

EXPLANATORY STATEMENT

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

Norfolk Island Continued Laws Ordinance 2021

Norfolk Island Applied Laws Amendment (Applied Laws and Service Delivery (Queensland) (Long Service Leave)) Rules 2021

Authority

The *Norfolk Island Applied Laws Amendment (Applied Laws and Service Delivery (Queensland) (Long Service Leave)) Rules 2021* (the Rules) is made under section 7 of the *Norfolk Island Applied Laws Ordinance 2016* (the Ordinance).

Section 7 of the Ordinance provides that the Commonwealth Minister with responsibility for the Territory of Norfolk Island may, by legislative instrument, make rules amending the Ordinance to:

- amend or repeal a continued law; or
- to make application, saving or transitional provisions in relation to any amendments or repeals of continued laws.

The Ordinance amends laws of the former Norfolk Island Legislative Assembly and laws made under those laws (continued laws) as set out in the items in the Schedules to the Ordinance. Section 7 provides that the Rules operate as amendments to the Ordinance.

Purpose

This Rules is one of a suite of legislative instruments to implement the Intergovernmental Partnership Agreement on State Service Delivery to Norfolk Island 2021 to transition responsibility for state level health and education service provision from New South Wales to Queensland from 1 January 2022.

The amendments made by the Rules operate as amendments to the Schedules of the Ordinance which themselves amend the continued laws. The amendments insert new items into the Schedules to effect these amendments.

The purpose of the Rules is to amend continued laws to ensure both Queensland and New South Wales legislation can be appropriately applied in Norfolk Island. The Rules provide the applied New South Wales legislation relating to employee long service leave will not apply to:

- officers or employees of Queensland;
- an authority (within the meaning of section 18B of the *Norfolk Island Act 1979* of the Commonwealth) of Queensland; and
- an officer or employee of an authority (within the meaning of section 18B of the *Norfolk Island Act 1979* of the Commonwealth) of Queensland.

Consultation

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. The New South Wales Government has also been engaged in the transition process.

Other

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

The Rules commence at the same time as the Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021, on 1 January 2022.

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 (Applied Laws and Service Delivery (Queensland) (Long Service Leave)) 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 Rules

The *Long Service Leave Act 1955 (NSW)(NI)* makes provision in relation to long service leave entitlements for employees in Norfolk Island in general. It is not one of the laws applied in Norfolk Island specifically for employees of NSW providing services in Norfolk Island under arrangements with the Commonwealth (defined as an ***applied industrial relations law*** in section 5 of the Ordinance).

The Rules provide the applied New South Wales legislation relating to employee long service leave will not apply to

- officers or employees of Queensland.
- an authority of Queensland (within the meaning of section 18B of the *Norfolk Island Act 1979* of the Commonwealth);
- an officer or employee of an authority of Queensland (within the meaning of section 18B of the *Norfolk Island Act 1979* of the Commonwealth).

Those employees will have their long service leave entitlements provided in accordance with the industrial relations laws of Queensland, which are applied in Norfolk Island for those employees (see *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* Schedule 1 item 1(3)). A similar arrangement applied for New South Wales employees performing services in Norfolk Island under an arrangement with the Commonwealth.

Human rights compatibility assessment

The legislative instrument will not engage or impact any human rights and freedoms recognised or declared by any of the international instruments specified in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Therefore, it is assessed as being compatible with human rights, pursuant to section 9(2) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Assistant Minister for Regional Development and Territories and Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development
The Hon Nola Marino MP

ATTACHMENT—NOTES ON CLAUSES

Section 1—Name

This clause provides that the title of the Rules is the *Norfolk Island Applied Laws Amendment (Applied Laws and Service Delivery (Queensland) (Long Service Leave)) Rules 2021* (the Rules).

Section 2—Commencement

This clause provides for the Rules to commence immediately after the commencement of the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021*. That Ordinance commences on 1 January 2022.

Section 3—Authority

Clause 3 provides that the Rules are made under Subsection 7(1) of the *Norfolk Island Applied Laws Ordinance 2016* (the Ordinance). Subsection 7(1) also provides that the Rules amend the Ordinance itself.

Section 4—Schedules

This clause provides that legislation that is specified in a Schedule is amended or repealed as set out in the Schedule concerned and any other item in a Schedule to the Rules has effect according to its terms.

Schedule 1—Amendments

Item 1 – This item amends item 6 of Schedule 5 of the Ordinance. Schedule 5 makes amendments of the *Long Service Leave Act 1955* (NSW) in its application to Norfolk Island. Item 6 of Schedule 5 of the Ordinance adds a new subsection 3A to the *Long Service Leave Act 1955* (NSW)(NI) dealing with modifications for Norfolk Island.

The *Long Service Leave Act 1955* (NSW)(NI) makes provision in relation to long service leave entitlements for employees in Norfolk Island in general. It is not one of the laws applied in Norfolk Island specifically for employees of New South Wales providing services in Norfolk Island under arrangements with the Commonwealth (defined as an ***applied industrial relations law*** in section 5 of the Ordinance).

The amendment made by this rule inserts a new subsection 3A(7). It provides that the *Long Service Leave Act 1955* (NSW)(NI) does not apply in relation to employees of Queensland to the extent that they are exercising powers or performing functions or duties under an arrangement between the Commonwealth and Queensland for the delivery of services to Norfolk Island.

Those employees will have their long service leave entitlements provided in accordance with the industrial relations laws of Queensland, which are applied in Norfolk Island for those employees (see *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* Schedule 1 item 1(3)). A similar arrangement applied for New South Wales employees performing services in Norfolk Island under an arrangement with the Commonwealth.