

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 Applied Laws and Service Delivery (Queensland) Ordinance 2021

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

Authority

The *Norfolk Island Applied Laws and Service Delivery (Queensland) Amendment Rules 2021* (the Rules) is made under subsection 7(1) of the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* (the Ordinance).

Subsection 7(1) 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 an applied law;
- otherwise affect its operation, and;
- to make application, saving or transitional provisions in relation to rules affecting the operation of applied laws.

The purpose of subsection 7(1) of the Ordinance is to ensure changes to applied laws supporting the delivery of services by Queensland to Norfolk Island can be made efficiently and effectively by the Minister.

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 to Queensland from 1 January 2022.

The Rules make several changes to applied Queensland laws that provide general rules of interpretation. In particular, the Rules modify the *Acts Interpretation Act 1954* (Qld) in its application to laws of Queensland in force in Norfolk Island.

In transitioning to the Queensland applied law regime, the Rules:

- set out the meaning of commonly used words and expressions; including those used in Queensland applied health, education and industrial relations legislation;
- confer jurisdiction on the court in Norfolk Island corresponding to the court in Queensland which has jurisdiction;
- confer functions on the Administrative Review Tribunal of Norfolk Island, which is performed in Queensland by the Queensland Civil and Administrative Tribunal;
- provide that a reference to a provision of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) are to be read as if a reference to the corresponding provision of the *Administrative Review Tribunal Act 1996* (NI);

- provide that Vocational Education and Training qualifications obtained on Norfolk Island have the same status as in Queensland;
- provide references to a police force are taken to be references to the Australian Federal Police and that references to a police officer holding a particular kind of office or position, or a reference to a police officer in general terms, are to be read as references to a member of the Norfolk Island Police Force or the Australian Federal Police; and
- provide that a reference to the Health Practitioners Regulations National Law in force in Queensland is to be read as if it included a reference to the National Law within the meaning of the *Health Practitioners Act 1983* (NI).

However, to assure Queensland industrial relations laws which apply to Queensland employees performing services on Norfolk Island are interpreted consistently with laws in force in Queensland, the Rules ensure the *Acts Interpretation Act 1954* (Qld) generally applies when dealing with applied industrial relations laws as defined by the Ordinance.

The Rules establish a range of amendments to Queensland applied education and health legislation to ensure effective operation of service from 1 January 2022. To support students, particularly those in the last years of school, to navigate the transition of state service partners, the Rules establish arrangements whereby students in years 11 and 12 in 2022 and 2023 will keep to the New South Wales education curriculum to ensure consistency in subjects and examination.

The Rules will also support the maintenance of a Parents & Citizens Association, as constituted under previously applied New South Wales legislation.

The Rules see removal of references to other forms of schooling (non-state and home-schooling) to reflect that the Queensland Department of Education will only provide teaching services to the Norfolk Island Central School.

The Rules provide the application of the *Health and Hospital Boards Act 2011* (Qld) and the *Public Health Act 2005* (Qld) on Norfolk Island will not exclude or limit the operation of the New South Wales applied health legislation. This is to ensure continuity of health services during the transition.

In addition, the Rules generally limit the application of the *Public Health Act 2005* (Qld) to those matters related to an identified COVID-19 public health emergency.

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 New South Wales 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 Applied Laws and Service Delivery (Queensland) Amendment 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 NSW to Queensland from 1 January 2022

The Rules make several changes to applied Queensland laws providing general rules of interpretation. In particular, the Rules modify the *Acts Interpretation Act 1954* (Qld) in its application to laws of Queensland in force in Norfolk Island.

In transitioning to the Queensland applied law regime, the Rules

- set out the meaning of commonly used words and expressions; including those used in Queensland applied health, education and industrial relations legislation.
- confer jurisdiction on the court in Norfolk Island corresponding to the court in Queensland which has jurisdiction;
- confer functions on the Administrative Review Tribunal of Norfolk Island, which is performed in Queensland by the Queensland Civil and Administrative Tribunal;
- provide that a reference to a provision of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) are to be read as if a reference to the corresponding provision of the *Administrative Review Tribunal Act 1996* (NI);
- provide that Vocational Education and Training qualifications obtained on Norfolk Island have the same status as in Queensland;
- provide that reference to a police force are taken to be references to the Australian Federal Police and that references to a police officer holding a particular kind of office or position, or a reference to a police officer in general terms, are to be read as references to a member of the Norfolk Island Police Force or the Australian Federal Police; and
- provide that a reference to the Health Practitioners Regulations National Law in force in Queensland is to be read as if it included a reference to the National Law within the meaning of the *Health Practitioners Act 1983* (NI).

However, to assure that Queensland industrial relations laws which apply to Queensland employees performing services on Norfolk Island are interpreted consistently with laws in force in Queensland, the Rules ensure that the *Acts Interpretation Act 1954* (Qld) generally applies when dealing with applied industrial relations laws as defined by the Ordinance.

The Rules establish a range of amendments to Queensland applied education and health legislation to ensure effective operation of service from 1 January 2022. To support students, particularly those in the last years of school, to navigate the transition of state service partners, the Rules establish arrangements whereby students in years 11 and 12 in 2022 and 2023 (or other period as determined in the licensing agreement) will keep to the New South Wales education curriculum to ensure consistency in subjects and examination.

The Rules will also support the maintenance of a Parents & Citizens Association, as constituted under previously applied New South Wales legislation.

The Rules see removal of references to other forms of schooling (non-state and home-schooling) to reflect that the Queensland Department of Education will only provide teaching services to the Norfolk Island Central School.

The Rules provide that the application of the *Health and Hospital Boards Act 2011 (Qld)* and the *Public Health Act 2005 (Qld)* on Norfolk Island will not exclude or limit the operation of the New South Wales applied health legislation. This is to ensure continuity of health services during the transition.

In addition, the Rules generally limit the application of the *Public Health Act 2005 (Qld)* to those matters related to an identified COVID-19 public health emergency.

Human rights compatibility assessment

The Rules have been designed to ensure health and education services are maintained for the Norfolk Island community, and where possible, limit disruptions.

Repealing references to non-state and home-schooling from the Queensland legislation as it applies on Norfolk Island may raise concerns choice is being limited for parents and children in that community. However, should non-state schooling be a future option for Norfolk Island, part 7 of the *Education Act 1990 (NSW)(NI)* currently provides for registration of private schools and of home schooling. These rules are not intended to affect those provisions and this legislation can be applied if needed.

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 Applied Laws and Service Delivery (Queensland) Amendment Rules 2021*.

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 Subsection 7(1) of the Ordinance. That subsection provides that the Minister may, by legislative instrument, make rules amending this Ordinance:

- (a) so as to amend or repeal an applied law; or
- (b) so as to otherwise affect the operation of an applied law (but not to suspend the operation); or
- (c) to make application, saving or transitional provision in relation to any amendments, repeals or provisions affecting the operation of applied laws.

An ***applied law*** means a law of Queensland as in force in the Territory under section 18A of the *Norfolk Island Act 1979* (Ordinance s5).

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 of the Ordinance

Schedule 1 contains amendments to the Ordinance and to applied laws specified in the Ordinance. The amendments of a particular applied law are each contained in a separate schedule of the Ordinance.

Item 1 – After section 6: New section 6A

Section 6 of the Ordinance provides general rules of interpretation to be applied when interpreting Queensland Acts as in force in Norfolk Island.

- Subsection 6(2) provides that the *Acts Interpretation Act 1954* (Qld)(NI) applies in relation to an applied law that is a Queensland Act.
- Subsection 6(3) provides the *Statutory Instruments Act 1992* (Qld)(NI) applies in relation to an applied law that is a Queensland statutory instrument.

This item inserts new section 6A, which deals with the interpretation and application of ***applied industrial relations laws***.

Section 5 of the Ordinance defines ***applied industrial relations law*** to mean any of the *Industrial Relations Act 2016* (Qld), *Public Sector Ethics Act 1994* (Qld), *Public*

Service Act 2008 (Qld), *Superannuation (State Public Sector) Act 1990 (Qld)*, *Workers' Compensation and Rehabilitation Act 2003* and the *Work Health and Safety Act 2011 (Qld)* and legislation made under those Acts.

New subsection 6A(1) provides that the *Acts Interpretation Act 1954 (Qld)* applies to the interpretation of applied industrial relations laws, rather than the *Acts Interpretation Act 1954 (Qld)(NI)*, subject to the exceptions outlined in subsections 6A(2) to (4). Subsection 6A(1) is intended to ensure that applied industrial relations laws are, on the whole, interpreted consistently with the corresponding Queensland laws in force in Queensland.

New subsection 6A(2) provides that a reference in an applied industrial relations law to the geographical area of Queensland is taken to include Norfolk Island. This includes all references to this geographical area, whether expressed as references to 'Queensland' or to 'this State'.

New subsection 6A(3) provides that, despite the fact that the *Acts Interpretation Act 1954 (Qld)* applies to the interpretation of applied industrial relations laws, two particular provisions of the *Acts Interpretation Act 1954 (Qld)(NI)* also apply to the interpretation of applied industrial relations laws. These are sections 26A and 36A, as inserted by Schedule 2 to the Ordinance.

- Section 26A provides that if an applied law or adopted law establishes or requires the establishment or appointment of a statutory body, it is not taken to establish, or require the establishment or appointment of, the same kind of body in Norfolk Island. It is intended that, where an applied industrial relations law refers to such a body, the reference is taken to refer to the body as established under Queensland law.
- Section 36A provides that if an applied law or adopted law requires or permits something to be done in connection with a document made, etc. under, or for the purposes of, an applied law or a law of Queensland, the reference to the document is taken to be a reference to:
 - any such document made, etc. in relation to Norfolk Island in force or existing at the time the thing is to be done; or
 - if there is no document made, etc.—the document made, etc as in force in Queensland.

New subsection 6A(4) provides a general interpretation rule for applied industrial relations laws that where such a law provides for the appointment, removal or suspension of a person to or from an office or position in Queensland, the law is not taken to separately require the appointment, removal or suspension of a person to or from the office or position in respect of Norfolk Island. The effect of this is that appointments, removals and suspensions to and from offices in Queensland automatically have effect in relation to Norfolk Island.

The following amendments to Schedule 2 of the Ordinance make amendment to the *Acts Interpretation Act 1954 (Qld)* in its application to Norfolk Island (the AIA)

Item 2 After item 1 of Schedule 2: new item 1A

This inserts two new provisions into the AIA.

New subsection 14K(1) provides that a reference to the short title of an Act followed by “(Qld)” is a reference to the Act as in force in Queensland from time to time. New subsection 14K(2) provides that a reference to the short title of an Act followed by “(Qld)(NI)” is a reference to the Act as in force in the Territory of Norfolk Island from time to time. New subsection 14K(3) provides a general rule for interpretation of a reference to a law where the reference itself does not indicate whether it refers to the law as in force in Queensland or the law as in force in the Territory. This is to be read as a Queensland Act in force in the Territory except where the operation of the Act is suspended.

New section 14L makes corresponding provision to subsections 14K(1) and 14K(2) for references to instruments,

Item 3 After item 2 of Schedule 2: new item 2A

This inserts new section 32DAA of the AIA, which provides that in an applied law or an adopted law, to the extent that the context permits, a reference to a person in or of Queensland is to be read as if it were a reference to such a person in or of the Territory of Norfolk Island; and a reference to locality or other thing in or of Queensland is to be read as if it were a reference to such a locality or thing in or of the Territory of Norfolk Island.

This modifies the operation of section 35 of the AIA, which contains the common Interpretation Act provision that a reference to an officer, locality etc. is to be read as an officer, locality etc. in Queensland.

Item 4 After item 3 of Schedule 2: new items 3A, 3B, 3C, 3D

These new items insert or substitute definitions relating to courts or tribunals.

Item 3A amends the section 44 definition of **summary proceedings** to substitute a reference to the *Court of Petty Sessions Act 1960* (NI) in place of the *Justices Act 1886* (Qld).

Items 3B and 3C insert new subsections 49A(2), 49A(3) and 49A(4). These:

- confer jurisdiction on the court in Norfolk Island corresponding to the court in Queensland which has jurisdiction
- confer functions on the Administrative Review Tribunal of Norfolk Island which are performed in Queensland by the Queensland Civil and Administrative Tribunal
- provide that a reference to a provision of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) are to be read as if a reference to the corresponding provision of the *Administrative Review Tribunal Act 1996* (NI).

Item 3D inserts new section 49B, which provides that references to specified Queensland courts or tribunals are to be read as references to the corresponding court or tribunal in Norfolk Island.

Item 5 After item 5 of Schedule 2: new item 5B

This item inserts new section 52AB, 52AC, 52AD and 52AE into the AIA

New section 52AB provides that references to an apprenticeship, a traineeship, or a training or employment skills program under the *Further Education and Training Act 2014* (Qld) are to be read as if they include a reference to:

- a VET accredited course within the meaning of the *National Vocational Education and Training Regulator Act 2011*
- an apprenticeship or traineeship (however described) conducted under an arrangement with the Norfolk Island Regional Council or any other body established for a public purpose under a law of the Territory of Norfolk Island.

There are many references to such programs etc. under the *Further Education and Training Act 2014 (Qld)* in the applied Queensland laws dealing with education. This definition allows equivalent arrangements in Norfolk Island to have an equivalent status for the purposes of the applied law.

New section 52AC provides that references to a police force are taken to be references to the Australian Federal Police (AFP) (new subsection 52AC(1)) and that references to a police officer holding a particular kind of office or position are to be read as references to a member of the Police Force of Norfolk Island or of a member or special member of the AFP holding a corresponding position (new subsection 52AC(2)). Where subsection 52AC(2) does not apply, because the provision does not contain a reference to a particular kind of office or position, subsection 52AC(3) will provide in that a reference to a police officer in general terms will have a corresponding meaning.

Subsection 52AC(1) and 52AC(2) do not apply to references in a provision of an applied law that vests a power where subsection 18B(5B) of the *Norfolk Island Act 1979* (Cth) applies. Where that subsection applies, the power is vested in the AFP or member of the Police Force by operation of the Commonwealth Act and the reference in the applied law is taken to include a reference to the Force or officer in whom the power is vested under subsection 18B(5B) (see subsection 18B(11)). Accordingly, this interpretation provision is only intended to deal with provisions containing references to police which are not covered by subsection 18B(5B). As subsection 52AC(3) applies to situations where there is no reference to a police officer holding etc. a particular kind of office or position, it falls outside the terms of subsection 18B(5B) and therefore the exception does not need to be stated.

New section 52AD provides that a reference to the Health Practitioner Regulation National Law in force in Queensland is to be read as if it included a reference to the National Law within the meaning of the *Health Practitioners Act 1983* (NI). There are a number of references to a Health Practitioner or similar term in the applied laws which are defined by reference to the Queensland Act. This definition extends those definitions to the Norfolk Island equivalent.

New section 52AE enables requirements to publish a document in the Queensland Gazette or in a newspaper to be satisfied through publication in the Commonwealth Gazette or the Territory Gazette.

Item 6 After item 6 of Schedule 2: new items 6A, 6B, 6C, 6D, 6E, 6F, 6G and 6H

These items insert new provisions into Schedule 1 of the AIA, which sets out the meaning of commonly used words and expressions.

Item 6A omits the definition of **charge** which refers to specific Queensland legislation and provides a similar definition without such references.

Item 6B replaces definitions of a **Childrens Court judge** and **Childrens Court magistrate**, which refer to specific Queensland legislation, with references simply to a ‘magistrate’. Item 6E substitutes a new definition of **magistrate** to mean a magistrate appointed under section 6 of the *Court of Petty Sessions Act 1960* (NI).

Item 6C inserts a definition of **Commonwealth Gazette**.

Item 6D provides that **Consolidated Fund** means the Consolidated Revenue Fund referred to in section 81 of the Commonwealth Constitution, in place of the definition applicable to Queensland.

Item 6F repeals the definition of police officer. This is now dealt with by new section 52AC.

Item 6G provides that **public holiday** means a public holiday within the meaning of the *Employment Act 1988* (NI) in place of the definition applicable to Queensland.

Item 6H inserts a definition of **Territory Gazette**.

Item 7 After Schedule 2: new Schedule 3—Amendments of the *Education (General Provisions) Act 2006*; new Schedule 4—Amendments of the *Education (General Provisions) Regulation 2017*; new Schedule 5—Amendments of the *Education (Queensland College of Teachers Act) 2005*; new Schedule 6—Amendments of the *Education (Queensland College of Teachers Regulation 2016*; new Schedule 7—Amendments of the *Education (Queensland Curriculum and Assessment Authority) Regulation 2014*; new Schedule 8—Amendments of the *Hospital and Health Boards Act 2011*; new Schedule 9—Amendments of the *Industrial Relations Act 2016*; new Schedule 10—Amendments of the *Public Health Act 2005*; new Schedule 11—Amendments of the *Statutory Instruments Act 1992*

New Schedule 3 of the Ordinance amends the *Education (General Provisions) Act 2006* (the EGPA) in its application to Norfolk Island. The EGPA governs the operation of schools in Queensland: both State schools and non-State schools. However, Queensland is only providing services on Norfolk Island in connection with the Norfolk Island Central School (NICS) and has requested that provisions relating to the non-State schools and other matters not relevant to the operation of the NICS be omitted from the Act as it applies in Norfolk Island.

Item 1 amends paragraph 10(5)(a) to omit, from the definition of **parent**, a person who has “guardianship of a child under the relevant Queensland legislation and substitute a reference to the corresponding provision under the *Child Welfare Act 2009* (NI).

Item 2 omits references to schooling at a non-State school and home schooling which are not relevant in the context of Norfolk Island.

Item 3 changes a reference to schooling outside Queensland to outside the Territory of Norfolk Island.

Item 4 inserts new subsections 12(3) and 12(4) which provide transitional arrangements for students at NICS who are studying the NSW curriculum. It provides that a reference in this section to an educational program approved by the Minister may be read as a reference to the syllabuses licensed by the New South Wales Education Standards Authority to the Commonwealth for use at the Norfolk Island Central School.

Items 5 and 6 amend section 13 to provide that the Norfolk Island Central School is taken to be a ***State school*** established by the Minister. The consequence of this is that NICS comes within the definitions of ***State school***, ***State educational institution*** and ***State instructional institution*** for the purposes of the EGPA.

Item 7 repeals provisions relating to the amalgamation or closure of schools, which are not relevant in the Norfolk Island context.

Items 8 and 9 delete references to enrolment in a non-State school which are not relevant in the Norfolk Island context.

Item 10 provides that a fee for distance education will not be payable by a person who lives in Norfolk Island. The Commonwealth will meet the cost of such education under the arrangements agreed with Queensland.

Item 11 inserts new section 61A. This is a transition provision allowing for integration of students at NICS during 2022 into the scheme under the Act relating to allocation of state education.

Item 12 modifies section 104 by repealing subsection 104(1) and replacing new subsections 104(1) and 104(1A) to provide that, when a person either consents to be appointed as an appointed member of the school council or stands for election as an elected member, the person shall disclose the person's criminal history, including whether a conviction has been recorded or not, in relation to the offences that are the same as, or substantially the same as the offences referred to in section 9A of the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld).

Item 13 alters the school council's obligation to keep records so that the corresponding Commonwealth Act applies.

Item 14 repeals section 133, which provides that a parents and citizens association is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982* (Qld). That provision is not relevant in the context of Norfolk Island.

Item 15 amends section 135, to remove a requirement that an audit of a parents and citizens association be conducted subject to the *Auditor-General Act 2009* (Qld). That provision is not relevant in the context of Norfolk Island.

Item 16 repeals section 145, which is concerned with a claim served on a parents and citizens association under the *Personal Injuries Proceedings Act 2002* (Qld). That provision is not relevant in the context of Norfolk Island.

Item 17 inserts new section 154A. This provides that the existing Parents and Citizens association for Norfolk Island Central School is to be taken to be a parents and citizens association for the purposes of the EGPA.

Item 18 repeals a provision relating to mature age students. Mature age students will not be enrolled at NICS so these provisions are not relevant in the context of Norfolk Island.

Item 19 repeals a provision relating to mature age students. Mature age students will not be enrolled at NICS so these provisions are not relevant in the context of Norfolk Island.

Items 20, 21, 22, 23 and 24 repeal provisions relating to non-State schools, which are not relevant in the context of Norfolk Island.

Item 25 repeals subsection 178(5) to remove a reference to police assistance under a specified Queensland Act.

Item 26 removes provisions relating to non-State schools, which are not relevant in the context of Norfolk Island.

Items 27 and 28 are consequential on deletion of references to non-State schools.

Items 29 and 32 delete provisions relating to home education. This will not be provided under this Act in the context of Norfolk Island.

Item 30 amends section 200 (a provision providing exemption from compulsory schooling requirements) to align it more closely with the circumstances applicable in the context of Norfolk Island.

Items 31 and 33 to 46 omit references to non-State schools and make consequential drafting changes arising from those omissions.

Item 47 amends section 335. That section provides definitions relevant for Part 5 of Chapter 12, which deals with controls over entry to school premises. The amendment adds to the definition of **exempt person** ‘any other member of staff of the institution’. This amendment is required because at NICS, while the teaching staff will be employees of the Queensland Department of Education (and hence within the existing definition of an **exempt person**), the ancillary staff are employed by the Commonwealth.

Item 48 removes provisions relating to non-State schools, which are not relevant in the context of Norfolk Island.

Items 49 to 56 omit references to non-State schools and make consequential drafting changes arising from those omissions.

Item 57 repeals Chapter 13, which deal with schools in receipt of subsidy. These provisions are not relevant in the Norfolk Island Context.

Items 58 to 65 omit references to non-State schools and make consequential drafting changes arising from those omissions.

Item 66 amends section 408, which provides for summary proceedings for prosecution of offences against the EGPA. The amendment replaces a reference to the *Justices Act 1886* with the *Court of Petty Sessions Act 1960* (NI).

Item 67 repeals Parts 1 and 1A of Chapter 19, which deal with Kindergarten learning programs. These are not offered at NICS.

Items 68 to 80 omit references to non-State schools and make consequential drafting changes arising from those omissions.

Item 81 inserts into the Dictionary at Schedule 4 of the EGPA a definition of **staff member**, of a school. This is defined to include a member of the teaching staff and any other member of staff (whether an employee of Queensland or the Commonwealth). This definition is inserted to address the situation at NICS, where the teaching staff will be employees of the Queensland Department of Education and the ancillary staff are employed by the Commonwealth.

Items 82 and 83 omit definitions relevant only to non-State schools.

Item 84 substitutes the definition of **chief executive (child safety)**, which refers to the head of the relevant Queensland department, to mean instead the child welfare officer appointed under the *Child Welfare Act 2009* (NI).

Items 85 to 92 omit references to non-State schools and make consequential drafting changes arising from those omissions.

Items 93 and 94 repeal definitions which relate to repealed provisions.

Item 95 extends the definition of **serious offence**, currently defined by reference to section 15 of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) to include an offence in a jurisdiction other than Queensland that is the same, or substantially the same, as a serious offence mentioned in paragraph 15(1)(a) to (f) of that Act.

New Schedule 4 of the Ordinance contains amendments of the *Education (General Provisions) Regulation 2017* in its application to Norfolk Island.

Item 1 amends the definition of **staff member** at section 10 of the regulation. This defines the members or staff who are authorised to remove property from a student's possession under Division 2 of Part 2 of the Regulations. Currently this is defined as anyone employed by the Queensland Department of Education at the school. However, at the Norfolk Island Central School only the teaching staff will be employed on that basis. The new definition extends to any other staff member at the school authorised by the Principal for the purpose of Division 2 of Part 2 of the Regulations.

Item 2 amends the definition at subsection 22(6) of the **relevant authority** to whom it is appropriate to report an unexplained absence of a child from school, to refer by example to child welfare officer appointed under the *Child Welfare Act 2009* (NI) rather than department in which the *Child Protection Act 1999* (Qld) is administered.

New Schedule 5 of the Ordinance contains amendments of the *Education (Queensland College of Teachers) Act 2005* (QCT Act) in its application to Norfolk Island. This Act deals with teaching standards, registration of teachers and related matters.

Item 1 omits specific references to home schooling at subsections 74(2) and (3), which is not provided by Queensland in Norfolk Island.

Item 2 inserts a new section 117A, which will authorise the Professional Capacity and Teacher Conduct Committee established under the QCT Act to conduct practice and conduct hearings by means of audio link, an audio visual link, or another form of communication technology that the PC&TC Committee decides.

Item 3 replaces section 124 and 125, which deal with the constitution of the Queensland Civil and Administrative Tribunal for the purposes of practice and conduct proceedings under the QCT Act. These sections instead provide for the constitution of the Administrative Review Tribunal of Norfolk Island for the purposes of practice and conduct proceedings under the QCT Act.

Item 4 amends the powers of an investigator appointed under the Act to require information or attendance under section 181. The amended provision will enable existing requirements for attendance to be met by audio link or audio visual link and for production of a stated thing to be met by some means not requiring physical attendance.

Item 5 amends section 225, which provides for summary proceedings for prosecution of offences against the QCT Act. The amendment replaces a reference to the *Justices Act 1886* with the *Court of Petty Sessions Act 1960* (NI).

Item 6 adds new definitions of **audio link** and **audio visual link** in the Dictionary at Schedule 3 of the QCT Act.

Item 7 omits the definition of **charge** in the Dictionary at Schedule 3 of the QCT Act, which refers to specific Queensland legislation, and provides a similar definition without such references.

Item 8 amends the definition of **indictable offence** in the Dictionary at Schedule 3 of the QCT Act. This is defined to include an indictable offence dealt with summarily. The definition is amended to refer to matters dealt with under the Criminal Code of Norfolk Island in addition to matters dealt with under the Criminal Code of Queensland.

Item 9 extends the definition of **serious offence**, currently defined by reference to section 15 of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) to include an offence in a jurisdiction other than Queensland that is the same, or substantially the same, as a serious offence mentioned in paragraph 15(1)(a) to (f) of that Act.

New Schedule 6 amends the *Education (Queensland College of Teachers) Regulation 2016* in its application to Norfolk Island.

Item 1 adds a new paragraph 12(1)(d), which adds to the definition of prescribed educational programs for use by teachers an educational program based on syllabuses licensed by the New South Wales Education Standards Authority to the Commonwealth for use by the Department to administer the senior secondary curriculum at the Norfolk Island Central School in 2022 and 2023 or such other period as determined in the licensing agreement.

New Schedule 7 amends the *Education (Queensland Curriculum and Assessment Authority) Regulation 2014* in its application to Norfolk Island.

Item 1 amends the definition of ***non-Queensland studies*** in the Dictionary at Schedule 2 of the Regulations. It provides that it does not include studies for which the results of a person's assessment are issued by a Norfolk Island School after 1 January 2022.

New Schedule 8 amends the *Hospital and Health Boards Act 2011* in its application to Norfolk Island.

The *Hospital and Health Boards Act 2011* (HHB Act) will come into force in Norfolk Island on 1 January 2022. However, there are a number of arrangements currently in place under applied NSW laws: the *Public Health Act 2010* (NSW)(NI), the *Health Services Act 1997* (NSW)(NI), and laws made under those Acts. These involve the exercise or powers and functions by persons or authorities in Norfolk Island, such as the Norfolk Island Health and Residential Aged Care Service (NIHRACS).

It is intended that current functions performed by Norfolk Island officials progressively will be migrated to the HHB Act, with appropriate modifications, as services by Queensland relating to hospital operations are rolled out.

Until appropriate administrative arrangements can be made to transition from those NSW health laws to Queensland laws; the intention is that the NSW health laws would continue to apply, and for their operation not to be affected by the commencement of the HHB Act.

Item 1 Amends the HHB Act to insert a new section 4A.

Subsection 4A(1) provides that the HHB Act applies subject to, and does not exclude or limit the operation of the *Public Health Act 2010* (NSW)(NI), or the *Health Services Act 1997* (NSW)(NI).

It does not appear that NIHRACS would be subject to the obligations under the HHB Act as a provider of health services. However, for the avoidance of doubt, subsection 4A(2) declares that, until otherwise expressly provided, it is taken not to provide a ***public sector health service*** within the meaning of this Act and the Facility it operates is taken not to be a ***public sector health service facility*** or a ***public sector hospital*** within the meaning of this Act.

Items 2, 3 and 4 amend sections 139 and 139A of the HHB Act to authorise disclosure of confidential information subject to the HHB Act by NIHRACS and its employees.

NIHRACS is covered by the *Privacy Act 1988* (Cth),¹ which protects information, including health and sensitive information from disclosure except in limited circumstances. Under the *Privacy Act 1988*, one of the circumstances in which disclosure of sensitive information is permitted, is where the disclosure is authorised under an Australian law.²

To facilitate the disclosure/sharing of health information, these amendments would impose the same restrictions on NIHRACS and employees of NIHRACS employees (contained in subdivision 1 of Part 7 of the HHB Act) in relation to confidential information; while also permitting those persons to disclose confidential information within the circumstances and to the entities outlined in subdivision 2 of Part 7 of the HHB Act. The effect is to substantially align the protection of confidential information on Norfolk Island with what applies in Queensland. The permitted disclosures in Part 7, Division 2, Subdivision 2 of the HHB Act are considered necessary to facilitate the effective management of health services on Norfolk Island. While the *Privacy Act 1988* (Cth) provides principles for determining whether certain disclosures of health information are permitted (and these principles continue to apply to the NIHRACS), it is nonetheless considered necessary to align the confidentiality provisions in relation to Queensland so as to permit (if required) the more seamless provision of confidential information by NIHRACS in order to facilitate NIHRACS receiving advice on matters relating to the delivery of health services on Norfolk Island.

While for many of the circumstances in Part 7, Division 2, Subdivision 2 of the HHB Act, disclosure by NIHRACS may already be permitted under the *Privacy Act 1988* (Cth), it is still considered necessary to expressly and specifically permit disclosure in the circumstances in which disclosure is permitted in Queensland. This is because some of the circumstances in which disclosure may be required or permitted may arise in circumstances of some urgency in relation to the health of a person or the protection of the public. It would not be in the public interest for the possible disclosure to be hampered by a lack of legal clarity as to whether it was permitted under a more general provision of the *Privacy Act 1988* (Cth).

The application of Part 7, Division 1, Subdivision 1 of the HHB Act and the *Privacy Act 1988* to NIHRACS and its employees are safeguards in place to protect the personal information, above and in addition to the safeguards which already apply to NIHRACS under the *Privacy Act 1988* (Cth). It should also be noted that in some respects the confidentiality in the HHB Act may be more stringent in some respects than those in the *Privacy Act 1988* (Cth). For example subsection 142A(3) of the HHB Act prohibits disclosure of confidential information even in circumstances

¹ See paragraph (c) in the definition of 'agency', and paragraph (c) of the definition of 'Commonwealth law' in s 6 of the *Privacy Act 1988* (Cth)

² see Australian Privacy Principle 6.2(b) and paragraph (c) of the definition of 'Australian law' in s 6 of the *Privacy Act 1988*

where the person who can be identified is deceased—there is no such express restriction in the *Privacy Act 1988* (Cth).

A further reason the application of these provisions (both the restrictions and the authorisations) are considered necessary is that specific privacy protections for contact tracing information are also being applied on Norfolk Island under the *Public Health Act 2005* (QLD) (NI). These specific provisions would have been drafted to work as a coherent whole with the provisions of the HBB Act—applying the HBB Act provisions to NIHRACS permits these more specific privacy protections for contact tracing to have full effect on Norfolk Island.

Finally, it should be noted that it is not feasible for amendments of this type to be made by Parliamentary enactment. The provisions amend Queensland legislation in its application to Norfolk Island. Queensland legislation may change frequently and consequently the amendments may need significant updating. It is not feasible, nor an effective use of Parliamentary time, for such amendments to applied laws to be made in primary legislation. It is for this reason that the *Norfolk Island Act 1979* (Cth) creates a scheme permitting the amendment of applied state laws by Ordinance and laws made under Ordinances.

Item 5 amends the Dictionary in Schedule 2 of the HBB Act to insert a definition of **NIHRACS** to mean the Norfolk Island Health and Residential Aged Care Service within the meaning of the *Norfolk Island Health and Residential Aged Care Service Act 1985* (NI).

New Schedule 9 amends the *Industrial Relations Act 2016* in its application to Norfolk Island.

Items 1 to 3 have the effect of amending the definition of **public holiday** in the Dictionary at Schedule 5 of the Act. Queensland employees working in Norfolk Island will be entitled to public holidays observed in Norfolk Island rather than those in a place in Queensland. The new definition, like that in the *Acts Interpretation Act 1954* in its application to Norfolk Island, will define **public holiday** to mean a public holiday within the meaning of the *Employment Act 1988* (NI).

New Schedule 10 amends the *Public Health Act 2005* in its application to Norfolk Island.

The *Public Health Act 2005* will come into force in Norfolk Island on 1 January 2022. However, there are a number of arrangements currently in place under applied NSW laws: the *Public Health Act 2010* (NSW)(NI), the *Health Services Act 1997* (NSW)(NI), and laws made under those Acts. These involve the exercise or powers and functions by persons or authorities in Norfolk Island, such as the Norfolk Island Health and Residential Aged Care Service (NIHRACS) and the Norfolk Island Regional Council.

It is intended that current functions performed by Norfolk Island officials progressively will be migrated to the *Public Health Act 2005*, with appropriate modifications, as services by Queensland in relation to hospital operations are rolled out.

Until appropriate administrative arrangements can be made to transition from those NSW health laws to Queensland laws; the intention is that the NSW health laws would continue to apply, and for their operation not to be affected by the commencement of the *Public Health Act 2005*.

However, the Commonwealth wishes to make use of the contact tracing provisions (Chapter 3 Part 3) and public health emergency provisions (Chapter 8) in the *Public Health Act 2005* for the purpose of managing COVID-19 on Norfolk Island. Sections 99 and 101 of the *Public Health Act 2005* give a contact tracing officer powers to collect information from persons and businesses. These provisions are necessary to prevent the spread of notifiable conditions, including COVID-19, on Norfolk Island. The scope of these powers are limited to managing the spread of notifiable conditions under Chapter 3 of the *Public Health Act 2005*, and the permitted disclosures in sections 106 - 110 are all in the nature of disclosures necessary to protect and promote the health and wellbeing of persons in Norfolk Island.

As above, the *Privacy Act 1988* applies to NIHRACS and its employees, and the prohibition in section 105 against disclosure of confidential information under Chapter 3 Part 3 as well as section 111 limiting access to contact information or business contact information other than under the *Public Health Act 2005* acts as additional safeguards.

However, section 362N in Part 7B of Chapter 8 of the *Public Health Act 2005* also relies on the definition of 'COVID-19 emergency period' in the *COVID-19 Emergency Response Act 2020* (Qld). As that Act is not applied on Norfolk Island, the simplest approach appears to be that Part 7B of Chapter 8 should not apply.

As the Commonwealth wishes to move away from dealing with COVID-19 under emergency provisions under the *Disaster and Emergency Management Act 2001* (NI), it is appropriate to apply the general public health orders provisions (Chapter 2 Part 3) to facilitate this transition. In light of the application of public health orders under Chapter 2 Part 3, it also appears preferable to apply the general monitoring and enforcement provisions (Chapter 9) in their entirety.

Item 1 inserts new section 5A, to give effect to the above arrangements. It provides that at this time the provisions of the *Public Health Act 2005* and laws made under the Act do not apply except for the provisions referred to above and other provisions of the Act and the Regulations in so far as they relate to these provisions.

New section 5A also provides, to avoid doubt that, except for the provisions referred to above and other provisions of the Act and the Regulations in so far as they relate to these provisions, the *Public Health Act 2005* and the laws made under it are subject to, and do not exclude or limit the operation of, the *Public Health Act 2010* (NSW)(NI), the *Health Services Act 1997* (NSW)(NI).

Item 2 amends the definition of **COVID-19 emergency** in section 315 of the *Public Health Act 2005*.

The COVID-19 related application of Chapter 8 of the *Public Health Act 2005* operates in accordance with the declaration of a public health emergency in Queensland on 29 January 2020, as further extended. The definition of COVID-19 emergency needs to be amended to reflect that a public health emergency has not yet been declared under the *Public Health Act 2005* with respect to Norfolk Island.

Section 315 as amended defines **COVID-19 emergency** to mean any public health emergency declared for Norfolk Island because of the coronavirus disease 2019 (COVID-19) caused by the novel coronavirus SARS-CoV-2.

New Schedule 11 amends the *Statutory Instruments Act 1992* in its application to Norfolk Island.

The *Statutory Instruments Act 1992* (Qld) only applies to a **statutory instrument** (see definition at section 7 of the Statutory Instruments Act) those provisions of the *Acts Interpretation Act 1954* (Qld) that are specified in Schedule 1 of the Statutory Instruments Act.

Item 1 amends section 14 of the Statutory Instruments Act to add new subsection 14(4). This provides that, the extent that it is amended by Schedule 2 to the Ordinance, the *Acts Interpretation Act 1954*, as in force in the Territory of Norfolk Island from time to time, will apply to a statutory instrument in the same way it applies to an Act. Thus, any such amendments will apply, where relevant, in the interpretation of a statutory instrument, without need to be specified in Schedule 1 of the Statutory Instruments Act.

New subsection 14(4) makes it clear that these provisions of the Acts Interpretation Act (which in general apply only to an applied law or an adopted law) will apply to a statutory instrument whether or not the instrument concerned can be characterised as a ‘law’.