

## **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 Subsection 18A(2) of the Act provides that applied laws may be amended or repealed by an Ordinance made under section 19A or a law made under a section 19A Ordinance.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 also recognises the right of the child to education. Functioning educational institutions, underpinned by contextually appropriate legislation, is 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.

#### **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 (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) 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), 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 so that 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) can be obtained from one or both the Queensland Director of Public Prosecutions and the Commonwealth Director of Public Prosecutions as the latter is responsible for prosecutions on Norfolk Island.

#### **Item [12]**

Item 12 amends sections 75 and 286 by expanding these sections so that the obligations within apply to both the Australian Federal Police (who provide policing services on Norfolk Island) and the Queensland Police Service to ensure relevant information (for example, that an approved teacher's criminal history changes) can be shared by relevant authorities.

Section 80 is amended by expanding this section so that obligations to inform the Queensland College of Teachers of an approved teacher being committed for trial for, or convicted of, an indictable offence applies to the Queensland and Commonwealth Commissioners of Police and the Queensland and Commonwealth Directors of Public Prosecutions.

Item 12 also amends section 112 by expanding it to ensure that information can flow from either or both of the Queensland Civil and Administrative Tribunal and the Administrative Review Tribunal of Norfolk Island.

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

#### **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.