

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 (Education) Ordinance 2023

Authority

The *Norfolk Island Act 1979* (Cth) (the Act) deals with the governance of Norfolk Island. 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 an applied law jurisdiction. Subsection 18A(2) of the Act provides that applied laws may be amended or repealed by an Ordinance made under section 19A or a law made under a section 19A Ordinance.

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 (Education) Ordinance 2023* (Cth) (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 Queensland Government agreed to take over the delivery of certain services to the Territory of Norfolk Island from 1 January 2022 following the expiry 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, announced by the Australian and Queensland governments on 26 October 2021.

Legislative instruments have been enacted to give effect to the IGA and to provide a core legal framework to ensure continuity of essential services. The overarching instrument is the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* (Cth).

In January 2022, a range of Queensland education-related laws were applied on Norfolk Island under the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* (Cth). These included the:

- a. *Education (General Provisions) Act 2006* (Qld)
- b. *Education (General Provisions) Regulation 2017* (Qld)
- c. *Education (Queensland College of Teachers) Act 2005* (Qld)
- d. *Education (Queensland Curriculum and Assessment Authority) Regulation 2014* (Qld)

Amendments are now required to these applied laws to adjust certain aspects to suit the Norfolk Island context.

Consultation

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts has consulted with the Queensland Department of Education and Queensland Department of the Premier and Cabinet in the development of this instrument to ensure that education services continue to be effectively provided to Norfolk Island.

Regulatory Impact Statement

The Office of Impact Analysis considers the proposal is likely to have no more than minor regulatory impacts. A Regulatory Impact Statement is not required (ref. OBPR22-03465).

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 (Education) Ordinance 2023

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 (Education) Ordinance 2023* is to amend already applied Queensland education-related legislation to ensure it is contextually appropriate for delivery of education services on Norfolk Island.

Human rights implications

This Legislative Instrument engages the International Covenant on Economic, Social and Cultural Rights, in particular Article 13 which recognises the right of everyone to education. Article 28 of the Convention on the Rights of the Child (CRC) also recognises the right of the child to education. Functioning educational institutions, underpinned by contextually appropriate legislation, are critical to maintaining these rights.

Repealing references to non-state schools from the Queensland legislation as it applies in Norfolk Island reflects the unavailability of non-state schools on Norfolk Island, at this time. Should non-state schooling be a future option for Norfolk Island, part 7 of the *Education Act 1990* (NSW)(NI) currently provides for registration of private schools. These rules are not intended to affect those provisions and this legislation can be applied if needed.

Article 19 of the CRC requires parties to take all appropriate legislative and administrative measures to protect children from harm. The International Covenant on Civil and Political Rights (ICCPR), Article 17 recognises the right to protection from arbitrary interference with a person's privacy. Australia has reserved the right to make laws that limit a person's privacy provided they are in the interests of public safety, or the protection of the rights or freedoms of others.

The disclosure and sharing of teachers' personal information enabled by this Legislative Instrument ensures that relevant Queensland Government entities continue to have access to the same level of information about all Queensland Government employed teachers, regardless of whether they are based in Queensland or on Norfolk Island. These measures ensure the initial and continuing suitability of teachers, in turn ensuring the welfare and best interests of children and protecting them from harm, thus falling within Australia's reservation to make laws protecting the rights of others.

Legislative and procedural safeguards are in place to reduce the likelihood of a violation of Article 17 of the ICCPR arising from the disclosure and sharing of teachers' personal information. These include the *Privacy Act 1988* (Cth), section 283 of the *Education (Queensland College of Teachers) Act 2005* (Qld)(NI), which limits the circumstances when a disclosure of information may occur, and the *Information Privacy Act 2009* (Qld), which provides safeguards for the handling of personal information in the public sector environment. Section 284 of the *Education (Queensland College of Teachers) Act 2005* (Qld)(NI) also

provides that guidelines about dealing with personal information must be maintained by the Queensland College of Teachers.

Conclusion

This Legislative Instrument is compatible with human rights as it promotes the human rights to education articulated above. Although it may raise some concerns regarding teacher privacy, it does so to ensure the safety of children, thus falling within Australia's reservation to make laws protecting the rights of others.

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 (Education) Ordinance 2023

This attachment explains the operation of individual provisions in the *Norfolk Island Applied Laws and Service Delivery (Queensland) Amendment (Education) Ordinance 2023* (Cth) (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 (Education) Ordinance 2023* (Cth).

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* (Cth).

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

Schedule 1

Amendments to Schedule 3 to the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021*

Items [1] to [8] amend the *Education (General Provisions) Act 2006* (Qld)(NI), by amending Schedule 3 of the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* (Cth).

Item [1]

Item 1 repeals section 182 as this only relates to non-state schools, of which there are currently none on Norfolk Island. Subsection 183(2) is amended as a consequence of the repeal of section 182.

Item [2]

Item 2 repeals section 185A as this only relates to non-state schools, of which there are currently none on Norfolk Island. The amendment to subsection 185(3) is a consequential amendment to remove a cross-reference to section 185A.

Subsection 186(1) is similarly repealed as this only relates to non-state schools, of which there are currently none on Norfolk Island.

Sections 186, 187 and 189 to 192 are amended to change references to ‘relevant decision-maker’ to ‘chief executive’. Once the references to non-state schools are repealed, the chief executive will be the only relevant decision-maker for an exemption under this Part.

The amendments to subsections 188(1) and 188(2) remove cross-references to section 185A.

Division 5 (section 197A) is also repealed as this only relates to non-state schools, of which there are currently none on Norfolk Island.

Item [3]

Item 3 amends section 241, which provides what an authorised officer may do if they suspect a young person in the compulsory participation phase in education or training is not participating full-time in an eligible option. Subsection (5) was originally applied unchanged and provided that “*For the Police Powers and Responsibilities Act 2000, section 16, an authorised officer acting under this section is a public official performing a function authorised by this Act*”. This legislation has not been applied in Norfolk Island, and so this item amends subsection 241(5) to be more contextually relevant by enabling an authorised officer to ask a police officer (i.e. a member of the Police Force of Norfolk Island or a member or special member of the Australian Federal Police (AFP)) for assistance to perform a function under this section.

Item [4]

Item 4 reverses a previous omission of references to ‘non-state schools’ in sections 383 to 387 (by repealing items 58, 59, 60 and 62 of Schedule 3 to the Ordinance). These sections allow for the transfer of student information between schools, both state and non-state schools, when a student moves schools. When applied, these sections were amended to remove all references to non-state schools, likely because there are no non-state schools on Norfolk Island, meaning that the Act only allows for the exchange of transfer notes between Norfolk Island Central School (NICS) and another state school. However, it is possible that a student from a non-state school may transfer to NICS, or vice versa, and therefore the principal of either school should have the power to request a transfer note under these sections.

Item [5]

Item 5 unsuspends and applies sections 420 and 420A of the *Education (General Provisions) Act 2006* (Qld) (by repealing item 71 of Schedule 3 to the Ordinance). These sections provide for the special education of people below compulsory school age with a disability and for a ministerial policy about the criteria for determining whether a person is a person with disability. It is appropriate to apply them to allow for the provision of special education services at NICS when required.

Item [6]

Item 6 removes a cross-reference to subsection 420(1) in subsection 420A(2). This is because subsection 420(1) was previously repealed.

Item [7]

Item 7 amends the definition of ‘external program’ to remove a cross-reference to section 182 (repealed by item 1 above).

Item [8]

Item 8 repeals and substitutes the definition of ‘relevant decision-maker’ to remove a cross reference to the definition in section 186, which is repealed above.

Amendments to Schedule 4 to the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021*

Items [9] and [10] amend the *Education (General Provisions) Regulation 2017* (Qld)(NI), by amending Schedule 4 of the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* (Cth).

Item [9]

Item 9 amends sections 17 and 18 by omitting references to non-state schools, of which there are currently none on Norfolk Island.

Item [10]

Item 10 repeals section 61 which has no application as it was made under section 370 of the *Education (General Provisions) Act 2006* (Qld) which was previously repealed by item 57 of Schedule 3 to this Ordinance.

Item 10 also repeals section 63. This section relates only to overseas students enrolling at state schools that are registered under the *Education Services for Overseas Students Act 2000* (Cth) (ESOS Act) to enrol overseas students. NICS is not registered to enrol overseas students under the ESOS Act, and there is currently no intention for it to become registered.

Amendments to Schedule 5 to the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021*

Items [11] to [13] amend the *Education (Queensland College of Teachers) Act 2005* (Qld)(NI) (“the QCT Act”), by amending Schedule 5 of the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021* (Cth).

Item [11]

Item 11 amends section 15B by expanding it to allow the Queensland College of Teachers (QCT) to obtain information regarding an applicant’s suitability to teach (i.e. if an applicant for registration or permission to teach has been charged with or convicted of an offence) not only from the Queensland Director of Public Prosecutions but also from the Commonwealth Director of Public Prosecutions, as the latter is responsible for prosecutions on Norfolk Island.

The effect of the amendment is to enable the information to be obtained in relation to teachers based in Queensland or on Norfolk Island, noting that all teachers at the Norfolk Island Central School are employed by the Queensland Government.

Item [12]

Section 75

Item 12 amends section 75 to expand the obligations within to apply not only to the Queensland Commissioner of Police but also to the Commissioner of Police of the Commonwealth (who is responsible for policing on Norfolk Island) to ensure that both can share relevant information with the QCT. Both Commissioners will be required to notify the QCT about a change in criminal history where they suspect that the person charged with an offence is either an approved teacher, or was an approved teacher when the offence is alleged to have been committed. This enables the QCT to contact the person concerned to remind them of their obligation under the section 68 to notify the QCT of a change in their criminal history. The effect of the amendment

is to enable the QCT to access to information on Queensland Government employed teachers based in Norfolk Island equivalent to those based in Queensland.

Section 80

Item 12 amends section 80 to expand the obligations within to apply not only to the Queensland Commissioner of Police and Queensland Director of Public Prosecutions but also to the Commissioner of Police of the Commonwealth and the Commonwealth Director of Public Prosecutions. Each must notify the QCT if they believe a person charged with an indictable offence is, or was at the time the offence is alleged to have been committed, an approved teacher. They must also notify the QCT at certain points in criminal proceedings.

This effect of the amendment is to apply the provision in relation both to teachers based in Queensland, and to Queensland Government employed teachers on Norfolk Island, noting that the Commissioner of Police of the Commonwealth and the Commonwealth Director of Public Prosecutions are responsible respectively for policing and prosecutions on Norfolk Island.

Section 112

Item 12 amends section 112 to expand it to ensure that information regarding disciplinary action can flow not just from the Queensland Civil and Administrative Tribunal (QCAT) but also from the Administrative Review Tribunal of Norfolk Island (ARTNI) with regard to Queensland Government employed teachers based on Norfolk Island.

Subsection 112(3) is amended to clarify that information relating to Norfolk Island is not considered “interstate” information.

Section 286

Item 12 amends section 286 to expand it to provide for the QCT to enter into an information sharing arrangement not only with the Queensland Commissioner of Police but also with the Commissioner of Police of the Commonwealth. The information sharing arrangements enable the QCT to give information to the Commissioners of Police, or the Commissioners of Police to give information, including criminal history information, to the QCT. The effect of this amendment is to allow information sharing regarding Queensland Government employed teachers based in both Queensland and on Norfolk Island.

Item [13]

Item 13 amends subsection 287(5) to include the Crime and Corruption Commission (CCC) as a relevant agency. Subsection 287(5) was previously amended to change the definition of “relevant agency”. This included removing the CCC as a relevant agency.

Inclusion of the CCC will enable the Queensland College of Teachers to share information with the CCC about a relevant offence committed by a teacher on Norfolk Island.

Amendments to Schedule 7 to the Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021

Item [14] amends the *Education (Queensland Curriculum and Assessment Authority) Regulation 2014 (Qld)(NI)*, by amending Schedule 7 of the *Norfolk Island Applied Laws and Service Delivery (Queensland) Ordinance 2021 (Cth)*.

Item [14]

Item 14 repeals section 165. This section requires a student enrolled in senior secondary education at a school and who is not an Australian citizen or permanent resident to pay a fee, but also allows the fee to be waived under certain circumstances. The section is not applicable on Norfolk Island, as there is no intention to enrol overseas students at NICS.

Item 9 of Schedule 1 to the *Education (Queensland Curriculum and Assessment Authority) Regulation 2014* (Qld)(NI) is also repealed to remove a cross-reference to section 165.