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Date introduced: 24 February 2016
House: House of Representatives
Portfolio: Infrastructure and Regional Development
Commencement: Sections 1 to 3 of both Bills commence on Royal Assent.

Schedules 1 and 2; Part 2 of Schedule 3; Part 2 of Schedule 4 and Schedule 6 of the Territories Legislation Amendment Bill 2016 commence on the day after Royal Assent.
Part 1 of Schedules 3 and 4 and Schedule 5 commence on 1 July 2016.

Schedule 1 of the Passenger Movement Charge Amendment (Norfolk Island) Bill 2016 will commence at the same time as Schedule 5 of the Territories Legislation Amendment Bill 2016 (1 July 2016). The provisions of this Bill will not commence if Schedule 5 does not commence.

Links: The links to the Bills, their Explanatory Memoranda and second reading speeches can be found on the homepages for the Passenger Movement Charge Amendment (Norfolk Island) Bill 2016 and the Territories Legislation Amendment Bill 2016 can be found on the Bill's home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at March 2016.
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The Bills Digest at a glance

The Norfolk Island Legislation Amendment Act 2015 began the process of radically overhauling the governance arrangements that had operated on Norfolk Island (NI). The Act started the transition of NI from a self-governing territory to a modern local government type authority to commence from 1 July 2016. It also started the process of extending Australian legislation to NI, in particular social security, Medicare, the Pharmaceutical Benefits Scheme and taxation measures, again to commence from 1 July 2016.

These Bills continue the process of extending Australian law to NI, through consequential amendments to various Commonwealth Acts. In particular, the Territories Amendment Bill 2016 introduces compulsory enrolment to NI electors and provides for NI to be represented by the Member for Canberra and the two Senators for the Australian Capital Territory. It also starts the phased application of the Fair Work Act 2009 to NI employment arrangements and industrial relations. The Passenger Movement Charge (Norfolk Island) Amendment Bill 2016 applies a financial charge on people departing NI for another country, to align with the situation applying to mainland Australia and the Indian Ocean territories.

Purpose of the Bills

The purpose of the Territories Amendment Bill 2016 (the Territories Bill) is to continue the process of bringing Norfolk Island (NI) within the framework of Australian law through:

• amending the Commonwealth Electoral Act 1918 (CEA) to make it compulsory for NI electors to enrol and be represented by the Member for the division of Canberra in the Australian Capital Territory (ACT) and by ACT Senators
• providing for the phased introduction of the Fair Work Act 2009 (Cth) and associated workplace relations legislation to NI
• amending the Acts Interpretation Act 1901 (Cth) and the Norfolk Island Act 1979 (Cth) to provide for Commonwealth law to automatically apply to NI unless it is expressly excluded
• consequential amendments of several Commonwealth Acts to extend their coverage to NI or to exclude NI and
• correcting a number of anomalies in the current treatment of some Australian territories, such as extending child support arrangements to residents of the Indian Ocean territories.

The purpose of the Passenger Movement Charge (Norfolk Island) Amendment Bill 2016 (the Passenger Movement Bill) is to amend the Passenger Movement Charge Act 1978 (Cth) to apply a financial charge on people departing NI for another country. This brings NI in line with existing arrangements for passengers leaving mainland Australia for another country, as well as passengers departing from the Indian Ocean territories.

The Passenger Movement Bill provides that a person is exempt from liability for passenger movement charge if they depart NI for another country (or for an installation in the Joint Petroleum Development Area) with the intention of returning to another place in Australia within seven days.

Structure of the Bills

The Territories Bill is divided into six schedules:

• Schedules 1 and 2 correct oversights or anomalies in the Norfolk Island Legislation Amendment Act 2015 relating to social security and child support
• Schedule 3 extends child support arrangements to residents of the Indian Ocean territories (Christmas Island and the Cocos (Keeling) Islands)
• Schedule 4 relates to NI’s electoral arrangements
• Schedule 5 deals with machinery changes to make certain Commonwealth Acts apply to NI, and ensure that other Acts exclude NI and

• Schedule 6 revises and broadens the definition of the NI Regional Council in the **Norfolk Island Act**.

The **Passenger Movement Bill** has one Schedule, which contains the amendments to the **Passenger Movement Charge Act**.

### Background

In 2015 the Australian Government enacted the **Norfolk Island Legislation Amendment Act 2015** (the **2015 Act**), which commenced the process of radically overhauling the governance arrangements that had operated on NI. Further detail on the history of NI, including its evolving governance arrangements, is set out in the Bills Digest for that Act.²

With the abolition of the NI Legislative Assembly and Executive Council by the 2015 Bill, the island began the transition from a self-governing territory to a local government type authority. During the interim transition period, which commenced on 18 June 2015, an Advisory Council has been established to support the transition of the NI Legislative Assembly to the NI Regional Council, which will have local and municipal responsibilities but not powers usually exercised by state or national governments. The new Regional Council is due to commence on 1 July 2016. New South Wales (NSW) laws will apply on NI from 1 July 2016 and that State will deliver services and administer laws following agreement between NSW and the Commonwealth. The 2015 Act also started the process of extending Australian legislation to NI, in particular social security, Medicare, Pharmaceutical Benefits Scheme and taxation measures, again to commence from 1 July 2016.³

These reforms had been met with resistance from some NI residents, particularly in regard to the move away from self-government (see below).⁴

In June 2015 the NI Advisory Council was appointed by the Assistant Minister for Infrastructure and Regional Development, Jamie Briggs, and commenced operation from 1 July 2015.⁵

This Bill continues the reform of NI governance arrangements with particular reference to electoral arrangements and the extension of federal employment legislation to NI. The Bill also makes amendments to various Commonwealth Acts so that Australian legislation will automatically apply to NI, unless specifically excluded.

While Norfolk Islanders are entitled to enrol to vote in Australian federal elections, they are not obliged to do so unlike other Australian citizens. Currently under the **CEA** residents of NI who are Australian citizens have the option to vote in a federal electorate in a state they have connection to or in the electorate of Canberra, ACT or Solomon in the Northern Territory (NT).⁶

NI employment terms and conditions are currently covered by the **Employment Act 1988 (NI)**.⁷ The Government’s approach involves a three-stage transition to the federal workplace relations system under the **Fair Work Act**. Subject to the passage of the Bill through Parliament, it is intended that from 1 July 2016, the **Fair Work Act** will apply to NI but with a phased extension of specific provisions of that Act. By use of the rule making power to be inserted by the Bill, the Employment Minister will provide:

- from 1 July 2016, NI employees will be entitled to 85 per cent of the National Minimum Wage—that is, currently around $14.70⁸

- from 1 July 2017, the minimum wage for NI employees will be increased to 100 per cent—the current National Minimum Wage is $17.29.

- from 1 July 2018, Modern Awards (which set wages and conditions for industries or occupations) will be extended to NI.⁹

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3. For further information on the 2015 Act and for background on Norfolk Island see C Madden, **Norfolk Island Legislation Amendment Bill 2015**, Bills digest, 102, 2014–15, Parliamentary Library, Canberra, 2015.
4. M Low, ‘**Canberra will run Norfolk Island - but not all the locals are happy**’, *The Conversation*, 19 May 2015.
5. J Briggs (Assistant Minister for Infrastructure and Regional Development), **Norfolk island reforms commence**, media release, 1 July 2015.
6. **Commonwealth Electoral Act 1918** (Cth), subsections 95AA, 101(1A), 101(5A), 245(1).
7. **Employment Act 1988 (NI)**.
8. The current minimum wage on NI is $10.70 per hour: see regulation 12 of the **Employment Regulations 1991** (NI).
From the date of commencement of the Fair Work Act on NI (that is, 1 July 2016), workplace relations on NI will be underpinned by the National Employment Standards. These are 10 minimum employment entitlements which have to be provided to all employees.10

In his second reading speech on the Territories Bill, the Minister for Major Projects, Territories and Local Government, Paul Fletcher, stated that legislation relating to telecommunications and corporations will not be extended to NI at this time, due to the complexity of the arrangements, but will be considered at a later date.11

Committee consideration

Selection of Bills Committee

The Committee resolved that the Bills not be referred to committees.12

Senate Standing Committee for the Scrutiny of Bills

The Senate Standing Committee for the Scrutiny of Bills had no comment on the Passenger Movement Bill.13 The Scrutiny Committee raised two concerns with the broad rule-making power at item 5 of Schedule 5 to the Territories Bill. Firstly, the Committee noted that the Bill allows transitional rules made before 1 July 2017 to modify the effect of primary legislation (such provisions are referred to as Henry VIII clauses).14 Secondly, the Committee noted that transitional rules made before 1 July 2017 may also have retrospective effect, as subitem 5(4) of Schedule 5 to the Territories Bill provides that section 12(2) of the Legislation Act 2003, which would usually operate to prevent such an outcome, does not apply to those rules.15

After considering the detailed justification for the approach to the transitional rules set out in the Explanatory Memorandum, the Scrutiny Committee concluded that while it ‘remains concerned about the scope of this power, its potential to apply retrospectively and that it could give rise to detriment’ it left ‘the question of whether the proposed rule-making power is appropriate to the Senate as a whole’.16

Policy position of non-government parties/independents

The Labor Party supports the Bills.17 In the second reading debate on the 2015 Bill the member for Canberra said:

I want to underscore the fact that there will be democracy on Norfolk Island under the new arrangement; it will just take a different form. Norfolk Islanders will fall into my electorate of Canberra, as we have heard. That means they will be represented by a federal representative in the House of Representatives, and voting will not be optional; it will be compulsory as it is on mainland Australia. This is in addition to electing their own regional council, with elections to be held early next year.18

The policy position of other non-government parties/independents was not known at the time of writing.

Position of major interest groups

It has been reported that some NI residents are unhappy with the transition process and have called for a review.19 A group campaigning against the changes, the Norfolk Island People for Democracy, has also made allegations against the Executive Director of the interim administration, Peter Gesling, and the Australian Government claiming they are trying to stifle free speech by putting limits on broadcasting on NI radio. While

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10. Ibid. For information see: FWO, ‘National Employment Standards’, FWO website.
15. Ibid.
16. Ibid., p. 7.
Mr Gesling says the Australian Government is consulting widely, Tim Sheridan, who was the former NI Minister for Broadcasting, says there is little information on what changes will be made in July 2016 and this is adding to the frustration and tension on NI. 20

There are reports that NI business people have concerns with the proposed introduction of the Fair Work Act. Among other things, that Act sets the minimum wage at $17.29 an hour. NI’s minimum is now $10.70. 21 Minister Fletcher has promised a ‘phased extension’ to give islanders appropriate time to adjust to the changes (as detailed above). 22

**Financial implications**

There are no direct financial implications from the Bills although as the Explanatory Memorandum notes, the Government made provision in the 2015–16 Budget for reform of NI governance. The Budget 2015–16 provided $136.6 million over five years from 2014–15 (including spending of $35.8 million in capital and receiving $19.9 million in revenue) to reform the governance arrangements and extend Commonwealth and State government programmes to NI. 23 The Explanatory Memorandum also notes the Australian Electoral Commission will absorb the minor costs related to amendments contained in Schedule 4 of the Bill.

**Statement of Compatibility with Human Rights**

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bills’ compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bills are compatible and where the Bills may limit human rights, those limitations are reasonable, necessary and proportionate. 24

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights considers that the Bills promote human rights. 25 As discussed below, in its report on the 2015 Bill the Committee raised concerns about provisions that would have a discriminatory effect on New Zealand citizens with permanent residency who live on NI, by denying them access to social security. 26 The Committee’s report on the current Bills:

> ...notes that these Bills will allow New Zealand citizens who hold an Australian permanent visa and reside on Norfolk Island access to social security payments, consistent with the arrangements for other Australian permanent visa holders. 27

The Committee thanked the Minister for ‘positively responding’ to its advice on the 2015 Bill. 28

**Key issues and provisions**

**Territories Legislation Amendment Bill 2016**

**Transitional rules**

The Territories Bill contains a number of so-called ‘Henry VIII clauses’ 29 in the form of transitional rules (such as items 5, 50, 55, 68 and 85 in Schedule 5). The provisions allow the relevant Minister to make rules, by legislative instrument, which change the effect of the parent Act itself, or change the effect of other primary legislation in relation to matters affecting NI. These provisions are described in further detail below. In each case there are

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22. P Fletcher, op. cit.
24. The Statement of Compatibility with Human Rights can be found at pages 8 to 13 of the Explanatory Memorandum to the Bills.
28. Ibid.
29. A ‘Henry VIII’ clause is an express provision which authorises the amendment of either the empowering legislation, or any other primary legislation, by means of delegated legislation.
limits placed on the extent of these rule-making powers. In particular the transitional rules cannot create an offence or civil penalty; provide powers of arrest or detention or entry, search or seizure; impose a tax; set an amount to be appropriated from the Consolidated Revenue Fund or directly amend the text of the particular Act. The Senate Standing Committee for the Scrutiny of Bills has consistently drawn attention to ‘Henry VIII’ clauses and other provisions which (expressly or otherwise) permit subordinate legislation to amend or take precedence over primary legislation. Such provisions clearly involve a delegation of legislative power to the Executive and can be a matter of concern to the Committee. As noted above the Committee, while raising concerns about some of the clauses, has left it to the Senate as a whole to decide the appropriateness of the rule-making powers.

Schedule 1—New Zealand citizens residing on Norfolk Island

Schedule 1 amends the Norfolk Island Legislation Amendment Act to repeal item 323 of Schedule 2, which would otherwise insert new subsection 7(2AA) into the Social Security Act 1991. The effect of that subsection would be that the Social Security Act would not apply to a New Zealand permanent resident of Australia who resides on NI when it came into force from 1 July 2016.

As mentioned above, the Parliamentary Joint Committee on Human Rights in its report on the 2015 Bill had identified an issue with New Zealand permanent residents of Australia who are recipients of social security:

Currently, on mainland Australia all permanent visa holders are entitled to social security under the Social Security Act 1991 (the Act). Under the Norfolk Island Legislation Amendment Bill 2015 (the Bill), the Act will be extended to Norfolk Island providing the same social security system on the island as is provided on mainland Australia. However, the extension of social security payments to residents of Norfolk Island will not apply to New Zealand citizens that hold an Australian permanent visa.

The Committee found that the measure appeared to be directly discriminatory and therefore limited the right to equality and non-discrimination.

As set out above, the Committee thanked the Minister for responding to its advice on this issue through the amendment in Schedule 1 to the Bill.

Schedule 4—Norfolk Island electoral arrangements

Part 1 of Schedule 4 amends the CEA and the Referendum (Machinery Provisions) Act 1984 (Cth) to bring NI electors into the Commonwealth electoral arrangements. The Bill will make enrolling to vote in federal elections compulsory, and provide for the representation of NI electors by a single member for an electorate in the ACT, namely the division of Canberra, and by two ACT senators. Part 2 contains transitional provisions.

Amendments to the Commonwealth Electoral Act 1918 (CEA)

Item 1 amends subsection 4(1) of CEA to include NI in the definition of the ACT. This means that the ACT is to include NI for the purposes of the CEA.

Item 2 repeals and substitutes the definition of ‘Controller-General of Prisons’ in section 4 of the CEA. The new definition refers to the office in two different categories, one category being the states, the ACT (not including a non-self-governing territory) and the NT and the second category being a non-self-governing territory (that is NI, Jervis Bay, Christmas Island and the Cocos (Keeling) Islands). The new definition is intended to ensure that principal officers who have control of prisons and gaols in non-self-governing territories are subject to the requirements of sections 109 and 227, in addition to those officers of the states, NT and ACT who were previously covered by the definition.

33. ibid., p. 69.
35. Explanatory Memorandum, op. cit., p. 17. Section 109 deals with the responsibilities of Controllers-General of Prisons to provide the Electoral Commissioner with lists of persons serving prison sentences of at least three years and section 227 deals with mobile voting booths. Subsection 93(8AA) provides that a person serving a sentence of imprisonment of at least three years is not entitled to vote.
Item 3 provides a definition of ‘non-self-governing territory’ to be inserted into section 4 of the CEA. A non-self-governing territory means NI, the Jervis Bay Territory, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands. Item 4 repeals and substitutes the definition of ‘Registrar-General’ in section 4 of the CEA. Like the new definition of Controller-General of Prisons, the definition is divided into two categories, one for states, the ACT and the NT and one for a non-self-governing territory. This has application for section 108 of the CEA, which requires Registrars-General to provide regular information on deaths to the Electoral Commissioner. The new definition is also relevant in relation to the amendments in item 43.

Existing sections 46 and 48 of the CEA deal with procedures for calculating the representation of the states and territories in the House of Representatives. Items 11 to 19 amend these provisions to take account of new arrangements that will affect NI. For example item 11 inserts new paragraph 46(1)(da), which requires the Electoral Commissioner to ascertain the number of people of NI for the purposes of determining the number of members of the House of Representatives to be chosen in the states and territories at a general election. Item 16 inserts new subsections 48(2BA) and 48(2BB). Amongst other things item 16 provides that if the Electoral Commission determines, after the relevant calculation of the people of NI, there is to be no member chosen in NI, then NI is to be taken to be part of the ACT.

Item 23 inserts new section 56AA into the CEA. The practical effect is to ensure that NI and the Territory of Jervis Bay will be in different divisions of the ACT. Therefore a member of the House of Representatives representing the ACT will only represent one external territory.

Item 30 repeals sections 95AA, 95AB and 95AC of the CEA that currently set outs the arrangements for the enrolment of NI electors. These provisions will no longer be required under the new arrangements.

Item 32 amends subsection 98AA(2)(a) to provide that a driver’s licence issued under the law in force on NI can be used as a form of evidence of identity for the purposes of enrolment.

Item 33 is a consequential amendment that would repeal a reference to section 95AA in subsection 99(3) of the CEA. If section 95AA is repealed as outlined in item 30, the reference would be redundant (see above).

Section 101 of the CEA provides for compulsory enrolment of electors. Failure to comply with the requirement is an offence. However, current subsection 101(5A) provides that the requirement does not apply to electors who reside on NI. Item 38 repeals subsection 101(5A), so that NI electors will be subject to the compulsory enrolment requirement. Items 34 to 37 are consequential to the removal of subsection 101(5A).

Existing section 394 of the CEA provides that without the authority of the Governor-General no election or referendum or vote of electors of a state (defined to include the ACT, NI and NT) can be held on the day appointed as polling day for a Senate or House of Representatives general election. Item 45 repeals and substitutes section 394. According to the Explanatory Memorandum, the amendment is intended to ensure that the general prohibition around timing applies to elections in NI in the same way that it applies to such elections in the states, the ACT and the NT.

Items 49 to 60 provide transitional arrangements for Schedule 4. As noted above, NI electors currently have the option to vote in federal state and territory electorates. Item 51 allows for the Electoral Commissioner to transfer NI electors who are currently enrolled in a state or territory to the roll for the ACT, that is the division of Canberra (paragraph 51(2)(a)). The Commissioner can decide not transfer a NI elector if he/she is satisfied that the elector is not entitled to be on the roll for the ACT. The Commissioner must notify the NI elector that this has occurred. A transfer cannot be made during the period the rolls have closed for an election.

Item 52 sets out procedures to be undertaken by the Electoral Commissioner for the transfer of NI electors already enrolled in the ACT.

Item 60 allows the responsible Commonwealth Minister to make rules prescribing matters related to the amendments and repeals made in Schedule 4. Certain limits and safeguards are included.

Schedule 5—Application of Acts to Norfolk Island

Part 1—General amendments

Items 1 and 2 amend section 2B of the Acts Interpretation Act 1901 to include NI in the definitions of ‘Australia’ and ‘Commonwealth’ respectively. The effect of these amendments is that other legislation that relies on the definition of ‘Australia’ or the definition of the ‘Commonwealth’ provided by the Acts Interpretation Act will include NI.

Item 3 repeals and substitutes section 18 of the Norfolk Island Act 1979. Section 18 currently provides that Commonwealth Acts do not apply to NI unless expressed to extend to NI. New section 18 reverses this presumption, and provides that a Commonwealth Act is in force on NI unless an Act expressly provides otherwise.

Item 5 allows the responsible Commonwealth Minister (that is the Minister who administers the Norfolk Island Act) to make rules for the transition to the provisions in Schedule 5. Rules made before 1 July 2017 may modify the effect of any Act or instrument and may have retrospective application (subitem 5(4)). As set out above, the Scrutiny of Bills Committee drew the attention of the Senate to this provision, noting that it ‘may be considered to delegate legislative powers inappropriately’.

The rules are limited in their scope as set out in subitem 5(2). For example, they must not create an offence or civil penalty, they must not impose a tax or directly amend the text of the Norfolk Island Act.

Item 6 provides for compensation for acquisition of property. This provision follows a standard format which responds to a constitutional requirement that Commonwealth acquisitions of property be compensated for if they have not been undertaken on just terms.

Part 2—General amendments

Part 2 contains a number of machinery provisions providing amendments to 57 specific Acts in relation to their operation on NI. The Explanatory Memorandum at pages 5 to 7 sets out the Acts to be amended and the type of amendment. The following tables rely on that information.

<table>
<thead>
<tr>
<th>Acts to be amended to specifically extend to Norfolk Island</th>
<th>Acts to be amended to specify that they do not extend to Norfolk Island</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural and Veterinary Chemicals Act 1994</td>
<td>Australian Securities and Investments Commission Act 2001</td>
</tr>
<tr>
<td>Australian Capital Territory (Self-Government) Act 1988</td>
<td>Bankruptcy Act 1966</td>
</tr>
<tr>
<td>Australian National Preventive Health Agency Act 2010</td>
<td>Bankruptcy (Estate Charges) Act 1997</td>
</tr>
<tr>
<td>Business Names Registration Act 2011</td>
<td>Cross-Border Insolvency Act 2008</td>
</tr>
<tr>
<td>Industry Research and Development Act 1986</td>
<td>Customs Tariff (Anti-Dumping) Act 1975</td>
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</tbody>
</table>

Other Acts are to be amended so as to extend to NI when prescribed or other conditions apply.

<table>
<thead>
<tr>
<th>Acts to be amended so that they may extend to Norfolk Island if prescribed</th>
<th>Acts to be amended that would extend to Norfolk Island subject to certain conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do Not Call Register Act 2006</td>
<td>Telecommunications (Interception and Access) Act 1979 (will extend to NI upon repeal of the Telecommunications Act 1992 (NI))</td>
</tr>
<tr>
<td>Export Control Act 1982</td>
<td></td>
</tr>
</tbody>
</table>
Imported Food Charges (Imposition–Customs) Act 2015  
Imported Food Charges (Imposition–Excise) Act 2015  
Import Food Charge (Imposition–General) Act 2015  
(These Acts will only extend to NI if the Imported Food Control Act 1992 is prescribed to extend to NI) |
| Plant Breeder’s Rights Act 1994 |  |

Certain other Acts are to be amended so that they continue to operate on NI as they did before commencement of this Schedule. These Acts are:

- Broadcasting Act 1992
- Telecommunications Act 1997
- Telecommunications (Carrier Licence Charges) Act 1997
- Telecommunications (Industry Levy) Act 2012
- Telecommunications (Numbering Charges) Act 1997
- Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997 and

As mentioned above, the Minister has indicated that further legislative reform in regard to telecommunications and corporations on NI will be undertaken at a later date.

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39. Part XIB of the *Competition and Consumer Act 2010* deals with anti-competitive conduct and record-keeping rules for the telecommunications industry.
Amendment of employment and industrial relations legislation

As mentioned above, the Government is proposing to implement a staged transition in relation to employment and industrial relations legislation with the various stages to be implemented via Ministerial rules rather than through the primary legislation. This intention is reflected in the amendments to the Fair Work Act in items 51 to 56 of Schedule 5.\(^{40}\)

Item 51 inserts definitions of ‘Australia’ and ‘Commonwealth’ in section 12 of the Fair Work Act. Both terms are defined to include NI when used in a geographical sense. This has the effect of extending the Fair Work Act to NI. Item 55 inserts new section 32A, which provides that the Minister may make rules modifying the Fair Work Act and the Fair Work Regulations 2009 in regard to their operation in NI.\(^{41}\) This power is subject to certain limitations. For example, the rules must not create an offence or civil penalty, they must not impose a tax or directly amend the text of the Act (proposed subsection 32A(2)). The Minister may not delegate this power (item 56).

There are also equivalent rule-making powers in relation to:

- Fair Entitlements Guarantee Act 2012 (item 50, new section 9A)
- Independent Contractors Act 2006 (item 68, new section 5A) and
- Road Safety Remuneration Act 2012 (item 85, new section 15A).

Other amendments to Commonwealth legislation include:

- item 29 amends the Copyright Act 1968 to include NI in the definition of Australia for the purposes of section 152 relating to amounts payable for broadcasting published sound recordings.
- item 44 excludes NI from the definition of Australia in subsection 4(1) for the purposes of the Excise Act 1901.

Other provisions

Schedule 2—Claims for assistance made by Norfolk Island residents before 1 July 2016

Item 1 of Schedule 2 amends paragraph 381(a) of Schedule 2 of the Norfolk Island Legislation Amendment Act to extend the ‘early claims’ application period for family assistance payments from four weeks to eight weeks. The ‘early claims’ period is part of the transitional provisions provided under the 2015 Act to enable NI residents to lodge claims for family assistance, child support and social security payments prior to 1 July 2016 when the entitlements first become payable.\(^{42}\) The amendment corrects an anomaly under those transitional provisions which would have allowed family assistance claims to be lodged only four weeks prior to 1 July 2016 whereas early claims for social security and child support could be lodged eight weeks prior to 1 July 2016. The amendment has the effect of providing an eight week early claims period for all three payments.

Schedule 3—Child support for Indian Ocean Territory residents

Part 1 amends the Child Support (Assessment) Act 1989 and the Child Support (Registration and Collection) Act 1988 to extend child support arrangements to residents of the Indian Ocean territories. Previously the Indian Ocean territories had been in an anomalous position of being excluded from the national scheme. Part 2 provides transitional arrangements to allow for an eight week early application period before 1 July 2016.

Schedule 6—Nature of Norfolk Island Regional Council

Item 1 amends the definition of ‘Norfolk Island Regional Council’ in the Norfolk Island Legislation Amendment Act\(^{43}\) by removing the requirement for that body to be a ‘body corporate’ and instead requiring the Council to be ‘a body’. The effect would be that the Regional Council may be any type of body, including a body corporate or a body politic. This would provide flexibility in the application of local government law to NI.\(^{44}\)

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41. ‘This Act’ is defined in section 12 of the Fair Work Act to include the Regulations.
42. The Explanatory Memorandum at p. 2 provides further explanation.
43. Item 17, Schedule 2.
44. Explanatory Memorandum, op. cit., p. 44.
Passenger Movement Charge Amendment (Norfolk Island) Bill 2016

Item 1 of the Passenger Movement Bill removes the definition of Australia in section 3 of the Passenger Movement Charge Act 1978. As ‘Australia’ will no longer be defined in the Act, the definition of that term in the Acts Interpretation Act will apply. As discussed above, after the amendment made by item 1 of Schedule 5 to the Territories Bill, ‘Australia’ as defined in the Acts Interpretation Act, will include NI. As a result, the passenger movement charge will apply to people who travel from NI to another country.

Section 4 of the Passenger Movement Charge Act sets out how the passenger movement charge applies when a person’s travel involves intermediate destinations. Subsection 4(3) currently provides that if a person departs from an Indian Ocean Territory for another country or an installation in the Joint Petroleum Development Area and they intend to then travel to another place in Australia within seven days of their original departure from the Indian Ocean Territory, then their original departure is not treated as a departure from Australia. As a result, the person does not need to pay the passenger movement charge. Items 2 and 3 amend subsection 4(3), so that it applies to departures from NI in the same way that it applies to departures from the Indian Ocean territories. This means that a passenger departing NI for another country will not be liable to pay the passenger movement charge if they have the intention of returning to another place in Australia within seven days.

Item 5 provides for a similar exemption if leaving Australia with the intention of departing that other country for NI within seven days.

Concluding comments

The Bills are part of a transition process bringing NI under Commonwealth law and ensuring that NI residents are subject to the same rules as other Australians. In relation to electoral matters, it has been anomalous that enrolment and voting are voluntary for Australian residents on NI. Following passage of the Territories Bill all eligible Australians living on NI will be required to enrol and vote in federal elections and referenda. The Territories Bill will also provide for a three-year transition period for NI workers to be covered by Commonwealth employment laws and related industrial conditions.
