

## **EXPLANATORY STATEMENT**

Issued under the Authority of the Minister for  
Infrastructure and Regional Development

*Christmas Island Act 1958*  
*Cocos (Keeling) Islands Act 1955*

*Christmas Island Customs Amendment (Australian Border Force) Ordinance 2015*  
Ordinance No. 3, 2015

*Cocos (Keeling) Islands Customs Amendment (Australian Border Force) Ordinance 2015*  
Ordinance No. 4, 2015

Subsection 9(1) of the Christmas Island Act 1958 (the CI Act) provides that the Governor General may make Ordinances for the peace, order and good government of the Territory. Subsection 12(1) of the Cocos (Keeling) Islands Act 1955 (the CKI Act) provides that the Governor General may make Ordinances for the peace, order and good government of the Territory.

Section 7 of the CI Act provides that the laws in force in the Territory of Christmas Island include Ordinances made on or after 1 July 1992, as in force from time to time. Section 7A of the CKI Act contains a provision to the same effect in the Territory of the Cocos (Keeling) Islands.

An Ordinance relating to Customs has been made under each of the CI Act and the CKI Act, both with the title Customs Ordinance 1993 (the Customs Ordinances). The Indian Ocean Territories Customs Service (the IOTCS) is established in each of the Territories under the Customs Ordinances. The Chief Executive Officer (CEO) of Customs is the Comptroller of the IOTCS and all officers of the Australian Customs and Border Protection Service (ACBPS) are customs officers of the IOTCS.

In addition, the current Customs Ordinances apply the Customs Act 1901 (the Customs Act), the Customs Administration Act 1985 (the Customs Administration Act) and the Customs Regulations 1926 (the Customs Regulations) in the Territories, as modified by the Customs Ordinances.

The purpose of the amending Ordinances is to amend the application of the Customs Act, the Customs Administration Act and the Customs Regulations in the Territories as a result of three recent circumstances affecting their application.

On 9 May 2014, the Government announced that, from 1 July 2015, the statutory office of the CEO of Customs and the ACBPS will cease to exist and that the ACBPS' functions will be integrated into the Department of Immigration and Border Protection. To give effect to these arrangements, the Customs and Other Legislation Amendment (Australian Border Force) Act 2015 will repeal the Customs Administration Act. Therefore, the amending Ordinances amend the Customs Ordinances to remove the references to the Customs Administration Act as it can no longer apply in the Territories. The amending Ordinances also make minor

amendments to the Customs Ordinances as a consequence of the abolition of the office of the CEO of Customs.

The Customs Ordinances also applied the Customs Act and the Customs Regulations in the Territories in the form existing on 18 July 2005. On this date, the Customs Act introduced mandatory electronic reporting requirements for mainland Australia in 2005. For example, all cargo reports under section 64AB of the Customs Act must now be communicated electronically. The Territories did not have the information technology infrastructure to meet the mandatory electronic reporting needs in the Customs Act.

However, since 18 July 2005, there have been many amendments to the Customs Act that do not apply in the Territories. Examples include the updated Infringement Notice Scheme and changes designed to strengthen controls on imported and exported cargo. Other amendments aimed at modernising and clarifying various provisions of the Customs Act have also been made since 2005. The Customs Ordinances have been amended so that the Customs Act as in force from time to time is applied in the Territories to enable such changes to be reflected in the Territories. All approved forms and approved statements as in force from time to time under the Customs Act now also apply in the Territories.

The application of the Customs Act in the Territories is modified to allow communications to be provided either electronically or by hard copy in an approved form. For example, cargo reporting under section 64AB will allow for both electronic and hard copy reporting in the Territories. In mainland Australia reporting under section 64B must be done electronically. This modification ensures the continuation of existing import processing and reporting in the Territories.

On 1 April 2015, the Customs Regulations sunsetted in accordance with the Legislative Instruments Act 2003 and were replaced by the Customs Regulation 2015 and the Customs (International Obligations) Regulation 2015. These new Regulations significantly improve the operation of the legislation by repealing redundant provisions, simplifying language and restructuring provisions that were difficult to navigate in the Customs Regulations. The amending Ordinances repeal the application of the Customs Regulations in the Territories and instead apply the new Regulations in the Territories.

No consultation was undertaken as the amendments in the amending Ordinances are minor and machinery in nature, and do not substantially alter existing arrangements.

The amending Ordinances commence immediately after the commencement of the Australian Border Force Act 2015 on 1 July 2015.

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## Statement of Compatibility with Human Rights

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

*Christmas Island Customs Amendment (Australian Border Force) Ordinance 2015*  
*Cocos (Keeling) Islands Customs Amendment (Australian Border Force) Ordinance 2015*

These legislative instruments are 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

The Amendment Ordinances amend each of the *Customs Ordinance 1993* that applies in the Territory of Christmas Island and the Territory of the Cocos (Keeling) Islands.

Subsection 9(1) of the Christmas Island Act 1958 (the CI Act) provides that the Governor General may make Ordinances for the peace, order and good government of the Territory. Subsection 12(1) of the Cocos (Keeling) Islands Act 1955 (the CKI Act) provides that the Governor General may make Ordinances for the peace, order and good government of the Territory.

An Ordinance relating to Customs has been made under each of the CI Act and the CKI Act, both with the title *Customs Ordinance 1993* (the Customs Ordinances). The Indian Ocean Territories Customs Service (the IOTCS) is established in each of the Territories under the Customs Ordinances. The Chief Executive Officer (CEO) of Customs is the Comptroller of the IOTCS and all officers of the Australian Customs and Border Protection Service (ACBPS) are customs officers of the IOTCS.

In addition, the Customs Ordinances apply the *Customs Act 1901* (the Customs Act), the *Customs Administration Act 1985* (the Customs Administration Act) and the *Customs Regulations 1926* (the Customs Regulations) in the Territories, as modified by the Customs Ordinances.

The purpose of the amending Ordinances is to amend the application of the Customs Act, the Customs Administration Act and the Customs Regulations in the Territories as a result of three recent circumstances affecting their application.

### *Abolition of the statutory office of the CEO of Customs, and the ACBPS*

On 9 May 2014, the Government announced that, from 1 July 2015, the statutory office of the CEO of Customs and the ACBPS will cease to exist and that the ACBPS' functions will be integrated into the Department of Immigration and Border Protection. To give effect to these arrangements, the *Customs and Other Legislation Amendment (Australian Border Force) Act 2015* will repeal the Customs Administration Act. Therefore, the proposed Ordinances would amend the Customs Ordinances to remove the references to the Customs Administration Act as it can no longer apply in the Territories.

The amending Ordinances make minor amendments to the Customs Ordinances as a consequence of the abolition of the office of the CEO of Customs. None of the amendments change the scope of customs related functions performed and powers exercised under the applied Acts.

#### *Several amendments to the Customs Act since 2005*

The Customs Ordinances applied the Customs Act and the Customs Regulations in the Territories in the form existing on 18 July 2005. On this date, the Customs Act introduced mandatory electronic reporting requirements for mainland Australia in 2005. For example, all cargo reports under section 64AB of the Customs Act must now be communicated electronically. The Territories did not have the information technology infrastructure to meet the mandatory electronic reporting needs in the Customs Act.

However, since 18 July 2005, there have been many amendments to the Customs Act that do not apply in the Territories. Examples include changes designed to strengthen controls on imported and exported cargo. Other amendments aimed at modernising and clarifying various provisions of the Customs Act have also been made since 2005. Therefore, the Customs Ordinances have been amended so that the Customs Act as in force from time to time is applied in the Territories to enable such changes to be reflected in the Territories. It is also proposed to all approved forms and approved statements as in force from time to time under the Customs Act now apply in the Territories.

The application of the Customs Act in the Territories is also modified to allow communications to be provided either electronically or by hard copy in an approved form. These modifications will ensure the continuation of existing import processing and reporting in the Territories.

#### *Sunsetting of the Customs Regulations*

On 1 April 2015, the Customs Regulations sunsetted in accordance with the *Legislative Instruments Act 2003* and were replaced by the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015*. These new Regulations significantly improve the operation of the legislation by repealing redundant provisions, simplifying language and restructuring provisions that were difficult to navigate in the Customs Regulations. The new Regulations did not introduce any new policy matters. The amending Ordinances therefore apply the new Regulations in the Territories.

The amending Ordinances commence immediately after the commencement of the *Australian Border Force Act 2015* on 1 July 2015.

### **Human rights implications**

The amending Ordinances do 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 amending Ordinances are compatible with human rights.

**Minister for Infrastructure and Regional Development**