

EXPLANATORY STATEMENT

Minute No. 160 of 2022 - Assistant Minister for Regional Development and Territories

Subject - *Christmas Island Act 1958*

Christmas Island Applied Laws Amendment (Heritage) Ordinance 2022

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. Western Australian laws in force in the Territory (applied laws) can be incorporated, amended or repealed by an Ordinance (section 8(2) of the Act). Section 3 of *Christmas Island Applied Laws Ordinance 1992* provides that applied laws that are amended are specified in Schedule 1. Section 6 of the Ordinance provides that the applied laws in Schedule 4 are repealed.

The purpose of the *Christmas Island Applied Laws Amendment (Heritage) Ordinance 2022* (the Ordinance) is to streamline regulation and provide, for Christmas Island, arrangements for the heritage management of freehold properties that are consistent with arrangements on mainland Australia.

Amendments to the Christmas Island Applied Laws Ordinance 1992

The amendment repeals the reference to the *Heritage of Western Australia Act 1990* (W.A.)(C.I.) in Schedule 4 – repealed applied laws.

The *Heritage of Western Australia Act 1990* (W.A.) was legislation which previously provided a scheme for the protection of heritage in Western Australia. The Western Australian Parliament repealed this Act and re-enacted or re-made that law as the *Heritage Act 2018* (W.A.).

Paragraph 10A(b) of the *Acts Interpretation Act 1901* (Cth) (the AI Act) (applying to the *Christmas Island Applied Laws Ordinance 1992* (C.I.) because of subsections 4(1) and 5(1) of the *Interpretation Ordinance 1958* (C.I.)) has effect such that a reference to the short title of a law of a State that has been repealed includes a reference to any re-enacted or re-made law of the State.

Paragraph 10A(b) of the *Acts Interpretation Act 1901* (Cth) is likely to apply so that the reference to the ‘*Heritage of Western Australia Act 1990* (W.A.)’ as a repealed law in Schedule 4 to the *Christmas Island Applied Laws Ordinance 1992* (C.I.) also includes (and therefore repeals) the *Heritage Act 2018* (W.A.) in its application to Christmas Island.

The amendment to Schedule 4 of the *Christmas Island Applied Laws Ordinance 1992* will omit the repeal of the *Heritage of Western Australia Act 1990* (W.A.)(C.I.), and by

extension, revoke any repeal in Christmas Island of the *Heritage Act 2018* (W.A.), with the effect that the Act commences as an applied law on Christmas Island.

Commencing the *Heritage Act 2018* (W.A.) as an applied law on Christmas Island will:

- Enable freehold properties with heritage values on Christmas Island to be protected and managed at a local level in accordance with the *Heritage Act 2018* (W.A.)(C.I.). This is consistent with the treatment of freehold properties with heritage values on mainland Australia.
- Result in the commencement of Item 781 of Schedule 1 to the *Environment and Heritage Legislation Amendment Act (No 1) 2006* (Cth), which will, immediately after the *Heritage Act 2018* (W.A.)(C.I.) starts to apply to Christmas Island under the amendment, amend section 525 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) so that freehold land on Christmas Island will not be a ‘Commonwealth area’ under section 525 of the EPBC Act, merely because a person holds a freehold interest in that land.
- Streamline regulation by facilitating the removal of freehold properties on Christmas Island from the Commonwealth Heritage List (under section 341L(1)(a) of the EPBC Act, as the properties will no longer be in a Commonwealth area). This will enable these properties to be protected and managed at a local level, supported by the Western Australia Government.

The Ordinance also adds a new clause as a modification of Part 10 of the *Heritage Act 2018* (W.A.)(C.I.) to allow for ‘just terms’ in the unlikely event that a provision of that Act results in the acquisition of property by the Commonwealth other than on just terms under Part 10 of that Act (for example, if a freehold property were to be acquired under the Act as a result of poor management of heritage values).

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* (Cth).

This Ordinance amends the *Christmas Island Applied Laws Ordinance 1992* (C.I.). Subsection 33(3) of the *Acts Interpretation Act 1901* (Cth) provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.

Commencement

The Ordinance commences on 1 July 2022.

Regulatory Impact Statement

The Office of Best Practice Regulation has advised they consider the proposal is unlikely to have more than a minor regulatory impact given the changes are seeking to align it with a previous decision, and therefore the preparation of a Regulation Impact Statement is not required (OBPR21-01204).

Consultation

The Department of Infrastructure, Transport, Regional Development and Communications (DITRDC), consulted with the Christmas Island community on the Ordinance from 23 February to 1 March 2022. The community were broadly supportive of the policy outcomes of the Ordinance.

Consultation has been undertaken with the Department of Agriculture, Water and the Environment and the Shire of Christmas Island to develop robust transitional arrangements that are consistent with the requirements of the EPBC Act and processes established under applied law.

The Shire of Christmas Island supports the Ordinance and, with support from DITRDC, has committed to undertaking a local heritage survey for the purpose of developing a new Local Heritage List. This new list will be developed in close consultation with freehold owners of heritage properties, the broader Christmas Island community and with the support of the relevant parts of Western Australian Government under Service Delivery Arrangements.

The Western Australia Department of Planning, Lands and Heritage was consulted on the Service Delivery Arrangement, which has been negotiated for 2022-23 to provide heritage management support in line with the *Heritage Act 2018* (W.A.)(C.I.).

Details of the Ordinance are set out in the Attachment.

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

Details of the *Christmas Island Applied Laws Amendment (Heritage) Ordinance 2022*

This Attachment sets out further details of the *Christmas Island Applied Laws Amendment (Heritage) Ordinance 2022*.

Section 1 – Name

This section provides that the title of the instrument is the *Christmas Island Applied Laws Amendment (Heritage) Ordinance 2022*.

Section 2 – Commencement

This section provides that the Ordinance commences on 1 July 2022.

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

Christmas Island Applied Laws Ordinance 1992

Item 1 adds to Schedule 1 to the *Christmas Island Applied Laws Ordinance 1992*, before Part 16, a new Part 15B - *Heritage Act 2018 (W.A.)(C.I.)*. This new Part 15B amends the *Heritage Act 2018 (W.A.)(C.I.)* to insert a new section 113A in Part 10 of the *Heritage Act 2018 (W.A.)(C.I.)*.

Section 113A of the *Heritage Act 2018 (W.A.) (C.I.)* is a section providing for compensation on just terms for any acquisition of property under Part 10 of the *Heritage Act 2018 (W.A.)(C.I.)*. It should be noted any power to acquire property is not contained in this instrument or in the *Christmas Island Applied Laws Ordinance 1992*, but instead is found in the relevant Western Australian law in force in Christmas Island under section 8A of the *Christmas Island Act 1958 (Cth)*.

Item 2 amends Schedule 4 – repealed laws by omitting ‘*Heritage of Western Australia Act 1990 (W.A)(C.I.)*’. This change ensures the *Heritage Act 2018 (W.A.)* commences as an applied law in the Territory of Christmas Island, given the operation of paragraph 10A(b) of the *Acts Interpretation Act 1901 (Cth)* (the AI Act), which applies to the *Christmas Island Applied Laws Ordinance 1992 (CI)* because of subsections 4(1) and 5(1) of the *Interpretation Ordinance 1958 (CI)*.

Statement of Compatibility with Human Rights

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

Christmas Island Applied Laws Amendment (Heritage) Ordinance 2022

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 Ordinance

The *Christmas Island Applied Laws Amendment (Heritage) Ordinance 2022* (the Ordinance) makes a minor amendment to the *Christmas Island Applied Laws Ordinance 1992* to omit the repeal of the *Heritage of Western Australian Act 1990* (W.A.)(C.I.) in the Territory of Christmas Island.

The effect of the Ordinance will be that:

- a. heritage places will be able to be protected and managed at a local level.
- b. freehold land will no longer be defined as a Commonwealth area under section 525 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- c. freehold properties with values currently listed on the Commonwealth Heritage List (CHL) will be removed from the CHL in accordance with section 341L(1)(a) of the EPBC Act.
- d. management of private properties with Commonwealth listed heritage values on Christmas Island will align with the treatment of such properties on mainland Australia.

Human rights implications

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

Conclusion

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

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