

## NORTHERN TERRITORY OF AUSTRALIA

*Public Sector Employment and Management Act*

## DETERMINATION 13 OF 2011

I, KENNETH DONALD SIMPSON, the Commissioner for Public Employment (the *Commissioner*), pursuant to section 34(1)(b) of the *Public Sector Employment and Management Act* (the *Act*), determine that the classes of duties specified in the Schedule may only be performed for a fixed period by a person appointed on a temporary basis under section 29 of the Act.

Pursuant to section 34(3) of the Act, I determine that a person may be employed to perform duties for a period not exceeding 5 years.

Pursuant to section 34(4) of the Act, I determine that the terms and conditions of employment will be as set out below.

Pursuant to section 34(4) of the Act, I determine with respect to any Executive Contract of Employment in operation as at the date of the making of this Determination, that the terms and conditions of employment as set out in this Determination will apply, provided that:

- a) no accrued right or entitlement will be diminished by the making of this Determination; and
- b) where an existing Contract of employment provides for more beneficial terms or conditions, those terms and conditions will prevail over this Determination to the extent of any inconsistency.

Pursuant to a direction from the Minister pursuant to section 13(p) of the Act, I determine that the terms and conditions of employment for Chief Executive Officers appointed under section 19 of the Act shall be as set in this Determination.

This Determination and a *Contract* are intended to operate to the exclusion of any award or enterprise agreement pursuant to the *Fair Work Act 2009* (Commonwealth).

**A. GENERAL**

1. The Act, other than Parts 7 and 8 and sections 55, 56, 57 and 58, applies to an Executive Contract Officer.
2. All Regulations made under the Act, other than Regulation 7, apply to an Executive Contract Officer.

3. The By-laws made under the Act do not apply to an Executive Contract Officer.
4. All Employment Instructions issued by the Commissioner under section 16 of the Act apply to an Executive Contract Officer other than:
  - 4.1. Employment Instruction Number 5 - Medical Incapacity;
  - 4.2. Employment Instruction Number 6 - Inability to Discharge Duties;
  - 4.3. Employment Instruction Number 7 – Discipline.
5. Subject to the Act, the relevant provisions of the Act, Regulations and Employment Instructions are express terms and conditions of the Contract.

## **B. REMUNERATION**

6. An Executive Contract Officer will be entitled to the ***Total Remuneration Package*** specified in Clause 3 of a Contract. The Total Remuneration Package incorporates the ***Salary Component*** and the ***Employment Benefits***.
7. The Total Remuneration Package shall be adjusted from time to time to reflect average salary movements in salaries applicable to the classification of Senior Administrative Officer 2 in the Northern Territory Public Sector. Provided that if any part of the average salary movement results from an arrangement which the Commissioner deems to be an exchange of a condition of employment for a salary adjustment, such part shall not be used to adjust salaries for Executive Contract Officers unless an identical exchange of such condition of employment is also made in respect of Executive Contract Officers.
8. The date of effect of any adjustment to the Total Remuneration Package under paragraph 7 will be the same date as the date of effect of the salary quantum change in salaries applicable to the classification of Senior Administrative Officer 2 in the Northern Territory Public Sector which such adjustment reflects.
9. An Executive Contract Officer will elect, by written notice to the ***Employer*** within 14 days of the commencement of a Contract, what proportion of the Total Remuneration Package he/she elects to receive as Employment Benefits and what proportion is to be paid to him/her as ***Salary***.
10. If an Executive Contract Officer has not made the election referred to in paragraph 9 within the period referred to in that paragraph, he/she

will, subject to paragraph 11, be deemed to have elected to take the proportion of the Total Remuneration Package as Salary determined by the Employer to be appropriate having regard to any Employment Benefits being conferred, or required to be conferred, under paragraphs 14 to 37.

11. If, during the term of a Contract, there is a significant change to the Executive Contract Officer's superannuation contributions or to the value of the Total Remuneration Package, the Executive Contract Officer may, by notice in writing, request a change to the percentage taken as Employment Benefits and/or the Salary Component to reflect the change.
12. Fortnightly payment of Salary will be calculated in accordance with the following formula:

$$\frac{\text{Annual Salary}}{313} \quad \text{multiplied by} \quad 12$$

## C. EMPLOYMENT BENEFITS

13. Any difference between an Executive Contract Officer's Total Remuneration Package and the amount taken as Employment Benefits will be provided to him/her as Salary.
14. An Executive Contract Officer may elect to salary package Employment Benefits as approved by the Commissioner from time to time and the proportion of the Total Remuneration Package to be paid to him/her as Salary will be adjusted to reflect the value of the Employment Benefits received.
15. Administration fees for salary packaging for benefit items in addition to those specified in this Determination will be on the same terms as those applying generally to employees of the Northern Territory Public Sector.
16. In making a claim for payment for any Employment Benefit, an Executive Contract Officer will make an appropriate declaration as required for taxation purposes. If such declaration is found to be incorrect, he/she agrees to indemnify and reimburse the Employer for any additional tax or penalties imposed by the Australian Taxation Office.

## Motor Vehicle

### *General*

17. Subject to paragraphs 18 and 29, an Executive Contract Officer may elect to have the use of a motor vehicle fitted with incognito plates and supplied by the Employer. The choice of vehicle is at the discretion of the Executive Contract Officer, from those approved by

the Commissioner from time to time, relevant to the Executive Contract Officer's designation.

18. Approval of the use of a motor vehicle for Contracts of a period of 12 *months* or less will be at the Employer's discretion.

*Conditions of Use*

19. Subject to paragraph 20 the following conditions regarding the use of a motor vehicle provided to an Executive Contract Officer will apply:
  - 19.1. the motor vehicle will form part of an Agency's vehicle pool and be available for pool use by all employees during ordinary working hours;
  - 19.2. the motor vehicle will be available for reasonable personal use, including use within and outside the Northern Territory during all periods of paid leave, and periods of unpaid leave of up to three (3) months, provided the Executive Contract Officer continues to pay contributions in accordance with the relevant paragraphs of 21 to 30;
  - 19.3. the Employer will meet the full running costs of the motor vehicle, including during periods of paid leave, for use within the Northern Territory;
  - 19.4. running costs (i.e. fuel and oil) for use outside of the Northern Territory, during periods of paid or unpaid leave, shall be met by the Executive Contract Officer;
  - 19.5. operational requirements for the vehicle will be in accordance with NT Fleet Management Policy.

*Reasonable Personal Use*

20. For the purposes of paragraph 19, "reasonable personal use" means:
  - 20.1. the motor vehicle may be used for private purposes, but not for other business purposes (other than Northern Territory Government related use);
  - 20.2. the motor vehicle will not be misused in a way that subjects the vehicle to excessive wear and/or damage;
  - 20.3. the motor vehicle may be driven by the Executive Contract Officer's spouse and children, and where accompanied by the Executive Contract Officer other members of his/her immediate family.

### *Contributions*

21. An Executive Contract Officer will pay a contribution amount for personal use of the motor vehicle at a rate determined from time to time by the Commissioner.
22. The contribution amount under paragraph 21 will reflect the marginal operating costs of providing the motor vehicle to an Executive Contract Officer, including the *Fringe Benefits Tax* liability incurred by the Employer.
23. No contribution will be required for any period of greater than one *week* where the motor vehicle is unavailable for an Executive Contract Officer's use.

### *Leave Without Pay*

24. An Executive Contract Officer on leave without pay for up to three (3) months will pay a contribution rate in accordance with paragraph 21.
25. The Employer may approve the use of a motor vehicle for periods of leave without pay in excess of 3 months.
26. An Executive Contract Officer on leave without pay in excess of three (3) months will pay a contribution rate determined by the Employer, which will be no less than the contribution required under paragraph 21.
27. An Executive Contract Officer with use of a motor vehicle during a period of leave without pay will be responsible for all running costs (i.e. fuel and oil).

### *Leave at Half Pay*

28. An Executive Contract Officer with use of a motor vehicle while on leave at half pay will pay the full rate of contributions required under paragraph 21.

### *Part-Time*

29. The Employer may approve the use of a motor vehicle for an Executive Contract Officer employed on a part-time basis.
30. An Executive Contract Officer employed on a part-time basis with use of a motor vehicle will pay the full rate of contributions required under paragraph 21.

### **Superannuation – Accumulation Scheme**

31. The Employer will make superannuation contributions from an Executive Contract Officer's Total Remuneration Package to an

***Accumulation Scheme*** of an amount sufficient to meet the minimum employer contribution requirements under the *Superannuation Guarantee Administration Act 1992* (Commonwealth) as amended from time to time.

32. An Executive Contract Officer will advise the Employer in writing within 14 days of the commencement of a Contract of the Accumulation Scheme in which contributions under paragraph 31 are to be made. Where he/she does not provide this advice to the Employer, the Employer will make the contributions to the Northern Territory Government default Accumulation Scheme.
33. An Executive Contract Officer may elect to discontinue membership of an Accumulation Scheme at any time by notice in writing to the Employer and advise the Employer of the new Accumulation Scheme to which the Employer will make superannuation scheme contributions in accordance with paragraph 31.

### **Superannuation – Defined Benefit Scheme**

34. An Executive Contract Officer who is a member of a ***Defined Benefit Scheme*** prior to commencing an Executive Contract may elect in writing to the Employer to continue membership of that scheme.
35. Where an Executive Contract Officer elects to continue membership of a Defined Benefit Scheme:
  - 35.1. the contribution salary will be based on the rate of 65% of the Executive Contract Officer's Total Remuneration Package;
  - 35.2. the Employer will make sufficient contributions from the Executive Contract Officer's Total Remuneration Package to fund the employer component of the scheme benefits; and
  - 35.3. the Executive Contract Officer will make contributions to the scheme in accordance with the rules of the scheme and any determinations made by the ***Commissioner of Superannuation***.
36. Subject to satisfying conditions for cessation and the endorsement of the Commissioner of Superannuation, an Executive Contract Officer may apply in writing to discontinue his or her membership of a Defined Benefit Scheme and the provisions of paragraphs 31, 32 and 33 will then apply.

### **Salary Sacrifice for Employer Superannuation**

37. An Executive Contract Officer may also request in writing for the Employer to make additional contributions from his/her Total Remuneration Package to an Accumulation Scheme or a Defined Benefit Scheme by way of a salary sacrifice arrangement in accordance with Northern Territory Government policy, the rules

relevant to the respective schemes and any legislative requirements of the Australian Taxation Office.

## **D. OTHER CONDITIONS**

### **Personal / Carer's Leave**

38. An Executive Contract Officer progressively accrues three weeks of personal / carer's leave per *Employment Year*, and this leave accumulates from year to year.
39. An Executive Contract Officer may access personal / carer's leave without providing medical/documentary evidence, up to a maximum of five (5) days per Employment Year, provided no more than three (3) of those days are consecutive.
40. Paid personal / carer's leave can be taken by the Executive Contract Officer for a personal illness or injury, or where the Executive Contract officer is required to provide care or support for a member of his/her immediate family or household because of personal illness, injury or an unexpected emergency affecting the member.
41. An Executive Contract Officer must make all reasonable effort to advise the Employer as soon as reasonably practicable on any day of absence from his/her employment.
42. Where an Executive Contract Officer's paid personal / carer's leave has been exhausted he/she may take up to two days unpaid leave to care for an immediate family or household member.
43. An Executive Contract Officer may elect to access personal leave at half the Total Remuneration Package rate where the absence is at least one day.

### **Compassionate Leave**

44. An Executive Contract Officer is entitled to take up to three days of paid compassionate leave in the event of a death or a serious illness posing a threat to the life of the Executive Contract Officer's immediate family or household member.
45. The Employer may require the Executive Contract Officer to produce documentary evidence of the need for compassionate leave.

### **Recreation Leave**

46. An Executive Contract Officer progressively accrues five weeks paid recreation leave per Employment Year.

47. The Employer may, on application in writing by the Executive Contract Officer, grant leave for recreation purposes, subject to the Employer's operational requirements.
48. An Executive Contract Officer must take a minimum of three (3) weeks recreation leave within each Employment Year unless otherwise approved by the Employer.
49. An Executive Contract Officer will not carry forward in excess of six (6) weeks recreation leave within each Employment Year unless otherwise approved by the Employer.
50. The Employer may direct an Executive Contract Officer to take a period of paid recreation leave where he/she has accrued in excess of ten (10) weeks recreation leave, or where the Employer's enterprise is shut down for a period, e.g. between Christmas and New Year.
51. The Employer may agree to the Executive Contract Officer cashing out an amount of recreation leave provided he/she retains at least four weeks accrued leave.
52. If the Executive Contract Officer elects to cash out recreation leave, such payment will be in addition to and will not form part of, the Total Remuneration Package.
53. Subject to the rules of the Australian Taxation Office as varied from time to time, and with the agreement of the Employer, an Executive Contract Officer may salary sacrifice a future recreation leave accrual as a lump sum payment for superannuation purposes provided he/she retains at least four weeks accrued leave.
54. The Employer will pay to the Executive Contract Officer any unused period of accrued recreation leave on completion or termination of a Contract.
55. Payments under paragraphs 51 to 54 will be at the rate of the Executive Contract Officer's Total Remuneration Package.

#### **Recreation Leave at Half Pay**

56. Subject to the approval of the Employer, an Executive Contract Officer may utilise one or more weeks of his/her recreation leave at half the Total Remuneration Package rate, in order to double the period of leave. Half-pay recreation leave cannot be used where the Executive Contract Officer has entered into a purchased leave arrangement under paragraph 58.
57. Where an Executive Contract Officer utilises an amount of recreation leave at half pay all leave entitlements will accrue as if the Executive Contract Officer had utilised the leave at the full Total Remuneration



Package rate; however, the second half of the period of the leave will not count as service and service based entitlements will be adjusted accordingly.

### **Purchase of Additional Leave**

58. Subject to the approval of the Employer, an Executive Contract Officer who has completed 12 months continuous service may purchase between one and six weeks additional leave per year in accordance with the same terms applying to an ongoing Senior Administrative Officer 2 in the Northern Territory Public Sector.

### **Community Service Leave**

59. An Executive Contract Officer is entitled to take paid community service leave for the purposes of jury service or a voluntary emergency activity as approved by the Employer.
60. The Executive Contract Officer's Salary will be reduced by the total amount of jury service pay received by him/her.

### **Long Service Leave**

61. An Executive Contract Officer will be entitled to three (3) calendar months long service leave after completion of ten (10) years continuous service plus an additional nine (9) calendar days for each subsequently completed year of service.
62. The Employer may, on application in writing by the Executive Contract Officer, approve a period of long service leave, subject to the Employer's operational requirements.
63. Subject to paragraph 64, an Executive Contract Officer is required to use his/her entitlement to long service leave within three years of the 10 year and 20 year entitlement accruing, unless the Employer approves a temporary deferral on the utilisation of the leave.
64. An Executive Contract Officer will not be required to use his/her entitlement where he/she was of an age no less than ten years younger than the minimum retirement age of 55 years as at 7 March 1999, and he/she was then employed in the Northern Territory Public Sector and remained in that employment.
65. An Executive Contract Officer who has not obtained approval from the Employer to temporarily defer the utilisation of his/her long service leave beyond the three (3) year limit under paragraph 63 will:
- 65.1. be directed by the Employer to utilise the long service leave credit from a date which suits the needs of the agency; or

- 65.2. have the long service leave credit cashed out from the date determined in sub-paragraph 65.1.
66. Long service leave will be granted in minimum blocks of seven (7) calendar days, and then multiples of three (3) calendar days.
67. When using a long service leave entitlement an Executive Contract Officer may elect:
- 67.1. to be paid at the rate of the Total Remuneration Package for the full period of the leave; or
- 67.2. to take half the entitlement as leave and the balance paid-in-lieu of leave at the Total Remuneration Package rate; or
- 67.3. subject to the approval of the Employer, to utilise his/her entitlement to long service leave at half the Total Remuneration Package rate, provided that the period of leave taken will not exceed twice the entitlement accrued under paragraph 61.
68. Where an Executive Contract Officer utilises an amount of long service leave in accordance with sub-paragraph 67.3 all leave entitlements will accrue as if the Executive Contract Officer had utilised the leave at the full Total Remuneration Package rate.
69. An Executive Contract Officer may at any time elect to cash up a minimum of one (1) month of long service leave at the Total Remuneration Package rate.
70. If an Executive Contract Officer elects to take a long service leave entitlement in cash, such payment will be in addition to and will not form part of, the Total Remuneration Package.
71. Subject to the rules of the Australian Taxation Office as varied from time to time, an Executive Contract Officer may salary sacrifice a future long service leave accrual as a lump sum payment for superannuation purposes at the Total Remuneration Package rate.

### **Payment-in lieu-of Long Service Leave**

72. For less than ten years (10) continuous service, on completion or termination of a Contract, an Executive Contract Officer will receive payment in lieu of pro-rata long service leave at the rate of twenty two and one half calendar days for seven (7) completed years of continuous service, and a further twenty two and one half (22 ½) calendar days for each of the eighth (8th) and ninth (9th) completed years of continuous service.
73. Provided an Executive Contract Officer had at least one year of service, on death his/her estate will be entitled to receive payment in

lieu of any long service entitlement, to be paid at the Total Remuneration Package rate.

74. For ten (10) years service or more, on completion or termination of a Contract, an Executive Contract Officer will be entitled to receive payment in lieu for any unused and pro-rata long service leave at the Total Remuneration Package rate.

### **Recognition of Prior Service for Long Service Leave Purposes**

75. On request the Employer may recognise an Executive Contract Officer's prior service with a recognised employer for the purposes of long service leave. Such recognition will be in accordance with the provisions applying to a Senior Administrative Officer 2 in the Northern Territory Public Sector.

### **Parental Leave**

76. Parental leave provisions for Executive Contract Officers will be those that apply to a Senior Administrative Officer 2 in the Northern Territory Public Sector.

### **Requests for Flexible Working Arrangements to Care for a Child**

77. Provisions for flexible working arrangements to care for a child for Executive Contract Officers will be those that apply to a Senior Administrative Officer 2 in the Northern Territory Public Sector.

### **Special Leave**

78. Where an Executive Contract Officer has exhausted relevant leave entitlements the Employer may, where exceptional circumstances exist, approve special leave with or without pay.
79. Leave without pay approved under paragraph 78 will not count as service for any purpose.

### **Public Holidays**

80. Public Holiday provisions for Executive Contract Officers will be those that apply to a Senior Administrative Officer 2 in the Northern Territory Public Sector.

### **Part – time Employment**

81. An Executive Contract Officer may be employed on a part-time basis with the written approval of the Employer. Unless otherwise specified, and subject to paragraphs 22 and 30, the Executive Contract Officer will receive entitlements under this Determination on a pro-rata basis according to the agreed hours of work. Hours worked from time to time in excess of the agreed hours of work will

not qualify for accrual toward recreation, long service and personal leave.

### **Working Environment**

82. An Executive Contract Officer may be required, during the term of a Contract, to travel to and from, and work at, any location or place where the Employer requires.
83. Where an Executive Contract Officer is required under paragraph 82 to relocate from one place to another, the Executive Contract Officer will be paid removal expenses in accordance with paragraph 86.

### **Travelling Allowance**

84. Subject to agreement with the Employer, where an Executive Contract Officer in the course of employment is required to travel away from headquarters which extends overnight, the Executive Contract Officer will be entitled to travel allowance and other relevant arrangements applicable to a Senior Administrative Officer 2 in the Northern Territory Public Sector.

### **Higher Duties**

85. Where an Executive Contract Officer is required to perform all the duties of a higher designation for a continuous period in excess of two weeks, he or she will be entitled to receive payment for the total period at the minimum Total Remuneration Package applicable to the higher designation where this is greater than an Executive Contract Officer's Total Remuneration Package.

### **Removal Expenses**

86. Subject to agreement with the Employer, where an Executive Contract Officer is required to relocate from one place to another to take up duty in accordance with a Contract, the Executive Contract Officer may receive payment of reasonable removal and travel expenses for himself or herself, recognised dependants, if any, and furniture and personal and household effects.
87. Subject to paragraphs 88 and 89, on completion or termination of a Contract, the Employer will meet reasonable removal and travel expenses associated with returning an Executive Contract Officer, recognised dependants, if any, and any of the Executive Contract Officer's furniture and personal and household effects, from the place where an Executive Contract Officer resided during the period of employment to the place from which an Executive Contract Officer was recruited, or such other place of equal or lesser distance, as nominated by an Executive Contract Officer, and at the discretion of the Employer.

88. Paragraph 87 will have effect only where:
- 88.1. in the case of an Executive Contract Officer terminating a Contract, where that termination occurs within three (3) months of the termination date specified in a Contract; and
  - 88.2. the departure of an Executive Contract Officer and an Executive Contract Officer's dependants occurs within thirty (30) days of the completion or termination of employment of an Executive Contract Officer, unless otherwise approved by the Commissioner; and
  - 88.3. the removal of the effects of an Executive Contract Officer and an Executive Contract Officer's recognised dependants occurs within three (3) months of the completion or termination of employment of an Executive Contract Officer, unless otherwise approved by the Commissioner.
89. Where an Executive Contract Officer's employment is terminated or completed under this Determination and an Executive Contract Officer advises the Employer that he or she will continue to reside within the Northern Territory, paragraph 87 will be of no effect, unless an Executive Contract Officer was relocated from within the Northern Territory under paragraph 86.
90. The Employer may authorise the deduction from an Executive Contract Officer's final Salary payment to recover relocation expenses associated with the recruitment of the Executive Contract Officer under paragraph 86 if:
- 90.1. where the Contract is for a period of less than 12 months, he/she terminates their Contract before the expiry of the Contract; or
  - 90.2. where the Contract is for a period of 12 months or more, he/she terminates their Contract within 12 months of commencement.
91. Paragraph 90 will not apply where:
- 91.1. the Employer and the Employee mutually agree to terminate the Contract of employment; or
  - 91.2. the Employer decides that special circumstances apply.

### **Relocation Allowance**

92. Subject to agreement with the Employer, where an Executive Contract Officer is required to relocate from one place to another to take up duty in accordance with a Contract, relocation allowance provisions will be those that apply to a Senior Administrative Officer 2 in the Northern Territory Public Sector.

## Workers' Compensation

93. An Executive Contract Officer, if sustaining an injury as defined in the *Workers Rehabilitation and Compensation Act*, will be entitled to receive:
- 93.1. during the period of a Contract, *Workers Rehabilitation and Compensation Act* income based benefits based on the Salary Component at the time of injury. In addition, the Employer will continue to provide the same level of Employment Benefits in accordance with a Contract; or
- 93.2. on completion or termination of a Contract, compensation in accordance with the *Workers Rehabilitation and Compensation Act*. For the purpose of the *Workers Rehabilitation and Compensation Act*, salary will mean an Executive Contract Officer's Total Remuneration Package at the date of completion or termination of a Contract.

## Remote Locality Incentives

94. An Executive Contract Officer employed and residing in a remote locality as determined by the Commissioner is entitled to receive the remote locality incentives and provisions, in addition to his/her Total Remuneration Package, in accordance with the conditions applying to a Senior Administrative Officer 2 in the Northern Territory Public Sector.

## E. CONFIDENTIALITY AND NON-COMPETITION

95. In employing an Executive Contract Officer under a Contract, the Employer is exposing an Executive Contract Officer to confidential information and trade secrets, and information and documents which it considers and treats as confidential, including such things as Cabinet documents, submissions, draft reports, commercial information supplied to the Employer, draft legislation, and, particularly in the case of government business enterprises, the identity of suppliers and customers and prices charged to customers and by suppliers (except where that information is in the public domain). In consideration of an Executive Contract Officer being employed and therefore exposed to that information, the disclosure of which will damage the Employer, an Executive Contract Officer agrees by signing a Contract to be subject to the following conditions:
- 95.1. an Executive Contract Officer will not either during or after the course of his or her employment, and except in the proper course of his or her duties divulge to any person, and he or she should use his or her best endeavours to prevent the publication or disclosure of, any confidential information or trade secrets of the Employer and without limiting the generality of that expression any

trade secret or process or information concerning the same or the business of the Employer or of any of its dealings, transactions or affairs which may come to his or her knowledge during and as a result of or out of his or her employment, other than where that information or process is part of the public domain;

- 95.2. during his or her employment, an Executive Contract Officer will not be concerned or involved directly or indirectly whether as principal, agent, servant, consultant, director or shareholder in connection with any business, or the promotion of any business similar to and in competition with that conducted by the Employer, except as a shareholder in a Company listed on the Stock Exchange in Australia;
- 95.3. an Executive Contract Officer will not, for the following periods after the date of the termination of a Contract for any cause whatsoever, solicit any customer who is an existing customer of the Employer at the time of the termination of a Contract:
- 95.3.1. 6 months;
  - 95.3.2. a further 6 months in addition to the period specified in 95.3.1; and
  - 95.3.3. an additional 6 months in addition to the period specified in 95.3.2;
- 95.4. Each of these periods are separately agreed to despite any overlap of an Executive Contract Officer's obligations, and if one or more of these periods is or are found to be unenforceable, then that or those periods will be severed and the remaining period or periods will still apply.
- 95.5. In this paragraph "Employer" includes the Northern Territory of Australia and any government business enterprise conducted by the Northern Territory of Australia, including without limitation any company, joint venture or partnership.
- 95.6. Provided that the Commissioner may, by instrument in writing, exempt an Executive Contract Officer from any or all of the obligations in sub-paragraphs 95.2 and 95.3 of this paragraph.

## **F. OWNERSHIP OF MATERIAL AND INTELLECTUAL PROPERTY**

96. On completion or termination of a Contract, an Executive Contract Officer will return to the Employer all correspondence, documents, papers and property relating to duties performed during the period of a Contract.

97. Any intellectual property invented or created by an Executive Contract Officer as a result of his or her employment under a Contract will remain the property of the Employer, unless otherwise agreed in writing by the parties.

#### **G. CONFLICT OF INTEREST**

98. An Executive Contract Officer must disclose in writing to the Employer where a potential conflict between his/her personal interest and official duty, whether real or apparent, has arisen or is likely to arise.
99. The Employer may take any action, or direct the Executive Contract Officer to take any action the Employer considers necessary, to ensure there is no potential conflict between the Executive Contract Officer's personal interest and official duty.

#### **H. DECLARATION OF PRIVATE FINANCIAL AND OTHER INTERESTS**

100. The Employer may require an Executive Contract Officer to make a declaration of any private financial or other interests, including with respect to immediate family members (and other relevant persons), which might result in a conflict with his/her official duty.
101. The Employer may take any action, or direct the Executive Contract Officer to take any action the Employer considers necessary, to ensure there is no potential conflict between the Executive Contract Officer's private financial interests, including with respect to immediate family members (and other relevant persons) and his/her official duty.

#### **I. TRANSITION PROVISIONS**

102. An Executive Contract Officer who was, immediately prior to entering a Contract or subsequent or renewed Contract (howsoever described), an ongoing or fixed period employee employed in accordance with the Act or any other Northern Territory legislation approved by the Commissioner, will have:
- 102.1. subject to sub-paragraph 102.5, accrued recreation leave carried forward into a Contract;
- 102.2. accrued personal / carer's leave credits carried forward into a Contract;
- 102.3. continuity of service for the purpose of long service leave accrual;
- 102.4. continuity of service for the purpose of parental leave;



- 102.5. the value of the following entitlements paid in cash (net of tax):
- 102.5.1. all accrued recreation leave in excess of 4 weeks credit;
  - 102.5.2. all accrued and pro-rata recreation leave loading; and
  - 102.5.3. all accrued and pro-rata airfares (including applicable taxes). Dependency criteria for airfares will be assessed as at the date of commencement of a Contract;
- 102.6. for the purposes of sub-paragraph 102.5, the value paid will be calculated at the Total Remuneration Package rate as at the date of commencement of a Contract; and
- 102.7. continuity of any entitlement to removal expenses, if applicable.
103. Payments made under sub-paragraph 102.5 will be in addition to, and will not form part of, the Total Remuneration Package.

#### **J. PERFORMANCE REVIEW**

104. An Executive Contract Officer will be expected to meet and display the Executive Officer Capabilities as advised by the Commissioner from time to time.
105. The Employer will review an Executive Contract Officer's performance once each Employment Year or on a more frequent basis if required. An Executive Contract Officer will participate and co-operate in any performance appraisal processes adopted by the Employer.
106. Without limiting the scope of paragraph 105, the Employer will review an Executive Contract Officer's performance on the basis of:
- 106.1. fulfilment of the express or implied conditions of a Contract;
  - 106.2. any specific professional standards relevant to the nature of duties to be performed; and
  - 106.3. fulfilment of any agreed commitments of an Executive Contract Officer and expectations of the Employer.
107. Paragraphs 105 and 106 do not apply to Chief Executive Officers. The matter of performance review for Chief Executive Officers will be at the discretion of the Minister or Chief Minister, as appropriate.

## **K. MEDICAL EXAMINATION**

108. An Executive Contract Officer may be directed by the Employer to attend an examination by a registered medical practitioner(s) or other persons having relevant qualifications where the Employer believes the Executive Contract Officer's efficiency or work performance is affected by an illness or injury.

## **L. COMPLETION OF A CONTRACT**

109. Where an Executive Contract Officer has completed the period specified in a Contract, he or she will be entitled to payment of:
- 109.1. accrued recreation leave in accordance with paragraph 54;
  - 109.2. accrued and pro-rata long service leave in accordance with paragraph 72 or 74;
  - 109.3. payment of reasonable removal and travel expenses in accordance with paragraphs 87 - 89; and
  - 109.4. superannuation benefits where applicable.

## **M. TERMINATION OR SUSPENSION OF A CONTRACT**

### **Rules of natural justice to apply in all cases**

110. For the avoidance of doubt, all action taken by the Employer under this Part will be in accordance with Employment Instruction 3 – Natural Justice.

### **Termination or suspension may be at any time**

111. The Employer may at any time terminate a Contract by giving notice in writing to an Executive Contract Officer.
112. The Employer may at any time suspend the employment of an Executive Contract Officer (either with or without pay), by giving notice in writing to an Executive Contract Officer.

### **Termination for reason of misconduct or illness etc**

113. The Contract of an Executive Contract Officer may be terminated for one or more of the following reasons:
- 113.1. for committing any serious or persistent breach of the express or implied terms or conditions contained in a Contract;

- 113.2. for having seriously misbehaved, committed serious misconduct or serious neglect in the discharge of his or her duties;
- 113.3. for bankruptcy or making any arrangements or composition with creditors;
- 113.4. for refusing a direction to remove a conflict of interest identified in accordance with paragraph 98;
- 113.5. for the conviction of any criminal offence, other than an offence which, in the opinion of the Employer, does not affect a Contract;
- 113.6. where the Employer determines the Executive Contract Officer is incapacitated or prevented by illness, injury or accident from discharging a substantive part of his or her duties for the greater period of either of the following:
  - 113.6.1. taking into account any previous period(s) of personal / carer's leave taken for reasons of the illness, injury or accident, a total period of three months in a 12 month period; or
  - 113.6.2. the total period of personal / carer's leave which has accrued and is available under paragraphs 38 and 102.2 of this Determination, subject to a maximum of 52 weeks;
- 113.7. where the Employer determines the Executive Contract Officer is totally and permanently incapacitated, having regard to any medical or other relevant evidence and the provisions of any superannuation legislation applying to the Executive Contract Officer.

#### **Payment for termination for reason of misconduct or illness etc**

- 114. Where an Executive Contract Officer receives a notice of termination under paragraph 111 for a reason specified in paragraph 113, he/she will be entitled to payment, as at date of termination, of the following:
  - 114.1. accrued recreation leave in accordance with paragraph 54;
  - 114.2. accrued and pro-rata long service leave in accordance with paragraph 72 or 74;
  - 114.3. reasonable removal and travel expenses in accordance with paragraphs 87 - 89; and
  - 114.4. superannuation benefits where applicable.

## Payment for termination for other reasons

115. Where an Executive Contract Officer receives notice of termination for a reason other than those specified under paragraph 113, the Executive Contract Officer will be entitled to payment, as at the date of termination, of:
- 115.1. accrued recreation leave in accordance with paragraph 54;
  - 115.2. accrued and pro-rata long service leave in accordance with paragraph 72 or 74;
  - 115.3. reasonable removal and travel expenses in accordance with paragraphs 87 - 89;
  - 115.4. an amount calculated in accordance with paragraph 116; and
  - 115.5. superannuation benefits if applicable.
116. For the purposes of sub-paragraph 115.4, the amount paid will be the greater of either sub-paragraphs 116.1 or 116.2, being:
- 116.1. an amount equal to half the Total Remuneration Package; or  
  
an amount equal to the remuneration that would otherwise have been payable to the Executive Contract Officer during the term of the Contract remaining immediately prior to the termination of the Contract,  
  
whichever is the lesser; or
  - 116.2. where the Executive Contract Officer was an ongoing employee employed in accordance with the statutes specified in paragraph 102:
    - 116.2.1. immediately prior to entering a Contract; or
    - 116.2.2. immediately prior to entering the first of a series of Contracts which, in the opinion of the Commissioner, equates to continuous service;  
  
an amount equal to the remuneration that would otherwise have been payable to the Executive Contract Officer for four (4) weeks (or five (5) weeks in the case of an Executive Contract Officer over the age of 45 years); and  
  
an amount equal to the remuneration that would otherwise have been payable to the Executive Contract Officer for two (2) weeks for each year or part year of continuous service (or deemed continuous service), up to a maximum of forty eight (48) weeks.

117. The Executive Contract Officer will be responsible for any and all income tax liability and/or goods and services tax liability in respect of any payment made in accordance with sub-paragraph 115.4.
118. Payment made in accordance with sub-paragraph 115.4 will constitute payment in lieu of remuneration that would otherwise have been payable during a notice period.

**Additional provision for cessation of position or office for members of the Commonwealth Superannuation Scheme**

119. Despite any provision to the contrary in this Determination, the Employer will not give notice in writing to an Executive Contract Officer, who is a member of the Commonwealth Superannuation Scheme, to terminate a Contract under paragraph 111 on the ground only that an Executive Contract Officer's position or office has ceased or will cease to exist prior to the expiration of a Contract.

**Termination at the initiative of the Executive Contract Officer**

120. An Executive Contract Officer may, at any time, terminate a Contract by the giving of one (1) month's notice in writing to the Employer.
121. Where a Contract is terminated by an Executive Contract Officer in accordance with paragraph 120, the Executive Contract Officer will be entitled to payment, as at the date of termination, of:
  - 121.1. accrued recreation leave in accordance with paragraph 54;
  - 121.2. accrued and pro-rata long service leave in accordance with paragraph 72 or 74;
  - 121.3. reasonable removal and travel expenses in accordance with paragraphs 87 - 89; and
  - 121.4. superannuation benefits where applicable.

**N. REVIEW OF DECISION TO TERMINATE OR SUSPEND**

122. On receiving notice in writing from the Employer in accordance with the termination and/or suspension provisions of this Determination, an Executive Contract Officer (or former Executive Contract Officer) may:
  - 122.1. accept the decision; or
  - 122.2. within five (5) working days of receipt of the notice of termination or suspension, request the Employer to reconsider the decision to terminate a Contract or suspend the employment, and at that time

provide any additional information which an Executive Contract Officer wishes to be considered by the Employer.

123. Where an Executive Contract Officer requests the Employer to reconsider the decision in accordance with sub-paragraph 122.2, the Employer will provide to an Executive Contract Officer, within a further two (2) working days, advice in writing of his or her reconsidered decision.
124. Subject to paragraph 127, where an Executive Contract Officer does not accept the reconsidered decision, an Executive Contract Officer may, within two (2) working days of receipt of that decision, request the Commissioner to review that decision.
125. Within five (5) working days of receiving an Executive Contract Officer's request, the Commissioner will confirm the Employer's decision or recommend to the Employer a course of action appropriate in all of the circumstances (including, if appropriate, continuation of suspension).
126. An Executive Contract Officer will be notified in writing by the Commissioner of his or her decision under paragraph 125.
127. Where the Executive Contract Officer is a Chief Executive Officer at the date of receiving notice under paragraph 111, then the provisions of paragraphs 124 to 126 will not apply.

## **O. RE-APPOINTMENT**

128. At least six (6) months prior to the expiration of a Contract the Employer and an Executive Contract Officer will discuss whether an Executive Contract Officer will be re-appointed for a further period and, if so, on what terms.
129. The Employer will advise the Executive Contract Officer in writing of his / her decision on reappointment no later than three (3) months prior to the expiry of a Contract.
130. Paragraphs 128 and 129 do not apply to a Contract of a period of twelve (12) months or less.
131. Where the Executive Contract Officer is advised that his / her contract will not be renewed, such advice does not amount to a termination of the Contract under paragraphs 111 to 118. If a Contract is not renewed, the Contract will terminate by operation of the law.
132. In the event that an Executive Contract Officer is entering a further Contract with the Employer on termination or completion of an Executive Contract of Employment, where there is no break in

service, the service of an Executive Contract Officer will be recognised under the new contract.

133. Any accrued recreation leave and personal / carer's leave and continuity of service for the purpose of long service leave due to an Executive Contract Officer at the termination or completion of a Contract will be carried forward into any new Contract.
134. In some circumstances completion or termination of a Contract by an Executive Contract Officer may represent voluntary retirement for superannuation purposes, provided that an Executive Contract Officer does not remain in employment in the Northern Territory Public Sector.

## **P. MISCELLANEOUS**

### **Rules from Time to Time**

135. Subject to paragraphs 3 and 4, an Executive Contract Officer will familiarise himself or herself with and abide by any rules, regulations and/or policies of the Employer or the Northern Territory Public Sector as may be current from time to time.

### **Independent Advice**

136. By the signing of a Contract an Executive Contract Officer confirms that he or she has taken (or has chosen to waive the opportunity to obtain) independent advice as to the implications of a Contract and agrees to be bound by the terms and conditions imposed within a Contract and this Determination.

### **Continuation of Terms and Conditions**

137. Subject to paragraph 85, if an Executive Contract Officer is required to change his or her duties in any way during the term of a Contract, the terms and conditions of this Determination will continue to apply despite the change.

## **Q. DEFINITIONS**

138. In this Determination, unless otherwise stated or the context otherwise indicates:

***Accumulation Scheme*** - has the meaning given in Section 7 of the *Superannuation Guarantee (Administration) Act 1992*, and for the purposes of this Determination does not include the Commonwealth Superannuation Scheme, Northern Territory Government and Public Authorities Superannuation Scheme or the Northern Territory Supplementary Superannuation Scheme;

**Act** - means the *Public Sector Employment and Management Act*;

**Commissioner** - means the Commissioner for Public Employment appointed under the Act;

**Commissioner of Superannuation** - means the Commissioner of Superannuation appointed under the *Superannuation Act 1986*;

**Contract** - means a Contract made pursuant to this Determination and nominated as an Executive Contract of Employment;

**Defined Benefit Scheme** - for the purpose of this Determination means the following:

- a) Commonwealth Superannuation Scheme;
- b) Northern Territory Government and Public Authorities Superannuation Scheme; and
- c) Northern Territory Supplementary Superannuation Scheme

**Employer** - unless specifically stated otherwise, means:

- a) in the case of a Chief Executive Officer, the Northern Territory of Australia; and
- b) in any other case, the Chief Executive Officer of the relevant Agency.

**Employment Benefit(s)** - means a non-Salary benefit approved and provided by the Employer in accordance with this Determination, and at the request of an Executive Contract Officer in accordance with a Contract;

**Employment Year** - means each consecutive twelve (12) month period of service from the date of commencement of a Contract;

**Fringe Benefits Tax** – means a tax imposed under *Fringe Benefits Tax Act 1986*;

**month(s)** - means a calendar month(s);

**Salary** - means salary or wages within the meaning of section 221A(1) of the *Income Tax Assessment Act 1936*;

**Salary Component** - means that portion of the Total Remuneration Package which is payable as Salary in accordance with paragraphs 9 and 13 or as adjusted in accordance with paragraph 11;



**Total Remuneration Package** - means the total remuneration specified in clause 3 of a Contract to which an Executive Contract Officer is entitled in accordance with paragraph 6, as adjusted from time to time in accordance with paragraph 7; and

**Week** - means five (5) working days unless otherwise specified.

Dated this 29<sup>th</sup> day of JUNE 2011



KENNETH SIMPSON  
Commissioner for Public Employment

## Schedule

Executive Contract Officer 1  
Executive Contract Officer 2  
Executive Contract Officer 3  
Executive Contract Officer 4  
Executive Contract Officer 5  
Executive Contract Officer 6

Executive Contract Principal 1A\*  
Executive Contract Principal 1\*  
Executive Contract Principal 2\*  
Executive Contract Principal 3\*  
Executive Teacher 9 Contract\*

Executive Contract Principal Level 2  
Executive Contract Principal Level 3  
Executive Contract Principal Level 4  
Executive Contract Principal Level 5

Executive Contract Manager

\* these classifications are not available from 6 January 2011