



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

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance.

Dated 25 June 2020

David Hurley  
Governor-General

By His Excellency's Command

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

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# Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules.....	1
<b>Schedule 1—Amendments</b>		<b>2</b>
Part 1—Amendments commencing by notifiable instrument or after 6 months		2
<i>Norfolk Island Continued Laws Ordinance 2015</i>		2
Part 2—Transitional provisions commencing day after registration		34
<i>Norfolk Island Continued Laws Ordinance 2015</i>		34
Part 3—Repeals		41
<i>Norfolk Island Continued Laws Ordinance 2015</i>		41



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## 1 Name

This Ordinance is the *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020*.

## 2 Commencement

- (1) Each provision of this Ordinance 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this Ordinance is registered.	3 July 2020
2. Schedule 1, Part 1	A single day to be fixed by the Minister by notifiable instrument. However, if the provisions do not commence within the period of 6 months beginning on the day after this Ordinance is registered, they commence on the day after the end of that period.	3 January 2021
3. Schedule 1, Part 2	The day after this Ordinance is registered.	3 July 2020
4. Schedule 1, Part 3	At the same time as the provisions covered by table item 2.	3 January 2021

Note: This table relates only to the provisions of this Ordinance as originally made. It will not be amended to deal with any later amendments of this Ordinance.

- (2) Any information in column 3 of the table is not part of this Ordinance. Information may be inserted in this column, or information in it may be edited, in any published version of this Ordinance.

## 3 Authority

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

## 4 Schedules

Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this 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*

#### 1 Items 74A to 76L of Schedule 1

Repeal the items, substitute:

#### 73 Section 3

Repeal the section.

#### 73A Section 4

Insert:

*approved* means approved in writing by the Employment Liaison Officer, under subsection 47E(3), for the purposes of the provision in which the term occurs.

#### 73B Section 4

Repeal the following definitions:

- (a) definition of *Board*;
- (b) definition of *Chairman*.

#### 73C Section 4

Insert:

*Electronic Transactions Act* means the *Electronic Transactions Act 1999* of the Commonwealth.

*eligible party* has the meaning given by subsection 82AA(4).

*Employment Liaison Officer* means the person appointed as the Employment Liaison Officer under section 47F.

*incapacity* has the meaning given by subsection 28(1).

*independent medical examination* has the meaning given by subsection 47A(2).

*inspector* means a person appointed to be an inspector under subsection 57(1).

*internal reviewer* has the meaning given by subsection 66(3).

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

Omit “in a State or Territory or in New Zealand”, substitute “in Norfolk Island”.

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

Repeal the definition.

#### 73F Section 4

Insert:

*membership fees* for a public scheme means the fees for the scheme prescribed by rules made for the purposes of subsection 39B(5).

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

Repeal the definition.

**73H Section 4**

Insert:

*permanent incapacity* has the meaning given by subsection 28(2).

*permanent incapacity assessment* has the meaning given by subsection 32(3).

**73J Section 4 (definition of *permit holder*)**

Repeal the definition.

**73K Section 4**

Insert:

*registered health practitioner* has the same meaning as in the *Health Practitioners Act 1983*.

*registered medical practitioner* has the same meaning as in the *Health Practitioners Act 1983*.

*rehabilitation program*, in relation to an injury or condition, means a program involving the provision of rehabilitation services for the injury or condition.

*rehabilitation services*, in relation to an injury or condition, means services provided to a person in connection with the person's rehabilitation from the injury or condition, including (without limitation) the following:

- (a) medical, dental, psychiatric or hospital services (whether on an in-patient or out-patient basis);
- (b) services provided in connection with physical training or exercise;
- (c) physiotherapy;
- (d) occupational therapy;
- (e) vocational training;
- (f) assistance in finding suitable work;
- (g) an approved service.

*responsible party* has the meaning given by subsection 32(2).

*rules* means rules made under section 108.

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

Repeal the definition.

**73M Section 4 (definition of *this Act*)**

Omit "Regulations" (wherever occurring), substitute "rules".

**73N Section 4 (definition of *Tribunal*)**

Repeal the definition, substitute:

## Schedule 1 Amendments

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

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***Tribunal*** means the Court of Petty Sessions, when the Court is exercising jurisdiction conferred by subsection 78(1).

Note: The jurisdiction conferred by subsection 78(1) relates to matters arising under Part 3 (compensation for work-related accidents, etc.)

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

Repeal the definition.

#### **73Q Section 4**

Insert:

***work-related accident*** means a situation or event occurring at a workplace or arising out of, or in the course of, an employee's work that results in death or injury.

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

Insert:

(1A) If, in relation to a matter, this 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 behalf of the entity.

Example: This subsection applies to a reference in Part 5 (review of matters related to compensation) to an entity that is an employer mentioned in subsection (1) of this section, but is not a natural person, a body corporate or a body politic.

#### **73S Paragraph 7(1)(b)**

After "Commonwealth", insert "or New South Wales".

#### **73T Section 8 (heading)**

Omit "**Regulations**", substitute "**Rules**".

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

Omit "Regulations" (wherever occurring), substitute "rules".

#### **73V Section 9**

Repeal the section, substitute:

### **9 Public holidays**

Each of the following days in a year is to be observed as a public holiday:

- (a) New Year's Day—1 January and, if that day is a Saturday or Sunday, the next Monday;
- (b) Australia Day—26 January, or, if that day is a Saturday or Sunday, the next Monday;
- (c) Foundation Day—6 March and, if that day is a Sunday, the next Monday;
- (d) Good Friday;
- (e) Easter Monday;
- (f) Anzac Day—25 April;
- (g) Bounty Day—8 June and, if that day is a Saturday or Sunday, the next Monday;



- (h) Sovereign’s Birthday—the first Monday after the second Saturday in June or, if that Monday is observed as Bounty Day under paragraph (g), the next Monday;
- (i) Show Day—the second Monday in October;
- (j) Thanksgiving—the last Wednesday in November;
- (k) Christmas Day—25 December and, if that day is a Saturday or Sunday, 27 December;
- (l) Boxing Day—26 December and, if that day is a Saturday or Sunday, 28 December.

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

Repeal the Divisions.

### **73X Subsection 24(2)**

Omit “Subject to subsection 24(1) an employer”, substitute “In addition, an employer”.

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

Repeal the paragraphs, substitute:

- (a) for more than 20 hours during a week in which the person is required by law to attend school; or
- (b) for more than 40 hours during any other week.

### **73Z Subsection 24(3)**

Omit “prescribed training position”, substitute “training position prescribed by the rules for the purposes of this subsection”.

### **73ZA Subsection 24(4)**

Omit “of a class defined in the Regulations”, substitute “who belongs to a class prescribed by the rules, for the purposes of this subsection,”.

### **73ZB Section 25**

Repeal the section.

### **73ZC Before section 26**

Insert:

## **Division 1—Interpretation**

### **73ZD Subsection 26(1) (definition of *approved*)**

Repeal the definition.

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

Repeal the definition.

### **73ZF Subsection 26(1) (definition of *disease*)**

Repeal the definition, substitute:

*disease* has the meaning given by section 28A.

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

Repeal the definitions.

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

Repeal the definition, substitute:

*medical treatment* means any or all of the following:

- (a) attendance, examination or treatment of any kind by a registered health practitioner who is registered under a National Law (within the meaning of the *My Health Records Act 2012* of the Commonwealth) to practise one of the following professions (including a recognised speciality in one of the following professions):
  - (i) medical;
  - (ii) dental;
  - (iii) optometry;
  - (iv) physiotherapy;
  - (v) chiropractic;
  - (vi) osteopathy;
  - (vii) podiatry;
- (b) an examination, test or analysis carried out at the request or direction of a person referred to in paragraph (a), including the provision of a report in respect of such an examination, test or analysis;
- (c) the provision and, as necessary from time to time, the repair, adjustment or replacement of crutches, artificial members, artificial eyes or teeth, spectacles, hearing aids or other aids;
- (d) the provision of skiagrams;
- (e) maintenance, attendance at and treatment in a hospital;
- (f) the provision by a hospital of any or all of the following:
  - (i) medical attendance and treatment;
  - (ii) nursing attendance;
  - (iii) medicines, medical, surgical and other curative materials, appliances or apparatus;
  - (iv) any other usual or necessary hospital services with respect to the treatment of the injury or disease of an employee;
- (g) rehabilitation services;
- (h) any other approved treatment (which may include treatment by a person practising a profession that is not listed in subparagraphs (i) to (vii) of paragraph (a)).

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

Omit “referred to in subsection 39(4)”, substitute “established under subsection 39A(1)”.

**73ZJ Subsection 26(1) (definition of *spouse*)**

Omit “de facto spouse”, substitute “de facto partner”.

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

Repeal the definition.

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

Repeal the subsections, substitute:

- (3) For the purposes of subsection (2), without limiting who is a parent, and who is a child:
- (a) each of the following is a person's *child*:
    - (i) an adoptive child of the person;
    - (ii) a child of the person's spouse who is ordinarily resident with the person in the person's household;
    - (iii) the person's child within the meaning of the *Family Law Act 1975* of the Commonwealth; and
  - (b) a person is a *parent* of another person if the other person is the person's child because of paragraph (a).

### **73ZM Section 28**

Repeal the section, substitute:

## **28 Meanings of *incapacity* and *permanent incapacity***

### *Meaning of incapacity*

- (1) For the purposes of this Act, *incapacity* means:
- (a) injury by reason of a work-related accident;
  - (b) the physical or mental consequences of:
    - (i) an injury by reason of a work-related accident; or
    - (ii) a work-related accident;
  - (c) industrial deafness within the meaning of section 33;
  - (d) hernia within the meaning of section 34;
  - (e) occupational disease within the meaning of section 35;
  - (f) a cardiovascular or cerebrovascular episode within the meaning of section 36.

Note: Under section 30, an employee is entitled to periodical compensation if the employee's incapacity results in a total or partial loss or diminution of the employee's capacity to earn.

### *Meaning of permanent incapacity*

- (2) For the purposes of this Act, an employee suffers *permanent incapacity* in relation to a loss or impairment of a bodily or mental function of the employee if the loss or impairment:
- (a) is caused by incapacity (within the meaning of subsection (1)); and
  - (b) is permanent; and
  - (c) results in a loss of amenities or of enjoyment of life (or both) for the employee.

Note: Under section 31, an employee is entitled to lump sum compensation if the employee suffers permanent incapacity, whether or not the incapacity results in a loss or diminution of the employee's capacity to earn.

## **28A Meaning of *disease***

- (1) For the purposes of this Part, ***disease*** means an ailment suffered by an employee, or an aggravation of such an ailment, to which the employee's employment made a significant contribution.
- (2) In determining whether an employee's employment made a significant contribution to an ailment suffered by the employee, or to an aggravation of such an ailment, the matters that may be taken into account include (but are not limited to) the following:
  - (a) the duration of the employment;
  - (b) the nature of the employment, and the 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.

## **Division 2—Compensation: work-related accidents etc.**

### **73ZN Paragraph 29(1)(a)**

Omit "personal".

### **73ZO Paragraph 29(1)(d)**

Omit "cardio-vascular or cerebro-vascular", substitute "cardiovascular or cerebrovascular".

### **73ZP Paragraph 29(2)(a)**

After "prescribed", insert "by the rules".

### **73ZQ Section 30 (heading)**

Repeal the heading, substitute:

## **30 Periodical compensation—loss or diminution of capacity to earn**

### **73ZR Subsection 30(1)**

After "incapacity", insert "resulting in a loss or diminution of the employee's capacity to earn".

### **73ZS Paragraph 30(4)(a)**

Omit "under section 17 by reason of ill health", substitute "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".

### **73ZT Subparagraph 30(4)(a)(ii)**

After "section 10", insert "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,".

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

Omit “the prescribed amount”, substitute “the amount prescribed by the rules for the purposes of this subparagraph”.

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

Omit “where that amount is less than the prescribed amount”, substitute “, where that amount is less than the amount prescribed for the purposes of subparagraph (i)”.

**73ZW Section 31 (heading)**

Repeal the heading, substitute:

**31 Compensation for permanent incapacity—general**

**73ZX Subsections 31(1) and (2)**

Repeal the subsections, substitute:

- (1) If an employee suffers permanent incapacity in relation to a loss or impairment of a bodily or mental function, the employer must pay lump sum compensation to the employee in accordance with this section.
- (2) Lump sum compensation is payable:
  - (a) in addition to any other compensation payable in accordance with this Part; and
  - (b) in an amount calculated under subsection 32B(2); and
  - (c) whether or not the loss or impairment of bodily or mental function results in a loss or diminution of the employee’s capacity to earn.

**73ZY Section 32**

Repeal the section, substitute:

**32 Compensation for permanent incapacity—assessment**

*Scope of this section*

- (1) This section applies in relation to an employee if:
  - (a) the employee suffers a loss or impairment of a bodily or mental function; and
  - (b) the employee makes a claim for lump sum compensation under section 37A for permanent incapacity in relation to the loss or impairment.
- (2) The **responsible party** for the claim for compensation in relation to the loss or impairment is as follows:
  - (a) if the claim is made against an employer, or former employer, of the employee who was, at the time of the events giving rise to, or contributing to, the loss or impairment, a member of a public scheme—the Employment Liaison Officer;
  - (b) if the claim is made against the Commonwealth—the Employment Liaison Officer;
  - (c) in any other case—the person or entity against whom the claim is made.

Note: A claim for compensation will usually be made against an employer, or former employer, of an employee. However, the claim may be made against the

## Schedule 1 Amendments

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

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Commonwealth under section 40 (if the employer is not insured or indemnified) or section 41 (if the employer ceases to exist).

- (3) A **permanent incapacity assessment** of the employee is an assessment undertaken in accordance with this section by a registered medical practitioner, for the purpose of determining:
- (a) whether the employee has suffered permanent loss or impairment of a bodily or mental function entitling the employee to be paid lump sum compensation for permanent incapacity under section 31; and
  - (b) if the employee has suffered such permanent loss or impairment—the degree of the permanent loss or impairment, expressed as a percentage.

#### *Requirement to attend for assessment*

- (4) The responsible party in relation to the claim for compensation may:
- (a) make reasonable arrangements for a registered medical practitioner to undertake a permanent incapacity assessment of the employee; and
  - (b) give reasonable written notice to the employee requiring the employee to attend for a permanent incapacity assessment in accordance with the arrangements.

#### *Conduct of assessment*

- (5) A person who undertakes a permanent incapacity assessment of an employee must not assess the degree of any permanent loss or impairment of a bodily or mental function suffered by the employee until the person is satisfied that the degree of that loss or impairment has stabilised.
- (6) A person who undertakes a permanent incapacity assessment of an employee:
- (a) must apply the following (so far as they are applicable):
    - (i) the Schedule to this Act;
    - (ii) any approved guide; and
  - (b) may have regard to reports or advice obtained from a registered health practitioner of a kind referred to in paragraph (a) of the definition of **medical treatment** in subsection 26(1).

#### *Costs of assessment*

- (7) The responsible party in relation to a claim for compensation must pay the costs of a permanent incapacity assessment in relation to the claim.
- (8) The costs of a permanent incapacity assessment of an employee include any reasonable costs associated with travel by the employee (and if necessary, an escort or escorts for the employee) to and from the place where the assessment is to take place.

### **32A Compensation for permanent incapacity—failure to attend for assessment**

- (1) An employee's right to lump sum compensation under section 31 in relation to a loss or impairment of a bodily or mental function is suspended if the employee fails, without reasonable excuse, to comply with a notice to attend for a permanent incapacity assessment given to the employee under subsection 32(4) in relation to that loss or impairment.

- (2) If an employee's right to lump sum compensation in relation to a loss or impairment is suspended under subsection (1), the suspension continues until:
  - (a) the responsible party in relation to the claim gives the employee a new notice under subsection 32(4) setting out new arrangements for a permanent incapacity assessment in relation to the loss or impairment; and
  - (b) the employee complies with the new notice to attend for such an assessment.

### **32B Compensation for permanent incapacity—report of assessment and amount of compensation**

#### *Report of assessment*

- (1) A person who undertakes a permanent incapacity assessment of an employee must, as soon as practicable after concluding the assessment:
  - (a) prepare a written report of the assessment, including findings as to the matters mentioned in paragraphs (a) and (b) of the definition of **permanent incapacity assessment** in subsection 32(3); and
  - (b) give a copy of that written report to:
    - (i) the employee; and
    - (ii) the responsible party who arranged the assessment.

Note: Paragraphs (a) and (b) of the definition of **permanent incapacity assessment** in subsection 32(3) relate to whether, and to what degree, the employee has suffered permanent incapacity.

#### *Amount of lump sum compensation*

- (2) For the purposes of paragraph 31(2)(b), if the report of a permanent incapacity assessment indicates that the employee has suffered permanent incapacity with a specified percentage of permanent loss or impairment of bodily or mental function, the amount of lump sum compensation payable to the employee in relation to the loss or impairment is:
  - (a) if the specified percentage is 2% or less—nil; and
  - (b) if the specified percentage is 90% or more—an amount prescribed by the rules for the purposes of this paragraph; and
  - (c) otherwise—an amount that is the specified percentage of the amount prescribed for the purposes of paragraph (b).

### **32C Compensation for permanent incapacity—powers of Tribunal**

For the purposes of an inquiry under Division 2 of Part 5 in relation to an employee's claim for lump sum compensation under section 37A for permanent incapacity in relation to a loss or impairment of a bodily or mental function, the orders the Tribunal may make under section 85 include the following:

- (a) an order requiring a responsible party under subsection 32(2) in relation to the claim to arrange for a permanent incapacity assessment in relation to the employee's loss or impairment;
- (b) an order:
  - (i) varying a permanent incapacity assessment in relation to the loss or impairment; or
  - (ii) setting aside such an assessment; or
  - (iii) remitting such an assessment for reconsideration.

**73ZZ Subsection 33(1)**

Omit “paragraph 28(1)(b)”, substitute “paragraph (c) of the definition of *incapacity* in subsection 28(1)”.

**74 Subsection 33(2)**

Omit “An assessment under section 32 of the percentage of permanent loss or impairment of function, in relation to industrial deafness,”, substitute “A permanent incapacity assessment in relation to industrial deafness”.

**74A Subsection 34(1)**

Omit “(1)” (first occurring).

**74B Subsection 34(1)**

Omit “paragraph 28(1)(c)”, substitute “paragraph (d) of the definition of *incapacity* in subsection 28(1)”.

**74C Paragraph 34(1)(b)**

Omit “employment; and”, substitute “employment.”.

**74D Paragraph 34(1)(c)**

Repeal the paragraph.

**74E Subsection 34(2)**

Repeal the subsection.

**74F Subsection 35(1)**

Omit “paragraph 28(1)(d)”, substitute “paragraph (e) of the definition of *incapacity* in subsection 28(1)”.

**74G Subsection 35(3)**

Repeal the subsection, substitute:

- (3) Compensation under this Part is not payable in respect of occupational disease contracted by an employee due to the nature of the employee’s employment if, at the time of entering that employment:
  - (a) the employee falsely represented to the employer that the employee had not previously suffered a disease of the kind that was contracted; and
  - (b) the employee did so knowing that the representation was false.

**74H Subsection 36(1)**

Omit “A cardio-vascular or cerebro-vascular episode constitutes an episode for the purposes of paragraph 28(1)(e)”, substitute “A cardiovascular or cerebrovascular episode constitutes an episode for the purposes of paragraph (f) of the definition of *incapacity* in subsection 28(1)”.

**74J Subsection 36(2)**

Omit “cardio-vascular” (wherever occurring), substitute “cardiovascular”.

**74K Subsection 36(2)**

Omit “cerebro-vascular” (wherever occurring), substitute “cerebrovascular”.

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## **74L Section 37**

Repeal the section, substitute:

### **37 Compensation for reasonable costs of medical treatment**

#### *Scope of this section*

- (1) This section applies to an employer if:
- (a) the employer is liable under this Part to pay compensation to, or in respect of, an employee in relation to an injury or condition; or
  - (b) the employer would have been liable under this Part to pay compensation to, or in respect of, an employee in relation to an injury or condition, but for:
    - (i) the fact that the employee did not suffer a loss or diminution of the employee's capacity to earn; or
    - (ii) the operation of paragraph 32B(2)(a).

Note: Under paragraph 32B(2)(a), an employer is not liable to pay lump sum compensation under section 31 in relation to an employee's permanent incapacity if the assessed degree of loss or impairment is 2% or less.

#### *Compensation payable by public scheme employers*

- (2) If the employer was a member of a public scheme at the time of the events giving rise to, or contributing to, the injury or condition, the employer is liable to pay compensation to, or in respect of, the employee for costs incurred by, or on behalf of, the employee relating to medical treatment for the injury or condition, in accordance with subsection (3).
- (3) Any costs payable as compensation under subsection (2):
- (a) must be reasonable; and
  - (b) must be approved by the Employment Liaison Officer as reasonably appropriate in the circumstances; and
  - (c) are to consist of the following costs of medical treatment, to the extent that the treatment is reasonable and appropriate in the circumstances:
    - (i) any costs of medical treatment for the injury or condition, whether carried out in Norfolk Island or in another place;
    - (ii) the costs of transporting the employee (and if necessary, an escort or escorts for the employee) to and from a place where medical treatment is available;
    - (iii) the costs of enabling the employee (and if necessary, an escort or escorts for the employee) to remain in a place where medical treatment is available for the purpose of obtaining that medical treatment;
    - (iv) any costs incurred on the employee's behalf by a person or body other than the employee relating to medical treatment for the employee's injury or condition (including costs mentioned in subparagraphs (ii) and (iii)); and
  - (d) must not exceed the maximum amount, if any, in relation to the medical treatment for the injury or condition, prescribed by rules made for the purposes of this paragraph.

Note: For paragraph (d), the rules may make different provision with respect to different matters or classes of matter, including for example different kinds of treatment

## Schedule 1 Amendments

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

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and different injuries or conditions: see subsection 33(3A) of the *Acts Interpretation Act 1901* of the Commonwealth (as applied by section 8A of the *Acts Interpretation Act 1979*).

#### *Compensation payable by other employers*

- (4) If the employer was not a member of a public scheme at the time of the events giving rise to, or contributing to, the injury or condition, the employer is liable to pay compensation to, or in respect of, the employee for costs relating to medical treatment for the injury or condition, in accordance with subsection (5).
- (5) The costs payable as compensation under subsection (4):
  - (a) must be reasonable; and
  - (b) are to consist of any or all of the costs of medical treatment mentioned in subparagraphs (3)(c)(i) to (iv), to the extent that the treatment is reasonable and appropriate in the circumstances.

## Division 3—Compensation: payment of claims

### 37AA Interpretation—references to liability to pay compensation under this Part

A reference in sections 39 to 40 to an employer's liability to pay compensation under this Part, or to the full amount of an employer's liability to pay compensation under this Part, does not include a reference to the employer's liability to pay:

- (a) compensation because 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) in relation to each claim for compensation under this Part made against the employer (other than compensation to which paragraph (a) of this section applies)—an amount equal to the amount (if any) prescribed by the rules for the purposes of this paragraph.

Note: Paragraph 30(4)(a) applies where an employee is suffering from total incapacity, and requires payment of compensation to the employee in relation to an initial period when the employee is absent from duty.

### 74M Paragraph 37A(2)(a)

Omit “in accordance with the form prescribed for the purposes of this paragraph”, substitute “in the approved form”.

### 74N Paragraph 37A(2)(b)

Omit “by a medical practitioner in accordance with the form prescribed for the purposes of this paragraph”, substitute “given by a registered medical practitioner in the approved form”.

### 74P Sections 38, 39 and 39A

Repeal the sections, substitute:

## 38 Rehabilitation

### *Scope of this section*

- (1) This section applies if:
- (a) an employee makes a claim for compensation under section 37A in relation to an injury or condition of the employee; and
  - (b) the claim is made against:
    - (i) an employer, or former employer, of the employee who was a member of a public scheme at the time of the events giving rise to, or contributing to, the injury or condition; or
    - (ii) the Commonwealth.

Note: A claim for compensation will usually be made against an employer, or former employer, of an employee. However, the claim may be made against the Commonwealth under section 40 (if the employer is not insured or indemnified) or section 41 (if the employer ceases to exist).

### *Requirement to undertake rehabilitation program*

- (2) The Employment Liaison Officer may, by notice in writing given to the employee, require the employee to undertake a rehabilitation program for the injury or condition, consisting of rehabilitation services for which compensation is, or would be, payable by the employer under subsection 37(2).

Note: Compensation is payable under subsection 37(2) for the costs of medical treatment (which includes rehabilitation services) incurred by or on behalf of an employee, subject to the conditions set out in subsection 37(3).

- (3) If the employee is required under subsection (2) to undertake a rehabilitation program for the injury or condition, and the employee fails without reasonable excuse to begin, or continue with, the program, the employee's right to compensation under this Act in relation to the injury or condition is suspended until the employee begins, or continues with, the program.

### *Support for rehabilitation*

- (4) Subsection (5) applies if:
- (a) the claim for compensation is made against the employee's current employer; and
  - (b) the current employer is not taking reasonable steps to:
    - (i) accommodate the injury or condition of the claimant to which the claim relates; and
    - (ii) support the claimant's rehabilitation from that injury or condition.
- (5) Any obligation of the Commonwealth under subsection 39A(2) to indemnify the current employer in relation to the claim for compensation is suspended until the current employer takes reasonable steps of the kind referred to in paragraph (4)(b) of this section.

## 39 Compulsory insurance

### *Requirement to have insurance*

- (1) An employer must have a policy of insurance or indemnity with an insurer for the full amount of the employer's liability under this Part to pay compensation if:

## Schedule 1 Amendments

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

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- (a) the employer is not a member of a public scheme; and
- (b) the employer is not prescribed by the rules for the purposes of this paragraph.

#### *Offence*

- (2) An employer commits an offence if:
  - (a) the employer is required under subsection (1) to have a policy of insurance or indemnity for the full amount of the employer's liability under this Part to pay compensation; and
  - (b) the employer does not have such a policy.

#### Penalty:

- (a) in the case of a natural person—imprisonment for 2 years or 50 penalty units, or both;
  - (b) in the case of a body corporate—250 penalty units.
- (3) For the purposes of subsection (2):
    - (a) strict liability applies to paragraph (2)(a); and
    - (b) recklessness is the fault element for paragraph (2)(b).

#### *Evidentiary certificates*

- (4) In proceedings against a person (the *defendant*) for an offence against subsection (2), the following certificates are prima facie evidence of the matters stated in the certificates:
  - (a) a certificate that is signed, or purports to be signed, by an employee or agent of an insurer stating that there was not in force, on a specified date, a policy of insurance or indemnity issued by the insurer for the full amount of the defendant's liability under this Part to pay compensation;
  - (b) a certificate that is signed, or purports to be signed, by the Employment Liaison Officer stating either or both of the following:
    - (i) that the defendant was not, on a specified date, a member of a public scheme;
    - (ii) that the defendant was not, on a specified date, prescribed by the rules for the purposes of paragraph (1)(b).

#### *Joint insurance*

- (5) To avoid doubt, if subsection 39(1) requires an employer to have a policy of insurance or indemnity with an insurer for the full amount of the employer's liability under this Part to pay compensation, nothing in this Part prevents the employer from satisfying that requirement (in whole or in part) by jointly entering, with one or more other employers, into a contract of insurance or indemnity with an insurer.

## **39A Public schemes—general**

#### *Establishment*

- (1) The Commonwealth Minister may establish a scheme to indemnify employers for their liability under this Part to pay compensation.

*Employer indemnity*

- (2) The Commonwealth must indemnify an employer for the full amount of the employer's liability under this Part to pay compensation, if the employer was a member of a public scheme at the time of the events giving rise to the employer's liability.

*Limitation on scope of indemnity*

- (3) The Commonwealth's obligation under subsection (2) to indemnify an employer only covers the employer's liability to pay compensation under this Part as assessed in accordance with information:
  - (a) given by the employer as required under subsection 39B(2) (information to be included with application to join a public scheme); or
  - (b) given by the employer as required under subsection 39B(10) (information relevant to the management or control of a public scheme).

### **39B Public schemes—membership**

*Becoming a member of a public scheme*

- (1) An employer may apply to the Employment Liaison Officer, in writing, to become a member of a public scheme.
- (2) An application under subsection (1) must:
  - (a) include any information that the Employment Liaison Officer requires, in writing, to be included with an application; and
  - (b) if there is an approved form for making an application—be made in the approved form.
- (3) On receiving an application under subsection (1), the Employment Liaison officer must decide:
  - (a) to grant the application; or
  - (b) to refuse to grant the application.
- (4) In deciding whether to grant an application, the Employment Liaison Officer:
  - (a) must have regard to any considerations prescribed by the rules for the purposes of this paragraph; and
  - (b) may have regard to any other matters that the Employment Liaison Officer considers relevant.

*Membership fees*

- (5) The rules may prescribe membership fees for a public scheme.
- (6) Without limiting subsection (5), rules made for the purposes of that subsection may do any of the following:
  - (a) prescribe different membership fees for different employers or classes of employer;
  - (b) prescribe different membership fees for different periods;
  - (c) prescribe a membership fee by:
    - (i) specifying an amount as the fee; or
    - (ii) specifying a method for working out the fee.

**Schedule 1** Amendments

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

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- (7) In working out the membership fees for an employer in accordance with rules made for the purposes of subsection (5), the Employment Liaison Officer may have regard to:
  - (a) any information provided by the employer to the Employment Liaison Officer (whether under subsection (10) or otherwise); and
  - (b) any other information available to the Employment Liaison Officer.
- (8) The membership fees for a public scheme are payable on the days determined under subsection (9).
- (9) The Employment Liaison Officer may, by notifiable instrument, determine days for the purposes of subsection (8).

*Employment Liaison Officer may require information*

- (10) The Employment Liaison Officer may, by written notice, require an employer who is a member of a public scheme to do any of the following:
  - (a) provide specified information that is relevant to the management and control of the public scheme, including information relevant to determining membership fees for the scheme;
  - (b) provide that specified information:
    - (i) in an approved form; and
    - (ii) by a specified time.

*Revocation of membership*

- (11) The Employment Liaison Officer may revoke an employer's membership of a public scheme if:
  - (a) the employer does not pay the employer's membership fees for the scheme within a reasonable period after the day when those fees are payable (as determined under subsection (9)); or
  - (b) the employer fails to comply with a requirement under subsection (10) to provide specified information by a specified time.

**74Q Paragraph 40(1)(c)**

Omit "prescribed for the purposes of subsection 39(2)", substitute "prescribed by the rules for the purposes of paragraph 39(1)(b)".

**74R Subsection 40(1)**

Omit "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", substitute "the Commonwealth is liable to pay the compensation as if the Commonwealth".

**74S Subsections 40(2) and (2A)**

Omit "Administration" (wherever occurring), substitute "Commonwealth".

**74T Paragraph 41(1)(b)**

Omit "Administration", substitute "Commonwealth".

**74U Paragraph 41(1)(c)**

Omit "prescribed for the purposes of subsection 39(2)", substitute "prescribed by the rules for the purposes of paragraph 39(1)(b)".

**74V Subsection 41(1)**

Omit “Administration or person”, substitute “the Commonwealth or the person”.

**74W Subsection 41(2)**

Omit “levies”, substitute “membership fees”.

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

Repeal the definition, substitute:

*relevant amount* means:

- (a) an amount prescribed by the rules for the purposes of subparagraph 30(4)(b)(i) or paragraph 32B(2)(b); or
- (b) the amount (if any) last substituted under this section for an amount referred to in paragraph (a) of this definition;

**74Y Subsection 42(6)**

Omit all the words after “this section”, substitute “the Employment Liaison Officer must, by notifiable instrument, as soon as practicable after the variation, publish notice of the amount substituted for the relevant amount”.

**74Z Subsection 42(8)**

Omit “the Minister shall, immediately the error is discovered, publish a correction”, substitute “the Employment Liaison Officer must, by notifiable instrument, as soon as practicable after the error is discovered, publish a correction of the error”.

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

Repeal the paragraphs, substitute:

- (a) suffers incapacity; or

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

Repeal the paragraphs, substitute:

- (d) an injury or condition out of which the incapacity arose; or

**74ZC Subsection 43(4)**

Omit “It is the intention of the Legislative Assembly that compensation”, substitute “Compensation”.

**74ZD Section 46 (heading)**

Repeal the heading, substitute:

**46 Overpaid amounts**

**74ZE Section 46**

After “by way of compensation”, add “or indemnity”.

**74ZF Section 47**

Repeal the section, substitute:

## 47 Information relevant to claims

### *Scope of this section*

- (1) The section applies if:
  - (a) a claim for compensation is made under section 37A by a person (the **claimant**) in relation to an injury or condition of, or the death of, an employee (the **relevant employee**); and
  - (b) the relevant employee was employed by a person or entity (the **relevant employer**) at the time of the events (the **relevant events**) giving rise to, or contributing to, the relevant employee's injury, condition or death; and
  - (c) the claim is made against:
    - (i) the relevant employer, if the employer was, at the time of the relevant events, a member of a public scheme; or
    - (ii) the Commonwealth.

Note: A claim for compensation will usually be made against an employer, or former employer, of an employee. However, the claim may be made against the Commonwealth under section 40 (if the employer is not insured or indemnified) or section 41 (if the employer ceases to exist).

### *Employment Liaison Officer may require information*

- (2) If the Employment Liaison Officer reasonably believes that the claimant or the relevant employer has information relevant to the claim for compensation, the Employment Liaison Officer may, by written notice given to the claimant or the relevant employer (as the case may be), require that information to be provided to the Employment Liaison Officer:
  - (a) within 14 days after the day on which the notice is received; or
  - (b) within such longer period (if any) as the Employment Liaison Officer allows.

### *Failure to comply—claimant*

- (3) If the claimant fails, without reasonable excuse, to comply with a notice under subsection (2), any right of the claimant to compensation under this Act in relation to the injury, condition or death is suspended until the claimant complies with the notice.

### *Failure to comply—relevant employer*

- (4) If:
  - (a) the relevant employer was, at the time of the relevant events, a member of a public scheme; and
  - (b) the relevant employer fails, without reasonable excuse, to comply with a notice under subsection (2);then any obligation of the Commonwealth under subsection 39A(2) to indemnify the relevant employer in relation to the claim is suspended until the relevant employer complies with the notice.



## **47A Independent medical examinations—requirement by Employment Liaison Officer**

### *Scope of this section*

- (1) This section applies if:
  - (a) an employee makes a claim for compensation under section 37A in relation to an injury or condition of the employee, other than a claim for compensation payable under section 31 (which deals with compensation for permanent incapacity); and
  - (b) the claim is made against:
    - (i) an employer, or former employer, of the employee who was a member of a public scheme at the time of the events giving rise to, or contributing to, the injury or condition; or
    - (ii) the Commonwealth.

Note 1: For medical assessments (known as *permanent incapacity assessments*) in relation to claims for compensation under section 31, see sections 32 to 32C.

Note 2: A claim for compensation will usually be made against an employer, or former employer, of an employee. However, the claim may be made against the Commonwealth under section 40 (if the employer is not insured or indemnified) or section 41 (if the employer ceases to exist).

### *Requirement to attend for examination*

- (2) The Employment Liaison Officer may:
  - (a) make reasonable arrangements for a registered medical practitioner to undertake a medical examination (an *independent medical examination*) of the employee in relation to the injury or condition to which this section applies; and
  - (b) give reasonable written notice to the employee requiring the employee to attend for the independent medical examination in accordance with the arrangements.
- (3) The notice under paragraph (2)(b) must include a statement about how the employee may obtain a copy of the report of the assessment under section 47C.

### *Costs of examination*

- (4) The Employment Liaison Officer must pay the costs of an independent medical examination on behalf of the Commonwealth.
- (5) The costs of an independent medical examination of an employee include any reasonable costs associated with travel by the employee (and if necessary, an escort or escorts for the employee) to and from the place where the assessment is to take place.

### *Frequency of examinations*

- (6) An employee must not be required to undergo an examination under this section at more frequent intervals than are prescribed by rules made for the purposes of this subsection.

#### **47B Independent medical examinations—failure to attend examination**

- (1) An employee's right to compensation in relation to an injury or condition to which section 47A applies is suspended if the employee fails, without reasonable excuse, to comply with a notice to attend for an independent medical examination given to the employee under subsection 47A(2) in relation to that injury or condition.
- (2) If an employee's right to compensation in relation to an injury or condition is suspended under subsection (1), the suspension continues until:
  - (a) the Employment Liaison Officer gives the employee a new notice under subsection 47A(2) setting out new arrangements for an independent medical examination in relation to the injury or condition; and
  - (b) the employee complies with the new notice to attend for such an examination.

#### **47C Independent medical examinations—report of examination**

- (1) A person who undertakes an independent medical examination of an employee in relation to a claim for compensation under section 37A must, as soon as practicable after concluding the assessment, give a written report of the examination to the Employment Liaison Officer.
- (2) An employee who undergoes an independent medical examination may request a copy of the report mentioned in subsection (1) from the Employment Liaison Officer.
- (3) The Employment Liaison Officer must comply with a request under subsection (2) within 7 days after the later of the following days:
  - (a) the day the claim is assessed by the Employment Liaison Officer;
  - (b) the day the request for the report is received.

### **Division 4—Employment Liaison Officer**

#### **47D Employment Liaison Officer**

There is to be an Employment Liaison Officer.

#### **47E Functions and powers of Employment Liaison Officer**

##### *Management and control of public scheme*

- (1) The Employment Liaison officer is responsible for the management and control of any public scheme established under subsection 39A(1).
- (2) The responsibilities of the Employment Liaison Officer referred to in subsection (1) include (without limitation) the following:
  - (a) receiving, on behalf of the Commonwealth, any membership fees for a public scheme paid by employers;
  - (b) assessing claims for compensation made against employers who are members of a public scheme, for the purposes of determining the Commonwealth's liabilities under the scheme;
  - (c) making payments, on behalf of the Commonwealth, to discharge the Commonwealth's liabilities under a public scheme.

*Approvals*

- (3) The Employment Liaison Officer may, in writing, approve a person, policy or form, or any other thing, for the purposes of a provision of this Act.

*Other functions and powers*

- (4) The Employment Liaison Officer has such other functions and powers as are conferred on the Employment Liaison Officer by or under this Act, including any functions and powers delegated to the Employment Liaison Officer by the Commonwealth Minister under this Act.

*Directions by Commonwealth Minister*

- (5) The Commonwealth Minister may, by notifiable instrument, give directions to the Employment Liaison Officer in relation to the performance and exercise of the Employment Liaison Officer's functions and powers under this Act.
- (6) However, the Commonwealth Minister must not give a direction under subsection (5) that relates to a particular case.
- (7) The Employment Liaison Officer must comply with any directions given under subsection (5).

**47F Employment Liaison Officer—appointment**

The Commonwealth Minister may, by written instrument, appoint an SES employee, or acting SES employee, in the Department as the Employment Liaison Officer.

**47G Employment Liaison Officer—acting appointments**

The Commonwealth Minister may, by written instrument, appoint an SES employee, or acting SES employee, in the Department to act as the Employment Liaison Officer:

- (a) during a vacancy in the office of the Employment Liaison Officer; or
- (b) during any period, or during all periods, when the Employment Liaison Officer:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.

**47H Delegations by Employment Liaison Officer**

- (1) Subject to subsections (2) and (3), the Employment Liaison Officer may, in writing, delegate any or all of the Employment Liaison Officer's functions or powers under this Act to any of the following:
- (a) an SES employee or acting SES employee;
  - (b) an APS employee who holds, or performs the duties of, an Executive Level 1 position, or an equivalent or higher position;
  - (c) an individual who holds, or performs the duties of, an office or position in a body that is a part of the Commonwealth, or an authority of the Commonwealth, if the office or position is at a level equivalent to or higher than that of an APS employee classified at Executive Level 1;
  - (d) an inspector;

- (e) an employee of the Norfolk Island Regional Council;
  - (f) any other person.
- (2) The Employment Liaison Officer must not delegate a function or power to a person unless the Employment Liaison Officer is satisfied that the person has appropriate qualifications or expertise to perform the function or exercise the power.
- (3) The Employment Liaison Officer must not delegate:
- (a) the Employment Liaison Officer's power of delegation under subsection (1); or
  - (b) a function or power delegated to the Employment Liaison Officer by the Commonwealth Minister under this Act.
- (4) In performing a function or exercising a power delegated under subsection (1), a delegate must comply with any written directions of the Employment Liaison Officer.

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

Repeal the definitions.

**74ZH Subsection 53(2)**

Repeal the subsection, substitute:

- (2) An employer must keep such records as are prescribed by the rules for the purposes of this subsection, for such period as is so prescribed, relating to the safety and health of employees of the employer.

**74ZI Subsection 53(3)**

Omit "incapacity" (first and second occurring), substitute "permanent incapacity".

**74ZJ Subsection 53(3)**

Omit "prescribed form", substitute "form prescribed by the rules for the purposes of this subsection".

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

Omit "incapacity", substitute "permanent incapacity".

**74ZL Subsection 54(2)**

Omit "Regulations", substitute "rules".

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

Omit "Employment Liaison Officer" (wherever occurring), substitute "Chief Executive Officer".

**74ZN Subsection 55(4)**

Repeal the subsection, substitute:

- (4) Despite subsection (3), if a complaint is made or referred to the Chief Executive Officer under this section:
- (a) the Chief Executive Officer may require an inspector to investigate the complaint; and

- (b) if so required, the inspector must, as soon as practicable, investigate the complaint.

**74ZO Subsection 57(1)**

Omit “Minister”, substitute “Chief Executive Officer”.

**74ZP After section 57**

Insert:

**57A Inspectors—management and control**

- (1) The Chief Executive Officer is responsible for the management and control of inspectors.
- (2) The Chief Executive Officer may give directions to an inspector in relation to the performance and exercise of the inspector’s functions and powers under this Part.
- (3) An inspector must comply with any directions given to the inspector under subsection (2).

**74ZQ Paragraph 57(2)(a)**

Omit “Regulations”, substitute “rules”.

**74ZR Subsection 60(2)**

Before “evidence”, insert “prima facie”.

**74ZS Section 62**

Repeal the section.

**74ZT Section 64**

Omit “Regulations”, substitute “rules”.

**74ZU Part 5 (heading)**

Repeal the heading, substitute:

**Part 5—Review of matters relating to compensation**

**74ZV Division 1 of Part 5**

Repeal the Division, substitute:

**Division 1—Internal review by Employment Liaison Officer**

**65 Internal review—applications**

- (1) A person or entity covered by subsection (2) may apply to the Employment Liaison Officer for an internal review of a matter arising under Part 3 that affects the interests of the person or entity.
- (2) This subsection covers the following:
  - (a) a person who has made a claim for compensation under section 37A in relation to an injury, condition or death, but only if the person who suffered

the injury or condition, or who died, was employed by an employer who was a member of a public scheme at the time of events giving rise to, or contributing to, the injury, condition or death;

(b) a member or former member of a public scheme.

- (3) An application for an internal review under subsection (1) must:
- (a) be in writing; and
  - (b) set out the reasons for the application.
- (4) An application for an internal review of a matter under subsection (1) must be made:
- (a) within 30 days after the day on which the matter arises (for example, by the making of a decision by the Employment Liaison Officer in relation to the matter); or
  - (b) within such longer period (if any) as the Employment Liaison Officer allows.

## 66 Who undertakes internal review?

- (1) On receiving an application under section 65 for an internal review of a matter, the Employment Liaison Officer must:
- (a) review the matter personally; or
  - (b) ensure that the matter is reviewed by a delegate of the Employment Liaison Officer.
- (2) However, if the matter relates to a claim (the *primary claim*) for compensation under section 37A, the matter must not be reviewed by a person who has been involved in dealing with:
- (a) the primary claim; or
  - (b) a claim, by a member or former member of a public scheme, to be indemnified by the Commonwealth under subsection 39A(2) in relation to the primary claim.

Note: This subsection applies to the Employment Liaison Officer personally as well as to a delegate of the Employment Liaison Officer.

- (3) The *internal reviewer* of a matter is the person who reviews the matter under this section.

## 67 Internal review—determination and notice

- (1) If an application has been made under section 65 for an internal review of a matter, the internal reviewer must make a written determination in relation to the matter within the period prescribed by rules made for the purposes of this subsection.
- (2) As soon as practicable after making the determination, the internal reviewer must give written notice of the determination to:
- (a) the applicant for the internal review; and
  - (b) if the matter relates to a claim for compensation under section 37A:
    - (i) the person who made the claim; and
    - (ii) the person or entity against whom the claim was made.
- (3) A notice of a determination must:

- (a) be accompanied by a copy of the determination; and
- (b) set out the reasons for the determination, if those reasons are not set out in the copy of the determination; and
- (c) explain the effect of section 82 (which deals with when, and how, an application may be made to the Tribunal for an inquiry into a matter).

### **74ZW Division 2 of Part 5 (heading)**

Repeal the heading, substitute:

## **Division 2—Inquiry by Tribunal**

### **74ZX Section 78 (heading)**

Repeal the heading, substitute:

## **78 Tribunal**

### **74ZY Subsection 78(1)**

Repeal the subsection, substitute:

- (1) The Court of Petty Sessions has jurisdiction to exercise and perform the powers, duties, functions and authorities conferred or imposed on the Court by:
  - (a) this Division; or
  - (b) a provision of this Act that relates to an inquiry undertaken by the Tribunal under this Division.

Note: The Court of Petty Sessions has a separate jurisdiction under section 56 (stop work and improvement notices) to review requirements in notices given under that section.

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

Omit “Employment Tribunal”, substitute “Tribunal”.

## **75 Section 82**

Repeal the section, substitute:

## **82 Inquiry—applications**

### *Application for inquiry*

- (1) Subject to this section, a person or entity may apply to the Tribunal for an inquiry into:
  - (a) a matter arising under Part 3 that affects the interests of the person or entity; or
  - (b) if the person or entity is the Employment Liaison Officer—a matter arising under Part 3 that affects the interests of the Commonwealth.
- (2) An application to the Tribunal for an inquiry must:
  - (a) be in writing; and
  - (b) be made to the Secretary; and
  - (c) set out the reasons for the application.

*Requirement for internal review in certain cases*

- (3) Subsections (4) and (5) apply if a person or entity (the **interested party**) may apply to the Employment Liaison Officer under section 65 for an internal review of a matter (the **relevant matter**) relating to a claim for compensation under section 37A.
- (4) The interested party is not entitled to apply to the Tribunal under subsection (1) for an inquiry into the relevant matter unless:
  - (a) the interested party has made an application (the **internal review application**) under section 65 for an internal review of the relevant matter; and
  - (b) either:
    - (i) the interested party has received notice in accordance with 67 of a determination by the internal reviewer in relation to the relevant matter, but the interested party remains aggrieved in relation to the matter; or
    - (ii) if the interested party has not received such a notice—the period prescribed in relation to the internal review application, by rules made for the purposes of subsection 67(1), has expired.
- (5) If the interested party is entitled to apply to the Tribunal under subsection (1) for an inquiry into the relevant matter because subparagraph (4)(b)(i) applies, such an application by the interested party under subsection (1) must:
  - (a) be made within:
    - (i) the period of 7 days beginning on the day after the day on which the interested party received the notice of the determination by the internal reviewer referred to in subparagraph (4)(b)(i); or
    - (ii) such longer period (if any) as the Tribunal allows; and
  - (b) be accompanied by a copy of that determination.

## **82AA Inquiry—how convened**

*Inquiry must be convened*

- (1) The Secretary must, as soon as practicable after receipt of an application under section 82 for an inquiry into a matter, inform a member of the Tribunal of the application.
- (2) If a member of the Tribunal is informed of the application, the Tribunal must convene an inquiry into the matter.
- (3) The Tribunal may determine the time and place at which the inquiry is to be held.

*Notice of inquiry*

- (4) Each of following persons or entities is an **eligible party** in relation to an inquiry:
  - (a) the person or entity who applied for the inquiry under section 82;
  - (b) if the inquiry is into a matter that relates to a claim for compensation under section 37A:
    - (i) the person who made the claim; and
    - (ii) the person or entity against whom the claim was made;



- (c) if the inquiry is into a matter that affects the interests of the Commonwealth—the Employment Liaison Officer.
- (5) The Tribunal must give each eligible party in relation to the inquiry written notice of:
  - (a) the time and place at which the inquiry is to be held; and
  - (b) the matter to which the inquiry relates.

## **82AB Inquiry—participation and representation**

### *Participation in inquiry*

- (1) An eligible party in relation to an inquiry is entitled to:
  - (a) make representations to the Tribunal in relation to the inquiry; and
  - (b) appear at the inquiry.
- (2) If the Tribunal considers that it is appropriate to do so, the Tribunal may allow a person or entity who is not an eligible party in relation to the inquiry to do either or both of the following:
  - (a) make representations to the Tribunal in relation to the inquiry;
  - (b) appear at the inquiry.
- (3) If an eligible party who has been given notice of the inquiry in accordance with subsection 82AA(5) fails to attend at the time and place specified for the inquiry, the Tribunal may proceed in the absence of that party.

### *Representation at inquiry*

- (4) An eligible party in relation to an inquiry:
  - (a) is entitled to appear at the inquiry:
    - (i) personally; or
    - (ii) if the person is a body corporate—by a director, secretary or agent of the body corporate; and
  - (b) subject to subsection (5), is entitled to be represented at the inquiry by:
    - (i) a legal practitioner; or
    - (ii) another person, with leave of the Tribunal.
- (5) If, in the opinion of the Tribunal, the total value of all of the entitlements under this Act that are at issue in the inquiry is likely to be less than \$1,000, the Tribunal may refuse to allow any eligible party in relation to the inquiry to be represented at the inquiry by a legal practitioner.
- (6) Subsection (5) does not give the Tribunal the power to prevent:
  - (a) an eligible party who is legal practitioner from appearing personally; or
  - (b) an eligible party that is a body corporate from appearing by a director, secretary or agent of the body corporate who is a legal practitioner.

## **75A Subsections 85(1) and (2)**

Repeal the subsections, substitute:

- (1) After determining a matter in an inquiry, the Tribunal:

**Schedule 1** Amendments

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

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- (a) must, as soon as practicable after making its determination, give notice of the determination, together with a copy of the determination, to each eligible party in relation to the inquiry; and
- (b) may make, or refuse to make, an order in accordance with this section.

(2) The Tribunal may make any of the following orders:

- (a) an order requiring a person to do any (or all) of the following:
  - (i) to do an act required or permitted to be done by this Act;
  - (ii) to refrain from doing an act prohibited by this Act;
  - (iii) to pay money required or permitted to be paid by this Act; or
- (b) an order of the kind mentioned in section 32C (compensation for permanent incapacity—powers of Tribunal).

(2A) The Tribunal must not make any order as to costs.

**75B Paragraph 85(3)(a)**

Omit “subject to section 62,”.

**75C Subsection 85(4)**

Omit “82(6)”, substitute “82AB(3)”.

**75D Subsection 85(5)**

Repeal the subsection, substitute:

- (5) If the Tribunal makes an order in an inquiry, the Tribunal must, as soon as practicable after making the order, give notice of the order, together with a copy of the order, to:
  - (a) each person to whom the order is directed; and
  - (b) each eligible party in relation to the inquiry.

(5A) A person or entity who has been given notice of a determination or order by the Tribunal may request the Tribunal to give written reasons for the determination or order. The Tribunal must provide those reasons within the period of 7 days beginning on the day on which the Tribunal receives the request.

**75E Subsection 85(6)**

Omit “Subject to subsection 85(8), the”, substitute “The”.

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

Repeal the subsections, substitute:

- (11) If the Tribunal is required to give a person or entity notice of a determination or order of the Tribunal, the Tribunal must also give the person or entity a written or oral explanation of the effect of sections 91 and 92 (which deal with when, and how, an appeal may be made to the Supreme Court from a determination or order of the Tribunal).

**75G Subsection 86(2)**

Omit “paragraph 85(2)(d) or subsection 85(9)”, substitute “paragraph 85(2)(c)”.

**75H Section 88**

Repeal the section.

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**75J Subsection 89(1)**

Omit “(1)”.

**75K Subsection 89(2)**

Repeal the subsection.

**75L Section 90**

Repeal the section.

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

After “Review”, add “by Supreme Court”.

**75N Subsection 91(1)**

Repeal the subsection, substitute:

- (1) A person to whom notice of a determination or order of the Tribunal is given under section 85 may, within 14 days after the notice is given, institute an appeal to the Supreme Court from the determination or order.

**75P Sections 95 and 96**

Repeal the sections, substitute:

**95 Restriction on delegation by Commonwealth Minister**

The Commonwealth Minister must not delegate the power to make rules under subsection 108(1).

Note: This section restricts the Commonwealth Minister’s power of delegation under clause 10 of Schedule 1 to the *Interpretation Act 1979*.

**75Q After section 97**

Insert:

**97A Electronic transactions**

The Electronic Transactions Act applies in relation to this Act as if a reference in the Electronic Transactions Act to a law of the Commonwealth included a reference to this Act.

**75R Subsection 98(1)**

Omit “at the time the document was handed to the person or drawn to the person’s attention.”, substitute:

“at the following time:

- (a) if the document is in the form of an electronic communication within the meaning of the Electronic Transactions Act—the time of receipt of that communication as provided by section 14A of that Act;
- (b) in any other case—the time the document was handed to the person or drawn to the person’s attention.

Note: For a requirement or permission under a law of the Commonwealth to produce a document in electronic form, see section 11 of the Electronic Transactions Act and section 97A of this Act.”.

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

Omit “Regulations” (wherever occurring), substitute “rules”.

**75T Section 99**

Repeal the section.

**75U Section 100 (heading)**

Repeal the heading, substitute:

**100 Employment Liaison Officer, Tribunal members etc. to respect privacy**

**75V Subsection 100(2)**

Repeal the subsection, substitute:

- (2) This section applies to the following:
- (a) the Commonwealth Minister;
  - (b) the Secretary to the Tribunal;
  - (c) a member of the Tribunal;
  - (d) the Employment Liaison Officer, or a person appointed under section 47G to act as the Employment Liaison Officer;
  - (e) a person to whom the Employment Liaison Officer delegates a power or function under subsection 47H(1).

**75W Section 101**

Repeal the section.

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

Omit “the Board or Tribunal”, substitute “the Employment Liaison Officer or the Tribunal”.

**75Y Paragraph 106(1)(d)**

Repeal the paragraph.

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

Repeal the subsections.

**76 Section 108**

Repeal the section, substitute:

**107 Protection from liability**

- (1) A person covered by subsection (2) is not liable in civil proceedings for or in relation to anything done, or omitted to be done, in good faith in the performance or exercise, or purported performance or exercise, of a function or power under this Act.
- (2) This subsection covers the following:
- (a) the Commonwealth;
  - (b) the Commonwealth Minister;
  - (c) the Tribunal;

- (d) a member of the Tribunal;
- (e) the Secretary to the Tribunal;
- (f) the Employment Liaison Officer, or a person appointed under section 47G to act as the Employment Liaison Officer;
- (g) a person to whom the Employment Liaison Officer delegates a power or function under subsection 47H(1);
- (h) the Chief Executive Officer;
- (i) an inspector.

## **108 Rules**

- (1) The Commonwealth Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) directly amend the text of this Act.

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

Omit “*Employment Regulations 1991 (Norfolk Island)*”.

## **3 Items 76M to 76S of Schedule 1**

Repeal the items.

## Part 2—Transitional provisions commencing day after registration

### *Norfolk Island Continued Laws Ordinance 2015*

#### 4 In the appropriate position in Part 2 of Schedule 1

Insert:

### Division 18—Transitional provisions relating to the Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020

#### 397 Definitions for Division 18

In this Division:

***amended Employment Act*** means the *Employment Act 1988* (Norfolk Island) as amended by the operation of the amending Ordinance.

***amending Ordinance*** means the *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020*.

***claim for compensation*** means a claim for compensation under section 37A of the Employment Act.

***commencement*** means the time that Part 1 of Schedule 1 to the amending Ordinance commences.

***correspond*** has the following meaning:

- (a) a provision of the amended Employment Act and a provision of the old Employment Act ***correspond*** if each provision deals with the same subject matter with substantially similar effect;
- (b) a power or function exercised or performed by a person for the purposes of the amended Employment Act and a power or function exercised or performed by that person (or another person) for the purposes of the old Employment Act ***correspond*** if the powers or functions may be exercised or performed in relation to the same subject matter in a substantially similar way.

***new public scheme***: see subitem 398(1).

***old Employment Act*** means the *Employment Act 1988* (Norfolk Island) as in force before the commencement.

***old public scheme***: see subitem 398(1).

***responsible person***: see subitem 399(2).

***transitional certificate***, in relation to a transitional complaint: see subitem 400(2).

***transitional complaint***: see subitem 400(1).

### **398 Continuation of public scheme**

#### *Establishment of new public scheme*

- (1) The public scheme established before commencement for the purposes of subsection 39(4) of the old Employment Act (the *old public scheme*) continues in force after commencement as a public scheme (the *new public scheme*) within the meaning of the amended Employment Act, subject to the amended Employment Act and this Division.
- (2) At commencement, all rights and liabilities of the Administration in relation to the old public scheme are transferred to the Commonwealth by the operation of this subitem.
- (3) At commencement, any moneys held by the Administration for the purposes of the old public scheme are transferred to the Commonwealth by the operation of this subitem.

#### *Transition to new public scheme*

- (4) To the extent practicable, anything done before commencement for the purposes of the old public scheme, by or under a provision of the old Employment Act, is taken to have been done for the purposes of the new public scheme:
  - (a) by or under a corresponding provision of the amended Employment Act; and
  - (b) if the thing was done by a person in the exercise of a power, or the performance of a function, under or for the purposes of the old Employment Act—by a person (whether or not the same person) who has a corresponding power or function under the amended Employment Act.

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

#### *Scope*

- (1) This item applies in relation to a work-related accident, within the meaning of the amended Employment Act, that occurs, or that starts to occur, before commencement, and that is the subject of:
  - (a) a claim for compensation lodged before commencement that has not been assessed immediately before commencement; or
  - (b) a claim for compensation lodged after commencement.

#### *Application in relation to work-related accidents*

- (2) After commencement, the amended Employment Act applies in relation to the liability of a person (the *responsible person*) to pay compensation in relation to the work-related accident.

#### *No disadvantage test*

- (3) However, if the operation of subitem (2) would result in the amount of compensation payable (including a nil amount) in relation to the work-related accident being less than the amount of compensation that would have been payable if the amended Employment Act had not been amended by the amending Ordinance, the responsible person is liable to pay the amount of compensation that would have been so payable.

## Schedule 1 Amendments

### Part 2 Transitional provisions commencing day after registration

---

- (4) Subitem (3) does not apply in relation to amendments of the Employment Act made by the amending Ordinance by the operation of which an employee's right to compensation is suspended.

Note: An employee's right to compensation may be suspended under the amended Employment Act if the employee fails to attend for a permanent incapacity assessment or an independent medical examination, fails to begin or continue a rehabilitation program or fails to give the Employment Liaison Officer certain information on request.

#### *Transitional compensation claims*

- (5) To the extent practicable, anything done before commencement in relation to a claim for compensation for the work-related accident, by or under a provision of the old Employment Act, is taken to have been done in relation to that claim:
- (a) by or under a corresponding provision of the amended Employment Act; and
  - (b) if the thing was done by a person in the exercise of a power, or the performance of a function, under or for the purposes of the old Employment Act—by a person (whether or not the same person) who has a corresponding power or function under the amended Employment Act.
- (6) Subitem (5) does not apply in relation to a provision of Part 5 of the Employment Act (review of matters relating to compensation).

#### *Transfer of Administration's liability to pay compensation to the Commonwealth*

- (7) Any liability of the Administration, immediately before commencement, to pay compensation under the old Employment Act in relation to the work-related accident is transferred to the Commonwealth at commencement.

## 400 Review—complaints before the Board

#### *Transitional complaints*

- (1) This item applies to a complaint (the **transitional complaint**) lodged with a member of the Board before commencement under section 76 of the old Employment Act.

#### *Transitional certificates*

- (2) If the Board considers that it will not be able to finish dealing with the complaint before the time when, in accordance with advice from the Department, Part 1 of Schedule 2 to the amending Ordinance is to commence, the Board must give a certificate (a **transitional certificate**) in relation to the transitional complaint to the person or entity lodging the transitional complaint, and, in the case of a dispute (as mentioned in subsection 77(4) of the old Employment Act), to each party to the dispute.
- (3) A transitional certificate must include the following statements:
- (a) a statement to the effect that the Board has not been able to finish dealing with the complaint;
  - (b) a statement describing the progress (if any) made by the Board in resolving the transitional complaint, including any preliminary findings by the Board;
  - (c) a statement to the effect that, subject to the amended Employment Act and item 402 of this Schedule, the person to whom the certificate is given may



- apply for internal review under the amended Employment Act in relation to the matter that is the subject of the transitional complaint;
- (d) a statement to the effect that, subject to the amended Employment Act and item 403 of this Schedule, the person to whom the certificate is given may apply to the Tribunal for an inquiry in relation to the matter that is the subject of the transitional complaint.

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

##### *Scope*

- (1) This item applies if, before commencement:
- (a) a person or entity applies (or has applied) to the Secretary under section 82 of the Employment Act for an inquiry by the Tribunal in relation to a complaint lodged with a member of the Board under section 76 of that Act; and
  - (b) immediately before commencement, the Tribunal had not made a determination in proceedings in relation to the subject matter of the complaint.

##### *Law applicable to inquiry process*

- (2) Despite the amendments of the Employment Act made by the amending Ordinance, but subject to this item, the old Employment Act continues to apply after commencement in relation to the convening of the Tribunal and proceedings before the Tribunal.
- (3) The Tribunal may make any orders that are reasonably necessary for the conduct of the proceedings in the inquiry, including an order varying or waiving the operation of a provision of the old Employment Act otherwise applying under this item.

##### *Law applicable to determination in inquiry*

- (4) If the inquiry relates to a claim for compensation that was assessed before commencement, or a decision in relation to any other matter arising under Part 3 of the old Employment Act that was made before commencement, Part 3 of the old Employment Act as in force at the time the claim was assessed, or the decision was made, continues to apply in relation to the Tribunal's determination in the inquiry.
- (5) In any other case, Part 3 of the amended Employment Act as in force at the commencement time, subject to this Division, applies in relation to the Tribunal's determination in the inquiry.

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

##### *Application for internal review in relation to matters arising before commencement*

- (1) After commencement, a person or entity may apply to the Employment Liaison Officer under section 65 of the amended Employment Act for an internal review of:
- (a) the subject matter of a complaint lodged with a member of the Board before commencement under section 76 of the old Employment Act, or any related matter; or
  - (b) any other matter arising under Part 3 of the old Employment Act before commencement that affects the interests of the person or entity.

## Schedule 1 Amendments

### Part 2 Transitional provisions commencing day after registration

---

- (2) If the application relates to the subject matter of a complaint lodged with a member of the Board, the application must include the certificate given by the Board in relation to the complaint.

Note: The certificate may have been given under section 77 of the old Employment Act, or under subitem 400(2) of this Schedule (a transitional certificate).

- (3) Despite subsection 65(4) of the amended Employment Act, an application for internal review in relation to a matter arising under Part 3 of the Employment Act before commencement must be made within 30 days after commencement, or within such longer period as is approved by the Employment Liaison Officer.

#### *Law applicable to determination of internal review*

- (4) If the internal review relates to a claim for compensation that was assessed before commencement, or a decision in relation to any other matter arising under Part 3 of the old Employment Act that was made before commencement, Part 3 of the old Employment Act as in force at the time the claim was assessed, or the decision was made, applies in relation to the determination of the internal review.
- (5) In any other case, Part 3 of the amended Employment Act as in force at the time of the application mentioned in subitem (1), subject to this Division, applies in relation to the determination of the internal review.

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

#### *Application for inquiry in relation to matters arising before commencement*

- (1) After commencement, the matters in relation to which an application may be made to the Secretary for an inquiry under section 82 of the amended Employment Act include matters (*transitional matters*) arising before commencement under Part 3 of the old Employment Act.
- (2) If a transitional matter was the subject of a complaint lodged with the Board under section 76 of the old Employment Act, an application to the Secretary for an inquiry under section 82 of the amended Employment Act must include the certificate given by the Board in relation to the complaint.

Note: The certificate may have been given under section 77 of the old Employment Act, or under subitem 400(2) of this Schedule (a transitional certificate).

#### *Law applicable to determination in inquiry*

- (3) If the inquiry relates to a claim for compensation that was assessed before commencement, or a decision in relation to any other matter arising under Part 3 of the old Employment Act that was made before commencement, Part 3 of the old Employment Act as in force at the time the claim was assessed, or the decision was made, applies in relation to the Tribunal's determination in the inquiry.
- (4) In any other case, Part 3 of the amended Employment Act as in force at the time of the application mentioned in subitem (1), subject to this Division, applies in relation to the Tribunal's determination in the inquiry.

#### 404 Approvals

An approval by the Minister, for the purposes of a provision of Part 3 of the old Employment Act, that was in force immediately before commencement continues in force (subject to the amended Employment Act) as if it had been made by the Employment Liaison Officer under subsection 47E(3) of the amended Employment Act, for the purposes of the corresponding provision of the amended Employment Act.

#### 405 Part 4—safe working practices

##### *Directions given to inspectors before commencement*

- (1) A direction given to an inspector by the Employment Liaison Officer before commencement for the purposes of paragraph 39A(2)(e) of the old Employment Act continues in force after commencement, subject to the amended Employment Act, as if the direction had been given to the inspector by the Chief Executive Officer under subsection 57A(2) of the amended Employment Act.

##### *Complaints made before commencement*

- (2) If, immediately before commencement, a complaint had been made to the Employment Liaison Officer, the Minister or an inspector under section 55 of the old Employment Act, but an investigation into the complaint had not started, or had not finished, then after commencement:
  - (a) the Chief Executive Officer, and any inspector to whom the complaint was referred before commencement, may investigate, or continue to investigate, the complaint as if the complaint had been made or referred to the Chief Executive Officer, or an inspector, under section 55 of the amended Employment Act; and
  - (b) section 55 of the amended Employment Act applies accordingly in relation to the investigation.

#### 406 Regulations and rules

- (1) This item applies if:
  - (a) immediately before commencement, a provision of the old Employment Act provided for regulations to be made prescribing a matter (the **transitional matter**) under section 108 of the old Employment Act; and
  - (b) immediately before commencement, a provision (the **transitional regulation**) of the *Employment Regulations 1991* (Norfolk Island) was in force prescribing the transitional matter; and
  - (c) the amending Ordinance amends the old Employment Act to provide for the transitional matter to be prescribed by rules under section 108 of the amended Employment Act; and
  - (d) at commencement, no rules had come into force prescribing the transitional matter under section 108 of the amended Employment Act.
- (2) Despite the amendments of the old Employment Act, and the repeal of the *Employment Regulations 1991* (Norfolk Island), by the amending Ordinance, the transitional regulation continues in force as if it were a rule made under section 108 of the amended Employment Act prescribing the transitional matter.

**Schedule 1** Amendments

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

---

- (3) Subitem (2) stops applying in relation to the prescription of the transitional matter when a rule (or a provision of a rule) under section 108 of the amended Employment Act comes into force after commencement prescribing the transitional matter.

## **Part 3—Repeals**

### *Norfolk Island Continued Laws Ordinance 2015*

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

Insert:

### *Employment Regulations 1991*