

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 2020

Authority

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

The *Norfolk Island Applied Laws Amendment (Local Government Elections) Ordinance 2020* (the Ordinance) is made under section 19A of the Norfolk Island Act (a section 19A Ordinance).

Subsections 18A(1) and (2) of the Norfolk Island Act provide that laws in force in NSW from time to time are also in force in Norfolk Island and that a NSW law in force in Norfolk Island may be incorporated, amended or repealed by a section 19A Ordinance. Subsection 18A(3) of the Norfolk Island Act provides that a section 19A Ordinance can suspend the operation of a NSW law in force in Norfolk Island for such period as is specified in the Ordinance.

Purpose and operation

The Ordinance amends the *Norfolk Island Applied Laws Ordinance 2016* (Applied Laws Ordinance) to make changes to the *Local Government Act 1993* (NSW) (NI) and the *Local Government (General) Regulation 2005* (NSW) (NI) and to end the suspension in Norfolk Island of provisions of the *Electoral Funding Act 2018* (NSW) (NI), the *Electoral Funding Regulation 2018* (NSW) (NI), the *Lobbying of Government Officials Act 2011* (NSW) (NI) and the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014* (NSW) (NI). The Ordinance also amends these laws as appropriate for their application in Norfolk Island.

The primary purpose of the Ordinance is to facilitate the next ordinary election of the Norfolk Island Regional Council (the Council). The Ordinance is intended to provide an effective, transparent and fair framework for Council elections that is fit for purpose for Norfolk Island. In the absence of Norfolk Island laws relating to Council elections, the Ordinance is based closely on provisions regulating local government elections in NSW and is intended to reflect the Norfolk Island context.

The Ordinance:

- aligns the criteria for eligibility to vote in Council elections with the criteria for voting in Commonwealth House of Representative elections. This is consistent with the status of Norfolk Island as an external territory and facilitates the preparation of the residential roll;
- amends the criteria for eligibility to hold civic office. This means members of the NSW and Commonwealth Parliaments and judges of NSW, Norfolk Island and Commonwealth courts are not eligible to hold civic office on the Council. In addition, a person is not eligible to hold civic office if they have been found guilty of bribery or corruption under Norfolk Island law or if they have been convicted of an offence against the electoral funding laws of any state or territory or the Commonwealth;
- removes the ability of political parties to register for the purposes of Council elections. This means it is not possible for political parties and groups to be identified on the ballot-papers. Political parties and groups are still able to take part in elections;
- increases the time available to hold elections, by-elections and countback elections to a maximum of six months. This allows time to engage an electoral services provider to run an election if an election cannot be held when it is due;
- bans political donations from property developers and tobacco, liquor and gambling industries. Consistent with NSW, this seeks to prevent candidates and elected councillors from being subject to undue influence from these sectors;
- bans success fees for lobbying elected local government officials. This reduces the incentive for lobbyists and those paying for lobbying services to attempt to corrupt elected councillors and contributes to regulating undue influence from all sectors; and
- provides powers so that the Electoral Commission can regulate compliance with Council election laws. These powers, consistent with NSW, include powers for an inspector to enter any place he or she reasonably believes relevant documents are kept and to require a person to provide information an inspector reasonably needs to ensure compliance with a Council election law.

Consultation

The Department of Infrastructure, Transport, Regional Development and Communications (the department) consulted the Council, the Norfolk Island community and the NSW Government during the development of the Ordinance. The Australian Electoral Commission, Australian Federal Police, and the Attorney-General's Department's Human Rights Unit, Information Law Unit, Office of International Law and Courts Section were also consulted. While no amendments to the Ordinance were undertaken as a result of stakeholders' comments, the department included material in the explanatory materials as a result of feedback received.

Other

The Ordinance is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Ordinance commences the day after it is registered on the Federal Register of Legislation.

Detailed information on the 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 2020

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

Overview of the Disallowable Legislative Instrument

The *Norfolk Island Applied Laws Amendment (Local Government Elections) Ordinance 2020* (the Ordinance) amends the *Norfolk Island Applied Laws Ordinance 2016* (Applied Laws Ordinance) to make changes to the *Local Government Act 1993* (NSW) (NI) and the *Local Government (General) Regulation 2005* (NSW) (NI) and to end the suspension in Norfolk Island of provisions of the *Electoral Funding Act 2018* (NSW) (NI), the *Electoral Funding Regulation 2018* (NSW) (NI), the *Lobbying of Government Officials Act 2011* (NSW) (NI) and the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014* (NSW) (NI). The Ordinance also amends these laws as appropriate for their application in Norfolk Island.

The primary purpose of the Ordinance is to facilitate the next ordinary election of the Norfolk Island Regional Council (the Council). The Ordinance is intended to provide an effective, transparent and fair framework for Council elections that is fit for purpose for Norfolk Island. In the absence of Norfolk Island laws relating to Council elections, the Ordinance is based closely on provisions regulating local government elections in NSW and is intended to reflect the Norfolk Island context.

The Ordinance:

- aligns the criteria for eligibility to vote in Council elections with the criteria for voting in Commonwealth House of Representative elections. This is consistent with the status of Norfolk Island as an external territory and facilitates the preparation of the residential roll;
- amends the criteria for eligibility to hold civic office. This means members of the NSW and Commonwealth Parliaments and judges of NSW, Norfolk Island and Commonwealth courts are not eligible to hold civic office on the Council. In addition, a person is not eligible to hold civic office if they have been found guilty of bribery or corruption under Norfolk Island law or if they have been convicted of an offence against the electoral funding laws of any state or territory or the Commonwealth;
- removes the ability of political parties to register for the purposes of Council elections. This means it is not possible for political parties and groups to be identified on the ballot-papers. Political parties and groups are still able to take part in elections;

- increases the time available to hold elections, by-elections and countback elections to a maximum of six months. This allows time to engage an electoral services provider to run an election if an election cannot be held when it is due;
- bans political donations from property developers and tobacco, liquor and gambling industries. Consistent with NSW, this seeks to prevent candidates and elected councillors from being subject to undue influence from these sectors;
- bans success fees for lobbying elected local government officials. This reduces the incentive for lobbyists and those paying for lobbying services to attempt to corrupt elected councillors and contributes to regulating undue influence from all sectors; and
- provides powers so that the Electoral Commission can regulate compliance with Council election laws. These powers, consistent with NSW, include powers for an inspector to enter any place he or she reasonably believes relevant documents are kept and to require a person to provide information an inspector reasonably needs to ensure compliance with a Council election law.

Human rights implications

The modifications to applied NSW laws made by the Ordinance engage the following rights:

- fair trial and fair hearing rights
- right to take part in public affairs and elections
- privacy and reputation.

Fair trial and fair hearing rights

The right to a fair and public criminal trial or a fair and public hearing in civil proceedings is one of the guarantees in relation to legal proceedings. Fair trial and fair hearing rights include the principle that all persons are equal before courts and tribunals and the right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law. The right to a fair and public hearing is contained in Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR); see also Article 13 of the *Convention on the Rights of Persons with Disabilities* (CRPD).

The *Electoral Funding Act 2018* (NSW) (EFA), as in force in NSW, confers civil and criminal jurisdiction arising under the EFA upon NSW courts, namely the NSW Local Court and the Supreme Court of NSW. Similarly, the *Lobbying of Government Officials Act 2011* (NSW) (LGOA), as in force in NSW, confers criminal jurisdiction arising under the LGOA upon the NSW Local Court.

The Territory of Norfolk Island (Norfolk Island) has its own system of courts and tribunals. The Supreme Court of Norfolk Island is constituted under the *Norfolk Island Act 1979* (Cth) (Norfolk Island Act). The Court of Petty Sessions of Norfolk Island was established under the *Court of Petty Sessions Act 1960* (NI), which is continued in force under section 16 of the Norfolk Island Act.

The Ordinance amends the EFA in its application to Norfolk Island (the Applied EFA) to provide that any jurisdiction arising under the Applied EFA is conferred on the Court of Petty Sessions of Norfolk Island or the Supreme Court of Norfolk Island, as relevant. The Ordinance also amends the LGOA in its application to Norfolk Island (the Applied LGOA) to provide that any jurisdiction arising under the Applied LGOA is conferred on the relevant Norfolk Island court, namely, the Court of Petty Sessions of Norfolk Island.

Whilst the Ordinance changes the judicial forum in which rights may be exercised in Norfolk Island under the applied NSW laws, it does not reduce or limit these rights. Accordingly, the instrument may be considered to promote human rights by ensuring that access to justice for Norfolk Island residents is protected.

The right to take part in public affairs and elections

The right to take part in public affairs and elections guarantees the right of citizens to stand for public office, to vote in elections and to have access to positions in public service. This right is contained in Article 25 of the ICCPR. Article 25 provides that every citizen shall have the right and the opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives; 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; and to have access, on general terms of equality, to public service in their country. See also Article 5 of the *International Convention on the Elimination of all Forms of Racial Discrimination*, Article 7 of the *Convention on the Elimination of All Forms of Discrimination against Women* and Article 29 of the CRPD.

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

For instance, paragraph 290(1)(b) of the *Local Government (General) Regulation 2005* (NSW) (NI) (Applied LGR) provides that a candidate information sheet must include the proposed candidate's enrolled address within the meaning of the *Electoral Act 2017* (NSW) (EA), which is a reference to the address for which an elector is enrolled by the NSW Electoral Commissioner under Part 5 of the EA. However, the EA is not in force in Norfolk Island so the reference to a proposed candidate's enrolled address is not appropriate in the circumstances of Norfolk Island. The Ordinance amends paragraph 290(1)(b) of the Applied LGR to replace the reference to an enrolled address within the meaning of the EA with a reference to the address in respect of which the proposed candidate is enrolled on a Roll within the meaning of the *Commonwealth Electoral Act 1918*. By ensuring the provisions about candidate information sheets operate appropriately in Norfolk Island, the Ordinance promotes the right to take part in public affairs and elections.

The right to take part in public affairs and elections is also engaged by amendments to the *Local Government Act 1993* (NSW) (LGA) as in force in Norfolk Island (the Applied LGA) that deal with the right of a person to be enrolled as an elector in local government elections in Norfolk Island.

The LGA as in force in NSW provides that a person is entitled to be enrolled as an elector at a local government election if they are entitled to vote at either a NSW Legislative Assembly election or a Commonwealth House of Representatives election, provided the person:

- is a resident in a council ward, or an owner, occupier or ratepaying lessee of rateable land in a council ward; and
- is not in prison serving a sentence of 12 months or more.

The Ordinance relevantly removes the reference in the Applied LGA to eligibility to vote at a NSW Legislative Assembly election.

The people potentially affected by this amendment would be NSW residents who are also owners, occupiers or ratepaying lessees of rateable land in Norfolk Island and who are incapable of understanding the nature and significance of enrolment and voting or who have been convicted of treason or treachery and have not been pardoned. These are the only people who may vote at a NSW Legislative Assembly election but who cannot vote at a Commonwealth House of Representatives election.

Conditions may be applied to the exercise of the rights in Article 25 of the ICCPR, but they should be established by law and be based on objective and reasonable criteria. This amendment ensures that electors who reside in NSW are not favoured over electors who reside in other states and territories of Australia (other than Norfolk Island), so that all non-resident owners, occupiers and ratepaying lessees of rateable land in Norfolk Island are treated equally. The proposed change would, in practice, prevent a very small number of people (if any) from voting at a local government election in Norfolk Island. For these reasons, this amendment is an objective, reasonable, necessary and proportionate measure.

The Ordinance retains the disqualification of certain prisoners from being enrolled to vote at a local government election. However, the duration of the sentence of imprisonment necessary to disqualify a prisoner from enrolment to vote is increased to three years or longer, reflecting prisoner voting entitlements in Commonwealth electoral law.

The LGA as in force in NSW provides that a person serving a term of imprisonment of 12 months or more is disqualified from enrolment to vote at a local government election. This is also the situation for NSW state elections. Eligible Norfolk Island residents can vote at federal elections but are not entitled to vote at NSW state elections. As a result, it is appropriate that voting arrangements in Norfolk Island are consistent between the two levels of government (federal and local) relevant in Norfolk Island.

The amendment will enhance the right to take part in public affairs and elections by expanding the franchise. Specifically, it will permit any prisoners serving a term of imprisonment between 12 months and less than three years to vote at a local government election in Norfolk Island. While, in practice, this change would affect very few people, the principle of proportionality requires a degree of seriousness in an offence to warrant suspension of a right. Sentences of three years or more are indicative of the seriousness of the offence. The limitation on the right to vote as a consequence of the disqualification from voting by prisoners serving a term of imprisonment of three years or longer is objective, based on reasonable criteria, proportionate and non-discriminatory.

The right to take part in public affairs and elections is also engaged by amendments to the Applied LGA that deal with who is qualified to hold civic office, that is, the office of councillor or mayor, in Norfolk Island. Some of these provisions require amendment so they can operate effectively in Norfolk Island.

For example, the Applied LGA disqualifies a person from holding civic office while disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* (Cth). Norfolk Island has its own legislation regulating companies, namely the *Companies Act 1985* (NI). The Ordinance therefore extends the disqualification from civic office on the basis of disqualification from managing a corporation under the *Corporations Act 2001* (Cth) to apply also to persons included on the Register kept under section 303 of the *Companies Act 1985* (NI), which is a register of persons subject to a restriction as mentioned in section 12 of the *Companies Act 1985* (NI).

In addition, the Applied LGA refers to provisions of the *Crimes Act 1900* (NSW) that deal with corruptly receiving commissions and other corrupt practices. That Act is not in force in Norfolk Island. The Ordinance substitutes these provisions with appropriate references to the *Criminal Code 2007* (NI).

The Applied LGA also disqualifies a person from holding civic office if they have been convicted of an offence under the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) that is punishable by imprisonment for two years or more. That Act is no longer in force in NSW. To ensure the principle underlying the disqualification can be given effect in Norfolk Island in a manner that reflects Norfolk Island's status as an external territory, the Ordinance extends the disqualification to persons who have been convicted of an offence under a law of the Commonwealth or a state or territory that relates to electoral funding and is punishable by imprisonment for two years or more.

The Applied LGA provides that a person cannot hold civic office while they are also a member of the Parliament of NSW. This prohibition is intended to prevent any potential conflicts arising from a member of the NSW Parliament also holding office as a local government councillor or mayor in Norfolk Island. The Ordinance extends the disqualification so that it also applies to members of the Commonwealth Parliament, since the Commonwealth Parliament legislates for Norfolk Island as an external territory.

The LGA as in force in NSW and the Applied LGA disqualify a person from holding civic office while a judge of any court 'of the State or the Commonwealth'. Under the LGA as in force in NSW, the reference to 'the State' is read as a reference to NSW while, under the equivalent provision in the Applied LGA, the reference to 'the State' is read as a reference to Norfolk Island. The Ordinance amends the Applied LGA to extend the disqualification under the Applied LGA to judges of NSW courts. This is intended to prevent any potential conflict that might arise from a judge of a NSW court also holding civic office in Norfolk Island. For example, a judge of a NSW court may be required to rule on the application of NSW laws that are also in force in Norfolk Island and regulate the performance of his or her duties as a holder of civic office in Norfolk Island.

A savings provision will ensure that anyone who holds civic office when the amendments commence is not prevented by the amendments from completing their current term of office.

Conditions may be applied to the exercise of the rights in Article 25 of the ICCPR, but they should be established by law and should be based on objective and reasonable criteria. The amendments to the Applied LGA that deal with who is qualified to hold civic office in Norfolk Island are intended to ensure civic office holders on Norfolk Island are able to act in the best interests of the local community and are objective, reasonable, necessary and proportionate measures.

The right to take part in public affairs and elections is also engaged by amendments to the Applied LGA and the Applied LGR that deal with the timing of ordinary elections of councillors and by-elections and countback elections to fill casual vacancies. A countback election may be held in certain circumstances as an alternative to a by-election to fill a casual vacancy in the office of a councillor.

The Applied LGA provides that ordinary elections of councillors should occur on the second Saturday of September 2020 and on the second Saturday of September in every fourth year afterwards. The Applied LGA relevantly provides that a by-election to fill a casual vacancy in the office of a councillor or a mayor elected by the electors should be held on a Saturday that falls not later than three months after the vacancy occurs. The Applied LGA also provides that, if the Minister is of the opinion it would be impractical or inconvenient to hold an ordinary election or a by-election on these scheduled dates, the Minister may, by order published in the Gazette, appoint a subsequent Saturday for the election or by-election, which must not be more than 28 days later than the day when the election or by-election should have been held. In addition, the Applied LGR provides that the date for the conduct of a countback election must not be more than 49 days after the date of the casual vacancy occurring.

The Ordinance amends the Applied LGA to provide that the Minister may delay an ordinary election of councillors for a maximum period of six months and may delay a by-election until a day not later than six months after the vacancy occurred. The Ordinance also amends the Applied LGR to provide that a countback election must generally be held within three months but, if the Minister is of the opinion it would be impractical or inconvenient to hold a countback election within three months, the Minister may appoint a later date for the conduct of the countback election, which must not be more than three months later than the last day on which the countback election could otherwise have been held (i.e. a day not later than six months after the vacancy occurred).

As mentioned above, conditions may be applied to the exercise of the rights in Article 25 of the ICCPR, if they are established by law and based on objective and reasonable criteria. The amendments regarding the timing of elections are intended to allow sufficient time for arrangements to be made where circumstances prevent an election from being held when it is due. The extended periods are maximum periods and would allow adequate time for an electoral services provider to be engaged by the Electoral Commissioner or the Council and to conduct an election in the circumstances of Norfolk Island as a remote island community whose elections are not administered by a state or territory Electoral Commission. It is anticipated the Minister would only exercise the discretion to delay an election in a limited set of circumstances. For these reasons, the amendments are objective, necessary, reasonable and proportionate measures.

The right to take part in public affairs and elections is also engaged by amendments to the Applied LGA and Applied LGR that deal with the registration of political parties and the inclusion of political parties, groups of candidates and group voting squares on ballot-papers.

The Applied LGA provides that political parties can apply to register for local government elections and that political parties registered under Part 6 of the *Electoral Act 2017* (NSW) are also registered for the purposes of local government elections. Once registered, a political party can apply for their party name to appear next to endorsed candidates on the ballot-paper for a local government election. The Applied LGA also provides that two or more individual candidates can apply to have their names included in a group on the ballot-papers and can request a group voting square for the group.

In 2015 the Norfolk Island Advisory Council noted that, while major political parties were represented on Norfolk Island, there was little community support for a local political party system.

The Ordinance amends the Applied LGA and Applied LGR to omit the provisions providing for the registration of political parties and the use of political party names on the ballot-papers for local government elections. Political parties do not appear on the ballot-papers for local government elections in some other Australian jurisdictions, for example Victoria and Tasmania. The Ordinance also omits the provisions allowing groups of candidates to request a group voting square on the ballot-papers. This will ensure political parties and groups are treated consistently since recognising groups on the ballot-papers with a group voting square is similar to including political parties on the ballot-papers. The Ordinance also makes a number of consequential amendments to the Applied LGA and Applied LGR arising from these changes.

These amendments would not prevent the formation of political parties and recognised groups of candidates nor prevent political parties nominating, endorsing and supporting candidates or groups participating in local government elections in Norfolk Island. Accordingly, the amendments do not diminish the right to take part in public affairs and elections and are also consistent with the right to freedom of association contained in Article 22 of the ICCPR, which protects the right to form and join associations to pursue common goals.

The right to take part in public affairs and elections is also engaged by amendments to the Applied LGR that repeal the provisions dealing with the use of mobile polling booths in hospitals, nursing homes, retirement villages or similar facilities.

The small population and size of Norfolk Island do not justify the use of mobile polling booths during local government elections. Postal voting, pre-poll voting and declared institution voting will still be available for local government elections in Norfolk Island. Under the declared institution voting provisions, residents of a declared hospital, nursing home, retirement village or similar facility may vote on site before election day. Accordingly, these amendments do not diminish the right to take part in public affairs and elections.

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, and that everyone has the right to the protection of the law against such interference or attacks. See also Article 22 of the CRPD.

Privacy comprises freedom from unwarranted and unreasonable intrusions into a person's individual autonomy. In certain circumstances, an interference with privacy that is authorised under domestic law may be considered to be arbitrary under international law. In order for the interference not to be arbitrary, it must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances.

The right to privacy is engaged by the provisions of the Ordinance that affect the collection, use, disclosure or publication of personal information.

Clause 393 of the Applied LGR relevantly allows each registered political party to obtain upon request election information containing the names and the addresses of electors who voted (other than silent electors), whether they voted personally or by post and, if they voted at a polling place for the ward or area for which the electors were enrolled, the location of that polling place.

Consistent with the removal of provisions providing for the registration of political parties, the Ordinance would omit the word 'registered' from paragraphs 393(1)(a) and (b). This would have the effect that, upon request, a political party would be able to obtain election information under clause 393.

Clause 393 accords with the objectives of the ICCPR in that it promotes the right to take part in public life and elections, by facilitating political communications between political parties, elected local government officials and electors for the purpose of an election. The Ordinance contains safeguards to ensure the interference with privacy allowed by clause 393 is reasonable in the particular circumstances. Firstly, the information provided under clause 393 would not include silent electors. In addition, clause 393 contains an offence provision for using information provided under that clause for any purpose other than in connection with an election. Furthermore, unregistered political parties that are organisations within the meaning of section 6C of the *Privacy Act 1988* (Cth) (Privacy Act) are subject to the Australian Privacy Principles (APPs) under that Act. The legitimate purpose of this limitation on privacy in enhancing participation in the democratic process, the exclusion of information relating to silent electors and the safeguards in place to ensure the information is not misused, ensure that the interference with privacy under clause 393 is not arbitrary.

Section 739 of the Applied LGA is about the protection of privacy. It provides that a person may request that any material that is available (or is to be made available) for public inspection by or under the Applied LGA be prepared or amended so as to omit or remove any matter that would disclose or discloses the person's place of living if the person considers that the disclosure would place or places the personal safety of the person or of members of the person's family at risk. A person who may make a request under section 739 includes a person who is entitled to be enrolled as an elector.

Currently the Applied LGR prescribes a form for non-resident electors to use to make a request to omit or remove their place of living from the roll, but does not prescribe a form for resident electors to use to make such a request. Therefore, the Ordinance would insert new subsection 739(4A) into the Applied LGA to allow a form to be approved for this purpose. New subsection 739(4A) would provide that, in the case of the residential roll for local

government elections, a request is to be in the form approved by a senior Commonwealth officer, to give particulars of the relevant risk and to be verified by statutory declaration by the person making the request or by some other person.

To the extent that any information provided in a form approved under this provision may contain personal information, including sensitive information, within the meaning of the Privacy Act, the right to protection against unlawful or arbitrary interference with privacy will be engaged. Any access to, use or sharing of, personal information should only be for the legitimate objective of conducting an election; where it is necessary that the person has access to that information; and reasonable and proportionate to the achievement of the objective.

New subsection 739(4A) is based on existing subsection 739(4) of the Applied LGA and will permit a senior Commonwealth officer to approve a form with respect to a request from a person to remove the relevant material from the residential roll. It is intended that any form approved by the senior Commonwealth officer will require applicants to disclose only personal information, including sensitive information, that is reasonably necessary for the Electoral Commissioner to assess the merits of an application to remove the relevant material from the residential roll.

Transparency, including public access to electoral rolls, is a well-established democratic principle which enhances the integrity of elections and public confidence in their conduct. Accordingly, it is necessary for the Electoral Commissioner to have access to an applicant's personal information to assess the merits of his or her application for the relevant material, which would otherwise be available for public inspection, to be removed from an electoral roll.

It is intended that the collection, storage, use or disclosure of any personal information collected by the Electoral Commissioner will comply with the APPs under the Privacy Act.

Accordingly, the access to, use or sharing of, this personal information is for a legitimate objective, necessary and reasonable and proportionate to the achievement of the objective.

Conclusion

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

**Assistant Minister for Regional Development and Territories,
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,
Transport and Regional Development
The Hon Nola Marino MP**

ATTACHMENT—NOTES ON CLAUSES

This attachment explains the operation of individual provisions in the *Norfolk Island Applied Laws Amendment (Local Government Elections) Ordinance 2020* (the Ordinance).

Section 1—Name of Ordinance

This section provides that the title of the Ordinance is the *Norfolk Island Applied Laws Amendment (Local Government Elections) Ordinance 2020*.

Section 2—Commencement

This section provides that the Ordinance commences on the day after it is registered on the Federal Register of Legislation.

Section 3—Authority

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

Section 4—Schedule(s)

This section provides that each instrument that is specified in a Schedule to the Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Ordinance has effect according to its terms.

Schedule 1—Amendments

Norfolk Island Applied Laws Ordinance 2016

Amending item 1—Subitem 1(3) of Schedule 1 (table)

This amending item ends the suspension in Norfolk Island of the *Electoral Funding Act 2018* (NSW) (NI) (Applied EFA) and the *Lobbying of Government Officials Act 2011* (NSW) (NI) (Applied LGOA), and legislation made under those Acts. The suspension ends at the start of the day the Ordinance commences.

Amending item 2—After Schedule 1AB

This amending item inserts a new Schedule 1AC to the Applied Laws Ordinance. New Schedule 1AC contains amendments to the Applied EFA and the *Electoral Funding Regulation 2018* (NSW) (NI) (Applied EFR).

Electoral Funding Act 2018 (NSW)

Item 1—At the end of Part 1

Item 1 adds at the end of Part 1 of the Applied EFA a new section 3A (Modifications for Norfolk Island). New subsections 3A(1) and (2) provide that the following provisions of the Applied EFA are unsuspending in relation to Norfolk Island:

- (a) Parts 1 and 2;
- (b) Division 7 of Part 3;
- (c) sections 57 and 58;

- (d) section 135;
- (e) Part 9;
- (f) section 144, subsection 145(1) and sections 146, 147 and 149;
- (g) Part 11, other than section 154.

New subsection 3A(3) provides for the courts that have jurisdiction in relation to matters arising under the Applied EFA. Where the Supreme Court of New South Wales has jurisdiction under the *Electoral Funding Act 2018* (NSW), the Supreme Court of Norfolk Island has jurisdiction under the Applied EFA. Where the Local Court in NSW has jurisdiction under the *Electoral Funding Act 2018* (NSW), the Court of Petty Sessions of Norfolk Island has jurisdiction under the Applied EFA. Subsection 3A(3) provides that these arrangements are subject to the Commonwealth Constitution.

Item 2—Section 4 (definition of *associated entity*)

Item 2 has the effect of substituting a reference to ‘registered parties’ with a reference to ‘parties’ in the definition of ‘associated entity’ in section 4 of the Applied EFA. The definition, as amended, provides that, in the Applied EFA, an ‘associated entity’ means a corporation or another entity that operates solely for the benefit of one or more parties or elected members.

Item 3—Section 4 (at the end of the definition of *Electoral Commission*)

Item 3 adds a note at the end of the definition of ‘Electoral Commission’ in section 4 of the Applied EFA. The note clarifies that subsection 18B(2) of the Norfolk Island Act has the effect of vesting the powers, functions and duties of the Electoral Commission under the Applied EFA and Applied EFR in the Norfolk Island Minister and any other person or authority authorised by a direction or delegation under subsection 18B(3) or (4) of the Norfolk Island Act. ‘Norfolk Island Minister’ is defined in the *Interpretation Act 1987* (NSW) (NI) (Applied Interpretation Act) to mean the Commonwealth Minister who administers the Norfolk Island Act.

Item 4—Section 10 (note)

The Applied EFA contains bracketed notes referring to provisions of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW). Item 4 clarifies that the bracketed notes in the Applied EFA are references to the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) as in force in NSW immediately before the enactment of the *Electoral Funding Act 2018* (NSW).

Item 5—Before section 51

Item 5 inserts new section 50B. New section 50B provides that Division 7 of Part 3 of the Applied EFA, which prohibits political donations from property developers or tobacco, liquor or gambling industries, applies to local government elections and elected members of councils.

Item 6—Subsection 53(5) (definition of *relevant planning application*)

Item 6 repeals the definition of ‘relevant planning application’ in section 53 of the Applied EFA and substitutes a new definition.

The definition is relevant to determining who is a property developer for the purposes of Division 7 of Part 3 of the Applied EFA.

Prior to amendment, the definition in the Applied EFA relied on a definition in the *Environmental Planning and Assessment Act 1979* (NSW), which is not in force in Norfolk Island. The new definition refers to applications or requests under the *Planning Act 2002* (NI), which is the relevant planning legislation in force in Norfolk Island. The new definition provides that the applications and requests specified in paragraphs (a) to (d) of the new definition are relevant planning applications.

Items 7 and 8—Section 55

Items 7 and 8 amend section 55 of the Applied EFA.

Item 7 amends section 55 of the Applied EFA so that it no longer refers to the definition of ‘reportable political donation’ in section 6 of the Applied EFA. Section 55, as amended, provides that an annual or other subscription paid to a party by an individual as a member of the party or for the individual’s affiliation with the party is not a political donation for the purposes of Division 7 of Part 3 of the Applied EFA unless the amount of the payment is \$1,000 or more, or the total amount of all such payments made by the individual to the party during the same financial year is \$1,000 or more.

Item 8 repeals the note to section 55 of the Applied EFA, which contains a reference to the definition of ‘reportable political donation’ in section 6 of the Applied EFA. The definition of ‘reportable political donation’ is not relevant to section 55 of the Applied EFA as amended.

Items 9 and 10—Subsection 57(2) and Section 57 (note)

Item 9 omits the reference in subsection 57(2) of the Applied EFA to sections 6 and 23 of the Applied EFA and substitutes a reference to section 55.

Under the changes made by the Ordinance, section 6 (Meaning of ‘reportable political donation’) of the Applied EFA is not operative and relevant content from section 6 is incorporated into section 55 (see item 7). Therefore, it is appropriate to refer to section 55 in subsection 57(2).

Section 23 is in Division 3 of Part 3 of the Applied EFA, which is not unsuspending in Norfolk Island.

Item 10 repeals the note to section 57 of the Applied EFA. The note to section 57 refers to section 19 in Division 2 of Part 3, which is not unsuspending in Norfolk Island.

Items 11, 12, 13 and 14—Subsection 58(1)

Items 11, 12 and 14 omit references to ‘indirect campaign contribution’ and ‘contribution’ in subsection 58(1) of the Applied EFA.

Section 47 of the Applied EFA is not unsuspending in Norfolk Island. As a consequence, the references to indirect campaign contributions and contributions in subsection 58(1) are not operative.

Item 13 omits ‘the State’ (wherever occurring) and substitutes ‘the Commonwealth’ in subsection 58(1) of the Applied EFA.

The Commonwealth is responsible for the administration of Norfolk Island and the Applied EFA is applied in Norfolk Island under a Commonwealth Act, so it is appropriate for the Commonwealth to recover donations and loans that are unlawful because of the Applied EFA.

Subsection 58(1) as amended provides that, if a person accepts a political donation or loan that is unlawful because of Part 3 of the Applied EFA, an amount equal to the amount or value of the donation or loan (or double that amount if the person knew that it was unlawful) is payable by that person to the Commonwealth and may be recovered by the Electoral Commission as a debt due to the Commonwealth.

Item 15—Subsection 58(3)

Item 15 omits ‘the State’ (wherever occurring) and substitutes ‘the Commonwealth’ in subsection 58(3) of the Applied EFA.

The Commonwealth is responsible for the administration of Norfolk Island and the Applied EFA is applied in Norfolk Island under a Commonwealth Act, so it is appropriate for the Commonwealth to recover donations that are unlawful because of the Applied EFA.

Subsection 58(3) as amended provides that, if a person makes a political donation and, within 12 months of making that donation the person becomes a property developer (within the meaning of Division 7 of Part 3 of the Applied EFA), the person must pay an amount that is double the amount or value of the donation to the Commonwealth and that amount may be recovered by the Electoral Commission as a debt due to the Commonwealth.

Item 16—Subsections 58(2), (4) and (5)

Item 16 repeals subsections 58(2), (4) and (5) of the Applied EFA (including the note).

Subsection 58(2) refers to subsections 24(5) and 25(3) in Division 3 of Part 3 of the Applied EFA. That Division is not unsuspending in Norfolk Island, so it is appropriate to omit the reference to those provisions.

Subsection 58(4) refers to electoral expenditure that is unlawful because of Part 3 of the Applied EFA. The relevant provisions of Part 3 of the Applied EFA are not unsuspending in Norfolk Island, so subsection 58(4) of the Applied EFA is not needed.

Subsection 58(5) refers to section 35 in Division 4 of Part 3 of the Applied EFA. That Division is not unsuspending in Norfolk Island, so it is appropriate to omit the reference to section 35.

The note to section 58 refers to sections 78, 94 and 96 of the Applied EFA. Those sections are not unsuspending in Norfolk Island, so it is appropriate to omit the note.

Item 17—Paragraph 139(1)(a)

Item 17 omits ‘the Electoral Commission’, and substitutes ‘the Norfolk Island Department’ in paragraph 139(1)(a) of the Applied EFA.

Subsection 18B(2) of the Norfolk Island Act has the effect of vesting the powers, functions and duties of the Electoral Commission under the Applied EFA in the Norfolk Island

Minister and any other person or authority authorised by a direction or delegation under subsection 18B(3) or (4) of the Norfolk Island Act.

Paragraph 139(1)(a) of the Applied EFA, as amended, provides that the Norfolk Island Minister or a person authorised under subsection 18B(3) or (4) of the Norfolk Island Act may appoint a member of staff of the Norfolk Island Department as an inspector for the purposes of the Applied EFA. ‘Norfolk Island Department’ is defined in the Applied Interpretation Act to mean the Department of State of the Commonwealth responsible for the administration of the Norfolk Island Act (see amending item 3 of Schedule 1 to the Ordinance). At the time of writing, the relevant Commonwealth Department is the Department of Infrastructure, Transport, Regional Development and Communications.

Item 18—Subsection 145(1)

Item 18 omits the reference in subsection 145(1) of the Applied EFA to Divisions 5 and 6 of Part 3 of the Applied EFA. Those Divisions are not unsuspending in Norfolk Island, so it is appropriate to omit the reference to those Divisions.

Item 19—Subsection 149(3)

Item 19 repeals subsection 149(3) of the Applied EFA and replaces it with a new subsection 149(3).

Prior to amendment, subsection 149(3) of the Applied EFA provided that the *Criminal Procedure Act 1986* (NSW) had effect in a case in which a party that is an unincorporated association was charged with an offence under the Applied EFA in the same manner as it had effect in the case of a corporation charged with such an offence.

The *Criminal Procedure Act 1986* (NSW) is not in force in Norfolk Island. As a result, item 19 inserts new subsection 149(3), which provides that, if a party that is an unincorporated association is charged with an offence under the Applied EFA, any proceedings in relation to the offence are to be conducted, as far as is practicable, as if the party were a corporation charged with such an offence, subject to any order of a court made in relation to the conduct of the proceedings.

Item 20—Paragraph 153(2)(a)

Item 20 omits the reference to section 60 from paragraph 153(2)(a) of the Applied EFA. Section 60 is not unsuspending in Norfolk Island, so it is appropriate to omit the reference to that section.

Electoral Funding Regulation 2018 (NSW)

Item 21—At the end of Part 1

Item 21 adds a new clause 4A (Modifications for Norfolk Island) at the end of Part 1 of the Applied EFR.

New clause 4A provides that the following provisions of the Applied EFR apply in relation to Norfolk Island:

- (a) Part 1;
- (b) clause 34;

- (c) subclauses 36(1) and (2);
- (d) clause 42.

Item 22—Clause 34

Item 22 replaces the reference in clause 34 of the Applied EFR to ‘lead candidate of a group’ with a reference to ‘candidate in a group’.

Clause 34 as amended provides that the Electoral Commission may conduct a compliance audit of compliance with the requirements of Part 3 of the Applied EFA by a party, an elected member, candidate (including a candidate in a group), associated entity or third-party campaigner.

Item 23—Clause 36 (heading)

Item 23 omits the reference to third party campaigns from the heading to clause 36 of the Applied EFR. The provisions of the Applied EFR dealing with third-party campaigners are not unsuspending in Norfolk Island, so it is appropriate to omit the reference.

Item 24—Paragraph 42(2)(d)

Item 24 omits ‘the Electoral Commission’ and substitutes ‘the Norfolk Island Department’ in paragraph 42(2)(d) of the Applied EFR.

Paragraph 42(2)(d), as amended, provides that the Electoral Commission must not appoint or approve members of staff of the Norfolk Island Department to assess the value of property disposed of.

Subsection 18B(2) of the Norfolk Island Act has the effect of vesting the powers, functions and duties of the Electoral Commission under the Applied EFA and Applied EFR in the Norfolk Island Minister and any other person or authority authorised by a direction or delegation under subsection 18B(3) or (4) of the Norfolk Island Act. ‘Norfolk Island Minister’ is defined in the Applied Interpretation Act to mean the Commonwealth Minister who administers the Norfolk Island Act.

‘Norfolk Island Department’ is defined in the Applied Interpretation Act to mean the Department of State of the Commonwealth responsible for the administration of the Norfolk Island Act (see amending item 3 of Schedule 1 to the Ordinance). At the time of writing, the relevant Commonwealth Department is the Department of Infrastructure, Transport, Regional Development and Communications.

Amending item 3—Item 6 of Schedule 3

This amending item repeals the previous item 6 of Schedule 3 to the Applied Laws Ordinance and replaces it with new item 6.

The effect of this amendment is to add a definition of ‘Norfolk Island Department’ in subsection 21(1) of the Applied Interpretation Act. The definition applies to the interpretation of NSW laws as applied in Norfolk Island, with some exceptions (see sections 6 and 6A of the Applied Laws Ordinance).

The definition of ‘Norfolk Island Department’ provides that the Norfolk Island Department means the Department of State of the Commonwealth responsible for the administration of

the Norfolk Island Act. At the time of writing, the relevant Commonwealth Department is the Department of Infrastructure, Transport, Regional Development and Communications.

Amending item 4—After Schedule 3A

This amending item inserts new Schedule 3B after existing Schedule 3A to the Applied Laws Ordinance. New Schedule 3B amends the Applied LGOA and the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014* (NSW) (NI) (the Applied LGOR).

Lobbying of Government Officials Act 2011 (NSW)

Item 1—Subsection 3(1) (at the end of the definition of *Electoral Commission*)

Item 1 adds a note at the end of the definition of ‘Electoral Commission’ in subsection 3(1) of the Applied LGOA.

The note clarifies that subsection 18B(2) of the Norfolk Island Act has the effect of vesting the powers, functions and duties of the Electoral Commission under the Applied LGOA and Applied LGOR in the Norfolk Island Minister and any other person or authority authorised by a direction or delegation under subsection 18B(3) or (4) of the Norfolk Island Act. ‘Norfolk Island Minister’ is defined in the Applied Interpretation Act to mean the Commonwealth Minister who administers the Norfolk Island Act.

Item 2—Subsection 3(1) (definition of *Government official*)

Item 2 repeals the definition of ‘Government official’ in subsection 3(1) of the Applied LGOA and substitutes a new definition. The new definition provides that ‘Government official’ means a member (however expressed) of, or of the governing body of, a statutory body.

This amendment is intended to limit the application of ‘Government official’ in the Applied LGOA to relevant people in the Norfolk Island context. The new definition replicates paragraph (f) of the definition as in force in NSW.

The new definition of ‘Government official’ is intended to cover councillors of the Council.

Item 3—Subsection 3(1) (definition of *planning application*)

Item 3 repeals the definition of ‘planning application’ in subsection 3(1) of the Applied LGOA and substitutes a new definition.

Prior to amendment, the definition of ‘planning application’ referred to the *Environmental Planning and Assessment Act 1979* (NSW), which is not in force in Norfolk Island. The new definition instead refers to the *Planning Act 2002* (NI), which is the relevant planning legislation in force in Norfolk Island. The new definition provides that the applications and requests specified in new paragraphs (a) to (e) of the definition, except for applications and requests made by a public authority, are planning applications.

Item 4—Subsection 3(1)

Item 4 inserts a definition of ‘public authority’ in subsection 3(1) of the Applied LGOA.

The definition of ‘public authority’ is relevant to the definition of ‘planning application’ substituted by item 3, because applications or requests by public authorities do not fall within the definition of ‘planning application’.

Prior to amendment, the Applied LGOA referred to the meaning of ‘public authority’ in the *Environmental Planning and Assessment Act 1979* (NSW). That Act is not in force in Norfolk Island.

The new definition provides that ‘public authority’ means:

- (a) a public or local authority constituted by or under a law in force in the Territory of Norfolk Island under section 16, 16A or 18A of the Norfolk Island Act; or
- (b) the Norfolk Island Department; or
- (c) the Secretary, or an SES employee or acting SES employee (within the meaning of the *Public Service Act 1999* (Cth), of that Department.

‘Norfolk Island Department’ is defined in the Applied Interpretation Act to mean the Department of State of the Commonwealth responsible for the administration of the Norfolk Island Act (see amending item 3 of Schedule 1 to the Ordinance). At the time of writing, the relevant Commonwealth Department is the Department of Infrastructure, Transport, Regional Development and Communications.

Item 5—At the end of Part 1

Item 5 adds a new section 4A (Modifications for Norfolk Island) in the Applied LGOA.

New subsections 4A(1) and (2) provide that the following provisions of the Applied LGOA are unsuspended in Norfolk Island:

- (a) Part 1;
- (b) Part 5;
- (c) sections 19, 21, 22 and 23.

New subsection 4A(3) provides for the court that has jurisdiction in relation to matters arising under the Applied LGOA. Where the Local Court in NSW has jurisdiction under the *Lobbying of Government Officials Act 2011* (NSW), the Court of Petty Sessions has jurisdiction under the Applied LGOA. This arrangement is expressed to be subject to the Commonwealth Constitution.

Item 6—At the end of Part 5

Item 6 adds a new section 17A of the Applied LGOA, about the application of Part 5 of the Applied LGOA in Norfolk Island.

Section 17A provides that Part 5 of the Applied LGOA does not apply to:

- (a) a success fee paid or payable under an agreement in force at any time before the section comes into force in Norfolk Island; or
- (b) an agreement by a person for the giving or receiving of a success fee made before the section comes into force in Norfolk Island; or
- (c) a success fee paid or payable for work carried out before the section comes into force in Norfolk Island.

Section 17A is a transitional provision intended to ensure the ban on success fees for lobbying local government officials does not apply retrospectively to lobbying arrangements already in place when the section commences.

Items 7, 8 and 10—Section 19 (heading), subsection 19(1) and subsection 19(3)

Items 7, 8 and 10 omit references to the Lobbyists Code of Conduct from section 19 of the Applied LGOA. Item 7 omits the words ‘Lobbyists Code and’ from the heading to section 19. Item 8 omits the words ‘the Lobbyists Code and’ from subsection 19(1). Item 10 omits the words ‘to be a reference to the Lobbyists Code and’ from subsection 19(3) and substitutes ‘to include a reference to’.

The Lobbyists Code of Conduct is provided for in Part 2 of the Applied LGOA, which is not unsuspended in Norfolk Island. It is therefore appropriate to omit references to that Code of Conduct.

Item 9—Subsection 19(1)

Item 9 omits from subsection 19(1) of the Applied LGOA the text ‘(including any code of conduct or official rules referred to in section 12 (2))’.

Section 12 of the Applied LGOA is not unsuspended in Norfolk Island, and therefore it is appropriate to omit the reference to that section.

Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014 (NSW)

Item 11—After clause 2

Item 11 adds new section 2A in the Applied LGOR.

New section 2A provides that the following provisions are unsuspended in Norfolk Island:

- (a) clause 1;
- (b) clause 3;
- (c) clause 3A.

Item 12—Paragraph 3A(2)(a)

Item 12 omits the text ‘, New South Wales Division’ from paragraph 3A(2)(a) of the Applied LGOR.

The paragraph as amended provides that the meaning of ‘qualified accountant’ when used in clause 3A includes a Certified Practising Accountant member of CPA Australia.

This amendment is relevant to paragraph (b) of the definition of ‘third-party lobbyist’ in subsection 3(1) of the Applied LGOA, because a qualified accountant is excluded for the purposes of paragraph (b) of that definition.

Item 13—Paragraph 3A(2)(b)

Item 13 omits the text ‘, New South Wales Branch,’ from paragraph 3A(2)(b) of the Applied LGOR.

The paragraph as amended has the effect that ‘qualified accountant’ when used in clause 3A includes a member of Chartered Accountants Australia and New Zealand who holds a Certificate of Public Practice issued by that organisation.

This amendment is relevant to paragraph (b) of the definition of ‘third-party lobbyist’ in subsection 3(1) of the Applied LGOA, because a qualified accountant is excluded for the purposes of paragraph (b) of that definition.

Amending item 5—Item 17A of Schedule 4

This amending item repeals item 17A and inserts new items 17A, 17AA and 17AB into Schedule 4 to the Applied Laws Ordinance.

Item 17A—Chapter 10 (after the heading)

Item 17A substitutes the note after the heading to Chapter 10 of the Applied LGA. The new note is worded slightly differently to the previous note but the substance of the note has not changed. The words ‘*Norfolk Island Act 1979* of the Commonwealth’ are replaced with ‘Norfolk Island Act’, the words ‘Commonwealth Minister who administers the *Norfolk Island Act 1979* of the Commonwealth’ are replaced with ‘Norfolk Island Minister’ and the words ‘that Act’ are replaced with ‘the Norfolk Island Act’.

The changes are intended to reflect terms defined in the Applied Interpretation Act. ‘Norfolk Island Act’ is defined in the Applied Interpretation Act to mean the *Norfolk Island Act 1979* (Cth). ‘Norfolk Island Minister’ is defined in the Applied Interpretation Act to mean the Commonwealth Minister who administers the Norfolk Island Act.

Item 17AA—Subsection 266(1)

Item 17AA omits the reference in subsection 266(1) of the Applied LGA to an election of members of the NSW Legislative Assembly in relation to persons who are entitled to be enrolled as electors for a ward.

Subsection 266(1), as amended, provides that persons entitled to vote at an election of members of the Commonwealth House of Representatives are entitled to be enrolled as electors for a ward.

In addition, the effect of the amendment to subsection 266(1) is that a NSW resident who is an owner, occupier, or rate-paying lessee of rateable land on Norfolk Island and who is incapable of understanding the nature and significance of enrolment and voting or who has been convicted of treason or treachery and has not been pardoned is not entitled to be enrolled as an elector for local government elections in Norfolk Island.

Item 17AB—Subsection 266(2)

Item 17AB repeals subsection 266(2) of the Applied LGA (including the note), and substitutes a new subsection 266(2).

Prior to amendment, subsection 266(2) provided that, despite subsection 266(1), a person who had been convicted of an offence, whether in NSW or elsewhere, and had been sentenced in respect of that offence to imprisonment for 12 months or more and was in prison serving that sentence was not entitled to be enrolled as an elector for a ward.

New subsection 266(2) provides that, despite subsection 266(1) of the Applied LGA as amended, a person who is serving a sentence of imprisonment (within the meaning of the *Commonwealth Electoral Act 1918*) of three years or longer is not entitled to be enrolled as an elector for a ward.

Amending item 6—After item 17C of Schedule 4

This amending item inserts a series of new items into Schedule 4 to the Applied Laws Ordinance that amend section 275 of the Applied LGA. Section 275 of the Applied LGA governs who is disqualified from holding civic office.

Item 17D—Paragraph 275(1)(a1)

Prior to amendment, paragraph 275(1)(a1) of the Applied LGA provided that a person was disqualified from holding civic office while a member of the Parliament of NSW, except as provided by subsections 275(5) and (7).

Item 17D amends paragraph 275(1)(a1) to provide that a person is disqualified from holding civic office while a member of the Parliament of NSW or the Commonwealth.

Item 17D also omits the reference to subsection 275(5). Subsection 275(5) was a transitional provision that applied in NSW from the commencement of that subsection in NSW on 11 April 2012 and in Norfolk Island from 1 July 2016. The provision has no future operation in relation to members of the NSW Parliament, so it is appropriate to omit the reference to subsection 275(5) in paragraph 275(1)(a1).

See also item 17K, which relates to the operation of paragraph 275(1)(a1).

Item 17E—Paragraph 275(1)(b)

Prior to amendment, paragraph 275(1)(b) of the Applied LGA provided that a person was disqualified from holding civic office while a judge of any court of the State or the Commonwealth. The reference to judges of any court of ‘the State’ was read as a reference to judges of any court of Norfolk Island, because of the definition of ‘the State’ in subsection 21(1) of the Applied Interpretation Act.

Item 17E amends paragraph 275(1)(b) so that it provides that a person is disqualified from holding civic office while a judge of any court of the State, the Commonwealth or NSW.

Item 17F—Paragraph 275(1)(e1)

Item 17F repeals paragraph 275(1)(e1) of the Applied LGA and substitutes a new paragraph 275(1)(e1).

The new paragraph provides that a person is disqualified from holding civic office if he or she is while holding that office, or has been within two years before nomination for election, election or appointment to the office, convicted of an offence under a law of the Commonwealth, or a state or territory, that relates to electoral funding and is punishable by imprisonment for two years or more.

Item 17G—Paragraph 275(1)(g)

Item 17G omits from paragraph 275(1)(g) of the Applied LGA the reference to Part 4A of the *Crimes Act 1900* (NSW), which is about corruptly receiving commissions and other corrupt practices.

The *Crimes Act 1900* (NSW) is not in force in Norfolk Island, so it is appropriate to remove the reference to that Act.

This item is related to item 17J, which inserts a disqualification provision related to the *Criminal Code 2007* (NI) that is similar to the provision omitted by this item.

Item 17H—At the end of paragraph 275(1)(h)

Prior to amendment, paragraph 275(1)(h) of the Applied LGA provided that a person was disqualified from holding civic office while disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* (Cth).

Item 17H amends paragraph 275(1)(h) to provide that a person is disqualified from holding civic office while disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* (Cth), or while included on the Register kept under section 303 of the *Companies Act 1985* (NI). The Register kept under that section is a Register of persons subject to a restriction as mentioned in section 12 of the *Companies Act 1985* (NI).

Item 17J—After subsection 275(2)

Item 17J inserts new subsection 275(2A) of the Applied LGA.

New subsection 275(2A) provides that if a person is convicted of a bribery or related offence against Part 4.7 of the *Criminal Code 2007* (NI), including a conviction because of section 45 (complicity and common purpose) of that Act, or is convicted of an offence against section 47 (incitement) of that Act for urging the commission of a bribery or related offence against Part 4.7 of that Act, the person is disqualified from holding civic office, from the date of the conviction, for the period equivalent to the maximum term of imprisonment that can be imposed for the offence, or such lesser period as the court may order.

This item is related to item 17G, which omits a reference to similar offences in the *Crimes Act 1900* (NSW).

Item 17K—Subsections 275(5), (6) and (7)

Item 17K repeals subsections 275(5), (6) and (7) of the Applied LGA (not including the note) and substitutes new subsection 275(7).

Subsections 275(5) and (6) were transitional provisions that applied in NSW to members of the NSW Parliament from 11 April 2012 and in Norfolk Island from 1 July 2016. The provisions have no future operation, so it is appropriate for them to be repealed.

As amended, subsection 275(7) provides that, despite anything to the contrary in Chapter 10 of the Applied LGA, a member of the Parliament of NSW or the Commonwealth is not disqualified because of paragraph 275(1)(a1) from being nominated for election or being elected to a civic office. If elected, the person is disqualified from holding that civic office

unless the person has ceased to be a member of that Parliament before the first meeting of the council after the election.

New subsection 275(7) also removes the reference in subsection 275(7) to subsection 275(5), which is no longer be required as a consequence of the repeal of subsection 275(5) by this item.

Item 17L—At the end of section 275

Item 17L adds new subsections 275(8) and (9) at the end of section 275 of the Applied LGA.

New subsections 275(8) and (9) provide that the changes to disqualification provisions that are made by the Ordinance do not apply to current office holders (that is, people who hold civic office immediately before the time subsection 275(8) comes into force in Norfolk Island) during the balance of their current term of office, with one exception. The exception is that the changes to the disqualification provisions that are made by the Ordinance apply in relation to any nomination of current office holders under subsection 306(2) of the Applied LGA for election as a councillor for an area, or for election as mayor of an area, in a future election.

Amending item 7—After item 19 of Schedule 4

This amending item inserts new items 19AA and 19AB in Schedule 4 to the Applied Laws Ordinance.

Item 19AA—Subsection 288(2)

Item 19AA amends subsection 288(2) of the Applied LGA to omit a reference to 28 days and substitute a reference to six months.

Section 288 relates to delayed elections of councillors. As amended, section 288 provides that, if the Minister is of the opinion that it would be impracticable or inconvenient to hold an election as provided by section 287, the Minister may gazette a subsequent Saturday for the election that is not more than six months later than the day when the ordinary election should have been held.

Item 19AB—Subsection 293(2)

Item 19AB amends subsection 293(2) of the Applied LGA to amend the period of time for which a by-election may be delayed by the Minister.

Paragraph 292(a) of the Applied LGA provides that a by-election to fill a casual vacancy in the office of a councillor or a mayor elected by the electors of an area is to be held on a Saturday that falls not later than three months after the vacancy occurs.

Section 293 of the Applied LGA, as amended, provides that, if the Minister is of the opinion that it would be impractical or inconvenient to hold a by-election within three months (as provided by section 292), the Minister can gazette a subsequent Saturday for the election that is not more than three months later than the last day on which the by-election could otherwise be held under paragraph 292(a).

Amending item 8—After item 19G of Schedule 4

This amending item inserts new items 19GA to 19GJ in Schedule 4 to the Applied Laws Ordinance.

Item 19GA—Sections 308A, 308B and 308C

Item 19GA repeals the previous sections 308A, 308B and 308C of the Applied LGA and replaces them with new sections 308A and 308C.

The Ordinance contains several amendments to the Applied LGA and Applied LGR that modify the operation of that legislation in relation to political parties and groups of candidates. Under the changes made by the Ordinance, political parties will not be registered for the purposes of local government elections; the names or abbreviations of political parties and the term ‘Independent’ will not be included on the ballot-papers; no candidates will be grouped on the ballot-papers; and there will be no group-voting squares on the ballot-papers.

New section 308A applies to an election in which there are two or more councillors to be elected. It provides that two or more candidates duly proposed for nomination for election may, before noon on the nomination day prescribed by the regulations, lodge a claim with the returning officer to be recognised as a group.

New section 308C provides that the ballot-papers for an election are not informal by reason only that they contain the name of a candidate whom a court has declared to be incapable of being elected at that election, but a preference for such a candidate is to be disregarded, and (if necessary) subsequent preferences are to be renumbered accordingly.

The new note to section 308C replicates the previous note in section 308C. It provides that the regulations make further provision regarding the formality of ballot-papers.

Items 19GB and 19GC—Section 308D

Item 19GB omits the words ‘group voting’ in the heading to section 308D of the Applied LGA and substitutes the words ‘Grouping of candidates and matter to be printed on ballot-papers’. Item 19GC omits the reference to group voting squares in the text of section 308D.

Under section 308D as amended, the regulations do not make provision for group voting squares, as group voting squares will not be included on the ballot-papers for local government elections.

Items 19GD and 19GE—Section 314 (heading) and subsection 314(1)

Item 19GD omits the words ‘to be issued’ from the heading to section 314 of the Applied LGA. Item 19GE replaces the words ‘is to’ in subsection 314(1) of the Applied LGA with the word ‘may’.

Prior to amendment, section 314 provided that the Electoral Commissioner was to serve a penalty notice on each resident who appeared not to have a sufficient reason for failing to vote at an election.

Subsection 314(1) as amended provides that the Electoral Commissioner has discretion whether or not to serve a penalty notice on each resident who appears not to have a sufficient reason for failing to vote at an election.

Items 19GF and 19GG—Paragraphs 317(1)(c) and (d)

Item 19GF replaces the word ‘or’ at the end of paragraph 317(1)(c) of the Applied LGA with a full stop. Item 19GG repeals paragraph 317(1)(d) of the Applied LGA.

Paragraph 317(1)(d) provided that an election was not invalid just because on polling day the name of a political party, or the abbreviation of that name, as registered in the Local Government Register of Political Parties appeared printed adjacent to the name of a candidate on the ballot-papers for the election, but between the time the candidate was endorsed by the party and the polling day the candidate had ceased to be so endorsed.

Under the changes made by the Ordinance, political parties will not be registered for the purposes of local government elections, and the names or abbreviations of political parties will not be printed on ballot-papers for the election. As a result, paragraph 317(1)(d) is not needed. The amendment to paragraph 317(1)(c) made by item 19GF is a consequence of item 19GG.

Item 19GH—Part 7 of Chapter 10

Item 19GH repeals Part 7 of Chapter 10 of the Applied LGA.

Part 7 of Chapter 10 provided for the registration of political parties for local government elections, and for the printing of political party names on ballot-papers at local government elections. Under the changes made by the Ordinance, political parties will not be registered for the purposes of local government elections, and the names or abbreviations of political parties will not be printed on ballot-papers for elections.

Item 19GJ—Subsection 325(2)

Item 19GJ replaces the words ‘to be a reference’ in subsection 325(2) of the Applied LGA with the words ‘to include a reference’.

Subsection 325(2) as amended provides that the references in sections 137, 138 and 155 of the Applied EFA to ‘this Act’ are taken to include references to the Applied LGA and Applied LGR, but only in connection with the conduct of elections.

Amending item 9—Item 19H of Schedule 4

This amending item repeals the previous item 19H of Schedule 4 to the Applied Laws Ordinance and substitutes a new item 19H.

Item 19H—Section 328A

Item 19H repeals section 328A of the Applied LGA, which required the general manager to keep a register of copies of current declarations of political donation disclosures lodged with the Electoral Commission by or on behalf of councillors (including in their capacity as candidates for election as councillors). Under the changes made by the Ordinance, the general manager is not required to keep such a register.

Amending item 10—Item 19J of Schedule 4 (after subsection 331A(2))

This amending item inserts new subsection 331A(2A) in existing section 331A of the Applied LGA. New subsection 331A(2A) provides that a reference in section 331A to an election includes a reference to a countback election under section 291A of the Applied LGA.

The intention of this change is to clarify, for the avoidance of doubt, that certain people are authorised to deal with personal information within the meaning of the *Privacy Act 1988* (Cth) for the purposes of exercising their powers in relation to the preparation for, or the conduct of, countback elections.

Amending items 11 to 13—Item 19J of Schedule 4 (subsection 331A(3) (heading) and subsections 331A(3) and (4))

These amending items insert references to ‘holding’ information in existing section 331A of the Applied LGA. Specifically, the references are added in the heading to subsection 331A(3), in the text of subsections 331A(3) and (4) and in the heading to the table in subsection 331A(4).

Amending item 14—Item 19J of Schedule 4 (subsection 331A(4), table item 1, column 1)

This amending item amends existing item 19J of Schedule 4 to the Applied Laws Ordinance to omit the reference to the general manager in item 1 of the table in subsection 331A(4) of the Applied LGA and replace it with a reference to a council.

The change is consequential to changes made to section 296AA of the *Local Government Act 1993* (NSW) (LGA) by the *Local Government Amendment Act 2019* (NSW). The *Local Government Amendment Act 2019* (NSW) amended paragraph 296AA(1)(b) of the LGA to replace the reference to the general manager of the council with a reference to an electoral services provider engaged by the council.

Amending item 15—After item 45A of Schedule 4

This amending item inserts new items 45B to 45D in Schedule 4 to the Applied Laws Ordinance.

Items 45B—Subsection 739(4)

Item 45B replaces the words ‘The request’ in subsection 739(4) of the Applied LGA with the words ‘A request to the general manager’.

Prior to amendment, subsection 739(4) applied to requests made to either the general manager or the Electoral Commissioner under section 739 to omit or remove any matter that would disclose or discloses a person’s place of living from material that is available (or is to be made available) for public inspection.

The amendments limit the scope of subsection 739(4) so that it only applies to requests made to the general manager.

As amended, subsection 739(4) provides that a request to the general manager is to be in the form prescribed by the regulations, to give particulars of the relevant risk and to be verified by statutory declaration by the person making the request or by some other person.

This item is consequential to item 45C, which makes provision for the form to be used for requests made to the Electoral Commissioner to omit or remove any matter that would disclose or discloses a person's place of living from the residential roll for an area.

Item 45C—After subsection 739(4)

Item 45C inserts new subsection 739(4A) of the Applied LGA.

New subsection 739(4A) provides that, in the case of the residential roll for an area, a request to omit or remove any matter that would disclose or discloses a person's place of living is to be in the form approved by a senior Commonwealth officer, to give particulars of the relevant risk and to be verified by statutory declaration by the person making the request or by some other person.

Item 45D—At the end of section 739

Item 45D adds new subsection 739(9) in the Applied LGA which defines the term 'senior Commonwealth officer' for the purposes of section 739. This definition is relevant to who may approve the form to be used for requests to omit or remove any matter that would disclose or discloses a person's place of living from the residential roll for an area.

'Senior Commonwealth officer' means an APS employee (within the meaning of the *Public Service Act 1999* (Cth)) of the Norfolk Island Department who is classified as a Senior Executive Band 2 employee or a Senior Executive Band 3 employee under the Classification Rules (within the meaning of that Act) or is acting as such an employee and has responsibilities in relation to Norfolk Island.

'Norfolk Island Department' is defined in the Applied Interpretation Act to mean the Department of State of the Commonwealth responsible for the administration of the Norfolk Island Act (see amending item 3 of Schedule 1 to the Ordinance). At the time of writing, the relevant Commonwealth Department is the Department of Infrastructure, Transport, Regional Development and Communications.

Amending item 16—After item 46 of Schedule 4

This amending item inserts new items 46AA and 46AB in Schedule 4 to the Applied Laws Ordinance.

Items 46AA and 46AB—Item 14 of Schedule 6

Schedule 6 of the Applied LGA lists matters for which the regulations may make specific provision as mentioned in subsection 748(2).

Item 46AA omits the reference to the Local Government Register of Political Parties from item 14 of Schedule 6 to the Applied LGA because under the changes made by the Ordinance there is not a Local Government Register of Political Parties.

Item 46AB omits the reference to group voting squares from item 14 of Schedule 6 to the Applied LGA because under the changes made by the Ordinance group voting squares will not be included on ballot-papers.

Amending item 17—Item 47 of Schedule 4

This amending item repeals the previous item 47 of Schedule 4 to the Applied Laws Ordinance and substitutes new items 47, 47A and 47B.

Item 47—Dictionary

Item 47 replaces the definition of ‘final transition time’ in the Dictionary to the Applied LGA. This amendment does not change the substance of the law. It is included only for formatting reasons so that the amending items in the Applied Laws Ordinance remain in the correct order.

Item 47A—Dictionary (definition of *group voting square*)

Item 47A repeals the definition of ‘group voting square’ from the Dictionary to the Applied LGA because under the changes made by the Ordinance group voting squares will not be included on ballot-papers.

Item 47B—Dictionary

Item 47B replaces the definition of ‘Preparatory Election Ordinance’ in the Dictionary to the Applied LGA. This amendment does not change the substance of the law. It is included only for formatting reasons so that the amending items in the Applied Laws Ordinance remain in the correct order.

Amending item 18—Schedule 4 (heading specifying *Local Government (General) Regulation 2005*)

This amending item adds ‘(NSW)’ after the name of the regulation in the heading specifying the *Local Government (General) Regulation 2005* in Schedule 4 to the Applied Laws Ordinance to make it clear that the amendments listed under that heading are modifications to a NSW regulation as in force in Norfolk Island.

Amending item 19—After item 50 of Schedule 4

This amending item inserts new item 50A in Schedule 4 to the Applied Laws Ordinance.

Item 50A—Subclause 275(1)

Item 50A inserts a definition of ‘officer’ in subclause 275(1) of the Applied LGR. The definition provides that ‘officer’, in relation to a political party, means a person who is occupying or acting in an office or position concerned with the management of the party.

Amending item 20—After item 51 of Schedule 4

This amending item inserts new items 51A to 51C in Schedule 4 to the Applied Laws Ordinance.

Items 51A and 51B—Subclause 275(1) (definitions of *registered officer* and *registered political party*)

Item 51A repeals the definition of ‘registered officer’ from subclause 275(1) of the Applied LGR. Item 51B repeals the definition of ‘registered political party’ from subclause 275(1) of the Applied LGR.

The definitions are not needed because, under the proposed changes, political parties will not be registered for the purposes of local government elections.

Item 51C—Clause 276A

Item 51C repeals existing clause 276A of the Applied LGR and replaces it with new clause 276A.

Under existing clause 276A of the Applied LGR, a person is not qualified for appointment as an election official unless the person is enrolled for an electoral district under the *Electoral Act 2017* (NSW) (if the person resides in NSW), or the person is enrolled in any other state or territory of the Commonwealth as an elector for the House of Representatives (in any other case).

The intention of new clause 276A is that a person is not qualified for appointment as an election official unless the person is enrolled in a state or territory of the Commonwealth as an elector for the House of Representatives.

Amending item 21—After item 52 of Schedule 4

This amending item inserts new items 52A to 52H in Schedule 4 to the Applied Laws Ordinance.

Item 52A—Paragraph 288(2)(e)

Item 52A omits the reference to the creation of group voting squares from the notice requirements in paragraph 288(2)(e) of the Applied LGR.

Item 52B—Paragraph 289(1)(b)

Prior to amendment, paragraph 289(1)(b) of the Applied LGR provided that a candidate for election was to be proposed for nomination in a nomination paper in Form 3 by the registered officer of a registered political party.

Item 52B replaces the reference to the registered officer of a registered political party in paragraph 289(1)(b) of the Applied LGR with a reference to an officer of a political party.

The intention of the changes to paragraph 289(1)(b) is that nominations in Form 3 are able to be made by an officer of a political party.

Item 52C—Paragraph 290(1)(b)

Prior to amendment, paragraph 290(1)(b) of the Applied LGR provided that a candidate information sheet was to include the suburb, town or other locality of the proposed candidate's enrolled address within the meaning of the *Electoral Act 2017* (NSW).

Under the changes made by item 52C, the address to be included on a candidate information sheet is the address in respect of which the proposed candidate is enrolled on a Roll within the meaning of the *Commonwealth Electoral Act 1918* (Cth).

Item 52D—Paragraph 290(1)(c)

Item 52D replaces the reference to 'registered political party' in paragraph 290(1)(c) of the Applied LGR with a reference to 'political party'.

Paragraph 290(1)(c) as amended provides that a candidate information sheet is to include whether the proposed candidate is a member of any political party and, if so, the name of the party.

Item 52E—Subclause 290(2)

Item 52E replaces the reference to ‘the registered party’ in subclause 290(2) of the Applied LGR with a reference to ‘the political party’.

The intention of subclause 290(2) as amended is that a candidate information sheet can include the political party (if any) that has endorsed the proposed candidate.

Items 52F and 52G—Subclause 292(4)

Prior to amendment, subclause 292(4) of the Applied LGR provided that subclauses 292(2) and (3) did not apply in any case where the proposals for nomination for election referred to in those subclauses were made by the registered officer for a political party registered in the Local Government Register of Political Parties.

Item 52F replaces the reference to the registered officer in subclause 292(4) of the Applied LGR with a reference to an officer. Item 52G omits the reference in subclause 292(4) of the Applied LGR to registration in the Local Government Register of Political Parties.

The intention of subclause 292(4) as amended is that the provisions about multiple nomination proposals in subclauses 292(2) and (3) do not apply in any case where the proposals referred to were made by an officer of a political party.

Item 52H—Paragraph 293(1)(e)

Item 52H repeals paragraph 293(1)(e) of the Applied LGR.

Paragraph 293(1)(e) provided that a deposit in respect of the nomination of a candidate was to be returned if the name of the candidate appeared in a group on the ballot-papers and any candidate whose name appeared in that group was elected or received at least four per cent of the total number of formal first preference votes.

Under the changes made by the Ordinance, candidates will not be listed in a group on the ballot-papers, so paragraph 293(1)(e) is not required.

Amending item 22—Item 53 of Schedule 4

This amending item repeals the previous item 53 of Schedule 4 to the Applied Laws Ordinance and substitutes new items 53 to 53P.

The previous item 53 omitted a reference to NSW in subclause 295(4) of the Applied LGR. There is no longer a reference to NSW in that subclause, so the item is not needed.

Subclause 295(4) provides that, within six days after the nomination day, the returning officer (in relation to an election administered by an electoral services provider) is to deliver or send to the Electoral Commissioner copies of all nomination papers (including the candidate information sheets that accompany the nomination papers).

Item 53—Clause 298 (note)

New item 53 repeals the note to clause 298 of the Applied LGR.

The note to clause 298 referred to Subdivision 4 of Division 7 of Part 11, which provided for mobile polling booths and mobile pre-polling. Item 55C repeals that Subdivision, so the reference to that Subdivision in the note to clause 298 is not needed.

Item 53A—Paragraphs 300(2)(f) and (g)

Item 53A repeals paragraphs 300(2)(f) and (g) of the Applied LGR.

Subclause 300(2) provides for the information that must be included in a notice of contested election published by the election manager. Paragraph 300(2)(f) provided that the notice must include the names of the political parties (if any) that must be printed adjacent to the names of the candidates on the ballot-papers. Paragraph 300(2)(g) provided that the notice must include whether the word ‘Independent’ must be printed adjacent to the name of any candidate on the ballot-papers.

Under the changes made by the Ordinance, the notice of contested election is not required to include information about such matters.

Item 53B—Clause 302

Item 53B repeals the previous clause 302 of the Applied LGR and substitutes a new clause 302.

Clause 302 is about the order of candidates on ballot-papers. The amendments to clause 302 omit the references to ungrouped candidates and groups of candidates on ballot-papers. They also omit a reference to clause 304, as a consequence of the repeal of clause 304 by item 53E.

Items 53C and 53D—Clause 303 (heading) and Subclause 303(1)

Clause 303 of the Applied LGR is about ballots for determining the order of candidates on ballot-papers.

Items 53C and 53D remove references in the heading to clause 303 and in subclause 303(1) to the candidates being “ungrouped”.

Item 53E—Clause 304

Item 53E repeals clause 304 of the Applied LGR. Clause 304 dealt with ballots for determining the order of groups of candidates on ballot-papers. Under the changes made by the Ordinance, candidates will not be grouped on ballot-papers. Therefore, clause 304 is not required.

Items 53F and 53G—Subclauses 305(3), (4), (5) and (6)

Item 53F omits the words ‘in which there are no groups’ from subclause 305(3) of the Applied LGR.

Subclause 305(3) deals with printing ballot-papers for an election in which there are no groups. Under the changes made by the Ordinance there will be no groups on ballot-papers, so the words ‘in which there are no groups’ are not required.

Item 53G repeals subclauses 305(4), (5) and (6) of the Applied LGR. Subclauses 305(4), (5) and (6) contained requirements for printing ballot-papers for an election in which there were groups of candidates recorded on the ballot-papers. Under the changes made by the Ordinance, candidates will not be grouped on ballot-papers, therefore subclauses 305(4), (5) and (6) are not required.

Item 53H—Subclause 305(8)

Item 53H repeals the previous subclause 305(8) of the Applied LGR (including the note) and replaces it with a new subclause 305(8). New subclause 305(8) provides that the ballot-papers are to be in Form 4.

The changes made by this item omit references to elections in which groups are recorded on the ballot-papers. The changes also remove references to Forms 5 and 6, which provided the format for ballot-papers containing groups.

Item 53J—Subclause 312(2)

Item 53J omits the reference to Forms 5 and 6 from subclause 312(2) of the Applied LGR.

Forms 5 and 6 provided the format for ballot-papers containing groups. Under the changes made by the Ordinance, groups will not be printed on ballot-papers, so Forms 5 and 6 are not required.

Item 53K—Clause 313

Item 53K renumbers clause 313 of the Applied LGR as subclause 313(1). This amendment is consequential to item 53M, which adds a subclause 313(2).

Item 53L—Paragraph 313(g)

Item 53L omits the reference to the *Crimes (Administration of Sentences) Act 1999* from paragraph 313(g) of the Applied LGR.

Prior to amendment paragraph 313(g) provided that ‘correctional centre’ had the same meaning as in the *Crimes Administration of Sentences) Act 1999* (NSW). That Act is not in force in Norfolk Island. Therefore, item 53M adds a definition of ‘correctional centre’ that refers to the *Sentencing Act 2007* (NI), which is in force in Norfolk Island.

Item 53M—At the end of clause 313

Item 53M adds a new subclause (2) in clause 313 of the Applied LGR.

New subclause 313(2) provides that, for the purposes of clause 313, ‘correctional centre’ includes a police station or a court cell complex in which an offender is held in custody, and a detention centre within the meaning of the *Sentencing Act 2007* of Norfolk Island.

This definition is included in place of the reference to the meaning of ‘correctional centre’ in the *Crimes Administration of Sentences) Act 1999* (NSW), since that Act is not in force in Norfolk Island (see item 53L).

Items 53N and 53P—Clauses 315 and 316 and Subclause 317(1)

Item 53N repeals the previous clauses 315 and 316 of the Applied LGR and substitutes a new clause 316.

Under the previous clause 315 of the Applied LGR, an elector who was registered as a registered early voter (postal) within the meaning of the *Electoral Act 2017* (NSW) was taken to be registered as a registered early voter (postal) for the purposes of the *Local Government Act 1993* (NSW) (NI) without further application under the latter Act.

Prior to amendment, clause 316 provided that, in the case of an election administered by an electoral services provider, the Electoral Commissioner must forward to the election manager a list of those registered early voters (postal) registered under the *Electoral Act 2017* (NSW) who were entitled to vote at an election in respect of a ward or area.

New clause 316 provides that an elector who duly applies for a postal vote is entitled to make a postal vote in the ward or area to which the elector's application relates.

The effect of new clause 316 is that an elector who is registered as a registered early voter (postal) within the meaning of the *Electoral Act 2017* (NSW) is not automatically eligible for a postal vote for local government elections in Norfolk Island.

Item 53P omits from subclause 317(1) of the Applied LGR the reference to the list of registered early voters (postal) registered under the *Electoral Act 2017* (NSW) on which an elector's name appears.

Amending item 23—After item 55 of Schedule 4

This amending item inserts new items 55A to 55R in Schedule 4 to the Applied Laws Ordinance.

Items 55A and 55B—Subclause 323(5) and Subclause 330(6)

Item 55A omits the reference to Forms 5 and 6 from subclause 323(5) of the Applied LGR. Item 55B omits the reference to Forms 5 and 6 from subclause 330(6) of the Applied LGR.

Forms 5 and 6 provided the format for ballot-papers containing groups. Under the changes made by the Ordinance, Forms 5 and 6 are not required.

Item 55C—Subdivision 4 of Division 7 of Part 11

Item 55C repeals Subdivision 4 of Division 7 of Part 11 of the Applied LGR.

Subdivision 4 of Division 7 of Part 11 was about mobile polling places in hospitals, nursing homes, retirement villages or similar facilities, and mobile booths for pre-poll voting in remote local government areas.

The Subdivision is repealed because mobile polling is not required in Norfolk Island due to its small size. The provisions relating to declared institutions in Subdivision 3 of Division 7 of Part 11 can be used instead for residents in the local health and residential aged care facility.

Item 55D—Subclause 337(4E)

Item 55D omits the reference to Part 4 of the *Oaths Act 1900* in subclause 337(4E) of the Applied LGR and replaces it with a reference to the *Statutory Declarations Act 1959* (Cth).

The *Oaths Act 1900* (NSW) is not in force in Norfolk Island, whereas the *Statutory Declarations Act 1959* (Cth) does apply in Norfolk Island. Under the changes made by the Ordinance, a declaration made by a scrutineer under clause 337 is subject to the *Statutory Declarations Act 1959* (Cth).

Item 55E—Clause 345 (note)

Item 55E omits the words ‘where the voter marks, crosses or ticks a group voting square, or’ from the note to clause 345 of the Applied LGR.

The note to clause 345 refers to section 308C of the Applied LGA. The amendment to the note is consequential to the change to the content of section 308C made by item 19GA.

Item 55F—Subparagraph 348(1)(e)(i)

Item 55F omits the reference to a group of candidates from subparagraph 348(1)(e)(i) of the Applied LGR.

Prior to amendment, subparagraph 348(1)(e)(i) referred to first preferences recorded for each candidate and group of candidates on the ballot-papers. Under the changes made by the Ordinance, groups of candidates will not be recorded on the ballot-papers, so the reference in subparagraph 348(1)(e)(i) is not needed.

Item 55G—Subclause 356A(1) (definition of *recognised group of candidates*)

Item 55G amends the definition of ‘recognised group of candidates’ in subclause 356A(1) of the Applied LGR to omit the words ‘to have their names included in a group on the ballot-papers’ and replace them with the words ‘to be recognised as a group’.

The definition of ‘recognised group of candidates’ refers to section 308A of the Applied LGA. The change by item 55G to the definition is consequential to the change to section 308A made by item 19GA.

Item 55H—Subparagraphs 356B(c)(iii) and (iv)

Item 55H omits the word ‘registered’ from subparagraphs 356B(c)(iii) and (iv) of the Applied LGR.

The amendment replaces references to ‘registered political party’ with references to ‘political party’. Under the changes made by the Ordinance, political parties will not be registered for the purposes of local government elections. Paragraph 356(c) as amended provides that electoral material contravenes Subdivision 2 of Division 9A of Part 11 if the material contains information that is incorrect or misleading about whether a person is or is not a member of a political party or recognised group of candidates or endorsed by a political party.

Items 55J, 55K and 55L—Subparagraph 356B(d)(i) and Subparagraph 356B(d)(ii)

Item 55J omits the reference in subparagraph 356B(d)(i) of the Applied LGR to a party included in the Local Government Register of Political Parties and replaces it with a reference to a political party. Item 55K omits the reference to a party included in that Register from subparagraph 356B(d)(ii) of the Applied LGR and replaces it with a reference to a political party. Item 55L omits the reference to the Register from subparagraph 356B(d)(ii) of the Applied LGR.

Under the changes made by the Ordinance, political parties will not be registered in a Local Government Register of Political Parties. Paragraph 356B(d) as amended provides that electoral material contravenes Subdivision 2 of Division 9A of Part 11 if the material uses the name, an abbreviation or acronym of the name or a derivative of the name of a political party (or a name or abbreviation resembling such a name, abbreviation, acronym or derivative) in a way that is intended or likely to mislead any elector, or uses the word ‘Independent’ and the name or an abbreviation or acronym of the name or a derivative of the name of a political party in a way that suggests or indicates an affiliation with that party (unless the name of the party includes the word ‘Independent’).

Items 55M and 55N—Subclause 356C(2) (heading) and Subclause 356C(2)

Item 55M omits the word ‘registered’ from the heading to subclause 356C(2) of the Applied LGR. Item 55N omits the word ‘registered’ from subclause 356C(2) of the Applied LGR.

Under the changes made by the Ordinance, political parties will not be registered for the purposes of local government elections. Subclause 356C(2) as amended provides that a how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a political party does not comply with clause 356C (Non-complying electoral material—additional provisions regarding how-to-vote cards) if the party has endorsed no candidate for the election or the voting directions give a preference to a candidate not endorsed by the political party without first giving higher preferences to all candidates endorsed by it.

Item 55P—Subclause 356C(5)

Item 55P repeals subclause 356C(5) of the Applied LGR.

Subclause 356C(5) was about non-complying how-to-vote cards using group voting squares. Under the changes made by the Ordinance, group voting squares will not be included on the ballot-papers, therefore subclause 356C(5) is not required.

Items 55Q and 55R—Subclause 356C(6)

Items 55Q and 55R omit references to group voting squares from subclause 356C(6) of the Applied LGR.

Subclause 356C(6) is about non-complying how-to-vote cards without group voting squares.

Under the changes made by the Ordinance, group voting squares will not be included on the ballot-papers. Therefore, the words specifying group voting squares are not required.

Amending item 24—After item 57 of Schedule 4

This amending item inserts new items 57A and 57B in Schedule 4 to the Applied Laws Ordinance.

Item 57A—Subclause 356G(5) (definition of *associated entity*)

Item 57A omits the word ‘registered’ from the definition of ‘associated entity’ in subclause 356G(5) of the Applied LGR, so that the reference to ‘registered political parties’ is a reference to ‘political parties’.

Item 57B—Subclause 356G(5) (paragraphs (c) and (d) of the definition of *electoral participant*)

Item 57B repeals the previous paragraphs (c) and (d) of the definition of ‘electoral participant’ in subclause 356G(5) of the Applied LGR and replaces them with new paragraphs (c) and (d).

Item 57B replaces the references to ‘registered political party’ with references to ‘political party’ and replaces the reference to a ‘registered officer’ of a political party with a reference to ‘an officer’ of a political party. As amended, the definition of ‘electoral participant’ includes a political party and an officer of a political party.

Amending item 25—After item 58 of Schedule 4

This amending item inserts new items 58A to 58J in Schedule 4 to the Applied Laws Ordinance.

Item 58A—Clause 356N (note)

Item 58A repeals the note to clause 356N of the Applied LGR. The note referred to the *Environmental Planning and Assessment Act 1979* (NSW) and the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW). That Act and policy are not in force in Norfolk Island, therefore the note is not required.

Item 58B—Paragraph 356P(2)(a)

Item 58B omits the reference in paragraph 356P(2)(a) of the Applied LGR to the registered officer of a registered political party and replaces it with a reference to an officer of a political party.

As amended, paragraph 356P(2)(a) provides that an application for registration of electoral material may be made by an officer of a political party on behalf of the party.

Item 58C—Paragraph 356P(2)(b)

Item 58C replaces the reference in paragraph 356P(2)(b) of the Applied LGR to the first candidate listed with a reference to a candidate.

As amended, paragraph 356P(2)(b) provides that an application for registration of electoral material may be made by a candidate in a recognised group of candidates on behalf of the group.

Item 58D—Paragraph 356P(3)(a)

Item 58D omits the word ‘registered’ from paragraph 356P(3)(a) of the Applied LGR.

As amended, paragraph 356P(3)(a) provides that an application for registration of electoral material on behalf of an incorporated or unincorporated body (other than a political party or a recognised group of candidates) may be made by an officer or representative of the body who is not a candidate.

Items 58E and 58F—Paragraph 356Q(3)(f)

Item 58E omits the words ‘registered political party’ from paragraph 356Q(3)(f) of the Applied LGR and substitutes the words ‘political party’. Item 58F omits the reference in paragraph 356Q(3)(f) of the Applied LGR to the registered officer of the party or the first candidate listed in the group and replaces it with a reference to an officer of the party or a candidate in the group.

As amended, paragraph 356Q(3)(f) provides that electoral material must be refused registration if the material contains a representation or indication that a candidate is a member of, pursues or supports any or all of the objects or platform of, or is affiliated in some way with, a particular political party or recognised group of candidates, and the application was not made by or with the consent of an officer of the party or a candidate in the group.

Item 58G—Paragraphs 367(a) and (b)

Item 58G omits the references in paragraphs 367(a) and (b) of the Applied LGR to a place being used for voting under clause 332A of the Applied LGR.

Clause 332A is in Subdivision 4 of Division 7 of Part 11. This amendment is consequential to the repeal of that Subdivision by item 55C.

Item 58H—Subclause 369(1)

Item 58H omits the reference to a mobile booth from subclause 369(1) of the Applied LGR.

Mobile booths are dealt with in Subdivision 4 of Division 7 of Part 11. This amendment is consequential to the repeal of that Subdivision by item 55C.

Item 58J—Paragraphs 393(1)(a) and (b)

Item 58J omits the word ‘registered’ from paragraphs 393(1)(a) and (b) of the Applied LGR. This has the effect of replacing references to ‘registered political party’ with references to ‘political party’.

As amended, clause 393(1) provides that, after an election, the election manager must ensure that each political party that so requests, and each councillor and mayor not a member of a political party who makes a request in respect of his or her ward or area, as appropriate, is provided with election information containing the names and the addresses of electors who voted (other than silent electors), whether they voted personally or by post and, if they voted at a polling place for the ward or area for which the electors were enrolled, the location of that polling place.

Amending item 26—After item 59 of Schedule 4

This amending item inserts new items 59A to 59H in Schedule 4 to the Applied Laws Ordinance.

Item 59A—Paragraph 393B(1)(b)

Item 59A repeals paragraph 393B(1)(b) of the Applied LGR.

Paragraph 393B(1)(b) provided that a council must not determine a controversial development application during a caretaker period, except in certain circumstances.

The effect of this amendment is that the prohibition does not apply in Norfolk Island.

Item 59B—Subclause 393B(3) (definition of *controversial development application*)

Item 59B repeals the definition of ‘controversial development application’ from subclause 393B(3) of the Applied LGR.

The definition of ‘controversial development application’ is not required because, under the changes made by the Ordinance, the limitation on a council determining controversial development applications during a caretaker period does not apply (see item 59A).

Items 59C, 59D and 59E—Subclause 2(2) and Subclause 2(2A) of Schedule 9A

Item 59C replaces the reference in subclause 2(2) of Schedule 9A to the Applied LGR to ‘The notice’ with a reference to ‘A notice’. Item 59D omits the words ‘or appointment made’ from subclause 2(2) of Schedule 9A to the Applied LGR. Item 59E inserts new subclause 2(2A) of Schedule 9 to the Applied LGR.

Clause 2 of Schedule 9A sets out the process to be followed after a casual vacancy occurs that is to be filled by a countback election. The changes modify the timeframes applicable to particular steps of the process.

Subclause 2(1) provides that, after a casual vacancy occurs that is to be filled by a countback election, notice of the vacancy must be given to the returning officer or substitute returning officer who conducted the election (the original election) at which the person whose departure created the casual vacancy was elected, or, if it is not possible for that returning officer or substitute returning officer to conduct the countback election, a new returning officer must be appointed in accordance with the Applied LGA.

Prior to amendment, subclause 2(2) provided that the notice under subclause 2(1) must be given or the appointment made within 14 days of notification of the casual vacancy.

Under the changes made by the Ordinance, the notice to the returning officer or substitute returning officer who conducted the original election still needs to be given within 14 days of notification of the casual vacancy. If it is not possible for that returning officer or substitute returning officer to conduct the countback election, a new returning officer has to be appointed ‘as soon as practicable’ after the electoral services provider or Electoral Commissioner is notified of the casual vacancy.

Item 59F—Paragraph 2(5)(b) of Schedule 9A

Item 59F replaces the reference to 49 days in paragraph 2(5)(b) of Schedule 9A to the Applied LGR with a reference to three months.

Subclause 2(5) of Schedule 9A is about the date for the conduct of a countback election. Prior to amendment, subclause 2(5) provided that the date for the conduct of a countback election must be the date which in the opinion of the returning officer was the earliest practicable date to conduct the countback election, but was at least 14 days after the date of the publication of a notice on the relevant council's website, and not more than 49 days after the date of the casual vacancy occurring.

Under the changes made by the Ordinance, the date for the conduct of the countback election must be not more than three months after the date of the casual vacancy occurring.

Item 59G—At the end of clause 2 of Schedule 9A

Item 59G adds new subclauses 2(6) and (7) in Schedule 9A to the Applied LGR.

Subclause 2(6) provides that, if the Norfolk Island Minister is of the opinion that it would be impractical or inconvenient to hold a countback election as provided by subclause 2(5), the Norfolk Island Minister may, by order published in the Gazette, appoint a later date for the countback election. 'Norfolk Island Minister' is defined in the Applied Interpretation Act to mean the Commonwealth Minister who administers the Norfolk Island Act.

Subclause 2(7) provides that the later date must not be more than three months later than the last day on which the countback election could otherwise be held under subclause 2(5).

The intention of items 59F and 59G taken together is that there is a maximum of six months available to conduct a countback election if required.

Item 59H—Paragraph 3(c) of Schedule 10

Item 59H omits the reference in paragraph 3(c) of Schedule 10 to the Applied LGR to the registered officer for a political party registered in the Local Government Register of Political Parties and replaces it with a reference to an officer of a political party.

As amended, paragraph 3(c) of Schedule 10 provides that, in relation to a constitutional referendum or council poll, scrutineers are to be appointed not by candidates but by the returning officer at the request of the general manager or mayor of the relevant council, or by an officer of a political party, or by the Electoral Commissioner.

Amending item 27—Item 61 of Schedule 4

This amending item repeals the previous item 61 of Schedule 4 to the Applied Laws Ordinance and replaces it with new item 61.

The previous item 61 of Schedule 4 to the Applied Laws Ordinance amended note 2 in Form 1 in Schedule 11 to the Applied LGR.

Item 61—Schedule 11 (Form 1, note 2)

New item 61 amends note 2 in Form 1 in Schedule 11 to the Applied LGR to modify the details about how resident electors must make an application to have their address or other

matter removed from the electoral roll. As amended, the note provides that resident electors who wish to have their address or other matter removed from the electoral roll must make an application using the approved form referred to in subsection 739(4A) of the Applied LGA. Subsection 739(4A) of the Applied LGA is inserted by item 45C.

Amending item 28—After item 62 of Schedule 4

This amending item inserts new items 62A to 62C in Schedule 4 to the Applied Laws Ordinance. Items 62A to 62C amend Form 2 in Schedule 11 to the Applied LGR, which is the form to be used for nomination proposals by electors.

Item 62A—Schedule 11 (Form 2, item 4 of the form of consent)

Item 62A repeals item 4 of the form of consent in Form 2 in Schedule 11 to the Applied LGR.

Item 4 of the form of consent required the person proposed for nomination to state whether they requested the word ‘Independent’ be printed adjacent to their name on the ballot-papers. The effect of item 62A is that nominees are not able to request the word ‘Independent’ to be printed on the ballot-papers. This is consistent with the changes under which the names and abbreviations of political parties will not be printed on the ballot-papers.

Item 62B—Schedule 11 (Form 2, item 5 of the form of consent)

Item 62B renumbers item 5 of the form of consent in Form 2 in Schedule 11 to the Applied LGR as item 4. This amendment is consequential to item 62A, which repeals item 4 of the form of consent.

Item 62C—Schedule 11 (Form 2, note 4 of the form of consent)

Item 62C amends note 4 of the form of consent in Form 2 in Schedule 11 to the Applied LGR, to replace the reference to ‘item 5’ with a reference to ‘item 4’. This change is consequential to the renumbering of item 5 of the form of consent by item 62B.

Amending item 29—Item 63 of Schedule 4

This amending item repeals the previous item 63 of Schedule 4 to the Applied Laws Ordinance and substitutes new item 63.

Item 63—Schedule 11 (Form 2, paragraph (e) of the statistical information sheet)

Item 63 replaces a reference to NSW with a reference to Norfolk Island in paragraph (e) of the statistical information sheet in Form 2 in Schedule 11 to the Applied LGR.

As amended, paragraph (e) of the statistical information sheet requires the person proposed for nomination to declare their experience as a councillor in Norfolk Island.

Item 63 relates to item 70, which makes the same change to Form 3.

Amending item 30—At the end of Schedule 4

This amending item adds new items 64 to 73 at the end of Schedule 4 to the Applied Laws Ordinance.

Item 64—Schedule 11 (Form 2, paragraph (k) of the statistical information sheet)

Item 64 repeals existing paragraph (k) of the statistical information sheet in Form 2 in Schedule 11 to the Applied LGR and replaces it with new paragraph (k). This amendment omits the reference to political parties registered under the *Electoral Act 2017* (NSW) or under the *Local Government Act 1993* (NSW) (NI). Under the changes made by the Ordinance, political parties will not be registered for the purposes of local government elections.

Under new paragraph (k), persons proposed for nomination still need to declare the political party or parties of which they are a member.

Item 64 relates to item 71, which makes the same change to Form 3.

Items 65 and 66—Schedule 11 (Form 3)

Form 3 in Schedule 11 to the Applied LGR is the form to be used for nomination proposals by political parties.

Item 65 omits the reference in the heading to Form 3 to the registered officer for the party and replaces it with a reference to an officer of the party. Item 66 omits the reference in Form 3 in Schedule 11 to the Applied LGR to the registered officer for the political party (registered in the Local Government Register of Political Parties) and replaces it with a reference to an officer of the political party.

These amendments are necessary because, under the changes made by the Ordinance, parties will not be registered for the purposes of local government elections but are able to nominate candidates for an election.

Item 67—Schedule 11 (Form 3)

Item 67 omits the following words from Form 3 in Schedule 11 to the Applied LGR: “I request that the *registered name/*abbreviated name of the party be printed adjacent to the candidate’s name on the ballot-papers [*cross out whichever does not apply].”.

This amendment is necessary because, under the changes made by the Ordinance, party names and abbreviations will not be printed on the ballot-papers.

Items 68 and 69—Schedule 11 (Form 3)

Item 68 omits a reference to a registered officer in Form 3 in Schedule 11 to the Applied LGR and replaces it with a reference to an officer. Item 69 omits a reference to the signature of a registered officer in Form 3 in Schedule 11 to the Applied LGR and replaces it with a reference to the signature of an officer.

These amendments are necessary because, under the changes made by the Ordinance, parties will not be registered for the purposes of local government elections but are able to nominate candidates for an election.

Item 70—Schedule 11 (Form 3, paragraph (e) of the statistical information sheet)

Item 70 replaces a reference to NSW with a reference to Norfolk Island in paragraph (e) of the statistical information sheet in Form 3 of Schedule 11 to the Applied LGR.

As amended, paragraph (e) of the statistical information sheet requires the person proposed for nomination to declare their experience as a councillor in Norfolk Island.

Item 70 relates to item 63, which makes the same change to Form 2.

Item 71—Schedule 11 (Form 3, paragraph (k) of the statistical information sheet)

Item 71 repeals existing paragraph (k) of the statistical information sheet in Form 3 in Schedule 11 to the Applied LGR and replaces it with new paragraph (k). This amendment omits the reference to political parties registered under the *Electoral Act 2017* (NSW) or under the *Local Government Act 1993* (NSW) (NI). Under the changes made by the Ordinance, political parties will not be registered for the purposes of local government elections.

Under new paragraph (k), persons proposed for nomination still need to declare the political party or parties of which they are a member.

Item 71 relates to item 64, which makes the same change to Form 2.

Item 72—Schedule 11 (Form 4)

Item 72 omits the following words from Form 4 in Schedule 11 to the Applied LGR: ‘*[If the returning officer has accepted an application to print the name of a political party or the word “Independent” adjacent to the name of a candidate, the name or word must be printed there.]*’.

Form 4 sets out the format for ballot-papers. The amendment made by item 72 is needed because, under the changes made by the Ordinance, names of political parties and the word ‘Independent’ will not be printed on ballot-papers.

Item 73—Schedule 11 (Forms 5 and 6)

Item 73 repeals Forms 5 and 6 from Schedule 11 to the Applied LGR.

Forms 5 and 6 set out the format of ballot-papers containing groups. Under the changes made by the Ordinance, groups will not be included on the ballot-papers, therefore these forms are not required.