



EMPLOYMENT ACT 1988

[Consolidated as at 23 February 2013
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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Employment Act 1988

An Act to establish minimum wages and working conditions, compensation for work - related accidents, safe working practices, procedures for conciliation, adjudication and review, and for related purposes

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Employment Act 1988*.

Commencement

2. (1) Subject to subsection 2(2), this Act shall come into operation on a date fixed by the Administrator by notice published in the Gazette.

(2) The Administrator may fix different dates for the commencement of different provisions of this Act.

Crown and Administration bound

3. (1) Subject to this Act, this Act binds the Crown in right of Norfolk Island and the Administration.

(2) Nothing in this Act renders the Crown in right of Norfolk Island or the Administration liable to be prosecuted for an offence.

Interpretation

4. In this Act, unless the contrary intention appears —
 - “Board” means the Employment Conciliation Board constituted under section 65;
 - “Chairman” means the person appointed under subsection 65(5) to be the Chairman of the Board;
 - “Chief Magistrate” means the Chief Magistrate of the Court of Petty Sessions holding office under the *Court of Petty Sessions Act 1960*;
 - “contract” means a contract of employment;

- “employee” includes an apprentice or trainee;
- “employment” means employment by an employer of an employee to whom this Act applies;
- “legal practitioner” means a person, by whatever name called, who is entitled to practise law in a State or Territory or in New Zealand;
- “Magistrate” means a Magistrate holding office under the *Court of Petty Sessions Act 1960* and includes the Chief Magistrate;
- “member of the Board” includes the Chairman of the Board;
- “member of the Tribunal” means a Magistrate;
- “minimum rate” — *see section 14*;
- “pay period” means the period in respect of which an employee is paid on a pay day;
- “permit holder” means the holder of a temporary entry permit and includes a person who is required to be the holder of a temporary entry permit;
- “professional Magistrate” means a Magistrate who also holds office as Chief Magistrate, Acting Chief Magistrate or a Magistrate under the *Magistrates Court Act 1930* of the Australian Capital Territory;
- “public holiday”, in respect of an employee, means a day referred to in section 9 or a day specified in, or in accordance with, the employee’s employment contract in substitution of that day;
- “RPI” means the retail price index number within the meaning of the *Retail Price Index Act 1983*;
- “Secretary” means the Secretary to the Tribunal;
- “temporary entry permit” means a temporary entry permit within the meaning of the *Immigration Act 1980*;
- “this Act” includes the Regulations, and where a provision of this Act or the Regulations has effect as if another provision were substituted, that other provision;
- “Tribunal” means the Court of Petty Sessions;
- “week” means 7 days, Monday to Sunday inclusive;
- “working week” means a working week prescribed under paragraph 108(2)(a).

Application

5. (1) Subject to this section, this Act applies where work is carried out by an employee in Norfolk Island, whether a contract was entered into or not, and whether the contract, if any, was entered into in Norfolk Island or elsewhere.

(2) Where an employer is not ordinarily resident in Norfolk Island, an agent, officer or employee ordinarily resident in Norfolk Island of that employer is deemed, for the purposes of this Act, to be the employer where the agent, officer or employee —

- (a) is ordinarily in charge of the employer's business in Norfolk Island; or
- (b) has entered into a contract on behalf of the employer in Norfolk Island.

(3) This Act applies where a contract for work to be carried out elsewhere than in Norfolk Island —

- (a) is made in Norfolk Island; and
- (b) the employer and employee under the contract are ordinarily resident in Norfolk Island.

(4) Where a person is employed to carry out work in Norfolk Island under a contract made in a place elsewhere than Norfolk Island and the person performs no duties under the contract on land in Norfolk Island except duties that are incidental to the performance of the principal duties of the person under the contract, this Act does not apply.

Persons to whom Act applies

6. (1) For the purposes of this Act, an employer may be a natural person, a body politic, a body corporate or unincorporate, a firm, an association, a partnership or club, the personal representative of a deceased employer or a partnership between 2 or more of them.

(2) For the purposes of this Act, where a natural person enters into a contract of service as an employee with another person, whether or not a natural person, the other person is the employer of the first-mentioned person.

(3) For the purposes of this Act, where a natural person enters into a contract (other than a contract of service) with another person, whether or not a natural person, the first-mentioned person is deemed to be an employee of the other person and the other person is deemed to be the employer of the first-mentioned person where —

- (a) the contract constitutes or includes an agreement to perform work or service or work and service for a consideration in money;
- (b) the first-mentioned person personally performs all or part of the work or service or work and service; and
- (c) the work or service or work and service are not —
 - (i) incidental to a trade or business regularly carried on by the first-mentioned person before, or apart from, the making of the contract; or
 - (ii) the carrying on by the first-mentioned person of business under a business name within the meaning of the *Business Names Act 1976*.

Persons to whom Act does not apply

7. (1) This Act does not apply to —
- (a) members of the Police Force;
 - (b) officers or employees of the Commonwealth; or
 - (c) subject to subsection 7(2), persons holding office or appointments under a law of Norfolk Island, the Commonwealth or a State or Territory.
- (2) Subject to subsection 8(2), this Act applies to officers or employees of the Administration or a Territory authority.

Regulations may prescribe application of Act

8. (1) The Regulations may prescribe that —
- (a) work of a particular class; or
 - (b) contracts between persons of a particular class,
- constitute or do not constitute employment for the purposes of this Act.
- (2) The Regulations may prescribe that this Act does not apply to the Administration or a Territory authority or a class of officers or employees of the Administration or a Territory authority, or applies to the extent specified in the Regulations.

Public holidays

9. (1) Subject to this section, each of the following days in a year will, for the purposes of this Act, be taken to be a public holiday:
- (a) 1 January;
 - (b) 26 January;
 - (c) 6 March;
 - (d) 25 April;
 - (e) Good Friday;
 - (f) the Monday after Good Friday;
 - (g) 8 June;
 - (h) the last Wednesday in November;
 - (i) Christmas Day;
 - (j) the day after Christmas Day; and
 - (k) each of the days declared by the Minister under this subsection to be —
 - (i) the day for the observance of the Anniversary of the birthday of the Sovereign; and
 - (ii) Show Day.
- (2) The Regulations may provide that —
- (a) a day will, for the purposes of this Act, be taken to be a public holiday in addition to, or instead of, a day referred to in subsection 9(1); or
 - (b) a day referred to in subsection 9(1) will not be taken to be a public holiday for the purposes of this Act.

....

PART 2 — EMPLOYMENT TERMS AND CONDITIONS*Division 1 — Preliminary***Employment contracts**

10. (1) In this Part, unless the contrary intention appears —

“employment contract” means an agreement between an employer and employee for, or in relation to, the employment of an employee and includes —

(a) an agreement that would otherwise be void or voidable by reason of the legal incapacity of the employer or employee to enter into the agreement; and

(b) an agreement that is illegal by reason only of this Part.

(2) Despite the matters referred to in paragraphs 10(1)(a) and 10(1)(b), an employment contract referred to in those paragraphs will have legal effect as a contract subject to this Act.

Contracts must be in writing

11. (1) An employer must not commence to employ another person except under a written employment contract which complies with the standards and requirements imposed by this Act.

Penalty: 40 penalty units.

(2) An employer must, within 14 days after receiving a request from an employee, reduce to writing an unwritten term of an employment contract to which the employee is a party and must provide the employee with a copy of that document executed in a legally binding manner.

(3) An employment contract referred to in subsection 11(1) shall be certified in the prescribed manner.

(4) This section does not apply to the employment of a person who is a resident within the meaning of the *Immigration Act 1980*, however in the case of the employment of a resident —

(a) the employee may request the employer to enter into a written contract in the prescribed manner and the employer shall comply within 14 days from such request; and

(b) such written contract shall comply with the standards and requirements imposed by this Act.

(5) Conditions and requirements for the employment of apprentices and trainees may be prescribed by Regulation which are not in compliance with this section or division 2 of this Act.

Penalty: 40 penalty units.

Division 2 — Minimum Statutory Terms and Conditions of Employment

Application of employment terms and conditions applying under this Division

12. (1) An employee is legally entitled to recover any amount to which he or she would be entitled if, during any period of employment by an employer, each obligation of that employer to an employee under this Division was a contractual obligation of that employer to the employee.

Note: The effect of subsection 12(1) is that an employer and an employee cannot exclude the operation of a provision of this Division by contract.

(2) Subsection 12(1) —

- (a) does not limit any other legal entitlement of an employee; and
- (b) applies despite any legal incapacity of the employer or employee to enter into a contract; and
- (c) applies to any employment on or after the commencement date of the *Employment Amendment (No. 2) Act 2001*, regardless of whether the employment commenced before or after that date.

(3) An employee may enforce both the employee's legal entitlements under subsection 12(1) and any other legal entitlements (but the employee is not entitled to damages in respect of the same loss under both entitlements).

Minimum rates of pay

13. (1) An employer must pay wages —

- (a) to an employee aged 18 years or older – at not less than the minimum rate; and
- (b) to an employee aged less than 18 years – at not less than the percentage of the minimum rate set out in the table :

TABLE

Age	% of prescribed minimum rate
Under 16 years	75%
16 years and under 17 years	82.5%
17 years and under 18 years	91%

Penalty: 20 penalty units.

(2) An employer must pay the relevant rate of pay in respect of pay periods after the pay period during which an employee becomes entitled to an increased rate of pay.

Penalty: 20 penalty units.

Determination of minimum rate

14. The minimum rate is that amount determined by Regulation from time to time.

Annual holidays**15. (1)** If an employee —

- (a) has continuously served an employer during the preceding year; and
 - (b) at the end of the year, is employed by the employer on a regular basis,
- the employer —

- (c) must give the employee leave of not less than the number of days that the employee would work in three ordinary working weeks; and
- (d) must give the employee that leave on days on which the employee would ordinarily work; and
- (e) must pay the employee an equal amount in respect of each day of that leave, so that the total amount paid under this paragraph is not less than six per cent of the sum of the employee's gross pay during that year; and
- (f) pay the employee for a period of leave before the commencement of that period.

Penalty: 20 penalty units.

(2) If subsection 15(1) does not apply, an employer must not later than —

- (a) the end of each year of continuous service; or
- (b) the termination of the employee's service,

(whichever occurs first) pay the employee (as a holiday entitlement) not less than six per cent of the sum of the employee's gross pay during that year.

Penalty: 40 penalty units.

(3) An employee is not entitled to payment of a holiday entitlement under subsections 15(1) and 15(2) in respect of the same period of service.

(4) For the purposes of this section, an employee's service will be taken to be continuous despite any leave taken by the employee in accordance with this Act, under an employment contract, or otherwise by agreement between the employer and the employee.

Public holidays

16. (1) An employer must, in respect of each public holiday for an employee that occurs on an ordinary working day of the employee —

- (a) if the employee does not work on the public holiday —
 - (i) pay the employee at not less than the employee's ordinary rate of pay for the ordinary hours normally worked by the employee on that day, had it not been a public holiday; and
 - (ii) give the employee a day's leave on the holiday; or
- (b) if the employee works on the public holiday —
 - (i) pay the employee for the hours worked by the employee on the holiday at not less than the employee's ordinary rate of pay; and
 - (ii) in addition, pay the employee at not less than the employee's ordinary rate of pay for the ordinary hours normally worked by the employee on that day, had it not been a public holiday.

Penalty: 20 penalty units.

(2) An employer must pay an employee at not less than twice the employee's ordinary rate of pay in respect of work performed by the employee on a public holiday that is not an ordinary working day of the employee.

Penalty: 20 penalty units.

Sick leave

17. (1) An employer must, if an employee is absent from work by reason of ill health —

- (a) give the employee leave in respect of that absence; and
- (b) pay the employee at not less than the employee's ordinary rate of pay for the ordinary hours that the employee normally would have worked had the employee not been absent.

Penalty: 20 penalty units.

(2) An employee's entitlement under this section in respect of a period of continuous employment accrues —

- (a) in respect of leave at the rate of not less than one fiftieth of the sum of the period worked by the employee during that period of employment; and
- (b) in respect of pay at the rate of not less than one fiftieth of the sum of the employee's gross pay for that period of employment (including pay for holidays but not including pay for hours worked in excess of the working week applicable to the employee).

(3) Despite the other provisions of this section, an employer is not required under this section to —

- (a) in any year of employment of an employee, give the employee leave, or pay the employee, in respect of a period, or periods, of absence by reason of ill health of longer than the working week applicable to the employee; or
- (b) give an employee leave, or pay an employee, in respect of an absence lasting more than one day, unless the employee, within a reasonable period, provides the employer with a certificate signed by a medical practitioner stating that the employee was or will be, in the opinion of the medical practitioner, unfit, by reason of ill health, to work during that period.

(4) In subsection 17(3) —

“year of employment”, in respect of a period of employment of an employee, means —

- (a) the period of one year commencing on the date of commencement of that employment; or
- (b) each subsequent period of one year.

Rest period

18. An employer must give each employee a continuous rest period of not less than 24 hours in each week.

Penalty: 20 penalty units.

Note: This section would not prevent an employer from working an employee for a consecutive period of 12 days during a 14 day period commencing on a Sunday if the employee did not work on the first and last 24 hours of that period.

Uniforms

18A. (1) If an employee is required by law or by the employer to wear clothing or footwear that would not ordinarily be worn by the employee, the employer must provide to each employee so required with the requisite clothing or footwear.

Penalty for an offence against this subsection 5 penalty units

(2) The clothing and footwear referred to in subsection 18A(1) must be provided free of charge by the employer and the employer must replace it when reasonably necessary.

Penalty for an offence against this subsection 5 penalty units

(3) An employee must not disobey, disregard or fail to comply with a reasonable direction of an employer in relation to wearing the clothing or footwear provided under subsection 18A(1).

Penalty for an offence against this subsection 5 penalty units

(4) An employee who is provided with clothing or footwear under this section must take reasonable care of it.

Penalty for an offence against this subsection 5 penalty units

(5) Clothing and footwear provided in accordance with subsection 18A(1) remain the property of the employer.

Notice of termination

19. (1) An employer must give an employee —

- (a) at least 7 days written notice of termination of employment; or
- (b) in addition to any other entitlement of the employee, pay the employee not less than an amount equal to the sum of —
 - (i) the amount of wages and other entitlements accruing to the employee as a result of any work undertaken by the employee during the week the last day of which was the date of the employee's termination; and
 - (ii) if the employer was required to provide the employee with board or lodging —
 - (A) the value of that board or lodging agreed in writing between the employer and the employee; or
 - (B) in the absence of that agreement, the reasonable cost of the employee's obtaining 7 days board or lodging of a similar standard.

(2) If an employee does not give an employer at least 7 days notice of termination of employment, the employer may, in addition to any other amount that the employer is entitled to withhold from the employee, withhold from the employee an amount not exceeding an amount equal to the amount of wages and other entitlements accruing to the employee as a result of the work undertaken by the employee during the week the last day of which was the date of the termination of the employment.

(3) Subsection 19(1) does not apply to the justified termination of an employee's employment by an employer by reason of the employee's —

- (a) dishonesty in the course of the employment; or
- (b) absence from duty without reasonable cause; or
- (c) wilful disobedience with, or failure to have regard to, a reasonable direction of the employer; or
- (d) being under the influence of —
 - (i) intoxicating liquor; or
 - (ii) a dangerous drug or narcotic substance within the meaning of the *Dangerous Drugs Act 1927*.

Division 3 — Default Terms and Conditions of Employment

Operation of this Division may be varied by employment contracts

20. (1) An employee is legally entitled to recover any amount to which he or she would be entitled if, during any period of employment by an employer, each obligation of that employer to an employee under this Division was a contractual obligation of that employer to the employee

unless

that obligation is inconsistent —

- (a) in respect of employment commencing on or after the commencement of the *Employment Amendment (No. 2) Act 2001*, with the express terms of a written agreement between the employer and the employee; or
- (b) in respect of any other employment, with the express terms of an agreement between the employer and the employee.

(2) Subsection 20(1) —

- (a) will not be taken to limit any other legal entitlement of an employee; and
- (b) applies despite any legal incapacity of the employer or employee to enter into a contract; and
- (c) applies to any employment on or after the commencement date of the *Employment Amendment (No. 2) Act 2001*, regardless of whether the employment commenced before or after that date.

(3) An employee may enforce both the employee's legal entitlements under subsection 20(1) and any other legal entitlements (but the employee is not entitled to damages in respect of the same loss under both entitlements).

Payment of wages

21. (1) An employer must pay an employee the wages due to the employee at intervals of not greater than 14 days (or if another interval is prescribed, not greater than that other interval).

(2) An employer must pay an employee in cash or by cheque or direct credit to a bank account specified by the employee.

(3) An employer must not deduct any amount from an employee's wages unless —

- (a) the employee has authorised the employer to make the deduction in writing, specifying the amount, or means of calculating the amount, of the deduction; or
- (b) the employer is otherwise authorised by law to make the deduction.

Note: An employer and an employee can exclude the operation of this provision by agreement in accordance with subsection 20(1).

Annual leave

22. An employer of an employee who is entitled to take leave under subsection 15(1) —

- (a) must not require the employee to take that leave in a single period; and
- (b) must allow the employee to take leave accruing in respect of not less than 2 ordinary working weeks in a continuous period if the employee requests; and
- (c) must not require the employee to take that leave more than 12 months after it accrues,

but otherwise, leave may be taken at a time mutually agreed between the employer and the employee.

Note: An employer and an employee can exclude the operation of this provision by agreement in accordance with subsection 20(1).

Work outside working hours

23. (1) An employee may refuse to work for longer than, or for times that are not in, the working week applicable to the employee.

Note: An employer and an employee can exclude the operation of this provision by agreement in accordance with subsection 20(1).

(2) In the event that an employee agrees to work for the same employer for longer than the number of hours in the normal working week, prescribed as applicable to that employee, then the employer shall pay the following to the employee in respect of the period worked which exceeds the prescribed hours —

- (a) for any employee who works longer than the prescribed period of any working day 150% of the minimum hourly rate paid to that employee provided that amount is not less than the normal hourly rate paid to that employee; and
- (b) for any employee who works longer than the prescribed period of any working week 150% of the minimum hourly rate paid to that employee provided that amount is not less than the normal hourly rate paid to that employee.

(3) For the purposes of subsection 23(2), the minimum hourly rate is the amount fixed by section 14 and the normal hourly rate is the rate which is ordinarily paid to that employee per hour.

(4) Notwithstanding anything contained in section 21 of this Act, a contract or any clause or part of contract which is inconsistent with subsection 23(2), or seeks to avoid, amend, or exclude subsection 23(2) is void and of no effect.

Division 4 — General

Employment of persons under the age of 15 years

24. (1) An employer must not employ a person under the age of 15 years —

- (a) during any hours that the person is required by law to attend school; or
- (b) at any time between the hours of 11.00 pm on one day and 6.00 am on the next.

Penalty: 20 penalty units.

(2) Subject to subsection 24(1) an employer must not employ a person under the age of 15 years —

- (a) for more than 20 hours in a week during a school term or semester when, under an enactment, a child is required to attend school; and
- (b) for more than 40 hours per week during any other time.

Penalty: 20 penalty units.

(3) Subsections 24(1) and 24(2) do not apply to the employment of a person over the age of 14 as an apprentice or in a prescribed training position.

(4) This Act (other than subsection 24(1)) does not apply to employment of a person under the age of 15 years of a class defined in the Regulations by reference to —

- (a) the type of work in which the person is employed; or
- (b) the time at which the person is employed; or
- (c) the extent to which the person is employed; or
- (d) the person's employer.

Action taken by employer to avoid the operation of this Part**25. If —**

- (a) an employer terminates an employee's employment or varies that employment so that it ceases to be regular employment; and
- (b) as a result of that —
 - (i) termination on the continuity of the employee's service; or
 - (ii) that variation on the regularity of the employee's employment, the employee's entitlements under this Part are reduced; and
- (c) within one month of that termination or variation the employee is re-employed, or the employee's employment is varied so that it is again regular,

the effect of that termination or variation on the continuity or regularity of the employee's employment must be disregarded in calculating the employee's entitlements under this Part

unless

the Conciliation Board certifies that the employment was not terminated or varied for the purposes of avoiding the employer's obligations in respect of those entitlements, or for reasons including that reason.

PART 3 — COMPENSATION FOR WORK-RELATED ACCIDENTS, ETC**Interpretation****26. (1) In this Part, unless the contrary intention appears —**

“approved” means approved for the purposes of this Part by instrument in writing signed by the Minister;

“de facto spouse”, in relation to a person, means a person of the opposite sex to the first-mentioned person who lives with the first-mentioned person in a bona fide relationship in the nature of marriage, although not legally married;

“dependant” means a family dependant or a non-family dependant;

“disease” means

- (1) (a) an ailment suffered by an employee; or
- (b) an aggravation of such an ailment;

that was contributed to, to a significant degree, by the employee's employment.

(2) In determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee's employment, the following matters may be taken into account—

- (a) the duration of the employment;
- (b) the nature of, and 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.

(3) This definition does not limit the matters that may be taken into account.

“employee” means any person who works in the employer's business in any capacity and includes the employer if working in the employer's own business;

“family dependant”, in relation to a deceased employee, means a person who at the time of the death of the employee was a member of the family of the employee and who, at that time —

- (a) was wholly or partly dependent on the earnings of the employee; or
- (b) would, but for the incapacity of the employee, have been wholly or partly dependent on the earnings of the employee;

“hospital” means —

- (a) the Norfolk Island Hospital within the meaning of the *Norfolk Island Hospital Act 1985*; or
- (b) an approved hospital;

“injury” means—

- (a) a disease suffered by an employee;
- (b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment; or
- (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee's employment) that is an aggravation that arose out of, or in the course of, that employment,

but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.

Note: reasonable administrative action is defined in subsection (1A).

“Medical Superintendent” means the person appointed to be the Medical Superintendent within the meaning of the *Norfolk Island Hospital Act 1985* and includes the Deputy Medical Superintendent;

“medical treatment” means —

- (a) attendance, examination or treatment of any kind by an approved —
 - (i) medical practitioner;
 - (ii) dentist;
 - (iii) optometrist;
 - (iv) physiotherapist;
 - (v) chiropractor;
 - (vi) osteopath;
 - (vii) chiropodist; or
 - (viii) person practising a prescribed specialty;
- (b) the provision and, as necessary from time to time, the repair, adjustment or replacement during the prescribed period of skiagrams, crutches, artificial members, artificial eyes or teeth, spectacles, hearing aids or prescribed aids;
- (c) maintenance, attendance and treatment in a hospital;
- (d) the provision by a hospital of —
 - (i) medical attendance and treatment;
 - (ii) nursing attendance;
 - (iii) medicines, medical, surgical and other curative materials, appliances or apparatus; or
 - (iv) any other usual or necessary hospital services with respect to the treatment of the injury or disease of an employee; and
- (e) rehabilitation services within the meaning of section 38;

“non-family dependant”, in relation to a deceased employee, means a person other than a family dependant who, at the time of the death of the employee, the employee was under a legal or moral duty to support and who, at that time —

- (a) was wholly or partly dependent on the earnings of the employee; or
- (b) would, but for the incapacity of the employee, have been wholly or partly dependent on the earnings of the employee;

“public scheme” means a scheme referred to in subsection 39(4);

“spouse” includes a de facto spouse;

“significant degree” means a degree that is substantially more than material;

“work related accident” means a situation or event occurring at a work place or arising out of, or in the course of, an employee’s work that results in death or significant injury.

(1A) For the purposes of the definition “injury” in subsection (1) and without limiting that subsection, the expression “reasonable administrative action” is taken to include the following—

- (a) a reasonable appraisal of the employee’s performance;
- (b) a reasonable counselling action (whether formal or informal) taken in respect of the employee’s employment;
- (c) a reasonable suspension or termination or transfer action in respect of the employee’s employment;
- (d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee’s employment;
- (e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c), or (d);
- (f) anything reasonable done in connection with the employee’s failure to obtain a promotion reclassification, transfer or benefit or to retain a benefit, in connection with his or her employment,

and in this subsection “reasonable” means action that at the time—

- (i) was lawful;
- (ii) was not irrational, absurd or ridiculous;
- (iii) was relative or related to the conduct or behaviour giving rise to that action;
- (iv) was taken pursuant to the regulatory rules applicable to the employee; and
- (v) was taken in circumstances of fairness to the employee,

and includes action done by or on behalf of an employer by a person who has a reasonable belief at the time that the thing done was reasonable (as described above) but nothing in this subsection affects the right of an employee to challenge the reasonableness of an action or for a decision to be made on appeal that an injury was not suffered as a result of reasonable administrative action.

(2) For the purposes of this Part, a person shall be taken to be a member of the family of another person if the first-mentioned person is —

- (a) a child of the other person who has not attained the age of 18 years;
- (b) a child of the other person who has attained the age of 18 years but has not attained the age of 25 years and who is engaged in full-time education or training;
- (c) a child of the other person who has attained the age of 18 years and who is, by reason of mental or physical infirmity, unable to support himself or herself;
- (d) a parent of the other person; or
- (e) a spouse of the other person,

and not otherwise.

(3) For the purposes of subsection 26(2), “child” includes —

- (a) an adoptive child; and
- (b) a child of the spouse of a person who is ordinarily resident with the person in the household of the person.

(4) For the purposes of this Part, where it is necessary to determine whether a person is the de facto spouse of another person the following matters may be taken into account:

- (a) whether the first-mentioned person lives in the same residence as the other person, and the length of time that they have lived together;
- (b) the extent to which the first-mentioned person and the other person mutually as parents care for any children of them or either of them;
- (c) the extent to which household and living expenses are shared between the first-mentioned person and the other person;
- (d) the extent to which household tasks are shared between the first-mentioned person and the other person;
- (e) whether sexual relations exist between the first-mentioned person and the other person;
- (f) the financial arrangements existing between the first-mentioned person and the other person;
- (g) whether the first-mentioned person and the other person hold themselves out, or describe themselves, as a couple;
- (h) any other relevant consideration.

(5) A member of the family of an employer who resides with the employer shall, for the purposes of this Part, be deemed not to be an employee unless the employer by written notice to —

- (a) the insurer of the employer’s liability under this Part; or
- (b) in the case of an employer who is a member of the public scheme - the Minister,

discloses at the time the employment is commenced, and, thereafter, whenever the insurance or membership of the public scheme, as the case may be, is renewed, the name and nature of the employment of the employee and that the employee is a member of the family of the employer.

(6) For the purposes of this Part, a reference to an employee, where the employee has died by reason of an occurrence or condition referred to in subsection 29(1), shall be taken to be a reference to a dependant of the employee in relation to whom compensation is payable under this Part.

(7) A reference in this Part to an employee includes, after the commencement of incapacity, a reference to a former employee.

Meaning of “out of, or in the course of, employment”

27. (1) Subject to this Act, an occurrence shall, for the purposes of this Part, be deemed to have arisen out of, or in the course of, employment if the occurrence happens —

- (a) while the employee on any working day is present at the place of employment;
- (b) while the employee on any working day is present at a place which the employee —
 - (i) is directed by the employer to attend;
 - (ii) is required by the terms of his or her employment to attend; or
 - (iii) is expected to attend for the purposes of, or in connection with, the employer’s trade or business;
- (c) while the employee is travelling between the place of employment and a place referred to in paragraph 27(b);
- (d) while the employee is travelling between a place referred to in paragraph 27(b) and another place referred to in that paragraph; or
- (e) while the employee is travelling to a place for the purposes of receiving medical treatment as a result of an accident that occurred immediately before the commencement of the travel at a place, or in a situation, referred to in paragraph 27(a), 27(b), 27(c), or 27(d),

and not otherwise.

(2) Subsection 27(1) does not apply to an occurrence during a substantial interruption of, or deviation from, a journey, being an interruption or deviation made for a reason unconnected with the employee’s employment or attendance at a place referred to in subsection 27(1).

(3) Subject to section 45, where an occurrence happens while an employee is —

- (a) acting in contravention of a law or instruction applicable to the employee’s employment; or
- (b) acting without instructions,

the occurrence shall not be taken to have happened otherwise than in the course of employment by reason only that the employee was so acting, if the employee was so acting for the purposes of, or in connection with, the employer’s lawful trade or business.

(4) For the purposes of this section, “place of employment”, where there is no fixed place of employment, includes the area, scope or ambit of the employment.

Meaning of “incapacity”

28. (1) For the purposes of this Part, “incapacity”, in relation to an employee, means —

- (a) personal injury by reason of a work-related accident;
- (b) industrial deafness within the meaning of section 33;
- (c) hernia within the meaning of section 34;
- (d) occupational disease within the meaning of section 35; or
- (e) a cardio-vascular or cerebro-vascular episode within the meaning of section 36,

suffered by the employee as a result of which there is a loss or diminution of the employee’s capacity to earn.

(2) For the purposes of subsection 28(1), the physical and mental consequences of personal injury referred to in paragraph 28(1)(a), or of a work-related accident, constitute incapacity in relation to an employee where, as a result of those consequences, there is a loss or diminution of the employee’s capacity to earn.

(3) Loss of amenities and of enjoyment of life because of permanent loss or impairment of a bodily or mental function of an employee by reason of an occurrence or condition specified in subsection 28(1) constitutes incapacity for the purposes of this Part, whether or not the loss or impairment results in a loss or diminution of the employee’s capacity to earn.

(4) Subject to this section, damage to the body or mind of an employee caused exclusively by—

- (a) disease, infection or the ageing process; and
- (b) is not caused by or arise from a work-related accident,

does not constitute incapacity for the purposes of this Part.

Compensation for death

29. (1) Where the death of an employee results from —

- (a) personal injury by reason of a work-related accident;
- (b) hernia within the meaning of section 34;
- (c) occupational disease within the meaning of section 35; or
- (d) a cardio-vascular or cerebro-vascular episode within the meaning of section 36,

a dependant of the employee is entitled to compensation in accordance with this section.

(2) Where the employee leaves a family or non-family dependant wholly dependent on the earnings of the employee at the time of the employee’s death, the employer shall pay to the dependant —

- (a) an amount equal to the amount prescribed for the purposes of paragraph 31(2)(c); and
- (b) periodical compensation at 80% of the rate that would have been applicable had the employee been entitled to periodical compensation for total incapacity under subsection 30(4).

(3) Where the employee leaves a family dependant partly dependent on the earnings of the employee at the time of the employee's death, the employer shall pay to the dependant —

- (a) the amount referred to in paragraph 29(2)(a); and
- (b) a proportion of compensation payable under paragraph 29(2)(b) equal to the proportion by which the dependant was dependent on the earnings of the employee at that time.

(4) Where the employee leaves a non-family dependant partly dependent on the earnings of the employee at the time of the employee's death, the employer shall pay to the dependant —

- (a) a proportion of the amount referred to in paragraph 29(2)(a); and
- (b) a proportion of compensation payable under paragraph 29(2)(b),

equal to the proportion by which the dependant was dependent on the earnings of the employee at that time.

(5) Subject to subsection 30(9), periodical compensation payable under paragraph 29(2)(b), 29(3)(b) or 29(4)(b) shall be paid for a period of 2 years after the date of death of the employee.

(6) Where more than one dependant is entitled to compensation in accordance with this section, the amount of compensation payable in respect of each dependant shall be calculated according to the respective dependency of each dependant on the earnings of the employee at the time of death of the employee.

(7) Where subsection 29(6) applies, the total amount of compensation payable in respect of the death of an employee shall not exceed the amount that would have been payable under subsection 29(2) had the employee left one dependant wholly dependent on the earnings of the employee at the time of death of the employee.

Compensation for incapacity

30. (1) Where an employee suffers incapacity, the employer shall pay to the employee periodical compensation in accordance with this section.

(2) A reference in this section to total incapacity, in relation to an employee, is a reference to total loss, whether temporary or permanent, of the employee's capacity to earn by reason of the incapacity of the employee.

(3) A reference in this section to partial incapacity, in relation to an employee, is a reference to diminution, whether temporary or permanent, of the employee's capacity to earn by reason of the incapacity of the employee.

(4) Where an employee suffers total incapacity, compensation shall be —

- (a) payment as if the period of incapacity were a period of absence from duty under section 17 by reason of ill health —
 - (i) in respect of the 5 working days next following the commencement of the incapacity; or
 - (ii) where a written contract entered into in pursuance of section 10 provides for a longer period - in respect of that period; and

- (b) after the expiration of the period referred to in paragraph 30(4)(a), fortnightly payments of an amount equal to —
 - (i) the prescribed amount; or
 - (ii) the amount the employee would have received had the employee not been suffering incapacity where that amount is less than the prescribed amount.

(5) Subject to subsection 30(8), compensation under subsection 30(4) is payable until the employee ceases to suffer total incapacity.

(6) Where an employee suffers partial incapacity, compensation shall be paid at a rate calculated in accordance with subsection 30(4) as if the employee had suffered total incapacity, less the proportion of that rate that is equal to the proportion by which the employee's capacity to earn is not affected by the incapacity.

(7) Subject to subsection 30(8), compensation under subsection 30(6) is payable until the employee ceases to suffer partial incapacity.

(8) Compensation under this section is not payable —

- (a) after the date of death of an employee; or
- (b) in respect of a period after the expiration of a period or periods totalling 2 years of compensation payments under this section in relation to the same incapacity;

whichever first occurs.

(9) Paragraph 30(8)(a) does not affect the payment of compensation to a dependant of a deceased employee in accordance with section 29, but where an employee dies by reason of an occurrence or condition specified in that section and the employee received, in respect of that occurrence or condition, compensation under this section in respect of a period prior to the employee's death, the reference in subsection 29(5) to the date of death of an employee shall be read as a reference to the date of commencement of the incapacity suffered by the employee.

(10) A reference in this section to a working day includes a reference to a public holiday.

Compensation for permanent loss or impairment of function

31. (1) Where an employee suffers incapacity within the meaning of subsection 28(3), the employer shall pay to the employee lump sum compensation in accordance with this section.

(2) Compensation under this section —

- (a) is payable in addition to any other compensation payable in accordance with this Part;
- (b) subject to paragraph 31(2)(c), shall be an amount calculated in accordance with section 32; and
- (c) shall not exceed the prescribed amount.

(3) Where an amount to which an employee would otherwise have been entitled under this section is increased by reason of the operation of this Act before the amount is paid to the employee, the employee is entitled to be paid the increased amount.

(4) Where an employee receives lump sum compensation under this section and subsequently dies by reason of the incapacity in respect of which the compensation was received, any compensation payable under paragraph 29(2)(a), 29(3)(a) or 29(4)(a) to a dependant of the employee shall be reduced by the amount so received.

Assessment of permanent loss or impairment of function

32. (1) Subject to subsection 32(2), where an employee who suffers incapacity does not completely recover from the incapacity —

- (a) the Medical Superintendent; or
- (b) a person appointed by instrument in writing signed by the Minister,

shall make an assessment of the employee in order to ascertain whether the employee has suffered permanent loss or impairment of bodily or mental function within the meaning of subsection 28(3) and the percentage, if any, of the loss or impairment.

(2) An assessment under subsection 32(1) shall be undertaken when the Medical Superintendent, or, where paragraph 32(1)(b) applies, a person referred to in that paragraph, considers that the degree of incapacity suffered by the employee has stabilised.

(3) An assessment under subsection 32(1) shall be in writing and shall —

- (a) set out the nature and percentage of the permanent loss or impairment of function, if any; and
- (b) be served on the employer and employee.

(4) In making an assessment under this section —

- (a) regard shall be had to —
 - (i) the Schedule, so far as it is applicable; and
 - (ii) the tables of relative impairment set out in the work entitled Guides to the Evaluation of Permanent Impairment prepared by the Committee of the American Medical Association on Rating of Mental and Physical Impairment and as last published by the Association, so far as applicable to permanent loss or impairment of a bodily or mental function; and
- (b) regard may be had to reports or advice obtained from another medical practitioner or person practising a specialty referred to in subparagraphs 32(4)(a)(ii) to 32(4)(a)(viii) of the definition of "medical treatment" in subsection 26(1).

(5) Subject to subsections 32(6) and 32(7), an assessment made under this section of the percentage of permanent loss or impairment of function suffered by an employee entitles the employee to payment of lump sum compensation, in accordance with section 31, of an amount equal to that percentage of the amount prescribed under paragraph 31(2)(c).

(6) An employee is not entitled to lump sum compensation under section 31 where —

- (a) the percentage specified in an assessment made under this section is 2% or less; or
- (b) the employee has been given a notice in writing signed by the employer or the Minister requiring the employee to attend for assessment under this section at a time and place specified in the notice, and the employee has failed or refused to attend without reasonable excuse.

(7) Where the percentage specified in an assessment made under this section is 90% or more, the employee in relation to whom the assessment was made is entitled to be paid an amount equal to the amount prescribed under paragraph 31(2)(c).

(8) For the purposes of sections 76 and 85, the preparation under this section of an accurate and reasonable assessment is an act required by this Act to be done.

(9) The Tribunal, in dealing with proceedings concerning an assessment, may make an order setting aside, varying or remitting for reconsideration an assessment made, or purportedly made, under this section.

Compensation for industrial deafness

33. (1) Deafness suffered by an employee constitutes industrial deafness for the purposes of paragraph 28(1)(b) where —

- (a) after the commencement of this section the employee has been employed in employment in which the employee is exposed to the hazard of contracting deafness by reason of —
 - (i) intensity of; and
 - (ii) duration of exposure to, noise; and
- (b) the employee suffers deafness of a permanent nature within 2 years after having been so exposed.

(2) An assessment under section 32 of the percentage of permanent loss or impairment of function, in relation to industrial deafness, shall exclude any demonstrable pre-existing deafness established in the course of the assessment.

(3) Compensation for deafness is not payable under this Part where it is established that —

- (a) the deafness had a cause other than the cause referred to in paragraph 33(1)(a); or
- (b) in the light of medical and other evidence available, the degree of deafness does not significantly exceed that which normally would have resulted from the ageing process.

(4) Incapacity by reason of industrial deafness shall be deemed to have commenced on the date that the employee reported to the employer the existence of the deafness, or the date on which the employee was last employed in employment in which the employee was exposed to the hazard of contracting deafness, whichever first occurred.

(5) Compensation in respect of industrial deafness is payable by the employer who last employed the employee in employment in which the employee was exposed to the hazard of contracting deafness.

Compensation for hernia

34. (1) A hernia suffered by an employee constitutes a hernia for the purposes of paragraph 28(1)(c) where —

- (a) the hernia is —
 - (i) clinical hernia of a disabling character appearing to have recently occurred for the first time; or
 - (ii) an aggravation or strangulation of a pre-existent hernia resulting in immediate pain and disablement;
- (b) the onset of the hernia, or aggravation or strangulation of a pre-existent hernia, was immediately preceded by a strain or accident arising out of, or in the course of, the employee's employment; and
- (c) the employee reported the condition immediately after the occurrence of the strain or accident or not later than 72 hours thereafter.

(2) An employee who suffers incapacity by reason of a hernia is not entitled to compensation under this Part where the employee fails or refuses to undergo a surgical operation reasonably directed by the Medical Superintendent to be carried out for the cure of the hernia.

Compensation for occupational disease

35. (1) Disease suffered by an employee constitutes occupational disease for the purposes of paragraph 28(1)(d) where the disease is due to the nature of employment in which the employee is or was employed.

(2) Incapacity by reason of occupational disease shall be deemed to have commenced on the date that the employee reported to the employer the existence of the disease, or the date on which the employee was last employed in employment due to the nature of which the disease was contracted, whichever first occurred.

(3) Compensation under this Part in respect of occupational disease is not payable where —

- (a) it is proved that an employee, at the time of entering employment due to the nature of which a disease was contracted, knowingly and falsely represented that the employee had not previously suffered a disease of the kind contracted; or
- (b) an employee, wilfully and without reasonable cause, fails or refuses to provide the employer with such information as is prescribed.

(4) Compensation in respect of occupational disease is payable by the employer who last employed the employee in employment due to the nature of which the disease was contracted, whether or not a previous employment of the employee contributed towards the contracting of the disease.

Compensation for heart attack or stroke

36. (1) A cardio-vascular or cerebro-vascular episode constitutes an episode for the purposes of paragraph 28(1)(e) where —

- (a) the episode is the result of effort, strain or stress that is abnormal, excessive or unusual for the employee by whom the episode is suffered; and
- (b) the effort, strain or stress arises out of, or in the course of, the employee's employment.

(2) Compensation under this Part in respect of a cardio-vascular or cerebro-vascular episode is not payable where it is proved that an employee, at the time of entering employment in the course of which the employee suffered —

- (a) a cardio-vascular episode; or
- (b) a cerebro-vascular episode,

knowingly and falsely represented that the employee had not previously suffered either a cardio-vascular or cerebro-vascular episode.

Compensation for medical treatment

37. (1) Where —

- (a) compensation is payable under this Part by an employer to, or in respect of, an employee; or
- (b) but for the fact that an employee —
 - (i) did not suffer a loss or diminution of the employee's capacity to earn; or
 - (ii) by reason of the operation of paragraph 32(6)(a) is not entitled to compensation under this Part,compensation would have been payable under this Part to, or in respect of, the employee,

the employer is liable to pay the reasonable cost of medical treatment of the injury or condition in relation to which the compensation is, or, where paragraph 37(1)(b) applies, would have been, payable.

(2) Compensation under this section is payable in addition to any other compensation payable in accordance with this Part.

(3) For the purposes of subsection 37(1), the reasonable cost of medical treatment is —

- (a) the cost of medical treatment carried out in Norfolk Island with the approval of the Medical Superintendent;
- (b) where the Medical Superintendent considers it necessary for medical treatment to be carried out in a place other than Norfolk Island - the reasonable cost of that treatment to the extent that the employee is not entitled to receive free or subsidised treatment at that place;
- (c) the reasonable cost of transporting the employee, and, if necessary, an escort or escorts, to and from a place referred to in paragraph 37(3)(b);
- (d) the reasonable cost of accommodating an escort referred to in paragraph 37(3)(c) at or near a place referred to in paragraph 37(3)(b); and

- (e) the reasonable cost of rehabilitation services within the meaning of section 38; and
- (f) such other reasonable cost as is considered appropriate by the Minister in the circumstances of the case.

Claims for compensation

37A. (1) Compensation is not payable to a person under this Act unless a claim for compensation is made by or on behalf of the person under this section.

(2) A claim shall be made by giving the Employment Liaison Officer—

- (a) a written claim in accordance with the form prescribed for the purposes of this paragraph; and
- (b) except where the claim is for compensation for death under section 29—a certificate by a medical practitioner in accordance with the form prescribed for the purposes of this paragraph.

(3) Where a written claim, other than a claim for compensation for death under section 29, is given to the Employment Liaison Officer under paragraph (2)(a) and the claim is not accompanied by a certificate of the kind referred to in paragraph (2)(b), the claim shall be taken not to have been made until such a certificate is given to the Employment Liaison Officer.

(4) Where a claim is given to the Employment Liaison Officer, the Employment Liaison Officer shall cause a copy of the claim to be given to the employer by whom the employee was employed at that time.

(5) Strict compliance with an approved form referred to in subsection (2) is not required and substantial compliance is sufficient.

Rehabilitation services

38. The Medical Superintendent shall advise and assist a person suffering incapacity for the purpose of restoring the person, as quickly as possible, to the fullest physical and mental fitness of which the person is reasonably capable.

Compulsory insurance

39. (1) Subject to this section, an employer shall obtain from an approved insurer, and shall at all times maintain in force with an approved insurer, an approved policy of insurance or indemnity for the full amount of the employer's liability to pay compensation under this Part to all employees employed by the employer.

Penalty: (a) in the case of a
natural person — 50 penalty units or
imprisonment for 2
years, or both; and

(b) in the case of a
body corporate — 250 penalty units.

(2) Subsection 39(1) does not apply to a person prescribed for the purposes of this subsection.

(3) An employer may require an employee to provide to the employer such information in relation to the employee's medical history as is prescribed.

(4) The Minister may, in accordance with a resolution of the Legislative Assembly, establish a scheme by which an employer, on payment of such levies as are prescribed for the purposes of this subsection and subject to subsection 39(5A), is indemnified for the full amount of the employer's liability to pay compensation under this Part to all employees employed by the employer.

(4A) The levies referred to in subsection 39(4) are payable on the days prescribed in the Regulations.

(5) An employer applying to become a member of the public scheme shall provide to the Minister, in a form supplied by the Minister, such information as is prescribed.

(5A) Indemnification under subsection 39(4) is only in relation to the extent of the employer's liability assessed in accordance with the information supplied by the employer under subsection 39(5).

(5B) Where the Minister is satisfied that the information supplied by an employer under subsection 39(5) does not accurately reflect the employer's liability to pay compensation under this Part, the Minister may assess the prescribed levy for that employer for the purposes of subsection 39(4) on the basis of other information available to the Minister.

(5C) An assessment by the Minister under subsection 39(5B) is a matter in respect of which the relevant employer may lodge a complaint with the Board under section 76.

(6) The Minister, in his discretion, may grant or refuse to grant an application to become a member of the public scheme.

(7) The Minister shall exercise the discretion conferred by subsection 39(6) after taking into account considerations, if any, prescribed for the purposes of this subsection.

(7A) The Minister may revoke the membership of the public scheme of an employer if that employer has not within a reasonable period after the due date paid the prescribed levies.

(8) Subsection 39(1) does not apply to an employer who is a member of the public scheme.

(9) Where 2 or more employers may become liable to pay compensation in respect of the same employee, those employers, or any of them, may comply with their obligations under this section by —

- (a) jointly entering into a contract of insurance or indemnity for the purposes of subsection 39(1); or
 - (b) jointly becoming members of the public scheme,
- in relation to their liability in respect of the employee.

(10) In a prosecution for a failure to comply with subsection 39(1), a certificate signed or purporting to be signed by —

- (a) an employee or agent of an approved insurer, stating that there was not in force on a specified date an approved policy of insurance or indemnity issued by the insurer in relation to the person charged in respect of that person's liability under subsection 39(1); or
- (b) the Minister, stating that the person charged was not on a specified date —
 - (i) a member of the public scheme; or
 - (ii) a person prescribed for the purposes of subsection 39(2),

is evidence of the matters stated in the certificate.

(11) A reference in this section to liability to pay compensation does not include liability to pay —

- (a) compensation by reason of the application 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) an amount equal to the prescribed amount in respect of each claim for compensation, other than compensation to which paragraph 39(11)(a) applies.

Employment Liaison Officer

39A. (1) For the purposes of this Act the position of Employment Liaison Officer is established.

(2) The Employment Liaison Officer—

- (a) is appointed by the Chief Executive Officer in accordance with the *Public Sector Management Act 2000*;
- (b) has the day to day management and control of the scheme established by subsection 39(4) including the administration of claims;
- (c) is subject to the directions of the Minister and the Chief Executive Officer but not in connection with any matter concerning the investigation and determination of a claim by an employee of the Administration or a public sector agency or a territory instrumentality;
- (d) is the responsible officer for the purpose of certifying that an employment contract entered into in accordance with section 11, complies with the Act and the Regulations;
- (e) is responsible for the management and control of inspectors, including the power of direction to comply with, or perform a duty required to be performed by, this Act;

- (f) shall exercise such other functions powers and responsibilities in respect of any provision or provisions of this Act or the Regulations as may be required or permitted to be exercised thereby or as may be lawfully delegated or directed by the Chief Executive Officer or the Minister; and
- (g) may, by instrument in writing, delegate a power or function under this Act to an inspector or another employee of the Administration other than this power of delegation or a power or function delegated to him or her by the Minister or the Chief Executive Officer.

Compensation where employer not insured

40. (1) Where an employer is liable to pay compensation to an employee under this Part and the employer, in respect of the liability —

- (a) is not insured in accordance with subsection 39(1) for the full amount of the employer's liability to pay compensation; and
- (b) is not indemnified under the public scheme for the full amount of the employer's liability to pay compensation; and
- (c) is not a person prescribed for the purposes of subsection 39(2),

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 were the employer.

(2) A sum paid by the Administration to an employee in accordance with subsection 40(1) is a debt due and payable to the Administration by the employer recoverable in a Court of competent jurisdiction.

(2A) Where an employer is not insured in accordance with subsection 39(1), or is not indemnified under the public scheme, for the full amount of the employer's liability to pay compensation to an employee under this Part, any amount payable in respect of the compensation of the employee under that insurance policy or out of the public scheme, shall be paid to the Administration and that amount shall be deducted from the debt due and payable to the Administration under subsection 40(2).

(3) A sum recovered from an employer under subsection 40(2) is in addition to the imposition of penalties for an offence against this Act.

(4) Where an employer is a body corporate, an officer of the body corporate is personally liable to pay a debt referred to in subsection 40(2).

(5) For the purposes of subsection 40(4), "officer", in relation to a body corporate, means a director (whether or not a shareholder) of the body corporate, or, in the case of a body corporate that has ceased to exist, a person who was a director at the time the liability arose.

Compensation where employer ceases to exist

41. (1) Where an employer is liable to pay compensation to an employee under this Part and the employer, since the happening of the occurrence from which the liability arose, has died or ceased to exist, the employee to whom the compensation is payable has recourse against —

- (a) where the former employer was, or, but for the employer's death or dissolution, would have been, insured in accordance with subsection 39(1) - the insurer;

- (b) where the former employer was, or, but for the employer's death or dissolution, would have been, a member of the public scheme - the Administration; or
 - (c) where the former employer was a person prescribed for the purposes of subsection 39(2) at the time the employer died or ceased to exist - a successor, executor, assign or personal representative of the former employer,
- as if the insurer, Administration or person referred to in paragraph 41(1)(c), as the case may be, were the employer.

(2) A reference in subsection 41(1) to a situation where, but for an employer's death or dissolution, the employer would have been insured or a member of the public scheme is a reference to a situation where premiums or levies, as the case may be, have been paid in respect of a liability to pay compensation and nothing has occurred, other than the death or dissolution of the employer, to render the policy or membership inapplicable to the liability.

Variation of rates of compensation

42. (1) In this section —

“calculated amount” means an amount calculated in accordance with subsection 42(4);

“relevant amount” means —

- (a) an amount prescribed for the purposes of —
 - (i) subparagraph 30(4)(b)(i); or
 - (ii) paragraph 31(2)(c); or
- (b) where, after the prescribing of an amount for the purposes of subparagraph 30(4)(b)(i) or paragraph 31(2)(c), this Act has effect by reason of the operation of this section as if another amount were substituted for an amount so prescribed - the amount last so substituted;

“substituted amount” means an amount substituted for a relevant amount in accordance with subsections 42(4) and 42(5).

(2) The factor to be ascertained for the purposes of subsection 42(4) as at a particular date is the number, calculated to 3 places of decimals, determined by dividing the RPI ascertained as at that date by the RPI last ascertained as at 30 June or 31 December in a year.

(3) If the number so calculated would, if it were calculated to 4 places of decimals, end in 5 or a higher number, then that number shall be increased by 0.001.

(4) Where the factor ascertained in accordance with subsections 42(2) and 42(3) as at 30 June or 31 December in a year is greater than 1, this Act has effect as if for each relevant amount there were substituted an amount calculated by multiplying the relevant amount by that factor.

(5) Where a calculated amount is not a multiple of 10 cents, the amount that is to be substituted in accordance with subsection 42(4) is —

- (a) if the calculated amount exceeds the next lower amount that is a multiple of 10 cents by 5 cents or more - the next higher amount that is a multiple of 10 cents; or
- (b) in any other case - the lower amount.

(6) Where a relevant amount is varied as a result of the operation of this section the Minister shall, as soon as practicable, publish in the Gazette a notice setting out the amount substituted for the relevant amount.

(7) Where an amount is substituted for a relevant amount in accordance with this section, the substituted amount is payable —

- (a) in respect of periodical compensation payable fortnightly in accordance with subparagraph 30(4)(b)(i) - on the date when the compensation is next payable; or
- (b) in respect of lump sum compensation payable in accordance with paragraph 31(2)(c) - in respect of any payment made,

after the date of publication of a notice referred to in subsection 42(6).

(8) Where an error is made in a notice referred to in subsection 42(6), the Minister shall, immediately the error is discovered, publish a correction and —

- (a) where by reason of the error an underpayment of compensation has been made - the person liable to pay the compensation shall as soon as practicable pay the amount underpaid; or
- (b) where by reason of the error an overpayment of compensation has been made - the person who has paid the compensation may —
 - (i) deduct the amount overpaid from any further amounts of compensation payable; or
 - (ii) demand from the person who received the overpayment a refund of the amount overpaid.

Compensation in substitution for other claims

43. (1) Subject to subsection 43(3), where an employee —

- (a) suffers incapacity;
 - (b) would have suffered incapacity but for the fact that the employee did not suffer a loss or diminution of the employee's capacity to earn; or
 - (c) dies as a result of an occurrence or condition specified in subsection 29(1),
- no proceedings for damages or compensation arising directly or indirectly out of —
- (d) an injury or condition out of which the incapacity arose;
 - (e) an injury or condition out of which incapacity would have arisen had the employee suffered a loss or diminution of the employee's capacity to earn; or
 - (f) a death as a result of an occurrence or condition specified in subsection 29(1),

shall be heard or determined except in accordance with this Act, whether instituted by the employee or another person, and whether under a rule of law, enactment or law in force in Norfolk Island.

- (2) Without limiting the generality of subsection 43(1) —
- (a) the action for loss of services (known as the action per quod servitium amisit); and
 - (b) the action for loss of consortium (known as the action per quod consortium amisit), in relation to an employee,

are hereby abolished.

(3) Subsections 43(1) and 43(2) do not apply in respect of a cause of action that arose during a period not exceeding 6 years before the commencement of this Act.

(4) It is the intention of the Legislative Assembly that compensation payable under this Act in respect of incapacity or death arising out of, or in the course of, employment is to be in substitution for damages recoverable or payable in respect of the incapacity or death whatever the cause of action or basis of liability and whether the cause of action is actionable at the suit of, or the liability is enforceable by, a person suffering incapacity or some other person.

(5) Nothing in this section affects an action for breach of a contract of insurance.

(6) In this section, a reference to damages includes a reference to aggravated, exemplary or punitive damages.

No contracting out

44. A provision in an agreement or other document, whether or not executed before the commencement of this Act, by which —

- (a) a right conferred by this Part is excluded or limited; or
- (b) liability imposed on an employer or other person by this Part is excluded or limited,

is of no effect.

Excluded from compensation

45. Where it is proved that —

- (a) injury to, or the death of, an employee is intentionally self-inflicted; or
- (b) the incapacity of an employee is attributable to the employee's serious and wilful misconduct (including being under the influence of intoxicating liquor or a drug); or if
- (c) the incapacity, injury, illness or mental condition of an employee is attributable to work-related stress caused by or arising out of, disaffection or disagreement arising out of or in connection with a decision or action or proposed decision or proposed action of an employer that is both lawful and reasonable in the circumstances,

compensation is not payable in respect of the injury, death or incapacity.

Powers of the Employment Liaison Officer in matters of misconduct

45A. (1) The Employment Liaison Officer may on his or her own motion or must, if requested by an employee or the employer of the employee, investigate and determine whether in his or her opinion the claim by an employee is shown on the balance of probabilities to be a claim that should be disallowed under section 45.

(2) In making a determination under subsection (1) the Employment Liaison Officer shall determine, where a matter falls within paragraph 45(c), if the decision or action or proposed decision or proposed action of the employer was lawful and reasonable in the circumstances.

(3) A determination of the Employment Liaison Officer under this section must be provided in writing together with the reasons for his or her determination, to the employee concerned, and the employer.

Recovery of overpayments

46. Where an amount has been paid by way of compensation under this Part to a person who is not entitled to payment of the amount, the amount is recoverable in a Court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the person by whom the amount was paid.

Information as to compensation

47. (1) The Minister may, by instrument in writing served by post on a person whom the Minister reasonably believes to be in a position to do so, require that person to furnish to the Minister a report relating to a matter that might affect the payment of compensation, and the person so required shall, where the person is in a position to do so, furnish a report accordingly within 14 days after the service of the instrument.

(2) A person referred to in subsection 47(1) shall not furnish a report that is false or misleading in a material particular.

Penalty for an offence

against subsection 47(1) or 47(2): 20 penalty units

(3) A person is not excused from furnishing a report in accordance with subsection 47(1) on the ground that the report might tend to incriminate the person or make the person liable to a penalty.

(4) Where a person furnishes a report in accordance with subsection 47(1), information contained in the report, and information or a document or thing obtained as a direct or indirect consequence of the furnishing of the report, is not admissible in evidence against the person in any criminal proceedings except a proceeding for an offence against this section.

PART 4 — SAFE WORKING PRACTICES**Interpretation**

48. (1) In this Part, unless the contrary intention appears —

“bullying” means repeated unreasonable behaviour directed towards an employee or group of employees that creates a risk to health and safety and may include or involve—

- (i) publicly humiliating someone, verbal abuse or spreading malicious rumours or gossip;
- (ii) physical bullying such as the use of physical actions to bully, such as hitting, poking, tripping or pushing or repeatedly and intentionally damaging someone’s belongings;
- (iii) the use of negative words, repeatedly and intentionally to upset someone, such as name calling, insults, homophobic or racist remarks, and verbal abuse;
- (iv) social bullying such as lying, spreading rumours, playing nasty jokes, mimicking a person or deliberately excluding a person;
- (v) psychological bullying where someone (or a group of people) repeatedly and intentionally use words or actions which cause psychological harm and includes intimidating a person manipulating people and stalking a person;
- (vi) cyberbullying where someone (or a group of people) uses technology to verbally, socially or psychologically bully a person and may take place in chat rooms, through social networking sites, emails or mobile phones.

“incapacity” means —

- (a) personal injury;
- (b) industrial deafness within the meaning of section 33;
- (c) hernia within the meaning of section 34;
- (d) occupational disease within the meaning of section 35; or
- (e) a cardio-vascular or cerebro-vascular episode within the meaning of section 36;

“inspector” means a person appointed to be an inspector under subsection 57(1);

“occupier”, in relation to a place of work, means a person who has the control or management of the place of work;

“out of, or in the course of, employment”, in relation to an occurrence, has the same meaning as in section 27;

“place of work”, means a place, whether or not in a building or structure, in which work is performed for money —

- (a) by an employee of an employer who is the occupier of the place;
- (b) by an occupier of the place; or
- (c) at the request of an occupier of the place, by another person;

“plant”—

- (a) means a machine, appliance, implement, tool or item of equipment; and
- (b) includes a thing fitted to, connected with or appurtenant to anything referred to in paragraph 48(1)(a);

“practicable” means practicable having regard to —

- (a) the severity of the relevant hazard or risk;
- (b) the state of knowledge about the hazard or risk and the ways of removing or lessening the hazard or risk;
- (c) the availability and suitability of ways of removing or lessening the hazard or risk; and
- (d) the cost of removing or lessening the hazard or risk;

“substance” means a natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

Duties of employers

49. (1) An employer shall provide and maintain, so far as is practicable, a working environment that is safe and without risk to the health of —

- (a) an employee employed by the employer; or
- (b) another person performing work in the working environment.

Penalty: 40 penalty units.

(2) Without limiting the generality of subsection 49(1), an employer contravenes that subsection if the employer fails to take all reasonably practicable steps to —

- (a) provide and maintain plant and systems of work that are safe and without risk to health;
- (aa) provide and maintain a place of work that is free of bullying and to take such steps as may be necessary to prevent or stop bullying that may take place;
- (b) make arrangements adequate to ensure that the use, handling, storage and transport of plant and substances is safe and without risk to health;
- (c) maintain a place of work of which the employer is the occupier in a condition that is safe and without risk to health; and
- (d) provide information, instruction, training and supervision adequate to ensure safety and an absence of risk to health.

Safety equipment

49A. (1) Where an employee is required by this Act or by another law or by the employer to wear or use safety equipment in the course of employment, the employer shall provide the employee with the safety equipment.

Penalty: 10 penalty units.

(2) A person authorised for the purposes of this Part may direct an employer to require employees of that employer to wear or use certain safety equipment in the course of their employment and such a direction is a requirement for the purposes of subsection 49A(1).

(3) The safety equipment referred to in subsection 49A(1) shall be provided free of charge by the employer.

(4) An employee shall not disobey, disregard or fail to comply with a reasonable direction of an employer in relation to the wearing or use of safety equipment provided under subsection 49A(1).

Penalty: 10 penalty units.

(5) An employee who is provided with safety equipment under this section shall take reasonable care of the equipment, which remains the property of the employer.

Safety procedures

49B. (1) An inspector may direct an employer to adopt specified procedures in relation to the performance of tasks reasonably known or reasonably suspected to involve risks to employees of that employer.

(2) An employer shall comply with a direction given under subsection 49B(1).

Penalty: 20 penalty units.

Duties of occupiers

50. (1) An occupier of a place of work shall take such measures as are practicable to ensure that a person, other than an employee of the occupier, is not exposed to a risk to the person's health or safety arising from the occupier's use of the place of work.

Penalty: 40 penalty units.

(2) An occupier of a place of work shall take such measures as are practicable to ensure that the place of work and means of access to or egress from the place of work are safe and without risk to health.

Penalty: 40 penalty units.

(3) In subsection 50(1), "employee" includes a person referred to in paragraph 49(1)(b).

Duties of manufacturers, etc

51. (1) A person who designs, manufactures, imports or supplies plant or a substance for use at a place of work shall, so far as is practicable —

- (a) ensure that the plant or substance is designed and constructed so as to be safe and without risk to health when properly used; and
- (b) take measures to ensure that information relating to the use of the plant or substance at a place of work in a manner that is safe and without risk to health is made available to a person to whom the plant or substance is provided.

Penalty: 40 penalty units.

(2) A person who erects or installs plant for use at a place of work shall ensure, so far as is practicable, that the plant is erected or installed in a way that does not constitute a risk to safety or health when the plant is properly used.

Penalty: 40 penalty units.

(3) Plant or a substance shall be taken not to be properly used by a person for the purposes of this section where the plant or substance is used without regard to information or advice available to the person concerning that use.

Duties of employees

52. (1) An employee present at a place of work shall, so far as is practicable, take care for —

- (a) the employee's safety and health; and
- (b) the safety and health of another person who may be affected by the employee's acts or omissions at the place of work.

Penalty: 40 penalty units.

(2) An employee present at a place of work shall not —

- (a) wilfully or recklessly interfere with or misuse anything provided in the interests of safety or health at the place of work; or
- (b) wilfully or recklessly place at risk the safety or health of the employee or another person present at the place of work.

Penalty: 40 penalty units.

(3) In this section, "employee" includes a person referred to in paragraph 49(1)(b).

Records and notifications, etc

53. (1) An employer shall, so far as is practicable —

- (a) monitor the health of employees of the employer; and
- (b) monitor conditions at a place of work occupied by the employer.

(2) An employer shall keep such records as are prescribed, for such period as is prescribed, relating to the safety and health of employees of the employer.

(3) Where an employee suffers death or incapacity arising out of, or in the course of, employment by an employer, the employer shall as soon as practicable, and in any case within 7 days, after the death or incapacity becomes known to the employer, provide to the Minister information in the prescribed form relating to —

- (a) the death or incapacity; and
- (b) the events which gave rise to the death or incapacity.

Penalty for an offence against

subsection 53(1), 53(2) or 53(3): 20 penalty units.

(4) Subsection 53(3) does not apply to an employer who has a lawful excuse for not providing the information referred to in that subsection.

Medical and first aid services

54. (1) An —

- (a) employer; or
- (b) occupier of a place of work,

shall provide at a place of work occupied by the employer or occupier such medical and first aid services or facilities as are appropriate.

Penalty: 10 penalty units.

(2) For the purposes of subsection 54(1), the Regulations may prescribe the provision of —

- (a) medical and first aid services or facilities, or medical or first aid services or facilities, to be provided for a specified class of employees; or
- (b) medical and first aid services or facilities, or medical or first aid services or facilities, to be provided by a specified employer or occupier, or a specified class of employers or occupiers.

Complaints

55. (1) A person may complain to the Employment Liaison Officer or an inspector or the Minister that this Part is not being complied with by another person.

(2) A complaint made to the Minister under subsection 55(1) shall be referred by the Minister, as soon as practicable, to the Employment Liaison Officer or an inspector.

(3) Where the Employment Liaison Officer or an inspector receives a complaint under subsection (1) or (2), the Employment Liaison Officer or the inspector shall, as soon as practicable, investigate the complaint.

(4) The Employment Liaison Officer to whom a complaint has been referred may require an inspector to investigate the complaint.

Stop work and improvement notices

56. (1) Where, in the opinion of an inspector or the Minister, this Part is not being complied with by a person, the inspector or Minister may, by notice in writing served on the person —

- (a) require the person to cease to use a place of work, system of work, plant or substance specified in the notice; or
- (ab) require the person to direct employees of the person to stop carrying out a particular task or to stop carrying out a particular task in a particular manner; or
- (b) require the person to take measures necessary in the opinion of the inspector or Minister to ensure that a place of work, system of work, plant or substance specified in the notice does not constitute a risk to safety or health.

(2) Subject to subsection 56(8), a person shall comply with a notice served on the person under subsection 56(1).

Penalty: 40 penalty units.

(3) Where a person on whom a notice has been served under subsection 56(1) is aggrieved by a requirement of the notice, the person may, within 7 days after service of the notice, apply to the Court of Petty Sessions for a review of the requirement.

(4) The Minister shall be the respondent to an application under subsection 56(3).

(5) Where the Court of Petty Sessions is satisfied by the person making the application under subsection 56(3) that the requirement that is the subject of the application is not necessary to be complied with in order for this Part, other than subsection 56(1), to be complied with by the person, the Court may —

- (a) cancel the requirement; or
- (b) vary the requirement to the extent necessary to ensure that the requirement is consistent with this Part, other than subsection 56(1).

(6) Where subsection 56(5) does not apply, the Court of Petty Sessions shall confirm the requirement that is the subject of the application.

(7) A person shall comply with a requirement in a notice under subsection 56(1) that has been varied or confirmed by the Court of Petty Sessions.

Penalty: 40 penalty units.

(8) Where a requirement in a notice under subsection 56(1) requires the taking of measures under paragraph 56(1)(b) by a person, the person may, from the time of making an application under subsection 56(3) and until the application is disposed of, elect to cease to use the place of work, system of work, plant or substance that is the subject of the requirement instead of complying with the requirement.

(9) An election under subsection 56(8) is of no effect until notified to an inspector or the Minister in writing by the person making the election.

(10) A person who makes an election under subsection 56(8) shall comply with the election.

Penalty for an offence

against this subsection: 40 penalty units.

Inspectors

57. (1) The Minister may, by instrument in writing published in the Gazette, appoint persons to be inspectors for the purposes of this Part.

(2) Subject to subsection 57(3), an inspector may enter land or a building for the purpose of —

- (a) ensuring that this Part or the Regulations, or a notice issued under this Part, is being complied with; or
- (b) investigating a complaint under section 55.

(3) An inspector shall not —

- (a) enter land or a building; or
- (b) remain on land or in a building,

unless the inspector produces, if requested to do so, the instrument referred to in subsection 57(1) or a copy of the instrument.

- (4) A person shall not —
- (a) subject to compliance by an inspector with subsection 57(3), refuse to permit an entry to be made by an inspector under this section; or
 - (b) assault, hinder or obstruct an inspector performing a function under this Part.

Penalty for an offence

against this subsection:

- (a) in the case of a
natural person — 20 penalty units or imprisonment for 12 months, or both; and
- (b) in the case of a
body corporate — 100 penalty units.

Codes of practice

58. (1) The Minister may make Codes of Practice for the purpose of ensuring, so far as practicable, that working environments are safe and without risk to health.

(2) Notice of the making of a Code of Practice shall be published in the Gazette, and a Code has effect from the date of publication of the notice or from a later date specified in the notice.

(3) A Code of Practice is of no effect to the extent that the Code is inconsistent with this Act.

(4) As soon as practicable after making a Code of Practice the Minister shall lay a copy of the Code before the Legislative Assembly.

Effect of Codes of Practice

59. Where a Code of Practice is relevant to a matter in relation to which an inspector or the Minister may form an opinion under subsection 56(1), the inspector or Minister shall have regard to the Code in forming an opinion under that subsection.

Prosecutions

60. (1) A person other than an inspector or the Minister shall not institute a prosecution under this Part.

(2) In a prosecution by an inspector under this Part, the production of an instrument referred to in subsection 57(1), or a document purporting to be, or to be a copy of, such an instrument, is evidence that the person named in the instrument or document is an inspector.

No effect on civil liability

61. (1) A breach by a person of a duty imposed by or under this Part does not give rise to a cause of action against that person or another person.

(2) Subject to subsection 61(3), nothing in this Part affects the liability a person would have had, apart from this Part, for an act or omission giving rise to a cause of action against that person or another person.

(3) This section does not affect —

- (a) the prosecution of a person for an offence; or
- (b) the making of an application for review under subsection 56(3).

Powers of Board and Tribunal

62. The Board or Tribunal has no power to deal with a complaint or inquiry relating to a matter that, in the opinion of the Board or Tribunal, amounts to an allegation that a person has failed to comply with a duty imposed by or under this Part.

Reports

63. The Minister shall, as soon as practicable after 30 June in a year, lay before the Legislative Assembly a report containing in respect of the year ending on that date —

- (a) statistical information on occupational health and safety, including information on the incidence of occupational accidents and diseases; and
- (b) such other information on occupational health and safety as the Minister determines.

Consultative workplace arrangements

64. The Regulations may prescribe consultative arrangements relating to occupational health and safety to be entered into between employers and employees in respect of places of work or a class of places of work.

PART 5 — CONCILIATION, ADJUDICATION AND REVIEW

Division 1 — Conciliation

Employment Conciliation Board

65. (1) There is established by this Act a Board known as the Employment Conciliation Board.

(2) The Board shall consist of not less than 3 members —

- (a) having, in the opinion of the Minister, relevant qualifications or experience; and
- (b) appointed by the Minister in accordance with a resolution of the Legislative Assembly.

(3) A person has relevant qualifications or experience for the purpose of subsection 65(2) if the person —

- (a) has had substantial experience in industry, commerce, industrial relations or the service of a government or an authority of a government;
- (b) has been a member of the Public Service Board established by *the Public Service Act 1979*;
- (c) has been a Magistrate, or has held judicial office of a similar kind in a place other than Norfolk Island;
- (d) is or has been entitled to practise law in Norfolk Island, or in a State, Territory or New Zealand; or
- (e) has obtained a degree of a university or an educational qualification of a similar standard in the field of law, economics, industrial relations or some other field of study considered by the Minister to have substantial relevance to the functions of the Board.

(4) A person who is —

- (a) a member of the Public Service Board established by the *Public Service Act 1979*; or

....

- (c) a member of the Tribunal,

shall not be appointed to be a member of the Board.

(5) The Minister shall appoint one of the members referred to in subsection 65(2) to be the Chairman.

(6) An appointment under subsection 65(2) or 65(5) shall —

- (a) be by notice published in the Gazette; and
- (b) take effect from the date of that publication or from a later date specified in the notice.

(7) Subject to this Act and notwithstanding section 36 of the *Interpretation Act 1979*, a member of the Board holds office for a period of not less than 2 years and not more than 3 years specified by the Minister in the notice of appointment and is eligible for re-appointment.

Acting appointments

66. (1) Where —

- (a) a member of the Board —
 - (i) is, or is expected to be, absent from duty or from Norfolk Island; or
 - (ii) is, pursuant to section 71, disqualified; or
- (b) there is a vacancy in the office of a member of the Board,

the Minister may appoint a person to act as a member of the Board during the absence, disqualification or vacancy.

(2) A person appointed under subsection 66(1) is not required to have relevant qualifications or experience within the meaning of subsection 65(3).

(3) A person referred to in subsection 65(4) shall not be appointed under subsection 66(1).

(4) The Minister may at any time terminate an appointment made under subsection 66(1).

Publication of notices of appointment or termination

67. (1) Subject to subsection 67(2), an appointment or termination under section 66 shall —

- (a) be by notice published in the Gazette; and
- (b) take effect from the date of that publication or from a later date specified in the notice.

(2) Where the Minister considers that for reasons of urgency it is expedient to do so, an appointment or termination under section 66 may be by notice and shall take effect from the date specified in the notice, and the Minister shall cause the notice to be published in the Gazette as soon as practicable after the appointment or termination of appointment has been made.

Validity of acts of acting members

68. Nothing done by or in relation to a person purporting to act as a member of the Board pursuant to an appointment under subsection 66(1) is invalid on the ground that —

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Resignation of members

69. A member of the Board may resign the office of member by notice in writing given to the Minister.

Dismissal of members

70. (1) The Minister may terminate the appointment of a member of the Board for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) If a member of the Board —

- (a) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Board;
- (b) becomes bankrupt, applies as a debtor to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of remuneration for their benefit; or
- (c) becomes a person referred to in subsection 65(4),

the Minister may terminate the appointment of the member.

Disclosure of interest

71. (1) A member of the Board who has a direct or indirect interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of the interest to the Board.

(2) A disclosure under subsection 71(1) shall be recorded in the records of the Board and the member shall not be present during a deliberation or decision of the Board in relation to the matter.

(3) In subsection 71(1), “interest” includes the holding of a position by a member of the Board as an officer (whether or not a shareholder) of a body corporate that has an interest in a contract the subject of proceedings before the Board.

Meetings of the Board

72. (1) The Chairman shall call such meetings of the Board as are necessary for the exercise of its powers and performance of its functions.

(2) The Minister may at any time direct the Chairman to convene a meeting of the Board and the Chairman shall comply with the direction.

(3) At a meeting of the Board —

- (a) it shall be at the discretion of the Chairman whether —
 - (i) one member shall constitute the Board; or
 - (ii) 2 or 3 members shall constitute the Board, to deal with a matter before it; and
- (b) subject to this Act, the Board shall determine the procedure to be followed at and in connection with a meeting.

(4) The Board shall keep or cause to be kept a record of each complaint lodged under section 76 and of the result of the dealing by the Board with the complaint.

(5) Meetings of the Board shall be held in private.

Functions of the Board

73. (1) The functions of the Board are to inquire into and resolve matters in respect of which powers and functions are conferred on the Board by this Act.

(2) Without limiting the generality of subsection 73(1), in particular the functions of the Board are to consider matters brought before it in relation to employment.

Powers of the Board

74. Subject to this Act, the Board has the power to do all things that are necessary or convenient to be done for or in connection with or incidental to the exercise of its powers and the performance of its functions.

Reports

75. (1) The Board shall, when it sees fit but not less frequently than annually, prepare and furnish to the Minister a report on the operations of the Board during the period since the last such report was furnished.

(2) The Minister shall cause a copy or a summary of a report referred to in subsection 75(1) to be laid before the Legislative Assembly as soon as practicable after its receipt by the Minister.

Lodging of complaint

76. (1) An aggrieved person may lodge a complaint with any member of the Board concerning —

- (a) non-compliance with a provision of a written contract entered into in pursuance of section 10;
- (b) non-compliance with the minimum terms and conditions of employment specified in this Act;
- (c) subject to section 62, non-compliance with any other provision of this Act; or
- (ca) a complaint or grievance arising out of an unsuccessful worker's compensation claim made by the employee; or
- (d) any other matter in relation to employment.

(2) The member of the Board with whom a complaint has been lodged shall promptly inform the Chairman of the complaint, and the Chairman shall, as soon as practicable, call a meeting of the Board for the purpose of dealing with the complaint.

(3) In this section, "aggrieved person" means —

- (a) an employer, in relation to the employer's trade or business;
- (b) an employee, in relation to the employee's employment;
- (c) an insurer, in relation to a policy of insurance or indemnity entered into for the purposes of Part 3 with the insurer;
- (d) the Minister, in relation to a matter as to which rights, duties or liabilities are conferred or imposed on the Administration under Part 3;
- (e) a dependant of a deceased employee; or
- (f) any other person who has a direct and personal pecuniary interest in a matter as to which the Board may exercise a power or perform a function.

Resolution of complaint by conciliation

77. (1) Subject to section 62, the Board —

- (a) shall endeavour, by all such means as to it seem reasonable, to resolve a complaint brought before it by conciliation;
- (b) shall take such steps as to it seem reasonable to effect an amicable settlement of a complaint, and for this purpose may adjourn at any stage to enable the parties to negotiate with a view to a settlement of the complaint by amicable arrangements; and
- (c) is not bound by rules of evidence but may inform itself in such manner as it thinks fit.

(2) The Board shall, as soon as practicable after dealing with a complaint, issue a certificate setting out the result of that dealing.

(3) A certificate referred to in subsection 77(2) shall include a statement advising a person to whom the certificate is given of the provisions of subsections 82(1) and 82(2).

(4) A certificate referred to in subsection 77(2) shall be given to the person who brought the matter before the Board, or in the case of a dispute, to each party to the dispute.

(5) A person who has made a complaint, or in respect of whom a complaint has been made, is entitled to appear personally in respect of the complaint, or, where the person is a body corporate, by a director, secretary or agent of the body corporate, but is not entitled to be represented by a legal practitioner.

(6) Subsection 77(5) does not prevent —

- (a) a person from appearing personally where the person is a legal practitioner; or
- (b) a person that is a body corporate from appearing by a director or secretary of the body corporate who is a legal practitioner.

(7) No person shall receive a fee or reward for representing a party to a complaint.

Penalty: 10 penalty units.

(8) The Board shall make no order as to costs.

*Division 2 — Adjudication***Employment Tribunal**

78. (1) The Court of Petty Sessions has jurisdiction under this Act to exercise and perform the powers, duties, functions and authorities conferred or imposed on it by this Act.

(2) In relation to the exercise of the jurisdiction conferred by subsection 78(1) —

- (a) the Court of Petty Sessions shall be referred to as the Employment Tribunal; and
- (b) the Clerk of the Court of Petty Sessions shall be referred to as the Secretary to the Employment Tribunal.

Constitution of Tribunal

79. (1) Subject to this section, the Tribunal shall be constituted by any 3 of its members to deal with a matter before it.

(2) Where the Chief Magistrate has given a direction about the constitution of the Tribunal in relation to a specified matter or class of matters, or in relation to all matters, before it, the Tribunal shall be constituted, subject to subsections 79(3) and 79(4) and section 80, in accordance with the direction.

(3) The Chief Magistrate shall not direct that the Tribunal shall be constituted by other than 3 members.

(4) One or more professional Magistrates shall be included in the members by whom the Tribunal is constituted if the matter in issue before the Tribunal amounts to or is of the value of a sum of money exceeding the sum referred to in section 107 of the *Court of Petty Sessions Act 1960* as in force for the time being.

Disclosure of interest

80. (1) A member of the Tribunal who has a direct or indirect interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Tribunal, shall, as soon as possible after the relevant facts have come to the attention of the member, disclose the nature of the interest to the Tribunal.

(2) A disclosure under subsection 80(1) shall be recorded in the records of the Tribunal and the member shall not be present during a deliberation or decision of the Tribunal in relation to the matter.

(3) In subsection 80(1), “interest” includes the holding of a position by a member of the Tribunal as an officer (whether or not a shareholder) of a body corporate that has an interest in a contract the subject of proceedings before the Tribunal.

Meetings of Tribunal

81. (1) The Tribunal shall meet at such times as are necessary for the exercise of its powers and performance of its functions.

(2) At a meeting of the Tribunal, the Tribunal, subject to this Act, shall determine the procedure to be followed at and in connection with the meeting.

Proceedings before Tribunal

82. (1) A person to whom a certificate referred to in subsection 77(4) has been given who remains aggrieved by the subject-matter of the complaint to which the certificate relates, or who is aggrieved by the result of conciliation before the Board in relation to the complaint, may, within 7 days after the certificate has been given to the person, apply in writing to the Tribunal for an inquiry into the matter.

(2) An application under subsection 82(1) shall be —

- (a) made to the Secretary; and
- (b) accompanied by a copy of the certificate.

(3) The Secretary shall, as soon as practicable after receipt of an application and certificate under subsection 82(2), inform a member of the Tribunal who shall promptly convene a meeting for the purpose of inquiring into the application.

(4) The Tribunal —

- (a) shall give to a person to whom a certificate has been given in accordance with subsection 77(4) in relation to a matter the subject of an application notice in such manner as the Tribunal determines of the time and place at which it intends to hold the inquiry and of the subject-matter of the inquiry; and
- (b) shall give to that person a reasonable opportunity of making representations to the Tribunal.

(5) For the purposes of subsection 82(4), a person who is informed of the contents of a certificate referred to in subsection 77(4) shall be taken to have been given sufficient notice of the subject-matter of an inquiry which relates to the matter in respect of which the certificate was issued.

(6) Where a person to whom notice has been given under paragraph 82(4)(a) fails to attend at the time and place specified for the inquiry, the Tribunal may proceed in the absence of that party.

(7) A person referred to in subsection 82(4) —

- (a) is entitled to appear personally or, where the person is a body corporate, by a director, secretary or agent of the body corporate; and
- (b) subject to subsection 82(7A), may be represented by a legal practitioner who is entitled to practise in the Court of Petty Sessions.

(7A) Where the matter in issue before the Tribunal amounts to or is of the value of a sum of money that is less than \$1000, a person referred to in subsection 82(4) is not entitled to be represented by a legal practitioner.

(8) Subsection 82(7A) does not prevent —

- (a) a person from appearing personally where the person is a legal practitioner; or
- (b) a person that is a body corporate from appearing by a director or secretary of the body corporate who is a legal practitioner.

(9) No person shall receive a fee or reward for representing a party to an inquiry.

Penalty: 10 penalty units.

(9A) Subsection 82(9) does not apply to a legal practitioner in respect of representation by the practitioner in accordance with this section of a person referred to in subsection 82(4).

(10) The Tribunal shall make no order as to costs.

Meetings of Tribunal usually to be held in public

82A. (1) Subject to this section, proceedings before the Tribunal shall be heard and determined in a place to which members of the public have access, and any person is entitled, so far as is practicable, to be present during the proceedings.

(2) A person is not entitled to be present during the private deliberations of members of the Tribunal about proceedings heard, or to be heard or determined, in accordance with subsection 82A(1).

(3) Subject to subsection 82A(4), the Tribunal may order —

- (a) that a person or class of persons shall not be present during proceedings before the Tribunal;
- (b) that all or a specified part of the evidence or other information given or to be given in proceedings before the Tribunal shall not be published or reported, or may only be published or reported subject to conditions (including conditions as to the time of publication) specified by the Tribunal; or
- (c) that the name of a party to proceedings before the Tribunal, or of a person giving or intending to give evidence or information in proceedings before the Tribunal, shall not be published or reported.

(4) The Tribunal shall not make an order under subsection 82A(3) unless it is satisfied that —

- (a) the making of the order is desirable in the interests of justice; or
- (b) unless the order is made, the administration of justice is likely to be prejudiced.

(5) A person shall comply with an order made under subsection 82A(3).

Penalty: 10 penalty units.

(6) A reference in this section to the publishing or reporting of the name of a person includes a reference to publishing or reporting a reference or allusion to the person so as to disclose the identity of the person.

Application of rules of evidence, etc

83. For the purposes of an inquiry, the Tribunal —

- (a) is not bound by rules of evidence and may inform itself in such manner as it thinks fit;
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
- (c) may give directions relating to procedure that, in its opinion, will reduce delay and assist to achieve a prompt hearing of the matter at issue.

Evidence

84. (1) The Tribunal may, for the purposes of this Act —

- (a) receive evidence on oath or affirmation; and
- (b) receive documents in evidence.

(1A) Evidence or documents in evidence may be received by the Tribunal in a form, or by means, determined by the Tribunal.

(1B) Without limiting the generality of subsection 84(1A) —

- (a) the Tribunal may, if it so determines, receive evidence by telephone, or documents in evidence by facsimile transmission; and
- (b) if a proposed witness is not physically present before the Tribunal, the Tribunal may make such arrangements as it thinks fit for the administration to the proposed witness of an oath or the making by the proposed witness of an affirmation.

(2) The Tribunal may, by notice in writing served on a person, summon the person to appear before the Tribunal and may require the person to produce to the Tribunal documents specified in the notice.

(3) A person summoned under subsection 84(2) shall not, without lawful excuse, fail to appear or produce documents as required by the notice.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

(4) A person, whether summoned or not, who appears before the Tribunal shall not, without lawful excuse —

- (a) refuse to be sworn, or to make an affirmation, as a witness;
- (b) fail to answer a question that the person is lawfully required to answer; or
- (c) fail to produce a document that the person is lawfully required to produce.

Penalty for an offence

against this subsection: 10 penalty units or imprisonment for 6 months, or both.

Tribunal may make orders

85. (1) After determining a matter in proceedings before it, the Tribunal —

- (a) shall promptly advise in writing a person referred to in subsection 82(4) of its determination; and
- (b) may make or refuse to make an order in accordance with this section.

(2) Subject to section 62, the Tribunal may make an order requiring a person —

- (a) to do an act required by this Act to be done;
- (b) to refrain from doing an act prohibited by this Act;
- (c) to comply with a written contract entered into in pursuance of section 10; or
- (d) to pay money required to be paid by this Act or a contract referred to in paragraph 85(2)(c).

- (3) In addition to any other power conferred by this Act, the Tribunal —
- (a) subject to section 62, may make in relation to an application an order the terms of which have been consented to by the person who made the application and by each person proposed to be bound by the order; and
 - (b) may dismiss an application where the person who made the application notifies the Tribunal in writing that the application is withdrawn.
- (4) Subject to subsection 82(6), the Tribunal shall not make an order under subsection 85(2) unless it has given the person to whom the order is proposed to be directed a reasonable opportunity of making representations to the Tribunal.
- (5) Subject to subsection 85(7), a person to whom notice of an inquiry has been given in accordance with subsection 82(4) may request the Tribunal to give reasons for a determination or order of the Tribunal in relation to the subject-matter of the inquiry, and the Tribunal shall, within 7 days after receipt of the request, give to the person in writing the reasons for the determination or order.
- (6) Subject to subsection 85(8), the Tribunal has no jurisdiction to deal with an application to inquire into a complaint where the subject matter of the complaint, in the opinion of the Tribunal, amounts to an allegation that a person committed an offence under this Act.
- (7) Where the Tribunal declines jurisdiction in accordance with subsection 85(6), the Tribunal shall, as soon as practicable and in any case within 7 days after declining, give reasons for the determination that the Tribunal has no jurisdiction.
- (8) The Tribunal has jurisdiction to deal with an application to inquire into a complaint that an employer has contravened section 22 by conduct prohibited by section 106.
- (9) Where the Tribunal is satisfied that an employer has contravened section 22, whether or not by conduct prohibited by section 106, the Tribunal may, in addition to making an order under subsection 85(2) (including an order to pay money), order the employer to pay the employee for work performed as a result of the contravention at a rate of pay not less than twice the rate that would have been applicable during the employee's working week.
- (10) The making of an order under subsection 85(9) does not prevent the prosecution of a person for an offence, whether or not the order was made in consequence of conduct prohibited by section 106.
- (11) When making an order or determination under this section, the Tribunal shall, orally or in writing, inform a person to whom notice of the inquiry has been given in accordance with subsection 82(4) of the effect of sections 91 and 92.
- (12) Failure by the Tribunal to comply with subsection 85(11) does not affect the operation or validity of an order or determination made by the Tribunal under this section.

Compliance with orders

86. (1) Where the Tribunal makes an order under section 85, the person to whom the order is directed shall comply with the order.

(2) Where the Tribunal makes an order under paragraph 85(2)(d) or subsection 85(9), the person to whom the order is directed shall, within 7 days after a copy of the order has been given to the person, pay the money to the person specified in the order.

Penalty: 40 penalty units.

Dismissal of frivolous applications

87. Where, at any stage of an inquiry, the Tribunal is satisfied that an application is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the application should not be entertained, the Tribunal may dismiss the application.

Referral for further conciliation

88. (1) Where, at any stage of an inquiry, the Tribunal is satisfied that further conciliation before the Board is likely to result in an amicable settlement of the complaint that is the subject of the inquiry, the Tribunal may make an order requiring the persons to whom a certificate has been given under subsection 77(4) in relation to the complaint to enter into further conciliation before the Board in respect of the subject-matter of the complaint.

(2) Where the Tribunal makes an order under subsection 88(1), the Tribunal shall not continue the inquiry to which the order relates unless it is satisfied that further conciliation before the Board is unlikely to result in an amicable settlement of the complaint that is the subject of the inquiry.

Reports

89. (1) The Tribunal shall, when it sees fit but not less frequently than annually, prepare and furnish to the Minister a report on the operations of the Tribunal during the period since the last such report was furnished.

(2) The Minister shall cause a copy or a summary of a report referred to in subsection 89(1) to be laid before the Legislative Assembly as soon as practicable after its receipt by the Minister.

No liability for acts in good faith, etc

90. No action shall lie against the Minister, the Administration, the Board, a member of the Board, a person appointed under subsection 66(1), the Tribunal, a member of the Tribunal or the Secretary for anything done or omitted in good faith and without malice in the exercise or purported exercise of a power or function under this Act.

*Division 3 — Review***Appeal to Supreme Court**

91. (1) A person referred to in subsection 82(4) who is aggrieved by a determination or order of the Tribunal may, not later than 14 days after a copy of the determination or order has been given to the person, institute an appeal to the Supreme Court from the determination or order.

(2) An appeal shall be instituted by the appellant filing a notice of appeal in the office of the Registrar of the Supreme Court together with a copy of the determination or order that is appealed from.

(3) As soon as practicable after a person has instituted an appeal, the person shall serve a copy of the notice of appeal on each other person who was a party to the proceedings before the Tribunal out of which the appeal arose.

(4) The Supreme Court may, subject to such conditions (if any) as it thinks fit, dispense with the requirement for service of a copy of a notice of appeal in accordance with subsection 91(3) if it considers that it is necessary or expedient to do so, or if it appears that personal service cannot be effected, or may make an order for such substituted or other service as the Court thinks fit.

Jurisdiction on appeal

92. (1) Subject to subsection 92(2), the Supreme Court has general jurisdiction to hear and determine an appeal on any question, whether of fact or law, relating to the determination or order of the Tribunal that is appealed from.

(2) Where the matter in issue in an appeal amounts to or is of the value of \$2500 or less, the Supreme Court does not have jurisdiction to hear and determine the appeal except on a question of law.

Powers of Supreme Court on appeal

93. (1) Subject to section 92, the Supreme Court may, on an appeal —

- (a) affirm, reverse or vary the determination or order appealed from;
- (b) give such judgment, or make such order, as in all the circumstances it thinks fit, or refuse to do so; or
- (c) set aside all or a part of the determination or order appealed from and remit the proceedings to the Tribunal for further hearing or determination, subject to such directions (if any) as the Court thinks fit.

(2) A judgment or order under subsection 93(1) has effect as if it were a determination or order of the Tribunal and may be enforced accordingly.

Effect of appeal on determination or order of Tribunal

94. (1) Subject to this section, the institution of an appeal under section 91 does not affect the operation of the determination or order of the Tribunal out of which the appeal arose, and does not prevent the taking of action to implement the determination or order.

(2) The Tribunal or Supreme Court may make an order staying or otherwise affecting the operation or implementation of a determination or order referred to in subsection 94(1) if the Tribunal or Court, as the case may be, considers it appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of an appeal instituted under section 91.

(3) An order under subsection 94(2) may be made on such conditions, if any, as the Tribunal or Court, as the case may be, thinks fit, including conditions relating to the giving of security for the prosecution of the appeal.

PART 6 — MISCELLANEOUS

Delegation

95. (1) The Minister may, by instrument in writing, delegate to a person any of the powers and functions of the Minister under this Act, other than this power of delegation.

(2) A power or function delegated under subsection 95(1) when exercised or performed by the delegate shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.

(3) A delegation under subsection 95(1) does not prevent the exercise of a power or the performance of a function by the Minister.

No appropriation necessary

96. Notwithstanding any enactment, the Minister is authorised by this section to expend moneys of the Public Account payable by the Administration under this Act.

Agents

97. (1) An employee may, in writing signed by the employee, appoint a person to be the agent of the employee for the purposes of this Act.

(2) A receipt given to an employer by an agent of an employee is a sufficient discharge of the employer in respect of liability under this Act to pay to the employee the amount specified in the receipt.

Mode of service

98. (1) Subject to this section, where this Act requires or allows a document to be given to or served on a person, the document shall be deemed to have been given or served at the time the document was handed to the person or drawn to the person's attention.

(2) The Regulations may prescribe that documents shall be deemed to have been given to or served on a person on compliance with a procedure, or at a time, specified in the Regulations.

(3) The Regulations may make different provision in relation to —

- (a) documents of a particular kind; or
- (b) recipients of a particular class.

Privacy of Board and Tribunal meetings protected

99. (1) At a meeting of the Board, the Board may make an order prohibiting disclosure of information with respect to the proceedings, or a specified part of the proceedings, of the meeting.

(2) A person shall not, directly or indirectly, make a record of, or divulge or communicate to another person, information with respect to proceedings that are the subject of an order under subsection 99(1).

Penalty: 10 penalty units.

(3) Subsection 99(2) does not apply to a record or communication made in the exercise of powers or the performance of functions under or in relation to this Act, or in respect of which a person is under a legal duty to disclose information.

Tribunal and Board members, etc, to respect privacy

- 100. (1)** A person to whom this section applies shall not, directly or indirectly —
- (a) except in the exercise of the powers or the performance of the functions of the person under or in relation to this Act; and
 - (b) while the person is, or after the person ceases to be, a person to whom this section applies,

make a record of, or divulge or communicate to a person other than a person to whom it is the person's duty to disclose it, any information with respect to —

- (c) the affairs of another person; or
- (d) statements made by, or in relation to, another person,

acquired by the first-mentioned person as a person to whom this section applies.

Penalty: 10 penalty units.

(2) The persons to whom this section applies are the Minister, a member of the Board, a person appointed under subsection 66(1), the Secretary and a member of the Tribunal.

Proceedings before Board not to be used for the purpose of Tribunal or Court proceedings

101. (1) Notwithstanding anything in this Act, nothing said or done in proceedings before the Board under this Act —

- (a) is admissible in evidence; or
- (b) shall be taken into account,

in proceedings under this Act before the Tribunal or Supreme Court.

(2) Subsection 101(1) does not apply to the contents of a certificate issued under subsection 77(2).

(3) A reference in subsection 104(1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and to the person's reasons for the person's intention, opinion, belief or purpose.

Prosecutions for offences

105. Notwithstanding any enactment, proceedings for an offence against this Act may be commenced at any time within 3 years after the commission of the offence.

Victimisation prohibited

106. (1) An employer shall not —

- (a) dismiss an employee;
- (b) alter an employee's position to the employee's prejudice; or
- (c) threaten to do an act referred to in paragraph 106(1)(a) or 106(1)(b),

by reason of the fact that the employee —

- (d) has refused, or proposes to refuse, to work for the employer in accordance with section 22;

....

- (f) has made, or proposes to make, an application or complaint under this Act;
- (g) has commenced or continued, or proposes to commence or continue, any proceedings under, or in relation to, this Act; or
- (h) has given evidence or provided information in relation to an application or proceeding by another person under, or in relation to, this Act.

Penalty: 40 penalty units.

(2) An employer shall not —

- (a) dismiss an employee;
- (b) alter an employee's position to the employee's prejudice; or
- (c) threaten to do an act referred to in paragraph 106(2)(a) or 106(2)(b),

by reason of the fact that the employee is, or proposes to become, an officer, delegate or member of an organisation, whether or not a body corporate, for furthering or protecting the interests of employees generally or a class of employees.

Penalty: 10 penalty units.

(3) An employee shall not cease work or threaten to cease work for an employer by reason of the fact that the employer is, or proposes to become, an officer, delegate or member of an organisation, whether or not a body corporate, for furthering or protecting the interests of employers generally or a class of employers.

Penalty: 10 penalty units.

(4) In proceedings for an offence against this section, if all the relevant facts and circumstances, other than the reason set out in the charge as being the reason of an action alleged in the charge, are proved, it lies upon the person charged to prove that the action was not actuated by that reason.

....

Regulations

108. (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection 108(1), the Regulations may prescribe —

- (a) the hours or number of hours in a day, and the days or number of days in a week, that constitute a working week in relation to —
 - (i) an employee or class of employee; or
 - (ii) employment of a particular kind; and
- (b) forms for the purposes of this Act; and
- (c) fees for any matter under this Act; and
- (d) penalties not exceeding 10 penalty units for a contravention or breach of the Regulations; and

.....

(3) Regulations for the purpose of section 14 may provide—

- (a) that the minimum rate be determined as an amount payable as an hourly rate or in respect of a working week, or both.
- (b) that the minimum rate remain unchanged or be increased (but not reduced) annually in accordance with—
 - (i) the determination of an independent authority; or
 - (ii) a prescribed methodology having reference to matters other than only the RPI.
- (c) that if a determination of the minimum rate is to be effected by an independent authority, the authority must conduct an annual review and determination having regard to—
 - (i) variations in the RPI; and
 - (ii) a prescribed methodology; and
 - (iii) submissions from interested parties; and
 - (iv) the prevailing social and economic circumstances of Norfolk Island; and
 - (v) such other relevant matters as may be prescribed.

SCHEDULE

Section 32

ASSESSMENT OF LOSS OF AMENITIES AND OF ENJOYMENT OF LIFE BECAUSE OF PERMANENT LOSS OR IMPAIRMENT OF FUNCTION

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
	Loss of part of body	
1.	Total loss of an arm or the greater part of an arm	80
2.	Total loss of a hand or of the lower part of an arm	70
3.	Total loss of a thumb	28
	Total loss of one segment of a thumb	14
	Loss of the pulp of a thumb	8
4.	Total loss of an index finger	14
	Total loss of 2 segments of an index finger	12
	Total loss of one segment of an index finger	8
	Loss of the pulp of an index finger	4
5.	Total loss of the middle finger	12
	Total loss of 2 segments of a middle finger	10
	Total loss of one segment of a middle finger	8
	Loss of the pulp of a middle finger	3
6.	Total loss of a ring or small finger	8
	Total loss of 2 segments of a ring or small finger	6
	Total loss of one segment of a ring or small finger	4
	Loss of the pulp of a ring or small finger	2
7.	Total loss of all fingers, thumb intact (treat as 90% of loss of a hand)	63

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
8.	Total loss of a leg	75
	Total loss of a foot or of the lower part of a leg	60
9.	Total loss of a great toe	10
	Loss of one segment of a great toe	5
10.	Total loss of a lesser toe	2.5
11.	Total loss of both legs by above-knee or below knee amputation	100
12.	Loss of both arms, above-elbow or below-elbow amputation	100
13.	When applying the foregoing provisions of this Schedule for the purpose of assessing permanent loss or impairment of function affecting the hand and its digits, if multiple digits are involved regard shall be had to the summation of individual losses specified in this Schedule and also to permanent loss or impairment of function affecting the hand or lower arm as a whole as a gripping organ	
	Complete loss of finger/palm grip in all its components shall be treated for the purposes of this Schedule as constituting 60% loss of function of the hand, and complete loss of opposition or pincers grip shall be treated for the purposes of this Schedule as constituting 40% loss of function of the hand, these figures to be apportioned into four equal parts for the individual digits.	
	Example: Finger/Palm Grip — Index Middle Ring Little finger 15% 15% 15% 15% loss of function of hand, equalling altogether 60% of loss of function of hand.	
	Opposition or Pincers Grip — Index Middle Ring Little finger 10% 10% 10% 10% loss of function of hand, equalling altogether 40% of loss of function of hand.	
	The higher figure arrived at after assessment by both these methods shall be the figure to which regard shall be had for the purposes of this Schedule.	

Item	Nature of permanent loss or impairment of bodily function		Percentage loss or impairment
14.	If in the case of injury to a limb or part of a limb it is considered desirable in order to obtain the best functional result that the limb or portion of the limb be amputated at a more proximal level than the part injured, the disability shall be assessed as if the injury itself had necessitated the amputation at the more proximal level.		
	Assessment of arthrodeses		
15.	The following figures are to be used for a sound arthrodesis in the position of optimum function, partial joint stiffnesses to be proportionally assessed.		
16.	Shoulder	Treat as 35% loss of function of the arm	28
17.	Elbow	Treat as 40% loss of function of the arm	32
18.	Wrist	Treat as 30% loss of function of the lower arm	21
19.	Hip	Treat as 50% loss of function of the leg	37.5
20.	Knee	Treat as 40% loss of function of the leg	30

Item	Nature of permanent loss or impairment of bodily function		Percentage loss or impairment
21.	Ankle	Treat as 35% loss of function of the lower leg	21
22.	Triple (foot arthrodesis)	Treat as 30% loss of function of the lower leg	18
	Assessment of shortening		
23.	Up to 12.5mm	Treat as 5% loss of function of the leg	3.75
24.	Exceeding 12.5mm but not exceeding 37.5 mm	Treat as 10% loss of function of the leg	7.5
25.	Exceeding 25mm but not exceeding 37.5 mm	Treat as 15% loss of function of the leg	11.25
26.	Exceeding 37.5mm but not exceeding 50 mm	Treat as 20% loss of function of the leg	15
27.	Patellectomy		
	Where there is full extension of the knee and full flexion in the knee with minimal quadriceps thigh muscle wasting, treat as 15% loss of function of the leg, this figure to be varied in less successful results related to residual joint stiffness		11.25
28.	Excision of head of radius		
	Where full elbow extension and flexion movement is regained with full forearm rotation movement in either direction, treat as 15% loss of function of the arm, this basic figure to be varied in less successful cases related to residual joint stiffness		12
29.	Excision of lower end of ulna forearm bone		
	Where full forearm rotation movements are preserved and the wrist is normal, treat as 10% loss of function of the lower arm, this figure to be varied in less successful cases related to residual joint stiffness		7

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
30.	Ligamentous injuries of the knee joint with residual instability and including quadriceps insufficiency with comparable instability	
	Moderate laxity Treat as 15% loss of function of the leg	11.25
31.	Multiple disabilities	
	If the disability affects more than one limb the assessment shall be made by summing the figures, but if the disabilities involve one limb the method of progressive extraction of losses, ie, regarding the limb as a whole, shall be used	
32.	Spinal disability and other disabilities Cervical spine (a) Persistent muscle spasm, rigidity, and pain substantiated by loss of anterior curve revealed by X-ray, although no demonstrable structural pathology, moderate referred shoulder/arm pain	10
	(b) In cases similar to those mentioned in paragraph 32(a), but with gross degenerative changes consisting of narrowing of intervertebral spaces and oosteoarthritic lipping of vertebral margins	20
33.	Thoracic spine (a) Spinal strain related to trauma with persistent discomfort moderate degenerative changes with osteoarthritic lipping, no X-ray evidence of structural trauma	10
	(b) Fracture (i) Compression 25% involving 1 or 2 vertebral bodies, no fragmentation, healed, no neurologic manifestations	: 10
	(ii) Compression 50% with involvement posterior elements, healed, no neurologic manifestations, persistent pain	20

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
34.	Lumbar spine	
	(a) Mild to moderate persistent muscle spasm with pain, with moderate degenerative lipping revealed by X-ray	10
	(b) Fracture:	
	(i) Vertebral compression 25%, 1 or 2 adjacent vertebral bodies, little or no fragmentation, no definite pattern or neurologic changes	15
	(ii) Vertebral compression 50%, 1 or 2 adjacent vertebral bodies, little or no fragmentation, no definite pattern or neurologic changes	20
	(iii) In cases similar to those mentioned in subparagraph 34(b)(ii), but with successful fusion, mild pain	25
35.	Neurogenic low back pain - disc injury	
	(a) Surgical excision of disc, no fusion, good result, no persistent sciatic pain	10
	(b) Surgical excision of disc, no fusion, moderate persistent pain and stiffness aggravated by heavy lifting with necessary modification of activities	20
	(c) Surgical excision of disc with fusion, activities of lifting moderately modified	15
	(d) Surgical excision of disc with fusion, persistent pain and stiffness aggravated by heavy lifting necessitating modification of all activities requiring heavy lifting	25
36.	Tetraplegia and paraplegia	100
37.	Blindness	
	(a) Total blindness	100
	(b) Total loss of vision in one eye (normal vision in the other eye)	30

Item	Nature of permanent loss or impairment of bodily function	Percentage loss or impairment
38.	Deafness	
	(a) Total deafness	100
	(b) Total deafness in one ear (normal hearing in other ear)	17
39	Where an appliance or aid is fitted, assess residual deafness	
40.	Total loss of natural permanent teeth	
	(a) Anterior teeth	
	Loss of 1, 2, or 3 teeth	4
	Loss of 4, 5, or 6 teeth	5
	Loss of 7 to 12 teeth	6
	(b) Posterior teeth	
	Loss of 1 tooth	1
	Loss of 2 to 5 teeth	2
	Loss of 6 to 16 teeth	4
41.	Where there are subjective symptoms of pain without demonstrable clinical findings of abnormality or demonstrable structural pathology, no assessment should be made under this Schedule.	

NOTES

The *Employment Act 1988* as shown in this consolidation comprises Act No. 27 of 1988 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Employment Act 1988</i>	27, 1988	Parts 1, 5, 6 1.7.91	
		Parts 2, 4 1.9.91	
		Part 3, Schedule - 1.11.91	
<i>Employment Amendment Act 1988</i>	30, 1988	1.7.91	
[Previously reprinted as at 1 July 1991 incorporating amending Act listed above]			
<i>Employment Amendment Act 1993</i>	4, 1994	14.3.94	
<i>Employment Amendment Act 1995</i>	12, 1995	30.6.95	
<i>Statute Law (Miscellaneous Provisions) Act 1995</i>	13, 1995	27.7.95	
<i>Employment Amendment Act 1996</i>	8, 1996	20.6.96	
<i>Employment (Public Holidays) Amendment Act 2001</i>	12, 2001	5.10.01	
<i>Employment Amendment Act 2000</i>	3, 2000	8.8.03	
<i>Employment Amendment (No. 2) Act 2000</i>	4, 2000	8.8.03	
<i>Employment Amendment (No. 2) Act 2001</i>	17, 2003	8.8.03	
<i>Employment Amendment Act 2003</i>	7, 2004	14.5.04	
[Previously consolidated as at 14 May 2004]			
<i>Employment (Amendment) Act 2011</i>	9, 2011	19.8.11	
[Previously consolidated as at 20 August 2011]			
<i>Employment (Amendment No. 2) Act 2011</i>	2, 2012	5.4.12	

Enactment	Number and year	Date of commencement	Application saving or transitional provision
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[Previously consolidated as at 10 April 2012]

Interpretation (Amendment) Act 2012 14, 2012 28.12.12
[to substitute throughout —
Commonwealth Minister for Minister;
and to substitute Minister for executive
member]

Table of Amendments

ad = added or am = amended rep = repealed rs = repealed and
 inserted substituted

Provisions affected	How affected
4	am 30, 1988; 3, 2000
9	am 13, 1995
9(1)(k)	am 13, 1995
9(2)	rs 3, 2000
9(3)	rep 3, 2000
10	rs 3, 2000
11	rs 3, 2000
	am 17, 2003
11(3), 11(4), 11(5)	ad 17, 2003
12	rs 3, 2000
13	rs 3, 2000; 4, 2000
14	rs 3, 2000; 17, 2003; 2, 2012
15	rs 3, 2000
15(2)	am 17, 2003
16	rs 3, 2000
17	rs 3, 2000
18	rs 3, 2000
18(2)	rs 4, 1994
18A	ad 7, 2004
19	rs 3, 2000
20	rs 3, 2000
21	rs 3, 2000
22	rs 3, 2000
23	rs 3, 2000
	am 7, 2004; 17, 2003
24	rep 8, 1996
	rs 3, 2000
	am 7, 2004
25	rs 3, 2000
26	am 3, 2000; 9, 2011
28	am 9, 2011
30	am 8, 1996; 9, 2011
32	am 30, 1988; 8, 1996
37(3)(f)	ad 8, 1996
37A	ad 9, 2011
38(2)	rep 8, 1996
39	am 8, 1996
39A	ad 9, 2011
40	am 8, 1996
45	am 9, 2011
45A	ad 9, 2011
47	am 30, 1988

ad = added or am = amended rep = repealed rs = repealed and
inserted substituted

Provisions affected	How affected
48	am 9, 2011
49	am 8, 1996; 9, 2011
49A	ad 8, 1996
49B	ad 8, 1996
53	am 30, 1988
54	am 8, 1996
55	am 9, 2011
56	am 30, 1988; 8, 1996
65(4)(a)	am 30, 1988
65(4)(b)	rep 30, 1988
76	am 9, 2011
78,	rs 30, 1988
79	rs 30, 1988
81	am 30, 1988
82	am 30, 1988
82A	ad 30, 1988
84	am 30, 1988
85	am 30, 1988; 3, 2000
86	am 30, 1988
91-94	rs 30, 1988
99	am 30, 1988
101	am 30, 1988
106	am 3, 2000
106(1)(e)	rep 3, 2000
107	rep 12, 1995
	rep 3, 2000
108	am 12, 1995
108(2)(e)	ad 12, 1995
	rep 2, 2012
108(3)	ad 2, 2012

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