

EXPLANATORY STATEMENT

Ordinance No. , 2018

Issued by the authority of the Minister for Regional Development, Territories and Local Government

Norfolk Island Act 1979

Norfolk Island Continued Laws Amendment (Community Title) Ordinance 2018

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 (Community Title) Ordinance 2018* (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 the *Community Title Act 2015*, a Norfolk Island enactment. 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Assembly, have been continued in force under section 16A of the Act and, under section 17, may be amended or repealed by a section 19A ordinance.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 commences community title legislation on Norfolk Island. Community title provides a mechanism for a single parcel of land to be divided amongst separate owners into two or more lots with shared areas of common property maintained by the owners. Common property includes areas such as stairs, lifts, balconies and gardens. Examples of community title developments include retirement homes and holiday villages with common property such as swimming pools and gyms.

Consultation

Extensive community consultation was undertaken by the former Norfolk Island Assembly (the Assembly) prior to the passage of the *Community Title Act 2015* (NI) (the Act). Further consultation was undertaken in 2017 in preparation for the amendments in the Ordinance, which largely mirroring the provisions in the Act as made by the Assembly in 2015. In July 2017 a report about the status of community title by the Norfolk Island Regional Council (the Council), and presented to the Mayor and Councillors, was made available on the Council website and an article summarising the report and the proposed legislation was printed in the Norfolk Islander newspaper. No concerns were raised by the community or objections received. In September 2017 the department and the Council jointly authored an information sheet about community title and made it, as well as copies of the Act and Regulations, available on the Council website. The community did not supply any responses to the information sheet.

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 the day after it is registered.

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 (Community Title) Ordinance 2018

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 *Norfolk Island Continued Laws Amendment (Community Title) Ordinance 2018* commences community title legislation on Norfolk Island. Community title provides a mechanism for a single parcel of land to be divided amongst separate owners into two or more lots with shared areas of common property maintained by the owners.

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 Regional Development, Territories and Local Government,
The Hon Dr John McVeigh MP**

Norfolk Island Continued Laws Amendment (Community Title) Ordinance 2018

Section 1 – Name

This section provides that the title of the Ordinance is the *Norfolk Island Continued Laws Amendment (Community Title) Ordinance 2018*.

Section 2 – Commencement

This section provides that the Ordinance commences on the day after it is registered on the Federal Register of Legislation.

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 this Ordinance has effect according to its terms.

Schedule 1 – Amendments

Item 1 – After item 37 of Schedule 1

This item inserts provisions into the *Norfolk Island Continued Laws Ordinance 2015* (Principal Ordinance) to make amendments to the *Community Title Act 2015 (Norfolk Island)* (the Community Title Act).

New item 37A alters the commencement to commence the Ordinance the day after it is registered on the Federal Register of Legislation rather than a date to be fixed by the Administrator.

Items 37B to 37D have the effect of binding the Crown in each of its capacities.

New item 37E amends subsection 5(1) of the Community Title Act to include a definition of approved form, which means a form approved by the Registrar.

New items 37F to 37H update references in the Community Title Act to ‘form prescribed by regulation’ and ‘prescribed form’ to ‘approved form’. Providing for forms to be approved by the Registrar allows for forms to be more easily modified and updated than if they were set out in the Regulations.

New item 37J amends subsection 38(5) to refer directly to the model rules set out in new Schedule 1A.

New items 37K to 37N update references in the Community Title Act to ‘form prescribed by regulation’ and ‘prescribed form’ to ‘approved form’, allowing for forms to be more easily modified and updated than if they were set out in the regulations.

Item 37P repeals subsection 141(4) which requires the Community Title Tribunal to include a member, or person qualified to be a member, of the Federal Circuit Court when considering a matter of value greater than, or equal to, \$10,000.

New item 37Q repeals the provision for the Administrator to make regulations for the purposes of the Community Title Act. The substituted provision makes regulations as set out in new Schedule 6 to the Community Title Act.

New subsection 166(2) would ensure that all items proposed in Schedule 6 have effect according to their terms.

New item 37R updates a reference to ‘form prescribed by regulation’ to ‘approved form’, allows for the form to be more easily modified and updated than if it were set out in the regulations.

New item 37S inserts a new schedule after Schedule 1, titled Schedule 1A – Model rules for body corporate. The new schedule sets out rules for a body corporate in accordance with subsections 38(5) and (6) of the Community Title Act. The model rules set out in Schedule 1A apply by default where a body corporate does not make its own rules or revokes all of its rules. The model rules also apply where rules of the body corporate do not otherwise provide for a matter. The model rules cover such matters as health, safety and security, management and administration, use of common property, lots, behaviour of owners, occupiers and guests and dispute resolution.

New item 37T inserts a new Schedule 6 – Regulations and other matters at the end of the Community Title Act. The regulations are enacted by the amendment of section 166 at items 37 P and 37Q. The regulations set out requirements relating to community schemes and plans, the administration of community schemes and the keeping of manager’s trust accounts. The regulations also prescribe fees payable under the Community Title Act. Details of the Regulations are set out below.

The fees were calculated on a cost recovery basis to reflect the administrative costs to the Norfolk Island Regional Council (NIRC). These costs include staff time and materials associated with managing community title. The NIRC was consulted on the Community Title Ordinance as it was developed, including the quantum of fees.

Schedule 6 – Regulations and other matters

Part 1 – Preliminary

Regulations 1 and 2 provide definitions of *special resolution* and *unanimous resolution* for the purposes of subsection 5(1) of this Act.

Part 2 – Requirements relating to schemes and plans.

Regulation 3 sets out the acceptable forms scheme descriptions may take under section 34 of this Act.

Regulation 4 requires plans or maps lodged with the Registrar must comply with the guidelines issued by the Registrar.

Regulation 5 provides, as per subsection 26(3), the combined entitlements of all lots on a plan of community divisions may be between 2 and 100,000 (but must not exceed 100,000).

Regulation 6 provides, as per subsection 56(3), a permissible minor amendment is a change in the position of a boundary by 200 millimetres or less.

Regulation 7 requires a person making an application for subdivision through the community title scheme to submit to the Registrar an outer boundary survey plan of the land that is to be subdivided, and the fee specified in Schedule 3. This is subject to the Registrar’s discretion.

Regulation 8 requires the Registrar to examine a plan before accepting it for filing.

Regulation 9 provides the Registrar may require applicants to provide additional information in order to consider an application.

Regulation 10 provides the Registrar may require a licensed surveyor to certify the accuracy of a plan if land appears to be adjacent to water or another regular boundary.

Regulation 11 requires the Registrar to notify an applicant in writing, or electronically, after Registration of a plan.

Regulation 12 requires the Registrar to issue certificates of title for each lot and common property of a plan after registration.

Regulation 13 sets out the matters that may be determined by the Tribunal to amend, or the Supreme Court to cancel, a community plan under sections 61 and 69.

Regulation 14 outlines the effects of rules under subsection 38(3), such as to regulate or impose restrictions on building design.

Regulation 15 sets out the obligations of body corporate managers for section 82.

Regulation 16 outlines the obligation to return records and trust money when a delegation by a body corporate to a delegate is revoked.

Regulation 17 sets out issues that must be addressed at the first general meeting of the body corporate under paragraph 86(2)(e).

Regulation 18 sets out the requirements for the agenda of annual general meetings for bodies corporate for subparagraph 87(6)(d)(vi).

Regulation 19 outlines the procedural requirements for meetings of bodies corporate.

Regulation 20 outlines the requirement for the body corporate to maintain fidelity guarantee insurance for section 103.

Regulation 21 provides, for subsection 105(2), a copy of the current certificate of insurance with reference to matters covered under subsection 105(1) is acceptable as evidence.

Regulation 22 outlines the requirements for authorising acquisition of property by the body corporate under section 111(3)(b).

Regulation 23 outlines the requirements for statements of expenditure issued by bodies corporate under section 112.

Regulation 24 sets the limit that a body corporate may set on interest on arrears of contributions by lot owners.

Regulation 25 outlines what must be included in a notice for a payment of contribution served by the body corporate to an owner under section 113(6)(a).

Regulation 26 outlines the requirements for authorising of expenditure by the body corporate under section 118.

Regulation 27 sets the period required under section 134(2) as at least seven years.

Regulation 28 outlines records that must be kept by the body corporate under sections 135 and 136.

Regulation 29 provides for subparagraphs 137(4)(a)(i) and (ii) which require an amount be specified in a schedule. That amount should be \$10,000.

Regulation 30 outlines fees prescribed for information under subsection 138(4).

Regulation 31 outlines requirements surrounding provision of services by bodies corporate.

Regulation 32 outlines the functions of the secretary and treasurer of bodies corporate.

Regulation 33 outlines the process for a manager withdrawing money from trust accounts for the purposes of fees, costs and disbursements under paragraph 122(b).

Regulation 34 outlines what constitutes an authorised trust account under section 123.

Regulation 35 outlines a manager's general duties with respect to electronic records for trust accounts.

Regulation 36 outlines the requirements for a manager to keep detailed accounts of receipts and disbursements for trust accounts under paragraph 125(1)(c).

Regulation 37 outlines the requirements for a manager with separate trust ledger accounts.

Regulation 38 outlines the manager's duties to prepare a reconciliation statement at the end of each month.

Regulation 39 outlines the requirements for a receipt that a manager must provide to a person making a payment of trust money under paragraph 125(2)(a).

Regulation 40 outlines the requirements for a manager for payment of trust money.

Regulation 41 outlines the requirements for audits of trust accounts under section 126.

Regulation 42 outlines the manager's obligation to provide a statement for the audit of trust accounts.

Regulation 43 restricts certain people from auditing the accounts and records of the manager.

Regulation 44 outlines the requirement to hold a deposit on trust when a lot is pre-sold under section 149.

Regulation 45 prescribes the fees payable to the Registrar for the matters set out in the table.