

EXPLANATORY STATEMENT

Ordinance No. 15, 2016

Issued by the authority of the Minister for Local Government and the Territories

Norfolk Island Act 1979

Norfolk Island Applied Laws Amendment (Public Health) Ordinance 2016

Authority

The *Norfolk Island Act 1979* (the Act) provides for the Government of the Territory of Norfolk Island.

Section 19A of the Act provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory of Norfolk Island.

The *Norfolk Island Applied Laws Amendment (Public Health) Ordinance 2016* is made under section 19A of the Act.

Purpose and operation

Subsection 18A(1) of the Act provides that laws in force in New South Wales (NSW) from time to time are also in force on Norfolk Island. Subsection 18A(2) provides that a law in force in the Territory under subsection 18A(1) may be incorporated, amended or repealed under a section 19A Ordinance or a law made under such an ordinance. Subsection 18A(3) provides that a section 19A Ordinance can suspend the operation of a law in force in the Territory for such period as is specified in the Ordinance.

Currently, the *Norfolk Island Applied Laws Ordinance 2016* provides for the suspension of most applied NSW laws until 1 July 2018, and amends some of the applied NSW laws that commenced operation on Norfolk Island from 1 July 2016.

The suspension of most applied NSW laws for this period is intended to allow time for further negotiations with the NSW government for its officers and employees to perform functions and provide services in relation to Norfolk Island. It also enables further consideration to be given to transitional arrangements which will need to be in place before more extensive application of NSW applied laws to Norfolk Island can occur.

The Ordinance will, by amendment to the *Norfolk Island Applied Laws Ordinance 2016*, remove the suspension of certain provisions of the *Public Health Act 2010* (NSW), and the related provisions of the *Public Health Regulation 2012* (NSW), which provide for action on notifiable diseases and public health risks during a state of emergency. The treatment of notifiable diseases has been identified as an issue requiring urgent attention and the application of the relevant NSW laws will assist in addressing these concerns. The Ordinance also amends these provisions as appropriate for their application to Norfolk Island. The remainder of the *Public Health Act 2010* (NSW) is expected to be applied in the near future.

Consultation

The NSW government, whose officers and employees will perform functions and provide services with respect to these applied provisions, have been consulted regarding the application of these provisions of NSW law in Norfolk Island from 20 January 2017. The South Eastern Sydney Local Health District, which under NSW applied law includes the Territory of Norfolk Island, has also consulted the Norfolk Island Health and Residential

Aged Care Service and other relevant stakeholders regarding the application of these provisions.

Details of the Ordinance are set out in the Attachment.

The Ordinance is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Ordinance commences on 20 January 2017.

Statement of Compatibility with Human Rights

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

Norfolk Island Applied Laws Amendment (Public Health) Ordinance 2016

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 Disallowable Legislative Instrument

This Ordinance will remove the suspension of certain provisions of the *Public Health Act 2010* (NSW), and the related provisions of the *Public Health Regulation 2012* (NSW), which provide for action on notifiable diseases and public health risks during a state of emergency. The Ordinance also amends these provisions as appropriate for their application to Norfolk Island.

These NSW laws are in force on Norfolk Island under section 18A of the *Norfolk Island Act 1979* (the Act), not this instrument. This Statement of Compatibility with Human Rights is therefore limited to considering the human rights implications of the specific modifications to NSW laws, rather than of the NSW laws themselves.

Human Rights implications

This Disallowable Legislative Instrument engages the following right:

- Fair trial and fair hearing rights, as set out in Article 14 of the *International Covenant on Civil and Political Rights*. See also Article 40 of the *Convention on the Rights of the Child* and Article 13 of the *Convention on the Rights of Persons with Disabilities*.

The Territory of Norfolk Island has its own system of courts and tribunals. The Supreme Court of Norfolk Island is constituted under the Act. In addition, Norfolk Island continued laws have established both the Norfolk Island Court of Petty Sessions and the Norfolk Island Administrative Review Tribunal.

The relevant provisions of the *Public Health Act 2010* (NSW) which will be in force on Norfolk Island from 20 January 2017 under section 18A of the Act makes provision for both merits and judicial review in relation to certain matters. As these are laws of NSW, they provide for NSW Courts and Tribunals to undertake these review functions.

To ensure review rights continue in relation to Norfolk Island, the Ordinance will insert provisions into the *Norfolk Island Applied Laws Ordinance 2016* (Cth) which will operate to clarify that in matters which arise under the *Public Health Act 2010* (NSW) review options are vested in the relevant Norfolk Island court or tribunal.

Whilst this instrument changes review rights on Norfolk Island, by directing review mechanisms to Norfolk Island courts and tribunals instead of NSW courts and tribunals, it does not reduce or limit appeal rights. Accordingly, the instrument may be considered to promote human rights by ensuring that access to justice for Norfolk Islanders is protected under applied NSW laws.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes the protection of human rights.

Norfolk Island Applied Laws Amendment (Public Health) Ordinance 2016

Section 1 – Name

This section provides that the title of the Ordinance is the *Norfolk Island Applied Laws Amendment (Public Health) Ordinance 2016*.

Section 2 – Commencement

This section provides that the whole of the Ordinance commences on 20 January 2017.

Section 3 – Authority

This section provides that the Ordinance is made under section 19A of the *Norfolk Island Act 1979*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Ordinance is amended or repealed as set out in the applicable terms in the Schedule concerned, and any other item in a Schedule to that Ordinance has effect according to its terms.

Schedule 1 – Amendments

Part 1 – Amendments of public health legislation

Norfolk Island Applied Laws Ordinance 2016

Item [1] – Subitem 1(1) of Schedule 1 (at the end of the table)

Item 1 amends the table under subitem 1(1) of Schedule 1 by adding a reference to the *Public Health Act 2010*. The effect of this amendment is that the *Public Health Act 2010* (NSW), subject to the amendments made by this Ordinance, is no longer suspended on Norfolk Island. The Acts specified in the table under subitem 1(1) are those laws which apply in Norfolk Island by virtue of section 18A of the *Norfolk Island Act 1979* and whose operation in the Territory have not been suspended by an ordinance made under section 19A of the *Norfolk Island Act 1979*.

Item [2] – At the end of the Ordinance

Item 2 inserts a new Schedule 6 into the *Norfolk Island Applied Laws Ordinance 2016*, which will make a number of amendments to the *Public Health Act 2010* (NSW) and the *Public Health Regulation 2012* (NSW) as appropriate to their application to Norfolk Island. In summary, these amendments will apply the provisions of these laws which provide for action on notifiable diseases and public health risks during a state of emergency. The remainder of these NSW laws will remain suspended.

Schedule 6—Amendment of the Public Health Act 2010 (NSW) and the Public Health Regulation 2012 (NSW)

Part 1—Amendment of the Public Health Act 2010 (NSW)

Part 1 Overview

The items remove the suspension of certain provisions of the *Public Health Act 2010* (NSW) which provide for action on notifiable diseases and public health risks during a state of emergency. The items also amend these provisions as appropriate for their application to Norfolk Island. The remainder of the *Public Health Act 2010* (NSW) is expected to be applied in the near future.

Item 1 of Schedule 6 – Subsection 6(1)

Section 6 of the *Public Health Act 2010* (NSW) as in force in NSW is expressed to bind the Crown in the right of NSW as well as ‘the Crown in all its other capacities’. In the case of the *Public Health Act 2010* (NSW)(NI), as a law in force in the Territory, there is no need to specifically refer to the Crown in right of NSW. Therefore, the amendment provided at item 1 of Schedule 6 deletes the reference to the Crown in right of NSW so that section 4 simply provides for the Act to bind the Crown ‘in each of its capacities’.

Item 2 of Schedule 6 – At the end of Part 1

This item inserts the new section 6A at the end of Part 1 of the *Public Health Act 2010* (NSW)(NI). Subsection 6A(1) provides that only the provisions of that Act listed in subsection 6A(2) apply in relation to Norfolk Island. Subsection 6A(2) lists the relevant provisions. These are the provisions which provide for action on notifiable diseases and public health risks during a state of emergency, as well as some related and ancillary provisions.

New subsection 6A(3) has the effect that where a matter arising under the *Public Health Act 2010* (NSW) would be dealt with by a court of NSW, jurisdiction is instead conferred, to the extent permitted by the Commonwealth Constitution, on a Norfolk Island Court, as provided in paragraphs 6A(3)(a), (b) and (c).

New paragraph 6A(3)(a) means that where the Supreme Court of New South Wales has jurisdiction for a kind of matter in relation to NSW, the Supreme Court of Norfolk Island has jurisdiction for that kind of matter in relation to Norfolk Island.

New paragraph 6A(3)(b) means that where the District Court of New South Wales has jurisdiction for a kind of matter in relation to NSW, the Supreme Court of Norfolk Island has jurisdiction for that kind of matter in relation to Norfolk Island.

New paragraph 6A(3)(c) means that if the Local Court of NSW has jurisdiction for a kind of matter in relation to NSW, the Court of Petty Sessions of Norfolk Island has jurisdiction for that kind of matter in relation to Norfolk Island.

New subsection 6A(4) provides that, to the extent permitted by the Commonwealth Constitution, where a power or function is conferred on the Civil and Administrative Tribunal of NSW, that power or function, in relation to Norfolk Island, is conferred on the Administrative Review Tribunal of Norfolk Island and is to be exercised or performed in accordance with the *Administrative Review Tribunal Act 1996* (NI).

The limitation of the conferral of jurisdiction and powers to the extent permitted by the Commonwealth Constitution recognises that the powers exercisable by the relevant NSW courts and tribunal may be a mixture of judicial and non-judicial powers. The express limitation provided in subsections 6A(3) and (4) clarifies that these provisions do not purport to confer powers on Norfolk Island bodies where it would infringe the doctrine of separation of powers as enshrined in the Commonwealth Constitution.

Item 3 of Schedule 6 – Subsection 7(6)

This item substitutes the reference in subsection 7(6) of the *Public Health Act 2010* (NSW)(NI) to a state of emergency existing under the *State Emergency and Rescue Management Act 1989* (NSW) with a reference to a state of disaster or emergency which is declared to exist under the *Disaster and Emergency Management Act 2001* (NI). Subsection 7(6) provides that the Minister’s power to deal with public health risks generally does not apply to any part of the State for which a state of emergency exists under the *State Emergency and Rescue Management Act 1989* (NSW). As this NSW law is currently suspended in Norfolk Island it is appropriate that this reference, and other references in the

Act, are substituted with references to the *Disaster and Emergency Management Act 2001* (NI) which currently regulates disaster and emergency management on Norfolk Island.

Item 4 of Schedule 6 – Subsection 8(1)

This item substitutes the reference in subsection 8(1) of the *Public Health Act 2010* (NSW)(NI) to a state of emergency existing under the *State Emergency and Rescue Management Act 1989* (NSW) (the 1989 Act) with a reference to a state of disaster or emergency which is declared to exist under the *Disaster and Emergency Management Act 2001* (NI) (the 2001 Act). Section 8 gives the Minister the power to deal with public health risks during a state of emergency.

Item 5 of Schedule 6 – Subsection 8(2)

This item substitutes the reference in subsection 8(2) of the *Public Health Act 2010* (NSW)(NI) to ‘the 1989 Act’ with a reference to ‘the 2001 Act’. This amendment is consequential to the amendment made to subsection 8(1) by item 4 of Schedule 6.

Item 6 of Schedule 6 – Subsection 8(6)

This item substitutes the reference in subsection 8(6) of the *Public Health Act 2010* (NSW)(NI) to ‘Division 4 of Part 2 of the 1989 Act’ with a reference to ‘the 2001 Act’. This effect of this amendment is that any action taken by the Minister under section 8 of the *Public Health Act 2010* (NSW)(NI) has effect as if it had been taken in the execution of the *Disaster and Emergency Management Act 2001* (NI) (the 2001 Act). This means, for example, that the provisions of the 2001 Act dealing with immunity from civil liability for an honest act or omission will apply to any actions or orders taken under section 8 of the *Public Health Act 2010* (NSW)(NI).

Item 7 of Schedule 6 – Subsection 12(5)

This item repeals subsection 12(5) of the *Public Health Act 2010* (NSW)(NI) and substitutes a new subsection 12(5) which provides that any payments made under subsection 12(4) ‘are to be made out of money appropriated by the Parliament of the Commonwealth.’ The effect of this amendment is that any compensation which is payable for damage suffered by a person as a result of the disinfection or destruction of a noxious article under section 12 of the *Public Health Act 2010* (NSW)(NI) is payable by the Commonwealth rather than NSW.

Item 8 of Schedule 6 – Subsections 71(2) and (3)

This item substitutes the references in subsections 71(2) and (3) of the *Public Health Act 2010* (NSW)(NI) to an ‘authorised warrants officer’ with a reference to an ‘issuing officer’. Section 71 deals with the arrest of persons who contravene public health orders including the issue of arrest warrants. Subsection 71(5) provides that in this section an authorised warrants officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW). As this NSW law is currently suspended on Norfolk Island it is appropriate that this reference, and other references in the Act, are substituted with a reference to the officials on Norfolk Island who are ordinarily responsible for the issue of arrest warrants under Norfolk Island law, that is a Judge, or the Registrar, of the Supreme Court of Norfolk Island or a Magistrate of the Court of Petty Sessions of Norfolk Island.

Item 9 of Schedule 6 – Subsection 71(5)

This item repeals subsection 71(5) of the *Public Health Act 2010* (NSW)(NI) and substitutes a new subsection 71(5) which provides that in section 71, ‘issuing officer’ means a Judge, or the Registrar, of the Supreme Court of Norfolk Island or a Magistrate of the Court of Petty Sessions of Norfolk Island. This amendment is consequential to the amendment made to

subsections 71(2) and (3) by item 8 of Schedule 6. The definition of ‘issuing officer’ is based on the definition contained in section 47 of the *Criminal Procedure Act 2007* (NI).

Item 10 of Schedule 6 – Subsection 85(1) (definition of *primary school*)

This item repeals the definition of ‘primary school’ contained in subsection 85(5) of the *Public Health Act 2010* (NSW)(NI) and substitutes a new subsection which provides that, for the purposes of Division 4, a ‘primary school’ means a public school or a private school within the meaning of the *Education Act 1931* (NI). The effect of this amendment is that the provisions of the Act dealing with vaccine preventable diseases will apply to the Norfolk Island Central School.

Item 11 of Schedule 6 – Subsection 107(1)

This item substitutes the reference in subsection 107(1) of the *Public Health Act 2010* (NSW)(NI) to the NSW Register kept under the *Births, Deaths and Marriages Registration Act 1995* (NSW) with the Norfolk Island registers of births, deaths and marriages kept under the *Registration of Births, Deaths and Marriages Act 1963* (NI). The effect of this amendment is that the relevant official may request access to a Norfolk Island register kept under the *Registration of Births, Deaths and Marriages Act 1963* (NI).

Item 12 of Schedule 6 – Subsection 107(2)

This item substitutes the reference in subsection 107(2) of the *Public Health Act 2010* (NSW)(NI) to the NSW Registrar of Births, Deaths and Marriages with the Registrar within the meaning of the *Registration of Births, Deaths and Marriages Act 1963* (NI). This amendment is consequential to the amendment made to subsections 107(1) by item 11 of Schedule 6. The effect of this amendment is the Norfolk Island Registrar of Births, Deaths and Marriages is to make such arrangements as are necessary for the supply of information from a Norfolk Island register if required by a relevant official.

Item 13 of Schedule 6 – Subsections 109(1) and (2)

This item substitutes the references in subsections 109(1) and (2) of the *Public Health Act 2010* (NSW)(NI) to an ‘authorised warrants officer’ with references to an ‘issuing officer’. Section 109 deals with the issue of search warrants where an authorised officer suspects that a provision of the Act or the regulations has been or is being contravened on premises. The effect of this amendment is that the officials on Norfolk Island who are ordinarily responsible for the issue of search warrants under Norfolk Island law, that is a Judge, or the Registrar, of the Supreme Court of Norfolk Island or a Magistrate of the Court of Petty Sessions of Norfolk Island will also be responsible for the issue of search warrants under the Act.

Item 14 of Schedule 6 – Subsection 109(3)

This item substitutes a new subsection 109(3) of the *Public Health Act 2010* (NSW)(NI), to replace the reference to Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) with a reference to Division 3 of Chapter 3 of the *Criminal Procedure Act 2007* (NI). As the latter NSW law is currently suspended in Norfolk Island it is appropriate that this reference is substituted with the appropriate reference to the Norfolk Island law which currently regulates the issue of search warrants. The effect of this amendment is that the procedures dealing with search warrants in Division 3 of Chapter 3 of the *Criminal Procedure Act 2007* (NI) will apply, with appropriate modifications, to an application for a search warrant under section 109 of the *Public Health Act 2010* (NSW)(NI).

Item 15 of Schedule 6 – Subsection 109(3)

This item substitutes the reference in subsection 109(4) of the *Public Health Act 2010* (NSW)(NI) to section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) with a reference to section 58 of the *Criminal Procedure Act 2007* (NI). As this latter NSW law is currently suspended on Norfolk Island it is appropriate that this reference is substituted with the appropriate references to the Norfolk Island law which currently regulates the issue of search warrants. The effect of this amendment is that the general provision dealing with the availability of assistance and use in force in executing a search warrant under the *Criminal Procedure Act 2007* (NI) is not limited by s 109(4) of the *Public Health Act 2010* (NSW)(NI) which provides that a police officer may accompany an authorised officer executing a search warrant issued under section 109, and may take all reasonable steps to assist the authorised officer in the exercise of the person's functions under this section.

Item 16 of Schedule 6 – Subsection 109(5)

This item repeals subsection 109(5) of the *Public Health Act 2010* (NSW)(NI) and substitutes a new subsection 109(5) which provides that in section 109, 'issuing officer' means a Judge, or the Registrar, of the Supreme Court of Norfolk Island or a Magistrate of the Court of Petty Sessions of Norfolk Island. This amendment is consequential to the amendment made to subsections 109(1) and (2) by item 13 of Schedule 6. The definition of 'issuing officer' is based on the definition contained in section 47 of the *Criminal Procedure Act 2007* (NI).

Item 17 of Schedule 6 – Section 121

This item amends section 121 of the *Public Health Act 2010* (NSW)(NI) which deals with the appointment of public health officers. The effect of the amendment is to avoid any doubt that a public health officer may be appointed for the whole of the Territory of Norfolk Island rather than just a part of the Territory.

Item 18 of Schedule 6 – Section 125

This item amends section 125 of the *Public Health Act 2010* (NSW)(NI) which deals with the delegation of the functions of a public health officer. The effect of the amendment is to provide that the public health officer may delegate any of their functions (other than this power of delegation) to the manager of the Norfolk Island Health and Residential Aged Care Service (NIHRACS) or to a NIHRACS employee.

Item 19 of Schedule 6 – After subsection 126(1)

This item inserts a new subsection 126(1A) into the *Public Health Act 2010* (NSW)(NI). The effect of the amendment is to provide that the Secretary may appoint the manager of the Norfolk Island Health and Residential Aged Care Service (NIHRACS) or a NIHRACS employee to be an authorised officer, either generally or in relation to any particular function exercisable by authorised officers under this or any other Act relating to public health.

Item 20 of Schedule 6 – Subsection 132(1)

This item amends subsection 132(1) of the *Public Health Act 2010* (NSW)(NI) which deals with civil proceedings or other compensation brought against the State or any authority of the State. The effect of the amendment is to provide that section 132 also applies to any civil proceedings or other compensation brought against the Commonwealth or any Commonwealth authority.

Part 2—Amendment of the Public Health Regulation 2012 (NSW)

Public Health Regulation 2012 (NSW)

Item 21 of Schedule 6 – At the end of Part 1

This item inserts new clause 3A at the end of Part 1 of the *Public Health Regulation 2012* (NSW)(NI). Subsection 3A(1) provides that only the provisions of that Regulation listed in subclause 3A(2) apply in relation to Norfolk Island. Subsection 3A(2) lists the relevant provisions. These are the provisions which provide for action on notifiable diseases and public health risks during a state of emergency, as well as some related and ancillary provisions.

Item 22 of Schedule 6 – Paragraph 44A(1)(d)

This item substitutes the reference in paragraph 44A(1)(d) of the *Public Health Regulation 2012* (NSW)(NI) to a state of emergency existing under the *State Emergency and Rescue Management Act 1989* (NSW) with a reference to a state of disaster or emergency which is declared to exist under the *Disaster and Emergency Management Act 2001* (NI).

Paragraph 44A deals with exemptions from pre-enrolment requirements relating to immunisations at child care facilities. As this NSW law is currently suspended in Norfolk Island it is appropriate that this reference is substituted with a reference to the *Disaster and Emergency Management Act 2001* (NI) which currently regulates disaster and emergency management in Norfolk Island.

Part 2 – Other amendments

Norfolk Island Applied Laws Ordinance 2016

Item [3] – Item 1 of Schedule 4

This item repeals and substitutes a new item 1 of Schedule 4 of the *Norfolk Island Applied Laws Ordinance 2016*.

Item 1 of Schedule 4 – At the end of Chapter 1

This item substitutes a new section 6A in the *Local Government Act 1993* (NSW)(NI) which modifies the operation of this applied law in Norfolk Island, including with respect to the jurisdiction of Norfolk Island courts and the Administrative Review Tribunal of Norfolk Island. This consequential amendment will ensure consistency with the equivalent provision to be inserted into the *Public Health Act 2010* (NSW)(NI) by the Ordinance (item 2 of Schedule 6), and avoids any doubt that the powers or functions conferred upon the Administrative Review Tribunal of Norfolk Island under the *Local Government Act 1993* (NSW)(NI) are to be exercised or performed by the Tribunal in accordance with the *Administrative Review Tribunal Act 1996* (NI) (new paragraphs 6A(2)(b) and (3)(b)). The new section 6A is otherwise in identical terms to the substituted section 6A.