



Norfolk Island Legislation (Migration) Transitional Rule 2016

I, Paul Fletcher, Minister for Territories, Local Government and Major Projects, make the following rule.

Dated 28 June 2016

Paul Fletcher
Minister for Territories, Local Government and Major Projects

Contents

Part 1—Preliminary	1
1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Definitions	1
5 Determining whether a person is a parent, or a dependent child, of another person.....	2
Part 2—Visas taken to have been granted immediately after the final transition time	3
Division 1—Visas relating to holding of unrestricted entry permits on 30 June 2016	3
6 Subclass 444 (Special Category) visa taken to have been granted.....	3
7 Effect of Subclass 444 visa taken to have been granted.....	3
Division 2—Visas relating to holding of general or temporary entry permits on 30 June 2016	5
8 Subclass 159 (Provisional Resident Return) visa taken to have been granted.....	5
9 Effect of Subclass 159 visa taken to have been granted.....	6
10 This Division has effect despite Divisions 159.5 and 159.6 of Schedule 2 to the <i>Migration Regulations 1994</i>	7
Division 3—Visas for residents of Norfolk Island on 30 June 2016	8
11 Subclass 808 (Confirmatory (Residence)) visa taken to have been granted.....	8
Part 3—Immigration status of persons in Norfolk Island at the final transition time	9
12 Immigration status of persons in Norfolk Island at the final transition time	9

Part 1—Preliminary

1 Name

This is the *Norfolk Island Legislation (Migration) Transitional Rule 2016*.

2 Commencement

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

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

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under item 357 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015*.

4 Definitions

In this instrument:

dependent child has a meaning affected by section 5.

final transition time means the commencement of Part 1 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015*.

Note: Part 1 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015* commences on 1 July 2016.

non-citizen means a person who is not an Australian citizen.

Note: This definition is the same as the definition of ***non-citizen*** in the *Migration Act 1958*.

parent has a meaning affected by section 5.

Section 5

5 Determining whether a person is a parent, or a dependent child, of another person

- (1) For the purposes of this instrument, whether a person is or was a parent of another person is to be determined in the same way as it is determined for the purposes of the *Migration Act 1958*.

Note: The definitions of *child* and *parent* in subsection 5(1) of the *Migration Act 1958*, and section 5CA of that Act, are relevant to that determination.

- (2) For the purposes of this instrument, whether a person is or was a dependent child of another person is to be determined in the same way as it is determined for the purposes of the *Migration Regulations 1994*.

Note: The definition of *child* in subsection 5(1) of the *Migration Act 1958*, section 5CA of that Act and the definition of *dependent child* in regulation 1.03 of the *Migration Regulations 1994* are relevant to that determination.

Part 2—Visas taken to have been granted immediately after the final transition time

Division 1—Visas relating to holding of unrestricted entry permits on 30 June 2016

6 Subclass 444 (Special Category) visa taken to have been granted

- (1) A non-citizen is taken to have been granted a Subclass 444 visa under the *Migration Act 1958* immediately after the final transition time if subsection (2) or (3) applies to the non-citizen.

New Zealand citizen holder of unrestricted entry permit

- (2) This subsection applies to a non-citizen if, immediately before the final transition time, he or she:
- (a) held an unrestricted entry permit granted under the *Immigration Act 1980* (Norfolk Island); and
 - (b) did not hold a permanent visa under the *Migration Act 1958*.

New Zealand citizen child in Norfolk Island of parent holding unrestricted entry permit

- (3) This subsection applies to a non-citizen born after 30 December 2015 and before 1 July 2016 if, immediately before the final transition time:
- (a) he or she was in Norfolk Island; and
 - (b) he or she did not hold any of the following under the *Immigration Act 1980* (Norfolk Island):
 - (i) an unrestricted entry permit;
 - (ii) a general entry permit;
 - (iii) a temporary entry permit; and
 - (c) he or she was not a resident of Norfolk Island under that Act; and
 - (d) he or she was a New Zealand citizen; and
 - (e) at least one of his or her parents held an unrestricted entry permit under that Act as a New Zealand citizen; and
 - (f) he or she did not hold a permanent visa under the *Migration Act 1958*.

7 Effect of Subclass 444 visa taken to have been granted

- (1) A Subclass 444 visa that is taken under this Division to have been granted to a non-citizen is taken to come into effect:
- (a) immediately after the final transition time; or
 - (b) if, at the final transition time, the non-citizen held under the *Migration Act 1958* another temporary visa, other than a Subclass 600 visa, Subclass 601 visa and Subclass 651 visa, that was in effect then but later ceases to be in effect—when that cessation occurs.

Part 2 Visas taken to have been granted immediately after the final transition time

Division 1 Visas relating to holding of unrestricted entry permits on 30 June 2016

Section 7

Note: If, at the final transition time, the non-citizen held a Subclass 600 visa, Subclass 601 visa or Subclass 651 visa, the Subclass 444 visa taken under this Division to have been granted to the non-citizen is taken to come into effect immediately after the final transition time. As a result, the Subclass 600 visa, Subclass 601 visa or Subclass 651 visa ceases to be in effect immediately after the final transition time because of subsection 82(2) of the *Migration Act 1958*.

- (2) To avoid doubt, this Division does not prevent a visa taken under this Division to have been granted from being cancelled, or otherwise ceasing to be in effect, under the *Migration Act 1958*.

Division 2—Visas relating to holding of general or temporary entry permits on 30 June 2016

8 Subclass 159 (Provisional Resident Return) visa taken to have been granted

- (1) A non-citizen is taken to have been granted a Subclass 159 visa, of a kind described in subsection (4), under the *Migration Act 1958* immediately after the final transition time if subsection (2) or (3) applies to the non-citizen.

Non-citizen holder of general entry permit or temporary entry permit

- (2) This subsection applies to a non-citizen if, immediately before the final transition time, he or she:
- (a) held a general entry permit, or a temporary entry permit, granted under the *Immigration Act 1980* (Norfolk Island); and
 - (b) did not hold a permanent visa under the *Migration Act 1958*.

Non-citizen child in Norfolk Island of parent holding permit other than visitor permit

- (3) This subsection applies to a non-citizen born after 30 December 2015 and before 1 July 2016 if, immediately before the final transition time:
- (a) he or she was in Norfolk Island; and
 - (b) he or she did not hold any of the following under the *Immigration Act 1980* (Norfolk Island):
 - (i) an unrestricted entry permit;
 - (ii) a general entry permit;
 - (iii) a temporary entry permit; and
 - (c) he or she was not a resident of Norfolk Island under that Act; and
 - (d) he or she was not a New Zealand citizen; and
 - (e) at least one of his or her parents:
 - (i) held an unrestricted entry permit under that Act as a New Zealand citizen; or
 - (ii) held a general entry permit or temporary entry permit under that Act; and
 - (f) he or she did not hold a permanent visa under the *Migration Act 1958*.

Kind of Subclass 159 visa taken under this section to have been granted

- (4) A Subclass 159 visa taken under this section to have been granted is taken to be a temporary visa permitting the holder to travel to, enter and remain in Australia for the period:
- (a) starting when the visa is taken to come into effect under section 9; and
 - (b) ending at the end of 30 June 2017.

Condition on Subclass 159 visa taken under this section to have been granted

- (5) A Subclass 159 visa taken under this section to have been granted is taken to be subject to the condition that, while the holder is in Australia, the holder must

Section 9

live, study and work only in Norfolk Island, apart from any period during the whole of which the visa holder:

- (a) has not turned 25; and
- (b) is a dependent child of a person who is ordinarily resident in Norfolk Island; and
- (c) lives elsewhere in Australia for the purpose of study; and
- (d) meets the requirements mentioned in condition 8105 (which relates to students engaging in work) in Schedule 8 to the *Migration Regulations 1994*.

Note 1: This condition is the same as that in subclause 8549(2) of Schedule 8 to the *Migration Regulations 1994*.

Note 2: Condition 8105 is not imposed on the visa.

9 Effect of Subclass 159 visa taken to have been granted

Coming into effect

- (1) A Subclass 159 visa that is taken under this Division to have been granted to a non-citizen is taken to come into effect:
 - (a) immediately after the final transition time; or
 - (b) if, at the final transition time, the non-citizen held under the *Migration Act 1958* another temporary visa, other than a Subclass 600 visa, Subclass 601 visa and Subclass 651 visa, that was in effect then but later ceases to be in effect—when that cessation occurs.

Note: If, at the final transition time, the non-citizen held a Subclass 600 visa, Subclass 601 visa or Subclass 651 visa, the Subclass 159 visa taken under this Division to have been granted to the non-citizen is taken to come into effect immediately after the final transition time. As a result, the Subclass 600 visa, Subclass 601 visa or Subclass 651 visa ceases to be in effect immediately after the final transition time because of subsection 82(2) of the *Migration Act 1958*.

Effect continues until 30 June 2017

- (2) A Subclass 159 visa that is taken under this Division to have been granted to a non-citizen and that is taken to come into effect before 1 July 2017 continues in effect until the end of 30 June 2017.

No effect after 30 June 2017

- (3) A Subclass 159 visa that is taken under this Division to have been granted to a non-citizen cannot be in effect after 30 June 2017 (whether or not it is taken to have come into effect before or on that day).

Visa may be cancelled or otherwise cease to have effect

- (4) To avoid doubt, this Division does not prevent a visa taken to have been granted under this Division from being cancelled, or otherwise ceasing to be in effect, under the *Migration Act 1958*.

Visas taken to have been granted immediately after the final transition time **Part 2**
Visas relating to holding of general or temporary entry permits on 30 June 2016 **Division 2**

Section 10

**10 This Division has effect despite Divisions 159.5 and 159.6 of Schedule 2 to the
*Migration Regulations 1994***

This Division has effect despite Divisions 159.5 and 159.6 of Schedule 2 to the
Migration Regulations 1994 (about when a Subclass 159 visa is in effect, and the
conditions on such a visa).

Section 11

Division 3—Visas for residents of Norfolk Island on 30 June 2016

11 Subclass 808 (Confirmatory (Residence)) visa taken to have been granted

- (1) A non-citizen is taken to have been granted a Subclass 808 visa, of a kind described in subsection (4), under the *Migration Act 1958* immediately after the final transition time if subsection (2) or (3) applies to the non-citizen.

Non-citizen resident of Norfolk Island without permanent visa

- (2) This subsection applies to a non-citizen if, immediately before the final transition time, he or she:
- (a) was a resident of Norfolk Island under the *Immigration Act 1980* (Norfolk Island); and
 - (b) did not hold a permanent visa under the *Migration Act 1958*.

Note: Under the *Immigration Act 1980* (Norfolk Island), a child who was, for medical reasons, born outside Norfolk Island to a parent who was a resident of Norfolk Island was also a resident of Norfolk Island.

Non-citizen holder of Subclass 834 visa

- (3) This subsection applies to a non-citizen if, immediately before the final transition time, he or she held a Subclass 834 (Permanent Resident of Norfolk Island) visa under the *Migration Act 1958*.

Kind of Subclass 808 visa taken under this section to have been granted

- (4) A Subclass 808 visa taken under this section to have been granted is taken to be a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from immediately after the final transition time. This subsection has effect despite Division 808.5 of Schedule 2 to the *Migration Regulations 1994* (about when a Subclass 808 visa is in effect).

Visa may be cancelled or otherwise cease to have effect

- (5) To avoid doubt, subsection (1) does not prevent a visa taken to have been granted under that subsection from being cancelled, or otherwise ceasing to be in effect, under the *Migration Act 1958*.

Part 3—Immigration status of persons in Norfolk Island at the final transition time

12 Immigration status of persons in Norfolk Island at the final transition time

A person who is in Norfolk Island at the final transition time:

- (a) is taken for the purposes of the *Migration Act 1958* to enter Australia at that time; and
- (b) is taken for the purposes of that Act to be immigration cleared immediately after that time; and
- (c) is not required to comply with section 166 of that Act (which is about presenting evidence of identity etc. for the purposes of immigration clearance after entering Australia) merely because he or she is taken to have entered Australia at the final transition time.