

EXPLANATORY STATEMENT

Ordinance No. 4, 2016

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

Norfolk Island Act 1979

Norfolk Island Continued Laws Amendment (2016 Measures No. 1) 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 (the Administration), and the Executive Director of Norfolk Island.

Section 19A of the 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 Continued Laws Amendment (2016 Measures No. 1) Ordinance 2016* (the Ordinance) is made under section 19A of the Norfolk Island Act.

Purpose and operation

The Norfolk Island Act provides that subject to the Norfolk Island Act, a law of Norfolk Island continued in force by s 16 or s 16A of the Norfolk Island Act may:

- a) be amended or repealed by a section 19A Ordinance or by a law made under a section 19A Ordinance; and
- b) be suspended by a section 19A Ordinance for a specified period.

The purpose of the Ordinance is to ensure that existing Norfolk Island laws relating to immigration, health care, legislative interpretation and the Norfolk Island Provident Account have effective transitional arrangements in place to avoid creating conflict with Commonwealth legislation which will apply to Norfolk Island from 1 July 2016.

The Ordinance amends the *Norfolk Island Continued Laws Ordinance 2015* (the principal Ordinance) to amend and create transitional provisions for the *Immigration Act 1980* (NI Immigration Act) and the *Healthcare Levy Act 1990* (Healthcare Levy Act) in the period up to 30 June 2016. A consequential amendment to the principal Ordinance clarifies that from 1 July 2016, a reference to the Administrator in the principal Ordinance is a reference to the Administrator appointed under the *Norfolk Island Administrator Ordinance 2016* (the Administrator Ordinance).

The Ordinance also repeals the NI Immigration Act, the Immigration Regulations 1984 (NI Immigration Regulations), the *Healthcare Act 1989* (Healthcare Act) and Healthcare Levy Act, the *Provident Account Act 1958* (Provident Account Act), the Healthcare Regulations 1991 and the Healthcare Levy Regulations 2012 from 1 July 2016.

Consultation

The Administration of Norfolk Island was consulted on the operational aspects of the Ordinance's proposed content.

Details of the Ordinance are set out in the Attachment.

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

Sections One to Four of the Ordinance, as well as Part One of Schedule One and Part One of Schedule Two commence the day after the Ordinance is registered. The remaining sections of Schedule One and Two, as well as Schedules Three and Four, commence on 1 July 2016.

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

Norfolk Island Continued Laws Amendment (2016 Measures No. 1) Ordinance 2016

This Disallowable Legislative 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*.

Overview of the Legislative Instrument

From 1 July 2016, the Australian Government will commence delivering essential national functions on Norfolk Island. Responsibility for administering immigration and other border functions will transfer from the Administration of Norfolk Island (the Administration) to the Department of Immigration and Border Protection.

Norfolk Island currently regulates its own immigration through the *Immigration Act 1980* (NI) (NI Immigration Act). On 1 July 2016, this will be repealed and the *Migration Act 1958* will be extended to include Norfolk Island in the Australian migration zone.

The objective of the amendments relating to immigration arrangements in this instrument is to support regulatory amendments and put in place arrangements to facilitate the transition of Norfolk Island permit holders and foreign national residents to the Australian visa regime as of 1 July 2016. The specific regulatory amendments are detailed in the *Norfolk Island transitional migration amendments* and are designed to ensure that foreign national permit holders and permanent residents on Norfolk Island, and the island's economy, are not disadvantaged by a change in the immigration status of foreign nationals as a result of the governance reforms; this by way of providing comparable rights and benefits to affected Norfolk Island foreign national residents that they are currently afforded.

Prior to the final transition time of 1 July 2016, the Administration is seeking to finalise all entry permit applications pursuant to the NI Act. In order to provide sufficient time for consideration and processing of applications by the Administration of Norfolk Island in the lead-up to the final transition date of 1 July 2016, the effect of these amendments will prevent applications during the month of June 2016 and will also prevent the making of an application to extend an existing permit.

By ceasing the ability to make applications, it is possible that some people may be adversely affected where their permit ceases during the month of June 2016. Therefore, the amendments relating to immigration arrangements in this instrument detail if a person's permit expires during the month of June 2016, that person will automatically be granted an extension of that permit until, and including, 30 June 2016 and transition to a comparable Australian visa on 1 July 2016.

Visitor permit applications will still be processed, as it is necessary for tourism to remain unhindered during June 2016. Similarly, the grant of unrestricted entry permits to Australian and New Zealand citizens will be unaffected prior to 1 July 2016.

The amendments also provide transitional provisions relating to the repeal of this NI Immigration Act and Regulations. There is a new general transitional provision which will ensure the NI Act and Regulations continue to apply for the purpose of completing any processes already commenced under that legislation prior to its repeal. In addition to the general transitional provision, there is also a transitional provision that deals specifically with requests to the Commonwealth Minister under the NI Act for review of decisions in relation

to applications where a decision on that review application had not been made before 1 July 2016.

This provision will ensure if the Commonwealth Minister grants the application, the person would be taken to have been granted the relevant permit, permit extension or residency on 30 June 2016. The purpose of these provisions is to remove doubt and provide certainty as to which law applies if a person had commenced but not completed any process under the NI Immigration Act and Regulations on 1 July 2016. The transitional provisions also ensure that no person is disadvantaged by the new arrangements.

The amendments also provide provisions for disclosure of and access to records, documents and papers by the Norfolk Island Administrator or an authorised person to Department of Immigration and Border Protection (DIBP) officers.

Amendments to the *Healthcare Levy Act 1990* (NI) (Healthcare Levy Act) will convert the quarterly amounts payable by each eligible person for the Norfolk Island Healthcare Levy and the Medical Evacuation Levy to pro-rata amounts of \$73.35 and \$26.65 respectively, to cover the shorter levy period from 1 June to 30 June 2016.

A consequential amendment covers the Administrator appointed under the Administrator Ordinance as well as under the *Norfolk Island Act 1979* (the Norfolk Island Act).

Further amendments repeal the *Healthcare Act 1989* (Healthcare Act), Healthcare Levy Act, NI Immigration Act, *Provident Account Act 1958* and associated regulations on 1 July 2016.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

Right to Privacy

This Disallowable Legislative Instrument engages the right to privacy under article 17 of the International Covenant on Civil and Political Rights due to the amendments relating to disclosure and access to records, documents and papers in Division 3 of Schedule 1. Article 17 states:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

By virtue of these amendments, the disclosure of and access to records, documents and papers will be lawful. These provisions operate during the transition period, which commences the day after this instrument is registered until 30 June 2016, for the purpose of allowing DIBP to obtain information for the purpose of issuing transitional visas. This disclosure and access is for a limited duration and for limited purpose and it is necessary to facilitate the transition of Norfolk Island permit holders and foreign national residents to the Australian visa regime as of 1 July 2016. As such, the government is of the view that any limit on the right to privacy as a result of these amendments is necessary, reasonable and proportionate. Furthermore, any further disclosure of these records, documents and papers by DIBP officers will be subject to the *Privacy Act 1988* (Cth) and/or the *Australian Border*

Force Act 2015 (Cth).

Right to Health

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A similar right is found in Art 24 of the Convention on the Rights of the Child and Art 25 of the Convention on the Rights of Persons with Disabilities. Under Art 2(1) of ICESCR, a country is obliged to take steps 'to the maximum of its available resources, with a view to achieving progressively the full realisation' of the rights recognised in ICESCR. Ensuring that health services are affordable is one component of this right.

From 1 July 2016, the NILA Act will extend a number of health arrangements which exist on mainland Australia, including the Medicare Benefits Schedule, the Pharmaceutical Benefits Scheme (PBS) and the Private Health Insurance rebate. The extension of arrangements is supported by a number of other bills which extend tax and levy-related health measures to Norfolk Island, as part of the extension of mainland health arrangements to the Territory.

The pre-existing Norfolk Island health scheme, including the Healthcare Levy, only subsidises certain health-related expenses beyond a threshold, whereas Medicare and the PBS will begin providing assistance immediately. Accordingly, the amendments promote the right to health of Australian citizens on Norfolk Island by improving the access of citizens, and particularly low income earners, to adequate health care on Norfolk Island.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because to the extent that it may limit the right to privacy, this limitation is reasonable, necessary and proportionate.

Details of proposed Norfolk Island Continued Laws Amendment (2016 Measures No. 1) Ordinance 2016

Item 1 – Name

This item provides that the title of the Ordinance is the *Norfolk Island Continued Laws Amendment (2016 Measures No. 1) Ordinance 2016*.

Item 2 – Commencement

This item sets out the commencement time for the Ordinance by Schedule. Sections One to Four of the Ordinance, as well as Part One of Schedule One and Part One of Schedule Two would commence the day after the Ordinance is registered. The remaining sections of Schedule One and Two, as well as Schedules Three and Four, would commence on 1 July 2016.

Item 3 – Authority

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

Item 4 – Schedules

Item 4 is an enabling provision for the Schedules. It provides that each instrument that is specified in a Schedule to the Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

Schedule 1 – Amendments relating to immigration arrangements

Part 1 – Main amendments relating to immigration

Norfolk Island Continued Laws Ordinance 2015

Item 1 – After item 140 of Schedule 1

This item inserts new item 140A, the effect of which is to add new Part 7 to the end of the NI Immigration Act. Item 1 does this by amending Part 1 of Schedule 1 to the *Norfolk Island Continued Laws Ordinance 2015* (“Principal Ordinance”). New item 140A is inserted after item 140 of Schedule 1 to the Principal Ordinance. Existing items 112 to 140 (inclusive) of Schedule 1 to the Principal Ordinance amend the NI Immigration Act. New item 140A adds new Part 7 to the end of the NI Immigration Act.

New Part 7 of the NI Immigration Act contains transitional provisions relating to immigration arrangements. Division 2 of new Part 7 provides for the cessation of the ability to make certain applications during the month of June 2016, that is:

- an application for a Temporary Entry Permit (TEP), a General Entry Permit (GEP) or for an extension of a TEP is of no effect and must not be granted; and
- an application for residency is of no effect and must not be granted.

The amendments also extend the duration of certain entry permits that are in effect where these permits would have ceased during June. This is necessary because the permit holder would not otherwise be able to seek an extension of their permit, or apply for a new one, if it were to cease during June.

The reason for the above amendments is to provide enough time for consideration and processing, by the Administration, of certain applications in the lead-up to the final transition date of 1 July 2016. That is, it is intended that all outstanding decisions on applications for TEPs, GEPs, residency and extension of TEPs should be finalised in this period. This is intended to ensure a smooth transition to Australia's universal visa system under the *Migration Act 1958* in Norfolk Island on and from 1 July 2016. On 1 July 2016, people who hold permits or who have resident status in Norfolk Island under the NI Immigration Act will be deemed to hold an Australian visa. This will occur by virtue of a transitional rule made under the *Norfolk Island Legislation Amendment Act 2015*.

Division 3 of new Part 7 of the NI Immigration Act permits the disclosure of and access to certain records, documents and papers that were in the possession of, or under the control of, the Administration that relate directly or indirectly to matters arising under the NI Immigration Act.

The main purpose of these provisions is for the Department of Immigration and Border Protection to obtain necessary information in relation to new and existing clients in the Norfolk Island cohort.

Part 7 – Transitional provisions relating to immigration arrangements

Division 1 - Introduction

New section 91 of the NI Immigration Act makes it clear that new Part 7 applies despite anything else in the NI Immigration Act.

New section 92 defines ***transition period*** for the purpose of Part 7. The transition period is the whole of June 2016.

Division 2 – Transitional arrangements for certain entry permits and declarations of residency

New subsection 93(1) provides that during the transition period, a person is not permitted to make an application for a GEP or a TEP, or for an extension of the period during which a TEP remains in force. New subsection 93(2) makes it clear that even if an application is made contrary to subsection 93(1), this purported application is to be of no effect.

New section 94 ensures that even if an application is made contrary to section 93, the Administrator cannot action the application. That is, section 94 provides that the Administrator must not grant a GEP or a TEP to someone who applied for the permit in the transition period. In addition, the Administrator must not extend the duration of a TEP where an application for the extension is made during the transition period.

New subsection 95(1) provides that during the transition period, a person is not permitted to make an application to be declared a resident of Norfolk Island. New subsection 95(2) makes it clear that even if an application is made contrary to subsection 95(1), this purported application is to be of no effect.

New section 96 ensures that even if an application is made contrary to section 95, the Administrator cannot action the application to be declared to be a resident of Norfolk Island. That is, section 96 provides that the Administrator must not grant a declaration of residency to someone who applied for such a declaration during the transition period.

New section 97 extends the duration of a GEP or a TEP that is in force immediately before the start of June 2016 where the permit would have ceased during June 2016 (but for new section 97). This is necessary because – by virtue of Division 2 of Part 7 – the permit holder would not otherwise be able to seek an extension of their permit, or apply for a new one, if it were to cease during June.

Division 3 – Other transitional arrangements

New section 98 provides for:

- the disclosure by certain persons of records, documents and papers relating directly or indirectly to matters arising under the NI Immigration Act;
- the access and use of such records, documents and papers.

Subsection 98(1) provides that the Administrator and authorised persons are permitted to disclose things mentioned in subsection (2) to a Commonwealth authorised officer mentioned in subsection (4). The inclusion of an authorised person in this provision will allow for some future flexibility in terms of changing roles as the Administration is phased-out, and allows flexibility for those with responsibility over the things mentioned in subsection (2) in terms of disclosure.

Subsection 98(2) specifies what the “things” are, as referred to in subsection (1).

Subsection 98(3) provides for the type of access and use a Commonwealth authorised officer may have of the relevant records, documents and papers. “Commonwealth authorised officer” is defined in subsection (5). In particular, the access is to be full and free and permits the making of copies of, or taking extracts from, the records, documents and papers mentioned in paragraph 98(3)(a).

Subsection 98(4) sets out how the Commonwealth authorised officer may use the records, documents and papers, and this includes indirect purposes arising out of the listed Acts.

Subsection 98(5) contains a definition of ***Commonwealth authorised officer*** for the purposes of section 98. This definition means all employees in the Department of Immigration and Border Protection, whose duties include responsibility for immigration, citizenship and border protection. The reason for this definition is that, aside from the purpose of making decisions, or assisting in making decisions, in relation to granting or refusing to grant visas, information may be shared with other areas of the Department to fulfil their functions, for example, updating client records, producing statistics or resolving visa status.

Part 2 – Amendments commencing 1 July 2016

Norfolk Island Continued Laws Ordinance 2015

Item 2 – Schedule 1 (heading specifying the NI Immigration Act)

This Part, which incorporates amendments that commence on 1 July 2016, contains items 2 to 10. The purpose of these amendments is to repeal Norfolk Island’s immigration legislation, including amendments made to that legislation up until 1 July 2016. This is because this is the day when Australian immigration laws, including the *Migration Act 1958*, extend to Norfolk Island. The remaining provisions of Norfolk Island immigration law that are to be in effect after this date are those things specified in new Part 4 of the NI Immigration Regulations, in item 10.

Item 2 of Schedule 1 to this Ordinance amends the Principal Ordinance to repeal the heading specifying the NI Immigration Act in Schedule 1 to the Principal Ordinance. This is a technical amendment, consequential to the repeal of the NI Immigration Act, made by item 8 of this Schedule.

Item 3 – Items 112 to 140A of Schedule 1

This item repeals items 112 to 140A of Schedule 1 to the Principal Ordinance.

These items contain technical amendments to the NI Immigration Act that were necessary as a consequence of the transitional role of the Administrator up until 1 July 2016. This item repeals items 112 to 140A consequential to:

- the repeal of the NI Immigration Act made by item 8 of this Schedule; and
- the transition to Australian migration law from 1 July 2016.

Item 4 – Schedule 1 (heading specifying the *Immigration Regulations 1984* (Norfolk Island))

This item repeals the heading in Schedule 1 to the Principal Ordinance which specifies the *Immigration Regulations 1984* (Norfolk Island)

This is a technical amendment, consequential to the repeal of the NI Immigration Regulations, made by item 9 of this Schedule.

Item 5 – Items 141 to 148A of Schedule 1

This item repeals items 141 to 148A of Schedule 1 to the Principal Ordinance.

Generally, these items contain technical amendments to the NI Immigration Regulations that were necessary as a consequence of the transitional role of the Administrator up until 1 July 2016.

This item repeals items 141 to 148A consequential to:

- the repeal of the NI Immigration Regulations made by item 9 of this Schedule; and
- the transition to Australian migration law from 1 July 2016.

Item 6 – Item 190 of Schedule 1 (paragraphs 5(3)(c) and (d) of Schedule 1)

This item repeals paragraphs 5(3)(c) and (d) in item 190 of Schedule 1 to the Principal Ordinance.

Item 190 amends the *Interpretation Act 1979* (Norfolk Island). Paragraphs 5(3)(c) and (d) of Schedule 1 contain references to the NI Immigration Act and the NI Immigration Regulations. This item is therefore a technical amendment, consequential to items 8 and 9 below, which repeal the NI Immigration Act and the NI Immigration Regulations.

Item 7 – Item 349 of Schedule 1

This item repeals item 349 of Schedule 1 to the Principal Ordinance.

Item 349 deals with the application of earlier transitional amendments to the NI Immigration Regulations relating to decision-making and the review of decisions. This is a consequential amendment to item 8 below, which repeals the NI Immigration Act.

Item 8 – Item 1 of Schedule 2

This item inserts “*Immigration Act 1980*” into item 1 of Schedule 2 to the Principal Ordinance.

Item 1 of Schedule 2 to the Principal Ordinance deals with the repeal of certain Norfolk Island continued laws. The effect of inserting the “*Immigration Act 1980*” into this item is to repeal this Act on 1 July 2016.

Item 9 – Item 2 of Schedule 2

This item inserts “*Immigration Regulations 1984*” in item 2 of Schedule 2 to the Principal Ordinance.

Item 2 of Schedule 2 to the Principal Ordinance deals with the repeal of certain Norfolk Island Regulations. The effect of inserting the “*Immigration Regulations 1984*” into this item is to repeal these regulations on 1 July 2016.

Item 10 – In the appropriate position in Schedule 2

This item inserts new Part 4 in the appropriate position in Schedule 2 to the Principal Ordinance. New Part 4 contains transitional provisions relating to the repeal of the NI Immigration Act and the NI Immigration Regulations.

New item 17 in this Part deals with transitional arrangements for applications for review of decisions under the NI Immigration Act which are made, but not completed, before the repeal of the *Immigration Act 1980* (Norfolk Island) on 1 July 2016. Specifically, this item provides that if a person requested the Commonwealth Minister to review a decision (under section 84 of the NI Immigration Act) in relation to:

- an application for a GEP or TEP; or
- an application for an extension of the period during which a TEP remains in force; or
- an application to be declared to be a resident of Norfolk Island

and a decision had not been made on the application before 1 July 2016, the Commonwealth Minister must make a decision on that application for review as soon as practicable after 1 July 2016, and the old Act and the old Regulations continue to apply to that review.

If the Commonwealth Minister grants the application, the person is taken to have been granted the permit, extension or residency (as applicable) on 30 June 2016.

The purpose of this provision is to make clear which law applies to these circumstances, and to ensure that no person is disadvantaged by these arrangements. In particular, this provision will ensure that a person will have the benefit of any transitional visa arrangements on 1 July 2016 on the basis of being a permit holder on 30 June 2016.

New item 18 in this part is a general transitional provision relating to the repeal of the NI Immigration Act. This item makes clear that despite the repeal of the old Act and the old Regulations, that Act and those Regulations, as in force immediately before the repeal, continue to apply for the purpose of completing any processes that were commenced under that Act or those Regulations before the repeal. The purpose of this provision is to provide certainty in relation to which law applies in circumstances where a process was commenced, but not completed, under the NI Immigration Act prior to its repeal on 1 July 2016.

These amendments will be publically conveyed to the Norfolk Island community through a newsletter distributed to every household and information sheets available at the Australian Government Information Centre on the island.

Schedule 2 – Amendments relating to healthcare levy

Part 1 – Main amendments relating to healthcare levy

Norfolk Island Continued Laws Ordinance 2015

Item 1 inserts the following changes to the Healthcare Levy Act before item 109 of the principal Ordinance.

Section 108A makes amendments to the Healthcare Levy Act through the principal Ordinance. Section 108A repeals current subsection 4(1)(b) and, in relation to a ‘levy period’ where the ‘levy day’ falls on 1 June 2016, provides that the relevant ‘levy period’ means the period from 1 June to 30 June 2016. The existing definition of ‘levy period’ is also retained for all levy days except 1 June 2016.

Section 108B amends subsection 6(1) of the Healthcare Levy Act to make the amounts in this section, which are normally payable on each levy day, subject to an exception for the levy day falling on 1 June 2016 in new subsection 6A.

Item 2 inserts the following changes to the Healthcare Levy Act after item 109 of the principal Ordinance.

Section 109A inserts new subsection 6A (Amount of levy for the month of June 2016). This section provides that for the month of June 2016 only, the amount of levy payable will be the amounts prescribed by this section. This is due to the Commonwealth assuming

responsibility for health from 1 July 2016, which means that the health care levy will no longer be required.

Section 109B makes the application of section 12 subject to the qualification in subsection 12(4) in respect of the new levy period of 1 June – 30 June 2016.

Section 109C adds new subsection 12(4) to the Healthcare Levy Act. New subsection 12(4) modifies section 12 of the Act to provide that a person who becomes liable to pay the health care levy on or after 1 July 2016 must pay levy in respect of the period 1 June to 30 June 2016, instead of the period 1 June – 31 August 2016 as originally provided in the Act.

Part 2 – Amendments commencing 1 July 2016

Norfolk Island Continued Laws Ordinance 2015

Items 3 - 7 amend Schedule 1 of the principal Ordinance to remove the Healthcare Act and Healthcare Levy Act from Schedule 1.

Item 8 inserts the Healthcare Act and Healthcare Levy Act in the list of repealed Acts under Item 1 of Schedule 2 to the principal Ordinance.

Item 9 inserts the Healthcare Levy Regulations 2012 and the Healthcare Regulations 1991 in the list of repealed regulations under Item 2 of Schedule 2.

Schedule 3 – Amendments relating to the Administrator

Norfolk Island Continued Laws Ordinance 2015

Item 1 amends the *Interpretation Act 1979* (NI) (Interpretation Act) to repeal Notes 2 and 3 at the end of section 11, effectively deleting current Note 2. This is to reflect the insertion of a new definition of Administrator which references the Administrator Ordinance.

Item 2 repeals the current definition of *Administrator* in the Interpretation Act and substitutes a new definition. The new definition provides that in relation to things done before the *interim transition time*, *Administrator* means the Administrator of the Territory appointed under the Norfolk Island Act as in force immediately before 1 July 2016. After this time, a reference to the *Administrator* means the Administrator of the Territory appointed under the Administrator Ordinance.

Schedule 4 – Amendments relating to the closure of the Provident Account

Norfolk Island Continued Laws Ordinance 2015

Item 1 amends Schedule 1 of the principal Ordinance to remove the Provident Account Act from Schedule 1.

Item 2 repeals previous amendments to the Provident Account Act made by the principal Ordinance.

Item 3 inserts the *Provident Account Act 1958* in the list of repealed Acts under Item 1 of Schedule 2 to the principal Ordinance.