

EXPLANATORY STATEMENT

Ordinance No. 14, 2016

Issued by the authority of the Minister for Local Government and the Territories

Norfolk Island Act 1979

Norfolk Island Continued Laws Amendment (Public Health) Ordinance 2016

Authority

The *Norfolk Island Act 1979* (the Act) provides for the Government of the Territory 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 (Public Health) Ordinance 2016* (the Ordinance) is made under section 19A of the Act.

Purpose and operation

Under sections 16 and 16A of the Act, certain laws that were in force in the Territory of Norfolk Island immediately before the interim transition time (18 June 2015) continue in force and form part of the law of the Territory ('continued laws').

Continued laws may be amended or repealed by an Ordinance made under section 19A of the Act or by a law made under such an Ordinance.

The Ordinance amends the *Norfolk Island Continued Laws Ordinance 2015* (the Principal Ordinance) to amend and repeal a number of Norfolk Island enactments.

The Ordinance amends the *Administrative Review Tribunal Act 1996* (NI) and the *Health Act 1913* (NI) and repeals the *Contagious Diseases Act 1957* (NI) and the *Tuberculosis Act 1950* (NI).

These amendments and repeals are consequential to the *Norfolk Island Applied Laws Amendment (Public Health) Ordinance 2016* which will, by amendment to the *Norfolk Island Applied Laws Ordinance 2016*, remove the suspension of certain provisions of the *Public Health Act 2010* (NSW), and the related provisions of the *Public Health Regulation 2012* (NSW), which provide for action on notifiable diseases and public health risks during a state of emergency. The treatment of notifiable diseases has been identified as an issue requiring urgent attention and the application of the relevant NSW laws will assist in addressing these concerns.

The application of these provisions of the *Public Health Act 2010* (NSW) to Norfolk Island mean that the above continued laws, which also deal with notifiable diseases, are redundant and the Ordinance will amend or repeal these laws accordingly.

Consultation

The amendments made by the Ordinance are consequential to the amendments made by the *Norfolk Island Applied Laws Amendment (Public Health) Ordinance 2016*. The NSW government, whose officers and employees will perform functions and provide services with respect to these applied provisions, have been consulted regarding the application of these

provisions of NSW law in Norfolk Island from 20 January 2017. The South Eastern Sydney Local Health District, which under NSW applied law includes the Territory of Norfolk Island, has also consulted the Norfolk Island Health and Residential Aged Care Service and other relevant stakeholders regarding the application of these provisions.

Details of the Ordinance are set out in the Attachment.

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

The Ordinance commences on 20 January 2017.

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 (Public Health) 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 Disallowable Legislative Instrument

The Ordinance amends the *Norfolk Island Continued Laws Ordinance 2015* (the Principal Ordinance) to amend and repeal a number of Norfolk Island enactments. The Ordinance amends the *Health Act 1913* (NI) and repeals the *Contagious Diseases Act 1957* (NI) and the *Tuberculosis Act 1950* (NI).

Human rights implications

This Disallowable Legislative Instrument engages the following right:

- 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.

The Ordinance will amend and repeal a number of Norfolk Island enactments dealing with public health. These amendments and repeals are consequential to the *Norfolk Island Applied Laws Amendment (Public Health) Ordinance 2016* which will, by amendment to the *Norfolk Island Applied Laws Ordinance 2016*, remove the suspension of certain provisions of the *Public Health Act 2010* (NSW), and the related provisions of the *Public Health Regulation 2012* (NSW), which provide for action on notifiable diseases and public health risks during a state of emergency. The treatment of notifiable diseases has been identified as an issue requiring urgent attention and the application of the relevant NSW laws will assist in addressing these concerns.

Accordingly, as these amendments are consequential to the implementation of a modern regulatory framework for the management of infectious diseases on Norfolk Island they will promote the right to health of Australian citizens on Norfolk Island.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes the protection of human rights.

Norfolk Island Continued Laws Amendment (Public Health) Ordinance 2016

Section 1 – Name

This section provides that the title of the Ordinance is the *Norfolk Island Continued Laws Amendment (Public Health) Ordinance 2016*.

Section 2 – Commencement

This section provides that the whole of the Ordinance commences on 20 January 2017.

Section 3 – Authority

This section provides that the Ordinance is made under section 19A of the *Norfolk Island Act 1979*.

Section 4 – Schedules

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

Schedule 1 – Amendments

Norfolk Island Continued Laws Ordinance 2016

Item [1] – Before item 1AA of Schedule 1

Item 1 inserts a new item 1AAA into Part 1 of Schedule 1 of the Principal Ordinance. The effect of this amendment is to insert a new definition of ‘enactment’ into the *Administrative Review Tribunal Act 1996* (NI). The effect of this amendment is to avoid any doubt that the Administrative Review Tribunal may review decisions made in the exercise of powers conferred under ‘applied laws’, that is, New South Wales laws as in force in Norfolk Island under section 18A of the *Norfolk Island Act 1979* (paragraph (d) of the definition of *enactment*), when an applied law confers review functions on the Tribunal. The existing definition of ‘enactment’ contained in the *Interpretation Act 1979* (NI), which applies more generally to Norfolk Island laws, does not include applied laws. Under subsection 18A(1) of the *Norfolk Island Act 1979*, the laws of NSW, as in force in NSW *from time to time*, are also in force on Norfolk Island (subject to suspension, incorporation, amendment or repeal by an ordinance made under s 19A of the *Norfolk Island Act 1979*).

Item [2] – After item 1AA of Schedule 1

Item 2 inserts a new item 1AB into Part 1 of Schedule 1 of the Principal Ordinance. The effect of this amendment is to amend s 15(1) of the *Administrative Review Tribunal Act 1996* (NI) by providing that the prohibition upon an enactment providing for review by the Administrative Review Tribunal of a decision of the Commonwealth Minister does not apply to a decision made in the exercise of a power, function or duty vested in the Commonwealth Minister by section 18B of the *Norfolk Island Act 1979*. The effect of this amendment is to avoid any doubt that the Administrative Review Tribunal may review decisions made in the exercise of powers conferred under ‘applied laws’, that is, New South Wales laws as in force in Norfolk Island under section 18A of the *Norfolk Island Act 1979* when an applied law confers review functions on the Tribunal.

Item [3] – Before item 102AA of Schedule 1

Item 3 inserts a new item 102 into Part 1 of Schedule 1 of the Principal Ordinance. The effect of this amendment is to repeal sections 10 and 20 of the *Health Act 1913* (NI). These

provisions regulate matters relating to infectious diseases and are no longer required with the application of the relevant provisions of the *Public Health Act 2010* (NSW) to Norfolk Island.

Item [4] – Part 1 of Schedule 1 (heading specifying *Tuberculosis Act 1950 (Norfolk Island)*)

Item 4 repeals the heading in Part 1 of Schedule 1 of the Principal Ordinance specifying '*Tuberculosis Act 1950 (Norfolk Island)*' and is consequential to the repeal of the *Tuberculosis Act 1950* (NI).

Item [5] – Item 343B of Schedule 1

Item 5 repeals item 343B in Part 1 of Schedule 1 of the Principal Ordinance and is consequential to the repeal of the *Tuberculosis Act 1950* (NI).

Item [6] – At the end of Part 2 of Schedule 1

Item 6 inserts a new Division 6 at the end of Part 2 of Schedule 1 of the Principal Ordinance, providing that the repeal of section 10 of the *Health Act 1913* (NI) applies in relation to conduct engaged in on or after 20 January 2017. The effect of this new Division is that section 10 of the *Health Act 1913* (NI), which provides it is an offence for the spreading of infectious disease, still applies to conduct engaged by a person before 20 January 2017 when the provision is repealed.

Item [7] – Item 2 of Schedule 2

Item 7 inserts references to the *Contagious Diseases Act 1957* (NI) and the *Tuberculosis Act 1950* (NI) into Schedule 2 of the Principal Ordinance. The effect of these amendment is to repeal these Norfolk Island continued laws. These Acts regulate matters relating to infectious diseases and are no longer required with the application of the relevant provisions of the *Public Health Act 2010* (NSW) to Norfolk Island.