

EXPLANATORY STATEMENT

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

Norfolk Island Continued Laws Ordinance 2021

Norfolk Island Continued Laws Ordinance Amendment (Applied Laws and Service Delivery (Queensland) Measures) Rules 2021

Authority

The *Norfolk Island Continued Laws Ordinance Amendment (Applied Laws and Service Delivery (Queensland) Measures) Rules 2021* (the Rules) is made under section 6 of the *Norfolk Island Continued Laws Ordinance 2015* (the Ordinance).

Section 6 of the Ordinance provides that the Commonwealth Minister with responsibility for the Territory of Norfolk Island may, by legislative instrument, make rules amending the Ordinance to:

- amend or repeal a continued law; or;
- to make application, saving or transitional provisions in relation to any amendments or repeals of continued laws.

The Ordinance amends laws of the former Norfolk Island Legislative Assembly and laws made under those laws (continued laws) as set out in the items in the Schedules to the Ordinance. Section 6 provides that the Rules operate as amendments to the Ordinance.

Purpose

The Rules are one of a suite of legislative instruments to implement the Intergovernmental Partnership Agreement on State Service Delivery to Norfolk Island 2021 to transition responsibility for state level health and education service provision from New South Wales (NSW) to Queensland from 1 January 2022.

The amendments made by the Rules operate as amendments to the Schedules of the Ordinance which themselves amend the continued laws. The amendments insert new items into the Schedules to effect these amendments.

The purpose of the Rules is to amend continued laws to ensure Queensland legislation can be appropriately applied in Norfolk Island. In transitioning to the Queensland applied law regime, the Rules

- provide that the Administrative Review Tribunal of Norfolk Island can have functions relating to review of decisions conferred on it by an enactment of a Queensland law in force in Norfolk Island as well as a NSW law.
- provide that nothing in the *Child Welfare Act 2009* (NI) excludes or limits the operation of the provisions of the *Education (General Provisions) Act 2006* (Qld) (NI) dealing with mandatory reporting of sexual abuse.

- amend the *Child Welfare Act 2009* (NI) to replace “*Education Act 1990* (NSW) (NI)” with “*Education (General Provisions) Act 2006* (Qld) (NI) so that the applied Queensland law will now regulate school attendance.
- replace in the *Child Welfare Act 2009* (NI) a reference to a government school, within the meaning of the NSW Education Act, with a reference to a State school within the meaning of the *Education (General Provisions) Act 2006* (Qld) (NI).
- provide that nothing in the *Disaster and Emergency Management Act 2001* (NI) excludes or limits the operation of the provisions of the *Public Health Act 2005* (Qld) (NI).
- make general provision in the *Acts Interpretation Act 1979* (NI) for enactments to extend to Queensland laws in force in Norfolk Island where they currently extend to NSW laws.
- provide that, to the extent that a continued law regulates employment, the law does not apply to officers, employees or authorities of Queensland, to the extent that they are exercising powers or performing functions or duties under an arrangement between the Commonwealth and Queensland for the delivery of services to Norfolk Island.
- provide that a reference in an enactment to the short title of an Act of Queensland or to the name of an instrument made under such an Act followed by “(Qld)(NI)” is a reference to the Act or instrument as in force in Norfolk Island from time to time.
- provide that a reference in an enactment to the short title of an Act of Queensland or to the name of an instrument made under such an Act followed by “(Qld)” is a reference to the Act or instrument as in force in Queensland from time to time.
- provide that where, a Queensland law in its application to Norfolk Island, a power or function is expressed to be vested in the Supreme Court of Queensland, or a Judge of that Court, that power or function is vested in the Supreme Court or a Judge, as the case may be.

Consultation

As the incoming service provider, the Queensland Government has been actively involved in the development of all relevant instruments. Queensland officials are also undertaking their own engagement with Norfolk Island stakeholders, including visits to the island. The NSW Government has been engaged in the transition process.

Other

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Rules commence at the same time as the Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021, on 1 January 2022.

Statement of Compatibility with Human Rights

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

Norfolk Island Continued Laws Ordinance Amendment (Applied Laws and Service Delivery (Queensland) Measures) Rules 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Rules

The Rules are one of a suite of legislative instruments to implement the Intergovernmental Partnership Agreement on State Service Delivery to Norfolk Island 2021 to transition responsibility for state level health and education service provision from New South Wales (NSW) to Queensland from 1 January 2022.

The amendments made by the Rules operate as amendments to the Schedules of the Ordinance which themselves amend the continued laws. The amendments insert new items into the Schedules to effect these amendments.

The purpose of the Rules is to amend continued laws to ensure Queensland legislation can be appropriately applied in Norfolk Island. In transitioning to the Queensland applied law regime, the Rules

- provide that the Administrative Review Tribunal of Norfolk Island can have functions relating to review of decisions conferred on it by an enactment of a Queensland law in force in Norfolk Island as well as a NSW law.
- provide that nothing in the *Child Welfare Act 2009* (NI) excludes or limit the operation of the provisions of the *Education (General Provisions) Act 2006* (Qld) (NI) dealing with mandatory reporting of sexual abuse.
- amend the *Child Welfare Act 2009* (NI) to replace “*Education Act 1990* (NSW) (NI)” with “*Education (General Provisions) Act 2006* (Qld) (NI)” so that the applied Queensland law will now regulate school attendance.
- replace in the *Child Welfare Act 2009* (NI) a reference to a government school, within the meaning of the NSW Education Act, with a reference to a State school within the meaning of the *Education (General Provisions) Act 2006* (Qld) (NI).
- provide that nothing in the *Disaster and Emergency Management Act 2001* (NI) excludes or limits the operation of the provisions of the *Public Health Act 2005* (Qld) (NI).
- make general provision in the *Acts Interpretation Act 1979* (NI) for enactments to extend to Queensland laws in force in Norfolk Island where they currently extend to NSW laws.
- provide that, to the extent that a continued law regulates employment, the law does not apply to officers, employees or authorities of Queensland, to the extent that they are exercising powers or performing functions or duties under an arrangement between the Commonwealth and Queensland for the delivery of services to Norfolk Island.

- provide that a reference in an enactment to the short title of an Act of Queensland or to the name of an instrument made under such an Act followed by “(Qld)(NI)” is a reference to the Act or instrument as in force in Norfolk Island from time to time.
- provide that a reference in an enactment to the short title of an Act of Queensland or to the name of an instrument made under such an Act followed by “(Qld)” is a reference to the Act or instrument as in force in Queensland from time to time.
- provide that where, a Queensland law in its application to Norfolk Island, a power or function is expressed to be vested in the Supreme Court of Queensland, or a Judge of that Court, that power or function is vested in the Supreme Court or a Judge, as the case may be.

The Rules only seek to modify existing applied legislation and do not change the scope of current service delivery on Norfolk Island.

Human rights compatibility assessment

The legislative instrument will not engage or impact any human rights and freedoms recognised or declared by any of the international instruments specified in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Therefore, it is assessed as being compatible with human rights, pursuant to section 9(2) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Assistant Minister for Regional Development and Territories and Parliamentary
Secretary to the Deputy Prime Minister and Minister for Infrastructure, Transport and
Regional Development
The Hon Nola Marino MP**

ATTACHMENT—NOTES ON CLAUSES

Section 1—Name

This clause provides that the title of the Rules is the *Norfolk Island Continued Laws Ordinance Amendment (Applied Laws and Service Delivery (Queensland) Measures) Rules 2021* (the Rules).

Section 2—Commencement

This clause provides for the Rules to commence on 1 January 2022.

Section 3—Authority

Clause 3 provides that the Rules are made under Section 6 of *Norfolk Island Continued Laws Ordinance 2015* (the Ordinance).

The Ordinance amends laws of the former Norfolk Island Legislative Assembly and laws made under those laws (continued laws) as set out in the items in the Schedules to the Ordinance.

Section 6 provides that the Rules operate as amendments to the Ordinance.

Section 4—Schedules

This clause provides that legislation that is specified in a Schedule is amended or repealed as set out in the Schedule concerned and any other item in a Schedule to the Rules has effect according to its terms.

Schedule 1—Amendments

The amendments made by the Rules operate as amendments to the Schedules of the Ordinance which themselves amend the continued laws. The amendments insert new items into the Schedules to effect these amendments

Part 1—Amendment of the Administrative Review Tribunal Act 1996 (NI)

Item 1 – New item 1AAAA

Section 14 provides that the Administrative Review Tribunal can have functions relating to review of decisions conferred on it by an **enactment**. This item amends the definition of **enactment** at section 3 of the *Administrative Review Tribunal Act 1996* (NI) so that it includes a Queensland law in force in Norfolk Island as well as a New South Wales law.

Part 2—Amendment of the Child Welfare Act 2009 (NI)

Item 2 – New item 29AAAA

Part 10 of Chapter 12 of the *Education (General Provisions) Act 2006* (Qld) (NI) provides for mandatory reporting of sexual abuse. It appears this may extend reporting requirements to circumstances not covered by the corresponding provisions in the Child Welfare Act.

This gives rise to the possibility of inconsistency between the two provisions. In such a case, the Norfolk Island continued law will prevail over the applied law of the State (see *Norfolk Island Act 1979* (Cth) s 18A(4)).

To avoid doubt, this item inserts a new section 9A into the Child Welfare Act to provide that nothing in that Act is intended to exclude or limit the operation of the provisions of Part 10 of Chapter 12 of the *Education (General Provisions) Act 2006* (Qld) (NI) in accordance with their terms.

Item 3 – New item 31AAB

This item amends paragraph 33(3)(c) of the Child Welfare Act to omit “*Education Act 1990* (NSW) (NI)”, and substitute “*Education (General Provisions) Act 2006* (Qld) (NI)”. That provision deals with the situation where child welfare concerns arise due to failure to attend school in accordance with mandatory attendance requirements. The amendment substitutes a reference to the applied law of Queensland, which will now regulate school attendance, in place of the NSW law.

Item 4 – New item 37AAA

This item repeals and replaces the definition of *school* in the Dictionary in the Child Welfare Act, to substitute the reference to a government school within the meaning of the NSW Education Act with a reference to a State school (within the meaning of the *Education (General Provisions) Act 2006* (Qld) (NI)).

Part 3—Amendment of the Disaster and Emergency Management Act 2001 (NI)

Item 5 New item 63AA

This item inserts a new section 5A, which provides that nothing in the *Disaster and Emergency Management Act 2001* (NI) is intended to exclude or limit the operation of the provisions of the *Public Health Act 2005* (Qld) (NI) in accordance with their terms.

The *Disaster and Emergency Management Act 2001* (NI) is currently used to issue directions to deal with issues related to the COVID-19 public health emergency. It is intended to make use of the contract tracing powers and associated confidentiality scheme in Part 3 of Chapter 3 of the *Public Health Act 2005* (Qld), due to its core role in the COVID-19 public health emergency response. It is also proposed to use, where appropriate, the specially designed powers for the COVID-19 public health emergency under Part 7A of Chapter 8 of the Public Health Act in place of directions under the *Disaster and Emergency Management Act 2001* (NI).

This gives rise to the possibility of inconsistency between the two provisions. In such a case, the Norfolk Island continued law will prevail over the applied law of the State (see *Norfolk Island Act 1979* (Cth) s 18A(4)).

This new provision is inserted for the avoidance of doubt.

Part 4—Amendment of the Interpretation Act 1979 (NI)

Item 6 - new item 150A

There are a number of provisions in continued laws which refer to ‘enactments’. Generally, this means a continued law and does not include an applied law of a State (see definition of *enactment* at Interpretation Act 1979 (NI) s12). Since the introduction of applied laws of NSW, some continued laws have been amended so that their provisions will extend to applied NSW laws: see for example the definition of *enactment* at section 3 of the *Administrative Review Tribunal Act 1996* (NI) referred to above at item 1. In that case a specific amendment is being made to extend the provisions of that Act to a Queensland law also, within the timeframe for introduction of Queensland applied laws, it has not been possible to review all Norfolk Island laws and extend to Queensland applied laws those which currently extend to NSW laws on a case-by-case basis. However, there is no apparent reason why an enactment which extends to a NSW law should not also extend to a Queensland law. This provision is a temporary measure, pending a more detailed review of the legislation.

This item inserts new section 8AA into the Acts *Interpretation Act 1979* (NI). Subsection 8AA(1) makes general provision for enactments to extend to Queensland laws in force in Norfolk Island where they currently extend to NSW laws in force in Norfolk Island.

As this amendment is being made by rules under section 6 of the Ordinance, it cannot create an offence or civil penalty; provide powers of: arrest or detention; or of entry, search or seizure; or impose a tax (see Ordinance subsection 6(2)). Accordingly, new subsection 8AA(2) provides that subsection 8AA(1) does not apply where it would have such an effect.

Item 7 – new item 150A

This item inserts a new section 8D into the *Interpretation Act 1979* (NI).

It provides that, to the extent that a continued law regulates employment, the law does not apply to officers, employees or authorities of Queensland, to the extent that they are exercising powers or performing functions or duties under an arrangement between the Commonwealth and Queensland for the delivery of services to Norfolk Island.

Those employees will have their employment conditions regulated by the industrial relations laws of Queensland, which are applied in Norfolk Island for those employees (see *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* Schedule 1 item 1(3)). A similar arrangement applies for NSW employees performing services in Norfolk Island under an arrangement with the Commonwealth.

Item 8 – new item 183A

This item inserts a new section 29B into the *Interpretation Act 1979* (NI). Subsection 29B(1) provides that a reference in an enactment to the short title of an Act of Queensland or the name of an instrument made under such an Act followed by “(Qld)(NI)” is a reference to the Act or instrument as in force in Norfolk Island from time to time. Subsection 29B(2) provides that a reference in an enactment to the short

title of an Act of Queensland or the name of an instrument made under such an Act followed by “(Qld)” is a reference to the Act or instrument as in force in Queensland from time to time.

Section 29A makes similar provision in relation to NSW Acts and Instruments.

Part 5—Amendment of the Supreme Court Act 1960 (NI)

Item 9 -new item 336AA

This item inserts a new subsection 5(5A) into the *Supreme Court Act 1960* (NI). It provides that where, a Queensland law in its application to Norfolk Island, a power or function is expressed to be vested in the Supreme Court of Queensland, or a Judge of that Court, that power or function is vested in the Supreme Court or a Judge, as the case may be.

This provision corresponds to the provision made in relation to New South Wales by subsection 5(5).