



# Norfolk Island Customs Ordinance 2016

## Ordinance No. 8, 2016

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance.

Dated 05 May 2016

Peter Cosgrove  
Governor-General

By His Excellency's Command

Paul Fletcher  
Minister for Territories, Local Government and Major Projects

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## Part 1—Preliminary

### 1 Name

This is the *Norfolk Island Customs Ordinance 2016*.

### 2 Commencement

- (1) Each provision of this Ordinance specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Ordinance	1 July 2016.	1 July 2016

Note: This table relates only to the provisions of this Ordinance as originally made. It will not be amended to deal with any later amendments of this Ordinance.

- (2) Any information in column 3 of the table is not part of this Ordinance. Information may be inserted in this column, or information in it may be edited, in any published version of this Ordinance.

### 3 Authority

This Ordinance is made under section 19A of the *Norfolk Island Act 1979*.

### 4 Definitions

In this Ordinance:

***applied customs law*** means a law of the Commonwealth in its application to the Territory in accordance with this Ordinance.

***Comptroller-General of Customs*** means the person who is the Comptroller-General of Customs in accordance with subsection 11(3) or 14(2) of the *Australian Border Force Act 2015*.

***Customs Minister*** means the Minister who administers Part XII of the *Customs Act 1901*.

***officer of Customs*** means an officer of Customs within the meaning of the *Customs Act 1901*.

***Secretary*** means the Secretary of the Department administered by the Customs Minister.

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**5 Interpretation Act**

The *Interpretation Act 1979* (Norfolk Island) does not apply to this Ordinance.

Note: The *Acts Interpretation Act 1901* applies instead because this Ordinance is a legislative instrument (see subsection 13(1) of the *Legislation Act 2003*).

**6 Criminal Code**

Chapter 2 of the *Criminal Code 2007* (Norfolk Island) does not apply to offences against an applied customs law.

Note: See also section 5AA of the *Customs Act 1901* (NI).

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## Part 2—Applied customs law

### 7 Application of Commonwealth Customs legislation

- (1) Subject to this Ordinance, the following laws of the Commonwealth apply in the Territory as if they were laws of the Territory, except to the extent that they deal with duties of customs:
  - (a) the *Customs Act 1901*;
  - (b) the *Customs Regulation 2015*;
  - (c) the *Customs (International Obligations) Regulation 2015*;
  - (d) other regulations as in force from time to time under the *Customs Act 1901*;
  - (e) subject to subsection (4), an instrument as in force from time to time under subsection 4A(1) or (1A) of the *Customs Act 1901*.
- (2) For the purposes of this Ordinance:
  - (a) the *Customs Act 1901* in its application to the Territory:
    - (i) is modified in accordance with Schedule 1; and
    - (ii) may be cited as the *Customs Act 1901* (NI); and
  - (b) the *Customs Regulation 2015* in its application to the Territory:
    - (i) is modified in accordance with Schedule 2; and
    - (ii) may be cited as the *Customs Regulation 2015* (NI); and
  - (c) the *Customs (International Obligations) Regulation 2015* in its application to the Territory:
    - (i) is modified in accordance with Schedule 3; and
    - (ii) may be cited as the *Customs (International Obligations) Regulation 2015* (NI).
- (3) For the purposes of the applied customs laws, goods have the same classification as they would have if they were classified under a tariff classification under the *Customs Tariff Act 1995*.
- (4) If:
  - (a) there is in force under subsection 4A(1) or (1A) of the *Customs Act 1901* (NI) an instrument approving a form or statement in relation to a matter; and
  - (b) there is in force an instrument, of the kind referred to in paragraph (1)(e) of this section, in relation to the matter;then the instrument of the kind referred to in paragraph (1)(e) of this section does not apply in the Territory.

### 8 References to certain terms in applied customs law

In the *Customs Act 1901* (NI), in regulations in force under that Act and in an instrument under subsection 4A(1) or (1A) of that Act:

- (a) a reference to the Minister is a reference to the Customs Minister; and
- (b) a reference to the Department is a reference to the Department administered by the Customs Minister; and

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- (c) a reference to Australia or the Commonwealth, if used in a geographical sense, is a reference to the Territory.

**9 Delegation**

- (1) The Comptroller-General of Customs may, by writing, delegate any of his or her functions or powers under an applied customs law (other than section 179 of the *Customs Act 1901* (NI)) to:
- (a) the Secretary; or
  - (b) another officer of Customs.

*Directions to delegates*

- (2) An officer of Customs must, in performing functions or exercising powers under a delegation under paragraph (1)(b), comply with any written directions of the Comptroller-General of Customs.

*Subdelegation by Secretary*

- (3) If the Secretary is delegated functions or powers under subsection (1), the Secretary may, by writing, delegate any of those functions or powers to another officer of Customs.
- (4) An officer of Customs must, in performing functions or exercising powers under a delegation under subsection (3), comply with any written directions of the Secretary.
- (5) The Secretary must not give directions under subsection (4) in relation to particular functions or powers that are inconsistent with any directions given under subsection (2) in relation to those functions or powers.
- (6) A function that is performed or a power that is exercised by an officer of Customs under a delegation under subsection (3) is taken, for the purposes of the law referred to in subsection (1), to have been performed or exercised by the Comptroller-General of Customs.



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## Schedule 1—Modifications of the Customs Act 1901

Note: See subparagraph 7(2)(a)(i).

### *Customs Act 1901*

#### **1 Subsection 4(1) (definition of *Division 1B Judge*)**

Repeal the definition, substitute:

*Division 1B Judge* means a Judge of the Supreme Court of Norfolk Island.

#### **2 Subsection 4(1) (definition of *Division 1B Magistrate*)**

Repeal the definition, substitute:

*Division 1B Magistrate* means a Magistrate within the meaning of the *Court of Petty Sessions Act 1960* (Norfolk Island).

#### **3 Subsection 4(1) (definition of *officer of Customs*)**

Repeal the definition, substitute:

*officer of Customs* means an officer of Customs within the meaning of the *Customs Act 1901* (Commonwealth).

#### **4 Subsection 64(3)**

Omit “Subject to subsection (4), the”, substitute “The”.

#### **5 Subsection 64(4)**

Repeal the subsection.

#### **6 Subsection 64AA(4)**

Omit “Subject to subsection (5), a”, substitute “A”.

#### **7 Subsection 64AA(5)**

Repeal the subsection.

#### **8 Subsection 64AAB(3)**

Repeal the subsection, substitute:

(3) The report may be made by document or electronically.

(3A) A documentary report must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) be communicated to the Department by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport of arrival; and
- (d) contain such information as is required by the form; and
- (e) be signed in a manner specified in the form.

(3B) An electronic report must communicate such information as is set out in an approved statement.

**9 Subsection 64AAB(5)**

Omit “approve different statements for reports”, substitute “approve different forms for documentary reports, and different statements for electronic reports,”.

**10 Paragraph 64AAC(2)(b)**

After “depot operator”, insert “, or other person,”.

**11 Subsection 64AAC(3)**

Repeal the subsection, substitute:

(3) The report may be made by document or electronically.

(3A) A documentary report must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) be communicated to the Department by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport of arrival; and
- (d) contain such information as is required by the form; and
- (e) be signed in a manner specified in the form.

(3B) An electronic report must communicate such information as is set out in an approved statement.

**12 Subsection 64AAC(5)**

Omit “approve different statements for electronic reports”, substitute “approve different forms for documentary reports, and different statements for electronic reports,”.

**13 Subsection 64AB(4)**

Repeal the subsection, substitute:

(4) A cargo report may be made by document or electronically.

(4A) A documentary report must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) be communicated to the Department by sending or giving it to an officer doing duty in relation to the reporting of ships or aircraft at the port or airport of arrival; and
- (d) contain such information as is required by the form; and
- (e) be signed in a manner specified in the form.

**14 Subsection 64AB(5)**

Omit “approved statement to be communicated electronically”, substitute “approved form or approved statement”.

**15 Paragraphs 64AB(5)(a), (aa) and (b)**

Omit “in the statement”.

**16 Subsection 64AB(6)**

Omit “approve different statements for the cargo reports”, substitute “approve different forms for documentary reports, and different statements for electronic reports,”.

**17 Subsection 64ABAA(1)**

After “depot operator”, insert “or other person”.

**18 Subsections 64ABAA(1) to (4)**

Omit “electronically”.

**19 Subparagraph 64ABAA(5)(c)(i)**

Repeal the subparagraph, substitute:

- (i) be made by document or electronically; and

**20 After subsection 64ABAA(5)**

Insert:

(5A) A documentary report must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) be communicated to the Department by sending or giving it to an officer doing duty in relation to outturn reports; and
- (d) contain such information as is required by the form; and
- (e) be signed in a manner specified in the form.

(5B) An electronic report must communicate such information as is set out in an approved statement.

**21 Subsections 64ABAA(6) and (7)**

Repeal the subsections, substitute:

- (6) The Comptroller-General of Customs may approve different forms for documentary reports, and different statements for electronic reports, to be made by different relevant persons under this section.
- (7) An officer may disclose a cargo report to a relevant person for the purpose of enabling the relevant person to communicate to the Department an outturn report in respect of the cargo.

**22 Subsection 64ABAA(11)**

Insert:

*relevant person* means the following:

- (a) a stevedore;

- (b) a depot operator or other person whose particulars have been communicated to the Department by the operator of an aircraft under section 64AAC;
- (c) a person in charge of a Customs place (other than a warehouse).

**23 Subsection 64ABAB(1)**

Omit “, the depot operator”, substitute “ or other premises, the depot operator or other person whose particulars have been communicated to the Department by the operator of the aircraft under section 64AAC”.

**24 Section 64ADAA**

Repeal the section, substitute:

**64ADAA Requirements for communicating to Department electronically**

A communication that is permitted by this Subdivision to be made to the Department electronically must:

- (a) contain the signature of the person who makes it; and
- (b) if information technology requirements have been determined under section 126DA—meet those requirements.

**25 Subsection 71AAAF(1)**

Omit “containing the information that is set out in an approved statement”.

**26 Subsection 71AAAF(2)**

Repeal the subsection, substitute:

- (2) A self-assessed clearance declaration may be made by document or electronically.
- (2A) A documentary declaration must:
  - (a) be in writing; and
  - (b) be in an approved form; and
  - (c) be communicated to the Department by sending or giving it to an officer doing duty in relation to self-assessed clearance declarations; and
  - (d) contain such information as is required by the form; and
  - (e) be signed in a manner specified in the form.
- (2B) An electronic declaration must communicate such information as is set out in an approved statement.

**27 Subsection 71AAAG(1)**

Omit “advice electronically”, substitute “advice, by document or electronically,”.

**28 Section 71AAAH**

Omit “electronically”, substitute “, by document or electronically,”.

**29 Subsection 71AAAI(1)**

Omit “electronically”, substitute “, by document or electronically,”.

**30 Subsection 71AAAI(2)**

Omit “electronically”, substitute “, by document or electronically”.

**31 Paragraphs 71AAAM(2)(a) and (b) and (4)(a) and (b)**

Omit “electronically”, substitute “, by document or electronically,”.

**32 Subsection 71AAAN(2)**

Omit “electronically,”, substitute “, by document or electronically,”.

**33 Paragraph 71AAAO(3)(a)**

Omit “electronically”, substitute “, by document or electronically,”.

**34 Paragraph 71AAAO(3)(b)**

After “set out in an”, insert “approved form or”.

**35 Subsection 71AAAP(1)**

Omit “electronically”, substitute “, by document or electronically,”.

**36 Subsection 71AAAP(5)**

Omit “A withdrawal”, substitute “An electronic withdrawal”.

**37 Subsection 71AAAT(1)**

Omit “approve different statements for electronic communications”, substitute “approve different forms for documentary communications, and different statements for electronic communications,”.

**38 Subsection 71E(2B)**

Repeal the subsection, substitute:

- (2B) A movement application under subsection (2A) may be made by document or electronically.
- (2BA) A documentary movement application under subsection (2A) must be communicated to the Department by giving it to an officer doing duty in relation to import entries or to the movement of goods subject to customs control.

**39 Section 71M**

Repeal the section, substitute:

**71M Requirements for communicating to Department electronically**

A communication that is permitted by this Division to be made to the Department electronically must:

- (a) contain the signature of the person who makes it; and
- (b) if information technology requirements have been determined under section 126DA—meet those requirements.

**40 Subsection 77K(5)**

Repeal the subsection.

**41 Subsection 114F(1A)**

Omit “electronically,” substitute “, by document or electronically,”.

**42 Subsection 114F(1A)**

After “required by an”, insert “approved form or”.

**43 Subsection 114F(1B)**

Omit “electronically”, substitute “, by document or electronically”.

**44 Paragraph 114F(1B)(b)**

After “required by an”, insert “approved form or”.

**45 Subsection 117AA(2)**

Omit “electronically”, substitute “, by document or electronically,”.

**46 Subsection 117AA(2)**

After “required by an”, insert “approved form or”.

**47 Subsection 117AA(4)**

Omit “electronically”, substitute “, by document or electronically,”.

**48 Subsection 117A(1)**

Omit “electronically”, substitute “, by document or electronically,”.

**49 Subsection 117A(2)**

After “set out in an”, insert “approved form or”.

**50 Subsection 119(1)**

Omit “electronically”, substitute “, by document or electronically,”.

**51 Subsection 119(2)**

After “set out in an”, insert “approved form or”.

**52 Section 119E**

Repeal the section, substitute:

**119E Requirements for communicating to Department electronically**

A communication that is permitted by this Division to be made to the Department electronically must:

- (a) contain the signature of the person who makes it; and
- (b) if information technology requirements have been determined under section 126DA—meet those requirements.

**53 Section 126D**

Repeal the section.

**54 Subsection 126DA(1)**

Omit “must determine, and cause to be published in the *Gazette*”, substitute “may determine”.

**55 Section 126DB**

Repeal the section, substitute:

**126DB Authentication of certain electronic communications**

An electronic communication that is made to the Department and is permitted by this Act is taken to be made by a particular person, even though the person did not authorise the communication, if:

- (a) if information technology requirements have not been determined under section 126DA—the person did not notify the Department of a breach of security relating to electronic communications before the communication; or
- (b) if the Comptroller-General of Customs has determined under section 126DA the information technology requirements that have to be met to satisfy a requirement that the person’s signature be given to the Department in connection with information in the communication:
  - (i) the communication meets those requirements; and
  - (ii) the person did not notify the Department of a breach of security relating to those requirements before the communication;

unless the person provides evidence to the contrary.

**56 Paragraph 126DC(3)(b)**

Repeal the paragraph, substitute:

- (b) if the Comptroller-General of Customs has determined under section 126DA the information technology requirements that have to be met to satisfy a requirement that the person’s signature be given to the Department in connection with information in the communication—met those requirements.

**57 Sections 126E to 126G**

Repeal the sections.

**58 Divisions 3 to 5 of Part XI**

Repeal the Divisions.

**59 Section 270**

Repeal the section.

## **Schedule 2—Modifications of the Customs Regulation 2015**

Note: See subparagraph 7(2)(b)(i).

### ***Customs Regulation 2015***

#### **1 At the end of section 14**

Add:

; (d) a place where goods are packed or consolidated for export.

#### **2 Part 13**

Repeal the Part.



## **Schedule 3—Modifications of the Customs (International Obligations) Regulation 2015**

Note: See subparagraph 7(2)(c)(i).

### ***Customs (International Obligations) Regulation 2015***

#### **1 Part 4**

Repeal the Part.