Western Australia;
  - the *Fair Work Act 1994* of South Australia;
  - the *Industrial Relations Act 1984* of Tasmania.

### Commonwealth

With regard to the Commonwealth, we undertook an initial comparison of employment conditions for the staff of their Members/Parliamentarians and our own Legislative Assembly Members Sch 1 s 1.2

I have pulled out the relevant sections from this document and included them in the body of this email. I have also added in a column to the comparison table which compares termination/severance benefits which we mentioned in our meeting this morning.

### Northern Territory

With regard to the Northern Territory, they appear to hire at least some of their Parliamentary Staff under their *Public Sector Employment and Management Act 1993* and Enterprise Agreement as indicated in clause 3 of their EA which states that the Speaker is a party to the EA alongside the definition of employer including "for an employee in the Department of the Legislative Assembly – the Speaker." This differs from our LAMS employment arrangements where we hire staff under a separate LAMS Act and not the PSM Act (under which ACTPS staff are employed).

We have reached out to our colleagues in the Northern Territory for more details on how they have been administering arrangements for their Legislative Assembly since the introduction of the FW Act fixed term contract rules.

# Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

# Sch 1 s 1.2

We will provide a further update when we receive a response from the Northern Territory.

Please let me know if we can provide any further information.

**Juliet Szanto | Industrial Relations and Employment Conditions Officer**

Whole of Government Industrial Relations and Public Sector Employment

Office of Industrial Relations and Workforce Strategy

**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

220 London Circuit Canberra City | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

**From:** "Szanto, Juliet" <Juliet.Szanto@act.gov.au>  
**Sent:** 04/10/2024 1:23 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Cc:** "Angus, Sarah" <Sarah.Angus@act.gov.au>; "Perkovic, Sophia" <Sophia.Perkovic@act.gov.au>; "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>  
**Subject:** RE: Overview of LAMS Employment Farmwork against other Jurisdictions

OFFICIAL

Hi Sanaz,

I took a quick look into Victoria's employment framework and added a section to the comparison table in my initial email which compares the entitlements of electorate officers who have similar termination provisions (i.e they automatically terminate either under legislation or their enterprise agreement) and I believe are also covered by the Fair Work system.

It appears that electorate officers employed under their *Parliamentary Administration Act 2005* use a system similar to the Commonwealth in that the employment is 'on-going' until terminated. They differ from the commonwealth in that they specifically state that their termination payment is a redundancy payment whereas the Commonwealth provides an additional payment where their severance payment not treated as a redundancy.

We will provide a further update if we come across anything further.

Kind regards,

Juliet,

**Juliet Szanto | Industrial Relations and Employment Conditions Officer**  
Whole of Government Industrial Relations and Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**  
220 London Circuit Canberra City | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

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**From:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>  
**Sent:** Thursday, 3 October 2024 3:11 PM  
**To:** Szanto, Juliet <[Juliet.Szanto@act.gov.au](mailto:Juliet.Szanto@act.gov.au)>  
**Cc:** Angus, Sarah <[Sarah.Angus@act.gov.au](mailto:Sarah.Angus@act.gov.au)>; Perkovic, Sophia <[Sophia.Perkovic@act.gov.au](mailto:Sophia.Perkovic@act.gov.au)>; CMTEDD, Office of the EGM PSE <[CMTEDD.OfficeoftheEGMPSE@act.gov.au](mailto:CMTEDD.OfficeoftheEGMPSE@act.gov.au)>  
**Subject:** RE: Overview of LAMS Employment Farmwork against other Jurisdictions

OFFICIAL

Thanks Juliet. I think Victoria would also be a good one to check, especially because (if I recall correctly) they have a fixed election cycle and they are also covered by the National System.

Kind Regards

Sanaz (she/her)

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals**  
**Public Sector Employment**  
**Office of Industrial Relations and Workforce Strategy**  
**Chief Minister, Treasury and economic Development Directorate| ACT Government**  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

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Sch 1 s 1.2

Australian Capital Territory

# Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 202~~41~~ (No 1)

Disallowable instrument DI202~~41~~-

made under the

**Legislative Assembly (Members' Staff) Act 1989, s 5 (3) (Office-holders may employ staff) and s 17 (4) (Office-holders may engage consultants and contractors)**

## 1 Name of instrument

This instrument is the *Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2021 (No 1)*.

## 2 Commencement

This instrument commences the day after notification. ~~on 1 July 2021.~~

## 3 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.

## 4 Definition

In this instrument:

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

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

## 5 Revocation

DI2021-180 ~~16-299~~ is revoked.

## 6 Approval for Act, s 5 and s 17

This instrument approves arrangements and conditions in accordance with which office-holders may, on behalf of the Territory, employ part 2 employees, or engage contractors or consultants, under the Act, section 5 or section 17.

## 7 Staff employment

An office-holder may only employ a part 2 employee under an agreement substantially in the form set out in schedule 1.

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

**8 Re-engagement**

A part 2 employee whose employment is terminated by the operation of subsection 8(1) or 8(2) of the Act, and who receives a termination payment under the applicable enterprise agreement, shall not recommence employment under the Act before the expiry of the period of time, in weeks and days, that is equivalent to the termination payment.

*Example* Where an employee is in receipt of a termination payment equal to six weeks' pay, not including superannuation or any other payment, the exclusion period is equal to six weeks.

*Note* There is nothing to prevent new employment arrangements being settled during the exclusion period with a view to employment recommencing immediately following the expiration of the exclusion period.

**9 Contractor and consultant engagements**

- (1) An office-holder may only engage a consultant or contractor under an agreement substantially in the form set out in schedule 2.
- (2) A contract for services by which an office-holder engages a consultant or a contractor—
  - (a) must be endorsed by the Chief Minister, or a person authorised by the Chief Minister for this purpose, or if the contract relates to the engagement of consultants and contractors by the Speaker, the Clerk of the Legislative Assembly, or a person authorised by the Clerk for this purpose, before execution by the parties; and
  - (b) must be in accordance with guidelines issued by the ACT Government Procurement Board.

**Dated**

Andrew Barr  
*Chief Minister*

## **8. TERMINATION OF EMPLOYMENT**

- 8.1 You may terminate this Agreement in accordance with the Act and the Enterprise Agreement where applicable.
- 8.2 Subject to the Act, this Agreement terminates automatically if any of the circumstances specified in subsection 8(1) or 8(2) of the Act apply.
- 8.3 I may terminate this Agreement in accordance with the Act, the Enterprise Agreement where applicable, the Award and the *Fair Work Act 2009* (Cth).
- 8.4 On termination of employment, however occurring, you will immediately deliver to me all work-related property belonging to me or to the Australian Capital Territory which is in your possession or control.

## **9. NO WAIVER**

- 9.1 Failure or omission by either of us to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of either of us to seek redress for any breach of any such provision.

## **10. GOVERNING LAW**

- 10.1 This Agreement is to be governed by the law of the Australian Capital Territory.

## **11. NOTICES**

- 11.1 All notices, consents, approvals, agreements or other communications by or to the respective parties to the Agreement will be in writing and addressed to the relevant party at their usual address, or such other address as may from time to time be specified by the party in writing.
- 11.2 All notices, consents, approvals, agreements or other communications delivered in accordance with clause 11.1 are deemed to be duly given or made as follows:
- (a) if delivered by hand, upon delivery;
  - (b) if sent by prepaid mail, upon the expiration of four days after the date on which it was so sent;
  - (c) if sent by facsimile, upon the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address;
  - (d) if sent by electronic mail, upon the sender's computer recording that the message has been successfully transmitted to the recipient's electronic mail address.

Schedule 1 Staff employment

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Page 5 of 5

Dated \_\_\_\_\_ of \_\_\_\_\_  
(date) (month) (year)

Signed by the Office-holder

In the presence of

Signed by the employee

In the presence of

Signed

Chief Minister  
or Clerk of the Legislative Assembly  
(or authorised person)\*

*\*delete whichever is appropriate*

Date

(To be signed and dated by the Chief Minister, or a person authorised by the Chief Minister for that purpose, before execution by the Parties, or, if this agreement relates to the employment of staff by the Speaker, to be signed and dated by the Clerk of the Legislative Assembly, or a person authorised by the Clerk for that purpose, before execution by the Parties).

---

**ATTACHMENT TO THE EMPLOYMENT AGREEMENT****Item 1** [Clause 1.1(h)]

- (a) **Name of employee:**
- (b) **Address of employee:**
- (c) **Date of Birth of employee:**

**Item 2** [Clause 1.1(g)]**Name of Office-holder:****Item 3****Type of Employment:** (Eg. "fixed term", "casual")*Note: Casual employees are not entitled to be paid a LAMS Allowance.***Item 4****Period of Agreement** [clause 8]

**(The period of Agreement is until termination conditions are met under the Act and the Enterprise Agreement unless a period of Agreement is stated):**

**Item 5****Period of Probation (must be specified where the employment is subject to probation):**

*Note: The probationary period would normally be 6 months or less. If the specified period is less than 6 months, where necessary, the period of probation may subsequently be extended up to 6 months.*

**Item 6****Duties (must be consistent with the classification and salary specified in Items 7 and 8):**

*Note: (1) Specify the key duties from the relevant Work Level Standard; or*

*(2) If the person is engaged to undertake a specified project, provide a description of the project and/or scope of the project; and*

*(3) Specify the Identified duties to be performed where a Specialist Duties Payment is to be paid in accordance with the Enterprise Agreement where applicable.*

**Item 7****Classification (must be in accordance with the Enterprise Agreement where applicable):****Item 8**

*Note: (1) Specify the relevant commencing annual salary and salary point (increment) in accordance with the*

*Enterprise Agreement where applicable.*

*(2) The annual salary includes any non-cash benefits to which the employee is entitled under flexible remuneration arrangements, but excludes any long service leave allowance and leave loading.*

*(3) The person will begin employment on their commencing salary point and will progress to the next salary point on or immediately prior to the anniversary date of appointment in accordance with the Enterprise Agreement*

*(3)(4) Specify the relevant Specialist Duties Payment, where applicable, in accordance with the Enterprise Agreement.*

**(a) Salary (full-time equivalent):**

*Note: Specify commencing salary per annum.*

**(b) Salary Point (~~1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup>~~):**

*Note: Specify commencing salary point*

**(c) Specialist Duties Payment (full-time equivalent), if applicable:**

**Item 9****Fortnightly Hours of Work (standard full-time hours are 73.5 hours per fortnight):****Item 10****Working Pattern (days and commencing and finishing times that work will be performed if less than full time):**

---

**Item 11** [Clause 6.1]

**Recognition of Employment with an Australian Parliamentarian or with a Commonwealth department or instrumentality for the accrual of annual leave, personal leave and long service leave**

- (a) **Yes/No (strike out the answer that does not apply)**
- (b) **If Yes, supply details of previous employment:**

**Schedule 2** Contractor and consultant engagements

---

## **Schedule 2 Contractor and consultant engagements**

(see cl 9 (1))

---

# AGREEMENT

Date

Parties

\_\_\_\_\_  
**[INSERT OFFICE-HOLDER'S  
NAME]**

AND

**[INSERT FULL NAME OF  
CONTRACTOR INCL. ACN IF  
COMPANY]**

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**[INSERT BRIEF TITLE OF SERVICES]**

**Note to users:** any text in red is for your attention. When using this template to prepare an agreement you will need to complete and/or follow any user prompts and also read the instructional notes.

**DELETE this note, all prompts and other notes before finalising the agreement**

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**PARTIES:** **[INSERT OFFICE-HOLDER'S NAME]** of Legislative Assembly Building, Civic Square, London Circuit, Canberra City, on behalf of the Australian Capital Territory pursuant to section 17 of the *Legislative Assembly (Members' Staff) Act 1989* (ACT) (**Office-holder**)

**[INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION AND CHECK IT IS A LEGAL ENTITY]** of **[INSERT address (of registered office if for a company)]** (**Contractor**).

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## BACKGROUND

- A. The Office-holder is an office-holder of the Legislative Assembly.
  - B. Section 17 of the *Legislative Assembly (Members' Staff) Act 1989* (ACT) allows an office-holder to engage a consultant or contractor for the provision of services necessarily incidental to the performance of his or her ministerial or parliamentary duties.
  - C. The Office-holder is satisfied that the services set out in this Agreement are necessarily incidental to the performance of his or her ministerial or parliamentary duties.
  - D. The Office-holder has agreed to purchase, and the Contractor has agreed to provide, the services on the terms and conditions in this Agreement.
- 

**IT IS AGREED** by the parties as follows.

## 1. Interpretation

### 1.1 Definitions

The following definitions apply in this Agreement, unless the context otherwise requires.

<b>Clerk</b>	has the meaning given in the <i>Legislative Assembly (Office of the Legislative Assembly) Act 2012</i> (ACT).
<b>Confidential Text</b>	any text of this Agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in <b>Item 7 Schedule 1</b> .
<b>Contractor Material</b>	all material owned by the Contractor and used for the purpose of providing the Services, including documents, information and data stored by any means.

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<b>Contract Material</b>	all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including all reports (whether in draft or final form), documents, information and data stored by any means.
<b>Contract Officers</b>	in relation to each party, the representatives whose names and contact details are specified in <b>Item 1 Schedule 1</b> , or as notified from time to time by one party to the other.
<b>Contract Information</b>	<p>the kind of information that:</p> <ul style="list-style-type: none"> <li>(1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Office-holder or the Territory which are by their nature confidential;</li> <li>(2) is notified (whether in writing or not) by the Office-holder to the Contractor as being confidential;</li> <li>(3) is specified in <b>Item 6 Schedule 1</b>; or</li> <li>(4) is Personal Information,</li> </ul> <p>but does not include information that:</p> <ul style="list-style-type: none"> <li>(5) is or becomes public knowledge other than by breach of this Agreement;</li> <li>(6) has been independently developed or acquired by the Contractor; or</li> <li>(7) has been notified by the Office-holder to the Contractor as not being confidential.</li> </ul>
<b>Contract Price</b>	the amounts specified in, or calculated in accordance with, <b>Item 3 Schedule 1</b> .
<b>GST</b>	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Information Privacy Act</b>	the Information Privacy Act 2014 (ACT).
<b>Insolvency Event</b>	<p>in respect of a natural person:</p> <ul style="list-style-type: none"> <li>(a) any orders, agreements or arrangements are made in respect of the affairs of the person in accordance with the Bankruptcy Act 1966 (Cth); or</li> </ul>

- 
- (b) in the reasonable opinion of the Office-holder the person is likely to be declared bankrupt or lose control of the management of their financial affairs; or
  - (1) in respect of all other entities:
    - (a) any of the events listed in sub-sections 459C(2)(a) to (f) of the Corporations Act 2001 (Cth) occur in respect of the entity; or
    - (b) any other event occurs which, in the reasonable opinion of the Office-holder is likely to result, or has resulted, in the:
      - (i) insolvency;
      - (ii) winding up; or
      - (iii) appointment of a controller (as that term is defined in the Corporations Act 2001 (Cth)) in respect of part or all of the property,
- of the entity.

For the purpose of subparagraph (2)(b), subsections 459C(2)(a) to (f) Corporations Act 2001(Cth) are to be read as if applying to all incorporated entities.

**Invoice**

an invoice that:

- (1) if GST is payable in respect of the provision of the Services, is a valid tax invoice for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (2) clearly sets out details of the Services provided and of the amount that is due for payment, is correctly calculated and is in respect of Services that have been performed in accordance with this Agreement;
- (3) is accompanied by any other details or reports required under this Agreement; and
- (4) is rendered at the times specified in **Item 3 Schedule 1** (if any) and addressed to the Office-holder's Contract Officer.

**Office-holder  
Material**

any material provided by the Office-holder to the Contractor for the purposes of this Agreement including documents, equipment, information and data stored by any means.

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<b>Personal Information</b>	<p>is personal information as defined in section 8 of the Information Privacy Act, namely, information or an opinion about an identified individual or an individual who is reasonably identifiable:</p> <p>(1) whether the information is true or not; and</p> <p>(2) whether the information or opinion is recorded in a material form or not,</p> <p>but does not include personal health information (as defined in the Health Records (Privacy and Access) Act 1997 (ACT)) about the individual.</p>
<b>Prescribed Insurer</b>	an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and rated at AA or better by Standard & Poor's.
<b>Procurement Act</b>	the Government Procurement Act 2001 (ACT).
<b>Services</b>	the services described in <b>Schedule 2</b> .
<b>Special Condition</b>	any provision set out in <b>Schedule 3</b> .
<b>Specified Personnel</b>	any person named in <b>Item 4 Schedule 1</b> , or any other employee or agent of the Contractor, who is approved by the Office-holder from time to time for the purpose of <b>clause 6</b> .
<b>Term</b>	the term specified in <b>Item 2 Schedule 1</b> , and if extended, the initial term and the extended term.
<b>Territory</b>	<p>when used:</p> <p>(1) in a geographical sense, the Australian Capital Territory; and</p> <p>(2) in any other sense, the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Cth).</p>
<b>TPPs</b>	the Territory Privacy Principles provided for in section 13 and set out in Schedule 1 of the Information Privacy Act.
<b>TPP Code</b>	a code of practice about information privacy which, having regard to section 21(1) and (3) of the Information Privacy Act, binds an agency that engages the Contractor in the provision of the Services.

---

## 1.2 General

In this Agreement, unless a contrary intention is expressed:

- (1) references to “Contractor” include any employees, agents or subcontractors of the Contractor;
- (2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (3) words in the singular include the plural and vice versa;
- (4) headings are for convenience only and do not affect the construction or interpretation of this Agreement;
- (5) an obligation imposed on more than one person binds them jointly and severally; and
- (6) the word “include” and any derivation is not to be construed as a word of limitation.

## 2. Services

The Consultant must perform the Services in accordance with the provisions of this Agreement and to a standard of care, skill and diligence expected of a person who regularly acts in the capacity in which the Consultant is engaged.

## 3. Term

### 3.1 Commencement

This Agreement commences on the date:

- (1) specified in **Item 2 Schedule 1** to this Agreement; or
- (2) on which the Chief Minister, or if this Agreement relates to the engagement of consultants and contractors by the Speaker, the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it,

whichever is later.

### 3.2 Endorsement

This Agreement does not have effect until the Chief Minister, or if this Agreement relates to the engagement of consultants and contractors by the Speaker, the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it. Until this Agreement is endorsed, neither party may:

- (1) exercise any rights under this Agreement;
- (2) enforce any obligations under this Agreement;
- (3) perform Services under this Agreement; or
- (4) in any way act pursuant to this Agreement.

---

### 3.3 Extension

This Agreement ends on the date specified in **Item 2 Schedule 1** to this Agreement unless extended under **clause 12.7** or terminated under the provisions of this Agreement.

## 4. Contract Price

### 4.1 Invoice

The Office-holder must pay the Contractor the Contract Price following its receipt of an Invoice and otherwise in accordance with **Item 3 Schedule 1**.

### 4.2 Incorrect payments

If, after payment, an invoice is found to have been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due by the Office-holder to the Contractor under this Agreement.

## 5. Ownership and use of material

### 5.1 Ownership of material

Ownership of:

- (1) all Contract Material, including any intellectual property rights, vests on its creation in the Office-holder;
- (2) all Office-holder Material, including any intellectual property rights, remains with the Office-holder; and
- (3) all Contractor Material, including any intellectual property rights, remains with the Contractor.

### 5.2 Licence of material

The Office-holder grants to the Contractor a royalty-free, limited licence to use the Contract Material and Office-holder Material for the Term.

- (1) The Contractor grants to the Office-holder a royalty-free, perpetual, limited licence to use the Contractor Material.
- (2) For the purpose of this clause, “use” includes:
  - (a) such uses as are reasonably necessary for the Office-holder to obtain the full benefit of the Services, including use of the Contract Material; and
  - (b) such uses as are reasonably necessary for the Contractor to undertake the Services or as otherwise agreed by the Office-holder,and may include supply, reproduce, publish, perform, communicate, broadcast, adapt and copy as the context requires.

### 5.3 Third party rights

The Contractor must ensure:

- (1) the use of any Contract Material or Contractor Material will not infringe the intellectual property rights of any third party; and
- (2) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Office-holder's (or its agents') use of any Contract Material or Contractor Material.

### 5.4 Moral rights

The Contractor must, in relation to the authors of any work that comprises or forms part of the Contract Material:

- (1) use its best endeavours to include in the Contract Material an attribution of those authors; and
- (2) procure from those authors their genuine written consent for the Office-holder to:
  - (a) attribute the authorship of the work to the Office-holder or a third party where that attribution was inadvertent;
  - (b) not attribute the authorship of the author when using the work (including exhibiting or performing the work in or to the public); and/or
  - (c) materially alter the work in any way.

### 5.5 Safekeeping and preservation of material

The Contractor must ensure the safe-keeping and proper preservation of Contract Material and Office-holder Material in its possession or control and deliver to the Office-holder all Contract Material and Office-holder Material on the expiration or termination of this Agreement (other than copies of material that the Office-holder has authorised the Contractor to retain).

## 6. Contractor's personnel

The Contractor must:

- (1) in performing the Services, engage only persons who have the skills, training and expertise appropriate for the Services;
- (2) comply with all reasonable requirements notified by the Office-holder regarding the suitability and fitness of persons engaged by the Contractor for the performance of Services;
- (3) ensure the Services are performed by Specified Personnel (if any) and provide replacement personnel acceptable to the Office-holder at no additional charge and at the earliest opportunity if the Specified Personnel are unable to perform any of the Services; and

## **Schedule 1 Staff employment**

(see cl 7)

## EMPLOYMENT AGREEMENT – STAFF OF OFFICE-HOLDERS

Note: This Agreement is of no legal effect without the prior endorsement of the Chief Minister, or a person authorised by the Chief Minister for that purpose, or, if it relates to the employment of staff by the Speaker, the Clerk of the Legislative Assembly, or a person authorised by the Clerk for that purpose.

This Agreement sets out the terms on which I will employ you, pursuant to subsection 5(1) of the *Legislative Assembly (Members' Staff) Act 1989*.

### 1. DEFINITIONS

1.1 In this Agreement, the following words have the following meanings:

- (a) "Act" means the *Legislative Assembly (Members' Staff) Act 1989* ("the Act");
- (b) "Agreement" means this Agreement and includes any attachments or schedules;
- (c) "Award" means the Australian Capital Territory Public Sector Enterprise Award 2016 as varied from time to time;
- (d) "Enterprise Agreement" means the applicable industrial agreement made under the *Fair Work Act 2009* which applies to and covers persons engaged under the Act;
- (e) "Determination" means any relevant determination made pursuant to the Act;
- (f) "Direction" means any relevant direction given pursuant to the Act;
- (g) "I" means the person specified in item 2 of the Attachment to this Agreement, on behalf of the Australian Capital Territory, and "my", "mine" and "me" have corresponding meanings;
- (h) "You" means the person specified in item 1 of the Attachment to this Agreement and "your" and "yours" have corresponding meanings.

### 2. APPLICATION

2.1 The terms and conditions of your employment are as set out in:

- (a) the Enterprise Agreement where applicable;
- (b) the Award;
- (c) the Act;
- (d) any Determinations or Directions;
- (e) this Agreement; and
- (f) other applicable laws.

### **3. OBLIGATIONS**

#### **3.1 In performing the duties, you will:**

- (a) comply with the requirements of the applicable code of conduct for staff of members and ministers of the ACT Legislative Assembly as varied from time to time;
- (b) comply with the terms and conditions of your employment;
- (c) notify me of any illness or medical condition affecting you which substantially affects your ability to carry out your duties or obligations under this Agreement;
- (d) notify me of any restrictions by statute, court order, contract, or deed on your legal capacity to perform the full range of duties;
- (e) comply with any lawful and reasonable direction given by a person having authority to give the direction;
- (f) not harass a member of the public or another public employee, whether sexually or otherwise.

### **4. EMPLOYEE WARRANTIES**

#### **4.1 You warrant that you:**

- (a) are and will continue to be a fit and proper person to be an employee under this Agreement; and
- (b) have discussed with me the issue of prior criminal convictions and have disclosed to me your convictions, other than spent convictions. I agree to keep such information strictly confidential.

### **5. EXCLUSIVE EMPLOYMENT**

#### **5.1 During the period of this Agreement, you must not be employed or engaged by any other person in any other capacity without my prior written approval nor will you engage in any business or undertaking without my prior written approval.**

**6. RECOGNITION OF OTHER EMPLOYMENT FOR LEAVE ACCRUAL**

6.1 I may agree to recognise your employment with an Australian parliamentarian or with a Commonwealth department or instrumentality for the purpose of determining the accrual of certain leave entitlements. My agreement shall be set out in item 11 of the Attachment to this Agreement or otherwise provided to you in writing.

6.2 My agreement as provided in clause 6.1 is subject to the following conditions:

- (a) the employment must have been as a staff member of a Member or Senator of an Australian parliament, or as an employee or officer of a Commonwealth department or instrumentality;
- (b) the employment may count towards the accrual of annual leave, personal leave and long service leave subject to availability under item 11 of the Attachment to this Agreement;
- (c) leave entitlements for which a payment has, or should have, been made shall not be recognised except in relation to relevant qualifying periods;
- (d) if ceased, in order to be recognised, the employment must have terminated no more than:
  - (i) part of a working day prior to the commencement of employment under the Act in relation to annual leave benefits; and
  - (ii) two (2) months prior to commencement of employment under the Act in relation to personal leave benefits; and
  - (iii) one (1) year prior to commencement of employment under the Act in relation to long service leave benefits,

unless the Chief Minister agrees that an alternative period is appropriate in the circumstances.

**7. PAID PARKING**

7.1 To remove any doubt, you do not have any automatic entitlement to paid parking.

- 
- (4) if the Office-holder requires, ensure that each person engaged in the performance of the Services executes a deed of confidentiality in a form acceptable to the Office-holder (including with respect to not accessing or otherwise safeguarding Personal Information as applicable), and provide those executed deeds to the Office-holder in accordance with any requirements that the Office-holder notifies.

## **7. Non-disclosure of Contract Information**

### **7.1 Contractor's use of Contract Information**

The Contractor must:

- (1) use Contract Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (2) not transfer Contract Information held in connection with this Agreement outside the Territory or the Office-holder, or allow any person (other than its authorised personnel) outside the Territory or the Office-holder to have access to it, without the prior approval of the Office-holder;
- (3) notify the Office-holder immediately if the Contractor becomes aware that a disclosure of Contract Information is required by law, or an unauthorised disclosure of Contract Information has occurred; and
- (4) in respect of any Personal Information held in connection with this Agreement:
  - (a) comply with the TPPs and any applicable TPP Code and must not (and procure that any subcontractor engaged by the Contractor under this Agreement does not) act or engage in a practice that breaches a TPP or a TPP Code; and
  - (b) co-operate with any reasonable requests or directions of the Office-holder arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the Information Privacy Act.

### **7.2 Contractor to protect Contract Information**

- (1) Except as provided in this Agreement, the Contractor must not disclose Contract Information to any person, nor deal with the Information in any way except for the purpose of this Agreement, without the prior written consent of the Office-holder except to the extent that the Contract Information is:
  - (a) required or authorised to be disclosed by law;
  - (b) disclosed to the Contractor's solicitors, auditors, insurers or advisers;
  - (c) generally available to the public; or
  - (d) in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Office-holder.

- 
- (2) The Contractor must take all reasonable measures to ensure that Contract Information accessed or held by it in connection with this Agreement is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose and that only its authorised personnel have access to Contract Information.
  - (3) The Contractor must do all things necessary to ensure that Contract Information accessible to the Contractor and the Contractor's personnel by virtue of the performance of this Agreement is not accessed, published or communicated in any way, including imposing upon the Contractor's personnel obligations of confidentiality with respect to Contract Information.

### **7.3 Acknowledgement of effect of Crimes Act**

The Contractor acknowledges that the publication or communication of any fact or document by a person which has come to its knowledge or into its possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Contractor is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT).

## **8. Confidential Text under Procurement Act**

### **8.1 Office-holder may make Agreement publicly available**

In giving effect to the principles of open and accountable government, the Office-holder may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Agreement may be a notifiable contract under the Procurement Act and, if so, the Office-holder will be required to make the text of this Agreement available to the public, including by publication on a public contracts register.

### **8.2 Confidential Text**

If **Item 7 Schedule 1** states that this Agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in **Item 8 Schedule 1**, and **clause 8.3** applies.

### **8.3 Office-holder must not disclose Confidential Text**

Except as provided in this Agreement, the Office-holder must not disclose Confidential Text to any person without the prior written consent of the Contractor (which consent will not be unreasonably withheld) except to the extent that Confidential Text:

- (1) is required or authorised to be disclosed under law;
- (2) is reasonably necessary for the enforcement of the criminal law;
- (3) is disclosed to the Office-holder's solicitors, auditors, insurers or advisers;

- 
- (4) is generally available to the public;
  - (5) is in the possession of the Office-holder without restriction in relation to disclosure before the date of receipt from the Contractor;
  - (6) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
  - (7) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

## **9. Insurance and indemnity**

### **9.1 Contractor's insurance**

The Contractor must effect and maintain for the Term all insurance coverage required to be effected by it by law, public liability insurance and professional indemnity insurance in amounts not less than the amounts (if any) specified by **Item 5 Schedule 1**, and any other insurance specified in **Item 5 Schedule 1** with a Prescribed Insurer.

### **9.2 Indemnity**

The Contractor indemnifies the Territory and the Office-holder, its employees and agents against liability in respect of all claims, costs and expenses in relation to all loss, damage, injury or death to persons or property caused by the Contractor, in connection with the provision of the Services, except to the extent that the Office-holder or the Territory caused the relevant loss, damage or injury.

### **9.3 Claims to be made good**

The Contractor must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in **clause 9.2** and the Office-holder may deduct the amount, or any part of it, from any moneys due or becoming due to the Contractor under this Agreement.

## **10. Termination**

### **10.1 Default**

The Office-holder may terminate this Agreement, at any time by notice to the Contractor, if the Contractor:

- (1) is the subject of an Insolvency Event;
- (2) fails to commence timely provision of the Services or to meet any timeframes specified in this Agreement; or
- (3) is in breach of a provision of this Agreement, where that breach:
  - (a) if capable of being remedied, is not remedied within the period specified in a notice by the Office-holder; or
  - (b) is not capable of being remedied.

---

## 10.2 Termination for any reason or reduction of Services

The Office-holder may, at any time by notice to the Contractor, terminate this Agreement or reduce the Services for any reason, and in that event:

- (1) the Office-holder will be liable only for:
  - (a) payments under this Agreement for Services rendered before the date of termination; and
  - (b) subject to **clauses 10.2(2) and 10.2(3)**, any reasonable costs incurred by the Contractor and directly attributable to the termination or reduction of Services, but not in respect of loss of prospective profits;
- (2) on receipt of a notice of termination or reduction, the Contractor must:
  - (a) stop work as specified in the notice;
  - (b) take all available steps to minimise loss resulting from that termination or reduction of Services; and
  - (c) continue to perform any part of the Services not affected by the notice; and
- (3) in the event of a reduction of the Services, the Office-holder's liability to pay the Contract Price will, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.

## 10.3 No prejudice

Nothing in this **clause 10** prejudices:

- (1) any other rights or remedies of the Office-holder in respect of any breach of this Agreement; or
- (2) any rights or remedies available to the parties pursuant to Division 5.1 of the *Legislative Assembly (Members' Staff) Act 1989* (ACT).

## 11. Dispute resolution

- (1) If a difference or dispute (**Dispute**) arises in relation to this Agreement either party may give notice to the other that a Dispute exists, which specifies details of the Dispute, and the parties agree that they will endeavour to resolve the Dispute by negotiations, or, if the Dispute has not been resolved within 28 days of the issue of the notice, undertake mediation with an independent mediator, the cost to be shared by the parties unless otherwise agreed.
- (2) Nothing in this **clause 11** will prejudice the rights of either party to institute proceedings to enforce this Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

---

## 12. General

### 12.1 Cooperation and good faith

Each party will:

- (1) fully cooperate with each other to ensure timely progress and fulfilment of this Agreement; and
- (2) act reasonably and in good faith with respect to matters that relate to this Agreement.

### 12.2 Conflict of interest

The Contractor warrants that no conflict of interest exists or is likely to arise in the performance of the Services and its other obligations under this Agreement and must, if a conflict or risk of conflict arises, notify the Office-holder and comply with any requirement of the Office-holder to eliminate or deal with that conflict or risk.

### 12.3 No employment, partnership or agency relationship

Nothing in this Agreement constitutes the Contractor, or its employees, agents or subcontractors as employees, partners or agents of the Office-holder or the Territory or creates any employment, partnership or agency for any purpose and the Contractor must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Office-holder or the Territory.

### 12.4 No assignment or subcontracting

- (1) The Contractor must not subcontract the performance of the Services or assign the whole or part of this Agreement without the prior written consent of the Office-holder. If the Office-holder gives its consent, the Office-holder may impose any conditions.
- (2) A change in the control of the Contractor or a company that controls the Contractor (except a company listed on an Australian stock exchange) is taken to be an assignment, the term “control” including the direct or indirect holding of more than 50% of the share capital of a corporation.
- (3) If the Contractor breaches **clause 12.4(1)**, the Office-holder reserves its rights, including requiring the Contractor to provide information regarding the proposed subcontractor’s or assignee’s capability to continue performing this Agreement or to provide security to ensure the proper performance of this Agreement.

---

## 12.5 Entire agreement

This Agreement comprises the entire agreement between the parties in relation to the Services and supersedes any prior representations, negotiations, writings, memoranda and agreements.

## 12.6 Severability

Any provision of this Agreement that is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

## 12.7 Variation

This Agreement may be varied or the Term extended only by the written agreement of the parties prior to the expiration of this Agreement. A variation does not have effect until the Chief Minister, or if this Agreement relates to the engagement of consultants and contractors by the Speaker, the Clerk of the Legislative Assembly, or a person authorised for this purpose, endorses it. Until the variation is endorsed, neither party may:

- (1) exercise any rights under the variation;
- (2) enforce any obligation under the variation;
- (3) perform Services under the variation; and
- (4) in any way act pursuant to the variation.

## 12.8 No waiver

Failure or omission by the Office-holder at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights and remedies that the Office-holder may have in respect of that provision.

## 12.9 Governing law and compliance with the law

This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory. The Contractor must comply with the laws from time to time in force in the Territory in performing the Services.

---

## 12.10 Notices

Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contract Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (4) if sent by electronic mail, on whichever of the following occurs first:
  - (a) the other party's acknowledgement of receipt by any means;
  - (b) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address; or
  - (c) the expiration of two business days after the date on which it was sent without receipt of a notification that the delivery failed,

and if given in two or more ways, on the first of paragraphs (1) to (4) occurring.

## 12.11 Special Conditions

In the event of any inconsistency between any Special Condition and any other provision of this Agreement then, to the extent of any inconsistency, the Special Condition will prevail.

## 12.12 Survival of clauses

Clauses 7, 9.2 and 9.3 will survive the expiration or earlier termination of this Agreement.

## 13. Legislative Assembly (Members' Staff) Act 1989

This Agreement is subject to Division 5.1 of the *Legislative Assembly (Members' Staff) Act 1989 (the Act)*, which forms part of this Agreement. In the event of any inconsistency between a term of this Agreement and a provision of Division 5.1 of the Act then, to the extent of any inconsistency, the Act will prevail.

## SCHEDULE 1

### CONTRACT DETAILS

**Item 1. Contract Officers**

*See clauses 1.1 and 12.10*

For the Office-holder:

[INSERT name of Contract Officer]  
 [INSERT contact details – address and facsimile]

For the Contractor:

[INSERT name of Contract Officer]  
 [INSERT contact details – address and facsimile]

**Item 2. Term**

*See clauses 1.1 and 3*

From [eg. the date of this Agreement] until [INSERT end date, note pursuant to section 18(6) of the *Legislative Assembly (Members' Staff) Act 1989 (ACT)*, the term is limited to a maximum of 3 years].

**Item 3. Contract Price**

*See clauses 1.1 and 4*

- (1) Contract Price:            \$[INSERT]       (GST inclusive).
- (2) If the Contract Price is payable:
  - (a) as a lump sum, an Invoice may only be rendered following completion of the Services; or
  - (b) by instalments, Invoices may only be rendered in accordance with the following.

Instalment	When Invoice may be rendered
	<p>[If appropriate, the instalments may be linked to the completion of milestones listed in Schedule 2. If Contract Price is not payable by instalments, insert “Not used”.]</p>

- (3) Except if otherwise stated in this Agreement, the Contract Price is:
  - (a) payable within 30 days of receipt by the Office-holder of an Invoice;

- 
- (b) inclusive of GST and all other taxes, duties and charges; and
  - (c) inclusive of all disbursements, including out-of-pocket expenses incurred by the Contractor.
- (4) [INSERT details if disbursements are to be paid in addition to the Contract Price, eg. specify categories of disbursements and upper limit payable by the Office-holder or whether disbursements are to be approved in advance before the Office-holder becomes liable].

**Item 4. Specified Personnel**  
See clauses 1.1 and 6

Not applicable.

[OR, INSERT names if relevant.]

**Item 5. Other amounts and insurance**  
See clause 9.1

- (1) Public liability insurance: [INSERT amount, eg. \$20 million] (in respect of each claim).
- (2) Professional indemnity insurance: [INSERT amount, eg. \$10 million] (in respect of each claim) and [INSERT amount, eg. \$10 million or a different amount] (in the annual aggregate).
- (3) [INSERT other type of insurance, if any].

[Note: The level of public liability insurance under this Agreement must be based on an assessment of risk.

Advice from the ACTIA may be obtained regarding whether professional indemnity insurance is required for the purposes of the Agreement and the appropriate level.

If professional indemnity insurance is required, the Contractor may be subject to a professional standards scheme created under the Civil Law (Wrongs) Act 2002 (ACT), which must be applied in determining the level of professional indemnity insurance for the Agreement. Seek ACTGS advice regarding how the Scheme affects the professional indemnity insurance requirements in the Agreement.

If professional indemnity insurance is required, consideration should be given to whether “run-off” cover is necessary. If so, the following words may be included in this Item 5: “The Contractor must maintain the professional indemnity insurance coverage required under this **Item 5** for an additional period of 6 years from the expiration of the Term. This Item survives the expiration or earlier termination of this Agreement.”

**Item 6. Contract Information**  
See clauses 1.1 and 7

Item 6 not used.

[OR, INSERT details of any information (other than Confidential Text) that the Office-holder requires the Contractor to keep confidential in addition to what is already set out in the definition of Contract Information. If details in the definition of Contract Information are sufficient, RETAIN “Item 6 not used”.]

**Item 7. Confidential Text**  
See clauses 1.1 and 8

Item 7 not used.

[OR, INSERT “This Agreement is a “notifiable contract” under the Procurement Act and the following is Confidential Text” and then INSERT details of any text in the Agreement that either party requires the Office-holder to keep confidential, eg. name and other personal details of Contract Officers or Specified Personnel, hourly rates or other individual components of the Contract Price.

[**Note:** If the Agreement is a notifiable contract under the Procurement Act, text may only be deleted from the public text of the Agreement if the Office-holder is permitted to not disclose the text on the basis of one or more of the grounds set out in section 35(1) of the Procurement Act. The relevant grounds should be specified in Item 8 below.]

**Item 8. Grounds for confidentiality of Confidential Text**  
See clause 8

Item 8 not used.

[OR, MODIFY this Item as appropriate (see text below) and insert here.

“The Procurement Act, part 3 (Notifiable Contracts) applies to this Agreement. The Office-holder is satisfied that the Confidential Text is “confidential information” for the purposes of that Act because disclosure of the text would:

---

**EXAMPLE ONLY**

- (1) be an unreasonable disclosure of Personal Information about a person; or
- (2) be an unreasonable disclosure of information about the business affairs of a person.”]

[**Note:** if the Agreement is a “notifiable contract” under the Procurement Act, in order for the Confidential Text to be kept confidential, the Office-holder must be satisfied that at least one of the grounds for confidentiality set out in section 35(1) of the Act applies to the Confidential Text.

Also, note that if Item 7 is used, Item 8 must also be completed.]

---

## SCHEDULE 3

### SPECIAL CONDITIONS

*See clause 12.11*

[If there are no Special Conditions, DELETE the following Items and INSERT “Not Used”.]

#### Item 1. Changes in control of Contractor

[**Note:** Only use this Special Condition if **clause 12.4(2)** is not sufficient and a wider set of circumstances in which a change in control of the Contractor is deemed to occur is required.]

In addition to the circumstances set out in **clause 12.4(2)**, for the purposes of **clause 12.4**, “control” includes the direct or indirect possession of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights) to:

- (1) directly or indirectly control the membership of the board of directors of the corporation; or
- (2) otherwise directly or indirectly direct or cause the direction of the management and policies of that corporation,

whether by means of trusts, agreements, arrangements, understandings, practices, greater industry experience, the ownership of any interest in shares or stock of that corporation or otherwise.

#### Item 2. Audit

[**Note:** Only use this Special Condition in circumstances where, in addition to the Auditor-General’s powers, there may be a special need for the Office-holder to conduct audits and checks in relation to the Contractor’s provision of the Services and compliance with the Agreement]

Without limiting the powers of the Territory’s Auditor-General under the *Auditor-General Act 1996 (ACT)* the Office-holder (or its nominated representative) may, at its cost, inspect records kept by the Contractor and conduct audits and other checks, to monitor the Contractor’s delivery of the Services and compliance with this Agreement. The Contractor must act reasonably to cooperate with persons authorised to conduct an audits or checks.

#### Item 3. Complaints in relation to interference with privacy

[**Note:** it is recommended that this Special Condition be included in Schedule 3 until agencies that will be using this template have implemented TPP policies or codes of practice that make provision for the handling of complaints in relation to the handling of Personal Information by non-government agencies, such as the Contractor]

- 
- 3.1 A complaint alleging an interference with the privacy of an individual in respect of any Services performed by the Contractor (**Complaint**) will be handled by the Office-holder in accordance with the following procedures, unless otherwise provided for in a TPP privacy policy made under TPP 1.3 which applies to a Territory agency as relevant to this Agreement:
- (1) if the Office-holder receives a Complaint it will immediately notify the Contractor of only those details of the Complaint necessary to minimise any breach or prevent further breaches of this Agreement;
  - (2) if the Contractor receives a Complaint it must immediately notify the Office-holder of the nature of the Complaint but will only release Personal Information to the Office-holder concerning the complainant with that person's consent; and
  - (3) after the Office-holder has given or been given notice under (1) or (2), it will keep the Contractor informed of all progress with the Complaint concerning the actions of the Contractor.
- 3.2 This item survives the expiry or earlier termination of this Agreement.

**DATE OF THIS AGREEMENT.....**

**SIGNED** for and on behalf of the )  
**[INSERT OFFICE-HOLDER'S NAME]** )  
in the presence of: ) .....  
) Signature of Office-holder / authorised  
) person\*  
) \*delete whichever is not applicable  
..... )  
Signature of Witness )  
) .....  
..... ) Print name  
Print name )  
) )

**SIGNED** for and on behalf of )  
**[NAME & ACN OF CONTRACTOR]** )  
in the presence of: ) .....  
) Signature of director / authorised  
) officer / individual\*  
) \*delete whichever is not applicable (see note below)  
..... )  
Signature of director / secretary / witness\* )  
\*delete whichever is not applicable (see note below) )  
) .....  
Print name )  
) .....  
) Signature of second authorised officer\*  
) \*only use if Incorporated Association (see note below)  
) .....  
) Print name  
) )  
) )  
) )



- Note:**
- Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange. Also date the cover page.
  - Company: Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cth), for example, by 2 directors or a director and a secretary. Common seal may be required under the Contractor's constitution.
  - Individual: Must be signed by the individual Contractor and witnessed.
  - Incorporated Association: Must be signed in accordance with the Contractor's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

**ENDORSEMENT**

Disallowable Instrument DI **[INSERT NUMBER]** provides that an agreement under section 17 of the *Legislative Assembly (Members' Staff) Act 1989*, must be endorsed by the Chief Minister, or a person authorised by the Chief Minister for this purpose, or if the agreement relates to the engagement of consultants and contractors by the Speaker, the Clerk of the Legislative Assembly, or a person authorised by the Clerk for this purpose, before execution by the Parties.

The Chief Minister (or authorised person), or the Clerk of the Legislative Assembly (or authorised person), endorses this Agreement:

.....  
Signature of Chief Minister (or authorised person) or the Clerk of the Legislative Assembly (or authorised person)\*

*\*delete whichever is not applicable*

\_\_\_\_\_  
PRINT FULL NAME

.....  
Date of endorsement

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

# Sch 1 s 1.2

Sch 1 s 1.2

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Sch 1 s 1.2

Sch 1 s 1.2

**From:** "Wright, Steven" <Steven.Wright@act.gov.au>  
**Sent:** 08/10/2024 9:21 PM  
**To:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>  
**Cc:** "Mironova, Tatiana" <Tatiana.Mironova@act.gov.au>  
**Subject:** Fw: Advice: Termination payments to staff of Members of the Legislative Assembly  
**Attachments:** Sch 1 1.2

**OFFICIAL: Sensitive - Legal Privilege**

Good evening all,

I am forwarding the attached advice. I have not fully reviewed it as yet, but understand it reflects the preliminary position expressed by the GSO.

Sch 2.2(a)(ii) but will ask Tatiana to find a time for us to discuss next steps and roles ASAP given the timing involved.

Thanks

Steven

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**From:** "Szanto, Juliet" <Juliet.Szanto@act.gov.au>  
**Sent:** 09/10/2024 12:55 PM  
**To:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Cc:** "Perkovic, Sophia" <Sophia.Perkovic@act.gov.au>  
**Subject:** FW: Advice: Termination payments to staff of Members of the Legislative Assembly  
**Attachments:** Sch 1 1.2

**OFFICIAL: Sensitive - Legal Privilege**

Hi Kim and Sanaz,

Sch 1 1.2

Sch 1 1.2

For reference these are the instruments which deal with prior service alongside the Employment Agreement.

Legislative Assembly (Members' Staff) Variable Terms Of Employment Of Members' Staff Determination 2015 (No 1)  Disallowable instrument DI2015-71	Clause 4
Legislative Assembly (Members' Staff) Variable Terms Of Employment Of Office-holders' Staff Determination 2015 (No 1)  Disallowable instrument DI2015-72	Clause 4
Legislative Assembly (Members' Staff) Variable Terms Of Employment Of Members' Staff Determination 2021 (No 1)  Disallowable instrument DI2021-185	Clause 7(2)
Legislative Assembly (Members' Staff) Variable Terms Of Employment Of Office-holders' Staff Determination 2021 (No 1)  Disallowable instrument DI2021-184	Clause 8(2)

However:

Until now, our position has been that outside of employee's on leave from the ACTPS, there is not explicit entitlement to transfer service under the LAMS Act as it was assumed that these instruments fulfilled the same function as div 7.2 under the PSM Standards. These instruments are seen to cover requirements for determining an employee's entitlement to prior service recognition and then limit this entitlement to a set of eligible employers. It might be good to get OLAs confirmation here.

These eligible employers are different from eligible employers under div 7.2 section 67 of the PSM Act.

Sch 1 1.2

# Sch 1 s 1.2

**From:** Szandurski, Kim

**Sent:** Tuesday, 8 October 2024 9:42 PM

**To:** Perkovic, Sophia ; Usnik, Andrea ; Janeczko, Luke ; Taylor, Nina ; Szanto, Juliet ; Angus, Sarah

**Subject:** Fw: Advice: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

FYI - I'll set up a catch up in the morning 😊

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# Duplicate

# Duplicate

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**From:** "Henry, Tracey" <Tracey.Henry@act.gov.au>  
**Sent:** 09/10/2024 2:39 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Cc:** "Wright, Steven" <Steven.Wright@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>  
**Subject:** RE: Termination Estimates  
**Attachments:** Termination of Ministerial Staff after a general election 2024.pdf, Payroll Guide-Termination payment LAMS Staff.pdf

**OFFICIAL**

Hi Sanaz,

Further information below as requested:

Chief Ministers office – 21/8/24 – 8 staff  
Berry office – 27/8/24 - 7 staff  
Stephen–Smith office – 29/8/24 – 5 staff  
Steel office – 2/9/24 – 4 staff  
Gentleman office – 4/9/24 – 5 staff  
Cheyne office – 4/9/24 – 6 staff  
Rattenbury office – 5/9/24 – 7 staff  
Vassarotti office – 9/9/24 – 7 staff  
Davidson office – 10/9/24 – 4 staff  
Communications Unit – 10/9/24 – 10 staff

**Total: 63 staff**

- In addition, please note the Payroll Team provided calculations for each office to Executive Support for circulation.
- Executive Support emailed the calculations to staff (as per the dates above) and included the attached and below information.
- Please note the attached information was provided to OIRWS for review before circulation to ensure accuracy.

\*\*\*\*\* *Body of email starts below* \*\*\*\*\*

*With the election coming up in October attached are guidelines that address some queries around the termination of ministerial staff at a general election.*

*I have also attached your termination estimate provided by payroll for your information, but please note:*

- *Your estimate is based on data that we currently hold in the system and does not include any future pay rises.*
- *It is based on this current financial year tax rates, and does not include the potential change in rates, particularly for the tax-free portion of the severance component.*
- *It is also based on the leave records that are currently in the system and are likely to change if there is any change to your leave record.*

*We know that the uncertainty of an election can be daunting and may cause concern or anxiety for some people, if you have further questions, please feel free to contact Matt Mison or utilise the available EAP*

*services. Information on how to access the EAP can be found on the [Executive Portal](#) – under Popular resources.*

*If you have any questions that have not been addressed in the attached guidelines, please do not hesitate to contact me.*

Please let me know if you require anything further or have any questions.

Kind regards  
Tracey

**Tracey Henry** |Senior Director | Ministerial and Executive Support  
Workforce and Information Services| CMTEDD Corporate

**Phone:** 02 6207 0372 or via MS Teams | **Email:** [Tracey.Henry@act.gov.au](mailto:Tracey.Henry@act.gov.au)

---

**From:** Mirzabegian, Sanaz  
**Sent:** Wednesday, 9 October 2024 1:51 PM  
**To:** Henry, Tracey  
**Cc:** Wright, Steven ; Bolton, Martin ; Szandurski, Kim  
**Subject:** RE: Termination Estimates

OFFICIAL

Thanks Tracey, are you able to tell me how many staff in each of those categories?  
Also, very grateful if you could provide some factual dot points for addition into the CM Brief.

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate| ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**

---

**From:** Henry, Tracey <[Tracey.Henry@act.gov.au](mailto:Tracey.Henry@act.gov.au)>  
**Sent:** Wednesday, 9 October 2024 1:49 PM  
**To:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>; Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>;  
Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>  
**Cc:** Wright, Steven <[Steven.Wright@act.gov.au](mailto:Steven.Wright@act.gov.au)>  
**Subject:** Termination Estimates

OFFICIAL

Hi Sanaz, Martin and Kim,

As discussed below are the exact dates termination calculations were provided to all eligible staff in each office.

Chief Ministers office – 21/8/24  
Berry office – 27/8/24  
Stephen–Smith office – 29/8/24  
Steel office – 2/9/24  
Gentleman office – 4/9/24

Cheyne office – 4/9/24  
Rattenbury office – 5/9/24  
Vassarotti office – 9/9/24  
Davidson office – 10/9/24  
Communications Unit – 10/9/24

Please let me know if you require anything further.

Kind regards  
Tracey

**Tracey Henry** |Senior Director | Ministerial and Executive Support  
Workforce and Information Services| CMTEDD Corporate

**Phone: 02 6207 0372 or via MS Teams** | Email: [Tracey.Henry@act.gov.au](mailto:Tracey.Henry@act.gov.au)

## TERMINATION OF MINISTERIAL STAFF AT A GENERAL ELECTION

### Q. What triggers the termination of current ministerial staff at a general election?

The employment of ministerial staff is automatically terminated when their Minister ceases to hold office.

(s8(2)(a) Termination of Employment; *Legislative Assembly (Members Staff) Act 1989*  
[Legislative Assembly \(Members Staff\) Act](#)

At a general election Ministers continue to hold office until the election of a new Chief Minister on the first sitting day of the newly elected Assembly.

s46(1A)(d)(i) Vacation of office by Ministers; *Australian Capital Territory (Self-Government Act) 1988 – Commonwealth*  
[Australian Capital Territory \(Self-Government Act\)](#)

However, the employment of ministerial staff is deemed to continue for a further two weeks.

Clause 8(1) Termination of employment; *DI2015-77 Legislative Assembly (Members Staff) Deemed Date if Termination of Employment of Office-holders' Staff Direction 2015*  
[Legislative Assembly \(Members' Staff\) Deemed Date of Termination of Employment of Office-holders' Staff](#)

The 2024 election will be held on 19 October. Depending on when the outcome of the poll is declared, the newly elected Assembly may sit in the first week of November.

### Q. Are ministerial staff entitled to a termination payment?

Yes, with some exceptions, under the conditions of the *ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026* ministerial staff may be entitled to a termination payment.

B7.1 Termination Payment; *ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026*  
[ACT-Legislative-Assembly-Members-Staff-Enterprise-Agreement-2023-2026](#)

Ministerial staff are entitled to a termination payment when:

1. their deemed continued period of employment ceases two weeks after the first sitting day of the newly elected Assembly;
- or
2. they are immediately re-employed by any Member of the new Assembly for a period of three months or less. The termination payment will be when their employment ceases at the end of the re-employment period.

s8(1) Variable terms of employment; *DI2005-293 Legislative Assembly (Members' Staff) Variable Terms of Employment of Office-holders' Staff 2005*  
[Legislative Assembly \(Members' Staff\) Variable Terms of Employment of Office-holders' Staff](#)

The exceptions are listed at B7.2 of the *ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026* and discussed below.

**Q. While staff are not automatically re-employed if a ministerial staff member is re-employed by a Minister following a General Election, do they need to sign a new contract?**

Yes, the ministerial staff member will need to have a new contract, even if they are re-employed in the same position in the same office and even if for a short period. All current ministerial staff employment contracts cease two weeks after the first sitting day of the newly elected Assembly.

**Q. Is a ministerial staff member entitled to a termination payment if they are immediately re-employed by a re-elected or new Minister or a Member of the Assembly for more than three months?**

No, they are not entitled to a termination payment under B7.1 of the *ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026*, but their accrued annual and long service leave entitlements can on request either be carried over or be paid out.

B7.2.7 Termination Payment; *ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026*  
[ACT-Legislative-Assembly-Members-Staff-Enterprise-Agreement-2023-2026](#)

**Q. If a ministerial staff member's employment is terminated and they receive a termination payment, can they be re-employed by a re-elected or new Minister?**

Yes, they can be re-employed, subject to an exclusion period of time, in weeks and days, that is equivalent to the termination payment received. For example, if a staff member receives a termination payment equal to six weeks' pay, the exclusion period for re-engagement is six weeks.

There is however nothing to prevent new employment arrangements being settled during the exclusion period with a view to employment recommencing immediately following the expiration of the exclusion period.

s8 Re-engagement; *DI2021-180 Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2021 (No 1)*  
[Legislative Assembly \(Members' Staff\) Office-holders' Hiring Arrangements Approval 2021 \(No 1\)](#)

**Q. Are ministerial staff members who are public sector employees on leave without pay from the public service entitled to a termination payment?**

No, they are not entitled to a termination payment under B7.1 of the *ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026*.

For officers of the ACTPS ceasing employment with a Minister, they have the right to:

1. return to employment with the ACTPS at their substantive classification prior to commencing leave without pay; and
2. apply to the Head of Service for a determination to be made of their classification and rate of pay as an officer on return to the ACTPS, in accordance with arrangements approved by the Head of Service.

On their return to employment with the ACTPS, any accrued personal leave, annual leave and long service leave, less any utilised leave, will be transferred back to the ACTPS.

B7.2.2 Termination Payment; *ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026*  
[ACT-Legislative-Assembly-Members-Staff-Enterprise-Agreement-2023-2026](#)

s8 *DI2021-184 Legislative Assembly (Members' Staff) Variable Terms Of Employment Of Office-holders' Staff Determination 2021 (No 1)*(clause 8(1)(d))

[Legislative Assembly \(Members' Staff\) Variable Terms Of Employment Of Office-holders' Staff Determination 2021 \(No 1\)](#)

[s65A Public Sector Management Act 1994](#)  
[Reintegration Assessment Procedures](#)

**Q. Are there other circumstances where ministerial staff are not entitled to a termination payment?**

Yes, ministerial staff are not entitled to a termination payment under B7.1 of the *ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026* if they:

1. have resigned from employment;
2. have been dismissed for misconduct;
3. are a probationary employee;
4. are a casual employee;
5. have been employed for a fixed period to fill a vacancy caused by a staff member being absent on leave; or
6. have been employed to undertake a specified project, where the project has been completed.

B7.2 Termination Payment; *ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026*

[ACT-Legislative-Assembly-Members-Staff-Enterprise-Agreement-2023-2026](#)

**Q. How is the termination payment calculated?**

Staff eligible for a termination payment are entitled to be paid:

1. a sum equal to four weeks salary irrespective of length of service; plus
2. a sum equal to two weeks salary for each completed year of continuous service; plus
3. a pro-rata payment for additional completed months of service,

up to a maximum of forty-eight weeks' salary.

B7.1 Termination Payment; *ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026*.

**Q. What about the other staff entitlements such as annual leave, leave loading, long service leave and personal leave?**

On termination, any accrued annual leave and long service leave, less any utilised leave, in addition to any outstanding leave loading will be paid out to staff.

Annual Leave – F7.9; *ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026*.

Long Service Leave - s10(1); *DI2015-72 Legislative Assembly (Members' Staff) Variable Terms of Employment of Office-holders' Staff Determination 2015 (No 1)*.

[Legislative Assembly \(Members' Staff\) Variable Terms of Employment of Office-holders' Staff](#)

An exception to this is where a ministerial staff member is taking up a position in a Commonwealth, State, Territory or Local Government body which, under its employment provisions, accepts the transfer of such accrued entitlements, and the staff member requests their entitlements be carried over to their new employer. This recognition of prior service entitlements may vary between bodies, and may also involve breaks in employment conditions, it is recommended that staff contact their any future employer to confirm arrangements and entitlements.

Unused personal leave is not paid out on cessation of employment.

*F4.25; ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026.*

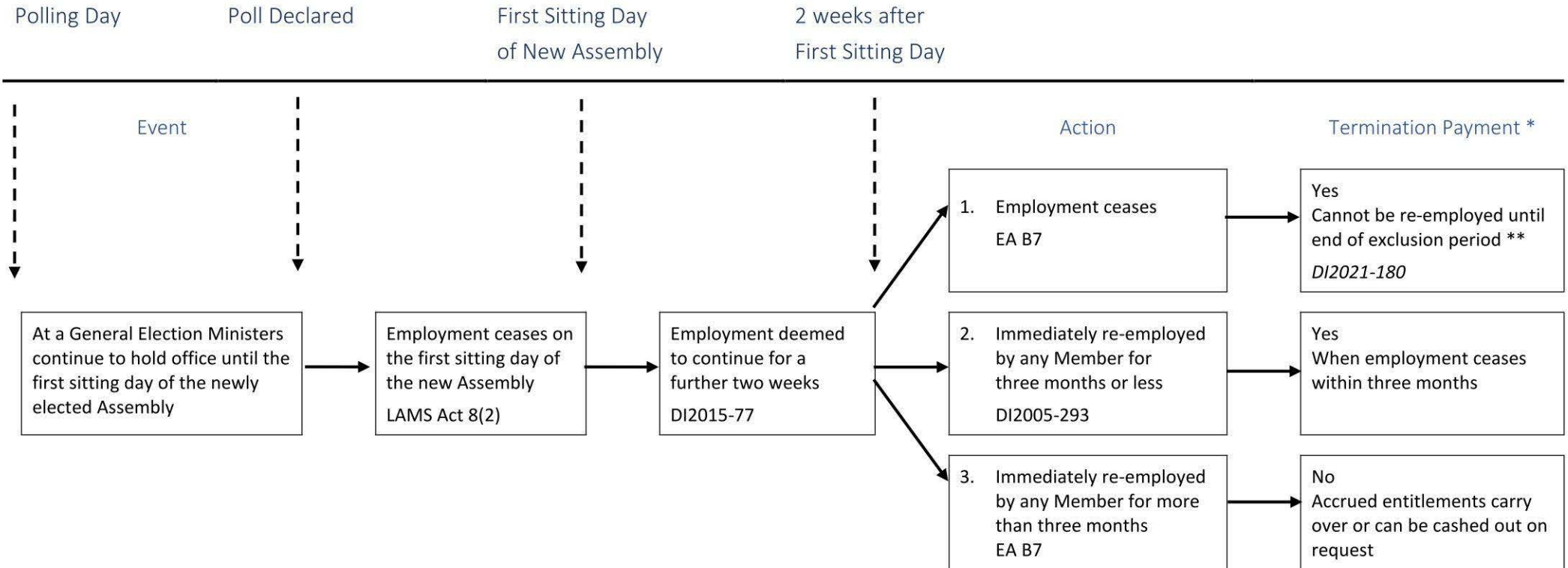
**Q. How do ministerial staff receive an estimate of their potential termination payment?**

Shared Services Executive Payroll will prepare estimates for all eligible ministerial staff for termination payments, including annual leave, leave loading and long service leave entitlements, based on a cessation date of 5-November. This assumes a newly elected Assembly sitting in the first week of November following the declaration of the poll for the general election.

These estimates will be prepared by office and provided progressively to ministerial staff from mid-August 2024.

For any further information, please contact [ExecutiveSupport@act.gov.au](mailto:ExecutiveSupport@act.gov.au)

### Staff of Ministers at a General Election



**\* Exceptions**

1. Resignation or dismissal for misconduct.
2. Employees with a right of return to the ACTPS or APS.
3. Fixed term employment for an employee on leave.
4. Fixed term employment for a project which is completed.
5. Probationers.
6. Casual.
7. Former employees immediately re-employed under the LAMS Act.

**\*\* Exclusion period**

The exclusion period is a period of time, in weeks and days, that is equivalent to the termination payment.



**ACT**  
Government

# End of term - Termination payments Payroll Guide

## END OF TERM / TERMINATION PAYMENT

This payment is made under Clause B7 of the [ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026](#) (LAMS Enterprise Agreement) for employees whose employment is terminated by the operation of sections 8(1), 8(2), 8(4), 13(1) and 13(3) of the [Legislative Assembly \(Members' Staff\) Act 1989](#) (LAMS Act).

### Eligibility for a Termination Payment

You may **NOT** be entitled to this payment if you;

- have a right of return to secure employment in the public sector, i.e. you hold a nominal position within an ACT Government Directorate or a Commonwealth Agency.
- are engaged for a fixed period, to fill a vacancy caused by a staff member being absent on leave.
- are engaged to undertake a specified project, where the project has been completed.
- are immediately re-employed under the LAMS Act.
- a probationary employee.

To check if you are eligible to receive this payment, please contact [ExecutiveSupport@act.gov.au](mailto:ExecutiveSupport@act.gov.au).

### Components of your estimate

1. **All unused Annual and Long Service Leave** at the proposed date of exit (plus eligible allowances) - only if elected to not have this balance paid fortnightly.
2. **'Severance Payment (Termination payment)'**:
  - o Payment for 2 weeks salary (plus eligible allowances) for each year of completed year of continuous eligible service plus;
  - o A pro-rata payment for additional completed months of service, up to a maximum of 48 weeks salary (if eligible)\*, plus
3. **Payment for 4 weeks salary** (plus eligible allowances) irrespective of length of service

### Allowances included in the calculation of unused leave and Termination Payment.

- LAMS Allowance
- Specialist Duties Allowance (if eligible to receive)

*Note: Leave loading and Long Service Leave 'allowances' are **NOT** included in the calculations.*

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#### *\*Example of pro-rata payment for additional months-*

If an employee has 5 years and 3 months of service, this is 5.25 years of total service (converted to decimal). Assuming this period is all at full-time, the 'termination/severance' component is calculated as 2 years for every completed year (and pro-rata month of service) i.e.-

2 weeks x 5.25 years' service = **10.5 weeks payment.**

Where the employee has a combination of full-time and part-time service, this is split up and calculated accordingly.

## Taxation of unused leave and Termination Payments

Annual leave, Long Service Leave (LSL) payments are generally taxed at a flat 32%. The tax rate on LSL is based on the date of accrual and type of leave.

The Severance and payment in lieu of notice components are tax-free up to a limit depending on your years of service. This is determined by a formula stipulated by the Australian Tax Office and is updated on 1 July every year. The tax-free limit is a whole dollar amount plus an amount for each year of service you complete in the period of employment.

### Additional information

- Any existing **overpayments** will be deducted from outstanding leave balances, and tax adjusted accordingly. This will be clearly outlined in your estimate.
- **Long Service Leave** – If you are *not* receiving the LSL allowance fortnightly, you may be eligible to a pro-rata payment if you have completed more than 12 months of service (Clause F25.8 of the [LAMS Enterprise Agreement](#)). To note, you do not need to complete 7 years of service to receive pro-rata LSL payment when terminated under the LAMS Act.
- **Severance payment** – Periods of prior service that maybe eligible to be included in the calculation of the severance payment made under Clause B7 only includes:
  - service under the LAMS Act,
  - service under non-executive members (i.e. Office of the Legislative Assembly) and
  - parliamentary service
- **Payment in lieu of notice:** If you are in a fund of choice (i.e. non-PSS/CSS superannuation), superannuation is payable on this component of payment.
- There will be only **one estimate** provided as at the date requested by the Executive support team. Payroll services are unable to revise these estimates for varying dates.
- The calculations provided are an **estimate only** and based on the leave balances held in the payroll system on the date of calculation. The final figures may vary due to variations in leave balances, tax rates and salary variations.

*“Information provided in this document in relation to taxation is of a general nature and does not constitute financial advice. The treatment of termination payments for the purposes of taxation is subject to ATO ruling as it applies at the time of cessation and in context of individual circumstances. For information regarding your personal circumstances, we recommend seeking independent advice from a registered tax agent.”*

**From:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Sent:** 09/10/2024 3:06 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Subject:** RE: For Information: Advice: Termination payments to staff of Members of the Legislative Assembly  
**Attachments:** LAMS ETP\_Example.pdf

**OFFICIAL: Sensitive - Legal Privilege**

So if you look at the attached the calculation for the part time is as follows

- A) Average weekly hours part time 22.05
- B) Normal weekly hours 36.75

a/b 0.60

Weekly Pay for individual on \$150k \$3076.68

Average weekly pay divided by 0.6 \$1846.00

4 Weeks at 0.6 is \$7384.03 as per attached

**Martin Bolton | Executive Branch Manager | Payroll and HR Systems**

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

**Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government**

Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

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**From:** Mirzabegian, Sanaz  
**Sent:** Wednesday, October 9, 2024 2:53 PM  
**To:** Bolton, Martin  
**Subject:** RE: For Information: Advice: Termination RE payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Do you mean: we calculate the salary based on the average sum of all part-time work for that year? So what happens if someone has done the following:

For 2 months they worked at 0.2, then for 3 months at 0.6, for 4 months at 0.8 and 3 months full time?

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment**

**Office of Industrial Relations and Workforce Strategy**

**Chief Minister, Treasury and economic Development Directorate | ACT Government**

220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

---

**From:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Sent:** Wednesday, 9 October 2024 2:45 PM  
**To:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>

**Subject:** RE: For Information: Advice: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

We pro rata the entitlement and pay at the current rate

Make sense?

**Martin Bolton | Executive Branch Manager | Payroll and HR Systems**

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

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**From:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>

**Sent:** Wednesday, October 9, 2024 2:37 PM

**To:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>

**Subject:** RE: For Information: Advice: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Hi Martin,

Can you please explain this more simply:

- We currently use the salary at termination but pro rata the current salary for the average part time service.

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals**

**Public Sector Employment**

**Office of Industrial Relations and Workforce Strategy**

**Chief Minister, Treasury and economic Development Directorate | ACT Government**

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**From:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>

**Sent:** Wednesday, 9 October 2024 12:21 PM

**To:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>

**Cc:** Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>; Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>; Khem, Deepika <[Deepika.Khem@act.gov.au](mailto:Deepika.Khem@act.gov.au)>; Palic, Richard <[Richard.Palic@act.gov.au](mailto:Richard.Palic@act.gov.au)>; Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>

**Subject:** RE: For Information: Advice: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Hi Sanaz,

- B7.1.2 of the LAMS EA states that “a sum equal to 2 weeks salary for each completed year of service’ is the entitlement.
  - What is a completed year?

- Currently if someone has one year of part time service or 0.5 we would apply 1 weeks severance for that particular year of service.
  - Should we apply 2 weeks severance to each completed year of service irrespective of the employees status of part or full time?
- Number 34 of the advice only speaks of 'salary at the time their employment terminates'.
    - We currently use the salary at termination but pro rata the current salary for the average part time service.
    - How should severance weeks be calculated for an individual with part time service?

I have reached out to the OLA pay team for clarity of how they approach that component.

Happy to clarify.

Thanks

Martin

**Martin Bolton | Executive Branch Manager | Payroll and HR Systems**

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

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**From:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>

**Sent:** Wednesday, October 9, 2024 9:31 AM

**To:** Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>

**Cc:** Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>; Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>

**Subject:** RE: For Information: Advice: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Hi Lisa, In reading the advice in more detail, I noticed the following paragraphs, which suggest an official view from the entirety of CMTEDD.

I wish to put it on the record that none of the OIRWS representatives at that meeting made any comments or statements that can be attributed to the above. Specifically, I did not speak other than when asked if I had anything else to add. Kim, spoke in relation to part-time, full time characterisation of staff, and Martin only in relation to an old advice, which had been used as the basis for the characterisation of payment. Having regard to this, and subject to your views, as Robert and Steven are both away

Sch 1 s 1.2

20. CMTEDD referred to the KPMG Advice and noted that it was inconsistent with CMTEDD's position. CMTEDD questioned whether the KPMG Advice was relevant as it was not advice provided by our office and may have been obtained in breach of the *Law Officers Legal Services Directions 2023 (Legal Services Directions)*.
21. Although we did not clarify this issue during the meeting, we note that the requirement in the Legal Services Directions that all Territory work must be provided by our office does not apply to the OLA.<sup>6</sup> Notwithstanding this, the existence of legal advice, even if obtained in breach of the Legal Services Directions, cannot be disregarded merely for that reason.
22. CMTEDD suggested that our office provide preliminary oral advice about the appropriate characterisation of the termination payments, and that, if that preliminary advice did not align with CMTEDD's current approach (to characterise the payments as

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<sup>5</sup> The following CMTEDD staff attended this meeting: Robert Wright, Executive Group Manager, Corporate; Sanaz Mirzabegian, Executive Group Manager, Treasury; Kim Szandurski, Executive Branch Manager, Public Sector Industrial Relations; Henry Tracey, Executive Director, Ministerial and Executive Support; Martin Bolton, Executive Branch Manager, Payroll and HR; Richard Palic, Director, Payroll Services; and Deepika Khemchandani, Director, Payroll Services.

<sup>6</sup> See paragraph 1.3(5) of the Legal Services Directions.

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## Employment termination payments under LAMS Act and EA

5

redundancy payments), or if we did not reach a clear position in alignment with CMTEDD's current practice, then legal advice would not be obtained.

23. You will appreciate that this suggested approach is not consistent with this office's approach to the provision of legal advice. Noting the potential serious consequences, the issue having been raised, we consider it appropriate (and indeed necessary) to provide advice on this question.

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate| ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**

---

**From:** Mirzabegian, Sanaz

**Sent:** Wednesday, 9 October 2024 8:53 AM

**To:** Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>

**Cc:** Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>

**Subject:** For Information: Advice: Termination payments to staff of Members of the Legislative Assembly

Hi Lisa,

For your visibility, we have received the advice. I have set out the summary of conclusions and para 91 which relates to the entitlement notice. I will discuss in more detail with colleagues and provide an update later today:

# Sch 1 1.2

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate| ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**

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## Termination Payment -LAMS Estimate for Financial Advice

Employee Name:	XXXXXX XXXXX	AGS:	123456
Proposed Exit Date:	05/11/2024	Salary at Exit:	\$150,000.00
		Other Applicable Allowances:	\$10,500.00

### Annual Leave and Long Service Leave

<b>Hourly rate used</b>	<b>\$83.72</b>		
Payment in lieu of Annual Leave	100.0000 hours	\$	8,371.91
Payment in lieu of long service leave			
Full time	1.0000 months	\$	13,375.00
Part time (based on an average of 22.05 hours per week)	2.0000 months	\$	16,050.00
<b>Total annual leave, annual leave loading and long service leave</b>		<b>\$</b>	<b>37,796.91</b>

Gross components will not change

Tax based on marginal tax Tax components will change → \$ 15,000.00

### Severance Payments

Severance Payments based on 6 Years and 9 months continuous service and an annual salary of \$ 160500

<b>Weekly rate used</b>	<b>\$3,076.68</b>		
Full-time	9.5 weeks	\$	29,228.46
Part-time	4 weeks (at avg hou 22.05 per week)	\$	7,384.03
Payment in lieu of notice:	4 weeks	\$	12,306.72
<b>Total</b>		<b>\$</b>	<b>48,919.21</b>

Gross components likely to change based on status at exit

Taxable Component (ETP) \$ 48,919.21  
Tax on ETP (based on whole of income) Tax components will change → \$ 15,654.00

<b>Total</b>			
<b>Total gross entitlement</b>		\$	<b>86,716.12</b>
<b>Less total taxation</b>		\$	<b>30,654.00</b>
<b>Total net entitlement</b>		\$	<b>56,062.12</b>

Can't be reemployed under LAMS Act until: 08/03/2025

Prepared:	Checked:	Team Leader:
Date:	Date:	Date:

Please note: this is an estimated figure of what you may receive as at your proposed exit date, this figure may vary upon cessation due to changes in leave balances, employment conditions or increases to your salary etc.

**From:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Sent:** 09/10/2024 3:08 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Subject:** RE: For Information: Advice: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Yes you are correct we do average it.

**Martin Bolton | Executive Branch Manager | Payroll and HR Systems**

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

**Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government**

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---

**From:** Mirzabegian, Sanaz  
**Sent:** Wednesday, October 9, 2024 3:08 PM  
**To:** Bolton, Martin  
**Subject:** RE: For Information: Advice: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

But that doesn't answer my q about what if someone has a combo of part-times? What is it we are averaging?

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals**

**Public Sector Employment**

**Office of Industrial Relations and Workforce Strategy**

**Chief Minister, Treasury and economic Development Directorate| ACT Government**

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Duplicate

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Duplicate

Duplicate

Duplicate

Duplicate

**From:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>  
**Sent:** 09/10/2024 4:03 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Subject:** RE: Advice: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Hi Sanaz

For the purposes of our urgent questions, I think we can leave this one for today. I will ask Sophia to discuss with Juliet and we can talk through with [Sch 1 1.2](#)

Kind regards  
Kim

---

**From:** Mirzabegian, Sanaz  
**Sent:** Wednesday, 9 October 2024 2:11 PM  
**To:** Szandurski, Kim  
**Subject:** FW: Advice: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Hi Kim, I am not sure I quite follow Juliet's line of reasoning. [Sch 1 1.2](#)

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate| ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**

**Duplicate**

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Sch 1 s 1.2

Sch 1 s 1.2

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# Sch 1 1.12

# Sch 1 1.2

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Sch 1 s 1.2

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Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

**From:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>  
**Sent:** 14/10/2024 11:46 AM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Cc:** "Wright, Steven" <Steven.Wright@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Subject:** RE: Email to Speaker's CoS

OFFICIAL

Hi Sanaz

Based on the legal advice provided today, Martin and I have discussed and can confirm Rachel's advice below is correct.

Kind regards  
Kim

---

**From:** Mirzabegian, Sanaz  
**Sent:** Monday, 14 October 2024 11:27 AM  
**To:** Szandurski, Kim  
**Cc:** Wright, Steven ; Bolton, Martin  
**Subject:** FW: Email to Speaker's CoS

OFFICIAL

Hi Kim, I'm at training to 1pm. Could you please check the advice and confirm if what Rachel is saying below is accurate?

Kind Regards

Sanaz (she/her)

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate| ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**

---

**From:** Turner, Rachel <[Rachel.Turner@parliament.act.gov.au](mailto:Rachel.Turner@parliament.act.gov.au)>  
**Sent:** Monday, 14 October 2024 11:21 AM  
**To:** Wright, Steven <[Steven.Wright@act.gov.au](mailto:Steven.Wright@act.gov.au)>; Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>  
**Cc:** Duncan, Tom <[Tom.Duncan@parliament.act.gov.au](mailto:Tom.Duncan@parliament.act.gov.au)>  
**Subject:** RE: Email to Speaker's CoS

OFFICIAL

Hi Steven

Unfortunately not, the Speaker is chasing the Clerk. We have had the advice for over a week, Mel is impacted as the Speaker is retiring so this information is important for her.

Regards  
Rachel

**Rachel Turner**

Executive Manager, Business Support | Office of the Legislative Assembly

Phone: (02) 6205 0181 | Mobile: **Sch 2.2(a)(ii)**

Email: [rachel.turner@parliament.act.gov.au](mailto:rachel.turner@parliament.act.gov.au)

GPO Box 1020 Canberra ACT 2601

[www.parliament.act.gov.au](http://www.parliament.act.gov.au)



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---

**From:** Wright, Steven <[Steven.Wright@act.gov.au](mailto:Steven.Wright@act.gov.au)>

**Sent:** Monday, 14 October 2024 11:02 AM

**To:** Turner, Rachel <[Rachel.Turner@parliament.act.gov.au](mailto:Rachel.Turner@parliament.act.gov.au)>; Mirzabegian, Sanaz

<[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>

**Subject:** RE: Email to Speaker's CoS

OFFICIAL

Hi Rachel

**Sch 2.2(a)(ii)** and am meeting Sanaz at 3:30 today. As such, I am not clear on where the CMO briefing is at. Could you hold off until tomorrow morning pls?

Steven

Sch 1 s 1.2, Sch 2 s 2.2(a)(ii)

If you have any questions please don't hesitate to contact me.

Regards  
Rachel

**Rachel Turner**

Executive Manager, Business Support | Office of the Legislative Assembly

Phone: (02) 6205 0181 | Mobile: **Sch 2.2(a)(ii)**

Email: [rachel.turner@parliament.act.gov.au](mailto:rachel.turner@parliament.act.gov.au)

GPO Box 1020 Canberra ACT 2601

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promote the institution of parliament in the ACT.

**From:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Sent:** 14/10/2024 2:07 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>  
**Cc:** "Taylor, Nina" <Nina.Taylor@act.gov.au>; "Angus, Sarah" <Sarah.Angus@act.gov.au>; "Palic, Richard" <Richard.Palic@act.gov.au>; "Mullavey, Malcolm" <Malcolm.Mullavey@act.gov.au>  
**Subject:** FW: comms for Exit calculation changes  
**Attachments:** Updated LAMS ETP\_Example.pdf

## UNOFFICIAL

Hi Sanaz and Kim,

See below communications to be included by Steven Wright and Tracy Henry to the recipients of our VR calculations.

Thanks

Martin

As a result of recently received legal and taxation advice, your estimate previously provided will likely change in the following way:

Firstly the payment is no longer considered a redundancy calculation (which is concessionally taxed) but rather an Eligible Termination Payment (ETP). ETP's are taxed at a higher rate than a redundancy. On the attached estimate example the tax components are circled in **purple** and will likely be higher upon final calculation as the tax amount will change each fortnight as the calculation takes into account year to date income when calculating total tax. This means that your net payment will also be less.

The second change is that your severance payments circled in **orange** will change in the following way

- There will be no split between full and part time severance component (weeks)
- Your severance payment, severance weeks times salary rate will now be based on your work status on exit, eg part time or full time.
- The tax amounts changes each fortnight as the calculation takes into account year to date income when calculating total tax on the payment

The Gross Annual Leave and Long Service Leave components, circled in **green** will not change unless you have taken leave since the calculations were provided.

Due to the timing of the receipt of the legal and tax advice, Payroll is unable to update each calculation before the election. If you are genuinely considering exiting please request through (insert inbox in Tracy's team). Payroll will have limited capacity and may provide indicative changes to those that request a recalculation depending on the complexity of the individual.

**Martin Bolton | Executive Branch Manager | Payroll and HR Systems**

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

**Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government**

Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

---

**From:** Khem, Deepika <[Deepika.Khem@act.gov.au](mailto:Deepika.Khem@act.gov.au)>

**Sent:** Wednesday, 9 October 2024 11:58 AM

**To:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Cc:** Palic, Richard <[Richard.Palic@act.gov.au](mailto:Richard.Palic@act.gov.au)>  
**Subject:** RE: Circumstance change

UNOFFICIAL

Hi Martin

I have updated the example, however noting we may have to update again based on the clarification re exit salary/ exit status.

Thanks

Dee

---

**From:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Sent:** Wednesday, 9 October 2024 10:22 AM  
**To:** Khem, Deepika <[Deepika.Khem@act.gov.au](mailto:Deepika.Khem@act.gov.au)>  
**Subject:** FW: Circumstance change

UNOFFICIAL

Can you update the attached with a third box.

Martin Bolton | Executive Branch Manager | Payroll and HR Systems  
Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)  
**Shared Services** | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government  
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

---

**From:** Bolton, Martin  
**Sent:** Tuesday, October 1, 2024 1:03 PM  
**To:** Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>  
**Cc:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>; Khem, Deepika <[Deepika.Khem@act.gov.au](mailto:Deepika.Khem@act.gov.au)>; Mullavey, Malcolm <[Malcolm.Mullavey@act.gov.au](mailto:Malcolm.Mullavey@act.gov.au)>; Palic, Richard <[Richard.Palic@act.gov.au](mailto:Richard.Palic@act.gov.au)>  
**Subject:** FW: Circumstance change

Hi Lisa,

Draft comm points for both scenarios, ETP change and ETP change and calculation methodology change.

Note that attached is for ETP change only and will need adjusting for the second scenario.

Thanks

Martin

Martin Bolton | Executive Branch Manager | Payroll and HR Systems  
Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

---

**From:** Khem, Deepika <[Deepika.Khem@act.gov.au](mailto:Deepika.Khem@act.gov.au)>

**Sent:** Tuesday, October 1, 2024 12:09 PM

**To:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>; Mullavey, Malcolm <[Malcolm.Mullavey@act.gov.au](mailto:Malcolm.Mullavey@act.gov.au)>; Palic, Richard <[Richard.Palic@act.gov.au](mailto:Richard.Palic@act.gov.au)>

**Subject:** RE: Circumstance change

## UNOFFICIAL

Sounds good, I can easily update the example and colour code based on the advice regarding "exit status".

I have added a few things in red below to cover ourselves and leave it a bit grey... thoughts?

We can tweak further based on the final advice.

Dee

---

**From:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>

**Sent:** Tuesday, 1 October 2024 11:45 AM

**To:** Khem, Deepika <[Deepika.Khem@act.gov.au](mailto:Deepika.Khem@act.gov.au)>; Mullavey, Malcolm <[Malcolm.Mullavey@act.gov.au](mailto:Malcolm.Mullavey@act.gov.au)>; Palic, Richard <[Richard.Palic@act.gov.au](mailto:Richard.Palic@act.gov.au)>

**Subject:** Circumstance change

## UNOFFICIAL

### What you think?

Depending on the advice around "exit status" I may need the severance to look different Dee and dif coloretc. Ill talk once we get the advice.

### ETP change only

Attached is a sample calculation designed to inform you of what will change and what will not change (subject to previous caveats) as a result of the revised tax treatment.

- Gross components, circled in blue will not change
- Tax amounts circled in red will potentially change and will be higher
  - The amount of tax will likely be higher in all cases
  - The tax amounts changes each fortnight as the calculation takes into account year to date income when calculating total tax.
  - Employees with higher earnings and a higher components of ETP/ leave payments will be more affected by the application of the revised method.

### ETP change and calculation methodology change

- Annual Leave and Long Service Leave components, circled in blue will not change
- Severance payments circled in blue may change
  - Your severance calculation will be based on your work status on exit, eg part time or full time.

- Periods of part or full time will be irrelevant in that calculation due to exit status being the key variable.
- Tax amounts circled in red will potentially change and will be higher
  - The amount of tax will likely be higher in all cases
  - The tax amounts changes each fortnight as the calculation takes into account year to date income when calculating total tax

Martin Bolton | Executive Branch Manager Payroll and HR Systems, Shared Services

Phone: 02 620 58700 | Mobile: Sch 2.2(a)(ii) Email: [martin.bolton@act.gov.au](mailto:martin.bolton@act.gov.au)

Shared Services and Property | Chief Minister, Treasury and Economic Development Directorate | ACT Government

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Sch 1 s 1.2

Sch 1 s 1.2

**From:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>  
**Sent:** 14/10/2024 4:53 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>  
**Cc:** "Taylor, Nina" <Nina.Taylor@act.gov.au>; "Angus, Sarah" <Sarah.Angus@act.gov.au>  
**Subject:** FW: comms for Exit calculation changes  
**Attachments:** Updated LAMS ETP\_Example.pdf

### UNOFFICIAL

*I've tweaked the message for you below. Sarah is working on the brief 😊 Generally the HR areas are responsible for employees contacting them, arguably this email should be drafted by Steven and dispatched by his staff. All payroll matters are always managed by the HR areas, so we should send this one back to Steven to manage once you are comfortable with the wording.*

I am writing to advise that we have recently received updated independent legal and taxation advice that means that your estimate previously provided is likely to change.

We have now been advised that the exit payment should be considered an Eligible Termination Payment (ETP). ETP's are taxed at a higher rate than a redundancy which is concessionally taxed. Taxation rules are set by the Australian Taxation Office (ATO). Should you have any queries in relation to compliance with the Australian Taxation rules, you should contact the ATO directly.

We have prepared an attached estimate example which sets out the changes that you may see if you receive an exit payment. The tax components are circled in purple and will likely be higher upon final calculation as the tax amount will change each fortnight. This is because the calculation takes into account year to date income when calculating total tax. This will mean that your net payment will also be less.

The second change is that your severance payments circled in orange may change in the following way:

- There will be no split between full and part time severance component (weeks)
- Your severance payment, severance weeks times salary rate will now be based on your work status on exit, eg part time or full time
- The tax amounts changes each fortnight as the calculation takes into account year to date income when calculating total tax on the payment.

The Gross Annual Leave and Long Service Leave components, circled in green will not change unless you have taken leave since the calculations were provided.

Unfortunately, due to the timing of the receipt of the legal and tax advice, Payroll is unable to update each calculation before the election this weekend. If you are genuinely considering exiting, please request through [insert inbox in Tracy's team]. Payroll may have limited capacity to provide indicative changes to those genuinely considering exiting depending on the complexity of the individual.

**Martin Bolton | Executive Branch Manager | Payroll and HR Systems**

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

**Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government**

Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

# Duplicate

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

**From:** "Angus, Sarah" <Sarah.Angus@act.gov.au>  
**Sent:** 14/10/2024 6:01 PM  
**To:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>  
**Cc:** "Taylor, Nina" <Nina.Taylor@act.gov.au>; "Perkovic, Sophia" <Sophia.Perkovic@act.gov.au>  
**Subject:** CM draft brief - LAMS Termination Payment  
**Attachments:** Sch 1 1.2

UNOFFICIAL

Hi Sanaz,

Please see attached draft brief for the CM in relation to LAMS Termination Payment changes. I have only been more across this in the last week so if there are details at the beginning that are missing and form an important part of the narrative these would need to be added in. I have tried to strike a balance between covering the main points of the [Sch 1 s 1.2](#) advice that is resulting in a change rather than going through each point in great detail.

I have not put this in Trim yet as I was not confident we could put the [Sch 1 s 1.2](#) advice in there or have it as an attachment to this brief.

If you have any questions or concerns please let us know.

Thank you,  
Sarah

**Sarah Angus | A/g Director, Industrial Relations and Public Sector Employment**

Phone: (02) 620 72192 | Email: [sarah.angus@act.gov.au](mailto:sarah.angus@act.gov.au)

Industrial Relations and Public Sector Employment | Office of Industrial Relations and Workforce Strategy (OIRWS)  
Chief Minister, Treasury and Economic Development | ACT Government

Level 5, 220 London Circuit, Canberra City ACT 2601 | GPO Box 158 Canberra ACT 2601 | Web: [www.act.gov.au](http://www.act.gov.au)

I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

---

**From:** Szandurski, Kim  
**Sent:** Monday, 14 October 2024 4:54 PM  
**To:** Mirzabegian, Sanaz ; CMTEDD, Office of the EGM PSE  
**Cc:** Taylor, Nina ; Angus, Sarah  
**Subject:** FW: comms for Exit calculation changes

UNOFFICIAL

*I've tweaked the message for you below. Sarah is working on the brief 😊 Generally the HR areas are responsible for employees contacting them, arguably this email should be drafted by Steven and dispatched by his staff. All payroll matters are always managed by the HR areas, so we should send this one back to Steven to manage once you are comfortable with the wording.*

I am writing to advise that we have recently received updated independent legal and taxation advice that means that your estimate previously provided is likely to change.

We have now been advised that the exit payment should be considered an Eligible Termination Payment (ETP). ETP's are taxed at a higher rate than a redundancy which is concessional tax. Taxation rules are set by the Australian Taxation Office (ATO). Should you have any queries in relation to compliance with the Australian Taxation rules, you should contact the ATO directly.

We have prepared an attached estimate example which sets out the changes that you may see if you receive an exit payment. The tax components are circled in purple and will likely be higher upon final calculation as the tax amount will change each fortnight. This is because the calculation takes into account year to date income when calculating total tax. This will mean that your net payment will also be less.

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- There will be no split between full and part time severance component (weeks)
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Unfortunately, due to the timing of the receipt of the legal and tax advice, Payroll is unable to update each calculation before the election this weekend. If you are genuinely considering exiting, please request through [insert inbox in Tracy's team]. Payroll may have limited capacity to provide indicative changes to those genuinely considering exiting depending on the complexity of the individual.

**Martin Bolton | Executive Branch Manager | Payroll and HR Systems**

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

**Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government**

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OFFICIAL SENSITIVE

MINISTERIAL BRIEF

Chief Minister, Treasury and Economic Development Directorate

To: Chief Minister

Tracking No.: Click here to enter text.

Date: 14/10/2024

CC: Deputy Director General, Office of Industrial Relations and Workforce Strategy

From: Executive Group Manager, Office of Industrial Relations Workforce Strategy

Subject: Changes to the LAMS Termination Payment

Critical Date: 15/10/2024

Critical Reason: LAMS employees will have their employment terminated following the ACT Election of 19 October 2024 in accordance with the LAMS Act. The method for calculation of these termination payments has changed based on recent advice from the Government Solicitors Office. This needs to be communicated to employees before the Election on 19 October 2024.

<always add the date it was reviewed by the relevant approver. Delete the listed approvers only if not applicable>

- DG      .../.../...
- DDG    .../.../...

Recommendations

That you:

1. Note the information contained in this brief;

Noted / Please Discuss

Andrew Barr MLA ...../...../.....

Minister's Office Feedback

Tracking No.: Click here to enter text.

Choose an item.

### Background

1. In accordance with clause B7 of the Legislative Assembly Members' Staff Enterprise Agreement 2023-2026 (LAMS EA), an employee whose employment is terminated by the operation of sections 8(1), 8(2), 13(1) and 13(3) of the LAMS Act is entitled to a Termination Payment.
2. Historically this has been treated as a genuine redundancy payment and has been taxed accordingly.
3. On 1 May 2024 the Manager, HR and Entitlements of The Office of the Legislative Assembly requested advice from the National Head of Government Tax, KPMG, as to how the Termination Payments under clause B7 of the LAMS EA are to be treated for tax purposes. See [Attachment A](#).
4. Additionally, differences in the Termination Payment calculation methods used by the Office of the Legislative Assembly (OLA) pay team and Shared Services (SSHR) Payroll became evident and ACT Government Solicitor (ACTGS) advice was sought.

### Issues

# Sch 1 s 1.2

*Payments to be treated as EIP*

## Sch 1 1.2

11. Termination Payment estimates have been provided to employees throughout 2024 based on the previous practice.

Tracking No.: [Click here to enter text.](#)

Choose an item.

12. While the estimates are provided with advice to employees that they are estimates only, the impact of a change in taxation methods will have a considerable impact on the net payment received by most LAMS employees.
13. There may be individuals who seek to raise a dispute with the Territory following the changes to their termination payment. Their ability to make a legal claim against the Territory will depend upon individual circumstances and the level of reliance they had on the information that was initially provided to them. Each matter should be considered on a case-by-case basis and advice will be sought from ACTGS if a legal claim arises. Where legal liability can be established, as the matter is considered an administrative error, there may be other considerations that could be applied in these circumstances, such as an act of grace payment. See [Attachment C](#).

#### *Salary at the time employment terminates*

14. Termination Payments have always been made based on the salary of the employee on their date of termination [Sch 1 1.2](#) This advice does not impact the calculations.

#### *Calculation of completed years of service*

15. The OLA pay team follow the method [Sch 1 1.2](#)
16. SSHR Payroll have previously followed a process of pro-rating the entitlement under B7.1 where an employee had been part-time for the relevant completed year. This aligns with the process followed for Voluntary Redundancy payments under L6.8 of the ACTPS ACT Administrative and Related Classifications Enterprise Agreement 2023-2026.

## Sch 1 1.2

#### **Financial Implications**

18. The gross payments that the Territory will pay to employees will largely stay the same despite the ACTGS advice.
19. The only area where the cost will increase is for employees that have been part-time during their employment and will now receive a higher entitlement due to the ACTGS advice as this will result in a change to SSHR Payroll calculations.
20. Employees will be impacted by the net amount they receive due to the ACTGS advice on the tax to be applied to the Termination Payment. The sum of the variation will depend on individual circumstances, for example, their length of service, salary upon termination, long service leave balance etc., compared to estimates they have received earlier in 2024. Overall, it is anticipated that employees will receive a lesser amount than previous estimates they have received.

Tracking No.: [Click here to enter text.](#)

Choose an item.

## Consultation

### Internal

21. Within Chief Minister, Treasury and Economic Development Directorate, Robert Wright, Executive Group Manager, Corporate, consulted with Sanaz Mirzabegian, Acting Executive Group Manager, Public Sector Employment, Office of Industrial Relations and Workforce Strategy.
22. Agreement was made to seek ACTGS advice on questions relating to LAMS Termination Payments.

**Commented [SA4]:** If this requires a date please put this in as I am not sure when this was first discussed. Same with other consultation below.

### Cross Directorate

23. Robert Wright, Executive Group Manager, Corporate, Chief Minister, Treasury and Economic Development Directorate consulted with Rachel Turner, Executive Manager, Business Support, Office of the Legislative Assembly.
24. Agreement was also made to seek ACTGS advice on questions relating to LAMS Termination Payments.

# Sch 1 1.2

## Work Health and Safety

27. Employees that have received a Termination Payment estimate during 2024 may have made plans based upon these estimates.
28. Following the advice from ACTGS their actual Termination Payment could vary greatly and impact plans they had put in place for the payment.
29. Where deposits have already been paid or assumptions of financial entitlement have been acted upon, employees could become distressed when this news is delivered.
30. An email will be sent to employees to explain the changes to the calculation methods and provide an example calculation for them to review.
31. Avenues for support will be set out in the email for employees who are concerned or distressed by the email.

**Commented [SA5]:** I am unsure if this is in the draft email but if not, perhaps it should be?

## Benefits/Sensitivities

32. Termination Payments will be paid in accordance with the *Income Tax Assessment Act (ITAA) 1997*.
33. The OLA pay team and SSHR Payroll will be applying consistent methods in calculating and paying Termination Payments.
34. The advice will result in a change to custom and practice for previous Termination Payments. LAMS Employees and relevant Unions would have been expecting the same

Tracking No.: [Click here to enter text.](#)

Choose an item.

methods to be applied for any Termination Payments processed in 2024. This is a sensitivity and risk as employees may be worse off due to this advice.

**Communications, media and engagement implications**

<Please consider stakeholder communications, broader engagement that will be required, and if the matter has the potential to generate media coverage. If appropriate, attach draft communications content (digital content or a media release as appropriate).>

- 35. An email will be sent to LAMS employees to advise of the change to taxation and calculation of the Termination Payment.
- 36. An email will be prepared for Unions that are party to the LAMS EA to advise of the changes to the Termination Payments.

Signatory Name:

Phone:

Action Officer:

Phone:

**Attachments**

Attachment	Title
Attachment A	Sch 1 s 1.2
Attachment B	
Attachment C	AoG Guidelines



# ACT OF GRACE PAYMENTS

## Policy and Procedures Guide

Chief Minister, Treasury and  
Economic Development  
Directorate

June 2022

## DOCUMENT CONTROL

<b>Prepared for:</b>	<b>Chief Minister Treasury and Economic Development ACT Insurance Authority</b>
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<b>Version</b>	<b>2.0</b>

### Revision

This policy must be reviewed and updated every three years (or when relevant changes are made to the *Financial Management Act 1996 (FMA)*).

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1.0	Final of policy	September 2019	Responsible Officer
2.0	Peer review	June 2022	A/g Chief Finance Officer, CMTEDD

**This is an Open Access Document**

### Authorisation

Kathy Leigh  
 Director-General  
 Chief Minister, Treasury and Economic  
 Development Directorate

Date

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# ACT OF GRACE PAYMENTS

## Definition

1. An act of grace payment is a payment of money to a person from the Territory that would not otherwise be authorised by law or required to meet a legal liability, but is authorised by the Treasurer because the Treasurer considers it is appropriate to do so because of special circumstances. It is ordinarily the case that the Territory has some moral obligation in respect of the special circumstances that warrants the authorisation of the payment. The Treasurer will make a decision after receiving advice in relation to the act of grace request and will be assisted by the procedures outlined in these guidelines.

## Authority

2. The authority for act of grace payments is provided by section 130 of the *Financial Management Act 1996* (FMA). This Act provides statutory authority for an act of grace payment so that there is a lawful basis for the expenditure of public money where it is not otherwise authorised by law.

## Discretion of Treasurer

3. The act of grace power is a unique discretion given to the Treasurer to authorise the making of payments to persons in special circumstances. The act of grace mechanism enables the authorisation of payments, but does not create an obligation to make these. There is no entitlement to an act of grace payment and the making of a request that sets out complete information does not guarantee a favourable outcome for the applicant.

## Purpose of this Guide

4. The purpose of this guide is to set out the procedures relating to act of grace payments and thereby assist people, both in the community and in the ACT Government, in understanding why and how such payments are requested and sometimes made.

5. This guide is not intended as a guide for decision-makers in assessing the nature of special circumstances, nor the merits of any individual case. It does not limit the decision-making powers of the Treasurer nor of a decision-maker for an act of grace payment.

## Request Process and Payment

6. The following procedures are addressed by these guidelines.

- Process for making a request.
- Act of grace considerations and decision-making.
- Payment and records for reporting.

## Things to Consider Before Making a Request

7. Each request for an act of grace payment (as a form of discretionary financial assistance):

- is considered on its individual merits;
- is decided at the discretion of the decision-maker; and
- once decided, does not establish a precedent for other requests.

8. The act of grace mechanism is generally a remedy of last resort and is not used when there is another viable remedy available to provide redress in the circumstances giving rise to the request, such as administrative review or legal action.
9. If other avenues exist for a person to receive financial assistance from the ACT Government or elsewhere (such as existing legislation or schemes), it is recommended that those avenues be investigated before a request is made for an act of grace payment.

## PROCESS FOR MAKING A REQUEST

### Individuals and organisations seeking an act of grace

10. Individuals and organisations seeking an act of grace payment should write to the Treasurer to seek an act of grace payment. A fact sheet is available on the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) website explaining this process in more detail.
11. There is no prescribed format for the making of a request for an act of grace payment.
12. Those submitting a request are asked to do so by sending a letter, or an email, to the ACT Treasurer, and to include or attach all relevant evidence in support of the request. This would include information, where relevant, about:
- a) a clear explanation of the incident/situation and how it occurred;
  - b) what actions on the Government's part contributed to the situation;
  - c) what actions or factors, relating to yourself or to other relevant individuals or organisations have contributed to the situation in either a positive or negative way;
  - d) why the situation warrants being considered a special circumstance;
  - e) what other avenues have been explored (including legal and financial), and with what outcomes;
  - f) why a payment would be appropriate, and the value of the payment being sought;
  - g) Evidence, including:
    - i. how has the value of the payment being sought been estimated;
    - ii. documentary evidence of the circumstances, for example, correspondence, agreements and other documents establishing the circumstances and any loss (e.g. medical certificates and statements);
    - iii. details of court or Tribunal findings; and
    - iv. what reviews have been undertaken or may be underway;
  - h) previous correspondence with Government;
  - i) yourself (name, date of birth, place of residence) and how you can be readily contacted (via email, phone and post); and
  - j) other information that is likely to be relevant.

### ACT agencies as the receiver of a request

13. Any request for an act of grace payment received by an ACT Government agency from an applicant should be forwarded to the Under Treasurer via either the Director-General, or an executive, of the agency receiving it. It would be useful for the recipient agency to liaise with Treasury prior to doing this to see whether any other information could usefully be provided at the same time.

## ACT agencies as the author of a request

14. An agency may bring an individual matter or set of circumstances to the attention of ACT Treasury to discuss the merit of a request for an act of grace payment. However, an agency should generally only make a specific request for such a payment on behalf of an individual or organisation with their approval, and should consult with Treasury before doing so to ensure to the extent possible that sufficient and appropriate information is provided to help Treasury with their assessment of the application.

15. The agency receiving (or making) the request for the payment may prepare a submission for Director-General approval, justifying why an act of grace payment may be appropriate or not. A request should address the matters outlined above (relevant information and evidence) and any other matters the agency considers relevant. It should refer to what (if any) correspondence or contact has been had with the individual or organisation to whom the request relates.

16. Any submission should be forwarded to the Chief Finance Officer (or equivalent) in the agency, prior to Director-General approval. Once approved by the Director-General, the Chief Finance Officer will send the request to the Finance and Budget Division of Treasury in CMTEDD for the purposes of preparing advice for consideration by the decision maker.

## Treasury review upon receipt of the request

17. Upon receipt of the request, Treasury will send a letter acknowledging receipt along with this guide. This will give the opportunity for those submitting the request to provide any additional information in relation to the request or confirm the existing application is complete.

18. When an act of grace request is made directly to the Treasurer, or to a delegate in CMTEDD, Treasury will consider the request and may undertake research in relation to the claims.

19. Staff of the Finance and Budget Division of Treasury in CMTEDD may be in contact with relevant areas of ACT Government and with the requestor to seek information.

20. Treasury will then develop advice for the Treasurer, or delegate, to consider along with the information provided in the request.

## Requests for comment from agencies

21. At any stage, an agency may be invited to provide formal advice to Treasury or to the Treasurer. If there are particular sensitivities in providing comment, please liaise with an Executive in the Finance and Budget Division to ascertain an appropriate way forward.

## Act of grace considerations

22. The FMA provides a discretion to the Treasurer, or an authorised delegate, to approve an act of grace payment, but does not obligate doing so.

23. The decision-maker will assess the nature of special circumstances and the appropriateness of making a payment of a relevant amount, including whether the Territory has any moral obligation in relation to the particular matter. 'Special circumstances' and 'relevant amount' are not defined in the FMA and are for the Treasurer or delegate, as decision-maker, to assess and decide on.

24. Individual circumstances are relevant in considering whether the application of a Territory law or policy, or Government action or inaction, has produced a moral obligation and/or an inequitable result in a particular case.

25. In deciding whether special circumstances exist, the decision maker may consider whether any of the following give rise to circumstances that are uncommon, exceptional or extraordinary in some way:

- a) the direct role of ACT Government in causing an unintended and inequitable result to a person such that it considers it has a moral responsibility to address the circumstances of the individual;
  - b) ACT legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the individual's or organisation's circumstances, and the impact on the individual's or organisation's circumstances is:
    - i. specific to the individual or organisation;
    - ii. outside the parameters of events for which the individual or organisation was responsible or had the capacity to adequately control; but
    - iii. not merely the intended effect of the legislation; and
  - c) the matter is not covered by legislation or specific policy, but the ACT intends to introduce such legislation or policy, and it is considered desirable in a particular case to apply the benefits of the relevant policy to the individual or organisation prior to the legislation or policy's commencement.
26. The decision-maker may consider any other matter that is relevant to the circumstances being considered.
27. Act of grace payments may not be approved, for example:
- a) when the proposed payments would have the effect of supplementing capped payments set by other specific legislation, in circumstances where that legislation expresses the clear intention that particular payment levels cannot be exceeded in any circumstances;
  - b) when the proposed payments would have the effect of establishing a payment scheme to apply to a group of individuals, without considering the merits of their requests on an individual basis;
  - c) when a request has arisen from private circumstances outside the sphere of ACT administration, there has been no involvement of an agent or ACT Government employee or entity and the matter is not related to the impact of any ACT legislation;
  - d) in respect of a matter that relates solely to the involvement of a Territory-owned Corporation that has a separate legal identity to the ACT Government;
  - e) to compensate a person or body for a debt owed to the ACT Government; or
  - f) to compensate a person for a loss arising from a judicial decision not involving the executive arm of the Government.
28. Act of grace requests are not likely to be approved in cases where a requestor's sole assertion is that it is unfair that the individual or organisation has been historically ineligible to receive a benefit for which a person or organisation in a similar contemporary situation would now be eligible. They are also not likely to be approved in cases where a person or organisation was historically eligible for a payment but is now ineligible due to a change in certain criteria.

## The decision-making step

29. Treasury will provide advice to the decision-maker, which will be considered alongside the request and any other material that has been provided.
30. The Treasurer or delegate is not obliged to follow the advice of Treasury, as full discretion to decide on a request for an act of grace payment is vested in the Treasurer, or delegate.

31. As there is no timeframe specified for the making of a decision, the decision will be made as soon as possible in light of all of the circumstances. Gathering information relevant to the request may involve Treasury making enquiries, requesting further information, conducting independent research or investigating claims made in the request. This may include seeking further information from the requestor.

32. Treasury must continue to perform its ordinary functions throughout this process and at certain times of the year (for example, in the lead up to the budget and budget review milestones) delays in the processing of an act of grace request may be unavoidable. Requestors who consider that there is time criticality for a decision should set out those matters in the request.

33. An authorisation of an act of grace payment by the Treasurer or a delegate may be expressed as being subject to conditions that need to be complied with by the payee, as set out in section 130 of the FMA.

## Notification of decision

34. The outcome of the decision will be conveyed by the decision-maker to the requestor in writing. If the request is successful, the decision maker will also write to the relevant agency to notify them of the payment and any conditions attaching to it. If a requestor is unhappy with the decision, it is open to them to request reconsideration of the decision if relevant new information or a serious factual error is identified. Requestors are also welcome to seek legal advice.

## Payment

35. Where a request is successful, the relevant agency will arrange for payment of the authorised amount, subject to any conditions having first been met.

Payments under the act of grace mechanism must be made from money appropriated by the ACT Legislative Assembly; and these will be reported in line with legislative requirements.

- a) If a condition is contravened, the Treasurer or a delegate may, by written notice addressed to the last-known address of the payee, require the payee, within 30 days of receipt of the notice, to pay an amount equal to all or part of the relevant amount.
- b) If the payee does not pay the amount specified in the notice, the amount may be recovered by the Territory as a debt.

## Records for reporting

36. Directorates and territory authorities will keep records of all payments for reporting in the notes to financial statements in accordance with the FMA, which will detail the amount and grounds for each payment made that financial year. The FMA prohibits the disclosure of details in relation to the payee, unless disclosure was agreed to by the payee as a condition of the Treasurer authorising the payment.

## RELATED DOCUMENTS

**Accessible from ACT Legislation Register (at [www.legislation.act.gov.au](http://www.legislation.act.gov.au))**

*Financial Management Act 1996 (FMA)*

*Legislation Act 2001*

Act of Grace Payments Factsheet



Chief Ministers, Treasury and Economic  
Development Directorate

June 2022

Sch 1 s 1.2

Sch 1 s 1.2

Duplicate

Duplicate

Sch 1 s 1.2

Sch 1 s 1.2

Duplicate

Duplicate

Duplicate

**From:** "Prowse, Fay" <Fay.Prowse@act.gov.au> on behalf of "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>  
**Sent:** 15/10/2024 7:58 AM  
**To:** "Angus, Sarah" <Sarah.Angus@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>  
**Cc:** "Taylor, Nina" <Nina.Taylor@act.gov.au>; "Perkovic, Sophia" <Sophia.Perkovic@act.gov.au>  
**Subject:** Trim Container created: CM draft brief - LAMS Termination Payment  
**Attachments:** CMTEDD2024/4323 : Brief to CM - Legislative Assembly Members (LAMS) Termination Payment

UNOFFICIAL

Hi team, I have created this Trim container for you to load your documents into once you have finalised makeup of pack – I will pop an action tree on.

# Duplicate

Duplicate

# Duplicate

Duplicate

Duplicate

**From:** "Prowse, Fay" <Fay.Prowse@act.gov.au>  
**Sent:** 15/10/2024 7:57 AM  
**To:** "Prowse, Fay" <Fay.Prowse@act.gov.au>  
**Subject:** CMTEDD2024/4323 : Brief to CM - Legislative Assembly Members (LAMS) Termination Payment  
**Attachments:** GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Brief to CM - Legislative Assembly Members (LAMS) Termination Payment.tr5

OFFICIAL

-----< Content Manager Record Information >-----

Record Number: CMTEDD2024/4323

Title: GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Brief to CM - Legislative Assembly Members (LAMS) Termination Payment

**From:** "Taylor, Nina" <Nina.Taylor@act.gov.au>  
**Sent:** 15/10/2024 4:21 PM  
**To:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Subject:** RE: Urgent: LAMS Fixed-term contracts  
**Attachments:** FW: Urgent request for legal advice--s 333E Fair Work Act, LAMS Act

**OFFICIAL: Sensitive**

Hi Kim and Sanaz,

As discussed this morning, Kim and I met with [Sch 2 s 2.2\(a\)\(ii\)](#) and talked through the LAMS issues that are being noted below and I feel we had a really productive conversation about improvements to manage LAMS matters moving forward, noting the current tensions in responsibility of certain work items.

A draft response to [Sch 2 s 2.2\(a\)\(i\)](#) has been drafted as follows:

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

**From:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>  
**Sent:** 16/10/2024 5:45 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>  
**Cc:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>  
**Subject:** FW: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

See further changes below - I have used green to indicate my changes.

Pls note also Kathy has advised, following further discussion with **Sch 2 s 2.2(a)(ii)**, that comms should be circulated tomorrow morning – this should consist of a notification to affected staff and they should advise staff that updated calculations are being prepared. **But please do not send until I have cleared.** Sanaz can you work with the team as discussed to work out what we need to do from a resources perspective to expedite this process? I will also need a timeframe.

Pls keep me in the loop.

Thanks  
 Lisa

**Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy**  
 Mobile: **Sch 2.2(a)(ii)** | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

---

**From:** Mirzabegian, Sanaz  
**Sent:** Wednesday, 16 October 2024 2:37 PM  
**To:** Szandurski, Kim ; Carmody, Lisa  
**Subject:** FW: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Update with Lisa's amendments (note working on response to unions, so not attached – yellow highlight=new addition; pink highlight=deletion):

Dear Mr Cook and Mr Mison

Further to recent discussions, as foreshadowed I am writing to provide an update in relation to the characterisation and calculation of termination payment for staff of the members of the Legislative Assembly employed under the *Legislative Assembly (Members' Staff) Act 1989 (ACT) (LAMS Act)*. As discussed, ~~The outcome of conclusion of our investigation into this matter is the position that we have now been advised that~~ the cessation of employment when the relevant Member or office holder ceases to hold office is properly characterised as a termination, not a redundancy. This also reflects the external taxation advice previously obtained by the Office of the Legislative Assembly.

~~We have considered a range of factors and can advised that this~~ position is not altered by the *Fair Work Act 2009 (Cth) (Fair Work Act)* or the National Employment Standards. Section 119 of the Fair Work Act establishes an employee's entitlement to redundancy pay if the employee's employment is terminated at the employer's initiative. In the present circumstances, the termination of the employment for staff of the members of the Legislative Assembly does not occur "at the employer's initiative"; rather, the employment terminates by operation of law. A summary of the position is attached for your reference.

I note that we have explored the relevance of longstanding and accepted “custom and practise” in determining the appropriate approach to the characterisation of payments to staff employed under the ~~Legislative Assembly (Members’ Staff) Act 1989 (ACT)~~ (LAMS Act). Those factors do not directly affect the proper characterisation of the payments at law.

I also note that we have explored whether there is any employment or other administrative action that may be taken by the Territory, or Chief Minister, in respect to the staff members of Office Holders (Ministers) prior to or after the end of employment that would change the nature of payment to a redundancy payment. There are no avenues available to the Territory or Chief Minister which would allow the payment to staff on termination to be characterised as redundancy payments. The employment of staff ceases as an operation of law being the operation of the LAMS Act and the *Australian Capital Territory (Self-Government) Act 1988* (Cth). In these circumstances, the *Income Tax Assessment Act 1997* (Cth) characterises these payments as eligible termination payments and not redundancies.

Furthermore, we have considered whether the power of the Chief Minister to approve an arrangement to employ staff under s 5(3) of the LAMS Act or to issue a direction as to the continuation of employment under section 8(6) of the LAMS Act may provide an avenue for the Chief Minister to change the nature of the employment. However, the scope of those powers is limited to the functions that are their subject matter, namely the arrangements for employment and continuation of employment only. Any other purpose would be beyond the scope of the legislative authority that must be exercised consistently with the provisions of the LAMS Act. It would not be open to the Chief Minister to seek to use a disallowable instrument to alter the legal characterisation of the termination as set out in the various Acts or the nature of the payment to be made on that termination as prescribed by Commonwealth law.

Finally, for completeness, and having regard to the communication provided to affected staff to date, we have considered the process for staff who may have suffered detriment by reliance on the estimates and advice by the Territory to seek compensation, including through an Act of Grace type scheme. As a general proposition, there must be a meaningful prospect that the Territory will be legally liable to a person before payment can be made to a person. Act of grace payments under section 130 of the *Financial Management Act 1996* (ACT) are decided by the Treasurer who ~~There are guidelines in relation to this process, noting that the Treasurer has discretion to authorise payment, where appropriate, because of special circumstances.~~ Each request for an act of grace payment (as a form of discretionary financial assistance) is considered on its individual merits, and once decided, does not establish a precedent for other requests (refer ~~Act of Grace Policy and Procedures Guide~~).

Having regard to the above, and for your information, tomorrow, we will provide an update to affected staff. [Propose: Having regard to the above, and for your information, we would like to provide an update to affected staff as soon as practicable. We understand that you are comfortable if we do this tomorrow morning] We are also establishing a team to assist individuals who require further information in relation to their circumstances and propose to recommend that they contact [insert name] in the first instance.

Lisa Carmody, Deputy Director General, OIRWS will also respond to the letter of 2 October 2024 from the CPSU addressed to Mr Cook and her. Attached is a copy of the letter for your reference.

Separately, we are working with the ACTGS as to future required action to ensure clarity of employment and termination arrangements for staff of the members of the Legislative Assembly.

Kind Regards

Sanaz (she/her)

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate| ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**

**From:** Wright, Steven <[Steven.Wright@act.gov.au](mailto:Steven.Wright@act.gov.au)>  
**Sent:** Wednesday, 16 October 2024 9:27 AM  
**To:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>; Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>  
**Cc:** CMTEDD, DDGOIRWS <[DDGOIRWS@act.gov.au](mailto:DDGOIRWS@act.gov.au)>; Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Sanaz

Thanks, just one suggestion from me – in green.

Steven

---

**From:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>  
**Sent:** Wednesday, 16 October 2024 8:55 AM  
**To:** Wright, Steven <[Steven.Wright@act.gov.au](mailto:Steven.Wright@act.gov.au)>; Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>  
**Cc:** CMTEDD, DDGOIRWS <[DDGOIRWS@act.gov.au](mailto:DDGOIRWS@act.gov.au)>; Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>  
**Subject:** FW: Termination payments to staff of Members of the Legislative Assembly  
**Importance:** High

OFFICIAL: Sensitive - Legal Privilege

Hi Steven,

Thanks for our earlier discussion. Below is the updated email to the CMO. Grateful for any comments/adjustments. I have deliberately not used the words “legal advice” not to create privilege risks.

[@Carmody, Lisa](#) you indicated you might want to add some wording in the context of your conversation with the CMO.

[@Carmody, Lisa](#) please note the letter to the CPSU that you will need to send and the pdf of the original letter.

Dear Mr Cook and Mr Mison

I am writing to provide an update in relation to the characterisation and calculation of termination payment for staff of the members of the legislative Assembly. The conclusion of our investigation into this matter is that the cessation of employment when the relevant Member ceases to hold office is properly characterised as a termination, not a redundancy. This also reflects the external taxation advice previously obtained by the Office of the Legislative Assembly. A summary of the position is attached for your reference.

I note that we have explored the relevance of longstanding and accepted “custom and practise” in determining the appropriate approach to the characterisation of payments to staff employed under the *Legislative Assembly (Members’ Staff) Act 1989* (ACT) (**LAMS Act**). Those factors do not directly affect the proper characterisation of the payments at law.

I also note that we have explored whether there is any employment or other administrative action that may be taken by the Territory, or Chief Minister, in respect to the staff members of Office Holders (Ministers) prior to or after the end of employment that would change the nature of payment to a redundancy payment. There are no avenues available to the Territory or Chief Minister which would allow the payment to staff on termination to be characterised as redundancy payments. The employment of staff ceases as an operation of law being the operation of the LAMS Act and the *Australian Capital Territory (Self-Government) Act 1988* (Cth). In these circumstances, the *Income Tax Assessment Act 1997* (Cth) characterises these payments as eligible termination payments and not redundancies.

Furthermore, we have considered whether the power of the Chief Minister to approve an arrangement to employ staff under s 5(3) of the LAMS Act or to issue a direction as to the continuation of employment

under section 8(6) of the LAMS Act may provide an avenue for the Chief Minister to change the nature of the employment. The scope of those powers is limited to the functions that are their subject matter, namely the arrangements for employment and continuation of employment only. Any other purpose would be beyond the scope of the legislative authority that must be exercised consistently with the provisions of the LAMS Act. It would not be open to the Chief Minister to seek to use a disallowable instrument to alter the legal characterisation of the termination as set out in the various Acts or the nature of the payment to be made on that termination as prescribed by Commonwealth law.

Finally, for completeness, and having regard to the communication provided to affected staff to date, we have considered the process for staff who may have suffered detriment by reliance on the estimates and advice by the Territory to seek compensation, including through an Act of Grace type scheme. As a general proposition, there must be a meaningful prospect that the Territory will be legally liable to a person before payment can be made to a person. Act of grace payments under section 130 of the *Financial Management Act 1996* (ACT) are decided by the Treasurer. There are guidelines in relation to this process, noting that the Treasurer has discretion to authorise payment, where appropriate, because of special circumstances.

Having regard to the above, later today, we will inform affected staff and respond to the letter of 2 October 2024 from the CPSU.

Separately, we are working with the ACTGS as to future required action to ensure clarity of employment and termination arrangements for staff of the members of the Legislative Assembly.

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate| ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**

**From:** "Irvine, Lisa" <Lisa.Irvine@act.gov.au> on behalf of "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>  
**Sent:** 16/10/2024 3:42 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Carmody, Lisa" <Lisa.Carmody@act.gov.au>  
**Subject:** RE: Letter to the CPSU  
**Attachments:** DDG Letter - CPSU - LAMS.docx

OFFICIAL

Hi Lisa and Sanaz,

Please find attached clean letter on letterhead.

Kind regards,  
Lisa

---

**From:** Mirzabegian, Sanaz  
**Sent:** Wednesday, 16 October 2024 3:08 PM  
**To:** Carmody, Lisa  
**Cc:** CMTEDD, DDGOIRWS ; Wright, Steven  
**Subject:** Letter to the CPSU

OFFICIAL

Hi Lisa, updated letter rot the CPSU for your review.

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate| ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**



Ms Maddy Northam  
Regional Secretary  
Community & Public Section Union

Via email: [Sch 1 s 1.2 \[REDACTED\]@cpsu.org.au](mailto:Sch 1 s 1.2 [REDACTED]@cpsu.org.au)

Dear Ms Northam

Thank you for your letter dated 2 October 2024 to me and Michael Cook, Chief of Staff, Office of the Chief Minister.

In your letter you raise a number of concerns regarding the characterisation of payments received by staff of Members and office-holders of the Legislative Assembly who are employed under the *Legislative Assembly (Members' Staff) Act 1989 (LAMS Act)* and covered by the *ACT Legislative Assembly Members Staff Enterprise Agreement 2023-2026 (LAMS EA)*. I have taken time to consider the matters in your letter. Below is an overview of the current position at law.

The employment of Assembly officer-holders' and Members' staff under the LAMS Act terminates if the engager ceases to hold office (see sections 8 and 13 of the LAMS Act).

Members of the Legislative Assembly are elected in accordance with part VIII (Elections to the Assembly) of the *Australian Capital Territory (Self-Government) Act 1988 (Cth) (Self-Government Act)*. Section 10 of that Act relevantly provides that each Member ceases to hold office on the relevant polling day.

*Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Members' Staff Direction 2020 (No 1)* (DI 2020-251) directs that the employment of Members' staff is deemed not to have been terminated under section 13 of the LAMS Act, but to continue until the date that is 2 weeks after the date on which the employment would otherwise have been terminated.

Ministers (or office-holders) hold office until they either resign, cease to be a member (not because of a general election), are dismissed from office or, relevantly, immediately before another Chief Minister is elected after the next general election (see section 46(1A) of the Self-Government Act). The Chief Minister's office is vacated immediately before a Chief Minister is elected after the next general election (see section 46(1A) of the Self-Government Act).

*The Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Office-holders' Staff Direction 2015* (DI 2015-77) directs that the employment of office-holders' staff is deemed not to have been terminated under section 8 of the LAMS Act, but to continue until the date that is 2 weeks after the date on which the employment would otherwise have been terminated.

The cessation of employment in these circumstances is properly characterised as a termination. Accordingly, payments received under clause B7 of the LAMS EA are employment termination payments under subsection 82-130(1) of the *Income Tax Assessment Act 1997 (Cth)* (**ITAA 1997**), and are not genuine redundancy payments under subsection 83-175(2) of the ITAA 1997.

This position is not altered by the *Fair Work Act 2009 (Cth)* (**Fair Work Act**) or the National Employment Standards. Section 119 of the Fair Work Act establishes an employee's entitlement to redundancy pay if the employee's employment is terminated at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour.

In the present circumstances, by virtue of the operation of the statutory provisions summarised above, the termination of the employment does not occur "at the employer's initiative"; rather, the employment terminates by operation of law. This means that no entitlement to redundancy pay arises under section 119 of the Fair Work Act for employees whose employment terminates by this means.

I have considered your reference to the following cases:

- (a) *CFMEU, CEPU & AMWU v Spotless [2015] FWCFB 1162 (CFMEU v Spotless)*; and
- (b) *Berkeley Challenge Pty Ltd v United Voice [2020] FCAFC 113 (Berkeley v United Voice)*.

Both cases considered the "ordinary and customary turnover of labour" and its relevance to the entitlement to redundancy payments. However, neither matter concerned a scenario where the termination occurred through the operation of law as occurs to staff employed under the LAMS Act when the relevant Member or office-holder ceases to hold office.

I appreciate the "custom and practise" in determining the characterisation of payments to staff employed under the LAMS Act. These matters do not directly affect the proper characterisation of the payments at law. That said, we will continue to work with the relevant staff members through the upcoming period, to provide an update and answer any questions that they might have.

Thank you again for bringing these matters to my attention.

Yours sincerely,

Lisa Carmody  
Deputy Director General  
Office of Industrial Relations and Workforce Strategy  
[date]

**From:** "Taylor, Nina" <Nina.Taylor@act.gov.au>  
**Sent:** 16/10/2024 1:13 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Cc:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>  
**Subject:** Re: Urgent: LAMS Fixed-term contracts

**OFFICIAL: Sensitive**

Hi Sanaz,

Of course, that sounds great. I had written the email to come from yourself so that's perfect. Happy for you to tweak as needed 😊

As mentioned yesterday, Kim and I also had a positive conversation with Sch 2.2(a)(ii) and we were on the same page about working through the issues together given we all bring different perspectives.

Im not sure exactly what you mean in regards to your reference in green below but assume we would still work together moving forward for now.

I think it would still be useful if the DDG OIRWS office could provide clarity on whether our team will be required to lead the relevant LAMS EA negotiations, LAMS Act and LAMS contract reviews as a future project.

Thanks so much, Nina

---

**From:** Mirzabegian, Sanaz  
**Sent:** Tuesday, October 15, 2024 5:59 pm  
**To:** Taylor, Nina  
**Cc:** Szandurski, Kim  
**Subject:** RE: Urgent: LAMS Fixed-term contracts

**OFFICIAL: Sensitive**

Thank you Nina, apologies, when we spoke this morning, I had not realised you were referring to this email. I spoke to Sch 2 s 2.2(a)(i) to respond to her email, and we have since received legal advice. I think the relationship is positive now. I am then wondering if it would work more in our favour if the email came from me and had a greater focus on working together to explore how we could support Sch 2 s 2.2(a)(i) in discharging her role (which should properly be looking after all staff engaged by the LAMS Act.

If you are ok with this, I am happy to use your email to respond and close the loop.

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate | ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**

**Duplicate**

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**From:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Sent:** 16/10/2024 3:26 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Subject:** RE: Advice: LAMS Staff - Calculation of Payment - Continuous Service

**OFFICIAL: Sensitive - Legal Privilege**

Hi Sanaz,

We calculate continuous service under LAMS act in accordance with that advice.

Thanks

Martin

**Martin Bolton | Executive Branch Manager | Payroll and HR Systems**  
Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)  
**Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government**  
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

---

**From:** Mirzabegian, Sanaz  
**Sent:** Wednesday, 16 October 2024 2:16 PM  
**To:** Bolton, Martin  
**Subject:** FW: Advice: LAMS Staff - Calculation of Payment - Continuous Service

**OFFICIAL: Sensitive - Legal Privilege**

Hi Martin, to chat at our 1:1 – does this change anything for you?

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate | ACT Government**  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

**Duplicate**

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# Duplicate

**From:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Sent:** 16/10/2024 3:41 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Subject:** FW: LAMS termination scenarios

OFFICIAL: Sensitive - Personal Privacy

**Martin Bolton** | Executive Branch Manager | Payroll and HR Systems

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government

Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

---

**From:** Khem, Deepika  
**Sent:** Wednesday, 18 September 2024 2:23 PM  
**To:** Bolton, Martin  
**Cc:** Palic, Richard  
**Subject:** LAMS termination scenarios

OFFICIAL: Sensitive - Personal Privacy

Hi Martin,

I have put together two scenarios as discussed this morning.

*Note: All terminations have been calculated at exit date 05/11/2024.*

## Sch 2.2(a)(ii)

Original version is on the Left side, and the updated one on the right side.

A few points to note:

- No change to his gross amounts of unused leave (annual and long service leave).
- Tax on leave is significantly higher, as revised version has the leave taxed at marginal rates (compared to a redundancy calc, where its taxed at flat 32%)
- Severance: This is where the difference is significant, as we have combined ALL service into part-time (he is part time at 33.07 hours per week at exit) – we understand this is how OLA process it currently?
- The entire ETP component (severance plus 4 weeks notice in lieu) is TAXED at 32%, i.e. there is no 'tax-free' portion unlike in a redundancy.

# Sch 2.2(a)(ii)

Annual Leave and Long Service Leave			
<b>Hourly rate used</b>		\$171.00	
Payment in lieu of Annual Leave	1261.6377 hours		\$ 215,735.19
Payment in lieu of long service leave			
Full time	0.5250 months		\$ 14,342.17
Part time (based on an average of 32.82 hours per week)	1.8750 months		\$ 45,744.41
<b>Total annual leave, annual leave loading and long service leave</b>			<b>\$ 275,821.77</b>
<b>Tax</b>			<b>\$ 88,268.00</b>
Severance Payments			
Severance Payments based on 9 Years and 9 months continuous service and an annual salary of \$ 327821			
<b>Weekly rate used</b>		\$5,634.84	
Full-time	3.3334 weeks		\$ 20,947.45
Part-time	12.1666 weeks (at avg ho 31.19 per week)		\$ 64,888.99
Payment in lieu of notice	4 weeks		\$ 22,619.38
<b>Total</b>			<b>\$ 108,455.82</b>
Tax Free Component			\$ 68,900.00
Taxable Component (ETP)			\$ 39,555.82
<b>Tax on ETP</b>			<b>\$ 12,658.00</b>
<b>Total</b>			<b>\$ 384,277.59</b>
<b>Total gross entitlement</b>			<b>\$ 384,277.59</b>
<b>Less total taxation</b>			<b>\$ 100,921.00</b>
<b>Total net entitlement</b>			<b>\$ 283,356.59</b>

Can't be reemployed under LAMS Act until: 22/03/2015

Annual Leave and Long Service Leave			
<b>Hourly rate used</b>		\$171.00	
Payment in lieu of Annual Leave	1261.6377 hours		\$ 215,735.19
Payment in lieu of long service leave			
Full time	0.5250 months		\$ 14,342.17
Part time (based on an average of 32.82 hours per week)	1.8750 months		\$ 45,744.41
<b>Total annual leave, annual leave loading and long service leave</b>			<b>\$ 275,821.77</b>
<b>Tax based on marginal tax</b>			<b>\$ 129,636.00</b>
Severance Payments			
Severance Payments based on 9 Years and 9 months continuous service and an annual salary of \$ 327821			
<b>Weekly rate used</b>		\$5,634.84	
Part-time	15.5 weeks (at avg ho 33.07 per week)		\$ 87,650.08
Payment in lieu of notice	4 weeks		\$ 22,619.38
<b>Total</b>			<b>\$ 110,269.46</b>
Taxable Component (ETP)			\$ 110,269.46
<b>Tax on ETP</b>			<b>\$ 50,974.00</b>
<b>Total</b>			<b>\$ 386,091.23</b>
<b>Total gross entitlement</b>			<b>\$ 386,091.23</b>
<b>Less total taxation</b>			<b>\$ 180,610.00</b>
<b>Total net entitlement</b>			<b>\$ 205,481.23</b>

Can't be reemployed under LAMS Act until: 12/03/2025

# Sch 2.2(a)(ii)

Original version is on the Left side, and the updated one on the right side.

A few points to note:

- No change to his gross amounts of unused leave (annual leave).
- Tax on leave is higher, as revised version has the leave taxed at marginal rates (compared to a redundancy calc, where its taxed at flat 32%)
- Severance: This is where the difference is significant, as we have combined ALL service into full-time (she is full time at 36.75 hours per week at exit) – we understand this is how OLA process it currently?
- The entire ETP component (severance plus 4 weeks notice in lieu) is TAXED at 32%, i.e. there is no 'tax-free' portion unlike in a redundancy.

# Sch 2.2(a)(ii)

<b>Annual Leave and Long Service Leave</b>			
11	Hourly rate used	\$46.62	
12	Payment in lieu of Annual Leave	115,5516 hours	\$ 5,386.48
13			
14			
15			
16			
17	Payment in lieu of long service leave		\$ -
18			
19			
20			
21	<b>Total annual leave, annual leave loading and long service leave</b>		<b>\$ 5,386.48</b>
22			
23	Tax		\$ 1,724.00
24			
<b>Severance Payments</b>			
Severance Payments based on 1 Years and 5 months continuous service and an annual salary of \$ 89367			
25	Weekly rate used	\$1,713.11	
26	Full-time	1.6666 weeks	\$ 2,855.07
27	Part-time	1.1666 weeks (at avg ho 29.4 per week)	\$ 1,598.81
28			
29			
30	Payment in lieu of notice:	4 weeks	\$ 6,852.44
31			
32	<b>Total</b>		<b>\$ 11,306.32</b>
33			
34	Tax Free Component		\$ 11,306.32
35	Taxable Component (ETP)		\$ -
36	Tax on ETP		\$ -
37			
38	<b>Total</b>		
39			
40	<b>Total gross entitlement</b>		<b>\$ 16,692.80</b>
41	Less total taxation		\$ 1,724.00
42	<b>Total net entitlement</b>		<b>\$ 14,968.80</b>
43			
44	Can't be reemployed under LAMS Act until: 23/12/2024		

<b>Annual Leave and Long Service Leave</b>			
11	Hourly rate used	\$46.62	
12	Payment in lieu of Annual Leave	115,5516 hours	\$ 5,386.48
13			
14			
15			
16			
17	Payment in lieu of long service leave		\$ -
18			
19			
20			
21	<b>Total annual leave, annual leave loading and long service leave</b>		<b>\$ 5,386.48</b>
22			
23	Tax based on marginal tax		\$ 2,444.00
24			
<b>Severance Payments</b>			
Severance Payments based on 1 Years and 5 months continuous service and an annual salary of \$ 89367			
25	Weekly rate used	\$1,713.11	
26	Full-time	2.8332 weeks	\$ 4,853.58
27			
28			
29			
30	Payment in lieu of notice:	4 weeks	\$ 6,852.44
31			
32	<b>Total</b>		<b>\$ 11,706.02</b>
33			
34	Tax Free Component		\$ -
35	Taxable Component (ETP)		\$ 11,706.02
36	Tax on ETP		\$ 3,746.00
37			
38	<b>Total</b>		
39			
40	<b>Total gross entitlement</b>		<b>\$ 17,092.50</b>
41	Less total taxation		\$ 6,190.00
42	<b>Total net entitlement</b>		<b>\$ 10,902.50</b>
43			
44	Can't be reemployed under LAMS Act until: 23/12/2024		

If you would like me to include further information or examples, please let me know.

Kind regards,

Dee

**Deepika Khemchandani** | Director | Payroll Services  
 Phone: +61 620 55294  
 Office of Industrial Relations and Workforce Strategy  
 Chief Minister, Treasury and Economic Development Directorate | ACT Government  
 GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

*Please note: I work part time Monday – Thursday.*

**From:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>  
**Sent:** 16/10/2024 6:49 PM  
**To:** Sch 2.2(a)(ii) @act.gov.au; 'Sch 2.2(a)(ii) @act.gov.au'  
**Cc:** "Leigh, Kathy" <Kathy.Leigh@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>  
**Subject:** Termination payments to staff of Members of the Legislative Assembly  
**Attachments:** Sch 1 1.2

**OFFICIAL: Sensitive - Legal Privilege**

Dear Sch 2.2(a)(ii)

Thank you for our earlier telephone conversations, Sch 2.2(a)(ii). I understand and appreciate that this issue will cause concern for affected staff. We have considered the issue from a range of angles and explored a variety of possibilities, including actions that could be taken at this point to change the nature of the payments. Unfortunately and as discussed, the conclusion is that the cessation of employment when the relevant Member or office holder ceases to hold office, is properly characterised as a termination, rather than a redundancy. A summary of the legal position is attached for your reference. This reflects the external taxation advice previously obtained by the Office of the Legislative Assembly.

For your information, to ensure we had considered all aspects of the matter, we have explored:

- Whether the legal position is altered by the *Fair Work Act 2009* (Cth) (**Fair Work Act**) or the National Employment Standards.  
The view is that it is not. Section 119 of the Fair Work Act establishes an employee's entitlement to redundancy pay if the employee's employment is terminated at the employer's initiative. In the present circumstances, the termination of the employment for staff of the members of the Legislative Assembly does not occur "at the employer's initiative"; rather, the employment terminates by operation of law.
- The relevance of longstanding and accepted "custom and practise" in determining the appropriate approach to the characterisation of payments to staff employed under the LAMS Act.  
We have found that those factors do not directly affect the proper characterisation of the payments at law.
- Whether there is any employment or other administrative action that may be taken by the Territory, or the Chief Minister, in respect to the staff members of Office Holders (Ministers) prior to or after the end of employment that would change the nature of payment to a redundancy payment.  
We have not found any avenues available to the Territory or Chief Minister which would allow the payment to staff on termination to be characterised as redundancy payments. The employment of staff ceases as an operation of law, being the operation of the LAMS Act and the *Australian Capital Territory (Self-Government) Act 1988* (Cth). In these circumstances, the *Income Tax Assessment Act 1997* (Cth) characterises these payments as eligible termination payments and not redundancies.
- Whether the power of the Chief Minister to approve an arrangement to employ staff under s 5(3) of the LAMS Act or to issue a direction as to the continuation of employment under section 8(6) of the LAMS Act may provide an avenue for the Chief Minister to change the nature of the employment.  
We have found that the scope of those powers is limited to the functions that are their subject matter, namely the arrangements for employment and continuation of employment only. Any other purpose would be beyond the scope of the legislative authority that must be exercised consistently with the provisions of the LAMS Act. It would not be open to the Chief Minister to seek to use a disallowable instrument to alter the legal characterisation of the termination as set out in the various Acts or the nature of the payment to be made on that termination as prescribed by Commonwealth law.

Appreciating the communication provided to affected staff to date, we have considered the process for staff who may have suffered detriment by reliance on the estimates and advice by the Territory to seek

compensation, including through an Act of Grace type scheme. Act of grace payments under section 130 of the *Financial Management Act 1996* (ACT) are decided by the Treasurer who has discretion to authorise payment. Noting that as a general proposition, there must be a meaningful prospect that the Territory will be legally liable before payment can be made; each request for an act of grace payment (as a form of discretionary financial assistance) is considered on its individual merits, and once decided, does not establish a precedent for other requests (refer [Act of Grace Policy and Procedures Guide](#)).

As the position at law is now clear, and subject to your views on best timing, we intend to provide an update to the affected staff. I understand you are comfortable for this communication to be sent tomorrow. I am also working with Payroll to facilitate recalculations, noting that this will be a revised estimate – I will keep you updated on timing for this. We are establishing a process to assist those who require further information in relation to their circumstances with an appropriate contact to assist those affected.

Separately, we are finalising a response to the CPSU's letter of 2 October 2024 addressed to Michael Cook and Lisa Carmody.

We are also working with the ACTGS as to future required action to ensure clarity of employment and termination arrangements for staff of the members of the Legislative Assembly.

Please don't hesitate to contact me if you wish to discuss any aspect of this.

Kind regards,  
Lisa

**Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy**  
Mobile: [Sch 2.2\(a\)\(ii\)](#) | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

**From:** Sch 2.2(a)(ii) [REDACTED]@act.gov.au  
**Sent:** 17/10/2024 8:15 AM  
**To:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; Sch 2.2(a)(ii) [REDACTED]@act.gov.au  
**Cc:** "Leigh, Kathy" <Kathy.Leigh@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>  
**Subject:** Re: Termination payments to staff of Members of the Legislative Assembly  
**Attachments:** original-048AC3D0-5EBF-4FC7-B008-5D8B6A9CD677.jpeg

OFFICIAL: Sensitive - Legal Privilege

Hi Lisa,

Thanks for providing this and ensuring this is communicated sensitively to effected staff given the significant stress people are under at this time.

I have a further question on the tax treatment if ETP -

Can you please confirm that the taxation treatment will still include concessional taxation (32%) up to the relevant ETP or whole or income cap as detailed in attached image. (Rather than the whole ETP and accrued leave being taxed at marginal rate)

(<https://www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-your-job/employment-termination-payments-for-employees/how-etp-components-are-taxed>)

Kind regards,

Matt

Get [Outlook for iOS](#)

**From:** Carmody, Lisa

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# Concessional rates and caps

Binder 1 Part 7.5

The concessional tax rate is:

- 17% if you reach your [preservation age](#)
- 32% if you have not reached preservation age, up to the relevant cap.

Amounts above the caps are taxed at the top marginal rate of 47% (45% plus Medicare levy of 2%) – see [Table A: Withholding rates for ETPs](#).

The [ETP cap amount](#) for the 2023–24 income year is \$235,000. This amount is indexed annually.

The [whole-of-income cap](#) is \$180,000, this amount is not indexed. This cap is reduced by any other taxable income payments you receive in the income year.

**From:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Sent:** 17/10/2024 8:24 AM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>  
**Subject:** Fw: Minister Gentleman's office- Termination estimates  
**Attachments:** Payroll Guide- Termination payment LAMS Staff.pdf

**OFFICIAL: Sensitive - Personal Privacy**

Note the attached guide that I believe is sent to each person by Tracy Henry. It contains eligibility requirements and also has quite a disclaimer in red regarding tax treatment.

Get [Outlook for iOS](#)

**From:** Khem, Deepika

**Sent:** Thursday, October 17, 2024 8:21 AM

**To:** Bolton, Martin

**Subject:** FW: Minister Gentleman's office- Termination estimates

**OFFICIAL: Sensitive - Personal Privacy**

Hi Martin

Here is an example of how we had sent the estimates to Tracey to distribute.

Thanks

Dee

Sch 2 s 2.2(a)(ii)

**From:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>  
**Sent:** 17/10/2024 10:13 AM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>  
**Cc:** "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>  
**Subject:** RE: Next Steps with LAMS - Comms to Affected Staff  
**Attachments:** Draft comms LAMS.docx

**OFFICIAL: Sensitive**

Comments and suggestions marked up can I see an update please once reviewed?

Could I also have info on which staff OLA are responsible for and which we are? I have heard cab min staff, min staff etc I just want to be really clea.

**Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy**  
 Mobile: [Sch 2.2\(a\)\(ii\)](#) | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

---

**From:** Mirzabegian, Sanaz  
**Sent:** Thursday, 17 October 2024 9:45 AM  
**To:** Bolton, Martin ; Wright, Steven ; Carmody, Lisa  
**Subject:** Next Steps with LAMS - Comms to Affected Staff  
**Importance:** High

**OFFICIAL: Sensitive**

Hi Lisa, While we prepare the list etc, here is the proposed staff comms, prepared in consultation with Steven and Martin:

### **Proposed Comms**

Good **Morning**

We have an update on the information previously provided to the staff of the Executive Members of the Legislative Assembly (Executive Staff) in relation to the estimates on termination of employment.

We note that the exit payment estimates provided to the Executive Staff were based on a redundancy. We have been advised that an exit payment is appropriately characterised as an Eligible Termination Payment (ETP) rather than a redundancy and should be calculated as such. An ETP is based on salary as at termination and is taxed at a higher rate (X%) than a redundancy payment (X%). ETP is not available if a person is immediately re-employed under the LAMS Act.

The above position aligns the treatment of exit payments for Executive Staff with all other Members of the Legislative Assembly staff.

We appreciate that you may have questions in relation to this, and we are here to support you in this regard, including to provide new estimates, if required urgently.

If you have any questions, please email [\[CMTEED Corporate mail box\]](#) , and the team will coordinate a response based on your question.

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate| ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**

---

**From:** Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>  
**Sent:** Thursday, 17 October 2024 8:59 AM  
**To:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>; Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Cc:** CMTEDD, DDGOIRWS <[DDGOIRWS@act.gov.au](mailto:DDGOIRWS@act.gov.au)>  
**Subject:** Revised estimates  
**Importance:** High

OFFICIAL: Sensitive

Morning both

I am in the office but online with the Public Service Commissioners conference over the next two days. However I am very focused on how we are managing the next steps in relation to implementation of the consequences of the legal advice recently received.

We need comms to go out this morning – could I please see revised comms to review and note it should include a reference to revising estimate calculations and a contact person in Steven Wright’s area (or Steven if appropriate) to assist people with concerns.

We need a plan for the revised estimate calculations – how long will it take, how long does it take for each roughly, how many do we have, how many additional people will we need to assist with it. How quickly can we have the revised estimates prepared? If we need to draw on people from across OIRWS or outside I am happy to help to facilitate this. Perhaps CFO could assist with resources?

I would like to see and have compiled a list of affected individuals and within that, we should include details like quantum of original estimate, tenure, anything else relevant so we have a sense of which individuals may be most impacted because they were expecting a significant payment which will now likely be reduced. Is that possible?

I will ask Lisa to book two check ins for us today using my breaks in conference but will step out if needed.

Thanks  
Lisa

**Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy**  
Mobile: [Sch 2 s 2.2\(a\)\(ii\)](#) | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au) \_  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**  
Level 5, 220 London Circuit Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

Good Morning

We ~~have an update on the information~~ previously provided an estimate [insert formal name] to the staff of the Executive Members of the Legislative Assembly (Executive Staff) in relation to the estimates on termination of employment.

~~We note that These the exit payment~~ estimates provided to the Executive Staff were based on the treatment of the exit payment as a redundancy. We have recently been advised that ~~an the~~ exit payment is appropriately characterised as an Eligible Termination Payment (ETP) rather than a redundancy ~~and should be calculated as such. This will have taxation implications because a redundancy payment is taxed at a lower rate. Unfortunately this means that net payments will be impacted.~~ An ETP is based on salary as at termination and is taxed at a higher rate (X%) than a redundancy payment (X%). ETP is not available if a person is immediately re-employed under the LAMS Act.

The above position aligns the treatment of exit payments for Executive Staff with ~~all~~ other Members of the Legislative Assembly staff.

We ~~appreciate understand~~ that you may have questions in relation to this, and we are here to support you in this regard, including to provide new estimates, ~~if required urgently to you as soon as practicable.~~

If you have ~~any~~ questions, please email [CMTEED Corporate mail box], and the team will coordinate a response based on your question.

We appreciate this may be upsetting for those of you who have made arrangements based on the earlier estimate and we are here to support you but please also be aware that [insert something re EAP here]

**Commented [LC1]:** Can we say something other than 'higher' rate my understanding is it is taxed at their usual tax rate based on the each individuals circumstances - ie it is higher than the rate for redundancy but not higher than their usual rate is it? What about marginal rate or similar?

**Commented [LC2]:** Is this new and unique to ETP - ie redundancy also has exclusion periods doesn't it?

**Commented [LC3]:** I think we need something more personal - people may be uncertain about reaching out to a positional mailbox - if it is positional can it be a new one targeted to this?

**From:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Sent:** 17/10/2024 10:40 AM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>  
**Subject:** RE: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

In Green is the current words, I propose the ones below it.

An ETP is based on salary as at termination and is taxed at a higher rate (X%) than a redundancy payment (X%).

An ETP is based on salary at termination and is taxed differently to a redundancy payment. Each individuals circumstances will differ, however it is likely that tax on the overall ETP will be higher.

Martin Bolton | Executive Branch Manager | Payroll and HR Systems  
Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)  
**Shared Services** | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government  
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

---

**From:** Mirzabegian, Sanaz  
**Sent:** Thursday, 17 October 2024 10:26 AM  
**To:** Wright, Steven ; Bolton, Martin  
**Subject:** FW: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

Hi most recent draft from Lisa

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate| ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**

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Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

# Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

**From:** "Mison, Matt" <Matt.Mison@act.gov.au>  
**Sent:** 17/10/2024 10:42 AM  
**To:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; "Cook, Michael" <Michael.Cook@act.gov.au>  
**Cc:** "Leigh, Kathy" <Kathy.Leigh@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Apologies Lisa,

A further question on the advice summary – the last paragraph “However, it may be affected by the entitlement to recognition of prior employment under the *Public Sector Management Act 1994* and *Public Sector Management Standards 2016* pursuant to sections 6(2) and 11(2) of the LAMS Act depending on the circumstances.”

Appears to indicate that staff who have had continuous employment carry over from the ACTPS (and have resigned from their positions) may have the recognition of prior service counted for termination – this is also new and significant information (and would assist in the scenario where people have resigned from the service). Is that the case?

Kind regards,

Matt

---

**From:** Carmody, Lisa  
**Sent:** Thursday, 17 October 2024 9:28 AM  
**To:** Mison, Matt ; Cook, Michael  
**Cc:** Leigh, Kathy ; Mirzabegian, Sanaz ; Wright, Steven  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Thanks Matt – we’ll come back to you.

Lisa

**Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy**  
Mobile: [Sch 2.2\(a\)\(ii\)](#) | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

---

**From:** Mison, Matt <Matt.Mison@act.gov.au>  
**Sent:** Thursday, 17 October 2024 8:16 AM  
**To:** Carmody, Lisa <Lisa.Carmody@act.gov.au>; Cook, Michael <Michael.Cook@act.gov.au>  
**Cc:** Leigh, Kathy <Kathy.Leigh@act.gov.au>; Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>; Wright, Steven <Steven.Wright@act.gov.au>  
**Subject:** Re: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Hi Lisa,

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**From:** "Wright, Steven" <Steven.Wright@act.gov.au>  
**Sent:** 17/10/2024 11:22 AM  
**To:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Cc:** "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>  
**Subject:** FW: Next Steps with LAMS - Comms to Affected Staff  
**Attachments:** Draft comms LAMS.docx

OFFICIAL: Sensitive

Hi Lisa, Sanaz

I've updated the proposed comms (see page 1, attached) and run past Martin. Sch 2.2(a)(ii) has indicated mid-next week is ok for estimates, so have reflected this in the update.

For final review/clearance please and I will have the team issue it (we can also run past Sch 2.2(a)(ii)).

Steven

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**Updated Proposed Comms (Cleared by Steven and Martin)**

Good Morning

Pay estimates for final entitlements were circulated to staff of the Executive Members of the Legislative Assembly (Executive Staff) in late September and early October this year. I am writing to provide you with an important update on these estimates and calculation of final entitlements.

The key changes to the estimates, reflecting updated taxation and legal advice are:

- Termination Payments under B7 of the LAMS EA must be taxed as a termination payment, which, subject to an individual's circumstances, may result in a higher amount of tax withheld in accordance with the *Income Tax Assessment Act (ITAA) 1997*.

The previous estimate incorrectly treated the termination payment as a genuine redundancy payment, which is not permitted under the ITAA. Further information on the taxation requirements can be found here: <https://www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-your-job/employment-termination-payments-for-employees>

- The calculation of termination payments is based on an employee's salary (including whether the employee is part-time or full-time) at the time their employment terminates.
- For the purposes of calculating termination payments, part time service does not prorate the number of weeks (two weeks per year of service) an employee is entitled to. The estimate applied an averaging methodology that affected periods of part-time service which is not applicable in these circumstances.

These updates align the treatment of termination payments for all staff of Members of the Legislative Assembly.

We understand these changes are important to you and Payroll has prioritised getting updated estimates to all staff. Due to the complexity and volume of these estimates, we anticipate the revised estimates will be made available mid-next week. As always, the estimates will provide you with an indicate of the expected final entitlements, but may change due to date of final cessation, leave taken and other factors.

We appreciate that you may have questions in relation to this, and we are here to support you in this regard. If you have any questions, please email [executivesupport@act.gov.au](mailto:executivesupport@act.gov.au), and the team will coordinate a response based on your question.

**Commented [SW1]:** Matt Mison has confirmed with Tracey that he is comfortable with all estimates going as a job-lot mid next week (Wednesday).

Sch 1 s 1.2

Sch 1 s 1.2

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**From:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Sent:** 17/10/2024 1:33 PM  
**To:** "Khem, Deepika" <Deepika.Khem@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Cc:** "Palic, Richard" <Richard.Palic@act.gov.au>; "Mullavey, Malcolm" <Malcolm.Mullavey@act.gov.au>  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Hi Sanaz,

As discussed the Redundancy calculation tax rates apply as below

Annual leave and LSL is taxed at a flat rate of 32% where as in an ETP payment it is taxed marginally.

Secondly the Severance component on the redundancy estimate is calculated as follows:

The tax on that for a pure redundancy is as follows.

\$12,524 base tax free

\$6,264 for each completed year

For example 9 years' service would be \$68900 tax free

The remaining amount above that would be taxed at 32%.

The severance is not a flat 32% tax – you do need to consider how long the employee has worked for and apply the above calculation to it.

Martin Bolton | Executive Branch Manager | Payroll and HR Systems

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government

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---

**From:** Khem, Deepika  
**Sent:** Thursday, 17 October 2024 10:03 AM  
**To:** Mirzabegian, Sanaz  
**Cc:** Bolton, Martin ; Palic, Richard ; Mullavey, Malcolm  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Good morning Sanaz,

The Employee Termination Payment (ETP) uses the Whole of Income Cap tax calculation. The Whole of Income cap for the current financial year is \$180,000. Any earnings earned during the financial year, plus any leave and salary in the final pay reduces this "Whole of Income" cap, to calculate which portion of the ETP is to be calculated at the lower taxation rate (32% for staff under the preserved benefit age and 17% for those over the preservation age) and which portion is taxed at 47%.

[Working out the whole-of-income cap amount | Australian Taxation Office \(ato.gov.au\)](https://ato.gov.au/Working-out-the-whole-of-income-cap-amount)

The tax on Leave (Annual leave + Long Service leave) is calculated based on Marginal tax rates and not included in the above. This is where we compare tax on normal fortnightly earnings to the employee's normal fortnightly earnings plus 1/26th of the leave to be paid out. The difference in tax will be the tax on leave to be paid out.

Please note that the tax calculations will vary every fortnight, due to the variation in year to date earnings.

I hope this helps, happy to discuss over Teams if you require further clarification.

Kind regards,

Dee

**Deepika Khemchandani** | Director | Payroll Services  
Phone: +61 620 55294  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and Economic Development Directorate | ACT Government  
GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

*Please note: I work part time Monday – Thursday.*

---

**From:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Sent:** Thursday, 17 October 2024 8:59 AM  
**To:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>  
**Cc:** Wright, Steven <[Steven.Wright@act.gov.au](mailto:Steven.Wright@act.gov.au)>; Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>; Khem, Deepika <[Deepika.Khem@act.gov.au](mailto:Deepika.Khem@act.gov.au)>  
**Subject:** Re: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi there we are formulating an answer, in short it depends as all income is taken into account towards the cap, YTD, pay out of leave and the severance.

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---

**From:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>  
**Sent:** Thursday, October 17, 2024 8:26 AM  
**To:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Cc:** Wright, Steven <[Steven.Wright@act.gov.au](mailto:Steven.Wright@act.gov.au)>; Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Martin,

Could you please confirm the amount by responding to my email not to [Sch 2.2\(a\)\(ii\)](#) email?

The other issue for us is of course the extent to which it is appropriate for us to provide tax advice to employees beyond sharing the facts as to what we are doing.

**Kind Regards**

Sanaz (she/her)

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals**

**Public Sector Employment**

**Office of Industrial Relations and Workforce Strategy**

**Chief Minister, Treasury and economic Development Directorate| ACT Government**

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# Sch 1 1.2

**From:** "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>  
**Sent:** 17/10/2024 3:22 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Cc:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Taylor, Nina" <Nina.Taylor@act.gov.au>  
**Subject:** FW: Termination payments to staff of Members of the Legislative Assembly  
**Attachments:** Payroll Guide- Termination payment LAMS Staff.pdf

OFFICIAL: Sensitive - Legal Privilege

Hi Sanaz

Please see the attached payroll guide on termination payments for LAMS staff.

Emma

---

**From:** Bolton, Martin  
**Sent:** Thursday, 17 October 2024 3:10 PM  
**To:** Matthews, EmmaC ; Taylor, Nina ; Szandurski, Kim  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

see attached, if I read correctly we state very clearly that its not included.

Martin Bolton | Executive Branch Manager | Payroll and HR Systems  
Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)  
**Shared Services** | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government  
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

---

**From:** Matthews, EmmaC <[EmmaC.Matthews@act.gov.au](mailto:EmmaC.Matthews@act.gov.au)>  
**Sent:** Thursday, 17 October 2024 3:06 PM  
**To:** Taylor, Nina <[Nina.Taylor@act.gov.au](mailto:Nina.Taylor@act.gov.au)>; Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>  
**Cc:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Subject:** FW: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Nina and Kim

Are you aware of any advice we may have historically provided about prior service and how it relates to staff in LAMS arrangements?

Emma

---

**From:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>  
**Sent:** Thursday, 17 October 2024 2:46 PM  
**To:** Matthews, EmmaC <[EmmaC.Matthews@act.gov.au](mailto:EmmaC.Matthews@act.gov.au)>; Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Subject:** FW: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Emma and Martin, Can you please have a look at the advice to see if anything else has been said?

Kind Regards

Sanaz (she/her)

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals**

**Public Sector Employment**

**Office of Industrial Relations and Workforce Strategy**

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**From:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Sent:** 17/10/2024 3:50 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Subject:** RE: Next Steps with LAMS - Comms to Affected Staff  
**Attachments:** 001. Master list\_ RECALULATIONS of LAMS Estimates.xlsx

OFFICIAL: Sensitive

update

- four dedicated staff working on the estimates
- four available for the quality assurance step or checking as we call it
- Some of the team will work overtime and over the weekend
- The folders and individual templates have been prepared to enable keying in of figures.
- One of the team created a report and tax template that has allowed some manual steps to be eliminated.
- The team have commence calculations
- Checking of the calculations will commence after pay cut off for the fortnight at 10am Friday
- A spreadsheet has been prepared to track progress, we will update and find a shared drive that can be accessed by all to track progress

Thanks

Martin

**Martin Bolton | Executive Branch Manager | Payroll and HR Systems**

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

**Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government**

Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

---

**From:** Carmody, Lisa  
**Sent:** Thursday, 17 October 2024 12:53 PM  
**To:** Bolton, Martin ; Wright, Steven ; Mirzabegian, Sanaz  
**Cc:** CMTEDD, DDGOIRWS  
**Subject:** Re: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

Thanks I would like to be able to update Kathy later today with an indication of how many in the team are working on this and how many of these are working overtime to accelerate revised calcs

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---

**From:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Sent:** Thursday, October 17, 2024 11:48:38 AM  
**To:** Wright, Steven <[Steven.Wright@act.gov.au](mailto:Steven.Wright@act.gov.au)>; Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>; Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>  
**Cc:** CMTEDD, DDGOIRWS <[DDGOIRWS@act.gov.au](mailto:DDGOIRWS@act.gov.au)>  
**Subject:** RE: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

We should have all complete by mid next week. There are about 63 calculations to be recalculated, they take on average about hours. NCH have kindly lent us a former payroll operative to help and we will bring one of our salary packaging staff with experience in this space back after cut of at 10 am tomorrow. We will more than likely have people working weekends and overtime.

**Martin Bolton** | Executive Branch Manager | Payroll and HR Systems

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

**Shared Services** | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government

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Surname	First Name	AGS	OFFICE	ELIGIBLE FOR TERM PAYMENT
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Sch 2 s 2.2(a)(ii)

Argv	Nicholas	8683620	CHEYNE	Yes
------	----------	---------	--------	-----

Sch 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)



**From:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>  
**Sent:** 17/10/2024 3:53 PM  
**To:** "Leigh, Kathy" <Kathy.Leigh@act.gov.au>; "Power, Leanne" <Leanne.Power@act.gov.au>  
**Cc:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>  
**Subject:** FW: Important update on pay estimates for final entitlements

**OFFICIAL: Sensitive**

Kathy  
For visibility, comms now sent via email.  
Thanks  
Lisa

**Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy**  
Mobile: Sch 2.2(a)(ii) | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

---

**From:** Irvine, Lisa **On Behalf Of** Carmody, Lisa  
**Sent:** Thursday, 17 October 2024 3:43 PM  
**Subject:** Important update on pay estimates for final entitlements

**OFFICIAL: Sensitive**

Good Afternoon

During August and September this year, pay estimates for final entitlements were circulated to the staff of the Executive Members of the Legislative Assembly (Executive Staff).

We are writing to provide you with an important update on these estimates and the calculation of final entitlements. This position reflects recent independent advice.

The key changes to the estimates are as follows:

- Termination Payments under B7 of the LAMS EA must be taxed as a termination payment, which, subject to an individual's circumstances, may result in a higher amount of tax withheld in accordance with the *Income Tax Assessment Act (ITAA) 1997*. The previous estimate incorrectly treated the termination payment as a redundancy payment, which is not permitted under the ITAA. Further information on the taxation requirements can be found here: <https://www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-your-job/employment-termination-payments-for-employees>
- The calculation of termination payments is based on an employee's salary (including whether the employee is part-time or full-time) at the time their employment terminates.
- The previous estimate applied an averaging methodology that affected periods of part-time service which is not applicable in these circumstances.

These updates align the way your estimates are calculated with all other staff of Members of the Legislative Assembly.

We understand these changes are important to you and Payroll has prioritised preparing and providing updated estimates to all staff. Due to the complexity and volume of these estimates, we anticipate that they will be made available to Executive Staff mid-next week. As always, the estimates will provide you with an indication of the expected final entitlements, but may change due to date of final cessation, leave taken and other factors.

We appreciate that the above advice might be concerning and we apologise for the incorrect information previously provided. We understand that you may have questions about this information, and we are here to support you in this regard.

We have established [LAMSLiaison@act.gov.au](mailto:LAMSLiaison@act.gov.au) as a dedicated mailbox to receive your queries. The mailbox will be live shortly, and we will send you an email to advise you of that. Alternatively, please telephone Emma Matthews, Executive Branch Manager, Public Service Employment on [Sch 2 s 2.2\(a\)\(ii\)](#).

In addition, we are mindful that the uncertainty at this time may cause concern, and remind you that the EAP is available to support you and family members. Information on how to access the EAP can be found on the [Executive Portal](#) – under Popular resources.

Kind regards,  
Lisa

**Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy**  
Mobile: [Sch 2 s 2.2\(a\)\(ii\)](#) | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

**From:** "Bolton, Martin" <Martin.Bolton@act.gov.au>  
**Sent:** 17/10/2024 4:24 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Prowse, Fay" <Fay.Prowse@act.gov.au>; "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>  
**Subject:** RE: Important update on pay estimates for final entitlements

OFFICIAL: Sensitive

Sch 2.2(a)(ii)

These are the people in the office he is from and I checked the email list and they are on the list.

Is the response something like this?

The information relates to all estimates sent to Executive Members of the Legislative Assembly (Executive Staff). We have checked the list and can confirm that the members that received an estimate have also been sent the email you received. Only staff eligible for a termination payment were sent estimates.

Martin Bolton | Executive Branch Manager | Payroll and HR Systems  
Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)  
**Shared Services** | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government  
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

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**From:** Carmody, Lisa  
**Sent:** Thursday, 17 October 2024 4:14 PM  
**To:** Mirzabegian, Sanaz ; Prowse, Fay ; Bolton, Martin ; Matthews, EmmaC  
**Subject:** FW: Important update on pay estimates for final entitlements

OFFICIAL: Sensitive

For advice please.

**Lisa Carmody** | Deputy Director-General, Office of Industrial Relations and Workforce Strategy  
Mobile: Sch 2.2(a)(ii) | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

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**From:** Sch 2.2(a)(ii) >  
**Sent:** Thursday, 17 October 2024 4:12 PM  
**To:** Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>; Irvine, Lisa <[Lisa.Irvine@act.gov.au](mailto:Lisa.Irvine@act.gov.au)>  
**Subject:** RE: Important update on pay estimates for final entitlements

OFFICIAL: Sensitive

Good afternoon Lisa,

This is concerning news to hear such a long time after these payment estimates were distributed. A number of staff in my team have indicated they have not received this email. Can you please confirm whether this is an isolated issue affecting certain staff or something broader?

Regards,

# Sch 2.2(a)(ii)

**From:** Irvine, Lisa <[Lisa.Irvine@act.gov.au](mailto:Lisa.Irvine@act.gov.au)> **On Behalf Of** Carmody, Lisa  
**Sent:** Thursday, October 17, 2024 3:43 PM  
**Subject:** Important update on pay estimates for final entitlements

OFFICIAL: Sensitive

Good Afternoon

During August and September this year, pay estimates for final entitlements were circulated to the staff of the Executive Members of the Legislative Assembly (Executive Staff).

We are writing to provide you with an important update on these estimates and the calculation of final entitlements. This position reflects recent independent advice.

The key changes to the estimates are as follows:

- Termination Payments under B7 of the LAMS EA must be taxed as a termination payment, which, subject to an individual's circumstances, may result in a higher amount of tax withheld in accordance with the *Income Tax Assessment Act (ITAA) 1997*. The previous estimate incorrectly treated the termination payment as a redundancy payment, which is not permitted under the ITAA. Further information on the taxation requirements can be found here: <https://www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-your-job/employment-termination-payments-for-employees>
- The calculation of termination payments is based on an employee's salary (including whether the employee is part-time or full-time) at the time their employment terminates.
- The previous estimate applied an averaging methodology that affected periods of part-time service which is not applicable in these circumstances.

These updates align the way your estimates are calculated with all other staff of Members of the Legislative Assembly.

We understand these changes are important to you and Payroll has prioritised preparing and providing updated estimates to all staff. Due to the complexity and volume of these estimates, we anticipate that they will be made available to Executive Staff mid-next week. As always, the estimates will provide you with an indication of the expected final entitlements, but may change due to date of final cessation, leave taken and other factors.

We appreciate that the above advice might be concerning and we apologise for the incorrect information previously provided. We understand that you may have questions about this information, and we are here to support you in this regard.

We have established [LAMSLiaison@act.gov.au](mailto:LAMSLiaison@act.gov.au) as a dedicated mailbox to receive your queries. The mailbox will be live shortly, and we will send you an email to advise you of that. Alternatively, please telephone Emma Matthews, Executive Branch Manager, Public Service Employment on [Sch 2 s 2.2\(a\)\(ii\)](#).

In addition, we are mindful that the uncertainty at this time may cause concern, and remind you that the EAP is available to support you and family members. Information on how to access the EAP can be found on the [Executive Portal](#) – under Popular resources.

Kind regards,  
Lisa

**Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy**  
Mobile: [Sch 2 s 2.2\(a\)\(ii\)](#) | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

**From:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>  
**Sent:** 17/10/2024 4:28 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Cc:** "Prowse, Fay" <Fay.Prowse@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>  
**Subject:** RE: Important update on pay estimates for final entitlements

**OFFICIAL: Sensitive**

Thanks only a small change to read no other staff are affected

**Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy**  
Mobile: [Sch 2.2\(a\)\(ii\)](#) | Email: [Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**

---

**From:** Mirzabegian, Sanaz  
**Sent:** Thursday, 17 October 2024 4:28 PM  
**To:** Carmody, Lisa  
**Cc:** Prowse, Fay ; Bolton, Martin ; Matthews, EmmaC  
**Subject:** RE: Important update on pay estimates for final entitlements

**OFFICIAL: Sensitive**

Hi Lisa, proposed response. Emma or me are happy to send.

Dear [Sch 2.2\(a\)\(ii\)](#)

Thank you for your email. The information in the email applies only to the staff of the **Executive Members** of the Legislative Assembly (Executive Staff). No other staff is affected.  
If any Executive Staff has not received the email, please provide their names to me and we will correct that immediately.

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals**  
**Public Sector Employment**  
**Office of Industrial Relations and Workforce Strategy**  
**Chief Minister, Treasury and economic Development Directorate | ACT Government**  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

**Duplicate**

# Duplicate

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**From:** "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>  
**Sent:** 17/10/2024 6:29 PM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Cc:** "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Taylor, Nina" <Nina.Taylor@act.gov.au>  
**Subject:** Re: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Will do.

Emma Matthews  
Executive Branch Manager, Workforce Governance & Recruitment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and Economic Development Directorate  
Telephone: [Sch 2.2\(a\)\(ii\)](#)  
Email: EmmaC.Matthews@act.gov.au

**From:** Mirzabegian, Sanaz  
**Sent:** Thursday, October 17, 2024 6:28:06 PM  
**To:** Matthews, EmmaC  
**Cc:** Szandurski, Kim ; Taylor, Nina  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

No, all good – happy to for you to prepare a more fulsome response (but not by reference to guidance – as we have not checked whether it is still authoritative). I'll then review, clear and we can send through you.

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment  
Office of Industrial Relations and Workforce Strategy  
Chief Minister, Treasury and economic Development Directorate| ACT Government  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)**

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**From:** Matthews, EmmaC  
**Sent:** Thursday, 17 October 2024 6:23 PM  
**To:** Mirzabegian, Sanaz  
**Cc:** Szandurski, Kim ; Taylor, Nina  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Hi Sanaz

As Martin has outlined, the guidance states clearly that the prior service is not included.

Please let me know if you would like to discuss.

Emma

---

**From:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>  
**Sent:** Thursday, 17 October 2024 6:01 PM  
**To:** Matthews, EmmaC <[EmmaC.Matthews@act.gov.au](mailto:EmmaC.Matthews@act.gov.au)>  
**Cc:** Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>; Taylor, Nina <[Nina.Taylor@act.gov.au](mailto:Nina.Taylor@act.gov.au)>  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

**OFFICIAL: Sensitive - Legal Privilege**

Thanks Emma. [Sch 1 1.2](#)

I thought the recent advice said prior service was not counted. Can you please check so we are 100% sure?

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals  
Public Sector Employment**

**Office of Industrial Relations and Workforce Strategy**  
**Chief Minister, Treasury and economic Development Directorate| ACT Government**  
220 London Cct | GPO Box 158 Canberra City ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

---

**From:** Matthews, EmmaC <[EmmaC.Matthews@act.gov.au](mailto:EmmaC.Matthews@act.gov.au)>  
**Sent:** Thursday, 17 October 2024 3:23 PM  
**To:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>  
**Cc:** Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>; Taylor, Nina <[Nina.Taylor@act.gov.au](mailto:Nina.Taylor@act.gov.au)>  
**Subject:** FW: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Sanaz

Please see the attached payroll guide on termination payments for LAMS staff.

Emma

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**From:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Sent:** Thursday, 17 October 2024 3:10 PM  
**To:** Matthews, EmmaC <[EmmaC.Matthews@act.gov.au](mailto:EmmaC.Matthews@act.gov.au)>; Taylor, Nina <[Nina.Taylor@act.gov.au](mailto:Nina.Taylor@act.gov.au)>; Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

see attached, if I read correctly we state very clearly that its not included.

Martin Bolton | Executive Branch Manager | Payroll and HR Systems

Phone: 620 58700 | Email: [Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)

**Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government**

Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | [act.gov.au](http://act.gov.au)

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**From:** Matthews, EmmaC <[EmmaC.Matthews@act.gov.au](mailto:EmmaC.Matthews@act.gov.au)>  
**Sent:** Thursday, 17 October 2024 3:06 PM  
**To:** Taylor, Nina <[Nina.Taylor@act.gov.au](mailto:Nina.Taylor@act.gov.au)>; Szandurski, Kim <[Kim.Szandurski@act.gov.au](mailto:Kim.Szandurski@act.gov.au)>  
**Cc:** Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Subject:** FW: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Nina and Kim

Are you aware of any advice we may have historically provided about prior service and how it relates to staff in LAMS arrangements?

Emma

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**From:** Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>  
**Sent:** Thursday, 17 October 2024 2:46 PM  
**To:** Matthews, EmmaC <[EmmaC.Matthews@act.gov.au](mailto:EmmaC.Matthews@act.gov.au)>; Bolton, Martin <[Martin.Bolton@act.gov.au](mailto:Martin.Bolton@act.gov.au)>  
**Subject:** FW: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Emma and Martin, Can you please have a look at the advice to see if anything else has been said?

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals**

**Public Sector Employment**

**Office of Industrial Relations and Workforce Strategy**

**Chief Minister, Treasury and economic Development Directorate| ACT Government**

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**From:** Mison, Matt <[Matt.Mison@act.gov.au](mailto:Matt.Mison@act.gov.au)>  
**Sent:** Thursday, 17 October 2024 10:43 AM  
**To:** Carmody, Lisa <[Lisa.Carmody@act.gov.au](mailto:Lisa.Carmody@act.gov.au)>; Cook, Michael <[Michael.Cook@act.gov.au](mailto:Michael.Cook@act.gov.au)>  
**Cc:** Leigh, Kathy <[Kathy.Leigh@act.gov.au](mailto:Kathy.Leigh@act.gov.au)>; Mirzabegian, Sanaz <[Sanaz.Mirzabegian@act.gov.au](mailto:Sanaz.Mirzabegian@act.gov.au)>; Wright, Steven <[Steven.Wright@act.gov.au](mailto:Steven.Wright@act.gov.au)>  
**Subject:** RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Apologies Lisa,

Duplicate

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**From:** "Mirzabegian, Sanaz"  
**Sent:** 18/10/2024 8:20 AM  
**To:** "Carmody, Lisa" <Lisa.Carmody@act.gov.au>  
**Cc:** "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Prowse, Fay" <Fay.Prowse@act.gov.au>  
**Subject:** Update on LAMS Update  
**Attachments:** LAMS Staff - entitlement to redundancy pay, Advice - Application of s 333E of the FW Act to engagement of staff under the LAMS Act, RE: Urgent request for legal advice--s 333E Fair Work Act, LAMS Act

Now with a minor adjustment to reflect **Emma's engagement with LAMS**.

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals**  
**Public Sector Employment**  
**Office of Industrial Relations and Workforce Strategy**  
**Chief Minister, Treasury and economic Development Directorate | ACT Government**  
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**From:** Mirzabegian, Sanaz  
**Sent:** Friday, 18 October 2024 8:11 AM  
**To:** Carmody, Lisa  
**Cc:** Matthews, EmmaC ; Szandurski, Kim ; Prowse, Fay  
**Subject:** LAMS Update

Good Evening Lisa,  
 Below for your first update to HoS. I have erred on the side of more at thispoint just for your visibility as it was a busy day today. We will provide a more structured email for tomorrow:

**Update As at 17 October 2024**

#### **LAMS Liaison Team convened**

A core team has been convened to work with relevant stakeholders to ensure the efficient and effective progression of a resolution to the current matter:

- DDG, OIRWS (Lead)
- EGM, Public Service Employment, OIRWS
- EBM, Workforce Governance and Recruitment, PSE, OIRWS
- EBM, Industrial Relations, PSE, OIRWS
- EGM, CMTEDD Corporate

Secretariat: Fay Prowse

Advice is sought as required from the ACTGS. Lisa Manzoney is the relevant contact in the first instance. Rachel Turner, Executive Manager, Business Support Branch, Office of the Legislative Assembly (OLA) will be consulted with and kept informed of progress, with any legal advice shared between OLA and OIRWS.

#### **Payroll**

- There are currently four dedicated staff working on the estimates and an additional four for quality assurance (checking) of the calculations
- The Team has commenced calculation and completed 15 assessments so far. Checking will commence after pay cut off for this fortnight at 10am on Friday.
- Some members of the team will work overtime, including over the weekend, with the expectation that all calculations will be complete by Tuesday night

- A spreadsheet has been prepared to track progress. This will be updated and available on a shared drive, for access by you, and limited other individuals.

## Communications

### key meetings

1. **9:56-10:07am.** Sanaz Mirzabegian, EGM, Public Sector Employment, OIRWS telephoned Rachel Turner, Executive Manager, Business Support Branch, Office of the Legislative Assembly (OLA). Ms Turner confirmed that there were approximately 60 staff of the Members of the Legislative Assembly whose pay was managed by the OLA, and whose termination payment was not previously calculated as a redundancy.
2. **1:58-2:10pm.** Sanaz Mirzabegian, Steven Wright, EGM, CMTEDD Corporate and Sch 2.2(a)(ii) CMO had a teleconference to confirm the content of the comms to affected staff. Mr Sch 2.2(a)(ii) acknowledged that his reaction had been overly strong the previous day, added that an apology statement and a referral to EAP would be appropriate for inclusion. This was agreed to and reflected in the final comms.
3. **4:30- approx. 5:12pm.** Representatives of OIRWS met with the CPSU and Exec staff. In attendance: Madeline Northam (CPSU); Brenton Higgins (CPSU ACT); Jessica Wallace (M. Gentleman's office); Jonathan Goodwin (R. Stephen-Smith's office); Jason Clark [Was not sure where he was from and I can't recall he was there all the time]; OIRWS: Lisa Carmody, Sanaz Mirzabegian; EmmaC Matthews; Kim Szandurski  
The CPSU did not agree with the position in the correspondence of 17/10/24, expressed a preference to have been included at the stage when instructions were being given to the ACTGS, queried lawyer expertise, and asked if legal advice could be shared. There appeared to be an assertion that the termination event would eventuate and that staff had acted in reliance on that. Ms Carmody noted that affected staff were the priority in the communication and that the next priority was to ensure estimates were released. She emphasised the wrap-around support provided to staff through dedicated team. Relating to the release of any legal advice, she noted that ACTGS advice had been provided to the Chief Minister (with the Minister's office receiving the legal position). She added that the release of advice was a matter for the solicitor-general.  
The parties agreed that they were not going to reach an agreement as to the legal position in that meeting.

### Key correspondence:

1. DDG, OIRWS email sent to all affected staff to advise of change, note that updated estimates would be available, offer dedicated support and EAP services. Forwarded to Rachel Turner, and Head of Service.
  - Note: Two phone calls received yesterday following the email to staff affected by the advice on termination payments. Both are being followed up with advice specific to the staff's circumstances:
    - staff member seeking to better understand how this affects her as she approaches birth leave.
    - staff member seeking to better understand how this affects her due to travel arrangements.
2. DDG, OIRWS Email sent in response to Maddy Northam CPSU's email of 2 October 2024 to address the matters covered by the CPSU

### Legal advice

Sch 1 s 1.2

# Sch 1 s 1.2

**Kind Regards**

**Sanaz (she/her)**

**Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals**

**Public Sector Employment**

**Office of Industrial Relations and Workforce Strategy**

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# Sch 1 s 1.2

# Sch 1 s 1.2

# Sch 1 s 1.2

Sch 1 s 1.2

**From:** "Prowse, Fay" <Fay.Prowse@act.gov.au>  
**Sent:** 18/10/2024 9:47 AM  
**To:** "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>  
**Subject:** LAMS Liaison Project - 17 October 2024 update  
**Attachments:** LAMS Liaison Project - October 2024 - 17 October 2024 Update.docx

**OFFICIAL**

Hi Sanaz, as requested

**Fay Prowse | Executive Officer to Russell Noud, Executive Group Manager  
Industrial Relations and Public Sector Employment**

Office of Industrial Relations and Workforce Strategy  
Phone: 02 6205 0358 | Email: [Fay.Prowse@act.gov.au](mailto:Fay.Prowse@act.gov.au);

**Chief Minister, Treasury and Economic Development Directorate (CMTEDD) | ACT  
Government**

Level 5, 220 London Circuit, Canberra City ACT 2601 | GPO Box 158 Canberra ACT 2601 |  
[www.act.gov.au](http://www.act.gov.au)

Date	LAMS Liaison Team	Payroll	Communications	Key Correspondence	Legal Advice
17/10/2024	<p>A core team has been convened to work with relevant stakeholders to ensure the efficient and effective progression of a resolution to the current matter:</p> <ul style="list-style-type: none"> <li>• DDG, OIRWS (Lead)</li> <li>• EGM, Public Service Employment, OIRWS</li> <li>• EBM, Workforce Governance and Recruitment, PSE, OIRWS</li> <li>• EBM, Industrial Relations, PSE, OIRWS</li> <li>• EGM, CMTEDD Corporate Secretariat: Fay Prowse</li> </ul> <p>Advice is sought as required from the ACTGS. Lisa Manzoney is the relevant contact in the first instance.</p> <p>Rachel Turner, Executive Manager, Business Support Branch, Office of the Legislative Assembly (OLA) will be consulted with and kept informed of progress, with any legal advice shared between OLA and OIRWS.</p>	<ul style="list-style-type: none"> <li>• There are currently four dedicated staff working on the estimates and an additional four for quality assurance (checking) of the calculations</li> <li>• The Team has commenced calculation and completed 15 assessments so far. Checking will commence after pay cut off for this fortnight at 10am on Friday.</li> <li>• Some members of the team will work overtime, including over the weekend, with the expectation that all calculations will be complete by Tuesday night</li> <li>• A spreadsheet has been prepared to track progress. This will be updated and available on a shared drive, for access by you, and limited other individuals.</li> </ul>	<p><b>Key meetings</b></p> <ol style="list-style-type: none"> <li>1. <b>9:56-10:07am.</b> Sanaz Mirzabegian, EGM, Public Sector Employment, OIRWS telephoned Rachel Turner, Executive Manager, Business Support Branch, Office of the Legislative Assembly (OLA). Ms Turner confirmed that there were approximately 60 staff of the Members of the Legislative Assembly whose pay was managed by the OLA, and whose termination payment was not previously calculated as a redundancy.</li> <li>2. <b>1:58-2:10pm.</b> Sanaz Mirzabegian, Steven Wright, EGM, CMTEDD Corporate and <b>Sch 2.2(a)(ii)</b> CMO had a teleconference to confirm the content of the comms to affected staff. <b>Sch 2.2(a)(ii)</b> acknowledged that his reaction had been overly strong the previous day, added that an apology statement and a referral to EAP would be appropriate for inclusion. This was agreed to and reflected in the final comms.</li> <li>3. <b>4:30- approx. 5:12pm.</b> Representatives of OIRWS met with the CPSU and Exec staff. In attendance: Madeline Northam (CPSU); Brenton Higgins (CPSU ACT); Jessica Wallace (M. Gentleman's office); Jonathan Goodwin (R. Stephen-Smith's office); Jason Clark [Was not sure where he was from and I can't recall he was there all the time]; OIRWS: Lisa Carmody, Sanaz Mirzabegian; EmmaC Matthews; Kim Szandurski</li> </ol> <p>The CPSU did not agree with the position in the correspondence of 17/10/24, expressed a preference to have been included at the stage when instructions were being given to the ACTGS, queried lawyer expertise, and asked if legal advice could be shared. There appeared to be an assertion that the termination event would eventuate and that staff had acted in reliance on that. Ms Carmody noted that affected staff were the priority in the communication and that the next priority was to ensure estimates were released. She emphasised the wrap-around support provided to staff through dedicated team. Relating to the release of any legal</p>	<ol style="list-style-type: none"> <li>1. DDG, OIRWS email sent to all affected staff to advise of change, note that updated estimates would be available, offer dedicated support and EAP services. Forwarded to Rachel Turner, and Head of Service. <ul style="list-style-type: none"> <li>• Note: Two phone calls received yesterday following the email to staff affected by the advice on termination payments. Both are being followed up with advice specific to the staff's circumstances: <ul style="list-style-type: none"> <li>○ staff member seeking to better understand how this affects her as she approaches birth leave.</li> <li>○ staff member seeking to better understand how this affects her due to travel arrangements.</li> </ul> </li> </ul> </li> <li>2. DDG, OIRWS Email sent in response to Maddy Northam CPSU's email of 2 October 2024 to address the matters covered by the CPSU</li> </ol>	<h1 style="font-size: 48px; margin: 0;">Sch 1 s 1.2</h1>

Date	LAMS Liaison Team	Payroll	Communications	Key Correspondence	Legal Advice
			<p>advice, she noted that ACTGS advice had been provided to the Chief Minister (with the Minister's office receiving the legal position). She added that the release of advice was a matter for the solicitor-general.</p> <p>The parties agreed that they were not going to reach an agreement as to the legal position in that meeting.</p>		

