NORTHERN TERRitory of aUSTRALIA

Public Sector Employment and Management Act

DETERMINATION NO. 5 OF 1995

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

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

In pursuance of section 34(4) of the Act, I determine that the terms and conditions of employment effective from 10 March 1995 shall be as set out below.

Where a Contract of Employment has been entered into pursuant to Determination No. 4 of 1994, but the period of such Contract of Employment extends to a date after the date of this Determination and has not otherwise terminated, the Executive Contract Officer may by a written request:

(a) ask the Employer to give notice of termination of the Contract of Employment: and

(b) ask the Employer to offer in writing a new Contract pursuant to and in accordance with this Determination.

If the Employer makes an offer pursuant to sub-paragraph (b) and such offer is acceptable to the Executive Contract Officer the Employer shall terminate the Contract of Employment and make a Contract with the Executive Contract Officer pursuant to this Determination.

In pursuance of the 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 out below.

A. General

1. The Public Sector Employment and Management 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 Public Sector Employment and Management Act apply to an Executive Contract Officer.

3. The By-laws made under the Public Sector Employment and Management Act do not apply to an Executive Contract Officer.

4. All Employment Instructions issued by the Commissioner for Public Employment pursuant to section 16 of the Act other than:

   Employment Instruction Number 5 - Medical Incapacity
   Employment Instruction Number 6 - Inability to Discharge Duties
   Employment Instruction Number 7 - Discipline

apply to an Executive Contract Officer.

B. Remuneration of an Executive Contract Officer

5. An Executive Contract Officer shall be entitled to the total remuneration specified in Clause 3 of a Contract. The total remuneration shall be equal to the Total Employment Cost. The Total Employment Cost incorporates the Salary Component and the Employment Benefits.

6. (1) The Total Employment Cost shall be adjusted from time to time to reflect average award movements in executive salaries applicable to permanent Executive Officers in the Public Sector of the Northern Territory. Provided that if any part of the average award movement results from an arrangement which the Commissioner for Public Employment 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.

   (2) The date of effect of any adjustment to the Total Employment Cost under sub-paragraph 6(1)(a) shall be the same date as the date of effect of the average award movements in executive salaries for permanent Executive Officers in the Public Sector of the Northern Territory which such adjustment reflects.

7. (1) An Executive Contract Officer shall elect, by written notice to the Employer within 30 days from the commencement of a Contract, to take part of the Total Employment Cost, being not more than 35% of the Total Employment Cost, as Employment Benefits and part of the Total Employment Cost, being not less than 65% of the Total Employment Cost, as Salary.
(2) If an Executive Contract Officer has not made the election referred to in sub-paragraph 7(1) within the period referred to in that sub-paragraph, the Executive Contract Officer shall, subject to paragraph 8, be deemed to have elected to take the percentage of the Total Employment Cost as Salary determined by the Employer to be appropriate having regard to any Employment Benefits being conferred, or required to be conferred, under paragraphs 10-19.

8. (a) 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 Employment Cost, the Executive Contract Officer may by notice in writing request a change to the percentage taken as employment benefits and/or salary to reflect the change.

(b) The Employer may make an adjustment under sub-paragraph 8(a) at a date which is convenient having regard to the Employer’s payroll and accounting procedures.

C. Employment Benefits

9. (1) Any difference between an Executive Contract Officer’s Total Employment Cost and the amount taken as Employment Benefits shall be provided to an Executive Contract Officer as Salary.

(2) To the extent that the sum of the Salary Component and the Employment Benefits exceeds the Total Employment Cost at the end of any Employment Year, or pro rata in relation to any part thereof, an Executive Contract Officer shall, upon demand by the Employer, pay an amount to the Employer sufficient to put the Employer in the position it would have been in had all of the Total Employment Cost been paid to the Executive Contract Officer as Salary.

10. An Executive Contract Officer shall be entitled to elect to receive Employment Benefits as approved by the Employer from time to time.

11. Employment Benefits, in accordance with paragraph 10 shall be paid by the Employer, from an Executive Contract Officer’s Employment Benefits Account, on a periodic or other basis, as specified in writing by an Executive Contract Officer in the approved form, having regard to the Employment Benefits being provided under paragraphs 10, 14, 15, 16, 17 or 18 as applicable.

12. In making a claim for payment for any Employment Benefit, an Executive Contract Officer shall make an appropriate declaration as required for taxation purposes. If such declaration is found to be incorrect an Executive Contract Officer agrees to indemnify and reimburse the Employer for any additional tax or penalties imposed by the Australian Taxation Office.
Motor Vehicles

13. (1) An Executive Contract Officer may elect to have the use of a motor vehicle fitted with incognito plates and supplied by the Employer. In the case of Executives at or below EC05 designation the choice of vehicle and contribution shall be at or below (at the discretion of the Executive Contract Officer) the approved standard relevant to the designation.

In the case of Executives at EC06 designation the class of vehicle and maximum value (excluding trade in value) shall be approved by the Chief Minister.

(2) The motor vehicle provided to an Executive Contract Officer will be available for reasonable personal use and use within and outside the Northern Territory during leave periods with the approval of the Employer. Running costs (ie. Petrol and Oil) for use outside the Northern Territory during leave periods shall be met by the Executive Contract Officer.

(3) The Employer shall deduct, either each fortnight or each month, an amount from an Executive Contract Officer's Employment Benefits Account at a rate ("The Rate") determined by the Commissioner for Public Employment from time to time, for such personal use.

(4) The Rate shall reflect the marginal operating costs of providing the vehicle, including the FBT liability of the Employer in respect of the provision of the vehicle to the Executive Contract Officer. The Rate shall be adjusted from time to time to reflect the level of adjustment applicable under paragraph 6(1).

(5) No deduction shall be made under sub-paragraph (3) in respect of any period in excess of one week where the motor vehicle is unavailable for an Executive Contract Officer's use.

(6) Operational requirements for the vehicle shall be in accordance with the NT Fleet Management Policy.

Official Telephone

14. (1) The Employer shall pay the total costs of an Executive Contract Officer's private telephone, where approval is given for use of an Executive Contract Officer's private telephone for business purposes. Where this benefit is provided, the Employer shall deduct, at least monthly, an amount from an Executive Contract Officer's Employment Benefits Account, at the rate of $30 per week (which shall be inclusive of the Employers FBT liability) (the "Telephone Contribution")
(2) The Telephone Contribution shall be adjusted from time to time to reflect the level of adjustment applicable under paragraph 6(1).

Superannuation

15. Where an Executive Contract Officer on entering a contract is not a member of the Commonwealth Superannuation Scheme (CSS) or the Northern Territory Government and Public Authorities Superannuation Scheme (NTGPASS) or subsequently ceases to be a member of the schemes, the Employer shall make contributions from an Executive Contract Officer’s Employment Benefits Account to a complying superannuation scheme or fund, chosen by an Executive Contract Officer of an amount sufficient to meet minimum Employer contribution requirements as determined from time to time by the Commissioner of Superannuation in accordance with prevailing legislative and regulatory requirements.

16. An Executive Contract Officer may also request the Employer to make contributions from an Executive Contract Officer’s Employment Benefits Account, additional to those specified in paragraph 15. to the complying superannuation scheme or fund chosen by an Executive Contract Officer.

17. Where an Executive Contract Officer is a member of the CSS and Northern Territory Supplementary Superannuation Scheme (NTSSS) an Executive Contract Officer may

(a) continue membership of the CSS and the NTSSS with superannuation salary for contribution and benefit purposes based on an Executive Contract Officer’s notional salary, or such other salary as determined by the Commissioner of Superannuation. The Employer shall contribute to the Northern Territory Government from an Executive Contract Officer’s Employment Benefits Account, an amount determined by the Commissioner of Superannuation, after taking into account actuarial advice, equivalent to that needed to fund the Employer component of general scheme benefits. An Executive Contract Officer who is a member of the CSS may elect to have a top-up arrangement in addition to the CSS and NTSSS and, while such an election is in force, the Employer shall make contributions from an Executive Contract Officer’s Employment Benefits Account to a complying superannuation fund or scheme chosen by an Executive Contract Officer for the purposes of the top-up arrangement. An Executive Contract Officer shall continue to contribute the required level of Executive Contract Officer contributions to the CSS from an Executive Contract Officer’s net salary: or

(b) apply in the approved form to discontinue membership of the CSS and NTSSS at any time during a contract, in which event paragraphs 15 and 16 of this determination will come into effect. The application is subject to the approval of the Commissioner of
Superannuation. On discontinuing membership of the CSS, an Executive Contract Officer shall be eligible for a deferred benefit or postponed pension in accordance with the Commonwealth Superannuation Act. The NTSSS benefit (based on an Executive Contract Officer's notional salary) accrued at the date of ceasing CSS membership will be transferred to a complying superannuation fund or scheme of an Executive Contract Officer's choice.

18. Where an Executive Contract Officer is a member of the NTGPASS and NTSSS, an Executive Contract Officer may:

(a) continue membership of the NTGPASS and the NTSSS with superannuation salary for contribution and benefit purposes based on an Executive Contract Officer's notional salary, or such other salary as determined by the Commissioner of Superannuation. The Employer shall contribute to the Northern Territory Government, on behalf of an Executive Contract Officer from an Executive Contract Officer's Employment Benefits Account, an amount determined by the Commissioner of Superannuation, after taking into account actuarial advice, equivalent to that needed to fund the Employer component of general scheme benefits. An Executive Contract Officer who is a member of the NTGPASS may elect to have a top-up arrangement in addition to the NTGPASS and NTSSS and, while such an election is in force, the Employer shall make contributions from an Executive Contract Officer's Employment Benefits Account to a complying superannuation fund or scheme chosen by an Executive Contract Officer for the purposes of the top-up arrangement. An Executive Contract Officer shall continue to contribute the required level of Executive Contract Officer contributions to the NTGPASS from an Executive Contract Officer's net salary; or

(b) apply in the approved form to discontinue membership of the NTGPASS and the NTSSS at any time during the term of a contract made under this determination in which event paragraphs 15 and 16 of this determination will come into effect. This application is subject to the approval of the Commissioner of Superannuation. On discontinuing membership of the NTGPASS, a transfer value from the NTGPASS and the NTSSS benefit (based on an Executive Contract Officer's notional salary) accrued at the date of ceasing NTGPASS membership will be transferred to a complying superannuation fund or scheme of an Executive Contract Officer's choice.

19. Where an Executive Contract Officer is a member of the NTSSS but not a member of the CSS or NTGPASS immediately prior to the commencement of a contract he or she shall cease to be a member of the NTSSS and the NTSSS benefit (based on an Executive Contract Officer's notional salary) accrued at the date of commencement of a contract will be transferred to a complying superannuation fund or scheme of an Executive Contract Officer's choice.
D. Other Conditions

Sick Leave

20. An Executive Contract Officer shall be entitled to sick leave of three (3) weeks paid leave per employment year, at the rate of Total Employment Cost. Entitlements shall be cumulative.

21. An Executive Contract Officer may access sick leave entitlements on a pro rata basis in respect of his or her initial employment year.

Recreation Leave

22. An Executive Contract Officer shall be entitled to five weeks recreation leave per employment year, at the rate of Total Employment Cost.

23. An Executive Contract Officer must take a minimum of three weeks recreation leave within each employment year. An Executive Contract Officer may elect to be paid in cash (Net of tax) a maximum of two (2) weeks unused recreation leave at an Executive Contract Officer's notional salary rate at the end of each employment year.

If the Executive Contract Officer elects to take the leave in cash such payment shall be in addition to (and shall not form part of) the Total Employment Cost.

24. An Executive Contract Officer shall not carry in excess of six (6) weeks recreation leave into a subsequent employment year. Any excess will be forfeited.

25. Pro-rata entitlement for recreation leave, at an Executive Contract Officer's notional salary rate, shall apply in respect of any incomplete employment year on completion or termination of a contract.

Long Service Leave

26. An Executive Contract Officer shall be entitled to three (3) calendar months long service leave after completion of ten (10) years continuous service plus an additional three-twentieths of a month for each subsequently completed year of service.

27. Payment for accrued long service leave taken during the period of the Contract will be calculated at the rate of Total Employment Cost.

28. For less than ten years (10) continuous service on completion or termination of a contract, an Executive Contract Officer shall 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 calendar days for each of the eighth and ninth completed years of continuous service.
29. Accrued and pro-rata long service leave shall be paid on completion or termination of a contract pursuant to this determination at the notional salary rate.

Special Leave

30. Where an Executive Contract Officer has exhausted relevant leave entitlements the employer may approve special leave in exceptional circumstances.

Parental Leave

31. An Executive Contract Officer on becoming pregnant shall be entitled to fifty-two (52) calendar weeks maternity leave. The timing of such leave is to be agreed between an Executive Contract Officer and the Employer.

32. Subject to paragraph 31, an Executive Contract Officer shall be entitled to a maximum of twelve weeks paid leave, at the rate of Total Employment Cost, during the period of 52 calendar weeks maternity leave, such leave to be without deduction from available leave credits.

33. An Executive Contract Officer shall be entitled to a maximum of one (1) weeks unpaid paternity leave, following the birth of his child.

34. Further to paragraph 33 an Executive Contract Officer shall be entitled to an additional unbroken period of up to fifty one (51) calendar weeks unpaid paternity leave in order to become the primary care-giver of the newborn child. Paternity leave shall cease on the child's first birthday.

35. An Executive Contract Officer, on legally adopting a child, shall be eligible to a maximum of fifty two (52) calendar weeks unpaid adoption leave.

36. Should an Executive Contract Officer's spouse be entitled to any form of parental leave, then an Executive Contract Officer shall not be entitled to take parental leave simultaneously with his or her spouse.

37. An Executive Contract Officer shall only be eligible to take leave in accordance with paragraphs 31 to 35 inclusive following completion of twelve (12) months continuous service in accordance with a contract. Provided that in the event of inconsistency between the terms of paragraphs 31 to 35 and Schedule 14 of the Industrial Relations Act 1988, the later shall prevail.
Removal Expenses

38. (1) Subject to agreement with the Employer, and where an Executive Contract Officer is required to relocate from one place to another to take up duty in accordance with a contract, an 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.

(2) Notwithstanding sub-paragraph (1) 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. Provided that an Executive Contract Officer who is required under this sub-paragraph to travel shall be entitled to be paid such travel allowances as are determined from time to time by the Commissioner for Public Employment.

39. On completion or termination of a contract, the Employer shall meet reasonable removal and travel expenses associated with returning an Executive Contract Officer, recognised dependants, if any, and any 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.

40. Paragraph 39 shall have effect only where:

(a) in the case of an Executive Contract Officer terminating a contract, where that termination occurs within three months of the termination date specified in a contract; and

(b) 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; and

(c) the removal of the effects of an Executive Contract Officer and an Executive Contract Officer’s recognised dependants occurs within ninety (90) days of the completion or termination of employment of an Executive Contract Officer.

41. Where an Executive Contract Officer’s employment is terminated or completed pursuant to this determination and an Executive Contract Officer advises the Employer that he or she will continue to reside within the Northern Territory, paragraph 39 shall be of no effect, unless an Executive Contract Officer was relocated from within the Northern Territory pursuant to paragraph 38.
Higher Duties

42. Where an Executive Contract Officer is required to perform all the duties of a higher designation for a continuous period in excess of one week he or she shall be entitled to receive payment for the total period at the minimum Total Employment Cost applicable to the higher designation where this is greater than an Executive Contract Officer's Total Employment Cost.

Compensation

43. An Executive Contract Officer, if sustaining a compensable injury as defined in the Work Health Act will receive:

(a) during the period of a contract, Work Health 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 benefits from an Executive Contract Officer's Employment Benefits Account; or

(b) on completion or termination of a contract, compensation in accordance with the Work Health Act. For the purpose of the Work Health Act, salary shall mean an Executive Contract Officer's notional salary at the date of completion or termination of a contract.

Ownership of Material and Intellectual Property

44. Confidentiality and Non-Competition

In employing an Executive Contract Officer pursuant to 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:

(a) 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;

(b) 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;

(c) 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:

(i) 6 months;
(ii) a further 6 months in addition to the period specified in (i); and
(iii) an additional 6 months in addition to the period specified in (ii).

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 shall be severed and the remaining period or periods shall still apply.

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.

Provided that the Commissioner for Public Employment may, by instrument in writing, exempt an Executive Contract Officer from any or all of the obligations in sub-paragraphs (b) and (c) of this paragraph.

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

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

47. An Executive Contract Officer who was, immediately prior to entering a contract or subsequent or renewed contract (howsoever described), a permanent or temporary employee employed in accordance with the Public Sector Employment and Management Act or any other Northern Territory legislation approved by the Commissioner for Public Employment, shall have:

(a) accrued and pro-rata recreation leave carried forward into a contract;
(b) accrued and pro-rata sick leave credits converted to full-time equivalent credits and carried forward into a contract;
(c) continuity of service for the purpose of long service leave accrual;
(d) the value of the following entitlements paid in each (not of tax):
   (i) all accrued and pro-rata recreation leave in excess of 6 weeks credit; and
   (ii) all accrued and pro-rata recreation leave loading; and
   (iii) 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;
(e) for the purposes of sub-paragraph 47(d) the monetary value paid will be calculated at the notional salary rate as at the date of commencement of a contract; and
(f) continuity of any entitlement to removal expenses, if applicable.

48. Payments made pursuant to paragraph 47(d), shall be in addition to (and shall not form part of) the Total Employment Cost.

Performance Review

49. The Employer shall review an Executive Contract Officer's performance once each employment year or on a more frequent basis if required. An Executive Contract Officer shall participate and cooperate in any performance appraisal processes adopted by the Employer.

50. Without limiting the scope of paragraph 49 the Employer shall review an Executive Contract Officer's performance on the basis of:

(a) fulfilment of the express or implied conditions of a contract;
(b) any specific professional standards relevant to the nature of duties to be performed; and
(c) fulfilment of any agreed commitments of an Executive Contract Officer and expectations of the Employer.

51. Paragraphs 49 and 50 shall not apply to Chief Executive Officers. The matter of performance review for Chief Executive Officers shall be at the discretion of the Chief Minister and Minister.

E. Completion of a Contract

52. Where an Executive Contract Officer has completed the period specified in a contract he or she shall be entitled to payment of:

(a) accrued recreation leave and accrued long service leave at an Executive Contract Officer's notional salary rate;

(b) subject to sub-paragraph 9(2) the balance in an Executive Contract Officer's Employment Benefits Account paid in cash (Net of tax);

(c) payment of reasonable removal and travel expenses in accordance with paragraph 39 and paragraph 40; and

(d) superannuation benefits where applicable.

F. Termination or Suspension of a Contract

53. (1) The Employer may at any time terminate a contract by giving notice in writing to an Executive Contract Officer.

(2) 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.

54. Where an Executive Contract Officer receives notice pursuant to paragraph 53 and the reason for that notice is that the Executive Contract Officer:

(a) has committed any serious or persistent breach of the express or implied terms or conditions contained in a contract; or

(b) has seriously misbehaved, committed serious misconduct or serious neglect in the discharge of his or her duties; or

(c) has become bankrupt or makes any arrangements or composition with creditors; or

(d) is convicted of any criminal offence, other than an offence which, in the opinion of the Employer, does not affect a contract;
the Executive Contract Officer shall be entitled to payment, as at the
date of termination, of:

(i) accrued recreation leave and accrued long service leave at the
Executive Contract Officer's notional salary rate; and

(ii) subject to sub-paragraph 9(2) the balance in the Executive
Contract Officer's Employment Benefits Account paid in cash
(Net of tax); and

(iii) payment of reasonable removal and travel expenses in
accordance with paragraph 39 and paragraph 40; and

(iv) superannuation benefits were applicable.

55. (1) Where an Executive Contract Officer receives notice pursuant to
paragraph 53 and the reason for that notice is that the Executive
Contract Officer is incapacitated or prevented by illness, injury
or accident from discharging in full his or her duties for the
period in excess of:

(a) one (1) calendar month; or

(b) the total period of sick leave which has accrued and is available
pursuant to paragraphs 21 and 47(b) of this determination;

whichever is the greater;

the Executive Contract Officer shall be entitled to payment, as at the
date of termination, of:

(i) accrued recreation leave and accrued long service leave at the
Executive Contract Officer's notional salary rate; and

(ii) subject to sub-paragraph 9(2) the balance in the Executive
Contract Officer's Employment Benefits Account paid in cash
(Net of tax); and

(iii) reasonable removal and travel expenses in accordance with
paragraph 39 and paragraph 40; and

(iv) superannuation benefits were applicable.

(2) Where an Executive Contract Officer is determined to be totally
and permanently incapacitated he or she shall be entitled to
utilise from the date of that determination his or her accrued
sick leave to the maximum of fifty two (52) weeks or the
expiration of the period specified in a contract, whichever
occurs first.

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(3) No further entitlements to sick leave shall accrue to the Executive Contract Officer from the date he or she is determined to be permanently and totally incapacitated.

56. Where an Executive Contract Officer receives notice of termination other than pursuant to paragraphs 54 and 55 the Executive Contract Officer shall be entitled to payment, as at the date of termination, of:
(a) accrued recreation leave and accrued long service leave at the Executive Contract Officer’s notional salary rate; and
(b) subject to sub-paragraph 9(2) the balance in the Executive Contract Officer’s Employment Benefits Account paid in cash (Net of tax); and
(c) reasonable removal and travel expenses in accordance with paragraph 39 and paragraph 40; and
(d) (i) an amount of fifty percent (50%) of the Executive Contract Officer’s Total Employment Cost for the balance of a contract with six (6) months maximum to apply; or
(ii) where the Executive Contract Officer was, immediately prior to entering a contract a permanent employee employed in accordance with the statutes specified in paragraph 47, an amount paid at the Executive Contract Officer’s notional salary rate equivalent to two weeks salary for each year or part year of continuous service, up to a maximum of forty eight (48) weeks, whichever is the greater; and
(e) superannuation benefits where applicable.

57. Notwithstanding any provision to the contrary in this determination the Employer shall not give notice in writing to an Executive Contract Officer to terminate a contract under paragraph 53 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 except that where an Executive Contract Officer’s position or office has ceased to exist and the Executive Contract Officer has not been redeployed then the provisions of paragraphs 53 and 56 shall apply.

58. Employment under a contract shall not count as service for the purpose of paragraph 56(d)(ii).

59. An Executive Contract Officer may at any time terminate a contract by the giving of one (1) months’ notice in writing to the Employer.

60. Where a contract is terminated by an Executive Contract Officer in accordance with paragraph 59, the Executive Contract Officer shall be entitled to payment, as at the date of termination, of:
(a) accrued recreation leave and accrued long service leave at the Executive Contract Officer’s notional salary rate; and

(b) subject to sub-paragraph 9(2) the balance in the Executive Contract Officer’s Employment Benefits Account in accordance with prevailing taxation provisions; and

(c) reasonable removal and travel expenses in accordance with paragraph 39 and paragraph 40; and

(d) superannuation benefits were applicable.

Review of Decision to Terminate or Suspend

61. On receiving notice in writing from the Employer in accordance with the termination and/or suspension provisions of this determination an Executive Contract Officer may:

(a) accept the decision; or

(b) 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.

62. Where an Executive Contract Officer requests the Employer to reconsider the decision in accordance with paragraph 61(b), the Employer shall provide to an Executive Contract Officer within a further two (2) working days advice in writing of his or her reconsidered decision.

63. (a) Where an Executive Contract Officer does not accept the reconsidered decision an Executive Contract Officer, within two (2) working days of receipt of that decision, may request the Commissioner for Public Employment to review that decision.

(b) Within five (5) working days of receiving an Executive Contract Officer’s request the Commissioner for Public Employment shall 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).

(c) An Executive Contract Officer shall be notified in writing by the Commissioner for Public Employment of his or her decision pursuant to paragraph 63(b).

64. Where the Executive Contract Officer is a Chief Executive Officer at the date of receiving notice pursuant to paragraph 53 then the provisions of paragraph 63 shall not apply.
G. Re-appointment

65. (a) At least six (6) months prior to the expiration of a contract the Employer and an Executive Contract Officer shall confer with the view to reaching agreement as to whether an Executive Contract Officer shall be re-appointed for a further period and, if so, on what terms.

(b) The parties shall agree in writing, no later than three (3) months (or such other period as they may agree in writing) prior to the expiration of a contract, their decision regarding the matters referred to in paragraph 645(a).

(c) Where during the course of renegotiating a further contract pursuant to paragraph 65(a) and (b), an Executive Contract Officer is advised that his or her contract will not be renewed, such advice does not amount to notice of termination pursuant to paragraphs 54 to 56. If a contract is not renewed, the contract shall terminate by operation of law.

66. (a) 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.

(b) Unless otherwise mutually agreed in a new contract, for the purpose of paragraph 66(a), a break in service shall constitute one (1) working day or more.

67. Any accrued or pro-rata entitlements to recreation leave and sick 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.

68. Any credit in an Executive Contract Officer's Employment Benefits Account at the termination or completion of a contract will be carried forward to any new Contract.

69. Completion or termination of a contract by an Executive Contract Officer aged fifty five (55) years or more represents voluntary retirement for superannuation purposes provided that an Executive Contract Officer does not remain in employment in the Public Sector of the Northern Territory.
H. Miscellaneous

70. Rules from Time to Time

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.

71. Retirement

Notwithstanding any term or condition of a Contract and/or this determination to the contrary, the provisions of the Public Sector Employment and Management Act or the Police Administration Act (as applicable) relating to retirement upon the attainment of the specified retirement age, apply to a Contract and the employment of an Executive Contract Officer.

72. Independent Advice

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.

73. Continuation of terms and conditions

Subject to paragraph 42 (Higher Duties) 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 shall continue to apply notwithstanding the change.

I. Interpretation

74. In this determination, unless otherwise stated or the context other indicates"

"Contract" means a contract made pursuant to this determination and nominated as an Executive Contract of Employment;

"Commissioner of Superannuation" means the Commissioner of Superannuation appointed under the Superannuation Act 1986.

"Employment Benefit" means a non-Salary benefit approved and provided by the Employer at the request of an Executive Contract Officer in accordance with a Contract:
"Employment Benefits Account" means the account established for an Executive Contract Officer to account for expenditure incurred by the Employer in the provision of Employment Benefits to an Executive Contract Officer provided that the amount paid into such account shall not, when added to the Salary Component, exceed the Total Employment Cost.

"Employment Benefit Cost" in relation to an Employment Benefit means the total cost to the Employer of providing that Employment Benefit, including any FBT or other tax, levy or charge payable by the Employer in relation to the Employment Benefit or equivalent amount in the case of the Employer being exempt from the payment of FBT, tax, levy or charge as the case may be;

"Employment Year" means each consecutive twelve (12) month period from the date of commencement of a contract;


"Month" means a calendar month;

"Notional Salary" means sixty-five percent (65%) of the Total Employment Cost;

"Complying superannuation scheme or fund" 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.

"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 Employment Cost which is payable as Salary in accordance with paragraphs 7 and 9 or as adjusted in accordance with paragraph 8;

"Total Employment Cost" means the total remuneration specified in clause 3 of a Contract to which an Executive Contract Officer is entitled in accordance with paragraph 5, as adjusted from time to time in accordance with paragraph 6;

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

Dated 10 March 1995

[Signature]

Commissioner for Public Employment
SCHEDULE 1

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 Teacher 9 Contract