

## EXPLANATORY STATEMENT

### Ordinance No. 2, 2014

Issued by the authority of the Assistant Minister for Infrastructure and Regional Development

*Christmas Island Act 1958*

#### ***Christmas Island Legislation Amendment (2014 Measures No.1) Ordinance 2014***

##### Authority

The Governor-General has made this Ordinance in accordance with the power granted to him under subsection 9(1) of the *Christmas Island Act 1958*, to make ordinances for the peace, order and good government of the Territory.

The Ordinance is a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

##### Background

Christmas Island is a Territory that was acquired by the Commonwealth under section 122 of the Australian Constitution. The Commonwealth accepted this Territory under the *Christmas Island Act 1958*.

The current legal framework in this Territory was established by the *Territories Law Reform Act 1992* which provided a body of modern state-type laws to replace the colonial laws that operated prior to 1992. This was achieved by inserting section 8A into the *Christmas Island Act 1958* (the Act), which applies the laws in force in Western Australia from time to time to Christmas Island, as subordinate Commonwealth law.

Subsection 8A(2) of the Act provides that Western Australian laws in force in the Territory can be amended or repealed by an ordinance.

Section 3 of *Applied Laws (Implementation) Ordinance 1992* (CI) provides that the applied laws in Schedule 1 are amended as set out in that Schedule. Section 6 provides that the applied laws in Schedule 4 are repealed.

##### Purpose and Operation

The purpose of this Ordinance is to amend the *Applied Laws (Implementation) Ordinance 1992* (CI) the *Importation of Dogs and Cats Ordinance 1973* (CI), and the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001 (No. 1)* (CI) to effect minor amendments to laws of the Territory of Christmas Island (the Territory) to ensure they are consistent with Australian Government policy and legislation, and with changes to applied Western Australian (WA) laws.

##### Amendments to the *Applied Laws (Implementation) Ordinance 1992* (CI)

This Ordinance amends Schedule 1 of the *Applied Laws (Implementation) Ordinance 1992* (CI) by inserting amendments to the *Shipping and Pilotage (Ports and Harbours) Regulations 1966* (WA)(CI).

As a result of amendments to section 10 of the *Shipping and Pilotage Act 1967* (WA) (which is applied automatically in the Territory as the *Shipping and Pilotage Act 1967* (WA)(CI)), ports in the Territory can no longer be declared via Ministerial proclamation. Ports must now be included in the list of declared ports in Schedule 1A of the *Shipping and Pilotage (Ports and Harbours) Regulations 1966* (WA)(CI) (the Regulations). Only ports validly declared according to the applied Act can be governed and managed under this Act.

Amendments to the Regulations have the effect of including the Port of Christmas Island in the list of declared ports in Schedule 1A to the Regulations, which renders the port a declared port for the purposes of the applied Act. This ensures the port can be administered and managed under the appropriate legislation, and that port officers have appropriate authority to exercise control over and manage the port under the applied Act and Regulations.

The amendments also repeal the long title section of the Ordinance and amend the short title, in line with current drafting standards and practices.

#### Amendments to the *Importation of Dogs and Cats Ordinance 1973* (CI)

This Ordinance amends the *Importation of Dogs and Cats Ordinance 1973* (CI) by repealing the current definition of an ‘assistance animal’, and replacing it with definitions provided in the *Disability Discrimination Act 1992* and its subordinate legislation.

The *Importation of Dogs and Cats Ordinance 1973* (CI) prevents the importation of dogs and cats to Christmas Island. This is to protect various species of fauna on the Island (many of which dwell in the Christmas Island National Park), which are likely to be harmed if these domestic animals were permitted on the island. The only exception to this restriction is for assistance animals, which may be imported with the permission of the Administrator.

The current definition of an assistance animal within the *Importation of Dogs and Cats Ordinance 1973* (CI), however, is not very broad and is no longer consistent with the definition of an assistance animal provided in the *Disability Discrimination Act 1992*. The definition in this Act provides a more modern and expansive description of an assistance animal. The amendment ensures that definitions in the *Importation of Dogs and Cats Ordinance 1973* (CI) remain current, and reflect the Government’s policy, as represented in other Commonwealth Government Acts.

#### Amendments to the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001* (No. 1) (CI)

The Ordinance amends the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001*(CI) by inserting amendments to the *Motor Vehicle (Third Party Insurance) Act 1943* (WA)(CI).

The amendments correct an oversight in the amendments originally made to the *Motor Vehicle (Third Party Insurance) Act 1943* (WA)(CI), by changing the title of section 7 from ‘Liability of the Commission’ to ‘Liability of the Approved Insurer’. The WA legislation refers to the ‘Commission’ (the Insurance Commission of Western Australia); however, all other references to the Commission in the applied Christmas Island legislation were changed to Approved Insurer. The Commission is not the automatic insurance provider under the applied legislation in Christmas Island, as it is a statutory body established in WA, and a similar body has not been established in the Territory. The reference to the Commission in

section 7 of the applied legislation was missed in original amendments, and this current amendment corrects that error.

The amendments also correct a reference to provisions in other Commonwealth Acts which have since been changed. Section 34 of the *Motor Vehicle (Third Party Insurance) Act 1943* (WA)(CI) allows delegations of powers under this Act to a person specified in subsection 8G(7) of the *Christmas Island Act 1958*. However, subsection 8G(7) no longer specifies persons to whom powers may be delegated. The amendments would remove this outdated reference, and specify that delegations under the applied law can be made in writing by the Minister.

Functions under the applied *Motor Vehicle (Third Party Insurance) Act 1943* (WA)(CI) need to be exercised by Departmental officials, Western Australian Government Departmental officials, and the Approved Insurer. For this reason, limitations on the persons to whom the Minister can delegate powers and functions have not been included, where those powers would ordinarily be exercised by the Commission or WA officials under the WA legislation. The applied legislation does, however, limit the Minister's power to delegate under the applied Act by prohibiting the delegation of powers and functions originally vested in the WA Minister, the Governor or the Governor-in-Council in the WA legislation.

#### Consultation

In preparing this Ordinance, officers of the responsible Department undertook consultation with Western Australian Government agencies that assist in the administration of applied laws amended by this Ordinance. As the amendments are minor and largely machinery in nature, public consultation was not undertaken.

#### Detailed Description of the Ordinance

##### Part 1 – Preliminary

##### **Section 1 Explanation - Name of Ordinance**

This is the formal section providing the title of the Ordinance.

##### **Section 2 Explanation – Commencement**

This section provides that the Ordinance is to commence on the day after it is registered on the Federal Register of Legislative Instruments.

##### **Section 3 Explanation – Authority**

This section cites the Act granting the authority to make the Ordinance.

##### **Schedule 1 Explanation – Schedules**

This section provides that the Schedules to the Ordinance amend the instruments specified as set out in the Schedules.

##### Schedule 1- Amendments

##### **Item 1 Explanation**

Item 1 repeals the long title of the *Applied Laws (Implementation) Ordinance 1992* (CI).

### **Item 2 Explanation**

Item 2 repeals the heading of section 1, the ‘Short Title’ and substitutes a new heading, ‘Name of Ordinance’, making this the only title, in line with current drafting practices for ordinances. Item 2 also repeals the short title of the *Applied Laws (Implementation) Ordinance 1992* (CI) and replaces it with a new title, the *Applied Laws (General) Ordinance 1992* (CI), to better describe the instrument’s current functions.

### **Item 3 Explanation**

Item 3 of the Schedule amends Schedule 1 of the *Applied Laws (Implementation) Ordinance 1992* (CI) by inserting a new Part 36A – Shipping and Pilotage (Ports and Harbours) Regulations 1966 after Part 36 of the Schedule, to make amendments to these applied Regulations.

Item 3 also inserts a new row in the table at Schedule 1A of the applied Regulations after the table item dealing with the port of Carnarvon. The new row includes the Port of Christmas Island in the table, and specifies the port boundaries as described in the map included in Division 2 of Schedule 1A of the applied Regulations. This has the effect of including this port in the table of declared ports under the Regulations. This enables the Port of Christmas Island to be managed and operate under the *Shipping and Pilotage Act 1967* (WA)(CI), as only declared Ports fall under this legislation.

Item 3 inserts a map of the port boundaries and delimiting port coordinates for the Port of Christmas Island into Schedule 1A, after the plan for the Port of Carnarvon. This has the effect of specifying the exact boundaries of the port, and ensuring the port as delimited is validly declared under the Regulations.

### **Item 4 Explanation**

Item 4 repeals the long title of the *Importation of Dogs and Cats Ordinance 1973* (CI).

### **Item 5 Explanation**

Item 5 repeals the heading of section 1, ‘Short Title’, and substitutes a new heading ‘Name of Ordinance’, making the short title the only title in line with drafting standards for ordinances.

### **Item 6 Explanation**

Item 6 amends the *Importation of Dogs and Cats Ordinance 1973* (CI) by repealing the definition of an ‘assistance animal’ in section 2, and replacing it with a new definition that mirrors the definition of an assistance animal in the *Disability Discrimination Act 1992*. This has the effect of expanding the definition and bringing it in line with other Commonwealth legislation. This ensures that a wider range of people with disabilities have access to assistance animals where they are needed in the Territory of Christmas Island.

### **Item 7 Explanation**

Item 7 removes the word ‘subregulation’ under subsection 3(1), which imposes a general prohibition on the importation of cats and dogs, and replaces it instead with ‘subsection’. This change in terminology makes the language consistent throughout the Ordinance.

### **Item 8 Explanation**

Item 8 repeals the long title of the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001 (No. 1)* (CI).

#### **Item 9 Explanation**

Item 9 repeals the heading of section 1, ‘Short Title’, and substitutes a new heading ‘Name of Ordinance’, making the short title the only title in line with drafting standards for ordinances. Item 9 also repeals the title of the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001 (No. 1)* (CI) and replaces it with a new title, the *Motor Vehicle (Third Party Insurance) Legislation Ordinance 2001* (CI), removing the unnecessary ordinance number.

#### **Item 10 Explanation**

Item 10 repeals section 5 of the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001 (No. 1)* (CI), which provided that Schedule 3 amended the *Applied Laws (Implementation) Ordinance 1992* (CI).

#### **Item 11 Explanation**

Item 11 inserts a new section 10A into the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001 (No. 1)* (CI), and repeals the heading of section 7, ‘Liability of the Commission’, of the *Motor Vehicle (Third Party Insurance) Act 1943* (WA)(CI), and replaces it with the new heading ‘Liability of the Approved Insurer’. This has the effect of ensuring the section refers to the correct name of the person with responsibility for third party insurance and attendant liabilities under the Act for the Territory of Christmas Island.

#### **Item 12 Explanation**

Item 12 amends section 20 of the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001 (No. 1)* (CI) by repealing section 34 of the *Motor Vehicle (Third Party Insurance) Act 1943* (WA)(CI) and replacing it with a new section 34 which omits the reference to subsection 8G(7) of the *Christmas Island Act 1958*. This has the effect of updating the applied Act to ensure it refers to the applicable provisions regarding the persons to whom powers can be delegated under the *Christmas Island Act 1958*.

#### **Item 13 Explanation**

Item 13 repeals Schedule 3 of the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001 (No. 1)* (CI), which amended the *Applied Laws (Implementation) Ordinance 1992* (CI). This Schedule is now redundant, as the amendments have taken effect and have been incorporated into the *Applied Laws (Implementation) Ordinance 1992* (CI).

## Statement of Compatibility with Human Rights

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

### **Christmas Island Legislation Amendment (2014 Measures No. 1) Ordinance 2014**

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 this Ordinance is to amend the *Applied Laws (Implementation) Ordinance 1992* (CI), the *Importation of Dogs and Cats Ordinance 1973* (CI), and the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001 (No. 1)* (CI) to effect minor amendments to laws of the Territory of Christmas Island to ensure they are consistent with Australian Government policy and legislation, and with changes to applied Western Australian laws.

The current legal framework in this Territory was established by the *Territories Law Reform Act 1992* which provided a body of modern state laws to replace the colonial laws that operated prior to 1992. This was achieved by inserting section 8A into the *Christmas Island Act 1958*, which applies the laws in force in Western Australia from time to time to Christmas Island, as subordinate Commonwealth law. Subsection 8A(2) of the Act provides that Western Australian laws in force can be amended or repealed by an Ordinance.

The amendments to the *Applied Laws (Implementation) Ordinance 1992* (CI) seek to ensure that the port of Christmas Island is declared under the *Shipping and Pilotage (Ports and Harbours) Regulations 1966* (WA) (CI), to ensure it can be managed in accordance with the appropriate legislation. Amendments to the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001 (No. 1)* (CI) correct minor errors in the *Motor Vehicle (Third Party Insurance) Act* (WA)(CI), by correcting a section title, and correcting references to outdated provisions in the *Christmas Island Act 1958* which have since been changed.

Amendments to the *Importation of Dogs and Cats Ordinance 1973* (CI) ensure the definition of an assistance animal in this Ordinance is consistent with the definitions provided in the *Disability Discrimination Act 1992*.

#### **Human Rights Implications**

##### **Amendments to the *Importation of Dogs and Cats Ordinance 1973* (CI)**

The Instrument does raise human rights issues, as it promotes the rights of people with disabilities. The amendment to the *Importation of Dogs and Cats Ordinance 1973* (CI) promotes Articles 3, 4, 9, 19 and 20 of the Convention on the Rights of Persons with Disabilities. These articles recognise the rights of people with a disability to participate fully in the community, to live independently, and to access mobility assistance. In addition, this measure would not be discriminatory in accordance with Article 5 of the Convention.

The *Importation of Dogs and Cats Ordinance 1973* (CI) prevents the importation of cats and dogs to Christmas Island. This is to protect various species of fauna on the Island, many of which inhabit the Christmas Island National Park, and are likely to be harmed if these domestic animals were to be allowed on the Island. The only exception to this restriction is for assistance animals, which may be imported with the permission of the Administrator.

The Instrument makes amendments to expand the definition of an ‘assistance animal’ in the *Importation of Dogs and Cats Ordinance 1973* (CI), as the Ordinance currently only defines ‘assistance animals’ as guide dogs, and dogs trained to assist with hearing disabilities. Amendments align the definition in the Ordinance with the current definition of an ‘assistance animal’ in the *Disability Discrimination Act 1992*, which offers a much broader definition, not restricted to particular kinds of disability. This ensures that a wider range of people with disabilities have access to assistance animals where they are needed in the Territory of Christmas Island.

This amendment aims to align the Ordinance more closely with Article 9 of the Convention, by enabling more people living with disabilities to live independently and participate fully in all aspects of life, allowing for equal access to transportation, and removing barriers to accessing mobility assistance.

The amendments outlined above do not engage any other human rights, as the amendments are of a minor or technical nature, and do not have significant impacts on the residents of Christmas Island and the Cocos (Keeling) Islands or their rights.

#### **Amendments to the *Applied Laws (Implementation) Ordinance 1992* (CI)**

Amendments to the *Applied Laws (Implementation) Ordinance 1992* (CI) make minor changes to the *Shipping and Pilotage (Ports and Harbours) Regulations 1966* (WA)(CI), which do not substantively change current arrangements for the management of ports in the Territory. The amendments ensure that changes to the way in which ports can now be declared under the applied *Shipping and Pilotage Act 1967* (WA)(CI) are reflected in the applied regulations.

#### **Amendments to the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001 (No. 1)* (CI)**

Amendments to the *Motor Vehicle (Third Party Insurance) Legislation Amendment Ordinance 2001 (No. 1)* (CI) effect minor changes to the *Motor Vehicle (Third Party Insurance) Act* (WA)(CI), which are minor technical corrections, and do not alter substantive arrangements under the legislation.

#### **Conclusion**

As this Instrument promotes the rights of people with disabilities, it 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*.

**The Hon Jamie Briggs, Assistant Minister for Infrastructure and Regional Development**