

EXPLANATORY STATEMENT

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

Norfolk Island Continued Laws Ordinance 2015

Norfolk Island Continued Laws Amendment (Employment) Ordinance 2021

Authority

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

The *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2021* (the Ordinance) is made under section 19A of the Norfolk Island Act.

The Ordinance amends the *Norfolk Island Continued Laws Ordinance 2015* (the Continued Laws Ordinance). The Continued Laws Ordinance is the mechanism through which amendments to Norfolk Island continued laws can be made. Norfolk Island continued laws are those laws made by the former Norfolk Island Legislative Assembly prior to 2015 and continued in force under either section 16 or 16A of the Norfolk Island Act.

Subsection 17(3) of the Norfolk Island Act provides that Norfolk Island laws continued in force may be amended or repealed by an Ordinance made under section 19A.

Purpose and operation

The Ordinance amends the *Employment Act 1988* (NI) (Employment Act) to insert new provisions relating to the indexation of compensation amounts payable under the Norfolk Island Workers' Compensation Scheme.

The compensation amounts are prescribed in the *Norfolk Island Employment Rules 2020* and are payable where:

- an employee suffers incapacity resulting in a loss or diminution of the employee's capacity to earn, or
- a report of a permanent incapacity assessment indicates that the employee has suffered permanent incapacity.

In order for these amounts to be indexed annually, the Ordinance inserts a new indexation method into the Employment Act which relies on the All Groups Consumer Price Index (CPI) published by the Australian Statistician for the March quarter. This replaces a method that relied on the Norfolk Island Retail Price Index (RPI) which is no longer calculated.

The new provisions also require the indexed compensation amounts to be payable after 1 July each year and to be published by notifiable instrument.

Consultation

The Australian Bureau of Statistics and the Attorney-General's Department were consulted during the development of the Ordinance.

Other

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

The Ordinance commences the day after registration on the Federal Register of Legislation.

Details of the Ordinance are set out in the Attachment.

Statement of Compatibility with Human Rights

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

Norfolk Island Continued Laws Amendment (Employment) Ordinance 2021

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 Ordinance

Purpose and operation

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The new provisions also require the indexed amounts to be payable after 1 July each year and to be published by notifiable instrument.

Human rights implications

This Ordinance does not engage any of the applicable rights or freedoms.

Conclusion

This Ordinance is compatible with human rights as it does not raise any human rights issues.

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

The Hon Nola Marino MP

ATTACHMENT—NOTES ON CLAUSES

This attachment explains the operation of individual provisions in the *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2021*.

Section 1 – Name of Ordinance

This section provides that the name of the Ordinance is the *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2021* (the Ordinance).

Section 2 – Commencement

This section provides for the Ordinance to commence on the day after the Ordinance is registered.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1—Amendments

Norfolk Island Continued Laws Ordinance 2015

The *Norfolk Island Continued Laws Ordinance 2015* (Continued Laws Ordinance) is the mechanism through which amendments to the *Employment Act 1988* (NI) (Employment Act) are made. The following amendments to Schedule 1 of the Continued Laws Ordinance amend the Employment Act as described below.

Amending item [1]—Item 73K of Schedule 1

Amending item 1 repeals item 73K of Schedule 1 to the Continued Laws Ordinance and substitutes new items 73K, 73KA and 73KB into the Schedule.

Item 73K—Section 4

This item reinserts the definitions of *registered health practitioner*, *registered medical practitioner*, *rehabilitation program*, *rehabilitation services* and *responsible party* into section 4 of the Employment Act with the exception of the definition of *rules*.

Item 73KA—Section 4 (definition of *RPI*)

New item 73KA repeals the definition of *RPI*. This repeal is consequential to amendments the Ordinance makes to section 42 of the Employment Act.

Item 73KB—Section 4

This item reinserts the definition of *rules* into section 4 of the Employment Act.

Amending item [2]—After item 73ZP of Schedule 1

Amending item 2 inserts new item 73ZPA into Schedule 1 to the Continued Laws Ordinance which corrects the reference in paragraph 29(2)(a) of the Employment Act to be to ‘paragraph 32B(2)(b)’ not ‘paragraph 31(2)(c)’.

This means an amount prescribed by the rules for the purposes of paragraph 32B(2)(b) is the amount the employer shall pay to the dependant where an employee leaves a family or non-family dependant wholly dependent on the earnings of the employee at the time of the employee’s death.

Amending item [3]—Items 74X to 74Z of Schedule 1

This amending item repeals items 74X to 74Z of the Schedule 1 to the Continued Laws Ordinance and substitutes new item 74X.

Item 74X—Section 42

New item 74X repeals section 42 of the Employment Act and substitutes new provisions relating to the indexation of compensation amounts.

The new indexation provisions rely on the All Groups Consumer Price Index number (CPI) published by the Australian Statistician instead of the Retail Price Index, established for Norfolk Island under the *Retail Price Index Act 1983* (NI) (RPI). The RPI is no longer calculated.

New section 42 provides that on 1 July each year, the relevant compensation amounts will be indexed in accordance with the method set out in subsections 42(1), 42(2), 42(3) and 42(4) of the Employment Act.

The relevant compensation amounts are prescribed in the *Norfolk Island Employment Rules 2020* and are payable where:

- an employee suffers incapacity resulting in a loss or diminution of the employee’s capacity to earn, or
- a report of a permanent incapacity assessment indicates that the employee has suffered permanent incapacity.

New subsection 42(5) provides that for periodical compensation, the new compensation amount is payable on and after the first payment date for the compensation occurring after 1 July. For lump sum compensation, the new amount is payable in respect of any payment of lump sum compensation made after 1 July.

Subsection 42(6) requires the Employment Liaison Officer to apply the indexation method to the compensation amounts as soon as practicable after the day on which the Australian Statistician publishes the index number for a March quarter. After the compensation

amounts have been indexed, the Employment Liaison Officer must publish the new compensation amounts by notifiable instrument.

Amending item [4]—At the end of Division 18 of Part 2 of Schedule 1

Amending item 4 inserts new item 406A at the end of Division 18 of Part 2 of Schedule 1 to the Continued Laws Ordinance.

Item 406A—References to amending Ordinance

New item 406A clarifies that references to the amending Ordinance in Division 18 include a reference to items 1 and 2 of this Ordinance.

The amending Ordinance means the *Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020* which made a range of amendments to the Employment Act relating to the Norfolk Island Workers' Compensation Scheme in 2020. By virtue of this provision, the transitional provisions relating to that Ordinance also apply to the amendments to the definitions and references in amending items 1 and 2 in this Ordinance.

Amending item [5]—In the appropriate position in Part 2 of Schedule

Division 21—Application provision relating to the Norfolk Island Continued Laws Amendment (Employment) Ordinance 2021

414—Publication of substituted amounts

This item provides that if the index number for the March quarter ending on 31 March 2021 occurs before the day the Ordinance commences, the reference to the day on which the Australian Statistician publishes the index number is taken to be a reference to the commencement day. This means the Employment Liaison Officer must apply the indexation method to the compensation amounts as soon as practicable after the day on which the Ordinance commences.