

EXPLANATORY STATEMENT

Ordinance No. , 2017

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

Norfolk Island Act 1979

Norfolk Island Continued Laws Amendment (2017 Measures No. 2) Ordinance 2017

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 (2017 Measures No. 2) Ordinance 2017* (the Ordinance) is made under section 19A of the Act. The Ordinance amends the *Norfolk Island Continued Laws Ordinance 2015* (the Principal Ordinance) to amend a number of Norfolk Island enactments. Norfolk Island enactments, made by the former Legislative Assembly, have been continued in force under section 16A of the Act and, under section 17, may be amended or repealed by a section 19A ordinance.

Purpose and operation

The Ordinance amends the *Airport Act 1991* (Norfolk Island) and the *Airport Regulations 1992* (Norfolk Island). These amendments substitute references in both these laws to the ‘Minister’ with the ‘Chief Executive Officer’. The term ‘Chief Executive Officer’ is defined in section 12 of the *Interpretation Act 1979* (Norfolk Island). The effect of these changes is to confer the existing functions of the Commonwealth Minister under these laws upon the General Manager of the Norfolk Island Regional Council (NIRC). As the NIRC owns and operates the airport, it is more appropriate for these functions to be directly conferred upon the General Manager rather than the Commonwealth Minister. Other amendments, at the request of the NIRC, increase a number of airport fees and charges and reduce the security deposit which must be paid by airport operators in some circumstances. The Ordinance also makes some consequential amendments and provides for transitional arrangements.

The Ordinance also amends the operation of the *Absentee Landowners Levy Act 1976* (Norfolk Island) by ceasing the assessment of the Levy after the assessment date of 15 September 2016. Amounts for 2016 and previous years, already assessed, will still be able to be recovered.

The Ordinance also makes amendments to the *Interpretation Act 1979* (Norfolk Island) and the *Juries Act 1960* (Norfolk Island) in relation to the Norfolk Island Health and Residential Aged Care Service Facility to ensure that the facility is included in the definition of hospital when that term is used in Norfolk Island legislation.

Consultation

The Department of Infrastructure and Regional Development consulted with the NIRC on the changes to airport arrangements and the cessation of the absentee landowner levy. As the change to the *Interpretation Act 1979* (Norfolk Island) and the *Juries Act 1960* (Norfolk Island) is machinery in nature consultation was not undertaken.

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 the day after it is registered on the Federal Register of Legislation.

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 (2017 Measures No. 2) Ordinance 2017

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

The Ordinance amends the *Airport Act 1991* (Norfolk Island) and the *Airport Regulations 1992* (Norfolk Island). These amendments substitute references in both these laws to the ‘Minister’ with the ‘Chief Executive Officer’. The effect of these changes is to confer the existing functions of the Commonwealth Minister under these laws upon the General Manager of the Norfolk Island Regional Council (NIRC). As the NIRC is responsible for the general administration of the airport, it is more appropriate for these functions to be directly conferred upon the General Manager rather than the Commonwealth Minister. Other amendments, at the request of the NIRC, increase a number of airport fees and charges and reduce the security deposit which must be paid by airport operators in some circumstances.

The Ordinance also amends the operation of the *Absentee Landowners Levy Act 1976* (Norfolk Island) by ceasing the assessment of the Levy after the assessment date of 15 September 2016. Amounts for 2016 and previous years, already assessed, will still be able to be recovered.

The Ordinance also makes amendments to the *Interpretation Act 1979* (Norfolk Island) and the *Juries Act 1960* (Norfolk Island) in relation to the Norfolk Island Health and Residential Aged Care Service Facility to ensure that the facility is included in the definition of hospital when that term is used in Norfolk Island legislation.

Human rights implications

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

Conclusion

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

**Minister for Local Government and Territories,
Senator the Hon Fiona Nash**

Norfolk Island Continued Laws Amendment (2017 Measures No. 2) Ordinance 2017

Section 1 – Name

This section provides that the title of the Ordinance is the *Norfolk Island Continued Laws Amendment (2017 Measures No. 2) Ordinance 2017*.

Section 2 – Commencement

This section provides that the Ordinance commences on the day after it is registered.

Section 3 – 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.

Norfolk Island Continued Laws Amendment (2017 Measures No. 2) Ordinance 2017 (the Ordinance) will be made under section 19A of the Act. The Ordinance amends the Principal Ordinance to amend a number of Norfolk Island enactments. Norfolk Island enactments, made by the former Legislative Assembly, have been continued in force under section 16A of the Act and, under section 17, may be amended or repealed by a section 19A ordinance.

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 – Amendment of the Airport Act 1991 (Norfolk Island) and the Airport Regulations 1992 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

Item 1 – After item 2A of Schedule 1

Item 1 inserts new items 2B-2R into Part 1 of Schedule 1 to the Principal Ordinance with the effect of amending the *Airport Act 1991* (Norfolk Island) and the *Airport Regulations 1992* (Norfolk Island) in the following ways.

Items 2B, 2C and 2E substitute references to the “Minister” in the *Airport Act 1991* (Norfolk Island) with references to the “Chief Executive Officer”. Items 2F and 2H similarly substitute references to the “Minister” in the *Airport Regulations 1992* (Norfolk Island) with references to the “Chief Executive Officer”. Section 12 of the *Interpretation Act 1979* (Norfolk Island) provides that any reference in a Norfolk Island enactment to the “Chief Executive Officer” means the General Manager of the NIRC. The effect of these changes is to confer the existing functions of the Commonwealth Minister under these laws upon the General Manager of the NIRC. Consistent with the transfer of these functions, the amendment to section 3F of the *Airport Act 1991* (Norfolk Island) also clarifies that the existing legal immunity conferred upon the Minister with respect to the seizure of aircraft under section 3C will now extend to the General Manager.

Item 2D will amend subsection 3FA(1) of the *Airport Act 1991* (Norfolk Island) to give the General Manager of the NIRC the power to delegate, by written instrument, his or her powers or functions under this Act or the *Airport Regulations 1992* (Norfolk Island) to “an

employee of the Administration”. Section 12 of the *Interpretation Act 1979* (Norfolk Island) relevantly provides that any reference in a Norfolk Island enactment to the “Administration” means the NIRC. This provision replaces the Minister’s current unrestricted power of delegation with a narrower delegation power which limits the range of persons to whom powers or functions may be delegated by the General Manager to employees of the NIRC. The delegation power is necessary as it will often not be practicable for the General Manager to personally discharge functions under the Act or the Regulations. It is also not practical from an operational perspective to restrict this power of delegation to senior officials of the NIRC, as powers may need to be exercised by NIRC employees who undertake the daily running of the airport.

Items 2G and 2J makes some consequential amendments to the *Airport Regulations 1992* (Norfolk Island), specifically, the repeal of a redundant provision (subregulation 3A(3)) dealing with the tabling of reports in the former Legislative Assembly and the repeal of a note at the end of regulation 3B dealing with redundant references to the “Minister”.

Items 2K-2R make a number of amendments to the Schedule to the *Airport Regulations 1992* (Norfolk Island).

Item 2K repeals the definition of “specified service” and items 2L and 2P substitute the references to “specified service” with “Regular Passenger Transport Service” in table A of the Schedule. The effect of these amendments is to clarify the operation of the relevant airport fees and charges.

Items 2M, 2N and 2Q amend table A by omitting and substituting new fees with respect to some airport fees and charges. The fee for aircraft operators for embarking and disembarking passengers on regular passenger transport services will be \$45.00 per person. The fee for after hours attendance by airport staff between 1500 and 0700 hours with respect to regular passenger transport services will be \$45.00 per person per hour and the passenger facilitation charge for non regular passenger transport charters with five passengers or more will be \$45.00 per person. The fees have been increased at the request of the NIRC and are consistent with the proposed fees in the schedule of fees and charges contained in its 2017-18 operational plan. The fee increases are intended to ensure the costs associated with maintaining the airport, including the need for future capital investment, are recovered from the airport users.

Item 2R amends table B of the Schedule by substituting the amount of \$50,000 for the existing amount of \$500,000. The effect of the amendment is to reduce the security deposit which must be paid by an aircraft operator of regular public transport services in circumstances where the operator’s three months’ estimated landing charges will not exceed \$50,000.

Item 2 – In the appropriate position in Part 2 of Schedule 1

Item 2 inserts a new Division 12 (item 373) into Part 2 of Schedule 1 to the Principal Ordinance which deals with the application of the amendments to these laws.

New subitem 373(1) provides that an authorisation, made by the Minister or his or her delegate for the purposes of s 3C of the *Airport Act 1991* (Norfolk Island), which was in force immediately before the commencement of the amendments continues in effect, after that commencement, as if it were an authorisation made by the General Manager after the commencement of the amendments.

New subitems 373(2) and (3) preserve the operation of section 3F of the *Airport Act 1991* (Norfolk Island), with respect to aircraft seized in accordance with section 3C, before the commencement of the relevant amendments.

New subitem 373(4) applies amended table A of the Schedule to the *Airport Regulations 1992* (Norfolk Island) in relation to the landing, take-off or movement of aircraft on or after 1 January 2018.

New subitem 373(5) applies amended table B of the Schedule to the *Airport Regulations 1992* (Norfolk Island) to public passenger services commencing on or after the commencement of this item.

New subitem 373(6) provides an aircraft operator may replace a security deposit if, following the commencement of amendments to table B, a smaller deposit would be required.

Schedule 2 – Absentee Landowners Levy Act 1976 (Norfolk Island)

Norfolk Island Continued Laws Ordinance 2015

Item 1 – Before item 1A of Schedule 1

Item 1 inserts two new items, 1AA and 1AB, before item 1A of schedule 1 to the Principal Ordinance.

New item 1AA changes the definition of levy day contained in subsection 2(1) of the *Absentee Landowners Levy Act 1976* (Norfolk Island) with the effect of removing the requirement for the levy to be levied after 2016.

New item 1AB inserts a note at the end of subsection 5(1) of the *Absentee Landowners Levy Act 1976* (Norfolk Island) explaining that the last day in respect of which the levy is imposed is 15 September 2016.

Schedule 3 – Norfolk Island Health and Residential Aged Care Service Facility

Norfolk Island Continued Laws Ordinance 2015

Item 1 – Interpretation Act 1979 (Norfolk Island)

Item 1 inserts new item 167A into schedule 1 of the Principal Ordinance to add item 12CA to the *Interpretation Act 1979* (Norfolk Island) with effect, for the purposes of any enactment, of making any reference to a hospital include the Norfolk Island Health and Residential Aged Care Service Facility.

Item 2 – Juries Act 1960 (Norfolk Island)

Item 2 inserts new item 190BA into schedule 1 of the Principal Ordinance with the effect of amending the *Juries Act 1960* (Norfolk Island) to replace the words “by the Norfolk Island Hospital” in subitem 10(nd) of that Act with “for the purposes of the Norfolk Island Health and Residential Aged Care Service”.