

EXPLANATORY STATEMENT

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

Norfolk Island Applied Laws Ordinance 2016

Norfolk Island Applied Laws Amendment (2021 Measures No.1) Rules 2021

Authority

Section 7 of the *Norfolk Island Applied Laws Ordinance 2016* (the Ordinance) provides that the Minister may, by legislative instrument, make rules amending the Ordinance so as to amend or repeal an applied law; or to make application, saving or transitional provisions in relation to any amendments or repeals of applied laws.

The *Norfolk Island Applied Laws Amendment (2021 Measures No. 1) Rules 2021* (the Rules) are made under section 7 of the Ordinance.

The Rules amend the Ordinance with the effect of amending applied New South Wales legislation, specifically the *Local Government Act 1993* (NSW) (NI) (the Local Government Act) as it applies in Norfolk Island.

Under section 18A of the *Norfolk Island Act 1979* (the NI Act), the laws of an ‘applied law jurisdiction’ are in force in Norfolk Island and may be amended or repealed by an ordinance made under section 19A. New South Wales is an ‘applied law jurisdiction’ for the purposes of the NI Act (see section 5).

Purpose and operation

The Rules remove any doubt as to the extraterritorial application of the Local Government Act so that functions can be undertaken and exercised where necessary outside of Norfolk Island. The amendments made by the Rules are technical in nature and are intended to clarify the existing operation of the Local Government Act as it applies in Norfolk Island.

Norfolk Island is a remote location and necessarily some activities and functions that relate to the administration of the Local Government Act may need to be undertaken by people in locations outside of Norfolk Island. The need to operate remotely, not just in relation to Norfolk Island matters but across many sectors and industries, has been particularly exacerbated by the ongoing COVID-19 pandemic. This has brought about a range of new practices and ways of working, including the use of technologies to facilitate remote operation to ensure continuity of administration and service delivery.

These changes will ensure the effective operation of the Local Government Act, recognising that from time to time activities and functions may need to be performed in areas outside of Norfolk Island, for example where a person, located on the Australian mainland, is appointed under the Local Government Act to exercise particular statutory functions. An example of this is supporting the ability of the Commissioner, who is ordinarily located on the Australian mainland and currently appointed to inquire into the Norfolk Island Regional Council, to undertake activities in places other than on Norfolk Island.

Consultation

These amendments are technical in nature, do not directly affect any individuals, and are intended to clarify the existing operation of the Local Government Act. As such it was not considered necessary to conduct consultation.

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

The Rules commence the day after registration on the Federal Register of Legislation.

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 (2021 Measures No.1) 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 Instrument

The *Norfolk Island Applied Laws Amendment (2021 Measures No. 1) Rules 2021* (the Rules) remove any doubt as to the extraterritorial application of the Local Government Act so that functions can be undertaken and exercised where necessary outside of Norfolk Island. The amendments made by the Rules are technical in nature and are intended to clarify the existing operation of the Local Government Act as it applies in Norfolk Island.

Norfolk Island is a remote location and necessarily some activities and functions that relate to the administration of the Local Government Act may need to be undertaken by people in locations outside of Norfolk Island. The need to operate remotely, not just in relation to Norfolk Island matters but across many sectors and industries, has been particularly exacerbated by the ongoing COVID-19 pandemic. This has brought about a range of new practices and ways of working including the use of technologies to facilitate remote operation to ensure continuity of administration and service delivery.

These changes will ensure the effective operation of the Local Government Act recognising that from time to time activities and functions may need to be performed in areas outside of Norfolk Island, for example where a person, located on the Australian mainland, is appointed under the Local Government Act to exercise particular statutory functions. An example of this is supporting the ability of the Commissioner, who is ordinarily located on the Australian mainland and currently appointed to inquire into the Norfolk Island Regional Council, to undertake activities in places other than on Norfolk Island.

Human Rights implications

This instrument clarifies the operation of existing legislation, does not make any substantive changes to that legislation and is being made to avoid any doubt as to the efficient and effective operation of the Act. As such it is compatible with human rights as it does not engage or otherwise limit any of the applicable human rights and freedoms.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights.

**Assistant Minister for Regional Development and Territories,
Parliamentary Secretary to the Deputy Prime Minister and Minister for
Infrastructure, Transport and Regional Development**

The Hon Nola Marino MP

Norfolk Island Applied Laws Amendment (2021 Measures No. 1) Rules 2021

Section 1 – Name

This section provides that the title of the instrument is the *Norfolk Island Applied Laws Amendment (2021 Measures No.1) Rules 2021*.

Section 2 – Commencement

This section provides for the Rules to commence the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Rules are made under section 7 of the *Norfolk Island Applied Laws Ordinance 2016* (the Ordinance).

Section 4 – Schedules

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

Schedule 1 – Amendments

Norfolk Island Applied Laws Ordinance 2016

Item [1] – Before item 1 of Schedule 4

Item 1 inserts new item 1A into Schedule 4 to the Ordinance with the effect of amending section 5 of the *Local Government Act 1993* (NSW)(NI) (the Local Government Act).

The effect of this amendment is that section 5 of the Local Government Act will now operate ‘in and in relation’ to Norfolk Island. Section 5 of the Local Government Act, as it applies in New South Wales, limits its application to those parts of that State ‘constituted as areas’ for its purposes and the intention of this amendment is to avoid any doubt as to the extraterritorial application of the Local Government Act as it applies in Norfolk Island.

Item [2] – After item 27 of Schedule 4

Item 2 inserts new item 27A into Schedule 4 to the Ordinance with the effect of amending section 438U of the Local Government Act.

The effect of this amendment is to add new subsections 6 and 7 at the end of section 438U of the Local Government Act. The intention of this amendment is to avoid any doubt that a commissioner in a public inquiry can operate and/or exercise powers and functions in or outside the territory of Norfolk Island.