

EXPLANATORY STATEMENT

Minute No. 15 of 2017 – Minister for Local Government and Territories

Subject - *Christmas Island Act 1958*

*Christmas Island Legislation Amendment (2017 Measures No. 1)
Ordinance 2017*

The *Christmas Island Act 1958* (the Act) provides for the government of the Territory of Christmas Island.

Subsection 9(1) of the Act provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory.

Subsection 8A(1) of the Act provides that the laws of Western Australia are in force in the Territory of Christmas Island from time to time as applied laws. When amending or repealing applied laws by Ordinance under subsection 8(2) of the Act, section 3 of *Applied Laws (General) Ordinance 1992* provides that applied laws that are amended are specified in Schedule 1.

The purpose of the proposed *Christmas Island Legislation Amendment (2017 Measures No. 1) Ordinance 2017* is to ensure laws of the Territory of Christmas Island are consistent with Australian Government policy and legislation, and with changes to applied Western Australian laws.

Amendments to the Applied Laws (General) Ordinance 1992

The proposed amendment changes the name of the *Applied Law (General) Ordinance 1992* to the *Christmas Island Applied Laws Ordinance 1992*, reflecting current drafting standards and practices.

To remove regulatory confusion for the mining industry on Christmas Island, the proposed Ordinance amends the Western Australian applied *Mining Rehabilitation Fund Act 2012* (WA)(CI) (MRF Act) to change the requirements associated with payment of a conservation levy under the MRF Act to the Australian Government. Where a mining company would be required to pay the Australian Government a conservation levy under a mining lease, the MRF Act levy would not be payable. If a conservation levy requirement is not included in a mining lease, the mining company would be required to pay the conservation levy imposed by the MRF Act.

Amendments to the Gambling (Clubs) Ordinance 1978

The proposed Ordinance amends the Ordinance's name to the *Christmas Island Gambling (Clubs) Ordinance 1978*, reflecting current drafting standards and practices. The proposed amendment also updates references to Western Australian applied laws and the Western Australian court which has jurisdiction under the Ordinance.

Amendments to the Interpretation Act 1984 (W.A)(C.I.) (Amendment) Ordinance 1992

The proposed amendment updates how Government information is published in the Territory of Christmas Island. Currently the *Interpretation Act 1984 (W.A)(C.I.) (Amendment) Ordinance 1992* allows for gazettal to occur in the Gazette or the Government Gazette, or a newspaper circulating in Western Australia, which includes the Territory of Christmas Island.

This amendment streamlines gazettal arrangements by ensuring information required to be gazetted is published as a Notifiable Instrument in one central location on the Federal Register of Legislation. This requirement does not apply where an instrument is published on behalf of the Western Australian Government in the government gazette of Western Australia.

Conditions to be Satisfied

The Act does not specify conditions that need to be satisfied before the power to make the Ordinance may be exercised.

Legislative Instrument

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

Commencement

The Ordinance commences on the date after registration on the Federal Register of Legislative Instruments.

Regulatory Impact Statement

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required.

Consultation

In preparing the proposed Ordinance, the Department of Infrastructure and Regional Development advised the Federal Executive Council Secretariat that it would consult on matters contained within the *Christmas Island Legislation Amendment (2017 Measures No. 1) Ordinance 2017*.

The *Christmas Island Legislation Amendment (2017 Measures No. 1) Ordinance 2017* was publicly available during May and June 2017 on the Department's website and a Community Bulletin was circulated advising the Christmas Island community about the proposed changes and requesting feedback. Public consultations were also held on 29 May on Christmas Island. No concerns or issues were raised.

Consultation was undertaken with Phosphate Resources Limited (PRL) relating to amendments to the Western Australian applied MRF Act. PRL advised that it had no concerns with the proposed amendments.

Details of the proposed Ordinance are set out in the Attachment.

The Minute recommends that the Ordinance be made in the form proposed.

Authority: Section 9(1) of the *Christmas Island Act 1958*

ATTACHMENT

Details of the proposed *Christmas Island Legislation Amendment (2017 Measures No. 1) Ordinance 2017*

This Attachment sets out further details of the *Christmas Island Legislation Amendment (2017 Measures No. 1) Ordinance 2017*.

Section 1 – Name

This section provides that the title of the instrument is the *Christmas Island Legislation Amendment (2017 Measures No. 1) Ordinance 2017*.

Section 2 – Commencement

This section provides that the Ordinance commences on the day after registration.

Section 3 – Authority

This section provides that the Ordinance is made under the *Christmas Island Act 1958*.

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 items in the Schedule concerned, and any other item in a Schedule to the Ordinance has effect according to its terms.

Schedule 1 – Amendments

Applied Laws (General) Ordinance 1992

Item 1 amends section 1 (Name of Ordinance) by omitting ‘*Applied Laws (General)*’ substituting it with ‘*Christmas Island Applied Laws*’. The proposed amendment will change the name of the Ordinance to ‘*Christmas Island Applied Laws Ordinance 1992*’.

Item 2 amends Schedule 1 (Amendments of applied laws) by inserting a new Part 18 (*Mining Rehabilitation Fund Act 2012 (WA)(CI)*) after Part 17 (*Medical Act 1894 (WA)(CI)*).

New Part 18 amends section 11 (Mining rehabilitation levy) of the *Mining Rehabilitation Fund Act 2012 (WA)(CI)* by adding a new subsection (4) after subsection (3).

New subsection 11(4) provides that subsections (1) to (3) do not apply where a company is a party to a mining lease with the Commonwealth and under the terms of the mining lease the company is required to pay a conservation levy to the Commonwealth.

Gambling (Clubs) Ordinance 1978

Item 3 amends the name of the Ordinance by adding ‘Christmas Island’ to the title. The amendment results in the name of the Ordinance being the *Christmas Island Gambling (Clubs) Ordinance 1978*.

Item 4 updates the legislative reference to *Associations Incorporations Act 2015* (WA)(CI). This ensures that the definition of ‘club’ in the Ordinance maintains consistency with the Western Australian applied law.

Item 5 updates the reference to Court so that matters under the Ordinance are within the jurisdiction of the District Court of Western Australia.

Item 6 amends subparagraph 3(1)(d)(i) to update the legislative reference to *Associations Incorporations Act 2015* (WA)(CI).

Item 7 omits Form 2 in the Schedule. This amendment is a consequential amendment due to Item 5.

Item 8 repeals section 28 as former laws of the Colony of Singapore do not apply to the Territory of Christmas Island.

Item 9 amends the name of Form 1 with the new name of the Ordinance, the *Christmas Island Gambling (Clubs) Ordinance 1978*.

Item 10 amends the century date marker to 20 in Form 1.

Item 11 repeals Form 2 as a consequential amendment due to Item 5.

Interpretation Act 1984 (W.A)(C.I.) (Amendment) Ordinance 1992

Item 12 amends subsection 5(5) after the definition of Crown by inserting the defined term ‘notifiable instrument’, which has the same meaning as in the *Legislation Act 2003*.

Item 13 would amend section 7(1) (74A) by substituting a new 74A so that where an applied law requires or permits a person to publish in the Gazette or the Government Gazette or a newspaper circulating in Western Australia, which includes the Territory of Christmas Island, that requirement is satisfied by the registration of the instrument as a notifiable instrument on the Federal Register of Legislation.

The *Interpretation Act 1984 (WA)(CI) (Amendment) Ordinance 1992* provides that when Western Australia is used in a geographical sense, it includes the Territory.

Subsection 74A(2) provides that this requirement does not apply to an instrument published by or on behalf of Western Australia.

Statement of Compatibility with Human Rights

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

Christmas Island Legislation Amendment (2017 Measures No. 1) Ordinance 2017

This Ordinance 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 regulation

The *Christmas Island Legislation Amendment (2017 Measures No. 1) Ordinance 2017* (the Ordinance) makes minor amendments to laws of the Territory of Christmas Island.

These changes ensure that laws of the Territory are consistent with Australian Government policy and legislation, and with changes to applied Western Australian laws.

The amendments made by the Ordinances:

- update titles to align with current drafting practices;
- remove regulatory confusion for the mining industry;
- update legislative and jurisdictional references; and
- aligns the Christmas Island gazettal processes with Notifiable Instruments under the *Legislation Act 2003*.

Human rights implications

The Ordinance does not engage any of the applicable rights or freedoms.

Conclusion

The Ordinance is compatible with human rights as it does not raise any human rights issues.

FIONA NASH

Minister for Local Government and Territories