

## **EXPLANATORY STATEMENT**

Issued by the Minister for Territories, Local Government and Major Projects

*Norfolk Island Applied Laws Ordinance 2016*

*Norfolk Island Applied Laws Amendment (Long Service Leave) Rule 2016*

The Minister for Territories, Local Government and Major Projects has made this rule under section 7 of the *Norfolk Island Applied Laws Ordinance 2016* (the Ordinance), which was made under section 19A of the *Norfolk Island Act 1979*.

Subsection 7(1) of the Ordinance provides that the Minister may, by legislative instrument, make rules amending the Ordinance so as to amend or repeal an applied law, or to make application, savings or transitional provision in relation to any amendments or repeals of applied laws. Subsection 7(2) provides limitations on the rule making power.

The Ordinance amended the *Long Service Leave Act 1955* (NSW)(NI) (LSL Act) to enable the extension of long service leave arrangements to Norfolk Island from 1 July 2016.

The *Norfolk Island Applied Laws Amendment (Long Service Leave) Rule 2016* (the Rule) amends the Ordinance to modify the application of the LSL Act in relation to Norfolk Island.

The purpose of the Rule is to ensure that long service leave under the LSL Act only accrues from 1 July 2016, without removing existing long service leave entitlements of eligible employees on Norfolk Island. The Rule also ensures that Norfolk Island public holidays are recognised for the purposes of long service leave accrual.

A Statement of Compatibility with Human Rights is set out at [Attachment A](#).

The Australian Government Department of Employment and the Fair Work Ombudsman undertook consultation with employers, employer groups and workers on the amendments relating to employment.

The Rule is a legislative instrument for the purpose of the *Legislation Act 2003*.

The Rule commences immediately after the commencement of the Ordinance on 1 July 2016.

Details of the Rule are set out at [Attachment B](#).

Authority: Section 7 of the *Norfolk Island Applied Laws Ordinance 2016*

## **ATTACHMENT A**

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### ***Norfolk Island Applied Laws Amendment (Long Service Leave) Rule 2016***

The Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of Legislative Instrument**

The *Norfolk Island Applied Laws Amendment (Long Service Leave) Rule 2016* (the Rule) amends the *Norfolk Island Applied Laws Ordinance 2016* to amend the *Long Service Leave Act 1955* (NSW)(NI) (LSL Act). The purpose of the Rule is to ensure that long service leave under the LSL Act accrues from 1 July 2016, without removing existing long service leave entitlements of eligible employees on Norfolk Island. The Rule also ensures that Norfolk Island public holidays are recognised for the purposes of long service leave accrual.

#### **Human rights implications**

The Legislative Instrument engages the following rights:

- The right to work and rights at work

#### ***The right to work and rights at work***

Articles 6(1) and 7(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognise 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 these Articles, States Parties undertake to take appropriate steps to safeguard this right. 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. 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.

The Rule does not limit the right to work or the right to the enjoyment of just and favourable conditions of work. The application of the LSL Act makes provisions entitling workers to long service leave, and does not affect long service leave rights accrued previously. The LSL Act is complementary to the extension of the *Fair Work Act 2009* (Cth), among other Commonwealth laws, on 1 July 2016. The Rule makes amendments to the *Norfolk Island Applied Laws Ordinance 2016* to support the application of provisions in the LSL Act, which operates to enhance the ability of eligible employees on Norfolk Island to realise their right to just and favourable conditions of work.

#### **Conclusion**

This Legislative Instrument is compatible with human rights because it promotes the protection of human rights.

## **ATTACHMENT B**

### ***Norfolk Island Applied Laws Amendment (Long Service Leave) Rule 2016***

#### **Section 1**

Section 1 provides the name of the rule as the *Norfolk Island Applied Laws Amendment (Long Service Leave) Rule 2016* (the Rule).

#### **Section 2**

Section 2 provides that the Rule commences immediately after the commencement of the Ordinance. The *Norfolk Island Applied Laws Ordinance 2016* (the Ordinance) commences on 1 July 2016. This is the day the *Long Service Leave Act 1955* (NSW)(NI) (LSL Act), as modified, extends to Norfolk Island.

#### **Section 3**

Section 3 refers to section 7 of the Ordinance as the legislative authority under which the rule is made. The Rule is made before the commencement of the Ordinance in reliance on section 4(2) of the *Acts Interpretation Act 1901* (as it applies through the operation of paragraph 13(1)(a) of the *Legislation Act 2003*).

#### **Section 4**

Section 4 provides that the Ordinance is modified by Schedule 1 to the Rule.

#### **Schedule 1 – Amendments**

##### ***Norfolk Island Applied Laws Ordinance 2016***

##### **Item 1 – After item 6 of Schedule 5**

This item inserts items 6A, 6B and 6C into the Ordinance.

Item 6A amends subsection 4(1) of the LSL Act to provide that service on or after 1 July 2016, or service to which an agreement applied before 1 July 2016 (if immediately before 1 July 2016, the worker was entitled under that agreement to leave in the nature of long service leave) is taken into account for the purposes of calculating the amount of long service leave that the worker will be entitled to under section 4. This modifies the point in time from which the entitlement for long service leave accrues to coincide with the commencement of the LSL Act. New paragraph 4(1)(b) has some retroactive application which is appropriate to ensure that pre-existing long service leave entitlements (if any) are preserved for Norfolk Island workers.

Item 6B replaces the reference to “appointed by the Governor as a public holiday to be observed generally throughout New South Wales” with “that is a public holiday within the meaning of the *Fair Work Act 2009* of the Commonwealth”. This ensures recognition of Norfolk Island public holidays for the purposes of long service leave accrual. This includes both:

- the standard eight national public holidays in paragraph 115(1)(a) of the Fair Work Act; and
- additional public holidays provided for in section 9 of the *Employment Act 1988* (NI), as permitted by paragraph 115(1)(b) of the Fair Work Act.

The reference to the *Fair Work Act 2009* is a reference to that Act as in force from time to time (see section 10 of the *Acts Interpretation Act 1901*, applying through the operation of section 13(1)(a) of the *Legislation Act 2003*).

Item 6C provides that the amendments made by items 6A and 6B have effect from the *start of* 1 July 2016. This amendment is slightly retrospective to the commencement of the rule, which commences *immediately after* 1 July 2016. This slight retrospectivity is intended to prevent conflicting requirements relating to the point in time from which long service leave accrues.