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To: Chambers - Ross J

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Subject: AM2018/8 - Proposed Norfolk Island Award: Applicant Parties Submission & Evidence in support [ABLAW-ImanageDocs.FID173173]

Dear Associate

AM2018/8 - Proposed Norfolk Island Award

On behalf of the NSW Business Chamber Ltd and the Norfolk Chamber of Commerce Inc, please find **attached** for filing:

1. Submission in support of an Interim Award (including annexures A – G); and
2. Affidavit of Cherri Eleanor Buffett dated 9 July 2018.

The Applicant and Respondent parties to the matter are copied in to this email by way of service.

Yours sincerely

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Fair Work Commission: 4 yearly review of modern awards

AM2018/8 PROPOSED NORFOLK ISLAND AWARD

SUBMISSION: INTERIM AWARD

THE NSW BUSINESS CHAMBER LTD

- and -

THE NORFOLK ISLAND CHAMBER OF COMMERCE INC.

9 JULY 2018

BACKGROUND

1. On 30 June 2018, the NSW Business Chamber Ltd (**NSWBC**) filed a claim for:
 - (a) the making of a modern award that would apply to employees and employers on Norfolk Island; or (in the alternative)
 - (b) transitional provisions to be inserted into approximately 77 modern awards to provide relief from certain modern award requirements such as penalty rates, minimum wages and public holiday rates.
2. On 5 July 2018, NSWBC in conjunction with the Norfolk Island Chamber of Commerce, Inc. (**Norfolk Chamber**) sought that an award for Norfolk Island be made on an interim basis until the Commission could hear and make a full and final determination of the matter.
3. The 'interim award' sought applies to private sector employers and employees on Norfolk Island (see **Annexure A**).
4. The interim award seeks to:
 - (a) maintain the operation of many key labour market features of Norfolk Island that operated before 1 July 2018 including the notion of the working week, flexible operation of types of employment, overtime arrangements etc;
 - (b) introduce a simple classification structure providing minimum wages above the national minimum wage, at rates already determined in other awards by the Fair Work Commission (the **Commission**), phased in over five years;
 - (c) introduce penalty rates for working hours which give rise to disutility for employees working on Norfolk Island; and
 - (d) introduce provisions already contained in existing modern awards for matters not seen as controversial in the context of Norfolk Island.
5. On 5 July 2018, the Commission issued directions requiring the 'applicant parties' to file materials in support of the making of an interim award by 4pm Monday 9 July 2018.¹
6. This submission is made on behalf of:
 - (a) NSWBC; and
 - (b) Norfolk Chamber.
7. NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009*.
8. The Norfolk Chamber is an incorporated association registered with the Australian Charities and Not-for-Profits Commission under the *Associations Incorporations Regulations 2005* (Norfolk Island).
9. We refer to these parties collectively as the Applicant Parties.

SPECIAL CONTEXT

10. The industrial circumstances of Norfolk Island are uncontroversially special and could reasonably be described as unique.
11. Relationships between employers and employees on Norfolk Island have evolved in a

¹ Transcript of Proceedings - 1056145 - AM2018/8 - 1:03pm Thursday 5 July 2018 at PN95

- manner that is entirely distinct from mainland Australia.
12. Mainland Australia has operated with substantial regulation of employment relationships manifest in various statutory schemes for over 100 years.
 13. At the heart of these schemes has been the making of industrial instruments principally awards. Depending on the scheme, these have either operated as common rule or responsiveness based.
 14. These awards have had common features; holistic regulation of terms and conditions of employment including:
 - (a) wages;
 - (b) allowances;
 - (c) hours of work;
 - (d) overtime;
 - (e) shift arrangements and penalties;
 - (f) penalty rates for working certain hours;
 - (g) types of employment;
 - (h) leave;
 - (i) consultation;
 - (j) redundancy;
 - (k) dispute resolution; and
 - (l) industry or occupation specific features.
 15. Awards applying in mainland Australia evolved in statutory schemes based on conciliation and arbitration, under both State and Commonwealth statutory schemes.
 16. In 2008 the Australian Industrial Relations Commission commenced the Award Modernisation Process which culminated in Fair Work Australia (**FWA**) making some 122 modern awards (operating from 1 January 2010) superseding many thousands of State and Commonwealth awards.
 17. Alongside these awards certain terms and conditions of employment have also evolved by direct statutory force which is now reflected in the National Employment Standards (**NES**).
 18. Even though employers and employees on mainland Australia had been subject to comprehensive award regulation for over 100 years, FWA formed the view that key elements of the new modern awards should be phased in over some 5 years.
 19. The Commonwealth Parliament also required FWA to review the operation of these awards after only some 2 years of operation, before the Commission was required to undertake an even more comprehensive review of modern awards, which has continued over the last 4 years.
 20. Norfolk Island, its residents and its businesses, share none of this industrial regulatory history.
 21. Given the very distinct nature of life on Norfolk Island, Norfolk Island citizens have evolved their society in a way that sees community and work co-exist in a manner that does not exist on mainland Australia.

22. In this sense Norfolk Island is not only a labour market apart from mainland Australia but also a labour market special to the society and community of Norfolk Island.
23. Until 2016 the 'high water mark' of labour market regulation for Norfolk Island was the *Employment Act 1988 (NI)*² (**EA 1988**) (see **Annexure B** for a copy of the legislation as it was prior to 1 July 2016).
24. The EA 1988 was a 'comprehensive' (albeit succinct) scheme of regulation dealing with:
 - (a) employment terms and conditions (section 10 to 24);
 - (b) compensation for work-related accidents (section 26 to 47);
 - (c) safe work practices (section 48 to 64);
 - (d) conciliation, adjudication and review (sections 65 to 94); and
 - (e) miscellaneous (sections 95 to 106).
25. As can be seen from a cursory view of the EA 1988, Norfolk Island has traditionally been regulated in a way tailored to its unique labour market, size and composition.
26. If one were to compare the equivalent scope of regulation that has been developed in mainland Australia, the mainland regulation would amount to many, many 1000's of pages.
27. The terms and conditions of employment in sections 10 to 24 of the EA 1988 set out simple standards on:
 - (a) the requirement for written employment contracts;
 - (b) minimum rates of pay;
 - (c) annual holidays;
 - (d) public holidays;
 - (e) sick leave;
 - (f) rest periods;
 - (g) uniforms;
 - (h) notice of termination;
 - (i) payment of wages;
 - (j) work outside working hours; and
 - (k) employment of persons under 15 years of age.
28. Prior to 1 July 2016 the minimum wage on Norfolk Island was \$10.70 per hour.
29. It is significant that industrial notions common place on mainland Australia were not part of the EA 1988, for example:
 - (a) prescriptive regulation of 'ordinary hours';
 - (b) types of employment with prescriptive rules;
 - (c) shift work;
 - (d) penalty rates; and
 - (e) detailed overtime prescriptions.

² Set out in **Annexure C** is the EA 1988 Guide.

30. The EA 1988 was supplemented by the *Employment Regulations 1991* but these Regulations did not materially increase regulation of terms and conditions of employment (see **Annexure D** for a copy of the legislation as it was prior to 1 July 2016).
31. The most recent consolidated EA 1988 (compilation 15 December 2016) after the introduction of mainland Australia regulation is set out in **Annexure E**.
32. The progressive introduction of mainland Australia regulation commenced with the amendment of the *Fair Work Act 2009* (Cth) (**FW Act**) inserting section 32A which empowered the Minister, by legislative instrument, to make rules prescribing modifications of the Act for its application to Norfolk Island.
33. The legislative instrument relevant to this is the *Fair Work (Norfolk Island) Rule 2016 (the Rules)* (**Annexure F**).
34. The Rules commenced operation on 1 July 2016.
35. The Explanatory Statement to the Rules is set out in **Annexure G**.
36. The Rules commenced the transition of Norfolk Island into the mainland Australia scheme of industrial regulation, the FW Act, NES and modern awards.
37. While mainland Australia has over the course of a century adapted and acclimatised to the current form and breadth of industrial regulation, including a period of five years to transition to key elements of modern awards, Norfolk Island has been given a mere two years to fully convert from its own 'fit for purpose' industrial arrangements to the regulatory regime of the mainland.
38. The Rules:
 - (a) applied the NES from 1 July 2016;
 - (b) applied the general provisions of the *Fair Work Act 2009* from 1 July 2016;
 - (c) phased in the National Minimum Wage; 85% 1 July 2016 and 100% 1 July 2017; and
 - (d) applied modern awards made by the Commission from 1 July 2018.
39. This fundamental shift in labour market regulation over such a short period appears to have had little regard to:
 - (a) the relative living standards of persons on Norfolk Island;
 - (b) the level of workforce participation on Norfolk Island;
 - (c) the impact on business including employment costs and regulatory burden;
 - (d) whether those operating businesses on Norfolk Island (and those working in them) can easily understand the regulatory scheme imposed on them; or
 - (e) the impact on employment and the well being of the Norfolk Island economy.
40. This transition also appears to have had little regard to the principle of inherent fairness and balance between economic wellbeing, community, employees and business that existed for decades before the Rules.
41. A considered understanding of this history and the evidence of Cheri Eleanor Buffet allows the Commission to form a preliminary view that:
 - (a) Norfolk Island is a unique labour market;³

³ Affidavit of Cheri Eleanor Buffet sworn 9 July 2018 at [8]and [13]

- (b) Norfolk Island employers and employees do not have the experience of historically working in the mainland industrial system;⁴
- (c) Norfolk Island employers and employees have historically worked in a simple and easy to understand regulatory system (before 2016) that aligns to the size, workforce composition and nature of work on Norfolk Island;⁵
- (d) the exposure of Norfolk Island to the NES and modern awards has created material (whether perceived or manifest) economic pressure on business sustainability and employment in an isolated and uniquely contained labour market;⁶
- (e) Norfolk Island is primarily reliant on tourism for its economic sustainability;⁷
- (f) tourism has stagnated in Norfolk Island;⁸
- (g) the notion of a working week has a different history and operation on Norfolk Island to mainland Australia;⁹
- (h) the operation of overtime and penalty rates has a different history and operation on Norfolk Island to mainland Australia;¹⁰
- (i) the notion of employment types (part time and casual) has a different history and operation on Norfolk Island to mainland Australia;¹¹
- (j) the notion of labour regulation such as minimum engagements etc has a different history and operation on Norfolk Island to mainland Australia;¹²
- (k) the labour regulation arrangements in operation before 1 July 2016 allowed Norfolk Island employers and employees to operate, work and live effectively and harmoniously within a special social and community setting;¹³ and
- (l) employers on Norfolk Island are ill equipped to understand and manage the complexity of modern awards (and the NES).¹⁴

42. These findings go to supporting the making of the interim award sought.

THE STATUTORY CONTEXT RELATING TO THE MAKING OF AN INTERIM AWARD

43. The approach advanced by the Applicant Parties sits squarely with the considerations arising from section 577 and 578.

44. The interim award is sought pursuant to section 156. Section 156 vests power in the Commission to make a modern award.

45. The FW Act does not appear to contain express provisions similar to previous legislation

⁴ Affidavit of Cherri Eleanor Buffet sworn 9 July 2018 at [14] - [43]

⁵ Affidavit of Cherri Eleanor Buffet sworn 9 July 2018 at [8] and [12] - [13]

⁶ Affidavit of Cherri Eleanor Buffet sworn 9 July 2018 at page 74 (Annexure CEB-4) and paragraphs [51] - [54]

⁷ Affidavit of Cherri Eleanor Buffet sworn 9 July 2018 at [12]

⁸ As above

⁹ Affidavit of Cherri Eleanor Buffet sworn 9 July 2018 at [14] and [35]

¹⁰ Affidavit of Cherri Eleanor Buffet sworn 9 July 2018 at [30] and [35]

¹¹ Affidavit of Cherri Eleanor Buffet sworn 9 July 2018 at [26] and [29]

¹² Affidavit of Cherri Eleanor Buffet sworn 9 July 2018 at [15]

¹³ Affidavit of Cherri Eleanor Buffet sworn 9 July 2018 at [16], [19], [40] - [41]

¹⁴ Affidavit of Cherri Eleanor Buffet sworn 9 July 2018 at [44] - [50]

dealing with the making of interim awards but does however empower the Commission to make interim decisions (section 589 (2)).

46. This power is sufficiently broad for the Commission to make a decision granting the award sought by the Applicant Parties (on an interim basis) until the Commission has time to hear and make a full and final determination in the matter.
47. On a preliminary basis the Commission should respectfully accept that the interim award sought is consistent with the modern awards objective (s 134) based on these submissions and the evidence of Cheri Eleanor Buffet.
48. The terms and conditions of employment in the interim award sought accord with the requirements of section 136 in terms of their inclusions and exclusions.
49. Section 143 deals with “coverage terms” of modern awards and sets out the requirements for these.
50. In short, it provides broad scope as to how to specify the employers and employees to be covered by an award and the interim award sought in **Annexure A** plainly accords with the requirements of the section.
51. It may be questioned whether or not section 154 has any application in this matter.
52. In our submission, on a proper reading, it does not.
53. Section 154 must be understood in terms of its language. The opening words of section 154 (1) are:
“A modern award must not include terms and conditions of employment...”
54. The notion of terms and conditions of employment should be understood as the terms and conditions that establish benefits, obligations and rights for employers and employees and as such should be seen as distinct from the notion of “coverage terms” that section 143 is concerned with.
55. In any event, the interim award’s “coverage term” is not determined or expressed in a way that could be said to offend section 154¹⁵.
56. The Applicant Parties respectfully seek the making of an interim award as soon as possible.
57. While the original claims were made on 30 June 2018 before modern awards applied to Norfolk Island and the Applicant Parties would favour the retrospective operation of the interim award to 1 July 2018, section 49 appears to work against this and as such the Applicant Parties seek the interim award to be made as soon as it can.
58. It is acknowledged that this will leave a very brief ‘interregnum’ between 1 July 2018 and the making of the interim award which might only be amenable to effective resolution through the assistance of the Commonwealth.

WHY MAKE AN INTERIM AWARD?

59. The Applicant Parties seek the making of a modern award for Norfolk Island as set out in **Annexure A**.
60. The Applicant Parties seek the making of this award on an interim basis until the Commission can hear and determine the matter in full.

¹⁵ See 4 yearly review of modern awards – transitional provisions [2015] FWCFB 644, ACCI v ACTU [2015] FCAFC 131.

61. We have been unable to identify in the time available whether the Commission has previously made a modern award on an interim basis under the FW Act. While the historical case law¹⁶ has developed in a different statutory context, many of the principles still seem to have relevance to the Commission's present task including that:
- (a) the making of an interim award is an unusual measure to be undertaken in special circumstances¹⁷;
 - (b) the making of an interim award should be directed at ensuring that existing conditions of employment (i.e. the status quo) are maintained unless and until the Commission, in the exercise of the powers which the Act confers, can determine the substantive dispute¹⁸; and
 - (c) the making of such an interim award is necessary to avoid injustice.¹⁹
62. In addition to these aspects, the exercise of the Commission's power under s 589(2) should be supported by arguments going to the balance of convenience and the public interest.
63. The terms and conditions of employment in the interim award seek to balance maintaining the status quo operating before 1 July 2018 (the claim having been made on 30 June 2018) in key respects but set into the form of a modern award reasonably adopting many elements of modern awards that are adaptable to the circumstances on Norfolk Island.
64. This balances the Applicant Parties' desire to maintain the status quo (on key issues) until it can be heard on a final award but also works to reflect the will of Parliament that Norfolk Island become part of the modern award system generally.
65. As noted above, the circumstances of this matter are uncontroversially special and could reasonably be described as unique.
66. The public interest is enlivened in this matter given the fragility of the Norfolk Island economy and the material burden exposure to over 100 modern awards creates.
67. It should be uncontroversial that employers are understandably struggling with the imposition of industry and occupation based modern awards and this increases the likelihood of non compliance. This will be manifestly reduced by making the interim award.
68. Making the interim award isolated to Norfolk Island also removes the immediate need for the Commission to consider the alternative claim to vary 77 modern awards in paragraph 1 (b) above which is more efficient and in the public interest.
69. The Applicant Parties have acknowledged a desire to finalise the matter as quickly as the Commission can reasonably timetable it and as such the interim award will not operate for a lengthy period of time.
70. In our respectful submission the balance of convenience favours the making of the award claimed in **Annexure A** on an interim basis.

¹⁶ See *Industrial Relations Commission Decision 1285/1995* [1995] AIRC 1116; (9 June 1995) concerning operation of s 111 of the *Industrial Relations Act 1988* (Cth)

¹⁷ See *Metal Trades Award and other awards* (1959) 93 CAR 62 at 64

¹⁸ See *In Media, Entertainment and Arts Alliance; ex parte The Hoyts Corporation Pty Ltd* (1993) 178 CLR 379 at 389

¹⁹ *Industrial Relations Commission Decision 1422/1992* [1992] AIRC 1376; (7 December 1992)



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On behalf of Australian Business Industrial, the NSW Business Chamber Ltd and the Norfolk Island Chamber of Commerce Inc.

9 July 2018

Norfolk Island Interim Award 2018

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Part 1—Application and Operation

1. Title

This award is the Norfolk Island Interim Award 2018.

2. Commencement and transitional

2.1 This award commences on 1 July 2018.

2.2 The monetary obligations imposed on employers by this award may be absorbed into over-award payments. Nothing in this award requires an employer to maintain or increase any over-award payment.

2.3 This award contains transitional arrangements which specify when particular parts of the award come into effect. Some of the transitional arrangements are in clauses in the main part of the award. There are also transitional arrangements in Schedule A that deal with minimum wages.

2.4 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

2.5 The Fair Work Commission may review the transitional arrangements in this award and make a determination varying the award.

2.6 The Fair Work Commission may review the transitional arrangements:

(a) on its own initiative; or

(b) on application by an employer, employee, organisation or outworker entity covered by the modern award; or

(c) on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award; or

- (d) in relation to outworker arrangements, on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the arrangements relate.

3. Definitions and interpretation

In this award, unless the contrary intention appears:

Act means the *Fair Work Act 2009 (Cth)*

adult apprentice means an apprentice who is 21 years of age or over at the commencement of their apprenticeship

cargo ship activity means work associated with the loading or unloading of a cargo ship that has stopped at Norfolk Island

employee means national system employee within the meaning of the Act

employer means national system employer within the meaning of the Act

NES means the National Employment Standards as contained in [sections 59 to 131](#) of the *Fair Work Act 2009 (Cth)*

standard rate means the minimum weekly wage for Level 3 in clause 14—Minimum wages

Norfolk Island means the land mass known as Norfolk Island as is not a reference to the Territory of Norfolk Island.

Territory of Norfolk Island means Norfolk Island and all the other islands and rocks lying within the area bounded by the parallels 28 degrees 59 minutes and 29 degrees 9 minutes south latitude and the meridians 167 degrees 54 minutes and 168 degrees east longitude.

- 3.1 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.

4. Coverage

- 4.1 Subject to this clause, this award:

- (a) covers employees in the classifications listed in clause 14—Minimum wages working on Norfolk Island employed by private sector employers operating a business on Norfolk Island; and
- (b) operates to the exclusion of any other modern award.

- 4.2** The award does not cover those classes of employees who, because of the nature or seniority of their role, have not traditionally been covered by awards including managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists.
- 4.3** The award does not cover Norfolk Island Regional Council or its employees.
- 4.4** The award does not cover employees excluded from award coverage by the Act.
- 4.5** The award does not cover employees who are covered by a modern enterprise award, or employers in relation to those employees.

5. Access to the award and the National Employment Standards

The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. The National Employment Standards and this award

The [NES](#) and this award contain the minimum conditions of employment for employees covered by this award.

7. Award flexibility

7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

7.3 The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
- (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

7.4 The agreement between the employer and the individual employee must also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

7.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

7.6 Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

7.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

7.8 The agreement may be terminated:

- (a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
- (b) at any time, by written agreement between the employer and the individual employee.

Note: If any of the requirements of s.144(4), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see s.145 of the *Fair Work Act 2009* (Cth)).

- 7.9** The notice provisions in clause 7.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 7.8(a), subject to four weeks' notice of termination.
- 7.10** The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.

Part 2—Consultation and Dispute Resolution

8. Consultation

8.1 Consultation regarding major workplace change

(a) Employer to notify

- (i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (ii) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

(b) Employer to discuss change

- (i)** The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (ii)** The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1(a).
- (iii)** For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

8.2 Consultation about changes to rosters or hours of work

- (a)** Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b)** The employer must:
 - (i)** provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (ii)** invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
 - (iii)** give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c)** The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.

- (d) These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

9. Dispute resolution

- 9.1** In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 9.2** If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.
- 9.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.
- 9.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 9.5** An employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 9.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this award and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

Part 3—Types of Employment and Termination of Employment

10. Types of employment

- 10.1** Employees may be engaged on a full-time, part-time or casual basis.

10.2 Full-time employment

The ordinary hours of full-time employees are an average of 38 per week averaged over 26 weeks.

10.3 Part-time employment

- (a)** A part-time employee:
 - (i)** works less than full-time hours of 38 per week;
 - (ii)** has reasonably predictable hours of work; and
 - (iii)** receives, on a pro rata basis, equivalent pay and conditions to full-time employees in the same classification.
- (b)** At the time of engagement the employer and the part-time employee must agree in writing on the number of hours to be worked each week. These hours can be varied at any time by agreement.
- (c)** Any variation to the agreed number of hours will be recorded in writing, which can be a note in a roster or wage record.
- (d)** On each occasion a part-time employee is required to attend work they are entitled to a minimum payment for one hours' work.

10.4 Casual employment

- (a)** A casual employee is one engaged as such. Casual employees must be paid a loading of 25% in addition to the relevant minimum wage in clause 14. This loading is instead of the leave to which full-time employees are entitled under the NES and this award.
- (b)** On each occasion a casual employee is required to attend work they are entitled to a minimum payment for one hours' work.

11. Termination of employment

11.1 Notice of termination is provided for in the NES.

11.2 Notice of termination by an employee

The notice of termination required to be given by an employee is the same as that required of an employer except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the employer may withhold from any monies due to the employee on termination under this award or the NES,

an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause less any period of notice actually given by the employee.

11.3 Job search entitlement

Where an employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.

12. Redundancy

12.1 Redundancy pay is provided for in the NES.

12.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

12.3 Employee leaving during notice period

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

12.4 Job search entitlement

- (a)** An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b)** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c)** This entitlement applies instead of clause 11.3.

Part 4—Minimum Wages and Related Matters

13. Classifications

The classifications to which the award applies are in Schedule B—Classification Structure and Definitions.

14. Minimum wages

14.1 Adult minimum wages

Classification	Minimum wage per week	Minimum wage per hour
	\$	\$
Level 1	719.20	18.93
Level 2	739.90	19.47
Level 3	768.30	20.22
Level 4	837.40	22.04
Level 5	913.70	24.04

14.2 Apprentice minimum wages

(a) An apprentice must be paid a minimum of the following percentage of the standard rate:

Year	% of <u>standard rate</u>
First	55
Second	65
Third	80
Fourth	95

(b) An adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be paid 80% of the minimum wage for Level 3 in clause 14.1, or

the rate prescribed by clause 14.2(a) for the relevant year of the apprenticeship, whichever is the greater.

- (c) An adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be paid the rate for the lowest adult classification in clause 14.1, or the rate prescribed by clause 14.2(a) for the relevant year of the apprenticeship, whichever is the greater.
- (d) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or twelve months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 14.1 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

14.3 Apprentice conditions of employment

Except as provided in this clause or where otherwise stated, all conditions of employment specified in this award apply to apprentices.

14.4 Junior minimum wages

The minimum wages for juniors are:

Age	% of relevant adult minimum wage
Under 16 years of age	36.8
At 16 years of age	47.3
At 17 years of age	57.8
At 18 years of age	68.3
At 19 years of age	82.5
At 20 years of age	97.7

14.5 Higher duties

An employee engaged for more than four hours on any one day or shift on the duties of a higher classification must be paid the minimum wage for that classification for the whole day or shift.

14.6 Supported wage system

See Schedule C

14.7 School-based apprentices

See Schedule D

14.8 National training wage

See Schedule D

15. Allowances

15.1 Clothing reimbursement

An employee required to provide special clothing or a uniform must be reimbursed by the employer for the cost of such clothing.

15.2 First aid allowance

An employee who has been trained to render first aid and who is the current holder of appropriate first aid qualifications such as a certificate from St John Ambulance or similar body must be paid an extra 2% of the [standard rate](#) per week if appointed by their employer to perform first aid duties.

15.3 Leading hand/in charge allowance

A team leader or leading hand in charge of three or more employees must be paid:

In charge of	% of standard rate extra per week
3–10 employees	4.4
11–20 employees	6.5
More than 20 employees	8.3

15.4 Meal allowance

An employee required to work more than one hour of overtime after the employee's ordinary time of ending work without being given 24 hours' notice must be either provided with a meal or paid a meal allowance of \$18.29. If the overtime exceeds four hours a further meal allowance of \$16.57 must be paid.

15.5 Vehicle allowance

An employee who agrees with their employer to use their own motor vehicle on the employer's business must be paid an allowance of \$0.78 per kilometre.

15.6 Reimbursement of expenses

An employee must be reimbursed all reasonable expenses incurred at the direction of the employer.

15.7 Adjustment of expense related allowances

- (a) At the time of any adjustment to the [standard rate](#), each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Vehicle allowance	Private motoring sub-group

16. Payment of wages

Payment of wages is dealt with in s.323 of the Act.

17. Superannuation

17.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation*

Industry (Supervision) Act 1993 (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.

- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

17.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

17.3 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 17.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 17.2 to one of the following superannuation funds or its successor:

- (a) CareSuper;
- (b) AustralianSuper;
- (c) SunSuper;
- (d) HESTA;
- (e) HOST-PLUS
- (f) the Retail Employees Superannuation Trust (REST)
- (g) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees 1 July 2018, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector scheme; or
- (h) a superannuation fund or scheme which the employee is a defined benefit member of.

Part 5—Hours of Work and Related Matters

18. Ordinary hours of work and rostering

18.1 The ordinary hours fixed in accordance with clause 10—Types of employment, for employees other than casuals are to be worked on a regular basis with fixed starting and finishing times over a maximum of six days per week. Once fixed, the starting and finishing times can be varied by agreement at any time or by the employer on seven days' notice.

18.2 Ordinary hours, for employees other than casuals are not to exceed 10 hours on any day or shift except by agreement in which case the maximum number of ordinary hours is 12.

19. Breaks

An employee must not be required to work for more than five hours without an unpaid break of at least 30 minutes for a meal.

20. Overtime and penalty rates

20.1 Overtime

All time worked in excess of:

- the maximum daily hours specified in clause 18.2;
- an average of 38 hours per week (by a full-time employee); or
- in excess of the agreed number of hours per week (by a part-time employee),

is overtime and must be paid at the rate of 150% of the relevant minimum wage. In the case of part-time employees, the agreed number of hours means the number of hours agreed either at the commencement of employment or subsequently.

20.2 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 20.2.
- (c) An agreement must state each of the following:

- (i) the number of overtime hours to which it applies and when those hours were worked;
- (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
- (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
- (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule I. There is no requirement to use the form of agreement set out at Schedule I. An agreement under clause 20.2 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 20.2 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 20.2 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 20.2 as an employee record.

- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 20.2 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (k) If, on the termination of the employee’s employment, time off for overtime worked by the employee to which clause 20.2 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 20.2.

20.3 Penalty rates

- (a) An employee working ordinary hours at the following times will be paid an additional amount, equal to the following percentage of the minimum wage in clause 14 for the relevant classification:

Type of employment	Monday to Friday (outside of 7am-7pm)	Saturday	Sunday	Public holidays
	%	%	%	%
Full-time and part-time	15	20	25	100
Casual (inclusive of casual loading)	40	45	50	100

- (b) The above penalty rates are not cumulative. Where more than one penalty applies the employee is entitled to the higher of the two.

- (c) Instead of being paid the above penalty rates an employee (other than a casual) may agree to be compensated for work performed on a public holiday by receiving their ordinary pay plus:
 - (i) an equivalent day or equivalent time off without loss of pay; or
 - (ii) an additional day of annual leave.

Part 6—Leave and Public Holidays

21. Annual leave

21.1 Annual leave is provided for in the NES.

21.2 For the purpose of the additional week of annual leave provided for in s.87(1)(b) of the Act, a **shiftworker** is an employee who works ordinary hours over seven days of the week and is regularly rostered to work on Sundays and public holidays.

21.3 When taking a period of paid annual leave an employee must be paid a loading of 17.5% in addition to the payment required by the NES or the ordinary pay they would have received for the period of the leave, whichever is the greater.

21.4 Annual close down

- (a) Where an employer intends temporarily to close (or reduce to nucleus) the place of employment or a section of it for the purpose, amongst others, of allowing annual leave to the employees concerned or a majority of them, the employer must give those employees one month's notice in writing of an intention to apply the provisions of this clause. In the case of any employee engaged after notice has been given, notice must be given to that employee on the date of their engagement.
- (b) Where an employee has been given notice pursuant to clause 21.4(a) and the employee has:
 - (i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;
 - (ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or
 - (iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.

- (c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.

21.5 Annual leave in advance

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
 - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
 - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

Note: An example of the type of agreement required by clause 21.5 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

- (c) The employer must keep a copy of any agreement under clause 21.5 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 21.5, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

21.6 Cashing out of annual leave

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 21.6.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 21.6.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 21.6 must state:
 - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and

- (ii) the date on which the payment is to be made.
- (e) An agreement under clause 21.6 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 21.6 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 21.6.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 21.6.

Note 3: An example of the type of agreement required by clause 21.6 is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H.

21.7 Excessive leave accruals: general provision

Note: Clauses 21.7 to 21.9 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 21.2).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 21.8 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.

- (d) Clause 21.9 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

21.8 Excessive leave accruals: direction by employer that leave be taken

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 21.7(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
 - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 21.7, 21.8 or 21.9 or otherwise agreed by the employer and employee) are taken into account; and
 - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
 - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 21.8(b)(i).

Note 2: Under section 88(2) of the Fair Work Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

21.9 Excessive leave accruals: request by employee for leave

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 21.7(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.

- (b) However, an employee may only give a notice to the employer under paragraph (a) if:
 - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (ii) the employee has not been given a direction under clause 21.8(a) that, when any other paid annual leave arrangements (whether made under clause 21.7, 21.8 or 21.9 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under paragraph (a) must not:
 - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 21.7, 21.8 or 21.9 or otherwise agreed by the employer and employee) are taken into account; or
 - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 21.2) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

22. Personal/carer's leave and compassionate leave

Personal/carer's leave and compassionate leave are provided for in the NES.

23. Community service leave

Community service leave is provided for in the NES.

24. Cargo ship activity leave

24.1 An employee is entitled to be absent from his or her employment for a period if:

- (a) the period consists of one or more of the following:

- (i) time the employee engages in cargo ship activity;
 - (ii) reasonable travel time to and from cargo ship activity; or
 - (iii) reasonable rest time immediately following cargo ship activity;
- and

(b) the employee's absence is reasonable in all the circumstances.

24.2 An employee who wants an absence from his or her employment to be covered by this clause must give his or her employer notice of the absence as soon as practicable. This notice must advise the employer of the period, or expected period of the absence. An employee must notify his or her employer as soon as practicable if a previously notified period of absence is to be amended due to unforeseen circumstances such as weather or sea conditions.

24.3 An employee who has given his or her employer notice of an absence under this clause must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in cargo unloading activity.

24.4 All leave taken under this clause is to be unpaid.

24.5 Nothing in this clause prevents an employee from engaging in paid employment whilst undertaking cargo ship activity.

25. Public holidays

25.1 Public holidays are provided for in the NES.

25.2 By agreement between an employer and the majority of employees in an enterprise another day may be substituted for a public holiday provided for in the NES.

25.3 An employer and an employee may agree on the substitution of another day for a day substituted under clause 24.1.

Schedule A—Transitional Provisions

A.1 General

A.1.1 The provisions of this schedule deal with minimum obligations only.

A.2 Minimum wages

A.2.1 The following transitional arrangements apply where the minimum rate prescribed by clause 14 of this award is greater than the national minimum wage, or special national minimum wage, that would apply to the employee if the employee was an award/agreement free employee.

A.2.2 The difference between the minimum wage for the classification in this award and the national minimum wage, or special national minimum wage is referred to as the transitional amount.

A.2.3 From the following dates the employer must pay no less than the minimum wage for the classification in this award minus the specified proportion of the transitional amount:

First full pay period on or after

1 July 2018	80%
1 July 2019	60%
1 July 2020	40%
1 July 2021	20%

A.2.4 These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2022.

Schedule B—Classification Structure and Definitions

Level 1

An employee at this level has been employed for a period of less than three months and is not carrying out the duties of a level 4 or level 5 employee.

Level 2

An employee at this level has been employed for at least three months but less than 18 months and is not carrying out the duties of a level 4 or level 5 employee.

Level 3

An employee at this level has been employed for more than 18 months and is not carrying out the duties of a level 4 or level 5 employee.

Level 4

An employee at this level has a trade qualification or equivalent and is carrying out duties requiring such qualifications.

Level 5

An employee at this level has advanced trade qualifications and is carrying out duties requiring such qualifications or is a sub-professional employee.

Schedule C—Supported Wage System

C.1 This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

C.2 In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this award for the class of work for which an employee is engaged

supported wage system (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

C.3 Eligibility criteria

C.3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

C.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

C.4 Supported wage rates

C.4.1 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause C.5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

C.4.2 Provided that the minimum amount payable must be not less than \$86 per week.

C.4.3 Where an employee’s assessed capacity is 10%, they must receive a high degree of assistance and support.

C.5 Assessment of capacity

C.5.1 For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

C.5.2 All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

C.6 Lodgement of SWS wage assessment agreement

C.6.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

C.6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

C.7 Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

C.8 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

C.9 Workplace adjustment

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

C.10 Trial period

C.10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

C.10.2 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

C.10.3 The minimum amount payable to the employee during the trial period must be no less than \$86 per week.

C.10.4 Work trials should include induction or training as appropriate to the job being trialled.

C.10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.

Schedule D—School-based Apprentices

- D.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- D.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- D.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- D.4** For the purposes of clause D.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- D.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- D.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- D.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.
- D.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each two years of employment as an apprentice or at the rate of competency based progression if provided for in this award.
- D.9** The apprentice wage scales are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three years duration) or stages of competency based progression (if provided for in this award). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- D.10** If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time apprentice will

count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.

D.11 School-based apprentices are entitled pro rata to all of the other conditions in this award.

Schedule E– National Training Wage

E.1 Definitions

E.1.1 In this schedule:

adult trainee means a trainee who would qualify for the highest minimum wage in wage level A, B or C if covered by that wage level.

approved training, in relation to a trainee, means the training specified in the training contract of the trainee.

Australian Qualifications Framework (AQF) means the national framework for qualifications in post-compulsory education and training.

relevant Ministers means a Minister responsible for vocational education and training.

training authority means a body that has power to approve traineeships, and to register training contracts.

trainee means an employee undertaking a traineeship under a training contract.

traineeship means a system of training that:

- (a) has been approved by the relevant training authority; and
- (b) meets the requirements of a training package developed by the relevant Skills Service Organisation and endorsed by the Australian Industry and Skills Committee; and
- (c) leads to an AQF certificate level qualification.

training contract means an agreement for a traineeship made between an employer and an employee that is registered by the relevant training authority.

training package means the competency standards and associated assessment guidelines for an AQF certificate level qualification that have been endorsed for an industry or enterprise by the Australian Industry and Skills Committee and placed on the National Training Information Service with the approval of the relevant Minister, and includes any relevant replacement training package.

wage level A, B or C, see clause E.4.

Year 10 includes any year before Year 10.

E.1.2 A reference in this schedule to **out of school** refers only to periods out of school beyond Year 10 as at 1 January in each year and is taken to:

- (a) include any period of schooling beyond Year 10 that was not part of, or did not contribute to, a completed year of schooling; and

- (b) include any period during which a trainee repeats, in whole or part, a year of schooling beyond Year 10; and
- (c) not include any period during a calendar year after the completion during that year of a year of schooling.

E.2 Coverage

E.2.1 Subject to clauses E.2.2 to E.2.5, this schedule applies to an employee covered by this award who is undertaking a traineeship and whose training package and AQF certificate level are allocated to a wage level by clause E.6 or by clause E.4.4.

E.2.2 This schedule only applies to AQF Certificate Level IV traineeships for which a relevant AQF Certificate Level III traineeship is listed in clause E.6.

E.2.3 This schedule does not apply to:

- (a) the apprenticeship system; or
- (b) qualifications not identified in training packages; or
- (c) qualifications in training packages that are not identified as appropriate for a traineeship.

E.2.4 If this schedule is inconsistent with other provisions of this award relating to traineeships, the other provisions prevail.

E.2.5 This schedule ceases to apply to an employee at the end of the traineeship.

E.3 Types of traineeship

The following types of traineeship are available:

E.3.1 A full-time traineeship based on 38 ordinary hours per week, with 20% of those hours being approved training;

E.3.2 A part-time traineeship based on fewer than 38 ordinary hours per week, with 20% of those hours being approved training provided:

- (a) wholly on the job; or
- (b) partly on the job and partly off the job; or
- (c) wholly off the job.

E.4 Minimum rates

E.4.1 Minimum weekly rates for full-time traineeships

(a) Wage level A

The minimum rate for a full-time trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to wage level A by clause E.6.1 is the weekly rate specified in Column 2 of **Table 1—Wage level A minimum weekly rate for full-time trainees (AQF Certificate Level I–III traineeship)**

according to the highest year of schooling completed by the trainee specified in that column and the experience level of the trainee specified in Column 1.

Table 1—Wage level A minimum weekly rate for full-time trainees (AQF Certificate Level I–III traineeship)

Column 1 Experience level of trainee	Column 2		
	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
School leaver	\$323.10	\$355.80	\$423.90
Plus 1 year out of school	\$355.80	\$423.90	\$493.30
Plus 2 years out of school	\$423.90	\$493.30	\$574.10
Plus 3 years out of school	\$493.30	\$574.10	\$657.30
Plus 4 years out of school	\$574.10	\$657.30	
Plus 5 or more years out of school	\$657.30		

NOTE: See clause E.4.3 for other minimum wage provisions that affect this paragraph.

(b) Wage level B

The minimum rate for a full-time trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to wage level B by clause E.6.2 or by clause E.4.4 is the weekly rate specified in Column 2 of

Table 2—Wage level B minimum weekly rate for full-time trainees
 (AQF Certificate Level I–III traineeship) according to the highest year of schooling completed by the trainee specified in that column and the experience level of the trainee specified in Column 1.

Table 2—Wage level B minimum weekly rate for full-time trainees
 (AQF Certificate Level I–III traineeship)

Column 1 Experience level of trainee	Column 2 Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	per week	per week
School leaver	\$323.10	\$355.80	\$412.40
Plus 1 year out of school	\$355.80	\$412.40	\$474.40
Plus 2 years out of school	\$412.40	\$474.40	\$556.40
Plus 3 years out of school	\$474.40	\$556.40	\$634.70
Plus 4 years out of school	\$556.40	\$634.70	
Plus 5 or more years out of school	\$634.70		

(c) **Wage level C**

The minimum rate for a full-time trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to wage level C by clause E.6.1 is the weekly rate specified in Column 2 of **Table 3—Wage level C minimum weekly rate for full-time trainees (AQF Certificate Level I–III traineeship)** according to the highest year of schooling completed by the trainee specified in that column and the experience level of the trainee specified in Column 1.

Table 3—Wage level C minimum weekly rate for full-time trainees
 (AQF Certificate Level I–III traineeship)

Column 1 Experience level of trainee	Column 2 Highest year of schooling completed
---	---

	Year 10	Year 11	Year 12
	per week	per week	per week
School leaver	\$323.10	\$355.80	\$412.40
Plus 1 year out of school	\$355.80	\$412.40	\$464.30
Plus 2 years out of school	\$412.40	\$464.30	\$518.70
Plus 3 years out of school	\$464.30	\$518.70	\$577.90
Plus 4 years out of school	\$518.70	\$577.90	
Plus 5 or more years out of school	\$577.90		

NOTE: See clause E.4.3 for other minimum wage provisions that affect this paragraph.

(d) AQF Certificate Level IV traineeships

- (i) The minimum rate for a full-time trainee undertaking an AQF Certificate Level IV traineeship is the minimum rate for the relevant full-time AQF Certificate Level III traineeship increased by 3.8%.
- (ii) The minimum rate for a full-time adult trainee undertaking an AQF Certificate Level IV traineeship is the weekly rate specified in Column 2 or 3 of **Table 4—Minimum weekly rate for full-time adult trainees (AQF Certificate Level IV traineeship)** according to the year of the traineeship specified in those columns and the relevant wage level for the relevant AQF Certificate Level III traineeship specified in Column 1.

Table 4—Minimum weekly rate for full-time adult trainees (AQF Certificate Level IV traineeship)

Column 1	Column 2	Column 3
Wage level	First year of traineeship	Second and subsequent years of traineeship
	per week	per week
A	\$682.70	\$709.10

B	\$658.60	\$683.90
C	\$599.40	\$622.00

NOTE: See clause E.4.3 for other minimum wage provisions that affect this paragraph.

E.4.2 Minimum hourly rates for part-time traineeships

(a) Wage level A

The minimum hourly rate for a part-time trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to wage level A by clause E.6.1 is the hourly rate specified in Column 2 of **Table 5—Wage level A minimum hourly rate for part-time trainees (AQF Certificate Level I–III traineeship)** according to the highest year of schooling completed by the trainee specified in that column and the experience level of the trainee specified in Column 1.

Table 5—Wage level A minimum hourly rate for part-time trainees (AQF Certificate Level I–III traineeship)

Column 1 Experience level of trainee	Column 2		
	Highest year of schooling completed		
	Year 10 per hour	Year 11 per hour	Year 12 per hour
School leaver	\$10.63	\$11.72	\$13.95
Plus 1 year out of school	\$11.72	\$13.95	\$16.24
Plus 2 years out of school	\$13.95	\$16.24	\$18.88
Plus 3 years out of school	\$16.24	\$18.88	\$21.61
Plus 4 years out of school	\$18.88	\$21.61	
Plus 5 or more years out of school	\$21.61		

NOTE: See paragraph (f) for calculating the actual minimum wage. See also clause E.4.3 for other minimum wage provisions that affect this paragraph.

(b) Wage level B

The minimum hourly rate for a part-time trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to wage level B by clause E.6.2 or by clause E.4.4 is the hourly rate specified in Column 2 of **Table 6—Wage level B minimum hourly rate for part-time trainees (AQF Certificate Level I–III traineeship)** according to the highest year of schooling completed by the trainee specified in that column and the experience level of the trainee specified in Column 1.

Table 6—Wage level B minimum hourly rate for part-time trainees (AQF Certificate Level I–III traineeship)

Column 1 Experience level of trainee	Column 2		
	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
School leaver	\$10.63	\$11.72	\$13.58
Plus 1 year out of school	\$11.72	\$13.58	\$15.61
Plus 2 years out of school	\$13.58	\$15.61	\$18.32
Plus 3 years out of school	\$15.61	\$18.32	\$20.89
Plus 4 years out of school	\$18.32	\$20.89	
Plus 5 or more years out of school	\$20.89		

NOTE: See paragraph (f) for calculating the actual minimum wage. See also clause E.4.3 for other minimum wage provisions that affect this paragraph.

(c) Wage level Cv

The minimum hourly rate for a part-time trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to wage level C by clause E.6.3 is the hourly rate specified in Column 2 of **Table 7—Wage level C minimum hourly rate for part-time trainees (AQF Certificate Level I–III traineeship)** according to the highest year of schooling completed by the trainee specified in that column and the experience level of the trainee specified in Column 1.

**Table 7—Wage level C minimum hourly rate for part-time trainees
(AQF Certificate Level I–III traineeship)**

Column 1 Experience level of trainee	Column 2 Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
School leaver	\$10.63	\$11.72	\$13.58
Plus 1 year out of school	\$11.72	\$13.58	\$15.27
Plus 2 years out of school	\$13.58	\$15.27	\$17.06
Plus 3 years out of school	\$15.27	\$17.06	\$19.01
Plus 4 years out of school	\$17.06	\$19.01	
Plus 5 or more years out of school	\$19.01		

NOTE: See paragraph (f) for calculating the actual minimum wage. See also clause E.4.3 for other minimum wage provisions that affect this paragraph.

(d) School-based traineeships

The minimum hourly rate for a part-time trainee who works ordinary hours and is undertaking a school-based AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to wage levels A, B or C by clause E.6 or by clause E.4.4 is the hourly rate in Column 1 or 2 of **Table 8—Minimum hourly rate for part-time trainees (school-based AQF Certificate Level I–III traineeship)** according to the year of schooling of the trainee.

Table 8—Minimum hourly rate for part-time trainees (school-based AQF Certificate Level I–III traineeship)

Column 1	Column 2
Year 11 or lower	Year 12
per hour	per hour
\$10.63	\$11.72

NOTE: See paragraph (f) for calculating the actual minimum wage. See also clause E.4.3 for other minimum wage provisions that affect this paragraph.

(e) AQF Certificate Level IV traineeships

- (i) The minimum hourly rate for a part-time trainee undertaking an AQF Certificate Level IV traineeship is the minimum hourly rate for the relevant part-time AQF Certificate Level III traineeship increased by 3.8%.
- (ii) The minimum hourly rate for a part-time adult trainee undertaking an AQF Certificate Level IV traineeship is the hourly rate in Column 2 or 3 of **Table 9—Minimum hourly rate for part-time adult trainees (AQF Certificate Level IV traineeship)**
- (iii) according to the year of the traineeship specified in those columns and the relevant wage level for the relevant AQF Certificate Level III traineeship specified in Column 1.

Table 9—Minimum hourly rate for part-time adult trainees (AQF Certificate Level IV traineeship)

Column 1	Column 2	Column 3
Wage level	First year of traineeship	Second and subsequent years of traineeship
	per hour	per hour
A	\$22.45	\$23.33
B	\$21.64	\$22.48
C	\$19.72	\$20.47

NOTE: See paragraph (f) for calculating the actual minimum wage. See also clause E.4.3 for other minimum wage provisions that affect this paragraph.

(f) Calculating the actual minimum wage

- (i)** If fewer than 38 (or an average of 38) ordinary hours of work per week is considered full-time at the workplace by the employer, the appropriate minimum hourly rate for a part-time trainee is obtained by multiplying the relevant minimum hourly rate in clauses E.4.2(a) to (e) by 38 and then dividing the figure obtained by the full-time ordinary hours of work per week.
- (ii)** If the approved training for a part-time traineeship is provided wholly off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum hourly rate in clauses E.4.2(a) to (e) applies to each ordinary hour worked by the trainee.
- (iii)** If the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum hourly rate in clauses E.4.2(a) to (e) minus 20% applies to each ordinary hour worked by the trainee.

E.4.3 Other minimum wage provisions

- (a)** Clause E.4.3 applies despite anything to the contrary in clause E.4.4 or E.3.2.
- (b)** An employee who was employed by an employer immediately before becoming a trainee with that employer must not suffer a reduction in their minimum rate of pay because of becoming a trainee.
- (c)** For the purpose of determining whether a trainee has suffered a reduction as mentioned in paragraph (b), casual loadings are to be disregarded.
- (d)** If a qualification is converted from an AQF Certificate Level II to an AQF Certificate Level III traineeship, or from an AQF Certificate Level III to an AQF Certificate Level IV traineeship, then the trainee must be paid the next highest minimum wage provided in this schedule, if a higher minimum wage is provided for the new AQF certificate level.

E.4.4 Default wage rate

The minimum wage for a trainee undertaking an AQF Certificate Level I–III traineeship whose training package and AQF certificate level are not allocated to a wage level by clause E.6 is the relevant minimum wage under this schedule for a trainee undertaking an

AQF Certificate to Level I–III traineeship whose training package and AQF certificate level are allocated to wage level B.

E.5 Employment conditions

E.5.1 A trainee undertaking a school-based traineeship may agree to be paid an additional loading of 25% on all ordinary hours worked instead of being paid annual leave, paid personal/carer’s leave, paid compassionate leave and paid absence on public holidays. However, if the trainee works on a public holiday, the public holiday provisions of this award apply.

E.5.2 A trainee is entitled to be released from work without loss of pay and without loss of continuity of employment to attend any training and assessment specified in, or associated with, the training contract.

E.5.3 Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the trainee’s wages and determining the trainee’s employment conditions.

E.5.4 The time to be included for the purpose of calculating the wages for part time trainees whose approved training is wholly off-the-job is determined by clauses E.4.2(f)(ii) and (iii) and not by clause E.5.3.

E.5.5 Subject to clause E.2.4, this award applies to a trainee in the same way that it applies to an employee who is not a trainee except as otherwise expressly provided by this schedule.

E.6 Allocation of traineeships to wage levels

The wage levels applying to training packages and their AQF certificate levels are:

E.6.1 Wage level A

Training package	AQF certificate level
Aeroskills	II
Aviation	I, II, III
Beauty	III
Business Services	I, II, III

Training package	AQF certificate level
Chemical, Hydrocarbons and Refining	I, II, III
Civil Construction	III
Coal Training Package	II, III
Community Services	II, III
Construction, Plumbing and Services Integrated Framework	I, II, III
Correctional Services	II, III
Drilling	II, III
Electricity Supply Industry—Generation Sector	II, III (III in Western Australia only)
Electricity Supply Industry—Transmission, Distribution and Rail Sector	II
Electrotechnology	I, II, III (III in Western Australia only)
Financial Services	I, II, III
Floristry	III
Food Processing Industry	III
Gas Industry	III
Information and Communications Technology	I, II, III

Training package	AQF certificate level
Laboratory Operations	II, III
Local Government (other than Operational Works Cert I and II)	I, II, III
Manufactured Mineral Products	III
Manufacturing	I, II, III
Maritime	I, II, III
Metal and Engineering (Technical)	II, III
Metalliferous Mining	II, III
Museum, Library and Library/Information Services	II, III
Plastics, Rubber and Cablemaking	III
Public Safety	III
Public Sector	II, III
Pulp and Paper Manufacturing Industries	III
Retail Services (including wholesale and Community pharmacy)	III
Telecommunications	II, III
Textiles, Clothing and Footwear	III

Training package	AQF certificate level
Tourism, Hospitality and Events	I, II, III
Training and Assessment	III
Transport and Logistics	III
Water Industry (Utilities)	III

E.6.2 Wage level B

Training package	AQF certificate level
Animal Care and Management	I, II, III
Asset Maintenance	I, II, III
Australian Meat Industry	I, II, III
Automotive Industry Manufacturing	II, III
Automotive Industry Retail, Service and Repair	I, II, III
Beauty	II
Caravan Industry	II, III
Civil Construction	I
Community Recreation Industry	III
Entertainment	I, II, III

Training package	AQF certificate level
Extractive Industries	II, III
Fitness Industry	III
Floristry	II
Food Processing Industry	I, II
Forest and Forest Products Industry	I, II, III
Furnishing	I, II, III
Gas Industry	I, II
Golf Clubs and Facilities	II, III
Health	II, III
Local Government (Operational Works)	I, II
Manufactured Mineral Products	I, II
Metal and Engineering (Production)	II, III
Outdoor Recreation Industry	I, II, III
Plastics, Rubber and Cablemaking	II
Printing and Graphic Arts	II, III
Property Services	I, II, III

Training package	AQF certificate level
Public Safety	I, II
Pulp and Paper Manufacturing Industries	I, II
Retail Services	I, II
Screen and Media	I, II, III
Sport Industry	II, III
Sugar Milling	I, II, III
Textiles, Clothing and Footwear	I, II
Transport and Logistics	I, II
Visual Arts, Craft and Design	I, II, III
Water Industry	I, II

E.6.3 Wage level C

Training package	AQF certificate level
Agriculture, Horticulture and Conservation and Land Management	I, II, III
Funeral Services	I, II, III
Music	I, II, III
Racing Industry	I, II, III

Training package

AQF certificate level

Rural Production

I, II, III

Seafood Industry

I, II, III

Schedule G—Agreement to Take Annual Leave in Advance

Link to PDF copy of [Agreement to Take Annual Leave in Advance](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:

The amount of leave to be taken in advance is: ____ hours/days

The leave in advance will commence on: ____/____/20____

Signature of employee: _____

Date signed: ____/____/20____

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

[If the employee is under 18 years of age - include:]

I agree that:

if, on termination of the employee’s employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ____/____/20____

Schedule H—Agreement to Cash Out Annual Leave

Link to PDF copy of [Agreement to Cash Out Annual Leave](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:

The amount of leave to be cashed out is: _____ hours/days

The payment to be made to the employee for the leave is: \$_____ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: ___/___/20___

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

Include if the employee is under 18 years of age:

Name of parent/guardian: _____

Signature of parent/guardian: _____

Date signed: ___/___/20___

Schedule I—Agreement for Time Off Instead of Payment for Overtime

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](#).

Name of employee: _____

Name of employer: _____

The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:

Date and time overtime started: ___/___/20___ ___ am/pm

Date and time overtime ended: ___/___/20___ ___ am/pm

Amount of overtime worked: _____ hours and _____ minutes

The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.

Signature of employee: _____

Date signed: ___/___/20___

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ___/___/20___

NORFOLK



ISLAND

Employment Act 1988

No. 27, 1988

Compilation No. 1

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EMPLOYMENT ACT 1988

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Employment Act 1988

An Act to establish minimum wages and working conditions, compensation for work - related accidents, safe working practices, procedures for conciliation, adjudication and review, and for related purposes

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Employment Act 1988*.

Commencement

2. (1) Subject to subsection 2(2), this Act shall come into operation on a date fixed by the Administrator by notice published in the Gazette.

- (2) The Administrator may fix different dates for the commencement of different provisions of this Act.

Crown and Administration bound

3. (1) Subject to this Act, this Act binds the Crown in right of Norfolk Island and the Administration.

- (2) Nothing in this Act renders the Crown in right of Norfolk Island or the Administration liable to be prosecuted for an offence.

Interpretation

4. In this Act, unless the contrary intention appears —
 - “Board” means the Employment Conciliation Board constituted under section 65;
 - “Chairman” means the person appointed under subsection 65(5) to be the Chairman of the Board;
 - “Chief Magistrate” means the Chief Magistrate of the Court of Petty Sessions holding office under the *Court of Petty Sessions Act 1960*;
 - “contract” means a contract of employment;
 - “employee” includes an apprentice or trainee;
 - “employment” means employment by an employer of an employee to whom this Act applies;
 - “legal practitioner” means a person, by whatever name called, who is entitled to practise law in a State or Territory or in New Zealand;
 - “Magistrate” means a Magistrate holding office under the *Court of Petty Sessions Act 1960* and includes the Chief Magistrate;
 - “member of the Board” includes the Chairman of the Board;
 - “member of the Tribunal” means a Magistrate;
 - “minimum rate” — *see section 14*;
 - “pay period” means the period in respect of which an employee is paid on a pay day;

- “permit holder” means the holder of a temporary entry permit and includes a person who is required to be the holder of a temporary entry permit;
- “professional Magistrate” means a Magistrate who also holds office as Chief Magistrate, Acting Chief Magistrate or a Magistrate under the *Magistrates Court Act 1930* of the Australian Capital Territory;
- “public holiday”, in respect of an employee, means a day referred to in section 9 or a day specified in, or in accordance with, the employee’s employment contract in substitution of that day;
- “RPI” means the retail price index number within the meaning of the *Retail Price Index Act 1983*;
- “Secretary” means the Secretary to the Tribunal;
- “temporary entry permit” means a temporary entry permit within the meaning of the *Immigration Act 1980*;
- “this Act” includes the Regulations, and where a provision of this Act or the Regulations has effect as if another provision were substituted, that other provision;
- “Tribunal” means the Court of Petty Sessions;
- “week” means 7 days, Monday to Sunday inclusive;
- “working week” means a working week prescribed under paragraph 108(2)(a).

Application

5. (1) Subject to this section, this Act applies where work is carried out by an employee in Norfolk Island, whether a contract was entered into or not, and whether the contract, if any, was entered into in Norfolk Island or elsewhere.

(2) Where an employer is not ordinarily resident in Norfolk Island, an agent, officer or employee ordinarily resident in Norfolk Island of that employer is deemed, for the purposes of this Act, to be the employer where the agent, officer or employee —

- (a) is ordinarily in charge of the employer’s business in Norfolk Island; or
- (b) has entered into a contract on behalf of the employer in Norfolk Island.

(3) This Act applies where a contract for work to be carried out elsewhere than in Norfolk Island —

- (a) is made in Norfolk Island; and
- (b) the employer and employee under the contract are ordinarily resident in Norfolk Island.

(4) Where a person is employed to carry out work in Norfolk Island under a contract made in a place elsewhere than Norfolk Island and the person performs no duties under the contract on land in Norfolk Island except duties that are incidental to the performance of the principal duties of the person under the contract, this Act does not apply.

Persons to whom Act applies

6. (1) For the purposes of this Act, an employer may be a natural person, a body politic, a body corporate or unincorporate, a firm, an association, a partnership or club, the personal representative of a deceased employer or a partnership between 2 or more of them.

(2) For the purposes of this Act, where a natural person enters into a contract of service as an employee with another person, whether or not a natural person, the other person is the employer of the first-mentioned person.

(3) For the purposes of this Act, where a natural person enters into a contract (other than a contract of service) with another person, whether or not a natural person, the

first-mentioned person is deemed to be an employee of the other person and the other person is deemed to be the employer of the first-mentioned person where —

- (a) the contract constitutes or includes an agreement to perform work or service or work and service for a consideration in money;
- (b) the first-mentioned person personally performs all or part of the work or service or work and service; and
- (c) the work or service or work and service are not —
 - (i) incidental to a trade or business regularly carried on by the first-mentioned person before, or apart from, the making of the contract; or
 - (ii) the carrying on by the first-mentioned person of business under a business name within the meaning of the *Business Names Act 1976*.

Persons to whom Act does not apply

7. (1) This Act does not apply to —

- (a) members of the Police Force;
- (b) officers or employees of the Commonwealth; or
- (c) subject to subsection 7(2), persons holding office or appointments under a law of Norfolk Island, the Commonwealth or a State or Territory.

(2) Subject to subsection 8(2), this Act applies to officers or employees of the Administration or a Territory authority.

Regulations may prescribe application of Act

8. (1) The Regulations may prescribe that —

- (a) work of a particular class; or
- (b) contracts between persons of a particular class,

constitute or do not constitute employment for the purposes of this Act.

(2) The Regulations may prescribe that this Act does not apply to the Administration or a Territory authority or a class of officers or employees of the Administration or a Territory authority, or applies to the extent specified in the Regulations.

Public holidays

9. (1) Subject to this section, each of the following days in a year will, for the purposes of this Act, be taken to be a public holiday:

- (a) 1 January;
- (b) 26 January;
- (c) 6 March;
- (d) 25 April;
- (e) Good Friday;
- (f) the Monday after Good Friday;
- (g) 8 June;
- (h) the last Wednesday in November;
- (i) Christmas Day;
- (j) the day after Christmas Day; and
- (k) each of the days declared by the Minister under this subsection to be —
 - (i) the day for the observance of the Anniversary of the birthday of the Sovereign; and
 - (ii) Show Day.

(2) The Regulations may provide that —

- (a) a day will, for the purposes of this Act, be taken to be a public holiday in addition to, or instead of, a day referred to in subsection 9(1); or
- (b) a day referred to in subsection 9(1) will not be taken to be a public holiday for the purposes of this Act.

....

PART 2 — EMPLOYMENT TERMS AND CONDITIONS

Division 1 — Preliminary

Employment contracts

10. (1) In this Part, unless the contrary intention appears —

“employment contract” means an agreement between an employer and employee for, or in relation to, the employment of an employee and includes —

- (a) an agreement that would otherwise be void or voidable by reason of the legal incapacity of the employer or employee to enter into the agreement; and
- (b) an agreement that is illegal by reason only of this Part.

(2) Despite the matters referred to in paragraphs 10(1)(a) and 10(1)(b), an employment contract referred to in those paragraphs will have legal effect as a contract subject to this Act.

Contracts must be in writing

11. (1) An employer must not commence to employ another person except under a written employment contract which complies with the standards and requirements imposed by this Act.

Penalty: 40 penalty units.

(2) An employer must, within 14 days after receiving a request from an employee, reduce to writing an unwritten term of an employment contract to which the employee is a party and must provide the employee with a copy of that document executed in a legally binding manner.

(3) An employment contract referred to in subsection 11(1) shall be certified in the prescribed manner.

(4) This section does not apply to the employment of a person who is a resident within the meaning of the *Immigration Act 1980*, however in the case of the employment of a resident —

- (a) the employee may request the employer to enter into a written contract in the prescribed manner and the employer shall comply within 14 days from such request; and
- (b) such written contract shall comply with the standards and requirements imposed by this Act.

(5) Conditions and requirements for the employment of apprentices and trainees may be prescribed by Regulation which are not in compliance with this section or division 2 of this Act.

Penalty: 40 penalty units.

Division 2 — Minimum Statutory Terms and Conditions of Employment

Application of employment terms and conditions applying under this Division

12. (1) An employee is legally entitled to recover any amount to which he or she would be entitled if, during any period of employment by an employer, each obligation of that employer to an employee under this Division was a contractual obligation of that employer to the employee.

Note: The effect of subsection 12(1) is that an employer and an employee cannot exclude the operation of a provision of this Division by contract.

(2) Subsection 12(1) —

- (a) does not limit any other legal entitlement of an employee; and
- (b) applies despite any legal incapacity of the employer or employee to enter into a contract; and
- (c) applies to any employment on or after the commencement date of the *Employment Amendment (No. 2) Act 2001*, regardless of whether the employment commenced before or after that date.

(3) An employee may enforce both the employee's legal entitlements under subsection 12(1) and any other legal entitlements (but the employee is not entitled to damages in respect of the same loss under both entitlements).

Minimum rates of pay

13. (1) An employer must pay wages —

- (a) to an employee aged 18 years or older – at not less than the minimum rate; and
- (b) to an employee aged less than 18 years – at not less than the percentage of the minimum rate set out in the table :

TABLE

Age	% of prescribed minimum rate
Under 16 years	75%
16 years and under 17 years	82.5%
17 years and under 18 years	91%

Penalty: 20 penalty units.

(2) An employer must pay the relevant rate of pay in respect of pay periods after the pay period during which an employee becomes entitled to an increased rate of pay.

Penalty: 20 penalty units.

Determination of minimum rate

14. The minimum rate is that amount determined by Regulation from time to time.

Annual holidays

15. (1) If an employee —

- (a) has continuously served an employer during the preceding year; and
- (b) at the end of the year, is employed by the employer on a regular basis, the employer —
- (c) must give the employee leave of not less than the number of days that the employee would work in three ordinary working weeks; and
- (d) must give the employee that leave on days on which the employee would ordinarily work; and

- (e) must pay the employee an equal amount in respect of each day of that leave, so that the total amount paid under this paragraph is not less than six per cent of the sum of the employee's gross pay during that year; and
- (f) pay the employee for a period of leave before the commencement of that period.

Penalty: 20 penalty units.

(2) If subsection 15(1) does not apply, an employer must not later than —

- (a) the end of each year of continuous service; or
- (b) the termination of the employee's service,

(whichever occurs first) pay the employee (as a holiday entitlement) not less than six per cent of the sum of the employee's gross pay during that year.

Penalty: 40 penalty units.

(3) An employee is not entitled to payment of a holiday entitlement under subsections 15(1) and 15(2) in respect of the same period of service.

(4) For the purposes of this section, an employee's service will be taken to be continuous despite any leave taken by the employee in accordance with this Act, under an employment contract, or otherwise by agreement between the employer and the employee.

Public holidays

16. (1) An employer must, in respect of each public holiday for an employee that occurs on an ordinary working day of the employee —

- (a) if the employee does not work on the public holiday —
 - (i) pay the employee at not less than the employee's ordinary rate of pay for the ordinary hours normally worked by the employee on that day, had it not been a public holiday; and
 - (ii) give the employee a day's leave on the holiday; or
- (b) if the employee works on the public holiday —
 - (i) pay the employee for the hours worked by the employee on the holiday at not less than the employee's ordinary rate of pay; and
 - (ii) in addition, pay the employee at not less than the employee's ordinary rate of pay for the ordinary hours normally worked by the employee on that day, had it not been a public holiday.

Penalty: 20 penalty units.

(2) An employer must pay an employee at not less than twice the employee's ordinary rate of pay in respect of work performed by the employee on a public holiday that is not an ordinary working day of the employee.

Penalty: 20 penalty units.

Sick leave

17. (1) An employer must, if an employee is absent from work by reason of ill health —

- (a) give the employee leave in respect of that absence; and
- (b) pay the employee at not less than the employee's ordinary rate of pay for the ordinary hours that the employee normally would have worked had the employee not been absent.

Penalty: 20 penalty units.

(2) An employee's entitlement under this section in respect of a period of continuous employment accrues —

- (a) in respect of leave at the rate of not less than one fiftieth of the sum of the period worked by the employee during that period of employment; and
- (b) in respect of pay at the rate of not less than one fiftieth of the sum of the employee's gross pay for that period of employment (including pay for holidays but not including pay for hours worked in excess of the working week applicable to the employee).

(3) Despite the other provisions of this section, an employer is not required under this section to —

- (a) in any year of employment of an employee, give the employee leave, or pay the employee, in respect of a period, or periods, of absence by reason of ill health of longer than the working week applicable to the employee; or
- (b) give an employee leave, or pay an employee, in respect of an absence lasting more than one day, unless the employee, within a reasonable period, provides the employer with a certificate signed by a medical practitioner stating that the employee was or will be, in the opinion of the medical practitioner, unfit, by reason of ill health, to work during that period.

(4) In subsection 17(3) —

“year of employment”, in respect of a period of employment of an employee, means —

- (a) the period of one year commencing on the date of commencement of that employment; or
- (b) each subsequent period of one year.

Rest period

18. An employer must give each employee a continuous rest period of not less than 24 hours in each week.

Penalty: 20 penalty units.

Note: This section would not prevent an employer from working an employee for a consecutive period of 12 days during a 14 day period commencing on a Sunday if the employee did not work on the first and last 24 hours of that period.

Uniforms

18A. (1) If an employee is required by law or by the employer to wear clothing or footwear that would not ordinarily be worn by the employee, the employer must provide to each employee so required with the requisite clothing or footwear.

Penalty for an offence against this subsection 5 penalty units

(2) The clothing and footwear referred to in subsection 18A(1) must be provided free of charge by the employer and the employer must replace it when reasonably necessary.

Penalty for an offence against this subsection 5 penalty units

(3) An employee must not disobey, disregard or fail to comply with a reasonable direction of an employer in relation to wearing the clothing or footwear provided under subsection 18A(1).

Penalty for an offence against this subsection 5 penalty units

(4) An employee who is provided with clothing or footwear under this section must take reasonable care of it.

Penalty for an offence against this subsection 5 penalty units

(5) Clothing and footwear provided in accordance with subsection 18A(1) remain the property of the employer.

Notice of termination

19. (1) An employer must give an employee —

- (a) at least 7 days written notice of termination of employment; or
- (b) in addition to any other entitlement of the employee, pay the employee not less than an amount equal to the sum of —
 - (i) the amount of wages and other entitlements accruing to the employee as a result of any work undertaken by the employee during the week the last day of which was the date of the employee's termination; and
 - (ii) if the employer was required to provide the employee with board or lodging —
 - (A) the value of that board or lodging agreed in writing between the employer and the employee; or
 - (B) in the absence of that agreement, the reasonable cost of the employee's obtaining 7 days board or lodging of a similar standard.

(2) If an employee does not give an employer at least 7 days notice of termination of employment, the employer may, in addition to any other amount that the employer is entitled to withhold from the employee, withhold from the employee an amount not exceeding an amount equal to the amount of wages and other entitlements accruing to the employee as a result of the work undertaken by the employee during the week the last day of which was the date of the termination of the employment.

(3) Subsection 19(1) does not apply to the justified termination of an employee's employment by an employer by reason of the employee's —

- (a) dishonesty in the course of the employment; or
- (b) absence from duty without reasonable cause; or
- (c) wilful disobedience with, or failure to have regard to, a reasonable direction of the employer; or
- (d) being under the influence of —
 - (i) intoxicating liquor; or
 - (ii) a dangerous drug or narcotic substance within the meaning of the *Dangerous Drugs Act 1927*.

Division 3 — Default Terms and Conditions of Employment

Operation of this Division may be varied by employment contracts

20. (1) An employee is legally entitled to recover any amount to which he or she would be entitled if, during any period of employment by an employer, each obligation of that employer to an employee under this Division was a contractual obligation of that employer to the employee

unless

that obligation is inconsistent —

- (a) in respect of employment commencing on or after the commencement of the *Employment Amendment (No. 2) Act 2001*, with the express terms of a written agreement between the employer and the employee; or
- (b) in respect of any other employment, with the express terms of an agreement between the employer and the employee.

(2) Subsection 20(1) —

- (a) will not be taken to limit any other legal entitlement of an employee; and
- (b) applies despite any legal incapacity of the employer or employee to enter into a contract; and
- (c) applies to any employment on or after the commencement date of the *Employment Amendment (No. 2) Act 2001*, regardless of whether the employment commenced before or after that date.

(3) An employee may enforce both the employee's legal entitlements under subsection 20(1) and any other legal entitlements (but the employee is not entitled to damages in respect of the same loss under both entitlements).

Payment of wages

21. (1) An employer must pay an employee the wages due to the employee at intervals of not greater than 14 days (or if another interval is prescribed, not greater than that other interval).

(2) An employer must pay an employee in cash or by cheque or direct credit to a bank account specified by the employee.

(3) An employer must not deduct any amount from an employee's wages unless —

- (a) the employee has authorised the employer to make the deduction in writing, specifying the amount, or means of calculating the amount, of the deduction; or
- (b) the employer is otherwise authorised by law to make the deduction.

Note: An employer and an employee can exclude the operation of this provision by agreement in accordance with subsection 20(1).

Annual leave

22. An employer of an employee who is entitled to take leave under subsection 15(1) —

- (a) must not require the employee to take that leave in a single period; and
- (b) must allow the employee to take leave accruing in respect of not less than 2 ordinary working weeks in a continuous period if the employee requests; and
- (c) must not require the employee to take that leave more than 12 months after it accrues,

but otherwise, leave may be taken at a time mutually agreed between the employer and the employee.

Note: An employer and an employee can exclude the operation of this provision by agreement in accordance with subsection 20(1).

Work outside working hours

23. (1) An employee may refuse to work for longer than, or for times that are not in, the working week applicable to the employee.

Note: An employer and an employee can exclude the operation of this provision by agreement in accordance with subsection 20(1).

(2) In the event that an employee agrees to work for the same employer for longer than the number of hours in the normal working week, prescribed as applicable to that employee, then the employer shall pay the following to the employee in respect of the period worked which exceeds the prescribed hours —

- (a) for any employee who works longer than the prescribed period of any working day 150% of the minimum hourly rate paid to that employee provided that amount is not less than the normal hourly rate paid to that employee; and
- (b) for any employee who works longer than the prescribed period of any working week 150% of the minimum hourly rate paid to that employee provided that amount is not less than the normal hourly rate paid to that employee.

(3) For the purposes of subsection 23(2), the minimum hourly rate is the amount fixed by section 14 and the normal hourly rate is the rate which is ordinarily paid to that employee per hour.

(4) Notwithstanding anything contained in section 21 of this Act, a contract or any clause or part of contract which is inconsistent with subsection 23(2), or seeks to avoid, amend, or exclude subsection 23(2) is void and of no effect.

Division 4 — General

Employment of persons under the age of 15 years

24. (1) An employer must not employ a person under the age of 15 years —

- (a) during any hours that the person is required by law to attend school; or
- (b) at any time between the hours of 11.00 pm on one day and 6.00 am on the next.

Penalty: 20 penalty units.

(2) Subject to subsection 24(1) an employer must not employ a person under the age of 15 years —

- (a) for more than 20 hours in a week during a school term or semester when, under an enactment, a child is required to attend school; and
- (b) for more than 40 hours per week during any other time.

Penalty: 20 penalty units.

(3) Subsections 24(1) and 24(2) do not apply to the employment of a person over the age of 14 as an apprentice or in a prescribed training position.

(4) This Act (other than subsection 24(1)) does not apply to employment of a person under the age of 15 years of a class defined in the Regulations by reference to —

- (a) the type of work in which the person is employed; or
- (b) the time at which the person is employed; or
- (c) the extent to which the person is employed; or

- (d) the person's employer.

Action taken by employer to avoid the operation of this Part

25. If —

- (a) an employer terminates an employee's employment or varies that employment so that it ceases to be regular employment; and
- (b) as a result of that —
- (i) termination on the continuity of the employee's service; or
- (ii) that variation on the regularity of the employee's employment, the employee's entitlements under this Part are reduced; and
- (c) within one month of that termination or variation the employee is re-employed, or the employee's employment is varied so that it is again regular,

the effect of that termination or variation on the continuity or regularity of the employee's employment must be disregarded in calculating the employee's entitlements under this Part

unless

the Conciliation Board certifies that the employment was not terminated or varied for the purposes of avoiding the employer's obligations in respect of those entitlements, or for reasons including that reason.

PART 3 — COMPENSATION FOR WORK-RELATED ACCIDENTS, ETC

Interpretation

26. (1) In this Part, unless the contrary intention appears —

“approved” means approved for the purposes of this Part by instrument in writing signed by the Minister;

“de facto spouse”, in relation to a person, means a person of the opposite sex to the first-mentioned person who lives with the first-mentioned person in a bona fide relationship in the nature of marriage, although not legally married;

“dependant” means a family dependant or a non-family dependant;

“disease” means

- (1) (a) an ailment suffered by an employee; or
- (b) an aggravation of such an ailment;

that was contributed to, to a significant degree, by the employee's employment.

(2) In determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee's employment, the following matters may be taken into account—

- (a) the duration of the employment;
- (b) the nature of, and particular tasks involved in, the employment;
- (c) any predisposition of the employee to the ailment or aggravation;
- (d) any activities of the employee not related to the employment;
- (e) any other matters affecting the employee's health.

(3) This definition does not limit the matters that may be taken into account.

“employee” means any person who works in the employer’s business in any capacity and includes the employer if working in the employer’s own business;

“family dependant”, in relation to a deceased employee, means a person who at the time of the death of the employee was a member of the family of the employee and who, at that time —

- (a) was wholly or partly dependent on the earnings of the employee; or
- (b) would, but for the incapacity of the employee, have been wholly or partly dependent on the earnings of the employee;

“hospital” means —

- (a) the Norfolk Island Hospital within the meaning of the *Norfolk Island Hospital Act 1985*; or
- (b) an approved hospital;

“injury” means—

- (a) a disease suffered by an employee;
- (b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee’s employment; or
- (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee’s employment) that is an aggravation that arose out of, or in the course of, that employment,

but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee’s employment.

Note: reasonable administrative action is defined in subsection (1A).

“Medical Superintendent” means the person appointed to be the Medical Superintendent within the meaning of the *Norfolk Island Hospital Act 1985* and includes the Deputy Medical Superintendent;

“medical treatment” means —

- (a) attendance, examination or treatment of any kind by an approved —
 - (i) medical practitioner;
 - (ii) dentist;
 - (iii) optometrist;
 - (iv) physiotherapist;
 - (v) chiropractor;
 - (vi) osteopath;
 - (vii) chiropodist; or
 - (viii) person practising a prescribed specialty;
- (b) the provision and, as necessary from time to time, the repair, adjustment or replacement during the prescribed period of skiagrams, crutches, artificial members, artificial eyes or teeth, spectacles, hearing aids or prescribed aids;
- (c) maintenance, attendance and treatment in a hospital;

- (d) the provision by a hospital of —
 - (i) medical attendance and treatment;
 - (ii) nursing attendance;
 - (iii) medicines, medical, surgical and other curative materials, appliances or apparatus; or
 - (iv) any other usual or necessary hospital services with respect to the treatment of the injury or disease of an employee; and
- (e) rehabilitation services within the meaning of section 38;

“non-family dependant”, in relation to a deceased employee, means a person other than a family dependant who, at the time of the death of the employee, the employee was under a legal or moral duty to support and who, at that time —

- (a) was wholly or partly dependent on the earnings of the employee; or
- (b) would, but for the incapacity of the employee, have been wholly or partly dependent on the earnings of the employee;

“public scheme” means a scheme referred to in subsection 39(4);

“spouse” includes a de facto spouse;

“significant degree” means a degree that is substantially more than material;

“work related accident” means a situation or event occurring at a work place or arising out of, or in the course of, an employee’s work that results in death or significant injury.

(1A) For the purposes of the definition “injury” in subsection (1) and without limiting that subsection, the expression “reasonable administrative action” is taken to include the following—

- (a) a reasonable appraisal of the employee’s performance;
- (b) a reasonable counselling action (whether formal or informal) taken in respect of the employee’s employment;
- (c) a reasonable suspension or termination or transfer action in respect of the employee’s employment;
- (d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee’s employment;
- (e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c), or (d);
- (f) anything reasonable done in connection with the employee’s failure to obtain a promotion reclassification, transfer or benefit or to retain a benefit, in connection with his or her employment,

and in this subsection “reasonable” means action that at the time—

- (i) was lawful;
- (ii) was not irrational, absurd or ridiculous;
- (iii) was relative or related to the conduct or behaviour giving rise to that action;
- (iv) was taken pursuant to the regulatory rules applicable to the employee; and
- (v) was taken in circumstances of fairness to the employee,

and includes action done by or on behalf of an employer by a person who has a reasonable belief at the time that the thing done was reasonable (as described above) but nothing in this subsection affects the right of an employee to challenge the reasonableness of an action or for a decision to be made on appeal that an injury was not suffered as a result of reasonable administrative action.

(2) For the purposes of this Part, a person shall be taken to be a member of the family of another person if the first-mentioned person is —

- (a) a child of the other person who has not attained the age of 18 years;
- (b) a child of the other person who has attained the age of 18 years but has not attained the age of 25 years and who is engaged in full-time education or training;
- (c) a child of the other person who has attained the age of 18 years and who is, by reason of mental or physical infirmity, unable to support himself or herself;
- (d) a parent of the other person; or
- (e) a spouse of the other person,

and not otherwise.

(3) For the purposes of subsection 26(2), “child” includes —

- (a) an adoptive child; and
- (b) a child of the spouse of a person who is ordinarily resident with the person in the household of the person.

(4) For the purposes of this Part, where it is necessary to determine whether a person is the de facto spouse of another person the following matters may be taken into account:

- (a) whether the first-mentioned person lives in the same residence as the other person, and the length of time that they have lived together;
- (b) the extent to which the first-mentioned person and the other person mutually as parents care for any children of them or either of them;
- (c) the extent to which household and living expenses are shared between the first-mentioned person and the other person;
- (d) the extent to which household tasks are shared between the first-mentioned person and the other person;
- (e) whether sexual relations exist between the first-mentioned person and the other person;
- (f) the financial arrangements existing between the first-mentioned person and the other person;
- (g) whether the first-mentioned person and the other person hold themselves out, or describe themselves, as a couple;
- (h) any other relevant consideration.

(5) A member of the family of an employer who resides with the employer shall, for the purposes of this Part, be deemed not to be an employee unless the employer by written notice to —

- (a) the insurer of the employer’s liability under this Part; or
- (b) in the case of an employer who is a member of the public scheme - the Minister,

discloses at the time the employment is commenced, and, thereafter, whenever the insurance or membership of the public scheme, as the case may be, is renewed, the name and nature of

the employment of the employee and that the employee is a member of the family of the employer.

(6) For the purposes of this Part, a reference to an employee, where the employee has died by reason of an occurrence or condition referred to in subsection 29(1), shall be taken to be a reference to a dependant of the employee in relation to whom compensation is payable under this Part.

(7) A reference in this Part to an employee includes, after the commencement of incapacity, a reference to a former employee.

Meaning of “out of, or in the course of, employment”

27. (1) Subject to this Act, an occurrence shall, for the purposes of this Part, be deemed to have arisen out of, or in the course of, employment if the occurrence happens —

- (a) while the employee on any working day is present at the place of employment;
- (b) while the employee on any working day is present at a place which the employee —
 - (i) is directed by the employer to attend;
 - (ii) is required by the terms of his or her employment to attend; or
 - (iii) is expected to attend for the purposes of, or in connection with, the employer’s trade or business;
- (c) while the employee is travelling between the place of employment and a place referred to in paragraph 27(b);
- (d) while the employee is travelling between a place referred to in paragraph 27(b) and another place referred to in that paragraph; or
- (e) while the employee is travelling to a place for the purposes of receiving medical treatment as a result of an accident that occurred immediately before the commencement of the travel at a place, or in a situation, referred to in paragraph 27(a), 27(b), 27(c), or 27(d),

and not otherwise.

(2) Subsection 27(1) does not apply to an occurrence during a substantial interruption of, or deviation from, a journey, being an interruption or deviation made for a reason unconnected with the employee’s employment or attendance at a place referred to in subsection 27(1).

(3) Subject to section 45, where an occurrence happens while an employee is —

- (a) acting in contravention of a law or instruction applicable to the employee’s employment; or
- (b) acting without instructions,

the occurrence shall not be taken to have happened otherwise than in the course of employment by reason only that the employee was so acting, if the employee was so acting for the purposes of, or in connection with, the employer’s lawful trade or business.

(4) For the purposes of this section, “place of employment”, where there is no fixed place of employment, includes the area, scope or ambit of the employment.

Meaning of “incapacity”

28. (1) For the purposes of this Part, “incapacity”, in relation to an employee, means —

- (a) personal injury by reason of a work-related accident;
- (b) industrial deafness within the meaning of section 33;
- (c) hernia within the meaning of section 34;

- (d) occupational disease within the meaning of section 35; or
- (e) a cardio-vascular or cerebro-vascular episode within the meaning of section 36,

suffered by the employee as a result of which there is a loss or diminution of the employee's capacity to earn.

(2) For the purposes of subsection 28(1), the physical and mental consequences of personal injury referred to in paragraph 28(1)(a), or of a work-related accident, constitute incapacity in relation to an employee where, as a result of those consequences, there is a loss or diminution of the employee's capacity to earn.

(3) Loss of amenities and of enjoyment of life because of permanent loss or impairment of a bodily or mental function of an employee by reason of an occurrence or condition specified in subsection 28(1) constitutes incapacity for the purposes of this Part, whether or not the loss or impairment results in a loss or diminution of the employee's capacity to earn.

(4) Subject to this section, damage to the body or mind of an employee caused exclusively by—

- (a) disease, infection or the ageing process; and
- (b) is not caused by or arise from a work-related accident,

does not constitute incapacity for the purposes of this Part.

Compensation for death

29. (1) Where the death of an employee results from —

- (a) personal injury by reason of a work-related accident;
- (b) hernia within the meaning of section 34;
- (c) occupational disease within the meaning of section 35; or
- (d) a cardio-vascular or cerebro-vascular episode within the meaning of section 36,

a dependant of the employee is entitled to compensation in accordance with this section.

(2) Where the employee leaves a family or non-family dependant wholly dependent on the earnings of the employee at the time of the employee's death, the employer shall pay to the dependant —

- (a) an amount equal to the amount prescribed for the purposes of paragraph 31(2)(c); and
- (b) periodical compensation at 80% of the rate that would have been applicable had the employee been entitled to periodical compensation for total incapacity under subsection 30(4).

(3) Where the employee leaves a family dependant partly dependent on the earnings of the employee at the time of the employee's death, the employer shall pay to the dependant —

- (a) the amount referred to in paragraph 29(2)(a); and
- (b) a proportion of compensation payable under paragraph 29(2)(b) equal to the proportion by which the dependant was dependent on the earnings of the employee at that time.

(4) Where the employee leaves a non-family dependant partly dependent on the earnings of the employee at the time of the employee's death, the employer shall pay to the dependant —

- (a) a proportion of the amount referred to in paragraph 29(2)(a); and
- (b) a proportion of compensation payable under paragraph 29(2)(b),

equal to the proportion by which the dependant was dependent on the earnings of the employee at that time.

(5) Subject to subsection 30(9), periodical compensation payable under paragraph 29(2)(b), 29(3)(b) or 29(4)(b) shall be paid for a period of 2 years after the date of death of the employee.

(6) Where more than one dependant is entitled to compensation in accordance with this section, the amount of compensation payable in respect of each dependant shall be calculated according to the respective dependency of each dependant on the earnings of the employee at the time of death of the employee.

(7) Where subsection 29(6) applies, the total amount of compensation payable in respect of the death of an employee shall not exceed the amount that would have been payable under subsection 29(2) had the employee left one dependant wholly dependent on the earnings of the employee at the time of death of the employee.

Compensation for incapacity

30. (1) Where an employee suffers incapacity, the employer shall pay to the employee periodical compensation in accordance with this section.

(2) A reference in this section to total incapacity, in relation to an employee, is a reference to total loss, whether temporary or permanent, of the employee's capacity to earn by reason of the incapacity of the employee.

(3) A reference in this section to partial incapacity, in relation to an employee, is a reference to diminution, whether temporary or permanent, of the employee's capacity to earn by reason of the incapacity of the employee.

- (4) Where an employee suffers total incapacity, compensation shall be —
- (a) payment as if the period of incapacity were a period of absence from duty under section 17 by reason of ill health —
 - (i) in respect of the 5 working days next following the commencement of the incapacity; or
 - (ii) where a written contract entered into in pursuance of section 10 provides for a longer period - in respect of that period; and
 - (b) after the expiration of the period referred to in paragraph 30(4)(a), fortnightly payments of an amount equal to —
 - (i) the prescribed amount; or
 - (ii) the amount the employee would have received had the employee not been suffering incapacity where that amount is less than the prescribed amount.

(5) Subject to subsection 30(8), compensation under subsection 30(4) is payable until the employee ceases to suffer total incapacity.

(6) Where an employee suffers partial incapacity, compensation shall be paid at a rate calculated in accordance with subsection 30(4) as if the employee had suffered total incapacity, less the proportion of that rate that is equal to the proportion by which the employee's capacity to earn is not affected by the incapacity.

(7) Subject to subsection 30(8), compensation under subsection 30(6) is payable until the employee ceases to suffer partial incapacity.

- (8) Compensation under this section is not payable —
- (a) after the date of death of an employee; or

- (b) in respect of a period after the expiration of a period or periods totalling 2 years of compensation payments under this section in relation to the same incapacity;

whichever first occurs.

(9) Paragraph 30(8)(a) does not affect the payment of compensation to a dependant of a deceased employee in accordance with section 29, but where an employee dies by reason of an occurrence or condition specified in that section and the employee received, in respect of that occurrence or condition, compensation under this section in respect of a period prior to the employee's death, the reference in subsection 29(5) to the date of death of an employee shall be read as a reference to the date of commencement of the incapacity suffered by the employee.

(10) A reference in this section to a working day includes a reference to a public holiday.

Compensation for permanent loss or impairment of function

31. (1) Where an employee suffers incapacity within the meaning of subsection 28(3), the employer shall pay to the employee lump sum compensation in accordance with this section.

(2) Compensation under this section —

- (a) is payable in addition to any other compensation payable in accordance with this Part;
- (b) subject to paragraph 31(2)(c), shall be an amount calculated in accordance with section 32; and
- (c) shall not exceed the prescribed amount.

(3) Where an amount to which an employee would otherwise have been entitled under this section is increased by reason of the operation of this Act before the amount is paid to the employee, the employee is entitled to be paid the increased amount.

(4) Where an employee receives lump sum compensation under this section and subsequently dies by reason of the incapacity in respect of which the compensation was received, any compensation payable under paragraph 29(2)(a), 29(3)(a) or 29(4)(a) to a dependant of the employee shall be reduced by the amount so received.

Assessment of permanent loss or impairment of function

32. (1) Subject to subsection 32(2), where an employee who suffers incapacity does not completely recover from the incapacity —

- (a) the Medical Superintendent; or
- (b) a person appointed by instrument in writing signed by the Minister,

shall make an assessment of the employee in order to ascertain whether the employee has suffered permanent loss or impairment of bodily or mental function within the meaning of subsection 28(3) and the percentage, if any, of the loss or impairment.

(2) An assessment under subsection 32(1) shall be undertaken when the Medical Superintendent, or, where paragraph 32(1)(b) applies, a person referred to in that paragraph, considers that the degree of incapacity suffered by the employee has stabilised.

(3) An assessment under subsection 32(1) shall be in writing and shall —

- (a) set out the nature and percentage of the permanent loss or impairment of function, if any; and
- (b) be served on the employer and employee.

- (4) In making an assessment under this section —
- (a) regard shall be had to —
- (i) the Schedule, so far as it is applicable; and
 - (ii) the tables of relative impairment set out in the work entitled Guides to the Evaluation of Permanent Impairment prepared by the Committee of the American Medical Association on Rating of Mental and Physical Impairment and as last published by the Association, so far as applicable to permanent loss or impairment of a bodily or mental function; and
- (b) regard may be had to reports or advice obtained from another medical practitioner or person practising a specialty referred to in subparagraphs 32(4)(a)(ii) to 32(4)(a)(viii) of the definition of "medical treatment" in subsection 26(1).

(5) Subject to subsections 32(6) and 32(7), an assessment made under this section of the percentage of permanent loss or impairment of function suffered by an employee entitles the employee to payment of lump sum compensation, in accordance with section 31, of an amount equal to that percentage of the amount prescribed under paragraph 31(2)(c).

(6) An employee is not entitled to lump sum compensation under section 31 where —

- (a) the percentage specified in an assessment made under this section is 2% or less; or
- (b) the employee has been given a notice in writing signed by the employer or the Minister requiring the employee to attend for assessment under this section at a time and place specified in the notice, and the employee has failed or refused to attend without reasonable excuse.

(7) Where the percentage specified in an assessment made under this section is 90% or more, the employee in relation to whom the assessment was made is entitled to be paid an amount equal to the amount prescribed under paragraph 31(2)(c).

(8) For the purposes of sections 76 and 85, the preparation under this section of an accurate and reasonable assessment is an act required by this Act to be done.

(9) The Tribunal, in dealing with proceedings concerning an assessment, may make an order setting aside, varying or remitting for reconsideration an assessment made, or purportedly made, under this section.

Compensation for industrial deafness

33. (1) Deafness suffered by an employee constitutes industrial deafness for the purposes of paragraph 28(1)(b) where —

- (a) after the commencement of this section the employee has been employed in employment in which the employee is exposed to the hazard of contracting deafness by reason of —
 - (i) intensity of; and
 - (ii) duration of exposure to, noise; and
- (b) the employee suffers deafness of a permanent nature within 2 years after having been so exposed.

(2) An assessment under section 32 of the percentage of permanent loss or impairment of function, in relation to industrial deafness, shall exclude any demonstrable pre-existing deafness established in the course of the assessment.

(3) Compensation for deafness is not payable under this Part where it is established that —

- (a) the deafness had a cause other than the cause referred to in paragraph 33(1)(a); or
- (b) in the light of medical and other evidence available, the degree of deafness does not significantly exceed that which normally would have resulted from the ageing process.

(4) Incapacity by reason of industrial deafness shall be deemed to have commenced on the date that the employee reported to the employer the existence of the deafness, or the date on which the employee was last employed in employment in which the employee was exposed to the hazard of contracting deafness, whichever first occurred.

(5) Compensation in respect of industrial deafness is payable by the employer who last employed the employee in employment in which the employee was exposed to the hazard of contracting deafness.

Compensation for hernia

34. (1) A hernia suffered by an employee constitutes a hernia for the purposes of paragraph 28(1)(c) where —

- (a) the hernia is —
 - (i) clinical hernia of a disabling character appearing to have recently occurred for the first time; or
 - (ii) an aggravation or strangulation of a pre-existent hernia resulting in immediate pain and disablement;
- (b) the onset of the hernia, or aggravation or strangulation of a pre-existent hernia, was immediately preceded by a strain or accident arising out of, or in the course of, the employee's employment; and
- (c) the employee reported the condition immediately after the occurrence of the strain or accident or not later than 72 hours thereafter.

(2) An employee who suffers incapacity by reason of a hernia is not entitled to compensation under this Part where the employee fails or refuses to undergo a surgical operation reasonably directed by the Medical Superintendent to be carried out for the cure of the hernia.

Compensation for occupational disease

35. (1) Disease suffered by an employee constitutes occupational disease for the purposes of paragraph 28(1)(d) where the disease is due to the nature of employment in which the employee is or was employed.

(2) Incapacity by reason of occupational disease shall be deemed to have commenced on the date that the employee reported to the employer the existence of the disease, or the date on which the employee was last employed in employment due to the nature of which the disease was contracted, whichever first occurred.

(3) Compensation under this Part in respect of occupational disease is not payable where —

- (a) it is proved that an employee, at the time of entering employment due to the nature of which a disease was contracted, knowingly and falsely represented

that the employee had not previously suffered a disease of the kind contracted; or

- (b) an employee, wilfully and without reasonable cause, fails or refuses to provide the employer with such information as is prescribed.

(4) Compensation in respect of occupational disease is payable by the employer who last employed the employee in employment due to the nature of which the disease was contracted, whether or not a previous employment of the employee contributed towards the contracting of the disease.

Compensation for heart attack or stroke

36. (1) A cardio-vascular or cerebro-vascular episode constitutes an episode for the purposes of paragraph 28(1)(e) where —

- (a) the episode is the result of effort, strain or stress that is abnormal, excessive or unusual for the employee by whom the episode is suffered; and
- (b) the effort, strain or stress arises out of, or in the course of, the employee's employment.

(2) Compensation under this Part in respect of a cardio-vascular or cerebro-vascular episode is not payable where it is proved that an employee, at the time of entering employment in the course of which the employee suffered —

- (a) a cardio-vascular episode; or
- (b) a cerebro-vascular episode,

knowingly and falsely represented that the employee had not previously suffered either a cardio-vascular or cerebro-vascular episode.

Compensation for medical treatment

37. (1) Where —

- (a) compensation is payable under this Part by an employer to, or in respect of, an employee; or
- (b) but for the fact that an employee —
 - (i) did not suffer a loss or diminution of the employee's capacity to earn; or
 - (ii) by reason of the operation of paragraph 32(6)(a) is not entitled to compensation under this Part,

compensation would have been payable under this Part to, or in respect of, the employee,

the employer is liable to pay the reasonable cost of medical treatment of the injury or condition in relation to which the compensation is, or, where paragraph 37(1)(b) applies, would have been, payable.

(2) Compensation under this section is payable in addition to any other compensation payable in accordance with this Part.

(3) For the purposes of subsection 37(1), the reasonable cost of medical treatment is —

- (a) the cost of medical treatment carried out in Norfolk Island with the approval of the Medical Superintendent;
- (b) where the Medical Superintendent considers it necessary for medical treatment to be carried out in a place other than Norfolk Island - the reasonable cost of that treatment to the extent that the employee is not entitled to receive free or subsidised treatment at that place;

- (c) the reasonable cost of transporting the employee, and, if necessary, an escort or escorts, to and from a place referred to in paragraph 37(3)(b);
- (d) the reasonable cost of accommodating an escort referred to in paragraph 37(3)(c) at or near a place referred to in paragraph 37(3)(b); and
- (e) the reasonable cost of rehabilitation services within the meaning of section 38; and
- (f) such other reasonable cost as is considered appropriate by the Minister in the circumstances of the case.

Claims for compensation

37A. (1) Compensation is not payable to a person under this Act unless a claim for compensation is made by or on behalf of the person under this section.

(2) A claim shall be made by giving the Employment Liaison Officer—

- (a) a written claim in accordance with the form prescribed for the purposes of this paragraph; and
- (b) except where the claim is for compensation for death under section 29—a certificate by a medical practitioner in accordance with the form prescribed for the purposes of this paragraph.

(3) Where a written claim, other than a claim for compensation for death under section 29, is given to the Employment Liaison Officer under paragraph (2)(a) and the claim is not accompanied by a certificate of the kind referred to in paragraph (2)(b), the claim shall be taken not to have been made until such a certificate is given to the Employment Liaison Officer.

(4) Where a claim is given to the Employment Liaison Officer, the Employment Liaison Officer shall cause a copy of the claim to be given to the employer by whom the employee was employed at that time.

(5) Strict compliance with an approved form referred to in subsection (2) is not required and substantial compliance is sufficient.

Rehabilitation services

38. The Medical Superintendent shall advise and assist a person suffering incapacity for the purpose of restoring the person, as quickly as possible, to the fullest physical and mental fitness of which the person is reasonably capable.

Compulsory insurance

39. (1) Subject to this section, an employer shall obtain from an approved insurer, and shall at all times maintain in force with an approved insurer, an approved policy of insurance or indemnity for the full amount of the employer's liability to pay compensation under this Part to all employees employed by the employer.

- Penalty:
- (a) in the case of a natural person — 50 penalty units or imprisonment for 2 years, or both; and
 - (b) in the case of a body corporate — 250 penalty units.

(2) Subsection 39(1) does not apply to a person prescribed for the purposes of this subsection.

(3) An employer may require an employee to provide to the employer such information in relation to the employee's medical history as is prescribed.

(4) The Minister may, in accordance with a resolution of the Legislative Assembly, establish a scheme by which an employer, on payment of such levies as are prescribed for the purposes of this subsection and subject to subsection 39(5A), is indemnified for the full amount of the employer's liability to pay compensation under this Part to all employees employed by the employer.

(4A) The levies referred to in subsection 39(4) are payable on the days prescribed in the Regulations.

(5) An employer applying to become a member of the public scheme shall provide to the Minister, in a form supplied by the Minister, such information as is prescribed.

(5A) Indemnification under subsection 39(4) is only in relation to the extent of the employer's liability assessed in accordance with the information supplied by the employer under subsection 39(5).

(5B) Where the Minister is satisfied that the information supplied by an employer under subsection 39(5) does not accurately reflect the employer's liability to pay compensation under this Part, the Minister may assess the prescribed levy for that employer for the purposes of subsection 39(4) on the basis of other information available to the Minister.

(5C) An assessment by the Minister under subsection 39(5B) is a matter in respect of which the relevant employer may lodge a complaint with the Board under section 76.

(6) The Minister, in his discretion, may grant or refuse to grant an application to become a member of the public scheme.

(7) The Minister shall exercise the discretion conferred by subsection 39(6) after taking into account considerations, if any, prescribed for the purposes of this subsection.

(7A) The Minister may revoke the membership of the public scheme of an employer if that employer has not within a reasonable period after the due date paid the prescribed levies.

(8) Subsection 39(1) does not apply to an employer who is a member of the public scheme.

(9) Where 2 or more employers may become liable to pay compensation in respect of the same employee, those employers, or any of them, may comply with their obligations under this section by —

(a) jointly entering into a contract of insurance or indemnity for the purposes of subsection 39(1); or

(b) jointly becoming members of the public scheme,
in relation to their liability in respect of the employee.

(10) In a prosecution for a failure to comply with subsection 39(1), a certificate signed or purporting to be signed by —

(a) an employee or agent of an approved insurer, stating that there was not in force on a specified date an approved policy of insurance or indemnity issued by the insurer in relation to the person charged in respect of that person's liability under subsection 39(1); or

(b) the Minister, stating that the person charged was not on a specified date —

(i) a member of the public scheme; or

(ii) a person prescribed for the purposes of subsection 39(2),

is evidence of the matters stated in the certificate.

(11) A reference in this section to liability to pay compensation does not include liability to pay —

- (a) compensation by reason of the application of —
 - (i) subparagraph 30(4)(a)(i); or
 - (ii) subparagraph 30(4)(a)(ii), except to the extent that a period referred to in that subparagraph exceeds 2 weeks; or
- (b) an amount equal to the prescribed amount in respect of each claim for compensation, other than compensation to which paragraph 39(11)(a) applies.

Employment Liaison Officer

39A. (1) For the purposes of this Act the position of Employment Liaison Officer is established.

- (2)** The Employment Liaison Officer—
 - (a) is appointed by the Chief Executive Officer in accordance with the *Public Sector Management Act 2000*;
 - (b) has the day to day management and control of the scheme established by subsection 39(4) including the administration of claims;
 - (c) is subject to the directions of the Minister and the Chief Executive Officer but not in connection with any matter concerning the investigation and determination of a claim by an employee of the Administration or a public sector agency or a territory instrumentality;
 - (d) is the responsible officer for the purpose of certifying that an employment contract entered into in accordance with section 11, complies with the Act and the Regulations;
 - (e) is responsible for the management and control of inspectors, including the power of direction to comply with, or perform a duty required to be performed by, this Act;
 - (f) shall exercise such other functions powers and responsibilities in respect of any provision or provisions of this Act or the Regulations as may be required or permitted to be exercised thereby or as may be lawfully delegated or directed by the Chief Executive Officer or the Minister; and
 - (g) may, by instrument in writing, delegate a power or function under this Act to an inspector or another employee of the Administration other than this power of delegation or a power or function delegated to him or her by the Minister or the Chief Executive Officer.

Compensation where employer not insured

40. (1) Where an employer is liable to pay compensation to an employee under this Part and the employer, in respect of the liability —

- (a) is not insured in accordance with subsection 39(1) for the full amount of the employer's liability to pay compensation; and
- (b) is not indemnified under the public scheme for the full amount of the employer's liability to pay compensation; and
- (c) is not a person prescribed for the purposes of subsection 39(2),

and the liability is not a liability referred to in subsection 39(11), the Administration is liable to pay the compensation as if the Administration were the employer.

(2) A sum paid by the Administration to an employee in accordance with subsection 40(1) is a debt due and payable to the Administration by the employer recoverable in a Court of competent jurisdiction.

(2A) Where an employer is not insured in accordance with subsection 39(1), or is not indemnified under the public scheme, for the full amount of the employer's liability to pay compensation to an employee under this Part, any amount payable in respect of the compensation of the employee under that insurance policy or out of the public scheme, shall be paid to the Administration and that amount shall be deducted from the debt due and payable to the Administration under subsection 40(2).

(3) A sum recovered from an employer under subsection 40(2) is in addition to the imposition of penalties for an offence against this Act.

(4) Where an employer is a body corporate, an officer of the body corporate is personally liable to pay a debt referred to in subsection 40(2).

(5) For the purposes of subsection 40(4), "officer", in relation to a body corporate, means a director (whether or not a shareholder) of the body corporate, or, in the case of a body corporate that has ceased to exist, a person who was a director at the time the liability arose.

Compensation where employer ceases to exist

41. (1) Where an employer is liable to pay compensation to an employee under this Part and the employer, since the happening of the occurrence from which the liability arose, has died or ceased to exist, the employee to whom the compensation is payable has recourse against —

- (a) where the former employer was, or, but for the employer's death or dissolution, would have been, insured in accordance with subsection 39(1) - the insurer;
- (b) where the former employer was, or, but for the employer's death or dissolution, would have been, a member of the public scheme - the Administration; or
- (c) where the former employer was a person prescribed for the purposes of subsection 39(2) at the time the employer died or ceased to exist - a successor, executor, assign or personal representative of the former employer,

as if the insurer, Administration or person referred to in paragraph 41(1)(c), as the case may be, were the employer.

(2) A reference in subsection 41(1) to a situation where, but for an employer's death or dissolution, the employer would have been insured or a member of the public scheme is a reference to a situation where premiums or levies, as the case may be, have been paid in respect of a liability to pay compensation and nothing has occurred, other than the death or dissolution of the employer, to render the policy or membership inapplicable to the liability.

Variation of rates of compensation

42. (1) In this section —

"calculated amount" means an amount calculated in accordance with subsection 42(4);

"relevant amount" means —

- (a) an amount prescribed for the purposes of —
 - (i) subparagraph 30(4)(b)(i); or
 - (ii) paragraph 31(2)(c); or

- (b) where, after the prescribing of an amount for the purposes of subparagraph 30(4)(b)(i) or paragraph 31(2)(c), this Act has effect by reason of the operation of this section as if another amount were substituted for an amount so prescribed - the amount last so substituted;

“substituted amount” means an amount substituted for a relevant amount in accordance with subsections 42(4) and 42(5).

(2) The factor to be ascertained for the purposes of subsection 42(4) as at a particular date is the number, calculated to 3 places of decimals, determined by dividing the RPI ascertained as at that date by the RPI last ascertained as at 30 June or 31 December in a year.

(3) If the number so calculated would, if it were calculated to 4 places of decimals, end in 5 or a higher number, then that number shall be increased by 0.001.

(4) Where the factor ascertained in accordance with subsections 42(2) and 42(3) as at 30 June or 31 December in a year is greater than 1, this Act has effect as if for each relevant amount there were substituted an amount calculated by multiplying the relevant amount by that factor.

(5) Where a calculated amount is not a multiple of 10 cents, the amount that is to be substituted in accordance with subsection 42(4) is —

- (a) if the calculated amount exceeds the next lower amount that is a multiple of 10 cents by 5 cents or more - the next higher amount that is a multiple of 10 cents; or
- (b) in any other case - the lower amount.

(6) Where a relevant amount is varied as a result of the operation of this section the Minister shall, as soon as practicable, publish in the Gazette a notice setting out the amount substituted for the relevant amount.

(7) Where an amount is substituted for a relevant amount in accordance with this section, the substituted amount is payable —

- (a) in respect of periodical compensation payable fortnightly in accordance with subparagraph 30(4)(b)(i) - on the date when the compensation is next payable; or
- (b) in respect of lump sum compensation payable in accordance with paragraph 31(2)(c) - in respect of any payment made,

after the date of publication of a notice referred to in subsection 42(6).

(8) Where an error is made in a notice referred to in subsection 42(6), the Minister shall, immediately the error is discovered, publish a correction and —

- (a) where by reason of the error an underpayment of compensation has been made - the person liable to pay the compensation shall as soon as practicable pay the amount underpaid; or
- (b) where by reason of the error an overpayment of compensation has been made - the person who has paid the compensation may —
 - (i) deduct the amount overpaid from any further amounts of compensation payable; or
 - (ii) demand from the person who received the overpayment a refund of the amount overpaid.

Compensation in substitution for other claims

43. (1) Subject to subsection 43(3), where an employee —

- (a) suffers incapacity;
- (b) would have suffered incapacity but for the fact that the employee did not suffer a loss or diminution of the employee's capacity to earn; or
- (c) dies as a result of an occurrence or condition specified in subsection 29(1),

no proceedings for damages or compensation arising directly or indirectly out of —

- (d) an injury or condition out of which the incapacity arose;
- (e) an injury or condition out of which incapacity would have arisen had the employee suffered a loss or diminution of the employee's capacity to earn; or
- (f) a death as a result of an occurrence or condition specified in subsection 29(1),

shall be heard or determined except in accordance with this Act, whether instituted by the employee or another person, and whether under a rule of law, enactment or law in force in Norfolk Island.

(2) Without limiting the generality of subsection 43(1) —

- (a) the action for loss of services (known as the action per quod servitium amisit); and
- (b) the action for loss of consortium (known as the action per quod consortium amisit), in relation to an employee,

are hereby abolished.

(3) Subsections 43(1) and 43(2) do not apply in respect of a cause of action that arose during a period not exceeding 6 years before the commencement of this Act.

(4) Compensation payable under this Act in respect of incapacity or death arising out of, or in the course of, employment is to be in substitution for damages recoverable or payable in respect of the incapacity or death whatever the cause of action or basis of liability and whether the cause of action is actionable at the suit of, or the liability is enforceable by, a person suffering incapacity or some other person.

(5) Nothing in this section affects an action for breach of a contract of insurance.

(6) In this section, a reference to damages includes a reference to aggravated, exemplary or punitive damages.

No contracting out

44. A provision in an agreement or other document, whether or not executed before the commencement of this Act, by which —

- (a) a right conferred by this Part is excluded or limited; or
- (b) liability imposed on an employer or other person by this Part is excluded or limited,

is of no effect.

Excluded from compensation

45. Where it is proved that —

- (a) injury to, or the death of, an employee is intentionally self-inflicted; or
- (b) the incapacity of an employee is attributable to the employee's serious and wilful misconduct (including being under the influence of intoxicating liquor or a drug); or if

- (c) the incapacity, injury, illness or mental condition of an employee is attributable to work-related stress caused by or arising out of, disaffection or disagreement arising out of or in connection with a decision or action or proposed decision or proposed action of an employer that is both lawful and reasonable in the circumstances,

compensation is not payable in respect of the injury, death or incapacity.

Powers of the Employment Liaison Officer in matters of misconduct

45A. (1) The Employment Liaison Officer may on his or her own motion or must, if requested by an employee or the employer of the employee, investigate and determine whether in his or her opinion the claim by an employee is shown on the balance of probabilities to be a claim that should be disallowed under section 45.

(2) In making a determination under subsection (1) the Employment Liaison Officer shall determine, where a matter falls within paragraph 45(c), if the decision or action or proposed decision or proposed action of the employer was lawful and reasonable in the circumstances.

(3) A determination of the Employment Liaison Officer under this section must be provided in writing together with the reasons for his or her determination, to the employee concerned, and the employer.

Recovery of overpayments

46. Where an amount has been paid by way of compensation under this Part to a person who is not entitled to payment of the amount, the amount is recoverable in a Court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the person by whom the amount was paid.

Information as to compensation

47. (1) The Minister may, by instrument in writing served by post on a person whom the Minister reasonably believes to be in a position to do so, require that person to furnish to the Minister a report relating to a matter that might affect the payment of compensation, and the person so required shall, where the person is in a position to do so, furnish a report accordingly within 14 days after the service of the instrument.

(2) A person referred to in subsection 47(1) shall not furnish a report that is false or misleading in a material particular.

Penalty for an offence

against subsection 47(1) or 47(2): 20 penalty units

(3) A person is not excused from furnishing a report in accordance with subsection 47(1) on the ground that the report might tend to incriminate the person or make the person liable to a penalty.

(4) Where a person furnishes a report in accordance with subsection 47(1), information contained in the report, and information or a document or thing obtained as a direct or indirect consequence of the furnishing of the report, is not admissible in evidence against the person in any criminal proceedings except a proceeding for an offence against this section.

PART 4 — SAFE WORKING PRACTICES

Interpretation

- 48. (1)** In this Part, unless the contrary intention appears —
 “bullying” means repeated unreasonable behaviour directed towards an employee or group of employees that creates a risk to health and safety and may include or involve—

- (i) publicly humiliating someone, verbal abuse or spreading malicious rumours or gossip;
- (ii) physical bullying such as the use of physical actions to bully, such as hitting, poking, tripping or pushing or repeatedly and intentionally damaging someone's belongings;
- (iii) the use of negative words, repeatedly and intentionally to upset someone, such as name calling, insults, homophobic or racist remarks, and verbal abuse;
- (iv) social bullying such as lying, spreading rumours, playing nasty jokes, mimicking a person or deliberately excluding a person;
- (v) psychological bullying where someone (or a group of people) repeatedly and intentionally use words or actions which cause psychological harm and includes intimidating a person manipulating people and stalking a person;
- (vi) cyberbullying where someone (or a group of people) uses technology to verbally, socially or psychologically bully a person and may take place in chat rooms, through social networking sites, emails or mobile phones.

“incapacity” means —

- (a) personal injury;
- (b) industrial deafness within the meaning of section 33;
- (c) hernia within the meaning of section 34;
- (d) occupational disease within the meaning of section 35; or
- (e) a cardio-vascular or cerebro-vascular episode within the meaning of section 36;

“inspector” means a person appointed to be an inspector under subsection 57(1);

“occupier”, in relation to a place of work, means a person who has the control or management of the place of work;

“out of, or in the course of, employment”, in relation to an occurrence, has the same meaning as in section 27;

“place of work”, means a place, whether or not in a building or structure, in which work is performed for money —

- (a) by an employee of an employer who is the occupier of the place;
- (b) by an occupier of the place; or
- (c) at the request of an occupier of the place, by another person;

“plant”—

- (a) means a machine, appliance, implement, tool or item of equipment; and
- (b) includes a thing fitted to, connected with or appurtenant to anything referred to in paragraph 48(1)(a);

“practicable” means practicable having regard to —

- (a) the severity of the relevant hazard or risk;
- (b) the state of knowledge about the hazard or risk and the ways of removing or lessening the hazard or risk;
- (c) the availability and suitability of ways of removing or lessening the hazard or risk; and

- (d) the cost of removing or lessening the hazard or risk;
 “substance” means a natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

Duties of employers

49. (1) An employer shall provide and maintain, so far as is practicable, a working environment that is safe and without risk to the health of —

- (a) an employee employed by the employer; or
- (b) another person performing work in the working environment.

Penalty: 40 penalty units.

(2) Without limiting the generality of subsection 49(1), an employer contravenes that subsection if the employer fails to take all reasonably practicable steps to —

- (a) provide and maintain plant and systems of work that are safe and without risk to health;
 - (aa) provide and maintain a place of work that is free of bullying and to take such steps as may be necessary to prevent or stop bullying that may take place;
- (b) make arrangements adequate to ensure that the use, handling, storage and transport of plant and substances is safe and without risk to health;
- (c) maintain a place of work of which the employer is the occupier in a condition that is safe and without risk to health; and
- (d) provide information, instruction, training and supervision adequate to ensure safety and an absence of risk to health.

Safety equipment

49A. (1) Where an employee is required by this Act or by another law or by the employer to wear or use safety equipment in the course of employment, the employer shall provide the employee with the safety equipment.

Penalty: 10 penalty units.

(2) A person authorised for the purposes of this Part may direct an employer to require employees of that employer to wear or use certain safety equipment in the course of their employment and such a direction is a requirement for the purposes of subsection 49A(1).

(3) The safety equipment referred to in subsection 49A(1) shall be provided free of charge by the employer.

(4) An employee shall not disobey, disregard or fail to comply with a reasonable direction of an employer in relation to the wearing or use of safety equipment provided under subsection 49A(1).

Penalty: 10 penalty units.

(5) An employee who is provided with safety equipment under this section shall take reasonable care of the equipment, which remains the property of the employer.

Safety procedures

49B. (1) An inspector may direct an employer to adopt specified procedures in relation to the performance of tasks reasonably known or reasonably suspected to involve risks to employees of that employer.

(2) An employer shall comply with a direction given under subsection 49B(1).

Penalty: 20 penalty units.

Duties of occupiers

50. (1) An occupier of a place of work shall take such measures as are practicable to ensure that a person, other than an employee of the occupier, is not exposed to a risk to the person's health or safety arising from the occupier's use of the place of work.

Penalty: 40 penalty units.

(2) An occupier of a place of work shall take such measures as are practicable to ensure that the place of work and means of access to or egress from the place of work are safe and without risk to health.

Penalty: 40 penalty units.

(3) In subsection 50(1), "employee" includes a person referred to in paragraph 49(1)(b).

Duties of manufacturers, etc

51. (1) A person who designs, manufactures, imports or supplies plant or a substance for use at a place of work shall, so far as is practicable —

- (a) ensure that the plant or substance is designed and constructed so as to be safe and without risk to health when properly used; and
- (b) take measures to ensure that information relating to the use of the plant or substance at a place of work in a manner that is safe and without risk to health is made available to a person to whom the plant or substance is provided.

Penalty: 40 penalty units.

(2) A person who erects or installs plant for use at a place of work shall ensure, so far as is practicable, that the plant is erected or installed in a way that does not constitute a risk to safety or health when the plant is properly used.

Penalty: 40 penalty units.

(3) Plant or a substance shall be taken not to be properly used by a person for the purposes of this section where the plant or substance is used without regard to information or advice available to the person concerning that use.

Duties of employees

52. (1) An employee present at a place of work shall, so far as is practicable, take care for —

- (a) the employee's safety and health; and
- (b) the safety and health of another person who may be affected by the employee's acts or omissions at the place of work.

Penalty: 40 penalty units.

(2) An employee present at a place of work shall not —

- (a) wilfully or recklessly interfere with or misuse anything provided in the interests of safety or health at the place of work; or
- (b) wilfully or recklessly place at risk the safety or health of the employee or another person present at the place of work.

Penalty: 40 penalty units.

(3) In this section, "employee" includes a person referred to in paragraph 49(1)(b).

Records and notifications, etc

53. (1) An employer shall, so far as is practicable —

- (a) monitor the health of employees of the employer; and

(b) monitor conditions at a place of work occupied by the employer.

(2) An employer shall keep such records as are prescribed, for such period as is prescribed, relating to the safety and health of employees of the employer.

(3) Where an employee suffers death or incapacity arising out of, or in the course of, employment by an employer, the employer shall as soon as practicable, and in any case within 7 days, after the death or incapacity becomes known to the employer, provide to the Minister information in the prescribed form relating to —

(a) the death or incapacity; and

(b) the events which gave rise to the death or incapacity.

Penalty for an offence against

subsection 53(1), 53(2) or 53(3): 20 penalty units.

(4) Subsection 53(3) does not apply to an employer who has a lawful excuse for not providing the information referred to in that subsection.

Medical and first aid services

54. (1) An —

(a) employer; or

(b) occupier of a place of work,

shall provide at a place of work occupied by the employer or occupier such medical and first aid services or facilities as are appropriate.

Penalty: 10 penalty units.

(2) For the purposes of subsection 54(1), the Regulations may prescribe the provision of —

(a) medical and first aid services or facilities, or medical or first aid services or facilities, to be provided for a specified class of employees; or

(b) medical and first aid services or facilities, or medical or first aid services or facilities, to be provided by a specified employer or occupier, or a specified class of employers or occupiers.

Complaints

55. (1) A person may complain to the Employment Liaison Officer or an inspector or the Minister that this Part is not being complied with by another person.

(2) A complaint made to the Minister under subsection 55(1) shall be referred by the Minister, as soon as practicable, to the Employment Liaison Officer or an inspector.

(3) Where the Employment Liaison Officer or an inspector receives a complaint under subsection (1) or (2), the Employment Liaison Officer or the inspector shall, as soon as practicable, investigate the complaint.

(4) The Employment Liaison Officer to whom a complaint has been referred may require an inspector to investigate the complaint.

Stop work and improvement notices

56. (1) Where, in the opinion of an inspector or the Minister, this Part is not being complied with by a person, the inspector or Minister may, by notice in writing served on the person —

(a) require the person to cease to use a place of work, system of work, plant or substance specified in the notice; or

- (ab) require the person to direct employees of the person to stop carrying out a particular task or to stop carrying out a particular task in a particular manner; or
- (b) require the person to take measures necessary in the opinion of the inspector or Minister to ensure that a place of work, system of work, plant or substance specified in the notice does not constitute a risk to safety or health.

(2) Subject to subsection 56(8), a person shall comply with a notice served on the person under subsection 56(1).

Penalty: 40 penalty units.

(3) Where a person on whom a notice has been served under subsection 56(1) is aggrieved by a requirement of the notice, the person may, within 7 days after service of the notice, apply to the Court of Petty Sessions for a review of the requirement.

(4) The Minister shall be the respondent to an application under subsection 56(3).

(5) Where the Court of Petty Sessions is satisfied by the person making the application under subsection 56(3) that the requirement that is the subject of the application is not necessary to be complied with in order for this Part, other than subsection 56(1), to be complied with by the person, the Court may —

- (a) cancel the requirement; or
- (b) vary the requirement to the extent necessary to ensure that the requirement is consistent with this Part, other than subsection 56(1).

(6) Where subsection 56(5) does not apply, the Court of Petty Sessions shall confirm the requirement that is the subject of the application.

(7) A person shall comply with a requirement in a notice under subsection 56(1) that has been varied or confirmed by the Court of Petty Sessions.

Penalty: 40 penalty units.

(8) Where a requirement in a notice under subsection 56(1) requires the taking of measures under paragraph 56(1)(b) by a person, the person may, from the time of making an application under subsection 56(3) and until the application is disposed of, elect to cease to use the place of work, system of work, plant or substance that is the subject of the requirement instead of complying with the requirement.

(9) An election under subsection 56(8) is of no effect until notified to an inspector or the Minister in writing by the person making the election.

(10) A person who makes an election under subsection 56(8) shall comply with the election.

Penalty for an offence

against this subsection: 40 penalty units.

Inspectors

57. (1) The Minister may, by instrument in writing published in the Gazette, appoint persons to be inspectors for the purposes of this Part.

(2) Subject to subsection 57(3), an inspector may enter land or a building for the purpose of —

- (a) ensuring that this Part or the Regulations, or a notice issued under this Part, is being complied with; or
- (b) investigating a complaint under section 55.

(3) An inspector shall not —

- (a) enter land or a building; or

(b) remain on land or in a building, unless the inspector produces, if requested to do so, the instrument referred to in subsection 57(1) or a copy of the instrument.

(4) A person shall not —

- (a) subject to compliance by an inspector with subsection 57(3), refuse to permit an entry to be made by an inspector under this section; or
- (b) assault, hinder or obstruct an inspector performing a function under this Part.

Penalty for an offence

against this subsection:

- (a) in the case of a natural person — 20 penalty units or imprisonment for 12 months, or both; and
- (b) in the case of a body corporate — 100 penalty units.

Codes of practice

58. (1) The Minister may make Codes of Practice for the purpose of ensuring, so far as practicable, that working environments are safe and without risk to health.

(2) Notice of the making of a Code of Practice shall be published in the Gazette, and a Code has effect from the date of publication of the notice or from a later date specified in the notice.

(3) A Code of Practice is of no effect to the extent that the Code is inconsistent with this Act.

(4) As soon as practicable after making a Code of Practice the Minister shall lay a copy of the Code before the Legislative Assembly.

Effect of Codes of Practice

59. Where a Code of Practice is relevant to a matter in relation to which an inspector or the Minister may form an opinion under subsection 56(1), the inspector or Minister shall have regard to the Code in forming an opinion under that subsection.

Prosecutions

60. (1) A person other than an inspector or the Minister shall not institute a prosecution under this Part.

(2) In a prosecution by an inspector under this Part, the production of an instrument referred to in subsection 57(1), or a document purporting to be, or to be a copy of, such an instrument, is evidence that the person named in the instrument or document is an inspector.

No effect on civil liability

61. (1) A breach by a person of a duty imposed by or under this Part does not give rise to a cause of action against that person or another person.

(2) Subject to subsection 61(3), nothing in this Part affects the liability a person would have had, apart from this Part, for an act or omission giving rise to a cause of action against that person or another person.

(3) This section does not affect —

- (a) the prosecution of a person for an offence; or
- (b) the making of an application for review under subsection 56(3).

Powers of Board and Tribunal

62. The Board or Tribunal has no power to deal with a complaint or inquiry relating to a matter that, in the opinion of the Board or Tribunal, amounts to an allegation that a person has failed to comply with a duty imposed by or under this Part.

Reports

63. The Minister shall, as soon as practicable after 30 June in a year, lay before the Legislative Assembly a report containing in respect of the year ending on that date —

- (a) statistical information on occupational health and safety, including information on the incidence of occupational accidents and diseases; and
- (b) such other information on occupational health and safety as the Minister determines.

Consultative workplace arrangements

64. The Regulations may prescribe consultative arrangements relating to occupational health and safety to be entered into between employers and employees in respect of places of work or a class of places of work.

PART 5 — CONCILIATION, ADJUDICATION AND REVIEW

Division 1 — Conciliation

Employment Conciliation Board

65. (1) There is established by this Act a Board known as the Employment Conciliation Board.

(2) The Board shall consist of not less than 3 members —

- (a) having, in the opinion of the Minister, relevant qualifications or experience; and
- (b) appointed by the Minister in accordance with a resolution of the Legislative Assembly.

(3) A person has relevant qualifications or experience for the purpose of subsection 65(2) if the person —

- (a) has had substantial experience in industry, commerce, industrial relations or the service of a government or an authority of a government;
- (b) has been a member of the Public Service Board established by *the Public Service Act 1979*;
- (c) has been a Magistrate, or has held judicial office of a similar kind in a place other than Norfolk Island;
- (d) is or has been entitled to practise law in Norfolk Island, or in a State, Territory or New Zealand; or
- (e) has obtained a degree of a university or an educational qualification of a similar standard in the field of law, economics, industrial relations or some other field of study considered by the Minister to have substantial relevance to the functions of the Board.

(4) A person who is —

- (a) a member of the Public Service Board established by *the Public Service Act 1979*; or

.....

- (c) a member of the Tribunal,

shall not be appointed to be a member of the Board.

(5) The Minister shall appoint one of the members referred to in subsection 65(2) to be the Chairman.

(6) An appointment under subsection 65(2) or 65(5) shall —

- (a) be by notice published in the Gazette; and
- (b) take effect from the date of that publication or from a later date specified in the notice.

(7) Subject to this Act, a member of the Board holds office for a period of not less than 2 years and not more than 3 years specified by the Minister in the notice of appointment and is eligible for re-appointment.

Acting appointments

66. (1) Where —

- (a) a member of the Board —
 - (i) is, or is expected to be, absent from duty or from Norfolk Island; or
 - (ii) is, pursuant to section 71, disqualified; or
- (b) there is a vacancy in the office of a member of the Board,

the Minister may appoint a person to act as a member of the Board during the absence, disqualification or vacancy.

(2) A person appointed under subsection 66(1) is not required to have relevant qualifications or experience within the meaning of subsection 65(3).

(3) A person referred to in subsection 65(4) shall not be appointed under subsection 66(1).

(4) The Minister may at any time terminate an appointment made under subsection 66(1).

Publication of notices of appointment or termination

67. (1) Subject to subsection 67(2), an appointment or termination under section 66 shall —

- (a) be by notice published in the Gazette; and
- (b) take effect from the date of that publication or from a later date specified in the notice.

(2) Where the Minister considers that for reasons of urgency it is expedient to do so, an appointment or termination under section 66 may be by notice and shall take effect from the date specified in the notice, and the Minister shall cause the notice to be published in the Gazette as soon as practicable after the appointment or termination of appointment has been made.

Validity of acts of acting members

68. Nothing done by or in relation to a person purporting to act as a member of the Board pursuant to an appointment under subsection 66(1) is invalid on the ground that —

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Resignation of members

69. A member of the Board may resign the office of member by notice in writing given to the Minister.

Dismissal of members

70. (1) The Minister may terminate the appointment of a member of the Board for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) If a member of the Board —

- (a) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Board;
- (b) becomes bankrupt, applies as a debtor to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of remuneration for their benefit; or
- (c) becomes a person referred to in subsection 65(4),

the Minister may terminate the appointment of the member.

Disclosure of interest

71. (1) A member of the Board who has a direct or indirect interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of the interest to the Board.

(2) A disclosure under subsection 71(1) shall be recorded in the records of the Board and the member shall not be present during a deliberation or decision of the Board in relation to the matter.

(3) In subsection 71(1), "interest" includes the holding of a position by a member of the Board as an officer (whether or not a shareholder) of a body corporate that has an interest in a contract the subject of proceedings before the Board.

Meetings of the Board

72. (1) The Chairman shall call such meetings of the Board as are necessary for the exercise of its powers and performance of its functions.

(2) The Minister may at any time direct the Chairman to convene a meeting of the Board and the Chairman shall comply with the direction.

(3) At a meeting of the Board —

- (a) it shall be at the discretion of the Chairman whether —
 - (i) one member shall constitute the Board; or
 - (ii) 2 or 3 members shall constitute the Board, to deal with a matter before it; and
- (b) subject to this Act, the Board shall determine the procedure to be followed at and in connection with a meeting.

(4) The Board shall keep or cause to be kept a record of each complaint lodged under section 76 and of the result of the dealing by the Board with the complaint.

(5) Meetings of the Board shall be held in private.

Functions of the Board

73. (1) The functions of the Board are to inquire into and resolve matters in respect of which powers and functions are conferred on the Board by this Act.

(2) Without limiting the generality of subsection 73(1), in particular the functions of the Board are to consider matters brought before it in relation to employment.

Powers of the Board

74. Subject to this Act, the Board has the power to do all things that are necessary or convenient to be done for or in connection with or incidental to the exercise of its powers and the performance of its functions.

Reports

75. (1) The Board shall, when it sees fit but not less frequently than annually, prepare and furnish to the Minister a report on the operations of the Board during the period since the last such report was furnished.

(2) The Minister shall cause a copy or a summary of a report referred to in subsection 75(1) to be laid before the Legislative Assembly as soon as practicable after its receipt by the Minister.

Lodging of complaint

76. (1) An aggrieved person may lodge a complaint with any member of the Board concerning —

- (a) non-compliance with a provision of a written contract entered into in pursuance of section 10;
- (b) non-compliance with the minimum terms and conditions of employment specified in this Act;
- (c) subject to section 62, non-compliance with any other provision of this Act; or
- (ca) a complaint or grievance arising out of an unsuccessful worker's compensation claim made by the employee; or
- (d) any other matter in relation to employment.

(2) The member of the Board with whom a complaint has been lodged shall promptly inform the Chairman of the complaint, and the Chairman shall, as soon as practicable, call a meeting of the Board for the purpose of dealing with the complaint.

(3) In this section, "aggrieved person" means —

- (a) an employer, in relation to the employer's trade or business;
- (b) an employee, in relation to the employee's employment;
- (c) an insurer, in relation to a policy of insurance or indemnity entered into for the purposes of Part 3 with the insurer;
- (d) the Minister, in relation to a matter as to which rights, duties or liabilities are conferred or imposed on the Administration under Part 3;
- (e) a dependant of a deceased employee; or
- (f) any other person who has a direct and personal pecuniary interest in a matter as to which the Board may exercise a power or perform a function.

Resolution of complaint by conciliation

77. (1) Subject to section 62, the Board —

- (a) shall endeavour, by all such means as to it seem reasonable, to resolve a complaint brought before it by conciliation;
- (b) shall take such steps as to it seem reasonable to effect an amicable settlement of a complaint, and for this purpose may adjourn at any stage to enable the parties to negotiate with a view to a settlement of the complaint by amicable arrangements; and
- (c) is not bound by rules of evidence but may inform itself in such manner as it thinks fit.

(2) The Board shall, as soon as practicable after dealing with a complaint, issue a certificate setting out the result of that dealing.

(3) A certificate referred to in subsection 77(2) shall include a statement advising a person to whom the certificate is given of the provisions of subsections 82(1) and 82(2).

(4) A certificate referred to in subsection 77(2) shall be given to the person who brought the matter before the Board, or in the case of a dispute, to each party to the dispute.

(5) A person who has made a complaint, or in respect of whom a complaint has been made, is entitled to appear personally in respect of the complaint, or, where the person is a body corporate, by a director, secretary or agent of the body corporate, but is not entitled to be represented by a legal practitioner.

(6) Subsection 77(5) does not prevent —

(a) a person from appearing personally where the person is a legal practitioner; or

(b) a person that is a body corporate from appearing by a director or secretary of the body corporate who is a legal practitioner.

(7) No person shall receive a fee or reward for representing a party to a complaint.

Penalty: 10 penalty units.

(8) The Board shall make no order as to costs.

Division 2 — Adjudication

Employment Tribunal

78. (1) The Court of Petty Sessions has jurisdiction under this Act to exercise and perform the powers, duties, functions and authorities conferred or imposed on it by this Act.

(2) In relation to the exercise of the jurisdiction conferred by subsection 78(1) —

(a) the Court of Petty Sessions shall be referred to as the Employment Tribunal; and

(b) the Clerk of the Court of Petty Sessions shall be referred to as the Secretary to the Employment Tribunal.

Constitution of Tribunal

79. (1) Subject to this section, the Tribunal shall be constituted by any 3 of its members to deal with a matter before it.

(2) Where the Chief Magistrate has given a direction about the constitution of the Tribunal in relation to a specified matter or class of matters, or in relation to all matters, before it, the Tribunal shall be constituted, subject to subsections 79(3) and 79(4) and section 80, in accordance with the direction.

(3) The Chief Magistrate shall not direct that the Tribunal shall be constituted by other than 3 members.

(4) One or more professional Magistrates shall be included in the members by whom the Tribunal is constituted if the matter in issue before the Tribunal amounts to or is of the value of a sum of money exceeding the sum referred to in section 107 of the *Court of Petty Sessions Act 1960* as in force for the time being.

Disclosure of interest

80. (1) A member of the Tribunal who has a direct or indirect interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Tribunal, shall, as soon as possible after the relevant facts have come to the attention of the member, disclose the nature of the interest to the Tribunal.

(2) A disclosure under subsection 80(1) shall be recorded in the records of the Tribunal and the member shall not be present during a deliberation or decision of the Tribunal in relation to the matter.

(3) In subsection 80(1), “interest” includes the holding of a position by a member of the Tribunal as an officer (whether or not a shareholder) of a body corporate that has an interest in a contract the subject of proceedings before the Tribunal.

Meetings of Tribunal

81. (1) The Tribunal shall meet at such times as are necessary for the exercise of its powers and performance of its functions.

(2) At a meeting of the Tribunal, the Tribunal, subject to this Act, shall determine the procedure to be followed at and in connection with the meeting.

Proceedings before Tribunal

82. (1) A person to whom a certificate referred to in subsection 77(4) has been given who remains aggrieved by the subject-matter of the complaint to which the certificate relates, or who is aggrieved by the result of conciliation before the Board in relation to the complaint, may, within 7 days after the certificate has been given to the person, apply in writing to the Tribunal for an inquiry into the matter.

(2) An application under subsection 82(1) shall be —

- (a) made to the Secretary; and
- (b) accompanied by a copy of the certificate.

(3) The Secretary shall, as soon as practicable after receipt of an application and certificate under subsection 82(2), inform a member of the Tribunal who shall promptly convene a meeting for the purpose of inquiring into the application.

(4) The Tribunal —

- (a) shall give to a person to whom a certificate has been given in accordance with subsection 77(4) in relation to a matter the subject of an application notice in such manner as the Tribunal determines of the time and place at which it intends to hold the inquiry and of the subject-matter of the inquiry; and
- (b) shall give to that person a reasonable opportunity of making representations to the Tribunal.

(5) For the purposes of subsection 82(4), a person who is informed of the contents of a certificate referred to in subsection 77(4) shall be taken to have been given sufficient notice of the subject-matter of an inquiry which relates to the matter in respect of which the certificate was issued.

(6) Where a person to whom notice has been given under paragraph 82(4)(a) fails to attend at the time and place specified for the inquiry, the Tribunal may proceed in the absence of that party.

(7) A person referred to in subsection 82(4) —

- (a) is entitled to appear personally or, where the person is a body corporate, by a director, secretary or agent of the body corporate; and
- (b) subject to subsection 82(7A), may be represented by a legal practitioner who is entitled to practise in the Court of Petty Sessions.

(7A) Where the matter in issue before the Tribunal amounts to or is of the value of a sum of money that is less than \$1000, a person referred to in subsection 82(4) is not entitled to be represented by a legal practitioner.

(8) Subsection 82(7A) does not prevent —

- (a) a person from appearing personally where the person is a legal practitioner; or
- (b) a person that is a body corporate from appearing by a director or secretary of the body corporate who is a legal practitioner.

(9) No person shall receive a fee or reward for representing a party to an inquiry.

Penalty: 10 penalty units.

(9A) Subsection 82(9) does not apply to a legal practitioner in respect of representation by the practitioner in accordance with this section of a person referred to in subsection 82(4).

(10) The Tribunal shall make no order as to costs.

Meetings of Tribunal usually to be held in public

82A. (1) Subject to this section, proceedings before the Tribunal shall be heard and determined in a place to which members of the public have access, and any person is entitled, so far as is practicable, to be present during the proceedings.

(2) A person is not entitled to be present during the private deliberations of members of the Tribunal about proceedings heard, or to be heard or determined, in accordance with subsection 82A(1).

(3) Subject to subsection 82A(4), the Tribunal may order —

- (a) that a person or class of persons shall not be present during proceedings before the Tribunal;
- (b) that all or a specified part of the evidence or other information given or to be given in proceedings before the Tribunal shall not be published or reported, or may only be published or reported subject to conditions (including conditions as to the time of publication) specified by the Tribunal; or
- (c) that the name of a party to proceedings before the Tribunal, or of a person giving or intending to give evidence or information in proceedings before the Tribunal, shall not be published or reported.

(4) The Tribunal shall not make an order under subsection 82A(3) unless it is satisfied that —

- (a) the making of the order is desirable in the interests of justice; or
- (b) unless the order is made, the administration of justice is likely to be prejudiced.

(5) A person shall comply with an order made under subsection 82A(3).

Penalty: 10 penalty units.

(6) A reference in this section to the publishing or reporting of the name of a person includes a reference to publishing or reporting a reference or allusion to the person so as to disclose the identity of the person.

Application of rules of evidence, etc

83. For the purposes of an inquiry, the Tribunal —

- (a) is not bound by rules of evidence and may inform itself in such manner as it thinks fit;
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
- (c) may give directions relating to procedure that, in its opinion, will reduce delay and assist to achieve a prompt hearing of the matter at issue.

Evidence

84. (1) The Tribunal may, for the purposes of this Act —

- (a) receive evidence on oath or affirmation; and
- (b) receive documents in evidence.

(1A) Evidence or documents in evidence may be received by the Tribunal in a form, or by means, determined by the Tribunal.

(1B) Without limiting the generality of subsection 84(1A) —

- (a) the Tribunal may, if it so determines, receive evidence by telephone, or documents in evidence by facsimile transmission; and
- (b) if a proposed witness is not physically present before the Tribunal, the Tribunal may make such arrangements as it thinks fit for the administration to the proposed witness of an oath or the making by the proposed witness of an affirmation.

(2) The Tribunal may, by notice in writing served on a person, summon the person to appear before the Tribunal and may require the person to produce to the Tribunal documents specified in the notice.

(3) A person summoned under subsection 84(2) shall not, without lawful excuse, fail to appear or produce documents as required by the notice.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

(4) A person, whether summoned or not, who appears before the Tribunal shall not, without lawful excuse —

- (a) refuse to be sworn, or to make an affirmation, as a witness;
- (b) fail to answer a question that the person is lawfully required to answer; or
- (c) fail to produce a document that the person is lawfully required to produce.

Penalty for an offence

against this subsection: 10 penalty units or imprisonment for 6 months, or both.

Tribunal may make orders

85. (1) After determining a matter in proceedings before it, the Tribunal —

- (a) shall promptly advise in writing a person referred to in subsection 82(4) of its determination; and
- (b) may make or refuse to make an order in accordance with this section.

(2) Subject to section 62, the Tribunal may make an order requiring a person —

- (a) to do an act required by this Act to be done;
- (b) to refrain from doing an act prohibited by this Act;
- (c) to comply with a written contract entered into in pursuance of section 10; or
- (d) to pay money required to be paid by this Act or a contract referred to in paragraph 85(2)(c).

(3) In addition to any other power conferred by this Act, the Tribunal —

- (a) subject to section 62, may make in relation to an application an order the terms of which have been consented to by the person who made the application and by each person proposed to be bound by the order; and
- (b) may dismiss an application where the person who made the application notifies the Tribunal in writing that the application is withdrawn.

(4) Subject to subsection 82(6), the Tribunal shall not make an order under subsection 85(2) unless it has given the person to whom the order is proposed to be directed a reasonable opportunity of making representations to the Tribunal.

(5) Subject to subsection 85(7), a person to whom notice of an inquiry has been given in accordance with subsection 82(4) may request the Tribunal to give reasons for a determination or order of the Tribunal in relation to the subject-matter of the inquiry, and the Tribunal shall, within 7 days after receipt of the request, give to the person in writing the reasons for the determination or order.

(6) Subject to subsection 85(8), the Tribunal has no jurisdiction to deal with an application to inquire into a complaint where the subject matter of the complaint, in the opinion of the Tribunal, amounts to an allegation that a person committed an offence under this Act.

(7) Where the Tribunal declines jurisdiction in accordance with subsection 85(6), the Tribunal shall, as soon as practicable and in any case within 7 days after declining, give reasons for the determination that the Tribunal has no jurisdiction.

(8) The Tribunal has jurisdiction to deal with an application to inquire into a complaint that an employer has contravened section 22 by conduct prohibited by section 106.

(9) Where the Tribunal is satisfied that an employer has contravened section 22, whether or not by conduct prohibited by section 106, the Tribunal may, in addition to making an order under subsection 85(2) (including an order to pay money), order the employer to pay the employee for work performed as a result of the contravention at a rate of pay not less than twice the rate that would have been applicable during the employee's working week.

(10) The making of an order under subsection 85(9) does not prevent the prosecution of a person for an offence, whether or not the order was made in consequence of conduct prohibited by section 106.

(11) When making an order or determination under this section, the Tribunal shall, orally or in writing, inform a person to whom notice of the inquiry has been given in accordance with subsection 82(4) of the effect of sections 91 and 92.

(12) Failure by the Tribunal to comply with subsection 85(11) does not affect the operation or validity of an order or determination made by the Tribunal under this section.

Compliance with orders

86. (1) Where the Tribunal makes an order under section 85, the person to whom the order is directed shall comply with the order.

(2) Where the Tribunal makes an order under paragraph 85(2)(d) or subsection 85(9), the person to whom the order is directed shall, within 7 days after a copy of the order has been given to the person, pay the money to the person specified in the order.

Penalty: 40 penalty units.

Dismissal of frivolous applications

87. Where, at any stage of an inquiry, the Tribunal is satisfied that an application is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the application should not be entertained, the Tribunal may dismiss the application.

Referral for further conciliation

88. (1) Where, at any stage of an inquiry, the Tribunal is satisfied that further conciliation before the Board is likely to result in an amicable settlement of the complaint that is the subject of the inquiry, the Tribunal may make an order requiring the persons to

whom a certificate has been given under subsection 77(4) in relation to the complaint to enter into further conciliation before the Board in respect of the subject-matter of the complaint.

(2) Where the Tribunal makes an order under subsection 88(1), the Tribunal shall not continue the inquiry to which the order relates unless it is satisfied that further conciliation before the Board is unlikely to result in an amicable settlement of the complaint that is the subject of the inquiry.

Reports

89. (1) The Tribunal shall, when it sees fit but not less frequently than annually, prepare and furnish to the Minister a report on the operations of the Tribunal during the period since the last such report was furnished.

(2) The Minister shall cause a copy or a summary of a report referred to in subsection 89(1) to be laid before the Legislative Assembly as soon as practicable after its receipt by the Minister.

No liability for acts in good faith, etc

90. No action shall lie against the Minister, the Administration, the Board, a member of the Board, a person appointed under subsection 66(1), the Tribunal, a member of the Tribunal or the Secretary for anything done or omitted in good faith and without malice in the exercise or purported exercise of a power or function under this Act.

Division 3 — Review

Appeal to Supreme Court

91. (1) A person referred to in subsection 82(4) who is aggrieved by a determination or order of the Tribunal may, not later than 14 days after a copy of the determination or order has been given to the person, institute an appeal to the Supreme Court from the determination or order.

(2) An appeal shall be instituted by the appellant filing a notice of appeal in the office of the Registrar of the Supreme Court together with a copy of the determination or order that is appealed from.

(3) As soon as practicable after a person has instituted an appeal, the person shall serve a copy of the notice of appeal on each other person who was a party to the proceedings before the Tribunal out of which the appeal arose.

(4) The Supreme Court may, subject to such conditions (if any) as it thinks fit, dispense with the requirement for service of a copy of a notice of appeal in accordance with subsection 91(3) if it considers that it is necessary or expedient to do so, or if it appears that personal service cannot be effected, or may make an order for such substituted or other service as the Court thinks fit.

Jurisdiction on appeal

92. (1) Subject to subsection 92(2), the Supreme Court has general jurisdiction to hear and determine an appeal on any question, whether of fact or law, relating to the determination or order of the Tribunal that is appealed from.

(2) Where the matter in issue in an appeal amounts to or is of the value of \$2500 or less, the Supreme Court does not have jurisdiction to hear and determine the appeal except on a question of law.

Powers of Supreme Court on appeal

93. (1) Subject to section 92, the Supreme Court may, on an appeal —

(a) affirm, reverse or vary the determination or order appealed from;

- (b) give such judgment, or make such order, as in all the circumstances it thinks fit, or refuse to do so; or
- (c) set aside all or a part of the determination or order appealed from and remit the proceedings to the Tribunal for further hearing or determination, subject to such directions (if any) as the Court thinks fit.

(2) A judgment or order under subsection 93(1) has effect as if it were a determination or order of the Tribunal and may be enforced accordingly.

Effect of appeal on determination or order of Tribunal

94. (1) Subject to this section, the institution of an appeal under section 91 does not affect the operation of the determination or order of the Tribunal out of which the appeal arose, and does not prevent the taking of action to implement the determination or order.

(2) The Tribunal or Supreme Court may make an order staying or otherwise affecting the operation or implementation of a determination or order referred to in subsection 94(1) if the Tribunal or Court, as the case may be, considers it appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of an appeal instituted under section 91.

(3) An order under subsection 94(2) may be made on such conditions, if any, as the Tribunal or Court, as the case may be, thinks fit, including conditions relating to the giving of security for the prosecution of the appeal.

PART 6 — MISCELLANEOUS

Delegation

95. (1) The Minister may, by instrument in writing, delegate to a person any of the powers and functions of the Minister under this Act, other than this power of delegation.

(2) A power or function delegated under subsection 95(1) when exercised or performed by the delegate shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.

(3) A delegation under subsection 95(1) does not prevent the exercise of a power or the performance of a function by the Minister.

No appropriation necessary

96. Notwithstanding any enactment, the Minister is authorised by this section to expend moneys of the Public Account payable by the Administration under this Act.

Agents

97. (1) An employee may, in writing signed by the employee, appoint a person to be the agent of the employee for the purposes of this Act.

(2) A receipt given to an employer by an agent of an employee is a sufficient discharge of the employer in respect of liability under this Act to pay to the employee the amount specified in the receipt.

Mode of service

98. (1) Subject to this section, where this Act requires or allows a document to be given to or served on a person, the document shall be deemed to have been given or served at the time the document was handed to the person or drawn to the person's attention.

(2) The Regulations may prescribe that documents shall be deemed to have been given to or served on a person on compliance with a procedure, or at a time, specified in the Regulations.

- (3) The Regulations may make different provision in relation to —
 - (a) documents of a particular kind; or

- (b) recipients of a particular class.

Privacy of Board and Tribunal meetings protected

99. (1) At a meeting of the Board, the Board may make an order prohibiting disclosure of information with respect to the proceedings, or a specified part of the proceedings, of the meeting.

(2) A person shall not, directly or indirectly, make a record of, or divulge or communicate to another person, information with respect to proceedings that are the subject of an order under subsection 99(1).

Penalty: 10 penalty units.

(3) Subsection 99(2) does not apply to a record or communication made in the exercise of powers or the performance of functions under or in relation to this Act, or in respect of which a person is under a legal duty to disclose information.

Tribunal and Board members, etc, to respect privacy

100. (1) A person to whom this section applies shall not, directly or indirectly —

- (a) except in the exercise of the powers or the performance of the functions of the person under or in relation to this Act; and
- (b) while the person is, or after the person ceases to be, a person to whom this section applies,

make a record of, or divulge or communicate to a person other than a person to whom it is the person's duty to disclose it, any information with respect to —

- (c) the affairs of another person; or
- (d) statements made by, or in relation to, another person,

acquired by the first-mentioned person as a person to whom this section applies.

Penalty: 10 penalty units.

(2) The persons to whom this section applies are the Minister, a member of the Board, a person appointed under subsection 66(1), the Secretary and a member of the Tribunal.

Proceedings before Board not to be used for the purpose of Tribunal or Court proceedings

101. (1) Notwithstanding anything in this Act, nothing said or done in proceedings before the Board under this Act —

- (a) is admissible in evidence; or
- (b) shall be taken into account,

in proceedings under this Act before the Tribunal or Supreme Court.

(2) Subsection 101(1) does not apply to the contents of a certificate issued under subsection 77(2).

False or misleading statements

102. (1) A person shall not knowingly —

- (a) make, whether orally or in writing, a false or misleading statement —
 - (i) in connection with, or in support of, a claim for compensation, whether for an employee or for another person;
 - (ii) with intent to deceive the Board or Tribunal;
 - (iii) with intent to deceive a person performing a function in relation to this Act; or
 - (iv) with intent to affect an amount or rate of compensation; or

- (b) obtain payment of an amount of compensation by means of a false or misleading statement, impersonation or fraudulent device.

Penalty: (a) in the case of a natural person — 50 penalty units or imprisonment for 2 years, or both; and

(b) in the case of a body corporate — 250 penalty units.

(2) Where a person is convicted of an offence against subsection 102(1), the Court may, in addition to imposing a penalty in respect of the offence, order the person to repay an amount equal to an amount paid by way of compensation in consequence of the act or omission in respect of which the person was convicted.

Offences by body corporate

103. (1) Where a body corporate is guilty of an offence against this Act, any officer of the body corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of the offence.

(2) For the purposes of subsection 103(1) “officer”, in relation to a body corporate, includes a director, secretary, executive officer, manager or employee of the body corporate.

Conduct by directors, servants or agents

104. (1) Where, in proceedings for an offence against this Act in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a person who is a director, servant or agent of the body corporate, being a person by whom the conduct was engaged in within the scope of the person’s actual or apparent authority, had that state of mind.

(2) Conduct engaged in on behalf of a body corporate —

- (a) by a person who is a director, servant or agent of the body corporate within the scope of the person’s actual or apparent authority; or
- (b) by another person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

is to be taken for the purposes of this Act to have been also engaged in by the body corporate.

(3) A reference in subsection 104(1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and to the person’s reasons for the person’s intention, opinion, belief or purpose.

Prosecutions for offences

105. Notwithstanding any enactment, proceedings for an offence against this Act may be commenced at any time within 3 years after the commission of the offence.

Victimisation prohibited

106. (1) An employer shall not —

- (a) dismiss an employee;
- (b) alter an employee’s position to the employee’s prejudice; or
- (c) threaten to do an act referred to in paragraph 106(1)(a) or 106(1)(b),

by reason of the fact that the employee —

- (d) has refused, or proposes to refuse, to work for the employer in accordance with section 22;

.....

- (f) has made, or proposes to make, an application or complaint under this Act;
- (g) has commenced or continued, or proposes to commence or continue, any proceedings under, or in relation to, this Act; or
- (h) has given evidence or provided information in relation to an application or proceeding by another person under, or in relation to, this Act.

Penalty: 40 penalty units.

(2) An employer shall not —

- (a) dismiss an employee;
- (b) alter an employee's position to the employee's prejudice; or
- (c) threaten to do an act referred to in paragraph 106(2)(a) or 106(2)(b),

by reason of the fact that the employee is, or proposes to become, an officer, delegate or member of an organisation, whether or not a body corporate, for furthering or protecting the interests of employees generally or a class of employees.

Penalty: 10 penalty units.

(3) An employee shall not cease work or threaten to cease work for an employer by reason of the fact that the employer is, or proposes to become, an officer, delegate or member of an organisation, whether or not a body corporate, for furthering or protecting the interests of employers generally or a class of employers.

Penalty: 10 penalty units.

(4) In proceedings for an offence against this section, if all the relevant facts and circumstances, other than the reason set out in the charge as being the reason of an action alleged in the charge, are proved, it lies upon the person charged to prove that the action was not actuated by that reason.

.....

Regulations

108. (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection 108(1), the Regulations may prescribe —

- (a) the hours or number of hours in a day, and the days or number of days in a week, that constitute a working week in relation to —
- (i) an employee or class of employee; or
- (ii) employment of a particular kind; and
- (b) forms for the purposes of this Act; and
- (c) fees for any matter under this Act; and
- (d) penalties not exceeding 10 penalty units for a contravention or breach of the Regulations; and

.....

- (3) Regulations for the purpose of section 14 may provide—
- (a) that the minimum rate be determined as an amount payable as an hourly rate or in respect of a working week, or both.
 - (b) that the minimum rate remain unchanged or be increased (but not reduced) annually in accordance with—
 - (i) the determination of an independent authority; or
 - (ii) a prescribed methodology having reference to matters other than only the RPI.
 - (c) that if a determination of the minimum rate is to be effected by an independent authority, the authority must conduct an annual review and determination having regard to—
 - (i) variations in the RPI; and
 - (ii) a prescribed methodology; and
 - (iii) submissions from interested parties; and
 - (iv) the prevailing social and economic circumstances of Norfolk Island; and
 - (v) such other relevant matters as may be prescribed.

SCHEDULE

Section 32

**ASSESSMENT OF LOSS OF AMENITIES AND OF ENJOYMENT OF LIFE
BECAUSE OF PERMANENT LOSS OR IMPAIRMENT OF FUNCTION**

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
	Loss of part of body	
1.	Total loss of an arm or the greater part of an arm	80
2.	Total loss of a hand or of the lower part of an arm	70
3.	Total loss of a thumb Total loss of one segment of a thumb Loss of the pulp of a thumb	28 14 8
4.	Total loss of an index finger Total loss of 2 segments of an index finger Total loss of one segment of an index finger Loss of the pulp of an index finger	14 12 8 4
5.	Total loss of the middle finger Total loss of 2 segments of a middle finger Total loss of one segment of a middle finger Loss of the pulp of a middle finger	12 10 8 3
6.	Total loss of a ring or small finger Total loss of 2 segments of a ring or small finger Total loss of one segment of a ring or small finger Loss of the pulp of a ring or small finger	8 6 4 2
7.	Total loss of all fingers, thumb intact (treat as 90% of loss of a hand)	63
8.	Total loss of a leg Total loss of a foot or of the lower part of a leg	75 60
9.	Total loss of a great toe Loss of one segment of a great toe	10 5
10.	Total loss of a lesser toe	2.5
11.	Total loss of both legs by above-knee or below knee amputation	100
12.	Loss of both arms, above-elbow or below-elbow amputation	100

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
18.	Wrist Treat as 30% loss of function of the lower arm	21
19.	Hip Treat as 50% loss of function of the leg	37.5
20.	Knee Treat as 40% loss of function of the leg	30
21.	Ankle Treat as 35% loss of function of the lower leg	21
22.	Triple (foot arthrodesis) Treat as 30% loss of function of the lower leg	18
	Assessment of shortening	
23.	Up to 12.5mm Treat as 5% loss of function of the leg	3.75
24.	Exceeding 12.5mm but not exceeding 37.5 mm Treat as 10% loss of function of the leg	7.5
25.	Exceeding 25mm but not exceeding 37.5 mm Treat as 15% loss of function of the leg	11.25
26.	Exceeding 37.5mm but not exceeding 50 mm Treat as 20% loss of function of the leg	15
27.	Patellectomy Where there is full extension of the knee and full flexion in the knee with minimal quadriceps thigh muscle wasting, treat as 15% loss of function of the leg, this figure to be varied in less successful results related to residual joint stiffness	11.25
28.	Excision of head of radius Where full elbow extension and flexion movement is regained with full forearm rotation movement in either direction, treat as 15% loss of function of the arm, this basic figure to be varied in less successful cases related to residual joint stiffness	12
29.	Excision of lower end of ulna forearm bone Where full forearm rotation movements are preserved and the wrist is normal, treat as 10% loss of function of the lower arm, this figure to be varied in less successful cases related to residual joint stiffness	7

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
30.	Ligamentous injuries of the knee joint with residual instability and including quadriceps insufficiency with comparable instability	
	Moderate laxity Treat as 15% loss of function of the leg	11.25
31.	Multiple disabilities	
	If the disability affects more than one limb the assessment shall be made by summing the figures, but if the disabilities involve one limb the method of progressive extraction of losses, ie, regarding the limb as a whole, shall be used	
32.	Spinal disability and other disabilities	
	Cervical spine (a) Persistent muscle spasm, rigidity, and pain substantiated by loss of anterior curve revealed by X-ray, although no demonstrable structural pathology, moderate referred shoulder/arm pain	10
	(b) In cases similar to those mentioned in paragraph 32(a), but with gross degenerative changes consisting of narrowing of intervertebral spaces and oosteoarthritic lipping of vertebral margins	20
33.	Thoracic spine	
	(a) Spinal strain related to trauma with persistent discomfort moderate degenerative changes with osteoarthritic lipping, no X-ray evidence of structural trauma	10
	(b) Fracture	:
	(i) Compression 25% involving 1 or 2 vertebral bodies, no fragmentation, healed, no neurologic manifestations	10
	(ii) Compression 50% with involvement posterior elements, healed, no neurologic manifestations, persistent pain	20
34.	Lumbar spine	
	(a) Mild to moderate persistent muscle spasm with pain, with moderate degenerative lipping revealed by X-ray	10
	(b) Fracture:	
	(i) Vertebral compression 25%, 1 or 2 adjacent vertebral bodies, little or no fragmentation, no definite pattern or neurologic changes	15
	(ii) Vertebral compression 50%, 1 or 2 adjacent vertebral bodies, little or no fragmentation, no definite pattern or neurologic changes	20

	(iii) In cases similar to those mentioned in subparagraph 34(b)(ii), but with successful fusion, mild pain	25
35.	Neurogenic low back pain - disc injury	
	(a) Surgical excision of disc, no fusion, good result, no persistent sciatic pain	10
	(b) Surgical excision of disc, no fusion, moderate persistent pain and stiffness aggravated by heavy lifting with necessary modification of activities	20
	(c) Surgical excision of disc with fusion, activities of lifting moderately modified	15
	(d) Surgical excision of disc with fusion, persistent pain and stiffness aggravated by heavy lifting necessitating modification of all activities requiring heavy lifting	25
36.	Tetraplegia and paraplegia	100
37.	Blindness	
	(a) Total blindness	100
	(b) Total loss of vision in one eye (normal vision in the other eye)	30
38.	Deafness	
	(a) Total deafness	100
	(b) Total deafness in one ear (normal hearing in other ear)	17
39	Where an appliance or aid is fitted, assess residual deafness	
40.	Total loss of natural permanent teeth	
	(a) Anterior teeth	
	Loss of 1, 2, or 3 teeth	4
	Loss of 4, 5, or 6 teeth	5
	Loss of 7 to 12 teeth	6
	(b) Posterior teeth	
	Loss of 1 tooth	1
	Loss of 2 to 5 teeth	2
	Loss of 6 to 16 teeth	4
41.	Where there are subjective symptoms of pain without demonstrable clinical findings of abnormality or demonstrable structural pathology, no assessment should be made under this Schedule.	

NOTES

The *Employment Act 1988* as shown in this consolidation comprises Act No. 27 of 1988 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Employment Act 1988</i>	27, 1988	Parts 1, 5, 6 1.7.91 Parts 2, 4 1.9.91 Part 3, Schedule 1.11.91	
<i>Employment Amendment Act 1988</i>	30, 1988	1.7.91	
<i>[Previously reprinted as at 1 July 1991 incorporating amending Act listed above]</i>			
<i>Employment Amendment Act 1993</i>	4, 1994	14.3.94	
<i>Employment Amendment Act 1995</i>	12, 1995	30.6.95	
<i>Statute Law (Miscellaneous Provisions) Act 1995</i>	13, 1995	27.7.95	
<i>Employment Amendment Act 1996</i>	8, 1996	20.6.96	
<i>Employment (Public Holidays) Amendment Act 2001</i>	12, 2001	5.10.01	
<i>Employment Amendment Act 2000</i>	3, 2000	8.8.03	
<i>Employment Amendment (No. 2) Act 2000</i>	4, 2000	8.8.03	
<i>Employment Amendment (No. 2) Act 2001</i>	17, 2003	8.8.03	
<i>Employment Amendment Act 2003</i>	7, 2004	14.5.04	
<i>[Previously consolidated as at 14 May 2004]</i>			
<i>Employment (Amendment) Act 2011</i>	9, 2011	19.8.11	
<i>[Previously consolidated as at 20 August 2011]</i>			
<i>Employment (Amendment No. 2) Act 2011</i>	2, 2012	5.4.12	
<i>[Previously consolidated as at 10 April 2012]</i>			
<i>Interpretation (Amendment) Act 2012</i> <i>[to substitute throughout —</i> <i>Commonwealth Minister for Minister;</i> <i>and to substitute Minister for executive</i> <i>member]</i>	14, 2012	28.12.12	
<i>[Previously consolidated as at 23 February 2013]</i>			

Ordinance	FRLI registration	Commencement	Application, saving and transitional provision
Norfolk Island Continued Laws Amendment Ordinance 2015 (No. 2, 2015)	17 June 2015 (F2015L00835)	Sch 1 (items 75, 76, 344, 345): 18 June 2015 (s 2(1) item 1)	Sch 1 (items 344, 345)

Table of Amendments

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

Provisions affected	How affected
4	am 30, 1988; 3, 2000
9	am 13, 1995; 3, 2000
10	rs 3, 2000
11	rs 3, 2000
	am 17, 2003
12	rs 3, 2000
13	rs 3, 2000; 4, 2000
14	rs 3, 2000; 17, 2003; 2, 2012
15	rs 3, 2000
	am 17, 2003
16	rs 3, 2000
17	rs 3, 2000
18	am 4, 1994
	rs 3, 2000
18A	ad 7, 2004
19	rs 3, 2000
20	rs 3, 2000
21	rs 3, 2000
22	rs 3, 2000
23	rs 3, 2000
	am 7, 2004; 17, 2003
24	rep 8, 1996
	ad 3, 2000
	am 7, 2004
25	rs 3, 2000
26	am 3, 2000; 9, 2011
28	am 9, 2011
30	am 8, 1996; 9, 2011
32	am 30, 1988; 8, 1996
37	am 8, 1996
37A	ad 9, 2011
38	am 8, 1996
39	am 8, 1996
39A	ad 9, 2011
40	am 8, 1996
43	am Ord No 2, 2015
45	am 9, 2011
45A	ad 9, 2011
47	am 30, 1988
48	am 9, 2011
49	am 8, 1996; 9, 2011
49A	ad 8, 1996

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

Provisions affected	How affected	
49B	ad	8, 1996
53	am	30, 1988
54	am	8, 1996
55	am	9, 2011
56	am	30, 1988; 8, 1996
65	am	30, 1988; Ord No 2, 2015
76	am	9, 2011
78	rs	30, 1988
79	rs	30, 1988
81	am	30, 1988
82	am	30, 1988
82A	ad	30, 1988
84	am	30, 1988
85	am	30, 1988; 3, 2000
86	am	30, 1988
91-94	rs	30, 1988
99	am	30, 1988
101	am	30, 1988
106	am	3, 2000
107	rep	12, 1995
	rep	3, 2000
108	am	12, 1995; 2, 2012



THE EMPLOYMENT ACT

GUIDE FOR EMPLOYERS

An explanation of your duties as an employer in accordance with the Norfolk Island Employment Act.

Who is an Employee?

An employee is a person who is hired, for money, to perform work and/or service in Norfolk Island for an employer. But a person who carries on a business or trade is excluded: an electrician or a contract gardener does not become your “employee” just because you are a customer.

Who is an Employer?

An employer is anyone (or any organisation) that hires an employee.

A *club* is an employer if it has a paid part-time manager, or a paid cook, or a paid bartender. A *shop proprietor* is an employer if he/she hires someone to attend the shop during lunch-hour.

A *guest house* is an employer if it hires a housekeeper, paying partly in money and partly in “free” room and board.

If the employer is a company, or a group of people, or an overseas resident, “the employer” is taken to be the person on Norfolk Island who is in charge of the operation.

Employee

There is no distinction between a “Permanent” employee and a “Casual” employee.

Every employee must be given paid public holidays, sick leave, annual leave and notice of termination.

Part-time and full-time employees have exactly the same entitlements. You can elect to pay these entitlements as you go provided you and your employee agree. But any addition to the hourly rate to allow for entitlements must not be less than the benefits provided under the Act. If your employee is paid the minimum rate of \$10.70 per hour and you agree to increase this rate to cover entitlements, you must pay \$12.21 per hour.

Minimum Standards that Must be Met

The Employment Act sets certain minimum standards for employment terms and conditions. As from 1 September, 1991 these minimums have to be met by all employers, regardless of whether a written Contract of Employment is signed with the employee, and regardless of whether the employee is a resident or a permit-holder. Any provision in a contract which falls short of the minimum standards is null and void; the minimums apply.

Rest Period

Every employee must be allowed at least one rest period of 24 consecutive hours off work each week.

Employees - Minimum Entitlements

- \$10.70 per hour minimum pay during the employee's normal working week (not over 8 hours in a day, not over 40 hours in a week).
- 150% of the minimum hourly rate (\$10.70) outside the employee's normal working week (any time above 8 hours in a day, or any time over 40 hours in a week). This amount is to be a minimum of \$16.05 per hour (based on minimum wage).
- 12 paid public holidays a year. If an employee works on a public holiday, the employee would be paid for the public holiday **plus** paid for any hours worked, all at the employee's normal hourly rate. If the employee agreed in a signed contract to work on public holidays, the employee can only decline to do that work by giving 7 days written notice to the employer.
- One ordinary working week sick leave a year. Whether unused sick leave accrues or not depends on what the employer and employee agreed in the contract of employment.
- Paid annual leave of not less than the number of days worked in three ordinary working weeks. Payment for the leave period is calculated on the basis of six per cent of the employee's gross pay during the year. Pay for the leave period must be paid before the employee goes on leave, if the employee requests it. If the employee does not take leave, the leave time must be accrued for at least two years.
- At least 7 clear days **written notice of termination**, unless the employee is summarily dismissed.

Employing Persons Under Age 18

People under age 15 are not allowed to be employed more than 20 hours a week, and may not be employed between 11pm and 6.30am or at any time when they are supposed to be in school. The other requirements of the Employment Act do not apply to under 15's unless they are employed more than 3 hours on any day.

All of the requirements of the Act do apply to any employee who is 15 or older, but the minimum wage levels are scaled down for anyone under 18.

- 15 years but under 16 years are 75% of the adult hourly minimums.
- 16 years but under 17 years are 82.5% of the adult hourly minimums.
- 17 years but under 18 years are 91% of the adult hourly minimums.

Signed Employment Contracts

The Employment Act itself binds the employer and employee to certain minimum standards regardless of written contracts. The purpose of the contracts is to make sure that employers and employees - particularly new Temporary Entry Permit holders, who may know little of Norfolk Island - have a clear, agreed understanding about what the job terms and conditions are, right at the outset.

Any employee on a Temporary Entry Permit who starts a new job on Norfolk Island is required to have an approved signed Contract of Employment before starting the job.

Residents and holders of General Entry Permits are not required to have signed contracts, but if they ask for one their employer shall, as required by law, provide a contract within fourteen days.

The Contract form (available from the Administration) reflects the requirements of the Employment Act. Unless the employer and employee agree otherwise, the contract does not specify any long-term employment and can be ended by either the employer or the employee on reasonably short notice.

In discussing the details of a job with a prospective employee, it is open to the employer to hand the prospective employee a copy of the Contract form with the various proposed details filled in, describing the job that the employer is offering. The details can be talked about, and modified by mutual agreement.

The Employment Act does not specify any particular days of the week, or hours of the days, that are either inside or outside of the "normal" 40-hour working week. That is a matter for the employer and employee to agree on. Weekend or evening work is an accepted part of the normal working week in many tourism industry jobs.

Certificate of Signing

A contract of employment is a private matter between employer and employee, and does not go on file at the Norfolk Island Administration. However, to ensure that a contract meets the minimum requirements of the Employment Act, it must be approved by an authorised officer.

The Immigration Department will normally not issue a Temporary Entry Permit to a proposed employee without an approved contract.

If an employer and employee agree in the future to change the terms of an existing signed contract; they can do so by changing and initialing the existing contract or can sign a new contract. The new contract must meet all the minimum standards required by the law and be approved, just as the original contract did.

An employee's Duties to You

It is up to you and your employee to agree on the most important aspects of the employee's duties - namely, what is a fair day's work for a fair day's pay. The Employment Act leaves that to you, but it does put some specific duties on employees. These are;

- An employee is to be **honest** on the job.
- An employee is to be **on the job during working hours**, and is not to be absent without reasonable cause.
- An employee is to carry out, and to have regard to, any **reasonable direction** you give.
- An employee is not to be under the influence of **liquor or drugs** while on duty or when reporting for duty.

An employee who breaks any of those four rules may be dismissed at once, without notice.

Other duties of employees are;

- To have care for their own safety and health on the job, and the safety and health of others.
- To take good care of any safety equipment, or uniforms, provided to them.
- To notify you promptly if unable to work because of illness; and if unable to work for more than one day, to see a doctor and to provide you with a doctor's certificate verifying the illness.
- If resigning, to give you at least 7 clear days written notice - longer if agreed to in the Contract.

The Employer's Right of Dismissal

An employer's ultimate right to discipline an employee is the right to dismiss the employee - immediately, if the employee has broken one of the above specific duties to their employer.

If an employee has been dismissed without notice and believes it was not justified, he or she can seek payment of the normal notice time, by talking with the Employment Conciliation Board in the first instance. But if normal notice is given, the Employment Act puts no restriction on the employer's right to dismiss an employee. No cause has to be given, and the employer's decision can not be challenged under the Act.

The Employment Tribunal

If an employee and employer are in dispute, and efforts of the Employment Conciliation Board have failed to bring about an acceptable settlement, the dispute can be taken to the Employment Tribunal. The Employment Tribunal is made up of the same magistrates that compose the Norfolk Island Court of Petty Sessions, but operates under different rules. It is required to “act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms”. It was designed with the aim of bringing prompt, fair outcomes to such disputes. In passing the Employment Act, the Norfolk Island Legislative Assembly believed that promptness in such settlements was particularly important for the protection of employees who have been working on Norfolk Island as Temporary Entry Permit holders, who may not be in a position to wait for the period of weeks or months that ordinary court hearings can take.

If a complaint is about a matter with less than \$1,000 of value, lawyers can not be used to represent either the employer or the employee, who must speak for themselves.

The Tribunal has the power to order someone to do anything required by the Employment Act; or to stop doing anything prohibited by the Act; or to comply with a contract of employment; or to pay money that is due, under the Act or under a contract of employment.

* * * * *



EMPLOYMENT REGULATIONS 1991

[Consolidated as at 7 April 2015
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

TABLE OF PROVISIONS

1. Short title
2. Interpretation
3. Application of Act to Administration employees
- 3A. Public holidays
4. Contracts of employment
5. Employment of children is limited
6. Periodical compensation for incapacity
7. Compensation for permanent loss or impairment of function
8. Compensation for occupational disease
9. Compulsory insurance
10. Records and notifications, etc
11. Mode of service
- 11A.
12. Minimum wage
13. Working week
 - Schedule 1
 - Schedule 1A
 - Schedule 2
 - Schedule 3
 - Schedule 4
 - Schedule 5



Employment Regulations 1991

Short title

1. These Regulations may be cited as the *Employment Regulations 1991*.

Interpretation

2. In these Regulations, unless the contrary intention appears —
“Act” means the *Employment Act 1988*;
“full-time employee” means an employee who is employed in a week for 35 hours or more;
“part-time employee” means an employee who is employed in a week for less than 35 hours.

Application of Act to Administration employees

3. For the purposes of subsection 8(2) of the Act, the following provisions of the Act apply to officers and employees of the Administration —
 - (a) Part 1;
 - (b) sections 24 and 25; and
 - (c) Parts 3 to 6 but not paragraph 108(2)(e).

Public holidays

- 3A. (1) for the purposes of subsection 9(2) of the Act in respect of the year 2015, Monday 28 December 2015 is to be taken as a public holiday (for Boxing Day) instead of Saturday 26 December.
(2) For the purposes of subsection 9(2) of the Act in respect of the year 2016, Tuesday 27 December 2016 is to be taken as a public holiday (for Christmas Day) instead of Sunday 25 December.

Contracts of employment

4. (1) For the purposes of subsections 11(1) of the Act, the form set out in Schedule 1 contains standards and requirements with which a written employment contract must comply but nothing therein is intended to prevent or discourage an employer providing terms and conditions that are more favourable or of greater benefit to the employee.
(2) For the purposes of subsection 11(3) of the Act, the form set out in Schedule 1A is the prescribed manner of certification.

Employment of children is limited

5.

....

(2) For the purpose of paragraph 108(1)(b) of the Act, “enactment” means an enactment concerned with attendance at a school —

- (a) in force at the place where the child is usually in attendance or enrolled; or
- (b) if the child is not, for any reason, in attendance or enrolled at a school, in force in Norfolk Island.

Periodical compensation for incapacity

6. For the purposes of subparagraph 30(4)(b)(i) of the Act, the prescribed amount is \$769.

Compensation for permanent loss or impairment of function

7. For the purposes of paragraph 31(2)(c) of the Act, the prescribed amount is \$100,000.

Compensation for occupational disease

8. For the purposes of paragraph 35(3)(b) of the Act, the prescribed information is as specified in Schedule 2.

Compulsory insurance

9. (1) For the purposes of subsection 39(3) of the Act, the prescribed information in relation to an employee's medical history is as specified in Schedule 2.

(1A) For the purposes of subsection 39(4) of the Act, the prescribed levy in relation to an employer in respect of a month is an amount calculated at the rate of 30 cents for each hour worked during the preceding month by each employee of the employer.

Note – the increase in the prescribed levy from 20 cents to 30 cents has effect from 1 November 2011 and is applied to the levy payable after 1 December 2011.

(1AB) For the purposes of subsection 39(4A) of the Act and subregulation (1A), the amount of levy payable by an employer in respect of a month is that amount calculated in accordance with the prescribed information submitted in accordance with Schedule 5.

(1AC) The prescribed information in accordance with subregulation (1AB) must be provided to the Minister no later than the 7th day of the month following the month for which the levy is payable.

(1AD) The prescribed date for payment of the levy in accordance with section 39(4A) of the Act is the day upon which the prescribed information is provided as required by subregulation (1AC).

(2) For the purposes of subsection 39(5) of the Act, the prescribed information is as specified in Schedule 3.

(3) For the purposes of subsection 39(7) of the Act, the prescribed considerations are whether an employer's —

- (a) accident history;
- (b) first-aid facilities;
- (c) accident prevention awareness; or
- (d) standard of administration,

are such that the claims for compensation that may arise in respect of the employer's trade or business would be likely to prejudice the operation of the public scheme so as to result in higher levy costs to other employers.

(4) For the purposes of paragraph 39(11)(b) of the Act, the prescribed amount is \$2000.

Records and notifications, etc

10. (1) For the purposes of subsection 53(2) of the Act —

- (a) the prescribed records are —
 - (i) a book in which is recorded the date of each occasion on which first-aid training is given to the employer's employees, together with brief details of the nature of that training;
 - (ii) a book in which is recorded the date of occurrence, and particulars of, each injury to an employee arising out of, or suffered in the course of, employment by the employer of the employee (other than an injury, from which arises death or incapacity, referred to in subsection 53(3) of the Act); and
 - (iii) a copy of any information provided to the Minister under subsection 53(3) of the Act; and
- (b) the prescribed period is 3 years.

(2) For the purposes of subsection 53(3) of the Act, the prescribed form is as specified in Schedule 4.

Mode of service

11. For the purposes of subsection 98(2) of the Act, a document may be given or served by post.

....

Minimum wage

12. For the purposes of paragraph 108(2)(e) of the Act, the prescribed minimum wage is \$10.70 per hour.

Working week

13. For the purposes of paragraph 108(2)(a) of the Act, 8 hours in a day and 40 hours in a week constitute the working week applicable to all employees in respect of employment of any kind.

SCHEDULE 1*Regulation 4(1)*

NORFOLK



ISLAND

MINIMUM STANDARD EMPLOYMENT CONTRACT

Employees are entitled to the terms and conditions prescribed in the Employment Act 1988.

This is an Employment Contract between: —

NAME OF EMPLOYEE <i>Full Name of Employee (Block Letters)</i>
ADDRESS OF EMPLOYEE <i>Full Address of Employee (Block Letters)</i>

AND

NAME OF EMPLOYER <i>Full Name of Employer (Block Letters)</i>
ADDRESS OF EMPLOYER <i>Full Address of Employer (Block Letters)</i>

1. APPLICATION

- 1.1 The terms and conditions of this Contract of Employment shall be as set out below:
- 1.1. (a) The terms and conditions contained in this contract override and supersede any terms and conditions of employment that might have applied prior to the date of application of this contract.
- 1.1. (b) The terms and conditions contained in this contract may, except as elsewhere specified, be varied by agreement between the Employer and the Employee.
- 1.1. (c) This contract will come into force on _____ and shall continue in force, except as otherwise provided for by the provisions below, until the employment is terminated or this contract is overridden or superseded.

2. POSITION

- 2.1 The Employee is engaged as _____ and shall perform the duties specified in the job description.
- 2.2 The Employee agrees to undertake any work in accordance with the job description as directed by the Employer and to comply with the reasonable directions, responsibilities and policies given and made by the Employer and its officers in relation to the position; and to abide by the Employer's house rules.

3. HOURS OF WORK

(Complete all details in SECTION **A** OR SECTION **B**)

3.1 SECTION **A**

DAYS OF EACH WEEK	HOURS BEFORE BREAK	HOURS AFTER FIRST BREAK	HOURS AFTER SECOND BREAK	TOTAL HOURS WORKED
Day One				
Day Two				
Day Three				
Day Four				
Day Five				
Day Six				

3.2 SECTION **B**

3.2.(a) The Employee will be **On Duty** as specified below: —

3.2.(b) The Employee will be **On-Call** as specified below: —

3.3.(c) The Employee will be **Off Duty** as specified below: —

4. WAGES

4.1 **RATE OF PAY:** —

4.1.(a) Ordinary rate of pay shall be: —

(Complete one only) \$ _____ per hour

OR \$ _____ per week

OR \$ _____ per _____ (specify pay period)

4.1.(b) Entitlement shall be additional and accrued

OR

Not be accrued and paid each pay period

NOTE: For the purposes of this clause, entitlements must be not less than the minimums provided by the Act (approximately 14.12%)

4.2 **DEDUCTIONS:** —

4.1.(a) The Employer shall make the following deductions from the Employee's wages towards the matter specified: **(no other deductions are permitted)**

AMOUNT OF DEDUCTION	MATTER SPECIFIED

4.2.(b) The Employee's wages shall be paid by

Cash Cheque Direct Credit to a bank account

Other method (specify) _____

No later than _____ in each pay period.
(specify day of the week)

4.3 **PAY PERIOD:** — (Select one and complete)

4.3.(a) Pay day is _____ and wages will be paid: —
(specify day of the week)

Weekly Fortnightly

Other (specified period) _____

5. ANNUAL LEAVE**5.1 ANNUAL LEAVE ENTITLEMENTS: —**

For each completed year of service, the Employee is entitled to the number of days that he/she would normally work in three ordinary working weeks as annual leave and will be paid in accordance with the provisions of the *Employment Act 1988* (as amended).

5.1(a) Annual leave will be taken —

EITHER: At a time or times mutually agreed between the Employer and the Employee.

OR: At any time other than during the following periods:

6. SICK LEAVE**6.1 SICK LEAVE ENTITLEMENTS: —**

6.1(a) The Employee is entitled to a minimum of one normal working week paid sick leave per annum in accordance with the provisions of the *Employment Act 1988*.

6.2 CIRCUMSTANCES WHERE SICK LEAVE MAY BE TAKEN: —

6.2(a) Unless agreed otherwise in this Contract, sick leave may only be taken where:

➤ The Employee is sick; or

➤ The Employee's spouse, dependent child, or dependent parent is sick;

OR

➤ On the death of the Employee's spouse, parent, child, brother, sister, grandparent, father-in-law, mother-in-law.

6.3 ACCRUAL OF SICK LEAVE: —

6.3(a) No more than 5 days sick leave can be accrued unless specified in this Contract.

6.4 NOTICE TO EMPLOYER: —

6.4(a) The Employee shall ensure that the Employer is notified as soon as possible on the day of absence.

THE EMPLOYER MAY REQUIRE A CLAIM OF SICKNESS TO BE SUPPORTED BY A MEDICAL CERTIFICATE

7. PUBLIC HOLIDAYS**7.1 NORFOLK ISLAND PUBLIC HOLIDAYS: —**

7.1.(a) The following days are recognised as public holidays and shall be paid for in accordance with the *Employment Amendment Act 2000*:

SCHEDULED DATE	PUBLIC HOLIDAYS
1 January	New Years Day
26 January	Australia Day
6 March	Foundation Day
<i>The date gazetted</i>	Good Friday
<i>The date gazetted</i>	Easter Monday
25 April	ANZAC Day
8 June	Anniversary (Bounty) Day
<i>The date gazetted</i>	Queens Birthday
Second Monday in October	Norfolk Island Show Day
Last Wednesday in November	Thanksgiving Day
25 December	Christmas Day
26 December	Boxing Day

NOTE: Days declared as Public Holidays in Norfolk Island are noted in subsection 9(1)(k) of the *Employment Act 1988*.

8. TERMINATION**8.1 MINIMUM PERIOD OF NOTICE: —**

8.1.(a) Either the Employee or the Employer shall give at least _____ days written notice of the termination of employment.

8.1.(b) Where the employment is terminated without the notice specified in clause 8(a), _____ weeks pay shall be forfeited by the defaulting party.

8.2 SUMMARY DISMISSAL: —

8.2.(a) Nothing in this Contract shall prevent the Employer from summarily dismissing an Employee for misconduct as specified in subsection 19(3) of the *Employment Amendment Act 2000*.

9. PERSONAL GRIEVANCES AND DISPUTES

9.1 Disputes and personal grievances shall be settled in accordance with the provisions contained in Part 5 of the Act - Conciliation, Adjudication and Review.

10. OTHER PROVISIONS OR SPECIAL CONDITIONS

11. DECLARATION

We, the Employee and Employer named in this Employment Contract, declare that we understand and fully accept the conditions of employment detailed above.

The Employee agrees that he/she has read, or had explained, the Employer’s house rules.

Signature of Employee *Date*

Signature of Employer *Date*

SCHEDULE 1A

Regulation 4(2)



CERTIFICATE OF SIGNING OF AN EMPLOYMENT CONTRACT

IN ACCORDANCE WITH THE EMPLOYMENT ACT 1988

We hereby certify that a Contract of Employment, in the form specified by Regulations under the *Employment Act 1988*, has been completed and signed by: —

NAME OF EMPLOYEE <i>Full Name of Employee (Block Letters)</i>
ADDRESS OF EMPLOYEE <i>Full Address of Employee (Block Letters)</i>

AND

NAME OF EMPLOYER <i>Full Name of Employer (Block Letters)</i>
ADDRESS OF EMPLOYER <i>Full Address of Employer (Block Letters)</i>

And we certify that the terms of the Contract meet or exceed the minimum standards required by the Act.

_____	_____
Signature of Employee	Date
_____	_____
Signature of Employer	Date

(If Employer is a corporation or other body, please also specify office held by signatory) _____

THIS EMPLOYMENT CERTIFICATE HAS BEEN CERTIFIED BY: —

Dated this..... day of20.....

EMPLOYMENT LIAISON OFFICER

<p>NOTE: THE COMPLETED AND SIGNED COPY OF THE CONTRACT REFERRED TO MUST BE PRODUCED ON REQUEST FOR INSPECTION BY A COMPETENT COURT</p> <p>THE FALSE SIGNING OF THIS CERTIFICATE IS PUNISHABLE BY A FINE NOT EXCEEDING \$1,000.00 OR BY IMPRISONMENT NOT EXCEEDING 6 MONTHS</p>
--

SCHEDULE 2

Regulation 8

MEDICAL HISTORY OF EMPLOYEE

To be completed by an employee at the employer's request

Please fill in this form using block capitals. Do not leave any blank spaces - if a question is not applicable write "N/A" in the answer space.

1. Full name of employee

2. Full name of employer

3. Employee's address

4. Please indicate which of the following best describes your occupation (tick more than one if applicable) —

- Performing clerical work
- Supervising manual work
- Performing manual work
- Using powered machinery

5. Have you any physical, mental or nervous defect, impaired eyesight or hearing, ill-health or recurrent condition?

Tick one

- (1) Yes
- No

(2) If "yes", please give details

7. Have you received medical advice or treatment including that given by a naturopath, chiropractor or any other practitioner of a similar kind in the past 5 years?

Tick one

- (1) Yes
- No

(2) If "yes", please give details

8. Have you claimed on an insurance company for disablement consequent upon an accident or illness?

Tick one

- (1) Yes
- No
- (2) If "yes", please give details
-

9. Have you a habit of taking morphia, cocaine, chloral or other narcotic drugs or drugs of addiction?

Tick one

- (1) Yes
- No
- (2) If "yes", please give details
-

10. Have you ever suffered from hernia?

Tick one

- (1) Yes
- No
- (2) If "yes", please give details
-

11. Have you ever suffered a cardio-vascular or cerebro-vascular episode (heart attack or stroke)?

Tick one

- (1) Yes
- No
- (2) If "yes", please give details
-

12. Are there any other matters relating to your personal or family medical history which should be disclosed?

Tick one

- (1) Yes
- No
- (2) If "yes", please give details
-

13. I declare that the above information is true and correct.

Signature of employee

Date...../...../.....

SCHEDULE 3

*Regulation 9(2)***APPLICATION TO BECOME A MEMBER OF THE PUBLIC SCHEME**

To be completed by an employer wishing to become a
member of the public scheme

Please fill in this form using block capitals. Do not leave any blank spaces - if a question is not applicable write "N/A" in the answer space.

1. **Full name of employer**
- Note - if the employer is a company or other body, please give the full legal name of the body.

2. **Postal address of employer**

3. **Street address of business premises**.....
- Note - if the premises are in more than one location, please specify each location.

- 4 **Nature of trade or business**
-

5. **Period of cover required**
From to at 4pm.

6. **Do you use machinery?**
Tick one
- (1) Yes
- No
- (2) **If "yes", describe the machinery and state the motive power used**
.....

7. Do you use, store or handle acids, gases, chemicals, explosives or radioactive materials?

Tick one

(1) Yes

No

(2) **If “yes”, please give details**.....
.....

8. Will any members of your family who reside with you be employed in your trade or business?

Tick one

(1) Yes

No

(2) **If “yes”, please give -**

(a) the name of the employee

(b) the nature of the employment

(c) the nature of the family relationship
.....

Notes -

* A “member of your family” means a child under 18; a child aged 18 or over but under 25 who is engaged in full-time education or training; a child aged 18 or over who is, because of mental or physical infirmity, unable to support himself or herself; a parent; a spouse (including de facto spouse).

* Only answer “yes” to question 8(1) if the family member resides with you.

* A family member who is your employee, and who resides with you, is not covered under the public scheme unless the above question is fully answered.

9. In respect of your liability as an employer —

(1) **Have you previously effected insurance with an insurance company?**

Tick one

Yes

No

(2) **Has any insurer permitted withdrawal of, or declined, any proposal?**

Tick one

Yes

No

(3) **Has any insurer cancelled or refused to renew a policy?**

Tick one

Yes

No

(4) **If “yes” to (2) or (3), please give details —**

.....
.....

10. **State the total amount paid by you as wages, salaries or other earnings during the past 12 months —**

\$.....

11. **Complete the following wage etc details**

(1) **Number of full-time employees**

Note - a full-time employee is one who works for 35 or more hours per week.

(2) **Number of part-time employees**

Note - a part-time employee is one who works for less than 35 hours per week.

(3) **Number of employees whose wages do not exceed \$380 per week**
.....

(4) **Number of employees whose wages exceed \$380 per week**

(5) **Number of employees engaged in the following activities —**

Performing clerical work

Supervising manual work

Performing manual work

Using powered machinery

Note - an employee may fall into more than one of above categories.

12. In the last 10 years, have any of your employees been injured in your employment, or suffered a heart attack, stroke, hernia or occupational disease as a result of the employment?

Tick one

(1) Yes

No

(2) If "yes", please give details.....
.....

13. Please disclose any other facts which may be relevant to consideration of your application for membership of the public scheme

.....

14. Application and declaration

The employer named above hereby applies to the Minister for membership of the public scheme.

The employer named above hereby declares that the information provided above is true.

Signature of employer

Date/...../.....

IMPORTANT NOTE Cover does not commence until this application has been considered, a levy advice has been provided to the employer, and the applicable levy has been paid.

SCHEDULE 4

Regulation 10(2)

FORM OF ACCIDENT REPORT

To be completed by an employer when an employee
suffers death or incapacity arising out of,
or in the course of, the employment

Please fill in this form using block capitals. Do not leave any blank spaces - if a question is not applicable write "N/A" in the answer space.

This form **must** be provided to the Minister within 7 days after the death or incapacity became known to the employer.

1. **Full name of employer**
- Note - if the employer is a company or other body, please give the full legal name of the body.
2. **Postal address of employer**
 3. **Employer's business telephone number**
 4. **Injured employee's name**
- Sex Age
5. **Injured employee's postal address**
 6. **Injured employee's occupation**
 7. **Was the employee engaged in this occupation when the relevant accident/incident occurred?**
- Tick one
- (1) Yes
- No
- (2) **If "no" state exactly what the employee was doing at the time of the accident/incident, and whether the accident/incident occurred during a meal break or other work break**
-
-
8. **How long has the employee been employed by you?**
-

9. State rate of wages etc paid at the time of the accident/incident —

- (1) \$..... per week
- (2) If not paid weekly, state the basis of payment
.....
- (3) Normal working time per week -
- (a) Number of days per week.....
- (b) Number of hours per week
- (4) Is board or lodging provided by the employer?
Tick one
- Yes
- No
- If "yes", state value per week - \$.....

10. State total earnings of the employee in the 12 months prior to the date of the accident or illness -

- (1) Total sum \$.....
- (2) Number of weeks
- (3) Average earnings per week \$.....

Note - include all payments and non-cash benefits (eg commissions, board, lodging, etc)

11. Date of accident/incident/...../.....

12. Day of week

13. Time of day

14. Did employee cease work immediately?

Tick one

- (1) Yes
- No

(2) If "no", state when the employee ceased work

15. State number of hours lost on last day at work hours

16. State full address of premises where accident/incident occurred
.....

17. Did the injury/incident happen during a motor vehicle journey?

Tick one

- (1) Yes
- No

(2) If "yes", please give full details
.....
.....

18. Did the employee notify the accident/incident before leaving the place of employment on the day of the accident/incident?

Tick one

- (1) Yes
- No

(2) If "no", when was the accident/incident first reported?
.....
.....

19. Was the employee injured (etc) while doing something which was not part of the employment, or at a place where the employee was not required by the employment to be?

Tick one

- (1) Yes
- No

(2) If "yes", please give details
.....
.....

20. Are you satisfied that the accident/incident happened in the course of employment and in the manner stated by the employee?

Tick one

(1) Yes

No

(2) If "no", state the reasons for your conclusion
.....
.....

21. State the apparent cause of the accident/incident

.....
.....

Note - Give full and particular details. If necessary, continue on another sheet of paper.

22. Was the employee perfectly sober at the time of the accident/incident?

Tick one

(1) Yes

No

(2) If "no", please give details
.....
.....

23. Give the names of all witnesses to the accident/incident —

.....
.....
.....
.....
.....

24. State apparent nature and extent of injury or illness —

.....
.....
.....

25. Did the employee receive any ambulance, medical, surgical or hospital treatment?

Tick one

(1) Yes

No

(2) If "yes", give brief details of the treatment
.....
.....

26. Declaration

The employer named above hereby declares that the information provided above is true.

Signature

Date/...../.....

IMPORTANT NOTE - In any case of serious injury where machinery was in use DO NOT make any repairs or modifications before inspection.

Schedule 5

<p>DUE DATE <i>7 days after end of month reported on.</i></p> <p>Receipt No: _____</p> <p>Date : _____</p>
--

EMPLOYMENT ACT 1988

Regulation 9(1AB)

**EMPLOYER'S MONTHLY CERTIFICATE AND PAYMENT
 FOR WORKERS COMPENSATION INSURANCE COVER
 UNDER THE NORFOLK ISLAND PUBLIC SCHEME**

NAME OF EMPLOYER _____	TELEPHONE _____
MAILING ADDRESS _____	
PROPRIETOR/PRINCIPAL OFFICER _____	

TO THE MINISTER:

During the month of _____ no one other than the following was employed in Norfolk Island by this employer; and

Total number of employees on this Certificate _____

Each person named was on duty for this employer for not more than the number of hours shown against the employee's name:

EMPLOYEE'S FULL NAME	OCCUPATION	DATE OF BIRTH	HOURLY RATE	HOURS
TOTAL HOURS				

Total of all hours worked _____ **x \$0.20 =** _____ **= LEVY DUE**

How many employees were injured in work-related accidents during the month? _____

How many who were injured required medical treatment other than First-Aid? _____

I declare that the information above is correct and enclose payment of the Levy due.

Signature of Principal Officer _____ *Date* _____

<p>IMPORTANT INFORMATION FOR EMPLOYER – BE SURE TO FILL IN THIS CERTIFICATE COMPLETELY AND CORRECTLY The <i>Employment Act 1988</i> requires that every employee receives compensation for specified types of work-related injury, disablement of disease, including some that may not show up until much later. The maximum compensation payable is currently \$212, 930.95 and up to 2 years wages, and full medical expenses. As an Employer you are liable for all such compensation payments. This Monthly Certificate and Payment is evidence that you are fully insured for all such payments.</p> <p>Unless you have full cover from an approved Insurance company, you are NOT INSURED if you fail to return this Certificate and Payment when due. You have NO INSURANCE if any employee or any hours are omitted from your Certificate. In addition to making you liable to pay for any compensation payments, this would also make you liable under the Act for up to \$5,000 fine and 2 years imprisonment for failing to Insure.</p>
--

NOTES

The Employment Regulations as shown in this consolidation comprises Regulations No. 1 of 1991 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Employment Regulations 1991</i>	1, 1991	13.6.91	
<i>Employment Amendment Regulations 1991</i>	4, 1991	31.10.91	
<i>Employment Amendment Regulations 1992</i>	8, 1992	5.11.92	
<i>Employment Amendment Regulations 1993</i>	1, 1993	30.9.93	
<i>Employment Amendment No. 2 Regulations 1993</i>	2, 1993	4.1.94	
<i>Employment Amendment Regulations 1995</i>	6, 1995	31.8.95	
			[previously consolidated as at 25 July 2002]
<i>Employment Amendment Regulations 2003</i>	6, 2003	24.12.03	
			[previously consolidated as at 4 March 2004]
<i>Employment Regulations 2004 (Amendment)</i>	16, 2004	1.10.04, except s.6 which had effect from 1.1.2005	
<i>Employment (Amendment No. 2) Regulations 2004</i>	18, 2004	24.12.04	
			[previously consolidated as at 28 August 2006]
<i>Employment (Amendment) Regulations 2007</i>	10, 2007	27.7.2007	
			[previously consolidated as at 28 July 2007]

Employment (Amendment) Regulations 2008 10, 2008 1.8.2008

[previously consolidated as at 2 August 2008]

Employment (Amendment No. 2) Regulations 2008 11, 2008 5.9.2008

[previously consolidated as at 6 September 2008]

Employment (Amendment) Regulations 2009 11, 2009 11.9.2009

[previously consolidated as at 15 September 2009]

Employment (Amendment) Regulations 2010 10, 2010 27.8.2010

[previously consolidated as at 28 August 2010]

Employment (Amendment) Regulations 2011 4, 2011 30.6.2011

Employment (Amendment No. 2) (Minimum Wage) Regulations 2011 5, 2011 30.6.2011

[previously consolidated as at 6 July 2011]

Employment (Amendment No. 3) Regulations 2011 14, 2011 21.10.2011

To have effect from 1.11.2011

[previously consolidated as at 22 October 2011]

Employment (Amendment) Regulations 2012 7, 2012 27.7.2012

[previously consolidated as at 23 February 2013]

Employment (Amendment) Regulations 2013 4, 2013 28.6.2013

To have effect from 1.7.2013

[previously consolidated as at 1 August 2012]

Interpretation (Amendment) Act 2012 14, 2012 28.12.12

[to substitute throughout —
Commonwealth Minister for Minister;
and to substitute Minister for executive
member]

[previously consolidated as at 29 June 2013]

Employment (Amendment) Regulations 2014 4, 2014 27.6.2014

[previously consolidated as at 1 July 2014]

*Employment (Amendment)
Regulations 2015* 1, 2015 2.4.2015

Table of Amendments

ad = added or am = amended rep = repealed rs = repealed and
inserted substituted

Provisions affected	How affected
3	am 5, 2011
3A	ad 8, 1992
	rs 6, 2003; 18, 2004; 10, 2007; 11, 2008; 11, 2009; 10, 2010; 7, 2012; 4, 2013; 4, 2014; 1, 2015
4	rs 16, 2004
5(1)	am 1, 1993; 16, 2004
5(2)	ad 1, 1993
	am 16, 2004
6	am 6, 1995
9(1A)	ad 4, 1991
	am 16, 2004 (<i>effective from 1.1.05</i>)
	am 14, 2011 (<i>effective from 1.11.11</i>)
11A	ad 8, 1992
	rep 2, 1993
12	rs 2, 1993; 6, 1995
	am 16, 2004; 10, 2008
13	am 6, 1995
Schedule I	rs 4, 1991; 16, 2004
Schedule 1A	ad 16, 2004
Schedule 5	ad 4, 2011

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NORFOLK



ISLAND

Employment Act 1988

No. 27, 1988

Compilation No. 3

Compilation date: 15 December 2016

Includes amendments up to: Norfolk Island Continued Laws Ordinance 2015
(No. 2, 2015)

Prepared by the Office of Parliamentary Counsel, Canberra



EMPLOYMENT ACT 1988

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Employment Act 1988

An Act to establish minimum wages and working conditions, compensation for work - related accidents, safe working practices, procedures for conciliation, adjudication and review, and for related purposes

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Employment Act 1988*.

Commencement

2. (1) Subject to subsection 2(2), this Act shall come into operation on a date fixed by the Administrator by notice published in the Gazette.

(2) The Administrator may fix different dates for the commencement of different provisions of this Act.

Interpretation

4. In this Act, unless the contrary intention appears —
 - “Board” means the Employment Conciliation Board constituted under section 65;
 - “Chairman” means the person appointed under subsection 65(5) to be the Chairman of the Board;
 - “Chief Magistrate” means the Chief Magistrate of the Court of Petty Sessions holding office under the *Court of Petty Sessions Act 1960*;
 - “contract” means a contract of employment;
 - “employee” includes an apprentice or trainee;
 - “employment” means employment by an employer of an employee to whom this Act applies;
 - “legal practitioner” means a person, by whatever name called, who is entitled to practise law in a State or Territory or in New Zealand;
 - “Magistrate” means a Magistrate holding office under the *Court of Petty Sessions Act 1960* and includes the Chief Magistrate;
 - “member of the Board” includes the Chairman of the Board;
 - “member of the Tribunal” means a Magistrate;
 - “professional Magistrate” means a Magistrate who also holds office as Chief Magistrate, Acting Chief Magistrate or a Magistrate under the *Magistrates Court Act 1930* of the Australian Capital Territory;
 - “public holiday”, in respect of an employee, means a day referred to in section 9 or a day specified in, or in accordance with, the employee’s employment contract in substitution of that day;
 - “RPI” means the retail price index number within the meaning of the *Retail Price Index Act 1983*;
 - “Secretary” means the Secretary to the Tribunal;

“this Act” includes the Regulations, and where a provision of this Act or the Regulations has effect as if another provision were substituted, that other provision;

“Tribunal” means the Court of Petty Sessions;

“week” means 7 days, Monday to Sunday inclusive;

“working week” means a working week prescribed under paragraph 108(2)(a).

Application

5. (1) Subject to this section, this Act applies where work is carried out by an employee in Norfolk Island, whether a contract was entered into or not, and whether the contract, if any, was entered into in Norfolk Island or elsewhere.

(2) Where an employer is not ordinarily resident in Norfolk Island, an agent, officer or employee ordinarily resident in Norfolk Island of that employer is deemed, for the purposes of this Act, to be the employer where the agent, officer or employee —

- (a) is ordinarily in charge of the employer’s business in Norfolk Island; or
- (b) has entered into a contract on behalf of the employer in Norfolk Island.

(3) This Act applies where a contract for work to be carried out elsewhere than in Norfolk Island —

- (a) is made in Norfolk Island; and
- (b) the employer and employee under the contract are ordinarily resident in Norfolk Island.

(4) Where a person is employed to carry out work in Norfolk Island under a contract made in a place elsewhere than Norfolk Island and the person performs no duties under the contract on land in Norfolk Island except duties that are incidental to the performance of the principal duties of the person under the contract, this Act does not apply.

Persons to whom Act applies

6. (1) For the purposes of this Act, an employer may be a natural person, a body politic, a body corporate or unincorporate, a firm, an association, a partnership or club, the personal representative of a deceased employer or a partnership between 2 or more of them.

(2) For the purposes of this Act, where a natural person enters into a contract of service as an employee with another person, whether or not a natural person, the other person is the employer of the first-mentioned person.

(3) For the purposes of this Act, where a natural person enters into a contract (other than a contract of service) with another person, whether or not a natural person, the first-mentioned person is deemed to be an employee of the other person and the other person is deemed to be the employer of the first-mentioned person where —

- (a) the contract constitutes or includes an agreement to perform work or service or work and service for a consideration in money;
- (b) the first-mentioned person personally performs all or part of the work or service or work and service; and
- (c) the work or service or work and service are not —
 - (i) incidental to a trade or business regularly carried on by the first-mentioned person before, or apart from, the making of the contract; or
 - (ii) the carrying on by the first-mentioned person of business under a business name within the meaning of the *Business Names Act 1976*.

Persons to whom Act does not apply

7. (1) This Act does not apply to —
- (a) members of the Police Force;
 - (b) officers or employees of the Commonwealth or New South Wales; or
 - (c) subject to subsection 7(2), persons holding office or appointments under a law of Norfolk Island, the Commonwealth or a State or Territory.

(2) Subject to subsection 8(2), this Act applies to officers or employees of the Administration or a Territory authority.

Regulations may prescribe application of Act

8. (1) The Regulations may prescribe that —
- (a) work of a particular class; or
 - (b) contracts between persons of a particular class,

constitute or do not constitute employment for the purposes of this Act.

(2) The Regulations may prescribe that this Act does not apply to the Administration or a Territory authority or a class of officers or employees of the Administration or a Territory authority, or applies to the extent specified in the Regulations.

Public holidays

9. (1) Each of the following days in a year is to be observed as a public holiday:
- (a) 1 January (New Year's Day);
 - (b) if 1 January is a Saturday or Sunday—the next Monday;
 - (c) 26 January (Australia Day) but, if that day is a Saturday or Sunday, the next Monday;
 - (d) 6 March (Foundation Day);
 - (e) if 6 March is a Sunday—7 March;
 - (f) Good Friday;
 - (g) Easter Monday;
 - (h) 25 April (Anzac Day);
 - (i) 8 June (Bounty Day);
 - (j) if 8 June is a Saturday or Sunday—the next Monday;
 - (k) the first Monday after the second Saturday in June but, if that Monday is the same as the one mentioned in paragraph (j), the next Monday (the Sovereign's birthday holiday);
 - (l) the last Wednesday in November (Thanksgiving);
 - (m) 25 December (Christmas Day);
 - (n) if 25 December is a Saturday or Sunday—27 December;
 - (o) 26 December (Boxing Day);
 - (p) if 26 December is a Saturday or Sunday—28 December;
 - (q) the day declared under subsection (2) to be Show Day.

(2) The Commonwealth Minister must, by legislative instrument, declare a specified day of a year to be Show Day.

PART 2 — EMPLOYMENT TERMS AND CONDITIONS

Division 2 — Minimum Statutory Terms and Conditions of Employment

Rest period

18. (1) An employer must give each employee a continuous rest period of not less than 24 hours in each week.

Penalty: 20 penalty units.

Note: This subsection would not prevent an employer from working an employee for a consecutive period of 12 days during a 14 day period commencing on a Sunday if the employee did not work on the first and last 24 hours of that period.

(2) Subsection (1) does not apply to an employer and an employee so far as that subsection is inconsistent with:

- (a) an enterprise agreement that applies to the employer and the employee under the *Fair Work Act 2009* of the Commonwealth; or
- (b) the operation of Division 3 (Maximum weekly hours) of Part 2-2 (National Employment Standards) of the *Fair Work Act 2009* of the Commonwealth in relation to the employer and the employee.

Uniforms

18A. (1) If an employee is required by law or by the employer to wear clothing or footwear that would not ordinarily be worn by the employee, the employer must provide to each employee so required with the requisite clothing or footwear.

Penalty for an offence against this subsection 5 penalty units

(2) The clothing and footwear referred to in subsection 18A(1) must be provided free of charge by the employer and the employer must replace it when reasonably necessary.

Penalty for an offence against this subsection 5 penalty units

(3) An employee must not disobey, disregard or fail to comply with a reasonable direction of an employer in relation to wearing the clothing or footwear provided under subsection 18A(1).

Penalty for an offence against this subsection 5 penalty units

(4) An employee who is provided with clothing or footwear under this section must take reasonable care of it.

Penalty for an offence against this subsection 5 penalty units

(5) Clothing and footwear provided in accordance with subsection 18A(1) remain the property of the employer.

(6) Subsection (1), (2), (3), (4) or (5) does not apply to an employer or an employee so far as that subsection is inconsistent with an enterprise agreement that applies to the employer and the employee under the *Fair Work Act 2009* of the Commonwealth.

Expiry of this Division

19. This Division is repealed at the start of 1 July 2018.

Division 4 — General

Employment of persons under the age of 15 years

24. (1) An employer must not employ a person under the age of 15 years —

- (a) during any hours that the person is required by law to attend school; or

- (b) at any time between the hours of 11.00 pm on one day and 6.00 am on the next.

Penalty: 20 penalty units.

(2) Subject to subsection 24(1) an employer must not employ a person under the age of 15 years —

- (a) for more than 20 hours in a week during a school term or semester when, under an enactment, a child is required to attend school; and
 (b) for more than 40 hours per week during any other time.

Penalty: 20 penalty units.

(3) Subsections 24(1) and 24(2) do not apply to the employment of a person over the age of 14 as an apprentice or in a prescribed training position.

(4) This Act (other than subsection 24(1)) does not apply to employment of a person under the age of 15 years of a class defined in the Regulations by reference to —

- (a) the type of work in which the person is employed; or
 (b) the time at which the person is employed; or
 (c) the extent to which the person is employed; or
 (d) the person's employer.

PART 3 — COMPENSATION FOR WORK-RELATED ACCIDENTS, ETC

Interpretation

26. (1) In this Part, unless the contrary intention appears —

“approved” means approved for the purposes of this Part by instrument in writing signed by the Minister;

“de facto spouse”, in relation to a person, means a person of the opposite sex to the first-mentioned person who lives with the first-mentioned person in a bona fide relationship in the nature of marriage, although not legally married;

“dependant” means a family dependant or a non-family dependant;

“disease” means

- (1) (a) an ailment suffered by an employee; or
 (b) an aggravation of such an ailment;

that was contributed to, to a significant degree, by the employee's employment.

(2) In determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee's employment, the following matters may be taken into account—

- (a) the duration of the employment;
 (b) the nature of, and particular tasks involved in, the employment;
 (c) any predisposition of the employee to the ailment or aggravation;
 (d) any activities of the employee not related to the employment;
 (e) any other matters affecting the employee's health.

(3) This definition does not limit the matters that may be taken into account.

“employee” means any person who works in the employer’s business in any capacity and includes the employer if working in the employer’s own business;

“family dependant”, in relation to a deceased employee, means a person who at the time of the death of the employee was a member of the family of the employee and who, at that time —

- (a) was wholly or partly dependent on the earnings of the employee; or
- (b) would, but for the incapacity of the employee, have been wholly or partly dependent on the earnings of the employee;

“hospital” means —

- (a) the Norfolk Island Hospital within the meaning of the *Norfolk Island Hospital Act 1985*; or
- (b) an approved hospital;

“injury” means—

- (a) a disease suffered by an employee;
- (b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee’s employment; or
- (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee’s employment) that is an aggravation that arose out of, or in the course of, that employment,

but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee’s employment.

Note: reasonable administrative action is defined in subsection (1A).

“Medical Superintendent” means the person appointed to be the Medical Superintendent within the meaning of the *Norfolk Island Hospital Act 1985* and includes the Deputy Medical Superintendent;

“medical treatment” means —

- (a) attendance, examination or treatment of any kind by an approved —
 - (i) medical practitioner;
 - (ii) dentist;
 - (iii) optometrist;
 - (iv) physiotherapist;
 - (v) chiropractor;
 - (vi) osteopath;
 - (vii) chiropodist; or
 - (viii) person practising a prescribed specialty;
- (b) the provision and, as necessary from time to time, the repair, adjustment or replacement during the prescribed period of skiagrams, crutches, artificial members, artificial eyes or teeth, spectacles, hearing aids or prescribed aids;
- (c) maintenance, attendance and treatment in a hospital;

- (d) the provision by a hospital of —
 - (i) medical attendance and treatment;
 - (ii) nursing attendance;
 - (iii) medicines, medical, surgical and other curative materials, appliances or apparatus; or
 - (iv) any other usual or necessary hospital services with respect to the treatment of the injury or disease of an employee; and
- (e) rehabilitation services within the meaning of section 38;

“non-family dependant”, in relation to a deceased employee, means a person other than a family dependant who, at the time of the death of the employee, the employee was under a legal or moral duty to support and who, at that time —

- (a) was wholly or partly dependent on the earnings of the employee; or
- (b) would, but for the incapacity of the employee, have been wholly or partly dependent on the earnings of the employee;

“public scheme” means a scheme referred to in subsection 39(4);

“spouse” includes a de facto spouse;

“significant degree” means a degree that is substantially more than material;

“work related accident” means a situation or event occurring at a work place or arising out of, or in the course of, an employee’s work that results in death or significant injury.

(1A) For the purposes of the definition “injury” in subsection (1) and without limiting that subsection, the expression “reasonable administrative action” is taken to include the following—

- (a) a reasonable appraisal of the employee’s performance;
- (b) a reasonable counselling action (whether formal or informal) taken in respect of the employee’s employment;
- (c) a reasonable suspension or termination or transfer action in respect of the employee’s employment;
- (d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee’s employment;
- (e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c), or (d);
- (f) anything reasonable done in connection with the employee’s failure to obtain a promotion reclassification, transfer or benefit or to retain a benefit, in connection with his or her employment,

and in this subsection “reasonable” means action that at the time—

- (i) was lawful;
- (ii) was not irrational, absurd or ridiculous;
- (iii) was relative or related to the conduct or behaviour giving rise to that action;
- (iv) was taken pursuant to the regulatory rules applicable to the employee; and
- (v) was taken in circumstances of fairness to the employee,

and includes action done by or on behalf of an employer by a person who has a reasonable belief at the time that the thing done was reasonable (as described above) but nothing in this subsection affects the right of an employee to challenge the reasonableness of an action or for a decision to be made on appeal that an injury was not suffered as a result of reasonable administrative action.

(2) For the purposes of this Part, a person shall be taken to be a member of the family of another person if the first-mentioned person is —

- (a) a child of the other person who has not attained the age of 18 years;
- (b) a child of the other person who has attained the age of 18 years but has not attained the age of 25 years and who is engaged in full-time education or training;
- (c) a child of the other person who has attained the age of 18 years and who is, by reason of mental or physical infirmity, unable to support himself or herself;
- (d) a parent of the other person; or
- (e) a spouse of the other person,

and not otherwise.

(3) For the purposes of subsection 26(2), “child” includes —

- (a) an adoptive child; and
- (b) a child of the spouse of a person who is ordinarily resident with the person in the household of the person.

(4) For the purposes of this Part, where it is necessary to determine whether a person is the de facto spouse of another person the following matters may be taken into account:

- (a) whether the first-mentioned person lives in the same residence as the other person, and the length of time that they have lived together;
- (b) the extent to which the first-mentioned person and the other person mutually as parents care for any children of them or either of them;
- (c) the extent to which household and living expenses are shared between the first-mentioned person and the other person;
- (d) the extent to which household tasks are shared between the first-mentioned person and the other person;
- (e) whether sexual relations exist between the first-mentioned person and the other person;
- (f) the financial arrangements existing between the first-mentioned person and the other person;
- (g) whether the first-mentioned person and the other person hold themselves out, or describe themselves, as a couple;
- (h) any other relevant consideration.

(5) A member of the family of an employer who resides with the employer shall, for the purposes of this Part, be deemed not to be an employee unless the employer by written notice to —

- (a) the insurer of the employer’s liability under this Part; or
- (b) in the case of an employer who is a member of the public scheme - the Minister,

discloses at the time the employment is commenced, and, thereafter, whenever the insurance or membership of the public scheme, as the case may be, is renewed, the name and nature of

the employment of the employee and that the employee is a member of the family of the employer.

(6) For the purposes of this Part, a reference to an employee, where the employee has died by reason of an occurrence or condition referred to in subsection 29(1), shall be taken to be a reference to a dependant of the employee in relation to whom compensation is payable under this Part.

(7) A reference in this Part to an employee includes, after the commencement of incapacity, a reference to a former employee.

Meaning of “out of, or in the course of, employment”

27. (1) Subject to this Act, an occurrence shall, for the purposes of this Part, be deemed to have arisen out of, or in the course of, employment if the occurrence happens —

- (a) while the employee on any working day is present at the place of employment;
- (b) while the employee on any working day is present at a place which the employee —
 - (i) is directed by the employer to attend;
 - (ii) is required by the terms of his or her employment to attend; or
 - (iii) is expected to attend for the purposes of, or in connection with, the employer’s trade or business;
- (c) while the employee is travelling between the place of employment and a place referred to in paragraph 27(b);
- (d) while the employee is travelling between a place referred to in paragraph 27(b) and another place referred to in that paragraph; or
- (e) while the employee is travelling to a place for the purposes of receiving medical treatment as a result of an accident that occurred immediately before the commencement of the travel at a place, or in a situation, referred to in paragraph 27(a), 27(b), 27(c), or 27(d),

and not otherwise.

(2) Subsection 27(1) does not apply to an occurrence during a substantial interruption of, or deviation from, a journey, being an interruption or deviation made for a reason unconnected with the employee’s employment or attendance at a place referred to in subsection 27(1).

(3) Subject to section 45, where an occurrence happens while an employee is —

- (a) acting in contravention of a law or instruction applicable to the employee’s employment; or
- (b) acting without instructions,

the occurrence shall not be taken to have happened otherwise than in the course of employment by reason only that the employee was so acting, if the employee was so acting for the purposes of, or in connection with, the employer’s lawful trade or business.

(4) For the purposes of this section, “place of employment”, where there is no fixed place of employment, includes the area, scope or ambit of the employment.

Meaning of “incapacity”

28. (1) For the purposes of this Part, “incapacity”, in relation to an employee, means —

- (a) personal injury by reason of a work-related accident;
- (b) industrial deafness within the meaning of section 33;

- (c) hernia within the meaning of section 34;
- (d) occupational disease within the meaning of section 35; or
- (e) a cardio-vascular or cerebro-vascular episode within the meaning of section 36,

suffered by the employee as a result of which there is a loss or diminution of the employee's capacity to earn.

(2) For the purposes of subsection 28(1), the physical and mental consequences of personal injury referred to in paragraph 28(1)(a), or of a work-related accident, constitute incapacity in relation to an employee where, as a result of those consequences, there is a loss or diminution of the employee's capacity to earn.

(3) Loss of amenities and of enjoyment of life because of permanent loss or impairment of a bodily or mental function of an employee by reason of an occurrence or condition specified in subsection 28(1) constitutes incapacity for the purposes of this Part, whether or not the loss or impairment results in a loss or diminution of the employee's capacity to earn.

(4) Subject to this section, damage to the body or mind of an employee caused exclusively by—

- (a) disease, infection or the ageing process; and
- (b) is not caused by or arise from a work-related accident,

does not constitute incapacity for the purposes of this Part.

Compensation for death

29. (1) Where the death of an employee results from —

- (a) personal injury by reason of a work-related accident;
- (b) hernia within the meaning of section 34;
- (c) occupational disease within the meaning of section 35; or
- (d) a cardio-vascular or cerebro-vascular episode within the meaning of section 36,

a dependant of the employee is entitled to compensation in accordance with this section.

(2) Where the employee leaves a family or non-family dependant wholly dependent on the earnings of the employee at the time of the employee's death, the employer shall pay to the dependant —

- (a) an amount equal to the amount prescribed for the purposes of paragraph 31(2)(c); and
- (b) periodical compensation at 80% of the rate that would have been applicable had the employee been entitled to periodical compensation for total incapacity under subsection 30(4).

(3) Where the employee leaves a family dependant partly dependent on the earnings of the employee at the time of the employee's death, the employer shall pay to the dependant —

- (a) the amount referred to in paragraph 29(2)(a); and
- (b) a proportion of compensation payable under paragraph 29(2)(b) equal to the proportion by which the dependant was dependent on the earnings of the employee at that time.

(4) Where the employee leaves a non-family dependant partly dependent on the earnings of the employee at the time of the employee's death, the employer shall pay to the dependant —

- (a) a proportion of the amount referred to in paragraph 29(2)(a); and

(b) a proportion of compensation payable under paragraph 29(2)(b), equal to the proportion by which the dependant was dependent on the earnings of the employee at that time.

(5) Subject to subsection 30(9), periodical compensation payable under paragraph 29(2)(b), 29(3)(b) or 29(4)(b) shall be paid for a period of 2 years after the date of death of the employee.

(6) Where more than one dependant is entitled to compensation in accordance with this section, the amount of compensation payable in respect of each dependant shall be calculated according to the respective dependency of each dependant on the earnings of the employee at the time of death of the employee.

(7) Where subsection 29(6) applies, the total amount of compensation payable in respect of the death of an employee shall not exceed the amount that would have been payable under subsection 29(2) had the employee left one dependant wholly dependent on the earnings of the employee at the time of death of the employee.

Compensation for incapacity

30. (1) Where an employee suffers incapacity, the employer shall pay to the employee periodical compensation in accordance with this section.

(2) A reference in this section to total incapacity, in relation to an employee, is a reference to total loss, whether temporary or permanent, of the employee's capacity to earn by reason of the incapacity of the employee.

(3) A reference in this section to partial incapacity, in relation to an employee, is a reference to diminution, whether temporary or permanent, of the employee's capacity to earn by reason of the incapacity of the employee.

(4) Where an employee suffers total incapacity, compensation shall be —

- (a) payment as if the period of incapacity were a period of absence from duty on paid personal/carer's leave taken under Subdivision A of Division 7 of Part 2-2 of the *Fair Work Act 2009* of the Commonwealth —
 - (i) in respect of the 5 working days next following the commencement of the incapacity; or
 - (ii) where a written contract entered into in pursuance of section 10 before 1 July 2016 and having effect for the purposes of the *Fair Work Act 2009* of the Commonwealth (as that Act applies in relation to Norfolk Island with modifications made by rules under section 32A of that Act), or a modern award or enterprise agreement applying to the employee under that Act, provides for a longer period - in respect of that period; and
- (b) after the expiration of the period referred to in paragraph 30(4)(a), fortnightly payments of an amount equal to —
 - (i) the prescribed amount; or
 - (ii) the amount the employee would have received had the employee not been suffering incapacity where that amount is less than the prescribed amount.

(5) Subject to subsection 30(8), compensation under subsection 30(4) is payable until the employee ceases to suffer total incapacity.

(6) Where an employee suffers partial incapacity, compensation shall be paid at a rate calculated in accordance with subsection 30(4) as if the employee had suffered total incapacity, less the proportion of that rate that is equal to the proportion by which the employee's capacity to earn is not affected by the incapacity.

(7) Subject to subsection 30(8), compensation under subsection 30(6) is payable until the employee ceases to suffer partial incapacity.

(8) Compensation under this section is not payable —

- (a) after the date of death of an employee; or
- (b) in respect of a period after the expiration of a period or periods totalling 2 years of compensation payments under this section in relation to the same incapacity;

whichever first occurs.

(9) Paragraph 30(8)(a) does not affect the payment of compensation to a dependant of a deceased employee in accordance with section 29, but where an employee dies by reason of an occurrence or condition specified in that section and the employee received, in respect of that occurrence or condition, compensation under this section in respect of a period prior to the employee's death, the reference in subsection 29(5) to the date of death of an employee shall be read as a reference to the date of commencement of the incapacity suffered by the employee.

(10) A reference in this section to a working day includes a reference to a public holiday.

Compensation for permanent loss or impairment of function

31. (1) Where an employee suffers incapacity within the meaning of subsection 28(3), the employer shall pay to the employee lump sum compensation in accordance with this section.

(2) Compensation under this section —

- (a) is payable in addition to any other compensation payable in accordance with this Part;
- (b) subject to paragraph 31(2)(c), shall be an amount calculated in accordance with section 32; and
- (c) shall not exceed the prescribed amount.

(3) Where an amount to which an employee would otherwise have been entitled under this section is increased by reason of the operation of this Act before the amount is paid to the employee, the employee is entitled to be paid the increased amount.

(4) Where an employee receives lump sum compensation under this section and subsequently dies by reason of the incapacity in respect of which the compensation was received, any compensation payable under paragraph 29(2)(a), 29(3)(a) or 29(4)(a) to a dependant of the employee shall be reduced by the amount so received.

Assessment of permanent loss or impairment of function

32. (1) Subject to subsection 32(2), where an employee who suffers incapacity does not completely recover from the incapacity —

- (a) the Medical Superintendent; or
- (b) a person appointed by instrument in writing signed by the Minister,

shall make an assessment of the employee in order to ascertain whether the employee has suffered permanent loss or impairment of bodily or mental function within the meaning of subsection 28(3) and the percentage, if any, of the loss or impairment.

(2) An assessment under subsection 32(1) shall be undertaken when the Medical Superintendent, or, where paragraph 32(1)(b) applies, a person referred to in that paragraph, considers that the degree of incapacity suffered by the employee has stabilised.

(3) An assessment under subsection 32(1) shall be in writing and shall —

- (a) set out the nature and percentage of the permanent loss or impairment of function, if any; and
- (b) be served on the employer and employee.

(4) In making an assessment under this section —

- (a) regard shall be had to —
 - (i) the Schedule, so far as it is applicable; and
 - (ii) the tables of relative impairment set out in the work entitled Guides to the Evaluation of Permanent Impairment prepared by the Committee of the American Medical Association on Rating of Mental and Physical Impairment and as last published by the Association, so far as applicable to permanent loss or impairment of a bodily or mental function; and
- (b) regard may be had to reports or advice obtained from another medical practitioner or person practising a specialty referred to in subparagraphs 32(4)(a)(ii) to 32(4)(a)(viii) of the definition of "medical treatment" in subsection 26(1).

(5) Subject to subsections 32(6) and 32(7), an assessment made under this section of the percentage of permanent loss or impairment of function suffered by an employee entitles the employee to payment of lump sum compensation, in accordance with section 31, of an amount equal to that percentage of the amount prescribed under paragraph 31(2)(c).

(6) An employee is not entitled to lump sum compensation under section 31 where —

- (a) the percentage specified in an assessment made under this section is 2% or less; or
- (b) the employee has been given a notice in writing signed by the employer or the Minister requiring the employee to attend for assessment under this section at a time and place specified in the notice, and the employee has failed or refused to attend without reasonable excuse.

(7) Where the percentage specified in an assessment made under this section is 90% or more, the employee in relation to whom the assessment was made is entitled to be paid an amount equal to the amount prescribed under paragraph 31(2)(c).

(8) For the purposes of sections 76 and 85, the preparation under this section of an accurate and reasonable assessment is an act required by this Act to be done.

(9) The Tribunal, in dealing with proceedings concerning an assessment, may make an order setting aside, varying or remitting for reconsideration an assessment made, or purportedly made, under this section.

Compensation for industrial deafness

33. (1) Deafness suffered by an employee constitutes industrial deafness for the purposes of paragraph 28(1)(b) where —

- (a) after the commencement of this section the employee has been employed in employment in which the employee is exposed to the hazard of contracting deafness by reason of —
 - (i) intensity of; and
 - (ii) duration of exposure to, noise; and

- (b) the employee suffers deafness of a permanent nature within 2 years after having been so exposed.

(2) An assessment under section 32 of the percentage of permanent loss or impairment of function, in relation to industrial deafness, shall exclude any demonstrable pre-existing deafness established in the course of the assessment.

(3) Compensation for deafness is not payable under this Part where it is established that —

- (a) the deafness had a cause other than the cause referred to in paragraph 33(1)(a); or
- (b) in the light of medical and other evidence available, the degree of deafness does not significantly exceed that which normally would have resulted from the ageing process.

(4) Incapacity by reason of industrial deafness shall be deemed to have commenced on the date that the employee reported to the employer the existence of the deafness, or the date on which the employee was last employed in employment in which the employee was exposed to the hazard of contracting deafness, whichever first occurred.

(5) Compensation in respect of industrial deafness is payable by the employer who last employed the employee in employment in which the employee was exposed to the hazard of contracting deafness.

Compensation for hernia

34. (1) A hernia suffered by an employee constitutes a hernia for the purposes of paragraph 28(1)(c) where —

- (a) the hernia is —
 - (i) clinical hernia of a disabling character appearing to have recently occurred for the first time; or
 - (ii) an aggravation or strangulation of a pre-existent hernia resulting in immediate pain and disablement;
- (b) the onset of the hernia, or aggravation or strangulation of a pre-existent hernia, was immediately preceded by a strain or accident arising out of, or in the course of, the employee's employment; and
- (c) the employee reported the condition immediately after the occurrence of the strain or accident or not later than 72 hours thereafter.

(2) An employee who suffers incapacity by reason of a hernia is not entitled to compensation under this Part where the employee fails or refuses to undergo a surgical operation reasonably directed by the Medical Superintendent to be carried out for the cure of the hernia.

Compensation for occupational disease

35. (1) Disease suffered by an employee constitutes occupational disease for the purposes of paragraph 28(1)(d) where the disease is due to the nature of employment in which the employee is or was employed.

(2) Incapacity by reason of occupational disease shall be deemed to have commenced on the date that the employee reported to the employer the existence of the disease, or the date on which the employee was last employed in employment due to the nature of which the disease was contracted, whichever first occurred.

(3) Compensation under this Part in respect of occupational disease is not payable where —

- (a) it is proved that an employee, at the time of entering employment due to the nature of which a disease was contracted, knowingly and falsely represented that the employee had not previously suffered a disease of the kind contracted; or
- (b) an employee, wilfully and without reasonable cause, fails or refuses to provide the employer with such information as is prescribed.

(4) Compensation in respect of occupational disease is payable by the employer who last employed the employee in employment due to the nature of which the disease was contracted, whether or not a previous employment of the employee contributed towards the contracting of the disease.

Compensation for heart attack or stroke

36. (1) A cardio-vascular or cerebro-vascular episode constitutes an episode for the purposes of paragraph 28(1)(e) where —

- (a) the episode is the result of effort, strain or stress that is abnormal, excessive or unusual for the employee by whom the episode is suffered; and
- (b) the effort, strain or stress arises out of, or in the course of, the employee's employment.

(2) Compensation under this Part in respect of a cardio-vascular or cerebro-vascular episode is not payable where it is proved that an employee, at the time of entering employment in the course of which the employee suffered —

- (a) a cardio-vascular episode; or
- (b) a cerebro-vascular episode,

knowingly and falsely represented that the employee had not previously suffered either a cardio-vascular or cerebro-vascular episode.

Compensation for medical treatment

37. (1) Where —

- (a) compensation is payable under this Part by an employer to, or in respect of, an employee; or
- (b) but for the fact that an employee —
 - (i) did not suffer a loss or diminution of the employee's capacity to earn; or
 - (ii) by reason of the operation of paragraph 32(6)(a) is not entitled to compensation under this Part,

compensation would have been payable under this Part to, or in respect of, the employee,

the employer is liable to pay the reasonable cost of medical treatment of the injury or condition in relation to which the compensation is, or, where paragraph 37(1)(b) applies, would have been, payable.

(2) Compensation under this section is payable in addition to any other compensation payable in accordance with this Part.

(3) For the purposes of subsection 37(1), the reasonable cost of medical treatment is —

- (a) the cost of medical treatment carried out in Norfolk Island with the approval of the Medical Superintendent;
- (b) where the Medical Superintendent considers it necessary for medical treatment to be carried out in a place other than Norfolk Island - the

- reasonable cost of that treatment to the extent that the employee is not entitled to receive free or subsidised treatment at that place;
- (c) the reasonable cost of transporting the employee, and, if necessary, an escort or escorts, to and from a place referred to in paragraph 37(3)(b);
 - (d) the reasonable cost of accommodating an escort referred to in paragraph 37(3)(c) at or near a place referred to in paragraph 37(3)(b); and
 - (e) the reasonable cost of rehabilitation services within the meaning of section 38; and
 - (f) such other reasonable cost as is considered appropriate by the Minister in the circumstances of the case.

Claims for compensation

37A. (1) Compensation is not payable to a person under this Act unless a claim for compensation is made by or on behalf of the person under this section.

(2) A claim shall be made by giving the Employment Liaison Officer—

- (a) a written claim in accordance with the form prescribed for the purposes of this paragraph; and
- (b) except where the claim is for compensation for death under section 29—a certificate by a medical practitioner in accordance with the form prescribed for the purposes of this paragraph.

(3) Where a written claim, other than a claim for compensation for death under section 29, is given to the Employment Liaison Officer under paragraph (2)(a) and the claim is not accompanied by a certificate of the kind referred to in paragraph (2)(b), the claim shall be taken not to have been made until such a certificate is given to the Employment Liaison Officer.

(4) Where a claim is given to the Employment Liaison Officer, the Employment Liaison Officer shall cause a copy of the claim to be given to the employer by whom the employee was employed at that time.

(5) Strict compliance with an approved form referred to in subsection (2) is not required and substantial compliance is sufficient.

Rehabilitation services

38. The Medical Superintendent shall advise and assist a person suffering incapacity for the purpose of restoring the person, as quickly as possible, to the fullest physical and mental fitness of which the person is reasonably capable.

Compulsory insurance

39. (1) Subject to this section, an employer shall obtain from an approved insurer, and shall at all times maintain in force with an approved insurer, an approved policy of insurance or indemnity for the full amount of the employer's liability to pay compensation under this Part to all employees employed by the employer.

- Penalty:
- (a) in the case of a natural person — 50 penalty units or imprisonment for 2 years, or both; and
 - (b) in the case of a body corporate — 250 penalty units.

(2) Subsection 39(1) does not apply to a person prescribed for the purposes of this subsection.

(3) An employer may require an employee to provide to the employer such information in relation to the employee's medical history as is prescribed.

(4) The Minister may, in accordance with a resolution of the Legislative Assembly, establish a scheme by which an employer, on payment of such levies as are prescribed for the purposes of this subsection and subject to subsection 39(5A), is indemnified for the full amount of the employer's liability to pay compensation under this Part to all employees employed by the employer.

(4A) The levies referred to in subsection 39(4) are payable on the days prescribed in the Regulations.

(5) An employer applying to become a member of the public scheme shall provide to the Minister, in a form supplied by the Minister, such information as is prescribed.

(5A) Indemnification under subsection 39(4) is only in relation to the extent of the employer's liability assessed in accordance with the information supplied by the employer under subsection 39(5).

(5B) Where the Minister is satisfied that the information supplied by an employer under subsection 39(5) does not accurately reflect the employer's liability to pay compensation under this Part, the Minister may assess the prescribed levy for that employer for the purposes of subsection 39(4) on the basis of other information available to the Minister.

(5C) An assessment by the Minister under subsection 39(5B) is a matter in respect of which the relevant employer may lodge a complaint with the Board under section 76.

(6) The Minister, in his discretion, may grant or refuse to grant an application to become a member of the public scheme.

(7) The Minister shall exercise the discretion conferred by subsection 39(6) after taking into account considerations, if any, prescribed for the purposes of this subsection.

(7A) The Minister may revoke the membership of the public scheme of an employer if that employer has not within a reasonable period after the due date paid the prescribed levies.

(8) Subsection 39(1) does not apply to an employer who is a member of the public scheme.

(9) Where 2 or more employers may become liable to pay compensation in respect of the same employee, those employers, or any of them, may comply with their obligations under this section by —

(a) jointly entering into a contract of insurance or indemnity for the purposes of subsection 39(1); or

(b) jointly becoming members of the public scheme,

in relation to their liability in respect of the employee.

(10) In a prosecution for a failure to comply with subsection 39(1), a certificate signed or purporting to be signed by —

(a) an employee or agent of an approved insurer, stating that there was not in force on a specified date an approved policy of insurance or indemnity issued by the insurer in relation to the person charged in respect of that person's liability under subsection 39(1); or

(b) the Minister, stating that the person charged was not on a specified date —

- (i) a member of the public scheme; or
- (ii) a person prescribed for the purposes of subsection 39(2),

is evidence of the matters stated in the certificate.

(11) A reference in this section to liability to pay compensation does not include liability to pay —

- (a) compensation by reason of the application of —
 - (i) subparagraph 30(4)(a)(i); or
 - (ii) subparagraph 30(4)(a)(ii), except to the extent that a period referred to in that subparagraph exceeds 2 weeks; or
- (b) an amount equal to the prescribed amount in respect of each claim for compensation, other than compensation to which paragraph 39(11)(a) applies.

Employment Liaison Officer

39A. (1) For the purposes of this Act the position of Employment Liaison Officer is established.

- (2)** The Employment Liaison Officer—
 - (a) is appointed by the Chief Executive Officer;
 - (b) has the day to day management and control of the scheme established by subsection 39(4) including the administration of claims;
 - (c) is subject to the directions of the Minister and the Chief Executive Officer but not in connection with any matter concerning the investigation and determination of a claim by an employee of the Administration or a public sector agency or a territory instrumentality;
 - (e) is responsible for the management and control of inspectors, including the power of direction to comply with, or perform a duty required to be performed by, this Act;
 - (f) shall exercise such other functions powers and responsibilities in respect of any provision or provisions of this Act or the Regulations as may be required or permitted to be exercised thereby or as may be lawfully delegated or directed by the Chief Executive Officer or the Minister; and
 - (g) may, by instrument in writing, delegate a power or function under this Act to an inspector or another employee of the Administration other than this power of delegation or a power or function delegated to him or her by the Minister or the Chief Executive Officer.

Compensation where employer not insured

40. (1) Where an employer is liable to pay compensation to an employee under this Part and the employer, in respect of the liability —

- (a) is not insured in accordance with subsection 39(1) for the full amount of the employer's liability to pay compensation; and
- (b) is not indemnified under the public scheme for the full amount of the employer's liability to pay compensation; and
- (c) is not a person prescribed for the purposes of subsection 39(2),

and the liability is not a liability referred to in subsection 39(11), the Administration is liable to pay the compensation as if the Administration were the employer.

(2) A sum paid by the Administration to an employee in accordance with subsection 40(1) is a debt due and payable to the Administration by the employer recoverable in a Court of competent jurisdiction.

(2A) Where an employer is not insured in accordance with subsection 39(1), or is not indemnified under the public scheme, for the full amount of the employer's liability to pay compensation to an employee under this Part, any amount payable in respect of the compensation of the employee under that insurance policy or out of the public scheme, shall be paid to the Administration and that amount shall be deducted from the debt due and payable to the Administration under subsection 40(2).

(3) A sum recovered from an employer under subsection 40(2) is in addition to the imposition of penalties for an offence against this Act.

(4) Where an employer is a body corporate, an officer of the body corporate is personally liable to pay a debt referred to in subsection 40(2).

(5) For the purposes of subsection 40(4), "officer", in relation to a body corporate, means a director (whether or not a shareholder) of the body corporate, or, in the case of a body corporate that has ceased to exist, a person who was a director at the time the liability arose.

Compensation where employer ceases to exist

41. (1) Where an employer is liable to pay compensation to an employee under this Part and the employer, since the happening of the occurrence from which the liability arose, has died or ceased to exist, the employee to whom the compensation is payable has recourse against —

- (a) where the former employer was, or, but for the employer's death or dissolution, would have been, insured in accordance with subsection 39(1) - the insurer;
- (b) where the former employer was, or, but for the employer's death or dissolution, would have been, a member of the public scheme - the Administration; or
- (c) where the former employer was a person prescribed for the purposes of subsection 39(2) at the time the employer died or ceased to exist - a successor, executor, assign or personal representative of the former employer,

as if the insurer, Administration or person referred to in paragraph 41(1)(c), as the case may be, were the employer.

(2) A reference in subsection 41(1) to a situation where, but for an employer's death or dissolution, the employer would have been insured or a member of the public scheme is a reference to a situation where premiums or levies, as the case may be, have been paid in respect of a liability to pay compensation and nothing has occurred, other than the death or dissolution of the employer, to render the policy or membership inapplicable to the liability.

Variation of rates of compensation

42. (1) In this section —

"calculated amount" means an amount calculated in accordance with subsection 42(4);

"relevant amount" means —

- (a) an amount prescribed for the purposes of —
 - (i) subparagraph 30(4)(b)(i); or

- (ii) paragraph 31(2)(c); or
- (b) where, after the prescribing of an amount for the purposes of subparagraph 30(4)(b)(i) or paragraph 31(2)(c), this Act has effect by reason of the operation of this section as if another amount were substituted for an amount so prescribed - the amount last so substituted;

“substituted amount” means an amount substituted for a relevant amount in accordance with subsections 42(4) and 42(5).

(2) The factor to be ascertained for the purposes of subsection 42(4) as at a particular date is the number, calculated to 3 places of decimals, determined by dividing the RPI ascertained as at that date by the RPI last ascertained as at 30 June or 31 December in a year.

(3) If the number so calculated would, if it were calculated to 4 places of decimals, end in 5 or a higher number, then that number shall be increased by 0.001.

(4) Where the factor ascertained in accordance with subsections 42(2) and 42(3) as at 30 June or 31 December in a year is greater than 1, this Act has effect as if for each relevant amount there were substituted an amount calculated by multiplying the relevant amount by that factor.

(5) Where a calculated amount is not a multiple of 10 cents, the amount that is to be substituted in accordance with subsection 42(4) is —

- (a) if the calculated amount exceeds the next lower amount that is a multiple of 10 cents by 5 cents or more - the next higher amount that is a multiple of 10 cents; or
- (b) in any other case - the lower amount.

(6) Where a relevant amount is varied as a result of the operation of this section the Minister shall, as soon as practicable, publish in the Gazette a notice setting out the amount substituted for the relevant amount.

(7) Where an amount is substituted for a relevant amount in accordance with this section, the substituted amount is payable —

- (a) in respect of periodical compensation payable fortnightly in accordance with subparagraph 30(4)(b)(i) - on the date when the compensation is next payable; or
- (b) in respect of lump sum compensation payable in accordance with paragraph 31(2)(c) - in respect of any payment made,

after the date of publication of a notice referred to in subsection 42(6).

(8) Where an error is made in a notice referred to in subsection 42(6), the Minister shall, immediately the error is discovered, publish a correction and —

- (a) where by reason of the error an underpayment of compensation has been made - the person liable to pay the compensation shall as soon as practicable pay the amount underpaid; or
- (b) where by reason of the error an overpayment of compensation has been made - the person who has paid the compensation may —
 - (i) deduct the amount overpaid from any further amounts of compensation payable; or
 - (ii) demand from the person who received the overpayment a refund of the amount overpaid.

Compensation in substitution for other claims

43. (1) Subject to subsection 43(3), where an employee —

- (a) suffers incapacity;
- (b) would have suffered incapacity but for the fact that the employee did not suffer a loss or diminution of the employee's capacity to earn; or
- (c) dies as a result of an occurrence or condition specified in subsection 29(1),

no proceedings for damages or compensation arising directly or indirectly out of —

- (d) an injury or condition out of which the incapacity arose;
- (e) an injury or condition out of which incapacity would have arisen had the employee suffered a loss or diminution of the employee's capacity to earn; or
- (f) a death as a result of an occurrence or condition specified in subsection 29(1),

shall be heard or determined except in accordance with this Act, whether instituted by the employee or another person, and whether under a rule of law, enactment or law in force in Norfolk Island.

(2) Without limiting the generality of subsection 43(1) —

- (a) the action for loss of services (known as the action per quod servitium amisit); and
- (b) the action for loss of consortium (known as the action per quod consortium amisit), in relation to an employee,

are hereby abolished.

(3) Subsections 43(1) and 43(2) do not apply in respect of a cause of action that arose during a period not exceeding 6 years before the commencement of this Act.

(4) Compensation payable under this Act in respect of incapacity or death arising out of, or in the course of, employment is to be in substitution for damages recoverable or payable in respect of the incapacity or death whatever the cause of action or basis of liability and whether the cause of action is actionable at the suit of, or the liability is enforceable by, a person suffering incapacity or some other person.

(5) Nothing in this section affects an action for breach of a contract of insurance.

(6) In this section, a reference to damages includes a reference to aggravated, exemplary or punitive damages.

No contracting out

44. A provision in an agreement or other document, whether or not executed before the commencement of this Act, by which —

- (a) a right conferred by this Part is excluded or limited; or
- (b) liability imposed on an employer or other person by this Part is excluded or limited,

is of no effect.

Excluded from compensation

45. Where it is proved that —

- (a) injury to, or the death of, an employee is intentionally self-inflicted; or
- (b) the incapacity of an employee is attributable to the employee's serious and wilful misconduct (including being under the influence of intoxicating liquor or a drug); or if

- (c) the incapacity, injury, illness or mental condition of an employee is attributable to work-related stress caused by or arising out of, disaffection or disagreement arising out of or in connection with a decision or action or proposed decision or proposed action of an employer that is both lawful and reasonable in the circumstances,

compensation is not payable in respect of the injury, death or incapacity.

Powers of the Employment Liaison Officer in matters of misconduct

45A. (1) The Employment Liaison Officer may on his or her own motion or must, if requested by an employee or the employer of the employee, investigate and determine whether in his or her opinion the claim by an employee is shown on the balance of probabilities to be a claim that should be disallowed under section 45.

(2) In making a determination under subsection (1) the Employment Liaison Officer shall determine, where a matter falls within paragraph 45(c), if the decision or action or proposed decision or proposed action of the employer was lawful and reasonable in the circumstances.

(3) A determination of the Employment Liaison Officer under this section must be provided in writing together with the reasons for his or her determination, to the employee concerned, and the employer.

Recovery of overpayments

46. Where an amount has been paid by way of compensation under this Part to a person who is not entitled to payment of the amount, the amount is recoverable in a Court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the person by whom the amount was paid.

Information as to compensation

47. (1) The Minister may, by instrument in writing served by post on a person whom the Minister reasonably believes to be in a position to do so, require that person to furnish to the Minister a report relating to a matter that might affect the payment of compensation, and the person so required shall, where the person is in a position to do so, furnish a report accordingly within 14 days after the service of the instrument.

(2) A person referred to in subsection 47(1) shall not furnish a report that is false or misleading in a material particular.

Penalty for an offence

against subsection 47(1) or 47(2): 20 penalty units

(3) A person is not excused from furnishing a report in accordance with subsection 47(1) on the ground that the report might tend to incriminate the person or make the person liable to a penalty.

(4) Where a person furnishes a report in accordance with subsection 47(1), information contained in the report, and information or a document or thing obtained as a direct or indirect consequence of the furnishing of the report, is not admissible in evidence against the person in any criminal proceedings except a proceeding for an offence against this section.

PART 4 — SAFE WORKING PRACTICES

Interpretation

- 48. (1)** In this Part, unless the contrary intention appears —
 “bullying” means repeated unreasonable behaviour directed towards an employee or group of employees that creates a risk to health and safety and may include or involve—

- (i) publicly humiliating someone, verbal abuse or spreading malicious rumours or gossip;
- (ii) physical bullying such as the use of physical actions to bully, such as hitting, poking, tripping or pushing or repeatedly and intentionally damaging someone's belongings;
- (iii) the use of negative words, repeatedly and intentionally to upset someone, such as name calling, insults, homophobic or racist remarks, and verbal abuse;
- (iv) social bullying such as lying, spreading rumours, playing nasty jokes, mimicking a person or deliberately excluding a person;
- (v) psychological bullying where someone (or a group of people) repeatedly and intentionally use words or actions which cause psychological harm and includes intimidating a person manipulating people and stalking a person;
- (vi) cyberbullying where someone (or a group of people) uses technology to verbally, socially or psychologically bully a person and may take place in chat rooms, through social networking sites, emails or mobile phones.

“incapacity” means —

- (a) personal injury;
- (b) industrial deafness within the meaning of section 33;
- (c) hernia within the meaning of section 34;
- (d) occupational disease within the meaning of section 35; or
- (e) a cardio-vascular or cerebro-vascular episode within the meaning of section 36;

“inspector” means a person appointed to be an inspector under subsection 57(1);

“occupier”, in relation to a place of work, means a person who has the control or management of the place of work;

“out of, or in the course of, employment”, in relation to an occurrence, has the same meaning as in section 27;

“place of work”, means a place, whether or not in a building or structure, in which work is performed for money —

- (a) by an employee of an employer who is the occupier of the place;
- (b) by an occupier of the place; or
- (c) at the request of an occupier of the place, by another person;

“plant”—

- (a) means a machine, appliance, implement, tool or item of equipment; and
- (b) includes a thing fitted to, connected with or appurtenant to anything referred to in paragraph 48(1)(a);

“practicable” means practicable having regard to —

- (a) the severity of the relevant hazard or risk;
- (b) the state of knowledge about the hazard or risk and the ways of removing or lessening the hazard or risk;
- (c) the availability and suitability of ways of removing or lessening the hazard or risk; and

- (d) the cost of removing or lessening the hazard or risk;
 “substance” means a natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

Duties of employers

49. (1) An employer shall provide and maintain, so far as is practicable, a working environment that is safe and without risk to the health of —

- (a) an employee employed by the employer; or
- (b) another person performing work in the working environment.

Penalty: 40 penalty units.

(2) Without limiting the generality of subsection 49(1), an employer contravenes that subsection if the employer fails to take all reasonably practicable steps to —

- (a) provide and maintain plant and systems of work that are safe and without risk to health;
- (aa) provide and maintain a place of work that is free of bullying and to take such steps as may be necessary to prevent or stop bullying that may take place;
- (b) make arrangements adequate to ensure that the use, handling, storage and transport of plant and substances is safe and without risk to health;
- (c) maintain a place of work of which the employer is the occupier in a condition that is safe and without risk to health; and
- (d) provide information, instruction, training and supervision adequate to ensure safety and an absence of risk to health.

Safety equipment

49A. (1) Where an employee is required by this Act or by another law or by the employer to wear or use safety equipment in the course of employment, the employer shall provide the employee with the safety equipment.

Penalty: 10 penalty units.

(2) A person authorised for the purposes of this Part may direct an employer to require employees of that employer to wear or use certain safety equipment in the course of their employment and such a direction is a requirement for the purposes of subsection 49A(1).

(3) The safety equipment referred to in subsection 49A(1) shall be provided free of charge by the employer.

(4) An employee shall not disobey, disregard or fail to comply with a reasonable direction of an employer in relation to the wearing or use of safety equipment provided under subsection 49A(1).

Penalty: 10 penalty units.

(5) An employee who is provided with safety equipment under this section shall take reasonable care of the equipment, which remains the property of the employer.

Safety procedures

49B. (1) An inspector may direct an employer to adopt specified procedures in relation to the performance of tasks reasonably known or reasonably suspected to involve risks to employees of that employer.

(2) An employer shall comply with a direction given under subsection 49B(1).

Penalty: 20 penalty units.

Duties of occupiers

50. (1) An occupier of a place of work shall take such measures as are practicable to ensure that a person, other than an employee of the occupier, is not exposed to a risk to the person's health or safety arising from the occupier's use of the place of work.

Penalty: 40 penalty units.

(2) An occupier of a place of work shall take such measures as are practicable to ensure that the place of work and means of access to or egress from the place of work are safe and without risk to health.

Penalty: 40 penalty units.

(3) In subsection 50(1), "employee" includes a person referred to in paragraph 49(1)(b).

Duties of manufacturers, etc

51. (1) A person who designs, manufactures, imports or supplies plant or a substance for use at a place of work shall, so far as is practicable —

- (a) ensure that the plant or substance is designed and constructed so as to be safe and without risk to health when properly used; and
- (b) take measures to ensure that information relating to the use of the plant or substance at a place of work in a manner that is safe and without risk to health is made available to a person to whom the plant or substance is provided.

Penalty: 40 penalty units.

(2) A person who erects or installs plant for use at a place of work shall ensure, so far as is practicable, that the plant is erected or installed in a way that does not constitute a risk to safety or health when the plant is properly used.

Penalty: 40 penalty units.

(3) Plant or a substance shall be taken not to be properly used by a person for the purposes of this section where the plant or substance is used without regard to information or advice available to the person concerning that use.

Duties of employees

52. (1) An employee present at a place of work shall, so far as is practicable, take care for —

- (a) the employee's safety and health; and
- (b) the safety and health of another person who may be affected by the employee's acts or omissions at the place of work.

Penalty: 40 penalty units.

(2) An employee present at a place of work shall not —

- (a) wilfully or recklessly interfere with or misuse anything provided in the interests of safety or health at the place of work; or
- (b) wilfully or recklessly place at risk the safety or health of the employee or another person present at the place of work.

Penalty: 40 penalty units.

(3) In this section, "employee" includes a person referred to in paragraph 49(1)(b).

Records and notifications, etc

53. (1) An employer shall, so far as is practicable —

- (a) monitor the health of employees of the employer; and

(b) monitor conditions at a place of work occupied by the employer.

(2) An employer shall keep such records as are prescribed, for such period as is prescribed, relating to the safety and health of employees of the employer.

(3) Where an employee suffers death or incapacity arising out of, or in the course of, employment by an employer, the employer shall as soon as practicable, and in any case within 7 days, after the death or incapacity becomes known to the employer, provide to the Minister information in the prescribed form relating to —

(a) the death or incapacity; and

(b) the events which gave rise to the death or incapacity.

Penalty for an offence against

subsection 53(1), 53(2) or 53(3): 20 penalty units.

(4) Subsection 53(3) does not apply to an employer who has a lawful excuse for not providing the information referred to in that subsection.

Medical and first aid services

54. (1) An —

(a) employer; or

(b) occupier of a place of work,

shall provide at a place of work occupied by the employer or occupier such medical and first aid services or facilities as are appropriate.

Penalty: 10 penalty units.

(2) For the purposes of subsection 54(1), the Regulations may prescribe the provision of —

(a) medical and first aid services or facilities, or medical or first aid services or facilities, to be provided for a specified class of employees; or

(b) medical and first aid services or facilities, or medical or first aid services or facilities, to be provided by a specified employer or occupier, or a specified class of employers or occupiers.

Complaints

55. (1) A person may complain to the Employment Liaison Officer or an inspector or the Minister that this Part is not being complied with by another person.

(2) A complaint made to the Minister under subsection 55(1) shall be referred by the Minister, as soon as practicable, to the Employment Liaison Officer or an inspector.

(3) Where the Employment Liaison Officer or an inspector receives a complaint under subsection (1) or (2), the Employment Liaison Officer or the inspector shall, as soon as practicable, investigate the complaint.

(4) The Employment Liaison Officer to whom a complaint has been referred may require an inspector to investigate the complaint.

Stop work and improvement notices

56. (1) Where, in the opinion of an inspector or the Minister, this Part is not being complied with by a person, the inspector or Minister may, by notice in writing served on the person —

(a) require the person to cease to use a place of work, system of work, plant or substance specified in the notice; or

- (ab) require the person to direct employees of the person to stop carrying out a particular task or to stop carrying out a particular task in a particular manner; or
- (b) require the person to take measures necessary in the opinion of the inspector or Minister to ensure that a place of work, system of work, plant or substance specified in the notice does not constitute a risk to safety or health.

(2) Subject to subsection 56(8), a person shall comply with a notice served on the person under subsection 56(1).

Penalty: 40 penalty units.

(3) Where a person on whom a notice has been served under subsection 56(1) is aggrieved by a requirement of the notice, the person may, within 7 days after service of the notice, apply to the Court of Petty Sessions for a review of the requirement.

(4) The Minister shall be the respondent to an application under subsection 56(3).

(5) Where the Court of Petty Sessions is satisfied by the person making the application under subsection 56(3) that the requirement that is the subject of the application is not necessary to be complied with in order for this Part, other than subsection 56(1), to be complied with by the person, the Court may —

- (a) cancel the requirement; or
- (b) vary the requirement to the extent necessary to ensure that the requirement is consistent with this Part, other than subsection 56(1).

(6) Where subsection 56(5) does not apply, the Court of Petty Sessions shall confirm the requirement that is the subject of the application.

(7) A person shall comply with a requirement in a notice under subsection 56(1) that has been varied or confirmed by the Court of Petty Sessions.

Penalty: 40 penalty units.

(8) Where a requirement in a notice under subsection 56(1) requires the taking of measures under paragraph 56(1)(b) by a person, the person may, from the time of making an application under subsection 56(3) and until the application is disposed of, elect to cease to use the place of work, system of work, plant or substance that is the subject of the requirement instead of complying with the requirement.

(9) An election under subsection 56(8) is of no effect until notified to an inspector or the Minister in writing by the person making the election.

(10) A person who makes an election under subsection 56(8) shall comply with the election.

Penalty for an offence

against this subsection: 40 penalty units.

Inspectors

57. (1) The Minister may, by instrument in writing published in the Gazette, appoint persons to be inspectors for the purposes of this Part.

(2) Subject to subsection 57(3), an inspector may enter land or a building for the purpose of —

- (a) ensuring that this Part or the Regulations, or a notice issued under this Part, is being complied with; or
- (b) investigating a complaint under section 55.

(3) An inspector shall not —

- (a) enter land or a building; or

(b) remain on land or in a building, unless the inspector produces, if requested to do so, the instrument referred to in subsection 57(1) or a copy of the instrument.

(4) A person shall not —

- (a) subject to compliance by an inspector with subsection 57(3), refuse to permit an entry to be made by an inspector under this section; or
- (b) assault, hinder or obstruct an inspector performing a function under this Part.

Penalty for an offence

against this subsection:

- (a) in the case of a natural person — 20 penalty units or imprisonment for 12 months, or both; and
- (b) in the case of a body corporate — 100 penalty units.

Codes of practice

58. (1) The Minister may make Codes of Practice for the purpose of ensuring, so far as practicable, that working environments are safe and without risk to health.

(2) Notice of the making of a Code of Practice shall be published in the Gazette, and a Code has effect from the date of publication of the notice or from a later date specified in the notice.

(3) A Code of Practice is of no effect to the extent that the Code is inconsistent with this Act.

(4) As soon as practicable after making a Code of Practice the Minister shall lay a copy of the Code before the Legislative Assembly.

Effect of Codes of Practice

59. Where a Code of Practice is relevant to a matter in relation to which an inspector or the Minister may form an opinion under subsection 56(1), the inspector or Minister shall have regard to the Code in forming an opinion under that subsection.

Prosecutions

60. (1) A person other than an inspector or the Minister shall not institute a prosecution under this Part.

(2) In a prosecution by an inspector under this Part, the production of an instrument referred to in subsection 57(1), or a document purporting to be, or to be a copy of, such an instrument, is evidence that the person named in the instrument or document is an inspector.

No effect on civil liability

61. (1) A breach by a person of a duty imposed by or under this Part does not give rise to a cause of action against that person or another person.

(2) Subject to subsection 61(3), nothing in this Part affects the liability a person would have had, apart from this Part, for an act or omission giving rise to a cause of action against that person or another person.

(3) This section does not affect —

- (a) the prosecution of a person for an offence; or
- (b) the making of an application for review under subsection 56(3).

Powers of Board and Tribunal

62. The Board or Tribunal has no power to deal with a complaint or inquiry relating to a matter that, in the opinion of the Board or Tribunal, amounts to an allegation that a person has failed to comply with a duty imposed by or under this Part.

Reports

63. The Minister shall, as soon as practicable after 30 June in a year, lay before the Legislative Assembly a report containing in respect of the year ending on that date —

- (a) statistical information on occupational health and safety, including information on the incidence of occupational accidents and diseases; and
- (b) such other information on occupational health and safety as the Minister determines.

Consultative workplace arrangements

64. The Regulations may prescribe consultative arrangements relating to occupational health and safety to be entered into between employers and employees in respect of places of work or a class of places of work.

PART 5 — CONCILIATION, ADJUDICATION AND REVIEW

Division 1 — Conciliation

Employment Conciliation Board

65. (1) There is established by this Act a Board known as the Employment Conciliation Board.

(2) The Board shall consist of not less than 3 members —

- (a) having, in the opinion of the Minister, relevant qualifications or experience; and
- (b) appointed by the Minister in accordance with a resolution of the Legislative Assembly.

(3) A person has relevant qualifications or experience for the purpose of subsection 65(2) if the person —

- (a) has had substantial experience in industry, commerce, industrial relations or the service of a government or an authority of a government;
- (b) has been a member of the Public Service Board established by *the Public Service Act 1979*;
- (c) has been a Magistrate, or has held judicial office of a similar kind in a place other than Norfolk Island;
- (d) is or has been entitled to practise law in Norfolk Island, or in a State, Territory or New Zealand; or
- (e) has obtained a degree of a university or an educational qualification of a similar standard in the field of law, economics, industrial relations or some other field of study considered by the Minister to have substantial relevance to the functions of the Board.

(4) A person who is —

- (a) a member of the Public Service Board established by *the Public Service Act 1979*; or

.....

- (c) a member of the Tribunal,

shall not be appointed to be a member of the Board.

(5) The Minister shall appoint one of the members referred to in subsection 65(2) to be the Chairman.

(6) An appointment under subsection 65(2) or 65(5) shall —

- (a) be by notice published in the Gazette; and
- (b) take effect from the date of that publication or from a later date specified in the notice.

(7) Subject to this Act, a member of the Board holds office for a period of not less than 2 years and not more than 3 years specified by the Minister in the notice of appointment and is eligible for re-appointment.

Acting appointments

66. (1) Where —

- (a) a member of the Board —
 - (i) is, or is expected to be, absent from duty or from Norfolk Island; or
 - (ii) is, pursuant to section 71, disqualified; or
- (b) there is a vacancy in the office of a member of the Board,

the Minister may appoint a person to act as a member of the Board during the absence, disqualification or vacancy.

(2) A person appointed under subsection 66(1) is not required to have relevant qualifications or experience within the meaning of subsection 65(3).

(3) A person referred to in subsection 65(4) shall not be appointed under subsection 66(1).

(4) The Minister may at any time terminate an appointment made under subsection 66(1).

Publication of notices of appointment or termination

67. (1) Subject to subsection 67(2), an appointment or termination under section 66 shall —

- (a) be by notice published in the Gazette; and
- (b) take effect from the date of that publication or from a later date specified in the notice.

(2) Where the Minister considers that for reasons of urgency it is expedient to do so, an appointment or termination under section 66 may be by notice and shall take effect from the date specified in the notice, and the Minister shall cause the notice to be published in the Gazette as soon as practicable after the appointment or termination of appointment has been made.

Validity of acts of acting members

68. Nothing done by or in relation to a person purporting to act as a member of the Board pursuant to an appointment under subsection 66(1) is invalid on the ground that —

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Resignation of members

69. A member of the Board may resign the office of member by notice in writing given to the Minister.

Dismissal of members

70. (1) The Minister may terminate the appointment of a member of the Board for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) If a member of the Board —

- (a) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Board;
- (b) becomes bankrupt, applies as a debtor to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of remuneration for their benefit; or
- (c) becomes a person referred to in subsection 65(4),

the Minister may terminate the appointment of the member.

Disclosure of interest

71. (1) A member of the Board who has a direct or indirect interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of the interest to the Board.

(2) A disclosure under subsection 71(1) shall be recorded in the records of the Board and the member shall not be present during a deliberation or decision of the Board in relation to the matter.

(3) In subsection 71(1), "interest" includes the holding of a position by a member of the Board as an officer (whether or not a shareholder) of a body corporate that has an interest in a contract the subject of proceedings before the Board.

Meetings of the Board

72. (1) The Chairman shall call such meetings of the Board as are necessary for the exercise of its powers and performance of its functions.

(2) The Minister may at any time direct the Chairman to convene a meeting of the Board and the Chairman shall comply with the direction.

(3) At a meeting of the Board —

- (a) it shall be at the discretion of the Chairman whether —
 - (i) one member shall constitute the Board; or
 - (ii) 2 or 3 members shall constitute the Board, to deal with a matter before it; and
- (b) subject to this Act, the Board shall determine the procedure to be followed at and in connection with a meeting.

(4) The Board shall keep or cause to be kept a record of each complaint lodged under section 76 and of the result of the dealing by the Board with the complaint.

(5) Meetings of the Board shall be held in private.

Functions of the Board

73. The functions of the Board are:

- (a) to deal with complaints lodged with members of the Board under section 76 (which is about complaints relating to workers compensation); and
- (b) to report under section 75 on the operations of the Board.

Powers of the Board

74. Subject to this Act, the Board has the power to do all things that are necessary or convenient to be done for or in connection with or incidental to the exercise of its powers and the performance of its functions.

Reports

75. (1) The Board shall, when it sees fit but not less frequently than annually, prepare and furnish to the Minister a report on the operations of the Board during the period since the last such report was furnished.

(2) The Minister shall cause a copy or a summary of a report referred to in subsection 75(1) to be laid before the Legislative Assembly as soon as practicable after its receipt by the Minister.

Lodging of complaint

76. (1) An aggrieved person may lodge a complaint with any member of the Board concerning —

- (ca) a complaint or grievance arising out of an unsuccessful worker's compensation claim made by the employee; or
- (d) any other matter in relation to Part 3 (which is about compensation for work-related accidents etc.).

(2) The member of the Board with whom a complaint has been lodged shall promptly inform the Chairman of the complaint, and the Chairman shall, as soon as practicable, call a meeting of the Board for the purpose of dealing with the complaint.

(3) In this section, "aggrieved person" means —

- (a) an employer, in relation to the employer's trade or business;
- (b) an employee, in relation to the employee's employment;
- (c) an insurer, in relation to a policy of insurance or indemnity entered into for the purposes of Part 3 with the insurer;
- (d) the Minister, in relation to a matter as to which rights, duties or liabilities are conferred or imposed on the Administration under Part 3;
- (e) a dependant of a deceased employee; or
- (f) any other person who has a direct and personal pecuniary interest in a matter as to which the Board may exercise a power or perform a function.

Resolution of complaint by conciliation

77. (1) Subject to section 62, the Board —

- (a) shall endeavour, by all such means as to it seem reasonable, to resolve a complaint brought before it by conciliation;
- (b) shall take such steps as to it seem reasonable to effect an amicable settlement of a complaint, and for this purpose may adjourn at any stage to enable the parties to negotiate with a view to a settlement of the complaint by amicable arrangements; and
- (c) is not bound by rules of evidence but may inform itself in such manner as it thinks fit.

(2) The Board shall, as soon as practicable after dealing with a complaint, issue a certificate setting out the result of that dealing.

(3) A certificate referred to in subsection 77(2) shall include a statement advising a person to whom the certificate is given of the provisions of subsections 82(1) and 82(2).

(4) A certificate referred to in subsection 77(2) shall be given to the person who brought the matter before the Board, or in the case of a dispute, to each party to the dispute.

(5) A person who has made a complaint, or in respect of whom a complaint has been made, is entitled to appear personally in respect of the complaint, or, where the person is a body corporate, by a director, secretary or agent of the body corporate, but is not entitled to be represented by a legal practitioner.

(6) Subsection 77(5) does not prevent —

(a) a person from appearing personally where the person is a legal practitioner; or

(b) a person that is a body corporate from appearing by a director or secretary of the body corporate who is a legal practitioner.

(7) No person shall receive a fee or reward for representing a party to a complaint.

Penalty: 10 penalty units.

(8) The Board shall make no order as to costs.

Division 2 — Adjudication

Employment Tribunal

78. (1) The Court of Petty Sessions has jurisdiction under this Act to exercise and perform the powers, duties, functions and authorities conferred or imposed on it by this Act.

(2) In relation to the exercise of the jurisdiction conferred by subsection 78(1) —

(a) the Court of Petty Sessions shall be referred to as the Employment Tribunal; and

(b) the Clerk of the Court of Petty Sessions shall be referred to as the Secretary to the Employment Tribunal.

Constitution of Tribunal

79. (1) Subject to this section, the Tribunal shall be constituted by any 3 of its members to deal with a matter before it.

(2) Where the Chief Magistrate has given a direction about the constitution of the Tribunal in relation to a specified matter or class of matters, or in relation to all matters, before it, the Tribunal shall be constituted, subject to subsections 79(3) and 79(4) and section 80, in accordance with the direction.

(3) The Chief Magistrate shall not direct that the Tribunal shall be constituted by other than 3 members.

(4) One or more professional Magistrates shall be included in the members by whom the Tribunal is constituted if the matter in issue before the Tribunal amounts to or is of the value of a sum of money exceeding the sum referred to in section 107 of the *Court of Petty Sessions Act 1960* as in force for the time being.

Disclosure of interest

80. (1) A member of the Tribunal who has a direct or indirect interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Tribunal, shall, as soon as possible after the relevant facts have come to the attention of the member, disclose the nature of the interest to the Tribunal.

(2) A disclosure under subsection 80(1) shall be recorded in the records of the Tribunal and the member shall not be present during a deliberation or decision of the Tribunal in relation to the matter.

(3) In subsection 80(1), “interest” includes the holding of a position by a member of the Tribunal as an officer (whether or not a shareholder) of a body corporate that has an interest in a contract the subject of proceedings before the Tribunal.

Meetings of Tribunal

81. (1) The Tribunal shall meet at such times as are necessary for the exercise of its powers and performance of its functions.

(2) At a meeting of the Tribunal, the Tribunal, subject to this Act, shall determine the procedure to be followed at and in connection with the meeting.

Proceedings before Tribunal

82. (1) A person to whom a certificate referred to in subsection 77(4) has been given who remains aggrieved by the subject-matter of the complaint to which the certificate relates, or who is aggrieved by the result of conciliation before the Board in relation to the complaint, may, within 7 days after the certificate has been given to the person, apply in writing to the Tribunal for an inquiry into the matter.

(2) An application under subsection 82(1) shall be —

- (a) made to the Secretary; and
- (b) accompanied by a copy of the certificate.

(3) The Secretary shall, as soon as practicable after receipt of an application and certificate under subsection 82(2), inform a member of the Tribunal who shall promptly convene a meeting for the purpose of inquiring into the application.

(4) The Tribunal —

- (a) shall give to a person to whom a certificate has been given in accordance with subsection 77(4) in relation to a matter the subject of an application notice in such manner as the Tribunal determines of the time and place at which it intends to hold the inquiry and of the subject-matter of the inquiry; and
- (b) shall give to that person a reasonable opportunity of making representations to the Tribunal.

(5) For the purposes of subsection 82(4), a person who is informed of the contents of a certificate referred to in subsection 77(4) shall be taken to have been given sufficient notice of the subject-matter of an inquiry which relates to the matter in respect of which the certificate was issued.

(6) Where a person to whom notice has been given under paragraph 82(4)(a) fails to attend at the time and place specified for the inquiry, the Tribunal may proceed in the absence of that party.

(7) A person referred to in subsection 82(4) —

- (a) is entitled to appear personally or, where the person is a body corporate, by a director, secretary or agent of the body corporate; and
- (b) subject to subsection 82(7A), may be represented by a legal practitioner who is entitled to practise in the Court of Petty Sessions.

(7A) Where the matter in issue before the Tribunal amounts to or is of the value of a sum of money that is less than \$1000, a person referred to in subsection 82(4) is not entitled to be represented by a legal practitioner.

(8) Subsection 82(7A) does not prevent —

- (a) a person from appearing personally where the person is a legal practitioner; or
- (b) a person that is a body corporate from appearing by a director or secretary of the body corporate who is a legal practitioner.

(9) No person shall receive a fee or reward for representing a party to an inquiry.

Penalty: 10 penalty units.

(9A) Subsection 82(9) does not apply to a legal practitioner in respect of representation by the practitioner in accordance with this section of a person referred to in subsection 82(4).

(10) The Tribunal shall make no order as to costs.

Meetings of Tribunal usually to be held in public

82A. (1) Subject to this section, proceedings before the Tribunal shall be heard and determined in a place to which members of the public have access, and any person is entitled, so far as is practicable, to be present during the proceedings.

(2) A person is not entitled to be present during the private deliberations of members of the Tribunal about proceedings heard, or to be heard or determined, in accordance with subsection 82A(1).

(3) Subject to subsection 82A(4), the Tribunal may order —

- (a) that a person or class of persons shall not be present during proceedings before the Tribunal;
- (b) that all or a specified part of the evidence or other information given or to be given in proceedings before the Tribunal shall not be published or reported, or may only be published or reported subject to conditions (including conditions as to the time of publication) specified by the Tribunal; or
- (c) that the name of a party to proceedings before the Tribunal, or of a person giving or intending to give evidence or information in proceedings before the Tribunal, shall not be published or reported.

(4) The Tribunal shall not make an order under subsection 82A(3) unless it is satisfied that —

- (a) the making of the order is desirable in the interests of justice; or
- (b) unless the order is made, the administration of justice is likely to be prejudiced.

(5) A person shall comply with an order made under subsection 82A(3).

Penalty: 10 penalty units.

(6) A reference in this section to the publishing or reporting of the name of a person includes a reference to publishing or reporting a reference or allusion to the person so as to disclose the identity of the person.

Application of rules of evidence, etc

83. For the purposes of an inquiry, the Tribunal —

- (a) is not bound by rules of evidence and may inform itself in such manner as it thinks fit;
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
- (c) may give directions relating to procedure that, in its opinion, will reduce delay and assist to achieve a prompt hearing of the matter at issue.

Evidence

84. (1) The Tribunal may, for the purposes of this Act —

- (a) receive evidence on oath or affirmation; and
- (b) receive documents in evidence.

(1A) Evidence or documents in evidence may be received by the Tribunal in a form, or by means, determined by the Tribunal.

(1B) Without limiting the generality of subsection 84(1A) —

- (a) the Tribunal may, if it so determines, receive evidence by telephone, or documents in evidence by facsimile transmission; and
- (b) if a proposed witness is not physically present before the Tribunal, the Tribunal may make such arrangements as it thinks fit for the administration to the proposed witness of an oath or the making by the proposed witness of an affirmation.

(2) The Tribunal may, by notice in writing served on a person, summon the person to appear before the Tribunal and may require the person to produce to the Tribunal documents specified in the notice.

(3) A person summoned under subsection 84(2) shall not, without lawful excuse, fail to appear or produce documents as required by the notice.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

(4) A person, whether summoned or not, who appears before the Tribunal shall not, without lawful excuse —

- (a) refuse to be sworn, or to make an affirmation, as a witness;
- (b) fail to answer a question that the person is lawfully required to answer; or
- (c) fail to produce a document that the person is lawfully required to produce.

Penalty for an offence

against this subsection: 10 penalty units or imprisonment for 6 months, or both.

Tribunal may make orders

85. (1) After determining a matter in proceedings before it, the Tribunal —

- (a) shall promptly advise in writing a person referred to in subsection 82(4) of its determination; and
- (b) may make or refuse to make an order in accordance with this section.

(2) Subject to section 62, the Tribunal may make an order requiring a person —

- (a) to do an act required by this Act to be done;
- (b) to refrain from doing an act prohibited by this Act;
- (d) to pay money required to be paid by this Act.

(3) In addition to any other power conferred by this Act, the Tribunal —

- (a) subject to section 62, may make in relation to an application an order the terms of which have been consented to by the person who made the application and by each person proposed to be bound by the order; and
- (b) may dismiss an application where the person who made the application notifies the Tribunal in writing that the application is withdrawn.

(4) Subject to subsection 82(6), the Tribunal shall not make an order under subsection 85(2) unless it has given the person to whom the order is proposed to be directed a reasonable opportunity of making representations to the Tribunal.

(5) Subject to subsection 85(7), a person to whom notice of an inquiry has been given in accordance with subsection 82(4) may request the Tribunal to give reasons for a determination or order of the Tribunal in relation to the subject-matter of the inquiry, and the Tribunal shall, within 7 days after receipt of the request, give to the person in writing the reasons for the determination or order.

(6) The Tribunal has no jurisdiction to deal with an application to inquire into a complaint where the subject matter of the complaint, in the opinion of the Tribunal, amounts to an allegation that a person committed an offence under this Act.

(7) Where the Tribunal declines jurisdiction in accordance with subsection 85(6), the Tribunal shall, as soon as practicable and in any case within 7 days after declining, give reasons for the determination that the Tribunal has no jurisdiction.

(11) When making an order or determination under this section, the Tribunal shall, orally or in writing, inform a person to whom notice of the inquiry has been given in accordance with subsection 82(4) of the effect of sections 91 and 92.

(12) Failure by the Tribunal to comply with subsection 85(11) does not affect the operation or validity of an order or determination made by the Tribunal under this section.

Compliance with orders

86. (1) Where the Tribunal makes an order under section 85, the person to whom the order is directed shall comply with the order.

(2) Where the Tribunal makes an order under paragraph 85(2)(d), the person to whom the order is directed shall, within 7 days after a copy of the order has been given to the person, pay the money to the person specified in the order.

Penalty: 40 penalty units.

Dismissal of frivolous applications

87. Where, at any stage of an inquiry, the Tribunal is satisfied that an application is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the application should not be entertained, the Tribunal may dismiss the application.

Referral for further conciliation

88. (1) Where, at any stage of an inquiry, the Tribunal is satisfied that further conciliation before the Board is likely to result in an amicable settlement of the complaint that is the subject of the inquiry, the Tribunal may make an order requiring the persons to whom a certificate has been given under subsection 77(4) in relation to the complaint to enter into further conciliation before the Board in respect of the subject-matter of the complaint.

(2) Where the Tribunal makes an order under subsection 88(1), the Tribunal shall not continue the inquiry to which the order relates unless it is satisfied that further conciliation before the Board is unlikely to result in an amicable settlement of the complaint that is the subject of the inquiry.

Reports

89. (1) The Tribunal shall, when it sees fit but not less frequently than annually, prepare and furnish to the Minister a report on the operations of the Tribunal during the period since the last such report was furnished.

(2) The Minister shall cause a copy or a summary of a report referred to in subsection 89(1) to be laid before the Legislative Assembly as soon as practicable after its receipt by the Minister.

No liability for acts in good faith, etc

90. No action shall lie against the Minister, the Administration, the Board, a member of the Board, a person appointed under subsection 66(1), the Tribunal, a member of the Tribunal or the Secretary for anything done or omitted in good faith and without malice in the exercise or purported exercise of a power or function under this Act.

Division 3 — Review

Appeal to Supreme Court

91. (1) A person referred to in subsection 82(4) who is aggrieved by a determination or order of the Tribunal may, not later than 14 days after a copy of the determination or order has been given to the person, institute an appeal to the Supreme Court from the determination or order.

(2) An appeal shall be instituted by the appellant filing a notice of appeal in the office of the Registrar of the Supreme Court together with a copy of the determination or order that is appealed from.

(3) As soon as practicable after a person has instituted an appeal, the person shall serve a copy of the notice of appeal on each other person who was a party to the proceedings before the Tribunal out of which the appeal arose.

(4) The Supreme Court may, subject to such conditions (if any) as it thinks fit, dispense with the requirement for service of a copy of a notice of appeal in accordance with subsection 91(3) if it considers that it is necessary or expedient to do so, or if it appears that personal service cannot be effected, or may make an order for such substituted or other service as the Court thinks fit.

Jurisdiction on appeal

92. (1) Subject to subsection 92(2), the Supreme Court has general jurisdiction to hear and determine an appeal on any question, whether of fact or law, relating to the determination or order of the Tribunal that is appealed from.

(2) Where the matter in issue in an appeal amounts to or is of the value of \$2500 or less, the Supreme Court does not have jurisdiction to hear and determine the appeal except on a question of law.

Powers of Supreme Court on appeal

93. (1) Subject to section 92, the Supreme Court may, on an appeal —

- (a) affirm, reverse or vary the determination or order appealed from;
- (b) give such judgment, or make such order, as in all the circumstances it thinks fit, or refuse to do so; or
- (c) set aside all or a part of the determination or order appealed from and remit the proceedings to the Tribunal for further hearing or determination, subject to such directions (if any) as the Court thinks fit.

(2) A judgment or order under subsection 93(1) has effect as if it were a determination or order of the Tribunal and may be enforced accordingly.

Effect of appeal on determination or order of Tribunal

94. (1) Subject to this section, the institution of an appeal under section 91 does not affect the operation of the determination or order of the Tribunal out of which the appeal arose, and does not prevent the taking of action to implement the determination or order.

(2) The Tribunal or Supreme Court may make an order staying or otherwise affecting the operation or implementation of a determination or order referred to in subsection 94(1) if the Tribunal or Court, as the case may be, considers it appropriate to do

so for the purpose of securing the effectiveness of the hearing and determination of an appeal instituted under section 91.

(3) An order under subsection 94(2) may be made on such conditions, if any, as the Tribunal or Court, as the case may be, thinks fit, including conditions relating to the giving of security for the prosecution of the appeal.

PART 6 — MISCELLANEOUS

Delegation

95. (1) The Minister may, by instrument in writing, delegate to a person any of the powers and functions of the Minister under this Act, other than this power of delegation.

(2) A power or function delegated under subsection 95(1) when exercised or performed by the delegate shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.

(3) A delegation under subsection 95(1) does not prevent the exercise of a power or the performance of a function by the Minister.

No appropriation necessary

96. Notwithstanding any enactment, the Minister is authorised by this section to expend moneys of the Public Account payable by the Administration under this Act.

Agents

97. (1) An employee may, in writing signed by the employee, appoint a person to be the agent of the employee for the purposes of this Act.

(2) A receipt given to an employer by an agent of an employee is a sufficient discharge of the employer in respect of liability under this Act to pay to the employee the amount specified in the receipt.

Mode of service

98. (1) Subject to this section, where this Act requires or allows a document to be given to or served on a person, the document shall be deemed to have been given or served at the time the document was handed to the person or drawn to the person's attention.

(2) The Regulations may prescribe that documents shall be deemed to have been given to or served on a person on compliance with a procedure, or at a time, specified in the Regulations.

(3) The Regulations may make different provision in relation to —

- (a) documents of a particular kind; or
- (b) recipients of a particular class.

Privacy of Board and Tribunal meetings protected

99. (1) At a meeting of the Board, the Board may make an order prohibiting disclosure of information with respect to the proceedings, or a specified part of the proceedings, of the meeting.

(2) A person shall not, directly or indirectly, make a record of, or divulge or communicate to another person, information with respect to proceedings that are the subject of an order under subsection 99(1).

Penalty: 10 penalty units.

(3) Subsection 99(2) does not apply to a record or communication made in the exercise of powers or the performance of functions under or in relation to this Act, or in respect of which a person is under a legal duty to disclose information.

Tribunal and Board members, etc, to respect privacy

- 100. (1)** A person to whom this section applies shall not, directly or indirectly —
- (a) except in the exercise of the powers or the performance of the functions of the person under or in relation to this Act; and
 - (b) while the person is, or after the person ceases to be, a person to whom this section applies,

make a record of, or divulge or communicate to a person other than a person to whom it is the person's duty to disclose it, any information with respect to —

- (c) the affairs of another person; or
- (d) statements made by, or in relation to, another person,

acquired by the first-mentioned person as a person to whom this section applies.

Penalty: 10 penalty units.

(2) The persons to whom this section applies are the Minister, a member of the Board, a person appointed under subsection 66(1), the Secretary and a member of the Tribunal.

Proceedings before Board not to be used for the purpose of Tribunal or Court proceedings

101. (1) Notwithstanding anything in this Act, nothing said or done in proceedings before the Board under this Act —

- (a) is admissible in evidence; or
- (b) shall be taken into account,

in proceedings under this Act before the Tribunal or Supreme Court.

(2) Subsection 101(1) does not apply to the contents of a certificate issued under subsection 77(2).

False or misleading statements

- 102. (1)** A person shall not knowingly —
- (a) make, whether orally or in writing, a false or misleading statement —
 - (i) in connection with, or in support of, a claim for compensation, whether for an employee or for another person;
 - (ii) with intent to deceive the Board or Tribunal;
 - (iii) with intent to deceive a person performing a function in relation to this Act; or
 - (iv) with intent to affect an amount or rate of compensation; or
 - (b) obtain payment of an amount of compensation by means of a false or misleading statement, impersonation or fraudulent device.

Penalty: (a) in the case of a natural person — 50 penalty units or imprisonment for 2 years, or both; and

(b) in the case of a body corporate — 250 penalty units.

(2) Where a person is convicted of an offence against subsection 102(1), the Court may, in addition to imposing a penalty in respect of the offence, order the person to repay an amount equal to an amount paid by way of compensation in consequence of the act or omission in respect of which the person was convicted.

Offences by body corporate

103. (1) Where a body corporate is guilty of an offence against this Act, any officer of the body corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of the offence.

(2) For the purposes of subsection 103(1) “officer”, in relation to a body corporate, includes a director, secretary, executive officer, manager or employee of the body corporate.

Conduct by directors, servants or agents

104. (1) Where, in proceedings for an offence against this Act in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a person who is a director, servant or agent of the body corporate, being a person by whom the conduct was engaged in within the scope of the person’s actual or apparent authority, had that state of mind.

(2) Conduct engaged in on behalf of a body corporate —

- (a) by a person who is a director, servant or agent of the body corporate within the scope of the person’s actual or apparent authority; or
- (b) by another person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

is to be taken for the purposes of this Act to have been also engaged in by the body corporate.

(3) A reference in subsection 104(1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and to the person’s reasons for the person’s intention, opinion, belief or purpose.

Prosecutions for offences

105. Notwithstanding any enactment, proceedings for an offence against this Act may be commenced at any time within 3 years after the commission of the offence.

Victimisation prohibited

106. (1) An employer shall not —

- (a) dismiss an employee;
- (b) alter an employee’s position to the employee’s prejudice; or
- (c) threaten to do an act referred to in paragraph 106(1)(a) or 106(1)(b),

by reason of the fact that the employee —

- (d) has refused to work for the employer in accordance with section 22;

....

- (f) has made, or proposes to make, an application or complaint under this Act;
- (g) has commenced or continued, or proposes to commence or continue, any proceedings under, or in relation to, this Act; or
- (h) has given evidence or provided information in relation to an application or proceeding by another person under, or in relation to, this Act.

Penalty: 40 penalty units.

(4) In proceedings for an offence against this section, if all the relevant facts and circumstances, other than the reason set out in the charge as being the reason of an action alleged in the charge, are proved, it lies upon the person charged to prove that the action was not actuated by that reason.

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Regulations

108. (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection 108(1), the Regulations may prescribe —

- (a) the hours or number of hours in a day, and the days or number of days in a week, that constitute a working week in relation to —
 - (i) an employee or class of employee; or
 - (ii) employment of a particular kind; and
- (b) forms for the purposes of this Act; and
- (c) fees for any matter under this Act; and
- (d) penalties not exceeding 10 penalty units for a contravention or breach of the Regulations; and

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SCHEDULE

Section 32

**ASSESSMENT OF LOSS OF AMENITIES AND OF ENJOYMENT OF LIFE
BECAUSE OF PERMANENT LOSS OR IMPAIRMENT OF FUNCTION**

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
	Loss of part of body	
1.	Total loss of an arm or the greater part of an arm	80
2.	Total loss of a hand or of the lower part of an arm	70
3.	Total loss of a thumb	28
	Total loss of one segment of a thumb	14
	Loss of the pulp of a thumb	8
4.	Total loss of an index finger	14
	Total loss of 2 segments of an index finger	12
	Total loss of one segment of an index finger	8
	Loss of the pulp of an index finger	4
5.	Total loss of the middle finger	12
	Total loss of 2 segments of a middle finger	10
	Total loss of one segment of a middle finger	8
	Loss of the pulp of a middle finger	3
6.	Total loss of a ring or small finger	8
	Total loss of 2 segments of a ring or small finger	6
	Total loss of one segment of a ring or small finger	4
	Loss of the pulp of a ring or small finger	2
7.	Total loss of all fingers, thumb intact (treat as 90% of loss of a hand)	63
8.	Total loss of a leg	75
	Total loss of a foot or of the lower part of a leg	60
9.	Total loss of a great toe	10
	Loss of one segment of a great toe	5
10.	Total loss of a lesser toe	2.5
11.	Total loss of both legs by above-knee or below knee amputation	100
12.	Loss of both arms, above-elbow or below-elbow amputation	100

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
22.	Triple (foot arthrodesis) Treat as 30% loss of function of the lower leg	18
	Assessment of shortening	
23.	Up to 12.5mm Treat as 5% loss of function of the leg	3.75
24.	Exceeding 12.5mm but not exceeding 37.5 mm Treat as 10% loss of function of the leg	7.5
25.	Exceeding 25mm but not exceeding 37.5 mm Treat as 15% loss of function of the leg	11.25
26.	Exceeding 37.5mm but not exceeding 50 mm Treat as 20% loss of function of the leg	15
27.	Patellectomy	
	Where there is full extension of the knee and full flexion in the knee with minimal quadriceps thigh muscle wasting, treat as 15% loss of function of the leg, this figure to be varied in less successful results related to residual joint stiffness	11.25
28.	Excision of head of radius	
	Where full elbow extension and flexion movement is regained with full forearm rotation movement in either direction, treat as 15% loss of function of the arm, this basic figure to be varied in less successful cases related to residual joint stiffness	12
29.	Excision of lower end of ulna forearm bone	
	Where full forearm rotation movements are preserved and the wrist is normal, treat as 10% loss of function of the lower arm, this figure to be varied in less successful cases related to residual joint stiffness	7
30.	Ligamentous injuries of the knee joint with residual instability and including quadriceps insufficiency with comparable instability	
	Moderate laxity Treat as 15% loss of function of the leg	11.25
31.	Multiple disabilities	
	If the disability affects more than one limb the assessment shall be made by summing the figures, but if the disabilities involve one limb the method of progressive extraction of losses, ie, regarding the limb as a whole, shall be used	
32.	Spinal disability and other disabilities	
	Cervical spine	
	(a) Persistent muscle spasm, rigidity, and pain substantiated by loss of anterior curve revealed by X-ray, although no demonstrable structural pathology, moderate referred shoulder/arm pain	10
	(b) In cases similar to those mentioned in paragraph 32(a), but with gross degenerative changes consisting of narrowing of intervertebral spaces and oosteoarthritic lipping of vertebral margins	20

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
33.	Thoracic spine (a) Spinal strain related to trauma with persistent discomfort moderate degenerative changes with osteoarthritic lipping, no X-ray evidence of structural trauma	10
	(b) Fracture	
	(i) Compression 25% involving 1 or 2 vertebral bodies, no fragmentation, healed, no neurologic manifestations	10
	(ii) Compression 50% with involvement posterior elements, healed, no neurologic manifestations, persistent pain	20
34.	Lumbar spine (a) Mild to moderate persistent muscle spasm with pain, with moderate degenerative lipping revealed by X-ray	10
	(b) Fracture:	
	(i) Vertebral compression 25%, 1 or 2 adjacent vertebral bodies, little or no fragmentation, no definite pattern or neurologic changes	15
	(ii) Vertebral compression 50%, 1 or 2 adjacent vertebral bodies, little or no fragmentation, no definite pattern or neurologic changes	20
	(iii) In cases similar to those mentioned in subparagraph 34(b)(ii), but with successful fusion, mild pain	25
35.	Neurogenic low back pain - disc injury (a) Surgical excision of disc, no fusion, good result, no persistent sciatic pain	10
	(b) Surgical excision of disc, no fusion, moderate persistent pain and stiffness aggravated by heavy lifting with necessary modification of activities	20
	(c) Surgical excision of disc with fusion, activities of lifting moderately modified	15
	(d) Surgical excision of disc with fusion, persistent pain and stiffness aggravated by heavy lifting necessitating modification of all activities requiring heavy lifting	25
36.	Tetraplegia and paraplegia	100
37.	Blindness (a) Total blindness	100
	(b) Total loss of vision in one eye (normal vision in the other eye)	30
38.	Deafness (a) Total deafness	100

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
	(b) Total deafness in one ear (normal hearing in other ear)	17
39	Where an appliance or aid is fitted, assess residual deafness	
40.	Total loss of natural permanent teeth	
	(a) Anterior teeth	
	Loss of 1, 2, or 3 teeth	4
	Loss of 4, 5, or 6 teeth	5
	Loss of 7 to 12 teeth	6
	(b) Posterior teeth	
	Loss of 1 tooth	1
	Loss of 2 to 5 teeth	2
	Loss of 6 to 16 teeth	4
41.	Where there are subjective symptoms of pain without demonstrable clinical findings of abnormality or demonstrable structural pathology, no assessment should be made under this Schedule.	

NOTES

The *Employment Act 1988* as shown in this consolidation comprises Act No. 27 of 1988 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Employment Act 1988</i>	27, 1988	Parts 1, 5, 6 1.7.91 Parts 2, 4 1.9.91 Part 3, Schedule 1.11.91	
<i>Employment Amendment Act 1988</i>	30, 1988	1.7.91	
<i>[Previously reprinted as at 1 July 1991 incorporating amending Act listed above]</i>			
<i>Employment Amendment Act 1993</i>	4, 1994	14.3.94	
<i>Employment Amendment Act 1995</i>	12, 1995	30.6.95	
<i>Statute Law (Miscellaneous Provisions) Act 1995</i>	13, 1995	27.7.95	
<i>Employment Amendment Act 1996</i>	8, 1996	20.6.96	
<i>Employment (Public Holidays) Amendment Act 2001</i>	12, 2001	5.10.01	
<i>Employment Amendment Act 2000</i>	3, 2000	8.8.03	
<i>Employment Amendment (No. 2) Act 2000</i>	4, 2000	8.8.03	
<i>Employment Amendment (No. 2) Act 2001</i>	17, 2003	8.8.03	
<i>Employment Amendment Act 2003</i>	7, 2004	14.5.04	
<i>[Previously consolidated as at 14 May 2004]</i>			
<i>Employment (Amendment) Act 2011</i>	9, 2011	19.8.11	
<i>[Previously consolidated as at 20 August 2011]</i>			
<i>Employment (Amendment No. 2) Act 2011</i>	2, 2012	5.4.12	
<i>[Previously consolidated as at 10 April 2012]</i>			
<i>Interpretation (Amendment) Act 2012</i> <i>[to substitute throughout —Commonwealth Minister for Minister; and to substitute Minister for executive member]</i>	14, 2012	28.12.12	
<i>[Previously consolidated as at 23 February 2013]</i>			

Ordinance	Registration	Commencement	Application, saving and transitional provision
Norfolk Island Continued Laws Amendment Ordinance 2015 (No. 2, 2015) (now cited as Norfolk Island Continued Laws Ordinance 2015 (see F2015L01491))	17 June 2015 (F2015L00835)	Sch 1 (items 75, 76, 344, 345): 18 June 2015 (s 2(1) item 1)	Sch 1 (items 344, 345) Sch 1 (items 352, 353) (F2016L00751)
as amended by			
Norfolk Island Continued Laws Amendment (2016 Measures No. 2) Ordinance 2016 (No. 5, 2016)	10 May 2016 (F2016L00751)	Sch 1 (items 1, 2, 4): 1 July 2016 (s 2(1) item 2)	—
Norfolk Island Continued Laws Amendment (Public Holidays) Ordinance 2016 (No. 13, 2016)	14 Dec 2016 (F2016L01949)	Sch 1 (item 1): 15 Dec 2016 (s 2(1) item 1)	—

Table of Amendments

ad = added or inserted am = amended rep = repealed rs = repealed and substituted exp = expired

Provisions affected	How affected
3	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
4	am 30, 1988; 3, 2000; Ord No 2, 2015 (as am by Ord No 5, 2016)
7	am Ord No 2, 2015 (as am by Ord No 5, 2016)
9	am 13, 1995; 3, 2000
	rs Ord No 2, 2015 (as am by Ord No 13, 2016)
Division 1 of Part 2	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
10	rs 3, 2000
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
11	rs 3, 2000
	am 17, 2003
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
Division 2 of Part 2	<u>rep</u> <u>1 July 2018 (s 19)</u>
12	rs 3, 2000
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
13	rs 3, 2000; 4, 2000
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
14	rs 3, 2000; 17, 2003; 2, 2012
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
15	rs 3, 2000
	am 17, 2003
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
16	rs 3, 2000
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
17	rs 3, 2000
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
18	am 4, 1994
	rs 3, 2000
	am Ord No 2, 2015 (as am by Ord No 5, 2016)
	<u>rep</u> <u>1 July 2018 (s 19)</u>
18A	ad 7, 2004
	am Ord No 2, 2015 (as am by Ord No 5, 2016)
	<u>rep</u> <u>1 July 2018 (s 19)</u>
19	rs 3, 2000; Ord No 2, 2015 (as am by Ord No 5, 2016)

ad = added or inserted am = amended rep = repealed rs = repealed and substituted exp = expired

Provisions affected	How affected
	<u>rep</u> <u>1 July 2018 (s 19)</u>
Division 3 of Part 2	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
20	rs 3, 2000
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
21	rs 3, 2000
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
22	rs 3, 2000
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
23	rs 3, 2000
	am 7, 2004; 17, 2003
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
Division 4 of Part 2	
24	rep 8, 1996
	ad 3, 2000
	am 7, 2004
25	rs 3, 2000
	rep Ord No 2, 2015 (as am by Ord No 5, 2016)
26	am 3, 2000; 9, 2011
28	am 9, 2011
30	am 8, 1996; 9, 2011; Ord No 2, 2015 (as am by Ord No 5, 2016)
32	am 30, 1988; 8, 1996
37	am 8, 1996
37A	ad 9, 2011
38	am 8, 1996
39	am 8, 1996
39A	ad 9, 2011
	am Ord No 2, 2015 (as am by Ord No 5, 2016)
40	am 8, 1996
43	am Ord No 2, 2015
45	am 9, 2011
45A	ad 9, 2011
47	am 30, 1988
48	am 9, 2011
49	am 8, 1996; 9, 2011
49A	ad 8, 1996
49B	ad 8, 1996
53	am 30, 1988
54	am 8, 1996
55	am 9, 2011
56	am 30, 1988; 8, 1996
65	am 30, 1988; Ord No 2, 2015
73	rs Ord No 2, 2015 (as am by Ord No 5, 2016)
76	am 9, 2011; Ord No 2, 2015 (as am by Ord No 5, 2016)
78	rs 30, 1988
79	rs 30, 1988
81	am 30, 1988
82	am 30, 1988
82A	ad 30, 1988
84	am 30, 1988

ad = added or inserted am = amended rep = repealed rs = repealed and substituted exp = expired

Provisions affected	How affected
85	am 30, 1988; 3, 2000; Ord No 2, 2015 (as am by Ord No 5, 2016)
86	am 30, 1988; Ord No 2, 2015 (as am by Ord No 5, 2016)
91-94	rs 30, 1988
99	am 30, 1988
101	am 30, 1988
106	am 3, 2000; Ord No 2, 2015 (as am by Ord No 5, 2016)
107	rep 12, 1995
	rep 3, 2000
108	am 12, 1995; 2, 2012; Ord No 2, 2015 (as am by Ord No 5, 2016)



Fair Work (Norfolk Island) Rule 2016

I, Michaelia Cash, Minister for Employment, make the following rule.

Dated 29 June 2016

Michaelia Cash
Minister for Employment

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1 Name

This is the *Fair Work (Norfolk Island) Rule 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2016.	1 July 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 32A of the *Fair Work Act 2009*.

4 Prescribed modifications of Fair Work legislation for its application in relation to Norfolk Island

- (1) For the application of the *Fair Work Act 2009* and the *Fair Work Regulations 2009* in relation to Norfolk Island, the modifications of that Act and those regulations set out in the applicable items of the Schedules to this instrument are prescribed.
- (2) Any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Ongoing modifications of the Fair Work Act 2009 relating to Norfolk Island

Note: See section 4.

Fair Work Act 2009

1 Section 12 (after paragraph (ca) of the definition of *eligible State or Territory court*)

Insert:

- (cb) the Court of Petty Sessions of Norfolk Island;

2 Section 12

Insert:

Norfolk Island employment means employment of an employee in Norfolk Island in connection with an activity (whether of a commercial, governmental or other nature) carried on in Norfolk Island by the employer.

3 Section 12 (definition of *reduction in take-home pay*)

Repeal the definition, substitute:

reduction in take-home pay:

- (a) in relation to an employee in Norfolk Island employment—see subsection 168M(3); and
- (b) in relation to a transferring employee in relation to a transfer of business referred to in Part 6-3A—see subsection 768BR(3).

4 Section 12 (definition of *take-home pay*)

Repeal the definition, substitute:

take-home pay:

- (a) in relation to an employee in Norfolk Island employment—see subsection 168M(2); and
- (b) in relation to a transferring employee in relation to a transfer of business referred to in Part 6-3A—see subsection 768BR(2).

5 Section 12 (definition of *take-home pay order*)

Repeal the definition, substitute:

take-home pay order:

- (a) in relation to an employee in Norfolk Island employment—see subsection 168N(1); and
- (b) in relation to a transferring employee in relation to a transfer of business referred to in Part 6-3A—see subsection 768BS(1).

6 At the end of section 14

Add:

Employers of public sector employees in Norfolk Island

- (8) Despite paragraph (1)(f), a person who is an employer, within the meaning of the *Industrial Relations Act 1996* (NSW), is not a national system employer merely because the person employs, or usually employs, a public sector employee, within the meaning of that Act, in connection with an activity the person carries on in Norfolk Island.

Note: This subsection does not affect the person's status as a national system employer if the person is a national system employer apart from paragraph (1)(f).

- (9) To avoid doubt, subsection (8) does not prevent either of the following from being a national system employer:
- (a) the Norfolk Island Regional Council;
 - (b) a body established for a public purpose by or under a law in force in Norfolk Island other than a law of New South Wales in force in Norfolk Island because of section 18A of the *Norfolk Island Act 1979*.

7 At the end of Division 4 of Part 1-2

Add:

23B Terms defined by reference to the *Corporations Act 2001*

For the purposes of interpreting an expression in this Act whose meaning is affected by the *Corporations Act 2001*, it is to be assumed that Norfolk Island were included for all purposes in the area covered by the definition of *this jurisdiction* in section 9 of that Act.

- Note: Examples of expressions in this Act whose meaning is affected by the *Corporations Act 2001* are:
- (a) “associated entity”, “franchise” and “related body corporate” (see the definitions of those expressions in section 12);
 - (b) “wholly-owned subsidiary” (see subsections 14(2) and (6)).

8 At the end of Part 2-2

Add:

Division 14—Operation of the National Employment Standards in relation to Norfolk Island employment

Subdivision A—What service counts for entitlements

131A Counting service before 1 July 2016 for non-accruing entitlements

General rule

- (1) An employee's service in Norfolk Island employment with an employer before 1 July 2016 counts as service of the employee with the employer for the purpose of determining the employee's entitlements under the National Employment Standards, other than entitlements to:
- (a) paid annual leave; and
 - (b) paid personal/carer's leave; and
 - (c) notice of termination or payment in lieu of notice.

- Note 1: References to the National Employment Standards include a reference to the extended parental leave provisions and the extended notice of termination provisions (see sections 746 and 761).
- Note 2: Interaction between the National Employment Standards and transitional NI instruments under Schedule 1A is dealt with in that Schedule.
- Note 3: Entitlements to paid annual leave, paid personal/carer's leave and notice of termination or payment in lieu of notice are dealt with in section 131B and Subdivision B.

No double entitlement

- (2) If, before 1 July 2016, the employee has already had the benefit of an entitlement, the amount of which was calculated by reference to a period of service, subsection (1) does not result in that period of service with the employer being counted again when calculating the employee's entitlements of that kind under the National Employment Standards.

Limitation on application of general rule to redundancy pay

- (3) Subsection (1) does not apply in relation to an employee and an employer for the purposes of Subdivision B of Division 11 of the National Employment Standards (which deals with redundancy pay) if the terms and conditions of employment that applied to the employee's employment by the employer immediately before 1 July 2016 did not provide for an entitlement to redundancy pay.

131B Counting service only on or after 1 July 2016 for accrual of certain entitlements under the National Employment Standards

- (1) For the purpose of determining the accrual of entitlements to the following under the National Employment Standards for Norfolk Island employment, only service in that employment on or after 1 July 2016 counts:
- (a) paid annual leave;
 - (b) paid personal/carer's leave;
 - (c) notice of termination or payment in lieu of notice.
- (2) Paragraphs (1)(a) and (b) do not limit Subdivision B (which deals with leave accrued or started before 1 July 2016).
- (3) For the purposes of sections 119, 121 and 122 (which deal with redundancy pay), so far as they relate to an employee's Norfolk Island employment, only service in such employment on or after 1 July 2016 counts.
- (4) Subsection (3) does not apply if the terms and conditions of the employee's Norfolk Island employment immediately before 1 July 2016 provided for an entitlement to redundancy pay.

Note: In that case, service before 1 July 2016 counts for working out redundancy pay under the National Employment Standards (see subsection 131A(1)).

Subdivision B—Leave accrued or started before 1 July 2016

131C Paid annual leave accrued immediately before 1 July 2016

- (1) The provisions of the National Employment Standards relating to taking of paid annual leave (including rates of pay while taking leave), or cashing out that kind of leave, apply, as a minimum standard, to paid annual leave that:

- (a) accrued before 1 July 2016 for Norfolk Island employment that continued on that day; and
- (b) had not been taken or cashed out before 1 July 2016;
- as if it were paid annual leave that had accrued under the National Employment Standards.
- (2) In addition to any paid annual leave that an employee actually accrued before 1 July 2016 for particular Norfolk Island employment that continued on that day, the employee is taken for the purposes of subsection (1) to have accrued before 1 July 2016 for that employment the number of days of paid annual leave worked out using the following formula:

$$\frac{\text{Number of days in the period described in subsection (3)}}{366} \times \text{Number of days of paid annual leave the employee would have accrued for a full year of continuous service in that employment}$$

- (3) For the purposes of subsection (2), the period:
- (a) starts at the start of:
- (i) the most recent anniversary (before 1 July 2016) of the day the employee started the employment; or
- (ii) if the employment started on or after 1 July 2015—the day the employment started; and
- (b) ends at the end of 30 June 2016.

However, the period does not include any days for which the employee actually (ignoring subsection (2)) accrued paid annual leave before 1 July 2016.

Leave paid for before 1 July 2016 and taken on or after that day

- (4) If, before 1 July 2016, an employer of an employee in Norfolk Island employment paid the employee the employee's full entitlement to payment for a period of paid annual leave that accrued before that day and was to be taken on or after that day, the National Employment Standards do not apply to require the employer to pay the employee any more for that leave. This has effect despite subsection (1).

131D Paid personal/carer's leave accrued immediately before 1 July 2016

The provisions of the National Employment Standards relating to taking of paid personal/carer's leave (including rates of pay while taking leave), or cashing out that kind of leave, apply, as a minimum standard, to paid leave that:

- (a) was to be available either:
- (i) for absence from work for ill health; or
- (ii) for a purpose described in paragraph 97(a) or (b); and
- (b) accrued before 1 July 2016 for Norfolk Island employment that continued on that day; and
- (c) had not been taken or cashed out before 1 July 2016;
- as if it were paid personal/carer's leave that had accrued under the National Employment Standards.

131E Continuation of leave started before 1 July 2016

General

- (1) If:
- (a) immediately before 1 July 2016, an employee in Norfolk Island employment is taking a period of leave; and
 - (b) there is leave of an equivalent type under the National Employment Standards;
- the employee is entitled to continue on leave of the equivalent type under the National Employment Standards for the remainder of the period.

Note: For example, if an employee is taking paid annual leave immediately before 1 July 2016, the employee is entitled to continue on paid annual leave under the National Employment Standards.

- (2) If an employee continues on leave under the National Employment Standards in accordance with subsection (1), the employee is entitled to adjust any of the following consistently with the provisions of the National Employment Standards in relation to that type of leave:
- (a) the amount of leave the employee is taking or will take;
 - (b) the time at which the leave is taken;
 - (c) the arrangements for taking the leave.

Community service leave

- (3) An employee may, on or after 1 July 2016, be absent from his or her Norfolk Island employment under Division 8 of the National Employment Standards even if the period of absence began before that day.
- (4) If an employee is absent from his or her employment in accordance with subsection (3) of this section, subsection 111(5) of the National Employment Standards applies as if a reference to the first 10 days of absence were a reference to the first 10 days of absence occurring on or after 1 July 2016.

131F Continuation of steps taken before 1 July 2016 for leave on or after that day

Steps taken by employee in Norfolk Island employment

- (1) If, before 1 July 2016:
- (a) an employee in Norfolk Island employment has taken a step that the employee is required to take so that the employee can, on or after 1 July 2016, take leave of a type of which there is an equivalent under the National Employment Standards; and
 - (b) an equivalent step is required under the National Employment Standards;
- the employee is taken to have taken the step under the National Employment Standards.
- (2) If an employee is taken, by subsection (1), to have taken a step, in relation to leave, under the National Employment Standards, the employee is entitled to adjust the step consistently with the provisions of the National Employment Standards in relation to that type of leave.

Note: For example, an employee could vary the content of a notice given to the employer in relation to the leave, or vary the amount of leave the employee has notified the employer that the employee intends to take.

Steps taken by employer of employee in Norfolk Island employment

- (3) If, before 1 July 2016:
 - (a) an employer of an employee in Norfolk Island employment has taken a step that the employer is required to take so that the employee can, on or after 1 July 2016, take leave of a type of which there is an equivalent under the National Employment Standards; and
 - (b) an equivalent step is required under the National Employment Standards; the employer is taken to have taken the step under the National Employment Standards.
- (4) If an employer is taken, by subsection (3), to have taken a step, in relation to leave, under the National Employment Standards, the employer is entitled to adjust the step consistently with the provisions of the National Employment Standards in relation to that type of leave.

Subdivision C—Application of National Employment Standards about notice of termination and redundancy pay

131G Application of National Employment Standards about notice of termination

- (1) Subdivision A of Division 11 of the National Employment Standards (which deals with notice of termination or payment in lieu of notice) applies to terminations of Norfolk Island employment occurring on or after 1 July 2016.

Note: The operation of the Subdivision may be affected by section 131B (which deals with what service counts for that Subdivision).

- (2) However, that Subdivision does not apply to a termination of Norfolk Island employment if notice of the termination was given before 1 July 2016.

131H Application of National Employment Standards about redundancy pay

Subdivision B of Division 11 of the National Employment Standards (which deals with redundancy pay) applies to terminations of Norfolk Island employment occurring on or after 1 July 2016, even if notice of the termination was given before that day.

Note: The operation of the Subdivision may be affected by sections 131A and 131B (which deal with what service counts for that Subdivision depending on whether the terms and conditions of the employee's employment by the employer immediately before 1 July 2016 provided for an entitlement to redundancy pay).

Subdivision D—Transfers of employment occurring before 1 July 2016

131J Treatment of transfers of employment occurring before 1 July 2016 for later operation of National Employment Standards

References to a transfer of employment in:

- (a) provisions of the National Employment Standards; and

- (b) subsections 22(5) and (6), as those subsections apply for the purposes of the National Employment Standards;
do not cover a situation where the employee became employed in Norfolk Island employment by the second employer before 1 July 2016.

9 At the end of Part 2-3

Add:

Division 9—Avoiding reductions in take-home pay from modern awards applying to Norfolk Island employment

168M Application of modern awards to Norfolk Island employment not intended to reduce take-home pay

- (1) There is not intended to be a reduction in take-home pay as a result of a modern award applying on or after 1 July 2018 to an employee in Norfolk Island employment to whom a transitional NI instrument applies on 30 June 2018 under Schedule 1A.
- (2) An employee's *take-home pay* is the pay an employee actually receives:
- (a) including wages and incentive-based payments, and additional amounts such as allowances and overtime; but
 - (b) disregarding the effect of any deductions that are made as permitted by section 324.

Note: Deductions permitted by section 324 may (for example) include deductions under salary sacrificing arrangements.

- (3) An employee in Norfolk Island employment suffers a *reduction in take-home pay* if, and only if:
- (a) on 30 June 2018 a transitional NI instrument applies to the employee under Schedule 1A; and
 - (b) on and after 1 July 2018 a modern award applies to the employee; and
 - (c) on and after 1 July 2018 the employee is employed in the same position as (or a position that is comparable to) the position he or she was employed in on 30 June 2018; and
 - (d) the amount of the employee's take-home pay for working particular hours or for a particular quantity of work after 30 June 2018 is less than what would have been the employee's take-home pay for those hours or that quantity of work on 30 June 2018; and
 - (e) that reduction in the employee's take-home pay is attributable to the termination of the transitional NI instrument and the application of the modern award.

Note: At the end of 30 June 2018:

- (a) transitional NI instruments are terminated by Schedule 1A; and
- (b) the limitation under subsection 47(2A) on modern awards applying to employees in Norfolk Island employment ends.

168N Orders remedying reductions in take-home pay

- (1) If the FWC is satisfied that an employee, or a class of employees, to whom a modern award applies has suffered a reduction in take-home pay as described in subsection 168M(3), the FWC may make any order (a *take-home pay order*)

requiring, or relating to, the payment of an amount or amounts to the employee or employees that the FWC considers appropriate to remedy the situation.

General provisions

- (2) The FWC may make a take-home pay order only on application by:
 - (a) an employee who has suffered a reduction in take-home pay as described in subsection 168M(3); or
 - (b) an organisation that is entitled to represent the industrial interests of such an employee; or
 - (c) a person acting on behalf of a class of such employees.
- (3) If the FWC is satisfied that an application for a take-home pay order has already been made in relation to an employee or a class of employees, the FWC may dismiss any later application that is made under these provisions in relation to the same employee or employees.

168P Ensuring that take-home pay orders are confined to the circumstances for which they are needed

- (1) The FWC must not make a take-home pay order under section 168N in relation to an employee or class of employees if:
 - (a) the FWC considers that the reduction in take-home pay is minor or insignificant; or
 - (b) the FWC is satisfied that the employee or employees have been adequately compensated in other ways for the reduction.
- (2) The FWC must ensure that a take-home pay order is expressed so that:
 - (a) it does not apply to an employee unless the employee has actually suffered a reduction in take-home pay as described in section 168M; and
 - (b) if the take-home pay payable to the employee under the modern award increases after the order is made, there is a corresponding reduction in any amount payable to the employee under the order.

168Q Contravening a take-home pay order

A person must not contravene a term of a take-home pay order made under section 168N that applies to the person.

Note 1: This section is a civil remedy provision (see Part 4-1).

Note 2: A civil penalty cannot be imposed for contravention of a term of a take-home pay order made under section 168N (see sections 545 and 546).

168R Take-home pay order continues to have effect so long as modern award continues to cover the employee or employees

A take-home pay order made under section 168N in relation to an employee or class of employees to whom a particular modern award applies continues to have effect in relation to those employees (subject to the terms of the order) for so long as the modern award continues to cover the employee or employees, even if it stops applying to the employee or employees because an enterprise agreement starts to apply.

168S Inconsistency between enterprise agreements and take-home pay orders and modern awards

An enterprise agreement has no effect in relation to an employee to the extent that it is less beneficial to the employee than the combination of:

- (a) a take-home pay order made under section 168N that applies to the employee; and
- (b) the modern award that applies to the employee.

Division 10—Operation of modern awards made before 1 July 2016 in relation to Norfolk Island

168T References to Australia in modern awards made before 1 July 2016

On and after 1 July 2016, a reference to Australia in a modern award made before that day has the same meaning as a reference in this Act to Australia has on and after that day.

Note: Accordingly, a reference to Australia in a modern award includes a reference to Norfolk Island.

10 At the end of Division 2 of Part 2-7

Add:

306A References to Australia in equal remuneration orders made before 1 July 2016

On and after 1 July 2016, a reference to Australia in an equal remuneration order made before that day has the same meaning as a reference in this Act to Australia has on and after that day.

Note: Accordingly, a reference to Australia in an equal remuneration order includes a reference to Norfolk Island.

11 Subsection 539(2) (after table item 5)

Insert:

Part 2-3—Modern awards

5A	section 168Q	(a) an employee;	(a) the Federal Court;	Nil
		(b) an employee organisation;	(b) the Federal Circuit Court;	
		(c) an inspector	(c) an eligible State or Territory court	

12 After paragraph 541(3)(b)

Insert:

- (ba) a term or provision of a take-home pay order made under section 168N;

13 After subsection 545(5)

Insert:

Court cannot order civil penalty for contravention of take-home pay order made under section 168N

- (6) A court cannot make an order under this section that:
- (a) relates to a contravention or proposed contravention of section 168Q (which deals with compliance with a take-home pay order made under section 168N, which is about avoiding reductions in take-home pay from modern awards applying to Norfolk Island employment); and
 - (b) amounts to a civil penalty.

14 After subsection 546(5)

Insert:

Court cannot make pecuniary penalty order for contravention of take-home pay order made under section 168N

- (6) A court cannot make a pecuniary penalty order for a contravention of section 168Q (which deals with compliance with a take-home pay order made under section 168N, which is about avoiding reductions in take-home pay from modern awards applying to Norfolk Island employment).

Schedule 2—Transient modifications of Fair Work legislation relating to Norfolk Island

Note: See section 4.

Part 1—Modifications

Fair Work Act 2009

1 Section 29 (heading)

Repeal the heading, substitute:

29 Interaction of modern awards, enterprise agreements and transitional NI instruments with State and Territory laws

2 Subsections 29(1), (2) and (3)

Omit “or enterprise agreement”, substitute “, enterprise agreement or transitional NI instrument under Schedule 1A”.

3 Subsection 29(3)

Omit “as a law to which modern awards and enterprise agreements are not subject”, substitute “for the purposes of this subsection”.

4 After subsection 47(2)

Insert:

Modern awards do not apply in relation to Norfolk Island for a period

- (2A) Despite subsection (1), a modern award does not apply to an employee (or to an employer, or an employee organisation, in relation to the employee) in the period starting at the start of 1 July 2016 and ending at the end of 30 June 2018 so far as the employee is employed, or usually employed, in Norfolk Island employment.

Note: This does not prevent a modern award from covering an employee, employer or employee organisation in that period.

- (2B) Despite subsection (1), a modern award does not apply to an outworker entity in the period starting at the start of 1 July 2016 and ending at the end of 30 June 2018 in relation to an outworker performing work in Norfolk Island.

Note: This does not prevent a modern award from covering an outworker entity in that period.

5 At the end of Division 12 of Part 2-2

Add:

125A Fair Work Information Statement for Norfolk Island employment

Statement need be given only to employees starting after 30 June 2016

- (1) So far as it relates to Norfolk Island employment, the obligation in section 125 for an employer to give an employee the Fair Work Information Statement

applies to an employee who starts Norfolk Island employment with the employer on or after 1 July 2016.

Special statement relating to Norfolk Island employment

- (2) The Fair Work Ombudsman may prepare, and publish in the Gazette, a statement of information about any or all of the following matters, so far as they relate to Norfolk Island employment:
 - (a) matters described in subsection 124(2);
 - (b) matters of content prescribed by regulations for the purposes of subsection 124(4).
- (3) If the Fair Work Ombudsman prepares and publishes a statement under subsection (2), section 125 has effect, in relation to an employer who employs an employee in Norfolk Island employment, as if the references in that section to the Fair Work Information Statement:
 - (a) were references to the statement under subsection (2), if that statement is about all the matters described in that subsection; or
 - (b) included references to the statement under subsection (2), if that statement is not about all the matters described in that subsection.

6 At the end of Part 2-6

Add:

Division 5—National minimum wages for Norfolk Island employment for 2016-17 financial year

299A National minimum wages for Norfolk Island for 2016-17 financial year

For the period starting at the start of 1 July 2016 and ending at the end of 30 June 2017, this Act has effect in relation to an award/agreement free employee employed, or usually employed, in Norfolk Island employment as if the national minimum wage, and each special national minimum wage, were 85% of that wage set by the national minimum wage order that comes into operation on 1 July 2016.

7 At the end of Division 1 of Part 3-2

Add:

381A Application of this Part to dismissal from Norfolk Island employment

This Part applies in relation to a dismissal from Norfolk Island employment that occurs on or after 1 July 2016.

8 After subsection 384(1)

Insert:

- (1A) In working out the period of employment of an employee in Norfolk Island employment by an employer, assume that:
 - (a) section 22 and subsection (2) of this section had extended to Norfolk Island before 1 July 2016; and

Schedule 2 Transient modifications of Fair Work legislation relating to Norfolk Island
Part 1 Modifications

- (b) employment of the employee in Norfolk Island employment by an employer before 1 July 2016 had been employment of the employee as a national system employee by a national system employer.

Note: If, on that assumption, the employee would on or after 1 July 2016 have completed a period of continuous service with the employer starting before 1 July 2016, the whole of that period is the employee's period of employment.

9 Subsection 539(2) (at the end of the table)

Add:

Schedule 1A—Transitional NI instruments

38A	clause 24 of Schedule 1A (other than in relation to a contravention or proposed contravention of a term that would be an outworker term if it were included in a modern award)	(a) an employee; (b) an employer; (c) an employee organisation to which the transitional NI instrument concerned applies; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	Nil
38B	clause 24 of Schedule 1A (in relation to a contravention or proposed contravention of a term that would be an outworker term if it were included in a modern award)	(a) an employee; (b) an employer; (c) an employee organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	Nil

10 Paragraph 540(3)(a)

Omit “and 14”, substitute “, 14 and 38A”.

11 Subparagraph 540(3)(b)(ii)

After “enterprise agreement”, insert “or transitional NI instrument under Schedule 1A”.

12 Paragraph 540(4)(b)

After “enterprise agreement”, insert “or transitional NI instrument under Schedule 1A”.

13 At the end of subsection 541(3)

Add:

; (g) a provision of a transitional NI instrument under Schedule 1A.

14 Paragraph 545(3)(a)

Omit “or a fair work instrument”, substitute “, a fair work instrument or a transitional NI instrument under Schedule 1A”.

15 At the end of section 545

Add:

Court cannot order civil penalty for contravention of transitional NI instrument

(7) A court cannot make an order under this section that:

- (a) relates to a contravention or proposed contravention of clause 24 of Schedule 1A (which deals with compliance with transitional NI instruments under that Schedule); and
- (b) amounts to a civil penalty.

16 At the end of section 546

Add:

Court cannot make pecuniary penalty order for contravention of transitional NI instrument

(7) A court cannot make a pecuniary penalty order for a contravention of clause 24 of Schedule 1A (which deals with compliance with transitional NI instruments under that Schedule).

17 Subsection 547(1)

Omit “or a fair work instrument”, substitute “, a fair work instrument or a transitional NI instrument under Schedule 1A”.

18 Subparagraph 548(1A)(a)(i)

Omit “or a fair work instrument”, substitute “, a fair work instrument or a transitional NI instrument under Schedule 1A”.

19 Paragraph 559(1)(a)

Omit “or a fair work instrument”, substitute “, a fair work instrument or a transitional NI instrument under Schedule 1A”.

20 Before Schedule 1

Insert:

Schedule 1A—Continued effect of certain instruments relating to employment in Norfolk Island

Part 1—Preliminary

1 Meanings of *employee* and *employer*

In this Schedule:

employee means an employee (within the ordinary meaning of the term) employed (or usually employed) in Norfolk Island employment.

employer means an employer (within the ordinary meaning of the term) of an employee in Norfolk Island employment.

NI collective instrument has the meaning given by subclause 2(1).

NI transitional contract has the meaning given by subclause 2(2).

transitional NI instrument means:

- (a) an NI collective instrument; or
- (b) an NI transitional contract.

Part 2—Creation of transitional NI instruments from certain Norfolk Island instruments and contracts

2 Creation of transitional NI instruments

NI collective instruments

- (1) Each of the following becomes an ***NI collective instrument*** at the start of 1 July 2016 and continues in existence in accordance with this Schedule from that time:
 - (a) a determination that had effect under the *Public Sector Remuneration Tribunal Act 1992* (Norfolk Island) immediately before 1 July 2016;
 - (b) an enterprise agreement, within the meaning of the *Public Service Act 2014* (Norfolk Island), that was in operation under Part 11 of that Act immediately before 1 July 2016.

This has effect despite the repeal of the *Public Sector Remuneration Tribunal Act 1992* (Norfolk Island) and the *Public Service Act 2014* (Norfolk Island).

Note: NI collective instruments may be varied in accordance with Part 3 of this Schedule and terminate on or before 30 June 2018 in accordance with that Part.

NI transitional contracts

- (2) A distinct ***NI transitional contract*** is taken to come into operation at the start of 1 July 2016 for each written employment contract, within the meaning of section 10 of the *Employment Act 1988* (Norfolk Island), that, immediately before that time:
 - (a) was in force; and
 - (b) complied with the standards and requirements imposed by that Act.

Note: Each NI transitional contract is separate from the employment contract that gave rise to it. The employment contract continues in force independently of the NI transitional contract.

- (3) The NI transitional contract is taken to include the same terms as were in the employment contract immediately before 1 July 2016.
- (4) The NI transitional contract continues in existence in accordance with this Schedule from the start of 1 July 2016.

Note: NI transitional contracts may be varied in accordance with Part 3 of this Schedule and terminate on or before 30 June 2018 in accordance with that Part.

3 Employees, employers etc. who are covered by a transitional NI instrument and to whom it applies

- (1) An NI collective instrument *covers*, and *applies* to, the same employees, employers and other persons that it would have covered (however described in the instrument) if the Acts described in subclause 2(1) had not been amended or repealed.

Note: Depending on the terms of an NI collective instrument, the instrument's coverage may extend to people who become employees after the instrument becomes an NI collective instrument.

- (2) An NI transitional contract *covers*, and *applies* to, the same employee and employer as the written employment contract that gave rise to the NI transitional contract.
- (3) This clause has effect subject to:
 - (a) the variation or termination of transitional NI instruments as referred to in clause 6; and
 - (b) subclause 19(1) (which deals with cessation of coverage by an NI collective instrument if an enterprise agreement or workplace determination starts to apply under this Act).

4 References in transitional NI instruments to the Employment Conciliation Board or the Employment Tribunal

- (1) If a provision of a transitional NI instrument confers a power or function on the Employment Conciliation Board or the Employment Tribunal (however described) referred to in the *Employment Act 1988* (Norfolk Island) that provision has effect on and after 1 July 2016 as if references in that provision to the Board or Tribunal were instead references to the FWC.
- (2) This clause has effect subject to a contrary intention in this Act.

5 No loss of accrued rights or liabilities when transitional NI instrument terminates or ceases to apply

- (1) If a transitional NI instrument terminates, or ceases to apply in relation to a person, that does not affect:
 - (a) any right or liability that a person acquired, accrued or incurred before the transitional NI instrument terminated or ceased to apply; or
 - (b) any investigation, legal proceeding or remedy in respect of any such right or liability.

- (2) Any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if the transitional NI instrument had not terminated or ceased to apply.
- (3) This clause has effect subject to a contrary intention in this Act.

Part 3—Variation and termination of transitional NI instruments

6 Transitional NI instruments can only be varied or terminated in limited circumstances

- (1) A transitional NI instrument cannot be varied except under:
 - (a) a provision of this Part; or
 - (b) clause 17 (which deals with resolving difficulties with the interaction between transitional instruments and the National Employment Standards).
- (2) A transitional NI instrument cannot be terminated (or otherwise brought to an end) except by or under a provision of this Part.

Note: The references in paragraph (1)(a) and subclause (2) to a provision of this Part includes a reference to another provision of this Act as it applies because of a provision of this Part.

7 Variation of transitional NI instruments to remove ambiguities etc.

- (1) On application by a person covered by a transitional NI instrument, the FWC may make a determination varying the instrument:
 - (a) to remove an ambiguity or uncertainty in the instrument; or
 - (b) to remove terms that are inconsistent with Part 3-1 of this Act (which deals with general protections), or to vary terms to make them consistent with that Part.

Note: For variation of a transitional NI instrument to resolve an uncertainty or difficulty relating to the interaction between the instrument and the National Employment Standards, see clause 17.

- (2) A variation of a transitional NI instrument operates from the day specified in the determination, which may be a day before the determination is made.

8 NI collective instruments: termination by agreement

Subdivision C of Division 7 of Part 2-4 of this Act (which deals with termination of enterprise agreements by employers and employees) applies in relation to an NI collective instrument as if a reference to an enterprise agreement included a reference to an NI collective instrument.

9 NI collective instruments: termination by the FWC

- (1) Subdivision D of Division 7 of Part 2-4 of this Act (which deals with termination of enterprise agreements after their nominal expiry date) applies in relation to an NI collective instrument as if a reference to an enterprise agreement included a reference to an NI collective instrument.

- (2) For the purposes of the application of that Subdivision to an NI collective instrument, the agreement's nominal expiry date is taken to be:
 - (a) the end of the period specified in the instrument as the period for which it has effect (however described); or
 - (b) if the instrument does not specify the period for which it has effect—1 July 2016.

10 NI transitional contracts: termination by agreement

- (1) The employee and employer covered by an NI transitional contract may make a written agreement (a **termination agreement**) to terminate the contract in accordance with the following requirements:
 - (a) the termination agreement must be signed by the employee and the employer;
 - (b) if the employee is under 18, it must also be signed by a parent or guardian of the employee;
 - (c) the signatures must be witnessed.
- (2) The termination has no effect unless it has been approved by the FWC.
- (3) The employer or employee may apply to the FWC for approval of the termination agreement. The application must be made:
 - (a) within 14 days after the termination agreement was made; or
 - (b) if in all the circumstances the FWC considers it fair to extend that period—within such further period as the FWC allows.
- (4) If an application for the FWC to approve the termination agreement is made under subclause (3), the FWC must approve the termination of the NI transitional contract if:
 - (a) the FWC is satisfied that the requirements of subclause (1) have been complied with; and
 - (b) the FWC is satisfied that there are no other reasonable grounds for believing that the employee has not agreed to the termination.
- (5) If the termination is approved under subclause (4), the termination operates from the day specified in the decision to approve the termination.

11 NI transitional contracts: termination at end of employment

If the employee covered by an NI transitional contract ceases to be employed under the written employment contract that gave rise to the NI transitional contract, the NI transitional contract terminates on that cessation.

12 NI transitional contracts: termination conditional on enterprise agreement

- (1) This clause provides for the making of an instrument (a **conditional termination**) that will have the effect of terminating an NI transitional contract if:
 - (a) an enterprise agreement (the **proposed enterprise agreement**) is made that covers the employee and the employer; and
 - (b) the proposed enterprise agreement comes into operation.
- (2) The conditional termination must be in writing and signed either by the employee or the employer. The signature must be witnessed.

- (3) If the conditional termination is signed by the employee, and the employee is under 18, it must also be signed by a parent or guardian of the employee.
- (4) The employer must give the employee a copy of the conditional termination if the conditional termination is signed by the employer.
Note: Failure to comply with this obligation does not affect the operation of subclause (6).
- (5) The conditional termination must accompany any application to the FWC for approval of the proposed enterprise agreement under section 185.
Note: Failure to comply with this obligation does not affect the operation of subclause (6), or the validity of an approval by the FWC of the proposed enterprise agreement.
- (6) If the requirements of subclauses (2) and (3) have been complied with in relation to the conditional termination, the NI transitional contract terminates when the proposed enterprise agreement comes into operation.

13 Termination of all transitional NI instruments at the end of 30 June 2018

A transitional NI instrument that has not already been terminated before the end of 30 June 2018 terminates at the end of 30 June 2018.

14 Effect of termination

- (1) If a transitional NI instrument terminates, it ceases to cover and apply to any employees, employers or other persons (and can never again cover or apply to any of them).
- (2) However, the termination of a transitional NI instrument covering or applying to an employee and his or her employer does not terminate the employment of the employee by the employer.

Note: After the termination of a transitional NI instrument applying to an employee and his or her employer, the terms of the employee's employment will continue to be subject to the National Employment Standards, national minimum wage orders and any enterprise agreement that applies to the employee and employer.

Part 4—Other effects of transitional NI instruments

Division 1—Interaction between transitional NI instruments and the National Employment Standards

15 The no-detriment rule

- (1) To the extent that a term of a transitional NI instrument is detrimental to an employee, in any respect, when compared to an entitlement of the employee under the National Employment Standards, the term of the transitional NI instrument is of no effect.

Note 1: A term of a transitional NI instrument that provides an entitlement that is at least as beneficial to an employee as a corresponding entitlement of the employee under the National Employment Standards will continue to have effect.

Note 2: Division 3 (which contains other general provisions about how this Act applies in relation to transitional NI instruments) is also relevant to how the National Employment Standards apply in relation to employees to whom transitional NI instruments apply.

Note 3: References to the National Employment Standards include a reference to the extended parental leave provisions and the extended notice of termination provisions (see sections 746 and 761).

- (2) If there is a dispute about the application of this item that must be resolved by the FWC in accordance with clause 17, the FWC may compare the entitlements which are in dispute:
 - (a) on a “line-by-line” basis, comparing individual terms; or
 - (b) on a “like-by-like” basis, comparing entitlements according to particular subject areas; or
 - (c) using any combination of those bases the FWC sees fit.
- (3) Subclause (1) does not affect a term of a transitional NI instrument that is permitted by a provision of the National Employment Standards as it has effect under clause 16.

16 Provisions of the National Employment Standards that allow instruments to contain particular kinds of terms

- (1) The following provisions of the National Employment Standards have effect as if a reference to a modern award or an enterprise agreement included a reference to a transitional NI instrument:
 - (a) section 63 (which allows terms dealing with averaging of hours of work);
 - (b) section 93 (which allows terms dealing with cashing out and taking paid annual leave);
 - (c) section 101 (which allows terms dealing with cashing out paid personal/carer’s leave);
 - (d) subsection 107(5) (which allows terms dealing with evidence requirements for paid personal/carer’s leave etc.);
 - (e) subsection 115(3) (which allows terms dealing with substitution of public holidays);
 - (f) section 118 (which allows terms dealing with an employee giving notice to terminate his or her employment);
 - (g) subsections 121(2) and (3) (which allow terms specifying situations in which the redundancy pay entitlement under section 119 does not apply);
 - (h) section 126 (which allows terms providing for school-based apprentices and trainees to be paid loadings in lieu).
- (2) If:
 - (a) a transitional NI instrument includes terms referred to in subsection 93(1) or 101(1) (of the National Employment Standards); but
 - (b) the terms do not include the requirements referred to in subsection 93(2) or 101(2) (of the National Employment Standards), as appropriate;the instrument is taken to include terms that include the requirements.

17 Resolving difficulties about application of this Division

- (1) On application by a person covered by a transitional NI instrument, the FWC may make a determination varying the transitional NI instrument:
 - (a) to resolve an uncertainty or difficulty relating to the interaction between the instrument and the National Employment Standards; or
 - (b) to make the instrument operate effectively with the National Employment Standards.

- (2) A variation of a transitional NI instrument operates from the day specified in the determination, which may be a day before the determination is made.

18 Division does not affect transitional NI instruments before 1 July 2016

This Division (including determinations under clause 17) does not affect the operation of a transitional NI instrument at any time before 1 July 2016.

Division 2—Interaction between transitional NI instruments and enterprise agreements or workplace determinations under this Act

19 Enterprise agreements or workplace determinations under this Act, and transitional NI instruments

NI collective instruments

- (1) If an enterprise agreement or workplace determination (under this Act) starts to apply to an employee, or an employer or other person in relation to the employee, then an NI collective instrument ceases to cover (and can never again cover) the employee, or the employer or other person in relation to the employee.

Note: The fact that an NI collective instrument applies to employees does not prevent those employees and their employer from replacing that instrument at any time with an enterprise agreement.

NI transitional contracts

- (2) While an NI transitional contract applies to an employee, or to an employer in relation to the employee, an enterprise agreement or workplace determination (under this Act) does not apply to the employee, or to the employer in relation to the employee.

Division 3—Other general provisions about how this Act applies in relation to transitional NI instruments

20 Employee's ordinary hours of work

Object of this clause

- (1) For the purposes of this Act, the ordinary hours of work of an employee to whom a transitional NI instrument applies are to be determined in accordance with this clause.

Ordinary hours as specified in transitional NI instrument

- (2) If a transitional NI instrument that applies to the employee specifies, or provides for the determination of, the employee's ordinary hours of work, the employee's **ordinary hours of work** are as specified in, or determined in accordance with, that instrument.

If subclause (2) does not apply and there is agreement

- (3) If subclause (2) does not apply, the employee's **ordinary hours of work** are the hours agreed by the employee and his or her employer as the employee's ordinary hours of work.

If subclause (2) does not apply and there is no agreement

- (4) If subclause (2) does not apply but there is no agreement under subclause (3), the **ordinary hours of work** of the employee in a week are:
- (a) if the employee is a full time employee—38 hours; or
 - (b) if the employee is not a full-time employee—the lesser of:
 - (i) 38 hours; and
 - (ii) the employee's usual weekly hours of work.

If subclause (2) does not apply: agreed hours are less than usual weekly hours

- (5) If:
- (a) subclause (2) does not apply; and
 - (b) the employee is not a full-time employee; and
 - (c) there is an agreement under subclause (3) between the employee and his or her employer, but the agreed ordinary hours of work are less than the employee's usual weekly hours of work;
- the **ordinary hours of work** of the employee in a week are the lesser of:
- (d) 38 hours; and
 - (e) the employee's usual weekly hours of work.

Usual weekly hours for part-time employee without usual weekly hours

- (6) Subclauses (7) and (8) have effect for working out the employee's usual weekly hours of work for the purposes of subparagraph (4)(b)(ii) or paragraph (5)(e) if the employee does not have usual weekly hours of work.

Note: That subparagraph and that paragraph relate only to part-time employees.

- (7) To work out the usual weekly hours of work for an employee who has been employed by the employer for at least 4 weeks:
- (a) identify the total number of hours that the employee has worked during the previous 4 completed weeks; and
 - (b) divide the result by 4.
- (8) To work out the usual weekly hours of work for an employee who has been employed by the employer for less than 4 weeks:
- (a) identify the total number of hours that the employee has worked during the period; and
 - (b) divide the result by the number of completed weeks for which the employee has been employed by the employer.

21 National minimum wages

- (1) This section explains the interaction between:
- (a) a transitional NI instrument that applies to an employer and an employee; and

- (b) a national minimum wage order, as affected by section 299A (which deals with wages for the 2016-17 financial year) if relevant;
so as to avoid doubt about that interaction.

Note: Under sections 294 and 295, the order will require the employer:

- (a) to pay the employee a base rate of pay that at least equals the national minimum wage, or special national minimum wage, that applies to the employee; and
- (b) if the employee is a casual employee—to pay the employee a casual loading of at least the percentage specified in the order of the employee's base rate of pay.

If instrument provides for base rate of pay less than national minimum wage

- (2) If the instrument provides for a base rate of pay for the employee less than the national minimum wage, or special national minimum wage, for the employee under the order, the employer must pay the national minimum wage, or special minimum wage, for the employee, despite the instrument.

Note 1: If the employer does not do so, the employer will contravene section 293, which is a civil remedy provision.

Note 2: If the instrument is an NI transitional contract, the base rate of pay is what is described in the contract as the ordinary rate of pay.

If instrument provides for base rate of pay of at least national minimum wage

- (3) If the instrument provides for a base rate of pay for the employee of at least the national minimum wage, or special national minimum wage, for the employee under the order, the employer must pay the employee the base rate of pay in accordance with the instrument.

Note: If the instrument is an NI transitional contract, the base rate of pay is what is described in the contract as the ordinary rate of pay.

If employee is casual employee

- (4) If the employee is a casual employee, the employer must pay the employee a casual loading of:
- (a) the percentage specified in the order of the employee's base rate of pay (which will be the greater of the base rate of pay set by the instrument and the national minimum wage, or special national minimum wage, for the employee); or
 - (b) if the instrument provides for an amount of casual loading (however described) greater than the amount worked out under paragraph (a)—that greater amount.

Note: If the employer does not do so, the employer will contravene section 293, which is a civil remedy provision.

Other allowances etc. to be paid in accordance with instrument

- (5) The order does not affect any of the following that the instrument provides for:
- (a) incentive-based payments and bonuses;
 - (b) loadings (other than casual loading);
 - (c) monetary allowances;
 - (d) overtime or penalty rates;
 - (e) any other separately identifiable amounts.

22 Payment of wages

Division 2 of Part 2-9 of this Act (which deals with payment of wages) applies in relation to a transitional NI instrument as if a reference to an enterprise agreement included a reference to a transitional NI instrument.

23 Application of unfair dismissal provisions

Part 3-2 of this Act (which deals with unfair dismissal) applies as if the reference in subparagraph 382(b)(ii) and paragraph 389(1)(b) to an enterprise agreement included a reference to a transitional NI instrument.

Part 5—Compliance with transitional NI instruments

24 Compliance with transitional NI instruments

A person must not contravene a term of a transitional NI instrument that applies to the person.

Note 1: This clause is a civil remedy provision (see Part 4-1).

Note 2: A civil penalty cannot be imposed for contravention of a term of a transitional NI instrument (see sections 545 and 546).

Fair Work Regulations 2009

21 Regulation 1.15 (heading)

Repeal the heading, substitute:

1.15 Interaction of modern awards, enterprise agreements and transitional NI instruments with State and Territory laws

22 At the end of subparagraph 1.15(a)(iii)

Add “or”.

23 After subparagraph 1.15(a)(iii)

Insert:

(iv) are provided for by a transitional NI instrument under Schedule 1A to the Act;

24 At the end of paragraph 1.15(b)

Add:

or (iv) are provided for by a transitional NI instrument under Schedule 1A to the Act;

25 Regulation 1.15 (note)

Omit “or enterprise agreement”, substitute “, enterprise agreement or transitional NI instrument under Schedule 1A to the Act”.

26 Regulation 1.15 (note)

Omit “as a law to which modern awards and enterprise agreements are not subject”, substitute “for that subsection”.

Part 2—Repeal of this Schedule

27 Repeal of this Schedule

This Schedule is repealed at the start of 2 July 2018.

EXPLANATORY STATEMENT

Fair Work (Norfolk Island) Rule 2016

Issued by the authority of the Minister for Employment

The *Fair Work Act 2009* (Cth) (Fair Work Act) and the *Fair Work Regulations 2009* (Fair Work Regulations) provide the legislative framework underpinning the national workplace relations system, which covers the majority of Australian workplaces.

Before 1 July 2016, the Fair Work Act and Fair Work Regulations did not apply to employers and employees on Norfolk Island. The *Territories Legislation Amendment Act 2016* (Cth) (Territories Act) and associated Rules make Norfolk Island a non-self-governing territory of Australia and extend relevant Commonwealth legislation to Norfolk Island. Accordingly, the Territories Act extends the Fair Work Act to Norfolk Island on 1 July 2016. The Territories Act also inserts a rule-making power into the Fair Work Act (new section 32A) on 1 July 2016. New section 32A enables the Minister for Employment (the Minister), by legislative instrument, to prescribe modifications of the Fair Work Act and the Fair Work Regulations for their application in relation to Norfolk Island.

The *Fair Work (Norfolk Island) Rule 2016* (the Rule) prescribes appropriate transitional arrangements to allow Norfolk Island employers and employees to transition to the national workplace relations system. The Rule takes effect on 1 July 2016.

These measures in the Rule include:

- increasing minimum wages for Norfolk Island award/agreement free employees to the national level through a stepped transition by:
 - increasing the minimum wage to 85% of the national minimum wage or applicable special minimum wage on 1 July 2016; and
 - increasing the minimum wage to 100% of the national minimum wage or applicable special minimum wage on 1 July 2017;
- modern awards will apply on Norfolk Island from 1 July 2018 (but can cover employers and employees and organisations from 1 July 2016);
- Norfolk Island employees will retain accrued (but unused) entitlements as at 1 July 2016, including “annual holidays” and “sick leave” accrued under the *Employment Act 1988* (NI) (Employment Act);
- the minimum period of notice of termination or payment in lieu of notice will commence from 1 July 2016. Service on Norfolk Island before 1 July 2016 is not counted as service for this provision;
- redundancy pay entitlement will commence from 1 July 2016. Service before 1 July 2016 is not counted as service for this provision, unless employees had an entitlement under their terms and conditions of employment;
- prior service before 1 July 2016 will be recognised for the minimum employment period for the protection from unfair dismissal;
- existing Norfolk Island employment contracts under the Employment Act, enterprise agreements under the *Public Service Act 2014* (NI) (Public Service Act) and public sector wage determinations under the *Public Sector Remuneration Tribunal Act 1992* (NI)

(Public Sector Remuneration Act) will continue as “transitional NI instruments” under the Fair Work Act until 1 July 2018 (unless terminated prior to that time):

- the Fair Work Commission (FWC) will have powers to vary or terminate transitional NI instruments in limited specified circumstances;
- the FWC will have the power to make on application a “take-home pay order” from 1 July 2018 to ensure that the transition to the modern awards framework does not result in a Norfolk Island employee having a reduction in their pay;
- employees and employers will be able to make enterprise agreements from 1 July 2016. In determining whether a proposed agreement would result in employees being better off overall compared with a relevant modern award, the FWC will consider the modern award that covers the employees;
- the Fair Work Ombudsman (FWO) will be able to publish alternate or supplementary information to the Fair Work Information Statement, to assist Norfolk Island employers and employees understand the modified application of the Fair Work Act;
- references to terms in the Fair Work Act that are defined in the *Corporations Act 2001* (Cth) (Commonwealth Corporations Act) will be read as if that Act extends to Norfolk Island on 1 July 2016:
 - the Commonwealth Corporations Act will not extend to Norfolk Island on 1 July 2016. Rather, the *Companies Act 1985* (NI) (Norfolk Companies Act) will continue to apply on Norfolk Island on 1 July 2016; and
- the definition of ‘national system employer’ (and the corresponding meaning of ‘national system employee’) will exclude the NSW Government and its public sector employees working on Norfolk Island.

As new section 32A does not commence until 1 July 2016, this instrument relies on section 4 of the *Acts Interpretation Act 1901* (Cth) (AIA) (as in force on 25 June 2009 in accordance with section 40A of the Fair Work Act) to enable a legislative instrument to be made so that it is operational on 1 July 2016. Section 4 provides that the legislative instrument-making power may be exercised before 1 July 2016 for the purposes of bringing the instrument into effect.

Details of the Rule are provided at [Attachment A](#).

A Statement of Compatibility with Human Rights has been completed for the Rule, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). The Statement’s assessment is that the measures in the Rule are compatible with human rights. A copy of the Statement is at [Attachment B](#).

The Rule is a legislative instrument for the purpose of the *Legislation Act 2003* (Cth).

Consultations took place with the Norfolk Island Administration and community in August 2015 and April 2016. The phased approach set out in the Rule reflects the preferences of the Norfolk Island community, particularly the need to allow sufficient time for employers and employees to transition to the new arrangements.

The Minister for Employment also consulted with the States and Territories under the Intergovernmental Agreement for a National Workplace Relations System for the Private Sector.

Details of the *Fair Work (Norfolk Island) Rule 2016*

Section 1 – Name of instrument

This section sets out the name of the Rule as the *Fair Work (Norfolk Island) Rule 2016*.

Section 2 – Commencement

This section provides that the instrument commences on 1 July 2016. This is the day that the Fair Work Act will extend to Norfolk Island, by virtue of the Territories Act.

Section 3 – Authority

This section provides that the instrument is made under section 32A of the Fair Work Act. As new section 32A does not commence until 1 July 2016, this instrument relies on section 4 of the AIA (as in force on 25 June 2009 in accordance with section 40A of the Fair Work Act) to enable a legislative instrument to be made so that it is operational on 1 July 2016. Section 4 provides that the legislative instrument-making power may be exercised before 1 July 2016 for the purposes of bringing the instrument into effect.

Section 4 – Prescribed modifications of the Fair Work legislation for its application in relation to Norfolk Island

This section prescribes the modifications to the Fair Work Act and the Fair Work Regulations in relation to Norfolk Island, as per the applicable items of the Schedules to the Rule.

Schedule 1 – Ongoing modifications of the Fair Work Act 2009 relating to Norfolk Island

Fair Work Act 2009

Schedule 1 makes a number of ongoing modifications to the Fair Work Act relating to Norfolk Island.

Item 1 – Section 12 (after paragraph (ca) of the definition of *eligible State or Territory court*)

Item 2 – Section 12

Item 3 – Section 12 (definition of *reduction in take-home pay*)

Item 4 – Section 12 (definition of *take-home pay*)

Item 5 – Section 12 (definition of *take-home pay order*)

The Fair Work Act confers a number of functions on an *eligible State or Territory court*. Item 1 modifies the definition in relation to Norfolk Island, to insert a new paragraph (cb) into the definition. This will enable the Court of Petty Sessions of Norfolk Island to exercise functions conferred on such courts.

Item 2 modifies section 12 of the Fair Work Act to introduce a definition of *Norfolk Island employment*. The definition relates to employment of an employee in connection with an activity carried on in Norfolk Island. The definition has limited application and is not intended to relate

to activities undertaken in another state or territory jurisdiction (such as in New South Wales), for the benefit of Norfolk Island. This definition is a key concept used in this Rule.

Items 3, 4 and 5 further modify section 12 of the Fair Work Act by expanding the definitions of *reduction in take-home pay*, *take-home pay*, and *take-home pay order*, respectively, to incorporate a definition relating to *Norfolk Island employment*. These definitions are relevant to the effect of amendments to Part 2-3 below.

Item 6 – At the end of section 14

This item modifies section 14 by inserting new subsections 14(8) and (9) into the Fair Work Act. Subsection 14(8) provides that an employer, within the meaning of the *Industrial Relations Act 1996* (NSW), is not a national system employer merely because they employ, or usually employ, a public sector employee within the meaning of that Act, in connection with an activity carried on in Norfolk Island. This new subsection will ensure that the NSW Government and its public sector employees working on Norfolk Island are not covered by the Fair Work Act, despite the operation of paragraph 14(1)(f) of the Fair Work Act.

The *Industrial Relations Act 1996* (NSW) currently defines a public sector employee as including ‘an employee of a public authority and a member of the Public Service, the NSW Police Force, the NSW Health Service or the Teaching Service.’

To avoid doubt, new subsection 14(9) of the Fair Work Act makes clear that new subsection 14(8) does not prevent certain employers from being national system employers – that is, the Norfolk Island Regional Council and any body established for a public purpose by or under a law in force in Norfolk Island (other than under a New South Wales law which is an applied law under section 18A the *Norfolk Island Act 1979*).

Item 7 – At the end of Division 4 of Part 1-2

A number of provisions of the Fair Work Act cross-refer to concepts in the *Corporations Act 2001* (Cth) (Corporations Act). For example, the *associated entity*, *franchise* and *related body corporate* definitions in section 12 of the Fair Work Act. The operation of the Corporations Act, with the exception of Chapter 5, will not extend to Norfolk Island on 1 July 2016.

This item amends the Fair Work Act through the inclusion of section 23B which provides for terms within the Fair Work Act that are defined by reference to their meaning in the Corporations Act, to continue to be defined in that way in relation to Norfolk Island employment.

Item 8 – At the end of Part 2-2

Part 2-2 of the Fair Work Act provides for the National Employment Standards (NES). This item amends Part 2-2 in relation to Norfolk Island employment to insert a new Division 14.

Division 14 – Operation of the National Employment Standards in relation to Norfolk Island employment

Subdivision A – What service counts for entitlements

Section 131A - Counting service before 1 July 2016 for non-accruing entitlements

This section provides that generally an employee's service with a Norfolk Island employer prior to 1 July 2016 will count as service when that employee's entitlements are calculated under the NES. However, this period will not count as service in relation to the accrual of paid annual leave, paid personal/carer's leave, or the calculation of the period of notice of termination or payment in lieu of notice. These entitlements are addressed separately below.

This section also provides that if, prior to 1 July 2016, an employee has already received an entitlement that was calculated by reference to a period of service, the employee cannot have this period used again for the calculation of the same type of entitlement under the NES. This is to prevent an employment receiving the benefit of an entitlement twice in relation to the same period of service.

Finally, this section provides that subsection 131A(1) does not apply in relation to the entitlement to redundancy pay if the employee was not entitled to receive redundancy pay under the terms and conditions of their employment immediately prior to 1 July 2016. The entitlement to redundancy pay under the NES can be found in Subdivision B of Division 11 of the Fair Work Act. This is to prevent an employer incurring on 1 July 2016 a contingent liability to pay redundancy pay to an employee based on service prior to that date when they have not previously been required to make provision for any such entitlement.

Section 131B - Counting service only on or after 1 July 2016 for accrual of certain entitlements under the National Employment Standards

This section provides that in relation to paid annual leave, paid personal/carer's leave and the calculation of the period of notice of termination or payment in lieu of notice under the NES, a Norfolk Island employee will only accrue these entitlements under the NES based on service on or after 1 July 2016.

Subsection 131B(2) provides that paragraphs 131B(1)(a) and (b) will not limit any provision of Subdivision B of these rules (which deals with leave accrued and started before 1 July 2016).

Section 19 of the Employment Act provides that an employer must (subject to specified exceptions) provide 7 days' notice of termination, or pay the employee wages and entitlements accrued (and if applicable the value of board and lodging) during the week up to the last day, being the employee's date of termination. If an employee does not provide 7 days' notice of resignation, the employer can withhold an amount for those wages and entitlements attributable to the final week up to termination.

Accordingly this section does not result in a Norfolk Island employee having an entitlement to a lesser period of notice of termination after 1 July 2016 than they had before 1 July 2016. Under section 117 of the Fair Work Act the minimum notice period is 1 week (for employees with less than 1 year of continuous service). After a year of continuous service the minimum notice period increases under the Fair Work Act.

The Employment Act does not provide a right to redundancy pay.

Subsection 131B(3) provides that only service by a Norfolk Island employee on or after 1 July 2016 will count towards the calculation of the employee's entitlement to redundancy pay

under the NES. Subsection 131B(4) however qualifies this to provide that if the employee's terms and conditions contained a right to redundancy immediately before 1 July 2016, then the employee's entire period of service can be used in the calculation of the entitlement to redundancy pay under the NES.

Subdivision B – Leave accrued or started before 1 July 2016

Section 131C - Paid annual leave accrued immediately before 1 July 2016

Section 15 of the Employment Act provides employees that have continuously served an employer during the preceding year with 3 weeks of paid "annual holiday" leave, based on their ordinary hours of work.

Subsection 131C(1) provides that paid annual leave that was accrued by a Norfolk Island employee before 1 July 2016 in relation to employment that continued after that day (and that had not been taken or cashed out prior to 1 July 2016) will be treated as if it had accrued under the NES. As such the provisions of the NES will apply as a minimum standard in relation to that annual leave. This section preserves only accrued but 'unused' entitlements ensuring there is not a "double dip" of the entitlement.

For clarity, if a common law contract or industrial instrument provides for greater entitlements than 3 weeks annual holidays, the accrued leave will be treated in the same way as the leave accrued under the Employment Act.

To ensure that Norfolk Island employees whose year of employment commences on a date after 30 June 2015 (including employees who commence new employment) are not disadvantaged, the employee will be taken to have accrued annual leave in accordance with the formula provided in subsections 131C(2) and (3). The employee will receive the benefit of the pro-rata portion of the year of service. The period for the calculation of this annual leave will commence from either the employee's most recent anniversary of the commencement of their employment or, if the employment started on or after 1 July 2015, the day the employee commenced employment. The period will end at the end of 30 June 2016.

Subsection 131C(4) provides that if before 1 July 2016 an employer had paid the employee the full entitlement for a period of annual leave, the NES do not apply to require the employer to pay for that leave. This provision ensures that an employee cannot "double dip" and receive payment twice for a period of annual leave.

Section 131D - Paid personal/carer's leave accrued immediately before 1 July 2016

Section 17 of the Employment Act provides employees with sick leave, which accrues at 1/50th of the sum of the period worked by the employee during the period of employment.

Section 131D provides that leave that was accrued by a Norfolk Island employee before 1 July 2016 and that was available for absence from work for ill health, or for purposes described in paragraph 97(a) or (b) of the Fair Work Act in relation to employment that continued after that day (and that had not been taken or cashed out prior to 1 July 2016) will be treated as if it had accrued under the NES. As such the provisions of the NES relating to taking or cashing out paid personal/carer's leave will apply as a minimum standard in relation to that leave.

For clarity, if a common law contract or industrial instrument provides for greater entitlements than under the Employment Act, the accrued leave will be treated in the same way as the leave accrued under the Employment Act.

Section 131E - Continuation of leave started before 1 July 2016

This section provides that if, immediately before 1 July 2016, a Norfolk Island employee is taking a period of leave where there is an equivalent type of leave under the NES, the employee can continue on leave of that equivalent type for the remainder of their period of leave.

This section also provides that for a Norfolk Island employee who continues on leave in the way allowed by subsection 131E(1), the employee is able to make adjustments to that leave in accordance with the NES. As such, the employee is able to adjust the amount of leave to be taken, the time at which it will be taken and any arrangements for its taking.

This section further provides that a Norfolk Island employee may, on or after 1 July 2016, be absent from their employment for community service leave under the NES. This includes situations where the period of absence began prior to 1 July 2016.

Subsection 111(5) of the Fair Work Act provides that an employer is required to pay an employee for the first 10 days of leave taken for jury service under the NES. For the purposes of applying subsection 111(5) in relation to Norfolk Island employees on a period of community service leave as described in subsection 131E(3), the reference to the first 10 days in subsection 111(5) will be taken to be a reference to the first 10 days of absence on or after 1 July 2016.

Section 131F - Continuation of steps taken before 1 July 2016 for leave on or after that day

Subsection 131F(1) provides that if prior to 1 July 2016 a Norfolk Island employee has taken a step required of them to take leave on or after 1 July 2016, and there is an equivalent type of leave under the NES, and there is a requirement to complete an equivalent step under the NES in relation to that equivalent type of leave, then the employee will be considered to have already taken the step under the NES.

Subsection 131F(2) provides that if an employee is considered to have taken a step under subsection 131F(1), the employee may adjust the step consistently with the provisions of the NES in relation to the equivalent type of leave.

Subsections 131F(3) and (4) have equivalent provisions to subsections 131F(1) and (2) recognising steps taken by employers so that employees can take leave.

Subdivision C – Application of National Employment Standards about notice of termination and redundancy pay

Section 131G – Application of National Employment Standards about notice of termination

Subsection 131G(1) provides that the NES notice of termination provisions (Subdivision A of Division 11) apply only to terminations of employment occurring on or after 1 July 2016. Subsection 131G(2) limits the operation of subsection 131G(1) to provide that the NES notice of

termination provisions also do not apply if notice of the termination was given before 1 July 2016.

This means that if an employee's employment is terminated, or the employee is given notice of termination of their employment prior to 1 July 2016 (even if the actual date of termination falls after 1 July 2016), the employer is not required to provide notice under the NES.

Section 131H – Application of National Employment Standards about redundancy pay

Section 131H provides that the entitlement to redundancy pay under the NES (Subdivision B of Division 11) applies to terminations of employment due to an employee's position being made redundant that occur on or after 1 July 2016, even if notice of termination was given before that date. This means that even where an employee is given notice of termination under the Employment Act prior to 1 July 2016, an employer may still be liable to pay redundancy pay (to an eligible employee) under the NES if the date of termination falls on or after 1 July 2016.

To aid the reader, a note explains that this Subdivision C may be affected by the operation of section 131A which deals with service (see above).

Subdivision D – Transfers of employment occurring before 1 July 2016

Section 131J – Treatment of transfers of employment occurring before 1 July 2016 for later operation of National Employment Standards

The purpose of section 131J is to make clear that references to 'transfer of employment' in the NES and in subsections 22(5) and (6) do not include an employee becoming employed by a second employer in Norfolk Island before 1 July 2016. This is because neither the first or second employer in Norfolk Island would have been a national system employer for the purposes of the Fair Work Act before 1 July 2016.

Item 9 – At the end of Part 2-3

This item modifies Part 2-3 of the Fair Work Act to insert new Divisions 9 and 10.

As set out in the explanatory notes to item 6 of Schedule 2 below, minimum pay rates for Norfolk Island employees will be phased in progressively from 1 July 2016. This includes:

- increasing Norfolk Island minimum wages to 85% of the national minimum wage or applicable special minimum wage for Norfolk Island award/agreement free employees will apply from 1 July 2016;
- increasing Norfolk Island minimum wages to 100% of the national minimum wage or applicable special minimum wage for Norfolk Island award/agreement free employees will apply from 1 July 2017; and
- modern award minimum wages (and the modern award framework more generally) will apply from 1 July 2018.

Generally speaking, the transition to the Fair Work Act is expected to see employees better off. However, it is possible that some Norfolk Island employees' take home pay under their existing transitional NI instrument may be less than that provided by the relevant modern award when it starts to apply.

Division 9 – Avoiding reductions in take-home pay from modern awards applying to Norfolk Island employment

Section 168M – Application of modern awards to Norfolk Island employment not intended to reduce take-home pay

This item modifies Part 2-3 of the Fair Work Act in relation to Norfolk Island, to insert a new Division 9. This Division provides a mechanism for avoiding reductions in take-home pay as a result of modern awards applying in Norfolk Island. This Division provides for remedial orders (take-home pay orders) and is modeled on Part 3 of Schedule 5 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (TPCA Act), which provided for take-home pay orders in the transition to modern awards under the *Workplace Relations Act 1996*. The scope for take-home pay orders is tightly constrained.

Subsection 168M(1) provides that the transition to the application of modern awards on Norfolk Island on 1 July 2018 is not intended to result in an employee who is subject to a transitional NI instrument suffering a reduction in take-home pay.

The mechanism in new Division 9 is not intended to allow the FWC to review entitlements in modern awards generally. Rather, the intention is to allow the FWC to deal with cases in which an employee suffers a reduction in take-home pay, for working the same hours or performing the same quantity of work, as a result of the application of modern awards on Norfolk Island.

Subsection 168M(2) provides that an employee's *take-home pay* refers to the pay comprising wages, incentive-based payments, and additional amount such as allowances and overtime. Any permitted deductions made under section 324 of the Fair Work Act (such as might occur under a salary sacrifice arrangement) are to be disregarded in coming to that pay figure.

Subsection 168M(3) provides that *a reduction in take-home pay* for an employee can only occur if each of the following requirements is met:

- on 30 June 2018 a transitional NI instrument applies to the employee under Schedule 1A;
- from 1 July 2018 a modern award applies to the employee;
- from 1 July 2018 the employee is employed in the same or comparable position as immediately before 30 June 2018:
 - this makes clear that take-home pay orders are not intended when a person changes jobs, or where working arrangements change;
- the amount of the employee's take-home pay for working particular hours, or producing a quantity of work is less on 1 July 2018 than it would have been immediately before 1 July 2018; and
- the reduction in the employee's take-home pay is attributable to the termination of the transitional NI instrument and the application of the modern award.

For clarity, the take-home pay mechanism does not apply during the period of 1 July 2016 until 30 June 2018. The reason for this is because transitional NI instruments will continue under Schedule 1A during that period, and modern awards will not apply.

Section 168N – Orders remedying reductions in take-home pay

Section 168N will enable the FWC to make a take-home pay order it considers appropriate where a modern award applies and there is a reduction in take-home pay. This can be to an

employee, or class of employees. A take-home pay order will be for the payment of an amount of money.

An employee, an organization representing an employee, or a person acting on behalf of a class of employees will be able to make an application for a take-home pay order (subsection 168N(2)).

The FWC will be able to dismiss an application for a take-home pay order that has already been made relating to the same employee or class of employees (subsection 168N(3)).

Section 168P – Ensuring that take-home pay orders are confined to the circumstances for which they are needed

Section 168P is intended to ensure that take-home pay orders are only ordered where required. The FWC must decline to make an order where it considers a reduction in take-home pay is minor or insignificant.

The FWC must also decline to make an order where it is satisfied that the employee is compensated in other ways. For example, the FWC may consider that an order is not warranted where an employee is compensated with significantly more beneficial annual leave entitlements than they previously enjoyed.

The FWC is required to ensure that a take-home pay order is expressly confined to an employee that has actually suffered a reduction of take-home pay (paragraph 168P(2)(a)).

The FWC is also required to ensure that a take-home pay order is expressed so that future increases in take home pay under modern awards (for example from FWC annual wage reviews) lead to a reduction in the amount payable under a take-home pay order (paragraph 168P(2)(b)). The take home pay order is intended to supplement the modern award until a point is reached where the take home pay of the employee under the modern award equals the take home pay of the modern award and the take home pay order at the time the take home pay order commenced to operate.

Section 168Q – Contravening a take-home pay order

Section 168Q provides that a person must not contravene a term of a take-home pay order that applies to that person.

There are two notes to this provision. The first notes that section 168Q is a civil remedy provision. The second notes that a civil penalty cannot be imposed for contravention of a term of a take-home pay order. (This is consistent with paragraph 32A(2)(a) of the Fair Work Act that provides that the rules may not create an offence or civil penalty). The reader is referred to sections 545 and 546, which provide for orders that can be made regarding contraventions of civil remedy provisions, and which have been modified to prevent civil penalties from being applied to a contravention of a take home pay order.

Section 168R – Take-home pay order continues to have effect so long as modern award continues to cover the employee or employees

Section 168R provides that a take-home pay order will continue for as long as a modern award covers the employee, or class of employees, even if an enterprise agreement starts to apply to the employee, or class of employee. This is intended to ensure that an employee can receive the benefit of a take-home pay order for as long as needed (i.e. until the take home pay of the employee equals the take home pay of the modern award and the take home pay order at the time the take home pay order commenced to operate. This is the effect of the combination of this section, paragraph 168P(2)(b) and section 168R.

Section 168S – Inconsistency between enterprise agreements and take-home pay orders and modern awards

Section 168S provides that an enterprise agreement has no effect to the extent that it is less beneficial to an employee than the combination of a take-home pay order that applies to the employee and the relevant modern award.

Division 10 – Operation of modern awards made before 1 July 2016 in relation to Norfolk Island

Section 168T – References to Australia in modern awards made before 1 July 2016

Section 168T clarifies that references to *Australia* in a modern award made before 1 July 2016 have the same meaning as references to Australia in the Fair Work Act on and after that day. For example, where a modern award is expressed to cover employees in Australia this will include Norfolk Island employees on and after 1 July 2016, by virtue of the meaning of Australia that will be inserted into section 12 of the Fair Work Act under the Territories Act.

This new provision operates in respect of modern awards that are also modern enterprise awards or State reference public sector modern awards.

Item 10 – At the end of Division 2 of Part 2-7

Part 2-7 of the Fair Work Act enables the FWC to make equal remuneration orders.

This item modifies Part 2-7 in relation to Norfolk Island from 1 July 2016. New section 306A clarifies that references to *Australia* in an equal remuneration order made before 1 July 2016 have the same meaning as references to Australia in the Fair Work Act on and after that day. For example, where an equal remuneration order is expressed to cover specified employees in Australia this will include Norfolk Island employees on or after 1 July 2016, by virtue of the meaning of Australia that will be inserted into section 12 of the Fair Work Act under the Territories Act.

Item 11 - Subsection 539(2) (after table item 5)

Item 11 modifies the table at subsection 539(2) of the Fair Work Act in relation to Norfolk Island, to include the new civil remedy provision in respect of take-home pay orders (see Schedule 1, clause 168Q). This table identifies who has standing to apply for an order; the courts to which an application for an order may be made; and the maximum penalty that may be imposed by a court. No penalty can be applied by the court for contravention of clause 168Q, consistent with paragraph 32A(2)(a) of the rule making power. The definition of *eligible State or Territory court* will include the Court of Petty Sessions of Norfolk Island pursuant to Item 1.

Item 12 - After paragraph 541(3)(b)

Item 12 modifies subsection 541(3) with an additional paragraph (ba), so that inspectors can also apply to a court for an order in relation to a contravention of a term or provision of a take-home pay order.

Item 13 - After subsection 545(5)

Item 13 modifies section 545 of the Fair Work Act to include a provision that a court cannot make an order that amounts to a civil penalty that relates to a contravention of a take-home pay order. This is consistent with paragraph 32A(2)(a) of the Fair Work Act that provides that the rules may not create an offence or civil penalty.

Item 14 - After subsection 546(5)

Item 14 modifies section 546 of the Fair Work Act to include new subsection 546(6) that a court cannot make a pecuniary penalty order for a contravention of a take-home pay order. This is consistent with paragraph 32A(2)(a) of the Fair Work Act that provides that the rules may not create an offence or civil penalty.

This modification is separate from the modification of section 546 made by item 16 in Schedule 2 to this Rule. This is done for clarity because schedule 2 will be repealed at the start of 2 July 2018 (see Schedule 2, Part 2).

Schedule 2 – Transient modifications of the Fair Work legislation relating to Norfolk Island

Part 1 – Modifications

Fair Work Act 2009

Part 1 of Schedule 2 makes a number of transient modifications of the Fair Work Act and the Fair Work Regulations in relation to Norfolk Island.

Item 1 – Section 29 (heading)

Item 2 – Subsections 29(1), (2) and (3)

Item 3 – Subsection 29(3)

These items amend section 29 of the Fair Work Act to provide for the interaction between transitional NI instruments (as defined in Schedule 1A to the Act) with State and Territory laws.

Item 4 – After subsection 47(2)

This item inserts new subsections 47(2A) and (2B) after subsection 47(2) of the Fair Work Act. New subsection 47(2A) provides that a modern award does not apply to an employee employed, or usually employed, in Norfolk Island employment (or to an employer, or an employee organisation, in relation to the employee) in the period starting at the start of 1 July 2016 and ending at the end of 30 June 2018. Similarly, new subsection 47(2B) provides that a modern

award does not apply to an outworker entity in the period starting at the start of 1 July 2016 and ending at the end of 30 June 2018 in relation to an outworker performing work in Norfolk Island.

The effect of these new subsections is that, despite the Fair Work Act commencing operation in relation to Norfolk Island employment on 1 July 2016, a modern award does not give a person an entitlement or impose an obligation on a person, unless and until it starts to apply to the person at the start of 1 July 2018.

While a modern award does not start applying to an employee in Norfolk Island employment (or an employer, or an employee organisation, in relation to the employee) or to an outworker entity in relation to an outworker performing work in Norfolk Island until the start of 1 July 2018, the legislative notes to new subsections 47(2A) and (2B) make clear that a modern award can still cover the relevant employee or outworker entity during the period from 1 July 2016 to 30 June 2018. This means that a modern award can still cover those employees or outworker entities where:

- a NI transitional instrument covers and applies to the employee or outworker entity under Schedule 1A (which can only be until the end of 30 June 2018); or
- an enterprise agreement applies (on or from 1 July 2016).

A consequence of having a modern award cover but not apply to an employee, employer, employee organisation or outworker entity in relation to an outworker during the period from 1 July 2016 to 30 June 2018, is that the FWC can assess an enterprise agreement made during that period against the relevant modern award for the purposes of determining whether it passes the better off overall test, as described in section 193 of the Fair Work Act.

Item 5 – At the end of Division 12 of Part 2-2

Division 12 of Part 2-2 of the Fair Work Act relates to the Fair Work Information Statement. This item modifies the Division in relation to Norfolk Island, by inserting a new section 125A. This section provides that an employer in Norfolk Island is required to provide the Fair Work Information Statement to any new employee who commences employment on or after 1 July 2016. A Norfolk Island employer is not required to provide the Fair Work Information Statement to any employee who commences on or before 30 June 2016.

Subsection 125A(2) provides that the FWO can publish a special statement of information regarding the matters described in subsection 124(2) and any matters prescribed by the Fair Work Regulations pursuant to subsection (4) of the Fair Work Act in relation to Norfolk Island. If the FWO does publish such a special statement then subsection 125A(3) provides that this special statement is then to be provided to employees under section 125. This mechanism is complementary to the education and advice role the FWO is undertaking to assist Norfolk Island employers and employees understand their rights and obligations under the Fair Work Act.

Item 6 - At the end of Part 2-6

Part 2-6 of the Fair Work Act provides for minimum wages. This item modifies the Part in relation to Norfolk Island, by inserting a new Division 5, containing section 299A. That section provides that the national minimum wage and “special national minimum wages 1-5” (for junior, trainees/apprentices and employees with a disability) will be increased on Norfolk Island by phasing it from the start of 1 July 2016. Between 1 July 2016 and 30 June 2017, award and

agreement free employees in Norfolk Island will be entitled to an increase in minimum wages to 85% of the national minimum wage or relevant special national minimum wage.

From 1 July 2017 the full national minimum wage and special national minimum wages will apply to award and agreement free employees in Norfolk Island.

Casual Norfolk Island employees will be entitled to the full 25% casual loading as specified in the national minimum wage order. For the period 1 July 2016 until 30 June 2017, the relevant 25% casual loading would be applied to the Norfolk Island transitional minimum wage (which will be increased to 85% of the relevant national system minimum wage from 1 July 2016, and a further increase to 100% of the relevant minimum wage on 1 July 2017).

The phasing in of minimum wage increases to the national level is designed to provide Norfolk Island employers with time to adjust to the transition to the Fair Work Act.

For illustrative purposes, the minimum wage on Norfolk Island prior to 1 July 2016 was \$406.60 (based on a 38 hour working week), or \$10.70 per hour. The decision in *Annual Wage Review 2015–16* [2016] FWCFB 3500 has the effect that the national minimum wage for an award/agreement free employee for the period 1 July 2016 until the end of 30 June 2017 is \$672.70 (based on a 38 hour working week), or \$17.70 per hour. The casual loading remains at 25%. This is the relevant minimum wage that applies to an employee that is not a junior employee, a person on a training arrangement, an apprentice, or an employee with a disability. For this same year, the relevant national minimum wage on Norfolk Island would be \$571.80 (based on a 38 hour working week), or \$15.05 per hour. A casual employee would therefore be entitled to \$18.81 per hour (as a result of including the casual loading). From 1 July 2017, the full national minimum wage and special national minimum wages will apply to award and agreement free employees in Norfolk Island.

Item 7 – At the end of Division 1 of Part 3-2

Item 8 – After subsection 384(1)

Part 3-2 of the Fair Work Act provides for the unfair dismissal regime.

Item 7 modifies Division 1 of Part 3-2 in relation to Norfolk Island by inserting a new section 381A. For clarity, this provision provides that Part 3-2 applies prospectively in relation to a dismissal that occurs on or after 1 July 2016.

Subsection 384(1) of the Fair Work Act provides the general rule for determining an employee's *period of employment* with an employer. Under sections 382 and 383 an employee must relevantly have served a *minimum employment period* to be protected from unfair dismissal.

Item 8 modifies section 384 in relation to Norfolk Island to insert a new subsection 384(1A). This provision ensures that prior service is recognized in determining the period of employment – rather than that period of employment simply being the period commencing on 1 July 2016. This is intended to avoid the possibility of an employer terminating an employee's employment shortly after 1 July 2016 to in effect avoid the unfair dismissal regime, where the employee would otherwise satisfy the relevant six or twelve month period in section 383.

Item 9 - Subsection 539(2) (at the end of the table)

Item 9 adds civil remedy provisions to the table at subsection 539(2) of the Fair Work Act in respect of transitional NI instruments (see Schedule 1A, Part 5, clause 24). It provides that proceedings in relation to transitional NI instruments are subject to rules regarding standing, jurisdiction and penalties as set in the additional table items. The additional table items 38A and 38B provide at column 4 that no civil penalties will be applied consistent with paragraph 32A(2)(a) of the rule-making power.

Item 10 - Paragraph 540(3)(a)

Item 11 – Subparagraph 540(3)(b)(ii)

Item 12 – Paragraph 540(4)(b)

Section 540 of the Fair Work Act limits when a person or entity referred to in column 2 of the table at subsection 539(2) has standing to bring proceedings. Item 10 modifies paragraph 540(3)(a) so that standing to bring proceedings about transitional NI instruments are not included in the limitations in subsection 540(2), which is about the standing of employee organisations and registered employee associations to bring proceedings.

Item 11 modifies subparagraph 540(3)(b)(ii) so that standing to bring proceedings about a term of a transitional NI instrument that would be an outworker term in a modern award is not included in the limitations in subsection 540(2), which is about the standing of employee organisations and registered employee associations to bring proceedings.

Item 12 modifies paragraph 540(4)(b) so that an employee organisation may only bring a proceeding in relation to a term of a transitional NI instrument that would be an outworker term in a modern award, if the organisation is entitled to represent the industrial interests of an outworker relating to the term.

These items are consistent with who may bring proceedings in relation to enterprise agreements.

Item 13 - At the end of subsection 541(3)

Section 541 provides that where an inspector applies to a court for an order in relation to a contravention or proposed contravention of a provision or term referred to in subsection 541(3), the inspector will also be able to apply for an order, on behalf of an employee, in relation to an employee's safety net contractual entitlements.

Item 13 modifies subsection 541(3) so that an inspector can apply to a court for an order in relation to an employee's safety net contractual entitlements when the inspector is applying for an order in relation to a contravention of a provision or a term of a transitional NI instrument.

Item 14 - Paragraph 545(3)(a)

Item 14 modifies paragraph 545(3)(a) of the Fair Work Act so that an eligible State or Territory court may order an employer to pay an amount to, or on behalf of, an employee of the employer if the court is satisfied that the employer was required to pay the amount under a transitional NI instrument. Item 1 of Schedule 1 modifies the definition of *eligible State or Territory court* to include the Court of Petty Sessions of Norfolk Island.

Item 15 - At the end of section 545

Item 15 modifies section 545 of the Fair Work Act to include a new subsection 545H so that a court cannot make an order that amounts to a civil penalty relating to a contravention of a transitional NI instrument. This is consistent with paragraph 32A(2)(a) of the Fair Work Act that provides that the rules may not create an offence or civil penalty.

Item 16 - At the end of section 546

Item 16 modifies section 546 of the Fair Work Act to include a provision that a court cannot make a pecuniary penalty order for a contravention of a transitional NI instrument. This is consistent with paragraph 32A(2)(a) of the Fair Work Act that provides that the rules may not create an offence or civil penalty.

Item 17 - Subsection 547(1)

Section 547 deals with interest up to judgment on amounts that a person is required to pay to another person under the Fair Work Act or a fair work instrument. Item 17 modifies subsection 547(1) so that an order regarding an amount payable under a transitional NI instrument is included in the scope of this provision.

Item 18 - Subparagraph 548(1A)(a)(i)

Item 18 modifies subparagraph 548(1A)(a)(i) of the Fair Work Act so that plaintiffs may choose a small claims procedure in order to pursue claim for an amount under a transitional NI instruments.

Item 19 - Paragraph 559(1)(a)

Item 19 modifies paragraph 559(1)(a) of the Fair Work Act so that transitional NI instruments are included in section 559. Section 559 is about unclaimed money. Subsection 559(1) provides that where an employer was required to pay an amount, under the Fair Work Act or a fair work instrument to an employee, and the employee cannot be located, then the employer can pay the amount to the Commonwealth as a sufficient discharge, as against the employee, for the amount paid.

Item 20 – Before Schedule 1

This item inserts new Schedule 1A before Schedule 1 to the Fair Work Act. New Schedule 1A contains provisions dealing with:

- the creation of transitional NI instruments from certain Norfolk Island instruments and contracts (Part 2 of this Schedule);
- the variation and termination of transitional NI instruments (Part 3 of this Schedule); and
- interaction between transitional NI instruments, the NES, enterprise agreements, workplace determinations and other provisions of the Fair Work Act (Part 4 of this Schedule).

Part 1—Preliminary

Clause 1 - Meanings of employee and employer

This clause provides that the terms *employee* and *employer* in this Schedule relate to Norfolk Island employment (as defined in Item 2 of Schedule 1) and have their ordinary meaning.

This clause provides that the term *transitional NI instrument* means an *NI collective instrument* or an *NI transitional contract*. The term *NI collective instrument* has the meaning given by subclause 2(1) and the term *NI transitional contract* has the meaning given to it by at subclause 2(2).

Part 2—Creation of transitional NI instruments from certain Norfolk Island instruments and contracts

Clause 2 – Creation of transitional NI instruments

This clause provides for the creation of NI collective instruments and NI transitional contracts as transitional NI instruments.

The significance of an instrument being a transitional NI instrument is that it is subject to the provisions set out in this Schedule regarding its operation, variation and termination. The notes to subclauses 2(1) and (4) make clear that NI collective instruments and NI transitional contracts, respectively, may be varied in accordance with Part 3 of this Schedule and terminate on or before 30 June 2018 in accordance with that Part.

NI collective instruments

Subclause 2(1) provides that, despite the repeal of the *Public Sector Remuneration Tribunal Act 1992* (Norfolk Island) and the *Public Service Act 2014* (Norfolk Island), the following instruments become an NI collective instrument at the start of 1 July 2016,

- a determination that had effect under the *Public Sector Remuneration Tribunal Act 1992* (Norfolk Island) immediately before 1 July 2016;
- an enterprise agreement, within the meaning of the *Public Service Act 2014* (Norfolk Island), that was in operation under Part 11 of that Act immediately before 1 July 2016.

NI transitional contracts

Subclause 2(2) provides for the creation of a distinct *NI transitional contract* that is taken to come into operation at the start of 1 July 2016 for each written ‘employment contract’, as defined in section 10 of the Employment Act, that, immediately before that time, was in force and complied with the standards and requirements imposed by the Employment Act. The note to subclause 2(2) states that each transitional contract is separate from the employment contract that gave rise to it (i.e. the underpinning contract of employment made by the employer and employee). That employment contract continues in force independently of the NI transitional contract.

The NI transitional contract is taken to include the same terms as were in the written employment contract under section 10 of the Employment Act immediately before 1 July 2016 (subclause 2(3)). It continues in existence in accordance with this Schedule (subclause 2(4)).

Clause 3 – Employees, employers etc. who are covered by a transitional NI instrument and to whom it applies

This clause sets out the employees, employers and other persons who are covered by a transitional NI instrument and to whom it applies.

Subclause 3(1) provides that an NI collective instrument covers, and applies to, the same employees, employers and other persons that it would have covered (however described in the instrument) if the *Public Sector Remuneration Tribunal Act 1992* (Norfolk Island) and the *Public Service Act 2014* (Norfolk Island) had not been amended or repealed. The note to subclause 3(1) states that, depending on the terms of an NI collective instrument, the instrument's coverage may extend to people who become employees after the instrument becomes an NI collective instrument, that is, after 1 July 2016.

Subclause 3(2) provides that an NI transitional contract covers, and applies to, the same employee and employer as the written employment contract that gave rise to the NI transitional contract.

Subclause 3(3) provides that this clause has effect subject to:

- the variation or termination of transitional NI instruments as referred to in clause 6; and
- subclause 19(1) which deals with the cessation of coverage by an NI collective instrument if an enterprise agreement or workplace determination starts to apply under the Fair Work Act.

Clause 4 – References in transitional NI instruments to the Employment Conciliation Board or the Employment Tribunal

Where a transitional NI instrument includes a provision which confers a power or function on the Employment Conciliation Board or the Employment Tribunal (however described) referred to in the Employment Act, clause 4 provides that the provision has effect on or after 1 July 2016 as if those references were instead references to the FWC.

Clause 5 – No loss of accrued rights or liabilities when transitional NI instrument terminates or ceases to apply

This clause preserves accrued rights, liabilities when a transitional NI instrument terminates or ceases to apply to an employee and allows investigations and legal proceedings to occur in relation to those rights or liabilities.

Part 3—Variation and termination of transitional NI instruments

Clause 6 – Transitional NI instruments can only be varied or terminated in limited circumstances

Subclause 6(1) provides that a transitional NI instrument can only be varied under a provision of this Part or in accordance with clause 17 which deals with resolving difficulties with the interaction between NI transitional instruments and the NES.

Subclause 6(2) provides that a transitional NI instrument can only be terminated by or under a provision of this Part.

Clause 7 – Variation of transitional NI instruments to remove ambiguities etc.

Subclause 7(1) provides that a person covered by a transitional NI instrument can apply to the FWC to vary the instrument:

- to remove an ambiguity or uncertainty in the instrument; or
- to remove terms that are inconsistent with Part 3-1 of the Fair Work Act (which deals with general protections).

This subclause includes a note that cross-references clause 17 which deals with a variation of a transitional NI instrument to resolve any uncertainty or difficulty in relation to the interaction between the instrument and the NES.

Subclause 7(2) provides that a variation of a transitional NI instrument operates from the day specified in the determination, which may be a day before the determination is made.

Clause 8 – NI collective instruments: termination by agreement

This clause provides that Subdivision C of Division 7 of Part 2-4 of the Fair Work Act (which deals with termination of enterprise agreements by employers and employees) applies in relation to a NI collective instrument as if a reference to an enterprise agreement included a reference to a NI collective instrument.

Clause 9 – NI collective instruments: termination by the FWC

Subclause 9(1) provides that Subdivision D of Division 7 of Part 2-4 of the Fair Work Act (which deals with termination of enterprise agreements after their nominal expiry date) applies in relation to a NI collective instrument as if a reference to an enterprise agreement included a reference to a NI collective instrument.

Subclause 9(2) provides that the nominal expiry date for a NI collective instrument is taken to be the end of the period specified in the instrument as being the period for which it is to have effect (however described), or if the instrument does not specify such a period, 1 July 2016.

Clause 10 – NI transitional contracts: termination by agreement

This clause provides for the termination of a NI transitional contract by written agreement between the employer and employee covered by the instrument. Subclause 10(2) provides that a termination agreement has no effect unless it has been approved by the FWC.

The employer or employee must make an application to the FWC for the approval of a termination agreement within 14 days after the agreement was made, or within such further period as the FWC allows if it considers it fair to extend that period in all the circumstances (subclause 10(3)).

Before terminating a NI transitional contract, the FWC must be satisfied that the formal requirements at subclause 10(1) have been complied with, and that there are no other reasonable grounds for believing that the employee has not agreed to the termination (subclause 10(4)).

The formal requirements at subclause 10(1) state that the termination agreement must be signed by the employee and the employer and, where the employee is under 18, it must also be signed by a parent or guardian of the employee. All signatures must be witnessed.

Subclause 10(5) provides the termination of a NI transitional contract operates from the day specified in the decision to approve the termination.

Clause 11 – NI transitional contracts: termination at end of employment

This clause provides that if an employee covered by an NI transitional contract ceased to be employed under the employment contract that gave rise to the NI transitional contract, the NI transitional contract terminates at that time.

Clause 12 – NI transitional contracts: termination conditional on enterprise agreement

This clause provides that an employee or employer covered by a NI transitional contract can make an instrument, known as a conditional termination, which has the effect of terminating the NI transitional contract where an enterprise agreement is made that covers the employee and employer and that agreement comes into operation. The significance of an employee being covered by a conditional termination is that they may fully participate in the bargaining process for an enterprise agreement.

The conditional termination must accompany any application to the FWC for approval of the enterprise agreement under section 185 of the Fair Work Act.

If the conditional termination is signed by the employer, they must give the employee a copy of the conditional termination.

The conditional termination must be in writing and signed by either the employee or the employer. Where the employee is under 18 and signs, it must also be signed by a parent or guardian. The signature of the employer or the employee must be witnessed. If these requirements have been complied with, the NI transitional contract terminates when the enterprise agreement comes into operation (subclause 12(6)).

Clause 13 – Termination of all transitional NI instruments at the end of 30 June 2018

This clause provides that any transitional NI instrument that has not already been terminated before the end of 30 June 2018 will terminate at the end of 30 June 2018. From 1 July 2018, modern awards will apply to employees in NI employment which completes the transition to the Fair Work Act.

Clause 14 - Effect of termination

Subclause 14(1) provides that once a transitional NI instrument terminates, it ceases to cover and apply (and can never again cover or apply) any employees, employers or other persons.

Subclause 12(2) provides that despite subclause 12(1), the termination of a transitional NI instrument does not terminate the employment of an employee by the employer. The note to this subclause provides that after the termination of a transitional NI instrument, the terms of the

employee's employment will continue to be subject to the NES, national minimum wage orders and any enterprise agreement that applies to the employee and employer.

Part 4 – Other effects of transitional NI instruments

Division 1 – Interaction between transitional NI instruments and the National Employment Standards

Clause 15 – The no-detriment rule

The NES provides minimum standards for key entitlements for employees in the national system. Subclause 15(1) provides the general rule that to the extent that a term of a transitional NI instrument is detrimental to an employee compared with an entitlement under the NES it has no effect.

Subclause 15(2) has the effect that in resolving a dispute about whether term is detrimental, the FWC (in an application made under clause 17 as referred to below below) is afforded broad discretion to consider entitlements on the basis of either or both of the following:

- “line-by-line”;
- “like-by-like”.

This flexibility for the FWC will help ensure terms that have a detrimental effect will have no effect to the extent of that detriment. That is, the NES entitlement will continue to apply and prevail over the corresponding entitlement in the transitional NI instrument to the extent that the term or entitlement in the transitional NI instrument is detrimental to an employee in comparison to the NES.

Subclause 15(3) provides an exception to the general rule in subclause 15(1), for terms permitted by clause 16.

Clause 16 – Provisions of the National Employment Standards that allow instruments to contain particular kinds of terms

Clause 16 ensures that certain provisions of the NES have effect as if a reference to a modern award or enterprise agreement included a reference to a transitional NI instrument. The relevant provisions of the NES are identified in paragraphs 16(1)(a) to (h).

Subclause 16(2) provides for the requirements set out in subsections 93(2) and 101(2) are taken to be included in the transitional NI instrument.

The intention of this clause is to ensure the continued application, subject to the no detriment test, of terms in a transitional NI instrument that provide for matters that are similar to these NES provisions. For example, this rule would enable the continued operation of a term in a transitional NI instrument for the cashing out of paid annual leave, but subject to the protections set out in subsection 93(2) of the Fair Work Act, by virtue of subclause 16(2). Therefore, in order to cash out annual leave under the provision in the transitional NI instrument, the employee must retain a minimum balance of four weeks' leave, the agreement to cash out must be a separate written agreement and the cashed out leave must be paid at the full amount the employee would have received had the employee taken the leave forgone.

Clause 17 – Resolving difficulties about application of this Division

Clause 17 enables a person covered by a transitional NI instrument to apply to the FWC to resolve any difficulties about the application of the rules about the interaction between transitional NI instruments and the NES set out in this Division. The FWC may vary the instrument to resolve uncertainty or difficulty relating to the interaction between the instrument and the NES, or to make the instrument operate effectively with the NES.

Any variation of the instrument operates from the day specified in the determination (which may be a day before the determination is made).

Clause 18 – Division does not affect transitional NI instruments before 1 July 2016

Clause 18 clarifies that new Division 9 (including a determination made under clause 17) does not affect the operation of a transitional NI instrument at any time before 1 July 2016. This Division operates prospectively from the extension of the Fair Work Act to Norfolk Island on that date.

Division 2 – Interaction between transitional NI instruments and enterprise agreements or workplace determinations under this Act

Clause 19- Enterprise agreements or workplace determinations under this Act, and transitional NI instruments

This clause provides for the interaction between transitional NI instruments and enterprise agreements and workplace determinations.

NI collective instruments

Subclause 19(1) provides that where an enterprise agreement or workplace determination made under the Fair Work Act starts to apply to an employee, or an employer or other person in relation to the employee, then an NI collective instrument ceases to cover (and can never again cover) the employee, or the employer or other person in relation to the employee. The note makes it clear that an NI collective instrument can be replaced by an enterprise agreement at any time.

NI transitional contracts

Subclause 19(2) provides while an NI transitional contract applies to an employee, or to an employer in relation to the employee, an enterprise agreement or workplace determination (under the Fair Work Act) does not apply to an employee, or to an employer in relation to the employee.

Division 3 – Other general provisions about how this Act applies in relation to transitional NI instruments

Clause 20 – Employee’s ordinary hours of work

The concept of an employee’s *ordinary hours of work* is central to the accrual and payment rules for a number of entitlements under the NES. Therefore, it is essential that rules are in place to ensure an employee’s ordinary hours of work can be identified.

Subclause 20(2) provides that where a transitional NI instrument applies to an employee's employment, that employee's ordinary hours of work for the purposes of the Fair Work Act are determined by the transitional NI instrument.

Subclause 20(3) provides that where there are no ordinary hours specified in the transitional NI instrument, the ordinary hours of work are the hours agreed between the employee and their employer.

Subclause 20(4) provides that where there is no such agreement and the employee's ordinary hours are not specified in the transitional NI instrument, a full-time employee's ordinary hours are 38 hours a week and the ordinary hours for an employee who is not a full-time employee are either 38 hours a week or their usual weekly hours (whichever is lower).

Subclause 20(5) provides that where the transitional NI instrument does not specify an employee's ordinary hours of work and the agreed hours for an employee who is not a full-time employee are less than the employee's usual hours, the ordinary hours of work for that employee shall be the lesser of 38 hours or the employee's usual weekly hours of work.

Subclauses 20(6) to (8) provide a mechanism for determining ordinary hours of work where an employee who is a part-time employee and who does not have usual weekly hours of work.

If a part-time employee has worked for at least 4 weeks, the employee's ordinary hours of work are the average hours in the previous 4 weeks.

If a part-time employee has worked less than 4 weeks, the employee's ordinary hours of work are the average hours for the number of completed weeks. For example, if a part-time employee has worked 3 weeks, the employee's ordinary hours are the number of hours completed during that period divided by 3.

Clause 21 – National minimum wages

Clause 21 sets out rules to clarify the interaction between a transitional NI instrument and a national minimum wage order as it applies in Norfolk Island, as affected by section 299A (dealing with wages for the 2016-17 financial year).

Subclause 21(2) provides that if the transitional NI instrument provides for base rate of pay less than the relevant national minimum wage, the employer must pay the relevant national minimum wage. This subclause clarifies that relevant Norfolk Island employees are entitled to the benefit of the safety net minimum wage if the instrument provided for a lesser wage.

On the other hand, subclause 21(3) provides that if the transitional NI instrument provides for base rate of pay of at least the relevant national minimum wage, the employer must pay the relevant wage specified in the instrument. This subclause clarifies that relevant Norfolk Island employees will not see a reduction in their wage, where the transitional NI instrument provides for a higher amount than the relevant national minimum wage.

Subclause 21(4) sets out the casual loading that a casual Norfolk Island employee is to receive. The applicable casual loading will be the higher of:

- the percentage specified in the order (i.e. 25%); or
- the percentage specified in the transitional NI instrument.

For example, if a transitional NI instrument provided for a casual loading of 15%, the casual employee would be entitled to a casual loading of 25%, as specified in the order.

By way of counter example, if a transitional NI instrument provided for a casual loading of 30%, the casual employee would be entitled to retain this loading, as it exceeds the 25% casual loading specified in the order.

Subclause 21(5) clarifies that a minimum wage order does not affect any terms of a transitional NI instrument dealing with certain specified matters. These specified matters are consistent with the items specified for the *full rate of pay* in subsection 18(1) of the Fair Work Act.

Clause 22 – Payment of wages

Clause 22 provides that Division 2 of Part 2-9 of the Fair Work Act (which deals with payment of wages) applies as though the term *enterprise agreement* included a reference to a *transitional NI instrument*. This enables, for example, a transitional NI instrument to specify a method of payment of wages (see paragraph 323(2)(d) of the Fair Work Act).

Clause 23 – Application of unfair dismissal provisions

Clause 23 ensures that a person is covered by a transitional NI instrument in relation to their employment is a ‘person be protected from unfair dismissal’, for the purposes of subparagraph 382(b)(ii) of the Fair Work Act.

This clause also ensures that the requirement to consult about genuine redundancy under paragraph 389(1)(b) of the Fair Work Act also applies if there is an obligation to consult about the redundancy in a transitional NI instrument.

Part 5 – Compliance with transitional NI instruments

Clause 24 – Compliance with transitional NI instruments

Clause 24 provides that a person must not contravene a term of a transitional NI instrument that applies to the person.

There are two notes to this provision. The first notes that clause 24 is a civil remedy provision. The second notes that a civil penalty cannot be imposed for contravention of a term of a transitional NI instrument. This is consistent with paragraph 32A(2)(a) of the Fair Work Act that provides that the rules may not create an offence or civil penalty. The reader is referred to sections 545 and 546, which are about orders that can be made about contraventions of civil remedy provisions, and which have been modified to prevent civil penalties from being applied.

Fair Work Regulations 2009

Item 21 – Regulation 1.15 (heading)

Item 22 – At the end of subparagraph 1.15(a)(iii)

Item 23 – After subparagraph 1.15(a)(iii)

Item 24 – At the end of paragraph 1.15(b)

Item 25 – Regulation 1.15 (note)

Item 26 – Regulation 1.15 (note)

These items make consequential amendments to Regulation 1.15 of the Fair Work Regulations to provide for the interaction between transitional NI instruments with State and Territory laws for the purposes of subsection 29(3) of the Fair Work Act.

Part 2 – Repeal of this Schedule

Item 27 – Repeal of Schedule

Part 1 of Schedule 2 modifies the Fair Work Act and the Fair Work Regulations in relation to Norfolk Island for specified transient matters for the period 1 July 2016 to 1 July 2018. From 1 July 2018 the transitional period for applying the Fair Work act and Fair Work Regulations to Norfolk Island will have been completed.

This item accordingly repeals Schedule 2 at the start of 2 July 2018.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Fair Work (Norfolk Island) Rule 2016

The *Fair Work Act 2009* (Cth) (Fair Work Act) is intended to provide a balanced framework for cooperative and productive workplaces that promotes national economic prosperity and social inclusion for all Australians.

Before 1 July 2016, the Fair Work Act and the associated *Fair Work Regulations 2009* (Fair Work Regulations) did not apply to employers and employees on Norfolk Island. The *Territories Legislation Amendment Act 2016* (Cth) (Territories Act) extends the Fair Work Act to Norfolk Island on 1 July 2016. The Territories Act also inserts a rule-making power into the Fair Work Act (new section 32A) on 1 July 2016. New section 32A enables the Minister for Employment (the Minister), by legislative instrument, to prescribe modifications of the Fair Work Act and the Fair Work Regulations in relation to Norfolk Island.

As new section 32A does not commence until 1 July 2016, this instrument relies on section 4 of the *Acts Interpretation Act 1901* (Cth) (AIA) (as in force on 25 June 2009 pursuant to section 40A of the Fair Work Act) to enable a legislative instrument to be made so that it is operational on 1 July 2016. Section 4 provides that the legislative instrument-making power may be exercised before 1 July 2016 for the purposes of bringing the instrument into effect.

The *Fair Work (Norfolk Island) Rule 2016* (the Rule) prescribes appropriate transitional arrangements to allow Norfolk Island employers and employees to transition to the national workplace relations system. The Rule takes effect on 1 July 2016.

These measures in the Rule include:

- increasing minimum wages for Norfolk Island award/agreement free employees to the national level through a stepped transition by:
 - increasing the minimum wage to 85% of the national minimum wage or applicable special minimum wage on 1 July 2016; and
- increasing the minimum wage to 100% of the national minimum wage or applicable special minimum wage on 1 July 2017;
- modern awards will apply on Norfolk Island from 1 July 2018 (but can cover employers and employees and organisations from 1 July 2016);
- Norfolk Island employees will retain accrued (but unused) entitlements as at 1 July 2016, including “annual holidays” and “sick leave” accrued under the *Employment Act 1988* (NI) (Employment Act);
- the minimum period of notice of termination or payment in lieu of notice under the NES will commence from 1 July 2016. Service before 1 July 2016 does not count as service for this provision;
- redundancy pay entitlements under the NES will commence from 1 July 2016. Service before 1 July 2016 does not count as service for this provision, unless employees had an entitlement under their terms and conditions of employment;

- service prior to 1 July 2016 will be recognised for the minimum employment period for the protection from unfair dismissal;
- existing Norfolk Island employment contracts under the Employment Act, enterprise agreements under the *Public Service Act 2014* (NI) (Public Service Act) and public sector wage determinations under the *Public Sector Remuneration Tribunal Act 1992* (NI) (Public Sector Remuneration Act) will continue as “transitional NI instruments” under the Fair Work Act until 1 July 2018 (unless terminated prior to that time):
 - the Fair Work Commission (FWC) will have powers to vary or terminate transitional NI instruments in limited specified circumstances;
- the FWC will have the power to make on application a “take-home pay order” from 1 July 2018 to ensure that the transition to the modern awards framework does not result in a Norfolk Island employee suffering a reduction in their take home pay;
- employees and employers will be able to make enterprise agreements from 1 July 2016. In determining whether a proposed agreement would result in employees being better off overall compared with a relevant modern award, the FWC will consider the modern award that covers the employees ;
- the Fair Work Ombudsman (FWO) will be able to publish alternate or supplementary information to the Fair Work Information Statement, to assist Norfolk Island employers and employees understand the modified application of the Fair Work Act;
- references to terms that are defined in the *Corporations Act 2001* (Cth) (Commonwealth Corporations Act) in the Fair Work Act will be read as if that Act extends to Norfolk Island on 1 July 2016:
 - the Commonwealth Corporations Act will not extend to Norfolk Island on 1 July 2016. Rather, the *Companies Act 1985* (NI) (Norfolk Companies Act) will continue to apply on Norfolk Island on 1 July 2016; and

Human Rights Implications

The Rule engages the right to work.

The right to work

Article 6(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises the right to work, which includes the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts. Under this Article, State Parties undertake to take appropriate steps to safeguard this right. A similar right is found in Article 27 of the *Convention on the Rights of Persons with Disabilities* (CRPD). Under Article 2(1) of ICESCR, a country is obliged to take steps “to the maximum of its available resources, with a view to achieving progressively the full realisation” of the rights recognised in ICESCR. Additionally, Article 11 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) requires States Parties to ‘eliminate discrimination against women in the field of employment’.

Article 7 of ICESCR recognises the ‘right of everyone to the enjoyment of just and favourable conditions of work’. The United Nations Committee on Economic, Social and Cultural Rights has stated that this right encompasses the right to fair wages and equal remuneration for work of

equal value, safe and healthy working conditions, and rest, leisure and reasonable limitation of working hours, among other elements.

Accrued entitlements at the end of 30 June 2016

The Rule promotes the enjoyment of just and favourable conditions of work with respect to accrued (but unused) entitlements at the 30 June 2016. From 1 July 2016, Norfolk Island employees will retain any accrued (but unused) entitlements, including in relation to:

- “sick leave”, such as accrued under the Employment Act:
 - from 1 July 2016 this will be paid personal/carer’s leave under the NES; and
- “annual holidays”, such as accrued under the Employment Act:
 - from 1 July 2016 this will be annual leave under the NES;

From 1 July 2016, Norfolk Island employees will accrue and be able to access the more generous leave entitlements under the NES.

National minimum wage for Norfolk Island employees

For the period 1 July 2016 to 30 June 2017, Norfolk Island award/agreement free employees will be entitled to an increase to minimum wages that applied on Norfolk Island prior to 1 July 2016 up to 85% of the relevant national minimum wage. From 1 July 2017, Norfolk Island award/agreement free employees will be entitled to 100% of the relevant national minimum wage (see item 199A of Part 1 of Schedule 2 to the Rule).

From 1 July 2018, 100% of minimum wages in modern awards will apply to award covered Norfolk Island employees.

The modified application of the national minimum wage framework does not limit the right to work and the enjoyment of just and favourable conditions of work. Firstly, the current minimum wage in Norfolk Island under the Employment Act is \$10.70. From 1 July 2016, the national minimum wage (as it will apply on Norfolk Island) at \$15.05 per hour will be more generous than the existing Norfolk Island minimum wage. The 85% applicable rate is temporary for one year to help employers adjust to the transition to the Fair Work Act.

Secondly Norfolk Island employees working as casuals will be entitled to the 25% loading from 1 July 2016.

Thirdly, during the transitional period of 1 July 2016 until 30 June 2018, existing NI industrial instruments will continue as transitional NI instruments under the Fair Work Act (see Schedule 1A to the Rule). If an instrument provides for a higher rate of pay or casual loading compared with the minimum, the employee is entitled to be paid the higher rate in the instrument. Conversely, if a transitional NI instrument provides for a rate of pay or casual loading less than the relevant national minimum wage (as it applies in Norfolk Island), the employee is entitled to the higher rate in the relevant national minimum wage (see clause 21 of Schedule 1A to the Rule).

Fourthly, from 1 July 2018 transitional NI instruments that are still in force will terminate to coincide with modern awards applying on Norfolk Island. The Rule contains a mechanism for

Norfolk Island employees to obtain take-home pay orders from the FWC. The orders are intended to remedy any reduction in take-home pay as a result of modern awards applying from 1 July 2018 (see item 168M of Division 9 of Part 2-3 inserted by Schedule 1 to the Rule).

These combined safeguards will ensure that the transition to the Fair Work Act will result in improved pay and conditions for the vast majority, if not all Norfolk Island employees.

Extension of modern award coverage on 1 July 2018

As part of the phased transition to the Fair Work Act, modern awards will not cover Norfolk Island employees and outworkers until 1 July 2018 (see item 4 of Part 1 of Schedule 2 to the Rule). Modern awards typically deal with a range of employment terms and conditions, in addition to the safety net elements of the NES and the relevant national minimum wage.

The delayed extension of modern awards is temporary to enable time for Norfolk Island employers and employees to adjust to the Fair Work Act framework.

Separately, the *Norfolk Island Continued Laws Amendment (2016 Measures No. 2) Ordinance 2016* ensured that sections 18 and 18A of the Employment Act (as amended), relating to a continuous rest period and the provision of a staff uniform in specified circumstances are retained until 1 July 2018. This provides a key protection in the transition to modern awards. Rest periods and staff uniform requirements are typically addressed in modern awards.

Also, the delayed extension of modern awards will not prevent Norfolk Island employers and employees from making an enterprise agreement under Part 2-4 of the Fair Work Act. Any enterprise agreements made would still need to satisfy the requirements of the “better off overall test” in Division 4 of Part 2-4 from 1 July 2016. In general terms, this means that the proposed enterprise agreement would need to result in the employees being better off compared with the relevant modern award, including the minimum wages specified in the award. This safeguard prevents Norfolk Island employees from being locked in to an agreement that would not satisfy the better off overall test.

Conclusion

The Rule is compatible with human rights because it does not limit human rights.

Affidavit

IN THE FAIR WORK COMMISSION

Matter No.: C2018/8

Re Application by: NSW Business Chamber Ltd and the Norfolk Island Chamber of Commerce, Inc.

Affidavit of: **Cherri Eleanor Buffett**

Address: PO Box 370, Norfolk Island

Occupation: President of the Norfolk Island Chamber of Commerce, Inc.

Date: 5 July 2018

I Cherri Eleanor Buffett, President of the Norfolk Island Chamber of Commerce Inc. say on oath

1. I am the President of the Norfolk Island Chamber of Commerce, Inc. (**Applicant**) and I am authorised to make this affidavit on the Applicant's behalf.
2. I make this affidavit based on information from my own personal knowledge and belief (except where indicated to the contrary). My personal knowledge is derived from my experience as a resident of the Island as well as my dealings with local businesses and members of the Norfolk Island community.

Norfolk Island Chamber of Commerce

3. The Norfolk Island Chamber of Commerce, Inc. (the **Norfolk Chamber**) is a not-for-profit, member based and member funded incorporated association. It has 69 financial members.
4. There are approximately 150 - 300 businesses on Norfolk Island. Annexed and marked '**CEB-1**' is a copy of the registered ASIC business names for majority of the businesses on the Island. Some businesses do not have registered business names.
5. The members of the Norfolk Chamber are a combination of local businesses, business owners and sole traders (contractors) in the following areas: travel agents, clothing

Filed on behalf of (name & role of party)	NSW Business Chamber Ltd & Norfolk Island Chamber of Commerce		
Prepared by (name of person/lawyer)	Nigel Ward		
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Email	Nigel.ward@ablawyers.com.au		
Address for service (include state and postcode)	Lvl 10, 140 Arthur Street North Sydney NSW 2060		

(Version 2 form approved 09/05/2013)




stores, cafe, restaurants, accommodation, food and grocery stores, woodworking, professional services (being two accountant and one lawyer), arts and craft, finance, individual and group travel organisers, vehicle repairs and maintenance, plasters and tilers, earthmoving and electricians.

6. My duties as President include managing the organisations affairs and supporting initiatives to strengthen local businesses including educational opportunities and the local labour market.
7. The Norfolk Chamber provides regulatory advice to its members to assist smaller providers with regulatory and employment issues. By way of example, I recently contacted the NSW Business Chamber for assistance and education on the new modern award system. Our members can now telephone the advice line of the NSW Business Chamber for employment advice.
8. In my experience doing business in an isolated and remote location within a limited marketplace brings unique challenges particularly communication as well as logistics of transport and freight. For example, the Island has the old 2G telephone network (which means internet access on mobiles is non-existent) and if our members want to call an advice line or the Fair Work Ombudsman in mainland Australia they need to pay the cost of an international phone call which can be expensive and time consuming. An example is that mail and parcels are delivered by air and sea. If the plane travelling to Norfolk Island is at full weight capacity (with tourists and their luggage) we will not receive the mail until it can be accommodated on another flight. Service mail arriving by ship takes between 4 and 6 weeks to arrive at Norfolk Island.

Norfolk Island

9. Norfolk Island is a land mass forming part of an external Australian territory in the Pacific Ocean about 1600km northeast of Sydney: the Territory of Norfolk Island. The Territory of Norfolk Island is made up of Norfolk Island, Phillip Island, Nepean Island and some small rocks and islets around Norfolk Island.
10. Norfolk Island has a population of approximately 1,748 with about 40% identifying as having Pitcairn Island ancestry.
11. The main language on Norfolk Island is English, but many Norfolk residents speak the local language Norf'k which is a mix of Tahitian and Old English from the Bounty descendants.
12. Norfolk Island's unique island economy was, and remains, very fragile. The Island relies heavily on tourism and numbers of tourists have dropped in recent years. Currently the




Island receives approximately 25,000 tourists per year.¹ At its peak in 2007/2008 Norfolk Island received 35,399 of visitors per year. Annexed and marked 'CEB-2' is a copy of the Norfolk Island Visitor Statistics prepared by the Norfolk Island Visitor Information Centre.

13. Norfolk Island is a 2.5 hour flight from Australia or 90 minutes from New Zealand. Flights in and out of Norfolk Island to Sydney are on Mondays and Fridays only. Air New Zealand has recently stopped running its Tuesday flights from Brisbane to the Island. Flights to Brisbane now only arrive and depart on Saturdays. Air New Zealand direct flights from New Zealand stopped early in 2018 and this has affected about 20% of the island's potential market. Australian government subsidies have been put in place to guarantee air service to the Island only from Australia to help with economic viability and sustainability of the Island.

Norfolk Island Employment Laws

Maximum and Minimum Hours

14. Prior to 1 July 2016 most Norfolk residents were quite happy to work two or three jobs because they were not paying income tax. Employment on Norfolk Island consisted of a standard working week of about 40 hours and there was no minimum amount of time an employee could be engaged for.
15. Many employees work for only 1 hour and only when required as they work for multiple employers that are dependent on tourism and weather.
16. Approximately 50 people work to unload the ship (which carries groceries, mail, building materials, motor vehicles and other goods) to the Island which arrives monthly. If the ship arrives, many people will have to make that job their priority and put their other job "on hold". The jobs that are put on hold could include gardening, maintenance jobs, vehicle repairs, pest control or plumbing, and or working for the Norfolk Island Regional Council. The whole island is aware when the ship arrives with produce and goods, and the Island community accommodates for flexibility in employment when this happens.
17. When people work to unload the ship they are working for and employed by a number of different entities (many of which are government operated) including:
- (a) Norfolk Island Regional Council who employs the Lighterage Workers;
 - (b) a shipping company employs the Stevedores;
 - (c) Border Force;

¹ This figure is an approximation as Norfolk Island no longer accurately records who is a visitor and who is a tourist on incoming visitor cards. There were 29,732 visitors to the Island in 2016/2017 year.




- (d) Bio-Security (Commonwealth); and
- (e) private contractors and workers (for example, truck drivers who deliver goods to different business).
18. Most of the above companies pay the workers by the hour depending on the time they spend unloading the ship. The ship can sit off-shore for a week at a time if the weather is bad and employees are essential waiting to be asked to come and help unload.
 19. People on Norfolk are multi skilled and some have worked multi jobs over generations because there has been no income/tax system, so they had become self sufficient and resourceful as a result. Many people on the Island will have 2 or 3 distinct jobs for example someone may assist to unload the ship, be a tour guide (or host) and also carry out another job on the island.
 20. Another example is with live performances on the Island which are shows put on for tourists. If a show doesn't have sufficient audience numbers or the weather is not permitting, it will be cancelled and put on a different evening during the week to try and accommodate for the tourists. I have been advised by operators of these shows that minimum engagement periods would not make their productions viable and they may have to stop the shows which will impact the experience for tourists on the island. An example of a live show would be the Island Dancers at the Fish Fry. The Island Dancers perform Tahitian dances whilst visitors enjoy freshly caught fish at sunset. Approximately 80 to 150 per night of tourists attend the Fish Fry which is held on Tuesdays and Thursdays 4.30 – 7.00pm.
 21. Another example of a show on Norfolk Island would be 'Mutiny on the Bounty'. This show is performed at an outdoor amphitheatre on Norfolk's west coastline, this re-enactment is the Islanders' version of events leading up to the Mutiny on the Bounty and is performed by descendants of the mutineers. Given its outdoor setting, the show is only performed if the weather permits.
 22. Norfolk is not a big Island and only takes 20 minutes to drive from one side to the other. Everyone on the Island lives approximately 10 minutes from their place of work. The Island has a speed limit of 50km/hr imposed. Most people drive to work.

Minimum Wage

23. The Norfolk Island minimum wage was \$10.70/hr before 1 July 2016. In two years the minimum wage has risen under Australian employment laws to \$18.93/hr. Some local businesses have expressed concern about the further increase to the minimum wage as they have just discovered that there are higher, additional minimum wages under modern awards.




24. Some retail and restaurant businesses on the Island may have the minimum wages required to be paid to their employees rise by almost \$2 an hour under the modern award system and overtime and penalty rates will severely effect Norfolk Island businesses.
25. I remember when the requirement to pay income tax came in around 1 July 2018, many businesses already increased the minimum wage to ensure their employees still received the same amount of money each week. Norfolk Island is a small community and generally Norfolk Island employers have the best welfare of their employees at heart.

Casual and Part-Time employment

26. Casual employment has never really formed part of Norfolk Island employment law.
27. The type of employment we have on the Island gives employees a sense of security knowing how many hours they will work in a week (and pay) but with the flexibility of a casual to work those hours when the employee or the business requires. A lot of businesses also have a high season and a low season which reflects the number of tourists on the Island and employees hours change from high season to low season.
28. The Island has generally had full-time (40 hours) or part-time (less than 40 hours) employment. Given the flexibility ingrained in the culture, casual employment was never really necessary or defined.
29. Casual and part-time employment has always been less rigid on Norfolk Island than on mainland Australia. As defining these types of employment is relatively new many businesses are currently dealing with deciding whether to make their employees casual (and pay an additional 25% on top of the base rate of pay) or make the employees part-time (which can be too strict for the Island's flexible nature and seasonal work) and be more costly to the business than casual employment (due to minimum engagements and payment for work that is not performed). The issue with confirming part-time hours for some employees on Norfolk Island is there is simply not enough work to do some days or weeks. In practice employees knew that they were working for somebody on an ongoing basis, but when they worked was extremely flexible.

Shift Penalties

30. Some employers have never had shift penalties before and will be subject to such significant rises in wages and they will most likely carry out early morning tasks (such as baking bread in the early hours of the morning) themselves to keep the business viable.



Overtime

31. Prior to 2016, Norfolk Island had its labour market work a 6 day week or 2 days off a fortnight. This is significantly impacted by the requirement to have 2 days off each week (under the modern awards) which would result in overtime payments for many employees.
32. Norfolk Island overtime applied after 40 hours of work. When overtime applied it was paid at 150% for all hours.

Weekend Penalties

33. The biggest concern for employers on the island that has been expressed to me is weekend penalties.
34. As stated in paragraph 31 above, the Island has always operated on weekends which accommodated the incoming and outgoing tourism flights on Saturdays and Sundays.
35. The Island's history does not give Saturday mornings and Sundays any special significance over any other day of the week. In fact, the Island has historically always had "half-days" on Wednesday afternoons and Saturday afternoons and if I had to pick a time, these are the times that would be considered 'inconvenient to work'.

Annual Leave and Annual Leave Loading

36. As explained at paragraph 26, casual employment never really existed on Norfolk Island. All employees were paid an hourly wage and businesses would add an additional amount (I do not have a percentage) on top of the hourly wage to accommodate for annual leave and personal leave. What this meant was that employees were not paid when they were not at work. For example, if an employee took annual leave they would not be paid because that was already incorporated into their hourly wage.
37. Prior to 1 July 2016, annual leave was an entitlement to 3 weeks leave per year. There was no additional 17.5% loading on top of this amount and as explained above, this amount was often incorporated into the hourly wage.
38. The requirement to accrue and receive more annual leave in the last 2 years for businesses has resulted in administrative difficulties in ensuring employees take, receive and accrue the correct amount of leave.
39. In addition to this, now employers have to pay 17.5% loading on top of the leave that remains in the balance. Before 1 July 2018, Norfolk Chamber received large amounts of phone calls from businesses who were wondering if they could decrease this liability by 'cashing out' the "old" annual leave in the balance before the new more costly




requirements came in. Businesses are finding compliance costs across the board from the new system to be a financial burden.

Unpaid Leave

40. Due to the Islands isolated nature and flight times some employees are required to take large amounts of unpaid leave at various times. The Island does not have an operating theatre (or anaesthetist) in the theatre anymore. There is only General Practitioners on the Island. This means women must go to the mainland at least 6 weeks prior to giving birth and other residents need to attend a mainland hospital for any other surgical and other simple procedures that cannot be done on Norfolk. Attending appointments with surgeons and then the surgery can mean an employee is away for themselves or to support a family member for weeks and possibly months at a time.
41. Residents of Norfolk Island tend to help each other and do a lot of volunteer work such as St Johns Ambulance, Mental Health Awareness Group and residents helping the elderly. Another example is Norfolk Island's funeral arrangements when we lose someone on the Island. Funerals and burials are entirely free and this is deeply ingrained in our culture. The Island's residents carry out the tasks in relation to a funeral and burial together.

Public Holidays

42. Public Holidays were typically paid at 200% but only if an employee worked on that day. If they did not work they received their normal pay.
43. As of 1 July 2018, the increase in public holiday wages to 250% (of an already increased minimum wage) will result in many businesses simply not opening on public holidays. This is a serious concern for our tourists who will often come to the Island for the Easter long weekend or the Queen's Birthday long weekend. If local shops, cafes and restaurants and tours are not open tourists will not have an enjoyable experience and are unlikely to come back or tell their friends to visit the island.

Education and understanding to date

44. Between July 2016 and now, the Norfolk Chamber of Commerce Inc learnt about the changes to employment laws through Norfolk Island Regional Council website, Council meetings, Federal Government and Commonwealth public notices in the two Norfolk Island newspapers (One Norfolk Online is through internet and the other is the weekly paper Norfolk Islanders).
45. Since that date the Norfolk Chamber has encouraged its members to talk to Fair Work Ombudsman who have visited Norfolk Island in the last few months (and approximately twice in the last two years). The Norfolk Chamber also encouraged members to use

information online from the NSW Business Chamber and more recently contacted the NSW Business Chamber to ask for help training and educating local businesses about the changes.

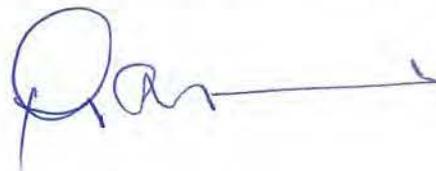
46. The Norfolk Chamber communicates with its members via email, social media and sometimes advertising in the local papers. During the visit by the NSW Business Chamber held presentations and private sessions for businesses on how to choose the relevant modern award, determine wage rates and implement penalties and loadings.
47. Members of the Norfolk Chamber have written to the Administrator on the Island regarding the impact of the modern award system on their business and a representative of the Norfolk Chamber has met with the Australian Administrator to discuss some of the concerns for businesses that were uncovered during the NSW Business Chamber visit to the Island. Annexed and marked 'CEB-3' are copies of members emails and letters to the Administrator notifying the Administrator of their concerns.
48. The Norfolk Chamber has also met with other peak bodies from time to time to discuss the changes including the Council of Elders, Norfolk Island People For Democracy and the Mayor of the Norfolk Island Regional Council. The Norfolk Chamber have also met with businesses who are not members of the Norfolk Island Chamber of Commerce Inc.
49. Many local businesses did not realise the impact of the modern award system until recently as they have been implementing other legislative and regulatory changes to their businesses including PAYG, superannuation and other land and business tax requirements.
50. Prior to the Norfolk Chambers affiliation with the NSW Business Chamber, many businesses on the Island did not have adequate support to comply and learn about the modern award changes to their business. For example, the Island only has a couple of general accountants and lawyers and no human resources or industrial relations experts.

Impact of the modern award system

51. I have received emails, phone calls and had discussions with numerous local businesses who are concerned that their business may not remain viable after the modern award system commences.
52. Businesses have expressed serious concern over the weekend penalty rates and have advised me that they simply do not fit with Norfolk's way of life and labour market. As an island we need to make sure that tourists have a great experience on Norfolk which requires full access to all available service. If the tourists 'product' is reduced so also is the Island's reputation.




53. I am aware that some local businesses have called NSW Business Chamber advice line regarding:
- (a) whether or not they can put individual flexibility agreements in place to combat the minimum engagement requirements, weekend penalty rates and other conditions under modern awards;
 - (b) whether or not employees can perform work for base rates of pay (even if it's a weekend) if it is at the employee's request; and
 - (c) to obtain assistance to work out the award minimum wage (including what level their employees are) so they can do cost modelling and determine whether they need to reduce staff numbers and in some cases, close the business.
54. I know of approximately 30 businesses that have closed prior to 1 July 2018 and there are a large number of businesses that were for sale prior to 1 July 2018. Annexed and marked 'CEB-4' is a copy of a report prepared by Chris Nobbs dated November 2017 that lists the names of these businesses on page 33.
55. Pinetree Tours (a major tour operator on the Island) told me that they have had to make reductions in staff numbers to remain viable and that 35 'casual' and part-time employees were let go a few weeks ago. They have cancelled two shows (Mutiny on the Bounty and The Sound and Light Show) and cancelled the Island Dancers who would normally perform at the Fish Fry. Annexed and marked 'CEB-5' is an email from Pinetree Tours confirming this. Annexed and marked 'CEB-6' is a copy of the wages assessment model that Pinetree Tours prepared to determine the wages that would apply to its employees under the modern award system.
56. I do not believe there has sufficient due diligence in the evaluation process of implementing the Australian employment laws (particularly the modern award system) on Norfolk. Now that local businesses have some understanding of modern awards and their terms and conditions they are in a better position to determine which terms are appropriate and which are not suitable to the Island at all.
57. If Norfolk Island was able to have its own modern award that was relevant to the labour market and the cultural heritage of the Island this would ease some of the financial pressure and burden on businesses so that we can maintain the economy because if they are no employers there will be no employees.
58. From my knowledge, there may be 1 or 2 persons on the Island who have HR experience but this is not usual in our businesses and being able to reference a single award would provide a level of simplicity that would be manageable for Norfolk Island given its unusual circumstances.



CB.

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
608916936	Insprint	26/10/2015	Registered		2899 AUSTRALIA PTY LIMITED				2899	Norfolk Island	Business Address	
613650445	A. G. Electrical	12/05/1999	Registered	Graham	Aaron Graham		50230	23442	2899	Norfolk Island	Business Address	
613646834	Norfolk Air	14/02/2007	Registered	Council	Administration of Norfolk Island			22001	2899	Norfolk Island	Business Address	
613647359	Mini Golf Shop	24/02/1984	Registered	Hain	Agnes Hain	agnes.hain@icloud.co		22552	2899	Norfolk Island	Business Address	
613648632	Norfolk Island Events	16/06/2010	Registered	Hain	Agnes Hain	agnes.hain@icloud.com			2899	Norfolk Island	Business Address	
613649335	CMI	24/07/2009	Registered	Rogers	Alice Rogers				2899	Norfolk Island	Business Address	
613646914	Village Imports	28/04/1983	Registered	Cook	Allan Cook				2899	Norfolk Island	Business Address	
613647206	Assistant Solutions	04/06/2012	Registered	McConnell	Allan McConnell				2899	Norfolk Island	Business Address	
613648203	Kingston Cottages	29/03/2001	Registered	Bataille	Allen Bataille (Ikey)		50376	22529	2899	Norfolk Island	Business Address	
613649586	TechSpecific Consultants	01/10/2004	Registered	Nobbs	Andre Nobbs & Michael Donohue				2899	Norfolk Island	Business Address	
613651399	Island Plumbing & Gas	20/09/2000	Registered	Barnett	Andrew Barnett			50304	2899	Norfolk Island	Business Address	
613649559	Sweeties Chocolate Factory	22/06/2016	Registered	Maxwell	Andrew Maxwell & Raewyn Maxwell				2899	Norfolk Island	Business Address	
	Norfolk Island Waste Management			Maxwell	Andrew Maxwell & Raewyn Maxwell							
613649880	Service	23/05/2002	Registered						2899	Norfolk Island	Business Address	
613650516	Norfolk Island Golf Pro Shop	10/04/2006	Registered	Umalaufu	Andrew Umalaufu & Kylie Umalaufu				2899	Norfolk Island	Business Address	
613646932	Romance Genie	18/03/2014	Registered	Donde	Angela Donde				2899	Norfolk Island	Business Address	
613647500	The Bounty Centre	04/05/1982	Registered	Hain	Agnes Hain	agnes.hain@icloud.co		22552	2899	Norfolk Island	Business Address	
613649362	Hamish's Cottages	23/09/2013	Registered	Macpherson	Anna MacPherson				2899	Norfolk Island	Business Address	
613646692	Norfolk Obsession	04/03/2014	Registered	Allen	Anthony Allen				2899	Norfolk Island	Business Address	
613647224	Norfolk Island Natural Therapies Clinic	31/03/2014	Registered	Allen	Anthony Allen				2899	Norfolk Island	Business Address	
613648347	Ball Bay Farm and Equine Centre	19/05/2011	Registered	Cook	Anthony Cook	shopping@	50923	22923	2899	Norfolk Island	Business Address	
613650007	Pizazz	31/10/2013	Registered	Cook	Anthony Cook	shopping@	50923	22923	2899	Norfolk Island	Business Address	
613651326	Lavendula Garden Cottages	07/08/2002	Registered	Gondon	Anthony Gondon & Jan Gondon				2899	Norfolk Island	Business Address	
613646450	Piccadilly	23/02/1978	Registered	Martinez	Aristides Martinez & Valerie Martinez		50266	22514	2899	Norfolk Island	Business Address	
613648365	Life As A Convict	05/06/2014	Registered	Evans	Arthur Evans		50755	23611	2899	Norfolk Island	Business Address	
613648507	Pitcairn Pioneers	05/06/2014	Registered	Evans	Arthur Evans		50755	23611	2899	Norfolk Island	Business Address	
613648936	History in the Making Tour	03/09/2013	Registered	Evans	Arthur Evans		50755	23611	2899	Norfolk Island	Business Address	
613649022	Arthur's Sharpening Services	03/09/2013	Registered	Evans	Arthur Evans		50755	23611	2899	Norfolk Island	Business Address	
613646996	Crackers	13/03/2012	Registered	Attabb	Attabb Pty Ltd				2899	Norfolk Island	Business Address	
615860663	Discover Our World (Norfolk Island)	16/11/2016	Registered	Avondale	AVONDALE PTY LTD				2899	Norfolk Island	Business Address	
	The Commandant's Dinner (Norfolk Island)			Avondale	AVONDALE PTY LTD							
615861071	Island)	16/11/2016	Registered						2899	Norfolk Island	Business Address	
615862836	Progressive Dinner (Norfolk Island)	16/11/2016	Registered	Avondale	AVONDALE PTY LTD				2899	Norfolk Island	Business Address	
615863280	Traditional Dinner	16/11/2016	Registered	Avondale	AVONDALE PTY LTD				2899	Norfolk Island	Business Address	
615863762	Colleen McCullough Home Tour	16/11/2016	Registered	Avondale	AVONDALE PTY LTD				2899	Norfolk Island	Business Address	
615864429	Lantern Lit Ghost Tour	16/11/2016	Registered	Avondale	AVONDALE PTY LTD				2899	Norfolk Island	Business Address	
615864885	Convict Kingston Tour	16/11/2016	Registered	Avondale	AVONDALE PTY LTD				2899	Norfolk Island	Business Address	
615865328	Breakfast Bush Walk (Norfolk Island)	16/11/2016	Registered	Avondale	AVONDALE PTY LTD				2899	Norfolk Island	Business Address	
615865579	Island Fish Feast	17/11/2016	Registered	Avondale	AVONDALE PTY LTD				2899	Norfolk Island	Business Address	
615865837	Art Trail	17/11/2016	Registered	Avondale	AVONDALE PTY LTD				2899	Norfolk Island	Business Address	
615866085	Norfolk Today Tour	17/11/2016	Registered	Avondale	AVONDALE PTY LTD				2899	Norfolk Island	Business Address	
613647742	Les Quintal's Baunti Escapes	18/06/2012	Registered	Avondale	AVONDALE PTY. LTD.				2899	Norfolk Island	Business Address	
613647859	Les Quintal's Baunti Excursions	18/06/2012	Registered	Avondale	AVONDALE PTY. LTD.				2899	Norfolk Island	Business Address	
613647733	Norfolk Island Tax Professionals	04/04/2011	Registered	Grube	Belinda Grube		50745	22883	2899	Norfolk Island	Business Address	
613647840	Income tax Professionals	04/04/2011	Registered	Grube	Belinda Grube		50745	22883	2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
613647939	Tax Professionals	04/04/2011	Registered	Grube	Belinda Grube		50745	22883	2899	Norfolk Island	Business Address	
613648561	Norfolk Island Tax & Accounting	08/08/2012	Registered	Grube	Belinda Grube		50745	22883	2899	Norfolk Island	Business Address	
613648614	Norfolk Island Business Solutions	27/03/2003	Registered	Grube	Belinda Grube		50745	22883	2899	Norfolk Island	Business Address	
613648767	NISA	11/12/1978	Registered	Grube	Belinda Grube		50745	22883	2899	Norfolk Island	Business Address	
613650687	Norfunk Recycled	31/12/2014	Registered	Thomas	Ben Thomas & Abigail Smith				2899	Norfolk Island	Business Address	
613651531	Benjamins	01/12/2000	Registered	Benjamins	Benjamins Pty Limited				2899	Norfolk Island	Business Address	
613646941	Fletcher Christian Auto Rentals	16/02/2004	Registered	Christian-Bailey	Bernard Christian-Bailey		50049	22411	2899	Norfolk Island	Business Address	
613651497	Fletcher Christian Apartments	11/03/1977	Registered	Christian-Bailey	Bernard Christian-Bailey & Mary Christian-Bailey		50049	22411	2899	Norfolk Island	Business Address	
613651451	Norfolk Premium Holidays	06/11/2000	Registered	Wheeler	Beverley Wheeler				2899	Norfolk Island	Business Address	
613646674	Bill's Paintworx	07/02/2011	Registered	Donald	Bill Donald				2899	Norfolk Island	Business Address	
613647813	Cascade Soft Drinks	09/03/2001	Registered	Forrest	Brad Forrester		57656	22838	2899	Norfolk Island	Business Address	
613647902	Norfolk Island Liquors	09/03/2001	Registered	Forrest	Brad Forrester		57656	22838	2899	Norfolk Island	Business Address	
613647162	Se Moosa Bus	08/03/2005	Registered	Tierney	Bradley Tierney		50839		2899	Norfolk Island	Business Address	
613649773	Tierney Electrical	25/05/1994	Registered	Tierney	Bradley Tierney		50839		2899	Norfolk Island	Business Address	
613647984	Building Fitness	12/04/2016	Registered	McRitchie	Brandt McRitchie				2899	Norfolk Island	Business Address	
613647288	Cross Cut Construction	04/03/2003	Registered	McRitchie	Brandt McRitchie & Cristina McRitchie				2899	Norfolk Island	Business Address	
613649273	Norfolk Organics	15/06/2016	Registered	King	Brendon King				2899	Norfolk Island	Business Address	
613647706	Pineridge Crafts	15/04/2004	Registered	Jones	Brent Jones				2899	Norfolk Island	Business Address	
613647331	Auwas Island Holiday Home	04/06/2015	Registered	Francis	Brett Francis & Kathleen Francis				2899	Norfolk Island	Business Address	
613649228	Selwyn Pine Estates	26/03/1999	Registered	Martin	Brett Martin				2899	Norfolk Island	Business Address	
613649148	Adams Plumbing	29/06/2009	Registered	Adams	Brian Adams		50339	22451	2899	Norfolk Island	Business Address	
613649291	Oceanview Apartments	08/04/1999	Registered	Bates	Brian Bates & Brenda Bates		50519	22119	2899	Norfolk Island	Business Address	
613648123	Hillyville	05/05/2005	Registered	Buffett	Brian Buffet & Leanne Buffet		51236	23545	2899	Norfolk Island	Business Address	
613650865	Cascade Crafts	06/11/1991	Registered	McGrath	Brian McGrath & Coral McGrath				2899	Norfolk Island	Business Address	
613649406	Callam Court Holiday Apartments	03/07/1991	Registered	Purss	Brian Purss & Jeanette Purss				2899	Norfolk Island	Business Address	
613646530	Bronny's Quirky Arts	21/01/2016	Registered	Robertson	Bronwyn Robertson				2899	Norfolk Island	Business Address	
613648598	Paddock Wood	26/10/2015	Registered	Watson	Brooke Watson & Joanna Raikes				2899	Norfolk Island	Business Address	
613646432	Mokeabout	21/01/2016	Registered		Bruce McCowan & David Haberfeld & Tracey Martin & Fiona Anderson				2899	Norfolk Island	Business Address	
611479791	B G TAYLOR AND ASSOCIATES	24/03/2016	Registered	Taylor	BRUCE TAYLOR				2899	Norfolk Island	Business Address	
613647591	BG Taylor and Associates	23/03/2016	Registered	Taylor	Bruce Taylor				2899	Norfolk Island	Business Address	
613647911	Governor's Lodge Resort	14/04/2005	Registered	Walker	Bruce Walker & Ann Walker				2899	Norfolk Island	Business Address	
613646950	Governor's Lodge	11/03/2005	Registered	Walker	Bruce Walker & Annie Walker				2899	Norfolk Island	Business Address	
613648016	Bedrock Electrical	29/04/2009	Registered	Adams	Byron Adams		50240	22678	2899	Norfolk Island	Business Address	
613650061	Bedrock	22/12/2011	Registered	Adams	Byron Adams		50240	22678	2899	Norfolk Island	Business Address	
613647671	Norfolk Island Dial A Digger	10/07/2015	Registered	Henderson	Caine Henderson				2899	Norfolk Island	Business Address	
613648196	Camerahouse	10/05/1985	Registered	Cameralines	Cameralines Pty Ltd				2899	Norfolk Island	Business Address	
619698878	CAMPBELL PLUMBING CO	17/06/2017	Registered	Davis	CAMPBELL DAVIS				2899	Norfolk	Business Address	
613646727	Norfolk Island Veterinary Surgery	23/02/2010	Registered	Nobbs	Candice Nobbs				2899	Norfolk Island	Business Address	
613649602	Valley Fruits	24/08/2009	Registered	Buffett	Cara Buffet				2899	Norfolk Island	Business Address	
613646638	Island Home Trader	29/01/2016	Registered	Dale	Carla Dale				2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
					CAROLYN GARDNER BULL, GRAHAM ROBERT BULL, LESLEY GARDNER BULL, NANCY BULL				2899	Norfolk Island	Business Address	
23131508	WHISTLEWOOD CRAFT SKILLS	09/05/1990	Registered						2899	Norfolk Island	Business Address	
613647715	Avanti Hairdressing	31/03/2008	Registered	Andrew	Cassie Andrew		55191	22692	2899	Norfolk Island	Business Address	
613651559	C E O'Sullivan & Associates	29/03/1977	Registered	O'Sullivan	Catherine O'Sullivan				2899	Norfolk Island	Business Address	
613650632	Focus Fashions	03/12/1980	Registered	O'Sullivan	Cathy O'Sullivan				2899	Norfolk Island	Business Address	
	Norfolk Island Museum of Transport & Technology			Ion-Robinson	Cedric Ion-Robinson							
613646745	Technology	21/02/2012	Registered	Robinson					2899	Norfolk Island	Business Address	
613651022	Robinson Firearms	04/07/2000	Registered	Ion-	Cedric Ion-Robinson				2899	Norfolk Island	Business Address	
613651291	Shearwater Scenic Villas	30/07/2002	Registered	Clarke	Charisse Clarke				2899	Norfolk Island	Business Address	
613649175	Madisons Jewellers	14/06/2016	Registered	Blackwell	Charles Blackwell & Kyla Blackwell		56300	22952	2899	Norfolk Island	Business Address	
				Christian-Bailey	Charles Christian-Bailey							
613648310	Christian-Bailey Agencies	22/02/1999	Registered	Bailey					2899	Norfolk Island	Business Address	
				Hamilton-Irvine	Cherie Hamilton-Irvine							
613649059	Dolphin Inn	01/02/1977	Registered	Irvine					2899	Norfolk Island	Business Address	
				Hamilton-Irvine	Cherie Hamilton-Irvine							
613649568	The Inn Group	25/10/1990	Registered	Irvine					2899	Norfolk Island	Business Address	
				Christian-Bailey	Christian - Bailey Agencies Pty Ltd							
613650758	The Buiding Centre	29/10/2009	Registered	Bailey					2899	Norfolk Island	Business Address	
				Christian-Bailey	Christian - Bailey Agencies Pty Ltd							
613650810	The Hospitality Shop	29/10/2009	Registered	Bailey					2899	Norfolk Island	Business Address	
613647046	2899 Design	16/02/2007	Registered	Nisbet	Christina Nisbet				2899	Norfolk Island	Business Address	
613650178	Island Creation's	06/11/2014	Registered	Pauling	Christine Pauling				2899	Norfolk Island	Business Address	
613646405	C.J Constructions	08/02/2013	Registered	Judd	Clinton Judd				2899	Norfolk Island	Business Address	
613646852	Rocky Point Lodge	10/02/2011	Registered	Clura	CLURA PTY LTD				2899	Norfolk Island	Business Address	
613647260	Norfolk Pine Souvenirs	25/11/2002	Registered	Crane	Colleen Crane				2899	Norfolk Island	Business Address	
	Pegasus Heart of Norfolk Equine			Vincent	Colleen Vincent							
613646978	Education	11/03/2009	Registered						2899	Norfolk Island	Business Address	
613649111	WILD HIHI	13/07/2005	Registered	Parsons	Corinne Parsons				2899	Norfolk Island	Business Address	
613834825	Stormy's Mechanical Repairs	23/07/2016	Registered	Randall	CRAIG RANDALL				2899	Norfolk Island	Business Address	
613646398	Stormy's	21/01/2011	Registered	Randall	Craig Randall & Katrina Randall				2899	Norfolk Island	Business Address	
613647564	Minischool	03/07/2013	Registered	McRitchie	Cristina McRitchie				2899	Norfolk Island	Business Address	
614124800	MINISCHOOL PRESCHOOL	08/08/2016	Registered	McRitchie	CRISTINA MCRITCHIE				2899	Norfolk Island	Business Address	
613647920	Pacific Tours	11/05/2010	Registered		Cumberland Resort and Spa Pty Ltd				2899	Norfolk Island	Business Address	
613648552	Cumberland Resort and Spa	31/05/2007	Registered		Cumberland Resort and Spa Pty Ltd				2899	Norfolk Island	Business Address	
613651488	Cascade Garden Apartments	19/09/2002	Registered		Curragold Pty Ltd & Barry Hyatt				2899	Norfolk Island	Business Address	
613387278	Daydreamer Apartments	30/06/2016	Registered	Evans	D.H EVANS & G.J EVANS				2899	Norfolk Island	Business Address	
613387581	Whispering Pines	30/06/2016	Registered	Evans	D.H EVANS & G.J EVANS				2899	Norfolk Island	Business Address	
613420438	Borry's Rental Cars	01/07/2016	Registered	Evans	D.H EVANS & G.J EVANS				2899	Norfolk Island	Business Address	
613650623	Tropic Bird Norfolk Island Arts & Crafts	19/12/2014	Registered	Snell	Damien Snell				2899	Norfolk Island	Business Address	
613647779	Avoca Mushrooms	21/08/2015	Registered	Nicolai	Darren Nicolai				2899	Norfolk Island	Business Address	
613648481	Avoca Painting & Mushrooms	19/07/2012	Registered	Nicolai	Darren Nicolai				2899	Norfolk Island	Business Address	
613647680	Norfolk Island Realty	23/03/2016	Registered	Bell	David Bell & Coral Bell		50701	22240	2899	Norfolk Island	Business Address	
613648409	Shiralee Executive Cottages	21/04/1986	Registered	Bell	David Bell & Coral Bell		50701	22240	2899	Norfolk Island	Business Address	
613650696	The Strand Arcade	31/10/1991	Registered	Bell	David Bell & Coral Bell		50701	22240	2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
613646469	Charter Marine (Norfolk Island)	09/01/2001	Registered	Bigg	David Bigg & Jacquelyn Bigg		50327	23514	2899	Norfolk Island	Business Address	
613648856	Fix it Dave	02/09/2013	Registered	Brown	David Brown				2899	Norfolk Island	Business Address	
613649577	Tintoela of Norfolk	02/05/1997	Registered	Evans	David Evans & Laurie Evans				2899	Norfolk Island	Business Address	
	Arc Up Welding, Fabricating and Panel			Fraser	David Fraser							
613649013	Beating	04/10/2012	Registered						2899	Norfolk Island	Business Address	
613930313	ARC UP WELDING NORFOLK ISLAND	30/07/2016	Registered	Fraser	DAVID FRASER				2899	Norfolk Island	Business Address	
613651282	Eldoo Hire Cars	06/08/1999	Registered	Haberfield	David Haberfield & Fiona Anderson				2899	Norfolk Island	Business Address	
613649737	Norfolk Island Mechanical	24/06/2016	Registered	Jeffreys	David Jeffreys & Carla Dale				2899	Norfolk Island	Business Address	
613649648	Dave Pitcher's Joinery	21/07/1992	Registered	Pitcher	David Pitcher				2899	Norfolk Island	Business Address	
613646601	Aataren Norfolk Island Villas	14/02/2013	Registered	Porter	David Porter & Jo Porter				2899	Norfolk Island	Business Address	
613544433	Norfolk Post	08/07/2016	Registered	Sanders	DAVID SANDERS				2899	Norfolk Island	Business Address	
613648070	Norfolk Island Stationers	28/01/1977	Registered	Sanders	David Sanders				2899	Norfolk Island	Business Address	
613648285	The Trading Post	28/01/1977	Registered	Sanders	David Sanders				2899	Norfolk Island	Business Address	
613650909	The Trading Post Newsagency	19/08/1985	Registered	Sanders	David Sanders				2899	Norfolk Island	Business Address	
613650249	Mission Road Agriconics	15/09/2009	Registered	South	David South & Bronwyn South				2899	Norfolk Island	Business Address	
613649344	Pinnacles Takeaways	04/08/2011	Registered	Graham	Dean Graham				2899	Norfolk Island	Business Address	
613647439	Sirocco	22/03/2011	Registered	Robinson	De-anne Robinson				2899	Norfolk Island	Business Address	
613647144	Norfolk Professional Centre	01/02/1993	Registered	McCowan	Debbie Nobbs-McCowan				2899	Norfolk Island	Business Address	
613651335	Paw Paw's Pump Shed	29/12/1994	Registered	McCowan	Debbie Nobbs-McCowan				2899	Norfolk Island	Business Address	
613648650	Fired Passion Gallery & Giftware	26/08/2013	Registered	Adams	Debby Adams				2899	Norfolk Island	Business Address	
613646683	Garske Chiropractic	21/02/2012	Registered	Gasek	Deborah Gaske				2899	Norfolk Island	Business Address	
613646343	Island Treasures	03/01/2013	Registered	Hammond	Debra Hammond				2899	Norfolk Island	Business Address	
613646772	Highlands	02/02/2016	Registered	Cristofaro	Deirdre Cristofaro				2899	Norfolk Island	Business Address	
613646656	Eco Norfolk	29/01/1996	Registered	Quintal	Denise Quintal				2899	Norfolk Island	Business Address	
613650605	Paradise Permaculture	17/11/2004	Registered	Greenwood	Derek Greenwood				2899	Norfolk Island	Business Address	
613648221	B.C Excavations	26/04/2004	Registered	Boudan	Desire Boudan				2899	Norfolk Island	Business Address	
613649031	Riggers Retreat	24/07/2014	Registered	Adams	Diana Adams		50959	22241	2899	Norfolk Island	Business Address	
613648883	Riggers Home & Gardens	01/06/2016	Registered	Adams	Diane Adams		50959	22241	2899	Norfolk Island	Business Address	
613651380	Maxs	15/02/1977	Registered	Diegelmans	Diegelmans Import Agencies Pty Ltd				2899	Norfolk Island	Business Address	
613649755	Max's Norfolk Island	01/07/1986	Registered	Diegelmans	Diegelmans Import Agencies Pty Ltd				2899	Norfolk Island	Business Address	
613648776	Island Music	27/03/2000	Registered	Reynolds	Donald Reynolds & Maree Reynolds				2899	Norfolk Island	Business Address	
613648829	Christian's Glaas Botham Boet	27/03/2000	Registered	Reynolds	Donald Reynolds & Maree Reynolds				2899	Norfolk Island	Business Address	
613650409	Quiltnorfolk	25/09/2009	Registered	Pearson	Donna Pearson & Rowena Massicks				2899	Norfolk Island	Business Address	
				Edward	Duncan Edward & Brian Adams & Ernest Nobbs				2899	Norfolk Island	Business Address	
613647519	Norfolk Island Stevedores Association	07/05/1990	Registered						2899	Norfolk Island	Business Address	
613651504	Endeavour Lodge	24/11/1997	Registered	Evans	Duncan Evans & Gaewyn Evans				2899	Norfolk Island	Business Address	
613649282	Norfolk Island Pest Control	02/07/1991	Registered	Gray	Duncan Gray & Terry Gray				2899	Norfolk Island	Business Address	
613649826	Duncans Jewellers	19/09/2006	Registered		Duncan Sanderson				2899	Norfolk Island	Business Address	
616662287	CASCADE KUSTOM	06/01/2017	Registered		DYLAN QUINTAL CHRISTIAN				2899	Norfolk Island	Business Address	
613646558	Central Service Station	23/01/1980	Registered		Earl Vincent & Colleen Vincent				2899	Norfolk Island	Business Address	
613650089	Frangipani @ Shortridge	24/10/2014	Registered		Elaine McNamara & Glen McNamara				2899	Norfolk Island	Business Address	
613646870	Libbys Island Bookkeeping Services	13/03/2014	Registered		Elizabeth Churchyard				2899	Norfolk Island	Business Address	
613881271	Norfolk Island Driver Training	26/07/2016	Registered		ELIZABETH HEWSON				2899	Norfolk Island	Business Address	
616940553	Island Garden Tours	20/01/2017	Registered		ELIZABETH HEWSON				2899	Norfolk Island	Business Address	
613648918	The Tin Sheds - Norfolk Island	13/07/2011	Registered		Elizabeth Nowell				2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
613649728	Te - Gadda Marketing & Management	08/09/2014	Registered		Elizabeth Nowell				2899	Norfolk Island	Business Address	
613647608	Culla & Co	27/03/1987	Registered		Elton Graham				2899	Norfolk Island	Business Address	
613647573	Chom Cha Ba - The Taste of Asia	10/04/2014	Registered		Emblements Pty Ltd				2899	Norfolk Island	Business Address	
613650338	Chom Cha Ba	19/10/2006	Registered		Emblements Pty Ltd				2899	Norfolk Island	Business Address	
613648150	The Hilli Goat	06/05/2014	Registered		Emily Ryves				2899	Norfolk Island	Business Address	
613651371	Mulberry Valley Hideaway	14/08/2002	Registered		Eric Craig				2899	Norfolk Island	Business Address	
613647895	Norfolk Island Historical Society	19/05/1990	Registered		Eric Craig & Moyna Craig				2899	Norfolk Island	Business Address	
613650981	Woodfired Pizza Pizza	04/07/2002	Registered		Eric Sweeney & Tracey Sweeney				2899	Norfolk Island	Business Address	
613650212	Christian Plumbing	28/04/1999	Registered		Ernest Christian				2899	Norfolk Island	Business Address	
613649424	Framed	30/07/2009	Registered		Eve Semple & Doug Creek				2899	Norfolk Island	Business Address	
613649504	Signed	30/07/2009	Registered		Eve Semple & Doug Creek				2899	Norfolk Island	Business Address	
613646969	Healing Hands	01/03/2006	Registered		Fenella Evans				2899	Norfolk Island	Business Address	
619441244	The Norfolk Store	31/05/2017	Registered		FINLEY BARLOW				2899	Norfolk Island	Business Address	
613647153	Craft & Things	13/01/2003	Registered		Fred Wong				2899	Norfolk Island	Business Address	
613647993	Anson Coffee	11/05/2006	Registered		Fred Wong				2899	Norfolk Island	Business Address	
613649399	Asia-Pacific Import & Export Co.	14/06/1985	Registered		Fred Wong & Dennie Wong				2899	Norfolk Island	Business Address	
613649942	Colony Chinese Restaurant	09/10/1980	Registered		Fred Wong & Dennie Wong				2899	Norfolk Island	Business Address	
613650374	A.B.C. Hobby Centre	22/09/1987	Registered		Fred Wong & Dennie Wong				2899	Norfolk Island	Business Address	
614342362	PFM Maintenance	26/08/2016	Registered		GARRETH TURNER				2899	Norfolk Island	Business Address	
613651540	Park Land Estate	05/12/2000	Registered		Gary Richards & Lynne Adams				2899	Norfolk Island	Business Address	
613651415	Photopress International	20/09/1984	Registered		Gary Robertson				2899	Norfolk Island	Business Address	
613651460	Local Images Gallery & Norfolk Shirts	19/09/2002	Registered		Gary Robertson				2899	Norfolk Island	Business Address	
613650856	Norfolk Island Scenic & Historical Tours	05/12/1988	Registered		Gary Snell & Dene Snell & Lisle Snell				2899	Norfolk Island	Business Address	
613647626	Gary's Tv and Video	07/03/2000	Registered		Gary Summerscales				2899	Norfolk Island	Business Address	
613650347	RPM Media	27/08/2008	Registered		Gary Summerscales				2899	Norfolk Island	Business Address	
613651308	T.V. Norfolk - TVNI	01/09/2000	Registered		Gary Summerscales				2899	Norfolk Island	Business Address	
613648329	Norfolk Island Law Society	06/05/2008	Registered		Geoff Atkinson				2899	Norfolk Island	Business Address	
613648534	Norfolk Island Community Legal Centre	29/04/2016	Registered		Geoffrey Atkinson				2899	Norfolk Island	Business Address	
613647724	GJB Trading Company	06/05/2010	Registered		Geoffrey Bennett				2899	Norfolk Island	Business Address	
613648276	Eugrey Partnership	27/04/2016	Registered		Geoffrey Dunlop & Caroline Dunlop				2899	Norfolk Island	Business Address	
613648687	Blairmore Farming	12/05/2016	Registered		Geoffrey Dunlop & Caroline Dunlop				2899	Norfolk Island	Business Address	
613648061	Bedford CA	15/04/2016	Registered		Geoffrey Hartigan				2899	Norfolk Island	Business Address	
613651237	GP Services	22/10/2007	Registered		George Parsons				2899	Norfolk Island	Business Address	
613647877	Cheers Patisserie	03/09/2015	Registered		Georgy Brien				2899	Norfolk Island	Business Address	
607782374	CHEERS PATISSERIE	29/09/2015	Registered		GEORGY CORNELIA BRIEN				2899	Norfolk Island	Business Address	
613648892	Pacifica	18/04/1989	Registered		Gerald Evans				2899	Norfolk Island	Business Address	
613649924	Coast Norfolk Island	02/10/2014	Registered		Gerald Evans				2899	Norfolk Island	Business Address	
613651120	Burnt Pine Pharmacy	03/12/2008	Registered		Geraldine Hall				2899	Norfolk Island	Business Address	
613649219	Hillie Lillies	17/08/1998	Registered		Gerri Downie & Nancy Menzies				2899	Norfolk Island	Business Address	
613351438	JACKSON'S FISHING CHARTERS	07/07/2016	Registered		GILBERT JACKSON				2899	Norfolk Island	Business Address	
613649246	Reflections of Norfolk Island	15/10/2012	Registered		Gillian Brown				2899	Norfolk Island	Business Address	
613651013	Norfolk Island Visitor Information Centre	27/09/1994	Registered		Glen Buffet				2899	Norfolk Island	Business Address	
613648132	Computer Guy	21/06/2012	Registered		Glen Christian				2899	Norfolk Island	Business Address	
613648972	Casa Kui	01/02/1977	Registered		Glenhaven Invest P/L,				2899	Norfolk Island	Business Address	
613646905	Swiss House	30/06/1978	Registered		Glenhaven Investment Pty Ltd				2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
613647751	Norfolk Island Conference and Events	17/07/2013	Registered		Go Norfolk Pty Ltd				2899	Norfolk Island	Business Address	
613649086	The Shoebox	05/04/2000	Registered		Graeme Rayner & Cheryl Rayner				2899	Norfolk Island	Business Address	
					Graham Cock & Darren Christian							
613648543	Norfolk Island Mowing & Garden Services	27/04/2005	Registered						2899	Norfolk Island	Business Address	
613649684	Big Surf	18/07/2008	Registered		Greame Rayner & Cheryl Rayner				2899	Norfolk Island	Business Address	
613649522	The Butcher In The Mall	22/11/2012	Registered		Greg Oliver & Jolene Oliver				2899	Norfolk Island	Business Address	
613648794	The Aviators Club	23/06/2014	Registered		Greg Prechett				2899	Norfolk Island	Business Address	
613647760	Norfolk Island Tobacco	28/04/2014	Registered		Gregg Prechett				2899	Norfolk Island	Business Address	
613647868	Norfolk Island Holiday Rentals	28/04/2014	Registered		Gregg Prechett				2899	Norfolk Island	Business Address	
613648043	Norfolk Island Holiday Specialists	02/05/2014	Registered		Gregg Prechett				2899	Norfolk Island	Business Address	
613650963	Norfolk Plumbing	26/07/1984	Registered		Gregory Horrocks & Peter Horrocks				2899	Norfolk Island	Business Address	
613646370	Mad Oly Imports	20/01/2016	Registered		Gregory Oliver				2899	Norfolk Island	Business Address	
613649102	Norfolk Island Professional Services	07/07/2004	Registered		Guy Edward				2899	Norfolk Island	Business Address	
612505674	Evans Above NI	19/05/2016	Registered		H.P EVANS & R EVANS				2899	Norfolk Island	Business Address	
613651353	Haydanblair House	05/12/2001	Registered		Hamish Martin				2899	Norfolk Island	Business Address	
613651406	Panorama Seaside Apartments	25/09/2000	Registered		Hamish Martin				2899	Norfolk Island	Business Address	
613647304	Metamorphosis Tattoo Studio	21/03/2011	Registered		Harvey McCoy				2899	Norfolk Island	Business Address	
613647662	The Chill Zone	14/04/2014	Registered		Hayley Evans				2899	Norfolk Island	Business Address	
613649415	Dino's Restaurant	29/04/2002	Registered		Helen Bartholomew & Dean Bosley				2899	Norfolk Island	Business Address	
					Helen Jackson & Gilbert Jackson & Troy Jackson				2899	Norfolk Island	Business Address	
613650892	Jackson's Fishing Charters	20/11/2009	Registered		Heritage Hill Investments PL				2899	Norfolk Island	Business Address	
613649353	Heritage Hill	31/10/2012	Registered		Ian Anderson & Monica Anderson				2899	Norfolk Island	Business Address	
613646549	World Traders	03/05/1978	Registered		Ian Anderson & Monica Anderson				2899	Norfolk Island	Business Address	
613651166	Ferny Lane Theatre	15/10/2007	Registered		Ian Webb & Debra Simpson				2899	Norfolk Island	Business Address	
613651255	Jes Himii	30/06/2003	Registered		Irvines Pty Ltd				2899	Norfolk Island	Business Address	
613648641	Hibiscus Apartments	20/08/2012	Registered		Irvines Pty Ltd				2899	Norfolk Island	Business Address	
613650525	Hibiscus Hire Cars	31/08/2007	Registered		J.M COLDWELL & A.D EVANS				2899	Norfolk Island	Business Address	
611561392	NORFOLK A&J	30/03/2016	Registered		Jack Marges & Caroline Silch				2899	Norfolk Island	Business Address	
613651086	Golden Orb Bookshop & Cafe	05/10/2007	Registered		Jade Pty Ltd				2899	Norfolk Island	Business Address	
613648696	Paton Place	16/07/1979	Registered		James Cusack				2899	Norfolk Island	Business Address	
613647582	CFT Security	01/07/2015	Registered		James Edward				2899	Norfolk Island	Business Address	
613646629	Ina'ai Entertainment	11/03/2015	Registered		JAMES EDWARD				2899	Norfolk Island	Business Address	
	NORFOLK ISLAND WATERSIDE WORKERS											
616947132	ASSOCIATION	28/01/2017	Registered		James Griffith				2899	Norfolk Island	Business Address	
613648301	Norfolk Alarms	07/07/1998	Registered		James Griffith				2899	Norfolk Island	Business Address	
613649200	Norfolk Electrical	02/06/1995	Registered		James Tavener & Alexis Tavener				2899	Norfolk Island	Business Address	
613649675	Taveners Farm	11/04/2003	Registered		James Vote				2899	Norfolk Island	Business Address	
613647117	The EcoMan	23/04/2015	Registered		JANNICA CORNELISSEN				2899	Norfolk Island	Business Address	
619326411	BEAUTIQUE NORFOLK ISLAND	08/06/2017	Registered		Jason Thomas				2899	Norfolk Island	Business Address	
613649004	Norfolk Saltwater Charters	18/07/2011	Registered		Jason Thomas & Anna Thomas				2899	Norfolk Island	Business Address	
613651102	Norfolk Land & Sea	14/10/1994	Registered		JENNIPHER JAUCZIUS				2899	Norfolk Island	Business Address	
617660330	Norfolk Art Adam Jauczius	27/02/2017	Registered		JM Coldwell & AD Evans				2899	Norfolk Island	Business Address	
613647537	Aata Orn	21/03/2005	Registered		JM Coldwell & AD Evans				2899	Norfolk Island	Business Address	
613647822	Norfolk Seeds	01/04/2008	Registered		JMalt Holdings Pty Ltd				2899	Norfolk Island	Business Address	
613646325	Norfolk Industries	13/01/2011	Registered						2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
613647797	Advance Hire Cars	07/04/1992	Registered		JMalt Holdings Pty Ltd				2899	Norfolk Island	Business Address	
613650730	Cobbys of Crystal Pool	21/09/2007	Registered		JMalt Holdings Pty Ltd				2899	Norfolk Island	Business Address	
613650936	Advance Hire Cars & Imports (LMVD)	24/07/1997	Registered		Jmalt Holdings Pty Ltd				2899	Norfolk Island	Business Address	
613649862	The Bounty Lodge Mobile Catering	24/06/2016	Registered		Joanne Elliot & Enie Madden				2899	Norfolk Island	Business Address	
613649933	The Bounty Lodge	24/06/2016	Registered		Joanne Elliot & Enie Madden				2899	Norfolk Island	Business Address	
613651344	Bounty Lodge Apartments	15/09/2000	Registered		Joanne Elliott				2899	Norfolk Island	Business Address	
					Joanne Elliott & Enie Madden							
613648025	Norfolk Island Leagues Club Grill & Bistro The Bounty Lodge Restaurant & Breakfast	20/06/2012	Registered		Joanne Elliott & Enie Madden				2899	Norfolk Island	Business Address	
613649899	Cafe	09/09/2009	Registered						2899	Norfolk Island	Business Address	
615224121	Traditions Norfolk Island	07/10/2016	Registered		JODIE WILLIAMS				2899	Norfolk Island	Business Address	
613647297	Rusty's Quality Meats	24/03/2009	Registered		Joel Reeves & Joel Reeves				2899	Norfolk Island	Business Address	
613648169	Joel's Cafe & Restaurant	17/09/2015	Registered		Joel Tester & Mary Tester				2899	Norfolk Island	Business Address	
613650294	Norfolk Film Productions	04/12/1990	Registered		John Anderson				2899	Norfolk Island	Business Address	
613650034	Norfolk Island Conservation Society	30/05/1994	Registered		John Anderson & Florence Anderson				2899	Norfolk Island	Business Address	
613646281	McIntyres	02/01/2001	Registered		John Brown				2899	Norfolk Island	Business Address	
613646487	JCB Cabinets	15/01/2003	Registered		John Christian-Bailey				2899	Norfolk Island	Business Address	
613646496	Forrester Court	31/01/2005	Registered		John Forrester & Bradley Forrester				2899	Norfolk Island	Business Address	
613650098	Seadrone Technology	28/06/2016	Registered		John Griffith				2899	Norfolk Island	Business Address	
613647215	Kentia Holiday Accommodation	02/04/2013	Registered		John Grose & Robyn Grose				2899	Norfolk Island	Business Address	
613646889	Global Coating Solutions	20/04/2015	Registered		John Huckstep				2899	Norfolk Island	Business Address	
614610767	JAWS of NI	02/09/2016	Registered		JOHN NAGY				2899	Norfolk Island	Business Address	
613650785	Hideaway Retreat	26/09/2005	Registered		John Nobbs				2899	Norfolk Island	Business Address	
613648874	EcoReset Pacifika - Norfolk Island	02/12/2015	Registered		John Wichman				2899	Norfolk Island	Business Address	
613646923	Air Norfolk Travel	28/02/1991	Registered		Joseph Adams				2899	Norfolk Island	Business Address	
613647635	Travelworld Norfolk Island	14/02/2002	Registered		Joseph Adams				2899	Norfolk Island	Business Address	
613651111	Traveland-Norfolk Island	24/06/1996	Registered		Joseph Adams				2899	Norfolk Island	Business Address	
613648838	Cochrane's Carpentry	12/06/2007	Registered		Joyce Cochrane				2899	Norfolk Island	Business Address	
613647251	J M Jarvis Distributors	25/03/1980	Registered		Judith Jarvis				2899	Norfolk Island	Business Address	
613649166	Equality Destination Weddings	01/08/2014	Registered		Julie Atkinson				2899	Norfolk Island	Business Address	
613649960	Hilli Lounge Wine Bar & Restaurant	28/04/2003	Registered		Justine Chilcott & Cameron Feldman				2899	Norfolk Island	Business Address	
613650678	Blue Butterfly	24/11/2006	Registered		Justine Olausen				2899	Norfolk Island	Business Address	
612980579	2Drips Water	15/06/2016	Registered		K.P ADAMS & S.A GARDINER				2899	Norfolk Island	Business Address	
					K5 Enterprises Pty Limited & Shorty's Family Trust							
615906637	Kiernan Agencies	14/11/2016	Registered		K5 Enterprises Pty Limited & Shorty's Family Trust				2899	Norfolk Island	Business Address	
615908097	PK Electrical	14/11/2016	Registered		K5 ENTERPRISES PTY LTD				2899	Norfolk Island	Business Address	
616103845	Celtic Shipping Services	24/11/2016	Registered		Karina Robinson				2899	Norfolk Island	Business Address	
613649040	Pioneer Chinese Emporium	14/06/2016	Registered		Karina Robinson				2899	Norfolk Island	Business Address	
613650169	The Pioneers	15/11/2013	Registered		Kate Lemerle				2899	Norfolk Island	Business Address	
90760160	CHRYSALIS PSYCHOLOGICAL SERVICES	05/01/2000	Registered		Kate Lemerle				2899	Norfolk Island	Business Address	
124446082	CHRYSALIS WELLNESS SERVICES INSTITUTE FOR APPLIED POSITIVE	29/03/2007	Registered		KATE LEMERLE							
169821872	PSYCHOLOGY	04/06/2014	Registered						2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
	ELITE BOOKKEEPING SERVICES NORFOLK				KATRINA RANDALL							
615748484	ISLAND	09/11/2016	Registered						2899	Norfolk Island	Business Address	
613651031	Norfolk Island Archives	30/10/2008	Registered		Kaye Pendleton & Shane Quintal				2899	Norfolk Island	Business Address	
613651040	Silky Oaks Tea Gardens	27/07/1984	Registered		Kaye Wood				2899	Norfolk Island	Business Address	
613649693	Norfolk Island Hot Krust Bakery	26/08/2009	Registered		Kaylani Pty Ltd				2899	Norfolk Island	Business Address	
618950637	MIsS FIT StudiO	08/05/2017	Registered		KELLY HENDERSON				2899	Norfolk Island	Business Address	
613649835	Norfolk Island Fitness & Health	02/11/2011	Registered		Kelvin Mulholland & Kay Taylor				2899	Norfolk Island	Business Address	
159413260	Norfolk Island Accommodation	18/03/2013	Registered		KERRI-ANN BROOKS				2899	Norfolk Island	Business Address	
613648909	Studio 3	25/08/2010	Registered		Kerry Robertson & Nolene Woodward				2899	Norfolk Island	Business Address	
613650570	2 Drips Water	16/12/2014	Registered		Kevin Adams & Stephen Gardiner				2899	Norfolk Island	Business Address	
613651264	Kevin Coulter Industries (K.C.I)	02/12/1992	Registered		Kevin Coulter & Pauline Oates				2899	Norfolk Island	Business Address	
613646763	4 Star Equine Services	01/04/2015	Registered		Kevin Jensen & Kim Jensen				2899	Norfolk Island	Business Address	
613646825	BJ's Jewellers	13/02/2004	Registered		Kevin Pereira & Jill Pereira				2899	Norfolk Island	Business Address	
613648178	Red Road Enterprises	18/04/2016	Registered		Khan Christian				2899	Norfolk Island	Business Address	
613649068	Mac's Dar-Set Service	29/09/1990	Registered		Kosene Mulafia				2899	Norfolk Island	Business Address	
613648258	Unna	16/05/2014	Registered		Kyla Blackwell & Kath King				2899	Norfolk Island	Business Address	
613648338	Broad Leaf Villas	24/05/2010	Registered		Kylie Adams & Michael Sterling				2899	Norfolk Island	Business Address	
613648052	Black Rock Cafe	10/09/2015	Registered		Larry Quintal				2899	Norfolk Island	Business Address	
613646610	Pa Yea's	13/02/2014	Registered		Larry Quintal & Barbara Quintal				2899	Norfolk Island	Business Address	
613649657	Run About Rentals	29/05/1996	Registered		Leon Judd				2899	Norfolk Island	Business Address	
613648963	Waa' Waha Vehicle Imports	06/06/2016	Registered		Leon McCowan				2899	Norfolk Island	Business Address	
613649488	Jacaranda Park Holiday Cottages	30/04/2002	Registered		Leon McCowan & Vanessa Quain				2899	Norfolk Island	Business Address	
613650776	L.C-B Constructions	28/10/1998	Registered		Leonard Christian-Bailey				2899	Norfolk Island	Business Address	
613648294	The Crest	28/05/1980	Registered		Leonard Christian-Bailey & Helen Christian-Bailey				2899	Norfolk Island	Business Address	
613647617	Norfolk Island Mowers	26/02/1993	Registered		Leonard Christian-Bailey & Helen Christian-Bailey & Matthew Christian-Bailey				2899	Norfolk Island	Business Address	
613648374	Ibook Norfolk Tours	01/10/2015	Registered		Les Quintal & Philippa Reeves				2899	Norfolk Island	Business Address	
613647233	Norfolk Naturals	05/05/2015	Registered		LESLIE EDUARD PTY LIMITED				2899	Norfolk Island	Business Address	
613648954	Orangeglen Enterprises	10/12/2015	Registered		Lewis Quintal				2899	Norfolk Island	Business Address	
613648383	Norfolk Pine B & B	19/04/2016	Registered		Lillian Mann & Ian Mann				2899	Norfolk Island	Business Address	
613647555	C.H.I.P.S. (Computer Help Information Products & Service)	15/06/2012	Registered		Linda Marie Halcombe				2899	Norfolk Island	Business Address	
154544019	GARSKE CHIROPRACTIC	30/11/2011	Registered		LINDON GARSKE				2899	Norfolk Island	Business Address	
613646361	Anew Raindrop	27/01/2015	Registered		Lorraine Bataille				2899	Norfolk Island	Business Address	
613647073	Cliff Hanger Construction	02/04/2012	Registered		Louci Reynolds & Campbell Harris				2899	Norfolk Island	Business Address	
613647386	Therapeutic and Relaxation Massage	17/03/2006	Registered		Louise Donald & George Nebauer				2899	Norfolk Island	Business Address	
613647886	Go Norfolk Island	05/04/2016	Registered		Louise Tavener & Andrea Nobbs				2899	Norfolk Island	Business Address	
613646861	The Fish and Chook Shop	28/02/2013	Registered		Luke McLeod & Melinda McLeod				2899	Norfolk Island	Business Address	
613650543	Custom Charters	11/12/2014	Registered		Luke McLeod & Melinda McLeod				2899	Norfolk Island	Business Address	
613650927	Fantasy Island Resort	16/07/1996	Registered		Lyndsay Tooley & Sharon Tooley				2899	Norfolk Island	Business Address	
613649237	Fantasy Island Rentals	27/03/2002	Registered		Lyndsay Tooley				2899	Norfolk Island	Business Address	
613649666	Craigs Knitwear	10/05/2002	Registered		Lynette Sterling				2899	Norfolk Island	Business Address	
613646585	Norfolk Travel Network	21/01/2003	Registered		Lyndsay Tooley & Sharon Tooley				2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
618383734	St. Cloud Kids	04/04/2017	Registered		MADELEINE PONINI				2899	Norfolk Island	Business Address	
613648516	Island Adventures Norfolk Island Shipping Services (The N.I.S Line)	02/10/2015	Registered		Malcolm Douran & Angela Judd				2899	Norfolk Island	Business Address	
613648865		26/06/2014	Registered		Malcolm Ried				2899	Norfolk Island	Business Address	
613648089	Araucaria Building Contractors	05/04/1993	Registered		Malcolm Tarrant & Raewynne Cranleigh				2899	Norfolk Island	Business Address	
613649817	Green Eyes	08/10/2004	Registered		Margaret Christian				2899	Norfolk Island	Business Address	
613650918	Pitcairn Settlers Village	27/10/1992	Registered		Marie Bailey				2899	Norfolk Island	Business Address	
613649639	The Salty Owl	23/06/2016	Registered		Marita Campion				2899	Norfolk Island	Business Address	
613647475	Seacrest Farms NI	10/06/2015	Registered		Mark Vickers				2899	Norfolk Island	Business Address	
613648758	Nature Norfolk Island	30/05/2016	Registered		Mark Vickers				2899	Norfolk Island	Business Address	
613650043	Norfolk Stockfeeds	05/06/2000	Registered		Martin Cross & Heather Cross				2899	Norfolk Island	Business Address	
613646898	Biotec .N.I.	15/02/2016	Registered		Martin Goldsmith				2899	Norfolk Island	Business Address	
613650141	Beauty 'N' More	01/08/2007	Registered		Martyn Haymes & Patricia Haymes				2899	Norfolk Island	Business Address	
613647199	Rumours	18/03/2011	Registered		Mary Johnston				2899	Norfolk Island	Business Address	
613646665	Omniche Holidays	04/02/2010	Registered		Mathew Christian-Bailey				2899	Norfolk Island	Business Address	
613650589	Crest Auto Rentals and Imports Greenhaven Palm Nurseries of Norfolk	09/07/1996	Registered		Mathew Christian-Bailey				2899	Norfolk Island	Business Address	
613647082	Island	08/03/2013	Registered		Mathew Reeves				2899	Norfolk Island	Business Address	
613647402	Bigg Fresh Farm Produce	28/03/2007	Registered		Matt Bigg & Susie Bigg				2899	Norfolk Island	Business Address	
613648678	The Jolly Roger Bar & Theatre Restaurant	11/11/2015	Registered		Matthew Zarb				2899	Norfolk Island	Business Address	
620021954	Fitzy's Farm	26/06/2017	Registered		MEGAN FITZPATRICK				2899	Norfolk Island	Business Address	
613648463	Norfolk Bath and Body	01/06/2010	Registered		Megan Fitzpatrick & Dean Fitzpatrick				2899	Norfolk Island	Business Address	
613649442	Heritage Events - Norfolk Island	13/08/2014	Registered		Michael King				2899	Norfolk Island	Business Address	
613650329	Behind The Hedges Tour	25/06/2001	Registered		Michael Prentice				2899	Norfolk Island	Business Address	
613650392	Fletcher's Fate	26/10/2006	Registered		Michael Prentice				2899	Norfolk Island	Business Address	
613650490	Culture Tours	19/07/1994	Registered		Michael Prentice				2899	Norfolk Island	Business Address	
613649791	Island Eggs	29/05/2001	Registered		Mike Andrew				2899	Norfolk Island	Business Address	
613649460	A Norfolk Legacy	10/07/1991	Registered		Mike Zande				2899	Norfolk Island	Business Address	
613650123	Bradley Agencies	21/06/1994	Registered		Milton Bradley				2899	Norfolk Island	Business Address	
140737579	PLANNING ASSIST	24/11/2009	Registered		MIRIAM ELWYN STREULENS				2899	Norfolk Island	Business Address	
613650794	Planning Assist	28/11/2006	Registered		Miriam Streulens				2899	Norfolk Island	Business Address	
613651273	Norfolk Island Military/War Museum	18/08/2000	Registered		Mitchell Evans				2899	Norfolk Island	Business Address	
613649479	Norfolk Island Orchid Farm Bounty Folk Museum and Old Norfolk	13/04/1999	Registered		Mitchell Evans & Tessie Evans				2899	Norfolk Island	Business Address	
613648007	Town	13/04/2007	Registered		Moira Winner				2899	Norfolk Island	Business Address	
613649371	Topcroft	12/08/2014	Registered		Monica Forsyth				2899	Norfolk Island	Business Address	
613650187	Norfolk Island Motors	28/06/2016	Registered		Morgan Evans				2899	Norfolk Island	Business Address	
613650838	Norfolk Energy	01/10/2007	Registered		N.I Administration				2899	Norfolk Island	Business Address	
613650016	Sweet Pea Cakery	14/10/2014	Registered		Natalie Mann				2899	Norfolk Island	Business Address	
166085105	The Healing Balm	01/10/2013	Registered		NATASHA ARNOLD				2899	Norfolk Island	Business Address	
611471240	Norfolk Island Yoga	22/03/2016	Registered		NATASHA ARNOLD				2899	Norfolk Island	Business Address	
613649853	Less Is Best	01/10/2014	Registered		Nathan Judd & Angela Judd				2899	Norfolk Island	Business Address	
613646316	Norfolk Island Cleaning Services	22/01/2010	Registered		Neil Waterland & Vanessa Waterland				2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
613649595	Neuro Cognitive Solutions	07/07/2008	Registered		Neuro Cognitive Software Pty Ltd				2899	Norfolk Island	Business Address	
613648187	Foodland	06/03/1984	Registered		NI Supermarkets P/L				2899	Norfolk Island	Business Address	
613647000	Words 4 U	22/04/2015	Registered		Nicola Kennedy				2899	Norfolk Island	Business Address	
	Norfolk Island Taxi and Shuttle Service -				Nicole Jones & Darrell Jones							
613646478	First Cab	18/01/2002	Registered						2899	Norfolk Island	Business Address	
613651139	Norfolk Island Data Services	09/11/1987	Registered		NIDS Pty Ltd				2899	Norfolk Island	Business Address	
608261623	Island Nectar	17/09/2015	Registered		NOELEEN WOODWARD				2899	Norfolk Island	Business Address	
					Noelene Woodward & Elicia Woodward				2899	Norfolk Island	Business Address	
613648801	Island Nectar	17/11/2015	Registered						2899	Norfolk Island	Business Address	
614567476	NI Mart	31/08/2016	Registered		NORFOLK BUSINESS SERVICES PTY LTD				2899	Norfolk Island	Business Address	
614567565	Oceans Liquor	31/08/2016	Registered		NORFOLK BUSINESS SERVICES PTY LTD				2899	Norfolk Island	Business Address	
614567725	Aviators Club	31/08/2016	Registered		NORFOLK BUSINESS SERVICES PTY LTD				2899	Norfolk Island	Business Address	
					Norfolk Financial Pty Ltd & Andre Nobbs & Alex Martin				2899	Norfolk Island	Business Address	
613648589	Norfolk Capital	13/06/2014	Registered						2899	Norfolk Island	Business Address	
					Norfolk Financial Pty Ltd & Andre Nobbs & Alex Martin				2899	Norfolk Island	Business Address	
613648669	Norfolk Payments	13/06/2014	Registered						2899	Norfolk Island	Business Address	
618730206	Bounty Points	26/04/2017	Registered		NORFOLK ISLAND AIRLINES PTY. LTD.				2899	Norfolk Island	Business Address	
613649746	Norfolk Island Real Estate	04/07/1985	Registered		Norfolk Island Real Estate Pty Ltd				2899	Norfolk Island	Business Address	
619381485	Radio Norfolk	29/05/2017	Registered		Norfolk Island Regional Council				2899	Norfolk Island	Business Address	
613651479	Fruit & Vege Garden	16/10/1984	Registered		Norfolk Island Supermarkets P/L				2899	Norfolk Island	Business Address	
613650105	Island Realty	20/10/1980	Registered		Norfolk Property Group Pty Limited				2899	Norfolk Island	Business Address	
613650356	Norfolk Septic Service	13/12/2013	Registered		Norman LeCren				2899	Norfolk Island	Business Address	
613648927	Boc's Farm & Industry Tours	28/09/2012	Registered		O'Connors Pty Ltd				2899	Norfolk Island	Business Address	
613650025	Prestige Auto Care and Upholstery	27/06/2016	Registered		O'Connors Pty Ltd				2899	Norfolk Island	Business Address	
613650990	The Olive'	12/12/2006	Registered		Olivegrove P/L & Naomi Thompson				2899	Norfolk Island	Business Address	
613028443	Pinevalley Apartments	15/06/2016	Registered		P.P CROWLEY & C DOURAN				2899	Norfolk Island	Business Address	
610014214	ASTRO-URANIA	21/01/2016	Registered		PAGE SMITH				2899	Norfolk Island	Business Address	
610502282	Lehua	01/02/2016	Registered		PAGE SMITH				2899	Norfolk Island	Business Address	
613646736	La Perouse Restaurant & Bar	07/02/2011	Registered		Paradise Hotel & Resort P/L				2899	Norfolk Island	Business Address	
613650150	Paradise Hotel & Resort	26/11/2010	Registered		Paradise Hotel & Resort P/L				2899	Norfolk Island	Business Address	
613647171	Island Markets	22/02/2008	Registered		Patricia Anderson				2899	Norfolk Island	Business Address	
612818096	BEAUTY 'N' MORE NORFOLK ISLAND	04/06/2016	Registered		PATRICIA HAYMES				2899	Norfolk Island	Business Address	
614639440	Norfolk Island Bowling Club Bistro	19/07/2011	Registered		Patrick O'Reilly				2899	Norfolk Island	Business Address	
613647804	Saints Holiday Apartments	28/02/1996	Registered		Paul Anderson & Aihua Jiang				2899	Norfolk Island	Business Address	
613648212	Menghetti Enterprises	21/03/2003	Registered		Paul Menghetti & Robyn Menghetti				2899	Norfolk Island	Business Address	
613648098	Yelavich Panel Repairs	04/03/1994	Registered		Paul Yelavich & Cheryl Yelavich				2899	Norfolk Island	Business Address	
613649380	Pumpkin's Patch	13/06/2016	Registered		Pauline Porter & Joanne Knapton				2899	Norfolk Island	Business Address	
613650310	The House of Prouds Gallery	04/06/1994	Registered		Percival Imports Pty Ltd				2899	Norfolk Island	Business Address	
613651522	Proud's Gallery	17/12/1993	Registered		Percival Imports Pty Ltd				2899	Norfolk Island	Business Address	
613647242	Middlegate Electrical	08/03/2016	Registered		Peter Arthur & Nolene Arthur				2899	Norfolk Island	Business Address	
613650052	Norfolk Island Rent-A-Car	09/09/2009	Registered		Peter Bernie & Lynlee Sanders				2899	Norfolk Island	Business Address	
613649326	Tropical Adventures Norfolk	23/06/2008	Registered		Peter Cassidy				2899	Norfolk Island	Business Address	
613651442	Foot-A-Walk Rentals	29/10/1997	Registered		Peter Crowley				2899	Norfolk Island	Business Address	
613649997	Norfolk Island Moving & Storage	16/11/2011	Registered		Peter Horrocks & Gregory Horrocks				2899	Norfolk Island	Business Address	
613651200	Pacific Mail Orders	17/11/1989	Registered		Peter Meers & Peter Woodward				2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
613649317	Powerpoint	02/04/2003	Registered		Peter Pye & Odette Pye				2899	Norfolk Island	Business Address	
613651433	Poinciana Cottages	25/10/2000	Registered		Peter Pye & Odette Pye				2899	Norfolk Island	Business Address	
613650954	Garrison Restaurant	24/11/2009	Registered		Peter Woodward				2899	Norfolk Island	Business Address	
613648445	Norfolk Island Building Supplies 04	04/06/2004	Registered		Peter Woodward & Peter Meers				2899	Norfolk Island	Business Address	
613650114	Irvines Building Supply Centre	10/11/1981	Registered		Peter Woodward & Peter Meers				2899	Norfolk Island	Business Address	
					Peter Woodward & Peter Meers & Lisa Plant				2899	Norfolk Island	Business Address	
613647135	Pete's Place	16/02/1984	Registered		Lisa Plant				2899	Norfolk Island	Business Address	
613648472	South Pacific Building	24/05/2011	Registered		Philip Hooper				2899	Norfolk Island	Business Address	
613650258	P.G.H Properties	25/11/2010	Registered		Philip Hooper				2899	Norfolk Island	Business Address	
613651068	South Pacific Resort Hotel	10/11/1987	Registered		Philip Hooper				2899	Norfolk Island	Business Address	
613651424	L. J. Quintal Real Estate	18/10/2000	Registered		Philippa Reeves & Leslie Quintal				2899	Norfolk Island	Business Address	
613502846	Wrap & Roll Norfolk Island	06/07/2016	Registered		Phoenix Pty Ltd				2899	Norfolk Island	Business Address	
613647322	Aloha Apartments	10/04/2014	Registered		Phoenix Pty Ltd				2899	Norfolk Island	Business Address	
613647466	Tudor Apartments	10/04/2014	Registered		Phoenix Pty Ltd				2899	Norfolk Island	Business Address	
613651228	Norfolk Satellite Services	10/03/1997	Registered		Phyllis Prole				2899	Norfolk Island	Business Address	
155955810	NORFOLK ISLAND LAWYER	28/02/2012	Registered		PIRIA COLEMAN				2899	Norfolk Island	Business Address	
613646334	Norfolk Island Health & Healing	11/01/2012	Registered		Piria Coleman				2899	Norfolk Island	Business Address	
613648436	Cascade Equipment Rentals	12/03/2002	Registered		PPB Pty Ltd				2899	Norfolk Island	Business Address	
613651362	Cascade Motors	14/08/2002	Registered		PPB Pty Ltd				2899	Norfolk Island	Business Address	
613646521	Aalehau Island Explorer	26/02/2015	Registered		Rachel Nebauer-Borg				2899	Norfolk Island	Business Address	
613647055	Sticky Fingers	12/03/2009	Registered		Rachel Nebauer-Borg				2899	Norfolk Island	Business Address	
613649951	Pullis' Valley	07/06/1993	Registered		Rachel Nebauer-Borg				2899	Norfolk Island	Business Address	
613647411	Pacific Resorts Marketing	30/03/2009	Registered		Rael Donde & Angela Donde				2899	Norfolk Island	Business Address	
613649988	The White House	18/11/2010	Registered		Rael Donde & Angela Donde				2899	Norfolk Island	Business Address	
613647180	P & R Groceries	12/03/2010	Registered		Raewyn Baker & Dean Graham				2899	Norfolk Island	Business Address	
613650712	Norfolk Holiday Apartments	16/06/1999	Registered		Ray Sills & Susan Sills				2899	Norfolk Island	Business Address	
613650874	Smudgie's Restrings	12/09/1994	Registered		Raymond Cooper				2899	Norfolk Island	Business Address	
615875208	Smudgie's Painting Service	13/11/2016	Registered		RAYMOND COOPER				2899	Norfolk Island	Business Address	
613647966	Whitewood Sea	30/04/2014	Registered		Rebecca Christian				2899	Norfolk Island	Business Address	
613648712	Norfolk Island Travel Centre	16/06/2010	Registered		Rebecca Christian				2899	Norfolk Island	Business Address	
613650641	Bounty Travel Centre	26/06/2000	Registered		Rebecca Christian				2899	Norfolk Island	Business Address	
613647108	En Plein Air Painting	13/03/2014	Registered		Rebecca Christian & Barbara Kelly				2899	Norfolk Island	Business Address	
613649540	Artist(s) In Residence Norfolk Island	15/08/2014	Registered		Rebecca Christian & Barbara Kelly				2899	Norfolk Island	Business Address	
613649620	Norfolk Island Art Workshop(s)	26/08/2014	Registered		Rebecca Christian & Barbara Kelly				2899	Norfolk Island	Business Address	
617523314	Serenity Day Spa and Beauty	21/02/2017	Registered		REBECCA SANDERS				2899	Norfolk Island	Business Address	
613648749	Pod's Pickle Factory	16/11/2015	Registered		Rhonda Buffet				2899	Norfolk Island	Business Address	
613648230	Five Pines Storage and Service Centre	01/05/2007	Registered		Richard Cottle				2899	Norfolk Island	Business Address	
613650196	Norfolk Island Block Factory	21/06/1989	Registered		Richard Cottle				2899	Norfolk Island	Business Address	
613647340	Australian Election Company	23/03/2016	Registered		Richard Kidd & Marilla Kidd				2899	Norfolk Island	Business Address	
613648730	Little Singapore Cafe and Takeaway	23/06/2014	Registered		Richard Lee & Tina Siah & Ah Lee				2899	Norfolk Island	Business Address	
613647420	Norfolk Manufacturing Tour	23/03/2010	Registered		Richard Woodward & Brad Forrester				2899	Norfolk Island	Business Address	
613647019	Personal Tours - Norfolk Island	26/02/2016	Registered		Rick Kleiner				2899	Norfolk Island	Business Address	
613646709	Car Beat Et	01/02/2016	Registered		Riki Christian				2899	Norfolk Island	Business Address	
613649513	Cart' Beat Et	04/10/2010	Registered		Riki Christian				2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
613648703	Norfolk Island Kentia Palm Nursery	11/03/1999	Registered		ROB VAN STAALDUINEN NORFOLK HOLDING PTY LTD				2899	Norfolk Island	Business Address	
613648623	Prouds Pharmacy	30/05/2005	Registered		Robert Little				2899	Norfolk Island	Business Address	
613649451	.NF	20/06/2016	Registered		Robert Ryan				2899	Norfolk Island	Business Address	
613649264	The Local Art Gallery	05/08/2014	Registered		Robert White				2899	Norfolk Island	Business Address	
613647546	Sustainablenorfolk.com	14/04/2009	Registered		Robin Adams & Simon Biggs				2899	Norfolk Island	Business Address	
613650427	Inspriat	27/11/2014	Registered		Robin Nisbet				2899	Norfolk Island	Business Address	
613647957	The Norfolk Store	06/08/2013	Registered		Robin Nisbet & Christina Nisbet				2899	Norfolk Island	Business Address	
613649193	Cascade Child Care Centre	29/05/1986	Registered		Robn May				2899	Norfolk Island	Business Address	
611418065	The Lost Apostrophe	29/03/2016	Registered		ROBYN GILLIES				2899	Norfolk Island	Business Address	
613648785	The Blue Bull	27/08/2013	Registered		Robyn Menghetti				2899	Norfolk Island	Business Address	
613650561	Norfolk Blue	16/10/2009	Registered		Robyn Menghetti				2899	Norfolk Island	Business Address	
613650829	Trade Winds Country Cottages	27/06/2002	Registered		Robyn Tavener				2899	Norfolk Island	Business Address	
613650614	Teka Wha Services	08/09/2008	Registered		Rodney Menzies				2899	Norfolk Island	Business Address	
					Ronald Van Gorph & Michelle Van Gorph				2899	Norfolk Island	Business Address	
613647644	Amalgamated Pest Control	10/04/2007	Registered		Rosa Ford				2899	Norfolk Island	Business Address	
613651157	Fabulous Photographics	24/07/1996	Registered		Rosemarie Evans				2899	Norfolk Island	Business Address	
613650285	Gaye Evans Gallery	30/06/2016	Registered		Ross's Norfolk Island Pty Limited				2899	Norfolk Island	Business Address	
613648418	The Scottish Shop	21/04/1987	Registered		Ross's Norfolk Island Pty Limited				2899	Norfolk Island	Business Address	
613649077	Ross's on Norfolk Island	09/02/1993	Registered		Roy Nobbs				2899	Norfolk Island	Business Address	
613649120	Teefa's Textures	28/07/2006	Registered		Roy Nobbs				2899	Norfolk Island	Business Address	
613651059	Rocky Point Joinery	24/07/1985	Registered		Samantha Browne & Anne Signal				2899	Norfolk Island	Business Address	
613646567	Anson Publications	05/01/1984	Registered		Samuel Wora & Betty Wora				2899	Norfolk Island	Business Address	
613647126	Wora Bowlo Bistro	04/03/2016	Registered		SARAH CHRISTIAN				2899	Norfolk Island	Business Address	
618461680	KMT Catering	08/04/2017	Registered		Sarah Maxwell				2899	Norfolk Island	Business Address	
613646503	Latitude 29	10/01/2007	Registered		SCOTT GREENWOOD				2899	Kingston	Business Address	
613812721	Greenwoods Fishing Adventures	21/07/2016	Registered		Scott Greenwood & Thomas Greenwood				2899	Norfolk Island	Business Address	
613647653	Blue Eye Enterprises	09/07/2013	Registered		Shane Langusch				2899	Norfolk Island	Business Address	
613647975	STL Bodyworks	04/09/2015	Registered		Shane O'Hara & Paula O'Hara				2899	Norfolk Island	Business Address	
613648810	O'Hara Plasterers & Tilers	30/05/2016	Registered		Shane Quintal & Kaye Pendleton				2899	Norfolk Island	Business Address	
613650436	Old Norfolk Town	21/12/1981	Registered		Shiu Narayon				2899	Norfolk Island	Business Address	
613650267	Island Paint & Panel Repairs	11/12/2013	Registered		Stephanie Jack				2899	Norfolk Island	Business Address	
613647493	Oceania Imports	25/09/1978	Registered		Stephanie Jack				2899	Norfolk Island	Business Address	
613649808	Low Duty Cigarettes	22/05/2002	Registered		Steve Brookes & Kerri - Ann Brookes				2899	Norfolk Island	Business Address	
613646754	Fe'awa Forever Channers On Norfolk - Gardeside	07/03/2014	Registered		Steve Brookes & Kerri-Ann Brookes				2899	Norfolk Island	Business Address	
613651004	Apartments	01/12/2009	Registered		Steve Ryves & Alison Ryves				2899	Norfolk Island	Business Address	
613647028	Norfolk Island Cottage Pottery	12/02/1987	Registered		Sue Pearson				2899	Norfolk Island	Business Address	
613648114	Aatuti Art	30/03/1995	Registered		Suzanne Evans				2899	Norfolk Island	Business Address	
613651193	Norfolk Island Language Resources	23/12/2008	Registered		Terence Grube & Belinda Grube				2899	Norfolk Island	Business Address	
613650721	Norfolk Insurance Office	19/09/2005	Registered		Teresa Keller				2899	Norfolk Island	Business Address	
613649497	Norfolk Forwarding Services	27/08/2004	Registered		The Administration Of Norfolk Island				2899	Norfolk Island	Business Address	
168750865	The Administration of Norfolk Island	25/03/2014	Registered		The Travel Centre Pty Ltd				2899	Norfolk Island	Business Address	
613646414	Norfolk Ocean Challenge	31/01/2014	Registered						2899	Norfolk Island	Business Address	

BN NUMBER	Business Name	START_DT	STATUS_CD	Surname	PROPRIETOR	Email	Mobile	Landline	ZIPCODE	X_LOCALITY	TYPE	NOTES
613646718	The Travel Centre	23/01/1981	Registered		The Travel Centre Pty Ltd				2899	Norfolk Island	Business Address	
618141861	OM Accountancy	23/03/2017	Registered		THE TRUSTEE FOR ALEXIS FORD TRUST				2899	Norfolk Island	Business Address	
620051096	Fitzy's Farm	27/06/2017	Registered		The Trustee for Fitzpatrick Family Trust 2				2899	Norfolk Island	Business Address	
617865915	The Blue Kingfisher Norfolk Island	09/03/2017	Registered		The Trustee for Greenwoods Trust				2899	Norfolk Island	Business Address	
616930753	McCoy Resources	20/01/2017	Registered		The Trustee for McCoy Resources Trust				2899	Norfolk Island	Business Address	
617824950	Polynesian Apartments	07/03/2017	Registered		The Trustee for McCoy Resources Trust				2899	Norfolk Island	Business Address	
614369783	S & L Fourie	22/08/2016	Registered		The Trustee for SLF Trust				2899	Norfolk Island	Business Address	
613428925	Castaway Norfolk Island	03/07/2016	Registered		The Trustee for T & S Investments Trust				2899	Norfolk Island	Business Address	
619021760	Cafe Tempo	12/05/2017	Registered		THE TRUSTEE FOR THE CAWIT FAMILY TRUST				2899	Norfolk Island	Business Address	
617011908	Timber On The Move	24/01/2017	Registered		The Trustee for the Christian Watson Christian Trust				2899	Norfolk Island	Business Address	
614520866	NI Heritage Services	29/08/2016	Registered		The Trustee for the Magri Family Trust				2899	Norfolk Island	Business Address	
619066732	THE PUBLIC ADVOCATE NORFOLK ISLAND	22/05/2017	Registered		The Trustee for The Office of the Public Advocate Norfolk Island				2899	CASCADE STAT	Business Address	
613348824	The Olive Norfolk Island	29/06/2016	Registered		The Trustee for the Olive Thompson Trust				2899	Norfolk Island	Business Address	
616695204	All - Star Painting	06/01/2017	Registered		The Trustee for the Porter Family				2899	Norfolk Island	Business Address	
617152217	All-Star Products Norfolk Island	02/02/2017	Registered		The Trustee for the Porter Family				2899	Norfolk Island	Business Address	
616417737	Reynolds Shoes of Norfolk Island	12/12/2016	Registered		The Trustee for the Rayner Family Trust				2899	Norfolk Island	Business Address	
618866676	Frank's of Norfolk Island	02/05/2017	Registered		The Trustee for the Rayner Family Trust				2899	Norfolk Island	Business Address	
615111290	Le Cafe Deli	30/09/2016	Registered		The Trustee for the Wora Family Trust				2899	Norfolk Island	Business Address	
617691095	BC Rock Breaking	01/03/2017	Registered		The Trustee for Wilson Boudan Trust				2899	Norfolk Island	Business Address	
612871539	South Pacific Resort Hotel	07/06/2016	Registered		TIMELY ADDITION PTY LTD				2899	Norfolk Island	Business Address	
617138664	Selwyn Cottage	01/02/2017	Registered		TIMOTHY PEARSON				2899	Norfolk Island	Business Address	
613650276	Pizza In The Pines	11/11/2014	Registered		Tony Watts & Sarah Watts				2899	Norfolk Island	Business Address	
613650365	Broad Arrow Trading Company	11/11/2014	Registered		Tony Watts & Sarah Watts				2899	Norfolk Island	Business Address	
613650481	Castaway Hotel	09/12/2014	Registered		Tony Watts & Sarah Watts				2899	Norfolk Island	Business Address	
613651513	Castaway Hotel & Apartments	30/12/2003	Registered		Tony Watts & Sarah Watts				2899	Norfolk Island	Business Address	
613647064	The Bakery	11/03/2010	Registered		Tosca Quintal				2899	Norfolk Island	Business Address	
613647279	Fletcher's Mutiny Cyclorama	29/11/2002	Registered		Tracey Yager & Sue Draper				2899	Norfolk Island	Business Address	
613649782	Gallery Guava	06/05/1997	Registered		Tracey Yager & Sue Draper				2899	Norfolk Island	Business Address	
613646816	Trevor Gow Building	04/02/2003	Registered		Trevor Gow				2899	Norfolk Island	Business Address	
613649700	Sub Lime Lounge	20/10/2010	Registered		Troy Hamilton-Irvine				2899	Norfolk Island	Business Address	
613650534	Minibar	21/12/2010	Registered		Troy Hamilton-Irvine				2899	Norfolk Island	Business Address	
613647457	A - Frame Chalets at Moku	09/05/2013	Registered		Troy Hamilton-Irvine & Cherie Hamilton-Irvine				2899	Norfolk Island	Business Address	
613647528	The Opportunity Shop	31/05/1977	Registered		Uniting Church Norfolk Island				2899	Norfolk Island	Business Address	

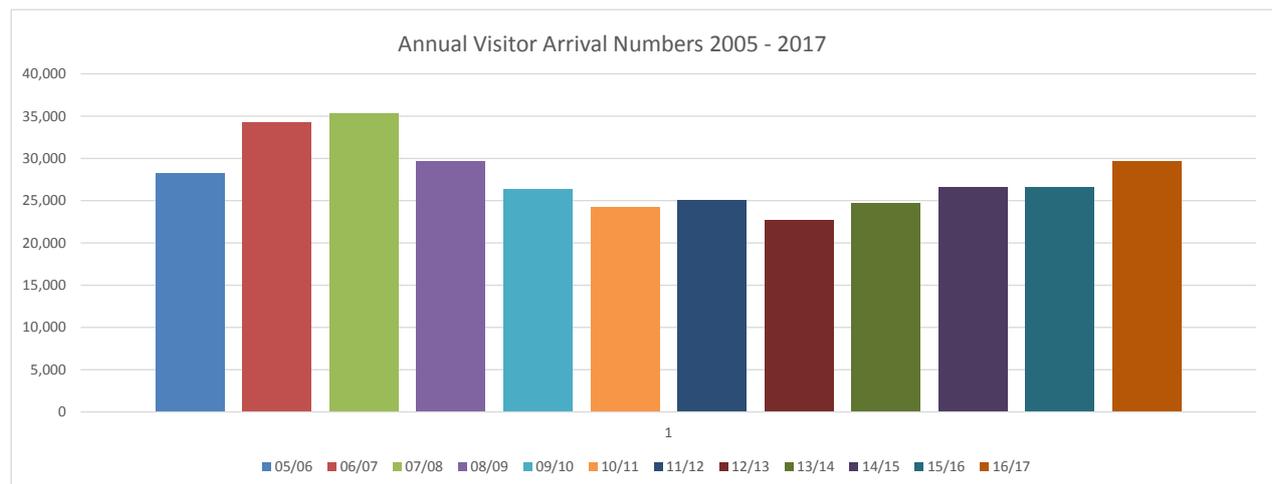
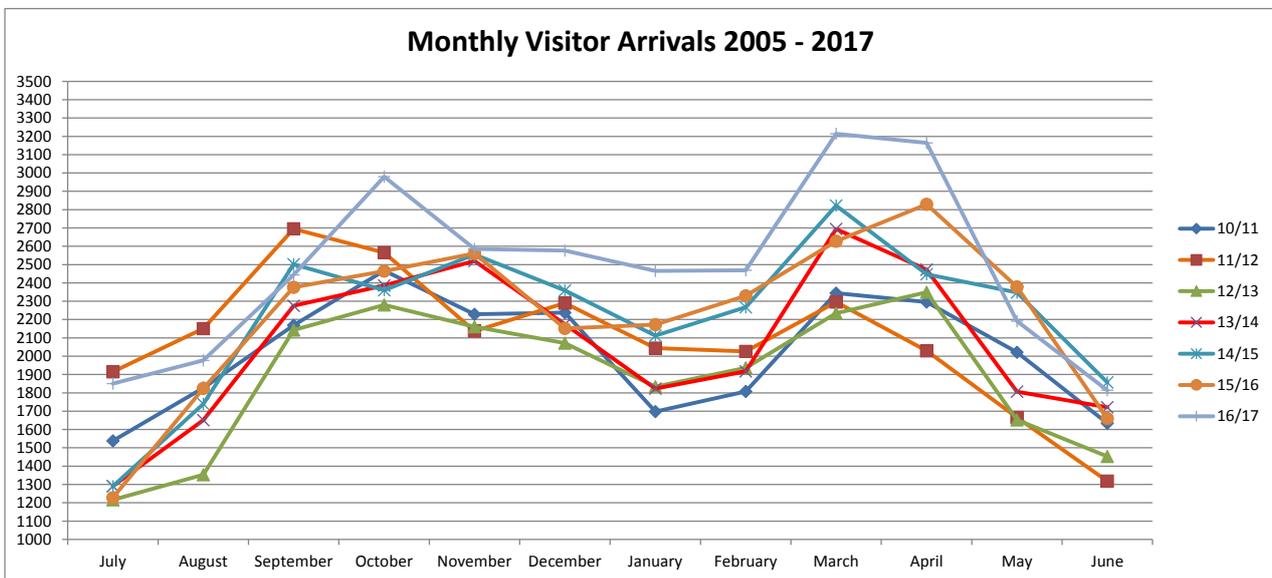
Norfolk Island Visitor Statistics 2005/06 - 2016/17 (Financial Year)

Total Visitor Numbers

Financial Year	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	% Difference on previous year
July	1786	2726	2223	2035	1578	1538	1915	1216	1291	1290	1228	1850	51%
August	2108	3066	2866	2456	2100	1827	2151	1353	1651	1740	1824	1977	8%
September	2281	2586	3111	2620	2103	2169	2695	2143	2275	2502	2376	2444	3%
October	2875	3167	3338	3160	3055	2467	2565	2280	2386	2360	2464	2980	21%
November	2625	3070	3431	2571	2488	2229	2137	2161	2520	2555	2561	2586	1%
December	2405	3133	2857	2462	2228	2238	2290	2071	2175	2359	2152	2577	20%
January	1779	2215	2516	2143	2128	1698	2044	1834	1823	2112	2172	2465	13%
February	2245	2809	3032	2220	2242	1807	2026	1937	1917	2267	2330	2469	6%
March	2459	3386	3178	3247	2757	2344	2296	2235	2694	2822	2628	3214	22%
April	2613	2995	3617	2373	2246	2296	2030	2349	2472	2448	2829	3165	12%
May	2500	2685	2674	2409	1963	2021	1666	1652	1806	2348	2378	2191	-8%
June	2543	2480	2556	1943	1451	1634	1318	1453	1721	1857	1660	1814	9%
TOTAL	28,219	34,318	35,399	29,639	26,339	24,268	25,133	22,684	24,731	26,660	26,602	29,732	
									YTD		26602	29732	12%

A = Highest month since 2005

B = Lowest month since 2005



Nathan Melville

Subject: FW: Introduction of Modern Awards - Norfolk Island [SEC=UNCLASSIFIED]
Attachments: Letter Eric Hutchinson 01.06.18.pdf

From: **Eric Hutchinson** <Eric.Hutchinson@infrastructure.gov.au>
Date: 20 June 2018 at 09:59
Subject: FW: Introduction of Modern Awards - Norfolk Island [SEC=UNCLASSIFIED]
To: "iank@foodland.nf" <iank@foodland.nf>
Cc: "norfolkisland.coc@gmail.com" <norfolkisland.coc@gmail.com>, CROOKS Karene <Karene.Crooks@infrastructure.gov.au>, "OFFICE.ADMINISTRATOR" <office.administrator@infrastructure.gov.au>

Dear Ian,

Thank you for your email and letter.

On the matter of the introduction of modern awards on Norfolk Island. The extension of the *Fair Work Act 2009* to Norfolk Island and other changes to employment laws were first announced in 2015 and have been phased in over time. This has involved:

- extending the National Employment Standards and workplace protections from 1 July 2016
- phasing in the national minimum wage over two years
- the application of modern awards to Norfolk Island from 1 July 2018.

The transition period has provided almost three years for businesses to prepare for these changes. To support employers and employees with the introduction of the modern awards, the Fair Work Ombudsman (FWO) visited Norfolk Island and conducted information sessions and one-on-one appointments with local businesses in April 2018. They are here again this week and I encourage you to book an appointment with them for individualised advice and assistance. They can be contacted on engage@fwo.gov.au.

Similarly and to their credit the Norfolk Island Chamber of Commerce last week arranged information sessions on this subject, with presentations by the NSW Business Chamber.

Kind Regards

Eric Hutchinson

Administrator of Norfolk Island

New Military Barracks, Quality Row, Kingston

PO Box 201, Norfolk Island 2899

Office: + 6723 22152 Mobile: + 6723
50001

Email: eric.hutchinson@infrastructure.gov.au



From: OFFICE.ADMINISTRATOR
Sent: Friday, 1 June 2018 12:27 PM
To: Eric Hutchinson; CROOKS Karene
Subject: FW: Introduction of Modern Awards - Norfolk Island [SEC=UNCLASSIFIED]

Regards

Barb Quintal

Office of the Administrator

Norfolk Island

Email: Barbara.quintal@infrastructure.gov.au

Tel: +6723 22152

Mob: +6723 50579

From: Ian Kiernan [<mailto:iank@foodland.nf>]
Sent: Friday, 1 June 2018 11:32 AM
To: Office.Administrator@infrastructure.gov.au
Cc: john.mcveigh.mp@aph.gov.au; norfolkisland.coc@gmail.com
Subject: Introduction of Modern Awards - Norfolk Island

Mr Eric Hutchinson

Administrator of Norfolk Island

Dear Eric,

Please find attached correspondence for your attention regarding Modern Awards.

The correspondence has also been copied to Minister McVeigh and the Norfolk Island Chamber of Commerce.

I look forward to your response and that of Minister McVeigh regarding the concerns raised.

Regards

Ian Kiernan

General Manager
Norfolk Island Supermarkets Pty Ltd
ABN 61182350523



62 Taylors Road, Burnt Pine

P.O. BOX 476, NORFOLK ISLAND, 2899

PHONE: +672 3 22018 FAX: +672 3 22802

EMAIL: foodland@norfolk.nf

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NORFOLK ISLAND SUPERMARKETS PTY. LTD.

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ABN 61182350523

PHONE: +672 3 22018

FAX: +672 3 22802

EMAIL: foodland@norfolk.nf

Mr Eric Hutchinson
Administrator of Norfolk Island
Kingston
Norfolk Island

Dear Eric,

Inflationary Impact of the Modern Award in Norfolk Island

As we are all aware, on 1st July 2018 Norfolk Island will undergo yet another change as part of the on-going and relentless tide of governance reform. I am of course referring to the introduction of Modern Awards, and I write to you today to highlight the ramifications of this additional burden on employers and, ultimately, the Norfolk Island community.

I am sure that you have read the objections or heard from many in the community about the introduction of these awards, particularly the penalty rates for work on weekends and Public Holidays. Some may brush aside these objections as employers simply trying to keep wages low. However, the truth is that the drastic changes to employment laws already enacted, and those soon to be commenced via the introduction of Modern Awards, have the capacity to severely affect Norfolk Islands fragile economy.

Whilst I cannot comment on the effect these changes will have on other businesses and employers, I can outline the cold hard facts as they apply to our business and the possible ramifications for our employees and the wider Norfolk Island Community.

As a result of the introduction of Taxation, Australian National Employment Standards and the Superannuation Guarantee on 1st July 2016, our company's standard wage expense for the FYE 30th June 2017 increased by \$224,000, over the previous financial year. This was largely because we took a decision to adjust our staff wage rates to compensate for the PAYG tax payable by them to the ATO so that our staff received the same take home wage as they had been enjoying for the previous year. The Superannuation Guarantee added an additional \$20,000 to our expenses. Some offsets to the increases were implemented by reducing other staff benefits, bonuses and director's fees paid to our principals. Additionally, my Management Team worked diligently to reduce operating expenses in other areas of the Company.

To ensure compliance under the new regulations, we of course had no other option but to seek proper advice from Accountants, Financial Advisers and Tax Experts. This occurred at a cost to the company in excess of \$45,000.00.

For the current FYE 30th June 2017 our wage expense is running \$165,000 ahead of the last financial year due to further adjustments required under the reforms.

With the introduction of Modern Awards on 1st July 2018, and importantly the penalty rates, overtime rates and allowances contained therein, **we have calculated that our wage expense just for Saturday's and Sunday's alone** will increase by 24% for Saturday and 76% for Sunday with a combined annual increase in excess of \$56,000.

In addition to this added cost to weekend trading, there are:

- Increased cost to wages etc for the Monday to Friday trading, as a result of the Supermarket trading for 10 hours per day
- Additional penalty rate costs for those Public Holidays that fall on a week day – Monday to Friday.

One doesn't have to be an Einstein or Financial Genius to work out that our Business is unable to sustain this level of expense increase in the longer term, and that we will eventually be forced to make some hard decisions.

Whilst no determinations have been made at this time, we are certainly reviewing our options which could include any or all of the following:

- Reduced Trading Hours on weekends
- Closing on Sundays
- Reduced Trading Hours on Public Holidays
- Closing on Public Holidays
- Reduced Staff Numbers
- Upwards adjustments to Mark-ups & Margins
- Implementing a surcharge for purchases made on Sundays and Public Holidays
- Introduction of Fees for Card Transactions

In a pragmatic sense, the most logical reaction would be to apply a surcharge for Sunday and Public Holiday trading as many businesses do in Australia.

We are very conscious that simply passing on the increased costs to the consumer would be an unfortunate extra burden at this very difficult time (financially) for many. Additionally, we recognise that this action would obviously be inflationary. Those who purchase from our Wholesale division and on-sell, e.g. Cafes, Restaurants, Clubs, Accommodation Proprietors, etc. (most of who are already experiencing increased wage costs of their own) – will also need to make upward adjustments to pricing.

We draw this matter of concern to your attention, and to the attention of both DIRD and Minister McVeigh, as we do not believe that adequate consideration has been given to the impact of the Modern Award regime to Norfolk Island, a community whose economy is largely derived from a 7-days per week Tourist Industry, with around 40% of the intake of visitors occurring on Saturdays and Sundays.

During the transition period to date your office, DIRD and various Ministers have all espoused a need to stimulate and grow Norfolk's economy. We respectfully suggest that the introduction of Modern Awards at this time will have the opposite effect and will contribute to a downturn in Norfolk Islands single biggest industry of tourism. The visitor experience will suffer through higher costs and a reduction in the supply of goods services and amenities, particularly on Sundays and Public Holidays.

We feel that with the appropriate level of 'political will', adjustments can be made to any legislation or enforced regulated reform extended to Norfolk Island. In Norfolk Island's case, there is a blindingly obvious need for more in-depth consideration of the impacts of such reforms, but in particular (at present) to the impacts of the Modern Award regime.

We look forward to your consideration.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'I. Kiernan', written in a cursive style.

IAN KIERNAN
Director and General Manager
Norfolk Island Supermarkets Pty Ltd

C.C. Hon. Dr. John McVeigh MP, Minister for Regional Development,
Territories, and Local Government

C.C. The Executive, Norfolk Island Chamber of Commerce

FYI yorlye..emails I have sent to Administrator and Councillors/Mayor...

Regards,
David Sanders

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Norfolk Magazine A-Z Guide to NI: www.norfolkislandmagazine.com/guide-to-norfolk
Norfolk Island website: www.theworldofnorfolk.com.au

From: Trading Post - David Sanders [mailto:david@tradingpost.nlk.nf]
Sent: Monday, April 30, 2018 11:51 AM
To: 'mayor@nirc.gov.nf'
Cc: 'bebs@norfolkisland.nlk.nf'
Subject: FW: INCREASED COSTS TO BUSINESS FROM 1 JULY 2018
Sensitivity: Confidential

Hi Robyn,

I am writing to you regarding the emails below, seeking support from you to apply pressure on the Commonwealth to suspend the introduction of the Modern Awards from 1 July 2018. You will recall the email I sent you and the other members of the Council on the impacts I foreshadow on my business from 1 July 2018. I would assume that you and other members would have spoken to others in Retail & Hospitality to see if they have the same concerns and increased costs to their business. As I have mentioned below, there is talk around Cafe's and Tour Operators will not open for business on weekends in particular on Sunday's. As a Tourist Destination, relying primarily on the Tourist dollar, this would have a catastrophic impact on Tourism generally.

You will see I have sent you emails I have sent to Eric Hutchinson...

I would be more than happy to discuss any of the concerns I have...

Regards,
Bebs

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Email: david@tradingpost.nlk.nf

Website: www.tradingpost.nlk.nf

Facebook: <https://www.facebook.com/pages/Norfolk-Island-Souvenir-Book-Shop/139129432764562>

Norfolk Magazine A-Z Guide to NI: www.norfolkislandmagazine.com/guide-to-norfolk

Norfolk Island website: www.theworldofnorfolk.com.au

From: Trading Post - David Sanders [mailto:david@tradingpost.nlk.nf]

Sent: Saturday, April 28, 2018 8:52 AM

To: 'Eric Hutchinson'

Subject: FW: INCREASED COSTS TO BUSINESS FROM 1 JULY 2018

Sensitivity: Confidential

Hi Eric,

In view of what I have mentioned below and your press release last week in the local paper, "Reflections on the last 12 months", mentioning that NSW Legislation has been suspended in relation to it applying to Norfolk Island until the impacts can be fully investigated, would you consider proposing to the powers that be that the Australian Award Conditions that come in to affect from 1 July 2018 also be suspended until such time as the impacts are fully investigated. It is clear that this has never been fully investigated and the CIE Report from 2006 clearly points out there will be devastating consequences if the Australian Tax system is imposed in Norfolk Island. The impacts of the Modern Awards will be (I believe) catastrophic... There is talk around that Cafe's will not open on weekends and Public Holidays, Tour Operators will not operate on weekends or Public Holidays. If this is the case, the impact on the Retail and Hospitality sectors, the backbone to our Economy will be significant having a severe impact on our Tourism Industry.

Regards,

David Sanders

The Trading Post Newsagency

Taylors Road,

PO Box 463,

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Norfolk Island website: www.theworldofnorfolk.com.au

From: Trading Post - David Sanders [mailto:david@tradingpost.nlk.nf]
Sent: Thursday, April 12, 2018 1:27 PM
To: 'Eric.Hutchinson@infrastructure.gov.au'
Subject: INCREASED COSTS TO BUSINESS FROM 1 JULY 2018
Sensitivity: Confidential

Hi Eric,

I have provided information below that will show the impact to Small Business from 01 July 2018. I feel I need to provide this to you so that you can see and hopefully understand what I believe will be a catastrophic situation for small business on Island. I am not sure that you care as much, as it was evident in a report done by Chris Nobbs that went to Minister, he clearly disputed the report as incorrect. Well below is what will happen to my business alone, come 01 July 2018 when it becomes necessary to apply the full Australian Awards and all the Conditions that come with it, such as L:ease Loading etc. I really do hold grave concern for the rest of the Retail Sector and Hospitality Sector, where business employ significant numbers of people. The impact will be frightening...

You cannot expect that Small Business will absorb these increases and one can expect that the cost of living will increase quite significantly if not from 1 July 2018 or as the year rolls on and the Financial impacts are realised.

You will see that from 1 July 2018, the changes will increase my wages costs alone by around \$26000.00 and that is based on the current award, not what the Award will increase to after 1 July 2018. Sadly, I believe the Australian INVASION has been purposely been set up to make sure that we as a community fail and financially are unable to pay for all of our services etc..

Had the Australian Government assisted our Government/s over the years providing support in the numerous projects put forward to raise revenue and ensure our sustainability, rather than squashing every endeavour, the INVASION would not have been necessary. It would certainly have worked out being a lot cheaper for the Australian Government to assist us, rather than spend the \$200+ Million on the Island that really, sees us no better off than we were 2 years ago. There has been hundreds of thousands of dollars squandered on projects, reports, Beaurocrats travel expenses & consultants that have delivered no net benefit to Island. There are projects that have been started that remain unfinished. One in particular where the Minister of the day saw it necessary to fly to the Island to make an announcement on a Infrastructure project that was going to kick start the economic revival of the Island, a project that he neglected to inform the Australian Parliament of people that was over half complete and monies were being raised to finish the rest of the project.

Happy to discuss any aspect of this if you wish...

Regards,
David Sanders

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SENT TO ALL COUNCILLORS & USED IN CHRIS NOBBS REPORT

Hi yorlye,

I sent this email below to John as a rough guide as to what the impacts to my business would be. Whilst I have used my business as an example based on working 52 weeks a year, I am sure most other businesses will be in the same or similar position, especially retail and hospitality. Below is the assessment I have conducted, which does not take into account Public Holidays, the 3 days a year we aren't open on a Public Holiday, the increase in the award rate from 1 July 2018 or the need to employ additional staff (casual staff @ the Award + 25%) when others are on annual leave.

This information can be used for reference purposes but The Trading Post Newsagency's name should not be used as the provider of the information.

WAGES IMPACT FROM 1 JULY 2018			
	Current Wage	Ave hrs per week	Gross Weekly wage
Week days	18.26	22.5	410.85
Saturday	18.26	6.5	118.69
Sunday	18.26	6	109.56
			639.10
Annual wage per staff			33233.20

	Australian Award Rate (current)	Weekdays	Gross Weekly wage
Week days	20.86	22.5	469.35
Saturday	25.1	6.5	163.15
Sunday	39.16	6	234.96
			867.46
Annual wage per staff			45107.92

Difference between current wage and Aust Award/staff 11874.72

Extra wages costs for 2 x staff per year 23749.44

Leave loading x 2 staff 17% 1738.35

Extra weeks annual leave x 2 staff 1278.20

Total increase in wages under Aust Award rates from 01 July 2018	26765.99
---	-----------------

Regards,
David Sanders

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Norfolk Island website: www.theworldofnorfolk.com.au

From: Trading Post - David Sanders [<mailto:david@tradingpost.nlk.nf>]

Sent: Tuesday, July 25, 2017 9:36 AM

To: 'john.mccoy@nirc.gov.nf'

Subject: INCREASED COSTS TO BUSINESS FROM 1 JULY 2018

Hey John,

Further to our conversation on Saturday I want to just point out the impacts of the Australia Award wages/conditions (there may be other conditions that I have not included) on my business from 1 July 2018. Thought this may be of interest to you.

- Annual Leave extra 1 week per year (4 weeks)	\$2000.00 pa - (there is no allowance for employing casual staff when other staff are on Annual Leave – the award rate plus 25%)
- 17% Leave loading based on 4 weeks pa	\$1100.00pa
- Increase in wages from to Award rates	\$7280.00pa
- Penalty rates for weekend work based on Current rates	\$15300.00pa
Total increase in wages alone	
\$25680.00	

These figures are based on current award rates including penalty rates for weekend work. I have not included the additional increase in work on Public Holidays which I would estimate to be an additional \$1000.00.

I did estimate this would be the additional costs to my business over 12 months ago and posted this on the VON Facebook page for the interest of the readers. Now bear in mind, this is for 2 employees only and I have not taken into consideration any other Awards conditions that may have a financial impact as well on my business.

Then of course there is the impact of Taxation and all of the additional costs as a consequence. For example, my Accountant fees prior to the INVASION was about \$300.00. This year I will be looking at \$1500.00+.

Please confirm you receive this as I am not confident that once it gets into the NIRC system you will actually receive it?

Regards,
Bebs

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http://www.avg.com/email-signature?utm_medium=email&utm_source=link&utm_campaign=sig-Virus-free.www.avg.com_email&utm_content=emailclient

- On the Brink of Disaster -

The Impact of the Australian Government Reforms on Norfolk Island Businesses

An Independent and Unsolicited Report provided to

The Norfolk Island Community

and to

The Hon Darren Chester MP

Minister for Infrastructure and Transport

Acting Minister for Regional Development

Acting Minister for Local Government and Territories

by

Chris Nobbs

Norfolk Island
November 2017

This report is provided as a free supplement to
The Norfolk Islander, Saturday 18 November 2017,
and copies are also available for
free download from *Norfolk Online News* at:
[http://www.norfolkonlinenews.com/
impact-of-the-reforms-on-norfolk-island-businesses.html](http://www.norfolkonlinenews.com/impact-of-the-reforms-on-norfolk-island-businesses.html)

Biographical Note

Dr Chris Nobbs is a graduate of the universities of Auckland, London and Cambridge, in natural science, economics and economic development respectively. He has had a career in both the private sector as a consultant and as a public servant, at local, state, national and international levels.

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Preface

The third settlement of the British territory of Norfolk Island commenced in 1856 with the resettlement on the island of the descendants of the HMS *Bounty* mutiny, then over-populating Pitcairn Island. Currently Norfolk Island is an external territory under the authority of the Commonwealth of Australia. In recent years Norfolk Island has been subject to changes wrought by the Australian Government that have been the most sweeping on the island since its settlement by the Pitcairn Islanders. These changes have included changes in representation and governance, and in the economic and financial regime on the island.

From 1979 until 2015 the island enjoyed a degree of self-government, but this was terminated in June 2015 by the Australian Government in actions that saw the closure of the Norfolk Island Legislative Assembly and the disbanding of the Norfolk Island Government and Public Service. The Legislative Assembly was replaced by a "regional council", constructed under Commonwealth legislation, and modelled on a New South Wales local authority template.

The centrepiece of the new economic and financial regime is the absorption of Norfolk Island into the Australian taxation and welfare systems. The activities of the new Norfolk Island Regional Council (NIRC) are regulated by the Commonwealth-enacted *Local Government Act 1993 (NSW)(NI)*, and by other Commonwealth Acts and Norfolk Island Acts still applicable to Norfolk Island.

The purpose of this report is to identify major changes that these recently introduced measures (and others that have been foreshadowed) have wrought on businesses on Norfolk Island, and to point to some of their consequences. In doing so it recognises the critical importance of tourism for the Norfolk Island economy. The report describes an island in economic crisis, and goes on to suggest actions that need to be taken to resolve it.

All the figures quoted - where not referenced - are current and in general circulation. Commonwealth Government departments, departments of the New South Wales Government, and the Norfolk Island Regional Council have all provided information. I have discussed the matters which are raised in this report over several months with many engaged with the economy of Norfolk Island, including successful business people. I thank them all for their contributions and advice. However responsibility for the content of this report rests with me.

The report is based on evidence and analysis. The conclusions follow from these. To deny the conclusions requires at least equally compelling other evidence and alternative analysis.

There does not appear to be any study of the prospects for the Norfolk Island economy, comparable to this one, carried out by the Australian Government or any other body.

Individuals and groups will make up their own minds as to the relevance of this report for their own purposes and for the Norfolk Island community more generally. Those who wish to discuss the content of the report, or who would like to provide alternative or additional information, are invited to contact the me at: nobbs298@gmail.com.

Chris Nobbs
Norfolk Island

Executive Summary

1. The Norfolk Island economy is in a state of crisis and on its current trajectory is heading towards a disaster in which many businesses and families will suffer substantially.
2. This crisis is a result of the manner of intervention by the Australian Government in the island's government and economy commencing 1 July 2016. By requiring *both* that Norfolk Island pay its own way *and* that Norfolk Islanders become like mainland Australians in terms of their obligations and expectations, the Australian Government is by its decisions crushing the island's economy in a vice from which few groups will escape unscathed.
3. Critical factors in this crisis include:
 - ◆ the imposition of Commonwealth and NSW regulatory regimes which have raised, and will inevitably continue to raise, business costs and prices substantially;
 - ◆ the planned introduction of Australia's Modern Award System for employment (which in some instances will see an overnight 30 per cent rise in small business wage costs);
 - ◆ the failure of the Australian Government to take up the responsibilities previously held by the Norfolk Island Government for the promotion of tourism on the island;
 - ◆ the loss of direct passenger airline services between New Zealand and Norfolk Island;
 - ◆ restrictions on island agricultural pursuits due to biosecurity preconditions;
 - ◆ the removal of general revenue raising powers previously held by the Norfolk Island Government; and
 - ◆ the little evidence of any "upside" for Norfolk Island's future economic development.
4. It is projected that the combination of these factors along with others will cause a very large increase in Island prices, a steep downturn in tourism, a slump in business, a rise in unemployment, and widespread community distress.
5. The Australian Government has given insufficient thought to the genuine requirements of a very small and marine-isolated economy such as Norfolk Island has. (Given that Australia comprises almost *in toto* one vast continent, this may not be surprising.) The "development" model currently in place for Norfolk Island is grossly inappropriate.
6. As a result of the analysis provided here, the Australian Government is urgently enjoined to:
 - ◆ halt for the meantime any further Commonwealth or state impositions on Norfolk Island under current arrangements;
 - ◆ commission the Australian Productivity Commission to carry out research and conduct a public inquiry to determine the real financial capacity of the island and how it can survive economically, socially and culturally at reasonable cost;
 - ◆ restore some general revenue-raising powers to the Norfolk Island Regional Council;
 - ◆ specify clearly and in much greater detail than has been done hitherto, exactly what its objectives on Norfolk Island are, and specify indicators to measure their achievement.

1. The Australian Government's Legal Changes and their Economic Consequences for Norfolk Island Businesses

1.1 Commonwealth level changes

All of the changes introduced by the Commonwealth Government under its "reform programme" impact businesses on Norfolk Island either directly or indirectly. These changes have come in the wake of the modest performance by Norfolk Island businesses in the years following the global financial crisis of 2007-09. Many of these changes impose substantial new and increasing costs on Norfolk Island businesses, which are enumerated in the following:

(i) The Australian minimum wage applicable to Norfolk Island rose 16 per cent on 1 July 2016, 22 per cent on 1 July 2017, and is set to increase by two to three per cent per year in following years

The Norfolk Island minimum wage administered by the Norfolk Island Government (NIG) stood at A\$13.00 over FY2015-16. The Norfolk Island minimum wage from 1 July 2016 was set by the Australian Government at 85 per cent of Australian national minimum wage i.e. $0.85 \times \$17.70 = \15.05 , a 15.8 per cent increase. As of 1 July 2017 the Norfolk Island minimum wage was increased to 100 per cent of Australian national minimum wage (\$18.29), a 21.5 per cent increase from the previous year [viz. $100(18.29-15.05)/15.05$]. The Australian Fair Work Commission commonly resets the minimum wage on an annual basis: the average annual increase over the last three years has been 2.7 per cent. Thus, beyond 30 June 2018 the Norfolk Island minimum wage is likely to continue to rise at about this rate – over and above the 41 per cent rise sustained over the last two years [viz. $100(18.29-13.00)/13.00$].

(ii) Employee entitlements under the National Employment Standards (NES) from 1 July 2016 have increased costs by reducing the standard working week on Norfolk Island by two hours and increasing employee leave entitlements

Prior to 1 July 2016 employment on Norfolk Island was regulated under the *Norfolk Island Employment Act 1988*, which provided for a standard working week of 40 hours and 10 days holiday leave, and a minimum of 5 days sick leave. The Australian National Employment Standards (NES) have introduced a maximum standard working week of 38 hours for full-time employees, twenty days paid annual leave per year, and up to ten days paid personal/carer's leave. These entitlements are available to all employees (including permanent part-timers).

(iii) Employee entitlements under the Australian Modern Award System (MAS) from 1 July 2018 will increase business costs very substantially, particularly as they relate to penalty rates

Under the *Norfolk Island Employment Act 1988* all overtime hours beyond the 40-hour standard, were paid at 150 per cent of the rate for regular hours; public holidays were paid days, and if worked were doubly paid (i.e. 200 percent the rate for regular hours).

It is proposed by the Australian Government that the Modern Award System (MAS) administered by Fair Work Australia will extend to Norfolk Island from 1 July 2018. Amongst other things the MAS introduces the concept of a specified minimum weekly wage for different levels of work responsibility above the basic minimum wage, in each of several different industry categories. All of these specified wage rates change over time by the same percentage as the minimum wage rate does (approx. +2.7 per cent per annum).

The MAS also introduces penalty pay rates for overtime, which will have very serious implications for Norfolk Island where tourist air service arrivals occur on four days of the week, two of which are on the weekend. The MAS also introduces specified minimum working hours for part-time employees (who on Norfolk Island are naturally restrained to live within 10 minutes travel time from work, and who due to other commitments may be quite comfortable with shorter and more flexible working hours).

Appendix I sets out the wage calculations for a small Norfolk Island retail business open during the week and on weekends in order to serve both tourists and local residents, before and after the introduction of the MAS. Wage costs are set to rise abruptly by 35 per cent per employee. Assuming that current opening hours are in some sense optimal for the business and its customers, such a wage increase would be inconceivable for future economic viability.

(iv) Employee superannuation is increasing at one per cent of employee normal earnings per year

Over many years the NIG operated a provident fund (superannuation) scheme for its employees, with superannuation provision for others in the community left for individuals to organise. It is probably true to say that up until the present the issue of retirement has not been the major issue on Norfolk Island as it is within Australia, as a result of the island's bounty, simple lifestyle, and supportive community.

Payment by businesses of employee superannuation under the Australian superannuation guarantee commenced 1 July 2016 at one per cent of employee normal earnings, moved to two per cent on 1 July 2017, will move to three per cent on 1 July 2018, and increase by one per cent annually after that. The current Australian rate of 9.5 per cent is fixed by Commonwealth legislation until 2020/2021, after which it will rise by 0.5 per cent per annum until it reaches 12.0 per cent p.a. in 2027. However in 2020/2021 the rate on Norfolk Island will have reached only 5.0 per cent p.a., so it will need to continue rising at 1.0 per cent p.a. until 2027/2028.

(v) Cost of compliance with Commonwealth legislation relating to employment and taxation (from 1 July 2016) is high

Set-up costs for businesses have included comprehension and training in relation to the changes introduced, computer hardware and software purchases, and payments for financial consultants and accountants. Advice from chartered accountants in relation to business structure options can run to many thousands of dollars. (Chartered accountant fees in Sydney commonly being well above \$400/hr.) Initial establishment of money value for depreciation scheduling and allowances on existing capital assets can require the hiring of registered quantity surveyors (cost for a 10-unit accommodation business around \$5,000).

On-going increased costs include the use of accountants in BAS preparation, and in taxation and superannuation matters.

(vi) Effects on businesses of general taxation changes from the Norfolk Island Government regime to the Australian Government regime appear so far to be small or negative

Prior to the 1 July 2016 changeover, businesses paid taxes to the NIG, particularly Norfolk Island GST and import duties. Goods imported into Norfolk Island for on-selling were not subject to import duty (a waiver not granted to imported vehicles, liquor, and tobacco products) but were subject to NI GST at the rate of 12 per cent of dollar value. Goods imported into Norfolk Island for the importer's use – and of value greater than \$500 – paid import duty at 18 per cent but were NI GST free.

From 1 July 2016, NI GST and import duties were abolished. The Australian Government has stated that goods and services provided on Norfolk Island will be Australian GST-free in future.

Based on Australian taxation law a business needs to be declared as either a sole trader, partnership, company or trust. These entities have different tax obligations and allowances. Most businesses on Norfolk Island operate as sole traders or partnerships (often husband and wife).

Claims for depreciation allowances for small businesses can cover capital works, plant and equipment, and renovations and improvements. Over the 2016-17 financial year the Australian Government provided 100 per cent instant depreciation for individual capital goods purchased at a cost of less than \$20,000 (including freight charges). This has now been extended for FY2017-18.

There is a range of other tax deductions claimable against expenses incurred by business entities and against personal income for sole traders and partnerships, incurred in running the business. These are

set out on the ATO website. Partnerships do not pay tax as such, but the business profits are divided amongst the partners who pay tax individually on their income. Norfolk Islanders paying income tax benefit from the special area zone tax offset allowable on Norfolk Island as a remote area (allowable to individuals who have lived or worked in the remote area more than 183 days in the tax year). Currently this offset is set at \$1,173.

The question that arises is whether the Australian taxation changes represent a nett positive or nett negative stimulus for Norfolk Island businesses. This is not easy to estimate, but the results of a business confidence survey carried out on Norfolk Island recently (see section 3.2) suggest overall that businesses have been disadvantaged by the taxation changes introduced by the Australian Government relative to their previous circumstance. Anecdotal evidence appears also to support this observation.

(vii) Commonwealth's extension of NSW legislation to Norfolk Island

The Australian Government has incorporated Norfolk Island notionally as a part of New South Wales, by passing Commonwealth laws applicable on Norfolk Island which mirror NSW laws. The New South Wales Acts currently in force on Norfolk Island include the *Local Government Act 1993 (NSW)* (as the *Local Government Act 1993 (NSW)(NI)*), the *Health Services Act 1997* and the *Public Health Act 2010* (together with the *Interpretation Act 1987* and the *Long Service Leave Act 1955*).

With regard to the application of other NSW legislation, Schedule 1 item 1 of the Norfolk Island Applied Laws Ordinance 2016 temporarily suspends the application of other NSW laws until 1 July 2018 (see Appendix II). As the NSW Government lists over 950 Acts currently in force in NSW (NSW Government, 2017), if this proposition is imposed on Norfolk Island it is likely to provide a feast for financial and legal intermediaries, increased costs of business, but with little or no tangible benefit for the island.

See further section 1.2(i) on the extension of NSW regulatory provisions to Norfolk Island.

(viii) Effects on employment opportunities

The negative consequences of the charges accumulating on businesses over time on the future *level* of employment are likely to be very serious, but unpredictable in precise terms. There are however other aspects of the Commonwealth changes that are having negative influence on island employment.

The NIG operated a Temporary Entry Permit (TEP) programme, under which businesses wishing to hire a skilled employee and having found no one suitable after advertisement on the island, could support someone to come to Norfolk Island (from Australia as from elsewhere) as a TEP worker. These permits were renewable every 12 months, and provided a path to permanent settlement on the island for those so-disposed. The programme provided a flexible but controlled labour market on the island.

Under the NIG regime skilled workers could often be attracted to work on Norfolk Island on account of the better conditions and tax advantages on the island. This opportunity has now been lost as New Zealanders now require visas to work on Norfolk Island, and there is no comparable financial advantage for similarly skilled Australians to work on the island. Currently, a Norfolk Island business cannot sponsor skilled employees to come to the island to work. The Commonwealth's Regional Sponsored Migration Scheme has no regional certifying body responsible for Norfolk Island.

Also for residents of Norfolk Island the NIG regime provided a means by which they could find part-time work in tourism and other industries as seasonal and other variables required. This flexibility has now been lost to a large degree on account of: individuals receiving welfare support from the Australian Government are who likely to be penalised if they take part-time employment, and individuals taking a second job being penalised by withholding tax taken out of their secondary employment pay (and which is returned later by means of their income tax assessment).

1.2 NSW State (NSW) level changes

As noted above, the Australian Government has replaced, under Commonwealth legislation, the Norfolk Island Legislative Assembly with a "regional council" modelled on a NSW local government template. (The concept of "regional council" does not exist in NSW.) In comparison to NSW local governments Norfolk Island is unique in NSW, and perhaps in Australia, in that it is responsible for a very wide range of services, including the island's telecommunications, lightering and ports, electricity utility, and an international airport.

In previous years the NIG had the ability to raise general revenues, particularly from the NI GST and import charges. The NIRC no longer has this power, and is limited to revenue raising methods specified in the *Local Government Act 1993 (NSW)(NI)*. This has placed an immense burden on the 1,200-odd ratepayers of the island and has undermined the ability of the island to respond adequately and flexibly to needs as they arise. These changes are also reflected in the increasing imposts being made on businesses. The Australian government has enforced on Norfolk Island the requirement of raising an annual minimum in rates of \$1million (see Appendix II) (and see further section 1.2(vii) below).

There is a misplaced optimism that local authority funds-raising can support a community of around 1,200 ratepayers on an isolated island in a manner similar to mainland Australia, given the breadth of responsibilities that the NIRC has, and the usage of the island's infrastructure by 30,000 tourists per year. A further difficulty for the NIRC is that the current Council's senior management were appointed by the Australian Government not the NIRC.

(i) NSW regulatory compliance

Public health and occupational health and safety (OH&S) requirements will represent very significant cost increases for businesses on Norfolk Island. Many businesses on Norfolk are small (because the market is small), and some businesses are not full-time. For these reasons the costs of meeting regulatory provisions will be high relative to revenue, and can be further increased by transportation costs to and from Australia e.g. for training, laboratory sample testing, monitoring. If the full weight of NSW regulatory provisions is imposed on businesses on Norfolk, many will close, and this has already been happening.

Consider the implications of the *Public Health Act 2010 (NSW)* and Public Health Regulations 2012, which require the establishment of a defined quality assurance program for all "private water suppliers". As there is no reticulated water supply on the Norfolk Island and all businesses provide water from rainwater tanks or bores, this definition includes individual accommodation houses, hotels, recreational and sporting facilities, community halls, schools, food preparation premises, restaurants and cafes, rented accommodation, and even private homes providing progressive dinners for tourists (NSW Health, 2014). Each and every one of these businesses individually will be forced into complying with the panoply of imposed regulations. Water carters who provide water only in temporary drought periods on the island (less than 100 deliveries total per year) also come under similar regulations. (Initial cost of compliance with this Act for private water suppliers is running at around \$5,000 for 10-unit accommodation property, \$15,000 for hotels; on-going compliance costs extra.)

Again, consider red meat (cattle) slaughter. The NSW legislation, and regulations administered by the NSW Food Authority are drafted with large scale plant operations e.g. abattoirs, in focus, a quite different situation to Norfolk Island where a mere dozen or so cattle beasts are slaughtered each week. If the full NSW specified requirements for licencing and registration, meat safety inspection, facilities construction, hygiene and handling, labelling, inspection and audit were applied on Norfolk Island, it is possible that they would wipe out the local industry, and in addition raise the cost of red meat through necessary importation. In contrast the previous *Norfolk Island Slaughtering Act* is a short Act and gives considerable discretion to the Stock Inspector, and its success is demonstrated by the high public health and OH&S standards achieved under it. It is flexibility of this sort which is far more appropriate to Norfolk Island conditions than high-cost regulations appropriate for different circumstances.

The main point is that Norfolk Island businesses are supportive of public health and OH&S objectives, however the costs and the benefits need to be assessed in a manner which a small community is capable of sustaining. It is imperative to put in place a flexible system that does not drive small businesses to the wall. Within the ambit of World Health Organisation criteria, the current Australian state regulations do not necessarily represent a unique best solution to these issues. As Danny Gilbert, former director of National Australia Bank and Chair of the Business Council of Australia's Ease of Doing Business Committee stated in a recent essay (Gilbert, 2017):

This is not a call to blindly slash regulationbut to take a culturally thoughtful, systematic, evidence-based approach to reforming our nation's insidious regulatory culture and deliver the best outcome for Australians.

If regulation is necessary, it should be fit-for-purpose. It shouldn't be too complex or excessive for the risks involved....

(ii) increasing tradesperson rates

Tradespersons (electricians, plumbers, carpenters) are both businesses in their own right, and provide a direct input cost to the proper functioning of other businesses. They have their own regulatory compliance requirements. In 2014-15 prior to the reform process, rates on Norfolk Island for tradespersons ranged around \$35-\$40 per hour. Current rates on Norfolk Island have risen to \$45-\$50 per hour (a 25-30 per cent increase). These rates are still below rates current in NSW, and will inevitably rise substantially as new regulations come into force, and new employees expect Australian levels of allowances and superannuation. Unless an alternative decision is taken by the Commonwealth, NSW regulatory requirements for tradespersons in relation to OH&S, compulsory insurance etc. will be extended to Norfolk Island from 1 July 2018. This is likely to occasion significant cost increases for all businesses.

(iii) Commonwealth and NIRC airport charges

Under the Norfolk Island Government regime, Australian federal departure tax did not apply to flights from Norfolk Island to New Zealand. From 1 July 2016 the Australian Government introduced a passenger movement charge for people departing from Norfolk Island to New Zealand, of A\$55. This was increased to A\$60, from 1 July 2017.

The NIRC has also announced an increase of its passenger movement charge (levied on all arrivals and departures) at the Norfolk Island airport from January 2018, from \$25.70 to \$45.60 (an 85 per cent increase). From 1 January 2018 these imposts will raise the total passenger fees payable on an airline ticket to Norfolk Island to A\$158.94 ex Brisbane, and A\$214.10 ex Auckland. These are extremely serious increases for Norfolk in a very competitive tourist marketplace: the price elasticity of demand for short-haul holiday flights being very elastic i.e. < -1.00.

See further Section 2.1(ii) below, on airline services' response to these issues.

(iv) NIRC "fee unit" increased 12.7 per cent from 1 July 2017

Charges for many NIRC services are determined in terms of a "fee unit". The fee unit for 2016-17 was set at \$25.20, and this has been increased for 2017-18 to \$28.40, an increase of 12.7 per cent.

The influence of this increase will be pervasive. Services which are set in relation to the fee unit and which are relevant for businesses include conveyancing, register searches and provision of documents, lodging of documents, licence issuance, examination of stock, water assurance and so on, contained in NSW Acts and Regulations including the *Sale of Food Act*, *Electricity Supply Act*, *Water Assurance Charges Act*, *Companies Regulations*, *Electricity Supply Regulations*, *Liquor Regulations*, and *Planning Regulations*.

(v) Other NIRC fees and charges have also increased from 1 July 2017

These increases include the following:

- ◆ Norfolk Telecom landline and mobile charges increased by 15 per cent;
- ◆ lighterage charge per cubic metre/tonne increased by 13 per cent, and it is understood that a further increase is projected;
- ◆ the electricity tariff remains at 62c/kWh however new charges effective 1 October 2017 include: a general infrastructure charge to all electricity consumers for grid access of \$37 per quarter; and a solar infrastructure access and development charge for consumers with photovoltaic arrays, of \$26 x Kw capacity per quarter.

(vi) wastes management

Under the NIG all Norfolk Islanders, including Norfolk Island businesses, paid a waste management levy at the rate of \$32/tonne on the import of all goods (incoming mail the only exemption). On 1 July 2017 the NIRC increased this levy to \$35/tonne (a 10 percent increase). The NIRC has now introduced from 1 August 2017 an additional waste management fee for disposal of non-recyclable waste, with the cost dependent on the volume of waste. This is set at \$15 per medium truck (1 cubic metre), \$20 per large truck (2 cubic metres).

In 2012 the Commonwealth declared the Norfolk Marine Park under the Australian Environment Protection and Biodiversity (EPBC) Act. This includes a sea area completely circumscribing Norfolk Island. Under the EPBC Regulations the disposal of wastes into a marine reserve is prohibited without the approval of the Director of National Parks, and the Director has made her view known to the NIRC that current disposal practices are inconsistent with the conservation objectives of the park and that current practices must cease. The NIRC supports this objective and is working towards this goal. The point requiring emphasis in the present context is that this represents a further, however unintentional, impost by the Australian Government on Norfolk Island businesses and the community. (Further on the Marine Park, see section 2.1(iv))

(vii) property rates

The Australian Government has imposed on the NIRC the requirement of raising from property rates a minimum of \$1,000,000 from property rates in the year ending June 2018, and thereafter (see Appendix II). This imposed further new costs on island businesses. (See further section 2.2(vi))

1.3 Summary

Businesses on Norfolk Island are being subject to an avalanche of cost increases imposed directly and indirectly by the Commonwealth, which many businesses will not be able to sustain.

It should be recalled that the downturn of economic activity experienced by many economies around the world over the years 2007-09 – when national GDP figures fell by around only 5 per cent – was characterised as a "financial crisis". With the Norfolk Island economy bracing for a plunge in activity much greater than that, the description of "crisis" is also applicable here.

The changes in imposts to which Norfolk Island businesses are subject in 2016-17, and will be subject in coming years are summarised in Table 1. Invariably these represent cost increases. Wage costs alone for some small businesses are set to rise over 30 per cent immediately on 1 July 2018 (see Appendix I). (And it is important to recall in relation to Table 1 that small percentage increases on large money amounts can also represent substantial cost increases e.g. the superannuation levy.)

Table 1.
Cost Increases for Norfolk Island Businesses since FY2015-16
as a result of the Commonwealth Intervention

NB: For each issue (as discussed in the text) this Table gives the chosen baseline measure and cost increases (in dollar or percentage terms) subsequent to FY2015-16. There are no known cost decreases that can be identified. Symbol (+) refers to estimated increases: the more symbols the larger the change. See text for full explanation.

Issue	Base	Cost Increase for Financial Year			
		2016-17	2017-18	2018-19	2019- (best knowledge)
Commonwealth					
Minimum wage	NI min. wage	+16%	+18%	+3%	Continues to increase at ~3% pa
Employee entitlements	NI min. wage	+11%	—	—	Continues at this higher level
MAS	NI wage, penalty rates	—	—	>25%	Continues at this higher level
Superannuation guarantee	NI wage/salary	+1%	+1%	+1%	Continues to incr. annually to 12.0%
Compliance costs Cwlth (tax, emp.)	Business turnover	+++ \$	—	—	After setup, cont. at const. level
Income tax (compliance, profit)	NIG tax level (w. allowances)	(+) \$	(+) \$?	
State level					
Compliance NSW (Public health etc.)	Equipm't, training, registr'n etc	++ \$	++++ \$?	
Tradespersons (as inputs)	Hourly rate	+12.5%	+12.5%	?	
NIRC services	NI fee unit 2016-17	—	+12.7%	?	Continues this higher level?
NI Telecom - landlines & mob	Charges 2016-17	—	+15%	?	Continues this higher level?
Lighterage	Charges 2016-17	—	+13%	?	Further increase foreshadowed?
Electricity	Fees & charges 2016-17	—	+ \$?	
Wastes management	Fees at 2016-17	—	+ \$?	
Property rates	Rates at 2016-17 (min. \$500k)	Intro-duced	+100% (min.)	?	Continues this level or higher
Cwlth & State					
Airport & passenger fees	(i) Cwlth pass. tax ex NZ prev. nil (\$)	+\$55	+9%	?	
	(ii) NIRC pass. levy 2016-17 (\$25.70)	—	+85% (>Jan '18)	?	

2. Uncertainties and Complicating Issues

Quite apart from the issue of known cost increases as discussed in previous sections, there is a further number of issues which have increased uncertainty for Norfolk Island businesses. Some of these are of major significance and represent substantial impediments to business investment on the island.

2.1 Aggravating Uncertainties

(i) tourism budget

The former Norfolk Island Government over many years provided steady base funding for Norfolk Island tourism organisation and promotion (around \$1.3m per annum), as a foundation for forward planning by island businesses. Under the NIRC such reliable funding no longer exists. Under the Australian Government reforms, the Commonwealth agreed to fund state functions. Because tourism promotion is a state function, it is contended that it is the Commonwealth's responsibility to provide stable and reliable funding for tourism promotion on Norfolk Island – as Australian states do for their own tourism. So far the Commonwealth has refused to do this, although the Commonwealth has provided some emergency funding over 2016-17 (\$100,000).

Norfolk Island does not have access to NSW state tourism funding, such as the \$300million Tourism Fund, or Destination NSW.

(ii) airline service reduction

Norfolk Island has been served over many years by scheduled air services from Brisbane, Sydney, and Auckland. In recent years Air New Zealand has provided all these services, of which those from Australia are underwritten by a contract with the Australian Government which provides a "top up" to the airline if average fare (revenue/passengers) falls below a specified level. On 16 December 2016 Air New Zealand announced that it would be withdrawing direct air services between New Zealand and Norfolk Island from May 2017, and it did. In early 2017 the company Norfolk Island Airlines indicated that it would provide an Auckland–Norfolk service, and additional flights between Norfolk and Brisbane. These flights commenced in May 2017. However, on 11 September 2017 Norfolk Island Airlines announced it would be withdrawing from the Norfolk Island-Auckland route from 14 January 2018, citing the impact of tax increases imposed by both the Australian Government and the NIRC (see section 1.2(iii)), and higher than planned operating start-up losses due to the delay in the NIRC destination marketing campaign. (Norfolk Island Airlines, 2017)

The New Zealand tourist market represents 16-20 per cent of Norfolk Island's tourism. This reduction will hit not only the New Zealand market but also the Australian: Norfolk Island is a well-known location for international events e.g. jazz festival, country music festival, food festival, Norfolk theatrical festival, and these will be compromised if in future they are seen as without international flavour. Sports teams from New Zealand will also be discouraged from visiting if they can only get to the island by travelling via Sydney. The service withdrawal also represents a substantial loss of freight capacity for island businesses.

(iii) reduced multiplier effects of off-shore ownership

The absorption of Norfolk Island into the Australian taxation system, the unrestrained immigration of those with Australia-based interests to the island, and the contracting of services to off-island companies, have reduced the multiplier effects of economic activity on the island, with negative but unmeasured consequences. (For example the petrol supply contract, formerly held by a local firm, has been awarded by the Australian Government to an international company.)

(iv) recreational fishing around Norfolk Island

Recreational fishing in the waters around Norfolk Island is an important asset for Norfolk Island tourism, and in addition provides fresh fish for the tables of island families.

Norfolk Island is situated wholly within the Norfolk Marine Park, established by the Australian Government in 2012. The Park covers a somewhat rectangular area of around 188,000km² (almost one quarter the area of NSW) with Norfolk Island at its core. The Norfolk Island Government's *Norfolk Marine Reserve Act* remains in operation however the supporting regulations were not completed prior to the Australian takeover on 1 July 2016. The Park is managed by Parks Australia on behalf of the Commonwealth, with fishing under the control of Australian Fisheries Management Authority (AFMA). Within the Park is a rectangular area of 67x40 nautical miles around Norfolk Island referred to as the "MoU Box", within which tourist and local recreational fishing by Norfolk Island-based vessels is permitted under a Memorandum of Understanding entered into in 2010 by the Norfolk Island Government and AFMA. (NIG and AFMA, 2009) The Box is defined as a "multiple use zone" in the marine park plan. (Australian Marine Parks, 2017)

For many years the Norfolk Island Government and its successor the Norfolk Island Regional Council, together with NI Fishers Association, have petitioned the Commonwealth to identify the Box on all planning maps, including those of the Temperate East Commonwealth Marine Reserves Network, in order to confirm the status of the Box in relation to Norfolk Island and its economy. So far this request has been denied.

2.2 Other matters

(i) biosecurity and agriculture

Under the NIG regime the importation of live animals into Norfolk Island was controlled by the NIG under the *Norfolk Island Animals (Importation) Act 1983*. On 1 July 2016 control passed to the Commonwealth Department of Agriculture and Water Resources (DAWR) acting under the requirements of the *Biosecurity Act 2015*. Norfolk Island is now designated as a distinct region within Australia for biosecurity purposes (as some regions within Australia are also so-recognised).

In February 2017 an application was made by a Norfolk Island resident family to DAWR for a permit to import live milking goats from Australia. Following an exchange of information with the applicant the Department informed the applicant in July 2017 of its decision to deny the granting of the permit on the basis of the biosecurity risk. This decision is now the subject of an internal departmental review at the request of the applicant. Concurrently and independent of this application, the Department made it clear that they intended to refuse all applications to import ruminants (cattle, sheep, and goats) to Norfolk Island.

The issue of the importation of ruminants is a very important one for Norfolk Island both because of the status of the island's current stock, and because of Island's high agricultural potential and its potential to provide viable economic activity alternative to the Island's reliance on tourism – and indeed as an adjunct to tourism itself.

The reasons given by DAWR for the permit refusal referred to the results of the quarantine survey carried out on Norfolk Island over 2012-14 (Department of Agriculture, undated), which demonstrated the high biosecurity status of the island and the absence of ruminant-specific diseases on the island at that time. In any proposed importation the primary concern is for the potential introduction of disease, and in the case of ruminants particularly, Johnes's disease: a chronic and debilitating ruminant disease which exists in Australia and is difficult to eradicate once established in a herd. However up until 30 June 2016, cattle, sheep and goats imported to Norfolk Island under the strict biosecurity protocols provided under the Norfolk Island legislation were subject to no known incursions.

As an alternative to the import of live animals DAWR has suggested the use of artificial insemination for ruminants on Norfolk Island. This has disadvantages due to the fact that it provides only half the genetic material as new, and which is a particularly significant impediment on Norfolk Island due to the small ruminant numbers currently on the island. In the case of the proposed goat importation this approach also presumes that goat does are available to the importer, which they are not. Furthermore the denial of live imports may well signal the gradual demise of the existing ruminant-based industries on the island, including the existing single goat-owner's fledgling business. (Currently Norfolk Island is home to around 1,500 cattle, 100 sheep and not more than 10 goats.)

For DAWR, when it is proposed to import a good (including animals) into Australia from overseas – and now equally into Norfolk Island from Australia – the *Biosecurity Act* provides for the Director of Biosecurity to conduct a Biosecurity Import Risk Assessment (BIRA) in relation to that particular good. This is then assessed against a criterion called the "appropriate level of protection" (ALOP), in which an investigation is made to determine whether risk management measures exist which can reduce the assessed risk to achieve the relevant ALOP level, which is not of necessity zero. If it is considered that the appropriate level of protection cannot be achieved, then importation is refused. (DAWR, 2016)

In the case of the application for a permit to import the goats to Norfolk Island, it appears that a BIRA has not been undertaken and that the decision has been made on less comprehensive grounds. For their part the applicants did in fact propose a number of risk-reducing strategies, and that the goats be subject to comprehensive testing and screening prior to departure and after arrival on Norfolk Island. Furthermore the decision by the Department to intend to refuse all live ruminant imports to Norfolk was not preceded by any consultation with the Norfolk Island community, nor in particular with the island's veterinarian or the Norfolk Island Cattle Association (NICA). The NICA in fact supports the continued importation of ruminants under strict quarantine conditions such as those in place under the previous regime.

Furthermore it appears that under BIRA procedures, the potential benefit to Norfolk Island of an expanded goat (or other ruminant) industry could not be taken into account, because that would apparently transgress World Trade Organisation international trade rules which allow only for the consideration of the *dis-benefit* of a disease outbreak in risk assessment procedures (DAWR, 2016, p.8). This would be truly ridiculous, and is a further example of the Commonwealth's entanglement of Norfolk Island in laws and rules and protocols not designed for small isolated islands and which are largely irrelevant, inhibitive, and decidedly costly for the island itself.

We need to be very clear what is happening here: namely that DAWR is – with the stroke of a pen – making a decision about how it thinks it should save Norfolk Island agriculture from itself, for no benefit to the Australian mainland, and for a great dis-benefit to Norfolk Island. This approach needs urgently to be reviewed.

The stringency so-far accorded by DAWR to the import of ruminants to Norfolk Island stands in stark contrast to the apparent relaxing of biosecurity protocols for horses, dogs and birds, and to the apparent unwillingness of DAWR to inspect marine consignments arriving at Norfolk Island on board ship and prior to physical landing on the island – as was done under the previous regime. On at least one occasion a ship has been turned away from the island in the past due to infected cargo.

(ii) new industries? The example of medicinal cannabis

The Commonwealth does not have a good record in assisting the promotion of new industries on Norfolk Island. One recent episode relates to the possible commercial cultivation of medicinal cannabis on the island. Given the island's severe isolation, biosecurity status and climatic conditions, commercial research showed that this could be a very valuable crop for the island. On two occasions (in 2014 and 2015) the Norfolk Island Government issued separate licences under Norfolk Island law to Australian companies to import to, cultivate and harvest cannabis in, and export cannabis from Norfolk Island. On both occasions the licence was cancelled by the Norfolk Island Administrator on instructions from the Commonwealth Minister. (Hardgrave, 2014; Adams, 2015a & b).

In 2016 the growing of medicinal cannabis became legal in Australia, and a number of companies both Australian and from overseas have expressed substantial interest in investing in the industry in Australia.

(iii) loss of government buffer

Island economies are naturally subject to quite wide swings in economic fortunes as a result of their very small size, and their being price takers in the economic arena and having to respond to economic conditions elsewhere. The loss of the ability to raise general revenues inhibits the ability of the NIRC to respond promptly and adequately to economic downturns (or upturns) effecting the island and its citizens. Furthermore under the NIG regime public funds available from the NI-GST increased naturally with increasing economic activity, but this link has now been broken.

(iv) loss of economic and tourism statistics

During the period of its existence the NIG maintained a number of statistics by which to monitor the island's economy. NI Customs kept records of goods imported, and whether they were for resale or not; NI Treasury had records of GST payments; and visitor arrival cards on arriving passenger aircraft provided a range of data about island visitors, particularly tourists, for tourism planning purposes. NI CPI figures were regularly calculated according to an Australian Bureau of Statistics (ABS)-derived and locally-relevant formula.

Under the new regime the NIRC has lost access to monitors of almost all its key economic indicators. There are no records of imports; no GST is payable; the Australian Border Force administers the Australian Government's passenger arrival cards system and although some information on tourist arrivals is now provided to the NIRC, this is circumscribed in content and at the discretion of the ABF.

There is no simple means available to make up these losses. Statistics available from the ABS are only rarely adequate and timely for island purposes due to factors including: long time intervals between collections; the time interval between collection and publication; Norfolk Island not necessarily being separately identified; confidentiality issues requiring the suppression or rounding of small numbers; and data collected not necessarily being locally relevant. And special data requests to the ABS have to be paid for.

(v) cruise ships

In recent years Norfolk Island has received visits from smaller-sized cruise ships which may carry their own inflatable boats for disembarkation. An increase in the number of visits to Norfolk Island by cruise ships represents one of the few positive opportunities on a bleak economic landscape. (In calendar year 2015 seven cruise ships came to the island, five discharged passengers totalling 1,925 persons; in 2016 five cruise ships came, three discharged passengers totalling 154 persons. In 2017 five ships have come - up to 22 October - discharging passengers on three occasions totalling 225 persons. Two more cruise ships are scheduled to arrive before the end of the year. (Transam Argosy, 2017)) Measures are afoot to increase the number of cruise-ship based visitors. There are a number of difficulties yet to be addressed, including the probability of not landing from larger vessels due to wind and weather (finally a decision for the ship's captain), and issues relating to passenger insurance in transfer and on land. While increased cruise ship visits can benefit the island, there are cogent reasons why net benefits will be limited. (Nobbs, 2017a)

(v) small business mentoring

The NIRC has recently sponsored a consultancy group from Queensland to provide mentoring for small and start-up businesses on the island. These activities may well prove useful for the island, however any positive effects are likely to be at the margin. The issue of how to energise new and novel business sectors in order to stimulate economic growth on the island has been the subject of discussion and debate over many years, and is recognised – as elsewhere – to be a difficult issue.

(vi) community effects

It needs to be noted that the continued impositions by the Commonwealth Government, and the lack of genuine acceptance by them of community input into strategic decision-making, has led to a widespread loss of self-confidence and self-esteem by many members of the community, and this has its own repercussions on economic and social wellbeing in the community.

Quite apart from the direct business concern with the introduction of land rates, the author is constrained to emphasise the distress that the introduction of land rates is having on many in the Norfolk Island community, and in particular on the descendants of the original settlers from Pitcairn Island. These folk hold their land as part of their patrimony and cultural identity to be passed down through the generations, and not as a merely fungible financial asset. Being often land rich but cash poor, many of them are being forced to sell their patrimony to pay their rates. Such sales are also likely to have the effect of driving land out of rural uses in an era in which immigration to the island is no longer controlled and housing represents a higher money value for the land.

2.3 Summary

Uncertainty is corrosive to business confidence and the willingness of businesses to invest. It also provokes emigration of working-age people. On this matter there is very little visible upside to the situation in which Norfolk Island finds itself.

The combination of rising costs and uncertainties about the future have caused many businesses on the island to close, others to reduce their business hours, and many to be put up for sale. (See Appendix III)

3. Surveys, Models, and Commonwealth Expenditures

The serious challenges faced by Norfolk Island businesses into the future and outlined in foregoing chapters, are confirmed by other lines of evidence.

3.1 The accommodation business model (June 2016)

In June 2016 model calculations were done for a typical or average Norfolk Island accommodation house undergoing the announced legislative changes of the Australian Government over the years to come. The model was conservative in its assumptions, the results of the calculations were described in the media at the time, and the model including its assumptions made available publicly in its entirety. (Nobbs, 2016a)

Making necessary assumptions about how the business functioned, the model made profit and loss projections for the business over the coming years. The results of calculations for a conservative “base case” scenario showed that individual after-tax income would register a 33 per cent drop from 2015-16 to 2018-19 (from around \$27,600 in 2015-16 to around \$18,500 in 2018-19). In the first year of the changes (2016-17) the business showed net benefit from the effects of the removal of the NI-GST, the new depreciation allowance and special zone tax offset effects, but these were rapidly eaten away by rising minimum wages, and in the year 2018-19 by penalty rates under the MAS. These numbers raised very serious concerns not only about the future income for accommodation business proprietors, but also their ability to invest and ensure their businesses remained economically viable. (The model did not of course take into account the loss of the New Zealand tourism market due to the withdrawal of air services from January 2018 (see section 2.1(ii)).

The results of the model calculations were provided at the time to the then Minister for Territories Hon Paul Fletcher and to the Secretary of the Department of Infrastructure and Regional Development Mr Mike Mrdak, and to other members of the Department responsible for Norfolk Island affairs.

3.2 Business confidence survey (August 2017)

A survey of business confidence on Norfolk Island was carried out over 21-28 August 2017. The survey was restricted to business owners/operators who were members of the Norfolk Island Chamber of Commerce (COC) and/or the Norfolk Island Accommodation and Tourism Association (ATA). The COC and the ATA are the peak bodies on Norfolk Island representing their members' interests. (Not all businesses on the island belong to either of these organisations.) Approximately one half of the relevant membership of the COC and one third of the relevant membership of the ATA responded to this survey.

Based on the responses received, business confidence on Norfolk Island is low, and getting worse. Sixty-one per cent of respondents considered the financial position of their business was worse in FY 2016-17 than it was in FY2015-16, while 21 per cent considered it was better. With regard to the outlook for FY 2017-18, 43 per cent of respondents considered the performance of the businesses would be "about the same", and 43 per cent considered they would be "worse off" (13 per cent considered they would be "better off" in FY2017-18 than they were in FY 2016-17). Furthermore about half of the respondents (48%) see no respite in the medium term (5-7 years ahead) although a minority (30%) do see such a respite. (Nobbs, 2017c)

It must also be emphasised that the responses to the survey are probably biased in the direction of optimism because of the surge of money into the community from termination payments to Norfolk Island public servants in June 2016, and from the capital works programme being undertaken on the island by the Commonwealth. Neither of these will recur in future years.

Appendix III also provides some additional data bearing on the matter of business confidence: in relation to business closures, business for sale advertisements, and empty commercial space.

3.3 Australian Government direct expenditure (2015-18)

The Australian Government has in the past year spent, and at the time of writing is spending, significant amounts of money on Norfolk Island infrastructure. These expenditures will have a positive impact on island businesses in terms of local employment and services provided to them. However these expenditures will shortly end and to all knowledge will not be repeated. Commonwealth pensions and entitlements are also paid on the island, replacing those paid by the former Norfolk Island Government (in some cases the coverage and entitlement amounts have increased, in some decreased).

Longer term infrastructure projects by the Australian Government include:

- ◆ refurbishments at the Norfolk Island Central School, and at the Norfolk Island Health and Residential Aged Care Service (formerly the Norfolk Island Hospital);
- ◆ the Cascade pier project, including the redesign and extension of the pier, and the installation of a crane designed to handle containers; and
- ◆ the construction of four barges: three for the disembarkation of cruise ship tourists, and one for the unloading of freight. (investment in pier and barges estimated at around \$18m).

This infrastructure spending will have long-term beneficial effects for the island, particularly if the Cascade improvements function to specification. The contract for the construction of the barges has now been let, with a start date of January 2018 and a scheduled completion date of April 2019. However uncertainty clouds this work in the short to medium term. Difficulties with the shipboard craning of containers particularly in moderate to heavy seas have yet to be resolved, as do occupational health and safety issues. There is no evidence to suggest that sea freight costs to the island will fall in the short or medium term.

On the other hand, requests by the NIRC to the Australian Government for assistance with regard to projects the NIRC considered as high priority – including connection to the trans-Pacific Hawaiki telecommunications cable, a waiver on the debt relating to the airport runway resurfacing in 2006, and reliable tourism funding – have been declined.

3.4 CIE econometric modelling (2004, 2014)

In 2006 the Centre for International Economics (CIE) of Canberra was asked to prepare a report for the Commonwealth Department of Transport and Regional Services (DOTARS) on the effects of an extension of all Commonwealth legislation to Norfolk Island. The report was not released by the Commonwealth, and only became available publicly in August 2015 by decision of the Administrative Appeals Tribunal (AAT) following a four-year-long campaign by Mr Brett Sanderson, opposed by the Commonwealth (CIE, 2006/2015). According to court documents DOTARS, together with the Department of Prime Minister and Cabinet, argued that release of the report would be contrary to the public interest. (Belot, 2015)

In 2014 the CIE was asked by the Department of Infrastructure and Regional Development (DIRD) to prepare a second and final report on the same issue. This report was released by the Commonwealth and gave a much more positive perspective on the merits of the intervention by the Commonwealth on Norfolk Island.

As we now know following the AAT ruling, the 2006 report forecast that following implementation of the Commonwealth changes Norfolk Island's gross domestic product (GDP) would initially fall by around four per cent before rising to around nine per cent above the "business as usual" baseline by the end of the ten-year projection period; and that consumption per household would rise some four per

cent above baseline over the same projection period. On the other hand the 2014 report forecast that the basic "core reform" with the combined application of Australian income tax, welfare payments and Medicare reforms, would see a jump in economic activity of around 14 per cent, and a large increase in household consumption of around 38 per cent by the end of its ten-year projection period (CIE, 2014, p.3). These latter figures have featured prominently in many subsequent Australian ministerial and departmental utterances.

Concerns were expressed at the time of the publication of the 2014 report as to the appropriateness of the computable general equilibrium (or CGE) model used in these calculations. (Nobbs, 2015) CGE models are commonly used to project things like global trade, and the economic performance of countries as diverse as the USA and Japan, while here it was being applied to an economy involving a population of around 1,800 (about the same size as Eumundi in Queensland or Narooma on the south coast of NSW). CGE models are extremely intensive in data requirements and if necessary data are not available, then the model requires that they be made up, and this can introduce considerable unreliability in the results obtained. The CIE reports acknowledged this issue. (CIE, 2014, pp 11-12)

The model assumes that resources will always be forthcoming to support the changes indicated, and that all change is "at the margin" (i.e. small and continuous). This latter is a particularly misplaced assumption because in Norfolk's small economy the market for many individual goods and services can adequately be provided by one supplier, so that monopoly or near monopoly is a common condition (e.g. in air transport, shipping, and in professional and technical services, quite apart from in government services such as power provision and the Norfolk Island liquor bond.) Furthermore, the model does not consider changes in the distribution of income consequent on the scenarios, nor environmental costs, nor the repatriation of money profits from the island to overseas owners rather than being reinvested locally.

Professor Michael Common, an English economist who spent ten years as a Senior Fellow at the Centre for Resource and Environmental Studies (now the Fenner School of Environment and Society) at the Australian National University in Canberra, and who was thoroughly familiar with the ORANI CGE economic model used in the two CIE reports, was engaged as an independent academic expert to compare the contents of, and the differences between, the two CIE reports. In his report Common notes that the numbers generated by the two model applications (2006 and 2014) are quite different, and concludes that due to the lack of transparency as to the data entered into the model and how it has been treated, it is not possible to discriminate amongst possible causes for this discrepancy. The usefulness of the CIE2014 report in particular was undermined by the fact that it does not make clear what the baseline is against which the economic changes are assessed, nor what infrastructure spending will be made and by whom: issues critical to any coherent assessment of Norfolk Island's future. Furthermore, Common's judgement was that given the very small size of the Norfolk Island economy, the use of the type of econometric model employed by CIE was "not a useful exercise". (Common, 2015) The CIE 2014 report makes no mention of the CIE 2006 report.

A further note from the perspective of November 2017. With the availability of both reports and the passage of time we can start to gain an augmented impression of the projections made by the CIE models. We note:

- (i) According to the 2014 model the economic impact of the reform package would be felt immediately with an initial and substantial surge in gross territory product (GTP/GDP). There is no available evidence that this has occurred, in fact the recent business confidence survey on the island suggests the contrary;
- (ii) The 2006 report indicated that prices on Norfolk Island would fall by around 5 percent, however the 2014 report makes no mention of prices. In fact following the introduction of the reforms on 1 July 2016 and except in rare instances, prices did not fall, and they have continued to rise as increased costs are placed on businesses and the community more generally;

(iii) One way of monitoring the output reliability of such CGE models is to employ "sensitivity analysis" i.e. to change slightly some key assumptions and observe what happens to the results of the model runs. Although two such analyses are recorded in the 2006 report, none are recorded in the 2014 report. The possibility therefore arises that the island is exposed to dangerously inappropriate policy choices as a result of inadequate assumptions underlying the modelling calculations.

(iv) The CIE modelling contains *no consideration of or reference* to the effects of the introduction of the MAS system into the Norfolk Island economy, scheduled for 1 July 2018, and to all available evidence *no consideration or reference* to the costs of meeting NSW and Australian regulatory provisions: two on-the-ground critical matters for business survival and profitability on the island.

3.5 Summary

The results of the accommodation house modelling (section 3.1) and the business confidence survey (section 3.2) indicate that the Norfolk Island economy is on a downward path. This is not alleviated by Australian Government direct expenditures on island infrastructure (section 3.3). The econometric modelling carried out by CIE for DIRD is compromised by its history, and at this time cannot be considered in any way legitimate as a basis for policy.

The application of abstract and mathematically sophisticated macroeconomic models to micro economies such as Norfolk's may give an impression of accuracy and sophistication, but this is illusory. Much greater attention needs to be paid to what is actually happening on the ground. (See further section 4.2(i) below.)

4. Overview of the Norfolk Island business situation

4.1 The current crisis

Norfolk Island businesses and the economy generally have been exposed to immense changes since 1 July 2016, which have brought the Norfolk Island economy to the brink of disaster. The evidence suggests that the island's economy and society is heading for collapse; tourism, upon which the island depends for its livelihood, is in disarray.

By requiring both that Norfolk Island pay its own way and that Norfolk Islanders be subject to taxes and benefits like mainland Australia, Australian Government policies are crushing the Norfolk Island economy in a vice from which few groups will escape. (Groups more likely to escape include: accountants and financial advisors whose rise is a consequence of the Australian Government's intervention, service providers to the Commonwealth and Commonwealth public servants with salaries fixed independent of conditions on Norfolk Island, and those with independent financial wealth from wherever they may come.)

The business community on Norfolk Island is very supportive of improving the wellbeing of its employees. However if the price is business closures, then no one benefits. Unemployment on a small island may mean emigration.

Norfolk Island has always been a relatively high cost-of-living economy due in particular to the high costs of freight and transport. Freight and associated costs impact heavily on the prices of imported goods – especially products such as building materials, fuel, groceries, and stock feed. Electricity prices on the island are very high relative to mainland rates. The electricity cost in South Australia, attested to be the highest power price in the world at 47.13c/kWh (Potter & Tillett, 2017), compares with the current Norfolk Island price of 62c/kWh. For Norfolk Islanders the return "bus ride" to the nearest destination starts at a minimum cost of around \$600.

In this environment the increased financial burdens put on island businesses and the community more generally by the changes being wrought by the Australian Government, as described in the foregoing pages, are likely to be crippling. Price rises, combined with the well-known price sensitivity of short haul tourism demand, the loss of direct air services to New Zealand, and the lack of institutionalised support for the island's tourist industry, are likely to result in a steep decline in tourism, a deep slump in business generally, and a rise in unemployment. The economic outlook is further darkened by great uncertainties in relation to the island's economy which diminish investment, and the apparent lack of any coherent plan or motivation by the Commonwealth to support sectoral initiatives on the island alternative to tourism.

As for those made unemployed, they will be protected to some extent by Australian welfare benefit payments, but this is an outcome that few on the island are likely to desire, and would represent a shameful outcome to the "reforms" put upon the island by the Australian Government. Eventually many of these people may be forced to leave the island with their families, as their aspirations and hopes for a life and career on the island – in many cases the island of their birth – are eroded.

We can summarise here **important causative issues underlying this crisis**:

- ◆ the imposition of the Australian Modern Award System, due to be introduced on 1 July 2018 (section 1.1(iii));
- ◆ the costs associated with compliance with Australian and NSW laws and regulations generally (sections 1.1(v) and 1.2(i));
- ◆ the failure of the Commonwealth to guarantee reliable tourism funding (section 2.1(i));

- ◆ the problems associated with achieving reliable flights to the island from New Zealand (section 2.1(ii));
- ◆ the loss of the ability of the NIRC to raise general revenues, together with the forced reliance on land rates (section 1.2(vii)).

The difficulties being experienced by businesses on the island (and by the community in general) **have been exacerbated by:**

- ◆ the overwhelming diversity and magnitude of the changes that have been and continue to be imposed on the island, coming on top of an economy that has seen only modest performance in the wake of the global financial crisis;
- ◆ the complexity of some of the changes e.g. those in relation to company structures, tax and superannuation requirements; and by
- ◆ the immediacy of the changes, many of which have been introduced with no or minimal transitional arrangements.

All these have added costs to the island of one sort or another.

The evidence more generally indicates that:

- (1) Despite the changes being wrought on the economy there is no evidence as yet that they have been of benefit to the Norfolk Island economy overall. The tax system changes show no clear evidence of net benefit (section 1.1(vi)); the Accommodation House Model of June 2016 (section 3.1) and the Business Confidence Survey of August 2017 (section 3.2) show net dis-benefits. The heavily compromised econometric modelling is without current relevance (section 3.4).
- (2) Depressed business confidence is exacerbated by the absence of evident upside to the present situation. Businesses have closed, others have gone onto shorter hours, and many are advertised for sale (See Appendix III). The increase in cruise ship visits can offer only a minimal respite to this problem.
- (3) When new sectoral economic opportunities have presented themselves on the island, they have failed to attract the support of the Commonwealth (sections 2.2(i) and (ii)).
- (4) Although not discussed in this report, there is abroad in the community an increased level of emotional distress that has its origins in the fragmentation and depersonalisation of life under the current regime, and which are eroding the fabric of Norfolk Island society. Many people on the island are exhausted and disillusioned by the imposed changes. Not all people on the island feel this way however.

4.2 Some functional elements underlying the crisis

(i) Incomplete appreciation of the attributes of small scale marine-isolated economies

There has been a failure of the Australian Government to come to terms with the nature of very small economies on very isolated islands. (In one respect this is understandable as that government deals by and large with economic life on an immense and continuous continental landmass.) This failure has been concretised by the inappropriate use of CGE modelling of the Norfolk Island economy, and the unwarranted picture it created.

Economies on very small isolated islands have some important and particular characteristics which it is important to understand if adequate economic policies are to be put in place:

- (1) They are not the same as small country towns, *inter alia* because they lack a surrounding-towns hierarchy to draw upon (see also Nobbs, 2016b);
- (2) What might be apparently small government-induced *institutional* changes in the case of larger economies, can have very major effects on small islands. (This is the lesson that can be taken from the matter of regulatory cost relative to enterprise size, and other examples given below);
- (3) Similarly, from a *market* perspective, marginal change doesn't necessarily mean marginal outcome on a small island (such as when a single supplier chooses to close his or her business and there is no replacement).

These issues entail two matters of major consequence:

- ◆ the need to pay close attention to specific island circumstances, on the ground; and
- ◆ the need for policy to allow for flexibility above all.

Australian Government policies implementing the current changes have so far shown little evidence of either of these characteristics.

In the foregoing report we have encountered a number of specific issues in this genre:

- ◆ the cost to businesses of regulatory compliance relative to revenue;
- ◆ employment penalty rates under MAS in relation to aeroplane arrival days;
- ◆ minimal hours of overtime under MAS given the characteristics of Norfolk Island living;
- ◆ a one airline default on the New Zealand route means no airline at all;
- ◆ costs to business as a result of the declaration by the Australian Government of the Norfolk Marine Reserve;
- ◆ the irreducible high cost of freight;
- ◆ with the island having no harbour there is no reliable or necessarily smooth transition of sea passengers or cargo from ship to shore despite the pier and barge improvements;
- ◆ the loss of economic and tourism statistics that cannot be replaced by ABS statistics;
- ◆ unemployment on an island versus emigration;
- ◆ tax on second jobs and their consequences for labour flexibility.

And in a more general sense the unique and problematic nature of remote island life and economy relative to metropolitan life, is exemplified by:

- ◆ the patched-up nature and derivation of laws being applied to Norfolk Island;
- ◆ the matter of requiring or not requiring passports for travel from Australia to Norfolk Island (particularly if planes from Australia are diverted by island weather to New Zealand);
- ◆ passengers from Australia having to fill in Australian Border Force passenger arrival cards;
- ◆ plant biosecurity differences with Australia;
- ◆ Norfolk Islanders being governed by NSW laws but having no vote in NSW elections.

These matters too reveal the general difficulty of fitting marine-isolated islands into standard categories.

(ii) the unnecessary characteristics of the changes applied

Quite apart from the content of the Australian Government's approach to Norfolk Island's economy, its implementation of that approach has been unnecessarily abrupt and abrasive.

One of the actions agreed in the *Norfolk Island Road Map*, signed in March 2011 between the Commonwealth Government and the Norfolk Island Government, related to processes to be involved in the transition and included the idea of introducing Australian tax file numbers to be followed by a

"dry-run" of tax returns to allow individuals and businesses time to adjust adequately to the proposed changes. A similar idea was recommended by the CIE in its 2014 report (CIE, 2014, p.54). Another idea promoted prior to the Federal Election of 2013 by Michael Keenan MP, Liberal Federal Member for Stirling and Shadow Minister responsible for Norfolk Island at the time, proposed that a Coalition government would decouple the dates of introduction of the Australian welfare system on Norfolk Island and the Australian taxation system, in order to provide some respite for people adjusting to the changes. (The introduction of Australian income tax in the Indian Ocean Territories was in fact phased in over four years.)

ACIL-Tasman in their consultant report of 2012 to the Commonwealth on the economic development of Norfolk Island stated their advice as:

In the immediate, it is not, however, necessary to resolve the final status of the integration of Norfolk Island with the Australian tax and transfer payment system. Rather, it is simply necessary to provide business with certainty regarding the operating environment. This certainty can be provided by the Commonwealth and Norfolk Island governments agreeing that company and income tax will not be extended to Norfolk Island until there is sustained evidence that the Norfolk Island economy is growing, and that the imposition of such taxes will not derail this growth; and that regardless of evidence of economic growth the extension of such taxes will not take place within the next five years. (ACIL-Tasman, 2012)

Unfortunately, none of these possibilities was activated. Economic consultants retained by the NIG also offered alternative strategies for the embracing of change (Econtech, 2006, 2008).

(iii) The Commonwealth's approach to date

Warnings of the impending crisis on Norfolk Island have been made by individuals and organisations on the island over at least the last eighteen months (e.g. NI Accommodation and Tourism Association, 2016). Even in recent months the responsible Commonwealth Minister and politicians have continued to maintain an approach in public that "all's going well" (e.g. Nash, 2017): this despite personal representations to the contrary by Island business people. It is hoped that the present report will provide the opportunity for the Commonwealth to reconsider its approach.

4.3 Immediate needs

The economic and governance model imposed on Norfolk Island is at base flawed and very damaging to the island's economic well-being. There is an urgent need for the Australian Government to take steps to avert the crisis and the impending collapse of the Norfolk Island economy. These steps include:

- (1) calling a halt to imposing on Norfolk Island any further legislative or regulatory changes under current arrangements;
- (2) commissioning the Australian Productivity Commission to carry out research and conduct a public inquiry to determine the real financial capacity of the island and how it can survive economically, socially and culturally at reasonable cost;
- (3) restoring some general revenue-raising powers to the Norfolk Island Regional Council; and
- (4) specifying with much more precision than hitherto what its objectives on Norfolk Island are, and developing indicators to measure outcomes on the ground.

References

- ACIL Tasman, 2012, *Norfolk Island Economic Development Report: Reform of the Norfolk Island Economy*, Report for DRARGL, March 2012, p.96.
- Adams, R., 2015a, Media release: Administrator Hardgrave cancels AusCann licence to cultivate medicinal cannabis on Norfolk Island and growing of medicinal cannabis will be legalised in Victoria, *The Norfolk Islander*, 10 October.
- Adams, R., 2015b, Letter to Hon Paul Fletcher, Minister for Territories, Local Government and Major Projects, Re: Prospective medicinal cannabis industry for Norfolk Island, 5 November.
- Australian Marine Parks, 2017. *Temperate East Network Draft Management Plan*, <https://parksaustralia.gov.au/marine/parks/temperate-east/plans/>
- Belot, H., 2015, "Uncensored audit of Norfolk Island's economy must be released, tribunal", *The Canberra Times*, 11 June.
- CIE, 2006/2015. *Economic Impact Assessment of extending Commonwealth legislation to Norfolk Island*, report to DOTARS, October 2006.
- CIE, 2014. *Economic Impact of Economic Reform Scenarios: Final Report*, report to DIRD, November 2014.
- Common, M., *A Comparison of Two CIE Reports (2006, 2014) on the Economic Impact of Norfolk Island Reform Scenarios*, 20/11/2015. Available for download from: <http://www.norfolkonlinenews.com/>. Summarised in Nobbs, 2017b.
- Department of Agriculture, (undated), *Norfolk Island Quarantine Survey 2012–2014: A Report to the Australian Government Department of Infrastructure and Regional Development*.
- Department of Agriculture and Water Resources, 2016. *Biosecurity Import Risk Analysis Guidelines 2016: managing biosecurity risks for imports into Australia*, DAWR, Canberra.
- Econtech Pty Ltd, 2006. *Modelling the Norfolk Island Government's Financial Position*, report prepared for the Norfolk Island Government, September; idem, 2008. *The Norfolk Island Government's Financial Position — One Year Later*, report to Norfolk Island Government, February.
- Gilbert, D., 2017. "Tackling Australia's \$65 billion red tape industry", *The Weekend Australian*, 25 February.
- Hardgrave, Hon G., 2014, Media Statement: Tasman Health cannabis licence cancelled, 14 August.
- Nash, Senator Fiona, 2017. Interview *Pacific Beat*, ABC Radio, 22 September.
- Nobbs, C., 2015. "Norfolk Island: So far a failure of process", *The Norfolk Islander*, 24 January 2015.
- Nobbs, C., 2016a. "Future for Norfolk's accommodation houses looks bleak", *The Norfolk Islander and Norfolk Online News*, 11 June 2016. Reprinted in (Nobbs, 2017b).
- Nobbs, C., 2016b. "Why Norfolk Island is not an Australian country town", *The Norfolk Islander and Norfolk Online News*, 25 June. Reprinted in (Nobbs, 2017b).

Nobbs, C., 2017a. "Norfolk Island and cruise ship tourism: let the buyer beware", *The Norfolk Islander* and *Norfolk Online News*, 18 February 2017.

Nobbs, C., 2017b. *Australia's Assault on Norfolk Island, 2015-16: Despatches from the Front Line*. Available from The Trading Post, Norfolk Island, and from www.createspace.com/7212642.

Nobbs, C., 2017c. A survey of business confidence on Norfolk Island, 21-28 August 2017. Available at: <http://www.norfolkonlinenews.com/chris-nobbs.html>; and summarised in *The Norfolk Islander* and *Norfolk Online News*, 9 September 2017.

Norfolk Island Accommodation and Tourism Association, 2016. Submission to Hon Minister Fletcher MP: Norfolk Island Economic Collapse, 10 February. Available at: <http://welcometonorfolkisland.com/ata-letter-to-commonwealth-minister-responsible-for-norfolk-island/>

Norfolk Island Government and Australian Fisheries Management Authority, 2009, *Norfolk Island Fishery Management Policy 2009*.

Norfolk Island Airlines, 2017. Media release: Norfolk Island Airlines withdraws direct Auckland services, 11 September. See also Prechelt, G., "To our Norfolk Island supporters", *The Norfolk Islander*, 23 September 2017.

NSW Government, 2017. Public Acts in Force:
<https://www.legislation.nsw.gov.au/#/table/publicActs>.

NSW Health, 2014. *NSW Private Water Supply Guidelines*, 28pp..

Potter, B. & Tillett, A., 2017, "Australian households pay highest power prices in world", *Australian Financial Review*, 4 August.

Transam Argosy, 2017. Cruise ship results: Norfolk Island 1992-2017 (to 20 October 2017).

APPENDIX I

Effects of the Australian Modern Award System on a Small Norfolk Island Retail Business: Wages per Employee FY2017-18 and FY2018-19

The following tables compare the wages cost per employee for a modelled small Norfolk Island retail business between the current situation in FY 2017-18 and the projected situation in FY 2018-19.

The calculations are done on the basis of those relevant to an adult employee being paid the required minimum wage under the relevant legal requirements. These requirements include:

- (1) National Employment Standards (applying on Norfolk Island from 1 July 2017)
- details 10 minimum employment entitlements, includes provisions for national minimum wage, 4 weeks annual leave, etc.
- (2) Modern Award System (applying on Norfolk Island from 1 July 2018)
- includes provisions for legal minimum wage for employees under different industry awards, and for different levels of job requirements, etc.

Different provisions are made for full time (FT) and part-time (PT) permanent employees, and casual staff.

Under Australian law the Fair Work Commission determines the legal minimum wage, normally on an annual basis. This wage for the coming financial year is announced to coincide with the first full pay period on or after 1 July. The standard working week is determined to be 38 hours. The minimum wage determinations in recent years have been as set out in Table 1.

Table 1. Australian national minimum wage rates 2014-2018

Financial year	Min. hourly rate (\$/hr)	Standard weekly wage (\$)	Percent increase on previous year (%)
2014-15	16.87	640.90	
2015-16	17.29	656.90	2.5
2016-17	17.70	672.70	2.4
2017-18	18.29	694.90	3.3
Average			2.7

Ref: Fair Work Ombudsman, "minimum wages":

<https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/minimum-workplace-entitlements/minimum-wages>

It is assumed that the increase in minimum wage for 2018-19 will be the average of the three previous determinations i.e. 2.7 per cent.

FY2017-18

The following (Table 2) refers to a single permanent staff worker employed in a small retail business on Norfolk Island serving both tourists and residents, in FY2017-18.

Table 2. Wages payable per permanent staff member (minimum wage rate) - FY2017-18

	Wage rate (\$/hr)	Ave hours per week	Gross weekly wage (\$)
Weekdays	18.29	22.5	411.52
Saturday	18.29	6.5	118.89
Sunday	18.29	6.0	109.74
	Total weekly wage		640.15
	Annual wage		33,287.80

Additional expenses:

- (i) Compulsory superannuation at the rate of 2.0 per cent annual wage
= annual wage x 0.02 = 33287.80 x 0.02 = \$665.76
- (ii) Cover by casual staff during permanent staff 4 weeks annual leave
= min. hourly rate x 25% loading x hours worked = 18.29 x 1.25 x 35 x 4 = \$3,200.75
- (iii) Allowances (clothing, meals etc.) = \$0.00
- (iv) Additional loadings for public holidays not accounted ----
- Total employee expense, 35 hours work, min pay, 2017-18 = \$37,154.31**

FY2018-19

It is proposed that on 1 July 2018 Norfolk Island will join the Australian Modern Award System (MAS). Under the MAS General Retail Industry Award 2010 (GRIA), the award wage for Level 1 employees over 2017-18 is \$20.08/hr. As award wages benefit from minimum wage determinations, the award wage for Level 1 employees in 2018-19 is estimated to increase by 2.7 per cent to \$(20.08x1.027)/hr = \$20.62/hr.

GRIA also specifies penalty payments: for ordinary hours worked on **Saturday** of 25 per cent loading for FT and PT employees; and for **Sunday** work penalty payment for FT and PT employees - specified for 1 July 2018 – 30 June 2019 - as a loading of 80 per cent. (GRIA S.29.4) (The Australian Parliament has recently enacted legislation to reduce penalty rates for Sunday employment.)

The following (Table 3) refers to a single permanent staff worker employed in a small retail business on Norfolk Island serving both tourists and residents, in FY2018-19.

Table 3. Wages payable per permanent staff member (MAS for General Retail L1) – FY 2018-19

	Wage rate (\$/hr)	Ave hours per week	Gross weekly wage (\$)
Weekdays	20.62	22.5	463.95
Saturday	25.78	6.5	167.57
Sunday	37.12	6.0	222.72
	Total weekly wage		854.24
	Annual wage		44,420.48

Additional expenses:

- (i) Compulsory superannuation at the rate of 3.0 per cent annual wage
= 44,420.48 x 0.03 = \$1,332.61

- (ii) Cover by casual staff during permanent staff 4 weeks annual leave (see Table 4).

Table 4. Wages payable to casual employee covering permanent staff 4-weeks annual holidays, with casual loading of 25 per cent (MAS for General Retail L1) – FY 2018-19 (estd.)

	Wage rate (\$/hr)*	Ave hours per week	Gross weekly wage (\$)
Weekdays	25.78	22.5	580.05
Saturday	27.84	6.5	180.96
Sunday	40.22	6.0	241.32
	Total weekly wage		1,002.33
	Total wage 4 weeks		4,009.32

* MAS wage rates for casual employees FY2017-18 x 1.027

(iii) Allowances (clothing, meals etc.) =	\$0.00
(iv) Additional loadings for public holidays not accounted	-----
(v) Leave loading 17.5 per cent for permanent staff on holiday = 854.24 x 4 x 0.175 =	\$597.97
Total employee expense, General Retail, L1, 2018-19 =	\$50,360.38
Increase in expenditure per employee (as specified) in dollars =	+ \$13, 206.07
Increase in expenditure per employee (as specified) percent =	+ 35.5 per cent

References

(all accessed and as at 15 September 2017)

Fair Work Ombudsman, 'National Employment Standards'
<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>

Fair Work Ombudsman, 'Modern Awards'
<https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/minimum-workplace-entitlements/modern-awards>

Fair Work Ombudsman, 'Norfolk Island Reform'
<https://www.fairwork.gov.au/about-us/legislation/norfolk-island>

APPENDIX II

Norfolk Island Applied Laws Ordinance 2016 (excerpts)

Ordinance No. 9, 2016, made under the Norfolk Island Act 1979 (Compilation No. 3, date: 20 January 2017)

Schedule 1 - Suspension

1 Suspension

- (1) The operation of the legislation of New South Wales, other than an Act specified in the following table or legislation made under such an Act, is suspended in the Territory for the period:
- (a) beginning on the day this item commences; and
 - (b) ending immediately before the start of 1 July 2018.

Legislation of New South Wales that is not suspended

Name of Act

Health Services Act 1997

Interpretation Act 1987

Local Government Act 1993

Long Service Leave Act 1955

Public Health Act 2010

- (2) Subitem (1) applies to legislation of New South Wales whether the legislation is in operation on the day this item commences or whether it comes into operation after that day.

Schedule 4 - Amendment of the Local Government Act 1993 (NSW)

.....

35 At the end of Part 2 of Chapter 15

Add:

513A Minimum revenue to be raised from ordinary rates

Despite any other provision of this Act, an ordinary rate made for a year by the council must be such as to ensure that the total of ordinary rates levied on all rateable land for the year is at least:

- (a) for the year ending on 30 June 2017—\$500,000; and
 - (b) for the year ending on 30 June 2018 and any later year—\$1,000,000.
-

APPENDIX III

Some Data on Status and Changes of Businesses on Norfolk Island since mid-2016

1. Business Closures since mid-2016

NAME	DESCRIPTION
ABC Hobbies	hobbies shop
Advance Hire Cars	car hire
Automotive Service Centre	automotive repair
Bligh Court	tourist accommodation
Blue Bull	restaurant
Cameralines	photographic equipment
Colony Restaurant	restaurant
Cynthia's Garden Tours	garden tours
Diamonds Exclusive	jewellers
Gallery 2899	photographic retail
House of Scruples	variety department store
Joel's Café	cafe
Just the Thing	mixed: clothing, souvenirs etc
Karlene's Guided Snorkelling	marine sport
Leeside	mixed: clothing, souvenirs etc
Menswear International	men's wear
Milt's Joinery	window frames
MiniBar	night spot
Minischool	preschool education
Norfolk Blue	restaurant
Norfolk Optical - Now located off-island, with visits	optometrist
Norfolk Premium Holidays	bus tours
Ocean Blue	fish & chips shop
Pa Yeas	restaurant
Paton Place	gifts
Pinnacles	fish and chips shop
Rick's Personal Tours	guided island tours
Silky Oaks Horse riding	horse riding
Swiss House	Swiss-origin gifts etc
The Deli Café	cafe
The Italian Shop	gifts
The Rock	restaurant
Video Shop	video sale and hire

Note: This list refers to business **closures** for **any and all reasons**. Some island businesses continue to trade but with reduced opening hours, and/or reducing inventories.

2. Businesses (retail and others) publicly advertised for sale (19 October 2017):

Barney Duffy's	restaurant
Bounty Folk Museum	museum
Butcher in the Mall	butcher shop
Café Latitude 29	cafe
Café Tempo	cafe
Cascade Investment Park	joinery and other
Fish & Chook Shop	fish and chips shop
Iwii Paradise	offices, accommodation
Jolly Roger	restaurant, night spot
Norfolk Industries	quarrying, earth works
Norfolk Island Real Estate	real estate
Norfolk Plumbing	plumbing
Parkland Estate Villas	retirement and function centre
Prestige Auto Care	auto panel/paint, upholstery
Prouds	gifts, chemist
Rumours (lease)	café, restaurant
The Golden Orb	café

On Norfolk Island as at August 2017: there were 27 commercial spaces (shops, offices etc.) vacant or for lease in the Burnt Pine area; there were 10 businesses (excluding accommodation businesses) plus four commercial sites listed publicly for sale (industrial, auto, retail) in the real estate columns.

3. Tourist Accommodation publicly advertised for sale (19 October 2017):

<i>Name</i>	<i>no. beds</i>
Aataren Villas	16
Anson Bay Lodge	20
Bounty Lodge Apartments	12
Callam Court	27
Cascade Garden Apartments	17
Cumberland Lodge	34
Fantasy Island Resort	24
Jacaranda Park Holiday Cottages	10
Norfolk Holiday Apartments	25
Nuffka Studio Apartments	18
Panorama Court Apartments	35
Shiralee Executive Cottages	24
The White House	10
TOTAL	

Note: Others accommodation houses are known to have changed hands without public notification.

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A Survey of Business Confidence on Norfolk Island

21-28 August 2017 (Full Report)

Introduction

"Business confidence is an economic indicator that measures the amount of optimism or pessimism that business managers feel about the prospects of their companies/organisations. It also provides an overview of the state of the economy. " (Financial Times)

A survey of business confidence on Norfolk Island was carried out over 21-28 August 2017. The survey was restricted to business owners/operators who are members of the Norfolk Island Chamber of Commerce (COC) and/or the Norfolk Island Accommodation and Tourism Association (ATA). The COC and the ATA are the peak bodies on Norfolk Island representing their members' interests. However not all businesses on the island belong to either of these organisations.

The survey questionnaire was distributed by the Presidents of the ATA and the COC, to their respective memberships, by e-mail. The Presidents also sent reminder e-mails to members. Recipients of the questionnaire were invited to download the form, complete it, and return it to a monitored box in the local shopping mall. Survey returns were advertised as anonymous to all who wished to remain anonymous, and confidential to the survey organiser. The questionnaire form used in the survey is attached as an Appendix.

The survey was an independent project organised and undertaken by Chris Nobbs, sometime co-director of the Australian social research consultancy Rush Social Research, and a sometime full member of the Australian Market and Social Research Society. He wishes to thank all those business owners and operators who chose to participate in this survey.

Survey Results: Questions Asked

A total of 24 completed survey forms were returned.

Survey question Q1 asked respondents to identify their membership of COC and/or ATA. Twelve respondents were members of the COC alone, six were members of the ATA alone, and five were members of both the COC and the ATA. i.e. 17 COC members responded and 11 ATA members responded. One response did not show membership of either body, and was not included in the analysis, giving 23 viable responses.

There are 38 current members of the COC, of whom 33 are owners/operators of businesses and five are not. There are 35 current members of the ATA, of whom 31 are owners/operators of accommodation houses, and four are not. **In consequence it can be said that around one half of the relevant membership of the COC (52%) and one third of the relevant membership of the ATA (35%) participated in this survey.** Not all owners/operators of accommodation houses are members of the ATA, and not all owners/operators of commercial enterprises are members of the COC. These points need to be borne in mind in interpreting the results recorded below.

Survey question Q2 asked respondents to identify the economic sector in which their business operated. Nine respondents owned/operated businesses in tourist accommodation (39% of respondents), five in retail (22%), two in commercial services (9%), two in industrial (9%), and five in the category of "other" (including primary production, entertainment etc.)(22%).

Table 1. Q2: My business is mainly in:

Economic sector	Number of respondents	Percentage of responses
Tourist accommodation	9	39
Retail	5	22
Commercial services	2	9
Industrial	2	9
Other	5	22
	23	101

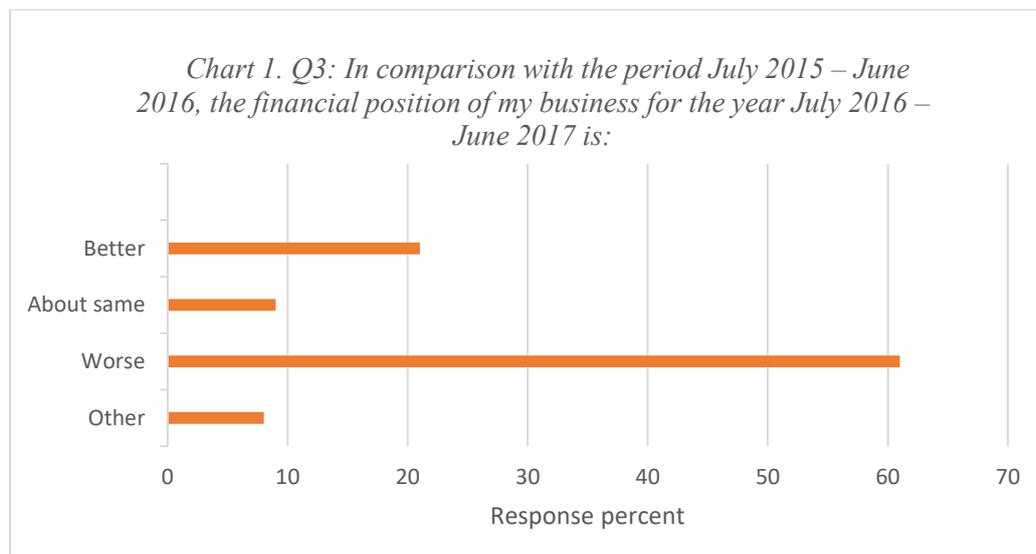
Note: Percentages may not add to 100 because of rounding.

Survey question Q3 asked respondents to compare the financial position of their business over the year July 2015 – June 2016 with that of July 2016 - June 2017 (i.e. a comparison between fiscal years FY 2015-16 and FY 2016-17). Responses were as follows. (Table 2)

Table 2. Q3: In comparison with the period July 2015 – June 2016, the financial position of my business for the year July 2016 - June 2017 is:

Response	Number of respondents	Percentage of responses
Much better	1	4
Somewhat better	4	17
About the same	2	9
Somewhat worse	9	39
Much worse	5	22
Not applicable (new bus.)	1	4
No answer	1	4
Total	23	100

Table 2 shows that, in comparing their financial position for the year 2016-17 ("this year") with that of year 2015-16 ("last year"), almost three times as many businesses considered they were "worse off" this year (categories "somewhat worse" and "much worse" combined) as those that considered they were "better off" this year (categories "much better" and "somewhat better" combined)(61% versus 21%). (See Chart 1)



Note: "Other" includes new business/ no answer

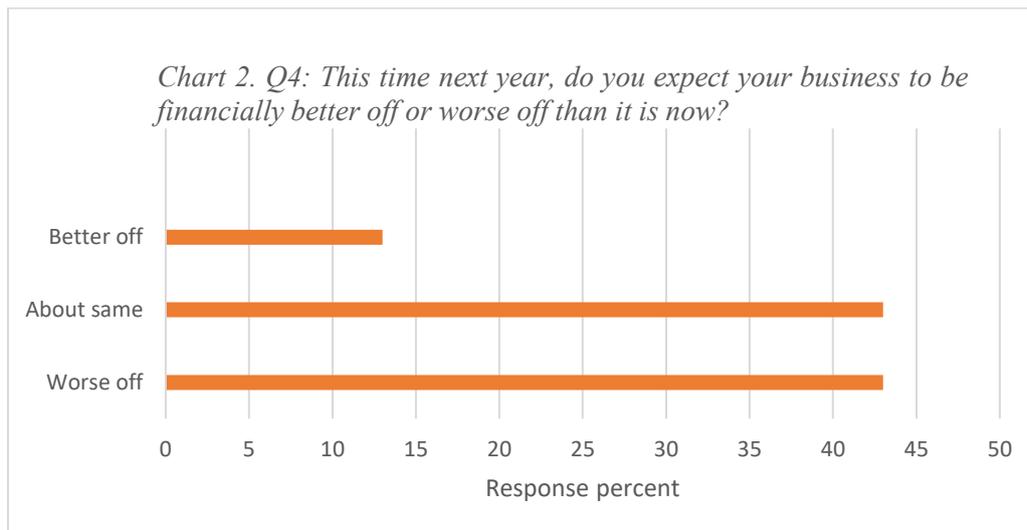
A comparison between responses given to Q3 and those to Q2, does not suggest that any particular sector of the economy was proving "better" or "worse" than any other over the period.

In **survey question Q4** respondents were asked to consider their business' financial expectations in the upcoming financial year ("next year") in comparison to the financial year just completed ("this year"). (Table 3) Note that whereas a response to Q3 is a matter of fact, the response to Q4 is a matter of forecast.

Table 3. *Q4: This time next year, do you expect your business to be financially better off or worse off than it is now?*

Response	Number of respondents	Percentage of responses
Better off	3	13
About the same	10	43
Worse off	10	43
Total	23	99

Forty-three percent of respondents considered that their financial position in the coming year (2017-18) would be about the same as this year (2016-17), while the same percentage considered that their financial position would be worse than this year. A small minority (13%) considered that their business would be better off in the coming year. (See Chart 2)



It is useful to consider how the responses to Question 4 (in Table 3) relate to the experience of the same business in the previous year i.e. whether or not the level of success that a business experienced over the period (2016-17) (in Table 2) is likely – by the owner's/operator's estimation – to continue over into the year 2017-18. (Table 4)

Table 4. Comparison of responses to Question 3 and Question 4 by the same respondent

Response to Q3 re 2016-17	Response to Q4 re 2017-18 by same respondent			
	Better off	About the same	Worse off	Total
Better	1	4	1	5
About the same	0	2	0	2
Worse	2	4	7	14
No answer	0	0	2	2
Total	3	10	10	23

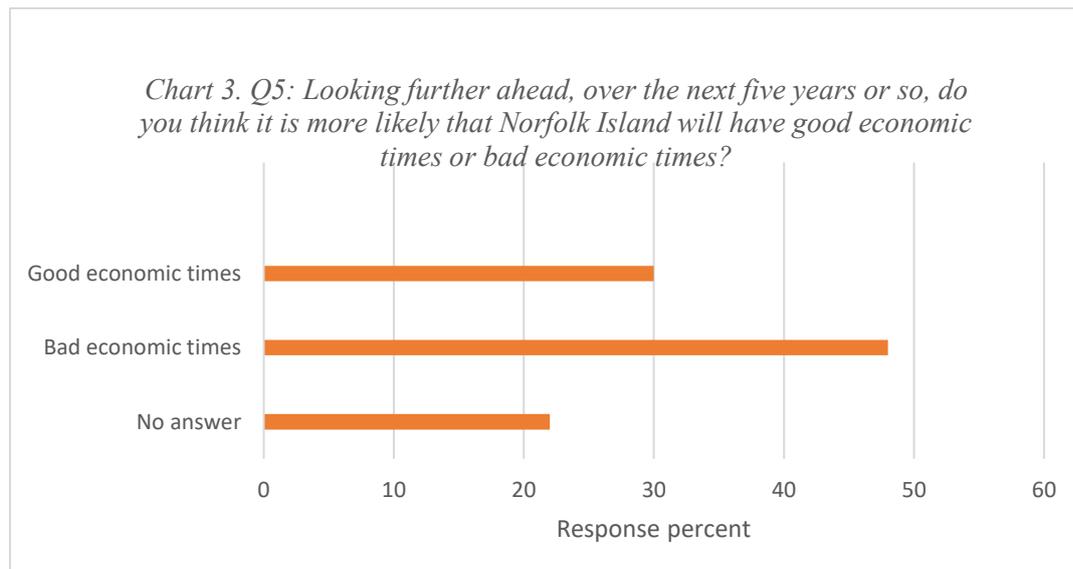
Table 4 shows that overall, individual respondents consider that the outlook for their business is worsening. Even for the respondents for whom the 2016-17 year was better than their 2015-16 year, only one believed that this trend would continue into the next year; for the 14 respondents for whom 2016-17 was worse than their year 2015-16, only two saw better days ahead in the next year.

Question 5 asked respondents to consider whether they thought economic conditions on the island would be good or bad five or so years ahead. (Table 4)

Table 4. *Q5: Looking further ahead, over the next five years or so, do you think it is more likely that Norfolk Island will have good economic times or bad economic times?*

Response	Number of respondents	Percentage of responses
Good economic times	7	30
Bad economic times	11	48
No answer	5	22
Total	23	100

Amongst respondents there appears to be some revival in hopes for good economic times in the medium-term future (30%), but this optimism is outweighed in the responses by the pessimism of others, with just less than half of the respondents (48%) believing that there will be bad economic times in the medium-term future for the island. (See Chart 3)



Survey Results: Respondents' Comments

Respondents were invited to add to their survey forms any comments they might choose to make. Comments were provided by 14 out of the 23 respondents. The topics covered included role of the Australian Government (3 comments), role of the NIRC (3 comments), costs (6 comments), the problems of tourism and the airlines (4 comments) and other issues (3 comments). Some suggestions for improving the situation were also made.

(i) Comments on the Commonwealth's role

Comments included the following:

Current political framework does not provide guaranteed funding for local government to meet its obligations. It lacks the financial capacity to provide adequate services, including airport, electricity, telecommunications, etc. The current intervention by the Federal Government is causing severe financial hardship for local businesses with skyrocketing costs and no end in sight.

The Commonwealth (again) has set up the (NIRC) system to fail. E.g. by appointing a \$1million+ management team before handing it over to NI and then actively made it fail (denied funding).

It would seem that the NIRC has been placed in a position that there is no option other than to continually increase taxes to meet the expenditure that the Australian Government has imposed on it. I personally don't believe that in the future the NIRC will be able to make the two ends meet.

(ii) Comments on the role of the NIRC

Some respondents felt the need for the NIRC to better formulate its goals:

Need a council/administrator who will do what is best for Norfolk Island ... rather than worry if an Australian or other company will make something and take their profit offshore.

Improvements to the economy will be dependent on community cohesion improving, a definite vision and strategic plan to guide us into the future. ... this will also be dependent on the Commonwealth finishing up the changes it's imposing much more rapidly so we can actually start to plan – this is impossible with perpetual uncertainty and impending (or actual) legislative changes that shift the goal-posts.

Two other respondents were more direct:

The NI Regional Council appears to have a policy of increasing fees and charges to pay for whatever it wishes to spend, rather than ensuring that it provides value to the community.

I feel that it will not improve with the current council – replace them with an administrator.

(iii) Issues with increasing costs

This was a concern mentioned by several respondents. Particular costs were: compliance costs, superannuation payments, increasing wages, and local imposts of land taxes and fees and charges. Respondents commented:

Many businesses including mine are finding it extremely difficult to absorb all the extra costs.

We have not tallied the many hours spent in dealing with the imposed transition into the Australian system.

I think the financial status of Norfolk Island residents is far worse off from that of last year. Being a new business I thought it may be better for me and my family.

The impact of income tax is devastating and it is taking so much disposable income away from the local economy which in turn has basically wiped out local trade from sources other than government or big business.

One respondent, after identifying rising wage costs, costs of accounting and filing taxes, and airfreight unreliability from New Zealand, commented:

The way things are going the future does not look bright and with the increasing costs of running my business I feel doubtful that my [established] shop will remain viable.

Not all comments by respondents were negative however. One reflected:

While we would expect the economic situation to be better, we would not expect it to be booming (good).

(iv) Issues with airlines and tourism

These issues were emphasised by some respondents:

I believe that we still maybe have been riding on the destination marketing that was done by our previous NI Tourist Bureau and I think that if Norfolk is not proactively marketed as a destination that tourist numbers will gradually fall.

If Norfolk Island Airlines discontinues the Auckland/Norfolk Island services, that will not only destroy the New Zealand visitor market, but it may destroy events such as the Country Music and Jazz weeks, due to loss of critical mass.

We need to support our new airline... the market won't go quiet if people are confident that someone will pick them up and drop them off.

(v) Other issues noted

Two respondents pointed to "the worldwide challenge of online shopping" that was beginning to affect Norfolk Island, while another noted that "cruise ships should have a positive impact". Another respondent drew attention to an inherited difficulty for accommodation houses:

It was detrimental to the island's economy when the last Legislative Assembly members thoughtlessly opened up tourist accommodation to anyone that had a spot to rent. No standards and no policing, [and]not enough tourist traffic to fill the beds that were already available. As a result all accommodation owners are struggling...

(vi) Proposals made in comments

Respondents made a number of proposals about ways of improving the current situation. In addition to those already mentioned (above), one respondent stressed the importance of lifting Norfolk Island's profile and airline capacity, and another emphasised the contribution that:

much stronger public/private partnerships, or collaboration between the Commonwealth and/or NSW departments and local services [could make].

One respondent after pointing to deficiencies of the system imposed on Norfolk Island by the Commonwealth, proposed:

A far more workable system would be for the Australian Government to follow New Zealand's example with its Island friends. A plus of that is that it has been proven to work!

A Summary

The survey shows that generally amongst respondents – business owners and operators on Norfolk Island – business confidence is low, and declining. Forty-three percent of respondents consider that the year 2017-18 will be less successful for their business(es) than 2016-17, and only 13 per cent of the respondents consider that it will be better. Even looking five years ahead, 43 per cent believe that economic times on Norfolk Island will be bad, while 35 per cent of respondents believe that economic times will be good.

As a final comment, it is perhaps worth noting that the significant expenditures by the Australian Government on the island over the past year - and which will not be repeated in future years – could give an upward bias to the experience of Island businesses over this period.

An on-line version of this report is available at: <http://www.norfolkonlinenews.com/chris-nobbs.html>.

- Chris Nobbs, 7 September 2017

Reference

Roy Morgan Research, *Business Confidence Survey*, <http://www.roymorgan.com/morganpoll/consumer-confidence/roy-morgan-business-confidence>

Attachment

A copy of the survey questionnaire is attached (following).



Survey of Business Confidence on Norfolk Island – August 2017

This survey is for business owners/operators who are members of the Norfolk Island Chamber of Commerce (COC) and/or the Norfolk Island Accommodation and Tourism Association (ATA) ONLY.

Members please print this form and answer the five questions. On completion of the survey, please fold up the sheet and put it in the box reserved for ATA-COC Survey Returns in the Trading Post, in the Norfolk Mall BY COB MONDAY 28 AUGUST. **Individual survey returns are anonymous, and confidential to the survey organiser.** Results from the overall survey will be published in the local media. The first six survey returns drawn from the Survey Returns box and which carry a Norfolk Island telephone number or PO Box number in the designated space (see below), will receive a ticket in the Norfolk Island Jazz raffle (drawn Thursday 31 August 2017). Any queries please contact the survey organiser: Chris Nobbs (T: 53277; E: nobbs298@gmail.com)

Q1. I am a member of: the ATA: the COC: (tick membership)

NB: For a member owning/operating more than one business, please answer the survey for your primary business; couples members with one business complete one survey form; couples members with two businesses complete two survey forms; no business, no survey form. Members currently off-island can contact the organiser if needs be.

Q2. My business is mainly in:

	Tick one
Tourist accommodation	
Retail	
Commercial services (accountancy, insurance etc.)	
Industrial	
Other	

Q3. In comparison with the period July 2015 – June 2016, the financial position of my business for the year July 2016 - June 2017 is:

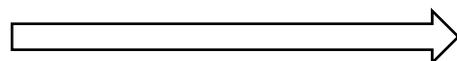
	Tick one
Much better	
Somewhat better	
About the same	
Somewhat worse	
Much worse	
Not applicable - new business	

Q4. This time next year, do you expect your business to be financially better off or worse off than it is now? (Choose one) Worse off: About the same: Better off:

Q5. Looking further ahead, over the next five years or so, do you think it is more likely that Norfolk Island will have good economic times or bad economic times? (Choose one)

Good economic times: Bad economic times:

Any further comments you would like to make: add overleaf



Your Norfolk Island telephone number or PO box number (optional)

END

From: **Ange** <accounts@pinreetours.com>
Date: 9 July 2018 at 08:10
Subject: RE: Pinetree Tours
To: "Norfolk Island Chamber of Commerce, Inc." <norfolkisland.coc@gmail.com>

Hi Cherri

Yes confirm the two shows and the Island dancers have been cancelled as of 01 July 2018.

Regards Ange

From: Norfolk Island Chamber of Commerce, Inc. [mailto:norfolkisland.coc@gmail.com]
Sent: Sunday, July 08, 2018 10:41 AM
To: Judd Ange <ange@pinreetours.com>; ange@ni.net.nf
Subject: Pinetree Tours

Hi Ange,

Could you please send me a clean return email, asap if possible please confirming:

Pinetree shows (on the wage structure sheet) have all been cancelled full stop.

The Island Dancers have also been cancelled at the fish fry.

Regards

Cherri

-----Safe Stamp-----

Your Anti-virus Service scanned this email. It is safe from known viruses.

For more information regarding this service, please contact your service provider.

PINETREE TOURS WAGE STRUCTURE 01 JULY 2018

MUTINY ON THE BOUNTY SHOW (Held once per week)

7.30pm-9.30pm Duration 2 hrs

<u>Current wage structure</u>	Principle Role: \$83.50 per show	8 employees
	Senior Role: \$67.50 per show	3 employees
	Junior Role: \$41.75 per show	10 employees

Current Wages Cost for running show including 2 x bus drivers(\$50 p/p)

\$1423.00 per show

***Currently require a minimum of 25 in audience to cover wages cost*.**

New Wage Structure under Awards

Live Performer Award (Fair Works have confirmed)

Each employee wage \$190.40 per show

New Wage Cost Under New Award for running show including 2 x bus drivers (\$94 p/p)

\$4186.40 per show

Now require a minimum of 76 in audience to cover wages cost

Entertainment Award (Fair Works NOT confirmed)

Each employee wage \$122.40 per show

New Wage Cost Under New Award for running show including 2 x bus drivers

\$2758.40 per show

Now require a minimum of 50 in audience to cover wages cost

SOUND AND LIGHT SHOW (Held twice per week)

7.00pm-8.30pm Duration 1.5 hrs

<u>Current wage structure</u>	Adult Role	\$36.00 per show	8 employees
	Junior Role	\$18 per show	2 employees

Current Wages Cost for running show including 2 x bus drivers (\$40 p/p)

\$440.00 per show

Currently require minimum of 10 in audience to cover wages cost

New Wage Structure under Awards

Live Performer Award (Fair Works have confirmed)

Each employee wage \$190.40 per show

New Wage Cost Under New Award for running show including 2 x bus drivers (\$94 p/p)

\$2092.00 per show

Now require minimum of 47 in audience to cover wages cost

Entertainment Award (Fair Works NOT confirmed)

Each employee wage \$122.40 per show

New Wage Cost Under New Award for running show including 2 x bus drivers

\$1412.00

Now require a minimum of 32 in audience to cover wages cost

ISLAND DANCERS AT FISH FRY FEAST (Held twice per week)

6.00pm-6.30pm Duration .5 hr

Current Wage Structure Each Employee wage \$35 per show 6 employees

Current Wage Cost **\$210.00 per show**

New Wage Structure under Awards

Live Performer Award (Fair Works have confirmed)

Each employee wage \$190.40 per show

New Wage Cost Under New Award **\$1142.40 per show**

Entertainment Award (Fair Works NOT confirmed)

Each employee wage \$122.40 per show

New Wage Cost Under New Award **\$734.40 per show**

BUS DRIVERS

Return Transfer Duration from ½ hr- 1 hr

Current Wage \$50 Award Wage \$95

OFFICE HOURS

Currently Monday- Saturday 8.30am – 5.00pm

Sunday 9.00am – 5.00pm

New Office Hours Monday –Friday 8.30am-5.00pm

Saturday 9.00-12.00 noon

CLOSED SUNDAYS

NO TOURS or SHOWS WILL NOW OPERATE ON A SUNDAY