

## **EXPLANATORY STATEMENT**

### **Ordinance No. 7, 2016**

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

*Norfolk Island Act 1979*

*Norfolk Island Land Transfer 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 Land Transfer Ordinance 2016* is made under section 19A of the Norfolk Island Act.

#### **Purpose and operation**

From 1 July 2016, the Commonwealth will assume responsibility for the delivery of Commonwealth and state-level services on Norfolk Island. On 1 July 2016, the Administration of Norfolk Island (the Administration) will transition to a Regional Council under the framework established by the *Norfolk Island Legislation Amendment Act 2015* (the NILA Act). Division 3, Part 2 of Schedule 2 to the NILA Act provides for the transfer of assets and liabilities of the Administration to the Norfolk Island Regional Council (the Regional Council) at the final transition time established by the NILA Act (1 July 2016).

To support the new governance arrangements for Norfolk Island, prior to 1 July 2016, the Department of Infrastructure and Regional Development (the Department) intends to commence the process of transferring ownership of certain Commonwealth assets related to local government functions (eg. roads, parks and reserves) to the Administration, and acquiring other assets related to state-type services (eg. the school, hospital, police station) from the Administration.

The purpose of this Ordinance is to effect transfers of interests in land between the Administration of Norfolk Island (or the Regional Council after 1 July 2016) and the Commonwealth. The Ordinance sets out a process which enables the Minister with responsibility for Territories to transfer an interest in land. The transfer may be effected by writing signed by the Minister, which has effect without any other act, requirement or condition, and may be made subject to conditions specified by the Minister in the instrument which effects the transfer.

Transfers of interest in land are also subject to certain terms established by the Ordinance. These terms include that the transfer may be compulsory or may give effect to an agreement between the parties; that any acquisition under this Ordinance must be on just terms as defined by section 51(xxxi) of the Constitution; and that liabilities arising from previous ownership of the interest are transferred with the interest.

### Consultation

The Administration has been consulted on a proposed schedule of assets to be transferred. The Norfolk Island Administrator and the Norfolk Island Advisory Council have also been advised of the proposed transfer of assets.

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.

**Norfolk Island Land Transfer Ordinance 2016**

**Section 1 – Name**

This section provides that the title of the Ordinance is the *Norfolk Island Land Transfer 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 – Minister may transfer certain Norfolk Island land**

Subsection 1 empowers the Minister administering the Norfolk Island Act (the Minister) to transfer interests in land held by the Commonwealth to the Administration of Norfolk Island (or the Regional Council after it is established on 1 July 2016), and interests in land held by the Administration or the Regional Council to the Commonwealth.

Such transfers are not intended to be subject to the requirements for disposal of land under the *Lands Acquisition Act 1989* (Lands Acquisition Act) because this Ordinance constitutes an enactment under section 62 of the Norfolk Island Act. The intention is to engage section 5 of the Lands Acquisition Act, which provides that if a provision referred to in section 62 of the Norfolk Island Act is in operation, the Lands Acquisition Act does not apply to anything dealt with by the provision.

Subsection 2 provides that the transfer may be compulsory (in a case where the Commonwealth acquires an interest in land from the Administration or Regional Council) or it may give effect to an agreement between the Commonwealth and the Administration or the Regional Council.

Subsection 3 provides that transfers normally have effect without any other act, requirement or condition. However, this provision also gives the Minister discretion to impose specific conditions on the transfer in the instrument which effects the transfer. This discretion is subject to the requirement in section 62(2) of the Norfolk Island Act that enactments which provide for the acquisition of land must provide that such land must not be acquired otherwise than on just terms.

**Section 5 – Registering transfers**

Notwithstanding subsection 4(3), this subsection provides that if an interest is transferred under this Ordinance, the Minister may sign a certificate confirming the transfer. The certificate should identify the interest in some way and state that the relevant interest has been transferred under the Ordinance to the Commonwealth, the Administration or the Regional Council, as applicable. The certificate may be lodged with a land registration official who may register the transfer and ownership of the interest according to the established procedures on Norfolk Island.

The certificates established under this Section do not effect the transfer, which is effected under section 4. A certificate will, however, be placed on the public register and will provide confirmation that the transfer of interest in land was made subject to the terms of this Ordinance.

#### **Section 6 – Exemption for transfers**

Section 6 provides that no taxes or fees applicable to transfers of land on Norfolk Island will be payable in relation to interests in land transferred under this Ordinance. This means, for example, that no levy under the Business Transactions (Levy Imposition) Act 2006 will be payable in respect of a transfer under subsection 4(1). This section reflects the nature of the exchange of interests in land between two government entities supported by an Act of Parliament, where payment of applicable levies diverges from agreed funding arrangements and may result in administrative inefficiency.

#### **Section 7 – Liabilities also transfer**

Section 7 provides that any liability arising from previous ownership of an interest in land by the Commonwealth or the Administration is transferred with the interest in land, whether or not the liability has arisen at the time the interest is transferred. Liabilities which arise under this section are to be distinguished from liabilities arising from operational activities conducted on the property, for which liability will remain with the previous owner of the property (for example, any liability relating to medical care provided within the Norfolk Island hospital premises prior to 1 July 2016 will remain with the Administration).

#### **Section 8 – Acquisitions must be on just terms**

Section 8 provides that if land is acquired under this Ordinance, it shall not be otherwise than on just terms. This section is intended to comply with the requirements of section 62(2) of the Norfolk Island Act.