

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Regional Development and Territories,
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,
Transport and Regional Development.

Norfolk Island Act 1979

Norfolk Island Applied Laws Amendment (Local Government Elections) Ordinance 2018

Authority

The *Norfolk Island Act 1979* (the Norfolk Island Act) provides for the government of the Territory of Norfolk Island.

Section 19A of the Norfolk Island Act provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory of Norfolk Island.

The *Norfolk Island Applied Laws Amendment (Local Government Elections) Ordinance 2018* (the Ordinance) is made under section 19A of the Norfolk Island Act.

Purpose and operation

The purpose of the Ordinance is to make changes to provisions relating to local government elections on Norfolk Island in order to facilitate the ordinary election of the Norfolk Island Regional Council (the Council) in 2020 and subsequent Council elections.

The Ordinance amends the *Norfolk Island Applied Laws Ordinance 2016* (the Applied Laws Ordinance) to make changes to the *Local Government Act 1993* (NSW) (NI) and the *Local Government (General) Regulation 2005* (NSW) (NI) (the applied local government laws). The applied local government laws contribute to the regulation of local government elections on Norfolk Island.

The applied local government laws apply in Norfolk Island under section 18A of the Norfolk Island Act. The applied local government laws are in force in Norfolk Island subject to the modifications contained in Schedule 4 to the Applied Laws Ordinance.

Because the Council is comprised of councillors who were elected before the establishment of Norfolk Island as an area for the purposes of the *Local Government Act 1993* (NSW) (NI), the election in 2020 would technically be the first election after the constitution of the area and would have to be administered by the Electoral Commissioner. However, the Council has existed for a number of years and so it is appropriate for the Council to be able to choose from the options available under the *Local Government Act 1993* (NSW) (NI) for the administration of a second or subsequent ordinary election. Therefore, the Ordinance amends the *Local Government Act 1993* (NSW) (NI) so that the 2020 ordinary election of councillors is treated as the second election.

The Ordinance also clarifies that, because of subsection 18B(2) of the Norfolk Island Act, the functions of the Electoral Commissioner and Electoral Commission under the applied local government laws are vested in the Commonwealth Minister who administers the Norfolk Island Act or in a person or authority authorised by a direction or delegation under subsection 18B(3) or (4) of the Norfolk Island Act. This clarification is desirable given the likelihood

that some functions of the Electoral Commissioner and Electoral Commission will be performed by an electoral services provider.

The Ordinance adds a new Part 10 to Chapter 10 of the *Local Government Act 1993* (NSW) (NI), which outlines who may handle personal information in relation to the preparation for, or the conduct of, elections. New Part 10 clarifies, for the avoidance of doubt, that the Electoral Commissioner, Electoral Commission and certain other persons exercising election powers under the *Local Government Act 1993* (NSW) (NI) may handle personal information within the meaning of the *Privacy Act 1988* (Cth). In addition, new Part 10 limits a person engaged by the Council General Manager as an electoral services provider to handling personal information for the purpose of administering, or assisting in administering, an election, in accordance with the terms of their engagement.

The Ordinance also makes a number of other amendments to the applied local government laws to ensure that they can operate effectively in the context of Norfolk Island. For example, the Ordinance replaces references to NSW laws that do not operate in Norfolk Island with references to Norfolk Island laws dealing with similar subject matter. For example, a reference to the *Environmental Planning and Assessment Act 1979* (NSW) is replaced with a reference to the *Planning Act 2002* (NI) and references to the *Road Transport Act 2013* (NSW) are replaced with references to the *Traffic Act 2010* (NI). The Ordinance also amends some references to NSW and NSW bodies that are not appropriate in the Norfolk Island context and makes other minor technical amendments to the applied local government laws.

Consultation

The Council, the Australian Electoral Commission and the NSW Department of Premier and Cabinet were consulted during the preparation of the Ordinance. The Attorney-General's Department was consulted on the amendments affecting the handling of personal information and on the Ordinance's compatibility with human rights. Minor amendments were made to the Ordinance to take account of stakeholder comments.

Other

The Ordinance is a legislative instrument for the purposes of the *Legislation Act 2003*. It commences the day after it is registered on the Federal Register of Legislation.

A statement of compatibility with human rights follows. Detailed information on individual provisions of the Ordinance is set out in the Attachment.

Statement of Compatibility with Human Rights

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

Norfolk Island Applied Laws Amendment (Local Government Elections) Ordinance 2018

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

Overview of the Ordinance

The purpose of the Ordinance is to make changes to provisions relating to local government elections on Norfolk Island in order to facilitate the ordinary election of the Norfolk Island Regional Council (the Council) in 2020 and subsequent Council elections.

The Ordinance amends the *Norfolk Island Applied Laws Ordinance 2016* (the Applied Laws Ordinance) to make changes to the *Local Government Act 1993* (NSW) (NI) and the *Local Government (General) Regulation 2005* (NSW) (NI) (the applied local government laws). The applied local government laws contribute to the regulation of local government elections on Norfolk Island.

The applied local government laws apply to Norfolk Island under section 18A of the *Norfolk Island Act 1979* (Cth) (the Norfolk Island Act). The applied local government laws are in force in Norfolk Island subject to the modifications contained in Schedule 4 to the Applied Laws Ordinance.

Because the Council is comprised of councillors who were elected before the establishment of Norfolk Island as an area for the purposes of the *Local Government Act 1993* (NSW) (NI), the election in 2020 would technically be the first election after the constitution of the area and would have to be administered by the Electoral Commissioner. However, the Council has existed for a number of years and so it is appropriate for the Council to be able to choose from the options available under the *Local Government Act 1993* (NSW) (NI) for the administration of a second or subsequent ordinary election. Therefore, the Ordinance amends the *Local Government Act 1993* (NSW) (NI) so that the 2020 ordinary election of councillors is treated as the second election.

The Ordinance also clarifies that, because of subsection 18B(2) of the Norfolk Island Act, the functions of the Electoral Commissioner and Electoral Commission under the applied local government laws are vested in the Commonwealth Minister who administers the Norfolk Island Act or in a person or authority authorised by a direction or delegation under subsection 18B(3) or (4) of the Norfolk Island Act. This clarification is desirable given the likelihood that some functions of the Electoral Commissioner and Electoral Commission will be performed by an electoral services provider.

The Ordinance adds a new Part 10 to Chapter 10 of the *Local Government Act 1993* (NSW) (NI), which outlines who may handle personal information in relation to the preparation for, or the conduct of, elections. New Part 10 clarifies, for the avoidance of doubt, that the Electoral Commissioner, Electoral Commission, and certain other persons exercising election powers under the *Local Government Act 1993* (NSW) (NI) may handle personal information within the meaning of the *Privacy Act 1988* (Cth). In addition, new Part 10 limits a person

engaged by the Council General Manager as an electoral services provider to handling personal information for the purpose of administering, or assisting in administering, an election, in accordance with the terms of their engagement.

The Ordinance also makes a number of other amendments to the applied local government laws to ensure that they can operate effectively in the context of Norfolk Island. For example, the Ordinance replaces references to NSW laws that do not operate in Norfolk Island with references to Norfolk Island laws dealing with similar subject matter. For example, a reference to the *Environmental Planning and Assessment Act 1979* (NSW) is replaced with a reference to the *Planning Act 2002* (NI) and references to the *Road Transport Act 2013* (NSW) are replaced with references to the *Traffic Act 2010* (NI). The Ordinance also amends some references to NSW and NSW bodies that are not appropriate in the Norfolk Island context and makes other minor technical amendments to the applied local government laws.

Human rights implications

The Ordinance engages the following rights:

- the right to take part in public affairs and elections
- the right to freedom of opinion and expression
- privacy and reputation

Right to take part in public affairs and elections

The Ordinance promotes the right to take part in public affairs and elections.

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provides that every citizen has the right and the opportunity, without distinction and without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives, and to vote and to be elected at genuine periodic elections. Such elections must be by universal and equal suffrage and be held by secret ballot, guaranteeing the free expression of the will of the electors. Under Article 2.2 of the ICCPR, each State Party is to take the necessary steps to adopt the legislative or other measures necessary to give effect to this right.

The Ordinance promotes the right to take part in public affairs and elections by making amendments to the applied local government laws that are needed to facilitate local government elections in Norfolk Island. Since the applied local government laws were originally drafted to operate in NSW, some provisions require amendment so they can operate effectively in Norfolk Island. For example, the applied local government laws contain several references to NSW laws that are not in operation in Norfolk Island. The Ordinance replaces these references with references to Norfolk Island laws to ensure that the provisions operate appropriately.

For example, clause 320C of the *Local Government (General) Regulation 2005* (NSW) (NI) referred to a licence issued under the *Road Transport Act 2013* (NSW). This reference is not appropriate in Norfolk Island because the *Road Transport Act 2013* (NSW) does not operate in Norfolk Island. The Ordinance amends clause 320C so it refers to a driver licence as defined in the *Traffic Act 2010* (NI). By ensuring that Norfolk Island driver licences are

recognised for the purposes of elections, the Ordinance promotes enfranchisement, which is a key element of the right to take part in public affairs and elections.

Right to freedom of opinion and expression

Article 19 of the ICCPR provides that everyone shall have the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, through any media. Article 19.3 provides that the right may be subject to certain restrictions that are provided by law and are necessary, for example, for respect of the rights of others.

Subdivision 3 of Division 9A of Part 11 of the *Local Government (General) Regulation 2005* (NSW) (NI) limits the right to expression by making it an offence to publish non-complying electoral material in the lead-up to an election. This limitation is for the legitimate purpose of preventing an elector from being misled in relation to the casting of his or her vote. It is a reasonable limitation because a vote cast by someone who has been misled about their vote may not be a true expression of their will. Subclause 356I(2) of the *Local Government (General) Regulation 2005* (NSW) (NI) provides various defences and exceptions to ensure the limitation is proportionate to the objective. The majority of these defences and exceptions are available on Norfolk Island without the need for amendment by the Ordinance. However, the Ordinance amends subclause 356I(2) by substituting the reference to the *Environmental Planning and Assessment Act 1979* (NSW), which does not operate in Norfolk Island, with a reference to the *Planning Act 2002* (NI). By ensuring the safeguard provided by this subclause can operate in Norfolk Island, the Ordinance promotes the right to freedom of opinion and expression.

Privacy and reputation

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation.

The Ordinance engages the right to privacy and reputation because it amends the *Local Government Act 1993* (NSW) (NI) to authorise certain persons to handle personal information within the meaning of the *Privacy Act 1988* (Cth) for the purposes of preparing for, or conducting, an election (see section 331A). Under the *Privacy Act 1988* (Cth), personal information means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The types of personal information that may be handled for the purposes of an election include the names and addresses of electors and other information related to a person's eligibility to vote in an election, such as their date of birth and citizenship status. Information will also be collected about proposed candidates for elections, such as the candidate's full name, membership of a registered political party, enrolment status and whether the proposed candidate is a property developer or a close associate of a corporation that is a property developer. This personal information may therefore include 'sensitive information' for the purposes of the *Privacy Act 1988* (Cth) because it may include information about an individual's membership of a political association. 'Sensitive information' is defined in

subsection 6(1) of the *Privacy Act 1988* (Cth) to include information or an opinion about an individual's membership of a political association that is also personal information.

Even though the Ordinance authorises the handling of personal information for election-related purposes, it does not infringe upon the right to privacy and reputation because the interference is lawful. In addition, it is not arbitrary because it is reasonably necessary to promote the right to take part in public affairs and elections.

Safeguards in section 331A

New section 331A (Information Privacy) contains a number of safeguards to protect personal information. Subsection 331A(1) limits the scope of the authorisation to handle personal information to the exercise of powers for a purpose under the *Local Government Act 1993* (NSW) (NI) that is related to the preparation for, or the conduct of, elections. The two provisions authorising the handling of personal information are subsection 331A(3) and subsection 331A(4).

Under subsection 331A(3), the handling of personal information must be in the course of the person's exercise of the election powers of one of the specified persons. The specified persons are persons whose powers are clearly identifiable under the *Local Government Act 1993* (NSW) (NI): the Electoral Commissioner, the Electoral Commission, a General Manager, a returning officer (or substitute returning officer) or an electoral official. If the person's handling of personal information is not in the course of exercising the election powers of a specified person, they could be in breach of the *Privacy Act 1988* (Cth).

Under subsection 331A(4), the handling of personal information is restricted to specific persons and purposes. For example, a person engaged by the General Manager as an electoral services provider may only handle the information for the purpose of administering, or assisting in administering, the election, and this must be in accordance with the terms under which they are engaged.

Conclusion

The Ordinance is compatible with human rights because it promotes the right to take part in public affairs and elections and the right to freedom of opinion and expression.

To the extent to which it interferes with individuals' privacy and reputation, that interference is lawful and is not arbitrary because it serves a legitimate purpose of promoting the right to take part in public affairs and elections and there are a number of safeguards to ensure any personal information handled for the purposes of the election provisions of the applied local government laws is handled appropriately.

ATTACHMENT—NOTES ON CLAUSES

This attachment explains the operation of individual provisions in the *Norfolk Island Applied Laws Amendment (Local Government Elections) Ordinance 2018* (the Ordinance).

Section 1

Section 1 of the Ordinance gives the name of the Ordinance. It is called the *Norfolk Island Applied Laws Amendment (Local Government Elections) Ordinance 2018*.

Section 2

Section 2 of the Ordinance explains when the amendments made by the Ordinance commence. All of the amendments commence on the day after the Ordinance is registered on the Federal Register of Legislation.

Section 3

Section 3 of the Ordinance identifies the legislative authority for the Ordinance. The Ordinance is made under section 19A of the *Norfolk Island Act 1979*.

Section 4

Section 4 of the Ordinance gives effect to the amendments listed in Schedule 1 to the Ordinance.

Schedule 1—Amendments

Norfolk Island Applied Laws Ordinance 2016

All the amendments in Schedule 1 to the Ordinance amend Schedule 4 to the *Norfolk Island Applied Laws Ordinance 2016* (the Applied Laws Ordinance).

Before the amendments made by the Ordinance, Schedule 4 to the Applied Laws Ordinance only amended the *Local Government Act 1993* (NSW), as applied in Norfolk Island (the applied LGA). As amended, the Applied Laws Ordinance also amends the *Local Government (General) Regulation 2005* (NSW), as applied in Norfolk Island (the applied LGR).

Item 1 – Schedule 4 (heading)

Item 1 amends the heading to Schedule 4 to the Applied Laws Ordinance to indicate that Schedule 4 as amended includes amendments to the applied LGR as well as amendments to the applied LGA.

Item 2 – After item 4 of Schedule 4

Item 2 inserts a new item 4A into Schedule 4 to the Applied Laws Ordinance. The new item 4A amends paragraph 210A(1)(a) of the applied LGA to replace the reference to appropriate districts within the meaning of the *Electoral Act 2017* (NSW) with a reference to the area constituted under section 204A of the applied LGA. Norfolk Island is constituted as an area under section 204A of the applied LGA, as inserted by item 4 of Schedule 4 to the Applied Laws Ordinance.

Paragraph 210A(1)(a) requires a council to consult the Electoral Commissioner and the Australian Statistician before altering the proposed boundaries of its wards. Before

amendment, the paragraph required the council to consult to ensure the proposed boundaries of its wards correspond to the boundaries of appropriate districts within the meaning of the *Electoral Act 2017* (NSW). However, this is not necessary for Norfolk Island because Norfolk Island does not have districts within the meaning of the *Electoral Act 2017* (NSW). For Norfolk Island, it is more relevant to ensure the proposed boundaries of any future wards correspond to the boundaries of Norfolk Island.

Item 3 – After item 17 of Schedule 4

Item 3 inserts new items 17A to 17C into the Applied Laws Ordinance.

Item 17A

New item 17A inserts a note after the heading to Chapter 10 of the applied LGA.

The note explains that the powers (including the functions and duties) of the Electoral Commissioner and the Electoral Commission under the applied LGA and the applied LGR are vested in the Commonwealth Minister who administers the *Norfolk Island Act 1979* (Cth) and in any other person or authority authorised by a direction or delegation under subsection 18B(3) or (4) of that Act.

This means the Commonwealth Minister who administers the *Norfolk Island Act 1979* (Cth), or a person or authority he or she authorises, is responsible for exercising the powers of the Electoral Commissioner and the Electoral Commission under the applied LGA and the applied LGR.

Item 17B

New item 17B amends subsection 269(1) of the applied LGA to replace the reference to the *Electoral Act 2017* (NSW) with a reference to a roll within the meaning of the *Commonwealth Electoral Act 1918* (Cth).

Section 269 of the applied LGA is about who is a ‘resident’ for the purposes of determining who may vote in a Norfolk Island Regional Council (Council) election. Subsection 269(1) as amended provides that a person is a resident of a ward if the person is enrolled on a roll within the meaning of the *Commonwealth Electoral Act 1918* (Cth). The approach for Norfolk Island local government elections is to base the residential roll on information taken from the Commonwealth electoral roll. Therefore, a person’s residency will be based on the address in respect of which they are enrolled on the Commonwealth electoral roll.

Item 17C

New item 17C amends subsection 270(2) of the applied LGA to replace the reference to a strata plan that is registered under the *Strata Schemes Development Act 2015* (NSW) with a reference to a plan of community division that is registered under the *Community Title Act 2015* (NI).

It is not appropriate to refer to a strata plan under the *Strata Schemes Development Act 2015* (NSW) because that Act does not operate in Norfolk Island. Therefore, the amendment is made to refer to the continued Norfolk Island law that deals with similar subject matter.

Item 4 – After item 19 of Schedule 4

Item 4 inserts new items 19A to 19J into Schedule 4 to the Applied Laws Ordinance. In accordance with normal drafting practice, there is no item 19I.

Item 19A

New item 19A repeals subsection 296(7) of the applied LGA.

Subsection 296(7) provided that the Electoral Commissioner was to administer the first election for an area after its constitution. Such a provision is appropriate in cases where there is no Council to choose how to administer the election. While, technically, the ordinary election of councillors in 2020 will be the first election after the constitution of Norfolk Island as an area under the applied LGA, the Council has been in operation for some time. As a result, it is appropriate the Council has the power to choose how to administer the 2020 election and subsequent elections. This amendment removes the requirement for the Electoral Commissioner to administer the 2020 election.

Item 19B

New item 19B replaces subsection 298(2) of the applied LGA.

The amendment to subsection 298(2) removes the reference to information kept on the Electoral Information Register within the meaning of the *Electoral Act 2017* (NSW) and clarifies that the Electoral Commissioner may use information kept on a Roll within the meaning of the *Commonwealth Electoral Act 1918*, or an extract of such a Roll, as a source of information for compiling the residential roll.

The intention for Norfolk Island local government elections is that the Electoral Commissioner will use information kept on the Commonwealth Electoral Roll as the basis for compiling the residential roll. This is sufficient given the overlap in eligibility requirements for Norfolk Island residents' inclusion on the Commonwealth Electoral Roll and on the residential roll for local government elections: subsection 266(1) of the applied LGA provides that a person who is entitled to vote at an election of members of the Commonwealth House of Representatives is entitled to be enrolled as an elector for a ward if he or she is a resident of the ward.

Items 19C and 19D

New items 19C and 19D amend section 299 of the applied LGA.

New item 19C inserts a new subsection 299(1AA) before subsection 299(1A). New subsection 299(1AA) provides that, as soon as practicable after the day the Ordinance commences, the General Manager is to prepare a roll of non-resident owners of rateable land within the area for the first election to be held after that day and keep it updated.

This provision is inserted to provide for the preparation of the first roll of non-resident owners of rateable land, since previously the section only provided (in subsection 299(1A)) for the preparation of subsequent rolls of non-resident owners of rateable land.

New item 19D amends subsection 299(1).

Prior to amendment, subsection 299(1) provided that, not later than the closing date for an election, the General Manager was to finalise ‘that roll of non-resident owners of rateable land’. Because of the insertion of new subsection 299(1AA), the reference to ‘that roll’ could have been ambiguous. The amendment to subsection 299(1) clarifies that the reference to ‘that roll’ is intended to be a reference to either the roll prepared under subsection 299(1AA) or the roll prepared under subsection 299(1A), whichever is applicable.

Items 19E and 19F

New items 19E and 19F amend section 300 of the applied LGA.

New item 19E inserts a new subsection 300(1AA) before subsection 300(1A). New subsection 300(1AA) provides that, as soon as practicable after the day the Ordinance commences, the General Manager is to prepare a roll of occupiers and ratepaying lessees (of land within the area) for the first election to be held after that day and keep it updated.

This provision is inserted to provide for the preparation of the first roll of occupiers and ratepaying lessees, since previously the section only provided (in subsection 300(1A)) for the preparation of subsequent rolls of occupiers and ratepaying lessees.

New item 19F amends subsection 300(1) of the applied LGA.

Prior to amendment, subsection 300(1) provided that, not later than the closing date for an election, the General Manager was to finalise ‘that roll of occupiers and ratepaying lessees’. Because of the insertion of new subsection 300(1AA), the reference to ‘that roll’ could have been ambiguous. The amendment to subsection 300(1) clarifies that the reference to ‘that roll’ is intended to be a reference to either the roll prepared under subsection 300(1AA) or the roll prepared under subsection 300(1A), whichever is applicable.

Item 19G

New item 19G amends subsection 303(3) of the applied LGA to replace the reference to the *Administrative Decisions Review Act 1997* (NSW) with a reference to the *Administrative Review Tribunal Act 1996* (NI). The *Administrative Decisions Review Act 1997* (NSW) is not in operation in Norfolk Island. The equivalent law in force in Norfolk Island is the *Administrative Review Tribunal Act 1996* (NI).

Item 19H

New item 19H amends subsection 328A(1) of the applied LGA to replace the reference to ‘New South Wales Electoral Commission’ with a reference to ‘Electoral Commission’.

As amended, subsection 328A(1) provides that the General Manager is required to keep a register of copies of current declarations of disclosures of political donations lodged with the Electoral Commission by or on behalf of councillors of the Council.

This amendment is made for consistency with other references to the Electoral Commission in the applied LGA.

Item 19J

New item 19J adds a new Part 10 (Information privacy) at the end of Chapter 10 of the applied LGA.

New Part 10 outlines the persons who are authorised to collect, use and disclose personal information under the Act and the purposes for which they may do so.

New subsections 331A(1) and (2) outline the scope of section 331A. The section applies in relation to the exercise of powers (including the performance of functions and duties) (the election powers) for any purpose under the applied LGA in relation to the preparation for, or the conduct of, elections.

New subsection 331A(3) provides that a person is authorised to collect, use or disclose personal information within the meaning of the *Privacy Act 1988* (Cth) in the course of the person's exercise of the election powers of the Electoral Commissioner, the Electoral Commission, a General Manager, a returning officer or substitute returning officer or an electoral official.

New subsection 331A(4) provides that a person engaged by the General Manager as an electoral services provider to administer, or assist in administering, an election, or a person acting on their behalf, may collect, use or disclose personal information if they reasonably believe it to be necessary to administer or assist in administering the election in accordance with the terms of their engagement.

Item 5 – After item 45 of Schedule 4

Item 5 inserts a new item 45A into Schedule 4 to the Applied Laws Ordinance.

New item 45A amends subsection 694(2) of the applied LGA to omit the reference to section 39 of the *Constitution Act 1902*. As amended, the reference to the Consolidated Fund does not include a reference to legislation. Therefore, the definition of 'Consolidated Fund' in subsection 21(1) of the *Interpretation Act 1987* (NSW) (NI) applies. That definition was inserted by item 4 of Schedule 3 to the Applied Laws Ordinance and has the effect that a reference to the 'Consolidated Fund' is a reference to the Consolidated Revenue Fund referred to in section 81 of the Commonwealth Constitution.

Prior to amendment, the Consolidated Fund referred to in subsection 694(2) was the Consolidated Fund that holds all public moneys collected, received or held by any person for or on behalf of NSW. However, since the applied LGA is applied in Norfolk Island as a Commonwealth law, it is appropriate for any penalty, fine or forfeiture under the applied LGA and applied LGR recovered in the proceedings referred to in the subsection to be paid into the Commonwealth Consolidated Revenue Fund.

Item 6 – After item 46 of Schedule 4

Item 6 inserts new items 46A and 46B into Schedule 4 to the Applied Laws Ordinance.

New item 46A repeals paragraph (a) of the definition of 'election' in the Dictionary to the applied LGA. This amendment is related to the repeal of subsection 296(7) by new item 19A.

It is appropriate for the 2020 election to be treated as the second election for the Council since the Council has been operating since 2016. To clarify the status of the 2020 election, it is helpful not to distinguish between the first election after the constitution of an area and an ordinary election and so there is no need for paragraph (a) of the definition of 'election'.

New item 46B repeals the definition of ‘Electoral Commissioner’ in the Dictionary to the applied LGA.

The definition had the potential to cause confusion. It provided that ‘Electoral Commissioner’ meant the person for the time being holding or acting in the office of Electoral Commissioner under the *Electoral Act 2017* (NSW). However, as explained in the note to the heading to Chapter 10 inserted by new item 17A, the powers of the Electoral Commissioner under the applied LGA are vested in the Commonwealth Minister who administers the *Norfolk Island Act 1979* (Cth) and in any other person or authority authorised by a direction or delegation under subsection 18B(3) or (4) of that Act.

This means the Commonwealth Minister who administers the *Norfolk Island Act 1979* (Cth), or a person or authority he or she authorises, is responsible for exercising the powers of the Electoral Commissioner under the applied LGA.

Item 7 – At the end of Schedule 4

Item 7 inserts a heading referring to the applied LGR and also inserts new items 49 to 63 into Schedule 4 to the Applied Laws Ordinance. New items 49 to 63 amend the applied LGR.

Item 49

New item 49 replaces the definition of ‘driver licence’ in subclause 275(1) of the applied LGR. The new definition provides that ‘driver licence’ means a licence issued under the *Traffic Act 2010* (NI).

Prior to amendment, ‘driver licence’ was defined in subclause 275(1) to mean a driver licence issued under the *Road Transport Act 2013* (NSW). However, the law under which driver licences are issued in Norfolk Island is the *Traffic Act 2010* (NI).

Item 50

New item 50 repeals the definition of ‘Electoral Commission’, including the note, in subclause 275(1) of the applied LGR.

The definition had the potential to cause confusion. It defined ‘Electoral Commission’ with reference to the *Parliamentary Electorates and Elections Act 1912* (NSW), which is not in force in Norfolk Island. However, as explained in the note to the heading to Chapter 10 of the applied LGA inserted by new item 17A, the powers of the Electoral Commissioner and the Electoral Commission under the applied LGA and applied LGR are vested in the Commonwealth Minister who administers the *Norfolk Island Act 1979* (Cth), and any other person or authority authorised by a direction or delegation under subsection 18B(3) or (4) of that Act.

This means the Commonwealth Minister who administers the *Norfolk Island Act 1979* (Cth), or a person or authority he or she authorises, is responsible for exercising the powers of the Electoral Commission under the applied LGR.

The note to the definition explained that the functions of the Electoral Commission are exercisable by the Electoral Commissioner and that any functions conferred or imposed on the Electoral Commissioner may be exercised by the Electoral Commissioner in his or her official name as Electoral Commissioner or in the name of the Commission.

The note is unnecessary because the powers of the Electoral Commission and Electoral Commissioner are vested in the same person, namely, the Commonwealth Minister who administers the *Norfolk Island Act 1979* (Cth).

Item 51

New item 51 repeals the definition of ‘Photo Card’ in subclause 275(1) of the applied LGR. That definition provided that ‘Photo Card’ meant a NSW Photo Card issued by Roads and Maritime Services under the *Photo Card Act 2005* (NSW). However, that Act does not operate in Norfolk Island. Rather than relying on the concept of a ‘Photo Card’, new items 54 and 55 replace references in the applied LGR to ‘a Photo Card’ with references to evidence of a person’s identity. Therefore, a definition of ‘Photo Card’ is no longer needed.

Item 52

New item 52 amends paragraph 281(1)(g) of the applied LGR to omit the reference to section 16 or 16A of the *City of Sydney Act 1988* (NSW). Those sections relate to enrolment for elections for the Council of the City of Sydney and are not relevant to Norfolk Island.

Item 53

New item 53 amends subclause 295(4) of the applied LGR to replace the reference to ‘New South Wales Electoral Commission’ with a reference to ‘Electoral Commission’.

The amendment is made for consistency with other references to the Electoral Commission.

Items 54 and 55

New item 54 amends paragraph 320C(2)(b) of the applied LGR to replace the reference to a Photo Card with a reference to other documentary evidence of the person’s identity.

Subclauses 320C(2) and (3) are about the process for determining whether a person who is not enrolled for an area but claims to be entitled to enroll on the residential roll for the area, is to be permitted to vote at an election.

Prior to amendment, paragraph 320C(2)(b) provided that a person was to provide to the election official as proof of identity a driver licence or a Photo Card. However, Photo Cards are issued under the *Photo Card Act 2005* (NSW), which does not operate in Norfolk Island. Therefore, the requirement to produce a Photo Card is replaced with a requirement to produce ‘other documentary evidence of the person’s identity’.

New item 55 amends the note to subclause 320C(3) of the applied LGR to replace the reference to a driver licence or a Photo Card with a reference to proof of identity under paragraph 320C(2)(b). This amendment is consequential to the amendment made by new item 54.

Items 56 and 57

New item 56 replaces paragraph 356E(3)(c) of the applied LGR. New paragraph 356E(3)(c) has the effect that paragraph 356E(2)(a) does not apply in relation to a poster on a vehicle on a public road or a public road related area.

Paragraph 356E(2)(a) relevantly provides that, during the regulated period for an election, a person must not display or permit or cause to be displayed a poster, on or within any premises occupied or used by, or under the control or management of, the Crown or any council.

Subclause 356E(3) provides exceptions to the rule in paragraph 356E(2)(a). Prior to amendment, one of the exceptions was that the rule in paragraph 356E(2)(a) did not apply in relation to a poster on a vehicle on a road or road related area within the meaning of subsection 4(1) of the *Road Transport Act 2013* (NSW). As the *Road Transport Act 2013* (NSW) does not operate in Norfolk Island, new item 56 omits the reference to that Act.

New item 57 adds new subclause 356E(4) at the end of clause 356E of the applied LGR. New subclause 356E(4) provides that ‘public road’ has the same meaning as in the *Traffic Act 2010* (NI) and that ‘public road related area’ means an area that divides a public road, a footpath or nature strip adjacent to a public road, an area that is open to the public and is designated for use by cyclists or animals, a shoulder of a public road, or an area that is not a public road, if the area is open to or used by the public for driving, riding or parking vehicles, whether or not it is primarily designed or used for that purpose.

Item 58

New item 58 amends paragraph 356I(2)(b) of the applied LGR to replace the reference to a development consent in force under the *Environmental Planning and Assessment Act 1979* (NSW) in relation to the use of any theatre or public hall as a place of public entertainment with a reference to a development approval under the *Planning Act 2002* (NI) in relation to the use of any theatre or public hall as a place of assembly within the meaning of the *Norfolk Island Plan 2002* of Norfolk Island.

Subdivision 3 of Division 9A of Part 11 of the applied LGR restricts the publication of certain material in the lead up to an election. Subclause 356I(2) provides for certain defences and exceptions to the prohibitions in the Subdivision.

The *Environmental Planning and Assessment Act 1979* (NSW) does not operate in Norfolk Island. Therefore, new item 58 replaces the reference to a type of development consent in force under that Act with a reference to a similar type of development approval under the *Planning Act 2002* (NI), which is in force in Norfolk Island and deals with similar subject matter to the *Environmental Planning and Assessment Act 1979* (NSW).

Item 59

New item 59 amends subclause 393AA(1) of the applied LGR to omit the reference to each first election for an area after its constitution.

This amendment is related to the repeal of subsection 296(7) of the LGA by new item 19A and is consistent with treating the 2020 ordinary election of councillors as the second election.

Items 60 to 62

New items 60 to 62 amend Form 1 in Schedule 11 to the applied LGR.

Form 1 provides the form that non-resident electors must use to request the omission or removal of their place of living from a roll. Note 1 provides that the request must be verified

by statutory declaration by the person making the request or by another person. Prior to amendment, the form included a form of Statutory Declaration that referred to the *Oaths Act 1900* (NSW).

The *Oaths Act 1900* (NSW) does not operate in Norfolk Island. Therefore, new item 60 amends Note 1 to provide that the required statutory declaration may be made in accordance with the form prescribed for the purposes of paragraph 8(a) of the *Statutory Declarations Act 1959* (Cth) and provides an internet address where that form can be located.

New item 61 amends Note 2 in Form 1 in Schedule 11 to the applied LGR to replace the references to the Australian Electoral Commission and the State Electoral Office with a reference to the Electoral Commission.

Note 2 explains to whom resident electors must apply to have their address or other matter removed from the electoral roll. Prior to amendment, the note provided that resident electors could apply to the Australian Electoral Commission or the State Electoral Office. However, since the Electoral Commissioner is responsible for preparing the residential roll, it is appropriate for resident electors to apply to the Electoral Commission for the removal of their address or other matter from the electoral roll.

New item 62 removes the form of Statutory Declaration from Form 1 and is consequential to the amendment made by new item 60.

Item 63

New item 63 amends paragraph (e) of the statistical information sheet in Forms 2 and 3 in Schedule 11 to the applied LGR to replace the reference to NSW with a reference to Norfolk Island.

Prior to amendment, paragraph (e) of the statistical information sheet provided for a person to list their experience as a councillor in NSW. However, experience as a councillor in Norfolk Island is more relevant to a local government election in Norfolk Island.