

EXPLANATORY STATEMENT

Ordinance No. 2, 2016

Issued by the authority of the Minister for Major Projects, Territories and Local Government

Norfolk Island Act 1979

Norfolk Island Administrator Ordinance 2016

Authority

The *Norfolk Island Act 1979* (the Act) provides for the Government of the Territory of Norfolk Island. It defines the roles, responsibilities and powers of the Governor-General, the responsible Commonwealth Minister, the Administrator of Norfolk Island, and the Executive Director of Norfolk Island.

Section 19A of the *Norfolk Island Act 1979* provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory of Norfolk Island.

The *Norfolk Island Administrator Ordinance 2016* is made under section 19A of the *Norfolk Island Act 1979*.

Purpose and operation

The Administrator is a statutory appointment under the *Norfolk Island Act 1979*. This role will be repealed by amendments made to this Act through the *Norfolk Island Legislation Amendment Act 2015* that commence on 1 July 2016.

The purpose of this Ordinance is to reinstate the position of Administrator from 1 July 2016 and specify the role and functions of the Administrator.

From the commencement of the final transition time on 1 July 2016, the Administrator continues to hold a number of Commonwealth decision-making powers. The Administrator also retains ceremonial functions and maintains a strong community engagement role.

Consultation

As the outcomes of the Ordinance are largely machinery in nature and the current arrangements for the Administrator are being continued, public consultation was not undertaken.

Statement of compatibility with human rights

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

The 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*.

The instrument does not engage any of the applicable rights or freedoms. It is compatible with human rights as it does not raise any human rights issues.

Detailed description of the Ordinance

Part 1 – Preliminary

Section 1 – Name

This section provides that the title of the Ordinance is the *Norfolk Island Administrator Ordinance 2016*.

Section 2 – Commencement

This section provides the whole of the Ordinance commences at the same time as Part 1 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015* commences.

Section 3 – Authority

This section provides that the Ordinance is made under section 19A of the *Norfolk Island Act 1979*. Ordinances made under this section are made for the peace, order and good government of the Territory of Norfolk Island, and are legislative instruments for the purposes of the *Legislative Instruments Act 2003*, and later the *Legislation Act 2003*.

Section 4 – Definitions

This section provides that the term ‘Administrator’ means the Administrator of the Territory of Norfolk Island as appointed under section 7.

Section 5 – The *Acts Interpretation Act 1901* does not apply

Section 7 is included to assist the reader by making it clear the *Acts Interpretation Act 1901* (Cth) does not apply to this Ordinance; rather, the *Interpretation Act 1979* (NI) applies to the extent that it can (see below). The *Interpretation Act 1979* (NI) provides it applies to ‘enactments’, and ‘enactments’ are defined by that act to include Ordinances made under section 19A of the *Norfolk Island Act 1979* (Cth).

Although the *Acts Interpretation Act 1901* (Cth) does not apply to this Ordinance, it should be noted that many of the provisions contained in the *Acts Interpretation Act 1901* (Cth) do apply to section 19A Ordinances by virtue of section 8A of the *Interpretation Act 1979* (NI).

Part 2 - Administrator

Section 6 – Establishment

Section 6 establishes the statutory office of Administrator of Norfolk Island.

Section 7 – Appointment

Subsection 7(1) provides that the Governor-General is to appoint the Administrator by written instrument. Pursuant to section 33AA of the *Acts Interpretation Act 1901*, this power

includes the power to reappoint. Subsection 7(2) provides that the appointment will be on a full-time basis. Under subsection 7(3), the Administrator will hold office during the Governor-General's pleasure; that is, without a term being specified. In practice, an appointment will be made for a specified period of time.

Section 8 – Functions and powers

The Administrator will be subject to the instruction of the responsible Commonwealth Minister both on matters delegated by the Minister and in relation to the statutory powers and functions of the Administrator. Subsection 8(1) provides that the Administrator must comply with any written directions provided by the responsible Commonwealth Minister when exercising all powers and performing all functions conferred on him or her under a law in force in the Territory.

A 'law in force' in the Territory is defined in section 15 of the *Norfolk Island Act 1979* and includes:

- a) Acts to the extent that they are in force from time to time in, or in relation to, the Territory;
- b) Laws made under Acts to the extent that those laws are in force from time to time in, or in relation to, the Territory;
- c) Section 19A Ordinances as in force from time to time; and
- d) Laws continued in force by section 16 or 16A (including such a law as amended in accordance with section 17); and
- e) New South Wales laws as in force in the Territory in accordance with section 18A.

The 'responsible Commonwealth Minister' is defined in section 4 of the *Norfolk Island Act 1979* (Cth) as the Minister who administers the *Norfolk Island Act 1979* (Cth).

Under subsection 8(2), this direction may be general or specific in nature. Under subsection 8(3), additional conditions may be placed upon the exercise of a power including that the Minister be notified of the Administrator's intention to exercise that power within a stipulated period of time before the power is exercised.

Section 9 – Engaging in other paid employment

This section requires the Administrator to obtain the responsible Commonwealth Minister's approval prior to engagement in any paid employment which falls outside the duties of the office of Administrator.

Section 10 – Resignation

Section 10 provides that the Administrator may resign his or her appointment by notifying the Governor-General in writing. The resignation will be effective on the day it is received by the Governor-General, unless a later date is nominated in the resignation, in which case the resignation will take effect on the nominated date.

Section 11 – Other terms and conditions

Section 11 provides that if a matter is not covered by an Act or this Ordinance, additional terms and conditions of the Minister's office may be determined by the responsible Commonwealth Minister. This provision is intended to address employment terms and conditions such as hours and location of work, additional duties, and any other matter that has not been addressed by legislation.

Section 12 – Acting Administrator

Section 12 provides that the responsible Commonwealth Minister may appoint an acting Administrator to be appointed by written instrument, and sets out the situations in which such an appointment may occur. This provision is subject to the requirements of sections 33AB and 33A of the *Acts Interpretation Act 1901*.