



Northern
Territory
Government

OFFICE OF THE
COMMISSIONER FOR PUBLIC EMPLOYMENT

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Executive Contract Employment in the Northern Territory Public Sector

Information Booklet

June 2011

INTRODUCTION

The purpose of this booklet is to provide an Executive Contract Officer (*ECO*) or any person considering an ECO position with an overview of relevant terms and conditions of employment.

The information provided is of a general nature and the particular arrangements will be determined by the offer of employment and a person's individual circumstances. Further information should be obtained from either the relevant agency's human resources section or from the Salary Packaging Unit within the Department of Business and Employment (DBE). The Office of the Commissioner for Public Employment can also provide general advice on terms and conditions matters for ECO employees. Contact details are provided at the conclusion of this booklet.

Prior to entering into ECO employment a person should consider obtaining independent financial and if necessary legal advice, in order to understand the full implications of the Contract terms and conditions.

This booklet and the information within does not form part of the ECO terms and conditions of employment.

LEGISLATIVE BASIS

Under the *Public Sector Employment and Management Act* (the *Act*), the Commissioner for Public Employment (the *Commissioner*) is empowered to determine terms and conditions of employment for all Northern Territory Public Sector employees. ECO terms and conditions of employment are set out in Determination 13 of 2011.

Chief Executive Officers are appointed under section 19 of the Act with the Northern Territory of Australia deemed to be the Employer.

All ECO's, other than Chief Executive Officers, are 'employees' of the Northern Territory Public Sector (NTPS) within the meaning of the Act. However, under the terms of the Contract the Chief Executive Officer is deemed to be the Employer of an ECO.

While the Act generally applies to all ECO's the Contract excludes Parts 7 and 8 which deal with Inability to Discharge Duties and Discipline and their associated appeal and provisions under the Act, the Regulations and the Employment Instructions. The Public Sector Employment and Management By-laws and any awards or enterprise agreements are also excluded.

PRINCIPLES AND CODE OF CONDUCT

The principles of Public Administration and Management, Principles of Human Resource Management and Principles of Conduct contained in Part 2 of the Public Sector Employment and Management Regulations, together with the Code of Conduct apply to all ECOs. A copy of the Code of Conduct which includes the Principles is attached.

REMUNERATION

ECO employment is remunerated by way of a Total Remuneration Package (*TRP*). The TRP comprises the Salary Component and the Employment Benefits (see below). The TRP is adjusted in line with average salary movements for a Senior Administrative Officer 2 classification in the NTPS.

An ECO is required within 14 days to elect what proportion of the TRP he/she will receive as Salary Component and what proportion will be received as Employment Benefits. In the event that an election is not made, the ECO will be paid the Salary Component having regard to the value of the Employment Benefits received by the ECO. An ECO may elect to alter the proportion of TRP received at a later time.

EMPLOYMENT BENEFITS

The Employment Benefits offered under an ECO Contract are a motor vehicle and employer superannuation contributions.

Motor Vehicle

An ECO may elect to have the use of a motor vehicle fitted with incognito plates. The provision of a vehicle is at the discretion of the Chief Executive Officer for ECO Contracts of 12 months or less duration or for ECO's employed on a part time basis. An ECO has some discretion in relation to the choice of vehicle within the approved range of models for the ECO level. "Green" vehicle options are available.

The conditions of use are specified in the determination; however, in general:

- Reasonable personal private use of the vehicle by the ECO and his/her immediate family (as defined) is permitted;
- The vehicle must not be misused or mistreated;
- The vehicle must be made available as part of the agency's vehicle pool during working hours;
- Running costs within the Northern Territory will be met by the Employer, including during periods of paid leave; and
- Running costs outside the Northern Territory during periods of leave will be met by the ECO.

An ECO is required to make a fortnightly contribution from his/her TRP toward the personal use of the vehicle. 'Green' vehicles attract a discounted contribution rate.

Other terms of the determination address vehicle use and contribution rates during periods of leave without pay, half pay leave and part-time employment.

Superannuation

Employer superannuation contributions are made to a compliant superannuation scheme from an ECO's TRP, such to at least meet the minimum employer contribution requirements under the relevant superannuation legislation.

An ECO is required to advise the Employer of his/her superannuation scheme within 14 days or else the Employer will make contributions to its default Accumulation Scheme (currently AGEST).

Members of the now closed Defined Benefit Schemes, eg NTGPASS or CSS, may elect to continue their membership of those schemes and employer contributions will be made based on a deemed contribution salary of 65% of the TRP.

An ECO may discontinue membership of a scheme, subject to the relevant rules of the scheme. Salary sacrifice for employer superannuation is also available.

Further information on superannuation is available from the Salary Packaging Unit in DBE and the Commissioner of Superannuation. Contact details are provided at the conclusion of this booklet.

WARNING: As superannuation is a complex matter, it is strongly advised that a person considering ECO employment obtain independent financial advice of the available options and the implications of these for the individual.

OTHER CONDITIONS

This part of the determination sets out the other terms and conditions of employment applying to an ECO. A brief explanation of each follows; however, for specific details you should refer to the terms of the determination. In summary, the following terms and conditions apply to an ECO:

- Accrual of three weeks personal / carer's leave per year which can be used to cover absences due to personal illness or for caring purposes;
- Up to three days compassionate leave can be used per occasion;
- Accrual of five weeks recreation (annual) leave with a minimum of three weeks to be used each year. An ECO may be directed to take excess leave and an ECO may elect to cash out a portion of his/her leave;
- Half pay recreation leave and purchased leave is available at the discretion of the Employer;
- Community service leave may be accessed for jury service or voluntary emergency activity;
- Three months long service leave accrues after ten years service with leave to be taken within three years of it accruing. Half-pay, double-pay and cash-out options are available at the discretion of the Employer and payment in lieu of pro-rata long service leave applies after seven years. Prior service with another employer may be recognised in certain circumstances;
- NTPS parental leave provisions apply to ECO's, in summary these are:
 - Up to three years parental leave inclusive of any paid leave component;

- 14 weeks paid maternity leave and one week's paid paternity / partners' leave for employees with less than five years service with the NTPS;
- 18 weeks paid maternity leave and two week's paid paternity / partners' leave for employees with five years or more service with the NTPS;
- An ECO may also request flexible work arrangements to care for a child.
- The Employer may grant special leave with or without pay where an ECO has exhausted his/her leave credits;
- NTPS provisions relating to public holidays apply to an ECO;
- Part-time employment may be approved at the discretion of the Employer with pro-rata access to entitlements;
- An ECO may be required to transfer to another work location at the discretion of the Employer;
- Travel allowance is payable for work related travel;;
- Payment for the performance of higher duties is payable where these are performed continuously for more than two weeks;
- Reasonable removal and travel expenses may be met by the Employer for an ECO to take up employment. Repatriation expenses may be met in limited circumstances. A relocation allowance may be payable for a period of up to six fortnights;
- Workers' compensation coverage is provided for under the Northern Territory *Workers' Rehabilitation and Compensation Act*, and
- NTPS remote locality incentives and conditions apply to an ECO required to reside and work in a remote locality (as defined).

CONFIDENTIALITY AND NON-COMPETITION

This section of the determination requires an ECO to maintain strict confidentiality in relation to the Employer's business. The ECO is also bound by the non-competition provisions of the determination.

OWNERSHIP OF MATERIAL AND INTELLECTUAL PROPERTY

All relevant material belonging to the Employer must be returned on completion or termination of a Contract. Unless otherwise agreed in writing by the parties, all intellectual property invented or created by an ECO in his/her employment will remain the property of the Employer.

CONFLICT OF INTEREST

An ECO is required to declare in writing any real or apparent potential conflict of interest that has or may arise in relation to his/her personal interests and employment. The Employer may take any action or direct the ECO to take any action to ensure there is no conflict of interest.

DECLARATION OF PRIVATE FINANCIAL AND OTHER INTERESTS

The Employer may require an ECO to make a declaration of any private financial or other interests which might result in a conflict with his/her employment. This extends to family members and other relevant persons. The Employer may take any action

or direct the ECO to take any action to ensure there is no conflict of interest, including in relation to family members etc.

TRANSITION PROVISIONS

This section of the determination applies to a former ongoing or temporary NTPS employee (or other NT Government employment approved by the Commissioner) entering into an ECO Contract or an ECO entering into a subsequent or renewed Contract and provides for accrued entitlements (within specified limits) to be carried forward into the new Contract. Continuity of service is recognised for long service leave and parental leave purposes.

PERFORMANCE REVIEW

ECO employment is subject to an ECO continuing to meet the performance requirements of the job as specified by the Employer. Performance reviews will be undertaken at least annually.

MEDICAL EXAMINATION

An ECO may be directed to undergo a medical examination by a registered medical practitioner or other relevant person where the Employer believes the ECO's performance or efficiency is affected by an illness or injury.

COMPLETION OF A CONTRACT

This section of the determination provides for the payment of accrued entitlements on completion of a Contract.

TERMINATION OR SUSPENSION OF A CONTRACT

This section of the determination sets out the procedures to be followed and the entitlements payable in the event that an ECO Contract is terminated or suspended, either at the initiative of the Employer or the ECO. The provisions are quite detailed and they should be read in full; however, the key points to note are as follows:

- The rules of natural justice apply to all action taken by the Employer;
- The Employer may terminate or suspend an ECO Contract at any time by giving notice in writing to the ECO;
- An ECO Contract may be terminated for reason of misconduct or illness, or for any other reason;
- The payment for termination to an ECO is subject to the reason for termination and generally includes accrued entitlements, superannuation benefits and relocation expenses (if applicable);
- For termination other than misconduct or illness, an additional amount may be payable, dependent upon the remaining term of the Contract and/or if the ECO was a former employee of the NTPS; and
- An ECO may terminate the Contract on the giving of one month's notice to the Employer.

WARNING: It is strongly recommended that you read the full termination provisions of the determination and seek advice (if necessary) prior to entering into an ECO Contract.

REVIEW OF DECISION TO TERMINATE OR SUSPEND

Within five working days of receiving notice of the Employer's decision to terminate or suspend a Contract, an ECO may request the Employer to reconsider that decision. The Employer is required to provide written advice to the ECO of his/her reconsidered decision within two working days. If unsatisfied with the Employer's reconsidered decision, the ECO may then request, within two working days, that the Commissioner review the Employer's decision. The Commissioner must then advise the ECO in writing the outcome of that review within five working days. A request for the Commissioner to review a decision is not available to a Chief Executive Officer.

WARNING: It is recommended that you read these provisions in full.

RE-APPOINTMENT

An ECO Contract may be renewed for a further period at the Employer's discretion. Reappointment is not automatic and a decision by the Employer not to reappoint an ECO does not amount to a termination of the Contract: the Contract simply terminates by operation of the law.

At least six months prior to the expiry of a Contract the Employer and an ECO are to discuss whether the ECO is to be reappointed. Within three months of expiry of a Contract the Employer will advise the ECO of his/her decision regarding reappointment. These provisions do not apply to Contracts of 12 months or less. Failure to discuss the Contract at the specified times does not create or lead to a legal right to a renewal or extension of the Contract, or compensation.

Service under an earlier Contract will be recognised under the new Contract where there is no break in service and accrued entitlements such as recreation leave and long service leave will also carry forward into the new Contract.

WARNING: It is recommended that you read these provisions in full.

MISCELLANEOUS

This section of the determination provides that:

- An ECO is required familiarise him/herself with any policies, rules and regulations of the Employer that may apply;
- By signing a Contract the ECO confirms that he/she has taken (or waived the opportunity of) independent advice in relation to the Contract;
- The terms and conditions under the determination will continue to apply if an ECO is required to change his/her duties in any way.

DEFINITIONS

This section of the determination defines key terms in the document.

FURTHER INFORMATION

Contact the Human Resources section in your agency for specific information on the terms of an ECO Contract and how they apply to you.

The Salary Packaging Unit within the Department of Business and Employment can provide general information on salary sacrifice and salary packaging options for ECO's. They can be contacted on telephone 08 8999 4505 or email: salarypackagingunit@nt.gov.au .

The Employee Relations Branch of the Office of the Commissioner for Public Employment can provide general information on ECO terms and conditions of employment. They can be contacted on 08 8999 4282 or email: enquiries.ocpe@nt.gov.au .

The Northern Territory Superannuation Office can provide general information on superannuation matters. They can be contacted on freecall 1800 631 630 or email: ntsuperannuation@nt.gov.au .

Most importantly, contact your legal and/or financial adviser for advice on ECO terms and conditions of employment and how they apply to your individual circumstances.

NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY PUBLIC SECTOR

**EXECUTIVE CONTRACT
OF EMPLOYMENT**

FOR CHIEF EXECUTIVE OFFICERS

This Contract of Employment is made
on the.....day of.....20.....

between

The Northern Territory of Australia
(hereinafter referred to as "the Employer")

.....

.....

.....

(show address for service of notices)

and

.....
(hereinafter referred to as "the Executive
Contract Officer")

.....

.....

.....

(show address for service of notices)



NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY PUBLIC SECTOR

**EXECUTIVE CONTRACT
OF EMPLOYMENT**

This Contract of Employment is made
on the.....day of.....20.....

between

The Chief Executive Officer
(hereinafter referred to as "the Employer")

.....

.....

.....

(show address for service of notices)

and

.....
(hereinafter referred to as "the Executive
Contract Officer")

.....

.....

.....

(show address for service of notices)



APPOINTMENT

1. The designation to which _____
_____ the Executive Contract Officer is appointed is Executive Contract Officer _____.
2. The period of this Contract is the period commencing on the ____ day of _____ 20 ____ and ending on the ____ day of _____ 20 ____ unless sooner terminated.

REMUNERATION

3. Subject to the terms and conditions of this Contract, the Executive Contract Officer shall be entitled to a total remuneration being a Total Remuneration Package of _____ (\$ _____) per annum.

DUTIES OF EXECUTIVE CONTRACT OFFICER

4. The Executive Contract Officer shall carry out any and all duties as directed from time to time and shall comply with any statutory obligations applicable to the designation or any office held.

TERMS AND CONDITIONS

5. The terms and conditions of this Contract are as set out in Determination 13 of 2011 of the Commissioner for Public Employment as amended from time to time issued pursuant to section 34(4) of the *Public Sector Employment and Management Act*, a copy of which is contained in the Schedule hereto.

GENERAL PROVISIONS

6. This Contract is nominated as an Executive Contract of Employment in accordance with section 3(1) of the *Public Sector Employment and Management Act*.
7. This Contract supersedes and replaces all other Contracts, understandings or arrangements relevant to the employment of the Executive Contract Officer prior to the execution of this Contract.

8. This Contract shall be governed by the law of the Northern Territory of Australia and shall be deemed to be made in the Northern Territory of Australia.
9. (a) All notices, consents, approvals, agreements or other communications by or to the respective parties to this Contract shall be in writing and shall be deemed to be duly given or made:
- (i) in the case of delivery in person, or by post, when delivered; or
 - (ii) in the case of a facsimile transmission, on receipt by the sender of a written communication transmission report from the sending facsimile machine indicating successful transmission to the recipient's facsimile number, provided that if the time of dispatch is not before 4.00 pm on a day on which business is generally carried on in the place to which such communication is sent, it shall be deemed to have been received at the commencement of business on the next day on which business is generally carried out in that place;
- to the party to which such communication is required or permitted or to be given under this Contract addressed to its address as shown in this Contract or at such address as the relevant addressee may specify for such purpose to the others by notice in writing.
- (b) A written communication transmission includes a notice by facsimile transmission.

IN WITNESS WHEREOF this Contract was executed the day and year first before written.

SIGNED BY _____

Signature

in the presence of:

Signature of Witness

SIGNED BY _____

Signature of Employee

in the presence of:

Signature of Witness

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 29th 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

EMPLOYMENT INSTRUCTION NUMBER 13

CODE OF CONDUCT

1. SCOPE AND PURPOSE

This Employment Instruction establishes the basic level of conduct expected of all employees. The Code cannot address all the possible challenges which individual employees may face in their Public Sector employment.

Where an employee is in doubt as to the applicability and scope of the provisions of this Code, or as to the appropriate course of action to be adopted in any given circumstance, the matter should be discussed with a more senior officer, the Chief Executive Officer or the Commissioner for Public Employment, as appropriate.

2. LEGISLATIVE BASIS

Section 16(2)(c) of the *Public Sector Employment and Management Act* (the Act).

Regulations 2, 3 and 4 of the Public Sector Employment and Management Regulations prescribe the Principles of Public Administration and Management, Human Resource Management, and Conduct.

3. OTHER SOURCES OF INFORMATION

The Northern Territory *Anti-Discrimination Act* and in particular section 20.

The Commonwealth *Sex Discrimination Act*

The Northern Territory Criminal Code, particularly sections 76 - 85, 92, 121, 122 and 222.

4. AGENCY ACTION REQUIRED

Chief Executive Officers may issue guidelines regarding acceptance of gifts and benefits by employees.

Chief Executive Officers may issue an agency-specific code of conduct which is consistent with the Act, Regulations, By-laws or Employment Instructions and any other legislation.

5. INTRODUCTION

5.1 Application of Code of Conduct

This Code of Conduct applies to all employees, including Chief Executive Officers and employees employed under an Executive Contract of Employment. Regulations 2, 3 and 4 (the Principles of Public Administration and Management, Human Resource Management, and Conduct) form part of the Code of Conduct applying to employees, Chief Executive Officers and Executive Contract employees.

5.2 Breach of Discipline

Disregarding the principles set out in this Employment Instruction, the principles of public administration and management, the principles of human resource management, or the principles of conduct as set out in Regulations 2, 3 and 4, or acting in a manner inconsistent with those principles is a breach of discipline under section 49(p) of the Act.

5.3 Familiarity With Principles

Chief Executive Officers and employees shall acquaint themselves with this Employment Instruction, and the Principles of Public Administration and Management, Human Resource Management, and Conduct.

5.4 Standards

In order to maintain public confidence in the integrity of the Public Sector, employees should exhibit, and be seen to exhibit, the highest ethical standards in carrying out their duties, and employees should pursue, and be seen to pursue, the best interests of the people of the Northern Territory.

5.5 Trust and Confidence

It is essential for the proper working of Government that employees retain the trust and confidence of their employer, colleagues and clients in the manner in which they discharge their official responsibilities.

6. PERSONAL AND PROFESSIONAL BEHAVIOUR

In the performance of their duties, employees shall:

- exercise their best possible technical or professional judgement;
- develop and maintain knowledge of their professional field;
- commit time and energy to furthering the agency's purpose and achievements;
- be familiar with and comply with the requirements of the Act, the *Financial Management Act* and other legislative, industrial or administrative requirements relevant to their official responsibilities;

- have regard to all official guidelines concerning the performance of their duties;
- provide all necessary and appropriate assistance to members of the public and other employees;
- seek to obtain value for public money spent and avoid waste or excessive use of public resources; and
- encourage other staff members by example to exercise similar qualities of personal and professional behaviour to those outlined above.

7. RELATIONSHIPS BETWEEN EMPLOYEES AND GOVERNMENT

7.1 Support to Government of the Day

Employees shall provide full support to the Government of the day regardless of which political party or parties are in office.

7.2 Advice to Government

Employees are responsible for providing to Government advice which is frank, independent, based on an accurate representation of the facts and which is as comprehensive as possible. This includes setting out the advantages, disadvantages, costs and consequences of the available options and, where appropriate, recommending a particular course of action.

7.3 Implementation of Government Policy

Employees are also responsible for carrying out decisions and implementing programs promptly, conscientiously and with full regard to Government policy. In implementing programs, an employee's own values should not supplant those explicit or implicit in Government policy. Obviously, it will be necessary both in providing advice and in implementing programs to exercise judgement as to which facts or courses of action are most relevant or important. Judgement must, however, always be exercised with due regard to legislative requirements, Government policy or a supervisor's directions together with considerations of equity and efficiency.

7.4 Contact with Minister and Ministerial Staff

Contact between a Minister and ministerial staff is normally with the Chief Executive Officer. Where a Minister or ministerial staff contacts an employee directly, the employee must advise the Chief Executive Officer of the contact as soon as possible.

8. RELATIONSHIPS BETWEEN EMPLOYEES AND MEMBERS OF THE LEGISLATIVE ASSEMBLY

Contact by members of the Legislative Assembly who are not Ministers will usually be to make representations on behalf of a constituent or by a member of the Opposition in relation to their duties as Opposition spokesperson on Government activities.

8.1 Representations on Behalf of a Constituent

Constituent representations should be channelled to, and/or received by, an appropriately senior employee who has responsibility for the subject matter of the representation.

Written responses should, where possible, be cleared by the Chief Executive Officer prior to dispatch.

Where an oral response is given, employees should ensure that all due care is exercised in providing that response, particularly where the content of the information is likely to be sensitive or constitute other than factual material which is readily available elsewhere.

If an employee is in any doubt about releasing information, the advice of the Chief Executive Officer should be sought.

Representations by members of the Legislative Assembly do not confer any privilege or priority in dealings with agencies. In addition, employees responsible for providing responses should, when contemplating release of such material, be mindful of legislation concerning the security, confidentiality or protocol governing certain categories of information.

8.2 Representation from an Opposition Spokesperson

Opposition Spokespersons normally contact the Minister with portfolio responsibility.

In the absence of the Minister, the Spokesperson may contact the Chief Executive Officer. If a Spokesperson contacts an employee, any request must be referred back to the Chief Executive Officer for instructions prior to a written or oral response being provided.

Further, it should be noted that Opposition Spokespersons do not have a right to access agency files and are not entitled, by virtue of their office, to be provided with written or oral information regarding future or proposed policies or strategies.

9. PUBLIC COMMENT

9.1 Meaning of Public Comment

"Public comment" includes public speaking engagements (including comments on radio and television), expressing views in a letter to the press or in books or in notices or where it is reasonably foreseeable that publication or circulation of the comment will flow to the community at large.

9.2 Public Comment on Government Matters

Except where required by law, or as authorised by the responsible Chief Executive Officer, an employee must not make public comment on Government matters in an official capacity.

9.3 Circumstances in which Public Comment is Inappropriate

While employees, as members of the community, have the right to make public comment and enter into public debate on political and social issues, there are some circumstances in which public comment is inappropriate. These include:

- the implication that the public comment, although made in a private capacity, is in some way seen to be an official comment of the Government or of the employee's agency;
- where an employee is directly involved in advising on or directing the administration or implementation of Government policy and the public comment would compromise his or her ability to continue to do so in an efficient and professional manner; and
- where public comment, regardless of the connection (or lack of connection) with an employee's normal duties, amounts to criticism sufficiently strong or persistent to give rise to the public perception that the employee is not prepared to implement or administer the policies of the Government of the day as they relate to his or her duties.

10. USE OF OFFICIAL INFORMATION

10.1 Disclosure of Official Information

An employee shall not disclose official information or documents acquired in the course of his or her employment, other than as required by law or where proper authority has been given.

10.2 Misuse of Official Information

Employees shall not misuse information gained in their official capacity. Misuse includes:

- speculation in shares on the basis of confidential information about the affairs of a business or of proposed Government action;
- seeking to take advantage for personal reasons or for another person on the basis of information about that person held in official records; and
- gossiping or rumour mongering on the basis of personal or other information held in official records.

10.3 Integrity and Security of Documents and Information

Employees shall take care to maintain the integrity and security of official documents or information for which they are responsible (see also Employment Instruction Number 10 - Employee Records).

10.4 Northern Territory Criminal Code

The Northern Territory Criminal Code contains provisions relating to the misuse and communication of confidential information and other matters relating to employees of the Public Sector.

11. USE OF OFFICIAL FACILITIES AND EQUIPMENT

Unless the Chief Executive Officer grants permission, official facilities and equipment, eg telephones, facsimiles, photocopiers, computers must not be used for non-government or private purposes.

In granting such permission, Chief Executive Officers should have regard to the risk of exposing the agency to potential legal liabilities which could result from the private use of facilities or equipment by employees.

Employees shall not utilise the skills or working time of other employees for their personal benefit or gain.

12. FINANCIAL AND OTHER PRIVATE INTERESTS

12.1 Disclosure of Interests

Employees shall disclose in writing to the Chief Executive Officer any financial or other interests held by them immediately upon becoming aware that a potential conflict between personal interest and official duty, whether real or apparent, has arisen or is likely to arise.

Notwithstanding the above, where the Chief Executive Officer considers it appropriate, any or all employees of an agency may be required to provide written statements of their financial or other interests as set out below.

The types of interests and contemplated interests which are to be considered by employees in determining whether or not they might conflict with their official duties include, but are not limited to, the following:

- shareholdings or other interest in a company or business, whether held by the employee as an individual or as a member of another company or partnership, or through a trust;
- interest in land or property;
- significant liabilities to organisations or individuals excluding indebtedness for home mortgages or for current and ordinary household and living expenses;
- outside employment, appointments or directorships, whether remunerated or not; and
- Local Government office.

The above interests are to be considered by employees not only in relation to themselves, but also in relation to their immediate families.

12.2 Ultimate Decision

The Chief Executive Officer will then decide whether:

- there is or could be conflict of interest;
- the employee should be authorised to continue his or her duties in the area;
- the employee should be requested to divest himself or herself of the interest; or
- a re-arrangement of duties amongst staff, or a transfer with duties involving no such actual or potential conflict, should be organised.

The ultimate decision concerning the appropriate course of action is one for the Chief Executive Officer.

12.3 Bankruptcy

If an employee becomes bankrupt during their employment, he or she must inform the Chief Executive Officer who will determine if any action is required.

13. DISCLOSURE OF OFFENCES AGAINST THE LAW

Employees who have been charged, convicted or acquitted of an offence are required to advise the Chief Executive Officer, regardless of whether the offence relates directly to the employee's duties.

Chief Executive Officers should be aware of what constitutes an irrelevant criminal record under the Northern Territory *Anti-Discrimination Act*.

14. POLITICAL PARTICIPATION

14.1 Awareness of Potential Conflict of Interest

Employees involved in the political arena, whether as an independent parliamentary candidate, as spokesperson, representative, fundraiser or parliamentary candidate for a political party, cause or movement, must be aware of the potential for conflict of interest.

14.2 Likely Potential Conflict of Interest

When the employee becomes aware that a potential conflict, whether real or apparent, has arisen or is likely to arise, the employee must immediately inform the Chief Executive Officer. The matter should then be dealt with as outlined in section 12 of this Employment Instruction.

14.3 Withdrawal

The employee must be aware that if a conflict of interest exists, it may be necessary to withdraw from the political arena or from employment with the Public Sector.

14.4 Caretaker Periods

Employees shall acquaint themselves with the conventions regarding "caretaker periods", that is, the period immediately before an election. In particular, following the dissolution of parliament, the Government assumes a "caretaker" role and avoids taking major policy decisions, making appointments of significance or entering into major undertakings or contracts.

15. OUTSIDE EMPLOYMENT

15.1 Employment Outside Public Sector

Employees shall obtain written permission from the Chief Executive Officer before engaging in any employment (including employment, work or service for which payment is made by way of pay, salary, honorarium, commission, fee, allowance or other reward) outside the Public Sector. Such permission must be renewed by the employee annually unless otherwise determined by the Chief Executive Officer.

Section 61 of the Act details the legislative provisions regarding outside employment. Outside employment should not affect in any way the efficiency or performance of the employee in their Public Sector job.

15.2 Factors for Consideration by Chief Executive Officer

In approving applications to undertake outside employment, the Chief Executive Officer should consider whether conflict may arise between the employee's Public Sector responsibilities and the proposed private employment. In particular, consideration should be given as to whether the company or private organisation concerned is in, or is entering into, a contractual relationship with the Government, whether its primary purpose is to lobby Government agencies or members of Parliament, or whether it is in a regulatory relationship with any Government body.

15.3 Notice of Approval

Approval to engage in outside employment shall be in writing and shall state any restrictions which the Chief Executive Officer has placed on such employment.

15.4 Change in Circumstances

Employees are required to notify the Chief Executive Officer of any change in the nature or circumstance of approved outside employment and such notification shall be treated as a fresh application for approval.

15.5 Voluntary or Unpaid Activities

In general, it is not necessary for employees to obtain permission to involve themselves in voluntary or unpaid activities. Where a conflict of interest arises between these activities and official responsibilities, however, employees must raise the issue with the Chief Executive Officer and accept his or her decision on whether the employee can continue in that activity.

15.6 Outside Employment in Employee's Private Time

Any permitted outside employment or voluntary work shall be performed wholly in the employee's private time. Except in the case of voluntary work, private time does not include an employee's normal working hours during periods of paid leave.

16. ACCEPTANCE OF GIFTS AND BENEFITS

16.1 Judgement and Responsibility

The acceptance of gifts or benefits by employees is an area requiring sound judgement. Benefits include offers of cash, gifts, free travel, substantial hospitality, accommodation or entertainment. Accepting such gifts or benefits is a matter of judgement for the individual employee concerned who must be satisfied that his or her responsibilities will not in any way be compromised or appear to be compromised by acceptance. The employee will bear personal responsibility for any decision to accept a gift or benefit.

16.2 Guiding Principles

In deciding whether to accept gifts or benefits, employees shall be guided by the following principles:

- employees must not solicit or accept any gifts or benefits, the receipt or expectation of which might in any way tend to influence, or appear to tend to influence, the employee in his or her official capacity;
- in the event that any substantial gift, offer or suggestion of such is made directly or indirectly to an employee, the facts shall be reported at the first opportunity to the Chief Executive Officer;
- employees shall avoid all situations in which the appearance may be created that any person or body, through the provision of hospitality or benefits of any kind is securing, or attempting to secure, the influence or favour of the employee; and
- employees shall take all reasonable steps to ensure that their spouse, children or dependents, or staff members, are not the recipients of benefits which could give the appearance of an indirect attempt to secure the influence or favour of the employee.

16.3 Permission of Chief Executive Officer

In any event, employees accepting a gift or benefit of a substantial nature must have the specific permission of the Chief Executive Officer.

16.4 Agency Guidelines and Policies

Chief Executive Officers may establish their own guidelines on this subject, in addition to the requirements given here. Agency-specific policies should give consideration to the following points:

- the relationship of the agency to the donor;
- the primary business of the donor;
- the likelihood of further contact with the donor;

- whether the gift is being accepted as part of a formal exchange of gifts between official representatives of the Northern Territory and another Government;
- the possible adverse consequences to the Northern Territory's interests which may result from the acceptance or refusal of a gift; and
- the type of gift or benefit which in the context of the agency's operations can be seen as inconsequential or trivial.

17. FAIRNESS AND EQUITY

17.1 Principles of Equity

Within policy guidelines, employees have a responsibility to ensure fairness in decision making and equity in program administration. In managing programs or in making decisions concerning individual matters, employees shall take the following principles of equity into consideration:

- procedural fairness; and
- social equity, which is concerned with the substance and the effect of administrative decisions on individuals and the community, particularly disadvantaged members of the community.

17.2 Basis for Decisions

Employees shall take all reasonable steps to ensure that the information upon which their decisions or actions are based is factually correct and relevant to the decisions or actions. Employees shall avoid acting in a way which could be seen as unreasonable or discriminatory.

17.3 Decisions Based on Statutory Power

Where an employee makes a decision based on a statutory power, the employee concerned shall ensure that:

- the legislation under which the decision is made authorises the making of that decision;
- he or she has the authority or the delegation to make the decision;
- any procedures which are required by law to be complied with in the making of a decision have been observed; and
- the decision, the evidence upon which it is based, and the reasons for the decision are properly documented.

17.4 Improper Exercise of Discretionary Powers

Employees shall not exercise discretionary powers for improper purposes or on irrelevant grounds. Improper exercise includes failing to take all relevant facts into consideration, taking irrelevant facts into consideration and not having regard to the merits of each particular case.

17.5 Unnecessary Delay

Employees should avoid unnecessary delay in making decisions or taking action.

17.6 Reports and Comment by Employees

When required to give references for, or make reports on, other Public Sector employees or on persons outside the Public Sector, employees have a duty to provide frank and accurate comment. Employees should also take care to avoid making statements which could be regarded as malicious. Situations in which a report potentially could be regarded as having been made with malice include:

- where the employee knowingly includes false or doubtful allegations in a report;
- where the language of the report is excessively strong or weak, in a manner which might unreasonably mislead the recipient of the report or misrepresent the employee who is the subject of the report; and
- where extraneous material is deliberately introduced or where omissions are deliberately made so as to create a misleading impression.

Section 64A of the Act provides protection from legal proceedings for employees who provide reports in good faith.

18. DISCRIMINATION

18.1 Provisions of Northern Territory *Anti-Discrimination Act*

The Northern Territory *Anti-Discrimination Act* prohibits discrimination on the grounds of race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, impairment, trade union or employer association activity, religious belief or activity, political opinion, affiliation or activity, irrelevant medical record, irrelevant criminal record or association with a person who has, or is believed to have, one of the above attributes. It is not unlawful to discriminate against another person on any of the attributes referred to above if an exemption under the *Anti-Discrimination Act* applies.

18.2 Compliance with Northern Territory *Anti-Discrimination Act*

Employees are required to comply with the provisions of the Northern Territory *Anti-Discrimination Act* in their dealings with other employees and members of the public.

19. EMPLOYEES TO EXERCISE DUE CARE

Employees are expected to exercise due care in ensuring the accuracy, timeliness and impartiality of information and advice given regardless of whether a service fee is charged for that information or advice.

20. DISCLOSURE OF WRONGDOING

Employees have a duty to report to a supervisor, manager, Chief Executive Officer or the Commissioner for Public Employment, any unethical behaviour, corrupt act or wrongdoing by any other employee.

D J HAWKES
COMMISSIONER FOR PUBLIC EMPLOYMENT

7 October 1998