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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NORFOLK ISLAND LEGISLATION AMENDMENT BILL 2015

**TAX AND SUPERANNUATION LAWS AMENDMENT (NORFOLK ISLAND
REFORMS) BILL 2015**

**A NEW TAX SYSTEM (MEDICARE LEVY SURCHARGE—FRINGE BENEFITS)
AMENDMENT BILL 2015**

**HEALTH AND OTHER SERVICES (COMPENSATION) CARE CHARGES
AMENDMENT (NORFOLK ISLAND) BILL 2015**

**HEALTH INSURANCE (APPROVED PATHOLOGY SPECIMEN COLLECTION
CENTRES) TAX AMENDMENT (NORFOLK ISLAND) BILL 2015**

**HEALTH INSURANCE (PATHOLOGY) (FEES) AMENDMENT (NORFOLK
ISLAND) BILL 2015**

**PRIVATE HEALTH INSURANCE (RISK EQUALISATION LEVY) AMENDMENT
(NORFOLK ISLAND) BILL 2015**

**AGED CARE (ACCOMMODATION PAYMENT SECURITY) LEVY AMENDMENT
(NORFOLK ISLAND) BILL 2015**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Assistant Minister for Infrastructure and Regional
Development, the Hon Jamie Briggs MP)

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AGED CARE (ACCOMMODATION PAYMENT SECURITY) LEVY AMENDMENT (NORFOLK ISLAND) BILL 2015

OUTLINE

There are two principal objectives of this package of Bills. The first is amendment of the *Norfolk Island Act 1979* to reform governance arrangements of Norfolk Island. This is in response to the “Same Country: Different World” report of the Joint Standing Committee on the National Capital and External Territories, which recommended substantial changes to the governance arrangements for Norfolk Island.

The second principal objective of this package of Bills is the extension of many mainland social security, immigration, and health arrangements to Norfolk Island, as well as changes to the tax system. This will implement the election commitment the Australian Government made in September 2013 and is consistent with the general principle that as Norfolk Island is part of Australia, those Australians who live there should have the same obligations and receive the same access to benefits as other Australians.

The current governance arrangements have been unable to deliver an adequate level of services to the community or an effective safety net for those most vulnerable in this small isolated community. The wide range of functions for which the Norfolk Island Government has been responsible, which includes national, state and local government services, coupled with the relatively narrow revenue base available for funding those services has meant large and growing revenue shortfalls for the Norfolk Island Government. As a result standards of service, particularly in the areas of social welfare and health care are well below those enjoyed by other Australians. It is beyond the resources of the small Norfolk Island community to support its current governance arrangements.

Similarly, the complexity involved in many of the services means the Norfolk Island Government has struggled to deliver an adequate level of services to the community or maintain an effective and up to date body of state-level legislation.

1. Reform of legal and governance arrangements

This package of reforms will strengthen and enhance the legal and governance framework for Norfolk Island. In broad terms, the reform of legal and governance arrangements consists of two separate phases. The first phase is the ‘interim transition time’ which begins on a day to

be proclaimed after the passage of the Norfolk Island Legislation Amendment Bill 2015. This phase includes the abolition of the Norfolk Island Legislative Assembly and Executive Council, and the establishment of an Advisory Council as an interim consultative body.

The second phase is to commence on 1 July 2016 and includes a mechanism which applies New South Wales state law to Norfolk Island as Commonwealth law as well as provisions to allow the Commonwealth to enter into arrangements with the New South Wales Government for the delivery of state level services. It is anticipated that a Norfolk Island Regional Council body would be established under New South Wales applied law or an ordinance under the *Norfolk Island Act 1979*, to be an elected local government body for the Territory.

1.1 Phase 1: The interim transition time

The purpose of the interim transition time is to enable the Commonwealth to implement the reforms, and prepare the community for the introduction of tax and social security and the introduction of the final governance model including the Norfolk Island Regional Council.

During the interim transition time, amendments are proposed in relation to the legislative and executive arrangements in force on Norfolk Island. The judicial arrangements on Norfolk Island are preserved without change.

1.1.1 Legislative functions during the interim transition time

It is proposed to abolish the Legislative Assembly, with the effect that the offices of all present members of the Assembly will terminate.

Enactments of the Legislative Assembly and all ordinances made by the Governor-General that are currently in force in the Territory will be preserved, as will laws made under such enactments and Ordinances.

Legislative power for the Territory will be conferred on the Governor-General, who will have broad power to make Ordinances for the peace, order and good governance of the Territory, including amending or repealing any Norfolk Island laws, however described (for example including all enactments, Ordinances, subordinate legislation) that are in force at the time the part of the Bill commences.

Such Ordinances will be subject to the disallowance provisions of the *Legislative Instruments Act 2003*; however, consistent with the arrangements for Ordinances of the Christmas Island and Cocos (Keeling) Islands territories, the sunset provisions of that Act will not apply to them.

1.1.2 Executive functions during the interim transition time

An Advisory Council that will include Norfolk Island community representatives will be established in the Act. The Advisory Council is an important mechanism for community consultation and engagement. The Advisory Council's role will be to offer advice to the Administrator on any matter affecting the peace order and good government of the Territory. The responsible Commonwealth Minister will be able to make provision by legislative instrument in relation to how the Council is to carry on business and in relation to remuneration and allowances (if any) for members of the Advisory Council.

During the interim transition time, the statutory office of the Administrator will continue. The Norfolk Island Administration will be continued as a body politic. The Administrator may exercise all the powers of the Administration, and may delegate such powers to specified persons. All rights, liabilities and assets of the Administration in existence prior to the commencement of the amendments made by Part 1 of Schedule 1 of the Bill will continue to

be rights, liabilities and assets of the Administration. Any rights, liabilities or assets (including property) relating to the government of Norfolk Island which were not, at the commencement of the amendments made by Part 1 of Schedule 1, rights, assets, or liabilities of the Administration (for example, assets, liabilities, rights or property held by Norfolk Island Ministers or the Legislative Assembly in that capacity) will become rights, liabilities, assets and property of the Administration.

Employees of the Administration prior to the commencement of the amendments made by Part 1 of Schedule 1 of the Bill, and any other person engaged on Norfolk Island, prior to that commencement, to perform duties relating to the government of Norfolk Island but who was not an employee of the Administration, will become an employee of the Administration.

The Administrator will be assisted by a new statutory position of Executive Director, who will be employed by the Norfolk Island Administration and designated by the Commonwealth Minister. The Executive Director will be delegated certain functions and powers by either the Commonwealth Minister or the Administrator. It is envisaged the Executive Director will be responsible for the day to day running of the Norfolk Island Administration and related entities including the Norfolk Island Hospital Enterprise and the Norfolk Island Government Tourist Bureau.

Through his or her ability to instruct the Administrator and delegates, the responsible Commonwealth Minister will have overarching supervisory powers in relation to the Administration and bodies corporate established under Norfolk Island enactments.

The Administrator will be subject to the instruction of the Commonwealth Minister both on matters delegated by the Commonwealth Minister and in relation to the statutory powers and functions of the Administrator. Matters on which the Commonwealth Minister may be able to instruct the Administrator are not limited by the Act and include: on what matters the Administrator is to seek advice from the Advisory Council; what powers should be delegated to the Executive Director; and how powers are to be exercised. There is provision for the Administrator to be required by the Commonwealth Minister to notify the Commonwealth Minister before exercising powers specified by the Commonwealth Minister.

During the interim period, powers and functions under Norfolk Island enactments which are at present conferred on Norfolk Island Ministers will be conferred on the Commonwealth Minister, who will be able to delegate these powers or functions. This arrangement will be provided for in an ordinance to be made by the Governor-General and is therefore not expressly provided for in the Act.

The Administrator will no longer be advised by an Executive Council. The Executive Council will be abolished. This relates to the abolition of the Norfolk Island Legislative Assembly, which will mean that there will not be any Norfolk Island Ministers to form an Executive Council.

Records currently held in relation to the Legislative Assembly, the Norfolk Island Executive Council, and persons acting in a capacity of Minister of Norfolk Island will be transferred to the Administration. Provision has been made for records of the Administration to remain in the custody of the Administration during the interim transition time.

1.1.3 Financial arrangements during the interim transition time

The financial arrangements in place prior to the interim transition time are to be maintained as far as possible during the interim transition time. The Public Account of Norfolk Island is to

continue as the repository of public money of the Territory, and each Territory authority shall continue to keep separate accounts.

Authorisation for expenditure of money from the Public Account is to be by legislative instrument made by the Governor-General; however, current annual and standing appropriations will remain in place (unless and until varied by the Governor-General) to allow the continued function of the Administration.

Control of spending during the interim transition time will ultimately rest with the Commonwealth Minister, however it is anticipated that delegations will be made to enable spending decisions to be made the Executive Director, the Chief Executive Officer of the Norfolk Island Administration and the responsible managers of Territory authorities (but only in relation to spending by the Territory authority). Existing delegations made for the purposes of approving proposals to enter into arrangements will remain in effect.

As the structure and arrangements relating to the financial framework are to be kept in place, there are a large number of minor amendments dealing with the abolition of various offices and bodies, and transferring duties and functions conferred on certain persons to the Administrator, or another appropriate person.

1.1.4 Employment arrangements during the interim transition time

All employees of the Administration prior to the interim transition time will remain as such. In addition, the Bill provides that any person who at the interim transition time was not an employee of the Administration or of a territory instrumentally but was employed to perform duties relating to the government of Norfolk Island will become an employee of the Administration, on existing terms and conditions, which may be varied. All such employees will continue on existing terms and conditions of employment. Such employees are not Commonwealth *Public Service Act 1999* employees.

1.2 Second phase: Final governance arrangements

The final governance arrangements for Norfolk Island will be established on the commencement of Schedule 2 of the Bill. The final governance arrangements are similar to those applying to Christmas Island and the Cocos (Keeling) Islands, with the exception that the Norfolk Island judicial arrangements will continue.

1.2.1 Legislative arrangements at the final transition time

The Bill establishes an applied laws regime for Norfolk Island similar to that operating on Christmas Island and the Cocos (Keeling) Islands. From commencement of the final transition time, the default body of law on Norfolk Island is New South Wales applied law (including as amended, suspended or repealed by legislative instrument of the Governor-General under *Norfolk Island Act 1979*). The application of New South Wales law as Commonwealth law does not in any way place any obligation on New South Wales or its officials to deliver services or administer legislation in respect of Norfolk Island.

After the commencement date, the Governor-General may also exercise legislative power for peace, order and good governance of the Territory by Ordinance under the *Norfolk Island Act 1979*. These post-commencement instruments prevail to extent of any inconsistency with any other applied NSW law or pre-existing law of the Territory.

However, instruments made by the Governor-General cannot affect nor effect the operation of Commonwealth law in Norfolk Island (so Commonwealth legislation will apply according to

its terms, and will take priority over any local Territory law, unless the relevant Commonwealth law provides otherwise (see subsection 8E(2) of *Christmas Island Act 1958* for equivalent provision)). Subsection 18(1) of the *Norfolk Island Act 1979* will remain in place, meaning that Commonwealth legislation does not extend to Norfolk Island unless it is expressed to extend.

The application of New South Wales laws will not, of itself, confer powers or impose responsibilities on New South Wales authorities or officers. Non-judicial powers and duties will be vested in the Commonwealth Minister administering the *Norfolk Island Act 1979*, who will have a capacity to delegate the powers, or direct that they be delegated to some other person or authority.

1.2.2 Executive arrangements at the final transition time

Executive functions provided for under applied New South Wales law will be the responsibility of the Commonwealth Minister, who may choose to delegate these functions to officers in his or her Department or other appropriate individuals or authorities.

The Commonwealth Minister will also be able to enter into arrangements with the Government of New South Wales for assistance in the administration of applied laws and other laws in force in the Territory, including the performance of functions and provision of services by New South Wales agencies on behalf of the Commonwealth.

At the local level, a Norfolk Island Regional Council will be established as an elected body to perform local level and municipal functions.

1.2.3 Employment arrangements at the final transition time

Employees of the Norfolk Island Administration will be transferred to the Norfolk Island Regional Council at the final transition time. It is expected that they will perform many of the same functions in the Regional Council as they already do, with some allowance for modernisation and restructuring. Employees will not be entitled to any payment when they cease as an employee of the Administration, but will be employed under the same terms and conditions.

1.2.4 Treatment of Assets and liabilities of the Norfolk Island Administration

Upon commencement of the final transition time, the Norfolk Island Administration will cease to exist. Provision has been made for assets and liabilities of the Norfolk Island Administration to vest in the Norfolk Island Regional Council, unless the Commonwealth Minister determines via a transition rule that any specified such asset or liability is to vest in the Commonwealth. Provision is made for the Commonwealth Minister to make transitional rules dealing with the transfer of Administration records to the Commonwealth or the Regional Council.

2. Extension of mainland social security, immigration, and health arrangements to Norfolk Island and changes to Australia's taxation system

Norfolk Island is the only inhabited place in Australia where residents do not participate in the taxation system, and the only place where Australians cannot access the Australian social security system. During the 2013 Federal election, the Government committed to extend federal taxation and social welfare systems to Norfolk Island to address issues of community welfare and ensure Australian citizens are treated equally throughout the country.

Extending the mainland social security system and, by extension, the mainland taxation and superannuation systems, will address issues of equity and welfare for Australian citizens and bring the rights and responsibilities of Norfolk Island residents in line with Australians living in Australia's other external territories such as Christmas Island.

The Norfolk Island Legislation Amendment Bill 2015 deals with the introduction of mainland social security (including the Medicare Benefits Schedule and the Pharmaceutical Benefits Scheme) and immigration arrangements. Amendments relating to the application of taxes and levies are part of this package of reforms but are dealt with in separate Bills, consistent with s. 55 of the Constitution.

The extension of health and social welfare arrangements is to take effect on commencement of Schedule 2 Part 1 of the Norfolk Island Legislation Amendment Bill 2015, which is 1 July 2016.

2.1 Extension of social security

This Bill extends mainland social security arrangements to Norfolk Island. Programmes and payments extended include the Age Pension, Newstart Allowance, Disability Support Pension and Youth Allowance. This will ensure Norfolk Island residents have access to social security on the same terms as other Australians.

Transitional provisions are included in the Bill to ensure both that these changes do not create a retrospective entitlement to payments for Norfolk Island Residents, and also so that Norfolk Island residents are not disadvantaged by legislated waiting periods for payments.

The Aged Care (Accommodation Payment Security) Levy Bill 2006 supports this measure by making consequential amendments to *Aged Care (Accommodation Payment Security) Levy Act 2006* as a result of the extension of associated aged care legislation to Norfolk Island.

2.2 Extension of health arrangements

This Bill extends a number of health arrangements which exist on mainland Australia, including the Medicare Benefits Schedule, the Pharmaceutical Benefits Scheme and the Private Health Insurance Rebate. These measures commence from 1 July 2016 and are an important part of ensuring the ongoing welfare of Australians on Norfolk Island.

In relation to Private Health Insurance, this Bill ensures that the same rules that apply to the calculation of the *lifetime health cover base day* for others will be applied equally to residents of Norfolk Island once they become eligible for Medicare. Transitional arrangements providing Norfolk Islanders a period of 12 months to take out Private Health Insurance and avoid the Lifetime Health Cover Loading are therefore included in the Bill.

The extension of health arrangements are supported by a number of other bills which make minor consequential amendments to health related acts:

- Health and Other Services (Compensation) Care Charges Amendment (Norfolk Island) Bill 2015;
- Health Insurance (Approved Pathology Specimen Collection Centres) Tax Amendment (Norfolk Island) Bill 2015;
- Health Insurance (Pathology) (Fees) Amendment (Norfolk Island) Bill 2015; and
- Private Health Insurance (Risk Equalisation Levy) Amendment (Norfolk Island) Bill 2015

These additional bills extend tax and levy related health measures to Norfolk Island, as part of the extension of mainland health arrangements to the Territory.

2.3 Extension of immigration arrangements

This Bill normalises immigration arrangements for Norfolk Island by extending the application of the *Migration Act 1958* and the *Immigration (Guardianship of Children) Act 1946* to Norfolk Island. These amendments will have the effect of ensuring that Norfolk Island is treated in a way consistent with Australia's other inhabited external territories such as Christmas Island. Transitional arrangements will be put in place to ensure that non-citizens on Norfolk Island can be granted visas under the Australian Migration system to ensure they do not inadvertently become unlawful as a result of the transition.

2.4 Changes to Australia's tax system

Schedule 1 to the Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015 amends the *Income Tax Assessment Act 1936*, *Income Tax Assessment Act 1997* and *Superannuation Guarantee (Administration) Act 1992* to repeal the:

- income tax exemptions that apply to Norfolk Island resident individuals, companies and trustees in relation to their Norfolk Island sourced income and their foreign sourced income, bringing them fully into Australia's income tax system;
- Medicare levy exemptions that apply to Norfolk Island residents, bringing them fully into Australia's Medicare levy system; and
- superannuation guarantee charge exemptions that apply to Norfolk Island employers and employees in relation to work performed on Norfolk Island, bringing them fully into Australia's superannuation guarantee system.

The A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Amendment Bill 2015 supports this measure by making consequential amendments to *A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Act 1999* as a result of the repeal of the Medicare levy exemptions. The taxation and superannuation reforms generally apply from 1 July 2016; with transitional arrangements applying in relation to capital gains tax and superannuation guarantee charge.

Financial impact statement

The total Norfolk Island reform package (including this Bill and related measures) is estimated to cost \$136.2 million over the forward estimates.

Statement of Compatibility with Human Rights

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

Norfolk Island Legislation Amendment Bill 2015 and related Bills

These Bills are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The principal objective of this package of bills is to provide the necessary framework for the sustainable economic and social development of the Norfolk Island Community. This is achieved through two principal reforms. The first is amendment of the *Norfolk Island Act 1979* to reform governance and legal arrangements of Norfolk Island. This will implement in large measure the Government's response to the "Same Country: Different World" report of the Joint Standing Committee on the National Capital and External Territories.

The second principal object of this package of Bills is the extension of many mainland social security, immigration, and health arrangements to Norfolk Island. This will implement in large part the election commitment of the Australian Government made in September 2013 and is consistent with the general principle that as Norfolk Island is part of Australia, those Australians who live there should have the same obligations and receive the same access to benefits as other Australians.

A more detailed description of this package of Bills is set out in the Outline to the Explanatory Memorandum.

Human rights implications

The following human rights are engaged by this package of Bills:

- The right to self-determination
- The rights of minorities
- The right to take part in public affairs and elections
- The right to freedom of movement
- The right to social security
- The right to health
- The right to an adequate standard of living, and
- The right to work

The right to self-determination

Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR) and Art 1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) provide that all peoples have the right of self-determination and that by virtue of that right they can freely determine their political status and freely pursue their economic, social and cultural development.

Some parts of the Norfolk-Pitcairn population of Norfolk Island identify as a people with rights to self-determination. The proposed governance reforms, which effectively remove

Norfolk Island's self-governing status, may be viewed by this group as being inconsistent with the right to self-determination.

Even if it is accepted that the Norfolk-Pitcairn population are a people with a right to self-determination, self-determination is widely understood to be exercisable in a manner that preserves the territorial integrity, political unity and sovereignty of a country, such as Australia. Self-government of Norfolk Island is thus not a prerequisite to exercising any right of self-determination.

The right to self-determination does, however, require that peoples be consulted about decision that impact on them and have the opportunity to participate in the making of such decisions, including through the processes of democratic government. It also includes a right to preserve group identity and culture.

The proposed governance reforms are the result of an extensive consultation process, including as led by the Administrator of Norfolk Island in response to the report of the Joint Standing Committee on the National Capital and External Territories "Same Country: Different World". The Norfolk Island community was consulted over several months through public forums, facilitated discussions, meetings with community leaders and groups, and the option to provide views directly over the internet or by letter. Hundreds of community members participated in one or more of the consultation processes. These consultations found significant support for change within the Norfolk Island community.

The primary purpose of the proposed governance reforms and the extension of mainland social security, immigration and health arrangements to Norfolk Island is to provide for the sustainable economic and social development of Norfolk Island, which are important aspects of the right to self-determination. The maintenance of the Norfolk-Pitcairn culture relies to some extent on the opportunities for members of that community to remain living on Norfolk Island. The proposed reforms will facilitate this by providing for sustainable economic development on Norfolk Island.

During the interim transition time from the current governance arrangements to the new governance arrangements, the population of Norfolk Island, including the Norfolk-Pitcairn population, will be able to participate in the making of decisions that affect them through the Advisory Council.

Under the new governance arrangements, the Australian citizens of Norfolk Island will be able to directly elect a Norfolk Island Regional Council, which will be responsible for local level and municipal government functions on Norfolk Island, such as the provision and maintenance of roads, power, water and sewerage, waste disposal and treatment, land use planning, management of local natural areas, historic and cultural places and public recreation facilities. The population of Norfolk Island will also remain eligible to vote in Commonwealth elections.

In light of the above factors, the Norfolk Island Legislation Amendment Bill 2015 and related Bills are consistent with any applicable right to self-determination.

Rights of minorities

Article 27 of the ICCPR is an individual right which overlaps to some extent with the collective right of peoples to self-determination. Article 27 provides that:

'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language'.

The Norfolk-Pitcairn population of Norfolk Island may constitute a minority under Art 27. The proposed governance reforms and the extension of mainland social security, immigration and health arrangements to Norfolk Island do not limit in any way the existing rights of the Norfolk-Pitcairn population to enjoy their own culture or use their own language. As noted above, the primary purpose of these reforms is to provide for the sustainable economic and social development of Norfolk Island, which will in turn facilitate the maintenance of the Norfolk-Pitcairn culture.

The right to take part in public affairs and elections

Article 25 of the ICCPR sets out another right which is related to, but distinct from the right to self-determination. Article 25 relevantly provides that:

‘Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 (i.e. race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) and without unreasonable restriction:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) ...’

(see also Art 5(c) of the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD), Arts 7 and 8 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), and Art 29 of the *Convention on the Rights of Persons with Disabilities* (CRPD).

The Bill engages this right through the abolition of the Norfolk Island Legislative Assembly. However, the Human Rights Committee has recognised that the right to take part in public affairs and elections can be met by different models of governance, so long as these are democratic and based on the consent of the people (see General Comment No 25 at para 1).

The final governance arrangements proposed for Norfolk Island, and of which the amendments made by this Bill are a significant component, will include the establishment of a Norfolk Island Regional Council, responsible for local and municipal issues, elected by the Australian citizens of Norfolk Island. Further, Norfolk Islanders who are Australian citizens will retain the right to vote in Commonwealth elections (the Commonwealth government will be responsible for certain aspects of the governance of Norfolk Island, through the application of Commonwealth laws including those relating to taxation, social security, the provision of health care, immigration, and through the administration of New South Wales laws as applied to Norfolk Island). This model is consistent with arrangements in Australia’s other inhabited external territories such as Christmas Island and the Cocos (Keeling) Islands.

The final governance arrangements proposed for Norfolk Island are thus consistent with Art 25(a) and (b), although the model for achieving this right is different to that currently in place on Norfolk Island.

During the interim transition time, the ability of individuals on Norfolk Island to participate in the conduct of public affairs at the local level will be more limited due to a lack of a democratically elected mechanism at the local level during this period. The transition from one governance model to another is a complicated process, which must be undertaken in a careful and considered manner to avoid unintended negative impacts on the community affected. The interim transition time from the current governance model, which has proved

itself over a number of years to be financially unsustainable and not to be serving the needs of the Norfolk Island community, to the new governance model is designed to avoid such negative impacts and give the necessary time to put the new governance model in place, while taking immediate action to redress Norfolk Island's depressed economy and the poor condition of its essential services. The present Norfolk Island Government has effectively been insolvent for a number of years and has been unable to deliver an appropriate level of services.

The short term limitation on local democratic representation is a reasonable, necessary and proportionate measure in light of the pressing need to address the numerous problems facing the Norfolk Island community. The creation of an Advisory Council of local community representatives will minimise the impact of the absence of local democratic representation for this interim period, which is expected to be less than 2 years. Participation in an advisory council is a recognised form of participation in the conduct of public affairs (see General Comment No 25 at para 6). Australian Citizens will still be able to vote in Federal elections and express their views to the responsible Commonwealth Minister, the Administrator on Norfolk Island or the Executive Director. Community members may also engage with elected representatives in the Federal Parliament.

The right to freedom of movement

Article 12(1) of the ICCPR provide that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. A similar right is found in Art 10 of the *Convention on the Rights of the Child* (CRC), Art 18 of the CRPD, Art 5 of the CERD and Art 15 of CEDAW.

Norfolk Island is the only inhabited territory of Australia to which the *Migration Act 1958* does not extend. This Bill proposes to extend the application of the *Migration Act 1958* and the *Immigration (Guardianship of Children) Act 1946* to Norfolk Island, which will overtake the *Immigration Act 1980* (NI) in providing for migration related matters. This promotes the right to freedom of movement of Australians by reducing barriers to movement, including removing the need for Australians not resident on Norfolk Island to carry passports for travel to Norfolk Island (which is internal travel within Australia) and the removal of residency fees for those who wish to reside permanently on Norfolk Island.

The right to social security

Article 9 of ICESCR recognises the right of everyone to social security, including social insurance. A similar right is found in Art 26 of the CRC and Art 28 of the CRPD. Under Art 2(1) of ICESCR, a country is obliged to take steps 'to the maximum of its available resources, with a view to achieving progressively the full realisation' of the rights recognised in ICESCR.

Extension of the mainland social security systems, including superannuation, payments and services available to other Australians living in Australia promotes Norfolk Island residents' right to social security. The mainland social security system is manifestly more comprehensive than the Norfolk Island Government's own welfare system, which does not provide any family assistance, childcare or unemployment payments.

The right to health

Article 12 of ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A similar right is found in Art 24 of the CRC and Art 25 of the CRPD. Under Art 2(1) of ICESCR, a country is obliged to take steps 'to the maximum of its available resources, with a view to achieving progressively the full

realisation' of the rights recognised in ICESCR. Ensuring that health services are affordable is one component of this right.

The extension of the Medicare Benefits Schedule and the Pharmaceutical Benefits Scheme will promote the right to health of Australian citizens on Norfolk Island. The pre-existing Norfolk Island health scheme only subsidises expenses beyond a threshold, whereas Medicare and the PBS begin providing assistance immediately. This will improve the access of citizens, and particularly low income earners, to healthcare on the Island.

The right to an adequate standard of living

Article 11(1) of ICESCR recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. A similar right is found in Art 27 of the CRC and Art 28 of the CRPD. Under Art 2(1) of ICESCR, a country is obliged to take steps 'to the maximum of its available resources, with a view to achieving progressively the full realisation' of the rights recognised in ICESCR.

The primary objective of the governance reforms and extension of mainland social security, health and other arrangements to Norfolk Island is to address the effective insolvency of the current Norfolk Island Government and its inability to deliver an appropriate level of basic services to the Norfolk Island Community. Further, the governance reforms will allow investments to be made to revitalise Norfolk Island's depressed economy. All of these steps will assist in improving the standard of living on Norfolk Island.

The right to work

Article 6(1) of ICESCR recognises the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts. Under this Article, State Parties undertake to take appropriate steps to safeguard this right. A similar right is found in Art 27 of the CRPD. Under Art 2(1) of ICESCR, a country is obliged to take steps 'to the maximum of its available resources, with a view to achieving progressively the full realisation' of the rights recognised in ICESCR.

Steps that State Parties take to achieve the full realisation of the right to work must include policies and techniques to achieve steady economic, social and cultural development (see Art 6(2)). As noted above, one of the primary aims of the reforms set out in the Norfolk Island Legislation Amendment Bill 2015 and related Bills is to revitalise the Norfolk Island economy, which in turn should lead to the creation of more jobs on Norfolk Island hence facilitating the realisation of the right to work for Norfolk Island residents.

Conclusion

The Bill is compatible with human rights because it advances the protection of human rights. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

NORFOLK ISLAND LEGISLATION AMENDMENT BILL 2015

NOTES ON CLAUSES

Clause 1: Short Title

Item 1 is a formal provision specifying the short title of the Bill.

Clause 2: Commencement

Table Item 1 specifies that sections 1 to 4 of the Bill (the short title, commencement, schedule, and translation of certain references provisions) will commence upon the Act receiving the Royal Assent.

Table Item 2 provides for provisions in Schedule 1 Part 1 of the Bill (the general amendments) and Schedule 1 Part 2 (transitional provisions including establishment of the Advisory Council) to commence on a day to be fixed by proclamation, or, if proclamation does not occur within 6 months, on the day after the end of the 6 month period.

Table Item 3 provides that Schedule 1 Part 2 (transitional provisions) will commence the day after the Act receives the Royal Assent.

Table Item 4 establishes that Schedule 1 Part 3 will commence immediately after both the provisions referenced in Table Item 2 commence, and Schedule 1 to the *Acts and Instruments (Framework Reform) Act 2015* commence. The provision in Schedule 1 Part 3 is contingent on the commencement of Schedule 1 to the *Acts and Instruments (Framework Reform) Act 2015*.

Table Item 5 provides that Schedule 2 Part 1 of the Bill, containing clauses relating to the final governance model for Norfolk Island will commence on 1 July 2016.

Table Item 6 specifies that Schedule 2 Part 2 of the Bill, which contains transitional provisions, will commence at the same time as the provisions in Table Item 2.

Table Item 7 specifies that Schedule 3 of the Bill, containing a minor amendment to the *Census and Statistics Act 2005*, will commence the day after the Act receives the Royal Assent.

Clause 3: Schedules

Item 3 provides that each Act in any schedule of this Bill is amended or repealed as set out in the applicable item in the Schedule. It also provides that any other item in a Schedule has effect according to its terms, which relate to provisions such as application provisions. It also allows that any regulation under Subsection (1) to be amended or repealed by the Governor-General.

Clause 4: Translation of certain references

Clause 4 provides that if Schedule 1 to the *Acts and Instruments (Framework Reform) Act 2015* commences before the commencement of Part 1 of Schedule 1 to the Norfolk Island Legislation Amendment Bill 2015, then the reference in Division 2 to the *Legislative Instrument Act 2003* should be read as a reference to the *Legislation Act 2003*.

SCHEDULE 1 – Interim arrangements etc.

Part 1—General Amendments

Division 1—Amendment of the Norfolk Island Act 1979

Preamble

Item 1 provides for the repeal of the preamble to the *Norfolk Island Act 1979* as the preamble no longer reflects the Parliament’s intention for the governance of Norfolk Island, as expressed in this Bill.

Items 2-14 (Inclusive) Amendments to Subsection 4(1)—Interpretation

Item 2 inserts a new definition of ‘Advisory Council’ to mean the Norfolk Island Advisory Council which is a body established in this Bill. It also inserts a definition of ‘Australia’ that includes Norfolk Island when used in a geographic sense. This definition differs from the definition of ‘Australia’ in the *Acts Interpretation Act 1901* that does not include Norfolk Island.

Item 3 removes a reference to the repealed *Public Sector Management Act 2000* (NI) and substitutes the *Public Service Act 2014* (NI).

Item 4 repeals the definition of ‘Chief Minister’ as this position ceases to exist from commencement of the interim transition time.

Item 5 repeals the definition of ‘Commonwealth Gazette’. This definition was required by virtue of subsections 39AB (1), 39AC (2) and paragraph 39AC (8)(a) of the *Norfolk Island Act 1979*, which are repealed from commencement of the interim transition time.

Item 6 repeals the definition of ‘Deputy Speaker’ as this position ceases to exist from commencement of the interim transition time.

Item 7 repeals the definition of ‘enactment’ and replaces it so as to include ordinances made by the Governor-General under section 19A, or an ordinance continued in force by this Act, or a law of the Norfolk Island Legislative Assembly, which is continued by this Act.

Item 8 repeals the definition of ‘Executive Council’ as this body ceases to exist from commencement of the interim transition time.

Item 9 inserts a new definition of ‘Executive Director’ which is a new position established in this Bill.

Item 10 inserts a new definition of ‘interim transition time’ to mean the commencement of Part 1 Schedule 1 to this Bill.

Item 11 amends the definition of ‘legislative assembly’ to clarify that the term is used, in the Bill, to refer to the Legislative Assembly that will cease to exist from the commencement of the interim transition time.

Item 12 inserts a new definition of ‘Legislative Assembly law’ to mean a law passed by the Norfolk Island Legislative Assembly, and assented to under the *Norfolk Island Act 1979* before the interim transition time.

Item 13 inserts a new definition of ‘member of the Advisory Council’ to clarify that the Chair of the Advisory Council is a member of the Advisory Council.

Item 14 repeals the definition of ‘Minister’ as the position ceases to exist from commencement of the interim transition time.

Item 15 repeals the definition of ‘Minister for Finance’ as the position ceases to exist from commencement of the interim transition time.

Item 16 defines ‘section 19A Ordinance’ to mean an ordinance made under that section after the interim transition time.

Item 17 repeals the definition of ‘Speaker’ as the position ceases to exist from commencement of the interim transition time.

Item 18 repeals subsection 4(2) which references Schedules 2 and 3 of the *Norfolk Island Act 1979*. These schedules are being repealed, making subsection 4(2) redundant.

Item 19 repeals a section stating that Chapter 2 of the *Criminal Code* as this provision is redundant.

Item 20 Repeal of Section 7 and substitution of New Sections 7 and 7A

Item 21 repeals Section 7—Exercise of Administrator’s powers etc. and substitutes text as follows.

Subsection 7(1) requires the Administrator to exercise powers and functions conferred on the Administrator.

Paragraph 7(1)(a) requires the Administrator to exercise powers and perform functions in accordance with the tenor of his or her Commission.

Paragraph 7(1)(b) requires the Administrator to discharge his or her powers and functions in accordance with written directions which may be given by the Commonwealth Minister.

Subsection 7(2) specifies that a direction issued by the Commonwealth Minister under paragraph 7(1)(b) can be either general or specific in nature. This is intended to allow the Commonwealth Minister to direct the Administrator either in relation to specific cases or decisions the Administrator may make, or a general direction, for example in relation to a type or class of decisions for which the Administrator may have decision making powers.

Subsection 7(3) allows the responsible Commonwealth Minister to require the Administrator to give notice of the Administrator’s intention to exercise a specified power or function, at least a specified number of days before exercising that power or performing that function.

Subsections 7A(1) enables the Administrator to delegate any or all of the Administrator’s functions and powers to the Executive Director, or an employee of the Administration, or to an office holder under an enactment, or to an employee of a body corporate established under a Norfolk Island enactment. This power of delegation is needed to ensure the usual business of Government in the Territory can be performed during the transition period. As the Administrator has a large number of functions under Norfolk Island enactments and is likely to be delegated a large number of functions under Norfolk Island enactments from the responsible Commonwealth Minister, many functions will need to be delegated to the Executive Director to allow him or her to manage the day to day functions of the Norfolk

Island Administration and other territory instrumentalities. Some powers may need to be delegated to employees of the Administration and statutory office holders under existing Norfolk Island enactments to enable these employees and office holders to continue making decisions as they discharge their functions.

Subsection 7A(2) states that a delegate must comply with any written directions of the Administrator and any written directions of the responsible Commonwealth Minister.

Subsection 7A(3) specifies that a direction issued under subsection 7(2) can be either general or specific in nature.

Subsections 7A(4) and (5) provide that if a direction of the Administrator issued under subsection 7(2) is inconsistent with a direction issued by the responsible Commonwealth Minister under subsection 7(2), then the direction issued by the responsible Commonwealth Minister will prevail.

Subsection 7A(6) allows the responsible Commonwealth Minister to require a delegate of the Administrator to give notice of his or her intention to exercise a specified power or function, at least a specified number of days before exercising that power or performing that function.

Subsection 7A(7) is a technical provision which confirms that relevant provisions of the *Acts Interpretation Act 1901* relating to delegations under Acts also apply to this section in relation to delegations of powers conferred by other laws (i.e. NI enactments).

Subsection 7A(8) states for clarity that nothing in section 7A prevents a power or delegation being conferred on the Administrator by an enactment.

Item 21 Repeal of sections 9 and 10, New Section 9, 10 and 10A

Item 21 repeals sections relating to Deputies of the Administrator and Oaths or affirmation of Administrator etc. The Deputy Administrator is no longer required as the Administrator will be assisted by the new position of Executive Director during the interim transition time.

New Section 9 establishes the position of Executive Director of Norfolk Island, to be appointed by the relevant Commonwealth Minister. The Executive Director will be a senior employee of the Administration, and will perform much of the oversight and general management role of the Norfolk Island Administration and territory instrumentalities including the Norfolk Island Hospital Enterprise, Norfolk Island Tourism, and the Norfolk Island Gaming Enterprise. It is intended for the Executive Director to use powers delegated by the Administrator to begin restructuring the Norfolk Island Administration and improving the efficiency of the public bodies, whilst administering the daily functions of the Norfolk Island Administration. Subsection 9(2) confirms the written appointment of an Executive Director is not a legislative instrument. This is because it is not legislative in character and therefore not within the meaning of section 5 of the *Legislative Instruments Act 2003*. This subsection confirms this and is included to assist readers.

New Section 10 provides a power for the Administrator to engage employees on behalf of the Administration, and also for the Administrator to specify the terms and conditions of any people employed by the Administrator on behalf of the Administration. Subsection 10(3) states Section 10 does not nullify the provisions of any other enactments that allow employees to be engaged on behalf of the Commonwealth. Subsection 10(4) clarifies the section does not, by implication, limit any of the powers conferred on the Administrator by section 5.

New Section 10A allows for officers and employees of Commonwealth agencies or Commonwealth authorities to be made available to assist the Administration.

Item 22 Repeal of Part III, substitute new Part III—Norfolk Island Advisory Council

Item 22 repeals Part III of the *Norfolk Island Act 1979* which relates the Norfolk Island Legislative Assembly, and replaces it with a new Part III, concerning the Norfolk Island Advisory Council.

New Section 11 is a formal provision providing a simplified outline of the new Part III.

New Section 12 establishes the Norfolk Island Advisory Council. The Advisory Council is intended to tender advice to the Administrator in the time between the commencement of the interim transition time and the commencement of the final transition time.

New Section 13 specifies the functions of the Advisory Council.

New Subsection 13(a) specifies the Advisory Council can advise the Administrator on matters affecting the peace, order and good government of the Territory. This provides the Council with broad discretion about the matters concerning Norfolk Island on which it may choose to advise.

New Subsection 13(b) further specifies that the Advisory Council may perform any additional functions which are subsidiary to the function specified in subsection 13(a).

New Section 14 establishes that the Advisory Council will consist of a Chair and four other members, meaning a total of five Advisory Council members.

New Section 14A allows the responsible Commonwealth Minister to appoint members of the Advisory Council by written instrument, with Advisory Council members to hold office on a part time basis.

New Section 14B specifies the responsible Commonwealth Minister will determine the length of an appointment to the Advisory Council, with the length of appointment not to exceed 12 months.

New Section 14C makes provision for acting members of the Advisory Council.

New Subsection 14C(1) specifies the responsible Commonwealth Minister may appoint an acting Chair of the Advisory Council in the circumstances specified in the two following paragraphs.

New Paragraph 14C(1)(a) allows an acting Chair of the Advisory Council to be appointed when there is a vacancy in the office of the Chair of the Advisory Council, including in circumstances where the appointment of Chair of the Advisory Council has not yet been made.

New Paragraph 14C(1)(b) allows an acting Chair of the Advisory Council to be appointed in circumstances when the Chair is absent from duty or Australia, or is unable to perform the duties of the office.

New Subsection 14C(2) makes provision for the responsible Commonwealth Minister to appoint a person to act as a member of the Advisory Council (other than the Chair of the Advisory Council, provision for which is made in subsection 14C(1)).

New Paragraph 14C(2)(a) allows an acting Advisory Council member to be appointed when there is a vacancy on the advisory Council, including whether or not an appointment has previously been made to the Advisory Council.

New Paragraph 14C(2)(b) allows an acting member of the Advisory Council to be appointed in circumstances when a member is absent from duty or Australia, or is unable to perform the duties of the office.

New Section 14D allows the responsible Commonwealth Minister to specify remuneration and allowances (if any) for members of the Advisory Council in a legislative instrument.

New Section 14E requires members of the Advisory Council to advise the responsible Commonwealth Minister in writing of all interests (pecuniary or otherwise) which conflict or may conflict with the performance of the member's functions on the Advisory Council. It also requires Advisory Council members to notify in writing the responsible Commonwealth Minister should they, during their term as members, acquire any interests (pecuniary or otherwise) which conflict or may conflict with the performance of the member's functions on the Advisory Council.

New Subsection 14F(1) provides that a member may resign by giving written notice to the responsible Commonwealth Minister.

New Subsection 14F(2) provides that the resignation will take effect on the day it is received by the responsible Minister, unless a later day is specified in the resignation.

New Section 14G allows the Commonwealth Minister to terminate the appointment of a member of the Advisory Council for any reason.

New Section 14H specifies that the responsible Commonwealth Minister may determine terms and conditions for Advisory Council members, and that members hold office on the basis of the terms and conditions specified (if any are specified by the responsible Commonwealth Minister).

New Section 14J allows the responsible Commonwealth Minister to determine, by legislative instrument, the procedures to be followed at or in relation to meetings of the Advisory Council. It includes a non-exhaustive list of matters on which the responsible Commonwealth Minister may prescribe procedures.

New Section 14K requires the Advisory Council to keep minutes of its meetings.

New Section 14L inserts a new section which relates to assistance to the Advisory Council.

New Subsection 14L(1) allows the Administrator to assist the Advisory Council. In practice, the Administrator may instruct employees of the Administration to provide assistance to the Advisory Council.

New Subsection 14L(2) provides a non-exhaustive list of the assistance the Administrator may provide the Advisory Council. In practice this assistance would include advice and information, secretariat services, clerical assistance and potentially meeting facilities.

New section 14M clarifies that neither the Administrator, nor any other person, is required to obtain advice from the Advisory Council before performing a function, or exercising a power, or taking other action.

Item 23 New Section 15

Item 23 inserts a new section 15—Laws in force in the Territory.

New Section 15 is a new section which specifies which laws are in force in Norfolk Island from time to time after the interim transition time, namely:

- Commonwealth Acts to the extent they are in force from time to time in the Territory;
- Laws made under those Acts;
- Ordinances made under new s 19A after the interim transition time; and

- Laws that were in force prior to the interim transition time and which have been continued in force by section 16 or new section 16A (see item 26) (and which may be amended in accordance with s 17, including by a new s 19A Ordinances).

Item 24

Item 24 amends the heading of section 16 to clarify that section 16 relates to those laws which were in force immediately before the commencement of the *Norfolk Island Act 1979*, which was on 7 August 1979.

Item 25

Item 25 adds a note for clarity that subsection 16(1) commenced on 7 August 1979.

Item 26 New Section 16A

New Section 16A provides that certain laws which were in force before the interim transition time continue in force during the interim transition time. These include legislative assembly laws and ordinances under the Act which were in effect before the interim transition time.

Item 27 New Subsections 17(3) and 17(4)

Item 27 adds new subsections (3) and (4) to section 17. These subsections allow laws continued in force by section 16 or section 16A to be amended by a section 19A ordinance or a law made under a section 19A ordinance.

Item 28 Repeal of Divisions 2 and 3 of Part IV, and new Division 2

Item 28 repeals Division 2 (Legislative power of Legislative Assembly) and Division 3 (Legislative power of the Governor-General) and substitutes a new Division 2 (Legislative powers of the Governor-General).

New Subsection 19A(1) is a provision giving the Governor-General plenary power to make Ordinances for the peace, order and good government of Norfolk Island.

New Subsection 19A(2) provides that an ordinance made by the Governor-General is a legislative instrument. Sunsetting provisions do not apply to legislative instruments made under this subsection by virtue of the exemption in item 47 of section 54 of the *Legislative Instruments Act 2003*, which provides an exemption from sunsetting for ‘ordinances of non-self-governing territories’.

Item 29

Item 29 renames Division 4 of Part IV to “Division 3—Inconsistency of laws”.

Item 30

Item 30 renames section 29 to “Inconsistency of Legislative Assembly laws with old Ordinances”.

Item 31

Item 31 replaces “Division 2” with “Repealed Division 2 (as in force before the interim transition time)”.

Item 32

Item 32 replaces “section 27” with “repealed section 27 (as in force before the interim transition time)”.

Item 33 Repeal of Section 30, and new Section 30

Item 34 repeals section 30 “Commencement of enactments” and substitutes a new section 30 (inconsistency of section 19A Ordinances with the regulations).

New Subsection 30(1) provides that in the case of any inconsistency between the regulations and a section 19A Ordinance, the regulations will prevail to the extent of the inconsistency.

New Subsection 30(2) provides that for the purposes subsection 30(1), an ordinance is consistent with the regulations to the extent to which the section 19A ordinance and the regulations are capable of operating together.

New Subsection 30(3) provides that references to a section 19A ordinance within section 30 also encompasses laws made under a section 19A ordinance.

Item 34

Item 34 repeals Part V of the Act: ‘The Legislative Assembly’, which has the effect that the Norfolk Island Legislative Assembly ceases to exist at the interim transition time.

Item 35

Item 35 omits the phrase “(4) or” from subsection 47(3)

Item 36

Item 36 repeals subsection 47(4) as this provision relates to schedule 2 of the Act, which is repealed by this Bill.

Item 37

Item 37 omits the phrase “(other than the general purpose referred to in subsection (4))” as subsection (4) is repealed by this Bill.

Item 38

Item 38 omits the phrase “subject to subsection 27(3)” from subsection 47(5) to remove a redundant reference to subsection 27(3), which relates to the legislative power of the Governor-General. The legislative power of the Governor-General is now dealt with under new section 19A.

Item 39

Item 39 repeals the Note referencing section 25, as section 25 is repealed by this Bill.

Item 40

Item 40 changes the heading of Subsection 48A in order to substitute “Minister for Finance” with “Administrator”.

Item 41

Item 41 substitutes “Minister for Finance” with “Administrator” in Subsection 48A(1).

Item 42

Item 42 repeals subsections 48A(4), (5) and (6) which require certain actions in relation to the Norfolk Island annual budget and inserts a clause requiring the Administrator to give a copy of the annual budget to the responsible Commonwealth Minister.

Item 43

Item 43 changes the heading of Subsection 48B in order to substitute “Minister for Finance” with “Administrator”.

Item 44

Item 44 substitutes “Minister for Finance” with “Administrator” in Subsections 48B(1) and (3), as the position of Minister for Finance ceases to exist on commencement of the interim transition time.

Item 45

Item 45 repeals subsection 48B(4) as it relates to the position of Minister for Finance, which ceases to exist on commencement of the interim transition time.

Item 46

Item 46 repeals paragraph 48C(3)(a) as it relates to the position of Minister for Finance, which ceases to exist on commencement of the interim transition time.

Item 47

Item 47 repeals subsection 48C(4) as it relates to the position of Minister for Finance, which ceases to exist on commencement of the interim transition time.

Item 48

Item 48 repeals subparagraph 48E(2)(b)(i) as it relates to the position of Minister for Finance, which ceases to exist on commencement of the interim transition time.

Item 49

Item 49 repeals subsection 48E(3) as it relates to Norfolk Island Ministers, which will cease to exist on commencement of the interim transition time.

Item 50

Item 50 repeals subsection 48E(4) as it relates to the position of Minister for Finance, which will cease to exist on commencement of the interim transition time.

Item 51

Item 51 substitutes “a Norfolk Island Minister” with “the Administrator” in Subsection 48F(3).

Item 52

Item 52 repeals paragraph 48G(2)(d) as it refers to the Norfolk Island Legislative Assembly which ceases to exist on commencement of the interim transition time.

Item 53

Item 53 repeals paragraphs 48G(3)(c) and (d), and substitutes paragraphs which require references to the Attorney-General or the Cabinet in section 37 of the *Auditor-General Act 1997* to be read as references to the Administrator.

Item 54

Item 54 repeals paragraphs 48G(3)(g), (h), (i) and (j), and substitutes paragraphs which require references to the Prime Minister, the Finance Minister or a responsible Minister in section 37 of the *Auditor-General Act 1997* to be read as references to the Administrator.

Item 55

Item 55 changes the heading of Section 48H in order to substitute “Minister for Finance” with “Administrator”, as the Administrator will assume responsibility for the preparation of financial statements.

Item 56

Item 56 substitutes “Minister for Finance” with “Administrator” in Subsection 48H(1) as the Administrator will assume responsibility for the preparation of financial statements.

Item 57

Item 57 repeals subsections 48H(4), (5) and (6) which specify actions the Norfolk Island Minister for Finance must perform in relation to the budget, and substitutes a subsection requires the Administrator to provide a copy of the budget to the responsible Commonwealth Minister.

Item 58

Item 58 substitutes “Chief Minister” with “Administrator” in Subsection 48J(1) as the Administrator will be the relevant person to receive annual reports from the Chief Executive Officer of the Norfolk Island Administration.

Item 59

Item 59 repeals subsections 48J(3) and (4), as these subsections relate the Chief Minister and the Legislative Assembly, both of which cease to exist on commencement of the interim transition time.

Item 60

Item 60 changes the heading of Section 48K in order to substitute “Minister for Finance” with “Administrator”. The position of Minister for Finance will cease to exist on commencement of the interim transition time.

Item 61

Item 61 omits references to the “Minister for Finance” and substitutes “Administrator” in subsections 48K(1) and (2). These changes ensure the Administrator has powers to obtain relevant information from territory authorities.

Item 62

Item 62 omits references to the “Minister for Finance” and substitutes “Administrator” in subsections 48P(1) and (3), as the Minister for Finance ceases to exist on commencement of the interim transition time. The obligations under these subsections will become obligations of the Administrator.

Item 63

Item 63 repeals paragraph 48R(4)(b) as it relates to the position of Minister for Finance, which ceases to exist on commencement of the interim transition time.

Item 64

Item 64 repeals paragraph 48S(4)(b) as it relates to the position of Minister for Finance, which ceases to exist on commencement of the interim transition time.

Item 65

Item 65 changes the heading of Section 51 in order to substitute “Minister for Finance” with “Administrator”.

Item 66

Item 66 omits references to the “Minister for Finance” and substitutes “Administrator” in subsections 51(1) and (3).

Item 67

Item 67 changes the heading of Section 51A in order to substitute “Minister for Finance” with “Administrator”.

Item 68

Item 68 omits references to the “Minister for Finance” and substitutes “Administrator” in subsections 51A(1) and (3).

Item 69

Item 69 repeals subsection 53(2) as it relates to the Norfolk Island Executive Council which is repealed by this Schedule

Items 70 and 71.

Items 70 and 71 remove references to Norfolk Island as a geographical place that are no longer required by virtue of the new definition of ‘Australia’ in Item 2 which includes Norfolk Island for the purposes of the *Norfolk Island Act 1979*.

Item 72 Repeal of sections 61, new section 61

New section 61 operates to ensure that the Public Service Act 1999 does not prevent a law of the Territory making provision for the appointment or employing of a person or persons for the purposes of the government of Norfolk Island, but that also ensures that the operation of that Act in respect of the Territory is not limited.

Item 73

Item 73 repeals subsection 61A(2) which specifies which persons are obliged to uphold the Norfolk Island Public Service Values, and substitutes a new subsection ensuring that the Norfolk Island Public Service Values will apply to all persons employed under a law of the Territory mentioned in subsection 61(1) and section 10.

Item 74 Section 62

New Section 62 ensures that the Lands Acquisition Act 1989 does not prevent the making of, or operation of, an enactment concerning the disposal of Commonwealth land in the Territory.

Items 75, 76 and 77

Items 75, 76 and 77 amend Section 64, which relates to Customs duty on certain goods, to clarify that for the purposes of that section, ‘Australia’ does not include Norfolk Island. This change is required by virtue of the new definition of ‘Australia’ in the *Norfolk Island Act 1979* that includes Norfolk Island. These amendments ensure that certain goods can continue to be exempt from Australian customs duty.

Item 78 Repeal of Sections 65 and 66A

Section 65 is repealed as it relates to remuneration of members of the Norfolk Island Legislative Assembly, Advisory Council and Ministers. As these positions cease to exist on commencement of this Schedule, this section is redundant.

Section 66A is repealed as it relates specifically to interactions between the Commonwealth Ombudsman and Norfolk Island Ministers. As the position of Norfolk Island Minister ceases to exist upon commencement of the interim transition time, this section is redundant.

Item 79

Item 79 omits an unnecessary “(1)” as there will be only one provision in section 67.

Item 80

Item 80 repeals subsections 67(2) and (3) as these subsections relate to the schedules which are repealed by this Bill (see Item 82 below).

Item 81

Item 81 amends the heading of Part IX – Transitional to clarify that the Part refers to transitional arrangements that commenced in 1979.

Item 82

Item 82 repeals Schedules 2 and 3, as they relate to the interaction of the powers of the Executive Council, Legislative Assembly and the Administrator. As the Legislative Assembly and Executive Council cease to exist from the commencement of the interim transition time, and the Administrator’s powers are not limited by reference to particular subject matters, these Schedules are redundant.

Item 83

Item 83 repeals the note in Schedule 4 to remove a reference to Section 10 (Oath or affirmation of the Administrator) which is repealed by this schedule.

Item 84

Item 84 repeals Schedules 5 to 9 which relate to oaths and affirmations for positions which cease to exist after the commencement of the interim transition time.

Division 2—Amendments of other legislation

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

Item 85 removes a redundant reference to a Minister of Norfolk Island, as the position of Minister of Norfolk Island is repealed upon the commencement of this Schedule.

Administrative Appeals Tribunal Act 1975

Item 86 removes a reference to ‘Norfolk Island Justice Minister’ from subsection 3(1), as the position of Norfolk Island Justice Minister ceases to exist on commencement of this Schedule.

Item 87 removes a reference to ‘Norfolk Island Minister’ from subsection 3(1), as the position of Norfolk Island Minister ceases to exist on commencement of this Schedule.

Item 88 repeals subsections 36B(6), 36C(4) and 36D(8) of the *Administrative Appeals Tribunal Act 1975* (AAT Act) to remove redundant references to Norfolk Island Ministers and bodies that are repealed by Schedule 1 Part 1 of this Bill. Note the transitional arrangements that apply to these provisions in item 196 of Schedule 1 Part 2.

Item 89 omits the repealed Public Sector Management Act 2000 (NI) and substitutes the *Public Service Act 2014* (NI) in subsection 67A(2) of the AAT Act.

Administrative Decisions (Judicial Review) Act 1977

Item 90 inserts a new section clarifying that this Act extends to Norfolk Island. This provision is included for the avoidance of any doubt over the question of whether this Act extends to Norfolk Island.

Age Discrimination Act 2004

Item 91 removes paragraph 5(g) from the definition of ‘administrative office’ as paragraph (g) relates to the Legislative Assembly, which ceases to exist on the commencement of this

schedule. This amendment does not otherwise affect the operation of the *Age Discrimination Act 2004* which will continue to apply on Norfolk Island.

Carbon Credits (Carbon Farming Initiative) Act 2011

Item 92 replaces references to ‘a Minister of Norfolk Island’ with ‘the Administrator of Norfolk Island’ subsections 296(7) and (8), as the position of Minister of Norfolk Island ceases to exist on commencement of this schedule. It should be noted subsections 296(7) and (8) relate to the making of arrangements with states and territories, and are both repealed on commencement of schedule 2 of the *Norfolk Island Legislation Amendment Act 2015*, as there will be no Norfolk Island Government with which to make an arrangement.

Commonwealth Grants Commission Act 1973

Item 93 replaces reference in subsection 5(3) of the *Commonwealth Grants Commission Act 1973* from a ‘Minister of that Territory’ to ‘the Administrator of Norfolk Island’. This amendment does not affect the operation of the *Commonwealth Grants Commission Act 1973*, which will continue to apply on Norfolk Island.

Crimes Act 1914

Item 94 removes an exception in relation to Norfolk Island from the definition of ‘Territory Ordinance’, meaning that Norfolk Island Ordinances will be treated consistently with Ordinances in relation to other territories such as Christmas Island.

Criminal Code Act 1995

Item 95 replaces the reference in the Dictionary of the *Criminal Code Act 1995* from ‘an Acting Administrator, or a Deputy Administrator’ to ‘an Acting Administrator’. This amendment does not affect the operations of the *Criminal Code Act 1995* but rather reflects that the position of Duty Administrator no longer exists.

Defence Act 1903

Item 96 omits ‘Norfolk Island’ from section 51 of the *Defence Act 1903*, which provides for the definition of self-governing territories. The operation of the *Defence Act 1903* is not affected by this amended as it continues to apply to Norfolk Island.

Disability Discrimination Act 1992

Item 97 repeals paragraph (g) of subsection 4(1) of the *Disability Discrimination Act 1992*, which provides that ‘administrative office’ means office of a member of the Legislative Assembly within the meaning of the *Norfolk Island Act 1979*. The office of a member of the Legislative Assembly will no longer exist on the commencement of Schedule 1 Part 1. The *Disability Discrimination Act 1992* will continue to apply the ‘administrative office’ meaning to Norfolk Island as it is covered by an office established by or an appointment under Commonwealth Law.

Do Not Call Register Act 2006

Item 98 repeals subparagraphs 3(2)(a)(v) and 3(3)(a)(vi) of Schedule 1 of the *Do Not Call Register Act 2006*. Section 3 of the *Do Not Call Register Act 2006* allows political parties, independent members of parliament and candidates to make designated telemarketing calls. This amendment repeals references to a Norfolk Island Legislative Assembly independent member and election candidate as following the commencement of this Schedule the Norfolk Legislative Assembly will no longer exist.

Item 99 repeals subclause 7(7) of Schedule 1 of the *Do Not Call Register Act 2006*, which under the *Do Not Call Register Act 2006* deems a member of the Legislative Assembly of

Norfolk Island as an employee of Norfolk Island. The Norfolk Island Legislative Assembly will not exist after the commencement of this Schedule.

Item 100 repeals subparagraphs 3(2)(a)(v) and 3(3)(a)(vi) of Schedule 1A of the *Do Not Call Register Act 2006*. Section 3 of the *Do Not Call Register Act 2006* allows political parties, independent members of parliament and candidates to send designated telemarketing faxes. This amendment repeals references to a Norfolk Island Legislative Assembly independent member and election candidate as following the commencement of this Schedule the Norfolk Legislative Assembly will no longer exist.

Item 101 repeals subclause 7(7) of Schedule 1A of the *Do Not Call Register Act 2006*, which under the *Do Not Call Register Act 2006* deems a member of the Legislative Assembly of Norfolk Island as an employee of Norfolk Island. The Norfolk Island Legislative Assembly will not exist after the commencement of this Schedule.

Environment Protection and Biodiversity Conservation Act 1999

Item 102 repeals subsection 393(2) which relates to the responsible Commonwealth Minister entering into arrangements with a Norfolk Island Minister, and substitutes a new subsection allowing the Commonwealth Minister to make arrangements with the Administrator to allow any person employed under relevant sections of the *Norfolk Island Act 1979* to perform functions or duties under the *Environment Protection and Biodiversity Conservation Act 1999*. This change is necessary as the position of Norfolk Island Minister will not exist after the commencement of this schedule, and the Administrator will be the relevant person for the purposes of making arrangements under the *Environment Protection and Biodiversity Conservation Act 1999*.

Item 103 repeals subsection 398(2) which relates to the responsible Commonwealth Minister entering into arrangements with a Norfolk Island Minister for the purposes of allowing state and territory officers to be inspectors, and substitutes a new subsection allowing the Commonwealth Minister to make arrangements with the Administrator to allow any person employed under relevant sections of the *Norfolk Island Act 1979* to perform functions or duties under the *Environment Protection and Biodiversity Conservation Act 1999*. This change is necessary as the position of Norfolk Island Minister will not exist after the commencement of this schedule, and the Administrator will be the relevant person for the purposes of making arrangements under the *Environment Protection and Biodiversity Conservation Act 1999*.

Item 104 omits the reference to ‘Territory; or’ and replace it with ‘Territory.’ in paragraph (b) of the definition of self-governing Territory in the *Environment Protection and Biodiversity Conservation Act 1999*

Item 105 repeals the reference ‘Norfolk Island’ at paragraph (c) of the definition of self-governing Territory in the *Environment Protection and Biodiversity Conservation Act 1999*. This amendment does not affect how the *Environment Protection and Biodiversity Conservation Act 1999* applies on Norfolk Island.

Freedom of Information Act 1982

Item 106 repeals the ‘Cabinet’ definition in subsection 4 of the *Freedom of Information Act 1982* and replaces it with a new definition for ‘Cabinet’ that does include a Norfolk Island Government Minister or Cabinet, as following the commencement of this Schedule, both will no longer exist.

Item 107 repeals the definition of Minister in subsection 4 of the *Freedom of Information Act 1982*. Following the commencement of this Schedule, the office of a Norfolk Island

Minister will no longer exist. This amendment does not affect how the *Freedom of Information Act 1982* applies on Norfolk Island.

Item 108 repeals the definition of the ‘Norfolk Island Authority’ in paragraph (c) of subsection 4 of the *Freedom of Information Act 1982* and replaces it with a new definition. The new definition allows that the Norfolk Island Authority is a body established or appointed by the Administrator of Norfolk Island.

Item 109 repeals the definition of the ‘Norfolk Island Authority’ in paragraph (e) of subsection 4 of the *Freedom of Information Act 1982* and replaces it with a new definition referring to a person holding office or performing the duties of an appointment where the appointment is made by the Administrator.

Item 110 repeals the definition of ‘Norfolk Island Minister’ in section 4(1) of the *Freedom of Information Act 1982*. After the commencement of this Schedule, the office of a Norfolk Island Minister will no longer exist.

Item 111 repeals subparagraph (a)(v) of the definition of ‘prescribed authority’. Under the *Freedom of Information Act 1982* the Legislative Assembly of the Territory of Norfolk Island will cease to exist following the commencement of this Schedule.

Item 112 omits the ‘Public Sector Management Act 2000’ and updates it with the ‘Public Service Act 2014’ in subsection 4(1) (paragraph (c) of the definition of principal officer) in the *Freedom of Information Act 1982*.

Item 113 repeals the paragraph (c) subsection 4(1) of the *Freedom of Information Act 1982*, which referred to the Chief Minister of Norfolk Island or another Minister acting for and on behalf of that Minister. Following the commencement of this Schedule, the office of the Chief Minister of Norfolk Island or a Minister of Norfolk Island will cease to exist.

Item 114 repeals subparagraph 4(3)(a)(iii) of the *Freedom of Information Act 1982*, which provides that a person shall not be taken to be a prescribed authority. In this instance, ‘an office member of the Legislative Assembly of the Territory of Norfolk Island or of Administrator or Deputy Administrator of that Territory or of Minister of Norfolk’ and replaces it with the ‘the office of the Administrator of Norfolk Island; or’ because following the commencement of this Schedule, the Legislative Assembly, Deputy Administrator and Minister of Norfolk will cease to exist.

Item 115 repeals paragraph 4(3B)(a) of the *Freedom of Information Act 1982* and replaces it with ‘the office of the Administrator, as it repeals similar positions to Item 114.

Item 116 omits the ‘Public Sector Management Act 2000’ and updates it with the ‘Public Service Act 2014’ in subparagraph 8(2)(d)(ii) of the *Freedom of Information Act 1982*.

Item 117 omits ‘or the Legislative Assembly of Norfolk Island’ paragraph (8)(2)(e) of the *Freedom of Information Act 1982*. After the commencement of this Schedule, the Legislative Assembly of Norfolk Island will no longer exist. This amendment does not affect how the *Freedom of Information Act 1982* applies on Norfolk Island.

Items 118 and 119 omit ‘or the Legislative Assembly of Norfolk Island’ in paragraph 8(2)(h) of the *Freedom of Information Act 1982*. Following the commencement of this Schedule, the Legislative Assembly of Norfolk Island will cease to exist.

Item 120 and 121 omit references to ‘Norfolk Island Minister’ from section 12 of the *Privacy Act 1988*. The office of a Norfolk Island Minister will cease to exist following the commencement of this Schedule.

Item 122 omits ‘Parliament; or’ and replaces it with ‘Parliament.’ in paragraph 21(1)(e) of the *Freedom of Information Act 1982*. This amendment does not affect the operation for the *Freedom of Information Act 1982*.

Item 123 repeals paragraph 21(1)(e) of the *Freedom of Information Act 1982*, as this paragraph contained references to Norfolk Island government body politic that ceases to exist after the commencement of this Schedule.

Item 124 omits ‘or Norfolk Island Minister’ from paragraph 26AA(1)(b), (c), (d) and (e) in the *Freedom of Information Act 1982*. The office of a Norfolk Island Minister will cease to exist following the commencement of this Schedule.

Item 125 omits from paragraph subsection 26AA(2) to (4) ‘or Norfolk Island Minister’ from the *Freedom of Information Act 1982*. Like the previous section, an office of a Norfolk Island Minister will cease to exist following the commencement of this Schedule.

Item 126 omits paragraph 46(c) ‘or of Norfolk Island’ from the *Freedom of Information Act 1982* because following the commencement of this Schedule, the Norfolk Island Legislative Assembly will not exist.

Item 127 omits ‘(a);’ and replace with ‘(a).’ in paragraph (b) of the definition of ‘electoral roll’, subsection 47A(1) of the *Freedom of Information Act 1982*. This amendment makes grammatical changes to give effect to Item 128.

Item 128 repeals paragraphs (c) and (d) of the definition of the ‘electoral roll’ of subsection 47A(1) of the *Freedom of Information Act 1982*. Following the commencement of this Schedule, the Norfolk Island Legislative Assembly will no longer exist.

Historic Shipwrecks Act 1976

Item 129 omits ‘and Norfolk’ from the definition of State in subsection 4A(11) of the *Historic Shipwrecks Act 1976* because following the commencement of this Schedule, Norfolk will no longer be deemed to be a State under the *Historic Shipwrecks Act 1976*.

Item 130 omits ‘or Norfolk Island’ from the definition of Territory in subsection 4A(11) of the *Historic Shipwreck Act 1976*. The effect of this amendment means that Norfolk is deemed to be a Territory under the *Historic Shipwrecks Act 1976*.

Items 131 and 132 omit a reference to ‘or Norfolk Island’ in subsection 4A(12)(a) of the *Historic Shipwrecks Act 1976* as Norfolk Island is deemed to be a Territory and not a State under the *Historic Shipwrecks Act 1976* following Item 129.

Item 133 repeals paragraph 4A(12)(c) of the *Historic Shipwrecks Act 1976*, following the commencement of this Schedule, the office of a Minister of Norfolk Island will no longer exist.

International Criminal Court Act 2002

Item 134 repeals and substitutes the definition of State in section 4 of the *International Criminal Court Act 2002*. The new definition of State does not include Norfolk Island after the commencement of this Schedule.

Item 135 omits ‘other than Australian Capital Territory, and the Northern Territory or Norfolk Island’ and substitutes ‘other than the Australian Capital Territory or the Northern Territory’ in paragraph (a) of the definition of State Minister in Section 4 of the *International Criminal Court Act 2002*. Following the commencement of this Schedule, the office of a Minister of Norfolk Island will no longer exist.

Item 136 omits ‘and’ in paragraph (c) of the definition of State Minister in Section 4 of the *International Criminal Court Act 2002*. This amendment makes grammatical changes to give effect to Item 78ZZ.

Item 137 repeals paragraph (d) of the definition of State Minister in Section 4 of the *International Criminal Court Act 2002*. Following the commencement of this Schedule, the office a Minister of Norfolk Island will cease to exist.

Item 138 omits ‘and, except in section 6, does not include Norfolk Island’ of the definition in Territory in section 4 of the *International Criminal Court Act 2002*. This amendment does not affect the operation of the *International Criminal Court Act 2002* as it applies to Norfolk Island.

Item 139 omits ‘Territory; or’ and replaces it with ‘Territory’ in paragraph 186(4)(b) of the *International Criminal Court Act 2002*. This amendment makes grammatical changes to give effect to Item 140.

Item 140 repeals paragraph 186(4)(c) of the *International Criminal Court Act 2002* as Norfolk Island is no longer deemed to be a State under the *International Criminal Court Act 2002*.

International Transfer of Prisoners Act 1997

Item 141 repeals the definition of ‘Territory Minister’ in subsection 4(1) of the *International Transfer of Prisoners Act 1997*. The new definition does not make reference to an office of a Norfolk Island Minister, which ceases to exist on the commencement of this Schedule.

Judiciary Act 1903

Item 142 removes a reference to a ‘member of the Government of Norfolk Island’, as the Government of Norfolk Island ceases to exist on the commencement of this schedule.

Lands Acquisition Act 1989

Item 143 repeals subsection 5(3) of the *Lands Acquisition Act 1989* which specifies the Act does not apply to any grants of Crown Land in Norfolk Island under the previous section 62 of the *Norfolk Island Act 1979*. New subsection 5(3) contains a provision which ensures that where land is disposed under New Section 62 of the *Norfolk Island Act 1979*, it is clear the *Lands Acquisition Act 1989* does not apply. This new subsection confirms the provisions set out in New Section 62.

Legislative Instruments Act 2003

Item 144 inserts a provision specifying that the Act extends to Norfolk Island.

National Health Act 1953

Item 145 amends the definition of ‘Commonwealth officer’ in subsection 84(1) by deleting that part of the definition which refers to the Administrator, an Acting Administrator or a Deputy Administrator of Norfolk Island.

National Health Security Act 2007

Item 146 omits ‘or’ in paragraph (c) of the definition of State or Territory Health Minister in the *National Health Security Act 2007*. This amendment makes grammatical changes to give effect to 147.

Item 147 repeals paragraph (d) of the definition of State or Territory Health Minister in the National Health Security Act 2007. The office of a Minister of Norfolk Island will not exist following the commencement of this Schedule.

Item 148 omits ‘, the Northern Territory and Norfolk Island’ with ‘or the Northern Territory’ in subsection 3(1) of the definition of the *National Health Services Act 2007*. This amendment reflects the changes made in the preceding Items.

Item 149 omits ‘the ‘Northern Territory and Norfolk Island’ with ‘and the Northern Territory’ in paragraph 3(2)(b) of the National Health Security Act 2007. Following the commencement of this Schedule, the office of a Minister of Norfolk Island will not exist.

Privacy Act 1988

Item 150 repeals the definition of ‘Cabinet’ in subsection 6(1) of the Privacy Act because following the commencement of this Schedule, the Norfolk Island Cabinet will cease to exist.

Item 151 repeals paragraph (d) of the definition of ‘Norfolk Island agency’ in subsection 6(1) of the Privacy Act 1988 and substitutes a new definition that provides a body established or appointed by the Administrator of Norfolk Island.

Item 152 repeals paragraph (f) of the definition of ‘Norfolk Island agency’ and provides a new definition that a person holding or performing the duties of an appointment, where the appointment is made by the Administrator of Norfolk Island.

Item 153 repeals the definition of ‘Norfolk Island Justice Minister’ in subsection 6(1) of the *Privacy Act 1988* as following the commencement of this Schedule the office of the Norfolk Island Justice Minister will no longer exist.

Item 154 repeals the definition of ‘Norfolk Island Minister’ in subsection 6(1) of the Privacy Act 1998 as following the commencement of this Schedule the office of a Norfolk Island Minister will no longer exist.

Item 155 repeals subparagraph 7(1)(a)(iiiiaa) of the *Privacy Act 1998* because the office of a Norfolk Island Minister no longer exist after the commencement of this Schedule.

Item 156 repeals subparagraph 7(1)(eea) and (eab) of the *Privacy Act 1998* which both refer to a Norfolk Island Minister, following the commencement of this Schedule, that office will no longer exist.

Item 157 omits ‘or Norfolk Island Minister’ in paragraph 28A(3)(a) of the *Privacy Act 1998* because following the commencement of this Schedule, the office of a Norfolk Island Minister will no longer exist.

Item 158 omits ‘Norfolk Island Minister’ in paragraph 28B(1)(a) of the *Privacy Act 1998* because following the commencement of this Schedule, the office of a Norfolk Island Minister will no longer exist.

Items 159 and 160 both repeal reference to ‘or Norfolk Island Minister (if any)’ in paragraphs 30(3)(d) and 30(4) of the *Privacy Act 1998*, as from the commencement of this Schedule, the office of a Norfolk Island Minister will cease to exist.

Item 161 repeals section 33B of the *Privacy Act 1998* because the office of the Norfolk Island Justice Minister ceases to exist following the commencement of this Schedule.

Item 162 omits ‘or a Norfolk Island Minister’ from paragraphs 34(2)(a) and (b) of the *Privacy Act 1998* as the office of a Norfolk Island Minister will not exist after the commencement of this Schedule.

Item 163 removes a reference to the repealed *Public Sector Management Act 2000* and substitutes the *Public Service Act 2014* in section 37 (table items 5B and 5C) of the *Privacy Act 1998*.

Items 164, 165 and 166 removes references to a Norfolk Island Minister from section 43 of the *Privacy Act 1998*, as the office of Norfolk Island Minister will not exist after the commencement of this Schedule.

Item 167 repeals a reference to the ‘Norfolk Island Public Service Board’ in the definition of ‘alternative complaint body’ in subsection 50(1) of the *Privacy Act 1988*. As the *Public Service Act 2014* (NI) abolished the Norfolk Island Public Service Board, this is a redundant reference.

Item 168 repeals the definition of ‘Norfolk Island Public Service Board’ in subsection 50(1) of the *Privacy Act 1988*. As the *Public Service Act 2014* (NI) abolished the Norfolk Island Public Service Board, this is a redundant reference.

Items 169, 170, 171 and 172 remove references to complaints being made to the Norfolk Island Public Service Board. As the *Public Service Act 2014* (NI) abolished the Norfolk Island Public Service Board, this is a redundant reference.

Item 173 repeals a reference to the ‘Norfolk Island Justice Minister’ in subsection 66(12) of the *Privacy Act 1988* as following the commencement of this Schedule the office of the Norfolk Island Justice Minister will no longer exist.

Item 174 repeals a reference to the ‘Norfolk Island Justice Minister’ in subsection 68(1) of the *Privacy Act 1988* as following the commencement of this Schedule the office of the Norfolk Island Justice Minister will no longer exist.

Item 175 repeals subsection 70(4) which relates to actions performed by the Norfolk Island Justice Minister as following the commencement of this Schedule the office of the Norfolk Island Justice Minister will no longer exist.

Proceeds of Crime Act 2002

Items 176 and 177 remove Norfolk Island from the definition of self-governing Territory to reflect the governance changes contained in this Bill. This does not affect the application of the Act to Norfolk Island.

Public Interest Disclosure Act 2013

Items 178, 179 and 180 remove the existing exclusion for public officials under the *Norfolk Island Act 1979*, and insert a new provision linking those public officials to the Department administered by the Minister administering the *Norfolk Island Act 1979*, and extends the provisions of the *Public Interest Disclosure Act 2013* to statutory office holders under the *Norfolk Island Act 1979*.

Remuneration Tribunal Act 1973

Item 181 repeals Paragraph 3(4)(jaa) of the *Remuneration Tribunal Act 1973* to remove references to member of the Legislative Assembly, member of the Norfolk Island Executive Council, and Minister, as these positions cease to exist. It substitutes a new paragraph defining the office of member of the Norfolk Island Advisory Council as a ‘public office’ for the purposes of the *Remuneration Tribunal Act 1973*.

Sex Discrimination Act 1984

Item 182 repeals subsection 4(1), paragraph (f) of the definition of ‘administrative office’ in the *Sex Discrimination Act 1984* to remove reference a reference to the position of member

of the Norfolk Island Legislative Assembly, as the office of member of the Norfolk Island Legislative Assembly ceases to exist on commencement of this schedule.

Transfer of Prisoners Act 1983

Item 183 removes a reference to the Legislative Assembly of Norfolk Island from paragraph 3(10)(b) of the *Transfer of Prisoners Act 1983*, as the Legislative Assembly of Norfolk Island ceases to exist from the commencement of this schedule.

Part 2—Transitional provisions

Division 1—Introduction

Item 184 provides definitions relevant to the part, including for ‘asset’, ‘assets official’ and ‘interim transition time’. It also clarifies the terms ‘Deputy Administrator’, ‘Executive Council’ and ‘Legislative Assembly’ have the same meanings as they did under the *Norfolk Island Act 1979* as was in force before the interim transition time.

Division 2—Transitional rules

Item 185 allows the Minister to make, by legislative instrument, any rules of a transitional nature in relation to any of the amendments or changes to legislation made by Part 1 of Schedule 1.

Subitem 185(2) specifies things the transitional rules may not do, such as create an offence or civil penalty, provide powers of arrest or detention or entry, search and seizure; impose a tax, appropriate funds or amend the Act.

Division 3—Transfer of assets and liabilities

Item 186 provides that any assets of the Norfolk Island Executive Council or Legislative Assembly become assets of the Administration on commencement of the interim transition time, with the Administration to become the successor at law in relation to the asset. This change of assets is automatic and does not require any conveyance, transfer or assignment.

Item 187 is similar to item 186, but provides that any liabilities of the Executive Council or Legislative Assembly become liabilities of the Norfolk Island Administration on commencement of the interim transition time. This change of liabilities is automatic and does not require any conveyance, transfer or assignment

Item 188 provides that assets held by any persons in their capacity as a Minister, or as a member of the Legislative Assembly, or as a member of the Executive Council, becomes an asset of the Administration on the commencement of the interim transition time. This change of assets is automatic and does not require any conveyance, transfer or assignment

Item 189 is similar to item 188, but provides that liabilities a person may have in connection with his or her capacity as a Minister, or as a member of the Legislative Assembly, or as a member of the Executive Council, becomes a liability of the Administration on commencement of the interim transition time. This change of liabilities is automatic and does not require any conveyance, transfer or assignment.

Item 190 provides for the registration of land which may vest in the Administration under item 186 or 188. Subitem 190(3) clarifies that a certificate issued under paragraph 190(1)(b) is not a legislative instrument. This is because it is not legislative in character and therefore not within the meaning of section 5 of the *Legislative Instruments Act 2003*. This subsection confirms this and is included to assist readers.

Item 191 provides that a relevant assets official (as defined in Item 184) may register or otherwise deal with any assets (other than land) which vest in the Administration under

items 186 or 188. Subitem 191(3) clarifies that a certificate issued under paragraph 191(1)(b) is not a legislative instrument. This is because it is not legislative in character and therefore not within the meaning of section 5 of the *Legislative Instruments Act 2003*. This subsection confirms this and is included to assist readers.

Division 4—Transfer of other matters

Item 192 is a transitional provision dealing with transfer of records to the Administration.

Subitem 192(1) specifies the records to which this item applies. It includes records held by persons in their capacity as a Minister of Norfolk Island, or a member of the Legislative Assembly, or a member of the Executive Council or as a Deputy Administrator. This section is intended to apply to official documents and records only, and it is not intended that it should apply to personal documents or records held by the previously mentioned persons.

Subitem 192(2) specifies that records and documents referred to in subitem 192(1) are transferred to the Administration after the interim transition time.

Subitem 192(3) provides that for the purposes of item 192, the term ‘Minister’ has the same meaning as was specified in the *Norfolk Island Act 1979* as in force immediately before the interim transition time.

Division 5—Employees

Item 193 sets out the transitional arrangements in relation to certain person who were not prior to the interim transition time employees of the Administration but were employed to perform duties relating to the government of the Territory. The Administration is to be the employer of all public sector employees on Norfolk Island (aside from employees of territory instrumentalities, who will remain employed by territory instrumentalities). The terms and conditions of such employees are preserved, but may be varied. Accrued entitlements of such employees are maintained.

Item 193 is intended to remove ambiguity which may exist in employment agreements/contracts about what entity is the employer of public sector employees on Norfolk Island. Subitems 193(a) and (b) specify that a person is not an eligible employee if that person was either an employee of the Administration or a Norfolk Island body corporate as at the interim transition time. This is because the employment status of these persons as employees of either the Administration or a body corporate is already clear. The intent of paragraph 193(1)(c) is to capture those individuals who were employed under the *Public Service Act 2014* (NI), or under a Norfolk Island enactment, or otherwise employed to perform duties relating to the government of the Territory. This item intends for persons who may be ordinarily employed in relation to functions of the Government of Norfolk Island under any unusual or unorthodox employment agreements will be defined as an eligible employee.

Division 6—Financial matters

Item 194 is a transitional provision in relation to annual financial statements; it specifies that sections 48B and 48C of the *Norfolk Island Act 1979* only apply in relation to financial statements for the year beginning on 1 July 2015, or a later financial year if necessary. This is to ensure that these sections only apply prospectively for future years, and not retrospectively.

Item 195 is a transitional provision in relation to annual reports; it specifies that section 48J, of the *Norfolk Island Act 1979* only applies in relation to annual reports for the year beginning on 1 July 2015, or a later financial year if necessary. This is to ensure that section 48J only applies prospectively for future years, and not retrospectively.

Division 7—Administrative Appeals Tribunal

Item 196 specifies that notwithstanding the amendments to sections 36B, 36C and 36D of the *Administrative Appeals Tribunal Act 1975*, those sections continue to apply after the interim transition time in relation to Norfolk Island as if the amendments had not been made and the Commonwealth Attorney-General being able to issue a certificate under these provisions. This is to ensure that persons are still able to appeal in the Administrative Appeals Tribunal relevant decisions which were made before the interim transition time.

Division 8—Historic shipwrecks

Item 197 ensures the amendments to section 4A of the *Historic Shipwrecks Act 1976* made by Part 1 in Schedule 1 do not affect the continuity of a declaration made under that section before the interim transition time. This will ensure that existing declarations on historic shipwrecks and artefacts in relation to Norfolk Island will be unaffected by amendments contained in this Bill.

Division 9—Public interest disclosure

Item 198 specifies that the changes to the *Public Interest Disclosure Act 2013* are not retrospective, and only apply to conduct that occurs after the interim transition time.

Division 10—Other matters

Item 199 provides that an exempt matter, being the operation of these transitional rules including for the transfer of assets and liabilities, does not trigger an obligation to pay a stamp duty or tax under State or territory law. Subitem 199(3) provides that the responsible Commonwealth Minister may certify in writing that a particular matter is an exempt matter for the purpose of this section.

Item 200 is a constitutional safety net to ensure that to the extent that any of the amendments or repeals made by Schedule 1 of the Bill, or the transitional rules, that would result in an acquisition of property from a person otherwise than on just terms contrary to paragraph 51(xxxi) of the Constitution, the Commonwealth will be liable to pay a reasonable amount of compensation to the person.

Item 201 specifies that this Part of the Bill has no effect to the extent (if any) that it imposes taxation.

Item 202 specifies that a certificate made or issued under this Part of the Bill should be taken to be authentic unless the contrary is established.

Item 203 is a technical provision which clarifies that nothing in Schedule 1 Part 2 limits the scope of the Governor-General's power to make ordinances under section 19A of the *Norfolk Island Act 1979*.

Part 3—Amendments contingent on the commencement of the *Acts and Instruments (Framework Reform) Act 2015*

Item 204 is a correction to punctuation required by Item 205 of this Part.

Item 205 repeals paragraph 10(2)(c) of the *Legislation Act 2003*. The paragraph repealed is proposed to be inserted by the *Acts and Instruments (Framework Reform) Bill 2014*, and is a reference to ordinances made under section 27 of the *Norfolk Island Act 1979*. As section 27 is repealed by this Act the reference is no longer required.

Item 206 specifies that, the repeal of paragraph 10(2)(c) by the *Acts and Instruments (Framework Reform) Act 2015* notwithstanding, the paragraph will continue to apply to any ordinances made before commencement of Part 1 of schedule 1.

SCHEDULE 2 – Final arrangements etc.

Part 1—Amendments

Division 1—Amendment of the Norfolk Island Act 1979

Items 1-21 (Inclusive) Amendments to Subsection 4(1)—Interpretation

Item 1 repeals the definition of ‘Acting Administrator’ as this position ceases to exist on commencement of the final arrangements.

Item 2 repeals the definition of ‘Administration’ as this legal person ceases to exist on commencement of the final arrangements as a regional council will be established.

Item 3 repeals the definition of ‘Administrator’ as this position ceases to exist on commencement of the final arrangements. The intention is to constitute the position of Administrator of Norfolk Island under an ordinance, consistent with the arrangements for the Administrator of the Territory of Christmas Island.

Item 4 repeals the definition of ‘Advisory Council’ as this body ceases to exist on commencement of the final arrangements as a regional council will be established.

Item 5 repeals the definition of ‘Chief Executive Officer’ as this position ceases to exist on commencement of the final arrangements.

Item 6 repeals the definition of ‘Commonwealth Finance Minister’ as this position will have no role under the *Norfolk Island Act 1979* on commencement of the final arrangements.

Item 7 repeals the definition of ‘Commonwealth Finance Minister’s Orders’ as the section under which these orders are made (41T of the *Norfolk Island Act 1979*) is repealed by this Act.

Item 8 repeals the definition of ‘Commonwealth Financial Officer for Norfolk Island’ as this position ceases to exist under the *Norfolk Island Act 1979* on commencement of the final arrangements.

Item 9 inserts a new definition of ‘court officer of New South Wales’, and includes a list of offices in a court of New South Wales as well as a definition of ‘court of New South Wales’. This item becomes relevant in respect of new section 18B below to ensure the responsible Commonwealth Minister does not exercise judicial powers or functions which may exist under New South Wales law.

Item 10 repeals the definition of ‘Executive Director’, as this position ceases to exist from commencement of the final transition time.

Item 11 repeals the definition of ‘Federal Court’ as the accountability provisions to which this definition relate under the *Norfolk Island Act 1979* are repealed on commencement of the final arrangements.

Item 12 inserts a new definition of ‘final transition time’, which means the commencement of Part 1 of Schedule 2 of the *Norfolk Island Legislation Amendment Act 2015*.

Items 13 to 24 (inclusive) repeal a number of definitions which will be redundant on commencement of the final arrangements, as the provisions to which they relate are being repealed. Item 17 inserts a new definition of ‘Norfolk Island Regional Council’, meaning a body corporate established by or under a law in force in the Territory or declared by section 19A Ordinance to be the Norfolk Island regional Council.

Item 25

Item 25 repeals Parts II and III, as these provisions relate to the Administration and the Advisory Council both of which cease to exist on commencement of the final arrangements.

Item 26 Repeal of Section 15, New Section 15

New Section 15 specifies the laws that are in force after the final transition time. These are:

- Commonwealth Acts to the extent they are in force from time to time in the Territory
- Laws made under those Acts
- Ordinances made under s.19A in force from time to time
- Laws continued in force under s.16 or 16A (as amended); and
- NSW laws applied under s.18A.

Item 27

New Section 18A

New Subsection 18A(1) establishes an applied law regime for Norfolk Island by providing that laws which are in force in NSW from time to time are also in force in Norfolk Island from the commencement of the final transition time.

New Subsection 18A(2) this subsection provides that a law in force under subsection 18A(1) can be incorporated, amended or repealed by a section 19A Ordinance or a law made under a section 19A ordinance. This subsection enables the modification of applied NSW laws, of the disapplication of such laws, by Ordinance, where that is appropriate or desirable in the context of Norfolk Island.

New Subsection 18A(3) permits a section 19A ordinance to suspend the operation of an applied NSW law in Norfolk Island for a specified period of time.

New subsections 18A(4) and (5) provide that a NSW law applied under subsection 18A(1) is of no effect to the extent that it is inconsistent with the Constitution, or an enactment (as defined). This means in any case of inconsistency between the Constitution or an enactment on the one hand and an applied law of NSW on the other hand, the Constitution or enactment prevails.

New Subsection 18A(6) clarifies that a provision of the law of New South Wales includes not just statutory law, but also principles or rules of common law or equity that are part of the law of New South Wales. Subsection 18A(6) provides that ‘provision of the law of New South Wales’ does not include an Act or a provision of an Act. This is a reference to Commonwealth Acts, rather than New South Wales Acts.

New Section 18B

New Subsections 18B(1) and (2) provides that powers vested under applied NSW laws in a NSW Minister, the NSW Governor, the NSW Governor-in-Council of NSW, or other person or authority (other than a NSW court officer or NSW court)) are instead vested in the responsible Commonwealth Minister.

New Subsection 18B(3) allows the responsible Commonwealth Minister to delegate any power vested in him or her under subsections 18B(1) or (2) to a specified person, or direct that such power is also vested in a specified person or authority.

New Subsection 18B(4) enables a person or authority in who a power has been vested by the responsible Commonwealth Minister to delegate that power to a specified person if the Commonwealth Minister has permitted that.

New Subsection 18B(5) provides that where the New South Wales Government and the Commonwealth Government have agreed to enter into an arrangement for the application and administration of one or more applied NSW laws (under new section 18C), the Minister is taken to have directed that certain powers are vested in certain NSW officers, employees or authorities. This provision obviates the need for the responsible Commonwealth Minister to specifically vest a potentially diverse range of powers to NSW officers or authorities.

New Subsection 18B(6) provides that a Minister may direct that the automatic vesting of a specified power under subsection (5) does not apply in relation to that power.

New Subsection 18B(7) specifies that the Minister may make directions issued under new subsection 18(6) subject to any conditions the Minister may see fit.

New Subsection 18B(8) provides that an instrument made under new section 18B may identify a power by referring to a class of powers.

New Subsection 18B(9) preserves the validity of the exercise of a power under s.18B by a person or authority who may not hold qualifications necessary for the exercise of that power under NSW law as in force in NSW. For example a power under an applied law may be validly exercised by the responsible Commonwealth Minister or his or her delegate, even if that responsible Minister or delegate would not be ordinarily qualified to exercise that power under the NSW law as in force in NSW.

New Subsection 18B(10) clarifies that nothing in section 18B affects the operation of section 18A in relation to a subordinate law made under a NSW law.

New Subsection 18B(11) provides that an instrument under section 18B is not a legislative instrument. This is because it is not legislative in character and therefore not within the meaning of section 5 of the *Legislative Instruments Act 2003*. This subsection confirms this and is included to assist readers.

New Subsection 18B(12) provides definitions relevant to the operation of section 18B, including ‘authority’, ‘authority of New South Wales’ ‘power’ and ‘exercise’.

New Section 18C

New Subsection 18C(1) provides the Commonwealth may enter into an arrangement with New South Wales for the effective application and administration of the laws in force in the Territory. This section would allow the Commonwealth to arrange for the New South Wales Government to deliver services or administer laws in relation to Norfolk Island. Any arrangement under this section would require the agreement of New South Wales.

New Subsection 18C(2) states for clarity that an arrangement under New Subsection 18C(1) may provide for an officer or employee or authority, or an officer or employee of an authority of New South Wales to exercise a power or perform any function or duty.

Item 28

Item 28 repeals Part VI—Finance, as Part VI relates to the Norfolk Island Administration and Government which cease to exist after the final transition time.

Item 29

Item 29 repeals the Norfolk Island Public Service Values. Employees of the Norfolk Island Regional Council will operate under an appropriate ethical framework either under applied NSW law or equivalent arrangements to be established in an ordinance.

Division 2—Amendments of other Acts

Division 2 of Part 1 of Schedule 2 contains amendments to a large number of Commonwealth Acts. The majority of the amendments in this division remove redundant references to the crown in the right of Norfolk Island, which ceases to be an operative concept upon the commencement of the final transition time. These acts are listed in the table below.

Detailed explanatory material is provided for Acts which do more than remove a redundant reference to the crown in the right of Norfolk Island on an exceptions basis after the table below.

Acts being amended to remove redundant references to the crown in the right of Norfolk Island.	
Acts beginning with letters A-L	Acts beginning with letters M-W
<i>Aboriginal and Torres Strait Islander Act 2005</i>	<i>National Environment Protection Council Act 1994</i>
<i>Age Discrimination Act 2004</i>	<i>National Residue Survey Administration Act 1992</i>
<i>Agricultural and Veterinary Chemicals Act 1994</i>	<i>National Transmission Network Sale Act 1998</i>
<i>Airports Act 1996</i>	<i>Native Title Act 1993</i>
<i>Airports (Transitional) Act 1996</i>	<i>Olympic Insignia Protection Act 1987</i>
<i>Air Services Act 1995</i>	<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>
<i>Australian Crime Commission Act 2002</i>	<i>Patents Act 1990</i>
<i>Australian Human Rights Commission Act 1986</i>	<i>Product Grants and Benefits Administration Act 2000</i>
<i>Australian Postal Corporation Act 1989</i>	<i>Productivity Commission Act 1998</i>
<i>Banking Act 1959</i>	<i>Product Stewardship (Oil) Act 2000</i>
<i>Bank Integration Act 1991</i>	<i>Protection of Movable Cultural Heritage Act 1986</i>
<i>Charter of the United Nations Act 1945</i>	<i>Protection of the Sea (Oil Pollution Compensation Funds) Act 1993</i>
<i>Civil Aviation Act 1988</i>	<i>Sex Discrimination Act 1984</i>
<i>Civil Aviation (Carriers' Liability) Act 1959</i>	<i>Small Superannuation Accounts Act 1995</i>
<i>Copyright Act 1968</i>	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>
<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>
<i>Crimes (Superannuation Benefits) Act 1989</i>	<i>Superannuation (Self-Managed Superannuation Funds) Taxation Act 1987</i>
<i>Designs Act 2003</i>	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
<i>Disability Discrimination Act 1992</i>	<i>Telstra Corporation Act 1991</i>
<i>Disability Services Act 1986</i>	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>
<i>Financial Sector (Shareholdings) Act 1998</i>	<i>Tobacco Plain Packaging Act 2011</i>
<i>Financial Transaction Reports Act 1988</i>	<i>Trade Marks Act 1995</i>
<i>Fisheries Management Act 1991</i>	<i>Trusts (Hague Convention) Act 1991</i>
<i>Foreign Corporations (Application Of Laws) Act 1989</i>	<i>Weapons of Mass Destruction (Prevention of Proliferation) Act 1995</i>
<i>Fringe Benefits Tax Assessment Act 1986</i>	
<i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i>	
<i>Healthcare Identifiers Act 2010</i>	
<i>Industrial Chemicals (Notification and Assessment) Act 1989</i>	
<i>Insurance Acquisitions and Takeovers Act 1991</i>	
<i>Marine Navigation Levy Collection Act 1989</i>	
<i>Marine Navigation (Regulatory Functions) Levy Collection Act 1991</i>	
<i>Marriage Act 1961</i>	

A.C.T. Self-Government (Consequential Provisions) Regulations

Item 32 repeals modifications relating to the *Extradition Act 1988*, as the application of NSW law from commencement of the final transition time removes the need for an arrangement to be made in relation to magistrate's functions under the *Extradition Act 1988* in respect of Norfolk Island. Words to the effect of the modifications are then made directly to the *Extradition Act 1991*, meaning the modifications are no longer required in the A.C.T. Self-Government (Consequential Provisions) Regulations.

Administrative Appeals Tribunal Act 1975

Item 33 amends subsection 67A(2) of the *Administrative Appeals Tribunal Act 1975* to provide that a notice issued under the Act should be given to the Secretary of the Department responsible for administering the *Norfolk Island Act 1979*, rather than the CEO of the Norfolk Island Administration. This is because under the new governance arrangements for Norfolk Island the Administration will cease to exist.

Admiralty Act 1988

Item 34 removes a reference to the Administration of Norfolk Island from the definition of 'government' in the *Admiralty Act 1988*, as the Norfolk Island Administration ceases to exist on commencement of this Part, this reference is redundant.

Aged Care (Accommodation Payment Security) Act 2006

Item 35 amends subsection 4 (2) of the *Aged Care (Accommodation Payment Security) Act 2006* (the Accommodation Payment Security Act) to ensure the Accommodation Payment Security Act applies to Norfolk Island. Currently subsection 4 (2) provides the Aged Care Act only applies to the external territories of Cocos (Keeling) Islands and Christmas Island. This amendment will include Norfolk Island in the list of external territories to which the Accommodation Payment Security Act applies.

Item 36 inserts a new definition into the Dictionary found in section 6 to the Accommodation Payment Security Act to confirm that when the term Australia is used in a geographical sense in the Accommodation Payment Security Act it includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Aged Care Act 1997

Item 37 amends subsection 4-1(2) of the *Aged Care Act 1997* (the Aged Care Act) to ensure the Aged Care Act applies to Norfolk Island. Currently subsection 4-1(2) provides the Aged Care Act only applies to the external territories of Cocos (Keeling) Islands and Christmas Island. This amendment will include Norfolk Island in the list of external territories to which the Aged Care Act applies.

Item 38 inserts a new subsection 4-1(4) into the Aged Care Act, stating that despite subsection 4-1(1), the parts of the Aged Care Act relating to allocation of places, extra service places and residential care subsidies apply in relation to Norfolk Island as if Norfolk Island were part of New South Wales and was not a separate Territory.

The note at the end of the new subsection 4-1(4) confirms this amendment has the effect that references to a Territory in Parts 2.2, 2.5 and 3.1 (allocation of places, extra service places and residential care subsidies respectively) do not apply to Norfolk Island and references in those Parts to a State will be relevant to New South Wales as if New South Wales included Norfolk Island.

Item 39 adds a new subsection 12-6(1B) to the Aged Care Act, ensuring that if the Secretary determines the regions within New South Wales for different subsidy types, as set out in

subsection 12-6(1) of the Aged Care Act, he or she must determine that one of those regions consists of Norfolk Island.

Item 40 inserts a new definition into the Dictionary found in Schedule 1 to the Aged Care Act to confirm that when the term Australia is used in a geographical sense in the Aged Care Act it includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Aged Care (Transitional Provisions) Act 1997

Item 41 amends subsection 4-1(2) of the *Aged Care (Transitional Provisions) Act 1997* (the Transitional Provisions Act) to ensure the Transitional Provisions Act applies to Norfolk Island. Currently subsection 4-1(2) provides the Transitional Provisions Act only applies to the external territories of Cocos (Keeling) Islands and Christmas Island. This amendment will include Norfolk Island in the list of external territories to which the Transitional Provisions Act applies.

Item 42 inserts a new subsection 4-1(4) into the Transitional Provisions Act, stating that despite subsection 4-1(1), the Part of the Transitional Provisions Act relating to a residential care subsidies applies in relation to Norfolk Island as if Norfolk Island were part of New South Wales and was not a separate Territory.

The note at the end of the new subsection 4-1(4) confirms this amendment has the effect that references to a Territory in Part 3.1 (residential care subsidies) do not apply to Norfolk Island and references in that Part to a State will be relevant to New South Wales as if New South Wales included Norfolk Island.

Item 42 inserts a new definition into the Dictionary found in Schedule 1 to the Transitional Provisions Act to confirm that when the term Australia is used in a geographical sense in the Transitional Provisions Act it includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

A New Tax System (Family Assistance) Act 1999

Item 51 inserts a new section 2A to the *A New Tax System (Family Assistance) Act 1999* stating that *A New Tax System (Family Assistance) Act 1999* is to extend to Norfolk Island.

Item 52 inserts a new definition into subsection 3(1) to the *A New Tax System (Family Assistance) Act 1999* to confirm that when the term Australia is used in a geographical sense in *A New Tax System (Family Assistance) Act 1999* that it includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

These amendments will allow families on Norfolk Island who meet the relevant eligibility conditions to access family tax benefit and other family assistance payments. Eligibility for child care benefit and child care rebate will be extended to families living on Norfolk Island who obtain child care from any approved child care service or registered carer established on Norfolk Island after the commencement of the amendments.

A New Tax System (Family Assistance) (Administration) Act 1999

Item 53 inserts a new section 2A to the *A New Tax System (Family Assistance) (Administration) Act 1999* stating that *A New Tax System (Family Assistance) (Administration) Act 1999* is to extend to Norfolk Island.

Items 54 and 55 amend subsections 80(5) and 89(9) to omit ‘of the Northern Territory and of Norfolk Island’ and to substitute ‘and of the Northern Territory’. The references to the Crown in the right of Norfolk Island become redundant as a result of the changes to governance arrangements on Norfolk Island.

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Item 56 repeals subsections allowing the Governor-General to make arrangements with the Administrator of Norfolk Island with respect to the administration of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. These subsections are no longer required, as from the commencement of the final transition time the position of Administrator of Norfolk Island will cease to exist under primary legislation.

Archives Act 1983

Item 57 removes a reference to body established under a law of Norfolk Island from the definition of ‘authority of the Commonwealth’ as under the new governance arrangements Norfolk Island will no longer have its own legislature.

Item 58 removes “other than Norfolk Island” from paragraph (h) of the definition of ‘Commonwealth institution’. Under the new governance arrangements Norfolk Island will no longer have its own administration. An exemption for Norfolk Island from this definition is therefore no longer required.

Auditor-General Act 1997

Item 61 includes a provision which extends the *Auditor-General Act 1997* to Norfolk Island.

Item 62 inserts a definition of Australia which includes Norfolk Island.

Australian Aged Care Quality Agency Act 2013

Item 63 inserts a new definition into the Dictionary found in section 3 to the *Australian Aged Care Quality Agency Act 2013* (the Quality Agency Act) to confirm that when the term Australia is used in a geographical sense in the Quality Agency Act it includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Item 64 amends subsection 6(2) of the Quality Agency Act to ensure the Quality Agency Act applies to Norfolk Island. Currently subsection 6(2) provides the Quality Agency Act only applies to the external territories of Cocos (Keeling) Islands and Christmas Island. This amendment will include Norfolk Island in the list of external territories to which the Quality Agency Act applies.

Australian Federal Police Act 1979

Item 66 repeals subsection 8(1C), which allows the Commonwealth Minister to enter into an agreement with the Administrator of Norfolk Island for the provision of police and regulatory services by the AFP. It substitutes a new subsection 8(1C) in which Norfolk Island is treated in a manner consistent with other external territories, whereby the relevant Commonwealth Minister can enter into an arrangement with either the Minister with responsibility for an external territory or with the Administrator (if any) of an external territory for the provision of police and regulatory services.

Item 67 removes a reference to the Crown in the right of Norfolk Island, as the concept of the Crown in the right of Norfolk Island becomes redundant as a result of the changes to governance arrangements on Norfolk Island.

Australian Hearing Services Act 1991

Item 68 amends subsection 4(1) of the *Australian Hearing Services Act 1991* to provide that the word ‘Australia’, when used in a geographical sense, includes Norfolk Island, the Territory of Cocos (Keeling) Islands, and the Territory of Christmas Island.

Item 69 inserts a provision into the *Australian Hearing Services Act 1991*, which provides that the Act applies in Norfolk Island.

Australian Organ and Tissue Donation and Transplantation Authority Act 2008

Item 72 amends section 4 to include a definition of “Australia” in a geographic sense, as including Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Item 73 amends section 7 by removing the exclusion of Norfolk Island from the provision setting out which external Territories are covered by the Act.

Broadcasting Services Act 1992

Items 77 and 78 remove references to the Government of Norfolk Island, as the Government of Norfolk Island ceases to exist as an operative concept on commencement of Schedule 2 Part 1.

Carbon Credits (Carbon Farming Initiative) Act 2011

Item 79, as amended in Schedule 1 Part 1, removes clauses which allow the responsible Commonwealth Minister to enter into arrangements with the Norfolk Island Administrator. As the position of Administrator of Norfolk Island is removed from primary legislation, this provision is no longer applicable. Provision to enter into agreement with any person on behalf of the Government of Norfolk Island is no longer required, as the Commonwealth will have responsibility for state level services from the commencement of Schedule 2 Part 1.

Child Support (Assessment) Act 1989

Item 81

Item 81 omits “the external Territories” from section 10 of the *Child Support (Assessment) Act 1989* and substitutes “an external Territory other than Norfolk Island”. This reverses the inclusion of residents of external Territories including Norfolk Island residents in the Tax Acts, and as a result Norfolk Island residents will be considered residents of Australia for the purposes of the *Child Support (Assessment) Act 1989*.

Item 82

Item 82 amends subsection 16(1) of the *Child Support (Assessment) Act 1989* to remove the words ‘of the Northern Territory and of Norfolk Island’ and to substitute ‘and of the Northern Territory’. The reference to Norfolk Island in this provision becomes redundant as a result of the changes to governance arrangements on Norfolk Island.

Item 83

Item 83 inserts a new section 16A into the *Child Support (Assessment) Act 1989*, which extends the *Child Support (Assessment) Act 1989* to Norfolk Island.

Child Support (Registration and Collection) Act 1988

Item 84

Item 84 omits “the external Territories” from subsection 4(1) (paragraph (a)) of the *Child Support (Registration and Collection) Act 1988* and substitutes “an external Territory other than Norfolk Island”. This reverses the inclusion of residents of external Territories including Norfolk Island residents in the Tax Acts, and as a result Norfolk Island residents will be considered residents of Australia for the purposes of the *Child Support (Registration and Collection) Act 1988*.

Items 85- 91 (inclusive) amend a number of provisions and headings in the *Child Support (Registration and Collection) Act 1988* to remove references to Norfolk Island. The references to Norfolk Island become redundant as a result of the changes to governance arrangements on Norfolk Island.

Commonwealth Grants Commission Act 1973

Item 94 repeals subsection 5(3) of the *Commonwealth Grants Commission Act 1973*. This subsection relates to the potential to grant special assistance to the Territory of Norfolk Island. As the Commonwealth will be responsible for state level services in the Territory there is no requirement for a provision in relation to special grants of assistance to Norfolk Island.

Item 95 repeals section 16C, which relates to Commonwealth Grants Commission inquiries in relation to the Territory of Norfolk Island. This provision is not necessary, as section 16D of the *Commonwealth Grants Commission Act 1973* will now encompass Norfolk Island

Item 96 removes a reference to ‘other’ in the heading of section 16D. As the section now encompasses Norfolk Island and there is no need to distinguish between ‘other’ territories and Norfolk Island.

Item 97 omits words ‘other than the Territory of Norfolk Island’, meaning that section 16D will apply to Norfolk Island and the Commonwealth Minister will be able to refer matters in relation to Norfolk Island to the Commonwealth Grants Commission, consistent with section 16D.

Item 98 omits references to reports made under section 16C, as 16C is repealed by Item 95. Reports in relation to Norfolk Island produced under section 16D will still be subject to the requirements of Section 25, including the requirement that the report be laid before each House of the Parliament.

Crimes Act 1914

Item 103 inserts a new heading for Section 3B, which makes it clear that the section no longer refers to Norfolk Island.

Items 104, 105, 106 and 107 remove references to Norfolk Island and the Administrator of Norfolk Island in Section 3B. Section 3B of the *Crimes Act 1914* allows the Governor-General to make arrangements with states and territories in relation to the functions of the *Crimes Act 1914*. As the Commonwealth will have responsibility for state level services, references to Norfolk Island are no longer required in this subsection.

Item 108 removes a reference in subsection 3CA(4) the *Crimes Act 1914* to arrangements which can be made with the Administrator of Norfolk Island. As the Commonwealth will have responsibility for state level services, references to Norfolk Island are no longer required in this subsection.

Item 109 and Item 110 remove a reference in the *Crimes Act 1914* to arrangements which can be made with the Administrator of Norfolk Island. As the Commonwealth will have responsibility for state level services, references to Norfolk Island are no longer required in this subsection.

Item 111 removes a reference to a parole officer of Norfolk Island. As the Commonwealth will have responsibility for state level services, references to Norfolk Island are no longer required in this subsection.

Item 112 removes references to Norfolk Island in the definition of ‘prescribed authority’. As the Commonwealth will have responsibility for state level services, references to Norfolk Island are no longer required in this subsection.

Item 113 removes references to Norfolk Island in relation to ‘prescribed authority’ and ‘parole officer’. As the Commonwealth will have responsibility for state level services, references to Norfolk Island are no longer required in this subsection.

Item 114 removes a reference to the Crown in the right of Norfolk Island. A reference to the Crown in the right of Norfolk Island becomes redundant as a result of the changes to governance arrangements on Norfolk Island.

Crimes (Aviation) Act 1991

Item 115 removes a reference to a magistrate of Norfolk Island. As the Commonwealth will have responsibility for state level services, references to Norfolk Island are no longer required in this subsection.

Items 116 and 117 remove a reference in the *Crimes (Aviation) Act 1991* to arrangements which can be made with the Administrator of Norfolk Island. As the Commonwealth will have responsibility for state level services, references to Norfolk Island are no longer required in this subsection.

Criminal Code Act 1995

Item 119 removes a reference to the ‘administrator, an Acting Administrator, or a Deputy Administrator, of Norfolk Island’ from the list of Commonwealth public officials, as these positions cease to exist in primary legislation on commencement of Schedule 2.

Customs Act 1901

Item 120 removes a reference to arrangements which can be made with the Administrator of Norfolk Island in relation to magistrates. As Norfolk Island magistrates are established under Commonwealth law (as opposed to state law for most other magistrates) an agreement to use Norfolk Island magistrates for the purposes of the Act is not necessary.

Data-matching Program (Assistance and Tax) Act 1990

Item 121 inserts at the end of Part 1 of the *Data-matching Program (Assistance and Tax) Act 1990*, a new section 3B, which extends this Act to Norfolk Island.

Dental Benefits Act 2008

Item 122 amends section 4 to include a definition of “Australia” in a geographic sense, as including Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Item 123 inserts a new section 7A which provides that the Act extend to all external Territories.

Item 124 amends section 18, which currently provides that the Dental Benefits Rules may make payment of dental benefits conditional on matters including whether the service is provided by, on behalf of, or under an arrangement with an internal Territory or an authority of an internal Territory. The amendment has the effect of changing the references to an internal Territory to references to any Territory.

Item 125 amends section 21, which currently provides that the Dental Benefits Rules may provide that dental benefits are not payable in respect of certain dental services, including those provided by, on behalf of, or under an arrangement with an internal Territory or an authority of an internal Territory. The amendment has the effect of changing the references to an internal Territory to references to any Territory.

Enhancing Online Safety for Children Act 2015

Item 130 removes a reference in the *Enhancing Online Safety for Children Act 2015* to the Government of Norfolk Island. From immediately after the final transition time, the concept of the ‘Government of Norfolk Island’ is no longer a relevant or operative concept.

Environment Protection and Biodiversity Conservation Act 1999

Item 131 repeals subsections 393(3) and 398(2) which both allow the Commonwealth Minister to enter into arrangements with the Administrator of Norfolk Island for various purposes under the Act. As the position of Administrator of Norfolk Island is removed from primary legislation, these provisions are no longer applicable.

Item 132 removes the reference to the Administrator of Norfolk Island in subsection 446(8) of the *Environment Protection and Biodiversity Conservation Act 1999*. As the position of Administrator of Norfolk Island is removed from primary legislation, this provision is no longer applicable.

Items 133, 134 and 135 remove references to Norfolk Island in the definition of ‘Commonwealth Area’. Item 134 removes a reference excluding Norfolk Island from the category of External Territory for the purposes of the definition, meaning that Norfolk Island will be treated consistently with other external territories such as Christmas Island the Cocos (Keeling) Islands. Items 133 and 135 remove references to Norfolk Island in the same section that were placed there for clarity, however, now that Norfolk Island is no longer excluded from the category of external territory these additional references to Norfolk Island are no longer required.

Items 136 and 137 remove references to the Administrator of Norfolk Island. As the position of Administrator of Norfolk Island is removed from primary legislation, these provisions are no longer applicable.

Environment Protection (Sea Dumping) Act 1981

Items 138, 139, 140 and 141 remove references to aircraft and vessels owned by the Norfolk Island Administration, as the Norfolk Island Administration ceases to exist from the commencement of Schedule 2.

Extradition Act 1988

Item 142 repeals the definition of *magistrate* for the purposes of the *Extradition Act 1988*, and substitutes a new definition that does not include references to Norfolk Island. The new definition also inserts modifications directly into the Act that were made by the A.C.T. Self-Government (Consequential Provisions) Regulations. This update has been included to simply the act and its provisions.

Items 143-151 (inclusive) remove references to Norfolk Island and the Administrator of Norfolk Island which are redundant as a result of the governance changes in relation to the Territory.

Family Law Act 1975

Items 152, 153, 154 remove references to Norfolk Island from section 112AN, which allows the Governor-General to make arrangements with states and territories in relation to powers, functions and facilities under the Act. Following the governance changes to be made by the Bill there will no longer be a ‘relevant authority’ as mentioned in section 112AN and as such there is no need to have that section refer to Norfolk Island.

Item 155 amends subsection 116C(4) of the *Family Law Act 1975* to the Crown in the right of Norfolk Island. This reference to the Crown in the right of Norfolk Island becomes redundant as a result of the changes to governance arrangements on Norfolk Island.

Farm Household Support Act 2014

Item 156 includes a definition of 'Australia' in the *Farm Household Support Act 2014* providing for that Act to extend to each of the Territories of Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Item 157 explicitly confirms that the *Farm Household Support Act 2014* extends to Norfolk Island.

Freedom of Information Act 1982

Item 163 removes reference to the Government of Norfolk Island from the objects of the *Freedom of Information Act 1982*.

Items 164-168 (inclusive) remove references to Norfolk Island in the definition of "Commonwealth contract" and adjust the definition of "Norfolk Island authority" to reflect the governance changes. The Freedom of Information Act 1982 will continue to apply to documents held by the Commonwealth in respect of Norfolk Island and Norfolk Island authorities.

Items 169 and 170 remove redundant references to the Norfolk Island Legislative Assembly, Administrator of Norfolk Island, Deputy Administrator of Norfolk Island and Minister of Norfolk Island.

Item 171 removes a redundant reference to the Government of Norfolk Island.

Items 172, 173, 176, 195, 196, 197, 198, 199, 200, 203 and 205 remove a redundant provision relating to consultation on documents affecting Norfolk Island intergovernmental relations and removes associated references to that provision.

Items 174, 175, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 201, 202, 204, 206, 207 and 208 remove redundant references to the Government of Norfolk Island and intergovernmental relations involving the Government of Norfolk Island.

Health and Other Services (Compensation) Act 1995

Item 211 repeals the *Health and Other Services (Compensation) Act 1995* (HOSC Act's) current definition of "Territory" and substitutes a new definition, which includes Norfolk Island.

Item 212 explicitly confirms the HOSC Act extends to Norfolk Island.

Health Insurance Act 1973

Item 214 amends the *Health Insurance Act 1973* (the HI Act) definition of "Australia" to include Norfolk Island, with the effect that persons on Norfolk Island meeting the definition of "Australian resident" under s3(1) of the HI Act will be eligible for enrolment in the Medicare programme.

Item 215 provides that the same patient contribution rates for nursing home type patients that apply in New South Wales will also apply in Norfolk Island.

Item 216 provides that the same terms, which apply in New South Wales to the administration of s3C, will also apply in Norfolk Island.

Item 217 inserts Norfolk Island in the HI Act definition of “External Territories”.

Item 218 provides that the same terms, which apply in New South Wales to the administration of Medicare benefits under Part II of the HI Act, will also apply in Norfolk Island.

Item 219 includes Norfolk Island in the jurisdictions captured by s18, which prohibits the payment of Medicare benefits to a recipient of a judgement or settlement resulting from a compensation claim, which includes health care costs; and also includes Norfolk Island in the jurisdictions captured by Section 23 DF(18) if the HIA, which provides for an approved pathology authority (i.e. a company that is allowed to own pathology lab providing Medicare services) to be established.

Item 220 includes Norfolk Island in the jurisdictions captured by Section 23 DF(18) if the HIA, which provides for an approved pathology authority (i.e. a company that is allowed to own pathology lab providing Medicare services) to be established.

Human Services (Centrelink) Act 1997

Item 221 amends section 3 of the *Human Services (Centrelink) Act 1997* to provide that the word ‘Australia’, when used in a geographical sense, includes Norfolk Island, the Territory of Cocos (Keeling) Islands, and the Territory of Christmas Island.

Item 222 amends section 5 of the *Human Services (Centrelink) Act 1997* to provide that the Act applies in Norfolk Island.

Human Services (Medicare) Act 1973

Item 223 amends section 3 of the *Human Services (Medicare) Act 1973* to provide that the word ‘Australia’, when used in a geographical sense, includes Norfolk Island, the Territory of Cocos (Keeling) Islands, and the Territory of Christmas Island.

Item 224 inserts a provision into the *Human Services (Medicare) Act 1973*, which provides that the Act applies in Norfolk Island.

Immigration (Guardianship of Children) Act 1946

Item 225 inserts into section 4 of the *Immigration (Guardianship of Children) Act 1946* (IGOC Act) the following new definition of Australia:

Australia, when used in a geographical sense, includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Currently, Australia is not a defined term in the IGOC Act, so when the term is used, for example in sections 4AAA, 4AA, 6, 6A, 8 and 12, it takes the meaning given to it in by section 2B of the *Acts Interpretation Act 1901* (the AIA), which does not include Norfolk Island. This amendment ensures the IGOC Act will extend to Norfolk Island, and that for the purposes of that Act, Norfolk Island is part of Australia.

Item 226 inserts new section 4AAC into the IGOC Act to provide that the Act extends to Norfolk Island.

International War Crimes Tribunals Act 1995

Items 229, 230, 231 and 232 remove references to arrangements which can be made with the Administrator of Norfolk Island in relation to magistrates. As Norfolk Island magistrates are established under Commonwealth law (as opposed to state law for most other magistrates) an agreement to use Norfolk Island magistrates for the purposes of the Act is not necessary.

Judiciary Act 1903

Item 233 removes a reference to the Crown in the right of Norfolk Island. References to the Crown in the right of Norfolk Island become redundant as a result of the changes to governance arrangements on Norfolk Island.

Items 234 to 243 (inclusive) remove references to Norfolk Island. The changed governance model for Norfolk Island means the Territory no longer requires specific references in these sections.

Lands Acquisition Act 1989

Items 244 and 245 remove references to authorities established under a law of Norfolk Island from the definition of ‘Commonwealth authority’. This is because from the commencement of Schedule 2 Part 1, Norfolk Island will not have its own legislature, and it therefore does not require a specific exemption in this definition in the *Lands Acquisition Act 1989*.

Migration Act 1958

Item 249 – Subsection 5(1) (definition of *adjacent area*)

Item 249 amends the definition of ‘adjacent area’ contained in subsection 5(1) of the *Migration Act 1958* (Migration Act) by inserting ‘of Norfolk Island,’ after Northern Territory. The existing definition provides that adjacent area means an adjacent area in respect of a State, of the Northern Territory, of the Territory of Ashmore and Cartier Islands, of the Territory of Cocos (Keeling) Islands or of the Territory of Christmas Island, as determined in accordance with section 5 of the *Sea Installations Act 1987*.

The effect of the amendment is that the definition of ‘adjacent area’ in subsection 5(1) will additionally include an adjacent area in respect of Norfolk Island. The term ‘adjacent area’ is used in subsections 5(1), 5(7), 9(1), 227(1) and 227(4) of the Migration Act in respect of the location and status of sea installations.

The purpose of this amendment is to ensure that sea installations in the adjacent area to Norfolk Island will, for the purposes of the Migration Act, be treated identically to how they would be treated if they were in the adjacent area to one of the areas currently listed in subsection 5(1) of the Act.

Item 250 – Paragraph 5AA(3)(b)

Item 250 repeals the existing paragraph 5AA(3)(b) of the Migration Act and substitutes a new paragraph. Existing paragraph 5AA(3)(b) provides that one of the situations in which a person is an ‘excluded maritime arrival’ is if the person is a non-citizen who holds and produces a passport that is in force and is endorsed with an authority to reside indefinitely on Norfolk Island. New paragraph 5AA(3)(b) provides that one of the situations in which a person is an excluded maritime arrival is if the person is a non-citizen who:

- holds and produces a passport that is in force; and
- is ordinarily resident on Norfolk Island.

Being an excluded maritime arrival means that you are not an unauthorised maritime arrival and therefore not subject to the legislation that applies to an unauthorised maritime arrival.

Subsection 5(1) of the Migration Act provides that an ‘unauthorised maritime arrival’ has the meaning given by section 5AA. Subsection 5AA(1) provides that, for the purposes of this Act, a person is an ‘*unauthorised maritime arrival*’ if:

- the person entered Australia by sea:

- at an excised offshore place at any time after the excision time for that place; or
- at any other place at any time on or after the commencement of this section; and
- the person became an unlawful non-citizen because of that entry; and
- the person is not an excluded maritime arrival.

The repeal of existing paragraph 5AA(3)(b) is a consequence of the amendment to subsection 7(1) by item 251 extending the Migration Act to Norfolk Island. As a result of this amendment a person who has the authority to reside indefinitely on Norfolk Island must either be an Australian citizen or hold a visa.

The effect of the new paragraph 5AA(3)(b) is to continue the effects of the existing paragraph 5AA(3)(b) to ensure that residents of Norfolk Island would not become an ‘unauthorised maritime arrival’ if they entered Australia (which will under the expanded definition include Norfolk Island) by sea without holding a valid visa.

The purpose of the new paragraph is to ensure that people who are ordinarily resident on Norfolk Island do not become unauthorised maritime arrivals as a result of entry and departure practices that may have been an acceptable practice under the *Immigration Act 1980* (Norfolk Island) (Norfolk Immigration Act), but are not authorised by the Migration Act. There are consequences that flow from being an unauthorised maritime arrival, and it is not intended that these should apply to people who are ordinarily resident on Norfolk Island, but have inadvertently entered Australia (Norfolk Island) in an unauthorised fashion.

For example, if a person who was ordinarily resident on Norfolk Island is outside Australia, and then returns to Norfolk Island by sea in a manner that is unauthorised by the Migration Act, they would, but for this amendment be considered an unauthorised maritime arrival.

This scenario would likely be a rare occurrence, however it may happen in circumstances where (for example) a Norfolk Island resident is not known to the Department on 1 July 2016 (and so was not transitioned to a visa) and arrives on Norfolk Island after 1 July 2016 by sea without a visa in effect.

Item 251 – Subsection 7(1)

Item 251 inserts “Norfolk Island,” after “means” in subsection 7(1) of the Migration Act. Subsection 7(1) provides the meaning of prescribed territory for the purposes of section 7. Subsection 7(2) provides that the Migration Act extends to prescribed territories. Subsection 7(3) provides that, subject to the Act, a prescribed territory:

- Shall be deemed to be part of Australia for the purposes of the Migration Act; and
- Shall be deemed to not be a place outside Australia.

The effect of including Norfolk Island in subsection 7(1), is that the Migration Act will extend to Norfolk Island, and that for the purposes of the Act, Norfolk Island is deemed to be part of Australia, and not to be a place outside Australia. The purpose of this amendment is to ensure that the Migration Act in its entirety will apply to persons on Norfolk Island.

Item 252 – Paragraph 42(2A)(b)

Item 253 – Subparagraph 42(2A)(e)(v)

Item 354 – Paragraph 42(2A)(f)

Items 252-254 (inclusive). These three items relate to subsection 42(2A) of the Migration Act. Subsection 42(2A) provides that subsection 42(1) does not apply to a non-citizen in relation to travel to Australia in certain circumstances. Each of the paragraphs of subsection 42(2A) provides a circumstance.

Subsection 42(1) provides that subject to subsections 42(2), 42(2A) and 42(3), a non-citizen must not travel to Australia without a visa in effect. Effectively, each paragraph of subsection 42(2A) provides a circumstance in which a non-citizen may travel to Australia without a visa in effect.

Item 252 repeals paragraph 42(2A)(b). Paragraph 42(2A)(b) provided that one of the circumstances in which subsection 42(1) does not apply to a non-citizen in relation to travel to Australia is if the travel is by a non-citizen who holds and produces a passport that is in force and is endorsed with an authority to reside indefinitely on Norfolk Island.

Paragraph 42(2A)(b) facilitated Norfolk Island residents travelling to Australia without first being granted a visa. On arrival in Australia, the resident could apply for a Norfolk Island Permanent Resident (Residence) (Class AW) visa while in immigration clearance.

As a consequence of the Migration Act extending to Norfolk Island, this facility is no longer necessary, as for a person to be lawfully present on Norfolk Island, they will need to either hold a visa under the Migration Act, or be an Australian citizen. Both of these forms of authority are equally valid on mainland Australia. As such, there is no need to facilitate a resident of Norfolk Island travelling to Australia.

Item 253 omits “non-citizen; or” from subparagraph 42(2A)(e)(v), and substitutes “non-citizen”. This is a consequential amendment to the repeal of paragraph 42(2A)(f), and reflects the fact that paragraph 42(2A)(e) is now the final paragraph of subsection 42(2A).

Item 254 repeals paragraph 42(2A)(f). Paragraph 42(2A)(f) provided that one of the circumstances in which subsection 42(1) does not apply to a non-citizen in relation to travel to Australia is if:

- the travel is from Norfolk Island to Australia; and
- the Minister has made a declaration that paragraph 42(2A)(f) is to apply in relation to the non-citizen’s travel; and
- the non-citizen is a person who would, if in the migration zone, be an unlawful non-citizen.

Paragraph 42(2A)(f) was included in the Migration Act to deal with the issue that Norfolk Island is part of Australia at international law, but was not part of Australia for the purposes of the Migration Act. This paragraph facilitated the movement into the migration zone of those unauthorised arrivals who could not be removed from Norfolk Island immediately because of the need to consider their position under Australia’s international obligations.

As Norfolk Island will now be part of the Australia for the purposes of the Migration Act, unauthorised arrivals will already be in Australia when on Norfolk Island, and this paragraph is now redundant.

Mutual Assistance in Criminal Matters Act 1987

Item 255 removes a reference to agreements under Section 39 in relation to magistrates of Norfolk Island, as Items 259 and 260 amend Section 39 so as to remove references to arrangements made in respect of Norfolk Island magistrates.

Item 256 removes the words ‘(other than Norfolk Island)’, which has the effect of ensuring that paragraph (c) of the definition of *magistrate* now applies to Norfolk Island, as with other external territories.

Items 257 and 258 remove references to the Crown in the right of Norfolk Island. A reference to the Crown in the right of Norfolk Island becomes redundant as a result of the changes to governance arrangements on Norfolk Island.

Items 259 and 260 remove references to arrangements which can be made with the Administrator of Norfolk Island in relation to magistrates. As Norfolk Island magistrates are established under Commonwealth law (as opposed to state law for most other magistrates) an agreement to use Norfolk Island magistrates for the purposes of the Act is not necessary.

National Blood Authority Act 2003

Item 261 amends section 3 to include a definition of “Australia” in a geographic sense, as including Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Item 262 amends the definition of “covered Territories” in section 3 to include Norfolk Island.

Item 263 amends section 6 by removing the exclusion of Norfolk Island from the provision setting out which external Territories are covered by the Act.

National Health Act 1953

Item 265 amends section 6A so that the Act extends to Norfolk Island.

Item 266 amends the definition of ‘Commonwealth officer’ in subsection 84(1) by deleting that part of the definition which refers to the Administrator, an Acting Administrator or a Deputy Administrator of Norfolk Island.

Item 267 amends subsection 84(1) by providing that for the purposes of Part VII of the *National Health Act 1953*, ‘territory’ is to include an external territory to which the Act extends. This will include Norfolk Island by virtue of item 265 above.

Item 268 amends section 84 by inserting a provision (subsection 84(3AA)) providing that a reference to the governing body of a public hospital on Norfolk island is to be a reference to a person or body as set out under the regulations.

Item 269 amends paragraph 107(2)(a) of the Act to provide that Norfolk Island is to be treated as being a part of New South Wales for the purposes of Part VIII of the Act, which deals with Committees of Inquiry. The Australian Capital Territory is already deemed to be a part of New South Wales for the purposes of Part VIII.

Item 270 amends section 133 so that it deals with the consequences of prosecution for offences against the laws of Norfolk Island. This section already provides for the consequences of prosecution for offences against the laws of other jurisdictions within Australia.

Item 271 amends section 135 so that a Commonwealth employee registered as a health professional under the laws of Norfolk Island will be able to perform his or her professional

duties in other Australian jurisdictions despite not being registered in such jurisdictions. The categories health professional listed in section 135 are medical practitioner, dentist, nurse, pharmaceutical chemist, pharmacist, physiotherapist and optometrist. Section 135 currently applies to health professionals registered under the laws of States and other Territories.

National Health Security Act 2007

Item 272 removes a reference to the Crown in the right of Norfolk Island. A reference to the Crown in the right of Norfolk Island becomes redundant as a result of the changes to governance arrangements on Norfolk Island.

Item 273 removes a reference to Norfolk Island in a clause allowing the responsible Minister to enter into agreements with state and territory governments under the *National Health Security Act 2007*. As the Commonwealth will be responsible for state level services, a reference to Norfolk Island in this subsection is no longer required.

Items 274 and 275 remove references to officers or employees of Norfolk Island. The Commonwealth will be responsible for state level services, references to Norfolk Island in this subsection is no longer required.

Ombudsman Act 1976

Items 280 to 286 (inclusive) remove the separate definition of “enactment of Norfolk Island” and insert the relevant Norfolk Island laws into the definition of “enactment”.

Items 287 to 289 (inclusive) remove subsequent references to “enactment of Norfolk Island” and a provision that allows the Ombudsman to operate as the Norfolk Island Ombudsman. These changes remove special arrangements relating to the Norfolk Island Government and but allow the Ombudsman to continue performing functions in relation to Commonwealth activity on Norfolk Island under its standard jurisdiction, as it does for other external territories.

Items 290 and 291 remove the Ombudsman’s authority and the Defence Ombudsman’s authority to investigate an action taken by a Norfolk Island magistrate or coroner, to align with other Australian jurisdictions.

Item 292 provides that the Ombudsman cannot investigate an action taken under a law of New South Wales that is applied to Norfolk Island. It is intended that the New South Wales Ombudsman be engaged to perform this task.

Paid Parental Leave Act 2010

Item 295 inserts a new section 3AA into the *Paid Parental Leave Act 2010* which extends the *Paid Parental Leave Act 2010* to Norfolk Island.

Item 296 amends section 6 of the *Paid Parental Leave Act 2010* to include Norfolk Island in the definition of *Australia* for the purposes of this Act.

Item 297 inserts a new paragraph (ea) into subsection 101(5) of the *Paid Parental Leave Act 2010* which ensures that the Secretary, in considering whether an employer is a fit and proper person, has the discretion to take into account whether the employer has, or is alleged to have, contravened a provision of the *Employment Act 1988* (Norfolk Island).

Privacy Act 1988

Items 299 and 300 remove references to the Crown in the right of Norfolk Island. A reference to the Crown in the right of Norfolk Island becomes redundant as a result of the changes to governance arrangements on Norfolk Island.

Item 301 removes a reference to Norfolk Island from the definition of ‘Commonwealth contract’, as the governance changes in this Bill mean there will no longer be a Norfolk Island Government to enter into contracts.

Item 302 removes words which have the effect of excluding employees of the public service of Norfolk Island from the definition of ‘Commonwealth officer’, as the governance changes in this Bill mean there will no longer be a Norfolk Island public service, thereby making the reference to the public service of Norfolk Island redundant.

Items 303 and 304 remove redundant references to the Administrator of Norfolk Island, as the position of Administrator of Norfolk Island ceases to exist upon commencement of the final transition time.

Item 305 repeals section 37 (table item 5C) as the references to *Norfolk Island Agency* and *Chief Executive Officer* of the Norfolk Island Administration are redundant.

Private Health Insurance Act 2007

Item 306 is a formal provision that inserts item 1-15 in Division 1 of Part 1-1, extending the Act to Norfolk Island.

Item 307 removes the words “and (4)” from Subsection 34-25(1), substitutes the words “, (4) and (4A)” to allow for the addition of new subsection 34-25(4A) as per Item 308.

Item 308 inserts new subsections 34-25(4A) and (4B) under a new heading “Person living on Norfolk Island at the final transition time”. These items set out the structure under which a Norfolk Island resident’s *lifetime health cover base day* is calculated. This item ensures that the same rules that apply to the calculation of the *lifetime health cover base day* for others will be applied equally to residents of Norfolk Island once they become eligible for Medicare.

Item 309 removes the current wording of Subsection 34-30(1)(a), which states that Norfolk Islanders are deemed to be overseas while living there, and substitutes with amended wording. The amended wording clarifies that, after the Act is extended to Norfolk Island, people living on Norfolk Island prior to the final transition date will be deemed to have been living overseas.

Item 310 inserts a definition of Australia into the Act at Clause 1 of Schedule 1.

Public Works Committee Act 1969

Item 316 amends subsection 6(2) of the *Public Works Committee Act 1969*, as it refers to works carried out by the Norfolk Island Administration. As the Norfolk Island Administration ceases to exist on commencement of Schedule 2, this subsection is no longer operative. The subsection relevant to works of the Northern Territory is also amended to improve the clarity of the drafting.

Radiocommunications Act 1992

Item 317 removes references in the *Radiocommunications Act 1992* to the Government of Norfolk Island. From immediately after the final transition time, the concept of the ‘Government of Norfolk Island’ is no longer a relevant or operative concept.

Remuneration Tribunal Act 1973

Item 318 repeals paragraph 3(4)(jaa) which is a reference to the Norfolk Island Advisory Council which ceases to exist upon commencement of the final transition time.

Social Security Act 1991

Item 322 inserts a new section 3AA into the *Social Security Act 1991* so that the Act extends to Norfolk Island.

Item 323 inserts a new subsection 7(2AA) into the *Social Security Act 1991* so that subparagraph (2)(b)(ii) does not apply to a New Zealand citizen who resides on Norfolk Island. This and item 324 put long-term Norfolk Island residents who are New Zealand citizens in the same position as residents of Australia who are New Zealand citizens, despite Norfolk Island residents not previously being required to hold an Australian visa to remain on Norfolk Island..

Item 324 inserts a new subsection 7(3A) into the *Social Security Act 1991*, so that for the purposes of determining under subsections (2A) to (2D), whether a person is a protected SCV holder, Australia is taken, at all relevant times, to have included Norfolk Island.

Item 325 amends subsection 7(4) of the *Social Security Act 1991* so that residence in an external territory, including Norfolk Island, will be taken to be residence in Australia for the purposes of Part 2.2 (age pension), Part 2.3 (disability support pension), Part 2.7 (bereavement allowance), and Part 2.8 (widow B pension).

Item 326 amends paragraph 10B(3)(d) of the *Social Security Act 1991* by deleting reference to an exception for Norfolk Island. As Australia will include Norfolk Island (item 329 refers) the exception becomes redundant.

Items 327 and 328 amend the definition of *remote area* in subsection 14(1) of the *Social Security Act 1991* to include Norfolk Island, meaning that Norfolk Island will be treated consistently with other external territories such as Christmas Island and Cocos (Keeling) Islands.

Item 329 amends the definition of *Australia* in section 23 of the *Social Security Act 1991* to include Norfolk Island.

Item 330 amends the definition of *external territory* in subsection 23(1) of the *Social Security Act 1991* to remove Norfolk Island. Norfolk Island is to be regarded as being within the definition of *Australia* (Item 329 refers) for the purposes of the social security law.

Item 331 repeals the definition of *regional or remote location* under subsection 592L(7) of the *Social Security Act 1991* and substitutes a new definition so that *regional or remote location* means (a) a location categorised as Inner Regional Australia, Outer Regional Australia, Remote Australia or Very Remote Australia under the Remoteness Structure as defined in subsection 1067A(10F) or (b) Norfolk Island. This will result in Norfolk Island being treated consistently with other external territories such as Christmas Island and Cocos (Keeling) Islands.

Item 332 repeals paragraph 1067A(10E)(a) and substitutes further criterion so that the subsection applies to a person if the person's family home is in a location categorised under the Remoteness Structure as Inner Regional Australia, Outer Regional Australia, Remote Australia or Very Remote Australia; or on Norfolk Island. The reference to Norfolk Island is required to categorise Norfolk Island as a regional or remote location for the purposes of the relocation scholarship payment and the youth allowance rate calculator.

Item 333 amends section 1162 of the *Social Security Act 1991* to omit a reference to Norfolk Island which is made redundant by changes to the governance arrangements for Norfolk Island.

Social Security (Administration) Act 1999

Item 334 inserts new section 6B into the *Social Security (Administration) Act 1999* so that the Act extends to Norfolk Island.

Social Security (International Agreements) Act 1999

Item 335 inserts new section 4A into the *Social Security (International Agreements) Act 1999* so that the Act extends to Norfolk Island.

Student Assistance Act 1973

Item 336 inserts a new definition of *Australia* into subsection 3(1) of the *Student Assistance Act 1973*. Under this new definition, Australia, when used in a geographical sense includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Item 337 amends section 5A to extend Norfolk Island to the *Student Assistance Act 1973*.

Telecommunications Act 1997

Item 343 omits ‘of the Northern Territory and of Norfolk Island’ and substitutes ‘and of the Northern Territory’. The references to the Crown in the right of Norfolk Island become redundant as a result of the changes to governance arrangements on Norfolk Island.

Item 344 removes a reference in the *Telecommunications Act 1997* to the Government of Norfolk Island. From immediately after the final transition time, the concept of the ‘Government of Norfolk Island’ is no longer a relevant or operative concept.

Tobacco Advertising Prohibition Act 1992

Item 346 removes a reference to the Crown in the right of Norfolk Island. References to the Crown in the right of Norfolk Island become redundant as a result of the changes to governance arrangements on Norfolk Island.

Item 347 removes a reference to Norfolk Island from subsection 15(3) of the *Tobacco Advertising Prohibition Act 1992* as Norfolk Island would no longer have its own legislature when the amending legislation takes full effect (unlike the other two territories specifically mentioned – the Australian Capital Territory and Northern Territory). This is also consistent with the second phase of the reform of legal and governance arrangements to commence on 1 July 2016 which includes a mechanism that applies New South Wales state law to Norfolk Island as Commonwealth law.

Veterans’ Entitlements Act 1986

Item 351 inserts a reference to payments made under Parts ‘IIIE’ and ‘VIB’ into the definition of ‘Australia’ in subsection 5Q(1). The amendment will ensure that residents of Norfolk Island will be eligible for payments of the clean energy and the prisoner of war recognition supplements respectively.

Item 352 amends subparagraphs 38(1)(aa)(iii) and (1)(e)(ii) to remove the redundant references to the residence of a person in Norfolk Island. The amendments are a consequence of the amendment to subsection 7(4) of the *Social Security Act 1991* (item 325 refers).

Item 353 amends section 59ZM to remove a reference to the Crown in the right of Norfolk Island. A reference to the Crown in the right of Norfolk Island becomes redundant as a result of the changes to governance arrangements on Norfolk Island.

Item 354 amends subsection 128(6) to remove a reference to the Crown in the right of Norfolk Island. A reference to the Crown in the right of Norfolk Island becomes redundant as a result of the changes to governance arrangements on Norfolk Island.

Part 2—Transitional provisions

Division 1—Introduction

Item 356 sets out the definitions of words used in Schedule 2 to the main Bill. In particular the term final transition time is defined as the commencement of Part 2 of Schedule 1, which is set as 1 July 2016.

Division 2—Transitional rules

Item 357

Subitem 357(1) provides the Minister may make rules by legislative instrument in relation to transitional matters.

Subitem 357(2) specifies things the transitional rules may not do, such as create an offence or civil penalty, provide powers of arrest or detention or entry, search and seizure; impose a tax, appropriate funds or amend the Act.

Division 3—Transfer of assets and liabilities

Item 358

Subitem 358(1) states this section applies to an asset of the Administration immediately before the final transition time.

Subitem 358(2) provides that on commencement of the final transition time, the asset ceases to be an asset of the Administration and becomes an asset of the Norfolk Island Regional Council, with the Norfolk Island Regional Council to become the successor at law in relation to the asset.

Subitem 358(3) allows that transitional rules may provide that subitem (2) does not apply in respect of one or more specified assets, and those assets instead become assets of the Commonwealth, and the Commonwealth becomes successor in law in relation to those assets which were specified in the transitional rules.

Item 359

Subitem 359(1) states this section applies to liabilities of the Administration immediately before the final transition time.

Subitem 359(2) provides that on commencement of the final transition time, the liability ceases to be a liability of the Administration and becomes a liability of the Norfolk Island Regional Council, with the Norfolk Island Regional Council to become the successor at law in relation to the liability.

Subitem 359(3) allows that transitional rules may provide that subitem (2) does not apply in respect of one or more specified liabilities, and those liabilities instead become liabilities of the Commonwealth, and the Commonwealth becomes successor in law in relation to those liabilities which were specified in the transitional rules.

Item 360 provides that any land which is transferred to the Norfolk Island Council may be registered, provided that there is a certificate which is signed by the Minister, and identifies the land, and states the land has been vested in the Norfolk Island Council under the transitional rules. This land transfer may be registered and given effect to in the usual way by a land registration official. The section provides that a certificate made under the item is not a legislative instrument. This is because it is not legislative in character and therefore not within

the meaning of section 5 of the *Legislative Instruments Act 2003*. This subitem confirms this and is included to assist readers.

Item 361 is similar in effect to item 360, only it provides for land transfers to the Commonwealth to be registered, rather than for land transfers to the Norfolk Island Council to be registered. Subitem 361(3) confirms that a certificate lodged with a land registration official is not a legislative instrument. This is because it is not legislative in character and therefore not within the meaning of section 5 of the *Legislative Instruments Act 2003*. This subitem confirms this and is included to assist readers.

Item 362 is similar in effect to item 360, only it provides for transfer of assets other than land to the Norfolk Island Council to be registered, instead of land as is the case in item 360. Subitem 362(3) confirms that a certificate lodged with an assets official is not a legislative instrument. This is because it is not legislative in character and therefore not within the meaning of section 5 of the *Legislative Instruments Act 2003*. This subitem confirms this and is included to assist readers.

Item 363 is similar in effect to item 361, only it provides for transfer of assets other than land to the Commonwealth to be registered, instead of land as is the case in Section 361. Subitem 363(3) confirms that a certificate lodged with a assets official is not a legislative instrument. This is because it is not legislative in character and therefore not within the meaning of section 5 of the *Legislative Instruments Act 2003*. This subitem confirms this and is included to assist readers.

Division 4—Transfer of other matters

Item 364 allows the transitional rules to specify that acts which were done by or in relation to the Administration can be attributed to either the Norfolk Island Council or the Commonwealth. These acts will be taken to have been performed by the Norfolk Island Council or the Commonwealth, depending on how the acts in question have been attributed in the transitional rules.

Item 365 allows the transitional rules to specify the Commonwealth or the Norfolk Island Council can be substituted as a party to any proceedings to which the Norfolk Island Administration was a party immediately before the final transition time.

Item 366 provides that transitional rules can be made which transfers records to either the Commonwealth or the Norfolk Island Council. It is not proposed that records of the Norfolk Island Administration would become Commonwealth records at any time, unless a transitional rule was made transferring certain records to the Commonwealth.

Subitems 366(4) and 366(5) provide that where an APP entity (as defined in the *Privacy Act 1988*) holds personal information collected for a particular purpose, and the individual has a reasonable expectation that information was collected for use or disclosure for a particular purpose, then Australian Privacy Principle 6 applies to the APP in respect of those records. This is to ensure that individuals' personal information is protected by the requirements in Australian Privacy Principle 6 even after a record or document containing personal information has transferred to the Commonwealth or the Norfolk Island Regional Council.

Item 367

Subitem 367(1) provides that where an instrument was made by or has effect in relation to the Norfolk Island Administration, the transitional rules may specify that any references to the Norfolk Island Administration in that instrument may be read as if the reference(s) to the Norfolk Island Administration were in fact references to the Norfolk Island Council.

Instruments include contracts, instructions, undertakings and agreements, but do not include legislative instruments or instruments made under a Commonwealth act.

Subitem 367(2) provides that where an instrument was made by or has effect in relation to the Norfolk Island Administration, the transitional rules may specify that any references to the Norfolk Island Administration in that instrument may be read as if the reference(s) to the Norfolk Island Administration were in fact references to the Commonwealth. Instruments include contracts, instructions, undertakings and agreements, but do not include legislative instruments or instruments made under a Commonwealth act.

Subitem 367(3) provides definitions used in item 367, specifically the definitions of ‘exempt instrument’ and ‘instrument’.

Division 5—Employees

Item 368

Subitem 368(1) establishes that a person is a ‘transferring employee’ if that person was employed by the Administration immediately before the final transition time. The definition of employees of the Administration includes those persons defined as Administration employees by Item 193 of Schedule 1—Part 2.

Subitem 368(2) provides that transferring employees cease to be employed by the Administration, and becomes an employee of the Norfolk Island Regional Council.

Subitem 368(3) preserves the employment terms and conditions of transferring employees, meaning that as Norfolk Island Regional Council employees they will retain the same terms and conditions they enjoyed as Administration employees (noting terms and conditions can be subject to variation as set out under subitem 368(4)).

Subitem 368(4) clarifies that nothing in the section prevents the terms and conditions of employees from being varied either in accordance with those terms and conditions or under a law, award, determination or agreement.

Subitem 368(5) provides that a transferring employee is not entitled to any payment or other benefit because they cease to be an employee of the Norfolk Island Administration as a result of this item.

Subitem 368(6) provides a definition of ‘vary’ for the purposes of Item 368.

Item 369 provides that employees who transfer to the Norfolk Island Council will maintain accrued entitlements equal to the amount of accrued entitlements they held before the transfer. A transferred employee’s period of service as an employee of the Administration will be taken to be unbroken as an employee of the Norfolk Island Government.

Division 6—Visas

Item 370 concerns the creation of transitional rules to deem visas granted to people who hold specified permits under the Norfolk Immigration Act or are in a circumstance covered by a specified provision of that Act.

As a consequence of item 251 extending the Migration Act to Norfolk Island, all non-Australian citizens will need to either hold a visa that is in effect, or they will be unlawful non-citizens as described in section 14 of the Migration Act. There are a number of consequences when a person is an unlawful non-citizen. For example, an unlawful non-citizen can be detained under section 189 of the Migration Act, and under paragraph 22(1)(b) of the *Australian Citizenship Act* a person cannot satisfy the General residence requirement for the citizenship by conferral if they were present in Australia as an unlawful non-citizen at any

time during the 4 year period immediately before the day they made the application for citizenship. It is not intended that those consequences should apply to persons who hold a legal right to be present on Norfolk Island prior to extending the Migration Act to Norfolk Island.

Subitem 370(1) allows that the transitional rules may provide that if, immediately before the final transition time, a person held a specified type of permit granted under the Norfolk Immigration Act, the person is taken to have been granted a specified type of visa under the Migration Act immediately after the final transition time.

Subitem 370(2) allows that the transitional rules may provide that if, immediately before the final transition time, a person was in specified circumstances, the person is taken to have been granted a specified type of visa under the Migration Act immediately after the final transition time.

The ‘final transition time’ is defined in section 356 of Part 2 of Division 1 of Schedule 2 to mean the commencement of Part 1 of this Schedule, which is 1 July 2016. As such, the effect of this provision is to allow for transitional rules to provide for a person holding specified type of permit or is in specified circumstances to be taken to have been granted a specified type of visa under the Migration Act immediately after the commencement of Part 1 of this Schedule, which is immediately after 00.00hrs on 1 July 2016.

It is intended that those visas be deemed granted rather than requiring applications for those visas to make the transition as straightforward as possible for people currently lawfully on Norfolk Island, and to avoid the possibility that a person may not apply for a visa and be left as an unlawful non-citizen as a result.

The reason for making the deeming of the visa grants by transitional rule rather than providing for the deemed grants in this Bill is to allow further time to adapt the visa products to the specific circumstance of each cohort.

Division 7—Social security

Item 371 inserts a definition of *social security payment* to have the same meaning as in the *Social Security Act 1991* for this Division.

Item 372 inserts an application provision regarding qualification for and payability of a social security payment or concession card. The amendments of the *Social Security Act 1991* made by Part 1 of this Schedule, in relation to qualification for and payability of a social security payment or concession card in respect of a period, apply in relation to a period that began on or after the final transition time.

Item 373 inserts a provision to deem backdated Australian residence for Norfolk Island residents before the final transition time for the purposes of the *Social Security Act 1991*. The item applies in relation to qualification for and payability of a social security payment or concession card in respect of a period that began at or after the final transition time. For the purposes of subsection 7(2) (Australian resident); subsection 7(5) (qualifying Australian residence); part 2.2 (age pension), part 2.3 (disability support pension), part 2.7 (bereavement allowance), part 2.8 (widow B pension), part 2.10 (parenting payment), part 2.11 (youth allowance), and part 2.12 (newstart allowance), residence of a claimant on Norfolk Island before the final transition time is taken to have been residence in Australia.

Item 374 applies to sections 512, 567G, 660M, 992J, 992L and points 1064-H7, 1065-E6, 1066-H6, 1066A-I6, 1066B-F6, 1067G-K9, 1067L-F9, 1068-J9 and 1068B-G6 of the

Social Security Act 1991 and sets out that these provisions do not apply in relation to the death of a child if immediately before his or her death, the child was ordinarily resident on Norfolk Island; and the death occurred before the final transition time.

Item 375 inserts a provision to ensure that for the purposes of the *Social Security Act 1991*, a newly arrived resident's waiting period is to be determined as if residence on Norfolk Island at any time ending at the final transition time were residence in Australia; and physical presence on Norfolk Island at any time ending at the final transition time were physical presence in Australia.

Item 376 inserts a transitional provision allowing early making of claims for a social security payment or concession card under the *Social Security (Administration) Act 1999* for up to 8 weeks prior to commencement. All claims made early are taken to have been made immediately after the final transition time.

Division 8 – Family assistance

Item 377 inserts a definition for *family tax benefit* to have the same meaning as in the *A New Tax System (Family Assistance) Act 1999* in this Division.

Item 378 inserts an application provision regarding eligibility for family tax benefit and single income family supplement under the *A New Tax System (Family Assistance) Act 1999*, such that they apply to the period that began at or after the final transition time. This will ensure that family tax benefit and single income family supplement cannot be paid in respect of a day before commencement on 1 July 2016.

Item 379 inserts an application provision regarding eligibility for stillborn baby payment under amendments to the *A New Tax System (Family Assistance) Act 1999*, such that they apply to a child if the child's delivery occurred at or after the final transition time.

Item 380 inserts an application provision regarding absences from Australia before final transition time. Sections 24, 62 and 63 of the *A New Tax System (Family Assistance) Act 1999* set out the effect of certain absences from Australia on eligibility for family tax benefit. As a general rule, if a child is absent from Australia for longer than 56 weeks, then the child cannot attract FTB for an individual. Similarly, an individual who has been absent from Australia for longer than 56 weeks cannot be eligible for FTB. If a child or individual return to Australia for less than 6 weeks and then leave again, they are treated as though they have not returned for the purposes of calculating the 56 weeks. In this item, 'Australia' has the same meaning as in the *A New Tax System (Family Assistance) Act 1999* (as amended by Part 1 of this Schedule). This provision provides that only absences that occur after commencement on 1 July 2016 would be taken into account for the purposes of these provisions.

Item 381 inserts a transitional provision allowing early lodgement of claims for family tax benefit under the *A New Tax System (Family Assistance)(Administration) Act 1999* for up to 4 weeks prior to commencement. All claims are taken to have been made immediately after the final transition time.

Division 9 – Child Support

Item 382 inserts a transitional provision allowing early lodgement of claims for an application for administrative assessment of child support under the *Child Support (Assessment) Act 1989* for up to 8 weeks prior to commencement. An early claim will be taken to have been made immediately after the final transition time provided it would have been in accordance with Division 1 of Part 4 of the *Child Support (Assessment) Act 1989* had it been made immediately after the final transition time. In this item, administrative assessment and child support have the same meaning as in the *Child Support (Assessment) Act 1989*.

Division 10 – Paid parental leave

Item 383 inserts an application provision regarding payability determinations under the *Paid Parental Leave Act 2010*. This provision states that the Secretary must not make a payability determination under that Act that parental leave pay or dad and partner pay is payable to a person for a child if the child was born before the final transition time and the person was ordinarily resident on Norfolk Island at the time of the birth.

Division 11 – Adjusted taxable income etc.

Item 384 inserts definitions of a designated official in relation to working out a person's adjusted taxable income under the *Child Support (Assessment) Act 1989*, the *Social Security Act 1991* and the *Paid Parental Leave Act 2010* and in relation to working out a person's taxable income under the *Social Security Act 1991*.

Item 385 provides that for the purposes of working out a person's adjusted taxable income for a period under a provision of the *Child Support (Assessment) Act 1989*; the *Paid Parental Leave Act 2010*; or the *Social Security Act 1991*, and a person's taxable income for some social security purposes, such income includes the person's tax-exempt Norfolk Island income. This will only apply where a Norfolk Island resident's taxable income for a period prior to the final transition time is required (as after transition a Norfolk Island resident's income will no longer be tax-exempt).

Item 386 inserts a transitional provision for a determination of tax-exempt Norfolk Island income if information and documents in a designated official's possession are sufficient to allow this determination. The designated official may obtain information or documents in order to inform this decision under the relevant provisions of the law for which the determination is needed (see item 388). The designated official may determine, from the information and documents in their possession, an amount to be the person's tax-exempt Norfolk Island income for the period. However, in determining the person's tax-exempt Norfolk Island income, the designated official must have regard only to income that was exempt from income tax under repealed Division 1A of Part III of the *Income Tax Assessment Act 1936*.

Item 387 applies if the designated official does not possess sufficient information and documents to determine a person's tax-exempt Norfolk Island income for the period. The designated official may determine that the person's tax-exempt Norfolk Island income for the period is an amount that the designated official considered appropriate. However, if the determination is for the purposes of the *Child Support (Assessment) Act 1989*, the amount that the Registrar considers appropriate must be at least two-thirds of the annualised MTAWE figure for the relevant June quarter. These terms are defined at subitem (4).

Item 388 provides that in obtaining information, Division 1, Part 5 of the *Social Security (Administration) Act 1999* has effect as if this Division, to the extent to which it relates to the *Social Security Act 1991*, were a part of the social security law. Item 388 also provides that section 161 of the *Child Support (Assessment) Act 1989* has effect as if this Division, to the extent to which it relates to that Act, were a part of that Act. Item 388 also provides that Division 2, Part 4-1 of the *Paid Parental Leave Act 2010* has effect as if this Division, to the extent to which it relates to that Act, were a part of that Act.

Item 389 empowers the Secretary or Registrar (as applicable) to delegate the power to make a decision under this Division in the same way other decisions may be delegated. It provides that section 234 of the *Social Security (Administration) Act 1999* has effect as if this Division, to the extent to which it relates to the *Social Security Act 1991*, were a part of the social

security law. Section 149 of the *Child Support (Assessment) Act 1989* has effect as if this Division, to the extent to which it relates to that Act, were a part of that Act; and that section 303 of the *Paid Parental Leave Act 2010* has effect as if this Division, to the extent to which it relates to that Act, were a part of that Act.

Item 390 provides for review of decisions under this Division. It provides that Part 4 of the *Social Security (Administration) Act 1999* has effect as if this Division, to the extent to which it relates to the *Social Security Act 1991* were a part of the social security law. Item 390 also applies to provide for review of decisions. It provides that section 80 of the *Child Support (Registration and Collection) Act 1988* applies to a determination under this Division for the purposes of a provision of the *Child Support (Assessment) Act 1989* as if the table in subsection 80(1) of that Act included a table item allowing the carer entitled to child support or the liable parent to lodge an objection to the determination. Item 390 also provides for review of decisions, providing that Chapter 5 of the *Paid Parental Leave Act 2010* has effect as if this Division, to the extent to which it relates to that Act, were a part of that Act.

Division 12—Extradition

Item 391 is a transitional provision which ensures that any agreements made between the Governor-General and the Chief Minister of the Australian Capital Territory under subsection 46(1) of the *Extradition Act 1988*, as modified by the A.C.T. Self-Government (Consequential Provisions) Regulations remain in force. Any agreements remain in force even given the changes to the *Extradition Act 1988* which inserts provisions consistent with the modifications in the A.C.T. Self-Government (Consequential Provisions) Regulations directly into the *Extradition Act 1988*.

Division 13—Other matters

Item 392 is a technical provision exempting stamp duty and other tax from applying to exempt matters, including the transfer of assets or liabilities under the transitional rules or any other provision in Schedule 2 Part 2. It allows the Minister to certify in writing that any matter is an exempt matter for the purposes of this Item or is a thing connected to an exempt matter, and provides that a certificate issued under subitem 392(3) is evidence in legal proceedings of the matters stated in the certificate.

Item 393 is a constitutional safety net to ensure that to the extent that the operation of the Act would result in an acquisition of property from a person otherwise than on just terms contrary to paragraph 51(xxxi) of the Constitution, the Commonwealth will be liable to pay a reasonable amount of compensation to the person.

Item 394 is a constitutional safety net which makes clear that this Part has no effect to the extent (if any) to which it imposes taxation.

Item 395 provides that a document which appears to be a certificate issued under Schedule 2 Part 2 should be taken to be authentic and properly given unless it is established the certificate is not authentic or was not properly given.

Item 396 clarifies Schedule 2 Part 2 does not in any way limit the matters which may be dealt with by ordinances issued under Section 19A.

SCHEDULE 3—Statistical information

Section 2 of the Census and Statistics Act 1905 is being amended to remove the words ‘other than Part III’ to ensure that the *Census and Statistics Act 1905* as a whole applies to the external territories listed in the Census and Statistics (Census) Regulations 2005.

Section 2 currently provides that the Act, other than Part III (which is about collection of statistics outside the census), extends to such external territories as are prescribed. This ensures that the census (Part II) and administration (Part IV) provisions in the Act apply to these territories, however it does not extend the additional statistics gathering powers (Part III) to these territories. Currently Christmas Island and the Cocos (Keeling) Islands are prescribed in the regulations. As part of the normalisation process, further amendments will also prescribe Norfolk Island in the regulations.

The proposed amendment to the Act aligns the power to collect statistics in the external territories with the power to collect statistics in the rest of Australia. It does not compel the Australian Bureau of Statistics to undertake any additional collection of statistical information.

TAX AND SUPERANNUATION LAWS AMENDMENT (NORFOLK ISLAND REFORMS) BILL 2015
A NEW TAX SYSTEM (MEDICARE LEVY SURCHARGE–FRINGE BENEFITS) AMENDMENT BILL 2015

NOTES ON CLAUSES

Outline of chapter

1.1 Schedules 1 and 2 to the Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015 (this Bill) amend the *Income Tax Assessment Act 1936* (ITAA 1936), *Income Tax Assessment Act 1997* (ITAA 1997) and *Superannuation Guarantee (Administration) Act 1992* (SG Act) to repeal the:

- income tax exemptions that apply to Norfolk Island resident individuals, companies and trustees in relation to their Norfolk Island sourced income and their foreign sourced income, bringing them fully into Australia's income tax system;
- Medicare levy exemptions that apply to Norfolk Island residents, bringing them fully into Australia's Medicare levy system; and
- superannuation guarantee charge exemptions that apply to Norfolk Island employers and employees in relation to work performed on Norfolk Island, bringing them fully into Australia's superannuation guarantee system.

1.2 The A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Amendment Bill 2015 supports this measure by making consequential amendments to *A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Act 1999* as a result of the repeal of the Medicare levy exemptions.

1.3 The taxation and superannuation reforms made by this Bill and A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Amendment Bill 2015 generally apply from 1 July 2016, with transitional arrangements applying in relation to capital gains tax (CGT) and superannuation guarantee charge.

Context of amendments

1.4 During the 2013 federal election, the Government committed to extend federal taxation and social welfare systems to Norfolk Island to address issues of community welfare and ensure Australian citizens are treated equally throughout Australia.

1.5 From 1 July 2016, the taxation system is to apply in Norfolk Island in the same way it currently applies to mainland Australia with the exception of indirect taxes, including goods and services tax, luxury car tax, wine equalisation tax, excise duties and customs duties. This approach is consistent with the current taxation arrangements in Australia's other external territories.

1.6 Similarly, Australia's government benefits (such as social security and Medicare) will also be extended to Norfolk Island. See the Norfolk Island Legislation Amendment Bill 2015 for further details.

1.7 Australia's superannuation guarantee regime is to be extended to employers and employees on Norfolk Island. Given Norfolk Island's depressed

economic situation and its predominantly low-income population, the superannuation guarantee will be phased in over several years.

Operation of existing law

Income tax

1.8 The Australian income tax system currently extends to Norfolk Island and includes Norfolk Island as part of Australia.

1.9 However, certain Norfolk Island residents receive an income tax exemption for their income sourced from Norfolk Island and from outside Australia (Division 1A of Part III of the ITAA 1936).

1.10 Distributions from Norfolk Island resident companies are unfrankable (paragraph 202-45(b) of the ITAA 1997). Broadly, the purpose of the franking credit system in Australia is to prevent the profits of companies being taxed both in the hands of shareholders and the company. However, to be a Norfolk Island resident company, all shareholders have to be Norfolk Island residents. Those shareholders currently do not pay income tax on distributions from Norfolk Island resident companies and as a result no double taxation can arise in relation to the distribution.

1.11 For this reason, distributions from Norfolk Island companies are unfrankable, because if they were frankable, all Australian income tax paid by those companies would be refundable to its tax exempt shareholders who would not themselves be subject to tax on this income. This would undermine the core rule that Norfolk Island residents pay income tax on their Australian sourced income (except for that income sourced from Norfolk Island).

Medicare levy

1.12 Similar to the treatment of foreign residents, Norfolk Island residents (although being Australian resident taxpayers) are exempt from the Medicare levy (sections 251S, 251T and 251U of the ITAA 1936).

Superannuation guarantee

1.13 The salary and wages paid to Norfolk Island resident employees for work done in Norfolk Island and the salary and wages paid by Norfolk Island resident employers for work done in Norfolk Island are not counted in calculating the superannuation guarantee entitlements of a particular employee and the liability for the superannuation guarantee charge of an employer (section 27 of the SG Act). This effectively removes Norfolk Island from the Australian superannuation guarantee system provided the proper nexus exists between Norfolk Island, the employer and the employee.

Summary of new law

1.14 Schedules 1 and 2 to this Bill amend the ITAA 1936, ITAA 1997 and SG Act to repeal the:

- income tax exemptions that apply to Norfolk Island resident individuals, companies and trustees in relation to their Norfolk Island sourced income and their foreign sourced income, bringing them fully into Australia's income tax system (Division 1A of Part III of the ITAA 1936);

- Medicare levy exemptions that apply to Norfolk Island residents, bringing them fully into Australia’s Medicare levy system (sections 251S, 251T and 251U of the ITAA 1936); and
- superannuation guarantee exemptions that apply to Norfolk Island employers and employees in relation to work performed on Norfolk Island, bringing them fully into Australia’s superannuation guarantee system (paragraphs 27(1)(b) and (c) of the SG Act).

1.15 Norfolk Island resident companies will also be brought within the dividend imputation system by repealing paragraph 202-45(b) of the ITAA 1997.

1.16 A number of consequential amendments are also required to the taxation and superannuation laws to reflect the removal of the Norfolk Island tax exemptions.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Norfolk Island resident taxpayers will be treated the same as other Australian residents under Australia’s income tax system, that is, they will be taxable on their worldwide income. Norfolk Island resident companies and shareholders will be able to access the dividend imputation system.	Certain Norfolk Island resident taxpayers receive an income tax exemption on their income sourced from Norfolk Island and from outside Australia. Norfolk Island companies and shareholders are excluded from the dividend imputation system.
Norfolk Island resident taxpayers will be subject to the Medicare levy.	Certain Norfolk Island resident taxpayers do not pay the Medicare levy.
The salary and wages paid to Norfolk Island resident employees for work done in Norfolk Island and the salary and wages paid by Norfolk Island resident employers for work done in Norfolk Island will be counted for superannuation guarantee purposes. However, transitional arrangements will apply as the superannuation guarantee rate applying to Norfolk Island employers and employees is progressively increased to align with the mainland Australian rate.	The salary and wages paid to Norfolk Island resident employees for work done in Norfolk Island and the salary and wages paid by Norfolk Island resident employers for work done in Norfolk Island are not counted in calculating the superannuation guarantee entitlements of a particular employee.

Detailed explanation of new law

Income tax

1.17 Schedule 1 amends the ITAA 1936 to remove an income tax exemption that is available to Norfolk Island resident individuals, Norfolk Island companies and Norfolk Island trustees on income sourced from Norfolk Island and income sourced from outside Australia. *[Schedule 1, item 1]*

1.18 Transitional provisions apply in respect of CGT to ensure that Norfolk Island taxpayers are only taxed on capital gains that accrue after the day the Norfolk Island income tax exemption is removed (see paragraph 1.34).

1.19 The definitions of Norfolk Island resident, Norfolk Island company and Norfolk Island trust are currently contained in Division 1A of Part III of the ITAA 1936 and are very detailed to ensure only those entities that genuinely reside in Norfolk Island are eligible for the exemption.

1.20 The removal of the income tax exemption in Division 1A of Part III of the ITAA 1936 means that all Norfolk Island resident individuals are subject to Australian income tax on their income sourced from Norfolk Island and from sources outside Australia, in addition to their income sourced from areas of Australia outside Norfolk Island.

1.21 Similarly, with the removal of the Norfolk Island income tax exemption, Norfolk Island companies must pay income tax on their income sourced from Norfolk Island and from sources outside Australia, in addition to their income sourced from areas of Australia outside Norfolk Island. Further, consistent with the treatment of other Norfolk Island sourced income, Norfolk Island shareholders will be subject to income tax on dividends from Norfolk Island companies. To prevent double taxation of corporate income following these changes, the dividend imputation system has been extended to Norfolk Island companies and shareholders. *[Schedule 1, item 15, section 202-45 of the ITAA 1997]*

1.22 Schedule 1 also removes exemptions for Norfolk Island residents from the requirement to quote their tax file number to an investment body or their employer or be subject to pay as you go withholding. Under the current law, Norfolk Island residents are taken to have quoted their tax file number to an investment body (such as a bank) or to their employer where the income they receive from that body or employer is exempt from Australian income tax. With the removal of the income tax exemption, the exemption from having to quote a tax file number or be subject to withholding becomes redundant and is therefore repealed. *[Schedule 1, items 2 to 4]*

Medicare levy

1.23 Schedule 1 to this Bill amends the ITAA 1936 to remove the full exemption from the Medicare levy for residents of Norfolk Island. *[Schedule 1, items 5 to 8]*

1.24 As a result, the Medicare levy will apply to all Norfolk Island residents as it currently applies to all other Australian resident taxpayers.

1.25 The rationale for the exemption of Norfolk Island residents was that generally, the Medicare levy does not apply to those taxpayers who are unable to access Medicare benefits. However, with the extension of Medicare benefits to Norfolk Island residents, the exemption from the Medicare levy is being removed.

1.26 This change will not affect the treatment of Norfolk Island residents who are nonetheless entitled to an exemption from the Medicare levy for another reason.

1.27 Changes to the Medicare levy will have the same effect on liabilities for the Medicare levy surcharge for those Norfolk Island resident individuals who have income for surcharge purposes above the relevant thresholds and who do not hold private health insurance for themselves and their dependants. *[Schedule 1, items 5 to 8 and Schedule 1, items 1 to 4 of A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Amendment Bill 2015]*

Superannuation guarantee

1.28 Schedule 2 to this Bill amends the SG Act to remove exemptions for salary and wages paid to Norfolk Island resident employees for work done in Norfolk Island, and for salary and wages paid by Norfolk Island resident employers for work done in Norfolk Island. *[Schedule 2, item 1]*

1.29 The removal of the exemption means that salary and wages paid to Norfolk Island resident employees for work done in Norfolk Island and salary and wages paid by Norfolk Island resident employers for work done in Norfolk Island will be covered by the superannuation guarantee arrangements. Employers will be required to make mandatory superannuation contributions to an appropriate superannuation fund on behalf of employees.

1.30 However, transitional arrangements have been introduced to allow the superannuation guarantee arrangements to be progressively introduced, in order to reduce the impact on Norfolk Island and employers (see paragraphs 1.41 to 1.44).

Consequential amendments

1.31 Cross references and notes contained in the taxation and superannuation laws that refer to the current Norfolk Island tax exemptions have been repealed. Cross-references to the CGT transitional provisions have also been added or updated. *[Schedule 1, items 9 to 14, 16 and 17]*

1.32 The A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Amendment Bill 2015 makes consequential amendments to the *A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Act 1999* reflecting changes made to the Medicare levy as it applies to Norfolk Island residents.

Application and transitional provisions

Income tax and Medicare levy

Application

1.33 The amendments to the income tax system (and Medicare levy system) apply to the 2016-17 income year and later income years. For most taxpayers, this will mean the changes commence on 1 July 2016 unless a taxpayer has a substituted accounting period. *[Schedule 1, item 19]*

Transitional rules — capital gains tax

1.34 A special transitional regime applies to the CGT liabilities of entities resident in Norfolk Island.

1.35 The object of the transitional CGT arrangements is to ensure that the income tax system only applies to tax capital gains that accrue in relation to

Norfolk Island taxpayers' CGT assets on or after 1 July 2016 unless those assets were already subject to Australian income tax.

1.36 To achieve this, all CGT assets held by Norfolk Island taxpayers at the end of 30 June 2016, will be taken on 1 July 2016 to have been acquired on 30 June 2016 for their market value on that day. However, this rule will not apply if the Norfolk Island taxpayer would have *not* been entitled to disregard any gain or loss from a CGT event that happened in relation to that asset under the law as it applied prior to these amendments. [*Schedule 1, item 18, subsection 102-25(2) of the Income Tax (Transitional Provisions) Act 1997*]

1.37 However, if the CGT asset is a pre-CGT asset (broadly one that was acquired by the taxpayer before 20 September 1985), the transitional rule does not apply and the asset will continue to be treated as a pre-CGT asset (that is, exempt from CGT) until a CGT event happens or another rule applies that affects the pre-CGT status of the asset.

1.38 Section 24P of the ITAA 1936 has also been rewritten and transferred into the *Income Tax (Transitional Provisions) Act 1997*. Section 24P provides an identical CGT transitional provision in relation to Christmas Island and the Cocos (Keeling) Islands as a result of similar changes which were made to the taxation arrangements applying to those territories in 1991. [*Schedule 1, item 18, subsection 102-25(1) of the Income Tax (Transitional Provisions) Act 1997*]

1.39 There are no policy changes in relation to the rewrite and transfer and the rewritten provision is intended to operate identically to section 24P.

Superannuation guarantee

Application

1.40 The superannuation guarantee changes apply for quarters starting on or after 1 July 2016. [*Schedule 2, subitem 2(1)*]

Transitional rules — superannuation guarantee

1.41 Recognising the potential impact that imposing the superannuation guarantee could have on Norfolk Island employment, the superannuation guarantee will be gradually phased-in. A special Norfolk Island transitional rate will apply, starting at one per cent and slowly increasing over a twelve-year period to minimise any employment impacts. In this way employers and employees will have time to adjust and take the increasing superannuation entitlements into account in their wage negotiations.

1.42 The transitional superannuation guarantee rate will only apply to salary and wages that were previously exempt from superannuation guarantee (to the extent that they were exempt). The transitional rates are set out in Table 1.1.

Table 1.1

<i>Financial year</i>	<i>General superannuation guarantee rate</i>	<i>Norfolk Island transitional rate</i>
2016-17	9.5%	1.0%
2017-18	9.5%	2.0%
2018-19	9.5%	3.0%
2019-20	9.5%	4.0%
2020-21	9.5%	5.0%
2021-22	10.0%	6.0%
2022-23	10.5%	7.0%
2023-24	11.0%	8.0%
2024-25	11.5%	9.0%
2025-26	12.0%	10.0%
2026-27	12.0%	11.0%
2027-28	12.0%	12.0%

1.43 Employers will apply the general superannuation guarantee rate to all salary and wages that were not previously exempt from the superannuation guarantee under the limited Norfolk Island exemption. Salary and wages that were exempt under the Norfolk Island exemption will be subject to the Norfolk Island transitional rate from 1 July 2016 to 30 June 2026. *[Schedule 2, subitem 2(2)]*

1.44 Employers will need to apportion the salary and wages they pay between the two categories — previously subject to superannuation guarantee and previously exempt from superannuation guarantee — and apply the correct rate to the salary and wages in each category. *[Schedule 2, subitem 2(2)]*

HEALTH AND OTHER SERVICES (COMPENSATION) CARE CHARGES AMENDMENT (NORFOLK ISLAND) BILL 2015

NOTES ON CLAUSES

Item 1 – After Section 3

Item 1 provides that the *Health and Other Services (Compensation) Care Charges Act 1995* extends to Norfolk Island.

HEALTH INSURANCE (APPROVED PATHOLOGY SPECIMEN COLLECTION CENTRES) TAX AMENDMENT (NORFOLK ISLAND) BILL 2015

NOTES ON CLAUSES

Item 1 – Schedule 1

Item 1 inserts the words “Norfolk Island; and” in paragraph 4(a) of the Act, which relates to external territories, so as to specifically include Norfolk Island in the list of external Territories to which the Act is extended.

HEALTH INSURANCE (PATHOLOGY) (FEES) AMENDMENT (NORFOLK ISLAND) BILL 2015

NOTES ON CLAUSES

Item 1 – Schedule 1

Item 1 inserts the words “Norfolk Island; and” in paragraph 4(a) of the Act, which relates to external territories, so as to specifically include Norfolk Island in the list of external Territories to which the Act is extended.

PRIVATE HEALTH INSURANCE (RISK EQUALISATION LEVY) AMENDMENT (NORFOLK ISLAND) BILL 2015

NOTES ON CLAUSES

Item 1 – Section 4

Item 1 inserts the words “to Norfolk Island” in Section 4 *Extension of Act to external Territories* so as to specifically include Norfolk Island in the list of external Territories to which the Act is extended.

AGED CARE (ACCOMMODATION PAYMENT SECURITY) LEVY AMENDMENT (NORFOLK ISLAND) BILL 2015

NOTES ON CLAUSES

Item 1 – Schedule 1

Item 1 inserts the words “Norfolk Island,” in subsection 3(2) of the Act, so as to specifically include Norfolk Island in the list of external Territories to which the Act is extended.