

## **EXPLANATORY STATEMENT**

Issued by Authority of the Deputy Prime Minister and Minister for Agriculture and Water Resources

*Export Control Act 1982 and Export Control (Orders) Regulations 1982*

*Export Control (Fees) Amendment (Norfolk Island Plants) Order 2016*

### **Legislative Authority**

Section 25 of the *Export Control Act 1982* (EC Act) provides that the Governor-General may make regulations empowering the Minister to make orders, not inconsistent with the Act. Regulation 3 of the *Export Control (Orders) Regulations 1982* provides that the Minister may, by instrument in writing, make orders, consistent with regulations made under the EC Act, with respect to any matter for in in relation to which provision may be made by regulations made under the EC Act.

### **Purpose**

The *Export Control (Fees) Order 2015* (Fees Order) prescribes fees, persons liable to pay fees or late fees, the time for payment of fees and exemptions from fees and to provide for related application and transitional provisions.

The purpose of the *Export Control (Fees) Amendment (Norfolk Island Plants) Order 2016* (Amendment Fees Order) is to amend the Fees Order giving effect to charging for services provided by the Department of Agriculture and Water Resources (the department) in relation to the *Export Control (Plants and Plant Products—Norfolk Island) Order 2016* (Norfolk Order).

### **Background**

The EC Act provides for the control of the export of certain goods and for related purposes. However, the EC Act explicitly excludes its application to Australian external territories, unless regulations have been made to extend the EC Act.

The *Export Control (Plants and Plant Products) Order 2011* regulates the export of prescribed grain, fresh fruits, fresh vegetables, hay and straw, and plants and plant products for which a phytosanitary or any other certificate is required, by declaring those goods to be prescribed goods under the EC Act and specifying the conditions and restrictions for their export. The department undertakes inspection and certification activities in relation to the preparation of prescribed goods for export.

In May 2015 the *Norfolk Island Legislation Amendment Act 2015* and related Acts came into effect. These Acts provide for the Australian Government to assume responsibility for funding and delivering national and state level services to Norfolk Island. From 1 July 2016 Australian mainland taxation, social security, immigration, biosecurity, customs and health arrangements, including Medicare and the Pharmaceutical Benefits Scheme, were extended to Norfolk Island. Prior to these changes, Norfolk Island was a self-governing external territory of Australia.

Amendments made on 1 July 2016 to section 18 of the *Norfolk Island Act 1979* provide that an Act or a provision of an Act extends to Norfolk Island unless the Act or another Act expressly excludes it.

The Norfolk Order allows the Australian Government to provide phytosanitary certification for plants and plant product exports from Norfolk Island.

The Fees Order, as amended by the Amendment Fees Order, operates alongside the legislative framework for cost recovery through the imposition of fees.

### **Impact and Effect**

The Norfolk Order extends specific sections of the EC Act and subordinate legislation to Norfolk Island. The Norfolk Order adopts existing export processes and practices used by the Norfolk Island Administration prior to 1 July 2016. Processes and practices are in accordance with Australian export requirements and allow Norfolk Island plant exporters to meet importing country requirements, including the requirement for phytosanitary certification.

The Australian Government Cost Recovery Guidelines state that agencies should set charges to recover some or all of the costs of services that they provide. The Fees Order as amended by the Amendment Fees Order, allows the department to appropriately recover the costs for providing export services on Norfolk Island by imposing fees. In accordance with the Norfolk Order only extending specific sections of the EC Act, an associated group of fees are also applied. These fees are consistent with fees applied under the policy authority confirmed in the 2015–16 Budget when the Commonwealth announced the redesign of the department's cost recovery arrangements. The redesign improved the department's cost recovery arrangements so they are financially sustainable and support the efficient and effective delivery of export services into the future.

### **Consultation**

Consultation was undertaken on Norfolk Island by departmental staff prior to cessation of self-government on 30 June 2016 via a number of public forums. Public forums were attended by island administration, local Biosecurity staff, shipping agents, local businesses and individuals. Changes with the introduction of the proposed Norfolk Order are considered to be minimal.

The Office of Best Practice Regulation has advised that the Norfolk Order and associated consequential amendments are minor in nature and do not require a regulation impact statement (ID 21006).

The Amendment Fees Order is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the [Attachment](#).

The Amendment Fees Order is a legislative instrument for the purposes of the *Legislation Act 2003*.

## **Details of the *Export Control (Fees) Amendment (Norfolk Island Plants) Order 2016***

### Section 1

This section provides that the name of this Order is the *Export Control (Fees) Amendment (Norfolk Island Plants) Order 2016*.

### Section 2

This section provides that the Amendment Fees Order commences on 1 December 2016.

### Section 3

This section provides that the Amendment Fees Order is made under regulation 3 of the *Export Control (Orders) Regulation 1982*.

### Section 4

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## **Schedule 1**

### Section 5 Definitions - Consequential Amendments

This section provides definitions of terms used in the *Export Control (Fees) Order 2015* (Fees Order). This ensures the meaning of these terms is clear. Many of the definitions in the Fees Order have the same meaning as when those terms are used in other Acts, legislative instruments (orders) or Australian Standards.

This item amends the definitions in the Fees Order for ‘Plants’ and ‘Plant Products’ to include those goods as prescribed under the *Export Control (Plants and Plant Products) Order 2011* or the *Export Control (Plants and Plant Products—Norfolk Island) Order 2016*.

**Statement of Compatibility with Human Rights**

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

*Export Control (Fees) Amendment (Norfolk Island Plants) Order 2016*

This 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**

The *Export Control (Fees) Order 2015* (Fees Order) prescribes fees, persons liable to pay fees or late fees, the time for payment of fees and exemptions from fees and to provide for related application and transitional provisions.

The purpose of the *Export Control (Fees) Amendment (Norfolk Island Plants) Order 2016* is to amend the Fees Order giving effect to charging for services provided by the Department of Agriculture and Water Resources<sup>7</sup> in relation to the *Export Control (Plants and Plant Products—Norfolk Island) Order 2016*.

**Human rights implications**

This Legislative 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.

**The Hon. Barnaby Joyce MP**  
**Deputy Prime Minister and Minister for Agriculture and Water Resources**