

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 Act 1979

Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021

Authority

The *Norfolk Island Act 1979* (the Act) provides for the governance of the Territory of Norfolk Island (Norfolk Island). Section 19A of the Act provides that the Governor-General may make Ordinances for the peace, order and good governance of Norfolk Island.

The *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* (the Ordinance) is made under section 19A of the Act.

Purpose and operation

The *Norfolk Island Regulations 2021* prescribe the State of Queensland as an applied law jurisdiction. Under subsection 18A(1) of the Act, the laws of an applied law jurisdiction are in force in Norfolk Island.

The Ordinance suspends the operation of the majority of Queensland applied laws in Norfolk Island. Some Queensland applied laws have not been suspended by the Ordinance in order to support the delivery of education and health services in Norfolk Island by the Queensland Government. The Ordinance also makes some minor technical modifications to the un-suspended Queensland applied laws to ensure their effective operation. Further modifications are expected to be made by rules made under the Ordinance.

The Australian and Queensland Governments signed the Intergovernmental Partnership Agreement on State Service Delivery to Norfolk Island (IGA) on 26 October 2021 to transition responsibility for state level health and education service provision from NSW to Queensland from 1 January 2022.

Queensland will provide government school education services to the Norfolk Island Central School. This will include management and administration, teacher staffing, professional development and support, the delivery of the curriculum and learning programs and the services underlying this delivery, and discharge its work health and safety duties.

The Ordinance ensures that Queensland education laws to support these functions remain in place, comprising the *Education (General Provisions) Act 2006* (Qld), *Education (Queensland College of Teachers) Act 2005* (Qld) and the *Education (Queensland Curriculum and Assessment Authority) Act 2014* (Qld), and legislation made under those Acts.

The *Hospital and Health Boards Act 2011* (Qld) and *Public Health Act 2005* (Qld), and legislation made under those Acts, are also laws that remain in force on Norfolk Island.

The primary purpose of the *Hospital and Health Board Acts 2011* (Qld) is to deliver public sector hospital and other health services in Queensland. Through its service delivery arrangement with the Queensland Government, the Australian Government is committed to providing Norfolk Island services that are at a level comparable to similar-sized mainland communities.

The Ordinance contributes to delivering this commitment by supporting the Norfolk Island Health and Residential Aged Care Service (NIHRACS) to access the support, oversight and clinical pathways of the Queensland health system. This is achieved through the coordination of clinical pathways to mainland care and services, facilitation of the referral and management of care, clinical and governance support, quality and safety systems advice to comply with national accreditation requirements and support of NIHRACS integration with public health and primary care through a Primary Health Network and mainland services delivered by hospitals. Queensland will also assist the NIHRACS Manager to build capacity and to develop data and information that contributes to the accountability, monitoring and evaluation of NIHRACS services. NIHRACS will have access to training and professional development, credentialing support and mechanisms for clinical review and supervision.

Queensland officials will provide advice on matters related to public health matters under the *Public Health Act 2005* (Qld), including advice on notifiable diseases, vaccinations, immunisation schedules and public health directions.

Queensland officials will also provide advice on COVID-19 related matters including, but not limited to, quarantine and border requirements (from a health perspective), contact tracing, support for vaccinations, models of care, infrastructure, escalation pathways and emergency planning. NIHRACS will have a single point of contact for all enquiries related to COVID-19. Queensland will support the implementation of contact tracing systems and infrastructure (technology or paper based) and the implementation of plans and policy.

As Queensland will provide education and health services to Norfolk Island under an arrangement with the Commonwealth, the Queensland Government's position is that all its employees, including those engaged in delivering services on Norfolk Island under service delivery arrangements between the Queensland Government and the Australian Government, should be subject to the Queensland industrial relations scheme.

The Ordinance ensures that the industrial relations laws of Queensland remain in place on Norfolk Island to support the delivery of services by Queensland employees through 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. This legislation will apply only to Queensland employees who perform services in Norfolk Island under the arrangement with the Commonwealth.

This will ensure consistency between the conditions of Queensland Government employees working in Queensland and on Norfolk Island. Queensland Government employees, when they are engaged on our behalf on Norfolk Island, will receive the same entitlements as if they worked on the mainland in comparable circumstances.

Consultation

The Department has worked with the Norfolk Island community to seek their views on service delivery and to provide guidance and support to those impacted by the transition. This work has been undertaken in line with the Norfolk Island Community Engagement Framework.

There has been a strong focus from all parties on the teachers, students and parents of the Norfolk Island Central School and ensuring those engaged with NIHRACS are provided with guidance and support as the transition approaches and is implemented.

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. As the outgoing service provider, the New South Wales Government has engaged with the Australian and Queensland Governments.

Other

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

The Ordinance commences on 1 January 2022.

Details of the Ordinance are set out in the Attachment.

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) Ordinance 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 Ordinance

Purpose and operation

The *Norfolk Island Regulations 2021* prescribe the State of Queensland as an applied law jurisdiction. Under subsection 18A(1) of the Act, the laws of an applied law jurisdiction are in force in Norfolk Island.

The Ordinance suspends the operation of the majority of Queensland applied laws in Norfolk Island. Some Queensland applied laws have not been suspended by the Ordinance in order to support the delivery of education and health services in Norfolk Island by the Queensland Government. The Ordinance also makes some minor technical modifications to the un-suspended Queensland applied laws to ensure their effective operation. Further modifications are expected to be made by rules made under the Ordinance.

Queensland will provide government school education services to the Norfolk Island Central School which will include management and administration, teacher staffing, professional development and support, the delivery of the curriculum and learning programs, and the services underlying this delivery and discharge its work health and safety duties.

The Ordinance ensures that Queensland education laws to support these functions remain in place, comprising the *Education (General Provisions) Act 2006* (Qld), *Education (Queensland College of Teachers) Act 2005* (Qld) and the *Education (Queensland Curriculum and Assessment Authority) Act 2014* (Qld), and legislation made under those Acts.

The *Hospital and Health Boards Act 2011* (Qld) and *Public Health Act 2005* (Qld), and legislation made under those Acts, are also laws that remain in force on Norfolk Island.

The primary purpose of the *Hospital and Health Board Acts 2011*(Qld) is to deliver public sector hospital and other health services in Queensland. Through its service delivery arrangement with the Queensland Government, the Australian Government is committed to providing Norfolk Island with services that are at a level comparable to similar-sized mainland communities.

The Ordinance contributes to delivering this commitment by supporting the Norfolk Island Health and Residential Aged Care Service (NIHRACS) access the support, oversight and clinical pathways of the Queensland health system. This is achieved through the coordination of clinical pathways to mainland care and services, facilitation of the referral and management of care, clinical and governance support, quality and safety systems advice

to comply with national accreditation requirements, and support of NIHRACS integration with public health and primary care through a Primary Health Network and mainland services delivered by hospitals. Queensland will also assist the NIHRACS Manager to build capacity and to develop data and information that contributes to the accountability, monitoring and evaluation of NIHRACS services. NIHRACS will have access to training and professional development, credentialing support and mechanisms for clinical review and supervision.

Queensland officials will provide advice on matters related to public health matters under the *Public Health Act 2005* (Qld), including advice on notifiable diseases, vaccinations, immunisation schedules and public health directions.

Queensland officials will also provide advice on COVID-19 related matters, including, but not limited to, quarantine and border requirements (from a health perspective), contact tracing, support for vaccinations, models of care, infrastructure, escalation pathways and emergency planning. NIHRACS will have a single point of contact for all enquiries related to COVID19. Queensland will support the implementation of contact tracing systems and infrastructure (technology or paper based) and the implementation of plans and policy.

As Queensland will provide education and health services to Norfolk Island under an arrangement with the Commonwealth, the Queensland Government's position is that all its employees, including those engaged in delivering services on Norfolk Island under service delivery arrangements between the Queensland Government and the Australian Government, should be subject to the Queensland industrial relations scheme.

The Ordinance ensures that the industrial relations laws of Queensland remain in place on Norfolk Island to support the delivery of services by Queensland employees through 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. This legislation will apply only to Queensland employees who perform services in Norfolk Island under the arrangement with the Commonwealth.

This will ensure consistency between the conditions of Queensland Government employees working in Queensland and on Norfolk Island. Queensland Government employees, when they are engaged on our behalf on Norfolk Island, will receive the same entitlements as if they worked on the mainland in comparable circumstances.

Human rights implications

This instrument engages:

- Article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the rights to health and social security;
- Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- Articles 28 and 29 of the *Convention on the Rights of the Child* (UNCRC).

The right to the enjoyment of the highest attainable standard of physical and mental health is contained in Article 12(1) of the ICESCR. The UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not a right for each individual to be healthy, but is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Committee reports that the '*highest attainable standard of health*' takes into account the country's available resources. This right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs, and conditions necessary for the realisation of the highest attainable standard of health.

The Ordinance engages the right to education in Article 13 of the ICESCR. Article 13 recognises the right of everyone to education, which is directed towards the full development of the human personality and the sense of its dignity, and to enable all persons to participate effectively in society. It also recognises the liberty of parents and guardians to choose non-government schools for their children's education, provided those schools conform to minimum educational standards. The right to education for children is also found in Articles 28 and 29 of the UNCRC.

The Ordinance operationalises the Queensland Government's commitment, in particular to teachers transferring their employment from New South Wales to Queensland, they will not be worse off in terms of workplace rights, protections and entitlements.

The Ordinance engages the following rights:

- the right to work under Article 6(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- the right to just and favourable conditions of work under Article 7 of the ICESCR;
- the right to an effective remedy in Article 2(3) of the *International Covenant on Civil and Political Rights* (ICCPR);
- the right to equality and non-discrimination under Article 26 of the ICCPR; and
- the right to strike under Article 8(1) of the ICESCR and Article 22 of the ICCPR.

The definition of 'human rights' in the *Human Rights (Parliamentary Scrutiny) Act 2011* relates to the seven core United Nations human rights treaties. The content of the rights to work and rights in work in the ICESCR may be informed by specific obligations in treaties of the International Labour Organisation (ILO), such as the *Right to Organise and Collective Bargaining Convention 1949 (No. 98)*, which deal with the right of employees to collectively bargain for terms and conditions of employment.

Right to work and rights in work

Article 6(1) of the ICESCR recognises the right to work and obliges States Parties to take appropriate steps to safeguard this right. The United Nations Committee on Economic, Social and Cultural Rights has stated that the right to work in article 6(1) of ICESCR encompasses the need to provide the worker with just and favourable conditions of work.

Article 7 of the ICESCR requires that States Parties recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensures, among other things,

remuneration that provides all workers with fair wages, rest and leisure, reasonable limitation of working hours, periodic holidays with pay, remuneration for public holidays, and safe and healthy working conditions.

Key terms and conditions of employment

As a result of the Ordinance, the Queensland Industrial Relations Act (Qld IR Act) will extend to NI and cover a Queensland Government employer and its employees as an applied law from 1 January 2022.

Complementary to the application of the Qld IR Act as an applied law, a Rule is to be made under section 32A of the *Fair Work Act 2009* (the Rule) will have the effect that a Queensland Government employer and its employees are no longer covered by most of the Fair Work Act when they are working on NI. These employees will be subject to the Qld IR Act as an applied law and the Fair Work Act in the same way as Queensland public sector employees working in Queensland.

The Qld IR Act as an applied law will provide for the following employment terms and conditions:

- Maximum weekly hours of work for full-time employees of 38 hours, with reasonable additional hours (ss 23-26, Qld IR Act);
- Unpaid parental leave for 52 consecutive weeks once the employee has completed 12 months' continuous service with the employer or the employee is a long-term casual employee and the employee has given at least 10 weeks' written notice, with the ability to request a further consecutive period of 52 weeks (Division 8, Qld IR Act);
- Annual leave for four weeks for each year of service (Division 5, Qld IR Act);
- Paid sick and carer's leave for 10 days for each year of service (Divisions 6-1 and 6-2, Qld IR Act);
- Paid bereavement leave for up to two days on the death of a member of an employee's family or household (Division 6-3, Qld IR Act);
- Paid leave on a public holiday (s 117, Qld IR Act); and
- Redundancy pay where an applicable industrial instrument applies to the employee and the employee's employment is terminated because the employer no longer requires the employee's job to be done by anyone (Division 13-2, Qld IR Act).

These provisions deal with terms and conditions of employment that, in relation to Queensland public sector employees working on NI, would but for the Rule be dealt with in the National Employment Standards (NES) (contained in Part 2-2 of the Fair Work Act).

As with Queensland public sector employees based in Queensland, Queensland public sector employees working on NI remain covered by Part 6-3 of the Fair Work Act. Part 6-3 extends the unpaid parental leave, notice of termination, and payment in lieu of notice provisions in the National Employment Standards (contained in Part 2-2 of the Fair Work Act) to all employees.

Preservation of accrued entitlements

Arrangements made under applied industrial laws of Queensland, with modifications made to those laws by rules made under section 7 of the Ordinance, will ensure the preservation of accrued entitlements and service for employees engaged by the NSW Government who take up employment with the Qld Government from 1 January 2022.

Public holidays

Queensland public sector employees working on Norfolk Island have an entitlement to paid leave on public holidays (under s 117 of the Qld IR Act as an applied law).

Anti-bullying measures

Queensland public sector employees working on Norfolk Island have, in the event they believe they have been subject to bullying in the workplace, the benefit of equivalent protections and avenues for redress as their counterparts based in Queensland.

The *Work Health and Safety Act 2011* (Qld) (which adopts the model Work Health and Safety laws) places relevant duties on businesses to, so far as is practicable, provide and maintain a working environment in which workers are not exposed to hazards, including hazards that impact on psychological health (such as workplace bullying). Additionally, there are comparable anti-bullying protections to Part 6-4B of the Fair Work Act provided in Chapter 7 of the Qld IR Act. Furthermore, Queensland Government employers have sophisticated bullying policies and grievance procedures, allowing employees to resolve matters quickly and confidentially.

As with Queensland public sector employees based in Queensland, Queensland public sector employees working on Norfolk Island will not be covered by the bullying provisions contained in Part 6-4B of the Fair Work Act.

Right to an effective remedy

Article 2(3) of the ICCPR provides that States Parties undertake to ensure the right to an effective remedy (to be determined by competent judicial, administrative or legislative authorities, or any other competent authority).

Right to an effective remedy before competent administrative and judicial authorities

The Queensland Industrial Relations Commission (QIRC), Industrial Magistrates Court (IMC) and Industrial Court of Queensland (Industrial Court) are vested with jurisdiction to hear and determine matters under the Qld IR Act.

As a result of the Rule, Queensland public sector employees working on Norfolk Island will not generally be subject to the jurisdiction of the Fair Work Commission (FWC) and the Federal Court and Federal Circuit and Family Court in relation to industrial relations matters, as they will no longer be covered by the Parts of the Fair Work Act that apply to national system employees.

The QIRC, IMC and Industrial Court provide for similar dispute resolution processes and remedies as provided for under the Fair Work Act. The QIRC is an independent tribunal that has powers and functions under various enactments, including in relation to the resolution of industrial disputes. The QIRC may resolve industrial disputes via conciliation or arbitration, can make any order it considers appropriate, and has an appellate jurisdiction. The IMC also has the power to conciliate or arbitrate matters under the Qld IR Act. The Industrial Court has the power to hear and decide matters referred to it by the QIRC, offences against the Qld IR Act, and appeals from the IMC. It may also exercise jurisdictional review of decisions of the QIRC and IMC.

Unfair dismissal

Queensland public sector employees working on Norfolk Island will, in the event they believe they have been unfairly dismissed, have broadly equivalent rights to remedies under the Queensland industrial relations system (as applied on Norfolk Island), as they would have under the Fair Work Act. The Queensland Industrial Relations Commission may order reinstatement, re-employment, compensation or payment of lost wages (ss 321, 322 or 323, Qld IR Act).

As with the Queensland public sector employees based in Queensland, Queensland public sector employees working on Norfolk Island remain covered by Part 6-4 of the Fair Work Act. Accordingly, they may continue to make unlawful termination applications before the FWC if their employment has been terminated and they believe that the termination was in contravention of s 772(1) of the Fair Work Act.

Rights to equality and non-discrimination in employment

Article 26 of the ICCPR recognises that all persons are equal before the law and are entitled, without any discrimination, to the equal protection of the law. It provides that the laws of the States Parties are to prohibit anyone from being discriminated against on any ground such as

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Queensland public sector employees working on Norfolk Island will have the same federal protections in relation to rights to equality and non-discrimination in employment as Queensland public sector employees working in Queensland. For example, they will continue to have access to protections from discrimination contained in federal anti-discrimination laws (for example the *Racial Discrimination Act 1975* and the *Sex Discrimination Act 1984*).

They will also continue to be covered by Part 6-4 of the Fair Work Act, which makes it unlawful to terminate an employee's employment on certain prohibited grounds including trade union membership, race, colour, sex, sexual preference, age, and physical or mental disability.

As with Queensland public sector employees based in Queensland, and as a result of the Rule, Queensland public sector employees working on Norfolk Island will not be covered by the general protections in Part 3-1 and anti-bullying provisions in Part 6-4B of the Fair Work Act.

Queensland public sector employees will have suitable and comparable protections under the Qld IR Act from adverse action during employment or dismissal from employment. The Qld IR Act provides for a number of general protections at work (Part 1, Chapter 8). There are three broad categories of protections: workplace rights, freedom of association and protection from workplace discrimination. See above under *Anti-bullying measures* in relation to the Queensland anti-bullying jurisdiction.

Right to Freedom of Association, Strike and Collective Bargaining

Article 22 of the ICCPR protects the right to freedom of association. Article 8(1) of the ICESCR supports this by providing that the State Parties undertake to protect the right to strike, provided it is exercised in conformity with the laws of the particular country.

Article 4 of the ILO *Right to Organise and Collective Bargaining Convention 1949 (No. 98)* requires States Parties to (among other things) take measures appropriate to national conditions to encourage and promote machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Right to freedom of association

Queensland public sector employees working on Norfolk Island will have access to the same protections in relation to the right to freedom of association as Queensland public sector

employees working in Queensland. They will be covered by Part 1 of Chapter 8 of the Qld IR Act as an applied law, which provides, amongst other things, that:

- a person must not take adverse action against another person because the other person is or is not involved with an industrial association, or has or has not engaged in industrial activity (ss 290-291, Qld IR Act);
- a person must not organise, take, or threaten any action against another person with intent to coerce the other person or a third person to engage in industrial activity (s 292, Qld IR Act);
- an employer must not induce an employee to be or not be a member of an industrial association (s 294, Qld IR Act); and
- an employer must not discriminate against an employee or prospective employee because of their trade union activity (s 295, Qld IR Act).

These provisions are substantially similar to protections under the Fair Work Act. They engage and promote the right to freedom of association for Queensland public sector employees working on Norfolk Island.

As with Queensland public sector employees based in Queensland, and as a result of the Rule, Queensland public sector employees working on Norfolk Island will not be covered by the general protections in Part 3-1 of the Fair Work Act.

Collective bargaining and the right to strike

Queensland public sector employees working on Norfolk Island will be in the same position as Queensland public sector employees working in Queensland, rather than being covered by the Fair Work Act as ‘national system employees’. The operation of the Ordinance and Rule will allow Queensland public sector employees working on Norfolk Island to collectively bargain at the enterprise level and take protected industrial action under the Queensland industrial relations system.

The relevant Queensland public sector employees and their employer would be covered by Chapter 4 of the Qld IR Act, under which they:

- must notify relevant parties of their intention to bargain (s 169, Qld IR Act);
- are required to bargain in good faith (s 173, Qld IR Act);
- are subject to a ‘peace obligation period’, during which the parties try to reach agreement but cannot seek assistance from the Queensland Industrial Relations Commission or take industrial action (s 174, Qld IR Act); and
- can be assisted in bargaining by the Queensland Industrial Relations Commission, including through conciliation and arbitration (Part 3 of Chapter 4, Qld IR Act).

A no-disadvantage test is in place to ensure a safety-net when bargaining. Employees are disadvantaged if the Queensland Industrial Relations Commission considers employees’ entitlements or protections would be reduced by the proposed bargaining instrument (ss 199 and 210, Qld IR Act).

The relevant Queensland public sector employees and their employer would also be able to take protected industrial action in support of a proposed bargaining instrument. Part 8 of Chapter 4 of the Qld IR Act provides:

- a right to take protected industrial action (ss 232 and 237, Qld IR Act);
- the circumstances in which industrial action is protected industrial action (ss 233-4, Qld IR Act);
- approval and notification requirements for proposed protected industrial action (ss 235-236, Qld IR Act);
- limited circumstances under which protected industrial action may be suspended or terminated, including on grounds of significant economic harm (ss 240-241, Qld IR Act).

The framework for collective bargaining and protected industrial action under the Qld IR Act is similar to that provided for under the Fair Work Act. The applied provisions of the Qld IR Act engage and promote the right to collectively bargain and the right to take protected industrial action in conformity with Australian laws.

Analysis

This Ordinance advances the rights to health and public health on Norfolk Island and the right of equality and non-discrimination, as it creates a new pathway for the Queensland Government to support NIHRACS as it delivers services to Norfolk Island.

The Ordinance promotes the right to education delivered by Queensland on Norfolk Island so that Norfolk Island can continue to have functioning and well-resourced schools. This measure will have a beneficial impact on the right to education.

Conclusion

This instrument is compatible with human rights as it advances the right to health, public health, education and industrial relations on Norfolk Island, as the Australian Government supports the delivery of health and education services in the territory under the laws established by the Queensland Government.

**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

ATTACHMENT—NOTES ON CLAUSES

This attachment explains the operation of individual provisions in the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021*.

Part 1—Preliminary

Section 1 – Name

Section 1 provides that the name of the Ordinance is the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* (the Ordinance).

Section 2 – Commencement

This section provides for the Ordinance to commence at the same time as the *Norfolk Island Regulations 2021*, which is on 1 January 2022.

Section 3 – Authority

Section 3 provides that the Ordinance is made under section 19A of the *Norfolk Island Act 1979* (the Act). That section confers power to make Ordinances for ‘the peace, order and good government’ of Norfolk Island.

Section 4 – Simplified outline of this Ordinance

This section provides a simplified outline of the Ordinance. It explains that this Ordinance amends, repeals and suspends applied laws as set out in the items in the Schedules to this Ordinance.

Section 5 – Definitions

Section 5 sets out the definitions of terms used in the Ordinance:

- ***applied law*** means a law of Queensland as in force in the Territory under section 18A of the Act
- ***applied industrial relations law*** means 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
- ***Queensland Act*** and ***Queensland statutory instrument*** refer to these Acts or statutory instruments as they apply in the Territory from time to time
- ***service delivery rule*** means a rule made under subsection 7(2). The subsection confers the power to make rules necessary or convenient for supporting the delivery of services to Norfolk Island under an arrangement between the Commonwealth and Queensland.

Section 6 – Interpretation Act

Subsection 6(1) provides that the *Interpretation Act 1979* (Norfolk Island) does not apply to this Ordinance or rules made under this Ordinance. The Note to this subsection explains that instead, the *Acts Interpretation Act 1901* (Cth) applies, because the Ordinance and any rules made under it are legislative instruments.

Subsection 6(2) provides that the *Acts Interpretation Act 1954* (Qld), as it applies in the Territory from time to time, applies in relation to:

- an applied law that is a Queensland Act as amended by this Ordinance;
- subject to any contrary intention in the service delivery rule—a provision of a Queensland Act that is applied, adopted or incorporated, with or without modification, by a service delivery rule.

Subsection 6(3) provides the *Statutory Instruments Act 1992* (Qld), as it applies in the Territory from time to time, applies in relation to

- an applied law that is a Queensland statutory instrument as amended by this Ordinance;
- subject to any contrary intention in the service delivery rule—a provision of a Queensland statutory instrument that is applied, adopted or incorporated, with or without modification, by a service delivery rule.

Section 7 – Rules

Subsection 7(1) provides that the Minister 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.

This will enable changes to be made to the applied laws to support the delivery of services by Queensland and to make modifications to the laws appropriate for Norfolk Island.

The powers under subsection 7(1) are in similar terms to the rule-making powers conferred on the Minister by section 7 of the *Norfolk Island Applied Laws Ordinance 2016* (in relation to NSW applied laws) and section 6 of the *Norfolk Island Continued Laws Ordinance 2015* (in relation to continued Norfolk Island laws).

Subsection 7(2) provides that the Minister may, by legislative instrument, make rules necessary or convenient for supporting the delivery of services to Norfolk Island under an arrangement between the Commonwealth and Queensland. These rules are defined as ***service delivery rules***.

The power to make service delivery rules is not confined to making modifications to applied laws. It provides for other measures to support the delivery of services by Queensland. This could include adopting another Queensland law in force from time to time, with appropriate modifications to that law, as is authorised under section 66A of the Act. This might be required where it is found that another law of Queensland is necessary to support the delivery of services by Queensland.

Subsection 7(3) provides that, subject to subsection (4), the rules may not create an offence or civil penalty; may not provide powers of arrest or detention or of entry, search or seizure; and may not impose a tax.

Subsection 7(4) makes it clear that subsection 7(3) does not prevent rules made under subsection 7(2) from applying, adopting or incorporating, with or without modification, a provision of a law of Queensland. The intention is that measures of such kinds contained in Queensland laws may be brought into effect to support the delivery of services by Queensland.

Subsection 7(5) provides that the rule-making power under subsection 7(2) will expire on 1 January 2023. The rules made under that subsection before that date will continue in effect.

Subsection 7(6) authorises the Minister to delegate the Minister's powers under section 7 to the Secretary or a Deputy Secretary of the Department. Subsection 7(7) provides that any such delegation will be of no effect on or after 1 January 2023. This means that the delegate will not be able to make new rules after 31 December 2022, but that any rules made by a delegate before that date will continue in effect.

Subsection 7(8) provides that, a delegate must comply with any directions of the Minister in exercising powers under a delegation under this section.

Section 8 - Powers under Queensland laws incorporated by service delivery rules

Section 8 provides, where a service delivery rule adopts a provision of Queensland law, then the adopted provision generally has the same effect as if sections 18B and 18E of the Act applied to the adopted law.

Under section 18B of the Act, powers vested in State officials under an applied law vest in the Commonwealth Minister. The section includes a scheme whereby the Minister may vest the powers in other persons by means of directions or delegations. Powers are vested automatically in State officials who are authorised to exercise the powers under the corresponding State law where provided in an arrangement between the State and the Commonwealth under section 18C. Section 18E of the Act provides that the directions or delegations are taken to extend to additions to, or alterations of, powers as a result of amendment of the applied law.

The purpose of section 8 is to apply, as far as possible, the provisions of sections 18B and 18E of the Act to a Queensland law adopted by a service delivery rule made under subsection 7(2) in the same way that these provisions apply to an applied law in force under section 18A of the Act.

Section 8 does not purport to apply subsections 18B(2A) and 18B(3) of the Act. These provisions do not change the substantive effect of section 18B.

- Subsection 18B(2A) confirms that powers vested by Ordinance are outside the scope of the section.
- Subsection 18B(13) declares that instruments made under section 18B (such as delegations or directions) are not legislative instruments.

The omission of subsection 18B(3) from the provisions applied by section 8 is not intended to give rise to an implication that any instrument made under the applied provisions is to be regarded as a legislative instrument for the purposes of the *Legislation Act 2003*. It is simply not possible for a legislative instrument such as this Ordinance to define the status of an instrument for the purposes of that Act.

Section 9 – Schedules

Subsection 9(1) provides that each applied law that is specified in a schedule is amended or repealed as set out in the applicable items in the schedule, whilst any other item in a schedule has effect according to its terms. Subsection 9(2) provides that the amendments, repeals and other items set out in the Schedules to this Ordinance continue in effect according to their terms from time to time. This provision is intended to acknowledge the fact that Queensland laws in force on Norfolk Island under s18A of the Act are in force as they exist from time to time, which means, as they are amended in Queensland, the amendments will also extend to Norfolk Island. This section makes clear that the amendments in this Ordinance continue to apply according to their own terms, even if the corresponding Queensland law (and hence the applied law) is amended.

Subsection 9(3) provides that, where an item in a schedule amends, suspends, repeals or otherwise affects an applied law, and the item is subsequently amended or repealed, then to the extent the corresponding law remains in force in Queensland, the applied law also continues in force in Norfolk Island in accordance with section 18A of the Act and this Ordinance as amended. This subsection is intended to make clear that the amendments, repeals, suspensions and other modifications set out in the schedules to this Ordinance are themselves subject to amendments and repeals as well, and that the application of the applied laws would be affected accordingly. For example, if an item in a schedule contains a modification of a Queensland law, but the item is subsequently repealed, then the modification would cease to have effect and the relevant Queensland law would be in force in the Territory without the modification.

At present this section has limited scope as there is only one schedule (Schedule 2) which contains amendments of an applied law. However, further amendments are expected to be made by rules made under subsection 7(1) to amend the Ordinance to amend or otherwise affect applied laws.

Schedule 1—Suspension

Item 1 – Suspension

Subitem 1 of item 1 to Schedule 1 suspends the operation of the legislation of Queensland, other than an Act specified in the table or legislation made under such an Act, from the day this item commences on 1 January 2022 until 1 January 2027.

The legislation of Queensland which is in operation in Norfolk Island is listed in the table under this subitem.

Acts Interpretation Act 1954

Education (General Provisions) Act 2006

Education (Queensland College of Teachers) Act 2005

Education (Queensland Curriculum and Assessment Authority) Act 2014
Hospital and Health Boards Act 2011
Industrial Relations Act 2016
Public Health Act 2005
Public Sector Ethics Act 1994
Public Service Act 2008
Statutory Instruments Act 1992
Superannuation (State Public Sector) Act 1990
Workers' Compensation and Rehabilitation Act 2003
Work Health and Safety Act 2011

Subitem 2 of item 1 provides that subitem 1 applies to legislation of Queensland whether the legislation is in operation on the day the item commences or whether it comes into operation after that day.

Subitem 3 of item 1 provides that an applied industrial relations law only applies in relation to an officer or employee of Queensland, an authority of Queensland, or an officer or employee of an authority of Queensland—and only to the extent that the officer, employee or authority is exercising powers or performing functions or duties under an arrangement between the Commonwealth and Queensland for the delivery of services to Norfolk Island

Item 2 – References to suspended law in law that is not suspended

Item 2 provides that the suspension of the operation of a law of Queensland in Norfolk Island does not affect any reference to that law in a law of Queensland which is not suspended, or, subject to any contrary intention in the service delivery rule, a provision of a law of Queensland applied, adopted or incorporated by a service delivery rule. This means a law which is referred to in an applied Queensland law or a Queensland law adopted by a service provider rule does not need to be operational in Norfolk Island for the reference to have effect.

Schedule 2—Amendment of the Acts Interpretation Act 1954 (Qld)

Schedule 2 amends the *Acts Interpretation Act 1954* in its operation as an applied law for the interpretation of other applied laws and Queensland laws applied, adopted or incorporated by a service delivery rule.

Item 1 – Act Binds Crown

Item 1 amends section 5 of the *Acts Interpretation Act 1954* to provide that it binds the Crown in all its capacities.

Item 2 – Statutory bodies

Item 2 inserts new section 26A of the *Acts Interpretation Act 1954* to provide that, if an applied law or adopted law establishes or requires the establishment or appointment of a committee, a board, a registrar or any other statutory body, then the law is not taken to establish, or require the establishment or appointment of, the same kind of body in the Territory of Norfolk Island.

Item 3 – References to documents

Item 3 inserts new section 36A of the *Acts Interpretation Act 1954* to provide that if an applied law or adopted law requires or permits something to be done in connection with a document made, approved or published under, or for the purposes of, an applied law, adopted law or a law of Queensland, the reference to the document is taken to be a reference to:

- any such document made, approved or published 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, approved or published in relation to Norfolk Island in force or existing at the relevant time—the document made, approved or published under, or for the purposes of, the law as in force in Queensland, as the document is in force or exists at the relevant time.

The effect of this is that, where a Queensland law in force in Norfolk Island requires for its operation (for example, some instrument to have been made), it will be sufficient if that instrument has been made in Queensland under the Queensland law. However, if it is appropriate to do so, it could be made again for Norfolk Island and would take precedence.

Items 4 and 5 - References to the Crown

Item 4 modifies the existing section 52 of the *Acts Interpretation Act 1954* to take effect as subsection 52(1).

Item 5 inserts a new subsection 52(2) of the *Acts Interpretation Act 1954* to provide that a reference in an Act to the Crown, or to the Crown in right of Queensland, is to be read as if it were a reference to the Crown in right of the Commonwealth, unless the context precludes that meaning.

Items 6 and 7 Meaning of commonly used words and expressions

Item 6 inserts into Schedule 1 of the of the *Acts Interpretation Act 1954* the following definitions:

adopted law means a law of Queensland applied, adopted or incorporated by a legislative instrument made under the Norfolk Island Act, other than an applied law.

applied law means a law of Queensland as in force in the Territory of Norfolk Island under section 18A of the Norfolk Island Act.

Norfolk Island Act means the *Norfolk Island Act 1979* of the Commonwealth.

Territory of Norfolk Island means the Territory of Norfolk Island as described in Schedule 1 to the Norfolk Island Act.

Item 7 omits the definition of ‘the State’ in Schedule 1 of the of the *Acts Interpretation Act 1954* and substitutes the following definition:

the State:

(a) when used in a geographical sense—means the Territory of Norfolk Island; and

(b) when used in any other sense—means the Territory of Norfolk Island unless the context precludes that meaning.