

Northern Territory Commissioner for Public Employment

Community and Public Sector Union

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This Deed is made at DARWIN on the 11<sup>th</sup> day of APRIL 2008

**Parties**                    **Northern Territory Commissioner for Public Employment** of 4th Floor  
Harbour View Plaza, corner of McMinn and Bennett Streets, Darwin (the  
"Employer")

**Community and Public Sector Union ("Union")**

## Recitals

1. The Parties to this Deed are also parties to a collective workplace agreement entitled the Northern Territory Public Sector 2008 – 2010 Union Collective Agreement, made pursuant to Part 8 of the *Workplace Relations Act 1996* (Cth) ("NTPS 2008-2010 UCA").
2. This Deed contains provisions which cannot be included in a workplace agreement under the *Workplace Relations Act 1996* ("the Act").
3. The Parties have entered into this Deed because they wish to include matters from the Northern Territory Public Sector 2004-2007 Certified Agreement to continue and to be preserved in a legally enforceable Deed, subject to Part 16, Division 10 of the Act.

## Operative Part

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Deed:

"Agency" means a unit of government administration, or office or statutory corporation nominated in an Administrative Arrangements Order as an Agency for the purposes of the *Northern Territory Public Sector Employment and Management Act 1993*.

"Act" means the *Workplace Relations Act 1996* and any successor legislation.

"Employee" means an employee where employment is covered by the NTPS 2008-2010 UCA, and who are members of, or are eligible to become members of the Union.

"Employer" means the Northern Territory Commissioner for Public Employment.

"NTPS 2008-2010 UCA" means the Northern Territory Public Sector 2008 – 2010 Union

Collective Agreement.

"**Party**" means a party to this Deed.

"**Term**" means the term of this Deed as defined in clause 2.

"**Union**" means the Community and Public Sector Union.

"**Workplace Agreement**" means a workplace agreement under the Act.

## 1.2 Interpretation

- (a) In this Deed, unless the context otherwise requires:-
- (i) words denoting the singular number also include the plural and vice versa and a word indicating a gender includes every other gender;
  - (ii) words denoting persons include the Employer, an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (iii) references to recitals or clauses, by letter or number are references to recitals or clauses in this Deed;
  - (iv) references to statutes include all statutes amending consolidating or replacing those statutes and all regulations made thereunder and for the time being and from time to time in force;
  - (v) a reference to this Deed is a reference to this Deed as amended, varied, ratified, notated or substituted from time to time;
  - (vi) a reference to a Party includes that Party's successors and permitted assigns;
  - (vii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (viii) "includes" in any form is not a word of limitation.
- (b) Headings are inserted for convenience only and do not affect the interpretation or construction of this Deed.

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**2. Term**

This Deed commences on the date the NTPS 2008-2010 UCA is lodged with the Workplace Authority and continues while the NTPS 2008-2010 UCA is in operation.

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**3. The Union as Representative**

**3.1 Union as Representative**

Although the Union enters into this Deed on its own behalf, it recognises and understands that it must take responsibility for the relevant benefits and obligations that arise under this Deed for and on behalf of Employees eligible to be members of the Union, by reason of its statutory role as a representative of its members as deemed by the Act and the Union’s Rules.

**3.2 Employee Acceptance of Benefits and Obligations**

As well as being for the benefit of the Parties to this Deed, this Deed is for the benefit of the Employees and is intended to be enforceable by such Employees individually to the extent lawfully possible. The Employees accept all benefits and obligations arising under this Deed, by becoming or remaining Employees of the Employer.

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**4. Unenforceable Terms in NTPS 2008-2010 UCA**

In the event that any provisions of the NTPS 2008-2010 UCA are not or cease to be valid or enforceable as provisions of the NTPS 2008-2010 UCA (“Invalid Clause”), the Parties will continue to comply with the Invalid Clause and will discuss whether this Deed should be amended to expressly include the Invalid Clause. Any dispute over expressly including the Invalid Clause in this Deed will be dealt with under the dispute resolution procedure in clause 11 of this Deed.

This clause will not apply to any Invalid Clause that is an objectionable provision under section 811(2) of the Act.

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**5. Negotiations for Replacement Agreement**

Negotiations to replace the NTPS 2008-2010 UCA will commence **three months** prior to the expiry of the NTPS 2008-2010 UCA or, by agreement between the parties to the Agreement, **four months** prior to the expiry of the NTPS 2008-2010 UCA.

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## 6. Redeployment and Redundancy

### 6.1 Relationship with Agreement

- (a) The Parties acknowledge that Schedule 10 of the NTPS 2008 – 2010 UCA sets out enforceable provisions dealing with the subject of redeployment and redundancy.
- (b) The provisions contained in this Deed are in addition to those set out in the NTPS 2008-2010 UCA.

### 6.2 Advice to Union

- (a) Where it appears to the Employer that a potentially surplus situation or a situation of redundancy has occurred or is likely to occur affecting members of the Union the Employer must:
  - (i) immediately advise the Union to this effect and immediately provide all details required by paragraph (c) below; and
  - (ii) arrange discussions with officers of the Union.
- (b) Where it appears to the Employer that a potentially surplus situation has occurred or a redundancy situation has or is likely to occur, affecting persons who are eligible to be members of the Union, the Employer:
  - (i) is not required to notify any details to the Union in respect of Employees holding a designation with a salary level equivalent to or above that of Executive Officer Level 1, unless the Employee concerned requests that the Union be notified;
  - (ii) must immediately provide details to the Union in respect of Employees holding a designation with a salary level below that of Executive Officer Level 1.
- (c) In accordance with Section 41(2) of the *Public Sector Employment and Management Act* the Chief Executive Officer of an Agency will notify the Union of an Employee being potentially surplus to its requirements, and in addition provide the following:
  - (i) For a Union member holding a classification below the salary level of Executive Officer 1, all supplementary information details in accordance

with Section 1.3 of Part B of Schedule 10 of the NTPS 2008-2010 UCA;

- (ii) For an Employee who is not a member of the Union but would be eligible to become a member of the Union, and who holds a classification carrying a salary level below that of Executive Officer 1, all supplementary information details in accordance with Section 1.3(f) to (i) of Part B of Schedule 10 of the NTPS 2008-2010 UCA; and
  - (iii) For an Employee who holds a classification carrying a salary level equivalent to or above that of Executive Officer 1, all supplementary information details in accordance with Section 1.3 of Part B of Schedule 10 of the NTPS 2008-2010 UCA, only if the Employee so requests, irrespective of the Employee being a member of the Union.
- (d) The advice to the Union will be provided at the same time as the Employee is advised under Section 1.1 of Part B of Schedule 10 of the NTPS 2008-2010 UCA.

### **6.3 Application of Inability etc**

The Employer agrees that it will involve the Union in the discussion referred to in Section 7 of Part B of Schedule 10 of the NTPS 2008-2010 UCA.

### **6.4 Voluntary retrenchment**

An Employee cannot be invited by the Employer to volunteer retrenchment until four weeks has elapsed since the Union was advised of a redundancy situation. A lesser period of time may be agreed upon by the Employer and the Union.

### **6.5 Right of Appeal**

The independent committee referred to in clause 15.2 of Part A of Schedule 10 of the NTPS 2008-2010 UCA will comprise:

- (a) an independent Chairperson agreed upon by the Employer and the Union concerned;
- (b) an Employee or nominee of the Employer;
- (c) an Employee or nominee of the Union.

## 6.6 Substitution or Other Provisions

Where the Union, the employee and the Employer agree, provisions may be applied to an Employee specified in sub-clauses 7.2(a) and (b) of this Deed, which are in addition to, or in substitution for, any or all of the Redeployment and Redundancy provisions set out in this clause and Schedule 10 of the NTPS 2008-2010 UCA.

## 6.7 Exemption

The Redeployment and Redundancy provisions set out in this clause and Schedule 10 of the NTPS 2008-2010 UCA do not apply to those fixed term or contract Employees employed under section 34 of the *Public Sector Employment and Management Act*, unless otherwise agreed between the Employer and the Union.

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# 7. Union Rights

## 7.1 Union Representation

The Employer recognises the legitimate right of the Union to represent those Employees who are members, or eligible to become members.

## 7.2 Rights of Entry

The Employer agrees that it will:

- (a) continue to apply the provisions of Part IX of the Act relating to rights of entry that operated prior to the amendments to those provisions resulting from the introduction of the *Workplace Relations (WorkChoices) Amendment Act*, and
- (b) grant access for the Union to conduct normal union business or to represent Employees in accordance with those provisions, provided that work is not disrupted.

## 7.3 Obligations on Entry

The Union agrees that its organisers will observe all the usual courtesies (including compliance with relevant site induction and OHS requirements) when entering or seeking to enter the Employer's premises and will not disturb or interfere with any work being carried out on the premises at any time that organisers are on the premises.

## 7.4 Representation

An Employee appointed as a Union delegate in the Agency in which he or she is employed will, upon notification to the Chief Executive Officer, be recognised as the accredited representative of the Union. Subject to the prior approval of the Chief Executive Officer, an accredited Union delegate shall be allowed reasonable time during working hours to interview the Chief Executive Officer or their representative, on matters affecting Employees whom he or she represents.

## 7.5 Grievance/ Dispute Resolution Training Leave

- (a) For the purpose of assisting Employees to understand their rights and entitlements under the NTPS 2008-2010 UCA and improving industrial relations, the Chief Executive Officer shall, subject to the provisions of this clause, provide an Employee who is a Union delegate or nominated Employee representative with up to five days' paid leave per annum to attend union training courses conducted by the Union or approved by the Union.
- (b) The approval for an Employee to attend a training course shall be subject to the operational requirements of the Agency.
- (c) An Employee seeking to take training leave under this clause must:
  - (i) unless agreed by the Chief Executive Officer, have completed at least twelve months' continuous service prior to taking training leave; and
  - (ii) have been nominated by the Union to attend the course for which the training leave is sought.
- (d) The Employee will only be paid for the period of training leave if:
  - (i) he or she provides evidence satisfactory to the Chief Executive Officer of his or her attendance at the course for which training leave was sought; and
  - (ii) unless agreed by the Chief Executive Officer, the Chief Executive Officer has received not less than four weeks written notice of nomination from the Union, setting out the time, dates, content and venues of the course.

- (e) Leave granted under this clause will be on ordinary pay, not including shift and penalty payments or overtime.
- (f) Leave granted under this clause will count as service for all purposes.

## **7.6 Communication**

- (a) For the purpose of assisting Employees to understand their rights and entitlements under the NTPS 2008-2010 UCA, the Chief Executive Officer shall, where practicable, make available facilities to assist the Union to display notices.

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## **8. Obligations on the Union**

The Union will pay to the Employer \$1.00 in consideration for the Employer agreeing to its obligations pursuant to this Deed.

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## **9. Special Condition**

A Party will promptly undertake all further acts reasonably requested by the other Party to establish, maintain and protect the respective rights and remedies of the Parties in this Deed and to carry out and effect the intent and purpose of this Deed.

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## **10. Illegality**

If any provision of this Deed is ineffective, void, voidable, illegal or unenforceable, or if this Deed would, if a particular provision were not omitted, be ineffective, void, voidable, illegal or unenforceable that provision will (without in any way affecting the validity, legality, effectiveness and enforceability of the remainder of this Deed) be severable and this Deed will be read and construed and take effect for all purposes as if that provision were not included in it.

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## **11. Dispute Resolution**

- (a) Before any proceedings are brought in respect of any dispute that arises out of or in connection with this Deed (including any dispute as to the validity, breach or termination of the Deed) (“the dispute”), the following steps must be taken to attempt to resolve the dispute.
- (b) Notice of the dispute must be given in writing by the party claiming that a dispute has arisen to the other Party to the Deed specifying the nature of the dispute.

- (c) Upon receipt of the notice of dispute, the Parties must attempt to resolve the dispute. The Parties acknowledge the right of the Parties to appoint another person to act on behalf of them in relation to resolving the matter and have a representative present at all meetings.
- (d) If within 10 business days of receipt of the notice of dispute the dispute is not resolved, then the Parties shall refer the dispute to mediation.
- (e) If the matter is referred to mediation the Parties:
- (i) agree that the mediator shall be an agreed mediator, or failing agreement, a mediator appointed by the President of the Law Society Northern Territory ("**the Mediator**");
  - (ii) agree that they will participate in the mediation process in good faith;
  - (iii) acknowledge the right of either party to appoint another person to act on behalf of the party in relation to the mediation process and have a representative present at the mediation; and
  - (iv) agree the mediation will be held in Darwin, Northern Territory unless the Parties agree.
- (f) Should the matter not be resolved at the mediation, either party may refer the matter to arbitration. To do this, written notice of the referral must be provided to the other party within 7 days of the mediation concluding. The arbitrator shall be an agreed arbitrator, or failing agreement, an arbitrator appointed by the President of the Law Society Northern Territory.
- (g) An arbitration conducted under this deed is an arbitration to which the *Commercial Arbitration Act* applies. However, without taking away from any other exclusion with respect to the operation of the *Commercial Arbitration Act* in this deed, the Parties agree that s34 and s36 of that Act does not apply.
- (h) In conducting an arbitration pursuant to this clause, the arbitrator shall act according to equity, good conscience and the substantial merits of the case without regarding to technicalities or legal form.
- (i) The Parties agree that where a mediation or arbitration takes place pursuant to this clause, the Employer and the Union to the dispute will each pay 50% of the costs of the independent mediator or arbitrator.

- (j) This clause does not prevent any party seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction where, in that Party's reasonable opinion, that action is necessary to protect that Party's rights.

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## **12. General**

### **12.1 Severability**

The terms of this Deed are severable and any invalidity of one or more, or part thereof, of the terms will not affect the validity of the remainder of the Deed as a whole.

### **12.2 Entire Agreement**

This Deed embodies the entire agreement between the Parties on the terms contained in this Deed and supersedes any prior written or other agreement of the Parties. No agreement or undertaking varying the terms of this Deed is binding on either party unless in writing and executed by the Parties.

### **12.3 Governing Law**

This Deed is governed by and must be construed according to the law applying in Northern Territory.

### **12.4 No waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed.
- (b) A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

### **12.5 Amendments**

This Deed may only be varied by an agreement executed by or on behalf of each party.

## **12.6 Counterparts**

This Deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

## **12.7 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

EXECUTED as a Deed

SIGNED SEALED AND DELIVERED BY

Northern Territory Commissioner for Public Employment

[Signature]  
(Signature of Witness)

(Signature of Witness)

PHILIP BAENNON

(Name of Witness)

[Signature]  
Name

SIGNED SEALED AND DELIVERED BY

Community and Public Sector Union  
affixing its seal in accordance with its Rules  
in the presence of



[Signature]

(Signature of Witness)

DIANNE VINCENT

(Name of Witness)

[Signature]  
Name

29 April 2008