

NORFOLK ISLAND

A BILL

Act 30 of 1988

for

An Act to amend the Employment Act 1988

Assent 11 Dec. 1988

BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows -

Short title

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

Commencement

2. This Act shall come into operation on a date fixed by the Administrator by notice published in the Gazette.

Principal Act

3. The Employment Act 1988 is in this Act referred to as the Principal Act.

Interpretation

4. Section 4 of the Principal Act is amended -

(a) by inserting after the definition of "Chairman" -

"'Chief Magistrate' means the Chief Magistrate of the Court of Petty Sessions holding office under the Court of Petty Sessions Ordinance 1960;"

(b) by omitting the definition of "Convenor";

(c) by omitting the definition of "Court";

(d) by omitting the definition of "Magistrate" and substituting -

"'Magistrate' means a Magistrate holding office under the Court of Petty Sessions Ordinance 1960 and includes the Chief Magistrate;"

- (e) by omitting the definition of "member of the Tribunal" and substituting -

"'member of the Tribunal' means a Magistrate;";

- (f) by inserting after the definition of "permit holder" -

"'professional Magistrate' means a Magistrate who also holds office as Chief Magistrate, Acting Chief Magistrate or a Magistrate under the Magistrates Court Ordinance 1930 of the Australian Capital Territory;"; and

- (g) by omitting the definition of "Tribunal" and substituting -

"'Tribunal' means the Court of Petty Sessions;".

Information as to compensation

5. Section 47 of the Principal Act is amended -

- (a) by omitting from subsection (2) "Penalty" and substituting "Penalty for an offence against subsection (1) or (2)"; and

- (b) by adding at the end -

" (3) A person is not excused from furnishing a report in accordance with subsection (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 (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."

Records and notifications, etc

6. Section 53 of the Principal Act is amended -

- (a) by omitting from subsection (3) "Penalty" and substituting "Penalty for an offence against subsection (1), (2) or (3)"; and

(b) by adding at the end -

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

Employment Tribunal

7. The Principal Act is amended by omitting sections 78 and 79 and substituting -

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 (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."

Meetings of Tribunal

8. Section 81 of the Principal Act is amended by omitting subsection (2) and substituting -

" (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

9. Section 82 of the Principal Act is amended -

(a) by omitting subsection (7) and substituting -

" (7) A person referred to in subsection (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 (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 (4) is not entitled to be represented by a legal practitioner.";

- (b) by omitting from subsection (8) "Subsection (7)" and substituting "Subsection (7A)";

- (c) by inserting after subsection (9) =

" (9A) Subsection (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 (4)."; and

- (d) by omitting subsection (11).

New section

10. The Principal Act is amended by inserting after section 82 -

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 (1).

(3) Subject to subsection (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 (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 (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."

Evidence

11. Section 84 of the Principal Act is amended by inserting after subsection (1) -

" (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 (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."

Review by Court

12. The Principal Act is amended by omitting sections 91, 92, 93 and 94 and substituting -

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 (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 (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 (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 (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 (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."

Minor and consequential amendments

13. The Principal Act is amended in accordance with the Schedule.

SCHEDULE

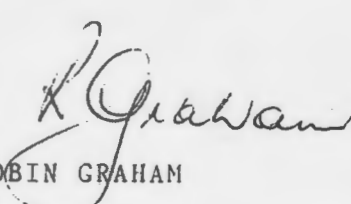
Section 12

| <u>Item</u> | <u>Provision amended</u> | <u>Amendment</u> |
|-------------|--------------------------|---|
| 1 | Subsection 32(9) | Omit "or Court" |
| 2 | Paragraph 56(1)(a) | Omit "and", substitute "or" |
| 3 | Subsection 56(3) | Omit "Court", substitute "Court of Petty Sessions" |
| 4 | Subsection 56(5) | Omit "Court" (first occurring), substitute "Court of Petty Sessions" |
| 5 | Subsection 56(6) | Omit "Court", substitute "Court of Petty Sessions" |
| 6 | Subsection 56(7) | Omit "Court", substitute "Court of Petty Sessions" |
| 7 | Subsection 56(8) | Omit "to the Court" |
| 8 | Paragraph 65(4)(a) | Add at the end "or" |
| 9 | Paragraph 65(4)(b) | Omit |
| 10 | Subsection 82(3) | Omit "the Convenor", substitute "a member of the Tribunal" |
| 11 | Subsection 85(11) | Omit "section 91", substitute "sections 91 and 92" |
| 12 | Subsection 86(2) | Omit "Subject to subsection 91(5), where", substitute "Where" |
| 13 | Subsection 99(1) | Omit "or Tribunal" (twice occurring) |
| 14 | Subsection 101(1) | Omit ", Court" |

- | | | |
|----|-------------------|--|
| 10 | Subsection 82(3) | Omit "the Convenor", substitute "a member of the Tribunal" |
| 11 | Subsection 85(11) | Omit "section 91", substitute "sections 91 and 92" |
| 12 | Subsection 86(2) | Omit "Subject to subsection 91(5), where", substitute "where" |
| 13 | Subsection 99(1) | Omit "or Tribunal" (twice occurring) |
| 14 | Subsection 101(1) | Omit ", Court" |

I, Robin Eleanor Graham, Clerk to the Legislative Assembly, pursuant to standing order 171, certify that this is a true copy of the Employment Amendment Bill 1988 agreed to by the Legislative Assembly.

Dated this 27th day of July 1988.


ROBIN GRAHAM
Clerk

(P3. 7/9) 10

No. 37 ASSEMBLY 22.12.88

ASSENT TO ACTS OF THE LEGISLATIVE

IT IS HEREBY NOTIFIED that on 15 December 1988 His Excellency the Governor-General, acting pursuant to sub-section 22(1) of the Norfolk Island Act 1979, declared his assent to the following proposed laws passed by the Legislative Assembly:

- * Court of Petty Sessions Amendment Act 1988 (Act No. 26 of 1988);
- * Employment Act 1988 (Act No. 27 of 1988);
- * Limitation of Actions (Real Property) Act 1988 (Act No. 28 of 1988);
- * Land (Subdivision) Amendment Act 1988 (Act No. 29 of 1988);
- * Employment Amendment Act 1988 (Act No. 30 of 1988); and
- * Court of Petty Sessions Amendment No. 2 Act 1988 (Act No. 31 of 1988).

DATED this twenty-first day of December 1988.

W. McF. CAMPBELL,
Deputy Administrator.

No. 28 NORFOLK ISLAND 27.6.91

EMPLOYMENT ACT 1988

NOTICE OF COMMENCEMENT

I, Herbert Bruce Mac Donald, Administrator of Norfolk Island, acting in accordance with the advice of the Executive Council of Norfolk Island and under section 2 of the

Employment Act 1988

hereby fix the dates specified in column 1 of the Schedule as the dates on which the provisions of the Act specified in column 2 of the Schedule are respectively to come into operation.

SCHEDULE

| <u>Column 1</u> <u>Commencement dates</u> | <u>Column 2</u> <u>Provisions</u> <u>to come</u> <u>into operation</u> |
|--|---|
| 1 July 1991 | Part I Part V Part VI |
| 1 September 1991 | Part II Part IV |
| 1 November 1991 | Part III Schedule |

Dated this twenty-first day of June 1991

H.B. MAC DONALD
Administrator

No. 29 NORFOLK ISLAND 29.6.91

EMPLOYMENT AMENDMENT ACT 1988

NOTICE OF COMMENCEMENT

I, Herbert Bruce Mac Donald, Administrator of Norfolk Island, acting in accordance with the advice of the Executive Council of Norfolk Island and under section 2 of the

Employment Amendment Act 1988

hereby fix

1 July 1991

as the date on which that Act shall come into operation.

Dated this twenty-eighth day of June 1991

H.B. MAC DONALD
Administrator