

2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TERRITORIES LAW REFORM BILL 2010

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Regional Australia, Regional Development and Local Government, the Honourable Simon Crean MP)

TERRITORIES LAW REFORM BILL 2010

OUTLINE

The primary purpose of the Bill is to make amendments to a range of Commonwealth legislation to improve Norfolk Island's governance arrangements and strengthen the accountability of the Norfolk Island Government. The Bill provides for the reform of the electoral system of Norfolk Island and establishes a contemporary financial management framework. The Bill also amends administrative law legislation to strengthen the transparency and accountability of the Norfolk Island Government and public sector.

The Bill further implements changes to the *Christmas Island Act 1958* and the *Cocos (Keeling) Islands Act 1955* to provide a vesting mechanism for powers and functions under Western Australian laws applied in the Territories.

The reforms in part are based on recommendations from the Joint Standing Committee on the National Capital and External Territories Inquiry into Governance on Norfolk Island, *Quis custodiet ipsos custodes?*, published in 2003.

The Norfolk Island reforms are in Schedule 1 of the Bill. Parts 1 and 2 of Schedule 1 make general governance and electoral amendments to the NI Act to:

- Reform the voting system for the Norfolk Island Legislative Assembly and provide more certainty about when elections are held.
- Prescribe a process for selecting a Chief Minister and Ministers and their roles and responsibilities.
- Allow the Administrator to access a greater range of advice when presented with bills for assent under Schedule 2 of the NI Act.
- Allow the Governor-General and the Minister responsible for Territories to take a more active role in the introduction and passage of Norfolk Island legislation.

Part 3 of Schedule 1 makes further amendments to the NI Act to enable the implementation of a contemporary financial management framework that will assist the Norfolk Island Government to meet the expectations of its community and to plan for the future. This includes provisions to establish a customised and proportionate financial framework which provides for the responsible management of public money and public property, preparation of budgets, financial reporting, annual reports and procurement.

Parts 4 to 7 of Schedule 1 are aimed at improving the accountability and transparency of the Norfolk Island Government and Administration by implementing mechanisms for the review of administrative actions equivalent to those available to residents on the mainland.

Amendments to the *Administrative Appeals Tribunal Act 1975* will enable merits review jurisdiction to be conferred on the Administrative Appeals Tribunal for specified decisions made under the authority of Norfolk Island enactments. These amendments provide for the making of regulations to specify which Norfolk Island enactments will be subject to the review process.

The Bill amends the *Freedom of Information Act 1982* and the *Privacy Act 1988* to extend the application of those Acts to information held by the Norfolk Island Government and Administration.

The Bill also makes minor amendments to the Ombudsman Act and Norfolk Island Act to make the Commonwealth Ombudsman the Ombudsman for Norfolk Island. This enables Norfolk Island to enact ombudsman legislation to facilitate the operation of the Commonwealth Ombudsman on Norfolk Island.

Schedules 2 and 3 amend the Christmas Island Act and the Cocos (Keeling) Islands Act. These amendments provide a vesting mechanism for powers and functions under Western Australian laws applied in the Territories. Powers and functions are automatically vested in Western Australian officers and authorities where an agreement with the Australian Government exists for those officers and authorities to act in the Territories.

FINANCIAL IMPACT STATEMENT

The amendments in this Bill will have minimal financial impact. There will be resource implications for Commonwealth agencies, such as providing training and information for Norfolk Island Administration and Government to ensure effective implementation of the Bill. This includes the implementation of the financial frameworks, and the new freedom of information, privacy, and other administrative law obligations.

REGULATION IMPACT STATEMENT

No regulation impact statement is required for the measures contained in this Bill.

TERRITORIES LAW REFORM BILL 2010

NOTES ON CLAUSES

List of abbreviations used

AAT	Administrative Appeals Tribunal
AAT Act	<i>Administrative Appeals Tribunal Act 1975</i>
Auditor-General Act	<i>Auditor-General Act 1997</i>
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1982</i>
NI Act	<i>Norfolk Island Act 1979</i>
Ombudsman Act	<i>Ombudsman Act 1976</i>
Privacy Act	<i>Privacy Act 1988</i>

Clause 1 – Short Title

Provides for the Act to be cited as the *Territories Law Reform Act 2010*.

Clause 2 – Commencement

Clause 2 (table Item 1) provides that sections 1 to 3 of the Bill (and anything not covered in the table) will commence on the day the Bill receives the Royal Assent.

Schedule 1, Part 1 (table Item 2) which outlines general amendments to the NI Act and consequential amendments to other Commonwealth Acts will commence on the day after the Bill receives the Royal Assent.

Table Item 3 provides that changes to the electoral arrangements in the NI Act under Schedule 1, Part 2 commence at the start of the first meeting of the Norfolk Island Legislative Assembly which is held after the first general election after the Bill receives the Royal Assent. The start of the first meeting of the Legislative Assembly is to be announced by the Minister in the *Commonwealth Gazette*.

Schedule 1, Part 3 (table Item 4) will commence the day after the Bill receives the Royal Assent. Schedule 1, Parts 4 (table Item 5) and 7 (table Item 10) commence on 1 January 2011.

Schedule 1, Part 5 makes amendments to the FOI Act. These amendments are dependent on the commencement of amendments to the FOI Act made under the *Freedom of Information Amendment (Reform) Act 2010*. As a result, items 155 to 175 and 183 to 239 commence on 1 January 2011 and items 176 to 182 commence immediately after the commencement of item 3 to Schedule 2 to the *Freedom of Information Amendment (Reform) Act 2010*.

Schedule 1, Part 6 amends the NI Act and the Ombudsman Act. Table Item 9 provides that these provisions will commence on a day determined by proclamation. If no day is fixed for commencement by proclamation, then the Part commences on the day after a period of six months from the day the Bill receives the Royal Assent.

Schedules 2 and 3 commence on the day after the Bill receives the Royal Assent (table Item 11).

Clause 3 – Schedule(s)

This clause provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable Items in the Schedule, and that any other Item in a Schedule has effect according to its terms.

Schedule 1 – Amendments relating to Norfolk Island

Part 1 – General amendments

Division 1 – Amendments of the Norfolk Island Act 1979

Norfolk Island Act 1979

Item 1 – Subsection 4(1)

Item 1 inserts a definition of *Chief Minister* into subsection 4(1) of the NI Act. The Chief Minister is defined as the Chief Minister appointed under section 13 of the NI Act.

Item 2 – Subsection 4(1)

Item 2 inserts a definition of *Commonwealth Finance Minister* into subsection 4(1). The Commonwealth Finance Minister is defined as the Commonwealth Minister who administers the *Financial Management and Accountability Act 1997*. This definition is necessary to distinguish between the Commonwealth Finance Minister and the Norfolk Island Minister for Finance (see Item 9). Each has a number of different obligations under the NI Act and the inclusion of this definition is intended to ensure that the role of each office can be clearly identified.

Item 3 – Subsection 4(1)

Item 3 inserts a definition of *Commonwealth Gazette* into subsection 4(1). The Commonwealth Gazette is defined as the Commonwealth of Australia Gazette. This definition is necessary to distinguish between the Commonwealth Gazette and the Norfolk Island Government Gazette for the purposes of obligations under the NI Act.

Item 4 – Subsection 4(1)

Item 4 inserts a definition of *Commonwealth Minister* into subsection 4(1). Commonwealth Minister is defined as a Minister of State of the Commonwealth. This definition supports the definitions of Commonwealth Finance Minister and responsible Commonwealth Minister in Items 2 and 11. The definition ensures that the distinction between the role and responsibilities of Norfolk Island Ministers and Commonwealth Ministers can be clearly identified in the NI Act.

Item 5 – Subsection 4(1) (definition of *executive member*)

Item 5 repeals the definition of *executive member* from subsection 4(1). The term executive member is being replaced with the term Minister throughout the NI Act and consequently the definition of executive member is being repealed (see Item 8 and 23)).

Item 6 – Subsection 4(1) (definition of *executive office*)

Item 6 repeals the definition of *executive office* from subsection 4(1). The term executive office is repealed as members of the Legislative Assembly are no longer appointed to executive office as executive members. Members of the Legislative Assembly are instead being appointed as Ministers (see Item 8 and 23).

Item 7 – Subsection 4(1) (definition of *Finance Minister*)

Item 7 repeals the definition of *Finance Minister* from subsection 4(1). This definition is repealed as it is no longer used in the NI Act. It is replaced by the definition of Minister for Finance in Item 9.

Item 8 – Subsection 4(1)

Item 8 inserts a definition of *Minister* into subsection 4(1). Minister is defined as the Chief Minister or a Minister appointed under section 13. This definition is necessary as the NI Act contains a number of provisions addressing the appointment and termination of Ministers. The use of the term Minister replaces the previously used term of executive officer. This change was recommended by the Joint Standing Committee on the National Capital and External Territories in its report *Quis custodiet ipsos custodes* (recommendation 17). The change reflects current practice on Norfolk Island and is a more readily understood and recognised term.

Item 9 – Subsection 4(1)

Item 9 inserts a definition of *Minister for Finance* into subsection 4(1). The Minister for Finance is defined as the Minister who is responsible for the administration of the Public Account of Norfolk Island. This definition is necessary to distinguish between the Commonwealth Finance Minister and the Norfolk Island Minister for Finance. Each has a number of different obligations under the NI Act and the inclusion of this definition is intended to ensure that the role of each office can be clearly identified.

Item 10 – Subsection 4(1)

Item 10 inserts a definition of *Norfolk Island Public Service Values* into subsection 4(1). The Norfolk Island Public Service Values are defined as the rules prescribed by regulations made for the purposes of subsection 61A(1).

Item 11 – Subsection 4(1)

Item 11 inserts a definition of *responsible Commonwealth Minister* into subsection 4(1). The responsible Commonwealth Minister is defined as the Commonwealth Minister who administers the NI Act. The definition ensures that the distinction between the role and responsibilities of Norfolk Island Ministers and Commonwealth Ministers can be clearly identified in the NI Act.

Item 12 – Paragraph 7(1)(e)

Item 12 omits ‘Minister’ and replaces it with ‘responsible Commonwealth Minister’. This amendment reflects the change in terminology in the NI Act under the amendment Bill, and clarifies which Commonwealth Minister has authority under this section.

Items 13 and 14 – Subsection 7(2)

Item 13 omits ‘paragraph (1)(b)’ from subsection 7(2) and replaces it with ‘paragraphs (1)(a) and (b)’. Item 14 omits ‘that paragraph’ from subsection 7(2) and substitutes ‘paragraph (1)(a) or (b)’.

Subparagraph 7(1)(a) provides that the Administrator shall exercise all powers and perform all functions in accordance with such advice, if any, from the Executive Council in relation to a matter specified in Schedule 2. Subparagraph 7(1)(b) provides that the Administrator shall exercise all powers and perform all functions in accordance with the advice of the Executive Council in relation to a matter specified in Schedule 3.

Subsection 7(2) provides that, notwithstanding subparagraph 7(1)(b), the Administrator shall not act in accordance with the Executive Council's advice in relation to matters specified in Schedule 3 if that advice is inconsistent with instructions given by the responsible Commonwealth Minister. Items 13 and 14 amend subsection 7(2) so that the Administrator, notwithstanding subparagraphs 7(1)(a) and (b), shall not act in accordance with the Executive Council's advice in relation to matters specified in either Schedule 2 or 3, if that advice is inconsistent with instructions given by the responsible Commonwealth Minister.

These Items broaden the Administrator's authority to seek Commonwealth advice on legislative matters and are supported by the amendments at Item 17, which authorise the responsible Commonwealth Minister to provide such advice. In essence, under the reforms, the Administrator must seek advice from the Commonwealth on Schedule 3 matters, and may also seek such advice on Schedule 2 matters. For example, instructions may be issued in situations where it is necessary for Norfolk Island legislation to be consistent with the national interest or comply with Australia's international obligations.

To ensure that these instructions are effective the Act provides that Commonwealth advice must be taken over inconsistent advice from the Norfolk Island Executive Council.

Item 15 – Subsection 7(2)

Item 15 omits 'Minister' and substitutes it for 'responsible Commonwealth Minister'. This amendment reflects the change in terminology in the NI Act under the amendment Bill, and clarifies which Commonwealth Minister has authority under this section.

Item 16 – Subsection 7(3)

Item 16 omits the first occurrence of 'Minister' and substitutes it for 'responsible Commonwealth Minister'. This Item clarifies that it is the responsible Commonwealth Minister who gives instructions to the Administrator.

Item 17 – Subsection 7(3)

Item 17 omits 'paragraph (1)(b)' from subsection 7(2) and replaces it with 'paragraphs (1)(a) or (b)'. Subsection 7(3) provides that the Minister may give the Administrator instructions in respect of advice tendered to the Administrator by the Executive Council for the purposes of subparagraph 7(1)(b), which is matters specified in Schedule 3. Item 17 amends subsection 7(3) to allow the Minister to also give instructions in respect of advice tendered to the Administrator by the Executive Council for the purposes of subparagraph 7(1)(a), which is matters specified in Schedule 2.

This Item supplements Items 13 and 14 to broaden the Administrator's authority to seek Commonwealth advice on legislative matters by authorising the responsible Commonwealth Minister to provide such advice. In essence, under the reforms, the Administrator must seek advice from the Commonwealth on Schedule 3 matters, and may also seek such advice on Schedule 2 matters. For example, instructions may be issued in situations where it is necessary for Norfolk Island legislation to be consistent with the national interest or comply with Australia's international obligations.

To ensure that these instructions are effective the Act provides that Commonwealth advice must be taken over inconsistent advice from the Norfolk Island Executive Council.

Item 18 – Subsection 7(3)

Item 18 omits the second occurrence of ‘Minister’ and substitutes it for ‘responsible Commonwealth Minister’. This amendment reflects the change in terminology in the NI Act under the amendment Bill, and clarifies which Commonwealth Minister has authority under this section.

Item 19 – Section 9

Item 19 repeals section 9 of the NI Act and substitutes a new section 9. The new section 9 provides that the responsible Commonwealth Minister can appoint one or more people jointly or severally to be the deputy or deputies of the Administrator. The deputy or deputies exercise powers and functions of the Administrator as assigned to them by the responsible Commonwealth Minister and exercised during his or her pleasure. The appointment of a deputy or deputies does not affect the exercise or performance of a function by the Administrator. This amendment will provide the Commonwealth with more options for a ‘replacement’ Administrator when the Administrator is unable to perform his or her duties.

Item 19 also includes a subsection that provides that a reference in Commonwealth legislation to a ‘Deputy Administrator’ is a reference to a deputy of the Administrator. This ensures that Commonwealth legislation which uses the current section 9 terminology will still have effect after this section commences. The existing references will now refer to the new office of Deputy of the Administrator.

Item 20 – Subsection 10(2)

Item 20 omits ‘The Deputy Administrator’ and substitutes ‘A deputy of the Administrator’. This Item reflects the change made to section 9 of the NI Act at Item 19.

Item 21 – Subsection 11(2)

Item 21 repeals subsection 11(2) and substitutes a new subsection 11(2). The new subsection 11(2) defines the Executive Council as consisting of the Chief Minister and such other Ministers as are appointed by the Administrator under section 13. This amendment ensures the definition of Executive Council remains consistent with the change in terminology from executive members holding executive office to Chief Minister and Minister. In effect, the composition of the Executive Council will remain as it currently exists under the NI Act.

Item 22 – Subsection 11(8)

Item 22 repeals subsection 11(8). Existing subsection 11(8) allows members of the Legislative Assembly who do not hold executive office to attend all Executive Council meetings. This subsection is being repealed as it blurs the distinction between the functions and responsibilities of Ministers and the functions and responsibilities of other members of the Legislative Assembly. The Joint Standing Committee on the National Capital and External Territories recommended that subsection 11(8) be repealed in its report *Quis custodiet ipsos custodes?* (recommendation 19).

Item 23 – Sections 12, 13 and 14

Item 23 repeals existing sections 12, 13 and 14 of the NI Act and substitutes new sections 12, 12A, 13, 14 and 14A.

Section 12

Section 12 provides that there is to be a Chief Minister and at least one, but not more than 3, Ministers and that the Ministers have executive authority for the matters specified in Schedules 2 and 3. The provision of a maximum number of Ministers, being three plus a Chief Minister, is intended to ensure effective backbench scrutiny of the Assembly's business – 4 Ministers and 4 backbenchers, with the Speaker being the 9th member. This entrenches the important separation of executive and legislative responsibility under the NI Act. This change was recommended by the Joint Standing Committee on the National Capital and External Territories in its report *Quis custodiet ipsos custodes* (recommendation 17). The amendments reflect the change in terminology from executive members to Ministers. A Minister is a more easily understood and recognised term which is already currently used in practice in the Norfolk Island Legislative Assembly. The Joint Standing Committee on the National Capital and External Territories recommended the change in terminology in its report *Quis custodiet ipsos custodes?* (recommendation 17).

The new section 12 replaces the old sections 12 and 13 and retains the existing restriction that people employed in the Public Service of the Territory, or of the Commonwealth, are not eligible to be Ministers (the restriction is located in the previous section 13). Section 12 also retains the provision that if a Minister becomes an employee of the Public Service of the Territory or the Commonwealth they vacate their ministerial office (also located in the previous section 13).

Section 12A

Section 12A provides the process for the nomination of the Chief Minister. The Legislative Assembly must, at the first meeting after a general election, nominate one of the Members to be the Chief Minister. The nomination of Chief Minister must occur after the election of the Speaker and Deputy Speaker, but before any other business.

This amendment codifies the current practice of the Legislative Assembly in nominating one executive member to have the designation of Chief Minister. The nomination by the Legislative Assembly also provides a clear line of accountability and responsibility for the office of the Chief Minister. Section 12A also provides process for filling vacancies in the office of Chief Minister. Vacancies that occur during a meeting are filled at the meeting by nominating a Member to be Chief Minister. If a vacancy occurs at any other time, the Speaker must convene a meeting as soon as practicable, so that a Member can be nominated to be Chief Minister.

Section 12A further provides that the Speaker and Deputy Speaker of the Legislative Assembly are not eligible to be nominated as Chief Minister. This reflects the Westminster system of government where the Speaker is an independent office.

The Chief Minister is nominated by the Legislative Assembly and appointed by the Administrator under the new section 12A. The Legislative Assembly is deemed to have advised the Administrator to appoint a member as Chief Minister once the nomination has occurred.

Section 13

Section 13 provides for the appointment of Ministers. The Administrator may also appoint one or more members of the Legislative Assembly as a Minister on the advice of the Chief Minister. This process differs from the previous section 13 of the NI Act, where formerly, the Administrator appointed all executive members on the advice of the Legislative Assembly.

The change aligns the Norfolk Island process for appointing Ministers with the Westminster system of government. As the Chief Minister is the leader of the Norfolk Island Government he or she

advises the Administrator on who the other Ministers will be. This change establishes clear lines of Ministerial responsibility – the Ministers are responsible to the Chief Minister, who is responsible to the Legislative Assembly and the Legislative Assembly is responsible to the Norfolk Island community.

New section 13 also provides that the appointment of the Chief Minister and Ministers take effect at the time of the appointment or the time specified in the instrument of appointment if this is a later time.

Section 14

Section 14 provides for the termination of the Chief Minister's and other Ministers' appointments. The Chief Minister ceases to hold office when:

- they cease to be a member of the Legislative Assembly by resignation or by reason of section 39 (disqualifications for membership of the Legislative Assembly) or section 39AA (dismissal of members of the Legislative Assembly, see Item 39 below); or
- they are dismissed from office by the Administrator under section 14A (dismissal of Ministers); or
- they resign from office, in writing and signed, delivered to the Administrator; or
- the Legislative Assembly passes a resolution of no confidence in them; or
- a notice about a general election is published under subsection 39AB(1) (resolution of no confidence in the Chief Minister, see Item 39 below); or
- the Legislative Assembly is dissolved under section 39AC (dissolution of the Legislative Assembly the Governor-General, see Item 39 below); or
- the Legislative Assembly first meets after a general election of the Legislative Assembly that occurred after their most recent appointment to the office of Chief Minister;

whichever happens first. The new section includes existing section 14 restrictions on the tenure of executive office. The new provisions dealing with removal from office are also included in the new section including dismissal from office by the Administrator (section 14A), removal from office by a no-confidence motion (section 39AB) and dissolution of the Legislative Assembly by the Governor-General (section 39AC).

Other Ministers cease to hold office when:

- they cease to be a member of the Legislative Assembly by resignation or by reason of section 39 (disqualifications for membership of the Legislative Assembly) or section 39AA (dismissal of members of the Legislative Assembly, see Item 39 below); or
- they are dismissed from office by the Administrator under section 14A (dismissal of Ministers); or
- they resign from office, in writing and signed, delivered to the Administrator; or
- a notice about a general election is published under subsection 39AB(1) (resolution of no confidence in the Chief Minister, see Item 39 below); or
- the Legislative Assembly is dissolved under section 39AC (dissolution of the Legislative Assembly the Governor-General, see Item 39 below); or

- the Legislative Assembly first meets after a general election of the Legislative Assembly that occurred after their most recent appointment to the office of Chief Minister;

whichever happens first. The new section includes existing section 14 restrictions on the tenure of executive office. The new provisions dealing with removal from office are also included in the new section including dismissal from office by the Administrator (section 14A) and dissolution of the Legislative Assembly by the Governor-General (section 39AC).

Section 14A

Section 14A provides that the Administrator may dismiss the Chief Minister from office if, in the Administrator's opinion, there are exceptional circumstances for doing so.

The power may only be exercised by the Administrator if exceptional circumstances exist. The power is based on the former section 13(1) and supplements the authority of the Legislative Assembly to pass a motion of no confidence in the Chief Minister.

Section 14A also provides that the Administrator may dismiss a Minister from office on the advice of the Chief Minister. As the Chief Minister has the power to advise the Administrator on who should be appointed as a Minister, it is appropriate that the Chief Minister has the power to advise the Administrator to dismiss a Minister from office.

Item 24 – Subsection 15(2)

Item 24 omits 'appointed to an executive office shall' from subsection 15(2) and replaces it with 'appointed to an office of Minister must'. This amendment reflects the change in terminology from executive member to Minister (see Item 23).

Item 25 – Subsection 15(3)

Item 25 amends subsection 15(3) to change the reference to 'executive office' to 'office of a Minister'. This amendment reflects the change in terminology from executive member to Minister (see Item 23).

This Item also amends the title of section 15 to add 'etc.', to ensure that the title is not misleading. Subsection 15(3) refers to 'any person' and is not limited to Executive Council Members or Ministers.

Item 26 – At the end of Part III

Item 26 inserts new section 15A into the NI Act. Section 15A provides that the Chief Minister is to administer such matters relating to the powers of the Administration as the Chief Minister allocates to him- or herself. Ministers are to administer such matters relating to the powers of the Administration as the Chief Minister allocates to them. In doing so, the Chief Minister may authorise a Minister or Ministers to act on the Chief Minister's or another Ministers' behalf.

The Chief Minister must publish details of the arrangements in the Norfolk Island Government Gazette which publically informs the Norfolk Island community of the allocation of ministerial responsibilities. It also provides clarity and transparency in the roles and responsibilities of the Norfolk Island Ministers and reinforces the chain of Ministerial responsibility. The Joint Standing Committee on the National Capital and External Territories recommended these amendments in its report *Quis custodiet ipsos custodes?* (recommendation 17).

Item 27 – After subsection 21(1)

Item 27 inserts subsection 21(1A). Subsection 21(1A) provides that the Administrator must reserve a proposed law introduced by the Governor-General for the Governor-General's pleasure. The Governor-General has the power to introduce a proposed law under section 26 of the NI Act. It is appropriate that proposed laws introduced by the Governor-General are reserved for the Governor-General's pleasure because the Legislative Assembly can amend the proposed laws during passage in the Assembly. The reservation of the proposed law for the Governor-General's pleasure allows the Governor-General to consider whether or not he or she agrees to any amendments made by the Legislative Assembly during passage.

Item 28 – At the end of paragraph 21(2)(a)

Item 28 inserts new subparagraph (iii) into paragraph 21(2)(a). Paragraph 21(2)(a) provides that the Administrator, when presented with a proposed law which provides for matters specified in Schedule 2 or 3 or both, shall declare that they assent to the proposed law or that they withhold assent to the proposed law. Item 28 adds a third option for the Administrator – to reserve the proposed law for the Governor-General's pleasure. This amendment will expand the options available to the Administrator when presented with a proposed law. It will allow the Administrator to refer laws where their assent, or withholding of assent, could be seen as a conflict of interest or otherwise controversial. For example, it will allow the Administrator to refer laws that may be inconsistent with a national policy objective to the Governor-General for consideration and oversight, via the giving or withholding of assent.

Item 29 – Subsection 21(5)

Item 29 amends subsection 21(5). Subsection 21(5) provides that the Administrator, when considering a proposed law that provides only for matters specified in Schedule 2, shall not assent, withhold assent, or return the proposed law to the Legislative Assembly with amendments, except in accordance with the advice of the Executive Council. Item 29 amends subsection 21(5) so that the Administrator shall not assent, withhold assent or return to the Legislative Assembly with amendments, a proposed law dealing with matters specified in Schedule 2 except in accordance with the advice of the Executive Council and any instructions from the responsible Commonwealth Minister.

Subsection 21(5) further provides that if there is an inconsistency between the advice of the Executive Council and any instructions from the responsible Commonwealth Minister, the Commonwealth Minister's instructions are to prevail to the extent of the inconsistency. This Item supplements Items 13, 14 and 17.

Item 30 – Subsection 21(6)

Item 30 omits 'Minister' and substitutes it for 'responsible Commonwealth Minister'. This amendment reflects the change in terminology in the NI Act under the amendment Bill, and clarifies which Commonwealth Minister has authority under this section.

Item 31 – Subsection 22(3)

Item 31 omits '21(2)' from subsection 22(3) and replaces it with '21(1A) or (2)'. This amendment is consequential to the amendment in Item 27. If the Governor-General returns a proposed law to the Legislative Assembly with amendments under section 21(2), and that law was introduced by the

Governor-General, the law must be reserved for the Governor-General's pleasure after the Legislative Assembly has considered the recommended amendments.

Item 32 – At the end of Division 2 of Part IV

Item 32 inserts new section 26A to the NI Act. Section 26A provides that the responsible Commonwealth Minister may introduce a proposed law for the peace, order and good government of the Territory into the Legislative Assembly. This change will increase the Commonwealth's legislative powers. It will allow the responsible Commonwealth Minister to introduce a proposed law, or proposed amendments to a current law, for the Legislative Assembly's consideration.

For example, this power may be used to implement national policy objectives (such as those agreed at the Council of Australian Governments) and to ensure that Norfolk Island legislation is consistent with the national interest or Australia's international obligations.

Item 33 – At the end of paragraph 27(1)(a)

Item 33 adds 'and' to paragraph 27(1)(a). This amendment is necessary as subparagraph 27(1)(c) is being removed at Item 35, leaving only two subparagraphs in subsection 27(1).

Item 34 – Paragraph 27(1)(b)

Item 34 omits the word 'and' from paragraph 27(1)(b). This amendment is necessary for drafting purposes as subparagraph 27(1)(c) is repealed at Item 35, leaving paragraph (1)(b) as the last subparagraph in subsection 27(1).

Item 35 – Paragraph 27(1)(c)

Item 35 repeals paragraph 27(1)(c). Paragraph 27(1)(c) restricted the Governor-General's power to make an Ordinance in the same terms as a proposed law introduced by the Governor-General, if the Legislative Assembly did not pass the proposed law within 60 days, to matters not specified in Schedules 2 or 3. This removal of paragraph 27(1)(c) will allow the Governor-General to make an Ordinance, in the same terms as a proposed law introduced under section 26, that makes provision for matters specified in Schedules 2 and 3.

This amendment will increase the Commonwealth's legislative powers. It will allow the Governor-General to introduce a proposed law (and pass an Ordinance in the same terms as the proposed law if necessary) on any topic. For example, this power may be used to implement national policy objectives (such as those agreed at the Council of Australian Governments) and to ensure that Norfolk Island legislation is consistent with the national interest.

Item 36 – Subsection 27(4)

Item 36 omits 'Minister' and substitutes it for 'responsible Commonwealth Minister'. This amendment reflects the change in terminology in the NI Act under the amendment Bill, and clarifies which Commonwealth Minister has authority under this section.

Item 37 – Subsection 28A(1)

Item 37 omits 'Minister' and substitutes it for 'responsible Commonwealth Minister'. This amendment reflects the change in terminology in the NI Act under the amendment Bill, and clarifies which Commonwealth Minister has authority under this section.

Item 38 – After subsection 35(1)

Item 38 inserts new subsection 35(1A). Subsection 35(1A) provides that subsection 35(1) does not apply to general elections held under section 39AB or 39AC. Subsection 35(1) provides that a general election of members of the Legislative Assembly is held on a date determined by the Administrator. General elections held in accordance with section 39AB or 39AC are held on a date determined by the responsible Commonwealth Minister (see Item 39 below), and are therefore excluded from the operation of the existing subsection 35(1).

Item 39 – At the end of Division 1 of Part V

Item 39 inserts new sections 39AA, 39AB and 39AC into the NI Act.

Section 39AA

Section 39AA provides that the Administrator may dismiss a member of the Legislative Assembly from office if they have engaged in, or are engaging in, seriously unlawful conduct or grossly improper conduct. This amendment will work in partnership with the current section 39, which provides that a member of the Legislative Assembly vacates their office if they become an undischarged bankrupt or are convicted of an offence and sentenced to imprisonment for one year or longer. The amendment will capture behaviour that is not covered by section 39, but is serious enough to require being dismissed from the Legislative Assembly. It is intended that the authority be used at the Administrator's discretion, and taking into account the gravity of action taken under this section. The section requires the Administrator to evaluate the seriousness of the conduct in question in acting under this section.

Section 39AB

Section 39AB provides the process for holding a general election if there is a successful no-confidence motion in the Chief Minister, the Legislative Assembly does not appoint a new Chief Minister within a period of 10 days, and the Governor-General does not dissolve the Legislative Assembly within that period of 10 days. If this occurs, a general election of members of the Legislative Assembly will be held on a day specified by the responsible Commonwealth Minister by notice in the Commonwealth Gazette. This date must also be published in the Norfolk Island Gazette as soon as practicable.

The specified day chosen must not be earlier than 36 days and not later than 90 days after the period of 10 days. The specified day also cannot be a polling day for an election of the Senate or a general election of the House of Representatives. During the time between when the notice is published in the Commonwealth Gazette, and the first meeting of the Legislative Assembly after the election, the Administrator exercises all the powers of the Administration, the Executive Council and Ministers in accordance with any directions from the Governor-General. For clarity, it is intended that this power be exercised to the exclusion of the Legislative Assembly, which would be unable to function without a Chief Minister.

If the Administrator decides it is necessary to issue or spend public money of the Territory when an enactment does not authorise the issuing or spending, the Administrator may do so with the authority of the Governor-General. The Governor-General exercises his or her power to issue directions and to authorise the issuing or spending of money by proclamation, which is not a legislative instrument.

Section 39AC

Section 39AC provides that the Governor-General can dissolve the Legislative Assembly if it is incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner. If the Legislative Assembly is dissolved under this section then a general election of members of the Legislative Assembly will be held on a day specified by the responsible Commonwealth Minister by notice in the Commonwealth Gazette. This date must also be published in the Norfolk Island Gazette as soon as practicable.

The specified day chosen must not be earlier than 36 days after the dissolution and not later than 90 days after the dissolution. The specified day also cannot be a polling day for an election of the Senate or a general election of the House of Representatives.

During the time between when the Legislative Assembly is dissolved, and the first meeting of the Legislative Assembly after the election, the Administrator exercises all the powers of the Administration, the Executive Council and Ministers in accordance with any directions from the Governor-General. If the Administrator decides it is necessary to issue or spend public money of the Territory when an enactment does not authorise the issuing or spending, the Administrator may do so with the authority of the Governor-General. The Governor-General exercises his or her power to issue directions and to authorise the issuing or spending of money by proclamation, which is not a legislative instrument.

The responsible Commonwealth Minister must cause a statement of the reasons for the dissolution to be published in both the Commonwealth Gazette and the Norfolk Island Government Gazette as soon as practicable. The statement of the reasons for the dissolution must also be tabled in both Commonwealth Houses of Parliament within 15 sitting days of the Houses after the dissolution.

Item 40 – At the end of section 42

Item 40 inserts new subsection 42(7). Subsection 42(7) provides that if a motion of no confidence in the Chief Minister is before the Legislative Assembly, the Assembly must deal with that motion before dealing with any other business. This amendment will ensure that the possible removal of a Chief Minister is dealt with expeditiously by the Legislative Assembly.

Item 41 – After section 42

Item 41 inserts new section 42A into the NI Act. Section 42A provides that a resolution of no confidence in the Chief Minister has no effect unless:

- it affirms a motion that is expressed to be a motion of no-confidence in the Chief Minister; and
- at least 14 days notice of the motion has been given, in accordance with the standing rules and orders; and
- the resolution is passed by at least the number of members necessary to be quorum; and
- the resolution is passed by a majority of the number of members present and voting at the meeting of the Assembly.

If a motion for a resolution of no confidence in the Chief Minister is being voted on in the Legislative Assembly, each member present at the meeting must cast a vote on the motion. The minimum of two weeks' notice of the motion will provide sufficient time for Members of the Legislative Assembly who are on the mainland or overseas to return to Norfolk Island for the motion. Passing the resolution by a majority of members present is consistent with the established

practice in section 42 of the NI Act. The obligation for all members present to vote will ensure that the Legislative Assembly gives considered thought to the motion of no confidence as the role of Chief Minister is pivotal to an effective Norfolk Island Government.

Item 42 – Section 49

Item 42 omits ‘Finance Minister’ everywhere that it occurs in section 49 and replaces it with ‘Commonwealth Finance Minister’. This Item clarifies that it is the Commonwealth Finance Minister who has the power to lend money to the Administration of Norfolk Island or a Territory authority.

Item 43 – Subsection 50(1)

Item 43 omits ‘Finance Minister’ and replaces it with ‘Commonwealth Finance Minister’. This Item clarifies that it is the Commonwealth Finance Minister who has the power to approve the Administration or a Territory authority borrowing money from someone other than the Commonwealth or raising money otherwise than by borrowing.

Item 44 – Subsection 50A(1)

Item 44 omits ‘Finance Minister’ and replaces it with ‘Commonwealth Finance Minister’. This Item clarifies that it is the Commonwealth Finance Minister who can enter into a contract to guarantee the repayment of money, or amounts liable to be paid in relation to the money, borrowed by the Administration.

Item 45 – Subsection 50A(2)

Item 45 omits ‘Finance Minister’ everywhere that it occurs in subsection 50A(2) and replaces it with ‘Commonwealth Finance Minister’. This Item clarifies that it is the Commonwealth Finance Minister who can in writing determine that the repayment of money, and associated payments, borrowed by the Administration is guaranteed by the Commonwealth.

Item 46 – Subsection 50D(1)

Item 46 omits ‘Finance Minister’ and replaces it with ‘Commonwealth Finance Minister’. This Item clarifies that it is the Commonwealth Finance Minister who may delegate his or her powers or functions under sections 50 or 50A.

Item 47 – Subsection 50D(1)

Item 47 omits ‘Finance Minister’s’ and replaces it with ‘Commonwealth Finance Minister’s’. This Item clarifies that it is the Commonwealth Finance Minister who may delegate his or her powers or functions under sections 50 or 50A.

Item 48 – Subsection 50D(2)

Item 48 omits ‘Finance Minister’ and replaces it with ‘Commonwealth Finance Minister’. This Item clarifies that an official delegated powers under section 50D must comply with any directions of the Commonwealth Finance Minister.

Item 49 – Subsection 53(2)

Item 49 omits ‘Minister’ and substitutes it for ‘responsible Commonwealth Minister’. This amendment reflects the change in terminology in the NI Act under the amendment Bill, and clarifies which Commonwealth Minister has authority under this section.

Item 50 – After section 61

Item 50 inserts new sections 61A into the NI Act. Section 61A provides that the regulations may prescribe rules to be known as the Norfolk Island Public Service Values. People appointed or employed under an enactment mentioned in section 61 of the NI Act (an enactment providing for the appointment and employment of people necessary for the purposes of the Act and the proper government of Norfolk Island) must behave in a way that upholds the Norfolk Island Public Service Values at all times. This amendment will allow the Commonwealth to prescribe values for the Norfolk Island Public Service in regulations.

Item 51 – Section 62

Item 51 omits ‘Minister’ and substitutes it for ‘responsible Commonwealth Minister’. This amendment reflects the change in terminology in the NI Act under the amendment Bill, and clarifies which Commonwealth Minister has authority under this section.

Item 52 – Subsection 65(4)

Item 52 omits ‘executive member’ and replaces it with ‘Minister’. This change reflects the change in terminology from executive members to Ministers (see Item 8 and 23).

Item 53 – Subsection 67(2)

Item 53 amends subsection 67(2). Existing subsection 67(2) provides that the Governor-General may make regulations to repeal, alter, or add a new Item to Schedule 2 or 3 of the NI Act, but regulations repealing or altering an Item in Schedule 2 may not be made unless a copy of the proposed regulations has been laid before the Legislative Assembly and the Assembly has passed a resolution approving the proposed regulations. Item 53 amends subsection 67(2) so that regulations repealing or altering an Item in Schedule 2 or 3 must not be made unless a copy of the proposed regulations has been tabled in the Legislative Assembly on a sitting day and at least one sitting day has passed since the sitting day on which the proposed regulations were tabled.

This amendment will ensure that the Legislative Assembly and the Norfolk Island community are aware of proposed regulations that repeal or alter an Item or Items in Schedule 2 or 3. The removal of the requirement for the Legislative Assembly to pass a resolution approving proposed regulations which repeal or alter an Item in Schedule 2 will provide the Commonwealth with control over the Items listed in Schedule 2. In practice, the Norfolk Island Government is consulted prior to the tabling of proposed regulations repealing, altering, or adding a new Item to Schedules 2 or 3.

Item 54 – Item 42 of Schedule 2

Item 54 omits ‘executive members’ from Item 42 of Schedule 2 and replaces it with ‘Ministers’. This change reflects the change in terminology from executive members to Ministers (see Items 8 and 23).

Item 55 – Schedule 6

Item 55 omits 'holding executive office' everywhere that occurs in Schedule 6 and replaces it with 'holding office as a Minister'. This change reflects the change in terminology from holding executive office to holding office as a Minister (see Items 8 and 23).

Item 56

Previously, the Act referred to executive members. The amended sections 13 and 15 replace the reference to executive members with Ministers. A person holding an executive office and designated as the Chief Minister immediately before the commencement of the amendments will continue holding the office of Chief Minister until the next general election held after the commencement of the amendments. This will be the first election after the Act receives the Royal Assent.

Item 57

Previously, the Act referred to executive members. The amended sections 13 and 15 replace the reference to executive members with Ministers. Persons holding an executive office immediately before the commencement of the amendments will continue holding the office of Minister until the next general election held after the commencement of the amendments. This will be the first election after the Act receives the Royal Assent.

Item 58

Previously, the Act did not limit the number of executive office holders that could be appointed. The amended sections 12 and 13 will restrict the number of Ministers to a maximum of 3. Where the number of executive office holders immediately before the commencement of the amendments exceeds 3, then all executive office holders will continue holding the office of Minister until the next general election held after the commencement of the amendments. This will be the first election after the Act receives the Royal Assent.

Item 59

The new section 12A(1) dealing with nomination of the Chief Minister will not take effect until the first meeting of the Legislative Assembly after the general election occurring after the commencement of these amendments. Commencement will occur on the day the Act receives the Royal Assent. The person holding the executive office designated as Chief Minister immediately before the commencement of the amendments will continue as the Chief Minister until the general election held after commencement of the amendments. This will be the first election after the Act receives the Royal Assent.

Item 60

The previous process for the presentation of bills to the Administrator for consent will continue for those bills presented prior to the commencement of the amendments to sections 21 and 22. Commencement of those amendments will occur on the day the Act receives the Royal Assent.

Division 2 – Consequential amendments

Item 61

This consequential amendment repeals the definition of Minister in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (relating to Norfolk Island). This reflects a change in title in the NI Act from an ‘Executive Member’ to ‘Chief Minister’ and ‘Minister’.

The following provisions are amended:

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* – Subsection 13(1) (definition of Minister)

Items 62, 64 and 68

These consequential amendments remove the phrase ‘person holding an office under section 13 of the *Norfolk Island Act 1979*’, replacing them with the phrase ‘Minister of Norfolk Island’. This reflects the simplification of terminology under the NI Act. These consequential amendments result from amendments to sections 4(1), 11(2) and 13 of the NI Act (with the terms ‘Minister’ and ‘Chief Minister’ replacing the term ‘Executive Member’).

The following provisions are amended:

- *Environment Protection and Biodiversity Conservation Act 1999* – Subsections 393(3) and 398(2)
- *Historic Shipwrecks Act 1976* – Paragraph 4A(12)(c)

Items 63 and 65

These consequential amendments remove the phrase ‘that Act’, substituting it with the phrase ‘the *Norfolk Island Act 1979*’. These amendments are consequential to amendments in Items 62 and 64, which remove the reference to ‘the *Norfolk Island Act 1979*’ in subsections 393(3) and 398(2). This leaves the subsections referring to ‘that Act’ with no reference to the actual Act being referred to, hence the need to replace ‘that Act’ with ‘*the Norfolk Island Act 1979*’.

The following provisions are amended:

- *Environment Protection and Biodiversity Conservation Act 1999* – Subsections 393(3) and 398(2)

Item 66

***Freedom of Information Act 1982* – Subparagraph 4(3)(a)(iii)**

This consequential amendment results from an amendment to subsection 11(2) of the NI Act which states that the Executive Council consists of the Chief Minister and such other Ministers as are appointed by the Administrator under section 13 (see Item 21). The amendment reflects the change in title from ‘Executive Members’ to ‘Chief Minister’ and ‘Ministers’ in the NI Act. The consequential amendment to the FOI Act is to reflect this change in terminology.

Item 67

Hazardous Waste (Regulation of Exports and Imports) Act 1989 – Subsection 42(4)

This consequential amendment removes the definition of Minister under subsection 42(4) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*. This amendment reflects changes to sections 4(1), 11(2) and 13 of the NI Act. Minister under the NI Act means a ‘Chief Minister’ or a ‘Minister’ appointed under section 13 of the NI Act. Subsection 42(4) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* has been repealed because the definition of Minister was inconsistent with the definition of Minister under the NI Act.

Items 69 and 72

These consequential amendments remove the phrase ‘or executive member (within the meaning of the *Norfolk Island Act 1979*)’, replacing it with the phrase ‘Minister of Norfolk Island’. This change echoes the adjustment in title under the NI Act from ‘Executive Members’ to ‘Chief Minister’ and ‘Ministers’ in amended sections 4(1), 11(2) and 13 of the NI Act. These consequential amendments reflect this change in terminology

The following provisions are amended:

- *International Criminal Court Act 2002* – Section 4 (paragraph (d) of the definition of *State Minister*)
- *International Transfer of Prisoners Act 1997* – Subsection 4(1) (paragraph (b) of the definition of *Territory Minister*)

Items 70, 71, 73, 74 and 77

These consequential amendments remove the phrases ‘or executive member’ and ‘or executive member’s’ from the Acts below. This mirrors a change in title under the NI Act from ‘Executive Member’s’ to ‘Chief Minister’ and ‘Ministers’ amended sections 4(1), 11(2) and 13 of the NI Act. In practice, Norfolk Island Executive Members are generally referred to as Members. These consequential amendments reflect this change in terminology.

The following provisions are amended:

- *International Criminal Court Act 2002* – Section 4 (definition of *State Minister*),
- *International Transfer of Prisoners Act 1997* – Subsection 4(1) (definition of *Territory Minister*)
- *Remuneration Tribunal Act 1973* – Paragraph 3(4)(jaa)

Item 75

National Health Security Act 2007 – Subsection 3(1) (paragraph (d) of the definition of State or Territory Health Minister)

This consequential amendment removes paragraph (d) of the definition of the ‘State or Territory Health Minister’, replacing it with the phrase ‘the Minister of Norfolk Island.’ The deletion of this

paragraph removes the phrase ‘executive member’. This reflects the terminology change under the NI Act from ‘Executive Member’ to ‘Ministers’ and ‘Chief Minister’ (ss 4(1), 11(2) & 13).

Item 76

Privacy Act 1988 – Subsection 6C(3) (subparagraphs (d)(vi) and (f)(vi) of the definition of State or Territory authority)

This consequential amendment reflects the change in terminology in the NI Act from an ‘Executive Member’ to ‘Chief Minister’ and ‘Minister’. The consequential amendment to the Privacy Act removes references to ‘a person holding an executive office mentioned in section 12 of the *Norfolk Island Act 1979*’. There is no need to insert any replacement provisions in the Privacy Act on the basis that a NI Minister will be included in the existing reference to ‘a State or Territory Minister’ at subparagraphs 6C(3)(d)(v) and 6C(3)(f)(v).

Part 2 – Amendments relating to elections

Division 1 – Dates for Elections

Norfolk Island Act 1979

Item 78 – Subsection 35(2)

Subsection 35(2) stipulates the maximum time before the term of the Norfolk Island Legislative Assembly expires or must be dissolved. Item 78 amends subsection 35(2) to provide for a minimum term of three years and a maximum term of four years. This amendment intends to provide stability to Norfolk Island's electoral system and assist the Norfolk Island Government in implementing its legislative program. The amendment will give effect to recommendation 23 of the Joint Standing Committee on the National Capital and External Territories in its 2003 report on the Inquiry into Governance on Norfolk Island, *Quis custodiet ipsos custodes?*

Item 79 – At the end of section 35

Item 79 inserts new subsection 35(3) which sets out exceptions to the new requirements in subsection 35(2) (see Item 78) regarding the minimum and maximum time for the term of the Norfolk Island Legislative Assembly. Subsection 35(3) is necessary to supplement amendments under this Act which insert new sections 39AB and 39AC (see Item 39). New section 39AB enables the Commonwealth Minister who administers the NI Act to dissolve the Legislative Assembly where it has passed a resolution of no confidence in the Chief Minister and where the Legislative Assembly has not nominated a new Chief Minister within 10 days. New section 39AC enables the Governor-General to dissolve the Legislative Assembly where, in the opinion of the Governor-General, it is incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner.

The new subsection 35(3) provides that where an election is required as a result of the application of section 39AB or 39AC then that election may be held within the minimum term stipulated by section 35(2).

Part 2 – Amendments relating to elections

Division 2 – Other matters

Norfolk Island Act 1979

Item 80 – Subsection 31(3)

Item 80 enables the making of regulations prescribing the electoral system to be used in Norfolk Island Legislative Assembly elections and the filling of casual vacancies. This will give effect to the need for electoral reform identified by the Joint Standing Committee on the National Capital and External Territories in its 2003 report on the Inquiry into Governance on Norfolk Island, *Quis custodiet ipsos custodes?*

Item 81 – At the end of section 31

Item 81 inserts new subsections 31(4) and (5) into the NI Act. The new subsections enable the method and manner in which votes are to be cast and counted in Norfolk Island Legislative Assembly elections, as well as the filling of casual vacancies, to be determined via regulations. The use of regulations will allow flexibility in determining an electoral system that best suits the community of Norfolk Island. The new subsections also allow scope for matters related to the electoral system that are yet to be considered to be determined at a later time via regulations.

Item 82 – Section 37

Item 82 repeals existing section 37 of the NI Act, which deals with the filling of casual vacancies in the Norfolk Island Legislative Assembly. The insertion of the new subsection 31(5) (see Item 81), which enables the making of regulations providing for the filling of casual vacancies, makes section 37 unnecessary.

Item 83 – Before section 38

Item 83 inserts section 37A. This new section enables the Norfolk Island Government to make arrangements with the Australian Electoral Commission to conduct general elections on their behalf, as well as the filling of casual vacancies. This amendment will give effect in part to recommendation 26 of the Joint Standing Committee on the National Capital and External Territories in its 2003 report on the Inquiry into Governance on Norfolk Island, *Quis custodiet ipsos custodes?*

Item 84 – Application of amendments

Item 84 limits the application of the amendments in this Division to general elections where the writs were issued after the commencement of this clause. Item 84 similarly limits the application of amendments in relation to filling casual vacancies. The delay in application will enable consultation with the Norfolk Island Legislative Assembly, Administration and community on the regulations supporting the electoral reform.

Part 3 – Amendments relating to finance

Item 85 – Subsection 4(1) (definition of *accounts of the Territory*)

Item 85 repeals the existing definition of accounts of the *Territory* in section 4(1) of the NI Act.

The definition formerly fed into the former section 51C, which is now being repealed by item 119. As such, the definition of this term is no longer required in the Act.

Item 86 – Subsection 4(1) (definition of *Auditor*)

Item 86 repeals the existing definition of *Auditor* in subsection 4(1) of the NI Act.

The amendments to the NI Act provide for the Commonwealth Auditor-General to commence audits for Norfolk Island in accordance with new section 48C (see item 117). As a result of these amendments, the definition of this term is no longer required.

Item 87 – Subsection 4(1)

Item 87 adds a definition of *Chief Executive Officer* to subsection 4(1).

The Chief Executive Officer has the same meaning as in the *Public Sector Management Act 2000* (NI). The term Chief Executive Officer was not previously defined or referred to in the NI Act. However, under the new financial framework in Part VI of the NI Act, obligations will be imposed on the Chief Executive Officer.

Item 88 – Subsection 4(1)

Item 88 adds a definition of *Commonwealth Finance Minister's Orders* to subsection 4(1).

Under the new financial framework in Part VI of the NI Act, the Commonwealth Finance Minister will be able to make Orders under section 48T to clarify financial requirements, for example in relation to the preparation of financial statements. Financial statements are prepared in accordance with accounting standards. As accounting standards change from time to time, the Commonwealth Finance Minister's Orders will need to be consistently re-issued. Specifying these financial requirements in the form of regulations would require considerable additional time, expense and inflexibility. It is therefore common practice to set these financial requirements in Finance Minister's orders. The Commonwealth, all Australian states, New Zealand, United Kingdom, Canada, United States of America and South Africa all set these rules in orders or standards rather than regulations.

Item 89 – Subsection 4(1)

Item 89 adds a definition of *Commonwealth Financial Officer for Norfolk Island* to subsection 4(1).

The Commonwealth Financial Officer for Norfolk Island means the Commonwealth Financial Officer for Norfolk Island appointed under regulations made for the purposes of section 51D. Section 51D is a new section, inserted by item 119. The inclusion of the definition makes it clear that the Commonwealth Financial Officer is appointed in accordance with section 51D and the regulations.

Items 90 & 91– Subsection 4(1)

Item 90 adds a definition of *Federal Court* to subsection 4(1). Item 91 adds a definition of *financial management and accountability provisions* to subsection 4(1).

These definitions are introduced to help clarify when and where an injunction may be obtained by the responsible Commonwealth Minister under new section 51E, if a person has engaged or is engaging, or is proposing to engage, in any conduct that contravenes the specified provisions of Part VI of the NI Act.

Items 95, 107 and 110 – Sections 4(1) and 47

Item 95 adds a definition of *Public Account of Norfolk Island* to subsection 4(1).

Items 107 and 110 make consequential changes to clarify that references to an Account in subsection 47(4) and (5) are references to the Public Account of Norfolk Island.

This new term is inserted to clarify that the Public Account of Norfolk Island is the account established under subsection 47(1) as amended by this Act.

Items 96, 97, 103, 106, 108, 109, 111, 112, 113, and 116– Sections 4(1), 25, 27, 47, and 48

Items 96 and 97 repeal and replace the definition of *public moneys of the Territory* with *public money of the Territory* in subsection 4(1).

As a consequence of the change of term, items 103, 106, 108, 109, 111, 112, 113 and 116 replace existing references in the NI Act to ‘public moneys’ with ‘public money’ and to ‘moneys’ with ‘money’.

The purpose of the new definition of public money of the Territory is to clarify the money of the Territory that will be covered by the new financial framework in Part VI of the NI Act. The definition, which is modelled on the corresponding definition in section 5 of the *Financial Management and Accountability Act 1997* (Cth), includes all money in the custody or under the control of the Administration, or in the custody or under the control of a person acting for or on behalf of the Administration in respect of the custody or control of the money. The definition includes money that is held on trust for, or otherwise for the benefit of, a person other than the Administration. The definition does not include money in the Norfolk Island Provident Account, as established under the *Provident Account Act 1958* (NI).

Item 98 – Subsection 4(1)

Item 98 adds a definition of *public property of the Territory* to subsection 4(1).

Prior to these amendments, the NI Act did not contain a definition of public property of the Territory. Public property of the Territory is defined to ensure that the financial provisions in Part VI of the NI Act cover all property in the custody or under the control of the Administration, or in the custody or under the control of a person acting for or on behalf of the Administration in respect of the custody or control of the property. The definition includes property that is held on trust for, or otherwise for the benefit of, a person other than the Administration. The definition of public property of the Territory is modelled on the corresponding definition in section 5 of the *Financial Management and Accountability Act 1997* (Cth).

Item 92 & 94 – Subsection 4(1)

Item 92 adds a definition of *money of a Territory authority* to subsection 4(1). Item 94 adds a definition of *property of a Territory authority* to subsection 4(1).

The proposed new definitions of public money of the Territory and public property of the Territory do not include money or property in the custody of, or belonging to a Territory authority. The definitions of money of a Territory authority and property of a Territory authority are added to provide a complete picture of the Norfolk Island Government's financial position. By adding these definitions to subsection 4(1), money or property in the custody or under the control of a Territory authority, or in the custody or under the control of a person acting for or on behalf of a Territory authority is subject to the new financial framework in Part VI of the NI Act.

Item 93 – Subsection 4(1)

Item 93 adds a definition of *performance audit* to subsection 4(1).

The new term has the same meaning as in the Auditor-General Act, whereby in relation to a person or body, it means a review or examination of any aspect of the operations of the person or body.

Item 99 – Subsection 4(1)

Item 99 adds a definition of *responsible manager* to subsection 4(1).

The new term is introduced to identify the person responsible for the finances of the Territory authority for the purpose of the new financial framework in Part VI of the NI Act. The definition of responsible manager means the most senior individual (or group of individuals - where the body has a governing council) with the body who (or which) is responsible for the operation and finances for the Territory Authority.

Items 100 and 104 – Subsection 4(1) and section 46

Items 100 and 104 remove the definition of *Territory authority* from section 46 and add a new definition to subsection 4(1).

Prior to these amendments, the NI Act contained a narrow definition of Territory authority in section 46.

The new definition of Territory authority will clarify which entities, other than the Administration, are also subject to the new financial framework in Part VI of the NI Act.

The definition of Territory authority includes:

- (a) a body corporate established for a public purpose by or under an enactment;

This part of the definition is modelled on the definition of Commonwealth authority in s7(1)(a) of the *Commonwealth Authorities and Companies Act 1997* (Cth). It is intended to capture statutory authorities created for a public purpose, by or under an enactment, as these entities are legally separate from the Administration and may not otherwise fall within the new financial framework in Part VI of the NI Act.

Currently, three statutory authorities are created by Norfolk Island enactment, legally separate from the Norfolk Island Administration - the Norfolk Island Hospital Enterprise,

established by the *Norfolk Island Hospital Act 1985* (NI) and the Norfolk Island Government Tourist Bureau, established by the *Norfolk Island Government Tourist Bureau Act 1980* (NI) and the Norfolk Island Museum Trust, established by the *Museum Trust Act 1987* (NI). These three statutory authorities would be covered by paragraph (a) of the definition of a ‘Territory authority’.

- (b) a body, entity, organisation or group of persons specified in the regulations; and
- (c) a body corporate in which the Administration or another Territory authority has a controlling interest.

This part of the definition is inserted in order to capture a body corporate, created under the *Companies Act 1985* (NI) or otherwise, controlled by the Administration or another Territory authority. The concept of a ‘controlling interest’ is analogous to the meaning of ‘controls’ set out in subsections 34(1A)-(1C) of the *Commonwealth Authorities and Companies Act 1997* (Cth). A Territory authority that is captured by paragraph (a) of the definition i.e. a body corporate established for a public purpose by or under an enactment, is not subject to the ‘controlling interest’ test in paragraph (c) of the definition.

For the purposes of the definition, entity has the same meaning as in the *Income Tax Assessment Act 1997* (Cth), but does not include an individual.

Items 101 and 102 – Section 25

Item 101 replaces the words ‘the object or effect of which is to dispose of or charge any public moneys of the Territory’ with ‘for the appropriation of public money of the Territory’, reinforcing the concept of appropriations within the NI Act. Item 102 includes a note which refers to section 48, requiring any expenditure from the Public Account of Norfolk Island to be supported by an appropriation made by enactment.

This amendment is consequential to amendments made at items 114 and 115.

Item 105 – Before section 47

Item 105 inserts a new heading, called Division 1 – Public Account of Norfolk Island. The new heading is necessary to ensure a logical structure to the Part.

Items 114 and 115 – Section 48

Item 114 amends subsection 48(1) by replacing the word ‘enactment’ with ‘an appropriation made by enactment’.

Item 115 includes a note to refer to section 25, which deals with proposal of money Bills.

The purpose of this amendment is to clarify, beyond any potential doubt, that an appropriation made by enactment of the Norfolk Island Legislative Assembly is required to support any expenditure by the Norfolk Island Government (including expenditure by Ministers and the Administration).

Appropriations are required to support any payments of public money of the Territory (as defined in subsection 4(1)) including money held on trust by the Administration for another person or any money held on trust by another person for Norfolk Island Government.

By virtue of amended subsection 48(1), appropriations are also required to authorise payments made in relation to investment activities (to the extent that investments are authorised by an enactment, as required already by subsection 48(2) of the Act).

By analogy, at the national level, sections 81 and 83 of the Australian Constitution require an appropriation made by law to support expenditure from the Consolidated Revenue Fund. This constitutional requirement is reinforced by section 26 of the *Financial Management and Accountability Act 1997*, which requires a valid drawing right for any expenditure of public money. Subsection 27(5) states that a drawing right has no effect to the extent that it claims to authorise the application of public money in a way that is not authorised by an appropriation.

These provisions are an important element of the fundamental recognition of the primacy of the legislature over the executive, and in particular, any activities involving the payment of public money.

Item 117 – After section 48

Item 117 inserts a new heading, called Division 2 – Financial Management and Accountability. The new heading is necessary to ensure a logical structure to the Part.

Item 117 inserts the following new sections, which add to the existing financial provisions in Part VI of the NI Act, providing part of the financial framework for Norfolk Island. These provisions may be supplemented through the provision of regulations and Commonwealth Finance Minister’s Orders made under Part VI of the NI Act.

Section 48A

New section 48A requires the Norfolk Island Minister for Finance to prepare annual budgets for the Administration and Territory authorities. These annual budgets must be prepared in accordance with regulations and Commonwealth Finance Minister’s Orders made under the NI Act.

Examples of matters on which regulations or Commonwealth Finance Minister’s Orders may be made include the content of the annual budgets, the forward estimate period, timing of preparation etc.

As soon as practicable after the annual budgets are prepared, the Norfolk Island Minister for Finance must:

- (i) cause a copy of each annual budget to be tabled in the Norfolk Island Legislative Assembly; and
- (ii) provide a copy of each annual budget to the Administrator.

Although ‘as soon as practicable’ is not specifically defined, the expectation is that the Norfolk Island Minister for Finance will table the annual budgets within seven days of preparation, or at the next sitting day of the Norfolk Island Legislative Assembly, whichever occurs sooner.

As soon as practicable after receiving a copy of an annual budget, the Administrator must send it to the responsible Commonwealth Minister.

Although no definition is put forward as to what may be considered ‘as soon as practicable’, the expectation is that the Administrator will send a copy of the annual budget to the responsible Commonwealth Minister within seven days of receipt of the annual budget.

Section 48B

New section 48B imposes an obligation on the Norfolk Island Minister for Finance to prepare annual financial statements for the Administration and Territory authorities. Annual financial statements must be prepared in accordance with the regulations and the Commonwealth Finance Minister’s Orders, made under Part VI of the NI Act, as soon as practicable after the end of the financial year.

Section 48B also requires the Norfolk Island Minister for Finance to give the annual financial statements to the Commonwealth Auditor-General as soon as practicable after they are prepared. If the annual financial statements are not provided within 5 months after the end of the financial year, subsection 48B(4) requires the Norfolk Island Minister for Finance to table a statement of reasons in the Norfolk Island Legislative Assembly.

Section 48C

New section 48C requires the Commonwealth Auditor-General to prepare an audit report on the annual financial statements received under section 48B. The Commonwealth Auditor-General must provide a copy of the audit report to the Norfolk Island Minister for Finance, the Administrator and the responsible Commonwealth Minister.

The Norfolk Island Minister for Finance must table a copy of that audit report in the Norfolk Island Legislative Assembly, accompanied by the annual financial statements, as soon as practicable after receiving it.

Although ‘as soon as practicable’ is not specifically defined, the expectation is that the Norfolk Island Minister for Finance will table a copy of the audit report and accompanying annual financial statements within seven days of receipt, or at the next sitting day of the Norfolk Island Legislative Assembly, whichever occurs sooner.

The responsible Commonwealth Minister must cause a copy of the audit report to be tabled in each House of the Parliament, as soon as practicable.

The inclusion of this section was recommended by the Joint Standing Committee on the National Capital and External Territories in the 2003 report on the Inquiry into Governance on Norfolk Island, *Quis custodiet ipsos custodiet?* The change was recommended to enable Norfolk Island to benefit from the Commonwealth Auditor-General’s existing experience and expertise enabling the provision of a high standard of reporting.

Section 48C is modelled on section 56 of the *Financial Management and Accountability Act 1997* (Cth).

Section 48D

New section 48D enables the Commonwealth Auditor-General to charge audit fees for statement audits made under section 48C (item 117). This is consistent with generally accepted commercial practice. The fees are to be calculated based on a scale of fees determined by the Auditor-General. The Auditor-General is to disclose, in the annual report of the office, details of how the scale (or

scales) of fees that applied during the year being reported on were determined.

Audit fees are to be payable to the Auditor-General 30 days after issue of a payment claim and fees may be claimed and payable by instalment. Unpaid fees may be recovered in a court with the legal capacity to pursue debts of the Commonwealth.

Section 48D is modelled on section 14 of the Auditor-General Act.

Section 48E

New section 48E allows the Commonwealth Auditor-General to conduct performance audits of the Administration and Territory authorities.

The Commonwealth Auditor-General must provide a copy of the performance audit report to the Norfolk Island Minister for Finance, the Administrator and the responsible Commonwealth Minister.

The Auditor-General must cause the completed performance audit report to be tabled in each House of the Parliament.

The Norfolk Island Minister for Finance must cause a copy of the performance audit report to be tabled in the Legislative Assembly, as soon as practicable after it is received. Although 'as soon as practicable' is not specifically defined, it is expected that the Norfolk Island Minister for Finance will table the performance audit report within seven days of receipt, or at the next sitting day of the Norfolk Island Legislative Assembly, whichever occurs sooner.

The responsible Commonwealth Minister must cause a copy of the performance audit report to be tabled in each House of the Parliament, as soon as practicable.

A copy of each performance audit report must also be supplied to the Chief Executive Officer where the Administration was the subject of the audit, or to the responsible manager or managers of a Territory authority where that authority was the subject of the audit.

The inclusion of this section was recommended by the Joint Standing Committee on the National Capital and External Territories in the 2003 report on the Inquiry into Governance on Norfolk Island, *Quis custodiet ipsos custodiet?* The change was recommended to enable Norfolk Island to benefit from the Commonwealth Auditor-General's existing experience and expertise enabling the provision of a high standard of reporting.

Section 48F

New section 48F requires the Commonwealth Auditor-General to seek comments on proposed performance audit reports required under section 48E (item 117). Where the Administration was the subject of the audit, the Auditor-General must provide the Chief Executive Officer with a copy of the proposed report. Where a Territory authority was the subject of the audit, the Auditor-General must provide the responsible manager or managers with a copy of the proposed report. Comments are required within a specified time.

The purpose of this clause is to ensure that auditees and other persons considered by the Auditor-General to have a special interest have the opportunity to review all proposed reports arising from a performance audit. Recipients of proposed reports have 28 days to respond to the Auditor-General on the proposed report. Confidentiality requirements of Part 5, Division 2 of the Auditor-General

Act apply, and under subclause 36(3) of that Act, recipients must not disclose information in the reports except as authorised by the Auditor-General.

Section 48F is modelled on section 19 of the Auditor-General Act.

Section 48G

New section 48G provides that the Auditor-General Act applies to audits by the Auditor-General under the NI Act. Provisions within this section extend certain parts of the Auditor-General Act to the NI Act where these parts would not otherwise apply. This section means that the Auditor-General has all of the powers and functions necessary to undertake his or her obligations under the NI Act.

Section 48H

New section 48H requires the Norfolk Island Minister for Finance to prepare periodic financial statements in relation to the Administration and each Territory authority. The financial statements must be prepared in accordance with regulations and Commonwealth Finance Minister's Orders made under Part VI of the NI Act.

Matters which may be prescribed by regulations or Commonwealth Finance Minister's Orders include the content and format of the periodic financial statements, the frequency with which the periodic financial statements are to be prepared e.g. monthly, quarterly etc. and a time period for preparation.

As soon as practicable after the statements are prepared, the Norfolk Island Minister for Finance must:

- (i) cause a copy of the statements to be tabled in the Norfolk Island Legislative Assembly;
and
- (ii) provide a copy of the statements to the Administrator.

Although 'as soon as practicable' is not specifically defined, the expectation is that the Norfolk Island Minister for Finance will table the periodic financial statements within seven days of preparations, or at the next sitting day of the Norfolk Island Legislative Assembly, whichever occurs sooner.

As soon as practicable after receiving a copy of the periodic financial statements, the Administrator must send them to the responsible Commonwealth Minister.

Although no definition is put forward as to what may be considered 'as soon as practicable', the expectation is that the Administrator will send a copy of the statements to the responsible Commonwealth Minister within seven days of receipt of the statements.

Section 48J

New section 48J requires the Chief Executive Officer (defined under subsection 4(1)) to prepare annual reports as soon as practicable after the end of each financial year. The annual report must be prepared in accordance with regulations and Commonwealth Finance Minister's Orders made under the NI Act, and must report on the operations of the Administration and Territory authorities in that

financial year. A copy of the annual report must be given to the Norfolk Island Chief Minister, who, as soon as practicable after receiving it, must:

- (i) table a copy of the annual report in the Norfolk Island Legislative Assembly, and
- (ii) provide a copy of the annual report to the Administrator.

Although ‘as soon as practicable’ is not specifically defined, the expectation is that the Norfolk Island Minister for Finance will table the annual report within seven days of receipt, or at the next sitting day of the Norfolk Island Legislative Assembly, whichever occurs sooner.

As soon as practicable after receiving a copy of the report, the Administrator must send it to the responsible Commonwealth Minister.

Although no definition is put forward as to what may be considered ‘as soon as practicable’, the expectation is that the Administrator will send a copy of the annual report to the responsible Commonwealth Minister within seven days of receipt of the annual report.

The inclusion of this section was recommended by the Joint Standing Committee on the National Capital and External Territories in the 2003 report on the Inquiry into Governance on Norfolk Island, *Quis custodiet ipsos custodiet?* The change was recommended on the basis of the ‘fundamental importance of public reporting to the people of Norfolk Island and the Commonwealth’.

New sections 48K and 48L

New sections 48K and 48L provide for the Norfolk Island Minister for Finance and the Chief Executive Officer, respectively, to request, by written notice, a Territory authority to provide information relevant to the performance of the Minister and CEO’s functions under Part VI of the NI Act, the regulations or the Commonwealth Finance Minister’s Orders. For example Minister for Finance and the Chief Executive Officer may request information from a Territory authority in order to prepare the reports and financial statements required to be produced under the new financial framework .

Sections 48K and 48L require a Territory authority to comply with the request for information within the period specified in the request, being no shorter than 14 days. The request may also specify the manner and form in which the information must be provided. The responsible manager or managers of a Territory authority must comply with the request to the extent that the responsible manager or managers are capable of doing so.

In particular, section 48K allows the Norfolk Island Minister for Finance to request information from a Territory authority relevant to the performance of his or her functions under sections 48A (Preparation of annual budgets), 48B (Preparation of annual financial statements), 48H (Preparation of periodic financial statements) of the NI Act, the regulations, or the Commonwealth Finance Minister’s Orders.

Section 48L allows the Chief Executive Officer to request information from a Territory authority relevant to the performance of his or her functions under Part VI of the NI Act, the regulations, or the Commonwealth Finance Minister’s Orders. This may include information required to assist the Norfolk Island Minister for Finance to carry out his duties, as described above.

Section 48M

New section 48M places an obligation on the Chief Executive Officer (defined under subsection 4(1)) to ensure that he or she manages the affairs of the Administration in a way that promotes the proper use of the Administration's resources.

Subsection 48M(2) provides that in fulfilling his or her obligations under subsection 48M(1), the Chief Executive Officer must comply with the NI Act, the regulations, the Commonwealth Finance Minister's Orders and any other law. Subsection 48M(3) defines the term 'proper use', for the purposes of section 48M as 'efficient, effective and ethical use that is not inconsistent with the policies of the Administration.'

This section is modelled on existing obligations placed on Chief Executives of Commonwealth agencies under section 44 of the *Financial Management and Accountability Act 1997* (Cth). This section, like the Commonwealth provision, may lead to further regulations being made, under sections 48R, in relation to commitments to spend public money of the Territory.

Section 48N

New section 48N places an obligation on the responsible manager or managers of a Territory authority (defined under subsection 4(1)) to ensure that he or she manages the affairs of the Territory authority in a way that promotes the proper use of the Territory authority's resources. This section is modelled on existing obligations placed on Chief Executives of Commonwealth agencies under section 44 of the *Financial Management and Accountability Act 1997* (Cth) and is intended to operate in the same manner as the obligations imposed on the Chief Executive Officer under the new section 48M.

Subsection 48N(2) provides that in fulfilling his or her obligations under subsection 48N(1), the responsible manager or managers must comply with the NI Act, regulations, the Commonwealth Finance Minister's Orders and any other law. Subsection 48N(3) defines proper use as efficient, effective and ethical use that is not inconsistent with the policies of the Administration. The effect of this is to require Territory authorities to follow the same financial policies as the Administration.

Section 48P

New subsection 48P(1) requires the Norfolk Island Minister for Finance to ensure that the accounts and records of the Administration properly record and explain the transactions and financial position of the Administration.

New subsection 48P(2) requires the Norfolk Island Minister for Finance to ensure that these accounts and records are prepared and kept in accordance with regulations and the Commonwealth Finance Minister's Orders made under the NI Act.

Accounts and records will also be required to be kept for a specified period of time, to be prescribed in the regulations or, if no regulations are in force, the Commonwealth Finance Minister's Orders.

Section 48Q

New subsection 48Q(1) requires the responsible manager or managers to ensure that the accounts and records of a Territory authority properly record and explain the transactions and financial position of that Territory authority.

New subsection 48Q(2) requires the responsible manager or managers to ensure that these accounts and records are prepared and kept in accordance with regulations and Commonwealth Finance Minister's Orders made under the NI Act.

Accounts and records will also be required to be kept for a specified period of time, to be proscribed in the regulations or, if no regulations are in force, the Commonwealth Finance Minister's Orders.

Section 48R

New section 48R provides for regulations to be made in relation to public money and public property of the Territory, and other resources of the Administration. This provision allows the Commonwealth to prescribe regulations to supplement and provide further detail of the financial framework provisions in Part VI of the NI Act.

New sub-section 48R(2) identifies a non-exhaustive list of matters for which regulations may be made. This includes the control and management of public money and public property of the Territory, grants of public money of the Territory, financial and accounting systems, the procurement of goods and services, the disposal of public property and the audit of annual financial statements.

Subsection 48R(3) specifies that regulations may also provide for the proper use and management of, and proper accountability for the use and management of public money and public property of the Territory, and other resources of the Administration.

Importantly, the specification of matters under subsections 48R(2) and (3) do not otherwise limit the Commonwealth's power to make regulations for the purposes of subsection 48R(1).

An example of a regulation that may be made under this section could be a requirement for the Administration to establish an internal audit committee.

Subsection 48R(4) specifies that regulations made under this section may confer functions or powers on the Auditor-General, the Norfolk Island Minister for Finance, the Chief Executive Officer, or the responsible manager or managers of a Territory authority. This provision is intended to ensure that subordinate legislation may confer necessary powers or functions on relevant people to enable them to fulfil obligations imposed by the Act, the regulations or the Commonwealth Finance Minister's Orders.

It is expected that any regulations to be made under this section will be made following consultation with the Norfolk Island Government.

Section 48S

New section 48S provides for regulations to be made in relation to money, property and other resources of Territory authorities (defined under subsection 4(1)). This provision allows the Commonwealth to prescribe regulations to supplement and provide further detail of the financial framework provisions in Part VI of the NI Act and ensures that this financial framework extends to Territory authorities.

New sub-section 48S(2) identifies a non-exhaustive list of matters for which regulations may be made. This includes the control and management of money and property of a Territory authority, grants of money of a Territory authority, financial and accounting systems, procurement of goods

and services, the disposal of property of a Territory authority and the audit of annual financial statements.

Subsection 48S(3) specifies that regulations may also provide for the proper use and management of, and proper accountability for the use and management of money and property of a Territory authority, and other resources of a Territory authority.

Importantly, the specification of matters under subsections 48S(2) and (3) do not otherwise limit the Commonwealth's power to make regulations for the purposes of subsection 48S(1).

This section operates in respect of Territory authorities in substantially the same manner as section 48R provides the Commonwealth with financial regulation-making powers in respect of the Administration.

An example of a regulation that may be made under this section could be a requirement on Territory authorities to establish internal audit committees.

Subsection 48R(4) specifies that regulations made under this section may confer functions or powers on the Auditor-General, the Norfolk Island Minister for Finance, the Chief Executive Officer, or the responsible manager or managers of a Territory authority. This provision is intended to ensure that subordinate legislation may confer necessary powers or functions on relevant people to enable them to fulfil obligations imposed by the Act, the regulations or the Commonwealth Finance Minister's Orders.

It is expected that any regulations to be made will be made following consultation with the Norfolk Island Government.

Section 48T

New section 48T allows the Commonwealth Finance Minister to make Orders in order to supplement and provide further detail of the financial framework provisions in Part VI of the NI Act. The Commonwealth Finance Minister's Orders may be made on any matter which the NI Act requires or permits, as well as on any matter on which regulations may be made for the purposes of subsection 48R(1) or subsection 48S(1). Subsection 48T(3) explicitly states that if an enactment is inconsistent with the Commonwealth Finance Minister's Orders, the enactment has no effect to the extent of the inconsistency.

An example of an Order that may be made under section 48T could be further detailed requirements on the preparation of annual and periodic financial statements.

It is expected that any Commonwealth Finance Minister's Orders made under this section will be made following consultation with the Norfolk Island Government.

Item 118 – Before section 49

Item 118 inserts a new heading, called Division 3 – Borrowing etc. The new heading is necessary to ensure a logical structure to the Part.

Item 119 – Sections 51, 51A, 51B, 51C, 51D, 51E, 51F and 51G

Item 119 repeals sections 51, 51A, 51B, 51C, 51D, 51E, 51F and 51G. The repealed sections related to audit provisions, which are amended at Item 110.

Item 119 inserts a new heading, called Division 4 – Commonwealth Ministers to be kept informed. The new heading is necessary to ensure a logical structure to the Part.

Item 119 inserts the following sections under the new heading.

Section 51

New section 51 requires the Norfolk Island Minister for Finance to provide to the responsible Commonwealth Minister reports, documents and information relating to the operations of the Administration. These are to be provided on request, in accordance with time limits set by the responsible Commonwealth Minister. The report, document or information provided to the Commonwealth Minister under this section must be relevant to Part VI of the NI Act, regulations made for the purposes of Part VI of the NI Act, or the Commonwealth Finance Minister's Orders.

Section 51 is modelled on paragraph 44A(1)(b) of the *Financial Management and Accountability Act 1997* (Cth).

Section 51A

New section 51A requires the Norfolk Island Minister for Finance to provide to the Commonwealth Finance Minister reports, documents and information relating to the operations of the Administration. This section provides the Commonwealth Finance Minister with the same authority to access relevant documents and information as the responsible Commonwealth Minister under section 51 (detailed above) and also supports the Commonwealth Finance Minister's duties in Part VI of the NI Act in particular under sections 49, 50 and 50A.

It is expected that the Commonwealth Finance Minister will only exercise his power in consultation with the responsible Commonwealth Minister.

Section 51B

New Section 51B requires a responsible manager or managers of a Territory authority to provide to the responsible Commonwealth Minister reports, documents and information relating to the operations of the Territory authority. These are to be provided on request and in accordance with time limits set by the responsible Commonwealth Minister. The report, document or information provided to the Commonwealth Minister under this section must be relevant to Part VI of the NI Act, regulations made for the purposes of Part VI of the NI Act, or the Commonwealth Finance Minister's Orders. The section is intended to operate in the same manner as new section 51.

Section 51B is modelled on paragraph 44A(1)(b) of the *Financial Management and Accountability Act 1997* (Cth).

Section 51C

New section 51C requires a responsible manager or managers of a Territory authority to provide to the Commonwealth Finance Minister reports, documents and information relating to the operations of the Territory authority. This section provides the Commonwealth Finance Minister with the same authority to access relevant documents and information as the responsible Commonwealth Minister under section 51B (detailed above). This section is intended to operate in the same manner as new section 51A and also supports some of the Commonwealth Finance Minister's duties under the NI Act including those found under sections 49, 50 and 50A.

It is expected that the Commonwealth Finance Minister will only exercise his power in consultation with the responsible Commonwealth Minister.

Division 5

Item 119 inserts a new heading, called Division 5 – Commonwealth Financial Officer for Norfolk Island. The new heading is necessary to ensure a logical structure to the Part. Section 51D is inserted under the new heading.

Section 51D

New section 51D enables the appointment of a Commonwealth Financial Officer for Norfolk Island. The Commonwealth Financial Officer for Norfolk Island must be appointed by the Governor-General, and will hold office at his or her pleasure.

The Commonwealth Financial Officer for Norfolk Island will have access to all relevant financial accounts, records, documents and information related to the Administration or a Territory authority. Additional functions and powers may be prescribed by regulation.

The Commonwealth Financial Officer is intended to be an optional appointment, to be made at the discretion of the Governor-General. It is intended that such an appointment may be made in the event that the Governor-General is of the view that Norfolk Island would benefit from Commonwealth assistance, for example in the implementation of the financial framework obligations under this Part of the NI Act.

Division 6

Item 119 inserts a new heading, called Division 6 – Injunctions. The new heading is necessary to ensure a logical structure to the Part. Section 51E will appear under the new heading.

Section 51E provides a power for the responsible Commonwealth Minister to apply for an injunction to enforce compliance with the financial management and accountability provisions (defined in subsection 4(1)). Under this section, the Federal Court of Australia may order an injunction requiring a person to restrain from doing an action, or compel a person to do an action, in order to comply with the financial management and accountability provisions. This section also enables the granting of an interim injunction, however it specifies that no undertakings as to damages are to be made where the interim injunction is granted.

In the case of a restraining action, an injunction may only be granted where the person has previously engaged in conduct that contravenes the financial management and accountability provisions, or where it appears to the Court that the person will engage in conduct of that kind.

In the case of compelling a person to do an action, an injunction may only be granted where the Court is satisfied the person has previously refused or failed to do the action in contravention of the financial management and accountability provisions, or if it appears to the Court that it is likely the person will refuse or fail to do the action.

The section notes that the powers conferred on the Federal Court under this section do not affect any other powers the Court may have under this Act or otherwise.

Item 120 – Application – annual budgets

Item 120 provides for the new section 48A to apply in relation to annual budgets for the financial year beginning 1 July 2011 or a later financial year.

Item 121 – Application – annual financial statements

Item 121 provides for the new section 48B to apply in relation to financial statements for the financial year beginning 1 July 2011 or a later financial year.

Item 123 – Application – annual reports

Item 123 provides for the new section 48J to apply in relation to annual reports for the financial year beginning 1 July 2011 or a later financial year.

Item 122 – Application – periodic financial statements

Item 122 provides for the new section 48H to apply in relation to periodic financial statements for periods that begin on or after 1 July 2011.

Item 124 – Transitional - audit

Item 124 is a transitional provision which is inserted to ensure that standards under which the accounts of the Territory have been audited in previous years, continue to apply to those years and associated reports on inspections and audits. This is limited to the financial year beginning 1 July 2010 or earlier, as under the amended NI Act, the Commonwealth Auditor-General will conduct audits from the year beginning 1 July 2011.

Item 125 – pre-commencement appropriation

Item 125 is a transitional provision which is inserted to ensure that the issue or expenditure of money prior to the commencement of amendments to section 48 is considered to have been authorised by an appropriation made by an enactment.

Part 4 – Amendments relating to the Administration Appeals Tribunal

Administrative Appeals Tribunal Act 1975

Item 126 – Subsection 3(1)

Item 126 adds a definition of *authority of Norfolk Island* to subsection 3(1).

The authority of Norfolk Island means a body (incorporated or not) established by a Norfolk Island enactment. A *Norfolk Island enactment* is defined for the purposes of the AAT Act in subsection 3(1) (see Item 129).

Item 127 – Subsection 3(1) (paragraph (b) of the definition of *enactment*)

Item 127 amends the definition of *enactment* at paragraph 3(1)(b).

Prior to amendment, the definition extended only to Norfolk Island ordinances, but not to laws passed by the Norfolk Island Legislative Assembly since the passage of the NI Act. In recognition of Norfolk Island as a self-governing Territory, Item 127 excludes Norfolk Island ordinances from the meaning of enactment. *Norfolk Island enactment* is defined separately in subsection 3(1) (see Item 129) and includes ordinances continued in force by the NI Act as well as those made by the Governor-General under the NI Act.

Item 128 – Subsection 3(1) (at the end of the definition of *enactment*)

Item 128 inserts a note at the end of the definition of *enactment* in subsection 3(1) which suggests that the definition should be read in reference to subsection 25(8).

Not all references to enactment within the AAT Act to extend to a Norfolk Island enactment. Therefore the definition of enactment does not include a Norfolk Island enactment. The relationship between enactment and Norfolk Island enactment is articulated at section 25 of the AAT Act as amended by this Act. The note inserted by Item 128 ensures that in reading the definition of enactment for the purposes of the AAT Act, the reader is alerted to the related provisions at subsection 25(8). Subsection 25(8) specifies the circumstances in which the AAT powers and procedures as provided for under the AAT Act will apply to a Norfolk Island enactment in the same manner as it applies to all other enactments (see Item 135).

Item 129 – Subsection 3(1)

Item 129 inserts a definition of *Norfolk Island enactment* into subsection 3(1) of the AAT Act.

Norfolk Island enactment is defined by reference to the NI Act which at section 4 provides:

enactment means:

- (a) a law (however described or entitled) passed by the Legislative Assembly and assented to under this Act;
- (b) an Ordinance made by the Government-General under section 2 or in pursuance of section 69; or
- (c) an Ordinance continued in force by this Act.

Norfolk Island enactment is not included in the definition of enactment under subsection 3(1) of the AAT Act. The relationship between enactment and Norfolk Island enactment and thus the

application of the provisions of the AAT Act is articulated at section 25 of that Act (see Items 132-135).

Item 130 – Subsection 3(1)

Item 130 adds a definition of *Norfolk Island Justice Minister* to subsection 3(1) of the AAT Act.

This definition is necessary to accommodate existing practice of the division of portfolio responsibilities in the Norfolk Island Government. There is no formal title of ‘Justice Minister’ or ‘Attorney-General’ in the Norfolk Island Government. Therefore, the relevant Minister is appropriately identified in this definition by the responsibilities of his or her office, in this case, the administration of Norfolk Island.

Item 131 – Subsection 3(1)

Item 131 adds a definition of *Norfolk Island Minister* to subsection 3(1) of the AAT Act.

This definition is consequential to amendments to the NI Act which provide for the change in title from ‘Executive Members’ to ‘Chief Minister’ and ‘Ministers’ (see Items 8 and 23).

Item 132 – After subsection 25(1)

The AAT will not automatically have jurisdiction to review all decisions under Norfolk Island enactments. Section 25 establishes the authority of the AAT to review certain decisions. Item 132 inserts new subsection 25(2) which provides authority to make regulations which confer jurisdiction to the AAT to review decisions made under a Norfolk Island enactment.

Item 133 – Subsection 25(3)

Subsection 25(3) identifies conditions and qualifications which may be provided under relevant enactments in respect of applications to the AAT for review of decisions. Item 133 clarifies that such conditions may be applied to the review of decisions made in the exercise of Norfolk Island enactments where provision for such review is made under regulations pursuant to subsection 25(2) (see Item 132).

Item 134 – After subsection 25(5)

Item 134 inserts subsection 25(5A). This new subsection applies the principles of existing subsection 25(5) to decisions made under Norfolk Island enactments. Therefore, subsection 25(5A) provides that where, pursuant to subsection 25(2), provision has been made in the regulations for the Tribunal to review decisions made in the exercise of powers conferred by a Norfolk Island enactment, then the failure of the person to make a decision within the period prescribed by that enactment, or another Norfolk Island enactment having effect under that enactment, is taken to have the effect of the decision being made at the conclusion of that prescribed period.

Item 135 – At the end of section 25

Item 135 inserts subsection 25(8) which establishes that where provision has been made in the regulations for the Tribunal to review decisions made in the exercise of powers conferred by a Norfolk Island enactment (as provided for under subsection 25(2)), then the AAT Act applies to that Norfolk Island enactment, and any other Norfolk Island enactment in so far as it relates to that primary enactment, as if it were an enactment within the meaning of the AAT Act.

The effect of subsection 25(8) is that where a Norfolk Island enactment has been specified under the regulations, then the AAT powers and procedures as provided for under the AAT Act will apply to that Norfolk Island enactment in the same manner as it applies to all other enactments as defined at subsection 3(1) of that Act. The intention is to ensure the application of key provisions of the AAT Act to Norfolk Island enactments, including sections 27, 27A, 43, 66 and 66A.

The extension of the application of the AAT Act to Norfolk Island enactments is to ensure the availability of a high quality, independent merits review for a range of administrative decisions under Norfolk Island enactments (as provided under regulations) where review is presently not available, or only available through the courts.

The amendment at subsection 25(8) recognises that it is not appropriate for all references to enactment in the AAT Act to include both Commonwealth and Norfolk Island enactments. The amendment clarifies this by specifying a number of provisions in the AAT Act to which subsection 25(8) does not apply and therefore in such provisions, the term enactment will not include a Norfolk Island enactment.

Item 136 – Paragraph 26(1)(a)

Subsection 26(1) restricts the ability for a decision to be altered once an application has been made to the Tribunal for the review of that decision. Paragraph 26(1)(a) provides an exception to the general prohibition on the alteration of such a decision in the event that the enactment that authorised the making of the decision, also expressly permits that decision to be altered. Item 136 inserts text into paragraph 26(1)(a) which clarifies that the paragraph does not apply to decisions authorised by regulations made for the purposes of subsection 25(2). That is, the paragraph does not apply to those decisions made in the exercise of powers provided under Norfolk Island enactment as provided for under the regulations.

Item 137 – After paragraph 26(1)(a)

Subsection 26(1) restricts the ability for a decision to be altered once an application has been made to the Tribunal for the review of that decision. Item 137 inserts new paragraph 26(1)(aa), which provides an exception to the general prohibition on the alteration of a decision. The exception applies in relation to decisions made in the exercise of powers under Norfolk Island enactment as provided for under the regulations pursuant to subsection 25(2). In such cases, the decision may be altered after an application for review of the decision has been made to the tribunal where the Norfolk Island enactment under which the decision was made expressly permits that decision to be altered. This paragraph complements the exception under existing paragraph 26(1)(a), by extending the exception to decisions made under Norfolk Island enactments.

Item 138 – Subsection 27(1)

Section 27 identifies the person or persons who have standing to make an application to the AAT under the AAT Act for the review of a decision. Subsection 27(1) specifies that the Commonwealth, or an authority of the Commonwealth, may make such an application if its interests are affected by the decision. Item 138 amends subsection 27(1) to provide that in addition to the Commonwealth, Norfolk Island, or an authority of Norfolk Island, has standing to make an application to the Tribunal for review of a decision where its interests are affected. The inclusion of this provision is necessary in light of the extension of the jurisdiction of the Tribunal to review decisions made under powers conferred by Norfolk Island enactments, where it is provided for under regulations.

Item 139 – At the end of subsection 27(1)

Item 139 inserts a note at the end of subsection 27(1). This note is inserted to clarify the operation of subsection 27(1) to decisions made under a Norfolk Island enactment. Pursuant to subsection 25(8), (Item 135), the use of enactment in subsection 27(1) does not include a Norfolk Island enactment. Subsection 27(1) however does apply where ‘any other enactment... provides that an application may be made to the Tribunal for a review of a decision’. The note inserted at Item 139 makes clear that while the term enactment in this context does not include a Norfolk Island enactment, it does include regulations made under subsection 25(2) of the AAT Act for review of decisions made in the exercise of powers conferred by a Norfolk Island enactment.

Item 140 – Paragraph 27A(2)(a)

Section 27A establishes the obligation on a person making a reviewable decision to take reasonable steps to notify the person or persons whose interests are affected by that decision. Subsection 27A(2) exempts from that obligation those decisions which are deemed to have been made under subsection 25(5), that is, where the decision maker has failed to act within the period of time prescribed under the relevant enactment. Item 134 inserts new subsection 25(5A) in the AAT Act which similarly provides that a decision is deemed to be made in respect of failure to act within a prescribed time period provided in a relevant Norfolk Island enactment. In the same way then, Item 140 inserts a reference to subsection 25(5A) into subsection 27A(2) to exempt decisions deemed to have been made by the operation of subsection 25(5A) from the obligation to provide notice under section 27A.

Item 141 – Paragraph 29(1)(d)

Section 29 provides for the manner in which an application for review of a decision shall be made to the AAT. Paragraph 29(1)(d) requires the application to be lodged with the Tribunal within the prescribed time where the terms of the decision are recorded in writing and provided to the applicant, or where the decision is deemed to have been made by reason of the operation of subsection 25(5).

Item 141 amends 29(1)(d) to extend the application of the provision to also require an application to be lodged with the Tribunal within the prescribed time where the decision is deemed to have been made by operation of subsection 25(5A). Subsection 25(5A) (Item 134) provides that a decision is deemed to be made in respect of failure to act within a prescribed time period provided in a relevant Norfolk Island enactment.

Item 142 – Subsection 29(3)

Subsection 29(3) stipulates the ‘prescribed time’ for an application for review to the AAT for the purposes of paragraph 29(1)(d) where the decision has been deemed to have been made by operation of 25(5). Item 142 inserts wording to provide that subsection 29(3) also applies to a decision which has been deemed to be made by operation of subsection 25(5A). Subsection 25(5A) (Item 134) provides that a decision is deemed to be made in respect of failure to act within a prescribed time period provided in a relevant Norfolk Island enactment.

Item 143 – At the end of section 36B

Section 36B provides that where disclosure of a matter would be contrary to the public interest, the State Attorney-General may issue a public interest certificate. To extend the operation of this provision to Norfolk Island, Item 143 inserts definitions of *Attorney-General*, *Cabinet*, and *State* to

be applied, for the purposes of section 36B, to the specific circumstances of Norfolk Island. Item 143 inserts a definition of State which includes Norfolk Island. Additionally, the amendments recognise that the Norfolk Island Government does not currently have a Minister with the title of ‘Attorney-General’ and inserts a definition of Attorney-General for the purposes of Norfolk Island which describes the role by reference to the responsibilities of his or her office, being the Norfolk Island Justice Minister (defined at Item 130). The inclusion of this definition ensures that the relevant Minister of the Norfolk Island Government is authorised to issue certificates under section 36B in the same manner as a State Attorney-General.

Item 143 further inserts a definition of *Cabinet* for the purposes of Norfolk Island. The definition is defined in practical terms being a body that consists of Norfolk Island Ministers and corresponds to the Cabinet. The intention of this amendment is to provide that, where a body of Norfolk Island Ministers meets in a manner that accords with a Commonwealth or State Cabinet equivalent, then they are afforded the same protection in respect of the AAT Act. This means that the disclosure of deliberations or decisions of Cabinet or of a committee of Cabinet in paragraph 36B(1)(a), includes deliberations or decisions of the Norfolk Island Cabinet equivalent.

Item 144 – At the end of section 36C

Section 36C provides a State Attorney-General with the authority to intervene in Tribunal proceedings on public interest grounds. Item 144 inserts the definitions of *Attorney-General* and *State* for the purposes of this section and to be applied to the specific circumstances of Norfolk Island.

Item 144 inserts a definition of State which includes Norfolk Island. Additionally, the amendments recognise that the Norfolk Island Government does not currently have a Minister with the title of ‘Attorney-General’ and inserts a definition of Attorney-General for the purposes of Norfolk Island which describes the role by reference to the responsibilities of his or her office, being the Norfolk Island Justice Minister (defined at Item 130). The inclusion of this definition ensures that the relevant Minister of the Norfolk Island Government has the same authority as a State Attorney-General under section 36C to intervene on public interest grounds.

Item 145 – At the end of section 36D

Section 36D sets out the procedure for the Tribunal’s determination of disclosure under section 36, subsection 36B(3), and paragraphs 36A(2)(b) and 36C(2)(b). This includes setting out the manner in which the Attorney-General of the Commonwealth or a State may appear, or be represented, at a Tribunal in order to inform the Tribunal of his or her opinion under sections 36A or 36C (paragraph 36D(7)(a)). Alternatively, the Attorney-General (Commonwealth or State) may inform the Tribunal of his or her opinion through provision of a written certificate (paragraph 36D(7)(b)).

Item 145 inserts a definition of *State* which includes Norfolk Island. Additionally, the amendments recognise that the Norfolk Island Government does not currently have a Minister with the title of ‘Attorney-General’ and inserts a definition of *Attorney-General* for the purposes of Norfolk Island which describes the role by reference to the responsibilities of his or her office, being the Norfolk Island Justice Minister (defined at Item 130). The definitions are intended to ensure that the relevant Minister of the Norfolk Island Government is afforded the same rights and responsibilities under this provision as a State Attorney-General.

Item 146 – At the end of subsection 43B(1)

Item 146 inserts a note at the end of subsection 43B(1). This note is inserted to clarify the intended application of subsection 43B(1) to decisions made under a Norfolk Island enactment. Pursuant to subsection 25(8), as inserted at Item 135, the use of ‘enactment’ in subsection 43B(1) does not include a Norfolk Island enactment. Subsection 43B(1) provides that Part IVA of the AAT Act applies to proceedings before the AAT under power conferred on it by or under ‘an enactment’ (paragraph 43B(1)(a)). The note inserted at Item 146 makes clear that while the term enactment in this context does not include a Norfolk Island enactment, it does include regulations made under subsection 25(2) of the AAT Act for review of decisions made in the exercise of powers conferred by a Norfolk Island enactment.

Item 147 – Section 59

Item 147 inserts ‘(1)’ at the start of section 59, to facilitate the insertion of subsection 59(2) under Item 148.

Item 148 – At the end of section 59

Item 148 inserts new subsection 59(2) which enables the making of regulations to enable the AAT to give an advisory opinion on a matter or questions arising under a Norfolk Island enactment where so referred. This provision extends the application of subsection 59(1) (previously section 59) to Norfolk Island enactments, where specifically provided for under regulations.

Item 149 – Subsection 66(4)

Section 66 provides protection against the disclosure of confidential information under specified circumstances, including where the giving of evidence (paragraph 66(1)(a)) or the production of the document (paragraph 66(2)(a)) would be contrary to an order of the Tribunal in force, under subsection 35(2), or under a similar provision of an enactment other than this Act. Item 149 inserts an inclusive definition of *enactment* for the purposes of this section, which includes a *Norfolk Island enactment*.

Subsection 25(8) specifically provides that enactment will include a Norfolk Island enactment under which reviewable decision may be made where the regulations so provide. It does not however, extend this to include other Norfolk Island enactments which have not been prescribed under regulations. The definition of enactment for the purposes of section 66 is expanded to include all Norfolk Island enactments and is therefore not contingent on the making of regulations.

Item 150 – Subsection 66A

Item 150 inserts ‘(1)’ at the start of section 66A, to facilitate the insertion of subsection 66A(2) under Item 151.

Item 151 – At the end of section 66A

Section 66A outlines the application of confidentiality provisions in Acts other than this Act. Item 149 inserts an inclusive definition of *enactment* for the purposes of this section, which includes a *Norfolk Island enactment*, as defined at Item 129. This means that the reference to a provision ‘of an enactment (other than this Act)’ which prohibits disclosure, includes a Norfolk Island enactment.

Subsection 25(8) specifically provides that enactment will include a Norfolk Island enactment under which reviewable decision may be made where the regulations so provide. It does not however, extend this to include other Norfolk Island enactments which have not been prescribed

under regulations. The definition of enactment for the purposes of section 66A is expanded to include all Norfolk Island enactments and is therefore not contingent on the making of regulations.

Item 152 – Section 67A

Item 152 inserts ‘(1)’ at the start of section 67A, to facilitate the insertion of subsection 67A(2) under Item 154 .

Item 153 – Section 67A

Section 67A provides guidance about who may be given a notice required or permitted under the AAT Act be given to ‘a person who made a decision’. Item 153 inserts ‘(other than a decision under a Norfolk Island enactment)’ after ‘a decision’ in the newly numbered subsection 67A(1) (see Item 152). The amendment is intended to make it clear that subsection 67A(1) does not apply to decisions made under a Norfolk Island enactment. The giving of notices in relation to decisions made under a Norfolk Island enactment are dealt with through the insertion of an additional subsection 67A(2) at Item 154.

Item 154 – At the end of section 67A

Section 67A provides guidance about who may be given a notice required or permitted under the AAT Act be given to ‘a person who made a decision’. Item 154 inserts subsection 67A(2) which provides that in relation to decisions made under a Norfolk Island enactment, such notices may be given to the Chief Executive Officer. The Chief Executive Officer is defined under the *Public Sector Management Act 2000* of Norfolk Island as ‘a person appointed as Chief Executive Officer under section 38’ of that Act.

In view of the relatively small size of the Norfolk Island public sector, stipulating the Chief Executive Officer as the person to receive notices under section 67A ensures greater efficiency in the application of the section to Norfolk Island. Where appropriate, it will be possible for the Chief Executive Officer to delegate his or her powers and responsibilities to another officer, or officers, of the Norfolk Island public service.

Part 5 – Amendments relating to freedom of information

Freedom of Information Act 1982

Item 155 – Subsection 3(1)

Section 3 of the FOI Act sets out the objectives of that Act, including to ‘extend as far as possible the right of the Australian community to access to information in the possession of the Government of the Commonwealth...’. Item 155 extends this primary objective to also include community access to information in the possession of the Government of Norfolk Island, by inserting the words ‘or the Government of Norfolk Island’ into the provision.

The amendment reflects the overall objective of this Part of the amending Bill, which is to ensure that the residents of Norfolk Island have a right of access to the same information held by Norfolk Island Government agencies as do all Australians in respect of Commonwealth information.

Item 156 – Subsection 4(1) (definition of *agency*)

Item 156 amends the definition of *agency* in section 4(1) of the FOI Act to include ‘a Norfolk Island authority’. This amendment is supplemented by Item 162 of the Bill which inserts a new definition of *Norfolk Island authority* into the FOI Act.

Item 157 – Subsection 4(1)

Item 157 inserts an inclusive definition of *Australia* in section 4(1) of the FOI Act which clarifies that when used in a geographical sense, the term includes Norfolk Island.

Item 158 – Subsection 4(1) (definition of *Cabinet*)

Item 158 repeals the definition of *Cabinet* in section 4(1) of the FOI Act, and inserts a new definition of Cabinet in relation to Norfolk Island.

The amendment recognises the Norfolk Island Government structure which does not have a ‘Cabinet’, and therefore in relation to Norfolk Island Cabinet is defined in practical terms as being a body that consists of Norfolk Island Ministers and corresponds to the Cabinet. The intention of this amendment is to provide that where a body of Norfolk Island Ministers meets in a manner that accords with a Commonwealth or State Cabinet equivalent, then they are afforded the same rights, responsibilities and protection in respect of the FOI Act.

Item 159 – Subsection 4(1) (paragraph (a) of the definition of *Commonwealth contract*)

Item 159 amends the definition of *Commonwealth contract* in section 4(1) of the FOI Act to extend the references to Commonwealth contracts to include contracts to which the Norfolk Island Government (or authority) is a party.

Item 160 – Subsection 4(1) (subparagraph (b)(iii) of the definition of *Commonwealth contract*)

Item 160 amends the definition of *Commonwealth contract* in section 4(1) of the FOI Act to extend the references under the Act to Commonwealth contracts to also include contracts to which the Norfolk Island Government (or authority) is a party.

Item 161 – Subsection 4(1)

Item 161 inserts a definition of *Minister* in section 4(1) of the FOI Act which clarifies that a reference to ‘Minister’ in that Act includes a Norfolk Island Minister. A new definition of *Norfolk Island Minister* is inserted in the FOI Act under Item 164.

Item 162 – Subsection 4(1)

Item 162 inserts a definition of *Norfolk Island authority* in subsection 4(1) of the FOI Act.

The amendment supplements the definition of *agency*, as amended by Item 156, to include a Norfolk Island authority. The amendment is intended to facilitate the extension of the application of the FOI Act to the Norfolk Island Public Sector (which includes the Norfolk Island Public Service and Territory instrumentalities), bodies established and persons appointed under Norfolk Island enactments for public purposes and bodies and persons holding or performing the duties of an appointment by the Administrator or a Norfolk Island Minister.

Item 163 – Subsection 4(1)

Item 163 inserts a definition of *Norfolk Island enactment* in subsection 4(1) of the FOI Act.

Norfolk Island enactment is defined by reference to the NI Act which at section 4 provides:

enactment means:

- (a) a law (however described or entitled) passed by the Legislative Assembly and assented to under this Act;
- (b) an Ordinance made by the Government-General under section 2 or in pursuance of section 69; or
- (c) an Ordinance continued in force by this Act.

The definition also extends to ‘an instrument (including rules, regulations or by-laws) made under such an enactment’. To avoid doubt, this definition also includes a Norfolk Island enactment as amended by another Norfolk Island enactment.

Item 164 – Subsection 4(1)

Item 164 inserts a new definition of *Norfolk Island Minister* in subsection 4(1) of the FOI Act.

This reflects the change in title of ‘Executive Members’ to ‘Chief Minister’ and ‘Ministers’ in the NI Act (see Items 8 and 23). Item 164 supplements the definition of a *Norfolk Island authority*, as amended by Item 162 to include a Norfolk Island Minister. The term is also inserted into the definition of Minister by Item 161. The amendments are intended to facilitate the extension of the application of the FOI Act to Norfolk Island Ministers, where existing application had been limited to Commonwealth Ministers.

Item 165 – Subsection 4(1) (at the end of the definition of *principal officer*)

Item 165 inserts at the end of the definition of *principal officer* in subsection 4(1) of the FOI Act an additional criterion which recognises the structure of the Norfolk Island Government and Administration. Item 165 provides that in relation to Norfolk Island, the principal officer is the person holding, or performing the duties of, the office of Chief Executive Officer. The *Chief Executive Officer* is defined under the *Public Sector Management Act 2000* of Norfolk Island as ‘a person appointed as Chief Executive Officer under section 38’ of that Act.

A principal officer is afforded a range of responsibilities under the Act, some of which may be delegated to other officers (for example, section 23 provides for delegation of the decision-making

power in relation to a request to an agency). In view of the relatively small size of the Norfolk Island public sector, the Chief Executive Officer of Norfolk Island is defined as the principal officer for the purposes of the Act to enable efficiency in operation of the Act on Norfolk Island.

Item 166 – Subsection 4(1) (at the end of paragraph (d) of the definition of *responsible Minister*)

Subsection 4(1) of the FOI Act sets out the definitions of a number of terms used in the Act. Item 166 amends 4(1) by inserting ‘or’ at the end of paragraph (d) of the definition of *responsible Minister*. This amendment facilitates the insertion of an additional paragraph to this definition under Item 167.

Item 167 – Subsection 4(1) (after paragraph (d) of the definition of *responsible Minister*)

Item 167 amends the definition of *responsible Minister* in subsection 4(1) of the FOI Act by inserting a new paragraph (e).

The amendment provides that in relation to Norfolk Island, the term responsible Minister means the Chief Minister. The Chief Minister position is a statutory position under the NI Act.

The responsible Minister is afforded a range of responsibilities under the FOI Act some of which may be delegated to other officers (for example, section 23 provides for delegation of the decision-making power in relation to a request to an agency). In view of the relatively small size of the Norfolk Island public sector, the Norfolk Island Chief Minister is determined to be the responsible Minister for the purposes of the FOI Act to enable its efficient operation.

Item 168 – After subsection 4(3)

Item 168 amends the FOI Act by inserting new subsections 4(3A) and 4(3B).

Subsection 4(3A) provides that unincorporated bodies of the sort described in subsection 4(2), established by or in accordance with a Norfolk Island enactment for the purpose of assisting or performing functions connected with a Norfolk Island authority shall be considered under the FOI Act to be part of that Norfolk Island authority, and not a separate Norfolk Island authority itself. The provision ensures that boards, councils and other bodies established under Norfolk Island enactments to assist in performance of the functions of a Norfolk Island authority, will not themselves be regarded as a Norfolk Island authority (or agency) for the purposes of the FOI Act. A similar limitation exists at subsection 4(2) for Commonwealth equivalents.

New paragraph 4(3B)(a) provides that a person shall not be taken to be a Norfolk Island authority because he or she holds a specified office listed in sub-paragraphs 4(3B)(i) to (iv) inclusive.

New paragraph 4(3B)(b) provides that a person shall not be taken to be a Norfolk Island authority because he or she holds, or performs the duties of: a prescribed office; an office of a member of a Norfolk Island authority; an office established by a Norfolk Island enactment for the purposes of a Norfolk Island authority; or an office the duties of which are performed as duties of employment as an officer of a Norfolk Island authority. The provision ensures the individuals are not themselves regarded as a Norfolk Island authority (or agency) for the purposes of the FOI Act. A similar limitation exists at paragraph 4(3)(b) for Commonwealth equivalents.

Item 169 – After section 4A

Item 169 inserts new section 43B into the FOI Act. Section 43B explicitly confirms that the FOI Act extends to Norfolk Island. This ensures that the Act applies to Norfolk Island by complying with section 18 of the NI Act which provides that a Commonwealth Act ‘is not, except as otherwise provided by that Act or by any other Act, in force as such in the [Norfolk Island] Territory, unless expressed to extend to the Territory’.

Item 170 – Section 5

Item 170 inserts numbering of subsection 5(1) into section 5 to enable the insertion of subsection 5(2) under Item 175.

Item 171 – Paragraph 5(a)

Section 5 of the FOI Act provides that the Act applies to courts in respect of administrative matters. Item 171 clarifies that the reference to ‘a court’ at paragraph 5(1)(a) does not include a court of Norfolk Island. By explicitly excluding the Norfolk Island court from the operation of subsection 5(1), the amendment ensures that there is no overlap between the scope of the operation of this provision and the new subsection 5(2) (inserted at Item 175). New subsection 5(2) specifies the application of the FOI Act to Norfolk Island Courts.

Item 172 – Paragraph 5(b)

Section 5 of the FOI Act provides that the Act applies to courts in respect of administrative matters. Item 172 clarifies that the reference to ‘judicial office’ at paragraph 5(1)(b) does not include a judicial office in the court of Norfolk Island. By explicitly excluding the Norfolk Island court from the operation of subsection 5(1), the amendment ensures that there is no overlap between the scope of the operation of this provision and the new subsection 5(2) (inserted at Item 175). New subsection 5(2) specifies the application of the FOI Act to Norfolk Island Courts.

Item 173 – Paragraph 5(b)

Section 5 of the FOI Act provides that the Act applies to courts in respect of administrative matters. Item 173 clarifies that the reference to ‘a court’ at paragraph 5(1)(b) does not include a court of Norfolk Island. By explicitly excluding the Norfolk Island court from the operation of subsection 5(1), the amendment ensures that there is no overlap between the scope of the operation of this provision and the new subsection 5(2) (inserted at Item 175). New subsection 5(2) specifies the application of the FOI Act to Norfolk Island Courts.

Item 174 – Paragraph 5(c)

Section 5 of the FOI Act provides that the Act applies to courts in respect of administrative matters. Item 174 clarifies that the reference to ‘a court’ at paragraph 5(1)(c) does not include a court of Norfolk Island. By explicitly excluding the Norfolk Island court from the operation of subsection 5(1), the amendment ensures that there is no overlap between the scope of the operation of this provision and the new subsection 5(2) (inserted at Item 175). New subsection 5(2) specifies the application of the FOI Act to Norfolk Island Courts.

Item 175 – At the end of section 5

Item 175 inserts new subsection 5(2) which specifically provides that for the purposes of the FOI Act, a Norfolk Island Court is a Norfolk Island authority. Obligations under the FOI Act apply to Norfolk Island Courts as a result of this designation only to the extent that a request for access to a

document of the Norfolk Island Court relates to an administrative matter. Under new paragraph 5(2)(d) these obligations extend to a registry or other office of the court and the staff of such an office when acting in the capacity of a staff member of that office.

The scope of the application of subsection 5(2) is limited by new paragraphs 5(2)(b) and (c) which exclude from the definition of a Norfolk Island authority a person holding judicial office in a Norfolk Island Court (when acting in his or her capacity as the holder of that office), and the holder of an office, established by a Norfolk Island enactment, and relating to the court (when acting in his or her capacity as holder of that office). Such persons are neither a Norfolk Island authority, nor included in the Norfolk Island authority for the purposes of the FOI Act.

This amendment ensures that documents relating to administrative matters that are held by courts fall within the scope of the FOI Act, but that judicial officers, or officers of the court are not themselves regarded as a Norfolk Island authority for the purposes of that Act. A similar limitation exists at subsection 5(1) for Commonwealth equivalents.

Item 176 – Paragraph 8(2)(d)

Section 8 of the FOI Act relates to the publication of information concerning functions and documents of agencies (which under subsection 4(1) is defined to include a Norfolk Island authority). In particular, subsection 8(2) requires an agency publish specified information. Item 176 repeals and substitutes paragraph 8(2)(d). The amendment includes a reference to the legislative arrangements for the appointment of officers to Norfolk Island authorities, in addition to the existing requirements regarding the appointment of Commonwealth agency employees. As amended, paragraph 8(2)(d) requires the publication of details of appointments of officers to agencies that are made other than under the *Public Service Act 1999* (Cth), or the *Public Sector Management Act 2000* (Norfolk Island).

Item 177 – At the end of paragraph 8(2)(e)

Section 8 of the FOI Act relates to the publication of information concerning functions and documents of agencies (which under subsection 4(1) is defined to include a Norfolk Island authority). Paragraph 8(2)(e) requires the publication of annual reports prepared by agencies that are laid before Parliament. Item 177 amends paragraph 8(2)(e) by inserting ‘or the Legislative Assembly of Norfolk Island’, to extend this provision to also require the publication of agency annual reports which are laid before the Legislative Assembly of Norfolk Island.

Item 178 – At the end of paragraph 8(2)(h)

Section 8 of the FOI Act relates to the publication of information concerning functions and documents of agencies (which under subsection 4(1) is defined to include a Norfolk Island authority). Paragraph 8(2)(h) requires the publication of information held by an agency that is routinely provided to Parliament in response to requests and orders from Parliament. To ensure that this provision applies to relevant information provided to the Norfolk Island equivalent, Item 178 amends paragraph 8(2)(h) by inserting ‘or the Legislative Assembly of Norfolk Island’.

Item 179 – At the end of paragraph 8(2)(h)

Section 8 of the FOI Act relates to the publication of information concerning functions and documents of agencies (which under subsection 4(1) is defined to include a Norfolk Island authority). Paragraph 8(2)(h) requires the publication of information held by an agency that is routinely provided to Parliament in response to requests and orders from Parliament. To ensure that

this provision applies to relevant information provided to the Norfolk Island equivalent, Item 179 inserts ‘or the Legislative Assembly of Norfolk Island, as the case may be’.

Item 180 – At the end of section 8 (before the notes)

Section 8 of the FOI Act relates to the publication of information concerning functions and documents of agencies (which under subsection 4(1) is defined to include a Norfolk Island authority). Item 180 amends section 8 to ensure that the provision applies to Norfolk Island, by inserting a definition of *enactment* which explicitly includes a Norfolk Island enactment, for the purposes of section 8.

Item 181 – At the end of section 8C

Section 8C of the FOI Act limits an agency’s (which under subsection 4(1) is defined to include a Norfolk Island authority) obligations under section 8 to publish specified information. These limitations include exempt matter, and information the publication of which is restricted or prohibited under an enactment. To ensure that restrictions and prohibitions under Norfolk Island enactments are recognised under this provision, Item 181 inserts a definition of *enactment* which explicitly includes a Norfolk Island enactment for the purposes of section 8C.

Item 182 – At the end of Part II

Part II of the FOI Act establishes an information publication scheme. Item 182 inserts new section 10B into Part II which provides transitional arrangements for the application of the Part II to Norfolk Island. Section 10B defers the application of Part II of the FOI Act on Norfolk Island authorities until 2 years after the commencement of this section. This is intended to ensure that Norfolk Island authorities have sufficient time to make the necessary arrangements to ensure that they can satisfy the obligations under this Part.

Item 183 – After paragraph 11B(4)(a)

Section 11B of the FOI Act provides assistance in determining whether a conditionally exempt document would be contrary to the public interest for the purposes of subsection 11A(5). In particular, subsection 11B(4) specifies factors which must not be taken into account in making a determination of the public interest. Item 183 amends subsection 11B(4) by inserting paragraph 11B(4)(aa). The amendment provides that a determination of public interest must not include consideration of whether the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island. An equivalent provision in respect of the Commonwealth Government exists at paragraph 11B(4)(a).

Item 184 – Section 12

Item 184 amends section 12 by inserting numbering which facilitates the insertion of a new subsection 12(2) under Item 185.

Item 185 – At the end of section 12

Section 12 of the FOI Act excludes specified documents from the application of the right of access under Part III of that Act. Item 185 inserts a new subsection 12(2) which provides that in relation to Norfolk Island documents or official documents of a Norfolk Island Minister, the FOI Act only applies to documents, or a part of a document, that became a document of a Norfolk Island

authority or an official document of a Norfolk Island Minister for a period of 5 years before the date of commencement of the relevant parts of the Bill.

The amendment is based on the previous subsection 12(2) of the FOI Act, which was repealed by Schedule 4 of the FOI Reform Bill 2009 as its operation was spent. The amendment is intended to extend to Norfolk Island the same transitional arrangements that were afforded to the Commonwealth at the time that the FOI Act commenced. On this basis, the new subsection 12(2) also retains the same qualifications that applied to the previous subsection 12(2).

Item 185 also inserts a new subsection 12(3) which provides that for the purposes for section 12, *enactment* explicitly includes a Norfolk Island enactment.

Item 186 – Subsection 15(6)

Section 15 of the FOI Act sets out the process for making a request to an agency or Minister for access to documents. Generally, under paragraph 15(5)(b) the agency or Minister has a period of 30 days to notify the applicant of the outcome of such a request. Subsection 15(6) provides that this time period may be extended as a result of the requirements of sections 26A, 27 or 27A.

Item 186 amends subsection 15(6) by inserting a reference to section ‘26AA’. Section 26AA as inserted by Item 192 requires that consultation take place in respect of a request to access documents affecting Norfolk Island intergovernmental relations. The amendment to subsection 15(6) enables the Minister to extend the response period on an access request by a further 30 days to enable consultations required under section 26AA to take place.

Item 187 – Paragraph 20(3)(c)

Section 20 of the FOI Act specifies the allowable forms of access to documents under that Act. Under this section the document should be made available to the applicant in the form requested, however, this may be refused if providing access in that particular form would result in one of the exceptions specified at subsection 20(3). For example, paragraph 20(3)(c) provides that access in the form requested by the applicant may be refused and access given in another form, where provision in the requested form would involve an infringement of copyright, subsisting in matter contained in the document that does not relate to the affairs of an agency, or of a Department of State. This exception does not apply to copyright owned by the Commonwealth, an agency or a State. Item 187 amends paragraph 20(3) by substituting ‘Norfolk Island or a State’ in place of ‘or a State’. This amendment means that the exception provided in paragraph 20(3)(c) does not apply to copyright owned by Norfolk Island.

Item 188 – At the end of paragraphs 21(1)(a) and (b)

Item 188 amends subsection 21(1) of the FOI Act by inserting ‘or’ at the end of paragraphs 21(1)(a) and (b). This is not intended to affect the meaning of this provision, but rather ensures consistency of drafting style throughout that Act.

Item 189 – At the end of subsection 21(1)

Section 21 of the FOI Act allows either the agency or Minister to defer access to documents under specified circumstances. For example, paragraph 21(1)(d) provides for deferral if a Minister considers the document is of such general public interest that the Parliament should be informed of the contents of the document before it is made public. Item 189 inserts a new paragraph 21(1)(e) which provides the same exception to requests to access documents received by a Norfolk Island

Minister or Norfolk Island authority. Paragraph 12(1)(e) explicitly provides that access to such a document may be deferred until after 5 sitting days of the Legislative Assembly of Norfolk Island, where a Norfolk Island Minister considers that the document is of such general public interest that the Legislative Assembly of Norfolk Island should be informed about the contents of the document before the document is otherwise made public.

Item 190 – Subparagraph 26A(1)(c)(i)

Section 26A requires consultation in respect of documents affecting Commonwealth-State relations. Item 190 inserts ‘etc’ after the bracketed reference to ‘Commonwealth-State relations’ at paragraph 26A(1)(c)(i). This amendment is intended to reflect that the reference also includes other forms of ‘relations’ dealt with under section 26A. Thus the reference is intended to also refer to relations between the Commonwealth and Norfolk Island, or Norfolk Island and a State.

Item 191 – At the end of section 26A

Section 26A requires consultation in respect of documents subject to access requests under the FOI Act and which affect Commonwealth-State relations. To enable the application of this provision to be extended to documents affecting Norfolk Island relations with the Commonwealth and with States, Item 191 inserts a new subsection 26A(6) which provides that for the purposes of section 26A, the term *State* includes Norfolk Island.

The heading to section 26A is also amended to add ‘etc’ at the end. This amendment reflects the application of section 26A to not only Commonwealth-State relations, but also other forms of ‘relations’, including relations between the Commonwealth and Norfolk Island, or Norfolk Island and a State.

Item 192 – After section 26A

Item 192 inserts new section 26AA into the FOI Act. Section 26AA sets out the consultation requirements for requests to access documents affecting Norfolk Island intergovernmental relations. The provision is drafted to reflect existing obligations in section 26A arising from requests made to an agency or Commonwealth Minister in respect of documents affecting intergovernmental relations. Section 26AA applies these same obligations to requests made of a Norfolk Island authority or Minister of Norfolk Island.

Section 26AA applies where:

- (a) arrangements about consultations have been entered into under the section between Norfolk Island and the Commonwealth, or Norfolk Island and a State
- (b) a request is made to a Norfolk Island Minister or authority in relation to a document that originated or was received from the Commonwealth or a State, or a document that contains information that originated from the same, and
- (c) a Minister of Norfolk Island or a Norfolk Island authority considers that the Commonwealth or State may reasonably contend that such a document is conditionally exempt under section 47B (i.e. intergovernmental relations) and access would be contrary to the public interest pursuant to section 11A(5).

Where such circumstances exist, section 26AA requires that:

- (a) access not be granted until consultation with the relevant body (Commonwealth or State) takes place
- (b) where, following consultation a decision is taken to grant access, then written notice of that decision must be given to the Commonwealth or State, and
- (c) access must not be given until the Commonwealth or State has had an opportunity to appeal the decision.

Item 193 – At the end of section 38

Section 38 of the FOI Act provides the criteria for exempting documents to which secrecy enactments apply. Item 193 inserts new subsection 38(4) which provides that for the purposes of the section reference to *enactment* includes a Norfolk Island enactment.

The amendment extends the same protection provided to documents subject to Commonwealth secrecy provisions to secrecy provisions contained in Norfolk Island enactments.

Item 194 – Subsection 45(1)

Section 45 of the FOI Act exempts documents which if disclosed, would found an action for a breach of confidence. The exemption does not extend to such documents where the action would be by an agency or the Commonwealth. Item 194 amends subsection 45(1) to extend this limitation to also exclude actions by Norfolk Island.

Item 195 – Subsection 45(2)

Section 45 of the FOI Act exempts documents which if disclosed, would found an action for a breach of confidence. Subsection 45(2) limits the operation of the section by providing that in specified circumstances, documents are not exempt documents if they relate to the deliberative process (see section 47C). Item 195 amends section 45 by inserting a reference to also include documents prepared by a Norfolk Island authority.

Item 196 – Paragraph 45(2)(b)

Section 45 of the FOI Act exempts documents which if disclosed, would found an action for a breach of confidence. Item 196 amends paragraph 45(2)(b) to extend the reference to the Commonwealth to also include Norfolk Island.

Item 197 – Subsection 47(3)

Section 47 of the FOI Act provides the criteria for determining whether a document is an exempt document because its disclosure under that Act would disclose trade secrets or commercially valuable information. Item 197 amends subsection 47(3) by inserting ‘Norfolk Island’ after the reference to the Commonwealth. This is intended to expand the application of the provision so that it applies to Norfolk Island to the same extent as its existing application to the Commonwealth. This ensures that undertakings made by, or on the authority of, Norfolk Island have the same effect under this section as undertakings by, or on the authority of, the Commonwealth.

Item 198 – Subsection 47A(1) (at the end of the definition of *electoral roll*)

Section 47A of the FOI Act provides exceptions from the operation of that Act for electoral rolls and related documents. Item 198 inserts new paragraphs 47A(1)(c) and (d), which extends the application of the exemption provision to the Norfolk Island electoral roll. The amendment does this by extending the definition of *electoral roll* to provide for electoral rolls, or any part thereof, prepared under the *Legislative Assembly Act 1979* of Norfolk Island.

Item 199 – At the end of section 47B (before note)

Section 47B of the FOI Act establishes a public interest conditional exemption in respect of documents related to Commonwealth-State relations. Item 199 expands the application of this provision to documents the disclosure of which would cause, or could reasonably be expected to cause damage to relations between Norfolk Island and the Commonwealth (paragraph 47B(1)(c)), or Norfolk Island and a State or Territory (paragraph 47B(1)(e)).

Item 199 also extends the application of section 47B to information communicated in confidence by the Norfolk Island Government (or authority) to the Commonwealth Government (or authority) (paragraph 47B(1)(d)). Additionally, paragraph 47B(1)(f) extends protection to confidential communication from a State Government (or authority) to the Norfolk Island Government (or authority).

The new paragraphs extend to Norfolk Island comparable conditional exemption provisions to those applied to the Commonwealth. Section 47B notes that in relation to all conditionally exempt documents, access must generally be granted unless it would be contrary to the public interest to do so.

Item 200 - Subsection 47C(1)

Section 47C of the FOI Act establishes conditional exemptions for documents related to the deliberative process. Item 200 amends the section to extend the application of this provision to deliberative processes involved in the functions of an agency (which by virtue of subsection 4(1) includes a Norfolk Island authority) or the Norfolk Island Government. This provision recognises that in some circumstances it may not be contrary to the public interest to provide access to such material.

Item 201 – Section 47D

Section 47D of the FOI Act establishes conditional exemptions for a document if its disclosure would have an adverse effect on financial or property interests of the Commonwealth or an agency (which by virtue of subsection 4(1) includes a Norfolk Island authority). Item 201 extends the operation of section 47D to protect the financial or property interests of the Norfolk Island Government. Under the Acts Interpretation Act, references to the ‘Commonwealth’ in a geographic sense include external Territories; the explicit inclusion of the words ‘Norfolk Island’ through the amendment to this provision make this interpretation free from doubt.

The heading of section 47D is also amended to reflect the inclusion of Norfolk Island into the operation of this provision.

Item 202 – Paragraph 47E(c)

Section 47E of the FOI Act provides conditional exemptions for a document if its disclosure would have an adverse effect on certain operations of agencies, which by virtue of subsection 4(1) includes

a Norfolk Island authority. Item 202 inserts a reference to Norfolk Island at paragraph 47E(c) to extend the protections afforded to the Commonwealth under the section to Norfolk Island.

Item 203 – Paragraph 47G(1)(b)

Section 47G of the FOI Act provides conditional exemptions for a document related to business or professional affairs, or concerning business, commercial or financial affairs of an organisation or undertaking. Under paragraph 47G(1)(b) this includes where disclosure could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency (which by virtue of subsection 4(1) includes a Norfolk Island authority), where: (a) the information is for the purpose of the administration of a law of the Commonwealth or of a Territory, or (b) the administration of matters administered by an agency. Item 203 amends the section by inserting a reference to ‘Norfolk Island’ which expands the scope of protection granted by the existing provision to the Commonwealth to Norfolk Island.

Item 204 – Subsection 47G(4)

Section 47G of the FOI Act provides conditional exemptions for a document related to business or professional affairs, or concerning business, commercial or financial affairs of an organisation or undertaking. Item 204 inserts a reference to Norfolk Island at subsection 47G(4) to extend the protections afforded to the Commonwealth under the section to Norfolk Island.

Item 205 – After subsection 47J(2)

Section 47J of the FOI Act provides conditional exemptions for a document if its disclosure would have an adverse effect on the economy. Item 205 inserts a new subsection 47J(2A) which clarifies that for the purposes of paragraph 27J(2)(b), Norfolk Island is considered a region of Australia. This means that an ‘adverse impact on Australia’s economy’, will include an adverse impact on the economy of Norfolk Island. This ensures that protections afforded to the Commonwealth are extended to Norfolk Island.

Item 206 – Paragraph 47J(3)(g)

Section 47J of the FOI Act provides conditional exemptions for a document if its disclosure would have an adverse effect on the economy. Subsection 47J(3) provides a non-exhaustive list of documents which may contain matters which would adversely impact the economy. This list includes, at paragraph 47J(3)(g) ‘borrowings by the Commonwealth, a State or an authority of the Commonwealth or a State’. Item 206 expands this paragraph to also include borrowings by Norfolk Island. This ensures that protections afforded to the Commonwealth are extended to Norfolk Island.

Item 207 – Paragraph 47J(3)(g)

Section 47J of the FOI Act provides conditional exemptions for a document if its disclosure would have an adverse effect on the economy. Subsection 47J(3) provides a non-exhaustive list of documents which may contain matters which would adversely impact the economy. This list includes, at paragraph 47J(3)(g), ‘borrowings by the Commonwealth, a State or an authority of the Commonwealth or a State’. Item 207 expands this paragraph to also include borrowings by an authority of Norfolk Island. This ensures that protections afforded to the Commonwealth are extended to Norfolk Island.

Item 208 – Section 53B

Item 208 inserts numbering into section 53B to allow for the insertion of new subsection 53B(2) under Item 212.

Item 209 – Section 53B (note)

Section 53B of the FOI Act provides the definition of *access grant decision* for the purposes of Parts VI, VII and VIIA of the FOI Act. The note to subsection 53B(1) clarifies that the table applies to documents which may be conditionally exempt under sections 47B (Commonwealth-State relations), 47G (business) or 47F (personal privacy). Table Item 1 applies to decisions made in relation to documents which may be conditionally exempt under section 47B. Item 209 amends the note to subsection 53B(1) to clarify table Item 1A (inserted at Item 211) also applies to decisions made in relation to documents which may be conditionally exempt under section 47B.

Item 210 – Section 53B (table Item 1)

Section 53B of the FOI Act establishes the definition of *access grant decision* for the purposes of Parts VI, VII and VIIA of that Act. Item 210 inserts ‘etc’ after the reference to ‘Commonwealth-State relations’ at table Item 1 in subsection 53B(1). This amendment is intended to reflect that the reference also includes other forms of relations and is intended to also refer to relations between the Commonwealth and Norfolk Island, or Norfolk Island and a State.

Item 211 – Section 53B (after table Item 1)

Section 53B of the FOI Act establishes the definition of *access grant decision* for the purposes of Parts VI, VII and VIIA of that Act. Item 211 inserts table Item 1A into section 53B. This Item refers to decisions in relation to a request for access to a document under section 26AA (Item 192).

Table Item 1A establishes that in relation to such a request, an *access grant decision* is a decision by an agency or Minister to grant access to an applicant to a document (or an edited copy of the document) because either the document is conditionally exempt under section 47B, or access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Item 212 – At the end of section 53B

Section 53B of the FOI Act establishes the definition of *access grant decision* for the purposes of Parts VI, VII and VIIA of that Act. Item 212 inserts new subsection 53B(2) which clarifies that for the purposes of table Item 1, the term *State* has the same meaning as in section 26A. The meaning of this term in section 26A includes Norfolk Island. This enables the provision to extend references to Commonwealth-State relations to include Commonwealth-Norfolk Island relations.

Item 213 - Section 53C

Item 213 inserts numbering into section 53C to allow for the insertion of new subsection 53C(2) under Item 215 of this amending Bill.

Item 214 – Section 53C (after table Item 1)

Section 53C of the FOI Act provides the definition of *affected third party* in relation to requests for access to documents under sections 26A, 27 and 27A for the purposes of Parts VI, VII and VIIA of that Act. Item 214 inserts new table Item 1A. This Item refers to decisions in relation to a request for access to a document under section 26AA (inserted by Item 192). The amendment establishes

that in relation to such a request, an *affected third party* is the Commonwealth or the State, as the case may be. The reference to State includes Norfolk Island.

Item 215 – At the end of section 53C

Section 53C of the FOI Act provides the definition of *affected third party* in relation to requests for access to documents under sections 26A, 27 and 27A for the purposes of Parts VI, VII and VIIA of that Act. Item 215 inserts new subsection 53C(2) which clarifies that for the purposes of table Item 1, the term *State* has the same meaning as in section 26A. The meaning of this term in section 26A includes Norfolk Island. This enables the provision to extend references to Commonwealth-State relations to include Commonwealth-Norfolk Island relations.

Item 216 – Paragraph 54P(1)(a)

Section 54P of the FOI Act establishes a requirement to notify affected third parties in relation to applications to the Information Commissioner for review under Part VII of that Act. Item 216 inserts a reference to decisions made in relation to access requests for documents to which a consultation requirement applies under new section 26AA (Item 192). Under the amendment, the notification requirements under section 54P apply in relation to an application for review of a Ministerial decision not to grant access to such documents. Comparative requirements exist for documents to which consultation requirements apply under sections 26A, 27 and 27A.

Item 217 – Paragraph 54S(2)(b)

Section 54S of the FOI Act sets time limits on the process for a review by the Information Commissioner under Part VII of that Act. Item 217 amends paragraph 54S(2)(b) by inserting a reference to reviewable decisions made in relation to access requests to which a consultation requirement applies under section 26AA (Item 192). The requirements established under section 54S therefore apply to applications to the Information Commissioner for review made under this Part in respect of such documents. Comparative requirements exist for documents to which consultation requirements apply under sections 26A, 27 and 27A.

Item 218 – Subsection 54Y(2) (note)

Section 54Y of the FOI Act provides for the Information Commissioner's review of deemed decisions. Item 218 inserts in the note to subsection 54Y(2) a reference to reviewable decisions made in relation to access requests to which a consultation requirement applies under section 26AA (Item 192). The note clarifies that this consultation requirement may apply when making an actual decision under subsection 54Y(2). The note similarly clarifies that consultation requirements may also apply under sections 26A, 27 and 27A.

Item 219 – Subsection 55G(1) (note)

Section 55G of the FOI Act sets out the procedure for the revocation or variation of a decision to refuse access during an Information Commissioner review of the original decision. Item 219 amends the note to subsection 55G(1) by inserting a reference to section 26AA. The amendment clarifies that when making a revised decision, the consultation requirement under section 26AA may still apply. The note similarly clarifies that consultation requirements may also apply under sections 26A, 27 and 27A.

Item 220 – At the end of section 55M

Section 55M of the FOI Act limits the Information Commissioner's authority to make an amendment to a record of opinion. Item 220 inserts new subsection 55M(3) which defines *enactment* for the purposes of section 55M to include a Norfolk Island enactment. This limits the Information Commissioner's ability to make a decision which results in the amendment of a record of a decision under a Norfolk Island enactment by a court, tribunal, authority or person (see paragraph 55M(2)(a)).

Item 221 – At the end of section 58AA

Section 58AA of the FOI Act limits the AAT's authority to amend a record relating to a record of an opinion under section 57A of that Act. Item 221 inserts new subsection 58AA(3) which provides that for the purposes of the section, reference to *enactment* includes a Norfolk Island enactment. This means that the Tribunal does not have the authority to recommend that an amendment be made to a record if it is satisfied that the record is of a decision made under a Norfolk Island enactment by a court, tribunal, authority or person.

Item 222 – Subsection 60AA(1)

Section 60AA of the FOI Act sets out the requirements for notification of affected third parties to an application for review of a decision by the AAT in specified circumstances. The existing provision applies to the review of a decision to deny access where a consultation requirement applies under sections 26A, 27 or 27A. Item 222 amends the section to extend its application to include a decision to deny access where there is a consultation requirement under section 26AA (Item 192).

Item 223 – Subsection 61(2)

Section 61 of the FOI Act establishes who bears the onus of proof in AAT proceedings under Part VI of that Act. The existing subsection 61(2) specifies the onus on affected third parties to be applied to proceedings relating to a decision to give access where a consultation requirement exists under section 26A, 27 or 27A. Item 223 amends the section to extend its application to include a decision where there is a consultation requirement under section 26AA (Item 192).

Item 224 – At the end of subsection 66(1)

Section 66 of the FOI Act provides that in relation to applications for review to the AAT under section 57A of that Act, the Tribunal has the discretion to make a recommendation to the responsible Minister that the applicant's costs in respect of the proceedings should be paid by the Commonwealth. Item 224 inserts words in subsection 66(1) to broaden this authority to allow for recommendations to be made by the Tribunal that costs be paid by Norfolk Island. Subsection 66(2) identifies criteria that the Tribunal must have regard to in making such a recommendation.

Item 225 – Subsection 74(1)

Section 74 of the FOI Act provides authority to the Information Commissioner to transfer complaints relating to actions under the FOI Act to the Ombudsman under specified circumstances. Recognising that the Ombudsman Act does not apply to Norfolk Island, Item 225 amends subsection 74(1) to provide that section 74 applies where the matter may be dealt with more effectively or appropriately by the Ombudsman, either under the Ombudsman Act (paragraph 74(1)(a)), or under the 'a particular Norfolk Island enactment' (paragraph 74(1)(b)). The language ensures flexibility to enable application to legislative provisions relating to the Ombudsman in any relevant Norfolk Island legislation.

Item 226 – Subsection 74(5)

Section 74 of the FOI Act provides authority to the Information Commissioner to transfer complaints relating to actions under that Act to the Ombudsman under specified circumstances. Section 74(5) confirms that where a matter is transferred by the Information Commissioner under this section, then it is taken to be a complaint made under the Ombudsman Act and shall be dealt with in accordance with that Act. Item 226 inserts wording to restrict the application of subsection 75(5) to matters referred to in paragraph 74(1)(a), that is, matters which may be more effectively or appropriately dealt with by the Ombudsman, under the Ombudsman Act.

Item 227 – At the end of section 74 (before note)

Section 74 of the FOI Act provides authority to the Information Commissioner to transfer complaints relating to actions under that Act to the Ombudsman under specified circumstances. Item 227 inserts subsection 74(6) which provides that matters transferred to the Ombudsman in respect of paragraph 74(1)(b), shall be dealt with by the Ombudsman as if it were a complaint made under the relevant Norfolk Island enactment. This amendment is consequential to the amendment at Item 225 and enables the application of this provision to legislative provisions relating to the Ombudsman in any relevant Norfolk Island legislation.

Item 228 – At the end of section 89D

Section 89D of the FOI Act limits the Information Commissioner's authority to amend a record relating to a record of opinion made under section 86, or a report to the FOI Minister under section 89A(3). Item 228 inserts new subsection 89D(4) which provides that for the purposes of the section, reference to *enactment* includes a Norfolk Island enactment. This means that the Information Commissioner does not have the authority to recommend that an amendment be made to such a record if he or she is satisfied that the record is of a decision made under a Norfolk Island enactment by a court, tribunal, authority or person.

Item 229 – At the end of section 89J

Section 89J of the FOI Act limits the Ombudsman's authority to amend a record relating to a record of an opinion about a report under section 15. Item 229 inserts new subsection 89J(3) which provides that for the purposes of the section, reference to *enactment* includes a Norfolk Island enactment. This means that the Ombudsman does not have the authority to recommend that an amendment be made to such a record if he or she is satisfied that the record is of a decision made under a Norfolk Island enactment by a court, tribunal, authority or person.

Item 230 – Subsection 90(1)

Section 90 of the FOI Act limits civil liability in respect of actions taken in reliance on that Act. Subsection 90(1) limits the actions for breach of confidence or infringement of copyright against the Commonwealth, a Minister, an agency, or an officer of an agency, in relation to the publication or granting of access to documents in the manner and form specified under paragraphs 90(1)(a), (b), or (c). Item 230 inserts 'Norfolk Island' in subsection 90(1) to expand the application of the provision to also provide the same protection provided to the Commonwealth to Norfolk Island in respect of actions arising as a result of actions within the activities described at paragraphs 90(1)(a), (b) and (c).

Item 231 – Subsection 91(1A)

Section 91 of the FOI Act limits civil liability arising from specified acts relating to the granting of access to documents under that Act. Subsection 91(1A) clarifies that the protection against civil action provided under section 90 of the FOI Act applies regardless of whether there has been a failure to undertake consultations mandated by that Act under sections 26A, 27 or 27A. Item 231 broadens this provision to similarly provide that the protection granted under section 90 is not affected by a failure to undertake consultations required under section 26AA as inserted at Item 192.

Item 232 – Subsection 91(1B)

Section 91 limits civil liability arising from specified acts relating to the granting of access to documents under the FOI Act. Section 91(1B) provides that there is no cause of action against the Commonwealth, an agency, a Minister or an officer solely on the basis that there has been a failure to undertake consultations required by the FOI Act under sections 26A, 26AA, 27 or 27A. Item 232 expands the protection under this provision to exclude action against Norfolk Island solely on the basis that there has been a failure to undertake consultations required under the stipulated sections of that Act.

Item 233 – Subsection 91(1B)

Section 91 limits civil liability arising from specified acts relating to the granting of access to documents under the FOI Act. Section 91(1B) provides that there is no cause of action against the Commonwealth, Norfolk Island, an agency, a Minister or an officer solely on the basis that there has been a failure to undertake consultations required by the FOI Act under sections 26A, 27 or 27A. Item 233 broadens this provision to similarly provide that no cause of action is available against such person or bodies solely because of a failure to undertake consultations required under section 26AA as inserted at Item 192.

Item 234 – After paragraph 91(1C)(a)

Section 91 limits civil liability arising from specified acts relating to the granting of access to documents under the FOI Act. Subsection 91(1C) limits liability as specified under paragraphs 91(1C)(d) and (e) where a document is shown to a person, organisation or proprietor for any of the purposes specified in paragraphs 91(1C)(a), (b), and (c). Item 234 inserts an additional purpose for which liability is limited in new paragraph 91(1C)(aa).

Paragraph 91(1C)(aa) provides that where the document is shown to a person, organisation or proprietor for the purpose of consultation with the Commonwealth or a State under subsection 26AA(2) then liability is limited in respect of actions specified at paragraphs 91(1C)(d) and (e).

Item 235 – After paragraph 91(1C)(d)

Section 91 limits civil liability arising from specified acts relating to the granting of access to documents under the FOI Act. Subsection 91(1C) limits liability as specified under paragraphs 91(1C)(d) and (e) where a document is shown to a person, organisation or proprietor for any of the purposes specified in paragraphs 91(1C)(a), (b), and (c). Item 235 extends the parties protected against civil liability identified at paragraph 91(1C)(d) by inserting that where documents are provided for the specified purposes, then no action for defamation, breach of confidence or infringement of copyright lies against Norfolk Island as a result of the showing of the document. This protection is in addition to existing protections afforded to the Commonwealth, an agency (including a Norfolk Island authority), a Minister or an officer.

Item 236 – After paragraph 91(2A)(a)

Section 91 limits civil liability arising from specified acts relating to the granting of access to documents under the FOI Act.

Subsection 91(2A) provides that a document shown for a purpose specified at paragraphs 91(2A)(a), (b), or (c) will not be taken to constitute an authorisation or approval for the purposes specified at paragraphs 91(2A)(d) and (e). Item 236 inserts an additional specified purpose for which a document may be shown by inserting new paragraph 91(2A)(aa). Paragraph 91(2A)(aa) provides that where the document is shown to a person, organisation or proprietor for the purpose of consultation with the Commonwealth or a State under subsection 26AA(2) it will not be taken to constitute an authorisation or approval for the purposes specified at paragraphs 91(2A)(d) and (e).

Item 237 – At the end of section 91

Section 91 limits civil liability arising from specified acts relating to the granting of access to documents under the FOI Act. Item 237 inserts subsection 91(4) which provides that for the purposes of paragraphs 91(1c)(a) and 91(2A)(a), the term *State* has the same meaning as in section 26A. Subsection 26A(6) specifies that the term State includes Norfolk Island. This enables the provision to extend references to Commonwealth-State consultations to include Commonwealth-Norfolk Island consultations.

Item 238 – After paragraph 92(2)(a)

Section 92 limits criminal liability arising from specified acts relating to the granting of access to documents under the FOI Act.

Subsection 92(2) provides that a person (or any other person concerned) showing a document for the purposes specified at paragraphs 92(2)(a), (b) or (c) will not be criminally liable for any offence solely as a result of showing the document. Item 238 inserts an additional purpose for which liability is limited at paragraph 92(2)(aa). Paragraph 92(2)(aa) provides that where the document is shown to a person, organisation or proprietor for the purpose of consultation with the Commonwealth or a State under subsection 26AA(2) then the person involved is not liable for any criminal offence merely because of showing the document.

Item 239 – At the end of section 92

Section 92 limits criminal liability arising from specified acts relating to the granting of access to documents under the FOI Act.

Item 239 inserts subsection 92(3) which provides that for the purposes of paragraph 92(2)(a), the term *State* has the same meaning as in section 26A. Subsection 26A(6) specifies that the term State includes Norfolk Island. This enables the provision to extend references to Commonwealth-State consultations to include Commonwealth-Norfolk Island consultations.

Part 6 – Amendments relating to the Ombudsman

Norfolk Island Act 1979

Item 240 – After section 66

Item 240 inserts a new section 66A at Part VIII of the NI Act. New section 66A applies only where under enactment, the Commonwealth Ombudsman is required to give a report to a Norfolk Island Minister (being either the Chief Minister or a Minister appointed under section 13 of the NI Act), and where an enactment also requires that the Norfolk Island Minister table that report in the Norfolk Island Legislative Assembly.

Where the above circumstances apply, new section 66A requires the Norfolk Island Minister to give the Commonwealth Ombudsman's report to the responsible Commonwealth Minister (subsection 66(2)). The Commonwealth Minister is then required to cause a copy of the report to be tabled in each House of the Parliament of the Commonwealth within 15 sitting days after receiving the report (subsection 66(3)).

The operation of the section is dependent upon an enactment (Commonwealth or Norfolk Island enactment) to provide for the authority of the Commonwealth Ombudsman to investigate complaints in the Territory of Norfolk Island. In the event that such authority were provided under enactment, including the provision of reporting requirements, then the operation of this provision ensures appropriate accountability and transparency. The tabling requirements are intended to ensure that the Commonwealth Parliament, through the responsible Ministers (both Commonwealth and Norfolk Island) are alerted to any governance issues in relation to Norfolk Island, should they arise in the context of complaints to the Commonwealth Ombudsman.

Ombudsman Act 1976

Item 241 – At the end of subsection 4(2)

Section 4 of the Ombudsman Act establishes the offices of the Commonwealth Ombudsman and Deputy Ombudsman. Subsection 4(2) provides that the functions of the office of the Commonwealth Ombudsman include the investigation of complaints made to him or her under the Commonwealth Ombudsman Act in addition to other functions conferred on the office by that Act, any other Commonwealth Act or regulations, or an ACT enactment or regulations. Item 241 inserts paragraph 4(2)(d) which extends the Commonwealth Ombudsman's authority to also include functions conferred on the office by a Norfolk Island enactment.

The amendment will enable the Commonwealth Ombudsman to perform the functions of the Norfolk Island Ombudsman should the Government of Norfolk Island enact legislation to facilitate this. It will make the office of the Commonwealth Ombudsman available in the administration of any Norfolk Island legislation. It is anticipated that the guidance and oversight that the Commonwealth Ombudsman can provide will assist the development of a sound and effective administrative process on Norfolk Island. An externally appointed Ombudsman is of particular benefit in a small community such as Norfolk Island.

Item 242 – At the end of section 4

Section 4 of the Ombudsman Act establishes the offices of the Commonwealth Ombudsman and Deputy Ombudsman. Item 242 inserts new subsection 4(6) which provides that the Commonwealth Ombudsman, in performing his or her functions under a Norfolk Island enactment, may be called

the Norfolk Island Ombudsman. This is consistent with the practice adopted in relation to other responsibilities conferred on the Ombudsman. For example, when performing functions in relation to immigration matters, the Ombudsman may be called the Immigration Ombudsman.

Part 7 – Amendments relating to privacy

Australian Capital Territory Government Service (Consequential Provisions) Act 1994

Item 243 – After subsection 23(1)

Section 23 of the *Australian Capital Territory Self Government Services (Consequential Provisions) Act 1994* provides for Schedule 3 of that Act to amend the Privacy Act. These amendments may be repealed on ‘a day fixed by or under an Australian Capital Territory (ACT) enactment’ for the purposes of sub-section 23(1).

Item 243 amends the ACT Self Government Service (Consequential Provisions) Act to ensure that the Territories Law Reform Bill does not affect the meaning or application of the Privacy Act to the ACT. It does this by providing that the use of ‘enactment’ in the Privacy Act does not, by implication, exclude an ACT enactment.

Privacy Act 1988

Item 244 – Subsection 6(1) (after paragraph (h) of the definition of *agency*)

Item 244 amends the definition of *agency* in subsection 6(1) of the Privacy Act by inserting new paragraph 6(1)(ha). Paragraph 6(1)(ha) includes ‘a Norfolk Island agency’ within the definition. This amendment is supplemented by Item 248 which inserts a new definition of *Norfolk Island agency* into the Privacy Act.

Item 245 – Subsection 6(1)

Item 245 inserts a new definition of *Cabinet* in relation to Norfolk Island in subsection 6(1) of the Privacy Act.

The amendment defines Cabinet in practical terms as being a body that consists of Norfolk Island Ministers and corresponds to the Cabinet. The intention of this amendment is to provide that where a body of Norfolk Island Ministers meets in a manner that accords with a Commonwealth or State Cabinet equivalent, then they are afforded the same rights, responsibilities and protection in respect of the Privacy Act.

Item 246 - Subsection 6(1) (definition of *Commonwealth contract*)

Item 246 amends the definition of *Commonwealth contract* in subsection 6(1) of the Privacy Act to extend the references to Commonwealth contracts under that Act to also include contracts to which the Norfolk Island Government (or agency) is a party.

The amendment is intended to provide protection to personal information held by a contractor to the Norfolk Island Government. The principal obligation arising in relation to Commonwealth contracts is set out in section 95B of the Privacy Act. Section 95B requires an agency entering into a Commonwealth contract to take contractual measures to ensure that a contracted service provider for the contract does not do an act, or engage in a practice, that would breach an Information Privacy Principle if the act had been done or engaged by an agency. In expanding the scope of the Information Privacy Principles to Norfolk Island agencies, it is appropriate to similarly ensure that the obligations are similarly extended to contractors of such agencies.

Item 247 – Subsection 6(1)

Item 247 inserts a new definition of *enactment* in subsection 6(1) of the Privacy Act which expressly provides that the term includes a Norfolk Island enactment.

The term *Norfolk Island enactment* is further defined under that Act by Item 208.

Item 248 – Subsection 6(1)

Item 248 inserts a new definition of *Norfolk Island agency* in subsection 6(1) of the Privacy Act. This definition supplements the amendment to the Privacy Act at Item 244, which provides that the term *agency* includes a Norfolk Island agency.

Norfolk Island agency is defined as (a) a Norfolk Island Minister; (b) a public sector agency, as defined in section 4 of the *Public Sector Management Act 2000* of Norfolk Island; (c) a body (incorporated or not), or a tribunal, established or appointed for a public purpose by a Norfolk Island enactment, other than a corporation established or registered under the *Norfolk Island Companies Act 1985*, or *Associations Incorporation Act 2005*; (d) a body established or appointed by the Administrator or a Norfolk Island Minister other than under a Norfolk Island enactment; (e) a person holding or performing the duties of an office established by or under, or an appointment made under, a Norfolk Island enactment; (f) a person holding or performing the duties of an appointment made by the Administrator of Norfolk Island, or a Norfolk Island Minister, other than under a Norfolk Island enactment; or (g) a court of Norfolk Island.

This definition is intended to ensure that Information Privacy Principles which apply to an agency under the Privacy Act will expressly apply to the Norfolk Island Government and agencies. For example, the unamended definition of agency in the Privacy Act includes ‘a Minister’ (paragraph (a) of the definition). This must be construed, in the absence of anything to the contrary as a reference to a Commonwealth Minister. The amendment ensures that a Norfolk Island Minister is now similarly included in this definition. The definition provides similar clarification in respect of the inclusion of Departments and courts to ensure that the Information Privacy Principles are applicable to comparative Norfolk Island persons and bodies.

Item 249 – Subsection 6(1)

Item 249 inserts a new definition of *Norfolk Island enactment* in subsection 6(1) of the Privacy Act. This definition supplements the amendment to the Privacy Act at Item 247, which provides that the term *enactment* includes a Norfolk Island enactment.

Norfolk Island enactment is defined by reference to the NI Act which at section 4 provides:

enactment means:

- (a) a law (however described or entitled) passed by the Legislative Assembly and assented to under this Act;
- (b) an Ordinance made by the Government-General under section 2 or in pursuance of section 69; or
- (c) an Ordinance continued in force by this Act.

Item 250 – Subsection 6(1)

Item 250 inserts a new definition of *Norfolk Island Justice Minister* in subsection 6(1) of the Privacy Act.

There is presently no Minister with the official title of ‘Justice Minister’ or ‘Attorney-General’ in the Norfolk Island Government. The definition of Norfolk Island Justice Minister ensures that the

Minister is appropriately identified by his or her responsibilities of office, in this case, the administration of the *Interpretation Act 1979* of Norfolk Island.

Item 251 – Subsection 6(1)

Item 251 inserts the definition of *Norfolk Island Minister* in subsection 6(1) of the Privacy Act. This amendment reflects the change in title of ‘Executive Members’ to ‘Chief Minister’ and ‘Ministers’ under the NI Act (see Items 8 and 23). Item 251 supplements the definition of a *Norfolk Island agency*, as amended by Item 248, to include a Norfolk Island Minister. The term is further used in other amendments to the Privacy Act to facilitate the extension of the application of particular provisions to Norfolk Island Ministers, where existing application had been limited to Commonwealth Ministers (i.e. sections 30, 31 and 32 of the Privacy Act).

Item 252 – At the end of paragraphs 6(5)(a), (b) and (c)

Item 252 amends subsection 6(5) of the Privacy Act by inserting ‘or’ at the end of paragraphs 6(5)(a), (b) and (c). This is not intended to affect the meaning of this provision, but rather ensures consistency of drafting style throughout the Privacy Act.

Item 253 – After paragraph 6(5)(c)

Subsection 6(5) provides guidance in the interpretation of *agency* as defined under subsection 6(1) of the Privacy Act. The subsection specifies a number of offices or duties which should not in themselves be determinative of whether a person is an agency for the purposes of that Act. Item 253 inserts new paragraph (ca) in subsection 6(5). Paragraph 6(5)(ca) provides that a person should not be deemed to be an agency for the purposes of the Privacy Act, solely on the basis he or she is the holder of, or performs the duties of, an office established by or under a Norfolk Island enactment.

This amendment extends the application of the existing paragraph 6(5)(c) to the comparative offices established under Norfolk Island enactment. It ensures that the same interpretation is applied to the determination of whether a particular person holding an office established under a Norfolk Island enactment, or an office established under a Commonwealth enactment is an agency for the purposes of the Privacy Act.

Item 254 – At the end of subsection 6(5)

Subsection 6(5) provides guidance in the interpretation of *agency* as defined under subsection 6(1) of the Privacy Act. The subsection specifies a number of offices or duties which should not in themselves be determinative of whether a person is an agency for the purposes of that Act. Item 254 inserts new paragraph (f) in subsection 6(5). Paragraph 6(5)(f) provides that a person should not be deemed to be an agency for the purposes of the Privacy Act only on the basis that he or she is the holder of, or performs the duties of, an office of a member of a tribunal, prescribed for the purposes of this paragraph, and established under or by a Norfolk Island enactment.

This amendment extends the application of paragraph 6(5)(e) to the comparative offices under Norfolk Island enactments. It ensures that the same interpretation is applied to the determination of whether a particular person holding an office established under a Norfolk Island enactment, or an office established under a Commonwealth enactment is an agency for the purposes of the Privacy Act.

Item 255 – After subsection 6(10)

Item 255 inserts new subsection 6(10A) which clarifies that the Supreme Court of Norfolk Island is not a ‘federal court’ for the purposes of the Privacy Act. Where it is appropriate for the Privacy Act to be extended to Norfolk Island Courts, this has been expressly provided for in that Act.

Item 256 – At the end of subparagraph 7(1)(a)(i) and (ii)

Item 256 amends paragraph 7(1)(a) by inserting ‘or’ at the end of subparagraphs 7(1)(a)(i) and (ii). This is not intended to affect the meaning of this provision, but rather ensures consistency of drafting style throughout the Privacy Act.

Item 257 – After subparagraph 7(1)(a)(ii)

Subsection 7(1) stipulates that unless it is otherwise provided (and excepting section 8) a reference in the Privacy Act to ‘an act’ or ‘a practice’ is a reference to an act or a practice listed in paragraphs 7(1)(a) to (h). Rights and responsibilities under that Act are directly linked to acts and practices. Therefore, this provision ensures that the scope of the Privacy Act is limited to action undertaken by specific persons or bodies, or under specified statutory authority.

For example, subparagraph 7(1)(a) provides that an act or practice (unless otherwise provided and excepting section 8) is a reference to an act or practice undertaken by an agency (other than an eligible case manager or hearing service provider), a file number recipient, a credit reporting agency, or a credit provider, except those persons or bodies listed in subparagraphs (i) to (vi). Item 257 inserts a new subparagraph 7(1)(a)(iia) which excludes acts done, or practices engaged in by a court of Norfolk Island. The amendment ensures that the provision applies to Norfolk Island in the same manner as it applies to the Commonwealth by providing that the acts and practices of Norfolk Island courts in relation to personal information are treated in the same manner under the Privacy Act as acts and practices of federal courts (see existing subparagraph 7(1)(a)(ii) of the Privacy Act).

Item 258 – At the end of subparagraph 7(1)(a)(iii)

Item 258 amends paragraph 7(1)(a) by inserting ‘or’ at the end of subparagraph 7(1)(a)(iii). This is not intended to affect the meaning of this provision, but rather ensures consistency of drafting style throughout the Privacy Act.

Item 259 – After subparagraph 7(1)(a)(iii)

Subsection 7(1) stipulates that unless it is otherwise provided (and excepting section 8) a reference in the Privacy Act to ‘an act’ or ‘a practice’ is a reference to an act or a practice listed in paragraphs 7(1)(a) to (h). Rights and responsibilities under that Act are directly linked to acts and practices. Therefore, this provision ensures that the scope of the Privacy Act is limited to action undertaken by specific persons or bodies, or under specified statutory authority.

For example, subparagraph 7(1)(a) provides that an act or practice (unless otherwise provided and excepting section 8) is a reference to an act or practice undertaken by an agency (other than an eligible case manager or hearing service provider), a file number recipient, a credit reporting agency, or a credit provider, except those persons or bodies listed in subparagraphs (i) to (vi). Item 259 inserts a new subparagraph 7(1)(a)(iiiaa) which excludes acts done, or practices engaged in by a Norfolk Island Minister. The amendment ensures that the provision applies to Norfolk Island in the same manner as it applies to the Commonwealth by providing that the acts and practices of Norfolk Island Ministers and Commonwealth Ministers are treated in the same manner under the Privacy Act (see existing subparagraph 7(1)(a)(iii) of the Privacy Act).

Item 260 – After paragraph 7(1)(b)

Subsection 7(1) stipulates that unless it is otherwise provided (and excepting section 8) a reference in the Privacy Act to ‘an act’ or ‘a practice’ is a reference to an act or a practice listed in paragraphs 7(1)(a) to (h). Rights and responsibilities under that Act are directly linked to acts and practices. Therefore, this provision ensures that the scope of the Privacy Act is limited to action undertaken by specific persons or bodies, or under specified statutory authority.

Item 260 inserts new paragraph 7(1)(ba) which provides that under the Privacy Act, an act or practice (unless otherwise provided and excepting section 8) includes a reference to an act or practice in respect of an administrative matter undertaken by a court of Norfolk Island. This ensures that the provision applies to Norfolk Island in the same manner as it applies to the Commonwealth. This provision will ensure that the acts and practices of Norfolk Island courts in relation to personal information are subject to the same rights and responsibilities under the Privacy Act as acts and practices of federal courts (see paragraph 7(1)(b)).

Item 261 – Paragraph 7(1)(d) and (e)

Subsection 7(1) stipulates that unless it is otherwise provided (and excepting section 8) a reference in the Privacy Act to ‘an act’ or ‘a practice’ is a reference to an act or a practice listed in paragraphs 7(1)(a) to (h). Rights and responsibilities under that Act are directly linked to acts and practices. Therefore, this provision ensures that the scope of the Privacy Act is limited to action undertaken by specific persons or bodies, or under specified statutory authority.

Item 261 specifically excludes the scope of paragraphs 7(1)(d) and (e) from applying to a Norfolk Island agency. This explicit exclusion is to ensure that there is no ambiguity in the interpretation of subsection 7(1) in respect of its application to Norfolk Island. Comparative paragraphs which ensure the application of the provision is extended effectively and explicitly to Norfolk Island agencies are inserted under Item 262.

Item 262 – After paragraph 7(1)(e)

Subsection 7(1) stipulates that unless it is otherwise provided (and excepting section 8) a reference in the Privacy Act to ‘an act’ or ‘a practice’ is a reference to an act or a practice listed in paragraphs 7(1)(a) to (h). Rights and responsibilities under that Act are directly linked to acts and practices. Therefore, this provision ensures that the scope of the Privacy Act is limited to action undertaken by specific persons or bodies, or under specified statutory authority.

Item 262 inserts new paragraphs 7(1)(eaa) and (eab) which provide that under the Privacy Act, an act or practice (unless otherwise provided and excepting section 8) includes a reference to an act or practice which is not related to an existing record and is undertaken by a Norfolk Island Minister in relation to the affairs of a Norfolk Island agency (paragraph 7(1)(eaa)); or an act or practice undertaken by an Norfolk Island Minister in relation to a record in his or her possession which relates to the affairs of a Norfolk Island agency. This amendments will ensure that both Norfolk Island Ministers and Commonwealth Ministers are subject to the same rights and responsibilities in relation to personal information (see paragraphs 7(1)(d) and (e)).

Item 263 – Paragraph 8(1)(b)

Subsection 8(1) outlines rules to determine when an act done or practice engaged in by a person on behalf of, or in the course of employment by, a specified body will be deemed to be an act done or practice engaged in by that body. Item 263 amends this subsection by inserting at paragraph 8(1)(b)

‘or Norfolk Island enactment’ after ‘Commonwealth enactment’. The amendment ensures that rights and responsibilities under the Privacy Act are applied consistently to bodies established under Commonwealth and Norfolk Island enactments.

Item 264 – Subsection 9(3)

Section 9 provides rules for determining when a body will be considered a ‘collector’ for the purposes of the application of the Privacy Act. Important responsibilities attach to collectors under that Act. Item 264 amends this section by inserting at subsection 9(3) ‘or Norfolk Island enactment’ after ‘Commonwealth enactment’. The amendment ensures that rights and responsibilities under the Privacy Act are applied consistently to bodies established under Commonwealth and Norfolk Island enactments.

Item 265 – Subsection 10(3)

Section 10 provides rules for determining when a body will be considered a ‘record-keeper’ for the purposes of the application of the Privacy Act. Important responsibilities attach to record-keepers under that Act. Item 265 amends this section by inserting at subsection 10(3) ‘or Norfolk Island enactment’ after ‘Commonwealth enactment’. The amendment ensures that rights and responsibilities under the Privacy Act are applied consistently to bodies established under Commonwealth and Norfolk Island enactments.

Item 266 – Subsection 11(3)

Section 11 provides rules for determining when a person or a body will be considered a ‘file number recipient’ for the purposes of the application of the Privacy Act. Important responsibilities attach to file number recipients under that Act. Item 266 amends the section by inserting at subsection 11(3) ‘or Norfolk Island enactment’ after ‘Commonwealth enactment’. The amendment ensures that rights and responsibilities under the Privacy Act are applied consistently to bodies established under Commonwealth and Norfolk Island enactments.

Item 267 – After subsection 15(1)

Part III, Division 2 of the Privacy Act establishes the Information Privacy Principles which include principles for the collection, use and disclosure of personal information by agencies. Item 267 inserts a new subsection 15(1A) which provides that in relation to a Norfolk Island authority, the Information Privacy Principles 1, 2, 3, 10 and 11 apply only in relation to information collected by an agency after the commencement of the relevant part of this amending Bill. This is consistent with the existing application of those specific Information Privacy Principles to Commonwealth agencies under section 15(1).

The Information Privacy Principles 4 to 9 inclusive will apply to a Norfolk Island agency in the equivalent way in which they apply to a Commonwealth agency as per existing subsection 5(2) of the Privacy Act.

Item 268 – Before section 16

Part III, Division 2 of the Privacy Act establishes the Information Privacy Principles which include principles for the collection, use and disclosure of personal information by agencies. Item 268 inserts new section 15B which establishes special provisions to ensure the Information Privacy Principles are applied to Norfolk Island agencies in a manner equivalent to Commonwealth agencies. These Principles are central to the imposition of duties and responsibilities to agencies

under the Privacy Act. The new section 15B ensures that they are properly amended to apply effectively to the Norfolk Island agencies. Specifically, section 15B provides that where the ‘record-keeper’ is a Norfolk Island agency the reference to the law of the Commonwealth at Principles 5 (Information relating to records kept by a record-keeper), 6 (Access to records containing personal information) and 7 (Alteration of records containing personal information), includes a reference to Norfolk Island.

The amendment is intended to have a similar effect as provision 15A of the Privacy Act, introduced by Schedule 3 of the *Australian Capital Territory Self Government Services (Consequential Provisions) Act 1994*. These sections are replicated and separated as Schedule 3 of the Australian Capital Territory Self Government Services (Consequential Provisions) Act can effectively be repealed by an Australian Capital Territory enactment under section 23 of that Act. Item 268 is drafted to ensure that even if Schedule 3 of that Act is repealed pursuant to section 23 it will not affect the application of the Information Privacy Principles to Norfolk Island agencies.

Item 269 – Paragraph 27(1)(b)

Section 27 stipulates the functions of the Privacy Commissioner in respect of interferences with privacy. Paragraph 27(1)(b) provides that the Privacy Commissioner’s functions include examination of a proposed enactment that would require or authorise acts or practices of an agency or organisation that might otherwise be an interference in the privacy of an individual, and to minimise such adverse effects. This examination may occur with or without a request from a Minister. Item 269 amends paragraph 27(1)(b) by inserting ‘or a Norfolk Island Minister’.

The existing reference in paragraph 27(1)(b) to ‘Minister’ must be construed, in the absence of anything to the contrary, as a reference to a Commonwealth Minister. Therefore, the amendment is necessary to ensure that a Norfolk Island Minister also has the same authority in respect of a request to the Privacy Commissioner to examine a proposed enactment under paragraph 27(1)(b).

Item 270 – Paragraph 27(1)(f)

Section 27 stipulates the functions of the Privacy Commissioner in respect of interferences with privacy. Paragraph 27(1)(f) provides that the Privacy Commissioner’s functions include the provision of advice to a Minister, agency or organisation on any matter relevant to the operation of the Privacy Act. This advice may be given on request, or on the Commissioner’s own initiative. Item 270 amends paragraph 27(1)(f) by inserting ‘a Norfolk Island Minister’.

The existing reference in paragraph 27(1)(f) to ‘Minister’ must be construed, in the absence of anything to the contrary, as a reference to a Commonwealth Minister. Therefore, the amendment is necessary to ensure that a Norfolk Island Minister has the equal ability to seek advice from the Privacy Commissioner on relevant matters.

Item 271 – Paragraph 27(1)(k)

Section 27 stipulates the functions of the Privacy Commissioner in respect of interferences with privacy. Paragraph 27(1)(k) provides that the Privacy Commissioner’s functions include the examination of a proposal for data matching or data linkage that may involve an interference with the privacy of individuals, or which may otherwise have any adverse effects on the privacy of individuals, and to ensure that such adverse effects are minimised. This examination may occur with or without a request from a Minister. Item 271 amends paragraph 27(1)(k) by inserting ‘or a Norfolk Island Minister’.

The existing reference in paragraph 27(1)(k) to ‘Minister’ must be construed, in the absence of anything to the contrary, as a reference to a Commonwealth Minister. Therefore, the amendment is necessary to ensure that a Norfolk Island Minister has the equal ability to request the Privacy Commissioner to examine a data matching or data linking proposal under this provision.

Item 272 – Paragraph 30(3)(d)

Section 30 of the Privacy Act provides for the provision of a report by the Privacy Commissioner following the investigation of an act or practice under the Privacy Act. Paragraph 30(3)(d) requires that where a report is required under subsection 30(1) resulting from an investigation under paragraph 27(1)(a), 28(1)(b), 28(1)(c) or 28A(1)(b), then the Commissioner must serve a copy of that report on the agency, file number recipient, credit reporting agency or credit provider concerned, and the responsible Minister (if any). Item 272 amends paragraph 30(3)(d) by inserting ‘or Norfolk Island Minister (if any)’.

The existing reference to in paragraph 30(3)(d) to ‘Minister’ must be construed, in the absence of anything to the contrary, as a reference to a Commonwealth Minister. Therefore, the amendment is necessary to ensure that, where relevant, reports must be served on the responsible Norfolk Island Minister.

Item 273 – Subsection 30(4)

Section 30 of the Privacy Act provides for the provision of a report by the Privacy Commissioner following the investigation of an act or practice under the Privacy Act. Paragraph 30(4) requires the Privacy Commissioner to serve a further report on the responsible Minister (if any) where a report is served under subsection 30(3) and after 60 days, the Commissioner is still of the view that the act or practice interferes with the privacy of an individual and is not satisfied that reasonable steps have been taken to prevent continuation of the practice or repetition of the act. Item 273 amends subsection 30(4) by inserting ‘or Norfolk Island Minister (if any)’.

The existing reference in subsection 30(4) to ‘Minister’ must be construed, in the absence of anything to the contrary, as a reference to a Commonwealth Minister. Therefore, the amendment is necessary to ensure that, where relevant, the further reports must be served on the responsible Norfolk Island Minister.

Item 274 – At the end of section 33

Section 33 of the Privacy Act excludes certain matters from the Privacy Commissioner’s reports under sections 30, 31 or 32 of the Privacy Act. Item 274 amends section 33 by inserting new subsection 33(5) which provides that ‘State’ includes Norfolk Island.

The effect of section 33(5) is that in determining whether a matter should be excluded from a report, the Privacy Commissioner shall include consideration of the need to prevent prejudice to relations between the Commonwealth Government and the Norfolk Island Government, or between Norfolk Island and another State or Territory (paragraph 33(2)(b)).

Item 275 – At the end of Division 3 of Part IV

Item 275 inserts new section 33B into the Privacy Act. Section 33B provides that copies of reports made by the Privacy Commissioner under sections 30, 31 or 32 and which relate to a Norfolk Island matter must be provided to the Norfolk Island Justice Minister (defined under Item 248).

To assist the Privacy Commissioner to apply this new provision, subsection 33B(2) provides guidance in determining when a report relates to a Norfolk Island matter. A report made under section 30 relates to a Norfolk Island matter where it considers an act or practice of a Norfolk Island agency (paragraph 33B(2)(a)).

A report made under section 31 relates to a Norfolk Island matter where it considers a proposed Norfolk Island enactment (as defined at Item 249) (paragraph 33B(2)(b)). A report made under section 32 relates to a Norfolk Island matter where it considers an activity or audit of a Norfolk Island agency (as defined at Item 248) (paragraph 33B(2)(c)).

Item 276 – Paragraph 34(2)(a)

Section 34 of the Privacy Act limits the performance of the Privacy Commissioner’s functions by restricting his or her ability to provide information about the existence (subsection 34(1)) or content (subsection 34(2)) of information related to an exempt document under the FOI Act.

Item 276 amends section 34 by inserting ‘or a Norfolk Island Minister’ in paragraph 34(2)(a). This amendment extends the application of section 34 to Norfolk Island and ensures that the Privacy Commissioner does not give a person official documents of the Norfolk Island Minister that would be exempt documents under the FOI Act.

Item 277 – At the end of paragraph 34(2)(b)

Section 34 of the Privacy Act limits the performance of the Privacy Commissioner’s functions by restricting his or her ability to provide information about the existence (subsection 34(1)) or content (subsection 34(2)) of information related to an exempt document under the FOI Act.

Item 277 amends section 34 by inserting ‘or a Norfolk Island Minister’ in paragraph 34(2)(b). This amendment extends the application of section 34 to Norfolk Island and ensures that the Privacy Commissioner does not give a person official documents of the Norfolk Island Minister that would be exempt documents under the FOI Act.

Item 278 – Section 37 (after table Item 5)

Section 37 of the Privacy Act provides a table to enable the identification of the ‘principal executive’ of an agency. The identification of the appropriate person as the principal executive is necessary to ensure the efficient operation of subsection 36(6) of that Act. Subsection 36(6) provides that where a complaint is made about an act or practice of an agency which is an unincorporated body, the principal executive of the agency is the respondent.

Item 278 inserts Items 5A, 5B, 5C and 5D into the table in section 37. These Items identify the appropriate principal executive of the agency in respect of Norfolk Island agencies. For example, in respect of a public sector agency as defined by the *Public Sector Management Act 2000* of Norfolk Island (table Item 5A); an unincorporated body, or tribunal as defined in subsection 6(1) paragraph (c) of the definition of *Norfolk Island agency* (see Item 248) (table Item 5B); or a body established or appointed by the Administrator of Norfolk Island, or Norfolk Island Minister otherwise than under a Norfolk Island enactment (table Item 5C); then the principal executive of the agency is the Chief Executive Officer of Norfolk Island (as defined by the *Public Sector Management Act 2000* of Norfolk Island).

This amendment makes the Chief Executive Officer of Norfolk Island the principal executive for public servants and people appointed or bodies established under a Norfolk Island enactment and

provides a single channel for communications to and from the Privacy Commissioner and Norfolk Island on most Norfolk Island matters. The Chief Executive Officer of Norfolk Island is responsible for public servants and statutory office holders under the *Public Sector Management Act 2000* of Norfolk Island.

Alternatively, where the agency is a court of Norfolk Island (table Item 5D), then the principal executive of the agency is the registrar or principal registrar of the court (or the person occupying an equivalent office).

Item 279 – Subsection 43(7)

Section 43 of the Privacy Act establishes requirements for the Privacy Commissioner’s conduct of investigation of complaints under the Privacy Act. Item 279 amends section 43 by inserting ‘or Norfolk Island Minister (if any)’ at subsection 43(7) to ensure that the relevant Norfolk Island Minister has been informed about stipulated matters related to the investigation under this provision. The outcome of this amendment is that Norfolk Island Ministers are treated in the same manner as Commonwealth Ministers in relation to investigations by the Privacy Commissioner.

Item 280 – Subsection 43(8)

Section 43 of the Privacy Act establishes requirements for the Privacy Commissioner’s conduct of investigation of complaints under the Privacy Act. Item 280 amends section 43 by inserting ‘or a Norfolk Island Minister’ at subsection 43(8) to enable the Privacy Commissioner to discuss any matter relevant to the investigation with the relevant Norfolk Island Minister. The outcome of this amendment is that Norfolk Island Ministers are treated in the same manner as Commonwealth Ministers in relation to investigations by the Privacy Commissioner.

Item 281 – Subsection 43(8A)

Section 43 of the Privacy Act establishes requirements for the Privacy Commissioner’s conduct of investigation of complaints under the Privacy Act. Item 281 amends section 43 by inserting ‘or a Norfolk Island Minister’ at subsection 43(8A) which restricts the Privacy Commissioner’s ability to discuss certain investigations with a Norfolk Island Minister under subsection 43(8). The outcome of this amendment is that Norfolk Island Ministers are treated in the same manner as Commonwealth Ministers in relation to investigations by the Privacy Commissioner.

Item 282 – At the end of paragraph 43(9)(b)

Section 43 of the Privacy Act establishes requirements for the Privacy Commissioner’s conduct of investigation of complaints under the Privacy Act. Item 282 amends section 43 by inserting ‘or Norfolk Island Minister’ at paragraph 43(9)(b) to require that, in specified circumstances, the Privacy Commissioner provide to the relevant Norfolk Island Minister evidence that an officer of an agency has been guilty of a breach of duty or of misconduct. The outcome of this amendment is that Norfolk Island Ministers are treated in the same manner as Commonwealth Ministers in relation to investigations by the Privacy Commissioner.

Item 283 – Subsection 50(1)

Section 50 of the Privacy Act authorises the Privacy Commissioner to transfer matters to other authorities such as the Ombudsman or the Australian Human Rights Commission in appropriate circumstances. Subsection 50(1) provides definitions for the purposes of section 50. Item 283 inserts a definition of *Norfolk Island Public Service Board*, which for the purposes of section 50

means the Public Service Board established under the *Public Sector Management Act 2000* of Norfolk Island.

Item 284 – After subparagraph 50(2)(a)(ii)

Section 50 of the Privacy Act authorises the Privacy Commissioner to transfer matters to other authorities such as the Ombudsman or the Australian Human Rights Commission in appropriate circumstances. Subsection 50(2) provides the criteria to be applied by the Privacy Commissioner in determining whether a matter should be transferred to another authority and the process for such a transfer. Item 284 inserts subparagraph 50(2)(a)(iia) which expands the reference to the ‘Ombudsman under the *Ombudsman Act 1976*’ (subparagraph 50(2)(a)(ii)) to also include ‘the Ombudsman under a particular Norfolk Island enactment’. This amendment enables complaints which could be more effectively or conveniently dealt with by the Norfolk Island Ombudsman (or the Commonwealth Ombudsman performing functions under an enactment of Norfolk Island) to be transferred to that office. This could apply, for example, to complaints relating to Norfolk Island agencies.

Item 285 – At the end of paragraph 50(2)(b)

Item 285 amends section 50 by inserting ‘or’ at the end of paragraph 50(2)(b). This amendment enables the insertion of an additional paragraph under Item 286.

Item 286 – After paragraph 50(2)(b)

Section 50 of the Privacy Act authorises the Privacy Commissioner to transfer matters to other authorities such as the Ombudsman or the Australian Human Rights Commission in appropriate circumstances. Subsection 50(2) provides the criteria to be applied by the Privacy Commissioner in determining whether a matter should be transferred to another authority and the process for such a transfer. Item 286 amends section 50 by inserting a new paragraph 50(2)(ba) which expands the reference to an application made to the Public Service Commissioner under the *Public Service Act 1999* (paragraph 50(2)(b)) to also include applications with respect to matters that have been, or could have been, made to the Norfolk Island Public Service Board under the *Public Sector Management Act 2000* of Norfolk Island.

Item 287 – After subparagraph 50(3)(a)(ii)

Section 50 of the Privacy Act authorises the Privacy Commissioner to transfer matters to other authorities such as the Ombudsman or the Australian Human Rights Commission in appropriate circumstances. Subsection 50(3) provides that where a complaint is transferred under subsection 50(2), it will be taken to be a complaint made to the authority to which it is transferred. Item 287 inserts new subparagraph 50(3)(a)(iia) which expands the reference to the ‘Ombudsman under the *Ombudsman Act 1976*’ (subparagraph 50(3)(a)(ii)) to also include ‘the Ombudsman under a particular Norfolk Island enactment’. This amendment requires that where a matter is transferred by the Privacy Commissioner to the Norfolk Island Ombudsman (or the Commonwealth Ombudsman performing functions under an enactment of Norfolk Island) under subsection 50(2), the complaint shall be taken to be a complaint made to that office. This could apply, for example, to complaints relating Norfolk Island agencies.

Item 288 – At the end of paragraph 50(3)(b)

Item 288 amends section 50 by inserting ‘or’ at the end of paragraph 50(3)(b). This amendment enables the insertion of an additional paragraph under Item 287.

Item 289 – After paragraph 50(3)(b)

Section 50 of the Privacy Act authorises the Privacy Commissioner to transfer matters to other authorities such as the Ombudsman or the Australian Human Rights Commission in appropriate circumstances. Subsection 50(3) provides that where a complaint is transferred under subsection 50(2) it will be taken to be a complaint made to the authority to which it is transferred. Item 289 inserts new paragraph 50(3)(ba) which expands the reference to an application made to the Public Service Commissioner under the *Public Service Act 1999* (paragraph 50(2)(b)) to also include applications with respect to matters that have been, or could have been, made to the Norfolk Island Public Service Board under the *Public Sector Management Act 2000* of Norfolk Island.

This amendment requires that where a matter is transferred by the Privacy Commissioner to the Norfolk Island Public Service Board under subsection 50(2), the complaint shall be taken to be a complaint made to that office. This could apply, for example, to complaints relating Norfolk Island agencies.

Item 290 – Before subsection 60(3)

Section 60 of the Privacy Act provides for payment of compensation and expenses in respect of determinations under that Act, in specified circumstances. Subsection 60(2) specifies that in cases where the respondent is an agency that has the capacity to sue and be sued, then the amount is recoverable as a debt due by that agency to the complainant. In any other case, the amount is recoverable as a debt due by the Commonwealth to the complainant. Item 290 inserts new subsection 60(2B) which provides that in the case of a determination relating to a Norfolk Island agency the reference to the ‘Commonwealth’ at subsection 60(2) is changed to ‘Norfolk Island’. This means that where the agency concerned does not have a capacity to sue or be sued, the amount is recoverable as a debt due by Norfolk Island to the complainant.

This means that the Norfolk Island Government is responsible for the payment of any amount determined by the Privacy Commissioner to be payable to a complainant under subparagraph 52(1)(b)(iii) or subsection 52(3) of the Privacy Act.

Item 291 – At the end of section 66

Section 66 of the Privacy Act provides a penalty for the failure or refusal to give information, answer a question, or provide a document or record when required to do so under that Act. The section also provides a number of reasonable excuses in relation to the failure or refusal to give such information under the Privacy Act. Item 291 inserts new subsection 66(12) which provides additional definitions for the purpose of applying section 66 to Norfolk Island. Specifically, subsection 66(12) provides that *Attorney-General* in relation to Norfolk Island, means the Norfolk Island Justice Minister (defined at Item 248). Subsection 66(12) further provides that *State* includes Norfolk Island.

The application of these amendments enable subsections 66(7), (8) and (9) to be applied directly to Norfolk Island. This means that the Norfolk Island Justice Minister may provide an undertaking under subsection 66(8) that other than in specified circumstances, material will not be used as evidence in proceedings for an offence against the law of Norfolk Island, or any other disciplinary proceedings against the individual. In providing such an undertaking the Norfolk Island Justice Minister must provide stated public interest reasons as to why the information or document should not be provided to the Privacy Commissioner.

Item 292 – At the end of subsection 68(1)

Subsection 68(1) of the Privacy Act provides that the Privacy Commissioner may authorise a person to enter premises of an agency, an organisation, a file number recipient, a credit reporting agency or credit provider under specified circumstances. The section further authorises such a person to inspect any document kept on the premises relevant to the performance of the Privacy Commissioner's functions.

However, subsection 68(1) excludes documents in respect of which a certificate has been provided by the Attorney-General under subsection 70(1) or (2). Item 292 extends this exception to also exclude 'documents in respect of which the Norfolk Island Justice Minister has given a certificate under subsection 70(4)'.

Item 293 – At the end of section 70

Subsection 70(1) of the Privacy Act enables the Attorney-General to provide a certificate to the Privacy Commissioner certifying that it would not be in the public interest to give information on a specified matter or produce a specified document or other record. Paragraphs 70(1)(a) to (h) inclusive provide the criteria that must be applied in determining whether the provision of the information or document would be contrary to the public interest. Where such a certificate is provided, the Commissioner is not entitled to require the information or document to be given.

Item 293 inserts new subsection 70(4) which establishes a comparative provision enabling the Norfolk Island Justice Minister (defined at Item 250) to give the Privacy Commissioner a certificate certifying that it would not be in the public interest to give information on a specified matter or produce a specified document or other record. Such a certificate must specify a reason prescribed at paragraphs 70(4)(a) to (h). Where such a certificate is provided, the Commissioner is not entitled to require the information or document to be given.

The amendment ensures that the same protections from disclosures that would not be in the public interest apply to both Norfolk Island and the Commonwealth.

Item 294 – Subsection 80G(1) (definition of *secrecy provision*)

Part VIA of the Privacy Act makes special provision for dealing with personal information in emergencies and disasters. Subsection 80G(1) sets out definitions of a number of terms used in this Part. Item 294 amends the definition of *secrecy provision* in subsection 80G(1) by extending the application of the definition to include provisions of a Norfolk Island enactment in addition to provisions of a law of the Commonwealth.

This means that the definition applies to a provision of a Norfolk Island enactment that prohibits or regulates the use or disclosure of personal information. This can include provisions with general or specified application.

Item 295 – After subsection 80R(1)

Item 295 inserts new subsection 80R(1A) in the Privacy Act. Subsection 80R(1A) replicates the operation of subsection 80R(1) in respect of secrecy provisions in Commonwealth enactments, and applies the same principle to Norfolk Island enactments.

The effect of the inserted provision is to clarify that the operation of Part VIA of the Privacy Act is only limited by secrecy provisions, whether provided for in Commonwealth or Norfolk Island enactments, where such provisions expressly exclude the operation of this section.

Item 296 – At the end of section 89

Part VIII of the Privacy Act outlines the application of this Act in respect of obligations of confidence. Section 89 stipulates the obligations of confidence to which this Part applies. Item 296 inserts new paragraph 89(c) which extends the application of this Part to an obligation which arises under or by virtue of a Norfolk Island enactment which is in force. This ensures that the same protections are provided to obligations arising under both Norfolk Island and Commonwealth enactments.

Item 297 – Application – Commonwealth contracts

Section 95B of the Privacy Act outlines the requirements under that Act in respect of Commonwealth contracts. Item 246 broadens the definition of *Commonwealth contracts* under the Privacy Act to include contracts entered into by the Norfolk Island Government. Item 297 provides transitional arrangements which limit the application of section 95B to contracts entered into by the Norfolk Island Government after the commencement of Item 297. This ensures that the application of the amendments do not have unintentional retrospective application to Norfolk Island contracts entered into prior to the obligations arising under this section entering into force.

Schedule 2 – Amendments relating to Christmas Island

Christmas Island Act 1958

Item 1 – Section 8G

Item 1 repeals section 8G of the Act and substitutes a new section 8G. The new section 8G establishes an arrangement for vesting and delegating powers under Western Australian laws applied on Christmas Island.

Subsection 8G(1) provides that powers of a Minister, Governor or Governor-in-Council of Western Australia by a Western Australian law in force on Christmas Island are instead vested in the Commonwealth Minister.

Subsection 8G(2) provides that powers vested in a person or authority by a Western Australian law in force on Christmas Island, and which are not covered by subsection 8G(1), are instead vested in the Commonwealth Minister.

Subsection 8G(3) provides that the Commonwealth Minister may vest or delegate powers subject to subsections 8G(1) and 8G(2) to another person or authority.

Subsection 8G(4) allows the Commonwealth Minister to empower a person or authority that is vested with a power under subsection 8G(3) to delegate that power to another person.

Subsection 8G(5) provides that if a person or authority is subject to an arrangement under section 8H, the Commonwealth Minister is taken to have vested those powers under Western Australian law applied on Christmas Island that the person or authority would normally hold in Western Australia in that person or authority.

Subsection 8G(6) allows the Commonwealth Minister to direct that subsection 8G(5) does not apply to a specified power, despite the existence of an arrangement under section 8H.

Subsection 8G(7) provides that a direction under subsection 8G(6) may be conditional or unconditional.

Subsection 8G(8) states that for the purpose of section 8G, an instrument may identify a power by reference to a class of powers.

Subsection 8G(9) provides that a person or authority vested with a power under section 8G is able to exercise that power despite not holding a qualification required by a Western Australian law.

Subsection 8G(10) clarifies that the operation of section 8G does not interfere with the application of Western Australian laws to Christmas Island under section 8A. For example, a regulation made under a law of Western Australia applies to Christmas Island by virtue of section 8A, despite the power to make a regulation for Christmas Island being vested in the Commonwealth Minister by section 8G.

Subsection 8G(11) provides that instruments made under section 8G are not legislative instruments.

Subsection 8G(12) defines the terms *authority*, *authority of Western Australia* and *power* for the purposes of section 8G.

Item 2 – Subsection 8H(2)

Item 2 amends the definitions of officer, employee and authority used in subsection 8H(2) to reflect those used in the new section 8G.

Item 3 – Transitional - directions under paragraph 8G(3)(a) of the *Christmas Island Act 1958*

Item 3 provides that any direction in force under the previous paragraph 8G(3)(a) of the Act remains in force as if it were made under the new paragraph 8G(3)(a).

Item 4 – Transitional – delegations under paragraph 8G(3)(b) of the *Christmas Island Act 1958*

Item 4 provides that any delegation in force under the previous paragraph 8G(3)(b) of the Act remains in force as if it were made under the new paragraph 8G(3)(b).

Item 5 – Transitional – delegations under subsection 8G(4) of the *Christmas Island Act 1958*

Item 5 provides that any delegation in force under the previous paragraph 8G(4) of the Act remains in force as if it were made under the new paragraph 8G(4).

Schedule 3 – Amendments relating to the Cocos (Keeling) Islands

Cocos (Keeling) Islands Act 1955

Item 1 – Section 8G

Item 1 repeals section 8G of the Act and substitutes a new section 8G. The new section 8G establishes an arrangement for vesting and delegating powers under Western Australian laws applied on the Cocos (Keeling) Islands.

Subsection 8G(1) provides that powers of a Minister, Governor or Governor-in-Council of Western Australia by a Western Australian law in force on the Cocos (Keeling) Islands are instead vested in the Commonwealth Minister.

Subsection 8G(2) provides that powers vested in a person or authority by a Western Australian law in force on the Cocos (Keeling) Islands, and which are not covered by subsection 8G(1), are instead vested in the Commonwealth Minister.

Subsection 8G(3) provides that the Commonwealth Minister may vest or delegate powers subject to subsections 8G(1) and 8G(2) to another person or authority.

Subsection 8G(4) allows the Commonwealth Minister to empower a person or authority that is vested with a power under subsection 8G(3) to delegate that power to another person.

Subsection 8G(5) provides that if a person or authority is subject to an arrangement under section 8H, the Commonwealth Minister is taken to have vested those powers under Western Australian law applied on the Cocos (Keeling) Islands that the person or authority would normally hold in Western Australia in that person or authority.

Subsection 8G(6) allows the Commonwealth Minister to direct that subsection 8G(5) does not apply to a specified power, despite the existence of an arrangement under section 8H.

Subsection 8G(7) provides that a direction under subsection 8G(6) may be conditional or unconditional.

Subsection 8G(8) states that for the purpose of section 8G, an instrument may identify a power by reference to a class of powers.

Subsection 8G(9) provides that a person or authority vested with a power under section 8G is able to exercise that power despite not holding a qualification required by a Western Australian law.

Subsection 8G(10) clarifies that the operation of section 8G does not interfere with the application of Western Australian laws to the Cocos (Keeling) Islands under section 8A. For example, a regulation made under a law of Western Australia applies to the Cocos (Keeling) Islands by virtue of section 8A, despite the power to make a regulation for the Cocos (Keeling) Islands being vested in the Commonwealth Minister by section 8G.

Subsection 8G(11) provides that instruments made under section 8G are not legislative instruments.

Subsection 8G(12) defines the terms *authority*, *authority of Western Australia* and *power* for the purposes of section 8G.

Item 2 – Subsection 8H(2)

Item 2 amends the definitions of officer, employee and authority used in subsection 8H(2) to reflect those used in the new section 8G.

**Item 3 – Transitional - directions under paragraph 8G(3)(a) of the
*Cocos (Keeling) Islands Act 1955***

Item 3 provides that any direction in force under the previous paragraph 8G(3)(a) of the Act remains in force as if it were made under the new paragraph 8G(3)(a).

**Item 4 – Transitional – delegations under paragraph 8G(3)(b) of the
*Cocos (Keeling) Islands Act 1955***

Item 4 provides that any delegation in force under the previous paragraph 8G(3)(b) of the Act remains in force as if it were made under the new paragraph 8G(3)(b).

**Item 5 – Transitional – delegations under subsection 8G(4) of the
*Cocos (Keeling) Islands Act 1955***

Item 5 provides that any delegation in force under the previous paragraph 8G(4) of the Act remains in force as if it were made under the new paragraph 8G(4).