



# BACKGROUND PAPER

*Fair Work Act 2009*  
s.156–4 yearly review of modern awards

## 4 yearly review of modern awards – Proposed Norfolk Island Award

(AM2018/8)

MELBOURNE, 12 JULY 2018

**Note: This is a background document only. It has been prepared by the Commission research area and does not represent the view of the Commission on any issue.**

### Norfolk Island reform process – workplace relations

[1] Before 1 July 2016, the *Fair Work Act 2009* (Cth) (Fair Work Act) and the *Fair Work Regulations 2009* (Fair Work Regulations) did not apply to employers and employees on Norfolk Island. Workplace relations on Norfolk Island was regulated by the *Employment Act 1988* (NI) (NI Employment Act) and the *Employment Regulations 1991* (NI).

[2] The *Territories Legislation Amendment Act 2016* (Cth) (Territories Act) and associated Rules made Norfolk Island a non-self-governing territory of Australia and extended relevant Commonwealth legislation to Norfolk Island.<sup>1</sup> The Territories Act extended the Fair Work Act to Norfolk Island on 1 July 2016, by inserting new definitions of 'Australia' and the 'Commonwealth' into s.12 of the Fair Work Act, as including Norfolk Island. This makes Norfolk Island employers and employees national system employers and employees for the purposes of the Fair Work Act.

[3] Consequently, from 1 July 2016 Norfolk Island businesses have been required to comply with many provisions of the Fair Work Act (subject to the operation of the *Fair Work (Norfolk Island) Rule 2016* (the Rule) discussed below). These include:

- the National Employment Standards (NES);
- increased minimum pay rates;
- a loading of 25 per cent for casual employees, in accordance with national minimum wage orders; and
- record-keeping and payslip requirements.

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<sup>1</sup> See Explanatory Statement, *Fair Work (Norfolk Island) Rule 2016*, p.1.

[4] The Territories Act also inserted s.32A into the Fair Work Act, which enables the responsible Minister, by legislative instrument, to prescribe modifications of the Fair Work Act in relation to Norfolk Island.

### ***Fair Work (Norfolk Island) Rule 2016***

[5] The Rule, which came into effect on 1 July 2016, sets out ‘ongoing modifications’ (Schedule 1) and ‘transient modifications’ (Schedule 2) of the Fair Work Act and the Fair Work Regulations relating to Norfolk Island. Schedule 2 to the Rule was repealed at the start of 2 July 2018.

[6] The transient modifications in Schedule 2 provided for increased minimum wages for Norfolk Island award/agreement free employees through a stepped transition. The Norfolk Island minimum wage was increased to 85 per cent of the national minimum wage or applicable special national minimum wage on 1 July 2016. The minimum wage increased to 100 per cent of the national minimum wage or applicable special national minimum wage on 1 July 2017.

[7] Schedule 2 also provided that modern awards ‘covered’ Norfolk Island employers and employees from 1 July 2016, but did not ‘apply’ to them until 1 July 2018. This was to enable Norfolk Island employers and employees to make enterprise agreements from 1 July 2016, and for the Fair Work Commission (Commission) to assess agreements against the relevant modern awards.

[8] Schedule 2 also continued Norfolk Island employment contracts under the NI Employment Act, enterprise agreements under the *Public Service Act 2014* (NI) and public sector wage determinations under the *Public Sector Remuneration Tribunal Act 1992* (NI) that were in effect immediately before 1 July 2016, as ‘transitional NI instruments’ under the Fair Work Act. Where transitional NI instruments contained less favourable terms than those contained in the NES, the relevant NES applied.

[9] The Commission was given powers to vary or terminate transitional NI instruments in limited specified circumstances. The termination of a transitional NI instrument did not terminate the employment of an employee by the employer.

[10] Any transitional NI instrument that had not been terminated before the end of 30 June 2018 terminated at the end of 30 June 2018. From 1 July 2018, modern awards apply to Norfolk Island employers and employees.

[11] The ongoing modifications of the Fair Work Act in Schedule 1 to the Rule include:

- a power for the Commission, from 1 July 2018, to make a ‘take-home pay order’ to ensure that the transition to modern awards does not result in a Norfolk Island employee having a reduction in their pay;
- Norfolk Island employees retaining any accrued (but unused) entitlements as at 1 July 2016 in relation to ‘annual holidays’ and ‘sick leave’ accrued under the NI Employment Act;
- the minimum period of notice of termination or payment in lieu of notice under the NES commencing from 1 July 2016, with service on Norfolk Island before 1 July 2016 not counted as service for this provision; and
- the redundancy pay entitlement under the NES commencing from 1 July 2016, with service on Norfolk Island before 1 July 2016 not counted as service for this provision

(unless the employee had an entitlement under their terms and conditions of employment).

### **Other workplace relations laws relating to Norfolk Island**

[12] The NI Employment Act:

- recognises Foundation Day, Bounty Day, Thanksgiving and Show Day as public holidays, in addition to the eight national public holidays legislated under the Fair Work Act;
- retains restrictions on employing persons under the age of 15 years; and
- retained the minimum statutory terms and conditions of employment in relation to rest periods and uniforms, until these provisions were repealed at the start of 1 July 2018.

[13] From 1 July 2016, the *Long Service Leave Act 1955* (NSW), with some modifications, has applied to Norfolk Island.