

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Regional Development, Local Government and Territories

*Norfolk Island Act 1979*

*Norfolk Island Applied Laws and Service Delivery (Queensland) Amendment (Further Education and Training) Ordinance 2022*

### **Authority**

The *Norfolk Island Act 1979* (Cth) (the Act) deals with the governance of Norfolk Island (NI). Norfolk Island is a Commonwealth administered territory with no state legislature.

Subsection 18A(1) of the Act provides that the laws of an applied law jurisdiction are in force in Norfolk Island. Section 5 of the *Norfolk Island Regulations 2021* (Cth) provides that Queensland is applied law jurisdiction. Subsection 18A(2) provides that applied laws may be amended or repealed by a section 19A Ordinance or a law made under a section 19A Ordinance.

Ordinances are generally made to account for unique legal and administrative arrangements or to address matters not dealt with by the laws of other jurisdictions applied in Norfolk Island from time to time. Subsection 19A(1) of the Act provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory.

The *Norfolk Island Applied Laws and Service Delivery (Queensland) Amendment (Further Education and Training) Ordinance 2022* (the Ordinance) is made under subsection 19A(1) of the Act.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Ordinance may be exercised.

### **Purpose and operation**

The Ordinance applies and amends Queensland laws, the *Further Education and Training Act 2014* (Qld) (the FET Act) and the *Further Education and Training Regulation 2014* (Qld) (the FET Regulation), to introduce arrangements to support the registration of apprenticeship and traineeship training contracts on Norfolk Island.

The amendments ensure that the FET Act and FET Regulation, as applied in Norfolk Island, are relevant and appropriate to the region. The focus of the arrangement is helping to build a skilled workforce to meet the current and future needs of industry and the Norfolk Island community.

The Ordinance implements the following key measures:

- Providing Norfolk Island apprentices, trainees and employers with access to regulated apprenticeships and traineeships under the Queensland legislative framework;
- Allowing for the registration and management of apprenticeship and traineeship training contracts by the Queensland Government;
- Ensuring Norfolk Island apprentices and trainees continue to receive the same qualifications as apprentices and trainees trained in other Australian states and territories;

- Enabling the establishment of school-based apprenticeships and traineeships in Norfolk Island;
- Establishing delegation and power/authority vesting arrangements for Queensland Government officials; and
- Giving the Administrative Review Tribunal of Norfolk Island jurisdiction for handling complaints from Norfolk Island apprentices, trainees and employers in relation to apprenticeship and traineeship training contracts.

The Ordinance will not apply provisions relating to the Queensland Training Ombudsman and establishing group training organisations and principal employer organisations. Provisions for the Queensland Civil and Administrative Tribunal will be suspended, with apprentices, trainees and employers instead having access to the appeal mechanisms of the Administrative Review Tribunal of Norfolk Island.

### Consultation

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts worked with the Norfolk Island community to seek residents' views on service delivery and to provide guidance and support to those impacted by the transition from New South Wales to Queensland. The Queensland Government also consulted with Norfolk Island stakeholders.

Consultation specific to the proposed Ordinance took place over approximately two months in 2022. Feedback from existing employers and the Norfolk Island community supports the Queensland Government taking on the registration of apprenticeship and traineeship training contracts, particularly as on-the-ground services will continue to be delivered by the current service provider, Asuria. The Ordinance has undergone various iterations and the final product takes account of the feedback received through consultations.

### Regulatory Impact Statement

The Office of Best Practice Regulation considers the proposal is likely to have no more than minor regulatory impacts. A Regulatory Impact Statement is not required (ref. OBPR22-02639).

### Other

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

The Ordinance commences on the day after the instrument is registered.

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) Amendment (Further Education and Training) Ordinance 2022**

This 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 Legislative Instrument**

The purpose of the *Norfolk Island Applied Laws and Service Delivery (Queensland) Amendment (Further Education and Training) Ordinance 2022* is to amend the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* to include new ‘Schedule 7A – Further Education and Training Act 2014 (Qld)’ and new ‘Schedule 7B – Further Education and Training Regulation 2014 (Qld)’ to apply and amend the Queensland legislation to make it appropriate for the Norfolk Island context.

The focus of the arrangement is helping to build a skilled workforce to meet the current and future needs of industry and the Norfolk Island community.

The Legislative Instrument implements the following key measures:

- Providing Norfolk Island apprentices, trainees and employers with access to regulated apprenticeships and traineeships under the Queensland legislative framework;
- Allowing for the registration and management of apprenticeship and traineeship training contracts by the Queensland Government;
- Ensuring Norfolk Island apprentices and trainees continue to receive the same qualifications as apprentices and trainees trained in other Australian states and territories;
- Enabling the establishment of school-based apprenticeships and traineeships in Norfolk Island;
- Establishing delegation and power/authority vesting arrangements for Queensland Government officials; and
- Giving the Administrative Review Tribunal of Norfolk Island jurisdiction for handling complaints from Norfolk Island apprentices, trainees and employers in relation to apprenticeship and traineeship training contracts.

#### **Human rights implications**

This Legislative Instrument engages the following rights under the International Covenant on Economic, Social and Cultural Rights:

- The right to self-determination (Article 1) – The Legislative Instrument will not limit any rights to self-determination. The residents of Norfolk Island are free to pursue their economic, social and cultural development without outside interference.
- The right not to be subject to discrimination (Article 2) – The services and opportunities enabled by the Legislative instrument are not predicated on Norfolk Island residents having any particular race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- The right to work (Article 6) – Residents of Norfolk Island are free to choose or accept work and the Legislative Instrument will support the continued provision of technical and vocational guidance and training to enable residents to work in industries of their choosing.
- The right to education (Article 13) – The Legislative Instrument will support the right to education by ensuring that higher education remains accessible to all Norfolk Island residents so that they can participate in society.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues but promotes the human rights articulated above.

**The Hon Kristy McBain MP**

**Minister for Regional Development, Local Government and Territories**

## ATTACHMENT – NOTES ON CLAUSES

### *Norfolk Island Applied Laws and Service Delivery (Queensland) Amendment (Further Education and Training) Ordinance 2022*

This attachment explains the operation of individual provisions in the *Norfolk Island Applied Laws and Service Delivery (Queensland) Amendment (Further Education and Training) Ordinance 2022* (the Ordinance).

#### Section 1 – Name of Ordinance

This section provides that the name of the Ordinance is the *Norfolk Island Applied Laws and Service Delivery (Queensland) Amendment (Further Education and Training) Ordinance 2022*.

#### Section 2 – Commencement

This section provides for the Ordinance to commence on the day after the instrument is registered.

#### Section 3 – Authority

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

#### Section 4 – Schedule

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

#### Schedule 1 – Amendments

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

#### **Schedule 1—Amendments**

#### **Item [1]—Subclause 1(1) of Schedule 1 (after table item dealing with the *Education (Queensland Curriculum and Assessment Authority) Act 2014*)**

Item 1 inserts “*Further Education and Training Act 2014*” in subsection 1(1) of Schedule 1 in the table headed “Legislation of Queensland that has not been suspended”. This will allow the *Further Education and Training Act 2014* (Qld) and its subordinate legislation to be applied in Norfolk Island.

#### **Item [2]—At the end of Clause 1 of Schedule 1**

Item 2 inserts new subclause 1(4) at the end of clause 1 of Schedule 1 to provide that the *Industrial Relations Act 2016* (Qld) applies to Norfolk Island to the extent necessary to give effect to the provisions of part 2 of Chapter 6 of the *Further Education and Training Act 2014* (Qld), in addition to the application currently set out in subsection 1(3).

The purpose of this amendment is to provide that apprentices and trainees can appeal to the industrial relations commission or the industrial court.

#### **Item [3]—Item 5B of Schedule 2 (section 52AB)**

Item 3 omits “adopted law” and substitutes “adopted law (other than the *Further Education and Training Act 2014* (Qld)(NI)),”.

Section 52AB was inserted into the *Acts Interpretation Act 1954* (Qld)(NI) by Schedule 2 of the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021*.

The purpose of section 52AB is to provide that vocational education and training qualifications obtained in Norfolk Island have the same status as in Queensland. However, applying section 52AB to the *Further Education and Training Act 2014* (Qld)(NI) may have the unintended effect of expanding the scope of the *Further Education and Training Act 2014* (Qld)(NI) beyond apprenticeships and traineeships declared under section 8 of the *Further Education and Training Act 2014* (Qld)(NI) to also include the apprenticeships and traineeships described in section 52AB. This is not the intention of section 52AB.

**Item [4]—Item 6 of Schedule 2 (definitions of *Norfolk Island Act* and *Territory of Norfolk Island*)**

Item 4 would amend Schedule 2 by repealing the definitions of “Norfolk Island” and “Territory of Norfolk Island” from item 6 of Schedule 2 and substituting them with amendments to items 6EA and 6H to correct the order of earlier amendments to Schedule 2.

**Item [5]—Item 6EA of Schedule 2 (before the definition of *Norfolk Island Department*)**

Item 5 inserts “*Norfolk Island Act* means the *Norfolk Island Act 1979* of the Commonwealth.” This amendment corrects the placement of an earlier amendment to Schedule 2.

**Item [6]—Item 6H of Schedule 2 (before the definition of *Territory Gazette*)**

Item 6 inserts “*Territory enactment* means an enactment within the meaning of the Norfolk Island Act.” This amendment will help clarify certain amendments giving effect to applied legislation in the current Ordinance (for example, the amendment to paragraph 59(4)(d) below) and in future Ordinances.

**Item [7]—At the end of item 6H of Schedule 2**

Item 7 inserts “*Territory of Norfolk Island* means the Territory of Norfolk Island as described in Schedule 1 to the Norfolk Island Act.” This amendment corrects the placement of an earlier amendment to Schedule 2.

**Item [8]—After Schedule 7**

Item 8 inserts new “Schedule 7A—Amendments of the Further Education and Training Act 2014 (Qld)” after Schedule 7. Each item referred to below is included in Schedule 7A.

**Item 1—Paragraph 17(5)(d)**

Item 1 omits paragraph 5(d) from section 17. This provision is not required as a consequence of the repeal of Chapter 3 of the *Further Education and Training Act 2014* (Qld)(NI).

**Item 2—Paragraph 17(5)(e)**

Item 2 omits “an Act or law” and substitutes “a law of the State”.

Under section 6 of the *Acts Interpretation Act 1954* (Qld)(NI), “Act” refers to a Queensland Act. This amendment references the definition of “law of the State” in Schedule 1 of the *Acts Interpretation Act 1954* (Qld)(NI) (inserted by Item 6DA, Schedule 2 of the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021*) to mean laws from time to time in force in the Territory of Norfolk Island.

### **Item 3—Subsections 17(7) and (11)**

Item 3 omits subsections (7) and (11). These provisions deal with home education, but the *Education (General Provisions) Act 2006* (Qld)(NI) has been amended so as not to provide for home education in Norfolk Island.

### **Item 4—Paragraph 59(4)(d)**

Item 4 omits “an Act of the State, another State or the Commonwealth” and substitutes “a Territory enactment, an Act of Queensland (as in force in Queensland or as in force in the Territory of Norfolk Island), or an Act of another State or the Commonwealth”.

The purpose of this amendment is to clarify that, in making a decision about the suitability of an employer, the chief executive must have regard to whether the employer has contravened an ‘enactment’ within the meaning of the *Norfolk Island Act 1979*, a Queensland Act (whether in force in Queensland or as applied to Norfolk Island), or an Act of any other state of Australia, the Australian Capital Territory, the Northern Territory or the Commonwealth.

### **Item 5—Chapters 3 and 4A**

Item 5 repeals Chapter 3 and Chapter 4A as the provisions relating to group training organisations, principal employer organisations and the Queensland Training Ombudsman will not apply in Norfolk Island.

### **Item 6—Section 113 (paragraph (c) of the definition of *place*)**

Item 6 omits “a place in Queensland waters” and substitutes “a place in waters within the Territory of Norfolk Island;”. The purpose of this amendment is to clarify that the provisions of Chapter 5 will apply to the Territory of Norfolk Island and the waters within the limits of the Territory of Norfolk Island, not to a place in Queensland waters.

### **Item 7—Subsection 132(5)(b)**

Item 7 omits “the court of the relevant Magistrates Court” and substitutes it with “the Court of Petty Sessions of Norfolk Island” as the Court of Petty Session of Norfolk Island deals with equivalent matters to state and territory Magistrates Courts.

### **Item 8—Subsection 132(8)**

Item 8 repeals subsection 132(8) as, per the amendment of subsection 132(5)(b), the concept of a ‘relevant Magistrates Court’ is not applicable in Norfolk Island.

### **Item 9—Subsections 150(1) and 152(1)**

Item 9 omits “State” in subsection (1) of each section and substitutes it with “Commonwealth”. This amendment provides that, under the applied law, forfeited items will be forfeited to the Commonwealth.

### **Item 10—Subdivision 5 of Division 2 of Part 4 of Chapter 5 (heading)**

Item 10 omits “State” from the heading and substitutes it with “Commonwealth”. The purpose of this amendment is to clarify that the provisions of Subdivision 5 of Division 2 of Part 4 of Chapter 5 will apply to the Commonwealth.

### **Item 11—Section 154 (heading)**

Item 11 omits “State” and substitutes it with “Commonwealth” as the provisions of section 154 will apply to the Commonwealth.

### **Item 12—Section 154**

Item 12 omits all references to “State” and substitutes them with “Commonwealth”. This amendment provides that, under the applied law, forfeited items will become the property of the Commonwealth.

### **Item 13—Subsections 155(1) and 163(1)**

Item 13 omits “State” in subsection (1) of each section and substitutes it with “Commonwealth”. This amendment provides that, under the applied law, the provisions of section 155 (How property may be dealt with) and section 163 (Compensation) will apply to the Commonwealth.

### **Item 14—Paragraphs 167(1)(a) to (d)**

Item 14 omits provisions relating to a decision of the chief executive about group training organisations and principal employer organisations. These provisions are not required as a consequence of the repeal of Chapter 3 of the *Further Education and Training Act 2014* (Qld)(NI).

### **Item 15—Section 178**

Item 15 omits “*Justices Act 1886*” and substitutes it with “*Court of Petty Sessions Act 1960* (NI)” as the Norfolk Island Court of Petty Sessions deals with summary offences in Norfolk Island.

### **Item 16—Subsection 188(2) (paragraph (b) of the definition of *official*)**

Item 16 omits “inspector; or” and substitutes “inspector.” as a consequence of the repeal of paragraphs 188(2)(c) and (d).

### **Item 17—Subsection 188(2) (paragraphs (c) and (d) of the definition of *official*)**

Item 17 repeals paragraphs (c) and (d) from the definition of *official* as these definitions are not required as a consequence of the repeal of Chapter 4A of the *Further Education and Training Act 2014* (Qld)(NI).

### **Item 18—Subsection 194(2)**

Item 18 omits “State” and substitutes it with “Commonwealth” as, under the applied law, civil liability may attach to the Commonwealth.

### **Item 19—Subsection 194(4) (paragraph (c) of the definition of *prescribed person*)**

Item 19 repeals paragraph (c). This definition is not required as a consequence of the repeal of Chapter 4A of the *Further Education and Training Act 2014* (Qld)(NI).



**Item 20—Subsection 194(4) (subparagraphs (d)(v) and (vi) of the definition of *prescribed person*)**

Item 20 repeals subparagraphs (v) and (vi). These definitions are not required as a consequence of the repeal of Chapter 4A of the *Further Education and Training Act 2014* (Qld)(NI).

**Item 21—Division 3 of Part 2 of Chapter 9**

Item 21 repeals this Division as the provisions are not required as a consequence of the repeal of Chapter 3 of the *Further Education and Training Act 2014* (Qld)(NI).

**Item 22—Schedule 1 (subparagraph (c)(i) of the definition of *information notice*)**

Item 22 omits “within 20 business days after the person receives the notice” from sub-paragraph (c)(i).

Section 157 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) requires an information notice to be given to each person who may apply to the Queensland Civil and Administrative Tribunal (QCAT) for review of a reviewable decision. This includes certain decisions made under the *Further Education and Training Act 2014* (Qld) (for example, section 167).

Section 49B of the *Acts Interpretation Act 1954* (Qld)(NI) provides that a reference to the QCAT is to be taken as a reference to the Administrative Review Tribunal of Norfolk Island. Section 49A(4) of the *Acts Interpretation Act 1954* (Qld)(NI) has the effect that, despite section 167(2) and subparagraph (c)(i) of the definition of ‘information notice’ in Schedule 1 of the *Further Education and Training Act 2014* (Qld)(NI), the application must be made as provided in the *Administrative Review Tribunal Act 1996* (NI) rather than the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

**Schedule 7B—Amendments of the Further Education and Training Regulation 2014 (Qld)**

Item 8 also inserts new “Schedule 7B—Amendments of the Further Education and Training Regulation 2014 (Qld)” after Schedule 7. Each item referred to below is included in Schedule 7B.

**Item 1—Subregulation 3(2) (example)**

Item 1 omits the examples of regulatory authorities.