###### **EXPLANATORY STATEMENT**

###### Issued by the authority of the Minister for Regional Development, Local Government and Territories

*Norfolk Island Act 1979*

***Norfolk Island Continued Laws Amendment (Fire Control) Ordinance 2023***

*Overview*

The *Norfolk Island Act 1979* (the NI Act) deals with the governance of Norfolk Island (NI). NI is a Commonwealth-administered territory with no state legislature. Section 19A of the NI Act provides that the Governor-General may make ordinances for the peace, order and good government of NI. The *Norfolk Island Continued Laws Amendment (Fire Control) Ordinance 2023*(the Ordinance)is made under section 19A of the NI Act*.*

The purpose of the Ordinance is to update the *Fire Control Act 2000* (NI) (Fire Control Act). The Fire Control Act is a continued law of Norfolk Island under the NI Act and, as such, may be amended or repealed by an ordinance made under section 19A of the NI Act. The Fire Control Act regulates the use of fire, gives the Chief Fire Control Officer (CFCO) and other people certain powers and functions, and sets out the restrictions and obligations for those lighting fires on-island.

Previously, the permit system under the Fire Control Act only applied during periods of acute fire danger declared by the Administrator, including days on which a total fire ban had been declared. The Ordinance extends the fire permit system, including by requiring permits year-round for fires to clear land, burn firebreaks, and burn large quantities of green waste. This provides the CFCO with greater control and oversight over fires on-island.

The CFCO will be able to declare total fire bans and fire danger periods, during which permits will be required to light most fires. Exemptions apply to the use of barbecues and stoves, fireplaces and incinerators, subject to particular requirements.

The Ordinance creates several new offences, including for using fires to clear land and to burn solid waste (except green waste). The Ordinance would also:

* establish obligations and penalties on land owners relating to fires, such as a requirement on landowners and occupiers to notify fire authorities about uncontrolled fires on their land;
* allow the CFCO to give directions to prevent fires;
* update the applicable penalties for breaching any requirements in the legislation;
* modernise language; and
* extend the term of the CFCO from 3 years to 5 years.

The maximum financial penalties that may be imposed for a range of fire-related offences have increased so as to be more proportionate to the existing maximum penalties of imprisonment. They also better reflect the serious risks an uncontrolled fire poses to the community, act as a deterrent for dangerous behaviour and align with modern standards.

*Legislative framework*

Norfolk Island is a Commonwealth administered territory with no state legislature. The Ordinance-making power in section 19A of the NI Act was enacted in 2015 by the Australian Parliament, and grants the Governor-General the power to make ordinances for the peace, order and good government of Norfolk Island. These types of plenary power provisions have existed in the *Christmas Island Act 1958* and the *Cocos (Keeling) Islands Act 1956* as far back as 1973.

Ordinances made for the external territories are unlike other types of delegated legislation at the Commonwealth level. Such ordinances generally deal with state-type matters, including matters relating to the protection of life, which are not normally dealt with in other types of Commonwealth delegated legislation. Consequently, deviation from strict compliance with Commonwealth guidance framed in the context of general Commonwealth-level delegated legislation is justifiable and consistent with Parliament’s intent regarding section 19A.

*Consultation*

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) consulted broadly about the measures included in the Ordinance. In particular, the department worked closely with the Norfolk Island CFCO and Norfolk Island Regional Council in developing the Ordinance.

The department released a public consultation paper in 2020 for comment from 10 October to 9 November 2020 outlining proposed changes to the Fire Control Act, which received one submission. The department and Norfolk Island Administrator also hosted two face-to-face community consultation sessions in March 2021 in response to the submissions concerns about the proposal to increase regulation over the burning of green waste.

In August 2022, targeted feedback was sought from the Norfolk Island Regional Council, Norfolk Island Chief Fire Control Officer and Parks Australia.

An exposure draft of the Ordinance was released to the public for a two-week consultation period between August and September 2022. A small number of submissions were received, which again raised concerns about the increased regulation of burning green waste and fees for permits. Notwithstanding this feedback, the Ordinance introduces new permit requirements for the burning of large amounts of green waste. This is necessary and proportionate, given that many bushfires on island have originated from the burning of green waste and burning off. However, the Ordinance was amended to provide greater clarity on the volume of green waste that may be burnt without first obtaining a permit. The Ordinance does not impose an obligation to charge for permits.

A submission was also received suggesting that imposing a legal obligation on a landowner to report fires on adjoining land was too burdensome. The obligation was consequently removed.

The Attorney-General’s Department was also consulted on the final stages of the Ordinance, including on the character of declarations that may be made by the CFCO under the Ordinance. No concerns were raised. The Attorney-General’s Department confirmed the declarations under the Ordinance are not legislative, as they do not meet the definition of a legislative instrument in subsection 8(4) of the *Legislation Act 2003*.

*Regulatory Impact Statement*

The Office of Best Practice Regulation considers the Ordinance is unlikely to have a more than minor regulatory impact. As such, the preparation of a Regulation Impact Statement is not required (ref. OBPR22-03477).

*Offences and Penalties*

Certain offences created by the Ordinance are of a sufficiently serious nature that they warrant the imposition of penalties greater than 50 penalty units and/or involving terms of imprisonment. Specifically, sections 21A(1), 21B, 21C(1), 22A(1), 22B, 23(1), 23A, 23B(1), 24, 25A and 26A provide a term of imprisonment, to reflect the seriousness of the conduct and importance of effective deterrence. Sections 21A(1) and 21C(1) also impose maximum penalties in excess of 50 penalty units. These high penalties are engaged for the most serious offences giving rise to a danger of harm or death to another person, or damage to property or the environment. Offences in the Fire Control Act are enforceable by the Norfolk Island police.

While it is generally more appropriate to create offence provisions imposing significant penalties (including terms of imprisonment) in Acts of Parliament rather than in subordinate legislation, ordinances made for the external territories are unlike other types of delegated legislation at the Commonwealth level. Such ordinances often deal with state-type matters which are not normally dealt with in other types of Commonwealth delegated legislation.

The plenary power provided in the NI Act authorises the making of ordinances that create offences and does not limit the size or nature of the penalties that can be imposed. For this reason, the power is distinguishable from the general Commonwealth policy that delegated legislation should not impose penalties of imprisonment or fines exceeding 50 penalty units.

The Ordinance uses a ratio of 15 units to 6 months imprisonment. This deviates from the Attorney-General’s Department’s Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (the Guide) recommended ratio of 5 units to 1 month imprisonment. This is because the penalty unit for Norfolk Island of $100 is lower than the Commonwealth penalty unit (but similar to the value of penalty units in state jurisdictions). The ratio employed by the Ordinance ensures that fines are more proportionate to the maximum terms of imprisonment and in alignment with penalties in operation across similar Australian communities. For example, under section 21A of the Ordinance, the penalty for lighting, using or maintaining a fire in the open air during a total fire ban is 60 penalty units ($6,000) or imprisonment for 2 years or both. In Queensland, the equivalent offence under section 86F of the *Fire and Emergency Services Act 1990* (QLD) carries a penalty of 50 penalty units ($7,150) or 6 months imprisonment. Contravention of the same offence in the Australian Capital Territory may result in a fine of 200 penalty units ($32,000), imprisonment for 2 years, or both.

*Evidential burden of proof*

It is a long-standing principle of criminal law that a defendant is presumed to be innocent and that the prosecution must prove every element of an offence relevant to the person’s guilt. A defence reverses the burden of proof that would usually apply in an offence, by requiring the defendant to discharge the burden of proof for one or more elements. Depending on the burden that is imposed, a defence requires the defendant to raise evidence about the matter (an evidential burden) or to positively prove the matter (a legal burden). Consequently, it is only appropriate to place an issue in a defence in certain circumstances.

Subsection 23B(2) of the Ordinance provides a defence to the burning of green waste in contravention of subsection 23B(1), where the burning is for a purpose other than disposing of the waste. An evidential burden is placed on the individual seeking to rely on the defence.

An evidential burden has been placed on the defendant in this provision as the conduct prohibited by the offence in subsection 23B(1) is primarily aimed at the protection and preservation of the environment, property, and life – both of the person involved, and of others such as bystanders or emergency services first-responders who may be involved in attending to the matter. Many bushfires on Norfolk Island have arisen from escapes from the burning of green waste and burning off. For these laws to achieve their critical public purpose of safety and preservation of life, they have been framed so as to place a burden on the defendant to prove a matter of defence. Furthermore, the purpose for which green waste is being burnt is something that is peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

*Other matters*

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

The Ordinance commences the day after it is registered.

A Statement of Compatibility with Human Rights follows.

A detailed explanation of the 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 Continued Laws Amendment (Fire Control) Ordinance 2023***

The Norfolk Island Continued Laws Amendment (Fire Control) Ordinance 2023 (the Ordinance) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Bill/Disallowable Legislative Instrument**

The *Fire Control Act 2000* (NI) (Fire Control Act) regulates the use of fire, gives Norfolk Island’s Chief Fire Control Officer (CFCO) and other people certain powers and functions, and sets out the restrictions and obligations for lighting fires on Norfolk Island. The Fire Control Act is a continued law of Norfolk Island under the *Norfolk Island Act 1979* (Cth) (the NI Act) and, as such, may be amended or repealed by an ordinance made under section 19B of the NI Act.

The Ordinance updates the Fire Control Act by extending the existing permit system, modernising penalty provisions, extending the term of the CFCO, and updating the regulations, restrictions and obligations for lighting fires on-island.

The Ordinance is made under section 19A of the NI Act. This provision empowers the Governor‑General to make ordinances for the peace, order and good government of Norfolk Island.

### **Human rights implications**

This Disallowable Legislative Instrument engages the following rights:

* The right to privacy under Article 17 ICCPR

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*Powers of entry*

Section 19 of the Ordinance engages the right to privacy, in that it gives powers to the CFCO, a Fire Officer, a Volunteer Fire Officer or an authorised person to enter land for the purpose of inspecting, extinguishing, or stopping the progress of a suspected fire.

Section 8.6 of the Attorney-General’s Department’s Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (Entry and Search Without a Warrant), referring to the *Senate Inquiry into Entry and Search Provisions in Commonwealth Legislation,* recommends that legislation should only authorise entry onto premises without consent or a warrant in emergency situations or where there is a serious threat or danger to public health.

Under the terms of the Ordinance, land can only be entered for the purpose of inspecting, extinguishing, or stopping the progress of, a fire or suspected fire. Fire is an emergency situation and presents a serious hazard to public health.

*Permits*

An applicant for a permit under the Ordinance may be required to provide certain personal information, including their name and contact details.

The Norfolk Island Regional Council is subject to obligations under the *Privacy Act 1988* that limit the collection, use and disclosure of personal information. Accordingly, any limitation on an applicant’s right to privacy is reasonable, necessary and proportionate.

### **Conclusion**

The Ordinance is compatible with human rights as, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Minister for Regional Development, Local Government and Territories,**

**Hon Kristy McBain MP**

**ATTACHMENT**

**Norfolk Island Continued Laws Amendment (Fire Control) Ordinance 2023**

Section 1 – Name

This section provides that the name of the Ordinance is the Norfolk Island Continued Laws Amendment (Fire Control) Ordinance 2023 (the Ordinance).

Section 2 – Commencement

This section provides for the Ordinance to commence on the day after registration 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 – Schedules

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 terms in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

Schedule 1—Amendments

***Norfolk Island Continued Laws Ordinance 2015***

***Fire Control Act 2000 (NI)***

**Item [1] – 97E of Schedule 1**

Item 1 repeals item 97E of the *Norfolk Island Continued Laws Ordinance 2015* (the Continued Laws Ordinance) which in turn amends section 5 of the *Fire Control Act 2000*(NI) (the Fire Control Act), and substitute:

Item 97E – Section 5

New item 97E repeals the definitions of *Board* and *Chairperson*. These terms are no longer used in the Fire Control Act and are redundant.

Item 97EA – Section 5

New item 97EA inserts a definition for *Commonwealth reserve*. This will align the meaning with that in the *Environment Protection and Biodiversity Conservation Act 1999*.

Item 97EB – Section 5

New item 97EB repeals and substitutes the definition of *fire danger period.* The definition provides that a *fire danger period* is one which is declared under section 22 of the Ordinance.

Item 97EC – Section 5

New item 97EC repeals the definitions of *member* and *period of acute fire danger*. These terms are no longer used in the Fire Control Act and are redundant.

Item 97ED – Section 5

New item 97ED inserts definitions for *permit* and *public reserve*. The new definitions provide that, for the purposes of the Ordinance, *permit* means a permit issued under Part 3A of the Ordinance, and to align the definition of *public reserve* with the meaning of a reserve in the *Public Reserves Act 1997*.

**Item [2] – 97H of Schedule 1**

Item 2 repeals item 97H of the Continued Laws Ordinance which in turn amends the Fire Control Act.

Item 97H – Subsection 14(1)

New item 97H substitutes the language in subsection 14(1) to replace the Minister with responsibility for Territories with the Chief Executive Officer as the person authorised to appoint the Chief Fire Control Officer (CFCO) and adds that it must be done in writing. Per the *Interpretation Act 1979* (NI), Chief Executive Officer means the general manager of the Norfolk Island Regional Council.

Item 97HA – Subsection 14(2)

New item 97HA updates the maximum term of the CFCO in subsection 14(2) from 3 years to 5 years. This will provide greater stability and continuity in the role. It is also reflective of the specialist nature of the position, noting the fire and emergency management skills required of the CFCO are unique and not always readily available on the island.

Item 97HB – Subsection 15(2)(k)

New item 97HB updates the powers of the CFCO to include protection of the environment under subsection 15(2)(k).

Item 97HC – Subsection 16(1)

New item 97HC substitutes the language in subsection 16(1) to replace the Minister with the Chief Executive Officer as the person authorised to appoint the CFCO and adds that it must be done in writing. Per the *Interpretation Act 1979* (NI), Chief Executive Officer means the general manager of the Norfolk Island Regional Council.

**Item [3] – After item 97M of Schedule 1**

Item 3 inserts new items after item 97M of Schedule 1 of the Continued Laws Ordinance, which in turn amends the Fire Control Act.

Item 97MA – Part 3 (heading)

New item 97MA repeals the Part 3 heading.

Item 97MB – Section 19

New item 97MB repeals existing section 19 and replaces it with new provisions about powers to enter land and light fires on land.

Subsection 19(1) gives the CFCO, a Fire Officer, a Volunteer Fire Officer or an authorised person the power to enter land if a fire is occurring or if they reasonably suspect there is a fire occurring, for the purpose of inspecting, extinguishing, or stopping the progress of, the fire or suspected fire.

Subsection 19(2) gives the CFCO, a Fire Officer, a Volunteer Fire Officer or an authorised person the power to light a fire on land to stop the progress of other fires.

While a warrant is the usual and preferred method for authorising entry to premises, the Federal Parliament has accepted powers to enter premises without consent or warrant are necessary in certain limited circumstances.

Situations of emergency or serious danger to public health[[1]](#footnote-1) are accepted by the Scrutiny of Bills Committee as a valid authorising of entry without consent or warrant. Coercive powers of entry are appropriate for these provisions to ensure authorised persons can take immediate action to stop fires, where the threat of emergency means it is not practical or possible to obtain consent to enter land. There is a clear need for these authorised persons to be able to respond swiftly to minimise endangerment to life, environment and property. Such risks outweigh the intrusiveness of such powers and warrant their availability in the Ordinance. It should also be noted that the powers of entry are subject to constraints and not without limits. They may only be exercised where a fire is or is reasonably expected to be occurring. The powers must also be exercised for the purpose of inspecting, extinguishing or stopping the progress of the fire or fires.

Item 97MC – Sections 21 to 26

New item 97MC repeals sections 21 and 26 and substitutes with new Part 3.

**Part 3—Prevention and control of fires**

**Division 1—Total fire ban**

Section 21 – Declaration of a total fire ban

Subsection 21(1) gives the CFCO the power to declare a total fire ban for a period in an area if they are satisfied it is necessary to protect life, property or the environment from fire. Paragraphs (a) – (d) provide the factors the CFCO should consider when exercising this power, being: the existence or likelihood of severe weather conditions conducive to the outbreak or spread of fire in the area; the likelihood that a fire in the area could get out of control; the number, nature or location of existing fires in the area; or insufficient resources being available to extinguish or prevent the outbreak or spread of fire in the area.

The first note to subsection 21(1) provides that a total fire ban under this section may be declared in an area that is in a Commonwealth reserve or a public reserve. It also notes that a total fire ban may also be declared in a Commonwealth reserve under regulation 12.30 of the Environment Protection and Biodiversity Conservation Regulations 2000 (Cth).

The second note provides that a declaration under this section may be varied or revoked.

Subsection 21(2) imposes an obligation on the CFCO to communicate the particulars of the total fire ban to the public, noting that the effective communication of the ban is critical to ensuring a reduction in fire activity on the island.

The decision to make a declaration of a total fire ban is not subject to independent review. This is because the decision to make a declaration is not directed towards the circumstances of any particular persons, but applies generally to the Norfolk Island community. Decisions made under section 21 are also likely to operate for such a short period that their effect would be spent by the time of review. The making of a declaration is constrained by the factors outlined in subsection 21(1). A declaration made under subsection 21(1) is not a legislative instrument, as defined by the *Legislation Act 2003*.

Section 21A – Fires during a total fire ban

Subsection 21A(1) creates an offence to light, use or maintain a fire during a total fire ban. A person found guilty of this offence is liable for a penalty of 60 penalty units, imprisonment for 2 years, or both. This high penalty reflects the seriousness of the offence and the risk lighting fires during hazardous conditions poses to property, environment and people. A strong deterrent is necessary to protect the community and discourage dangerous behaviour during high risk situations.

Paragraphs (a) – (c) provide the exceptions to this rule. Subsection 21A(1)(a) allows a fire during a total fire ban, if using a barbecue or stove per the requirements of subsection 21A(2) or (3). Subsection 21A(1)(b) allows a person to light, use or maintain a fire during a total fire ban, if a person has been directed to by the CFCO per subsection 25(1). Subsection 21A(1)(c) allows the CFCO, a Fire Officer or a Volunteer Fire Officer to light a fire for the purpose of stopping the progress of a fire occurring on any land in accordance with subsection 19(2).

Subsection 21A(2) paragraphs (a) – (e) set out the requirements for using a barbecue or stove during a total fire ban. A person must abide by these requirements to meet the exemption under subsection 21A(1)(a). Paragraph 21A(2)(a) provides the fire must be in a gas or electric barbecue or in a gas or electric stove. The subparagraphs to 21A(2)(b) provide that the barbecue or stove it must be within 20 metres of the person’s residence and not in a Commonwealth reserve or a public reserve.

Paragraph 21A(2)(c) makes it a requirement for the space immediately around and above the barbecue or stove to be cleared of all flammable, explosive or dangerous material to a distance of at least 2 metres.

Paragraph 21A(2)(d) provides that the person operating the barbecue or stove must be 18 or older. The final requirement for using a barbecue or stove during a total fire ban, under paragraph 21A(2)(e), is that a supply of running water, or fire fighting equipment, adequate to extinguish a fire be at hand.

Subsection 21A(3) outlines the requirements for using a public barbecue during a total fire ban. Under paragraph 21A(3)(a), a person can light, use or maintain the fire in a gas or electric barbecue made available by the Norfolk Island Regional Council for public use. This is to accommodate the use of public barbecues during Norfolk Island’s busiest tourist period, which aligns with the bushfire season. Paragraph 21A(3)(b) provides the person operating the public barbecue must be 18 or older. Paragraph 21A(3)(c) states that, for public barbecues in a Commonwealth reserve, the barbecue must be used in accordance with the Environment Protection and Biodiversity Conservation Regulations 2000 (Cth).

Section 21B – Fire must not be left unattended during total fire ban

This section creates an offence to light, use or maintain a fire in an area and leave the fire unattended during a total fire ban in the area. This offence carries a penalty of 15 penalty units or imprisonment for 6 months, or both.

Section 21C – Hot works during total fire ban

Subsection 21C(1) creates an offence to use hot works such as welding, soldering, grinding, gas cutting or any other like activity that creates heat or sparks during a total fire ban. The penalty for this offence is 60 penalty units or imprisonment for 2 years, or both.

This high penalty reflects the seriousness of this offence, commission of which may cause damage to property and the environment, as well as serious harm or death to another person.

Subsection 21C(1)(f) provides that hot works may be used during a total fire ban if the requirements of subsection 21C(2) are met.

Subsection 21C(1)(g) provides that hot works may be used during a total fire ban if a person has been directed to by the CFCO per subsection 25(1).

Paragraphs (a) – (c) of subsection 21C(2) outline the requirements for undertaking hot works during a total fire ban. The hot works must be for urgent repairs to an essential service, the CFCO must have been notified, and firefighting equipment adequate to extinguish a fire must be at hand.

**Division 2—Fire danger period**

Section 22 – Declaration of fire danger period

Subsection 22(1) gives the CFCO the power to declare a fire danger period in an area if they are satisfied that weather conditions conducive to the outbreak or spread of fire exist, or are likely to exist, in the area. Notes to this subsection provide that a fire danger period under this section may be declared in an area that is in a Commonwealth reserve or a public reserve, and a declaration under this section may be varied or revoked.

Subsection 22(2)(a) imposes an obligation on the CFCO to consult the Norfolk Island Regional Council before making a declaration of a fire danger period. Subsection 22(2)(b) provides that if the CFCO is declaring a fire danger period for an area in a Commonwealth reserve, the Director of the Commonwealth reserve must also be consulted.

Subsection 22(3) requires the CFCO to arrange to have the particulars of the fire danger period to be communicated to the public.

Subsection 22(4) states that if the CFCO fails to consult the Norfolk Island Regional Council or Director of a Commonwealth reserve, the declaration is still valid. This is to allow for emergency situations where consultation is not practical, given the urgency of the fire danger.

The decision to make a declaration of a fire danger period is not subject to independent review. This is because the decision to make a declaration is not directed towards the circumstances of any particular persons, but applies generally to the Norfolk Island community. Decisions made under section 22 are also likely to operate for such a short period that their effect would be spent by the time of review. A declaration made under subsection 22(1) is not a legislative instrument, as defined by the *Legislation Act 2003*.

Section 22A – Fires during a fire danger period

Under subsection 22A(1), it is an offence to light, use or maintain a fire in the open air in the area where a fire danger period has been declared. A person found guilty of this offence may face a penalty of 30 penalty units or imprisonment for 1 year, or both.

Paragraphs (a) – (c) provide exceptions to this offence. Subsection 22A(1)(a) provides that a person may light, use or maintain a fire during a fire danger period where the fire is contained in a barbecue, , stove, fireplace, or incinerator, or where the person holds a permit, and the relevant requirements are followed. Subsection 22A(1)(b) provides a further exception to the offence in 22A(1) if a person is directed to light, use or maintain a fire during a fire danger period by the CFCO in accordance with subsection 25(1). Subsection 22A(1)(c) provides the final exception, where the CFCO, a Fire Officer or a Volunteer Fire Officer may light a fire during a fire danger period for the purpose of stopping the progress of a fire occurring on any land.

Subsection 22A(2) outlines the requirements for using a barbecue or stove during a fire danger period. Subsection 22A(2)(a) provides the classes of acceptable barbecues or stoves, and subsection 22A(2)(b) states that the space around the barbecue or stove must be cleared of all flammable, explosive or dangerous material to a distance of at least 2 metres.

Subsection 22A(3) provides for the use of a public barbecue during a fire danger period. Paragraph 22A(3)(a) states that a person can light, use or maintain a fire in a gas or electric barbecue made available by the Norfolk Island Regional Council for public use. This is to accommodate the use of public barbecues during Norfolk Island’s busiest tourist period, which aligns with bushfire season. Paragraph 22A(3)(b) states that, for public barbecues in a Commonwealth reserve, the barbecue must be used in accordance with the Environment Protection and Biodiversity Conservation Regulations 2000 (Cth).

The requirements for using a fireplace during a fire danger period are established in subsection 22A(4). Subsection 22A(4)(a) details the kind and construction of fireplace that may be used to light a fire; subsection 22A(4)(b) states that the space around the barbecue or stove must be cleared of all flammable, explosive or dangerous material to a distance of at least 2 metres; and subsection 22A(4)(c) provides that the fire must be for the purpose of cooking food or heating liquid.

Subsection 22A(5)(a) provides that, in order to use an incinerator during a fire danger period, the incinerator must be properly constructed and designed to prevent the escape of sparks and incandescent material. Subsection 22A(5)(b) provides that an incinerator must not be in a Commonwealth or a public reserve during a fire danger period.

Subsection 22A(6) places obligations on a person using a permit during a fire danger period. A person must hold a permit to light, use and maintain a fire in the open air in a specified area during a fire danger period (subsection 22A(6)(a)) and take reasonable steps to give the CFCO and adjoining owners of land 24 hours’ notice (subsection 22A(6)(b)). Subsection 22A(6)(c) provides that a person 18 or older must attend the fire at all times while it is alight. The first note to this subsection provides that the person must comply with any permit conditions and a failure to comply is an offence under section 26A. The second note indicates that an owner of land also includes an occupier, and refers to the definition provided in section 5.

Subsection 22A(7) notes that, where a person is obligated to notify the CFCO and adjoining land owners under subsection 22A(6)(b), this notice does not have to be written.

Section 22B – Fire must not be left unattended during a fire danger period

This section creates an offence for a person who lights, uses or maintains a fire and leaves that fire unattended during a fire danger period. The penalty for this offence is 15 penalty units or imprisonment for 6 months, or both.

**Division 3—Fires other than during a total fire ban or fire danger period**

Section 23 – Fires to clear land

Subsection 23(1) provides that it is an offence to clear land by burning. A person found guilty of this offence may be subject to a penalty of 30 penalty units or imprisonment for 1 year, or both.

Exceptions to this offence are provided in subsection 23(1) paragraphs (a) to (d). Subsection 23(1)(a) provides that a person may clear land in an area by burning if they hold a permit in accordance with subsection 23(3). Subsection 23(1)(b) provides that land clearing using fire is permitted if the CFCO has directed the activity per subsection 25(1). Subsection 23(1)(c) provides that the CFCO, a Fire Officer, a Volunteer Fire Officer or an authorised person lighting a fire to stop the progress of another fire is also an exception to the offence. Subsection 23(1)(d) provides the final exception to the offence, if the burning is in accordance with the *Public Reserves Act 1997* or the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

Subsection 23(2) provides further context to the use of the term ***clearing land*** in subsection 23(1).

The requirements for using a permit to clear land are outlined in paragraphs (a) – (e) of subsection 23(3). The first note to this subsection provides that the person must comply with any permit conditions and a failure to comply is an offence under section 26A. The second note indicates that an owner of land also includes an occupier, and refers to the definition provided in section 5.

Subsection 23(4) provides that where a person is obligated to notify the CFCO and adjoining land owners under subsection 23(3)(b), this notice does not have to be written.

Section 23A – Burning waste

Section 23A creates an offence of burning solid waste (other than green waste) in the open air. The penalty for this offence is 30 penalty units or imprisonment for 1 year, or both. Exceptions to the offence are provided in paragraphs (a), (b) and (c).

Solid waste encompasses material that is not green waste. This includes both commercial and household waste and potentially hazardous materials such as plastics, tyres and painted or treated wood.

Subsection 23A(a) permits a person to burn solid waste in the open air if that person has been directed to by the CFCO per subsection 25(1). Subsection 23A(b) allows the CFCO, a Fire Officer or a Volunteer Fire Officer to burn solid waste for the purpose of stopping the progress of a fire occurring on any land in accordance with subsection 19(2). Subsection 23A(c) provides that solid waste can be burnt in the open air if in accordance with the *Public Reserves Act 1997* or the Environment Protection and Biodiversity Conservation Regulations 2000(Cth).

Section 23B – Burning green waste

Subsection 23B(1) creates an offence to burn green waste in the open air, except in accordance with paragraphs (a) – (d). A person found guilty of this offence may face a penalty of 30 penalty units or imprisonment for 1 year, or both.

Green waste includes branches, grass clippings, leaves, weeds, tree stumps and similar garden waste materials.

Subsection 23B(1)(a) provides that green waste can be burnt in the open air if the requirements in subsections 23B(3) or (5) are met. Subsection 23B(1)(b) allows a person to burn green waste in the open air if it is in accordance with a direction from the CFCO under section 25(1). Subsection 23B(1)(c) allows the CFCO, a Fire Officer or a Volunteer Fire Officer to burn green waste in the open air to stop the progress of a fire occurring on any land in accordance with subsection 19(2). Subsection 23B(1)(d) provides that green waste can be burnt in the open air in accordance with the *Public Reserves Act 1997* or the Environment Protection and Biodiversity Conservation Regulations 2000(Cth).

Subsection 23B(2) of the Ordinance would provide a defence to the burning of green waste in contravention of subsection 23B(1), where the burning is for a purpose other than disposing of the waste. An evidential burden is placed on the individual seeking to rely on the defence. An evidential burden has been placed on the defendant in this provision as the conduct prohibited by the offence in subsection 23B(1) is primarily aimed at the protection and preservation of the environment, property, and life.

Subsection 23B(3) allows for the burning of green waste where the person holds a permit or where the volume of green waste is less than 4 cubic metres. In both circumstances, the requirements in paragraphs (b) – (d) of subsection 23B(3) must be met. These requirements are that the person take reasonable steps to give 24 hours notice of the fire to the CFCO and adjoining landowners; that a person who is 18 or older must attend the fire at all times while it is alight; and that the burning of green waste cannot take place whilst there is a total fire ban in the area. The first note to this subsection provides that the person must comply with any permit conditions and a failure to comply is an offence under section 26A. The second note indicates that an owner of land also includes an occupier, and refers to the definition provided in section 5.

Subsection 23B(4) provides that where a person is obligated to notify the CFCO and adjoining land owners under subsection 23B(3)(b), this notice does not have to be written.

Subsection 23B(5) provides for the burning of green waste where it is to be burnt in an incinerator. The incinerator must be properly constructed and designed to prevent the escape of sparks and incandescent material.

**Division 4—Obligations relating to fires at all times**

Section 24 – Uncontrolled fires must be notified and extinguished

Subsection 24(1) provides that an owner of land must, immediately after becoming aware of an uncontrolled fire on the land or on adjoining land, notify the CFCO of the fire. A failure to do so is an offence, carrying a penalty of 15 penalty units or imprisonment for 6 months, or both.

Section 24A – No tampering etc with fire protection or fire prevention equipment

Subsection 24A(1) creates an offence, with a penalty of 15 penalty units, for tampering with, interfering with or damaging fire protection equipment or fire fighting equipment.

Subsection 24A(2) clarifies that, in subsection 24A(1), ***tamper with*** equipment includes removing fuel from a tank or air from tyres.

**Division 5—Chief Fire Control Officer Directions**

Section 25 – Directions to prevent fire or in event of fire

Subsection 25(1) gives the CFCO power to direct a person to take measures reasonable in the circumstances to prevent or inhibit the outbreak and spread of fire on land, or protect life, property or the environment from fire on land or spreading from land. The note to the section highlights that failure to comply with a direction is an offence under section 25A.

Paragraphs (a) – (f) of subsection 25(2) provides the circumstances the CFCO may consider when exercising this power. These circumstances include: the amount and type of flammable, explosive or dangerous material on the land; weather conditions affecting the land; the location and use of the land and nearby; the possible effect of fire on the land and nearby; the number of people likely to be on the land at any time; and the risk to public safety or the risk to the safety of people likely to be on the land. A note to this section provides that references to land includes buildings on the land, per section 5.

Subsection 25(3) lists the types of matters that may be included in a direction. Subsection 25(3)(a) provides that a direction may specify a reasonable period within which a person must take, or refrain from taking, specified action. Subsection 25(3)(b) provides a direction may specify a person must refrain from lighting a fire, or must extinguish a fire, even if the person holds a permit to light, use and maintain such a fire.

A direction may be given by the CFCO in writing or orally if the CFCO is satisfied that the circumstances require the direction to be given urgently (subsection 25(4)). Where a direction is given orally, subsection 25(5) requires the CFCO make a written record of the direction and give the person the direction in writing within a reasonable period after giving the direction orally.

Subsection 25(6) provides that the CFCO cannot direct a person to light, use or maintain a fire in a Commonwealth reserve.

Subsection 25(7) provides that directions given by the CFCO under this section may be subject to review by the Administrative Review Tribunal.

Section 25A – Failure to comply with Direction

It is an offence for a person to fail to comply with a direction given by the CFCO to prevent fire or in event of fire under section 25. The penalty is 15 penalty units or imprisonment for 6 months, or both.

**Part 3A—Permits**

Section 26 – Permits

Subsection 26(1) gives the CFCO the power to issue a permit to light, use and maintain a fire during a fire danger period, for the clearing land or for disposing of green waste.

Subsection 26(2) enables the CFCO to attach conditions to the issue of a permit. This could include, for example, that the fire may only be lit between certain times or in certain locations, or ensuring firefighting equipment or sufficient running water is on hand..The note to this section highlights that aside from the conditions attached to the permit, there are other legislative requirements that the permit holder must be alert to, including those set out in subsections 22A(6), 23(3) and 23B(3).

The paragraphs to subsection 26(3) provide that a permit may be issued in writing or orally. Permits may only be issued orally if the CFCO is satisfied that the person requires the permit urgently. Where a permit is issued orally, subsection 26(4) requires that the CFCO make a written record of the issue and that the CFCO give the permit holder the permit in writing, within a reasonable period.

Subsection 26(5) reiterates that a permit issued under this section does not permit a person to light, use or maintain a fire in the open air in an area during a total fire ban.

Subsection 26(6) provides that a permit does not permit a person to light, use or maintain a fire in an area in a Commonwealth reserve or a public reserve.

Subsection 25(7) provides for the review of decisions made under this section by the Administrative Review Tribunal.

Section 26A – Conditions of permit must be complied with

This section creates an offence of failing to comply with the conditions specified in a permit and carries a penalty of 30 penalty units or imprisonment for 1 year, or both.

*[Amendments of the* ***Norfolk Island National Park and Norfolk Island Botanic Garden Regulations 1988 (NI)****]*

**Item [4] – After item 209AB of Schedule 1**

Item 4 inserts provisions into the Continued Laws Ordinance which in turn amends the Norfolk Island National Park and Norfolk Island Botanic Garden Regulations 1988 (NI).

New item 209AC repeals Regulation 8 of theNorfolk Island National Park and Norfolk Island Botanic Garden Regulations 1988 (NI), which concerns offences relating to fire.

*[Amendments of the* ***Public Reserves Act 1997 (NI)****]*

**Item [5] – After item 275E of Schedule 1**

Item 5 inserts new section 275F, which repeals paragraph 40(b) about exceptions to lighting, using and maintaining a fire in a reserve, and substitutes it with two new paragraphs. New paragraph 40(a) allows a portable gas or electric barbecue or a portable gas or electric stove to be used in a public reserve, while new paragraph 40(b) allows a gas or electric barbecue made available by the Norfolk Island Regional Council for public use. New paragraph 40(c) allows a fire in a public reserve if it is in accordance with the *Fire Control Act 2000* (NI).

1. Report 4/2000 Inquiry into Entry and Search Provisions in Commonwealth Legislation, paras 1.36 and 1.44. [↑](#footnote-ref-1)