

**Electoral Act**

APPOINTMENT OF ELECTORAL COMMISSIONER

I, SALLY GORDON THOMAS, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council:

- (a) under section 314(2) of the *Electoral Act*, appoint Iain Vijayaratham Loganathan (the appointee) to be the Electoral Commissioner for 5 years on and from 25 April 2014; and
- (b) under section 321 of the *Act*, determine that the appointee holds office on the conditions (including conditions about remuneration, expenses and allowances) stated in the Schedule.

Dated 17th, April, 2014.

S. G. THOMAS
Administrator

By Her Honour's Command

D. W. TOLLNER

Treasurer
acting for Chief Minister

SCHEDULE

Electoral ActCONDITIONS OF APPOINTMENT
(INCLUDING REMUNERATION, EXPENSES
AND ALLOWANCES) OF THE
ELECTORAL COMMISSIONER

A. GENERAL

Appointment

- 1 The Electoral Commissioner (the Commissioner) holds office for a period of 5 years as specified in the instrument of appointment unless the appointment is sooner terminated pursuant to section 323 of the *Electoral Act* (the *Act*), or by resignation or other cessation.

Functions and Duties

- 2 The Commissioner will constitute the Northern Territory Electoral Commission (the Commission) under the *Act*, and perform the functions and duties of the Commission and the Commissioner as provided for by the *Act*, and any other functions and duties applicable to the Commission and the Commissioner under the laws of the Northern Territory and the Commonwealth of Australia.

B. REMUNERATION

- 3 The Commissioner is entitled to a Total Remuneration Package at the base rate applicable from time to time to an Executive Contract Officer 3 under an Executive Contract of Employment made pursuant to the *Public Sector Employment and Management Act*. The Total Remuneration Package incorporates the Salary Component and the Employment Benefits.
- 4 In addition to the Total Remuneration Package under paragraph 3, the Commissioner shall be entitled to access and arrange the Total Remuneration Package in accordance with this Schedule.

- 5 The Commissioner will elect, by written notice to the NTA within 14 days from the commencement of appointment, what proportion of the Total Remuneration Package he elects to receive as Employment Benefits and what proportion is to be paid to him as Salary.
- 6 If the Commissioner has not made the election referred to in paragraph 5 within the period referred to in that paragraph, the Commissioner will, subject to paragraph 7, be deemed to have elected to take the proportion of the Total Remuneration Package as Salary determined by the NTA to be appropriate having regard to any Employment Benefits being conferred, or required to be conferred, under paragraphs 9 to 20.
- 7 If, during a term of office, there is a significant change to the Commissioner's superannuation contributions or to the value of the Total Remuneration Package, the Commissioner may, by notice in writing, request a change to the percentage taken as Employment Benefits and/or the Salary Component to reflect the change.
- 8 Fortnightly payment of Salary will be calculated in accordance with the following formula:

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

C. EMPLOYMENT BENEFITS

- 9 Any difference between the Commissioner's Total Remuneration Package and the amount taken as Employment Benefits will be provided to the Commissioner as Salary.
 - 10 The Commissioner may elect to salary package Employment Benefits as approved by the Commissioner for Public Employment from time to time and the proportion of the Total Remuneration Package to be paid to him as Salary will be adjusted to reflect the value of the Employment Benefits received.
 - 11 Administration fees for salary packaging for benefit items in addition to those specified in this Schedule will be on the same terms as those applying generally to employees of the Northern Territory Public Sector.
 - 12 In making a claim for payment for any Employment Benefit, the Commissioner will make an appropriate declaration as required for taxation purposes. If such declaration is found to be incorrect, the Commissioner agrees to indemnify and reimburse the NTA for any additional tax or penalties imposed by the Australian Taxation Office.
- Motor Vehicle
- 13 The Commissioner may elect to have the use of a motor vehicle fitted with private plates supplied by the NTA, on the same terms and conditions applied to Executive Contract Officers in the Northern Territory Public Sector from time to time.
 - 14 The choice of vehicle is at the discretion of the Commissioner, from those approved by the Commissioner for Public Employment from time to time, relevant to the Northern Territory Public Sector designation of Executive Contract Officer 3.

- 15 Use of the vehicle will be in accordance with NT Fleet Driver Handbook guidelines and related NT Fleet policies
- 16 The Commissioner will pay a contribution amount for personal use of the motor vehicle at a rate determined from time to time by the Commissioner for Public Employment.

Superannuation - Accumulation Scheme

- 17 The NTA will make superannuation contributions from the Commissioner'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* (Cth) as amended from time to time.
- 18 The Commissioner will advise the NTA in writing within fourteen (14) days of the commencement of his appointment of the Accumulation Scheme in which contributions under paragraph 17 are to be made. Where he does not provide this advice to the NTA, the NTA will make the contributions to the Northern Territory Government default Accumulation Scheme.
- 19 The Commissioner may elect to discontinue membership of an Accumulation Scheme at any time by notice in writing to the NTA and advise the NTA of the new Accumulation Scheme to which the NTA will make superannuation scheme contributions in accordance with paragraph 17.

Salary Sacrifice for Superannuation

- 20 The Commissioner may also request in writing for the NTA to make additional contributions from his Total Remuneration Package to an Accumulation 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

- 21 The Commissioner progressively accrues three (3) weeks of personal/carer's leave per Employment Year, and this leave accumulates from year to year.
- 22 The Commissioner 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.
- 23 Paid personal/carer's leave can be taken by the Commissioner for a personal illness or injury, or where the Commissioner is required to provide care or support for a member of his immediate family or household because of personal illness, injury or an unexpected emergency affecting the member.
- 24 The Commissioner must make all reasonable effort to advise the NTA as soon as reasonably practicable on any day of absence from his employment.
- 25 Where the Commissioner's paid personal/carer's leave has been exhausted, he may take up to two (2) days unpaid leave to care for an immediate family or household member.
- 26 The Commissioner may elect to access personal leave at half the Total Remuneration Package rate where the absence is at least one (1) day.

Compassionate Leave

- 27 The Commissioner is entitled to take up to three (3) days of paid compassionate leave in the event of a death or a serious illness posing a threat to the life of the Commissioner's immediate family or household member.
- 28 The NTA may require the Commissioner to produce documentary evidence of the need for compassionate leave.

Recreation Leave

- 29 The Commissioner progressively accrues five (5) weeks paid recreation leave per Employment Year.
- 30 The NTA may, on application in writing by the Commissioner, grant leave for recreation purposes, subject to the Commission's operational requirements.
- 31 The Commissioner must take a minimum of three (3) weeks recreation leave within each Employment Year unless otherwise approved by the NTA.
- 32 The Commissioner will not carry forward in excess of six (6) weeks recreation leave within each Employment Year unless otherwise approved by the NTA.
- 33 The NTA may direct the Commissioner to take a period of paid recreation leave where he has accrued in excess of ten (10) weeks recreation leave, or where the Commission's enterprise is shut down for a period, e.g. between Christmas and New Year.
- 34 The NTA may agree to the Commissioner cashing out an amount of recreation leave provided he retains at least four (4) weeks accrued leave.
- 35 If the Commissioner elects to take recreation leave in cash, such payment will be in addition to and will not form part of, the Total Remuneration Package.
- 36 Subject to the rules of the Australian Taxation Office as varied from time to time, and with the agreement of the NTA, the Commissioner may salary sacrifice a future recreation leave accrual as a lump sum payment for superannuation purposes provided he retains at least four (4) weeks accrued leave.
- 37 The NTA will pay to the Commissioner any unused period of accrued recreation leave on completion or cessation of the appointment.
- 38 Payments under paragraphs 34 to 37 will be at the rate of the Commissioner's Total Remuneration Package.

Recreation Leave at Half Pay

- 39 Subject to the approval of the NTA, the Commissioner may utilise one or more weeks of his 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 Commissioner has entered into a purchased leave arrangement under paragraph 41.
- 40 Where the Commissioner utilises an amount of recreation leave at half pay, all leave entitlements will accrue as if the Commissioner 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

- 41 Subject to the approval of the NTA, the Commissioner who has completed 12 months continuous service may purchase between one (1) and six (6) 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

- 42 The Commissioner is entitled to take paid community service leave for the purposes of jury service or a voluntary emergency activity as approved by the NTA.
- 43 The Commissioner's salary will be reduced by the total amount of jury service pay received by him.

Long Service Leave

- 44 The Commissioner 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.
- 45 The NTA may, on application in writing by the Commissioner, approve a period of long service leave, subject to the Commission's operational requirements.
- 46 Subject to paragraph 47, the Commissioner is required to use his entitlement to long service leave within three (3) years of the ten (10) year and twenty (20) year entitlement accruing, unless the NTA approves a temporary deferral on the utilization of the leave.
- 47 The Commissioner will not be required to use his entitlement where he was of an age no less than ten (10) years younger than the minimum retirement age of 55 years as at 7 March 1999, and he was then employed in the Northern Territory Public Sector and remained in that employment.
- 48 The Commissioner who has not obtained approval from the NTA to temporarily defer the utilisation of his long service leave beyond the three (3) year limit under paragraph 46 will:
 - 48.1 be directed by the NTA to utilise the long service leave credit from a date which suits the needs of the Commission; or
 - 48.2 have the long service leave credit cashed out from the date determined in sub-paragraph 48.1.
- 49 Long service leave will be granted in minimum blocks of seven (7) calendar days, and then multiples of three (3) calendar days.
- 50 When using a long service leave entitlement, the Commissioner may elect:
 - 50.1 to be paid at the rate of the Total Remuneration Package for the full period of the leave; or
 - 50.2 to take half the entitlement approved as leave and the balance paid-in-lieu of leave at the Total Remuneration Package rate; or
 - 50.3 subject to the approval of the NTA, to utilise his 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 44.
- 51 Where the Commissioner utilises an amount of long service leave in accordance with sub-paragraph 50.3 all leave entitlements will accrue as if the Commissioner had utilised the leave at the full Total Remuneration Package rate.
- 52 The Commissioner may at any time elect to cash up a minimum of one (1) month of long service leave at the Total Remuneration Package rate.

- 53 If the Commissioner 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.

- 54 Subject to the rules of the Australian Taxation Office as varied from time to time, the Commissioner 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

- 55 For less than ten (10) years continuous service, on completion or cessation of the appointment, the Commissioner will receive payment in lieu of pro-rata long service leave at the rate of twenty two and one half (22½) calendar days for seven (7) completed years of continuous service, and a further twenty two and one half (22½) calendar days for each of the eighth (8th) and ninth (9th) completed years of continuous service
- 56 Provided the Commissioner had at least one (1) year of service, on death his estate will be entitled to receive pro-rata payment in lieu of any long service entitlement, to be paid at the Total Remuneration Package rate.
- 57 For ten (10) years service or more, on completion or cessation of the appointment, the Commissioner 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

- 58 On request, the NTA may recognise the Commissioner'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

- 59 Parental leave provisions for the Commissioner 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

- 60 Provisions for flexible working arrangements to care for a child for the Commissioner will be those that apply to a Senior Administrative Officer 2 in the Northern Territory Public Sector.

Special Leave

- 61 Where the Commissioner has exhausted relevant leave entitlements the NTA may, where exceptional circumstances exist, approve special leave with or without pay.
- 62 Leave without pay approved under paragraph 64 will not count as service for any purpose.

Public Holidays

- 63 Public Holiday provisions for the Commissioner will be those that apply to a Senior Administrative Officer 2 in the Northern Territory Public Sector.

Working Environment

- 64 The Commissioner may be required, during the term of the appointment, to travel to and from, and work at, any location or place where the NTA requires.

65 Where the Commissioner is required under paragraph 64 to relocate from one place to another, the Commissioner will be paid removal and relocation expenses in accordance with paragraph 67.

Travelling Allowance

66 Subject to agreement with the NTA, where the Commissioner in the course of his appointment is required to travel away from headquarters which extends overnight, the Commissioner will be entitled to travel allowance and other relevant arrangements applicable to a Senior Administrative Officer 2 in the Northern Territory Public Sector.

Removal and Relocation Expenses

67 Subject to agreement with the NTA, where the Commissioner is required to relocate from one place to another to take up duty in accordance with requirements of office, the Commissioner may receive payment of reasonable relocation and travel expenses, and relocation allowances, in accordance with the relocation expenses and relocation allowance provisions that apply to a Senior Administrative Officer 2 in the Northern Territory Public Sector.

68 Subject to paragraphs 69 and 70, on completion or cessation of office, the NTA will meet reasonable relocation and travel expenses associated with returning the Commissioner, recognised dependants, if any, and any of the Commissioner's furniture and personal and household effects, from the place where the Commissioner resided during the period of appointment to the place from which the Commissioner was recruited for appointment to the office, or such other place of equal or lesser distance, as nominated by the Commissioner, and at the discretion of the NTA.

69 Paragraph 68 will have effect only where:

69.1 the departure of the Commissioner and the Commissioner's dependants occurs within thirty (30) days of the completion or cessation of office of the Commissioner, unless otherwise approved by the NTA; and

69.2 the removal of the effects of the Commissioner and of the Commissioner's recognised dependants occurs within ninety (90) days of the completion or cessation of office of the Commissioner, unless otherwise approved by the NTA.

70 Where the Commissioner's period of office is completed or ceases and the Commissioner was recruited from the place at which he resided during the period of appointment, or he advises the NTA that he will continue to reside within the Northern Territory, paragraph 67 will be of no effect, unless the Commissioner was relocated from within the Northern Territory under paragraph 67.

71 The NTA may authorise the deduction from the Commissioner's final Salary payment to recover relocation expenses associated with the recruitment of the Commissioner under paragraph 68 if the appointment is terminated or ceases within 12 months of being made.

72 Paragraph 71 will not apply where:

72.1 the NTA and the Commissioner mutually agree to terminate the appointment; or

72.2 the NTA decides that special circumstances apply.

Workers' Compensation

73 The Commissioner, if an injury as defined in the *Workers Rehabilitation and Compensation Act* is sustained, will be entitled to receive:

- 73.1 during the period of office, *Workers Rehabilitation and Compensation Act* income based benefits based on the Salary Component at the time of injury. In addition, the NTA will continue to provide the same level of Employment Benefits in accordance with the terms and conditions of this Schedule; or
- 73.2 on completion or cessation of office, compensation in accordance with the *Workers Rehabilitation and Compensation Act*.

E. CONFIDENTIALITY AND NON-COMPETITION

74 In appointing the Commissioner to the office, the NTA is exposing the Commissioner 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 NTA, 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 the Commissioner being appointed and therefore exposed to that information, the disclosure of which will damage the NTA, the Commissioner agrees, by accepting the appointment to office of Commissioner, to be subject to the following conditions:

74.1 the Commissioner will not either during or after the course of his appointment to office, and except in the proper course of his duties divulge to any person, and he should use his best endeavours to prevent the publication or disclosure of, any confidential information or trade secrets of the NTA and without limiting the generality of that expression any trade secret or process or information concerning the same or the business of the NTA or of any of its dealings, transactions or affairs which may come to his knowledge during and as a result of or out of his appointment to office, other than where that information or process is part of the public domain;

74.2 during his appointment to office, the Commissioner 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 NTA, except as a shareholder in a Company listed on the Stock Exchange in Australia;

74.3 the Commissioner will not, for the following periods after the date of the completion or cessation of appointment to office for any cause whatsoever, solicit any customer who is an existing customer of the NTA at the time of the ceasing of office:

74.3.1 6 months;

74.3.2 a further 6 months in addition to the period specified in 74.3.1; and

74.3.3 an additional 6 months in addition to the period specified in 74.3.2.

74.4 each of these periods are separately agreed to despite any overlap of the Commissioner'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;

74.5 in this paragraph the NTA includes the Crown in right of 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; and

74.6 provided that the NTA may, by instrument in writing, exempt the Commissioner from any or all of the obligations in sub-paragraphs 74.2 and 74.3 of this paragraph.

F. OWNERSHIP OF MATERIAL AND INTELLECTUAL PROPERTY

75 On completion or cessation of appointment of office, the Commissioner will return to the NTA all correspondence, documents, papers and property relating to duties performed during the period of office.

76 Any intellectual property invented or created by the Commissioner as a result of his holding the office of the Commissioner will remain the property of the NTA, unless otherwise agreed in writing.

G. CONFLICT OF INTEREST

77 The Commissioner must disclose in writing to the Employer where a potential conflict between his personal interest and official duty, whether real or apparent, has arisen or is likely to arise.

78 The NTA may take any action, or direct the Commissioner to take any action the NTA considers necessary, to ensure there is no potential conflict between the Commissioner's personal interest and his official duty. This paragraph does not operate in a way that will or may interfere with the exercise of the independent functions of the Commissioner.

H. DECLARATION OF PRIVATE FINANCIAL AND OTHER INTERESTS

79 The NTA may require the Commissioner 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 official duty.

I. TRANSITION PROVISIONS

80 A Commissioner who was, immediately prior to his appointment as Commissioner or subsequent appointment (howsoever described), an ongoing or fixed period employee employed in accordance with the *Public Sector Employment and Management Act* or any other Northern Territory legislation approved by the Commissioner for Public Employment, will have:

80.1 accrued recreation leave to a maximum of four (4) weeks credit carried forward into his appointment;

80.2 accrued personal/carer's leave credits carried forward into his appointment;

80.3 continuity of service for the purpose of long service leave accrual;

80.4 continuity of service for the purpose of parental leave;

J. PERFORMANCE REVIEW

81 A panel comprising the NTA and the Commissioner for Public Employment will review the Commissioner's performance of public administration powers and functions once each Employment Year or on a more frequent basis if the panel determines that to be necessary at its discretion. The Commissioner will participate and co-operate in any performance appraisal processes adopted for these purposes.

82 Without limiting the scope of paragraph 81, the panel will review the Commissioner's performance on the basis of:

82.1 fulfilment of the express or implied conditions of appointment;

82.2 any specific professional standards and requirements of sound public administration relevant to the nature of administrative and managerial duties to be performed, including as Chief Executive Officer of the Commission for the purpose of the *Public Sector Employment Management Act* and Accountable Officer for the purpose of the *Financial Management Act*; and

82.3 fulfilment of any relevant agreed commitments of the Commissioner and expectations of the NTA

83 Paragraphs 81 and 82 do not apply to the exercise by the Commissioner of independent statutory functions, powers and discretions which he has under the *Act* or generally by reason that he holds office as the Commissioner.

K. MEDICAL EXAMINATION

84 The Commissioner may be directed by the NTA to attend an examination by a registered medical practitioner(s) or other persons having relevant qualifications where the NTA believes the Commissioner's efficiency or work performance is affected by illness or injury.

L. COMPLETION OF A PERIOD OF OFFICE

85 Where the Commissioner has completed the period of office specified in the instrument of appointment, he will be entitled to payment of:

85.1 accrued recreation leave in accordance with paragraph 37;

85.2 accrued and pro-rata long service leave in accordance with paragraph 55 or 57;

85.3 payment of reasonable removal and travel expenses in accordance with paragraphs 68 to 70; and

85.4 superannuation benefits where applicable.

M. PAYMENT FOLLOWING CESSATION OR TERMINATION OF APPOINTMENT

86 If the Commissioner -

86.1 ceases to hold office pursuant to sections 323 of the *Act*; or

86.2 resigns from office pursuant to section 324 of the *Act*;

86.3 the Commissioner will be entitled to payment, as at the date of termination or cessation, of:

86.4 accrued recreation leave in accordance with paragraph 377; accrued and pro-rata long service leave in accordance with paragraph 55 or 57;

86.5 reasonable removal and travel expenses in accordance with paragraphs 68 to 70; and

86.6 superannuation benefits where applicable.

N. MISCELLANEOUS

Rules from Time to Time

87 The Commissioner will familiarise himself with and abide by any policies and NT public sector legislated requirements, rules and regulations in force in the Northern Territory of Australia relevant to the administration of Agencies. This paragraph does not operate in a way that will or may interfere with the independent exercise of the powers, discretions and functions of the Commissioner or the Commission.

Independent Advice

88 By accepting appointment as Commissioner, the Commissioner confirms that he has taken (or has chosen to waive the opportunity to obtain) independent advice as to the implications of the appointment and agrees to be bound by the terms, and conditions imposed by the appointment and this Schedule.

Continuation of Terms and Conditions

89 If the Commissioner is required to change his duties in any way during the term of the appointment as Commissioner, the terms and conditions of this Determination will continue to apply despite the change.

O. DEFINITIONS

90 In this Schedule, unless otherwise stated or the context otherwise indicates:

"Accumulation Scheme"

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

"Commissioner for Public Employment"

means a person appointed under section 8 of the *Public Sector Employment and Management Act* as the Commissioner for Public Employment;

"Employment Benefit"

means a non-salary benefit approved and provided by the NTA at the request of the Commissioner in accordance with this Schedule;

"Employment Year"

means each consecutive twelve (12) month period of service from the date of commencement of an appointment;

"Fringe Benefits Tax"

means tax imposed by the *Fringe Benefits Tax Act 1986* (Commonwealth);

"Month"

means a calendar month;

"NTA"

means, subject to any contrary intention, the Chief Executive Officer of the Department of the Chief Minister, and his or her delegates, or equivalent office, from time to time;

"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 5 and 9 or as adjusted in accordance with paragraph 7;

"Total Remuneration Package"

means the total remuneration specified in paragraph 3 of this Schedule to which the Commissioner is entitled, as adjusted from time to time; and

"Week"

means five (5) working days unless otherwise specified.

