

Key Issues Brief

2.01 Workplace Relations

Key Issues

- Some Norfolk Island employers and the Norfolk Island Chamber of Commerce have expressed concerns about the impact of the full implementation of the *Fair Work Act (FWA) 2009* since its application to the Island was announced in 2015.
- Previous Norfolk Island employment laws provided access to some, but not all of the entitlements set out in the National Employment Standards and modern awards. Full implementation of the FWA ensures Norfolk Island residents have the same rights and obligations as other Australians. Employees will welcome their new entitlements and the additional income that will be directed towards the local economy.
- Following consultation with the community about reasonable transitional arrangements, the Government announced a multi-year, staged transition to the introduction of the Fair Work system that would enable employers and employees to adjust to the change.
- The Fair Work Ombudsman (FWO) has provided significant support and outreach for employers during the transition. This has included group information sessions and one-on-one appointments with FWO officials on Norfolk Island, targeted guidance material and handouts, and ready access to FWO officials online and by telephone. Following their most recent visit in June 2018, the FWO advised that most businesses were well prepared for the final phase of the transition from 1 July 2018. Whilst there have been some concerns raised in the media and by correspondence, these are consistent with what was raised prior to implementation.
- The 2016 Australian Census indicated there were 986 people in employment on Norfolk Island, approximately 70% of whom were employees.
- In a submission to the Fair Work Commission (see below), the NSW Business Chamber advised that there are 152 businesses on Norfolk Island. This contrasts with previous estimates, including a 2011 census of businesses which estimated that there were around 350 businesses on Norfolk Island, including sole traders who would not be affected by the introduction of modern awards.

Application to the Fair Work Commission

- On 30 June 2018, the NSW Business Chamber made an application to the Fair Work Commission (FWC) for a new award to be made specifically for Norfolk Island private sector employees, similar to the existing *Miscellaneous Award 2010*. If this is not possible, the Chamber was otherwise seeking:
 - a variation which would allow employers on Norfolk Island to engage employees for periods of one hour; and
 - establishment of transitional schedules to allow a longer phase-in of modern award terms on the Island – for example penalty rates, minimum wages and public holiday rates.

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- The application argued that many employers did not realise the significant changes that their businesses would experience with the advent of modern awards until the last few months of the three-year transition period.
- The Chamber reported that their representatives who recently visited the Island were “inundated with evidence” from local businesses that compliance with the modern award system would lead to:
 - significantly increased wage costs;
 - reduction in staff;
 - closure of businesses;
 - businesses being put up for sale, and
 - a reduction in hours of work for employees.
- This is in contrast with feedback received from the Norfolk Island Administrator and the FWO, who reported that, while not in favour of the changes, businesses generally accepted the reality and were doing their best to prepare for the introduction of modern awards on 1 July 2018.
- The application was not successful, based on significant legal elements of the current statutory framework:
 - Section 154 of the FWA generally prohibits a modern award from containing State- or Territory-based differences in terms. A stand-alone modern award for Norfolk Island, or alternatively, terms in modern awards that would apply only in Norfolk Island would constitute Territory-based differences. Therefore, the FWC is not currently able to make the determinations sought by the NSW Business Chamber.
 - Impermissible constitutional issues relating to acquisition of property would arise if an award or transitional arrangements were to be applied retrospectively. This means that entitlements accrued between 1 July 2018 and the commencement of a stand-alone Norfolk Island award and/or any transitional arrangements would have to be honoured.
- The Department understands that the NSW Business Chamber is continuing to work with the Norfolk Island Chamber of Commerce and that they are considering developing an Enterprise Agreement for businesses on Norfolk Island, an approach which the FWC mentioned while considering the request for a separate award.

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Workplace relations support for businesses during transition

- Throughout the reform process, employees and employers on Norfolk Island have been provided with a broad suite of resources and assistance from the FWO.
 - The FWO has provided priority workplace relations support and advice to employers and employees on Norfolk Island. In addition to conducting site visits with the major employers and community engagement activities, the FWO will continue to provide tailored services, including a dedicated webpage, and specific educational materials for different industry sectors.
 - As on the mainland, employees and employers on Norfolk Island also have access to a range of other resources and assistance through the FWO. These include, the Pay and Conditions Tool (PACT), the Fair Work Infoline and small business helpline, online training modules and best practice guides, templates (including payslips and pay records), and a MyAccount service which allows members to receive tailored advice and updates specific to the needs of their business. Calls to the Fair Work Infoline and small business helpline from Norfolk Island are charged as local calls.
- Prior to the most recent increase to the national minimum wage in July 2018, the FWO placed prominent advertising in the Norfolk Islander newspaper informing the community of the changes and reiterating the channels through which they could contact the FWO for assistance.
- The community was consulted on the transition in August 2015 and April 2016, and businesses have had over three years to prepare for the introduction.

Monitoring the Norfolk Island Economy

- You may be asked by the Chamber of Commerce or members of the business community to identify the modelling undertaken on the impacts of the FWA to the local economy.
 - Advice provided to the Department by economists in the Bureau of Infrastructure, Transport and Regional Economics and the Department of Jobs and Small Business has concluded that it would be difficult to separate the impacts of the FWA on the local economy from the other changes that have occurred on Norfolk Island, including the introduction of Medicare, social security payments and increased infrastructure expenditures.
 - Several assessments undertaken between 2010 and 2016 identified Norfolk Island's economy was in serious decline and urgent action was required to improve the sustainability of the community.
 - Economic analysis undertaken before the reforms indicated that the impact of the broader reform package would have strong positive impacts on the Norfolk Island economy, but may have some initial negative impact on employment due to higher wages.
 - The 2014 report prepared by the Centre for International Economics on the Impact of the Australian Government reform scenarios for Norfolk Island (**Attachment F** of Background Brief 2.04) considered it was likely that higher wages would lead to

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increased local consumption and this would have a positive impact on employment in the longer term.

- When the Department met with Dr Chris Nobbs, he mentioned very straightforward ways to monitor the economy including tourism number, freight volume and retail price index. You may wish to test Dr Nobbs views with the Chamber.
- The Department of Employment consulted with the Norfolk Island community and businesses in August 2015 and April 2016 on the extension of the Fair Work Act. The phased approach to the rollout of the FWA reflected the preferences of the Norfolk Island community, particularly the need to allow time for employers and employees to transition.
- The approach to transitioning to Australia’s workplace relations system was agreed in the context of the wider transition to tax, superannuation and social services.
- Norfolk Island’s economic performance was in long-term decline well before the Australian Government commenced delivering services on 1 July 2016.
 - Estimates of nominal gross territory product (GTP) indicated that the economy contracted by around 4 per cent between 2003-2004 and 2015-2016.
 - The number of hours worked on Norfolk Island declined by 27 per cent between 2009-2010 and 2015-16.
 - The Norfolk Island population declined by 19 per cent between 2001 and 2016.
 - The Australian Government provided over \$43 million in deficit funding to Norfolk Island between 2010 and 2016.

If asked about monitoring of the economy and the impact of the awards:

- Quantifying the specific impacts of modern awards is not feasible—there are too many other economic factors which would impact measurement and it would be extremely difficult to disaggregate those impacts for an economy the size of Norfolk Island.
- All of the changes made through the extension of Australian Government programs and services on the Island should be considered in a holistic manner rather than trying to separate out a single variable from a complex economic situation. For example, Norfolk Islanders now have access to Medicare, the Pharmaceutical Benefits Scheme and to Centrelink services for the first time.
- Evidence suggests the Norfolk Island economy is doing well. For example, approximately 30,000 people visited Norfolk Island in 2016-17, which is the highest number recorded since 2008-09. Visitor numbers for 2017-18 were slightly lower, but still the second highest in a decade. Visitor numbers in 2018-19 are strong, as indicated by the high demand for airline services. Unemployment is low and building activity appears to be strong.
- To support monitoring of the economy, NIRC and the business community on the Island may be able to provide information, including:
 - number, type and characteristics of businesses;

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- hours worked and numbers of employees;
 - development applications lodged to NIRC;
 - new motor vehicle registrations, and
 - other information which may be suggested by businesses.
- The Norfolk Island Chamber of Commerce 2017-2022 Strategic Plan requires the Chamber to action the establishment of mechanisms that quantify accurate measures of population, financial indicators, visitor numbers, conveyances, building applications, importation and export volumes and employment data. You might like to ask about the status of this work.

If asked about an enquiry by the Productivity Commission:

- NIRC may ask again for the Productivity Commission (the Commission) to undertake an inquiry into the Norfolk Island economy.
- NIRC wrote to the Hon Dr John McVeigh MP, former Minister for Regional Development, in February 2018 seeking support for the Commission to carry out research and conduct a public enquiry to determine:
 - the current financial capacity of Norfolk Island: and
 - how to grow Norfolk Island economically, socially, culturally and environmentally, including building a diverse and vibrant business environment.

You may wish to advise:

- The Australian Government supports the aspirations of NIRC and the community to build a diverse and vibrant business environment.
- The *Productivity Commission Act 1998* requires the Commission to have regard to ‘the need to improve the overall economic performance of the economy through higher productivity’. As a result, the Commission’s enquiries look at issues that affect a broad cross section of Australians. It would be unusual for the Commission to enquire into issues that predominately affect only a small portion of the Australian population.
- It is too early in the reform process to properly assess the impacts and gain an accurate understanding of Norfolk Island’s economic future.
- To support analysis of the economy, the 2016 Census and future Census data collected by the Australian Bureau of Statistics will be important. This can be combined with Australian Government data and information from NIRC and the business community to create a foundation for future social and economic analysis.
- Given the Joint Standing Committee on the National Capital and External Territories (JSCNET) interest in Norfolk Island – you could suggest your willingness to take up a JSCNET enquiry, including examination of the economy in 2019. A JSCNET enquiry could follow the Australian National Audit Office audit scheduled for completion around April 2019.

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Background

Transition to the full implementation of the Fair Work Act 2009

- On 1 July 2016, Norfolk Island began transitioning to the national workplace relations system and the FWA. The transition has occurred over three stages:
 - Stage 1 From 1 July 2016, the National Employment Standards (including sick leave and annual leave), and pay slip and record-keeping obligations applied on Norfolk Island. The relevant national minimum wage also commenced at a reduced rate of 85 per cent for the first year. Casual employees started getting an extra 25 per cent on top of the minimum rate.
 - Stage 2 From 1 July 2017, all Norfolk Island employees are entitled to the full relevant national minimum wage.
 - Stage 3 From 1 July 2018, Norfolk Island employees are covered by modern awards as part of the national system.
- The 2014 Centre for International Economics report provided a comprehensive assessment of the Norfolk Island economy, including the impact of applying the Australian minimum wage on Norfolk Island. The Australian Government commissioned the report to quantify the economic impact of various reform scenarios for Norfolk Island. The reform options included:
 - extension of Australian mainland minimum wage, and market/business operations;
 - extension of mainland taxation (personal, company and Medicare levy) and superannuation systems;
 - extension of mainland social security (unemployment benefits, welfare payments, and Medicare); and
 - changes to the current Norfolk Island arrangements (such as removing the Norfolk Island GST and import duties, possibly in exchange for extension of mainland taxation) and implementation of a range of microeconomic reforms.
- According to the 2016 Australian Census the highest employing industries were Accommodation and Food Services, followed by Retail Trade and Public Administration and Safety. The minimum base wage rates in these awards are generally higher than the National Minimum Wage (currently \$18.29 per hour). These awards also set out other loadings, allowances and conditions on top of the base rate.

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- Advice from the Bureau of Infrastructure, Transport and Regional Economics indicates that there are data limitations arising from small numbers or in this case a small location. These limitations mean that analysis should be considered indicative, and individual numbers and rates should be used with caution. For example, Australian Census data, which will be used for Norfolk Island, is subject to a process of random adjustment by the ABS to ensure that confidentiality is maintained. In practice, this means that a very small number published by the ABS can vary considerably for each iteration. Consequently, there can be a significant impact on percentages and ratios for very small cells. This is exacerbated once the small population is further divided by characteristics (such as industry or age). Hence, data at this level should be considered with caution, and a consequence is that it is difficult to analyse rates of change.
- On 1 July 2016 a new minimum wage equal to 85% of the national minimum wage (\$15.05 per hour) was introduced on Norfolk Island. The Norfolk Island minimum wage which was in effect at 30 June 2016 was \$10.70. The Department understands that most employees on Norfolk Island were paid more than the (NI) statutory minimum wage which has “softened” the impact of transitioning to the Australian minimum wage.

Sensitivities: Nil

Attachments: Nil

