

## EXPLANATORY STATEMENT

### **Ordinance No. 1, 2017**

Issued by the authority of the Minister for Local Government and Territories

*Norfolk Island Act 1979*

### ***Norfolk Island Continued Laws Amendment (Gaming) Ordinance 2017***

#### Authority

The *Norfolk Island Act 1979* (the Act) provides for the Government of the Territory of Norfolk Island.

Section 19A of the Act provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory of Norfolk Island.

The *Norfolk Island Continued Laws Amendment (Gaming) Ordinance 2017* (the Ordinance) is made under section 19A of the Act. The Ordinance amends the *Norfolk Island Continued Laws Ordinance 2015* (the Principal Ordinance) to amend a number of Norfolk Island enactments. Norfolk Island enactments, made by the former Legislative Assembly, have been continued in force under section 16A of the Act and, under section 17, may be amended or repealed by a section 19A ordinance.

#### Purpose and operation

The Ordinance ceases the regulation of gaming activities on Norfolk Island by the Norfolk Island Gaming Authority (the NIGA). This is achieved by providing that holding a licence issued by the NIGA is no longer an exception to the offences prohibiting the conduct of gaming activities on, or from, Norfolk Island under Norfolk Island law. The gaming activities that remain prohibited include operating as a bookmaker, carrying on a betting exchange, or operating interactive home gaming or an internet lottery.

Future legislative changes will provide for the ultimate closure of the NIGA and associated transitional matters.

#### Consultation

The Australian Government's decision to abolish the NIGA was taken on the basis of an independent report into the NIGA's activities. This report found significant problems with the structure and governance of the NIGA and recommended the NIGA not be continued in its present form. In preparing this report, consultations were undertaken with the racing and gaming sector, licence holders and previous members of the NIGA.

Following receipt of the report, the Department of Infrastructure and Regional Development held consultations with licence holders. In November 2016, the Australian Government announced the NIGA would be closed and that licence holders would have until 31 March 2017 to seek gaming licences in other jurisdictions.

Details of the Ordinance are set out in the Attachment.

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

The Ordinance commences on 1 April 2017.

## **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 (Gaming) Ordinance 2017***

This Disallowable 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 Instruments**

This Disallowable Legislative Instrument ceases the regulation of gaming activities on Norfolk Island by the Norfolk Island Gaming Authority (the NIGA). This is achieved by providing that holding a licence issued by the NIGA is no longer an exception to the offences prohibiting the conduct of gaming activities on, or from, Norfolk Island under Norfolk Island law. The gaming activities that remain prohibited include operating as a bookmaker, carrying on a betting exchange, or operating interactive home gaming or an internet lottery.

Future legislative changes will provide for the ultimate closure of the NIGA and associated transitional matters.

#### **Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Minister for Local Government and Territories,  
Senator the Hon Fiona Nash**

**Norfolk Island Continued Laws Amendment (Gaming) Ordinance 2017**

**Section 1 – Name**

This section provides that the title of the Ordinance is the *Norfolk Island Continued Laws Amendment (Gaming) Ordinance 2017*.

**Section 2 – Commencement**

This section provides that the Ordinance commences on 1 April 2017.

**Section 3 – Authority**

This section provides that the Ordinance is made under the *Norfolk Island Act 1979*.

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to the Ordinance is amended or repealed as set out in the applicable terms in the Schedule concerned, and any other item in a Schedule to that Ordinance has effect according to its terms.

**Schedule 1 – Amendments**

***Part 1—Amendment of the Bookmakers and Betting Exchange Act 1998 (Norfolk Island)***

***Norfolk Island Continued Laws Ordinance 2015***

**Item [1] – Before item 23 of Schedule 1**

Item 1 inserts new item 23AA into Part 1 of Schedule 1 to the *Norfolk Island Continued Laws Ordinance 2015* (the Principal Ordinance). The effect of this amendment is to insert a new note at the end of subsection 4(1) of the *Bookmakers and Betting Exchange Act 1998* (NI). The note is intended to make clear that the amendments made to this Norfolk Island Act by the Ordinance are not intended to relieve licence holders of their continuing obligations with respect to any gaming activities undertaken before 1 April 2017 notwithstanding that licence holders can no longer undertake gaming activities from this date.

**Item [2] – After item 23 of Schedule 1**

Item 2 inserts a number of new items (items 23A-23J) into Part 1 of Schedule 1 to the Principal Ordinance. The effect of these new items is to make a number of amendments to the *Bookmakers and Betting Exchange Act 1998* (NI). In summary, these amendments have the effect of prohibiting all persons (including licence holders) from operating as a bookmaker on Norfolk Island from 1 April 2017.

**Item 23A of Schedule 1 – Part 2 (heading)**

This item inserts a new heading to Part 2 of the *Bookmakers and Betting Exchange Act 1998* (NI), by substituting the existing heading of ‘Licences’ with the new heading of ‘Bookmaking’.

**Item 23B of Schedule 1 – Division 1 of Part 2 (heading)**

This item inserts a new heading to Division 1 of Part 2 of the *Bookmakers and Betting Exchange Act 1998* (NI), by substituting the existing heading of ‘Prohibition on Unlicensed Bookmaking’ with the new heading of ‘Prohibition of bookmaking’.

### **Item 23C of Schedule 1 – Section 6 (heading)**

This item inserts a new heading to section 6 of the *Bookmakers and Betting Exchange Act 1998* (NI), by substituting the existing heading of ‘Unlicensed bookmaking prohibited’ with the new heading of ‘Prohibition of bookmaking’.

### **Item 23D of Schedule 1 – Subsection 6(1)**

This item amends subsection 6(1) of the *Bookmakers and Betting Exchange Act 1998* (NI) to remove the existing provision for licensed bookmaking by providing that a person must not operate as a bookmaker on or after 1 April 2017. The effect of this amendment is to prohibit bookmaking activities on Norfolk Island from that date.

### **Item 23E of Schedule 1 – Subsections 6(2) and (3)**

This item repeals subsections 6(2) and (3) of the *Bookmakers and Betting Exchange Act 1998* (NI) which deal with licensed bookmaking. The repeal of these subsections is consequential to the amendment made to subsection 6(1) by item 23D of Schedule 1.

### **Item 23F of Schedule 1 – At the end of section 8**

This item amends section 8 of the *Bookmakers and Betting Exchange Act 1998* (NI) which provides for the granting of bookmaking licences. This effect of this amendment is to provide that no further licences may be granted on or after 1 April 2017.

### **Items 23G-23J of Schedule 1 – Section 9**

These items amend section 9 of the *Bookmakers and Betting Exchange Act 1998* (NI) which deals with the term and renewal of bookmaking licences. The effect of these amendments is to remove any provision for the renewal of licences which will continue to operate for the term stated in the licence. The note inserted at the end of section 9 is intended to make clear that a licence, which has not expired, does not provide an exception to any offences in this Act on or after 1 April 2017, which will prohibit all bookmaking activities on Norfolk Island from that date. The effect of these changes is that the statutory default provision in section 30 of the *Bookmakers and Betting Exchange Act 1998* (NI) will only apply to a contravention of the Act committed on or after 1 April 2017 to the extent that the contravention is in respect of the licensed operations that a licensee engaged in before 1 April 2017.

### **Item [3] – After item 24 of Schedule 1**

Item 3 inserts a number of new items (items 24AA-24AF) into Part 1 of Schedule 1 to the Principal Ordinance. The effect of these new items is to make a number of amendments to the *Bookmakers and Betting Exchange Act 1998* (NI). In summary, these amendments have the effect of prohibiting all persons (including licence holders) from carrying on the business of a betting exchange on Norfolk Island from 1 April 2017.

### **Item 24AA of Schedule 1 – Section 19A (heading)**

This item inserts a new heading to section 19A of the *Bookmakers and Betting Exchange Act 1998* (NI), by substituting the existing heading of ‘Issue of a betting exchange licence’ with the new heading of ‘Prohibition of betting exchanges’.

### **Item 24AB of Schedule 1 – Subsection 19A(1)**

This item amends subsection 19A(1) of the *Bookmakers and Betting Exchange Act 1998* (NI) to remove the existing provision for licensed betting exchanges by providing that a person must not carry on the business of a betting exchange on or after 1 April 2017. The effect of this amendment is to prohibit betting exchanges on Norfolk Island from that date.

**Item 23F of Schedule 1 – At the end of subsection 19A(2)**

This item amends subsection 19A(2) of the *Bookmakers and Betting Exchange Act 1998* (NI) which provides for the grant of betting exchange licences. The effect of this amendment is to provide that no further licences may be granted on or after 1 April 2017.

**Item 24AD of Schedule 1 – Sections 19B and 19E**

This item repeals sections 19B and 19E of the *Bookmakers and Betting Exchange Act 1998* (NI) which deal with licensed betting exchanges. The repeal of these sections is consequential to the amendment made to subsection 19A(1) by item 24AB of Schedule 1.

**Items 24AE of Schedule 1 – Subsection 46(1)**

This item amends subsection 46(1) of the *Bookmakers and Betting Exchange Act 1998* (NI) which provides that the Norfolk Island Gaming Authority (the NIGA) may issue, vary, or approve the transfer or suspension of, gaming licences. The effect of this amendment is to remove the power to issue licences which is consequential to the amendments made to sections 8 and 19A of the Act.

**Items 24AF of Schedule 1 – Section 48**

This item repeals section 48 of the *Bookmakers and Betting Exchange Act 1998* (NI) which deals with the preparation of reports by the NIGA. As there will be no bookmaking or betting exchange activities run on Norfolk Island from 1 April 2017, there will be little utility in requiring the NIGA to prepare regular reports to the Minister. Forthcoming legislative changes will make further provision for the ultimate closure of the NIGA, including provision for any records in the possession of the NIGA.

**Part 2—Amendment of the Gaming Act 1998 (Norfolk Island)****Norfolk Island Continued Laws Ordinance 2015****Item [4] – Before item 99 of Schedule 1**

Item 4 inserts new item 99AA into Part 1 of Schedule 1 to Principal Ordinance. The effect of this amendment is to insert a new note at the end of the definition of ‘licensed operations’ in subsection 4(1) of the *Gaming Act 1998* (NI). The note is intended to make clear that the amendments made to this Norfolk Island Act by the Ordinance are not intended to relieve licence holders of their continuing obligations with respect to any gaming services undertaken before 1 April 2017 notwithstanding that licence holders can no longer undertake gaming activities from this date.

**Item [5] – After item 99 of Schedule 1**

Item 5 inserts a number of new items (items 99A-99J) into Part 1 of Schedule 1 to the Principal Ordinance. The effect of these new items is to make a number of amendments to the *Gaming Act 1998* (NI). In summary, these amendments have the effect of prohibiting all persons (including licence holders) from conducting, operating or supervising interactive home gaming or an internet lottery on Norfolk Island from 1 April 2017.

### **Item 99A of Schedule 1 – Part 2 (heading)**

This item inserts a new heading to Part 2 of the *Gaming Act 1998* (NI), by substituting the existing heading of ‘Licences to conduct interactive home gaming’ with the new heading of ‘Interactive home gaming’.

### **Item 99B of Schedule 1 – Division 1 of Part 2 (heading)**

This item inserts a new heading to Division 1 of Part 2 of the *Gaming Act 1998* (NI), by substituting the existing heading of ‘Prohibition on unlicensed interactive home gaming’ with the new heading of ‘Prohibition of interactive home gaming’.

### **Item 99C of Schedule 1 – Section 6 (heading)**

This item inserts a new heading to section 6 of the *Gaming Act 1998* (NI), by substituting the existing heading of ‘Unlicensed interactive home gaming prohibited’ with the new heading of ‘Prohibition of interactive home gaming’.

### **Item 99D of Schedule 1 – Subsection 6(1)**

This item amends subsection 6(1) of the *Gaming Act 1998* (NI) to remove the existing provision for the licensed conduct, operation or supervision of interactive home gaming or an internet lottery by providing that a person must not conduct, operate or supervise these gaming services on or after 1 April 2017. The effect of this amendment is to prohibit these gaming activities on Norfolk Island from that date. The effect of this change is that the statutory default provision in section 29 of the *Gaming Act 1998* (NI) will only apply to a contravention of the Act committed on or after 1 April 2017 to the extent that the contravention is in respect of the licensed operations that a licensee engaged in before 1 April 2017.

### **Item 99E of Schedule 1 – Subsection 6(2)**

This item repeals subsection 6(2) of the *Gaming Act 1998* (NI) which deals with the licensed conduct, operation or supervision of interactive home gaming or an internet lottery. The repeal of this subsection is consequential to the amendment made to subsection 6(1) by item 99D of Schedule 1.

### **Item 99F of Schedule 1 – At the end of section 7**

This item amends section 7 of the *Gaming Act 1998* (NI) which provides for the grant of licences for the conduct, operation or supervision of interactive home gaming. The effect of this amendment is to provide that no further licences may be granted on or after 1 April 2017.

### **Items 99G-99J of Schedule 1 – Section 8**

These items amend section 8 of the *Gaming Act 1998* (NI) which deals with the term and renewal of interactive home gaming licences. The effect of these amendments is to remove any provision for the renewal of licences which will continue to operate for the term stated in the licence. The note inserted at the end of section 8 is intended to make clear that a licence, which has not expired, does not provide an exception to any offences in this Act on or after 1 April 2017, which will prohibit all gaming activities on Norfolk Island from that date.

### **Item [6] – After item 100 of Schedule 1**

Item 6 inserts a number of new items (items 100A-100F) into Part 1 of Schedule 1 to the Principal Ordinance. The effect of these new items is to make a number of amendments to the *Gaming Act 1998* (NI). In summary, these amendments are consequential to the

prohibition of all persons (including licence holders) conducting, operating or supervising interactive home gaming or an internet lottery on Norfolk Island from 1 April 2017.

**Item 100A of Schedule 1 – At the end of subsection 28C(1)**

This item amends subsection 28C(1) of the *Gaming Act 1998* (NI) which provides that NIGA may enter into an agreement with a person relating to the conduct by the person of an internet lottery business in or from Norfolk Island. The effect of this amendment is to provide that no further arrangements may be entered into on or after 1 April 2017.

**Item 100B of Schedule 1 – At the end of subsection 28D(1)**

This item amends subsection 28D(1) of the *Gaming Act 1998* (NI) which provides that where the NIGA enters into an agreement with a person under section 28C, the NIGA may grant a licence to the person to conduct an internet lottery business in or from Norfolk Island. The effect of this amendment is to provide that no further licences for internet lottery businesses may be granted on or after 1 April 2017.

**Items 100C-100D of Schedule 1 – Section 28E**

These items amend section 28E of the *Gaming Act 1998* (NI) which presently deal with the term and renewal of internet lottery business licences. The effect of these amendments is to remove any provision for the renewal of licences which will continue to operate for the term stated in the licence. The note inserted at the end of section 28E is intended to make clear that a licence, which has not expired, does not provide an exception to any offences in this Act on or after 1 April 2017, which will prohibit these gaming activities on Norfolk Island from that date.

**Item 100E of Schedule 1 – Sections 28G and 28H**

This item repeals sections 28G and 28H of the *Gaming Act 1998* (NI) which deal with internet lottery businesses. Section 28G deals with appeals to the Supreme Court of Norfolk Island against the cancellation or suspension of internet lottery business licences. Section 28H provides that nothing in Norfolk Island law prevents the operation of a licensed internet lottery business. The repeal of these sections is consequential to the amendment made to subsection 6(1) by item 99D of Schedule 1 and the other amendments made to the *Gaming Act 1998* (NI) by the Ordinance.

**Item 100F of Schedule 1 – Subsection 44(1)**

This item amends subsection 44(1) of the *Gaming Act 1998* (NI) which provides that the NIGA may issue, vary, or approve the transfer or suspension of, gaming licences. The effect of this amendment is to remove the power to issue licences which is consequential to the amendments made to sections 7 and 28D of the Act.

**Item 100G of Schedule 1 – Section 46**

This item repeals section 46 of the *Gaming Act 1998* (NI) which deals with the preparation of reports by the NIGA. As there will be no gaming activities run on Norfolk Island from 1 April 2017, there will be little utility in requiring the NIGA to prepare regular reports to the Minister. Forthcoming legislative changes will make further provision for the ultimate closure of the NIGA, including provision for any records in the possession of the NIGA.

***Part 3—Transitional provisions***

***Norfolk Island Continued Laws Ordinance 2015***

**Item [7] – In the appropriate position in Part 2 of Schedule 1**

Item 7 inserts a new Division 7 (item 358) into Part 2 of Schedule 1 of the Principal Ordinance.

New item 358 provides a constitutional safety net. Subitem 358(1) provides that if the operation of the Ordinance would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person. Subitem 358(2) provides that if the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.