



LEGISLATIVE COUNCIL

SEPARATION FROM SERVICE POLICY

FOR

**MEMBERS' SECRETARY/
RESEARCH ASSISTANTS**

**SECRETARY TO THE CHAIR OF
LEGISLATIVE COUNCIL STANDING COMMITTEES**

PRESIDENT'S OFFICE STAFF

FEBRUARY 2003

PREFACE

To Legislative Council Staff

This policy sets out the conditions for separation payments for staff employed as a Secretary/Research Assistant to Members of the Legislative Council in the event that the Member they work for ceases to hold office as a Member or is appointed as a Minister. This policy also covers staff employed in the position of Secretary to the Chair of a Legislative Council Standing Committee and the President's Office staff where the President ceases to hold office.

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Clerk of the Parliaments
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1 INTRODUCTION

(1) This policy outlines the provisions for the separation from service of staff employed as Secretary/Research Assistants to Members of the Legislative Council and President's Office staff.

2 DEFINITIONS

(1) In this document:

Member means a Member of the Legislative Council.

Officer means a person employed on a permanent basis as a Secretary/Research Assistant; President's Office staff, where that person is either a permanent employee or has been employed on a temporary basis for a continuous period of over 12 months.

President means the President of the Legislative Council.

A Member's term of office expires means

- the day on which a members term of service ceases under section 22B of the Constitution Act 1902.
- the Member ceases to hold an appointment to office, for example, President of the Legislative Council.

A Member who is appointed a Minister

Means where a Member is appointed as a Minister and the services of their staff are no longer required, that is, staff are not offered employment with that Minister.

3 TERMINATION OF EMPLOYMENT

(1) Officers and temporary employees are employed by the President of the Legislative Council by delegation from the Governor, under section 47 of the Constitution Act 1902.

(2) Under their conditions of employment the services of an Officer or temporary employee may be terminated by:

- * the giving of 2 weeks written notice by either the President, as the employer, or by the employee in the form of a resignation
- * the term of office of the Member the person works for expires
- * the Member the person works for is appointed to the Ministry.

(3) Termination of service, except by way of resignation or voluntary withdrawal of service, may only be made by the President, or in the absence of the President, by the Deputy President.

4 SEPARATION FROM SERVICE PROVISIONS

- (1) When a Member's term of office expires every endeavour will be made to retain the services of a currently employed Officer by temporary employment with another Member.
- (2) Officers whose services are terminated because their Member's term of office has expired will be entitled to a separation payment in one of the following circumstances:

- (a) Member, retires, resigns, dies, or otherwise ceases to be a member
- (i) the officer will be notified in writing that they have the option of accepting a separation from service payment, effective from the Member's last day of duty.
 - (ii) the officer continues to work at Parliament House for another Member and, within three months of the previous Member departing, the other Member notifies the President that they do not wish to offer the officer a permanent position, then the officer will be entitled to separation payments as provided in clause 5 (Separation Payments).
 - (iii) the officer continues to work at Parliament House for another Member and, after the expiration of two months and before the expiration of the third month of the previous Member departing,
 - the Member has not given the officer an offer to continue employment; or
 - the officer identifies that they can no longer continue employment with the other Member,

and the officer notifies the President of the circumstances in clause 4(2)(a)(iii), then the officer will be entitled to separation payments as provided in clause 5 (Separation Payments).

- (b) Member seeking re-election is not re-elected, or is not seeking re-election
- (i) the officer continues to work at Parliament House for another Member and, within three months of the declaration of the poll for a periodic Council election, that Member notifies the President that they do not wish to offer the officer a permanent position, then the officer will be entitled to separation payments as provided in clause 5 (Separation Payments).
 - (ii) the officer continues to work at Parliament House for another Member and, after the expiration of two months and before the expiration of the third month of the declaration of the poll for a periodic Council election;
 - the Member has not given the officer an offer to continue

employment, or

- the officer identifies that they can no longer continue employment with the new Member,

and the officer notifies the President of the circumstances in clause 4(2)(b)(ii), then the officer will be entitled to separation payments as provided in clause 5 (Separation Payments).

(c) Member is appointed a Minister

The conditions outlined in clause 4(2)(a) apply in this circumstance. The last day of duty for the purposes of offering a separation of service payment to affected staff, is the last working day prior to the Member being appointed as a Minister.

- (3) Where an offer of employment is made and the officer declines to accept the offer, other than provided for in clause 4(2)(a)(iii) or 4(2)(b)(ii), it will be treated as voluntary resignation and will not attract an entitlement to a separation payment.
- (4) Temporary employees employed for less than 12 months continuous service will be given 2 weeks notice of termination of employment if the Member departs for any reason. These temporary employees will not be eligible for separation payments outlined in clause 5 of this policy.

5 JOB SEARCH LEAVE

- (1) Job Search Leave assists employees to seek alternative employment during their remaining period of employment with the Parliament.
- (2) During a period of job search leave, the employee continues to receive their normal pay while they actively seek alternate employment.

Conditions applying to Job Search Leave

- (3) Job Search Leave is a concession only available to those employees who are actively seeking alternative employment. The following conditions apply:
 - Job Search Leave is available to staff who accept a separation payment between polling day and the declaration of the poll.
 - The period of Job Search Leave granted is up to 12 weeks and can only be taken in one block;
 - The employee is still regarded as being in service and will continue to accrue annual leave and extended leave for the actual period of Job Search Leave taken;
 - The leave is paid fortnightly, at the employees substantive rate, excluding any overtime, and payment will not be made in advance;
 - If the employee obtains and commences another job during the period of Job Search Leave, the employee must advise the Parliament in writing. The period of Job Search Leave will cease from the date the employee commences in the new job;

Calculation of Job Search Leave

- (4) Two dates are to be notified to the staff member by the Parliament. These dates are:
the last day of duty
The last day of service (the exit date)
- (5) The period between the two dates will be the period of Job Search Leave. The separation payment will be made on the last day of service and not during the period of Job Search Leave.

6 SEPARATION PAYMENT

- (1) Payment for separation will be made on the following basis:
- (a) 6 weeks pay in lieu of notice
 - (b) An allowance of 30% of the Eligible Termination Payment if the Australian Taxation Office does not accept the termination of employment as bona fide redundancy. The ETP is the separation payment it does not include recreation and extended leave payments.
- (2) In addition to 6.1
- (a) Where the employee has less than 4 years continuous service, the employee will receive the following entitlements:
- (i) severance pay of 4 weeks for each year of service max less than 16 weeks
 - (ii) expense reimbursement up to \$2,500 for training and career transition job assistance
 - (iii) 6 weeks jobs search leave, or
- (b) Where the employee has 4 years but less than 8 years continuous service, the employee will receive the following entitlements:
- (i) severance pay of 16 weeks for 4 years service plus 3 weeks for each year of service above 4 years to max less than 28 weeks
 - (ii) expense reimbursement up to \$3,500 for training and career transition job assistance
 - (iii) 8 weeks jobs search leave, or
- (c) Where the employee has 8 years but less than 12 years continuous service, the employee will receive the following entitlements:
- (i) severance pay of 28 weeks at 8 years service plus 3 weeks pay each additional year of service to max less than 40 weeks payment

- (ii) expense reimbursement up to \$4,000 for training and career transition job assistance
 - (iii) 10 weeks jobs search leave, or
- (d) Where the employee has 12 or more years continuous service, the employee will receive the following entitlements:
- (i) severance pay of 40 weeks at 12 years service plus 2 weeks pay for each additional year of service to a maximum 48 weeks payment at 16 years service or more,
 - (ii) expense reimbursement up to \$5,000 for training and career transition costs for job assistance
 - (iii) 12 weeks jobs search leave.

7 EXCLUSIONS

(1) Excluded from entitlement to separation payments are:

- (a) Officers on workers' compensation whose claim is based on compensation for termination or officers awaiting determination of claims against the employer for termination of services;
- (b) Officers subject to termination on the grounds of misconduct or unsatisfactory service;
- (c) Officers who resign for any reason or circumstance other than those described in clause 4(2)(a)(iii) or 4(2)(b)(ii) ;
- (d) Officers whose appointment to the Legislative Council was facilitated by way of secondment or leave without pay from the Public Service and are able to return to employment in the Public Service upon displacement;
- (e) Temporary employees employed for terms of less than 12 months.

8 REPAYMENT OF SEPARATION MONIES

(1) Officers who receive a separation payment under this policy are required to sign an undertaking to refund the Legislative Council all or part of the separation payment if they are re-employed including temporary or consulting capacity in a NSW public sector organisation within the period of weeks calculated in clause 5 (2) from the last day of duty. If the officer is re-employed in a NSW public sector organisation within the period covered by the severance payment the amount to be repaid is the salary equivalent of the number of weeks from the date they are re-employed to the end of the period covered by the severance payment.

(2) It is the responsibility of the Chief Executive Officer of the new employing agency and/or the former employee to ensure that this requirement for repayment is met.

(3) The Minister of the re-employing agency may waive the repayment obligation in circumstances where the re-employment is on a limited part time basis, for a short temporary period or at a substantially lower rate of pay.

9 SUPERANNUATION

(1) Employees who have been paying into a superannuation scheme could have access to benefits if and when they leave the Legislative Council's employment. The nature and amount of the benefit will vary depending on which scheme employees are members of and the employee's individual circumstances. The Legislative Council will provide, to the relevant superannuation fund, a statement that the officer has been retrenched. Further advice may be obtained from the State Authorities Superannuation Board's advisory service.