

EXPLANATORY STATEMENT

Ordinance No. 6, 2016

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

Norfolk Island Act 1979

Norfolk Island Provident Account (Closure and Other Measures) Ordinance 2016

Authority

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

The *Norfolk Island Provident Account (Closure and Other Measures) Ordinance 2016* is made under section 19A of the Act.

Purpose and operation

The Norfolk Island Provident Account is a retirement scheme which provides accumulated financial benefits to permanent staff of the Administration of Norfolk Island (Administration) upon resignation. The Provident Account is constituted under the *Provident Account Act 1958* (NI) (Provident Account Act), which is planned to be repealed on 1 July 2016 due to the commencement of Commonwealth superannuation legislation on Norfolk Island.

The purpose of this Ordinance is to close the Provident Account by 30 June 2016 and pay members their Provident Account balances, without requiring them to retire or resign from the Administration.

The Ordinance sets out a process for the Official Trustee of the Provident Account to verify and disburse the amounts payable to members before 30 June 2016, as contributions to the Provident Account are not eligible for Commonwealth superannuation tax concessions. In accordance with established practice under the Provident Account Act, a portion of accrued interest earned by the Account between the closure day on 19 May 2016 (ie. the final date for contributions to the Provident Account) and the final closure of the Provident Account will be retained by the Official Trustee to meet costs associated with the audit procedures required by the Ordinance.

Consultation

The Administration was consulted on the proposed content of the Ordinance. Representations from the Norfolk Island Public Service Association suggest the approach taken in the Ordinance is supported by the affected staff.

Details of the Ordinance are set out in the Attachment.

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

The whole of the proposed Ordinance commences the day after the Ordinance is registered.

Authority: Section 19A of the *Norfolk Island Act 1979*

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.

Details of proposed *Norfolk Island Provident Account (Closure and Other Measures) Ordinance 2016*

Section 1 – Name

This section provides that the title of the Ordinance is the *Norfolk Island Provident Account (Closure and Other Measures) Ordinance 2016*.

Section 2 – Commencement

This section provides that the whole of the Ordinance commences the day after it is registered.

Section 3 – Authority

This section provides that the Ordinance is made under section 19A of the Norfolk Island Act.

Section 4 – Definitions

This section defines the term ‘closure day’ to be 19 May 2016. The additional terms under this Section include ‘contribution’, ‘contributor’, ‘eligible employee’, ‘Official Trustee’, ‘pay day’, and ‘Provident Account’, and are defined to have the same meaning as under the Provident Account Act.

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

Section 5 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) apply to section 19A Ordinances by virtue of section 8A of the *Interpretation Act 1979* (NI).

Part 2 – Closure of the Provident Account

Section 6 – Application of Ordinance

Section 6 provides that this Ordinance applies despite anything in the *Provident Account Act 1958* (NI).

Section 7 – Closure of Norfolk Island Provident Account

Subsection 7(1) provides that the Provident Account is closed from the start of the closure day, which is defined under section 4 as 19 May 2016. To facilitate the verification of amounts owed to members, under subsection 5(2) no contributions may be made to the Provident Account on or after this day. Subsection (3) terminates the existing deduction process under which contributions for eligible employees were previously paid into the Account, but Subsection (4) continues the payment of interest into the Provident Account during the period commencing on closure day and ending on repeal day. This is to enable the interest to be used for payment of fees associated with the audit required by this Ordinance.

Section 8 – Audit to verify amounts payable to contributors

This section requires the Official Trustee to arrange for a person or firm appointed in accordance with the Provident Account Act to conduct a preliminary audit of the Provident Account. The purpose of the preliminary audit is to verify the amounts standing to the credit of each contributor to the Provident Account after the closure day but before the balances are disbursed.

Section 9 – Refund of contributions and interest

Section 9 sets out the amounts payable to contributors and the timeframes for completion of payment. Subsection 1 obliges the Official Trustee to arrange for each contributor to be paid an amount equal to the sum of amounts standing to the credit of the contributor's A account and B account immediately before the closure day, as verified by the audit. The A account is comprised of deductions from the salary paid to eligible employees, and the B account is comprised of contributions from the Administration in respect of the employee.

Subsection 2 stipulates that the amount referred to in subsection 1 includes interest calculated in accordance with section 12 of the Provident Account Act, as modified by section 10 of the Ordinance. The effect of this subsection is that the interest payable to the contributor will be the amount earned during the period commencing on 1 January 2016 and ending on 19 May, instead of the usual period under section 12 of the Provident Account Act of 'six months ending on 30 June'.

Subsection 3 provides that all amounts payable under subsection 1 must be paid no later than 30 June 2016. The purpose of this section is to allow contributors to obtain the benefit of the current tax arrangements in place on Norfolk Island prior to the extension of Commonwealth taxation laws to Norfolk Island on 1 July 2016. It is intended for the Official Trustee to be able to disburse funds on any day following the completion of the final audit up to 30 June 2016.

Subsection 4 outlines the method of payment to contributors. The payment is to be made using the usual method of payment for the contributor's salary, but alternative arrangements appropriate to the circumstances may be made by the Official Trustee if the usual method of payment is not practical for any reason.

Section 10 – Modification of section 12 of the Provident Account Act

Section 10 amends the timeframes for calculating interest referred to in subsections 12(1) and 12(2) of the Provident Account Act to accommodate the shortened timeframe created by the closure day on 19 May 2016. For the purposes of the Ordinance, interest will now be calculated for the period beginning on 1 January 2016 and ending on the closure day (19 May 2016).

Section 11 – Payment to person other than contributor

Section 11 empowers the Official Trustee to pay an amount payable to a contributor under this Ordinance to the contributor's legal personal representative if the contributor's affairs are being administered by another person at the time the payment is to be made. Subsection 3 requires the Official Trustee to comply with any court orders made in respect of an amount payable to a contributor before making a payment.

Section 12 – Final audit

Section 12 requires the Official Trustee to arrange for an audit of the operation and administration of the Provident Account as soon as practicable after funds have been disbursed to contributors. When the audit is completed, the Official Trustee must also

provide a copy of the audit report to the Minister with responsibility for Territories and to each person to whom a payment was made under this Ordinance.

Section 13 – Use and payment of certain interest

Section 13 states that the Official Trustee may utilise interest earned by the Provident Account during the period commencing on the closure day and ending on 30 June 2016 to defray the costs of conducting the audits required by the Ordinance. Any surplus remaining after the costs have been paid will be transferred to the Administration, or the Norfolk Island Regional Council after 1 July 2016. Similarly, the Administration will assume liability for any shortfall if the interest is insufficient to defray the costs of the audit. If the costs become due and payable after 1 July 2016, then the liability for the shortfall will transfer to the Regional Council.

Section 14 – Certain payments to be made to eligible employees

Section 14 sets out the amounts payable to eligible employees during the pay days which fall in the period commencing on closure day and ending on 30 June 2016. During this period, two amounts which would normally be contributed to the Provident Account are, instead, payable to the employee as part of their normal salary. These amounts are the employee contribution, (ie. an amount equal to the amount which would normally have been deducted from the employee's salary under section 9 of the Provident Account Act), and the employer contribution (ie. an amount equal to the amount that the Administration would, but for this Ordinance, have been required to contribute to the Provident Account under section 10 of the Provident Account Act in respect of the eligible employee).

Section 15 – Termination of appointment of Official Trustee and completing actions after the repeal day

Subsection 15(1) requires the Executive Director of the Administration to terminate the appointment of the Official Trustee in writing as soon as practicable after he is satisfied that all matters arising under this Ordinance that are required to be completed by the Official Trustee have been completed. This provision will only be utilised if the appointment is to be terminated before 1 July 2016 because on that date, the Provident Account Act will be repealed and the appointment of the Official Trustee will effectively be terminated on that date.

This section also provides that after 1 July 2016, where any duties of the Official Trustee still remain to be performed, subsection 15(2) provides that subsection 1 does not apply and the thing may be done by the Regional Council.

Section 16 – Repeal of this Ordinance

Section 16 provides that the Ordinance will be repealed on 1 October 2016. This extended timeframe is intended to provide for situations where a payment has not been resolved by 1 July 2016 for any reason.