

EXPLANATORY STATEMENT

Ordinance No. 8, 2016

Issued under the Authority of the Minister for Territories, Local Government and Major Projects

Norfolk Island Act 1979

Norfolk Island Customs Ordinance 2016

Subsection 19A(1) of the *Norfolk Island Act 1979* (the Norfolk Island Act) provides that subject to this Act, the Governor-General may make Ordinances for the peace, order and good government of the Territory of Norfolk Island.

The effect of section 15 of the Norfolk Island Act is that after 18 June 2015, the laws in force in the Territory from time to time include section 19A Ordinances as in force from time to time.

The purpose of the *Norfolk Island Customs Ordinance 2016* (the NI Ordinance) is to apply the *Customs Act 1901* (the Customs Act) the *Customs Regulation 2015* (the Customs Regulation) and the *Customs (International Obligations) Regulation 2015* (the Customs (International Obligations) Regulation) in Norfolk Island, as modified by the NI Ordinance.

From 1 July 2016, the Australian Government will integrate Norfolk Island with mainland tax and social security systems, and will commence delivering essential national functions such as immigration, biosecurity and customs.

To give effect to these reforms, section 2B of the *Acts Interpretation Act 1901* will be amended to include Norfolk Island in the definition of ‘Australia’ and new section 18 of the Norfolk Island Act will provide that a Commonwealth Act is in force in Norfolk Island, unless the Act expressly provides otherwise. Both of these provisions commence on 1 July 2016.

Section 6 of the Customs Act provides that this Act does not extend to the external Territories. As a consequence of this, and the operation of new section 18 of the Norfolk Island Act, the Customs Act does not extend to Norfolk Island.

Instead, the NI Ordinance, made under section 19A of the Norfolk Island Act, applies a modified version of the Customs Act, the Customs Regulation and the Customs (International Obligations) Regulation to Norfolk Island except to the extent that they purport to deal with duties of customs. This is consistent with the operation of customs laws in the Indian Ocean Territories of Christmas Island and the Cocos (Keeling) Islands. Application of the Customs Act and associated regulations maintains a customs border that is required to give effect to the Australian Government reforms outlined above.

The NI Ordinance is modelled on the Customs Ordinance 1993 for Christmas Island (the CI Ordinance) made under the *Christmas Island Act 1958*, with additional modifications.

As a consequence, the *Customs Act 1913* of Norfolk Island and the *Customs Regulations 1986* of Norfolk Island will be repealed at the same time the NI Ordinance commences. This will be done in the *Norfolk Island Continued Laws Amendment (2016 Measures No. 1) Ordinance 2016*. These laws will be repealed because they are inconsistent with the Customs function being assumed by the Commonwealth.

The CI Ordinance and the Customs Ordinance 1993 for the Cocos (Keeling) Islands establish a separate Indian Ocean Territories Customs Service (IOTCS). The Comptroller-General of Customs is the Comptroller of the IOTCS and all officers of Customs are customs officers of the IOTCS.

However, a separate customs administration is not established under the NI Ordinance. Instead, the Comptroller-General of Customs and officers of Customs will exercise their powers directly under the applied Customs Act, as Australian Public Service employees of the Department of Immigration and Border Protection (the Department). This will simplify arrangements by not having to separately appoint a Comptroller of a Customs Service for Norfolk Island, or the Comptroller appointing customs officers. This will not affect the Department's ability to undertake customs functions on Norfolk Island.

In 2005, the Customs Act introduced mandatory electronic reporting requirements for mainland Australia. For example, all cargo reports under section 64AB of the Customs Act must be communicated electronically.

Norfolk Island does not have the information technology infrastructure to meet the mandatory electronic reporting requirements in the Customs Act. The application of the Customs Act in Norfolk Island is therefore modified to allow communications to be provided either electronically or in documentary form. For example, cargo reporting under section 64AB allows for both electronic and documentary reporting on Norfolk Island. These modifications account for the operating environment on Norfolk Island.

It is not expected that there will be licensed depots on Norfolk Island initially. The application of the Customs Act and associated regulations to Norfolk Island is therefore modified to account for this.

No separate consultations were undertaken on the NI Ordinance as it is part of the broader Norfolk Island reforms integrating Norfolk Island with mainland Australia.

The NI Ordinance is a legislative instrument for the purpose of the *Legislation Act 2003*.

The NI Ordinance commences on 1 July 2016.

Authority: Section 19A of the Norfolk Island Act 1979

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Norfolk Island Customs Ordinance 2016

This legislative instrument is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

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The effect of section 15 of the Norfolk Island Act is that after 18 June 2015, the laws in force in the Territory from time to time include section 19A Ordinances as in force from time to time.

The purpose of the *Norfolk Island Customs Ordinance 2016* (the NI Ordinance) is to apply the *Customs Act 1901* (the Customs Act) the *Customs Regulation 2015* (the Customs Regulation) and the *Customs (International Obligations) Regulation 2015* (the Customs (International Obligations) Regulation) in Norfolk Island, as modified by the NI Ordinance.

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Human rights implications

The NI Ordinance does not engage or impact on, or limit the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

The NI Ordinance is compatible with human rights.

Minister for Territories, Local Government and Major Projects