

EXPLANATORY STATEMENT

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

Territories Legislation Amendment Act 2016

Territories Legislation Amendment Act Transitional Rule (Business Names Registration) 2016

The Minister for Territories, Local Government and Major Projects has made this Transitional Rule in accordance with the power granted to him under item 5 of Schedule 5 to the *Territories Legislation Amendment Act 2016*.

The *Territories Legislation Amendment Act 2016* provides for the application of the *Business Names Registration Act 2011* to Norfolk Island from 1 July 2016. This will mean that the existing Norfolk Island business names register (NI Register) will be transferred to the Business Names Register (BN Register) established and operated by the Australian Securities and Investment Commission (ASIC).

The Transitional Rule provides for the existing NI Register to be transferred to the BN Register in accordance with the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* which provides rules for the orderly and seamless transfer of state and territory business names registers to the BN Register. Applying these rules to the transfer of the NI Register to BN Register will ensure the transfer process is consistent with the way the various other state and territory registers were transferred to the BN Register. Transferring the NI Register to the BN Register in accordance with the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* will also ensure that ASIC can include on the register businesses that have identical or near identical names.

The Transitional Rule prescribes temporary provisions to facilitate the application of the *Business Names Registration Act 2011* to Norfolk Island. These provisions include substituting references in the *Business Names Registration Act 2011* to Commonwealth laws that do not yet apply to Norfolk Island with equivalent provisions. The Transitional Rule also applies the *Australian Securities and Investment Commission Act 2011* to Norfolk Island for the purposes of performing the functions and exercising the powers conferred under the *Business Names Registration Act 2011*.

As the Transitional Rule is largely machinery in nature and is a result of the arrangements introduced by the *Territories Legislation Amendment Act 2016*, public consultation was not undertaken.

The Transitional rule will commence at the same time as Schedule 5 to the *Territories Legislation Amendment Act 2016*, on 1 July 2016.

This rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

A Statement of Compatibility with Human Rights is set out at [Attachment A](#).

Details of the Transitional Rule are set out at [Attachment B](#).

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Territories Legislation Business Names Registration Transition Rule 2016 (No1)

This 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 Instrument

This instrument facilitates the transfer of the NI Register to the BN Register following the application of the *Business Names Registration Act 2011* to Norfolk Island from 1 July 2016 as a result of the provisions in the *Territories Legislation Amendment Act 2016*. To achieve this, the instrument:

- modifies the *Business Names Registration Act 2011* to facilitate the transfer of the NI Register to the BN Register;
- substitutes *Business Names Registration Act 2011* references to Commonwealth laws that do not currently apply on Norfolk Island with equivalent provisions under Norfolk Island Law;
- modifies the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* to ensure the NI Register is transferred to the BN Register in the same way as for the other states and territories;
- applies the *Australian Securities and Investments Commission Act 2001* to Norfolk Island to enable ASIC to perform the functions and exercise the powers conferred by the *Business Names Registration Act 2011*; and
- prescribes operational rules to facilitate the transfer of the NI Register to the BN Register.

Human rights implications

This Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Details of the *Territories Legislation Amendment Act Transitional Rule (Business Names Registration) 2016*

Part 1

Rule 1 – Name of rule

This rule provides that the name of the transitional rule is the *Territories Legislation Amendment Act Transitional Rule (Business Names Registration) 2016*.

Rule 2 – Commencement

This rule provides that the transitional rule commences on 1 July 2016.

Rule 3 – Authority

The transitional rule is made under item 5 of Schedule 5 to the *Territories Legislation Amendment Act 2016*.

Rule 4 – Definitions

This rule establishes the meaning of certain prescribed words that are used through the transitional rule.

Part 2

Rule 5 – Purpose of this part

This rule provides that the purpose of the transitional rule is to prescribe the process and other matters associated with applying the *Business Names Registration Act 2011* to Norfolk Island and transferring the NI Register to the BN Register.

Rule 6 – Application of the *Business Names Registration Act 2011* Act to Norfolk Island

Subrule 6(1) prescribes certain modifications to the operation of the *Business Names Registration Act 2011* in relation to Norfolk Island. These modifications are required as an interim measure to enable the transfer of the NI Register to the BN Register and to ensure that the application of the Act to Norfolk Island operates effectively until other Commonwealth laws are extended to Norfolk Island.

Subrule 6(2) provides that the list of notified State/Territory registers in the *Business Names Registration Act 2011* is modified to include the register of business names maintained under the *Business Names Act 1976* of Norfolk Island. The effect of this modification is that ASIC will be able to refuse applications to register new business names that are identical to those registered on the NI Register in the period between 1 July 2016 when the *Business Names Registration Act 2011* will apply to Norfolk Island and 5 September 2016 when the NI Register will be transferred to the BN

Register (as per paragraph 7(a) below). This modification is only required until 5 September 2016 after which the NI Register will cease to operate. The modification will therefore cease to operate after 5 September 2016 as per subrule 9(1) below.

Paragraphs 6(3)(a), (b) and (c) prescribe that certain offence provisions under the *Business Names Registration Act 2011* will not apply to businesses that are registered on the NI Register between 1 July 2016 and 5 September 2016 which is the date that the NI Register will be transferred to the BN Register (as per paragraph 7 (a) below). Under this subrule, the offence provisions under subsection 18(1), 19(1), 20(1) and 21(1) will not apply where a business is using a name that is registered on the NI Register, a domain name version of the name registered on the NI Register or a derivative of the business's domain name version of a name as registered on the NI Register.

These offence provisions relate to the activities of businesses registered on the BN Register. It is therefore not appropriate for these offence provisions to apply to businesses registered on the NI Register in the period between 1 July 2016 when the *Business Names Registration Act 2011* will apply to Norfolk Island and the transfer of the NI Register to the BN Register on 5 September 2016. As such, subrule 9(1) below provides that this exemption will cease to have effect from 5 September 2016.

The offence provisions that are being deemed to apply to business registered under the NI register are:

- subsection 18(1) of the *Business Names Registration Act 2011* which makes it an offence to carry on a business under a name not registered on the BN Register unless certain exemptions apply;
- subsection 19(1) of the *Business Names Registration Act 2011* which makes it an offence for a business not to include business names information in written communication with other entities unless certain exemptions apply;
- subsection 20(1) of the *Business Names Registration Act 2011* which makes it an offence to carry on a business under a business name without displaying that name prominently in every place that is open to the public unless certain exemptions apply; and
- subsection 21(1) of the *Business Names Registration Act 2011* which makes it an offence for an entity to carry on a business under a business name while disqualified unless certain exemptions apply.

These offence provisions will apply to businesses in Norfolk Island once the NI Register is transferred to the BN Register, consistent with all other states and territories. The exemption from these offence provisions is being provided only as a temporary measure to facilitate the transfer of the NI Register to the BN Register.

Paragraph 6(3)(d) prescribes that the offence provisions in subsection 18(1), 19(1), 20(1) and 21(1) of the *Business Names Registration Act 2011* as outlined above do not apply to companies that are incorporated or deemed to be incorporated under the *Companies Act 1985* of Norfolk Island. This exemption is a substitute for existing exemptions in place for companies registered under the *Corporations Act 2001* and is required because companies in Norfolk Island will continue to be regulated under the *Companies Act 1985* of Norfolk Island until such time that the *Corporations Act 2001*

is extended to Norfolk Island. The purpose of this rule is to ensure that companies in Norfolk Island are treated the same as in other states and territories for the purposes of the *Business Names Registration Act 2011*. The exemption will only apply until the *Corporations Act 2001* is fully extended to Norfolk Island as per subrule 9(2) below.

Subrule 6(3) modifies the meaning of ‘debtor representative’ under subsection 38 of the *Business Names Registration Act 2011* to substitute references to the *Corporations Act 2001* which do not currently apply on Norfolk Island with equivalent provisions under the *Companies Act 1985* of Norfolk Island. Under the modification, entities in Norfolk Island will have to notify ASIC within 28 days if any of the following persons is appointed to their business under the *Companies Act 1985* of Norfolk Island:

- a receiver or manager;
- an official manager or deputy official manager;
- a liquidator or provisional liquidator; or
- a trustee or other person administering a compromise or arrangement made between a company and another person;

This modification is only required while the *Corporations Act 2001* does not apply to Norfolk Island. As such, subrule 9(2) below provides that the modification will cease to have effect once the *Corporations Act 2001* is fully extended to Norfolk Island.

Subrule 6(4) modifies the meaning of ‘trustee in bankruptcy’ under subsection 38 of the *Business Names Registration Act 2011* to substitute references to the *Bankruptcy Act 1966* which does not currently apply on Norfolk Island with equivalent provisions in the *Bankruptcy Act 2006* of Norfolk Island. Under the modification, entities in Norfolk Island will have to notify ASIC within 28 days if any of the following persons is appointed to their business:

- an official trustee appointed under part 2 of the *Bankruptcy Act 2006* of Norfolk Island;
- a trustee elected under part 4 of the *Bankruptcy Act 2006* of Norfolk Island; or
- a trustee appointed under section 183 of the *Bankruptcy Act 2006* of Norfolk Island.

This modification is only required while the *Bankruptcy Act 1966* does not apply to Norfolk Island. As such, subrule 9(3) below provides that the modification will cease to have effect once the *Bankruptcy Act 1966* is fully extended to Norfolk Island.

Rule 7 – Application of the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* to Norfolk Island

This provision prescribes certain modifications to the operation of the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* in relation to Norfolk Island. These modifications are required to ensure that the NI Register can

be transferred to the BN Register using the Act. Applying the rules in the Act to the transfer of the NI Register to BN Register will ensure the transfer process is consistent with the way the various other state and territory registers were transferred to the BN Register. Transferring the NI Register to the BN Register in accordance with the Act will also ensure that ASIC can include on the register businesses that have identical or near identical names.

Paragraph 7(a) prescribes that the ‘change-over day’ in section 4 of the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* is taken to mean 5 September 2016 for Norfolk Island. This modification is required because the existing ‘change-over day’ occurred prior to the *Business Names Registration Act 2011* applying to Norfolk Island. The consequence of prescribing this modification is that the existing NI Register will be transferred to the BN Register on 5 September 2016.

Paragraph 7 (b) prescribes that the definition of ‘person responsible for registration in a State or Territory’ in section 4 of the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* is taken to also include the Registrar within the meaning of the *Business Names Act 1976* of Norfolk Island. The consequence of this change is that the Registrar of the NI Register will have to transition the NI Register to the BN Register in accordance with *Business Names Registration (Transitional and Consequential Provisions) Act 2011*.

Paragraph 7 (c) prescribes that the definition of ‘registration law’ in section 4 of the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* is taken to also include the *Business Names Act 1976* of Norfolk Island. The consequence of this modification is to ensure that the *Business Names Act 1976* of Norfolk Island is recognised as the registration law for the NI Register, facilitating its transfer to the BN Register in accordance with the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*.

Rule 8 – Administration of the Business Names Register

This provision prescribes certain rules for the administration of the BN Register with respect to Norfolk Island.

Subrule 8(1) prescribes that the *Australian Securities and Investments Commission Act 2001* is deemed to apply in Norfolk Island but only to the extent required to enable ASIC to perform its functions and exercise the powers conferred by the *Business Names Registration Act 2011*.

To avoid doubt, as this rule is made under the *Territories Legislation Amendment Act 2016*, the rule does not apply the *Australian Securities and Investments Commission Act 2001* where doing so would:

- create an offence or civil penalty;
- provide powers of arrest, detention, entry, search or seizure;
- impose a tax;

- set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in the *Territories Legislation Amendment Act 2016*; or
- directly amend the text of the *Territories Legislation Amendment Act 2016*.

The *Business Names Registration Act 2011* provides for certain offences in relation to contravention of its requirements. These offences already apply as a result of the *Business Names Registration Act 2011* applying to Norfolk Island. The application of the *Australian Securities and Investments Commission Act 2001* to Norfolk Island only provides for ASIC to perform its functions and exercise its powers under the *Business Names Registration Act 2011*. The rule does not alter any other application of the Act to Norfolk Island.

This deemed application of the *Australian Securities and Investments Commission Act 2001* to Norfolk Island is only required until the Act is fully extended to Norfolk Island. As such, subrule 9(4) below provides that the deemed application will automatically cease to have effect once the Act is fully extended to Norfolk Island.

Subrule 8(2) prescribes that new business registrations in Norfolk Island must only be done in accordance with the *Business Names Registration Act 2011* from 1 July 2016. This provision is included to avoid doubt during the period between the application of the *Business Names Registration Act 2011* to Norfolk Island (1 July 2016) and the transition of the NI Register to the BN Register (5 September 2016 as per Paragraph 7 (a) above).

Subrule 8(3) prescribes that businesses registered on the NI Register will only be allowed to renew their registrations on the NI Register until 4 September 2016 which is the last day before the NI Register is transferred to the BN Register. Renewal of registrations following 4 September 2016 must be undertaken on the *Business Names Registration Act 2011* as the NI Register will be transferred to the BN Register on 5 September 2016.

Subrule 8(4) requires the Registrar of the NI Register to provide ASIC with the list of business names registered on the NI Register. This rule is to facilitate the transfer of the NI Register to the BN register. The requirement will also ensure the Registrar of the NI Register provides ASIC with the details of the register so that it can be published by ASIC prior to transferring the NI Register to the BN Register.

Subrule 8(5) provides a general power for ASIC to publish the NI Register in any form from 1 July 2016. This will ensure that ASIC can publish the list of Norfolk Island businesses registered on the NI Register between the application of the *Business Names Registration Act 2011* to Norfolk Island on 1 July 2016 and the transfer of the NI Register to the BN Register on 5 September 2016 (as per paragraph 7 (a) above) and publish historic information as required.

Rule 9 – Expiry of transitional provisions

This provision provides for the expiry of some of these transitional rules once they are no longer required.

Subrule 9(1) prescribes that rules subrule 6(2) and paragraphs 6(3)(a), 6(3)(b) and 6(3)(c) will cease to operate on 5 September 2016. Rule 6(2) provides for the NI Register to be a notified register for the purposes of the *Business Names Registration Act 2011* to enable ASIC to refuse to register identical business names in the period between the Act applying to Norfolk Island and the transfer of the NI Register to the BN Register on 5 September 2016. The modification will therefore cease to operate after 5 September 2016 as it is no longer required. Paragraphs 6(2)(a) – (c) exempt businesses registered on the NI Register from certain offence provisions during the transition period between the *Business Names Registration Act 2011* applying to Norfolk Island on 1 July 2016 and the transfer of the NI Register to the BN Register on 5 September 2016. As there will no longer be any businesses registered under the NI Register after 5 September 2016, the transition rules in 6(3)(a) – (c) will no longer be required and will cease to operate.

Subrule 9(2) provides that paragraph 6(3)(d) and subrule (6)(4) will cease to operate once the *Corporations Act 2001* applies to Norfolk Island in full. Paragraph 6(3)(d) and subrule 6(4) provide for temporary modification of the *Business Names Registration Act 2011* as a consequence of the *Corporations Act 2001* not applying to Norfolk Island. They will no longer be needed once the *Corporations Act 2001* is fully extended to Norfolk Island.

Subrule 9(3) provides that subrule 6(4) will cease to operate once the *Bankruptcy Act 1966* is extended to apply in Norfolk Island in full. Subrule 6(5) provides for a temporary modification of the *Business Names Registration Act 2011* as a consequence of the *Bankruptcy Act 1966* not yet applying to Norfolk Island. It will no longer be needed once the *Bankruptcy Act 1966* is fully extended to Norfolk Island.

Subule 9(4) provides that subrule 8(1) will cease to operate once the *Australian Securities and Investments Commission Act 2001* is extended to apply in Norfolk Island in full. Subrule 8(1) provides for a temporary extension of the *Australian Securities and Investments Commission Act 2001* to Norfolk Island to enable ASIC to perform its functions and exercise its powers under *Business Names Registration Act 2011* there. It will no longer be needed once the *Australian Securities and Investments Commission Act 2001* is fully extended to Norfolk Island.