

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.

Employment Act 1988 (NI)

Norfolk Island Employment Rules 2020

Authority

The *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020* (the Ordinance) which amends the *Employment Act 1988 (NI)* (the Act) commences on 4 January 2021.

Section 108 of the amended Act provides that the Commonwealth Minister with responsibility for territories may, by legislative instrument, make rules prescribing matters required or permitted by this Act to be prescribed by the rules; or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The *Norfolk Island Employment Rules 2020* (the Rules) are made under section 108 of the amended Act.

Purpose and operation

The primary purpose of the Rules is to re-make relevant provisions from the *Employment Regulations 1991 (NI)* which were repealed by the Ordinance. The Regulations were repealed to allow for relevant matters to be prescribed in rules which can be more easily updated.

The Rules prescribe the following matters to support the administration of the Norfolk Island Workers' Compensation Scheme (the Scheme) established under the Act.

- Rule 5 – the maximum amount of periodical compensation payable per fortnight for loss or diminution of capacity to earn is \$3,000. This amount is comparable to the maximum amounts of compensation payable in other jurisdictions.
- Rule 6 – the maximum amount of compensation for permanent incapacity is \$300,000. This amount is comparable to the maximum amounts of compensation payable in other jurisdictions.
- Rule 7 – the amount which is not referenced in relation to an employer's liability to pay compensation is \$2,000. This is an existing provision.
- Rule 8(1) – the matters the ELO must have regard for when deciding whether to grant an application by an employer to become a member of the Scheme. This is an existing requirement.
- Rule 8(2) – the membership fee for the Scheme is 30 cents for each hour worked by each employee of the employer. This is the same as the existing membership fee.
- Rule 9 – the maximum frequency an employee will be required to undergo an independent medical examination is not more than fortnightly. This is a new

requirement to support the new independent medical examination process included in the Act.

- Rule 10 – the records an employer must keep in relation to employees. This is an existing requirement which has been updated.
- Rule 11 – the period for making a determination in relation to an internal review of a decision in relation to compensation is 14 days starting on the day the application is made. This is a new requirement to support the new internal review process which has been included in the Act.
- Rule 12 – the period for keeping records is 3 years. This is an existing requirement.
- Schedule 1 – the form an employer must complete when an employee suffers death or permanent incapacity. This is an existing form which has been updated to improve the layout and remove a question relating to the sobriety of the employee at the time of the accident which is no longer required.

Consultation

The Department consulted Comcare and Gallagher Basset during the development of the Rules.

Other

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Rules commence at the same time as Part 1 of Schedule 1 to the *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020*.

Statement of Compatibility with Human Rights

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

Norfolk Island Employment Rules 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 Rules

The primary purpose of the *Norfolk Island Employment Rules 2020* (the Rules) is to re-make relevant provisions from the *Employment Regulations 1991* (NI) which were repealed by the *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020*. The Regulations were repealed to allow for relevant matters to be prescribed in rules which can be more easily updated.

The Rules prescribe the following matters to support the administration of the Norfolk Island Workers' Compensation Scheme (the Scheme) established under the *Employment Act 1988* (NI) (the Act).

- Rule 5 – the maximum amount of periodical compensation payable per fortnight for loss or diminution of capacity to earn is \$3,000. This amount is comparable to the maximum amounts of compensation payable in other jurisdictions.
- Rule 6 – the maximum amount of compensation for permanent incapacity is \$300,000. This amount is comparable to the maximum amounts of compensation payable in other jurisdictions.
- Rule 7 – the amount which is not referenced in relation to an employer's liability to pay compensation is \$2,000. This is an existing provision.
- Rule 8(1) – the matters the ELO must have regard for when deciding whether to grant an application by an employer to become a member of the Scheme. This is an existing requirement.
- Rule 8(2) – the membership fee for the Scheme is 30 cents for each hour worked by each employee of the employer. This is the same as the existing membership fee.
- Rule 9 – the maximum frequency an employee will be required to undergo an independent medical examination is not more than fortnightly. This is a new requirement to support the new independent medical examination process included in the Act.
- Rule 10 – the records an employer must keep in relation to employees. This is an existing requirement which has been updated.
- Rule 11 – the period for making a determination in relation to an internal review of a decision in relation to compensation is 14 days. This is a new requirement to support the new internal review process which has been included in the Act.
- Rule 12 – the period for keeping records is 3 years. This is an existing requirement.

- Schedule 1 – the form an employer must complete when an employee suffers death or permanent incapacity. This is an existing form which has been updated to improve the layout and remove a question relating to the sobriety of the employee at the time of the accident which is no longer required.

Human rights implications

Right to privacy

Article 17 of the International Covenant on Civil and Political Rights 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 Rules require employers to keep records about:

- their employees' participation in first-aid training,
- the particulars of any injuries to their employees arising out of, or suffered in the course of, their employment, and
- any information provided to the Minister in relation to the death or permanent incapacity of an employee.

Employee records such as the ones referred to above are generally not covered by the *Privacy Act 1988* and are exempt from the Australian Privacy Principles. However, the Fair Work Ombudsman's Best Practice Guide to Workplace Privacy recommends employees be allowed access to their personal information and should be able to have that information corrected or verified if it is incorrect, out of date or incomplete.

This limitation on the right to privacy is permissible because it has a clear legal basis and is aimed at achieving a legitimate objective and is reasonable, necessary and proportionate.

The limitation has a clear legal basis because it is prescribed in the Rules which are publically accessible on the Federal Register of Legislation. In addition, employers have access to more user-friendly information about the Scheme and their record-keeping obligations. The Rules and this information is sufficiently precise and clearly expressed to enable employers to regulate their behaviour accordingly.

The limitation is also aimed at achieving the legitimate objectives of supporting employees' access to first-aid training, improving work health and safety and facilitating access to workers' compensation. Employee records of this kind are a source of data about the types and frequency of injuries suffered in a particular workplace which can be used to review and improve work practices. These records can also be used as evidence to support a claim for workers' compensation if an employee suffers an injury while at work. The limitation is therefore reasonable, necessary and proportionate to the benefit to employees' which can accrue as a result of these records being kept.

Conclusion

The Rules are compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**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

Section 1—Name

This section provides that the title of the Rules is the *Norfolk Island Employment Rules 2020* (the Rules).

Section 2—Commencement

This section provides for the Rules to commence at the same time as Part 1 of Schedule 1 to the *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020*. That Ordinance commences on 4 January 2021.

Section 3—Authority

Section 3 provides that the Rules are made under the *Employment Act 1988* (Norfolk Island) (the Act).

Section 4—Definitions

This section provides that in this instrument, *Act* means the *Employment Act 1988* (Norfolk Island). The note explains a number of expressions used in the Rules are defined in the Act.

Section 5—Periodical compensation—loss or diminution of capacity to earn

Section 5 provides that for the purposes of subparagraph 30(4)(b)(i) of the Act, the amount of \$3,000 is prescribed.

Section 30 of the Act provides that where an employee suffers incapacity resulting in a loss or diminution of the employee's capacity to earn, the employer shall pay to the employee periodical compensation in accordance with this section.

Subparagraph 30(4)(b)(i) provides that after the expiration of the period referred to in paragraph 30(4)(a), compensation shall be fortnightly payments of an amount equal to the amount prescribed by the rules for the purposes of this subparagraph.

Subparagraph 30(4)(b)(ii) provides that where the amount the employee would have received had the employee not been suffering incapacity is less than the amount prescribed for the purposes of subparagraph 30(4)(b)(i) the compensation payable will be the lesser amount.

Section 6—Compensation for permanent incapacity

This section provides that for the purposes of paragraph 32B(2)(b) of the Act, the amount of \$300,000 is prescribed.

Paragraph 32B(2)(b) provides that if the report of a permanent incapacity assessment indicates that the employee has suffered permanent incapacity with 90% or more permanent loss or impairment of bodily or mental function, the amount of lump sum compensation payable to the employee is \$300,000.

Section 7—References to liability to pay compensation

Section 7 provides that for the purposes of paragraph 37AA(b) of the Act, the amount of \$2,000 is prescribed. Paragraph 37AA(b) provides that in relation to each claim for compensation, an amount equal to the prescribed amount is not referenced in the employer's liability to pay compensation.

Section 8—Membership of public scheme

Subsection 8(1) provides that for the purposes of paragraph 39B(4)(a) of the Act, the matters the Employment Liaison Officer must have regard to in deciding whether to grant an application by an employer to become a member of a public scheme are whether, on account of any or all of the following:

- a) the employer's accident history;
- b) the employer's first-aid facilities;
- c) the employer's accident prevention awareness;
- d) the employer's standard of administration;

the claims that may arise in respect of that employer would be likely to prejudice the operation of the public scheme so as to require higher membership fees for employers.

Subsection 8(2) provides that for the purposes of subsection 39B(5) of the Act, the membership fee that is payable by an employer is an amount calculated at the rate of 30 cents for each hour worked by each employee of the employer during the period in respect of which the employer is a member of the scheme. This fee is the same as the fee which is currently payable by employers.

Section 9—Independent medical examinations

This section provides that for the purposes of subsection 47A(6) of the Act, an employee must not be required to undergo an independent medical examination at more frequent intervals than a fortnight.

Section 47A of the Act provides for the Employment Liaison Officer to make reasonable arrangements for a registered medical practitioner to undertake a medical examination of the employee in relation to an injury or condition in relation to which a claim for compensation has been made. Section 9 of the Rules limits the frequency of the examinations that can be required.

Section 10—Record-keeping and notification requirements

Section 10 provides that for the purposes of subsection 53(2) of the Act records about employees' first-aid training, injuries arising out of or suffered by employees in the course of employment and any information given to the Minister in relation to the death or permanent incapacity of an employee must be kept. The employer must keep these records for the duration of the employee's employment and, if the employee ceases to be employed, for 3 years beginning on the day the employment ceased.

Subsection 10(2) prescribes the form in Schedule 1 to the Rules, which is to be used for reporting an accident to the Minister, as required by subsection 53(3) of the Act.

Section 11—Internal review—period for making determination

This section provides that for the purposes of subsection 67(1) of the Act, the period of 14 days starting on the day the application is made is prescribed.

Subsection 67(1) of the Act requires a written determination in relation to an application for an internal review of a claim for compensation or other matter arising under Part 3 of the Act to be made within the period prescribed by the Rules. This means the written determination must be made within 14 days of the application being made.

Section 12—Application—record-keeping and notification requirements

Section 12 provides for section 10, in relation to record-keeping, to apply if the giving of the training, occurrence of the injury or provision of the information occurs within 3 years before the commencement of this section, or after the commencement of this section. This preserves the existing requirement to keep records for 3 years. It is therefore not retrospective.

Schedule 1—Form

Form 1—Accident report

This form is prescribed by section 10(2) of the Rules for the purpose of subsection 53(3) of the Act. This form must be completed by an employer when an employee suffers death or permanent incapacity arising out of, or in the course of, the employment.