

## **EXPLANATORY STATEMENT**

### **Ordinance No. 11, 2016**

Issued by the authority of the Minister for Territories, Local Government and Major Projects

*Norfolk Island Act 1979*

*Norfolk Island Regional Council Declaration Ordinance 2016*

#### **Authority**

The *Norfolk Island Act 1979* (the Act) provides for the Government of the Territory of Norfolk Island. It defines the roles, responsibilities and powers of the Governor-General, the responsible Commonwealth Minister, the Administrator of Norfolk Island, and the Executive Director 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 Regional Council Declaration Ordinance 2016* is made under section 19A of the Act.

#### **Purpose and operation**

In accordance with the *Norfolk Island Legislation Amendment Act 2015* (the NILA Act), on 1 July 2016 the Administration of Norfolk Island ceases to exist, and its assets, liabilities, employees etc. will be transferred, under Part 2 of Schedule 2 of the NILA Act, to the Norfolk Island Regional Council (the Regional Council) or the Commonwealth, as the case may be. The Act defines 'Norfolk Island Regional Council' to mean a body established by or under a law in force in Norfolk Island, and declared by a section 19A Ordinance to be the Regional Council.

On 1 July 2016, the *Local Government Act 1993* (NSW) will become a law in force in Norfolk Island. That Act, in its application to Norfolk Island, will be amended by the proposed *Norfolk Island Applied Laws Ordinance 2016* and constitute a council for Norfolk Island. This proposed Ordinance would declare that council to be the Regional Council.

The proposed Ordinance also provides that those persons elected as councillors in the election provided for under the *Norfolk Island Regional Council Preparatory Election Ordinance 2016* will become councillors for the Regional Council upon its establishment under the *Local Government Act 1993* (NSW)(NI).

#### **Consultation**

As the Ordinance is machinery in nature, consultation was not undertaken.

Details of the proposed 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 1 July 2016.

Statement of compatibility with human rights

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

The 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*.

The instrument does not engage any of the applicable rights or freedoms. It is compatible with human rights as it does not raise any human rights issues.

**Norfolk Island Regional Council Declaration Ordinance 2016**

**Section 1 – Name**

This section provides that the title of the Ordinance is the *Norfolk Island Regional Council Declaration Ordinance 2016*.

**Section 2 – Commencement**

This section provides that the whole of the Ordinance commences on 1 July 2016.

**Section 3 – Authority**

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

**Section 4 – Definitions**

This section defines ‘LGA’ to mean the *Local Government Act 1993* (NSW) as in force in the Territory. The note makes it clear that the LGA is in force under section 18A of the *Norfolk Island Act 1979* (Cth) and that amendments to the LGA are contained in the *Norfolk Island Applied Law Ordinance 2016*.

**Section 5 – Interpretation Act**

This section provides that the *Interpretation Act 1979* (NI) does not apply to this Ordinance. Rather the *Acts Interpretation Act 1901* (Cth) applies instead. The *Interpretation Act 1979* (NI) applies to all ‘enactments’ as defined in that Act, subject to any contrary intention appearing in the enactment. Although this Ordinance is an ‘enactment’ as defined, section 5 of the Ordinance expresses a contrary intention to that Act.

**Section 6 – Norfolk Island Regional Council**

This section declares the council constituted for Norfolk Island by section 219 of the LGA to be the Regional Council. This declaration is for the purposes of subsection 4(1) of the *Norfolk Island Act 1979* (Cth), which provides that the Regional Council is to be a body established under a law in force in the Territory and declared by a section 19A Ordinance.

This declaration is premised on the basis that new section 204A would be inserted into the LGA by the *Norfolk Island Applied Laws Ordinance 2016* to constitute Norfolk Island as an ‘area’ for the purposes of the LGA. Section 219 of the LGA provides for a council to be constituted for each area.

**Section 7 – Councillors**

Subsection 7(1) provides that at the final transition time (i.e. 1 July 2016), the persons elected in the election provided for under the *Norfolk Island Regional Council Preparatory Election Ordinance 2016* will become the councillors of the Regional Council.

Subsection 7(2) provides that the LGA will apply to the councillors as if they had been elected to civic office to the Regional Council under the LGA at the final transition time. This provision is included to make clear that the councillors transitioned under subsection 7(1) will, as soon as they become councillors of the Regional Council, be subject to the same requirements in the LGA as those applicable to councillors elected under the LGA. This means that the transition provided by subsection 7(1) should not be taken to override, for example, a provision in the LGA which operates to vacate a person or persons from the position of councillor.