

# Members of Parliament Staff Act 2013 No 41

[2013-41]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# Members of Parliament Staff Act 2013 No 41



New South Wales

An Act relating to the employment of staff by members of Parliament and by Ministers and certain other political office holders.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Members of Parliament Staff Act 2013*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**conditions of employment** has the same meaning as in the *Industrial Relations Act 1996*.

**function** includes a power, authority or duty and **exercise** a function includes perform a duty.

**member of Parliament** means a member of the Legislative Council or a member of the Legislative Assembly.

**political office holder** means:

- (a) a Minister, or
- (b) the Leader of the Opposition in the Legislative Assembly, or
- (c) the holder of a Parliamentary office in respect of which a determination under section 4 is in force.

**Presiding Officer** means the President of the Legislative Council or the Speaker of the Legislative Assembly.

**relevant Presiding Officer** means:

- (a) in relation to a person employed under Part 3 by a member of the Legislative Council—the President of the Legislative Council, or
- (b) in relation to a person employed under Part 3 by a member of the Legislative Assembly—the Speaker of the Legislative Assembly.

**special office holder** means a member of Parliament who holds an office specified in Schedule 1.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Notes included in this Act do not form part of this Act.

#### **4 Additional political office holders**

- (1) The Premier may, having regard to the duties associated with a Parliamentary office held by a member of Parliament, determine that the holder of that office is entitled to employ staff under Part 2 in the member's capacity as a political office holder.
- (2) A determination under this section:
  - (a) cannot be made in respect of a special office holder, and
  - (b) may be varied or revoked by the Premier.
- (3) Any such determination, including any variation or revocation, is required to be published in the Gazette.

### **Part 2 Staff of political office holders**

#### **5 Political office holders may employ staff**

- (1) A political office holder may, on behalf of the State, employ a person under a written agreement as a member of the office holder's staff.
- (2) Any such written agreement may be varied or replaced by a further agreement in writing.
- (3) The power of a political office holder to employ staff under this Part may be exercised only in accordance with arrangements approved by the Premier and the exercise of that power is subject to such conditions as are determined by the Premier.
- (4) Without limiting subsection (3), the Premier may determine the number of staff that a political office holder may employ under this Part.

## **6 Terms of written employment agreement**

- (1) The Premier may approve a model agreement for the employment of staff under this Part. The model agreement may be varied or replaced with the approval of the Premier.
- (2) The written agreement by which a person is employed under this Part must be in the terms of the model agreement as approved for the time being by the Premier.
- (3) However, any such written agreement of employment may, with the approval of the Premier, contain different or additional terms.

## **7 Conditions of employment**

- (1) The Premier may from time to time determine the conditions of employment of persons employed under this Part.
- (2) The conditions of employment of a person employed under this Part are, except in so far as provision is otherwise made by the person's written agreement of employment, such as may be fixed by a determination made under this section.

## **8 Termination of employment**

- (1) The employment of a person under this Part by a political office holder terminates:
  - (a) if the political office holder ceases to hold that office for any reason (even if, after ceasing to hold that office, he or she immediately becomes a political office holder), or
  - (b) on the day appointed for the taking of the poll for the next general election, or
  - (c) if the person resigns by letter addressed to the political office holder, or
  - (d) if the services of the person are dispensed with by the political office holder.
- (2) The Premier may direct in a particular case that the employment of a person that would otherwise terminate because of the operation of subsection (1) (a) or (b) does not terminate. In that case, the person's employment continues for such period as the Premier directs and the person is taken to be employed by the Premier during that period.
- (3) A political office holder may at any time dispense with the services of a person employed by the office holder under this Part.
- (4) This section has effect despite anything in the written agreement of employment of the person concerned.

## **9 Temporary staff assignments**

A person who is employed under this Part by a political office holder may be temporarily assigned to carry out work for another political office holder in accordance with arrangements made by those political office holders.

## **10 Administrative support services**

The Secretary of the Department of Premier and Cabinet is to provide administrative and other support services (including information technology services) for political office holders and their staff.

## **11 Delegation by Premier**

(1) The Premier may delegate to an authorised person any of the Premier's functions under this Part, other than this power of delegation.

(2) In this section:

**authorised person** means any of the following:

- (a) the holder of a statutory office,
- (b) a political office holder or member of staff of a political office holder,
- (c) a person employed in the service of the Crown,
- (d) a person authorised by the regulations.

## **12 Delegation by political office holder**

A political office holder may delegate to a member of the political office holder's staff any of the office holder's functions under this Part in relation to other members of the office holder's staff.

## **13 Delegation of expenditure of money appropriated to Premier for staff of political office holders**

(1) This section applies in relation to any function of the Premier of a kind referred to in section 9.7 (1) (b) of the [Government Sector Finance Act 2018](#) involving expenditure for the purposes of this Part.

(2) The power of the Premier under section 9.9 of the [Government Sector Finance Act 2018](#) to delegate a function to which this section applies is taken to include the power to delegate the function to a member of staff of a political office holder.

## **Part 3 Staff of members of Parliament**

### **14 Members of Parliament may employ staff**

- (1) A member of Parliament may, on behalf of the State, employ a person under a written agreement to assist the member in exercising his or her functions as a member of Parliament.
- (2) Any such written agreement may be varied or replaced by a further agreement in writing.

### **15 Employment of additional staff by special office holders**

- (1) A member of Parliament who holds an office specified in Schedule 1 may, in his or her capacity as a special office holder and in addition to the entitlement to employ staff under section 14, employ a person on behalf of the State under a written agreement to assist the special office holder in exercising the functions of that office.
- (2) Any such written agreement may be varied or replaced by a further agreement in writing.
- (3) The regulations may amend Schedule 1 by inserting, altering or omitting the description of an office held by a member of Parliament.
- (4) A regulation under subsection (3) may be made only on the joint recommendation of the Presiding Officers.

### **16 Staff to be employed subject to arrangements approved by Presiding Officers**

- (1) The power of a member of Parliament to employ staff under this Part may be exercised only in accordance with arrangements approved by the relevant Presiding Officer and the exercise of that power is subject to such conditions as are determined by the relevant Presiding Officer.
- (2) This section is subject to section 18.

### **17 Terms of written employment agreement**

- (1) The relevant Presiding Officer may approve a model agreement for the employment of staff under this Part. Any such model agreement may be varied or replaced with the approval of the relevant Presiding Officer.
- (2) The written agreement by which a person is employed under this Part must be in the terms of the model agreement as approved for the time being by the relevant Presiding Officer.
- (3) However, any such written agreement may, with the written approval of the relevant Presiding Officer, contain different or additional terms.



### **18 Number of staff**

The number of persons:

- (a) that a member of Parliament is entitled to employ under section 14, and
- (b) that a special office holder (other than the President or Deputy President of the Legislative Council or the Speaker or Deputy Speaker of the Legislative Assembly) is entitled to employ under section 15,

is to be determined in accordance with a determination by the Parliamentary Remuneration Tribunal.

### **19 Conditions of employment**

- (1) The relevant Presiding Officer may from time to time determine the conditions of employment of persons employed under this Part.
- (2) The conditions of employment of a person employed under this Part are, except in so far as provision is otherwise made by the person's written agreement of employment, such as may be fixed by a determination made under this section.

### **20 Termination of employment**

- (1) The employment of a person under this Part by a member of Parliament terminates:
  - (a) in the case of a person employed by a member of Parliament under section 14—if the member ceases to be a member of Parliament, or
  - (b) in the case of a person employed by a member of the Legislative Council under section 14—if the member becomes a political office holder, or
  - (c) in the case of a person employed by a member of Parliament in his or her capacity as a special office holder under section 15—if the member of Parliament ceases to be a special office holder or a member of Parliament, or
  - (d) on the day appointed for the taking of the poll for the next general election, or
  - (e) if the person resigns by letter addressed to the member of Parliament, or
  - (f) if the person's services are dispensed with by the member of Parliament.
- (1A) The employment of a person under this Part by a member of Parliament may also be terminated by the relevant Presiding Officer under section 20A.
- (2) The relevant Presiding Officer may direct in a particular case that the employment of a person that would otherwise terminate because of the operation of subsection (1) (a)–(d) does not terminate. In that case, the person's employment continues for such period as the relevant Presiding Officer directs and the person is taken to be employed

by the relevant Presiding Officer during that period.

- (3) A member of Parliament may at any time dispense with the services of a person employed by the member of Parliament under this Part.
- (4) This section has effect despite anything in the written agreement of employment of the person concerned.

#### **20A Termination by relevant Presiding Officer of employment for misconduct**

- (1) The employment of a person under this Part by a member of Parliament may be terminated by the relevant Presiding Officer after consulting the member of Parliament if the relevant Presiding Officer is satisfied that the staff member has engaged in misconduct.
- (2) The relevant Presiding Officer may not terminate the employment of a staff member unless:
  - (a) the staff member is notified in writing of the proposed termination and the reasons for taking that action, and
  - (b) the staff member is given a reasonable opportunity to make submissions in relation to the proposed termination, and
  - (c) if any such submissions are made, the relevant Presiding Officer has taken those submissions into consideration.
- (3) If:
  - (a) any matter relating to the misconduct by a staff member is being dealt with by the relevant Presiding Officer, or
  - (b) a staff member is charged with a serious offence,the relevant Presiding Officer may, after consulting the member of Parliament who employed the staff member, suspend the staff member from duty until the matter or the criminal charge has been dealt with and any subsequent action has been taken by the relevant Presiding Officer. Any such suspension may be removed by the relevant Presiding Officer at any time.
- (4) The relevant Presiding Officer may direct that any remuneration payable to a staff member while the staff member is suspended from duty under this section is to be withheld.
- (5) If, in the case of a staff member whose employment is suspended:
  - (a) the relevant Presiding Officer terminates the employment of the staff member for misconduct, or

(b) the staff member is convicted of the offence concerned,

any remuneration so withheld is forfeited to the State unless the relevant Presiding Officer otherwise directs or that remuneration was due to the staff member in respect of a period before the suspension was imposed.

- (6) Action may be taken or continued under this section in respect of a staff member despite the staff member resigning or otherwise ceasing to be employed by the member of Parliament concerned.
- (7) A member of Parliament may not, except with the approval of the relevant Presiding Officer, employ a person under this Part if the person's employment has been terminated at any time under this section.
- (8) This section does not limit the power of a member of Parliament to dispense with the services of a staff member under section 20.
- (9) This section has effect despite anything in the written agreement of employment of the staff member concerned.
- (10) In this section:

***misconduct*** in relation to a staff member includes the following:

- (a) taking any detrimental action (within the meaning of the [Public Interest Disclosures Act 1994](#)) against a person that is substantially in reprisal for the person making a public interest disclosure within the meaning of that Act,
- (b) taking any action against another person employed under this Part that is substantially in reprisal for a disclosure made by that person of the alleged misconduct of the staff member taking that action,
- (c) a conviction or finding of guilt for a serious offence.

The subject matter of any misconduct by a staff member may relate to an incident or conduct that happened while the staff member was not on duty, before his or her employment or before the commencement of this section.

***serious offence*** means an offence punishable by imprisonment for life or for 12 months or more (including an offence committed outside New South Wales that would be an offence so punishable if committed in New South Wales).

***staff member*** means a person who is employed under this Part by a member of Parliament.

## 21 Administrative support services

Each of the following is to provide administrative and other support services in relation to staff employed by members of Parliament under this Part:

- (a) the Clerk of the Parliaments,
- (b) the Clerk of the Legislative Assembly,
- (c) the Executive Manager, Parliamentary Services in the Parliament's Department of Parliamentary Services.

## **22 Delegation by Presiding Officers**

- (1) The President of the Legislative Council may delegate any of the President's functions under this Part (other than this power of delegation) to:
  - (a) the Clerk of the Parliaments, or
  - (b) the Executive Manager, Parliamentary Services in the Parliament's Department of Parliamentary Services.
- (2) The Speaker of the Legislative Assembly may delegate any of the Speaker's functions under this Part (other than this power of delegation) to:
  - (a) the Clerk of the Legislative Assembly, or
  - (b) the Executive Manager, Parliamentary Services in the Parliament's Department of Parliamentary Services.

## **23 Employment of staff under this Part by political office holders**

- (1) This Part extends to a member of Parliament who is a political office holder.
- (2) However, a member of Parliament who is a political office holder:
  - (a) is not authorised to employ persons under this Part to assist the member in exercising his or her functions as a political office holder, and
  - (b) is not, if the member employs persons under Part 2, authorised:
    - (i) to employ persons under section 14 if the member is a member of the Legislative Council, or
    - (ii) to employ persons under section 15.

## **24 Vicarious liability for certain torts committed by members of Parliament**

- (1) This section applies to a tort that is committed by a member of Parliament:
  - (a) in relation to a person employed by the member under this Part, and
  - (b) in the course of or incidental to exercising the member's functions as a member of Parliament.
- (2) Any vicarious liability in respect of a tort to which this section applies that would, but

for this section, be the vicarious liability of the Crown is, despite any provision of the *Law Reform (Vicarious Liability) Act 1983*, the vicarious liability of the office of the relevant Presiding Officer.

- (3) This section does not apply to a tort committed by a member of Parliament before the commencement of this section.

## **25 Other liability of members of Parliament as employers**

- (1) Any liability incurred under any Act or law by a member of Parliament in his or her capacity as the employer of persons under this Part is taken to be the liability of the office of the relevant Presiding Officer.
- (2) Subsection (1) does not affect the liability of a member of Parliament for any act or omission for which the member would be liable if the member were not an employer of persons under this Part.

## **Part 4 Miscellaneous**

### **26 Industrial proceedings excluded**

- (1) In this section, a reference to the employment of a staff member is a reference to:
  - (a) the engagement of, or failure to engage, a person under this Act, or
  - (b) dispensing with the services of, or other termination of the employment of, a person employed under this Act, or
  - (c) any disciplinary proceedings or action taken against a person employed under this Act, or
  - (d) the remuneration or other conditions of employment of a person employed under this Act.
- (2) The employment of a staff member, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (3) Parts 6, 7 and 9 of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the employment of a staff member.
- (4) Any State industrial instrument (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of staff members.
- (5) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of a matter that is declared by this section not to be an industrial matter for the purposes of the

*Industrial Relations Act 1996.*

**27 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Minister is not to recommend the making of a regulation relating to the employment of persons under Part 3 unless the Minister has certified that the relevant Presiding Officer has been consulted on the proposed regulation.
- (3) Subsection (2) does not apply in relation to a regulation made under section 15 (3).

**Schedule 1 Special office holders**

(Section 15)

Government Whip

Opposition Whip

Whip of a recognised party with 10 or more members in the Legislative Assembly (other than the Government or Opposition Whip)

Speaker of the Legislative Assembly

Deputy Speaker of the Legislative Assembly

President of the Legislative Council

Deputy President of the Legislative Council

**Schedule 2 Savings, transitional and other provisions**

**Part 1 General**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its

publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Existing ministerial staff**

A person who, immediately before the commencement of Part 2 of this Act, was employed under Part 2.5 of the *Public Sector Employment and Management Act 2002* as a special temporary employee in the office of a Minister or the Leader of the Opposition is, on that commencement, taken to be employed under and in accordance with Part 2 of this Act by that Minister or by the Leader of the Opposition (as the case requires).

### **3 Existing employees of members of Parliament**

- (1) A person who, immediately before the commencement of Part 3 of this Act, was employed (otherwise than under Part 2.5 of the *Public Sector Employment and Management Act 2002*) to assist a member of Parliament or a special office holder to exercise the member's or office holder's functions is, on that commencement taken to be employed under and in accordance with Part 3 of this Act by that member of Parliament or special office holder (as the case requires).
- (2) However, any determination under this Act of the conditions of employment of any such existing member of staff, or the staff member's written agreement of employment under this Act, cannot reduce the entitlements that the staff member had in his or her previous employment with respect to:
  - (a) leave, and
  - (b) notice periods and severance pay for termination of service.

### **4 Provisions relating to persons deemed to be employed under this Act**

An existing staff member to whom clause 2 or 3 applies:

- (a) retains any rights to annual leave, extended or long service leave or sick leave accrued in his or her employment as an existing staff member (including any existing right to cash out accrued annual leave), and
- (b) retains any existing right to continue to contribute to any State superannuation scheme or fund in respect of which the person is a member, and
- (c) is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy or other compensation) merely because the staff member ceases to be in the employment from which the staff member was

transferred by the operation of this Part, and

- (d) is not (except to the extent as provided by paragraph (a)) entitled to elect to be paid the money value of any extended or annual leave that the staff member accrued in the employment from which the staff member was transferred by the operation of this Part, and
- (e) is not entitled to claim, both under this or any other Act, dual benefits of the same kind for the same period of service.

## **5 Appropriation for staff of political office holders**

An appropriation under an annual Appropriation Act to the Premier for the recurrent services of the Department of Premier and Cabinet in respect of the financial year in which Part 2 of this Act commences is taken to include an appropriation for the purposes of the employment of persons by political office holders under that Part.

## **6 Application of Order made under [Constitution Act 1902](#)**

The Order made under section 47 of the [Constitution Act 1902](#) and published in the Gazette on 2 May 1952 does not apply in relation to the employment of persons under Part 3 of this Act.

## **7 Records of political office holders**

- (1) Any record of information created or received by a political office holder or the staff of a political office holder that is stored by a person employed in the Department of Premier and Cabinet in connection with the provision of information technology services for the office holder or his or her staff is, for all purposes while the political office holder is holding that office, taken to be in the possession or under the control of the political office holder and not in the possession or under the control of the Department of Premier and Cabinet.
- (2) Accordingly, any request or requirement to produce any such record of information is to be made or directed to the political office holder concerned or his or her staff.
- (3) This clause extends to records of information in existence before the commencement of this clause.

## **8 Transfer of records of former political office holders**

- (1) This clause applies in relation to any record of information that was created or received by a political office holder or the staff of a political office holder and that is stored by a person employed in the Department of Premier and Cabinet in connection with the provision of information technology services for the office holder or his or her staff.
- (2) If the political office holder to whom any such record of information relates ceases or



has ceased to hold that office (the **former political office holder**), the Secretary of the Department of Premier and Cabinet may:

- (a) transfer the stored record of information to the public office that, in the opinion of the Secretary of that Department, is the appropriate public office to have possession or control of the record, or
  - (b) dispose of the stored record of information (but not until 7 years after the former political office holder ceased to hold office).
- (3) If a record of information is transferred to a public office under this clause, the public office or head of that office must, before responding to any request or requirement to produce the record, consult with the head of the Public Service agency that is responsible to the political office holder who has portfolio responsibilities closest to those of the former political office holder.
- (4) A public office may, at any time after the period of 7 years following the transfer of a record of information to it under this clause, dispose of the record.
- (5) A record may not be disposed of under subclause (2) (b) or (4) if:
- (a) the record is the subject of a legal requirement to be produced, or
  - (b) legal proceedings have been commenced in respect of which there is a reasonable likelihood that the record will be required to be produced.
- (6) Before disposing of any record of information in accordance with subclause (4), the public office or head of that office must consult with the head of the Public Service agency that is responsible to the political office holder who has portfolio responsibilities closest to those of the former political office holder.
- (7) Subclauses (3) and (6) do not apply in relation to a record of information that relates to a former Leader of the Opposition in the Legislative Assembly.
- (8) This clause has effect despite the provisions of any other Act or law.
- (9) This clause extends to records of information in existence before the commencement of this clause.
- (10) In this clause, **public office** has the same meaning as in the [State Records Act 1998](#).

### **Schedule 3 (Repealed)**