



Fair Entitlements Guarantee (Norfolk Island) Rule 2016

I, Michaelia Cash, Minister for Employment, make the following rule.

Dated 29 June 2016

Michaelia Cash
Minister for Employment

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1 Name

This is the *Fair Entitlements Guarantee (Norfolk Island) Rule 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2016.	1 July 2016

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under section 9A of the *Fair Entitlements Guarantee Act 2012*.

4 Prescribed modifications of Fair Entitlements Guarantee legislation for application in relation to Norfolk Island

For the application of the *Fair Entitlements Guarantee Act 2012* and the *Fair Entitlements Guarantee Regulation 2012* in relation to Norfolk Island, the modifications of that Act and regulation set out in the applicable items of the Schedules to this instrument are prescribed.

Schedule 1—Modifications of the Fair Entitlements Guarantee Act 2012 relating to Norfolk Island

Fair Entitlements Guarantee Act 2012

1 Section 5 (definition of *bankruptcy trustee*)

After “*Bankruptcy Act 1966*”, insert “or the *Bankruptcy Act 2006* (Norfolk Island)”.

2 Section 5 (at the end of paragraph (a) of the definition of *cost*)

Add:

- (iii) if the winding up of the employer is under the *Companies Act 1985* (Norfolk Island)—an expense or amount that would be covered by subparagraph (i) or (ii) if the winding up were instead under the *Corporations Act 2001* and Norfolk Island were included for all purposes in the area covered by the definition of *this jurisdiction* in section 9 of that Act; or

3 Section 5 (at the end of paragraph (b) of the definition of *cost*)

Add:

- ; or (iii) if the bankruptcy of the employer is under the *Bankruptcy Act 2006* (Norfolk Island)—an expense or amount that would be covered by subparagraph (i) or (ii) if the bankruptcy were instead under the *Bankruptcy Act 1966* and that Act extended to Norfolk Island.

4 Section 5 (paragraph (a) of the definition of *insolvency event*)

After “*Corporations Act 2001*”, insert “or the *Companies Act 1985* (Norfolk Island)”.

5 Section 5 (paragraph (b) of the definition of *insolvency event*)

After “*Bankruptcy Act 1966*”, insert “or the *Bankruptcy Act 2006* (Norfolk Island)”.

6 Section 5 (at the end of the definition of *liquidator*)

Add “or the *Companies Act 1985* (Norfolk Island)”.

7 Paragraph 10(1)(b)

Repeal the paragraph, substitute:

- (b) either:
 - (i) after 4 December 2012, an insolvency event happened to the employer because of an event occurring under the *Corporations Act 2001* or the *Bankruptcy Act 1966*; or
 - (ii) after 30 June 2016, an insolvency event happened to the employer because of an event occurring under the *Companies Act 1985* (Norfolk Island) or the *Bankruptcy Act 2006* (Norfolk Island);

8 After paragraph 10(1)(c)

Insert:

- (ca) the end of the employment occurred:
 - (i) at any time, if subparagraph (b)(i) applies; or
 - (ii) after 30 June 2016, if subparagraph (b)(ii) applies;

9 After subsection 11(1)

Insert:

- (1A) A person is not eligible for an advance for the person's employment by an employer if:
- (a) the winding up of the employer is under the *Companies Act 1985* (Norfolk Island); and
 - (b) under subsection (1), the person would not be eligible, assuming that:
 - (i) the winding up were under the *Corporations Act 2001*; and
 - (ii) Norfolk Island were included for all purposes in the area covered by the definition of **this jurisdiction** in section 9 of that Act; and
 - (iii) events relating to the winding up occurred for the purposes of that Act when corresponding events occurred for the purposes of the *Companies Act 1985* (Norfolk Island).

10 After subsection 11(2)

Insert:

- (2A) A person is not eligible for an advance for the person's employment by an employer who is or was a bankrupt under the *Bankruptcy Act 2006* (Norfolk Island) if:
- (a) the person is a relative (as defined in the *Corporations Act 2001*) of the employer; or
 - (b) the person was a spouse or de facto partner (within the meaning of the *Acts Interpretation Act 1901*) of the employer at any time within the 12 months ending when the employer was determined to be a bankrupt under the *Bankruptcy Act 2006* (Norfolk Island).

11 Subsection 11(3)

After "subsection (1)", insert "or (1A)".

12 Subsection 11(3)

After "subsection (2)", insert "or (2A)".

13 Paragraph 19(1)(b)

After "(3)", insert "(as affected by subsection (4) or (5), if relevant)".

14 At the end of section 19

Add:

- (4) If the person's employer is wound up under the *Companies Act 1985* (Norfolk Island), subsection (3) has effect as if the reference in that subsection to amounts that are not payable under the *Corporations Act 2001* in the winding up of the person's employer were a reference to amounts that would not be payable under the *Corporations Act 2001* if:
- (a) the winding up of person's employer were under that Act instead of the *Companies Act 1985* (Norfolk Island); and
 - (b) Norfolk Island were included for all purposes in the area covered by the definition of **this jurisdiction** in section 9 of the *Corporations Act 2001*.

(5) If the person's employer is or was bankrupt under the *Bankruptcy Act 2006* (Norfolk Island), subsection (3) has effect as if the reference in that subsection to amounts that are not payable under the *Bankruptcy Act 1966* were a reference to amounts that would not be payable under the *Bankruptcy Act 1966* if:

- (a) the employer's bankruptcy were under the *Bankruptcy Act 1966* instead of the *Bankruptcy Act 2006* (Norfolk Island); and
- (b) the *Bankruptcy Act 1966* extended to Norfolk Island.

15 Section 29

Before "For the purposes", insert "(1)".

16 At the end of section 29

Add:

(2) If a payment of an advance for a person's employment by an employer is made under section 28 of this Act to the employer's liquidator appointed under the *Companies Act 1985* (Norfolk Island):

- (a) subsection (1) of this section, except paragraph (c) of that subsection, applies as if references in that section to section 560 of the *Corporations Act 2001* were references to section 548 of the *Companies Act 1985* (Norfolk Island); and
- (b) paragraph (1)(c) of this section does not apply.

17 Section 30

After "the bankruptcy trustee", insert "(under that Act)".

18 Paragraph 31(3)(b)

After "section 560 of the *Corporations Act 2001*", insert ", section 548 of the *Companies Act 1985* (Norfolk Island)".

19 Section 45

After "*Bankruptcy Act 1966*", insert ", the *Companies Act 1985* (Norfolk Island), the *Bankruptcy Act 2006* (Norfolk Island)".

Schedule 2—Modifications of the Fair Entitlements Guarantee Regulation 2012 relating to Norfolk Island

Fair Entitlements Guarantee Regulation 2012

1 Subsection 9(4)

Repeal the subsection, substitute:

- (4) So far as they apply in relation to Norfolk Island, the scheme and the other matters consist of Parts 1 to 7 of the Act, modified as prescribed by Schedule 1 to the *Fair Entitlements Guarantee (Norfolk Island) Rule 2016* and in accordance with Schedule 1 to this instrument.

Note: Schedule 2 to that rule also prescribes modifications of Schedule 1 to this instrument.

- (5) For the purposes of subsection (4), disregard the modifications prescribed by Schedule 1 to the *Fair Entitlements Guarantee (Norfolk Island) Rule 2016* of sections 10, 11, 19, 29, 30, 31 and 45 of the Act.

Note: Those modifications are superseded by modifications made by Schedule 1 to this instrument, as modified by Schedule 2 to that rule.

2 Item 6 of Schedule 1 (paragraph 10(1)(b))

Repeal the paragraph, substitute:

(b) either:

- (i) after 4 December 2012, an insolvency event happened to the specified person because of an event occurring under the *Corporations Act 2001* or the *Bankruptcy Act 1966*; or
- (ii) after 30 June 2016, an insolvency event happened to the specified person because of an event occurring under the *Companies Act 1985* (Norfolk Island) or the *Bankruptcy Act 2006* (Norfolk Island);

3 Item 6 of Schedule 1 (after paragraph 10(1)(b))

Insert:

(ba) the cessation of work occurred:

- (i) at any time, if subparagraph (b)(i) applies; or
- (ii) after 30 June 2016, if subparagraph (b)(ii) applies;

4 Item 7 of Schedule 1 (after subsection 11(1))

Insert:

- (1A) A TCF contract outworker is not eligible for an advance for work done by the TCF contract outworker for a specified person that is a company that has been wound up if:

- (a) the winding up of the company was under the *Companies Act 1985* (Norfolk Island); and
- (b) under subsection (1), the outworker would not be eligible, assuming that:
- (i) the winding up were under the *Corporations Act 2001*; and

- (ii) Norfolk Island were included for all purposes in the area covered by the definition of *this jurisdiction* in section 9 of that Act; and
- (iii) events relating to the winding up occurred for the purposes of that Act when corresponding events occurred for the purposes of the *Companies Act 1985* (Norfolk Island).

5 Item 7 of Schedule 1 (after subsection 11(2))

Insert:

- (2A) A TCF contract outworker is not eligible for an advance for work done by the TCF contract outworker for a specified person who is or was a bankrupt under the *Bankruptcy Act 2006* (Norfolk Island) if the TCF contract outworker is:
 - (a) a person who has been:
 - (i) at any time during the period of 12 months ending on the relevant date; or
 - (ii) at any time since the relevant date;
 - or who is, the spouse of the specified person; or
 - (b) a person who is a relative (other than a spouse) of a person of the kind referred to in paragraph (a).

6 Item 7 of Schedule 1 (subsection 11(3))

After “subsection (1)”, insert “or (1A)”.

7 Item 7 of Schedule 1 (subsection 11(3))

After “subsection (2)”, insert “or (2A)”.

8 Item 14 of Schedule 1 (paragraph 19(1)(b))

After “(3)”, insert “(as affected by subsection (4) or (5), if relevant)”.

9 Item 14 of Schedule 1 (at the end of section 19)

Add:

- (4) If the specified person is wound up under the *Companies Act 1985* (Norfolk Island), subsection (3) has effect as if the reference in that subsection to amounts that are not payable under the *Corporations Act 2001* in the winding up of the specified person were a reference to amounts that would not be payable under the *Corporations Act 2001* if:
 - (a) the winding up of the specified person were under that Act instead of the *Companies Act 1985* (Norfolk Island); and
 - (b) Norfolk Island were included for all purposes in the area covered by the definition of *this jurisdiction* in section 9 of the *Corporations Act 2001*.
- (5) If the specified person’s employer is or was bankrupt under the *Bankruptcy Act 2006* (Norfolk Island), subsection (3) has effect as if the reference in that subsection to amounts that are not payable under the *Bankruptcy Act 1966* were a reference to amounts that would not be payable under the *Bankruptcy Act 1966* if:
 - (a) the specified person’s bankruptcy were under the *Bankruptcy Act 1966* instead of the *Bankruptcy Act 2006* (Norfolk Island); and
 - (b) the *Bankruptcy Act 1966* extended to Norfolk Island.

10 Item 41 of Schedule 1 (section 45)

After “*Bankruptcy Act 1966*”, insert “, the *Companies Act 1985* (Norfolk Island), the *Bankruptcy Act 2006* (Norfolk Island)”.