



Norfolk Island Legislation Amendment Act Transitional Rule 2016 (No 1)

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

Part 1—Preliminary

1 Name of rule

This rule is the Norfolk Island Legislation Amendment Act Transitional Rule 2016 (No 1).

2 Commencement

This rule commences at the same time as 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.

3 Authority

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

4 Definitions

(1) In this rule:

1993 AFP arrangement means the *Arrangement between the Commonwealth of Australia and the Administration of Norfolk Island concerning the Provision of Services to the Administration of Norfolk Island by the Australian Federal Police*, signed on 2 February 1993 by the Administrator of Norfolk Island and the Minister administering the *Australian Federal Police Act 1979*, pursuant to subsection 8(1C) of the *Australian Federal Police Act 1979* as in force at that time.

Advisory Council has the same meaning as in the *Norfolk Island Act 1979* as in force immediately before the final transition time.

instrument has the same meaning as in item 367 of Schedule 2 to the NILA Act.

Legislative Assembly has the same meaning as in the *Norfolk Island Act 1979* as in force immediately before the final transition time.

NILA Act means the *Norfolk Island Legislation Amendment Act 2015*.

responsible Commonwealth Minister has the same meaning as in the *Norfolk Island Act 1979*.

Territory authority has the same meaning as in the *Norfolk Island Act 1979* as in force immediately before the final transition time.

(2) Any other expression that is used in the NILA Act has the same meaning, when used in this rule, as in Part 2 of Schedule 2 to that Act.

Note: A number of expressions used in this rule are defined in item 356 of Schedule 2 to the NILA Act, including the following:

Part 2 – Transitional rule

- (a) Administration
- (b) asset
- (c) final transition time
- (d) liability
- (e) Norfolk Island Regional Council.

Part 2—Transitional rule

5 Purpose of this Part

This Part is made in accordance with item 357 of Schedule 2 to the NILA Act, which provides for the Minister to make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Part 1 of Schedule 2 to the NILA Act. This rule prescribes transitional matters in relation to the amendments and repeals made by Part 1 of Schedule 2 to the NILA Act, which have the effect of abolishing the Administration and Advisory Council.

6 Transfer of records to the Commonwealth – records relating to the Administration and the Advisory Council

- (1) This section is made for the purposes of subitem 366(3) of Schedule 2 to the NILA Act.
 - (2) This section applies to any records or documents that:
 - (a) were in the possession of the Administration or the Advisory Council immediately before the final transition time; and
 - (b) meet either or both of the following conditions:
 - (i) the records or documents are of a kind described in subsection (5); or
 - (ii) the records or documents were transferred to the Administration under item 192 of Schedule 1 to the NILA Act.
- Note: Item 192 required the transfer, to the Administration, of records or documents that were, immediately before the interim transition time (that is, 18 June 2015), in possession of certain persons (such as Ministers, members of the Legislative Assembly or Executive Council) or in possession of the Legislative Assembly or Executive Council.
- (3) Subitem 366(2) of Schedule 2 to the NILA Act does not apply to a record or document to which this section applies.
 - (4) Records and documents to which this section applies are to be transferred to the Commonwealth after the final transition time.
 - (5) The kinds of records and documents covered by subparagraph (2)(b)(i) are the following:
 - (a) records or documents documenting the core business of the Advisory Council in any of the following forms:
 - (i) advice provided to the Administrator in accordance with the Advisory Council's terms of reference
 - (ii) addresses made by the Chair of the Advisory Council

- (iii) consultation issues papers and reports documenting outcomes of consultations
 - (iv) media releases
 - (v) minutes and supporting records of meetings
 - (vi) membership records
 - (vii) policies supporting its administration and operations
 - (viii) formal reports of the Advisory Council; and
- (b) records or documents documenting routine operational administrative tasks supporting the core business of the Advisory Council; and
- (c) records or documents documenting the core business of, or routine operational administrative tasks supporting the core business of, the Legislative Assembly.

7 Transfer of records to the Commonwealth – records relating to immigration, customs and citizenship

- (1) This section is made for the purposes of subitem 366(3) of Schedule 2 to the NILA Act.
- (2) This section applies to any records or documents that:
- (a) were in the possession of the Administration immediately before the final transition time; and
 - (b) meet any of the following conditions:
 - (i) they contain:
 - (A) data from systems that record movements of persons to or from Norfolk Island, including Burrows system and ERP suite or any other databases that document the movement of people or goods; or
 - (B) other information relating to the arrival of persons in, or the departure of persons from, Norfolk Island;
 - (ii) they relate to permissions to enter or remain in Norfolk Island;
 - (iii) they are accountable documents;
 - (iv) they are registers of accountable documents;
 - (v) they otherwise relate to a relevant matter; and
 - (c) are not excluded records.
- (3) Subitem 366(2) of Schedule 2 to the NILA Act does not apply to a record or document to which this section applies.

- (4) Records or documents to which this section applies are to be transferred to the Commonwealth after the final transition time.
- (5) In this section:
- (a) **accountable documents** are validated official documents that:
- (i) are prepared for the purposes of a relevant matter;
 - (ii) may have a monetary value; and
 - (iii) are required by Commonwealth laws or policies to be accounted for.

Examples:

- visa labels
- temporary travel documents
- Document for Travel to Australia
- citizenship certificates
- any other material prepared for the purpose of issuing permissions to enter or remain in Norfolk Island.

- (b) A record or document is an **excluded record** if:
- (i) it contains information that can only be read and accessed by the Commonwealth with the aid of a device, software licence or other thing that was an asset of the Administration immediately before the final transition time; and
 - (ii) an arrangement was in place immediately before the final transition time for the information to be provided to the Commonwealth in a form that can be read and accessed by the Commonwealth without such aid.

Note: Where there was no arrangement in place immediately before the final transition time for the information to be provided to the Commonwealth in a form that can be read and accessed by the Commonwealth without such aid, the record or document is to be transferred to the Commonwealth under this section, and the device, software or other thing that is required to enable the Commonwealth to read or access the information becomes an asset of the Commonwealth at the final transition time according to section 8 of this rule.

- (c) **relevant matter** means the administration or enforcement of the laws of Norfolk Island or the Commonwealth in relation to immigration, customs or citizenship.

8 Vesting of certain assets of the Administration

- (1) This section is made for the purposes of subitem 358(3) of Schedule 2 to the NILA Act.
- (2) This section applies to a device, software licence, or other thing if:

- (a) the device, software licence or other thing is required to read or access a document or record that meets the description of paragraphs 7(2)(a) and 7(2)(b) of this rule; and
- (b) the device, software licence, or other thing was an asset of the Administration immediately before the final transition time; and
- (c) there was no arrangement in place immediately before the final transition time for the information contained in the document or record to be provided to the Commonwealth in a form that can be read and accessed by the Commonwealth without the device, software licence or other thing, and as a result, the document or record is to be transferred to the Commonwealth under section 7 of this rule; and
- (d) the Commonwealth does not have its own device, software licence or other thing that enables it to read or access the document or record.

Note: If an arrangement was in place immediately before the final transition time for the information to be provided to the Commonwealth in a form that can be read and accessed by the Commonwealth without such device, software licence or other thing, the record or document would be an excluded record and therefore would not need to be transferred to the Commonwealth under section 7 of this rule. In that case, this section does not apply.

- (3) Subitem 358(2) of Schedule 2 to the NILA Act does not apply to an asset to which this section applies.
- (4) At the final transition time, an asset to which this section applies:
 - (a) ceases to be an asset of the Administration and becomes an asset of the Commonwealth without any conveyance, transfer or assignment; and
 - (b) the Commonwealth becomes the successor in law in relation to the asset.

9 References to the Administration in certain instruments taken to be references to the Norfolk Island Regional Council

- (1) This section is made for the purposes of subitem 367(1) of the NILA Act.
- (2) This section applies to an instrument if:
 - (a) the instrument was in force immediately before the final transition time; and
 - (b) a reference is made in the instrument to the Administration; and
 - (c) the instrument is an instrument covered by one or more of the following subparagraphs:
 - (i) the instrument was made by the Administration;
 - (ii) the Administration was a party to the instrument;
 - (iii) the instrument was given to, or in favour of, the Administration; or
 - (iv) a right or liability accrued or may accrue to the Administration under the instrument; and

- (d) the instrument is not made under an Act or regulations which preclude:
 - (i) the Norfolk Island Regional Council being taken to have made the instrument; or
 - (ii) the Norfolk Island Regional Council becoming a party to the instrument; or
 - (iii) the instrument being given to, or in favour of, the Norfolk Island Regional Council; or
 - (iv) the right or liability accruing to the Norfolk Island Regional Council; and
 - (e) the instrument is not the 1993 AFP arrangement.
- (3) If this section applies to an instrument, a reference to the Administration in the instrument has effect after the final transition time as if the reference were a reference to the Norfolk Island Regional Council.

Note: 'instrument' is defined in subitem 367(3) of Schedule 2 to the NILA Act to include a contract, deed, undertaking or agreement; a notice, authority, order or instruction; and an instrument made under an Act or under regulations but does not include an exempt instrument.

10 References to the Administration in the 1993 AFP arrangement taken to be references to the Commonwealth

- (1) This section is made for the purposes of subitem 367(2) of the NILA Act.
- (2) In the 1993 AFP arrangement, any reference to the Administration has effect after the final transition time as if the reference were a reference to the Commonwealth acting through the responsible Commonwealth Minister.

Note: The 1993 AFP arrangement continues in effect according to section 13 of this rule until a new arrangement under subsection 8(1C) of the *Australian Federal Police Act 1979* (as in force at and after the final transition time) takes effect.

11 Substitution of the Norfolk Island Regional Council as a party to certain proceedings

- (1) This section is made for the purposes of subitem 365(2) of Schedule 2 to the NILA Act.
- (2) This section applies to:
 - (a) proceedings pursuant to the *Goods and Services Tax Act 2007* (NI), to which the Administration was a party, pending in any court or tribunal immediately before the final transition time; and
 - (b) any other proceedings to which the Administration became a party after 1 June 2016 that were pending in any court or tribunal immediately before the final transition time.

- (3) The Norfolk Island Regional Council is substituted for the Administration, from the final transition time, as a party to proceedings to which subsection (2) applies.

12 Acts attributable to Norfolk Island Regional Council

- (1) This section is made for the purposes of subitem 364(2) of Schedule 2 to the NILA Act.
- (2) If, before the final transition time, something was done by, or in relation to, the Administration in connection with:
- (a) the Administration's exercise of a power that is in the nature of a power of a local government; or
 - (b) the Administration's exercise of a power under any of the following laws continued in force by the *Norfolk Island Act 1979*:
 - (i) the *Electricity Supply Act 1985* (NI); or
 - (ii) the *Lighthouse Act 1961* (NI); or
 - (iii) the *Telecommunications Act 1992* (NI)

the thing has effect after the final transition time as if it had been done by, or in relation to, the Norfolk Island Regional Council.

Note: For example, if:

- (a) before the final transition time, the Administration installed works of water supply in or on land on Norfolk Island; and
- (b) a law of New South Wales that is in force in Norfolk Island according to s 18A of the *Norfolk Island Act 1979* refers to works installed by a local government,

the works are taken to have been installed by the Norfolk Island Regional Council for the purposes of that law.

- (3) This section does not affect the operation of the other provisions of this rule.

Note: For example, this section does not affect the vesting of assets according to section 8 of this rule.

- (4) In this section:

- (a) a power is ***in the nature of a power of a local government*** if it is the same as or is substantially similar to a power that is conferred by the *Local Government Act 1993* (NSW) as in force in Norfolk Island on a council established under that Act.
- (b) ***power*** includes function or duty, and, in that context, exercise means perform.

13 Savings provision relating to repeal of certain provisions of the *Norfolk Island Act 1979* and the *Australian Federal Police Act 1979*

- (1) This provision has effect despite the repeal of Part II of the *Norfolk Island Act 1979* (as in force immediately before the final transition time) according to item 25 of Schedule 2 to the NILA Act, and the repeal of subsection 8(1C) of the *Australian Federal Police Act 1979* (as in force immediately before the final transition time) according to item 66 of Schedule 2 to the NILA Act.
- (2) Until an arrangement for the provision of police services and regulatory services for Norfolk Island under subsection 8(1C) of the *Australian Federal Police Act 1979* (as in force at and after the final transition time) takes effect, the 1993 AFP arrangement continues in effect, subject to section 10 of this rule, as an arrangement for Norfolk Island in force under subsection 8(1C) of the *Australian Federal Police Act 1979* as in force at and after the final transition time.

14 Savings provision relating to preparation of annual financial statements

- (1) This provision has effect despite the repeal of Part VI of the *Norfolk Island Act 1979* (as in force immediately before the final transition time) according to item 28 of Schedule 2 to the NILA Act.
- (2) Subject to subsection (3), sections 48B, 48C, 48D and 48J of the *Norfolk Island Act 1979*, as in force immediately before the final transition time, apply after the final transition time in relation to annual financial statements for the financial year beginning on 1 July 2015 in relation to:
 - (a) the Administration; and
 - (b) a Territory authority.
- (3) After the final transition time, sections 48B, 48C, 48D and 48J of the *Norfolk Island Act 1979* as in force immediately before the final transition time apply as if:
 - (a) references to the Administrator were references to the ‘Administrator of the Territory’ appointed under section 7 of the *Norfolk Island Administrator Ordinance 2016*;
 - (b) references to the Chief Executive Officer were references to the person appointed by the Norfolk Island Regional Council as the general manager under section 334 of the *Local Government Act 1993* (NSW) as in force in Norfolk Island according to section 18A of the *Norfolk Island Act 1979*;
 - (c) the words ‘the Administration is liable to pay’ in subsections 48D(1) were omitted and replaced with the words ‘the Department that deals with the administration of Norfolk Island must pay’; and
 - (d) the words ‘unpaid fees’ in subsection 48D(4) were omitted and replaced with the words ‘any fees payable by a Territory authority and which remain unpaid’.
- (4) Subject to subsection (5), section 48G of the *Norfolk Island Act 1979*, as in force immediately before the final transition time, applies after the final transition

time, to the extent necessary for the auditing of annual financial statements for the financial year beginning on 1 July 2015, in relation to:

- (a) the Administration; or
 - (b) a Territory authority.
- (5) After the final transition time, section 48G of the *Norfolk Island Act 1979* as in force immediately before the final transition time applies as if the reference to the Administration in paragraph 48G(2)(e) were a reference to the Norfolk Island Regional Council.

15 Constitutional safety net

- (1) If:
- (a) any of the provisions of this rule; or
 - (b) the operation of a provision of this rule;
- would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.