

EXPLANATORY STATEMENT

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

Norfolk Island Act 1979

Norfolk Island Continued Laws Amendment (Removal of Prisoners) Ordinance 2022

Authority

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

Subsection 17(3) of the Act provides that a law continued in force by section 16 ('Continuance of laws in force immediately before 7 August 1979') or 16A ('Continuance of certain laws in force immediately before the interim transition time') may be amended or repealed by a section 19A Ordinance or a law made under a section 19A Ordinance.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 Continued Laws Amendment (Removal of Prisoners) 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

NI does not have any long-term facilities in which to hold a prisoner while they are serving a sentence of imprisonment.

Previously, arrangements existed between the former Norfolk Island Government and New South Wales (NSW) to facilitate the transfer of NI prisoners to NSW to serve their custodial sentence in that State. These arrangements continued following the dissolution of the Norfolk Island Legislative Assembly as part of governance reforms in 2015.

The Queensland Government agreed to take over the delivery of certain services to NI from 1 January 2022 following the end of the previous agreement with the New South Wales Government. Agreement was formalised in the Intergovernmental Partnership Agreement (IGA) on State Service Delivery to Norfolk Island. The IGA was signed by the Australian and Queensland governments on 26 October 2021.

In order to support the potential future delivery of corrective services by the Queensland Government, the *Removal of Prisoners Act 2004* (NI) must be amended to list Queensland as a jurisdiction that a NI prisoner can be transferred to in order to undergo a term of imprisonment.

NSW will continue to be listed as a jurisdiction to ensure legislative authority remains to allow transfers of prisoners to NSW until such time as Queensland is in a position to receive transferees.

Consultation

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts has consulted with the Queensland Department of the Premier and Cabinet and Queensland Corrective Services in the development of this instrument to ensure that appropriate Commonwealth legal arrangements to facilitate corrective services for Norfolk Island prisoners are in place.

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. OBPR22-03458).

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 Continued Laws Amendment (Removal of Prisoners) 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 Continued Laws Amendment (Removal of Prisoners) Ordinance 2022* is to amend the *Removal of Prisoners Act 2004* (NI) to list Queensland as a “State” for the purposes of where a prisoner from Norfolk Island can be transferred to in order to undergo imprisonment or other detention in custody.

Human rights implications

This Legislative Instrument engages the International Covenant on Civil and Political Rights, in particular Articles 7 and 10. Article 7, provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 10(1) provides that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. Similarly, Article 16 of the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, seeks to ensure each State Party undertakes to prevent any acts of cruel, inhuman or degrading treatment (at the instigation of or with consent of a public official). As Norfolk Island does not have any facilities suitable in which to hold a prisoner while they are serving a term of imprisonment, this amendment will support prisoners’ rights by ensuring they are imprisoned in appropriate and modern facilities during the term of their sentence.

Additionally, Articles 3, 19 and 37 of the Convention on the Rights of the Child seek to ensure that the best interests of a child are a primary consideration, relevantly in ensuring protection of children from all forms of violence injury or abuse, neglect or negligent treatment, maltreatment or exploitation, as well as ensuring that every child deprived of liberty is treated with humanity and respect, considering the needs of persons of his or her age. As above, the lack of suitable facilities on Norfolk Island means that an amendment to allow prisoners be transferred to Queensland will facilitate any juvenile prisoners having access to appropriate youth detention amenities.

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 Continued Laws Amendment (Removal of Prisoners) Ordinance 2022

This attachment explains the operation of individual provisions in the *Norfolk Island Continued Laws Amendment (Removal of Prisoners) Ordinance 2022* (the Ordinance).

Section 1 – Name of Ordinance

This section provides that the name of the Ordinance is the *Norfolk Island Continued Laws Amendment (Removal of Prisoners) 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.

Schedule 1 – Amendments

Removal of Prisoners Act 2004 (NI)

Schedule 1—Amendments

Item [1]

Item [1] amends the *Removal of Prisoners Act 2004 (NI)*, by inserting the below two new items into the *Norfolk Island Continued Laws Ordinance 2015*.

Inserted item 291 amends the preamble to the *Removal of Prisoners Act 2004 (NI)* to reflect that this legislation will provide the authority to transfer prisoners to Queensland in addition to New South Wales.

Inserted item 292 amends the definition of “State” in section 3 of the *Removal of Prisoners Act 2004 (NI)* to include Queensland in addition to New South Wales. The definition of “State” is relied on in a number of other sections as the place where a person is to undergo imprisonment or other detention in custody.