

## **EXPLANATORY STATEMENT**

Issued by the authority of the Assistant Minister for Regional Development and Territories  
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,  
Transport and Regional Development.

*Norfolk Island Act 1979*

### ***Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020***

#### **Authority**

The *Norfolk Island Act 1979* (Norfolk Island Act) provides for the government of the Territory of Norfolk Island (Norfolk Island). Section 19A of the Norfolk Island Act provides that the Governor-General may make Ordinances for the peace, order and good government of Norfolk Island.

The *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020* (the Ordinance) is made under section 19A of the Norfolk Island Act.

The Ordinance amends the *Norfolk Island Continued Laws Ordinance 2015* (the Continued Laws Ordinance) with the effect of amending the *Employment Act 1988* (NI) (the Employment Act) and the *Employment Regulations 1991* (NI) (the Employment Regulations).

Under section 17 of the Norfolk Island Act, Norfolk Island laws continued in force under either section 16 or 16A of the Norfolk Island Act may be amended or repealed by an Ordinance made under section 19A.

#### **Purpose and operation**

The primary purpose of the Ordinance is to amend the Employment Act to allow for a new service provider to administer the Norfolk Island Workers' Compensation Scheme (the Scheme) established under the Employment Act.

In 2018, the Norfolk Island Regional Council (NIRC) advised the Department of Infrastructure, Transport, Regional Development and Communications (the Department) it was not in a position to continue administering the Scheme. As the largest employer on Norfolk Island, there is potential for conflicts of interest to arise if NIRC continues to deliver this service.

The Department has since engaged a nationally recognised workers' compensation service provider with experience managing workers' compensation schemes across multiple jurisdictions to take over administration of the Scheme. The Ordinance makes the following amendments to the Employment Act and repeals the Employment Regulations to enable the new service provider to start delivering this service.

#### ***Employment Liaison Officer***

Under the Employment Act, the Employment Liaison Officer (ELO) is responsible for the management and control of the Scheme. To allow a new service provider to administer the Scheme, the Ordinance amends provisions relating to the ELO's appointment, powers and functions.

Prior to amendment, the ELO was appointed by the Chief Executive Officer of the NIRC and is an employee of the NIRC. The amendments instead allow the Commonwealth Minister with responsibility for Norfolk Island to appoint an SES employee in the Department as the ELO.

Revised delegation provisions provide for the ELO to delegate functions or powers relevant to the day-to-day administration of the Scheme to relevant staff of the new service provider if satisfied the person has appropriate qualifications or expertise.

For the ELO to authorise employees of the scheme administrator to perform functions and exercise powers relevant to the administration of the Scheme, they must be satisfied those employees have:

- Experience managing claims for compensation under other Australian workers' compensation schemes.
- Knowledge and understanding of the Norfolk Island Scheme.
- The ability to work effectively with claimants, employers and medical practitioners.
- Time management and communication skills and the ability to work autonomously and as part of a team.

No specific qualifications are needed to manage workers' compensation claims, however, the fields of study which are relevant to these roles include allied health, public administration, business management and law.

The ELO who, prior to the amendments, was an employee of the NIRC, was also responsible for the management and control of inspectors and had some functions under Part 4 of the Employment Act relating to safe working practices. To ensure these powers and functions remain with the NIRC (which employs inspectors and is responsible for work health and safety regulation) these powers and functions have been transferred to the Chief Executive Officer.

### *Compensation*

The Ordinance also amends the Employment Act to allow for easier interpretation of provisions relating to eligibility for compensation and to improve the way claims for compensation are assessed.

Under the Employment Act, employers are required to have an insurance policy for the full amount of their liability to pay compensation unless they are members of the public scheme. Amendments to existing provisions relating to this requirement make this requirement clearer and update the offence provision to comply with modern drafting standards. The substance of the offence and the penalties imposed have not changed.

While there are normally limitations on the use of penalties in delegated legislation, the special legislative framework applying to Norfolk Island permits these provisions as they relate to an existing penalty relevant to a state-level matter. More information about this can be found in the section titled 'Special legislative framework' below.

Amendments to the Employment Act also allow for the powers and functions of the Medical Superintendent to be performed by any registered medical or health practitioner or by the ELO. This gives employees greater flexibility when seeking medical treatment for a work-related accident and makes the assessment of claims for compensation simpler.

Under rewritten provisions relating to compensation for medical treatment, the ELO will be responsible for approving any costs relating to medical treatment payable as compensation. The types of costs are listed in the Employment Act and include the cost of transport to receive medical treatment in a place other than Norfolk Island. Guidance materials based on workers' compensation industry standards will be developed to assist the ELO to determine reasonable costs. Rules may also be made prescribing the maximum amount payable. Decisions made by the ELO in relation to compensation for medical treatment may be subject to merits review under the new internal review process (as outlined below).

To assist with interpretation of existing provisions relating to *incapacity* and *permanent incapacity*, the Ordinance makes minor amendments to clarify the meaning of the terms and set out requirements relating to compensation and assessment in a more logical format.

The Ordinance inserts new provisions into the Employment Act to allow the ELO to require an employee who has made a claim for compensation to undertake an independent medical examination. The examination is undertaken by a registered medical practitioner and must be in relation to the injury or condition which is the subject of a claim for compensation. The cost of the assessment will be paid by the ELO. If the employee fails to attend the examination without reasonable excuse the employee's right to compensation will be suspended until an examination is undertaken.

This requirement is consistent with requirements under workers' compensation schemes in other Australian jurisdictions. The ELO's power to require an employee to undertake an independent medical examination can be limited by rules prescribing the frequency of assessment. The employee is also entitled to receive a copy of the report of examination. Decisions made by the ELO following the examination may be subject to merits review under the new internal review process (as outlined below).

The Ordinance inserts new provisions into the Employment Act to improve employees' access to rehabilitation services. Rehabilitation services include medical services, physical training or exercise, physiotherapy, occupational therapy, vocational training and assistance in finding suitable work. Employees may be required to undertake a rehabilitation program and must be supported by their employer who must take reasonable steps to accommodate the injury or condition and support the employee's rehabilitation. These new provisions bring the Employment Act and employee entitlements in relation to rehabilitation services closer into line with workers' compensation schemes in other Australian jurisdictions.

#### *Merits review*

The Ordinance inserts a new process for merits review into the Employment Act.

Prior to amendment, an aggrieved person could lodge a complaint with the Employment Conciliation Board (the Board) concerning a complaint or grievance arising out of an unsuccessful workers' compensation claim or any other matter in relation to compensation. The Board was required to resolve the complaint by conciliation.

While conciliation is a commonly used alternative dispute resolution method, in this context it has proved ineffective at achieving timely and appropriate outcomes for complainants. Under the Employment Act, the Board did not have any power to make orders (for example, directing that an incorrect decision relating to the payment of compensation be overturned) thus, some relatively simple disputes remained unresolved if an agreement between the

parties could not be reached. If an agreement could not be reached, it was possible for the matter to be taken to the Employment Tribunal (Tribunal). However, this can be a time consuming process and should be reserved for more complicated matters. For these reasons the Ordinance abolishes the Board and inserts a new internal review process into the Employment Act.

Under the new internal review process, people are able to make an application for a matter relating to workers' compensation to be reviewed. The review must be undertaken by a person other than the person who was originally involved in the matter. After the review has been completed, the applicant will be given a written determination detailing the outcome of the review (for example, a determination that the decision was incorrectly made). This review process has been modelled on similar processes in other Australian workers' compensation schemes.

If a person is not satisfied with the determination, it is open to them to apply to the Tribunal for an inquiry. Existing provisions relating to the Tribunal and the inquiry process will be amended to improve their operation and to accommodate the new review process. The Tribunal may make orders in relation to the matter.

#### *Other amendments*

The Ordinance makes other amendments to the Employment Act to improve its overall operation and update certain provisions to align with similar provisions in other Acts. An example of this is updating the definition of *child* to be consistent with the *Family Law Act 1975* of the Commonwealth. Similarly, the *Electronic Transactions Act 1999* of the Commonwealth is applied to make requirements relating to electronic communication consistent with other services provided by the Commonwealth.

#### Special legislative framework

The Ordinance is made pursuant to a plenary legislative power conferred on the Governor-General under section 19A of the Norfolk Island Act, which provides that the Governor-General may, subject to the Act, make Ordinances 'for the peace, order and good government of the Territory'. This is quite different from the general regulation-making powers commonly found in Commonwealth legislation, which generally only authorise the Governor-General to make regulations prescribing matters that are 'required or permitted' to be prescribed by an Act, or that are 'necessary or convenient' for carrying out or giving effect to an Act.

The Parliament has conferred plenary legislative power on the Governor-General for the external territories and the Jervis Bay Territory. That power is expressed in broad terms, and reflects the wording used in state constitutions to confer plenary legislative power on state parliaments. The conferral of the power is to enable the Governor-General to legislate for state-level matters, and authorises the broadest range of ordinances as necessary for the good government of Norfolk Island, including to prescribe offences that are punishable by imprisonment.

The Employment Act was made by the former Norfolk Island Legislative Assembly and has been continued in force by section 16A of the Norfolk Island Act. The Employment Act covers matters that would normally be dealt with under state or territory legislation. Subsection 17(3) of the Norfolk Island Act expressly provides that laws continued in force by

section 16A of that Act may be amended or repealed by a section 19A Ordinance. Accordingly, the amendment of this continued law by a section 19A Ordinance is expressly authorised by the Norfolk Island Act.

The Commonwealth develops offences having regard to the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide) which sets out limitations on the inclusion of certain penalties in delegated legislation. However, the special legislative framework applying in the case of Norfolk Island permits departure from the limitations regarding penalties in delegated legislation.

Section 19A authorises the broadest range of ordinances to be made for the good government of Norfolk Island, which includes the power to prescribe offences that impose penalties exceeding a fine of 50 penalty units and/or punishable by imprisonment.

The Employment Act will be amended to rewrite an existing offence in the Employment Act for failing to have an insurance policy to bring it into line with modern drafting standards. The existing offence imposes a penalty of 50 units in the case of a natural person and 250 penalty units in the case of a body corporate. Similar penalties are imposed in other state and territory workers' compensation legislation and reflect the seriousness of failing to have workers' compensation insurance.

No additional offences or penalty provisions have been included in the Act.

#### Consultation

The Department consulted the NIRC during the development of the Ordinance and information about transferring responsibility for delivering the Scheme to a new service provider has been provided to the Norfolk Island community. The Attorney-General's Department and Comcare provided policy advice on the amendments.

#### Other

The Ordinance is a legislative instrument for the purposes of the *Legislation Act 2003*.

Sections 1 to 4 of the Ordinance commence the day after the Ordinance is registered on the Federal Register of Legislation. Schedule 1, Part 2 commence on the same day.

Schedule 1, Part 1 commences on a single day to be fixed by the Minister by notifiable instrument. Schedule 1, Part 3 commences on the same day.

Detailed information on the individual provisions of the Ordinance is set out in the Attachment.

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

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

### **Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020**

This Disallowable 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 the Disallowable Legislative Instrument**

##### Purpose and operation

The primary purpose of the Ordinance is to amend the Employment Act to allow for a new service provider to administer the Norfolk Island Workers' Compensation Scheme (the Scheme) established under the Employment Act.

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Prior to amendment, the ELO was appointed by the Chief Executive Officer of the NIRC and is an employee of the NIRC. The amendments instead allow the Commonwealth Minister with responsibility for Norfolk Island to appoint an SES employee in the Department as the ELO.

Revised delegation provisions provide for the ELO to delegate functions or powers relevant to the day-to-day administration of the Scheme to relevant staff of the new service provider if satisfied the person has appropriate qualifications or expertise. The staff of the new service provider will be professional workers' compensation scheme administrators with qualifications and expertise in the areas of assessing and reviewing claims for compensation.

The ELO who, prior to the amendments, was an employee of the NIRC, was also responsible for the management and control of inspectors and had some functions under Part 4 of the Employment Act relating to safe working practices.

To ensure these powers and functions remain with the NIRC (which employs inspectors and is responsible for work health and safety regulation) these powers and functions have been transferred to the Chief Executive Officer.

### *Compensation*

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While conciliation is a commonly used alternative dispute resolution method, in this context it has proved ineffective at achieving timely and appropriate outcomes for complainants. Under the Employment Act, the Board did not have any power to make orders (for example, directing that an incorrect decision relating to the payment of compensation be overturned) thus, some relatively simple disputes remained unresolved if an agreement between the parties could not be reached. If an agreement could not be reached, it was possible for the matter to be taken to the Employment Tribunal (Tribunal). However, this can be a time consuming process and should be reserved for more complicated matters. For these reasons the Ordinance abolishes the Board and inserts a new internal review process into the Employment Act.

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#### *Other amendments*

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Similarly, the *Electronic Transactions Act 1999* of the Commonwealth is applied to make requirements relating to electronic communication consistent with other services provided by the Commonwealth.



## **Human rights implications**

The amendments to the Employment Act engage the following categories of human rights that are recognised in the ICCPR:

- Right to privacy.

### Right to privacy

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy or family, and that everyone has the right to the protection of the law against such interference or attacks.

The Employment Act requires personal information to be collected for the purpose of administering the public scheme. This includes information about employers who are members of the Scheme and employees who submit claims for compensation through the Scheme.

Section 100 of the Employment Act states that a person to whom this section applies shall not, directly or indirectly, except in the exercise of powers or functions under the Employment Act make a record of or divulge or communicate information with respect to the affairs of another person. An amendment to subsection 100(2) will set out more clearly the persons to whom this section applies, being the Commonwealth Minister, the Secretary to the Tribunal, a member of the Tribunal, the ELO (or a person appointed to act as the ELO) and a person to whom the ELO delegates a power or function. This amendment extends the requirement to maintain a person's privacy to the ELO and the ELO's delegates which will include the new service provider.

### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Assistant Minister for Regional Development and Territories,  
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,  
Transport and Regional Development  
The Hon Nola Marino MP**

## **ATTACHMENT—NOTES ON CLAUSES**

This attachment explains the operation of individual provisions in the *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020* (the Ordinance).

### **Section 1—Name of Ordinance**

This section provides that the title of the Ordinance is the *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020*.

### **Section 2—Commencement**

This section provides sections 1 to 4 commence the day after the Ordinance is registered on the Federal Register of Legislation. Schedule 1, Part 2 will commence on the same day.

Schedule 1, Part 1 commences on a single day to be fixed by the Minister by notifiable instrument. If the provisions do not commence within the period of 6 months beginning on the day after the Ordinance is registered, they will commence on the day after the end of that period. Schedule 1, Part 3 will commence on the same day.

### **Section 3—Authority**

This section provides that the Ordinance is made under section 19A of the *Norfolk Island Act 1979*.

### **Section 4—Schedules**

This section provides that each instrument that is specified in a Schedule to the Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Ordinance has effect according to its terms.

### **Schedule 1—Amendments**

#### **Part 1—Amendments commencing by notifiable instrument or after 6 months**

##### ***Norfolk Island Continued Laws Ordinance 2015***

#### **Amending item 1—Items 74A to 76L of Schedule 1**

Amending item 1 repeals items 74A to 76L of Schedule 1 to the *Norfolk Island Continued Laws Ordinance 2015* (the Continued Laws Ordinance). These items are amendments which have already been made to the *Employment Act 1988* (NI) (the Employment Act). Where relevant, they will be inserted back into the Continued Laws Ordinance and will remain in force. This approach has been taken in order to simplify the numbering of the amending items and so that all amendments to the Employment Act appear in sequence.

Amending item 1 also inserts items 73 to 76 into Schedule 1 to the Continued Laws Ordinance which in turn amend the Employment Act.

### **Item 73—Section 3**

Item 73 repeals section 3 from the Employment Act and is an existing amendment which is being reinserted into the Continued Laws Ordinance.

### **Item 73A—Section 4**

Item 73A amends section 4 of the Employment Act to insert a new definition of *approved* to mean approved in writing by the Employment Liaison Officer. Previously *approved* was defined under Part 3 to mean by instrument in writing signed by the Minister.

### **Item 73B—Section 4**

Item 73B repeals the definitions of *Board* and the definition of *Chairman*. This amendment is consequential to other amendments which will abolish the Employment Conciliation Board.

### **Item 73C—Section 4**

Item 73C inserts new and updated definitions into the Employment Act consequential to other amendments to Employment Act.

### **Item 73D—Section 4 (definition of *legal practitioner*)**

Item 73D amends the definition of legal practitioner to mean a person who is entitled practise law in Norfolk Island.

### **Item 73E—Section 4 (definition of *member of the Board*)**

Item 73E repeals the definition of *member of the Board*. This amendment is consequential to other amendments which will abolish the Employment Conciliation Board.

### **Item 73F—Section 4**

Item 73F inserts a definition of *membership fees* under section 4 to mean the fees to be a member of the Norfolk Island Workers' Compensation Scheme (the public scheme) as prescribed by the rules.

### **Item 73G—Section 4 (definitions of *minimum rate* and *pay period*)**

Item 73G is an existing amendment which is being reinserted into the Continued Laws Ordinance. It repealed the definitions of *minimum rate* and *pay period*.

### **Item 73H—Section 4**

Item 73H inserts updated definitions of *permanent incapacity* and *permanent incapacity assessment* into section 4 of the Employment Act.

### **Item 73J—Section 4 (definition of *permit holder*)**

Item 73J is an existing amendment which is being reinserted into the Continued Laws Ordinance. It repealed the definition of *permit holder*.

#### **Item 73K—Section 4**

Item 73K inserts new definitions under section 4 of the Employment Act. The new definitions include *registered health practitioner* and *registered medical practitioner* which will have the same meaning as in the *Health Practitioners Act 1983*. New definitions for *rehabilitation program*, *rehabilitation services*, *responsible party* and *rules* are also inserted.

#### **Item 73L—Section 4 (definition of *temporary entry permit*)**

Item 73L is an existing amendment which is being reinserted into the Continued Laws Ordinance. It repealed the definition of *temporary entry permit*.

#### **Item 73M—Section 4 (definition of *this Act*)**

Item 73M amends the definition of *this Act* under section 4 of the Employment Act to replace the references to ‘Regulations’ with references to ‘rules’.

This is consequential to other amendments to replace the Minister’s power to make regulations with the power to make rules.

#### **Item 73N—Section 4 (definition of *Tribunal*)**

Item 73N repeals the definition of *Tribunal* and substitutes a new definition which clarifies *Tribunal* means the Court of Petty Sessions when the Court is exercising jurisdiction conferred on it by subsection 78(1) of the Employment Act.

#### **Item 73P—Section 4 (definition of *working week*)**

Item 73P repeals the definition of *working week*. This definition is redundant because the term *working week* was only used in the regulation-making power and was not elsewhere referred to or relied on in the Act.

#### **Item 73Q—Section 4**

Item 73Q inserts the definition of *work-related accident* previously appearing under subsection 26(1) to instead appear under section 4. The definition is amended to remove the requirement for an injury to be ‘significant’.

#### **Item 73R—After subsection 6(1)**

Item 73R inserts new subsection 1A after subsection 6 to provide that if the Act refers to an entity which is not a person, the reference is taken to include a reference to a person nominated by the entity to act on its behalf.

#### **Item 73S—Paragraph 7(1)(b)**

Item 73S is an existing amendment which is being reinserted into the Continued Laws Ordinance. It inserted reference to New South Wales in paragraph 7(1)(b) of the Employment Act.

#### **Item 73T—Section 8 (heading)**

Item 73T amends the heading for section 8 of the Employment Act to substitute reference to ‘Regulations’ with references to ‘Rules’.

### **Item 73U—Subsections 8(1) and (2)**

Item 73U amends subsections 8(1) and (2) to substitute reference to ‘Regulations’ with references to ‘rules’. This is consequential to other amendments to replace the Minister’s power to make regulations with the power to make rules.

### **Item 73V—Section 9**

Item 73V is an existing amendment which is being reinserted into the Continued Laws Ordinance. It inserted provisions under section 9 of the Employment Act setting the days in a year to be observed as a public holiday. Section 9 has been rewritten to make the provisions for public holidays clearer and repeal existing subsection 9(2) which requires the Commonwealth Minister to declare a specified day of a year to be Show Day. Show Day was declared the second Monday in October by way of the *Norfolk Island Employment (Show Day) Declaration 2017*.

### **Item 73W—Divisions 1, 2 and 3 of Part 2**

Item 73W gives effect to an existing amendment in the Continued Laws Ordinance which repealed Divisions 1, 2 and 3 of Part 2 of the Employment Act.

### **Item 73X—Subsection 24(2)**

Item 73X amends subsection 24(2) to remove reference to subsection 24(1) and substitute ‘In addition, an employer’.

### **Item 73Y—Paragraphs 24(2)(a) and (b)**

Item 73Y substitutes rewritten provisions prohibiting an employer from employing a person under the age of 15 years for more than 20 hours during a week in which the person is required by law to attend school or for more than 40 hours during any other week. The amended provisions include reference to ‘required by law’ instead of ‘under an enactment’ to clarify the source of the requirement.

### **Item 73Z—Subsection 24(3)**

Item 73Z amends subsection 24(3) to omit reference to ‘prescribed training position’ and substitute ‘training position prescribed by the rules for the purposes of this subsection’. This is consequential to other amendments to replace the Minister’s power to make regulations with the power to make rules.

### **Item 73ZA—Subsection 24(4)**

Item 73ZA amends subsection 24(4) of the Employment Act to omit ‘of a class defined in the Regulations’ and substitute ‘who belongs to a class prescribed by the rules, for the purposes of this subsection’. This is consequential to other amendments to replace the Minister’s power to make regulations with the power to make rules.

### **Item 73ZB—Section 25**

Item 73ZB is an existing amendment which is being reinserted into the Continued Laws Ordinance. It repealed section 25 of the Employment Act.

**Item 73ZC—Before section 26**

Item 73ZC inserts a new heading ‘Division 1—Interpretation’ before section 26 of the Employment Act.

**Item 73ZD—Subsection 26(1) (definition of *approved*)**

Item 73ZD repeals the definition of *approved* under subsection 26(1) of the Employment Act and substitutes a new definition where *approved* means approved in writing by the Employment Liaison Officer.

**Item 73ZE—Subsection 26(1) (definition of *de facto spouse*)**

Item 73ZE repeals the definition of *de facto spouse* from the Employment Act. References to *de facto spouse* through the Employment Act will be replaced with *de facto partner* so that the definition of *de facto partner* in the *Acts Interpretation Act 1901* can be relied on.

**Item 73ZF—Subsection 26(1) (definition of *disease*)**

Item 73ZF repeals the definition of *disease* under subsection 26(1) and refers to new section 28A which sets out the meaning.

**Item 73ZG—Subsection 26(1) (definitions of *hospital* and *Medical Superintendent*)**

Item 73ZG repeals the definition of *hospital* under subsection 26(1) to allow for the ordinary meaning to be relied on. The *Interpretation Act 1979* (NI) also provides that for the purposes of any enactment, the Norfolk Island Health and Residential Aged Care Service Facility is taken to be a hospital.

Item 73ZG also repeals the definition of *Medical Superintendent*. This is consequential to other amendments to allow for the powers and functions of the Medical Superintendent to be performed by any registered medical or health practitioner or by the Employment Liaison Officer. This will give employees greater flexibility when seeking medical treatment for a work-related accident and makes the assessment of claims for compensation simpler.

**Item 73ZH—Subsection 26(1) (definition of *medical treatment*)**

Item 73ZH substitutes a rewritten definition of *medical treatment* in the Employment Act.

Paragraph 26(1)(a) lists professions instead of practitioners.

Paragraph 26(1)(b) provides that an examination, test or analysis carried out at the request or direction of one of the registered health practitioners practising one of the professions referred to in paragraph 26(1)(a) is included in the definition.

Paragraph 26(1)(c) of the definition of *medical treatment* removes the requirement for a prescribed period to apply to the provision, repair, adjustment or replacement of various aids such as crutches, spectacles and hearing aids. The requirement for aids other than those described in this paragraph to be prescribed has also been removed.

Paragraph 26(1)(d) includes the provision of skiagrams in the definition.

Paragraph 26(1)(e) includes maintenance, attendance at and treatment in a hospital in the definition.

Paragraph 26(1)(f) includes provision by a hospital of a range of services including nursing attendance and medicines.

Paragraph 26(1)(g) includes rehabilitation services in the definition of *medical treatment*.

Paragraph 26(1)(h) includes any other approved treatment which may include treatment by a person practising a profession that is not listed in paragraph (a) in the definition of *medical treatment*.

#### **Item 73ZI—Subsection 26(1) (definition of *public scheme*)**

Item 73ZI amends the definition of *public scheme* under subsection 26(1) to refer to the public scheme established under new subsection 39A(1).

#### **Item 73ZJ—Subsection 26(1) (definition of *spouse*)**

Item 73ZJ amends the definition of *spouse* to refer to *de facto partner* instead of *de facto spouse*.

#### **Item 73ZK—Subsection 26(1) (definition of *work related accident*)**

Item 73ZK repeals the definition of *work related accident* under subsection 26(1). The definition has been moved to appear under section 4.

#### **Item 73ZL—Subsections 26(3), (4) and (5)**

Item 73ZL repeals subsection 26(3) and inserts a rewritten subsection 26(3) which provides for *child* to include an adoptive child, a child of the spouse of a person who is ordinarily resident with the person in the person's household and a person who is the child of another person within the meaning of the *Family Law Act 1975*.

This item also repeals subsection 26(4) setting out the matters that may be taken into account when determining whether a person is the *de facto spouse* of another person. This is consequential to the amendment at item 73ZE which provides for the definition of *de facto partner* in the *Acts Interpretation Act 1901* to be relied on.

Subsection 26(5) is also repealed by this item. This removes the need for an employer who is a member of the public scheme to give written notice to the Minister that a member of their family is an employee.

#### **Item 73ZM—Section 28**

Item 73ZM repeals section 28 from the Employment Act and substitutes rewritten provisions setting out the meaning of *incapacity* and *permanent incapacity*. The existing provisions have been rewritten to aid interpretation; the meaning of these terms has not been altered.

This item will also insert new section 28A setting out the meaning of *disease*. The existing provision has been rewritten to aid interpretation; the meaning of the term has not been altered.

A new heading 'Division 2—Compensation: work related accidents etc.' will also be inserted before section 29 of the Employment Act.

**Item 73ZN—Paragraph 29(1)(a)**

Item 73ZN amends paragraph 29(1)(a) to omit the word ‘personal’ which appears before injury. *Personal injury* is not defined in the Employment Act and does not have any application other than as an *injury* as defined under subsection 26(1).

**Item 73ZO—Paragraph 29(1)(d)**

Item 73ZO amends paragraph 29(1)(d) to remove the hyphens from ‘cardiovascular’ and ‘cerebrovascular’.

**Item 73ZP—Paragraph 29(2)(a)**

Item 73ZP amends paragraph 29(2)(a) to insert ‘by the rules’ after ‘prescribed’. This is consequential to other amendments to replace the Minister’s power to make regulations with the power to make rules.

**Item 73ZQ—Section 30 (heading)**

Item 73ZQ repeals the heading for section 30 substituting ‘Periodical compensation—loss or diminution of capacity to earn’.

**Item 73ZR—Subsection 30(1)**

Item 73ZR inserts the words ‘resulting in a loss of diminution of the employee’s capacity to earn’ to clarify the meaning of *incapacity* and make it consistent with the new definition under section 28.

**Item 73ZS—Paragraph 30(4)(a)**

Item 73ZS is an existing amendment which is being reinserted into the Continued Laws Ordinance. It amended paragraph 30(4)(a) to refer to paid personal/carer’s leave taken under the *Fair Work Act 2009*.

**Item 73ZT—Subparagraph 30(4)(a)(ii)**

Item 73ZT is an existing amendment which is being reinserted into the Continued Laws Ordinance. It amended subparagraph 30(4)(a)(ii) to refer to the *Fair Work Act 2009*.

**Item 73ZU—Subparagraph 30(4)(b)(i)**

Item 73ZU amends subparagraph 30(4)(b)(i) to omit text referring to ‘the prescribed amount’ and substitute ‘the amount prescribed by the rules for the purposes of this subparagraph’. This is consequential to other amendments to replace the Minister’s power to make regulations with the power to make rules.

**Item 73ZV—Subparagraph 30(4)(b)(ii)**

Item 73ZV amends subparagraph 30(4)(b)(ii) to refer to the amount in subparagraph (i) instead of the prescribed amount.

**Item 73ZW—Section 31 (heading)**

Item 73ZW repeals the heading for section 31 substituting ‘Compensation for permanent incapacity—general’.



### **Item 73ZX—Subsections 31(1) and (2)**

Item 73ZX repeals subsections 31(1) and (2) of the Employment Act and substitutes rewritten subsections to aid interpretation of provisions relating to the payment of lump sum compensation for permanent incapacity.

### **Item 73ZY—Section 32**

Item 73ZY repeals section 32 of the Employment Act and substitutes rewritten provisions relating to assessment for compensation for permanent incapacity.

This item removes the requirement for the Medical Superintendent or a person appointed by the Minister to undertake an assessment. Instead, subsection 32(3) provides for a permanent incapacity assessment to be undertaken by a registered medical practitioner. Subsection 32(4) provides for the Employment Liaison Officer (in the case of public scheme members) or other person against whom the claim is made to make reasonable arrangements for the assessment to be undertaken. Under subsection 32(6) a person undertaking the assessment must apply (so far as they are applicable) the Schedule to the Employment Act and any approved guide. They may have regard to reports or advice obtained from a registered health practitioner. Subsection 32(7) provides that the costs of assessment will be met by the responsible party (in most cases the Employment Liaison Officer) if the claim is made against a member of the public scheme.

Section 32A requires an employee to comply with a notice to attend a permanent incapacity assessment. If the employee fails to comply without reasonable excuse, the employee's right to lump sum compensation is suspended until they are given a new notice and the employee complies with the new notice. This was previously required under paragraph 32(6)(b).

Section 32B requires a person who undertakes a permanent incapacity assessment to prepare a written report of the assessment setting out the findings of the assessment and must give a copy of that written report to the employee and the responsible party who arranged the assessment. Subsection 32B(2) sets out the amount of lump sum compensation payable. This entitlement has not changed and was previously set out under paragraphs 32(6)(a) and 32(7).

Section 32C sets out powers of the Tribunal and that it may make an order varying the assessment, setting aside the assessment or remitting the assessment for reconsideration. This provision has not changed and was previously under subsection 32(9).

### **Item 73ZZ—Subsection 33(1)**

Item 73ZZ amends subsection 33(1) of the Employment Act to substitute a reference to paragraph 28(1)(c).

### **Item 74—Subsection 33(2)**

Item 74 amends subsection 33(2) to reflect amendments to section 32 and updates the provision to include reference to 'a permanent incapacity assessment in relation to industrial deafness'.

**Item 74A—Subsection 34(1)**

Item 74A amends subsection 34(1) to omit reference to subsection (1). This amendment is consequential to the amendment at item 74E to repeal subsection 34(2).

**Item 74B—Subsection 34(1)**

Item 74B amends subsection 34(1) to replace reference to paragraph 28(1)(c) with paragraph 28(1)(d). This amendment is consequential to other amendments to section 28.

**Item 74C—Paragraph 34(1)(b)**

Item 74C amends paragraph 34(1)(b) of the Employment Act to remove the redundant ‘and’ at the end of the provision. This amendment is consequential to the amendment at item 74D to repeal paragraph 34(1)(c).

**Item 74D—Paragraph 34(1)(c)**

Item 74D repeals paragraph 34(1)(c) from the Employment Act. This removes the requirement to report a hernia not later than 72 hours after the occurrence of the strain or accident.

**Item 74E—Subsection 34(2)**

Item 74E repeals subsection 34(2) from the Employment Act. This removes the provision restricting an employee’s entitlement to compensation for a hernia where the employee fails or refuses to undergo a surgical operation.

**Item 74F—Subsection 35(1)**

Item 74F amends subsection 35(1) to replace reference to paragraph 28(1)(d) with paragraph 28(1)(e). This amendment is consequential to other amendments to section 28.

**Item 74G—Subsection 35(3)**

Item 74G repeals subsection 35(3) and removes the requirement for employees to provide prescribed information to an employer (for example, about their medical history). This item substitutes a revised subsection which provides that compensation is not payable where an employee falsely represented to the employer that they had not previously suffered a disease of the kind that was contracted.

**Item 74H—Subsection 36(1)**

Item 74H amends subsection 36(1) to update references relating to cardiovascular or cerebrovascular episodes.

**Item 74J—Subsection 36(2)**

Item 74J amends subsection 36(2) to remove the hyphen from “cardio-vascular”.

**Item 74K—Subsection 36(2)**

Item 74K amends subsection 36(2) to remove the hyphen from “cerebro-vascular”.

### **Item 74L—Section 37**

Item 74L repeals section 37 and substitutes revised provisions relating to compensation for costs of medical treatment. The existing provisions have been rewritten to aid interpretation.

Subsection 37(1) sets out the scope of section 37 and that employers are liable to pay compensation.

Subsection 37(2) sets out the compensation payable by public scheme employers. An employer who is a member of the public scheme is liable to pay compensation to an employee for costs relating to medical treatment.

Subsection 37(3) sets out the costs payable as compensation. The requirement for the cost of medical treatment carried out in Norfolk Island to be approved by the Medical Superintendent has been removed. Instead, the costs must be reasonable and must be approved by the Employment Liaison Officer. The costs of medical treatment include medical treatment carried out in Norfolk Island or in another place and, the costs of transporting the employee, and if necessary, an escort for the employee, to and from a place where medical treatment is available. A maximum amount in relation to the medical treatment may be prescribed by rules made for this purpose.

Decisions made by the Employment Liaison Officer in relation to compensation for the costs of medical treatment may be the subject of an application for internal review.

Subsections 37(4) and (5) provide for compensation to be payable by employers who are not members of the public scheme.

Item 74L also inserts a new heading ‘Division 3—Compensation: payment of claims’ and inserts section 37AA which is an existing provision (subsection 39(11)) relating to liability to pay compensation. This brings provisions relating to liability to pay compensation together in the same part of the Act.

### **Item 74M—Paragraph 37A(2)(a)**

Item 74M amends paragraph 37A(2)(a) of the Employment Act to provide for the form to be submitted when making a claim for compensation to be approved by the Employment Liaison Officer instead of prescribed in Regulations. This will allow for the form to be more easily updated.

### **Item 74N—Paragraph 37A(2)(b)**

Item 74N amends paragraph 37A(2)(b) to provide for certificate to be given by a registered medical practitioner in an approved form instead of a form prescribed in Regulations. This will allow for the form to be more easily updated.

### **Item 74P—Sections 38, 39 and 39A**

Item 74P repeals sections 38, 39 and 39A and substitutes new sections relating to rehabilitation, compulsory insurance and public schemes.

Section 38 inserts more comprehensive provisions relating to rehabilitation. Subsection 38(2) provides for the Employment Liaison Officer to require an employee to undertake a

rehabilitation program. Subsection 38(4) provides for an employer's indemnity to be suspended if they are not taking reasonable steps to support an employee's rehabilitation.

Decisions made by the Employment Liaison Officer in relation to rehabilitation may be the subject of an application for internal review.

Section 39 reinserts existing provisions in the Employment Act in relation to the employer's requirement to have insurance for the full amount of the employer's liability to pay compensation. The provisions have been rewritten to aid interpretation and better align the offence and penalty provisions with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide). The scope of the offence and penalty imposed has not been altered.

Subsection 39(1) provides that an employer must have a policy for insurance or indemnity for the full amount of the employer's liability to pay compensation if they are not a member of a public scheme and the employer is not prescribed by rules.

Subsection 39(2) provides that an employer commits an offence if they are not a member of a public scheme and are not prescribed by the rules and they do not have a policy of insurance.

Paragraph 39(3)(a) provides that strict liability applies with respect to the requirement in subsection 39(1) for an employer to have a policy of insurance. The imposition of strict liability is justified in this circumstance. First, strict liability is only applied to one element of the offence, being whether an employer is required to have a policy under subsection 39(2) by reference to subsection 39(1). Whether there is a requirement is based on the questions of fact set out in subsection 39(1) and the defendant is able to rely on the defence of honest and reasonable mistake of fact.

Subsection 39(4) provides that in proceedings against a person for an offence against subsection 39(2) a certificate saying an employer did not have an insurance policy in place or was not a member of the public scheme are prima facie evidence of the matters stated in the certificates. This is consistent with the Guide which indicates that it is acceptable to use evidentiary certificates to settle formal or technical matters of fact that would be difficult to prove by adducing admissible evidence.

Section 39A inserts provisions relating to establishment of the public scheme and employer indemnity in line with existing provisions in the Employment Act. Subsection 39A(2) provides the Commonwealth must indemnify an employer who is a member of a public scheme for the full amount of the employer's liability to pay compensation. Subsection 39A(3) limits the Commonwealth's obligation to indemnify an employer to the employer's liability to pay compensation as assessed in accordance with information given by the employer in relation to an application to join the scheme or relevant to the management of the scheme.

Section 39B reinserts existing provisions in the Employment Act in relation to membership of the public scheme. The provisions have been rewritten to aid interpretation and to allow for the Employment Liaison Officer instead of the Commonwealth Minister to process applications to be a member of the public scheme. Matters to be considered by the Employment Liaison Officer when deciding to grant an application to become a member of

the public scheme can be prescribed by rules. Membership fees for the public scheme can be prescribed by rules. Subsection 39(10) provides for the Employment Liaison Officer to require an employer to provide specified information relevant to the public scheme.

Subsection 39(11) provides for the Employment Liaison Officer to revoke an employer's membership of the public scheme if the employer does not pay the membership fees for the scheme or if they fail to comply with a requirement to provide specified information.

Decisions made by the Employment Liaison Officer in relation to membership of the public scheme, including revocation of membership, may be the subject of an application for internal review.

#### **Item 74Q—Paragraph 40(1)(c)**

Item 74Q amends paragraph 40(1)(c) to replace reference to subsection 39(2) to paragraph 39(1)(b) and to make reference to rules prescribed for the purposes of that paragraph. This amendment is consequential to other amendments to section 39 and to replace the Minister's power to make regulations with the power to make rules.

#### **Item 74R—Subsection 40(1)**

Item 74R amends subsection 40(1) to remove a redundant reference to subsection 39(11) and substitute references to the 'Administration' (meaning the Norfolk Island Regional Council (NIRC)) with references to the 'Commonwealth'. Liability to pay compensation where an employer is not insured will transfer from the NIRC to the Commonwealth.

#### **Item 74S—Subsections 40(2) and (2A)**

Item 74S amends subsections 40(2) and (2A) to substitute references to the 'Administration' with references to the 'Commonwealth'. Liability to pay compensation where an employer is not insured will transfer to the Commonwealth. Subsection 40(2) provides for compensation paid by the Commonwealth where an employer is not insured is a debt due and payable to the Commonwealth by the employer.

#### **Item 74T—Paragraph 41(1)(b)**

Item 74T amends paragraph 41(1)(b) to substitute reference to the 'Administration' with reference to the 'Commonwealth'. Liability to pay compensation where an employer ceases to exist will transfer to the Commonwealth.

#### **Item 74U—Paragraph 41(1)(c)**

Item 74U amends paragraph 41(1)(c) to replace reference to subsection 39(2) to paragraph 39(1)(b) and to make reference to rules prescribed for the purposes of that paragraph. This amendment is consequential to other amendments to section 39 and to replace the Minister's power to make regulations with the power to make rules.

#### **Item 74V—Subsection 41(1)**

Item 74V amends subsection 41(1) to substitute reference to 'Administration or person' with references to 'the Commonwealth or the person'. Liability to pay compensation where an employer ceases to exist will transfer to the Commonwealth.

**Item 74W—Subsection 41(2)**

Item 74W amends subsection 41(2) of the Employment Act to refer to ‘membership fees’ instead of ‘levies’.

**Item 74X—Subsection 42(1)(definition of *relevant amount*)**

Item 74X amends subsection 42(1) and the definition of *relevant amount* to refer to an amount prescribed ‘by the rules’ and update other references. This is consequential to other amendments to the Employment Act.

**Item 74Y—Subsection 42(6)**

Item 74Y amends subsection 42(6) of the Employment Act to provide for the Employment Liaison Officer instead of the Minister to publish by notifiable instrument the variation after a relevant amount has been varied.

**Item 74Z—Subsection 42(8)**

Item 74Z amends subsection 42(8) to provide for the Employment Liaison Officer instead of the Minister to publish by notifiable instrument a correction of an error in relation to a relevant amount.

**Item 74ZA—Paragraphs 43(1)(a) and (b)**

Item 74ZA repeals paragraphs 43(1)(a) and (b) and substitutes new paragraph (a) referring to incapacity. This amendment is consequential to other amendments relating to the meaning of incapacity in section 28 and has the same effect as the repealed paragraphs.

**Item 74ZB—Paragraphs 43(1)(d) and (e)**

Item 74ZB repeals paragraphs 43(1)(d) and (e) and substitutes new paragraph (d) referring to an injury or condition out of which the incapacity arose. This amendment is consequential to other amendments relating to the meaning of incapacity in section 28 and has the same effect as the repealed paragraphs.

**Item 74ZC—Subsection 43(4)**

Item 74ZC reinserts an existing amendment to subsection 43(4) which removed reference to the Legislative Assembly.

**Item 74ZD—Section 46 (heading)**

Item 74ZD repeals the heading for section 46 and substitutes a new heading ‘Overpaid amounts’.

**Item 74ZE—Section 46**

Item 74ZE amends section 46 to include reference to an amount paid by way of indemnity to a person who is not entitled to payment of that amount, to provide that these amounts are recoverable in a Court of competent jurisdiction.

## **Item 74ZF—Section 47**

Item 74ZF repeals section 47 and reinserts revised provisions relating to information relevant to claims and the role of the Employment Liaison Officer.

The repeal removes the broad discretion of the Minister to require any person to provide information that might affect the payment of compensation. The revised provisions under section 47 allow for the Employment Liaison Officer to instead require a claimant or their employer to provide information in relation to a claim for compensation.

If a claimant fails to comply with a notice to provide information without reasonable excuse their right to compensation will be suspended until they comply with the notice. If an employer fails to comply with a notice to provide information their indemnity in relation to the claim is suspended until they comply with the notice.

Section 47A inserts new provisions for the Employment Liaison Officer to require an employee to attend an independent medical examination. Similar requirements appear in other state and territory workers' compensation schemes and the new provisions have been modelled on provisions for independent medical examinations in the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth.

Subsection 47A(1) sets out the scope of the section and that it applies to employees whose employers are members of the public scheme.

Subsection 47A(2) provides for the Employment Liaison Officer to make reasonable arrangements for a registered medical practitioner to undertake a medical examination of an employee in relation to an injury or condition which is the subject of a claim. Paragraph 47A(2)(b) provides for the Employment Liaison Officer to give reasonable written notice to any employee requiring them to attend the independent medical examination. Subsections 47A(4) and (5) provide for the Employment Liaison Officer to pay the costs of the examination.

Subsection 47A(6) provides for rules to be made limiting the frequency of assessments.

Section 47B provides that an employee's right to compensation in relation to an injury or condition is suspended if the employee fails without reasonable excuse to attend an independent medical examination.

Section 47C provides for a report of the examination to be given to the Employment Liaison Officer and for the report to be given to the employee on request after the assessment of the claim has been completed.

Decisions made by the Employment Liaison Officer in relation to claims for compensation following an independent medical examination may be the subject of an application for internal review.

Item 74ZF also inserts a new Division 4 which sets of revised provisions relating to the role of the Employment Liaison Officer.

Section 47E sets out the functions and powers of the Employment Liaison Officer to include being responsible for the management and control of the public scheme, receiving membership fees and assessing claims for compensation. The Commonwealth Minister may

give directions to the Employment Liaison Officer in relation to the performance and exercise of the Employment Liaison Officer's functions and powers except in relation to a particular case.

Section 47F allows for the Employment Liaison Officer to be appointed by the Minister instead of the Chief Executive Officer of the NIRC. This is consequential to the transfer of responsibility for the public scheme from the NIRC to the Commonwealth.

Section 47G allows for the Minister to appoint an SES employee or acting SES employee in the Department to act as the Employment Liaison Officer during a vacancy or during a period when the Employment Liaison Officer is absent from duty or unable to perform the duties of the Office.

Section 47H provides for the Employment Liaison Officer to delegate their functions and powers if satisfied that the person has appropriate qualifications or expertise to perform the function or exercise the power. This is to allow for the public scheme to be administered by a workers' compensation provider and for relevant functions and powers (for example, assessing claims for compensation) to be delegated to suitably qualified staff of the provider. The Employment Liaison Office is able to give written directions to delegates.

**Item 74ZG—Subsection 48(1) (definitions of *incapacity* and *inspector*)**

Item 74ZG repeals the definitions of *incapacity* and *inspector*. These definitions appear elsewhere in the Employment Act.

**Item 74ZH—Subsection 53(2)**

Item 74ZH repeals subsection 53(2) from the Employment Act and substitutes a revised subsection requiring an employer to keep such records as are prescribed by the rules. This is consequential to other amendments to replace the Minister's power to make regulations with the power to make rules.

**Item 74ZI—Subsection 53(3)**

Item 74ZI amends subsection 53(3) to change the requirement to provide information to the Minister where an employee suffers incapacity to a requirement to report where an employee suffers permanent incapacity. This is to reduce the amount of information an employer is obliged to provide to the Minister.

**Item 74ZJ—Subsection 53(3)**

Item 74ZJ amends subsection 53(3) to require information about the death or permanent incapacity of an employee to be provided to the Minister in a form prescribed by rules. This is consequential to other amendments to replace the Minister's power to make regulations with the power to make rules.

**Item 74ZK—Paragraphs 53(3)(a) and (b)**

Item 74ZK amends paragraphs 53(3)(a) and (b) to refer to *permanent incapacity* instead of *incapacity*. This is consequential to the amendment in item 74ZI changing the requirement to report permanent incapacity.



**Item 74ZL—Subsection 54(2)**

Item 74ZL amends subsection 54(2) to refer to ‘rules’ instead of ‘Regulations’. This is consequential to other amendments to replace the Minister’s power to make regulations with the power to make rules.

**Item 74ZM—Subsections 55(1), (2) and (3)**

Item 74ZM amends subsections 55(1), (2) and (3) to substitute references to the ‘Employment Liaison Officer’ with ‘Chief Executive Officer’ and will allow the Chief Executive Officer to receive and investigate complaints under Part 4 of the Employment Act relating to safe working practices.

The NIRC is responsible for administering Part 4 of the Employment Act. The Chief Executive Officer is the General Manager of the NIRC. As the Employment Liaison Officer will no longer be an employee of the NIRC this will allow for the Chief Executive Officer to manage the administration of Part 4.

**Item 74ZN—Subsection 55(4)**

Item 74ZN repeals subsection 55(4) and substitutes a new revised 55(4) which provides for the Chief Executive Officer to require an inspector to investigate a complaint. This is consistent with other amendments to allow for the Chief Executive Officer to manage the administration of Part 4.

**Item 74ZO—Subsection 57(1)**

Item 74ZO is an existing amendment which is being reinserted into the Continued Laws Ordinance. It provided for the Chief Executive Officer to appoint inspectors. This is consistent with other amendments to allow for the Chief Executive Officer to manage the administration of Part 4.

**Item 74ZP—After section 57**

Item 75ZP inserts new section 57A after section 57 which provides for the management and control of inspectors. The Employment Liaison Officer formerly held this power. This is consistent with other amendments to allow for the Chief Executive Officer to manage the administration of Part 4.

**Item 74ZQ—Paragraph 57(2)(a)**

Item 74ZQ amends subsection 57(2)(a) to refer to ‘rules’ instead of ‘Regulations’. This is consequential to other amendments to replace the Minister’s power to make regulations with the power to make rules.

**Item 74ZR—Subsection 60(2)**

Item 74ZR amends subsection 60(2) of the Employment Act to insert ‘prima facie’ before ‘evidence’. This means an instrument or document produced by an inspector in a prosecution should be taken on face value.

**Item 74ZS—Section 62**

Item 74ZS repeals section 62. This is consequential to other amendments to abolish the Employment Conciliation Board and insert a new internal review process.

**Item 74ZT—Section 64**

Item 74ZT amends section 64 to refer to ‘rules’ instead of ‘Regulations’. This is consequential to other amendments to replace the Minister’s power to make regulations with the power to make rules.

**Item 74ZU—Part 5 (heading)**

Item 75ZU repeals the heading for Part 5 and substitutes a new heading ‘Part 5—Review of matters relating to compensation’.

**Item 74ZV—Division 1 of Part 5**

Item 74ZV repeals Division 1 of Part 5 and inserts a new ‘Division 1—Internal review by Employment Liaison Officer’. This amendment abolishes the Employment Conciliation Board (the Board) and inserts a new internal review process for matters arising under Part 3 of the Employment Act. The Board has been abolished because the conciliation process it was required to follow was an inefficient way to resolve complaints about claims for compensation.

Section 65 provides for people to make applications for internal review in writing within 30 days after the day on which the matter (which is the subject of the application) arises or within a longer period as the Employment Liaison Officer allows.

Under new section 66 the Employment Liaison Officer must review the matter personally or ensure the matter is reviewed by the Employment Liaison Officer’s delegate. If the matter relates to a claim for compensation, it must not be reviewed by a person was involved in the original assessment of that claim.

Section 67 provides for a written determination in relation to the matter to be given to the applicant. The determination must be made within the period prescribed by rules made for this purpose.

**Item 74ZW—Division 2 of Part 5 (heading)**

Item 74ZW repeals the heading for Division 2 of Part 5 and substitutes a new heading ‘Division 2—Inquiry by Tribunal’.

**Item 74ZX—Section 78 (heading)**

Item 74ZX repeals the heading for section 78 and substitutes a new heading to refer to the Employment Tribunal as the Tribunal. This is to ensure references to the Tribunal are consistent throughout the Employment Act.

**Item 74ZY—Subsection 78(1)**

Item 74ZY repeals subsection 78(1) and substitutes a revised subsection which continues to provide for the Norfolk Island Court of Petty Sessions to have jurisdiction to exercise and

perform the powers, duties and functions and authorities imposed on the court by this Division.

#### **Item 74ZZ—Paragraphs 78(2)(a) and (b)**

Item 74ZZ amends paragraphs 78(2)(a) and (b) to substitute references to ‘Tribunal’ instead of ‘Employment Tribunal’. This is to ensure references to the Tribunal are consistent throughout the Employment Act.

#### **Item 75—Section 82**

Item 75 repeals section 82 and substitutes rewritten provisions to allow for applications to be made to the Tribunal for an inquiry into matters arising under Part 3 of the Employment Act.

Section 82 is based on existing provisions for applications to be made to the Tribunal and incorporates provisions relating to the new internal review process. Subsection 82(3) requires a person to have made an application for internal review for the matter. This is similar to the previous requirement for a person to have made a complaint to the Board before they could make an application to the Tribunal.

Section 82AA sets out how an inquiry must be convened. These provisions are similar to the existing provisions in the Employment Act for proceedings before the Tribunal.

Section 82AB provides for people to make representations to the Tribunal and appear at the inquiry. Existing provisions have been revised to allow for a person to be represented by a legal practitioner or another person, with the leave of the Tribunal.

#### **Item 75A—Subsection 85(1) and (2)**

Item 75A repeals subsections 85(1) and (2) and inserts revised subsections. Existing provisions relating to the requirement for the Tribunal to give notice in writing of the determination and power to make orders have been rewritten to aid interpretation.

#### **Item 75B—Paragraph 85(3)(a)**

Item 75B amends subsection 85(3)(a) to remove reference to section 62. This is consequential to other amendments to abolish the Employment Conciliation Board and insert a new internal review process.

#### **Item 75C—Subsection 85(4)**

Item 75C amends subsection 85(4) update the reference to new subsection 82AB(3). This is consequential to other amendments to provisions relating to the Tribunal.

#### **Item 75D—Subsection 85(5)**

Item 75D repeals subsection 85(5) from the Employment Act and substitutes new subsections (5) and (5A). The existing subsections relating to the requirement to give reasons for a determination or order have been rewritten to aid interpretation.

#### **Item 75E—Subsection 85(6)**

Item 75E reinserts an existing amendment to subsection 85(6) to remove reference to subsection 85(8) which has been repealed.

**Item 75F—Subsections 85(8), (9), (10) and (11)**

Item 75F continues the repeal of subsections 85(8), (9) and (10) from the Employment Act and substitutes new section 85(11) which has been rewritten to aid interpretation. Subsection 85(11) requires an explanation of how an appeal may be made to the Supreme Court in a notice of a determination or order of the Tribunal.

**Item 75G—Subsection 86(2)**

Item 75G reinserts an existing amendment to subsection 86(2) to remove reference to subsection 85(9) which has been repealed.

**Item 75H—Section 88**

Item 75H repeals section 88 relating to referral for further conciliation. This is consequential to other amendments to abolish the Employment Conciliation Board and insert a new internal review process.

**Item 75J—Subsection 89(1)**

Item 75J amends subsection 89(1) to omit the number ‘1’. This is consequential to an amendment to repeal subsection 89(2). This subsection requires the Tribunal to furnish a report on the operations of the Tribunal to the Minister when it sees fit but not less frequently than annually.

**Item 75K—Subsection 89(2)**

Item 75K repeals subsection 89(2) from the Employment Act. It removes a redundant provision for the Minister to lay a copy of the Tribunal report to the Legislative Assembly. The Norfolk Island Legislative Assembly was abolished in 2015.

**Item 75L—Section 90**

Item 75L repeals section 90. Provisions relating to liability are reinserted into the Employment Act by item 76.

**Item 75M—Division 3 of Part 5 (heading)**

Item 75M amends the heading for Division 3 of Part 5 to be ‘Review by Supreme Court’.

**Item 75N—Subsection 91(1)**

Item 75N amends subsection 91(1) to remove reference to subsection 82(4).

**Item 75P—Sections 95 and 96**

Item 75P repeals sections 95 and 96 and inserts a new section 95 which restricts the delegation of the Commonwealth’s Minister’s powers to make rules under subsection 108(1). The Commonwealth Minister’s power of delegation is further restricted by clause 10 of Schedule 1 to the *Interpretation Act 1979* (NI).

**Item 75Q—After section 97**

Item 75Q inserts new section 97A which applies the *Electronic Transactions Act 1999* in relation to the Employment Act. This ensures administration of the workers' compensation scheme will be consistent with other services delivered by the Commonwealth.

**Item 75R—Subsection 98(1)**

Item 75R amends subsection 98(1) to include reference to the Electronic Transaction Act in relation to the time a document shall be deemed to have been given.

**Item 75S—Subsections 98(2) and (3)**

Item 75S amends subsection 98(2) and (3) to refer to 'rules' instead of 'Regulations'. This is consequential to other amendments to replace the Minister's power to make regulations with the power to make rules.

**Item 75T—Section 99**

Item 75T repeals section 99 relating to the privacy of Board and Tribunal meetings. This is consequential to other amendments to abolish the Employment Conciliation Board and insert a new internal review process. Item 75V reinserts provisions relating to privacy.

**Item 75U—Section 100 (heading)**

Item 75U inserts a new heading for section 100 'Employment Liaison Officer, Tribunal members etc. to respect privacy'.

**Item 75V—Subsection 100(2)**

Item 75V inserts a revised subsection 100(2) applying privacy provisions under subsection 100(1) to the Commonwealth Minister, the Secretary to the Tribunal, a member of the Tribunal, the Employment Liaison Officer or acting Employment Liaison Officer and a person to whom the Employment Liaison Officer delegates a power or function.

**Item 75W—Section 101**

Item 75W repeals section 101 which relates to proceedings before the Board. This is consequential to other amendments to abolish the Employment Conciliation Board and insert a new internal review process.

**Item 75X—Subparagraph 102(1)(a)(ii)**

Item 75X amends subparagraph 102(1)(a)(ii) to remove reference to the Board and insert reference to the Employment Liaison Officer in relation to a person not knowingly making a false or misleading statement with intent to deceive.

**Item 75Y—Paragraph 106(1)(d)**

Item 75Y reinserts an existing amendment to paragraph 106(1)(d) which removed the inclusion of 'or proposes to refuse' in the paragraph.

**Item 75Z—Subsections 106(2) and (3)**

Item 75Z continues the repeal of subsection 106(2) and (3).

## **Item 76—Section 108**

Item 76 repeals section 108 and inserts new section 107 which provides for protection from liability in civil proceedings in relation to anything done or omitted to be done in good faith under the Employment Act. The provision covers the Commonwealth, the Commonwealth Minister, the Tribunal, a member of the Tribunal, the Secretary to the Tribunal, the Employment Liaison Officer or acting Employment Liaison Officer, a person to whom the Employment Liaison Officer delegates a power or function, the Chief Executive Officer and an inspector.

This item also inserts new section 108 which provides for the Commonwealth Minister to make rules prescribing matters required or permitted by the Act or necessary or convenient to be prescribed for carrying out or giving effect to this Act. Subsection 108(2) prevents rules that create an offence or civil penalty, provide powers of arrest, impose a tax or directly amend the text of the Act to be made.

## **Amending item 2—Schedule 1 (after item 76L)**

Amending item 2 repeals the heading ‘*Employment Regulations 1991 (Norfolk Island)*’ after item 76L of Schedule 1 to the Continued Laws Ordinance.

## **Amending item 3—Items 76M to 76S of Schedule 1**

Amending item 3 repeals items 76M to 76S of Schedule 1 to the Continued Laws Ordinance which amended the *Employment Regulations 1991 (Norfolk Island)* (the Employment Regulations). The Employment Regulations are being repealed.

## **Part 2—Transitional provisions commencing day after registration**

### ***Norfolk Island Continued Laws Ordinance 2015***

## **Amending item 4—In the appropriate position in Part 2 of Schedule 1**

Amending item 4 inserts Division 18—Transitional provisions relating to the Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020.

## **Item 397—Definitions for Division 18**

Item 397 sets out definitions relevant to Division 18.

## **Item 398—Continuation of public scheme**

Item 398 continues the public scheme established before commencement of the Ordinance in force after commencement as the new public scheme. At commencement all rights and liabilities of, and moneys held by, the Administration (the NIRC) in relation to the old public scheme are transferred to the Commonwealth. This item provides that anything done before commencement for the purposes of the old public scheme is taken to have been done for the purposes of the new public scheme.

## **Item 399—Liability for compensation for work-related accidents occurring before commencement**

Item 399 applies the Employment Act as amended by the Ordinance in relation to the liability of a person to pay compensation for a work-related accident which occurred or

started to occur before commencement of the Ordinance. This item also includes a ‘no disadvantage test’ which will ensure an employee who submits a claim for compensation under the amended Employment Act for a work-related accident which occurred before the amendments commenced will not be disadvantaged.

#### **Item 400—Review—complaints before the Board**

Item 400 provides for the Employment Conciliation Board to issue a transitional certificate if it considers that it will not be able to finish dealing with a complaint lodged with a member of the Board before the Ordinance commences. This will allow the person who made the complaint to seek internal review or an inquiry by the Tribunal.

#### **Item 401—Review—Tribunal inquiry application before commencement**

Item 401 provides for the unamended Employment Act to apply in an inquiry by the Tribunal about a complaint lodged before commencement of the Ordinance. The unamended Employment Act also applies to the inquiry process unless the Tribunal makes orders varying or waiving the operation of the amended Employment Act.

#### **Item 402—Review—internal review after commencement**

Item 402 provides for a person to apply to the Employment Liaison Officer for an internal review of a matter arising before the Ordinance commences, within 30 days of the commencement of the amendments or such longer period as is approved. If the internal review relates to a claim that was assessed, or a decision that was made, under the unamended Employment Act, the unamended Act applies in relation to the determination of the review.

#### **Item 403—Review—Tribunal inquiry application after commencement**

Item 403 provides for the unamended Employment Act to apply in an inquiry by the Tribunal about a complaint lodged after commencement. If the complaint relates to a claim that was assessed, or a decision that was made, under the unamended Employment Act, the unamended Act applies in relation to the inquiry. If the complaint relates to a claim that was assessed, or a decision that was made under the amended Employment Act, the amended Employment Act applies.

#### **Item 404—Approvals**

Item 404 provides that an approval by the Minister for the purposes of Part 3 of the Employment Act that was in force immediately before commencement continues in force.

#### **Item 405—Part 4—safe working practices**

Item 405 provides for directions given to inspectors before commencement by the Employment Liaison Officer to continue in force after commencement as if the direction had been given by the Chief Executive Officer. This item also provides for a complaint that had been made to the Employment Liaison Officer or the Minister to be investigated after commencement as if the complaint had been made or referred to the Chief Executive Officer.

### **Item 406—Regulations and rules**

Item 406 provides for a regulation made prior to commencement of the Ordinance to continue in force as if it were a rule made under section 108 of the amended Employment Act. When a rule is made in relation to the matter prescribed in the regulation, the old regulation ceases to apply.

### **Part 3—Repeals**

#### ***Norfolk Island Continued Laws Ordinance 2015***

#### **Amending item 5—In the appropriate position in Part 2 of Schedule 2**

Amending item 5 repeals the Employment Regulations by inserting reference to the Regulation in the list of repeals under Part 2 of Schedule 2 to the Continued Laws Ordinance. The Commonwealth Minister will make rules to continue the effect of relevant regulations once repealed.