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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**TERRITORIES LEGISLATION AMENDMENT BILL 2016**

**PASSENGER MOVEMENT CHARGE AMENDMENT (NORFOLK ISLAND) BILL  
2016**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Major Projects, Territories and Local Government,  
the Hon Paul Fletcher MP)

## TERRITORIES LEGISLATION AMENDMENT BILL 2016

### OUTLINE

The purpose of the Territories Legislation Amendment Bill 2016 is to:

- Amend the *Norfolk Island Legislation Amendment Act 2015* to ensure that New Zealand citizens holding a permanent visa residing on Norfolk Island have access to social security.
- Amend the *Norfolk Island Legislation Amendment Act 2015* to align the early claims period for family assistance payments with the early claims periods for social security and child support payments before 1 July 2016.
- Amend the *Child Support (Assessment) Act 1989* and *Child Support (Registration and Collection) Act 1988* to extend the child support scheme to residents of the Indian Ocean Territories of Christmas Island and Cocos (Keeling) Island.
- Amend the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* to require eligible Australian citizens and eligible other persons living in Norfolk Island to enrol and vote in federal elections and referendums.
- Amend the *Norfolk Island Act 1979* and the *Acts Interpretation Act 1901* to extend all Commonwealth laws to Norfolk Island, unless expressly provided otherwise; and make the necessary consequential and transitional amendments to Commonwealth Acts to achieve this outcome (the Passenger Movement Charge Amendment (Norfolk Island) Bill 2016 is consequential to the primary measure).
- Amend the *Norfolk Island Act 1979* to broaden the definition of the Norfolk Island Regional Council to enable flexibility in the application of local government law to Norfolk Island.

### Schedule 1 - New Zealand citizens residing on Norfolk Island

This Schedule allows New Zealand citizens who hold a permanent visa and reside on Norfolk Island access to social security payments from 1 July 2016. This Schedule is due to commence on the day after Royal Assent, in order to commence before Part 1 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015*.

The *Norfolk Island Legislation Amendment Act 2015* included an amendment that inserted subsection 7(2AA) into the *Social Security Act 1991*. The subsection states that from 1 July 2016, subparagraph 7(2)(b)(ii) of the *Social Security Act 1991* does not apply to a New Zealand citizen who resides on Norfolk Island.

This means that from 1 July 2016, a New Zealand citizen on Norfolk Island who is the holder of an Australian permanent visa is not an Australian resident for social security purposes and hence ineligible for social security or family assistance payments.

The intention of inserting this provision is to align eligibility for Australian social welfare payments of New Zealand citizens who reside on Norfolk Island with New Zealand citizens

residing on the Australian mainland who arrived after February 2001. Without subsection 7(2AA), transitional visa arrangements for New Zealanders on Norfolk Island provide a pathway to Permanent Residence and subsequent access to social welfare payments that is unavailable to New Zealand citizens who commenced residing on mainland Australia after February 2001.

Although intended to remedy the pathway outlined above, subsection 7(2AA) has had an overreaching effect precluding all New Zealanders residing on Norfolk Island who are Australian permanent residents from Australian social welfare regardless of their pathway to permanent residence. It is also inconsistent with the Government's policy objective of encouraging New Zealand citizens with long-term residence in Australia to formalise their visa arrangements by seeking a permanent resident visa. The Parliamentary Joint Committee on Human Rights considered subsection 7(2AA) in its Twenty-second Report of the 44<sup>th</sup> Parliament, issued on 13 May 2015. The Joint Committee concluded that the measure appears to be discriminatory as it excludes some categories of Australian permanent residents from eligibility and limits rights to equality and non-discrimination.

This Schedule removes item 323 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015* which proposes inserting new subsection 7(2AA). This allows New Zealand citizens who hold a permanent visa and reside on Norfolk Island access to social security payments from 1 July 2016.

## **Schedule 2 - Claims for assistance made by Norfolk Island residents before 1 July 2016**

This Schedule aligns the early claims period for family assistance payments with the early claims periods for social security and child support payments. This Schedule commences the day after the Act receives Royal Assent.

Part 1 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015* extends the child support, family assistance and social security laws to the residents of Norfolk Island from 1 July 2016. Part 2 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015* contains the transitional provisions for the application of the social security, family assistance and child support law to Norfolk Island. The transitional provisions commenced on 18 June 2015.

In order to enable Norfolk Island residents to be qualified to be paid benefits from 1 July 2016, the transitional provisions allow residents to lodge claims for payments early. This is to enable the Department of Human Services to consider claims and undertake the required administrative tasks to ensure payments can be immediately payable from 1 July 2016. This reduces the number of payments requiring backdating and minimises the risk of residents being without financial support while they wait for claims to be processed.

An oversight in the *Norfolk Island Legislation Amendment Act 2015* meant the early claims period for child support and social security claims was to be eight weeks, while family tax benefit claims was to be four weeks. This administrative inconsistency would place an additional burden on claimants to lodge claims at separate times. It is therefore preferable that all early claim periods be aligned.

Items 376 and 382 of Part 2 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015* relate to the social security and child support early claims provisions respectively. Both provisions state that if a claim was made “during the 8-week period ending at the final transition time... the application is taken to have been made immediately after the final transition time” (the transition time being 1 July 2016).

Item 381 relates to family assistance early claims and states that if “a claim for family tax benefit was made during the 4-week period ending at the final transition time... the claim is taken to have been made immediately after the final transition time.” This Schedule amends this provision to allow an “8-week period” instead of a “4-week period”.

Similarly, item 382 was not made to allow applications for the acceptance of a child support agreement to be made prior to the final transition day for the *Norfolk Island Legislation Amendment Act 2015*. This Schedule provides for early applications for acceptance of such agreements to be made, similarly up to 8 weeks prior to the final transition day.

### **Schedule 3 - Child support for Indian Ocean Territory residents**

This Schedule extends the child support scheme to residents of the Indian Ocean Territories of Christmas Island and Cocos (Keeling) Island. Part 1 of this Schedule commences immediately after the commencement of Part 1 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015* or 1 July 2016. Part 2 of this Schedule commences the day after this Act receives the Royal Assent.

The *Norfolk Island Legislation Amendment Act 2015* extends the child support laws to the residents of Norfolk Island from 1 July 2016. The Australian taxation, social security and family assistance laws currently extend to residents of Christmas Island and Cocos (Keeling) Islands. The non-extension of the child support law to residents of Christmas Island and Cocos (Keeling) Islands is anomalous given that it will apply to the residents of Norfolk Island from 1 July 2016. It is intended that child support is extended to Christmas Island and Cocos (Keeling) Islands at the same time as Norfolk Island.

The *Norfolk Island Legislation Amendment Act 2015* included transitional provisions to allow Norfolk Island residents an 8-week early application period immediately prior to 1 July 2016 to lodge child support claims. With the extension of the child support program to residents of Cocos (Keeling) Islands and Christmas Island, it is intended that an 8-week early application period for child support applications is also extended to these residents to align with Norfolk Island residents.

### **Schedule 4 - Norfolk Island electoral arrangements**

Schedule 4 to this Bill amends the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* to require eligible Australian citizens and eligible other persons living on Norfolk Island to enrol and vote in federal elections and referendums from 1 July 2016. This provides consistency with eligible Australian citizens and eligible other persons who are required to enrol and vote.

The amendments to the Electoral Act will include Norfolk Island in a federal electoral Division of the Australian Capital Territory. In the event that the Australian Capital Territory has more than one Division, the relevant Division will be a Division that does not include the Jervis Bay Territory. At the time of commencement of the amendments, the practical effect will be the inclusion of Norfolk Island in the Division of Canberra. Inclusion of Norfolk Island in a federal electoral Division will allow Norfolk Island residents to be represented by a single federal member of the House of Representatives and the Senators for the Australian Capital Territory. Previous arrangements under which eligible Norfolk Islanders could choose to enrol in other federal electoral Divisions will be repealed, and individuals who are enrolled in other federal electoral Divisions will have their enrolment transferred to the Division of Canberra.

### **Schedule 5 - Application of Acts to Norfolk Island**

Schedule 5 builds on the reforms contained in the *Norfolk Island Legislation Amendment Act 2015* to normalise federal legislative arrangements for Norfolk Island. Schedule 5 enables this objective by extending all Commonwealth Acts to Norfolk Island, unless expressly provided otherwise. This reverses the presumption contained in previous section 18 of the *Norfolk Island Act 1979*, where Acts did not extend to Norfolk Island unless expressed to extend. Schedule 5 replaces section 18 with a new section 18, and amends the geographical definitions of “Australia” and “the Commonwealth” in the *Acts Interpretation Act 1901* to include Norfolk Island. The effect is to reverse the previous presumption.

In effect, new section 18 provides that a Commonwealth Act is in force on Norfolk Island, except as otherwise provided by an Act. This means that:

- Commonwealth Acts which do not state whether or not they extend to Norfolk Island extend to Norfolk Island (even if there is no practical effect of this extension).
- Commonwealth Acts which expressly state they do not extend to Norfolk Island do not (or continue to not) extend to Norfolk Island.
- Commonwealth Acts which state that they extend to Norfolk Island continue to extend (although this is technically unnecessary as a result of new section 18).

In some cases, only certain provisions of Acts apply to Norfolk Island.

The Australian Government has assessed all Commonwealth legislation to determine whether it is appropriate or not appropriate to extend an Act to Norfolk Island at this time. As a result of this consultation across federal government departments, this Schedule makes the necessary consequential amendments to Commonwealth Acts.

The changes made to the operation of section 18 of the *Norfolk Island Act 1979* and to definitions in the *Acts Interpretation Act 1901* are very broad in nature. To ensure that any unforeseen or unintended consequences can appropriately be dealt with, Schedule 5 permits the responsible Commonwealth Minister (as defined in the *Norfolk Island Act 1979*) to make transitional rules. If made before 1 July 2017, such rules may modify the effect of any Act or instrument, and may have retrospective application even if they negatively affect the rights of, or impose a liability on, a person. However, the transitional rules are limited in their scope;

for example, they must not create an offence or civil penalty, provide powers of arrest, detention, entry, search or seizure, or impose a tax.

The Schedule also contains rule-making powers for the Employment Minister to modify employment legislation, and these powers are limited by the appropriate limits and safeguards.

In summary, this Schedule consequentially amends the following Acts to expressly provide that they do not extend to Norfolk Island:

*Australian Securities and Investments Commission Act 2001*  
*Bankruptcy Act 1966*  
*Bankruptcy (Estate Charges) Act 1997*  
*Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*  
*Cross-Border Insolvency Act 2008*  
*Customs Licensing Charges Act 1997*  
*Customs Securities (Penalties) Act 1981*  
*Customs Tariff Act 1995*  
*Customs Tariff (Anti-Dumping) act 1975*  
*Customs Undertakings (Penalties) Act 1981*  
*Do Not Call Register Act 2006*  
*Education Services for Overseas Students Act 2000*  
*Export Control Act 1982*  
*Imported Food Charges Collection Act 2015*  
*Imported Food Charges (Imposition – Customs) Act 2015*  
*Imported Food Charges (Imposition – Excise) Act 2015*  
*Imported Food Charges (Imposition – General) Act 2015*  
*Imported Food Control Act 1992*  
*Import Processing Charges Act 2001*  
*Motor Vehicle Standards Act 1989*  
*Tradex Duty Imposition (Customs) Act 1999*  
*Tradex Duty Imposition (Excise) Act 1999*  
*Tradex Duty Imposition (General) Act 1999*

This Schedule specifically amends the following Acts so that they can extend to Norfolk Island:

*Agricultural and Veterinary Chemicals Act 1994*  
*Australian Capital Territory (Self-Government) Act 1988*  
*Australian National Preventative Health Agency Act 2010*  
*Australian Postal Corporation Act 1989*  
*Business Names Registration Act 2011*  
*Equal Employment Opportunity (Commonwealth Authorities) Act 1987*  
*Fair Work Act 2009*  
*Federal Proceedings (Costs) Act 1981*  
*Gene Technology Act 2000*  
*Industry Research and Development Act 1986*  
*Insurance Contracts Act 1984*

*National Land Transport Act 2014*  
*Passenger Movement Charge Collection Act 1978*  
*Protection of Moveable Cultural Heritage Act 1986*  
*Public Order (Protection of Persons and Property) Act 1971*  
*Water Efficiency Labelling and Standards Act 2005*  
*Workplace Gender Equality Act 2012*

This Schedule amends the following Acts to provide for their conditional extension to Norfolk Island:

*Do Not Call Register Act 2006* (may extend to Norfolk Island, if prescribed)  
*Export Control Act 1982* (may extend to Norfolk Island, if prescribed)  
*Imported Food Charges (Collection) Act 2015* (does not extend to Norfolk Island unless the *Imported Food Control Act 1992* extends)  
*Imported Food Charges (Imposition – Customs) Act 2015* (does not extend to Norfolk Island unless the *Imported Food Control Act 1992* extends)  
*Imported Food Charges (Imposition – Excise) Act 2015* (does not extend to Norfolk Island unless the *Imported Food Control Act 1992* extends)  
*Imported Food Charges (Imposition – General) Act 2015* (does not extend to Norfolk Island unless the *Imported Food Control Act 1992* extends)  
*Imported Food Control Act 1992* (may extend to Norfolk Island, if prescribed)  
*Plant Breeder’s Rights Act 1994* (may extend to Norfolk Island, if prescribed)  
*Telecommunications (Interception and Access) Act 1979* (will extend to Norfolk Island upon the repeal of the *Telecommunications Act 1992* (NI))

The following Acts are also specifically amended by this Schedule:

*Competition and Consumer Act 2010*  
*Copyright Act 1968*  
*Excise Act 1901*  
*Fair Entitlements Guarantee Act 2012*  
*Independent Contractors Act 2006*  
*Road Safety Remuneration Act 2012*

The following Acts are exceptions and unaffected by this Schedule. They are amended to apply to Norfolk Island as they did prior to the commencement of this Schedule.

*Broadcasting Services Act 1992*  
*Telecommunications Act 1997*  
*Telecommunications (Carrier Licence Charges) Act 1997*  
*Telecommunications (Industry Levy) Act 2012*  
*Telecommunications (Numbering Charges) Act 1997*  
*Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991*  
*Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*

In addition, consequential amendments related to the *Norfolk Island Legislation Amendment Act 2015* are made to the following Acts:

*Health Insurance Commission (Reform and Separation of Functions) Act 1997*

*Hearing Services and AGHS Reform Act 1997*

### **Schedule 6 - Nature of Norfolk Island Regional Council**

Schedule 6 amends the definition of ‘Norfolk Island Regional Council’ in item 17 of Part 2 in Schedule 2 of the *Norfolk Island Legislation Amendment Act 2015* to provide flexibility in the application of local government law to Norfolk Island.

### **Financial impact statement**

The 2015-16 Budget committed \$136.2 million over the forward estimates for the Norfolk Island reforms. This package of Bills does not have any additional impact on the budget.

The costs associated with implementation of the measures contained in Schedule 4 are minor and will be absorbed by the Australian Electoral Commission within existing resourcing.



## **Statement of Compatibility with Human Rights**

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

### **Territories Legislation Amendment Bill 2016**

This Bill 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*.

## **Statement of Compatibility with Human Rights**

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

### **Passenger Movement Charge Amendment (Norfolk Island) Bill 2016**

This Bill 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/Legislative Instrument**

The Territories Legislation Amendment Bill 2016 and the Passenger Movement Charge Amendment (Norfolk Island) Bill 2016 (the Bills) continue the process of normalising Commonwealth legislative arrangements for Norfolk Island, to ensure that Norfolk Islanders enjoy the same rights, entitlements and responsibilities as other Australians.

The purpose of the Territories Legislation Amendment Bill 2016 is to:

- Amend the *Norfolk Island Legislation Amendment Act 2015* to ensure that New Zealand citizens holding a permanent visa residing on Norfolk Island have access to social security on 1 July 2016.
- Amend the *Norfolk Island Legislation Amendment Act 2015* to align the early claims period for family assistance payments with the early claims periods for social security and child support payments before 1 July 2016.
- Amend the *Child Support (Assessment) Act 1989* and *Child Support (Registration and Collection) Act 1988* to extend the child support scheme to residents of the Indian Ocean Territories of Christmas Island and Cocos (Keeling) Island.
- Amend the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* to require eligible Australian citizens and eligible other persons living on Norfolk Island to enrol and vote in federal elections and referendums from 1 July 2016.
- Amend the *Norfolk Island Act 1979* and the *Acts Interpretation Act 1901* to extend all Commonwealth laws to Norfolk Island, unless expressly provided otherwise; and make the necessary consequential and transitional amendments to Commonwealth

Acts to achieve this outcome (the Passenger Movement Charge Amendment (Norfolk Island) Bill 2016 is consequential to the primary measure).

- Amend the *Norfolk Island Act 1979* to broaden the definition of the Norfolk Island Regional Council to enable flexibility in the application of local government law.

### **Human rights implications**

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

- The right to take part in public affairs and elections;
- The right to social security;
- The right to an adequate standard of living;
- The right to work;
- The rights of parents and children;
- The right to security of the person and freedom from arbitrary detention;
- The right to freedom of assembly; and
- The right to freedom of movement.

#### ***The right to take part in public affairs and elections***

The Territories Legislation Amendment Bill 2016 (the Territories Bill) engages Article 25 (right to take part in public affairs and elections) of the International Covenant on Civil and Political Rights (ICCPR). In effect, Article 25 guarantees the right of all Australian citizens to take part in the conduct of public affairs, and to vote and to be elected at genuine periodic elections. The Territories Bill does not limit the right to vote provided for by Article 25 of the ICCPR. Rather, Schedule 4 of the Bill contributes to the realisation of Article 25 of the ICCPR, as all eligible Australians living in Norfolk Island will be required to enrol and vote in federal elections and referendums (rather than enrolment occurring on a voluntary basis).

Those Norfolk Island residents previously enrolled in a federal Division of a State will be represented by a smaller number of Senators under amendments made by the Territories Bill, given the respective number of Senators for the States and Territories. However, the Territories Bill does not remove representation as these individuals will still be represented by two Senators (as is the current Senate representation for the Australian Capital Territory). Establishing arrangements whereby Senators have a more dedicated responsibility for Norfolk Island is expected to improve the level of effective representation for all Norfolk Islanders, collectively and individually.

#### ***The right to social security***

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to social security, including social insurance. A similar right is found in Article 26 of the Convention on the Rights of the Child (CRC) and Article 28 of the Convention on the Rights of Persons with Disabilities (CPRD). Under Article 2(1) of

ICESCR, a country is obliged to take steps “to the maximum of its available resources, with a view to achieving progressively the full realisation” of the rights recognised in ICESCR.

The Territories Bill promotes the right of everyone to social security by addressing a measure in the *Norfolk Island Legislation Amendment Act 2015* which had the unintended effect of excluding some New Zealand citizens resident on Norfolk Island from access to Australian social security payments. The Territories Bill also extends the application period for family assistance payments to 8 weeks from the current 4 weeks, and provides access to the Commonwealth child support scheme for residents of the Indian Ocean Territories. These measures are designed to increase accessibility and provide residents of all external territories with the same social services available to Australian citizens on the mainland.

### ***The right to an adequate standard of living***

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

The further normalisation of Commonwealth arrangements for Norfolk Island allows investments to be made to revitalise Norfolk Island’s depressed economy and substantially reduces regulatory barriers to the participation of Norfolk Island businesses in the wider Australian economy. This will assist in improving the standard of living on Norfolk Island.

### ***The right to work***

Article 6(1) of ICESCR recognises the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts. Under this Article, States Parties undertake to take appropriate steps to safeguard this right. A similar right is found in Article 27 of the CRPD. Under Article 2(1) of ICESCR, a country is obliged to take steps “to the maximum of its available resources, with a view to achieving progressively the full realisation” of the rights recognised in ICESCR. Additionally, Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires States Parties to ‘eliminate discrimination against women in the field of employment’.

Article 7 of ICESCR recognises the ‘right of everyone to the enjoyment of just and favourable conditions of work’. The United Nations Committee on Economic, Social and Cultural Rights has stated that this right encompasses the right to fair wages and equal remuneration for work of equal value, safe and healthy working conditions, and rest, leisure and reasonable limitation of working hours, among other elements.

The *Road Safety Remuneration Act 2012*, which created a national Road Safety Remuneration Tribunal responsible for setting the minimum pay rates and conditions for road transport drivers, and the *Independent Contractors Act 2006* which protects the rights of genuine independent contractors to enter into a contract for services without interference from third parties are extended to Norfolk Island in this Bill. The *Workplace Gender Equality Act 2012* is also extended to Norfolk Island, which will provide a framework for monitoring gender

equality in the workplace in Norfolk Island by requiring relevant employers with more than 100 staff to report on various gender equality indicators.

Many aspects of Commonwealth law provide stronger protections for workers than their Norfolk Island equivalent. These include provisions in the *Fair Work Act 2009* concerning the National Minimum Wage, the National Employment Standards, modern awards (which include a range of entitlements for particular industries or occupations, such as higher minimum wages, overtime rates, penalty rates, loadings and allowances) and an unfair dismissal framework. Those provisions will be extended to Norfolk Island with appropriate transitional arrangements and can be expected to enhance the ability of workers on Norfolk Island to fully utilise their right to just and favourable conditions of work.

### ***The rights of parents and children***

Article 27 of the CRC recognises the right of children to an adequate standard of living. States Parties undertake to “take all appropriate measures to secure the recovery of maintenance for the children from the parents or other persons having financial responsibility for the child”.

Article 23 of the ICCPR provides a similar right to make protection for children in the event of dissolution of a marriage.

The Commonwealth child support scheme provides a means of assistance for primary carers that was previously not available in the Indian Ocean Territories. The scheme recognises the principle that both parents have common responsibilities for the upbringing and development of the child, and that States parties should provide appropriate assistance to parents and guardians in the performance of their child-rearing responsibilities. The extension of child support legislation to Christmas Island and the Cocos (Keeling) Islands resolves the anomalous exclusion of the Indian Ocean Territories from the national scheme; promotes the universal recognition of the right to an adequate standard of living for all Australian children; and provides practical assistance to parents who have primary caring duties for their children by providing a legal avenue to claim economic support from the other parent.

### ***The right to security of the person and freedom from arbitrary detention***

Article 9 of ICCPR provides that everyone has the right to liberty and security of person, and no one shall be subject to arbitrary arrest or detention, or deprived of liberty except on such grounds and in accordance with such procedures as are established by law.

The Territories Legislation Amendment Bill 2016 extends the *Public Order (Protection of Persons and Property) Act 1971* to Norfolk Island. The Act creates a range of offences relating to Commonwealth Territories and on Commonwealth premises, including provisions relating to premises of certain investigatory authorities, diplomatic and consular premises, designated overseas missions and international organisations. Section 22 of the Act confers a power of arrest without warrant in relation to offences set out by the Act which occur in specified Commonwealth Territories or on Commonwealth premises.

From the Second Reading speech of the Public Order (Protection of Persons and Property) Bill 1971, the Act makes provision for situations that are sometimes fraught with the risk of discord, and occasionally, with the risk, or worse, the actuality, of violence. In a democracy, every citizen should be free, within limits imposed by laws designed to strike a reasonable

balance between conflicting interests, to give expression to their views or to their sentiments by the processes of peaceful assembly.

Chapter 2 of the *Criminal Code Act 1995* (Criminal Code) (General principles of criminal responsibility) applies to all offences against the Act. Section 10.5 of the Criminal Code also applies to an offence against section 13F of the Act (Person not to carry firearm, explosive substance or offensive weapon on authority premises), which provides that a person is not criminally responsible for this offence if the conduct constituting the offence is justified or excused by or under a Commonwealth law.

Section 22 of the Act provides that a “constable” (a member of the Australian Federal Police, or a member of a State or Territory police force) may without warrant arrest a person for an offence against the Act, if the constable has a reasonable ground to believe that the person has committed that offence and that proceedings against the person (by way of summons) would not be effective; or the arrest is necessary in order to prevent persistence or repetition by the person, the conduct of the kind constituting the offence, or the commission by the person of other offences against this Act.

Section 13D of the Act provides that an authorised officer (for an investigatory authority) may search a person and their personal effects when it is in the interests of security to do so. This may include screening and/or a frisk search. An authorised officer may also direct a person to leave authority premises (section 13E of the Act).

Where a person is found to be taking part in an assembly involving violence or apprehension of violence in a Territory or on Commonwealth premises; engages in unreasonable obstruction; uses a weapon, missile etc; or trespasses, they may be found guilty of an offence punishable on conviction by a fine of not more than 20 penalty units (in relation to a weapon, missile etc, a person may also face imprisonment for not more than 6 months). Similar provisions apply in relation to diplomatic and consular premises and personnel, designated overseas missions and international organisations.

Procedural safeguards are provided by the Act, such as the oversight of summary prosecutions by the Director of Public Prosecutions and provision for the court to dismiss a charge if particulars of the offence are not furnished. The provisions under the Act which permit deprivation of liberty are not arbitrary, and are sufficiently precise to enable people to regulate their behaviour. The requirement that the obstruction be “unreasonable” circumscribes the discretionary power provided to the police officer, and imposition of a fine is no more restrictive a measure than is required to achieve the purpose of the limitation.

Accordingly, the offences in relation to Commonwealth premises and the power of arrest provided under this Act are rationally connected to the legitimate objective of protecting national security by placing conditions on access to Commonwealth premises. The offences related to violent assemblies under the Act are also rationally connected to the legitimate objective of protecting public order. For these reasons, the limitation on rights created by extension of this Act to Norfolk Island is permissible because it is reasonable, necessary and proportionate.

### ***The right to freedom of assembly***

Articles 21 and 22 of ICCPR provide for a right of peaceful assembly and protest.

Section 8 of the Act provides that a member of a Police Force of the rank of Sergeant or above may give a direction to disperse certain assemblies and use such force as he or she believes, on reasonable grounds, to be necessary for that purpose and is reasonably proportionate to the danger from the continuance of the assembly.

The right to peaceful assembly is not affected by the extension of the *Public Order (Protection of Persons and Property) Act 1971* to Norfolk Island, as the offences established are conditional upon a reasonable apprehension that violence to persons or property will occur, or the offence requires that violence be committed by a person. Again, the requirement that the apprehension be “reasonable” appropriately circumscribes the discretionary power provided to the police officer, and dispersal of the assembly is no more restrictive a measure than is required to achieve the purpose of the limitation.

### ***The right to freedom of movement***

Article 12(1) of the ICCPR provides that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. A similar right is found in Article 10 of the CRC, Article 18 of the CRPD, Article 5 of the CERD and Article 15 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The Passenger Movement Charge Amendment (Norfolk Island) Bill 2016 (the PMC Amendment Bill) will amend the *Passenger Movement Charge Act 1978* to replicate the arrangements that apply in the Indian Ocean Territories so that most departures from Norfolk Island to another country will attract the Passenger Movement Charge, which is not currently the case. The PMC Amendment Bill will recognise the special air transport arrangements in place on Norfolk Island, whereby travel to the mainland may require transit through an international country from time to time. The PMC Amendment Bill will provide that a person is exempt from liability for passenger movement charge if they depart Norfolk Island for another country (or for an installation in the Joint Petroleum Development Area) with the intention of returning to another place in Australia within 7 days. These amendments promote the right to freedom of movement by reducing financial barriers to movement for Norfolk Islanders who wish to travel to the mainland.

### **Conclusion**

The Bills are compatible with human rights because they advance the protection of human rights. To the extent that the Bills may limit human rights, those limitations are reasonable, necessary and proportionate.

**Minister for Major Projects, Territories and Local Government,  
the Hon Paul Fletcher MP**

## NOTES ON CLAUSES

### Clause 1: Short Title

Clause 1 specifies the short title of the Bill, when enacted, as the *Territories Legislation Amendment Act 2016*.

### Clause 2: Commencement

Clause 2 sets out the commencement provisions for the *Territories Legislation Amendment Act 2016*, in accordance with the table in subclause 2(1) (the commencement table).

Subclause (2)(2) provides that any information in column 3 of the commencement table is not part of this Act. Information may be inserted in column 3, or information in it may be edited, in any published version of this Act.

Table Item 1 provides that sections 1 to 3 of the *Territories Legislation Amendment Act 2016* (the Act) and anything else in the Act not covered elsewhere by the commencement table commence on the day the Act receives the Royal Assent.

Table Item 2 provides that Schedules 1 and 2 of the Act commence on the day after the Act receives the Royal Assent.

Table Item 3 provides that Part 1 of Schedule 3 commences on 1 July 2016, that is, immediately after the commencement of Part 1 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015*.

Table Item 4 provides that Part 2 of Schedule 3 commences on the day after the Act receives the Royal Assent.

Table Item 5 provides that Part 1 of Schedule 4 commences on 1 July 2016, that is, at the same time as the commencement of Part 1 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015*.

Table Item 6 provides that Part 2 of Schedule 4 commences on the day after the Act receives the Royal Assent.

Table Item 7 provides that Schedule 5 commences on 1 July 2016.

Table Item 8 provides that Schedule 6 commences on the day after the Act receives the Royal Assent.

The commencement table contains a clarifying note that the table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

### Clause 3: Schedule(s)

Clause 3 is an enabling provision for the Schedules. It provides that legislation that is specified in a Schedule to the Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **SCHEDULE 1 – New Zealand Citizens Residing on Norfolk Island**

Item 1 repeals item 323 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015*, which would otherwise insert subsection 7(2AA) into the *Social Security Act 1991*. This allows New Zealand citizens holding a permanent visa residing on Norfolk Island access to social security payments from 1 July 2016.

## **SCHEDULE 2 – Claims for Assistance Made by Norfolk Island Residents Before 1 July 2016**

Item 1 omits “4-week” and substitutes “8-week” into paragraph 381(a) of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015*. This aligns the early claim period for family tax benefit with claims for social security and child support to 8 weeks before 1 July 2016.

Item 2 inserts new subitems 382(1A), (1B) and (1C) after subitem 382(1) of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015*.

New subitem 382(1A) applies if an application for acceptance by the Registrar of a child support agreement made in relation to a child was made during the 8-week period ending at the final transition time, if when the application was made, either the applicant, the child or a parent of the child was ordinarily resident on Norfolk Island. Assuming the agreement had been entered into and made at the time (the deemed agreement time) immediately after the final transition time, the agreement would have been a child support agreement at the deemed agreement time, and that the application would have been in accordance with Division 3 of Part 6 of the *Child Support (Assessment) Act 1989* at that time, then the agreement is taken to have been entered into and made at the deemed agreement time, and the application for acceptance made immediately after the deemed agreement time.

New subitem 382(1B) provides that subsection 92(3) of the *Child Support (Assessment) Act 1989* does not apply in relation to an agreement and an application taken under subitem (1A) to have been made in relation to a child if an application for administrative assessment of child support in respect of the child is taken under subitem 382(1) to have been made immediately after the final transition time. To meet this exemption, an application for acceptance of a child support agreement under the transitional provisions will have to have made an application for a child support assessment under the transitional provisions as well as the application for acceptance of the child support agreement.

New subitem 382(1C) is a saving provision, preventing an application for acceptance of a child support agreement that could be properly made otherwise than under the transitional provisions to be administered under the existing Act.

Item 3 inserts definitions of child support agreement and Registrar for the purposes of these transitional provisions, by reference to the relevant child support Acts.



## **SCHEDULE 3 – Child Support for Indian Ocean Territory Residents**

### **Part 1 – Amendments**

Item 1 amends section 10 of the *Child Support (Assessment) Act 1989*, and Item 2 amends subsection 4(1) of the *Child Support (Registration and Collection) Act 1988* to omit “(other than a person who is a resident of Australia solely because the definition of *Australia* in that Act includes an external Territory other than Norfolk Island)”. The sections will now state that for the purposes of the relevant Acts a person is a resident of Australia on a day if on that day, the person is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*. This omission extends child support to various external Territories in common with the tax law, which for practical purposes extends the scheme to residents of the Indian Ocean Territories.

### **Part 2 – Transitional provisions**

The *Norfolk Island Legislation Amendment Act 2015* includes transitional provisions to allow Norfolk Island residents an 8-week early application period immediately prior to 1 July 2016 to lodge child support claims. With the extension of the child support program to residents of Cocos (Keeling) Islands and Christmas Island, it is intended to allow an 8-week early application period for child support applications to these residents to align with Norfolk Island residents.

Subitem 3(1) applies if an application for an administrative assessment of child support in respect of a child is made during the 8-week period ending at the start of 1 July 2016, and when the application is made, either the applicant, the child or a parent of the child is ordinarily resident in the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands. Assuming the application had been made immediately after the commencement of Part 1 of this Schedule, and it would have been in accordance with Division 1 of Part 4 of the *Child Support (Assessment) Act 1989*, then the application is taken to be made immediately after that commencement.

Subitem 3(2) applies if an application for acceptance by the Registrar of a child support agreement made in relation to a child was made during the 8-week period ending at the start of 1 July 2016; if when the application is made, either the applicant, the child or a parent of the child was ordinarily resident in the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands. Assuming the agreement had been entered into and made at the time (the deemed agreement time) immediately after the commencement of Part 1 of this Schedule, the agreement would have been a child support agreement at the deemed agreement time, and assuming that the application would have been in accordance with Division 3 of Part 6 of the *Child Support (Assessment) Act 1989* at that time, then the agreement is taken to have been entered into and made at the deemed agreement time, and the application for acceptance is taken to be made immediately after the deemed agreement time.

Item 3 provides that subsection 92(3) of the *Child Support (Assessment) Act 1989* does not apply in relation to an agreement and an application taken under subitem (2) to have been made in relation to a child if an application for administrative assessment of child support in respect of the child is taken under subitem (1) to have been made immediately after the commencement of Part 1 of this Schedule. To meet this exemption, an application for

acceptance of a child support agreement under the transitional provisions will have to have been made together with an application for a child support assessment under the transitional provisions.

Item 4 is a saving provision, preventing an application for acceptance of a child support agreement that could be properly made otherwise than under the transitional provisions to be administered under the existing Act.

Item 5 inserts definitions of administrative assessment, child support, child support agreement and Registrar for the purposes of these transitional provisions, by reference to the relevant child support Acts.

## **SCHEDULE 4 – Norfolk Island Electoral Arrangements**

### **Part 1 - Amendments**

#### ***Commonwealth Electoral Act 1918***

Item 1 amends the definition of “Australian Capital Territory” in subsection 4(1) to include Norfolk Island in addition to the Jervis Bay Territory. This means that unless the contrary intention appears, the Australian Capital Territory is to include Norfolk Island for the purposes of the *Commonwealth Electoral Act 1918* (the Electoral Act).

Item 2 repeals and substitutes the definition of “Controller-General of Prisons” for the purposes of the Electoral Act. This definition is relied upon in sections 109 and 227 of the Electoral Act (see items 41, 43 and 44).

The new definition provides that:

- Controller-General of Prisons of a State, the Australian Capital Territory (not including a non-self-governing Territory) or the Northern Territory (not including a non-self-governing Territory) means the principal officer having control of the prisons and gaols of the State or Territory, however that officer is described. In this context, due to the new definition of “non-self-governing Territory” in subsection 4(1) (see item 3), the Australian Capital Territory does not include Norfolk Island or the Jervis Bay Territory, and the Northern Territory does not include the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands;
- Controller-General of Prisons of a non-self governing territory (that is, of Norfolk Island, the Jervis Bay Territory, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands) means the principal officer having control of the prisons and gaols of the non-self-governing Territory, however that officer is described.

The new definition is intended to ensure that principal officers who have control of prisons and gaols in non-self-governing territories are subject to the requirements of sections 109 and 227, in addition to those officers of the States, Northern Territory and Australian Capital Territory who were previously covered by the definition. In this context, prisons and gaols are intended to include any facilities for imprisonment or detention.

Item 3 inserts a new definition of “non-self-governing Territory” in subsection 4(1) for the purposes of the Electoral Act, which is relied on in the definition of “Controller-General of

Prisons” (see item 2) and “Registrar-General” (see item 4). A “non-self-governing” Territory means Norfolk Island, the Jervis Bay Territory, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands.

Item 4 repeals and substitutes the definition of “Registrar-General” for the purposes of the Electoral Act. This definition is relied on in section 108 of the Electoral Act (see items 39, 40 and 43).

The new definition provides that:

- Registrar-General of a State, the Australian Capital Territory (not including a non-self-governing Territory) or the Northern Territory (not including a non-self-governing Territory) means the principal officer who is charged with the duty of registering births, deaths and marriages occurring in the State or Territory, however that officer is described. In this context, due to the new definition of “non-self-governing Territory” in subsection 4(1) (see item 3), the Australian Capital Territory does not include Norfolk Island or the Jervis Bay Territory, and the Northern Territory does not include the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands;
- Registrar-General of a non-self-governing Territory (that is, of Norfolk Island, the Jervis Bay Territory, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands) means the principal officer who is charged with the duty of registering births, deaths and marriages occurring in the non-self governing Territory, however that officer is described.

The new definition is intended to ensure that principal officers who are charged with the duty of registering births, deaths and marriages in non-self-governing Territories are subject to the requirements of section 108, in addition to those officers of the States, Northern Territory and Australian Capital Territory who were previously covered by the definition.

Item 5 removes a redundant reference to the Crown in the right of Norfolk Island, which has ceased to be an operative concept due to the *Norfolk Island Legislation Amendment Act 2015*.

Item 6 inserts a definition of “Australian Capital Territory”, for the purposes of Part III of the Electoral Act, which includes the Jervis Bay Territory, but does not include Norfolk Island. Part III of the Electoral Act deals with Representation in the Parliament. Excluding Norfolk Island from the definition of the Australian Capital Territory for Part III is contrary to the general approach provided for in subsection 4(1) (see item 1) and is required to allow for specific provisions in this Part to deal with the representation of Norfolk Island in the Parliament.

Item 7 amends the definition of “Territory” for the purposes of Part III of the Electoral Act so that it no longer specifically excludes Norfolk Island. For the purposes of determining representation in the Parliament, Norfolk Island is to be considered a Territory in the same manner as other external territories.

Item 8 inserts new subsection 40(6A). Section 40 deals with representation of the Territories, including Norfolk Island, in the Senate. Under subsection 40(5), in the event that two or more members of the House of Representatives are to be chosen in Norfolk Island (due to the operation of subsection 48(2A)), Norfolk Island will be represented in the Senate. However,

under new section 40(6A), until Norfolk Island becomes entitled to separate representation, Norfolk Island is treated as if it were part of the Australian Capital Territory for the purposes of Senate representation. This is consistent with the approach used for the Cocos (Keeling) Islands and Christmas Island Territories, which are treated as part of the Northern Territory until such time as they become entitled to separate representation in the Senate.

Items 9 and 10 repeal subsection 45(2) and consequently change previous subsection 45(1) to a section. Subsection 45(2) assisted with the interpretation of Part III of Division 3 of the Electoral Act in view of the fact that Norfolk Island residents could enrol in a federal Division in a State under section 95AA and be presumed to be one of the people of the State under section 95AB. As sections 95AA and 95AB are repealed (see item 30), this subsection is no longer required.

Item 11 inserts new paragraph 46(1)(da), which requires the Electoral Commissioner to ascertain the number of people of Norfolk Island for the purposes of determining the number of members of the House of Representatives to be chosen in the States and Territories at a general election. This is consistent with the approach adopted for the other Territories, and will mean that the Electoral Commissioner will include the people of Norfolk Island in determining the number of members of the House of Representatives to be chosen in the States and Territories at a general election pursuant to section 48 of the Electoral Act.

Item 12 inserts new paragraph 46(1B)(ca) which requires the Electoral Commissioner to ascertain the number of people of Norfolk Island using population statistics that the Australian Statistician has most recently compiled and published in a regular series under the *Census and Statistics Act 1905*. This is consistent with the requirements that apply to ascertaining the number of people for the States and the other territories.

Item 13 repeals subsection 46(2) which provided that a Norfolk Island resident on the roll of electors of a Territory because of subsection 95AA(3) are people of that Territory for the purposes of ascertaining its population. As subsection 95AA(3) is repealed and the treatment of Norfolk Island is in accordance with new subsection 48(2BA) (see item 16), subsection 46(2) is no longer required.

Item 14 amends paragraphs 48(1)(b), which requires the Electoral Commissioner to determine the number of members of the House of Representatives to be chosen in the Territories at a general election, so that it is in accordance with new subsection 48(2BA) (see item 16).

Item 15 amends paragraph 48(2A), which specifies the method by which the Electoral Commissioner is to determine the number of members of the House of Representatives to be chosen in the Territories at a general election, so that it is subject to new subsection 48(2BA) (see item 16).

Item 16 inserts new subsections 48(2BA) and 48(2BB).

New subsection 48(2BA) specifies what is to occur in the event that the Electoral Commissioner determines that, at a general election, no member of the House of Representatives is to be chosen in Norfolk Island (due to the operation of subsection 48(2A)).

If this condition is met:

- the ascertainment under section 46, and the determinations under section 48, in respect of Norfolk Island and the Australian Capital Territory, are taken to never have been made (paragraph 48(2BA)(a));
- Norfolk Island is taken to be part of the Australian Capital Territory (in addition to the Jervis Bay Territory) (paragraph 48(2BA)(b)); and
- the Electoral Commissioner must, as soon as possible, ascertain, the number of people of the Australian Capital Territory under section 46 (subparagraph 48(2BA)(c)(i)) and determine the number of members of the House of Representatives under section 48 (subparagraph 48(2BA)(c)(ii)).

New subsection 48(2BB) assists with interpretation by clarifying that subsection 46(1A) does not apply to the ascertainment of the number of people of the Australian Capital Territory under subparagraph (2BA)(c)(i). Subsection 46(1A) might otherwise require the fresh ascertainment of the number of people of the Australian Capital Territory under sub-subparagraph 48(2BA)(c)(i) to be made after the end of the 12 month period after the day of the first meeting of the House of Representatives.

Item 17 amends paragraph 48(2F)(a)(i) so that where a determination is made under subsection 48(1) in accordance with new subparagraph 2BA(c)(ii) in respect of the Australian Capital Territory (see item 16), it is taken to never have been made in those circumstances where subsection 48(2E) applies to the Australian Capital Territory. This is consistent with the approach used for the Cocos (Keeling) Islands and Christmas Island Territories in relation to the Northern Territory.

Item 18 substitutes a new note alerting readers to the fact that, in certain circumstances, the number of people of the Australian Capital Territory will have been re-ascertained in accordance with section 46 because of the operation of subsection 48(2BA). The note also includes references to the re-ascertainment of the number of people of the Northern Territory because of the operation of subsection 48(2C), which appeared in the previous note.

Item 19 amends paragraph 48(2G), which provides the timing by which the Electoral Commissioner is to determine the number of members of the House of Representatives to be chosen in the Territories at a general election, so that it applies to those determinations made under paragraph 2BA(c) (see item 16).

Item 20 amends subparagraph 49(1)(a)(i) to require the number of people of Norfolk Island, ascertained under section 46, to be included in the Electoral Commissioner's certificate to be forwarded to the Minister responsible for the Electoral Act. This ensures that the requirements under section 46 in relation to Norfolk Island are appropriately reflected in the relevant notification requirements.

Item 21 amends the note under subsection 49(1) to alert readers to the fact that, in relation to subparagraph 49(1)(a)(iii) concerning the requirement for the Electoral Commissioner to notify the details of any adjustments made to relevant statistical information to give effect to the provisions of the Division, such adjustments may be necessary to give effect to subsection 48(2BA). The note no longer refers to adjustments being necessary to give effect to the

subsection 4(1) definition of the “Australian Capital Territory” due to the amendments made to this definition and section 38A (see items 1 and 6).

Item 22 amends section 51, which provides that a member of the House of Representatives representing a Territory shall be directly chosen by the people of the Territory, so that it is no longer subject to subsection 95AA(3) which is repealed (see item 30).

Item 23 inserts new section 56AA which contains specific requirements around how the Jervis Bay Territory and Norfolk Island are to be included in Australian Capital Territory Divisions.

Subsection 56AA(1) requires any distribution or redistribution of the Australian Capital Territory to include the whole of the Jervis Bay Territory in one electoral division. In respect of redistributions, this continues the effect of subsection 73(5), which is repealed (see item 28).

Subsection 56AA(2) requires that, until the Electoral Commissioner determines that a member of the House of Representatives be chosen in Norfolk Island at a general election under section 48(2A), any distribution or redistribution of the Australian Capital Territory into electoral division under this Act must be such that:

- the whole of Norfolk Island is included in one electoral division (paragraph 56AA(2)(a)); and
- if there is more than one electoral division – Norfolk Island and the Jervis Bay Territory are included in different electoral divisions (paragraph 56AA(2)(b)).

This provision ensures that, where possible, a member of the House of Representatives in the Australian Capital Territory only represents one external territory.

Item 24 amends the heading of section 56A concerning the inclusion of certain Territories in Northern Territory Divisions so that it better reflects its content and aligns with the heading of new section 56AA (see item 23).

Items 25 and 26 amend section 66 relating to proposed redistributions to:

- remove a specific requirement around the inclusion of the Jervis Bay Territory in one Australian Capital Territory electoral division. The specific requirements around the inclusion of external territories in Territory Divisions under section 56AA (for the Australian Capital Territory (see item 23)) and section 56A (for the Northern Territory) must be complied with in relation to distributions, so they necessarily must be taken into account in the making of proposed redistributions; and
- insert a note alerting readers to those requirements under sections 56AA and 56A.

Items 27 and 28 amend section 73 relating to the determination of redistributed electoral divisions by the augmented Electoral Commissioner to:

- remove a specific requirement around the inclusion of the Jervis Bay Territory in one Australian Capital Territory electoral division. The specific requirements around the inclusion of external territories in Territory Divisions under section 56AA (for the Australian Capital Territory (see item 23)) and section 56A (for the Northern

Territory) must be complied with in relation to distributions, so they necessarily must be taken into account in the determination of redistributed electoral divisions; and

- insert a note alerting readers to the specific requirements of sections 56AA (for the Australian Capital Territory) and 56A (for the Northern Territory).

Item 29 repeals subsections 94(16) and 95(17), which had the effect of enabling persons temporarily resident in Norfolk Island from being treated as eligible overseas electors, on the basis that Australia did not include Norfolk Island. As the electoral arrangements for persons living in Norfolk Island are to be consistent with the general arrangements applying to other Australians, these subsections are no longer required and persons living in Norfolk Island will be entitled to apply to be treated as eligible overseas electors on the same basis as other Australians.

Item 30 repeals sections 95AA, 95AB and 95AC, which provided specific arrangements for the enrolment of Norfolk Island residents. As persons living in Norfolk Island will be required to enrol on the same basis as other Australians under Part VII of the Electoral Act, these specific provisions relating to Norfolk Island electors are no longer required.

Item 31 repeals subsection 96(13), which had the effect of excluding persons living in Norfolk Island from being treated as itinerant electors. As the electoral arrangements for persons living in Norfolk Island are to be consistent with the general arrangements applying to other Australians, this subsection is no longer required and persons living in Norfolk Island will be entitled to apply to be treated as itinerant electors on the same basis as other Australians.

Item 32 amends paragraph 98AA(2)(a) so that an application or claim for enrolment by a person holding a driver's licence issued under a law in force in Norfolk Island must include or be accompanied by the number of that driver's licence. As there are specific laws governing the issuing of a driver's licence in Norfolk Island, this allows current holders of a Norfolk Island driver's licence to use this as a form of acceptable identification consistent with those holding a driver's licence issued under the law of a State or Territory.

Item 33 omits a reference to section 95AA from subsection 99(3), which relates to claims for enrolment and transfer. As section 95AA is repealed (see item 30), this reference is no longer required.

Item 34 amends subsection 101(1), which requires persons entitled to be enrolled to fill in, sign and send or deliver a claim to the Electoral Commissioner, so that it is no longer subject to subsection 101(5A). As subsection 101(5A) is repealed (see item 38), this qualification is no longer necessary.

Item 35 repeals subsection 101(1A), which allowed those residents of Norfolk Island entitled to be enrolled under section 95AA to fill in, sign and send or deliver a claim to the Electoral Commissioner. As section 95AA is repealed (see item 30), this subsection is no longer necessary.

Item 36 amends subsection 101(4), which provides for an offence for non-enrolment, so that it is no longer subject to subsection 101(5A). As subsection 101(5A) is repealed (see item 38), this qualification is no longer necessary.

Item 37 amends subsection 101(5), which requires enrolled persons to give written notice of change of address to the Electoral Commissioner, so that it is no longer subject to subsection 101(5A). As subsection 101(5A) is repealed (see item 38), this qualification is no longer necessary.

Item 38 repeals subsection 101(5A), which provided that subsections 101(1), 101(4) and 101(5) do not apply to a qualified Norfolk Islander within the meaning of section 95AA. As subsection 95AA is repealed (see item 30), this subsection is no longer necessary.

Items 39 and 40 amend section 108 to:

- modernise drafting by replacing “shall” with “must” and clarify that those obligations relating to forwarding information concerning deaths and other information under an agreement apply to the Registrar-General of a State; and
- substitute a new note alerting readers to the fact that the application of section 108 is subject to section 112 which provides further details of its application to the Australian Capital Territory, the Northern Territory and the non-self-governing Territories (namely, Norfolk Island, the Jervis Bay Territory, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands).

Item 41 substitutes a new note under section 109 alerting readers to the fact that the application of section 109, which requires the Controller-General of Prisons to forward information regarding particular persons serving sentences of imprisonment to the Electoral Commissioner, is subject to section 112, which provides further details of its application to the Australian Capital Territory, the Northern Territory and the non-self-governing Territories (namely, Norfolk Island, the Jervis Bay Territory, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands).

Items 42 and 43 change previous section 112 into subsection 112(1), without otherwise altering its content, and insert new subsections 112(2) to 112(4).

Under subsection 112(1), references to a State in Part VIII of the Electoral Act are generally interpreted to also apply to the Australian Capital Territory or the Northern Territory. However, more specific application arrangements for sections 108 and 109, which require Registrar-Generals and Controller-Generals of Prisons to forward particular information to the Electoral Commissioner, are included in new subsections 112(2) to (9).

#### *Application of sections 108 and 109 to the Australian Capital Territory*

Subsection 112(2) provides that for the purposes of the application of sections 108 and 109, the Australian Capital Territory does not include Norfolk Island or the Jervis Bay Territory and those sections apply:

- to Norfolk Island as if references to a State were references to Norfolk Island (subject to subsections 112(3) and 112(5)); and
- to Jervis Bay Territory as if references to a State were references to Jervis Bay Territory (subject to subsections 112(4) and 112(5)).



The effect of this provision is to require the “Controller-General of Prisons” and the “Registrar-General” of Norfolk Island, and of Jervis Bay Territory, as defined in subsection 4(1) (see items 2 and 4), to provide information to the Electoral Commissioner under sections 108 and 109.

Under paragraph 108(b), the “Registrar-General” of a State (which includes the Registrar-General of Norfolk Island and the Registrar-General of Jervis Bay Territory due to subsection 112(2)) is required to forward to the Electoral Commissioner (or a nominated officer) any information required under an agreement between the Electoral Commission and a Minister of the State or the Registrar-General. Subsections 112(3) and 112(4) provide that:

- in relation to Norfolk Island, a relevant agreement is taken to be with the responsible Commonwealth Minister (within the meaning of the *Norfolk Island Act 1979*) rather than with a Minister of the State (subsection 112(3)); and
- in relation to the Jervis Bay Territory, a relevant agreement is taken to be with the Minister administering the *Jervis Bay Territory Acceptance Act 1915* (subsection 112(4)).

Under subsection 109(2), there are requirements for the Controller-General of Prisons of a State (which includes the Controller-General of Norfolk Island and the Registrar-General of Jervis Bay Territory due to subsection 112(2)) to forward information to the Electoral Commissioner (or nominated officer) within four days following the close of the rolls for an election for a Division in a State. From 1 July 2016, Norfolk Island will be included in a Division of the Australian Capital Territory (see item 50). Subsection 112(5) therefore imposes the requirement for the Controllers-General of Prisons of Norfolk Island and Jervis Bay Territory to forward specified information where there is an election for a Division in the Australian Capital Territory.

#### *Application of sections 108 and 109 to the Northern Territory*

Subsection 112(6) provides that for the purposes of the application of sections 108 and 109, the Northern Territory does not include the Territory of Christmas Island or the Territory of Cocos (Keeling) Island and those sections apply:

- to the Territory of Christmas Island as if references to a State were references to the Territory of Christmas Island (subject to subsections 112(7) and 112(9)); and
- to the Territory of Cocos (Keeling) Islands as if references to a State were references to the Territory of Cocos (Keeling) Islands (subject to subsections 112(8) and 112(9)).

The effect of this provision is to require the “Controller-General of Prisons” and the ‘Registrar-General’ of the Territory of Christmas Island, and of the Territory of Cocos (Keeling) Islands, as defined in subsection 4(1) (see items 2 and 4), to provide information to the Electoral Commissioner under sections 108 and 109.

Under paragraph 108(b), the “Registrar-General” of a State (which includes the Registrar-General of the Territory of Christmas Island and the Registrar-General of the Territory of Cocos (Keeling) Islands due to subsection 112(2)) is required to forward to the Electoral Commissioner (or a nominated officer) any information required under an agreement between the Electoral Commission and a Minister of the State or the Registrar-General. Subsections 112(7) and 112(8) provide that:

- in relation to the Territory of Christmas Island, a relevant agreement is taken to be with the Minister administering the *Christmas Island Act 1958* (subsection 112(7)); and
- in relation to the Territory of Cocos (Keeling) Islands, a relevant agreement is taken to be with the Minister administering the *Cocos (Keeling) Islands Act 1955* (subsection 112(8)).

Under subsection 109(2), there are requirements for the Controller-General of Prisons of a State (which includes the Controller-General of the Territory of Christmas Island and the Controller-General of the Territory of Cocos (Keeling) Islands due to subsection 112(2)) to forward information to the Electoral Commissioner (or nominated officer) within four days following the close of the rolls for an election for a Division in a State. The Territory of Christmas Island and the Territory of Cocos (Keeling) Islands are included in a Division of the Northern Territory under the Electoral Act. Subsection 112(9) therefore imposes the requirement for the Controllers-General of Prisons of Norfolk Island and Jervis Bay Territory to forward specified information where there is an election for a Division in the Northern Territory.

Item 44 amends subsection 227(4A) so that the requirement to consult the Controller-General of Prisons before determining a prison as a place that a mobile polling team will visit to take votes in an election is compatible with the definition of “Controller-General of Prisons” in subsection 4(1) (see item 2).

Item 45 repeals and substitutes section 394. This section previously provided that, without the authority of the Governor-General, no election or referendum or vote of electors of a State, or part of a State, could be held or taken under the law of the State, on the day appointed as polling day for an election of the Senate or a general election of the House of Representatives. In this context, State was defined to include the Australian Capital Territory, the Northern Territory, and Norfolk Island. Under new section 394, additions have been made so that, without the authority of the Governor-General, no election, referendum or vote of the electors of Norfolk Island may be held or taken under a law in force in Norfolk Island on the day appointed as polling day for an election of the Senate or a general election of the House of Representatives. This is intended to ensure that the general prohibition around timing applies to elections in Norfolk Island in the same way that it applies to such elections in the States, the Australian Capital Territory and the Northern Territory.

### ***Referendum (Machinery Provisions) Act 1984***

Item 46 amends the definition of the “Australian Capital Territory” in section 3 of the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) to include Norfolk Island in addition to the Jervis Bay Territory. This places residents of Norfolk Island within the Australian Capital Territory for the purposes of referendums, which is consistent with their treatment under the Electoral Act.

Item 47 removes a redundant reference to the crown in the right of Norfolk Island, which has ceased to be an operative concept due to the *Norfolk Island Legislation Amendment Act 2015*.

Item 48 repeals section 98A, which provides that if a person is on the roll for a Territory because of subsection 95AA(3) of the Electoral Act, his or her vote or ballot paper is taken to be in relation to that Territory. As subsection 95AA is repealed (see item 30), this section is no longer required.

## **Part 2 – Transitional provisions**

Item 49 provides the following definitions for the purposes of the transitional provisions in the Bill:

- “commencement time” which means the commencement of Part 1 of the Schedule which is 1 July 2016 (at the same time as Part 1 of Schedule 2 to the *Norfolk Island Legislation Amendment Act 2015* commences);
- “responsible Commonwealth Minister” which has the same meaning as in the *Norfolk Island Act 1979*; and
- “rules” means rules made under subitem 60(1).

Item 50 provides that until the first distribution or redistribution of the Australian Capital Territory determined under subsection 73(1) or 76(6) that takes effect after 1 July 2016 the whole of Norfolk Island is taken to be included in the Division of the Australian Capital Territory that does not include the Jervis Bay Territory. At commencement, the practical effect of this provision will be the inclusion of Norfolk Island in the Division of Canberra.

Item 51 provides for action by the Electoral Commissioner in relation to enrolments for those Norfolk Island electors enrolled on electoral rolls for Divisions in a State or the Northern Territory immediately before 1 July 2016. Under this provision, the Electoral Commissioner must:

- transfer a relevant Norfolk Island elector’s name from the roll for the Subdivision in a State or the Northern Territory by deleting their name and the annotation made under section 95AC to identify that that person was a Norfolk Island elector, and entering their name and other particulars on the roll for the Division of the Australian Capital Territory that does not include the Jervis Bay Territory (effectively, the Division of Canberra) (sub-subitem 51(2)(a)); and
- notify the relevant Norfolk Island elector in writing that this has occurred (sub-subitem 51(2)(b)).

The Electoral Commissioner must not effect a transfer during the period when the rolls have closed for an election to be held in the relevant Division of the Australian Capital Territory that includes Norfolk Island (subitem 51(4)).

The Electoral Commissioner is not required to transfer a relevant Norfolk Island elector’s name where he or she is satisfied that a person is not entitled to be on the roll for the Division of the Australian Capital Territory that does not include the Jervis Bay Territory (effectively, the Division of Canberra). In such circumstances, the Electoral Commissioner must delete the annotation made under section 95AC of the Act, and must take action required or may take such action permitted by the rules (subitem 51(3)). The Electoral Commissioner must also

notify the relevant person in writing about the deletion of the annotation or any action taken in accordance with the rules (sub-subitem 51(3)(d)).

The Electoral Commissioner must not delete an annotation or take any action specified under the rules in respect of a person not entitled to be on the roll during the period when the rolls have closed for an election to be held in the relevant Division of the Australian Capital Territory that includes Norfolk Island (subitem 51(5)).

Item 52 provides for action by the Electoral Commissioner in relation to enrolments for those Norfolk Island electors enrolled on the electoral roll for the Division in the Australian Capital Territory that does not include the Jervis Bay Territory (effectively, the Division of Canberra) immediately before 1 July 2016. Under this provision, the Electoral Commissioner:

- must delete the annotation made under section 95AC to identify that a person was a Norfolk Island elector (sub-subitem 52(2)(a));
- may make any additions, alterations or corrections to the Roll that are necessary to ensure that the Roll contains the person's particulars as required by section 83 of the Electoral Act (sub-subitem 52(2)(b)); and
- notify the relevant Norfolk Island elector in writing that such action has occurred (sub-subitem 52(2)(c)).

The Electoral Commissioner must not delete an annotation (made under section 95AC) during the period when the rolls have closed for an election to be held in the relevant Division of the Australian Capital Territory that includes Norfolk Island (subitem 52(4)).

Where the Electoral Commissioner is satisfied that a person is not entitled to be on the roll for the Division of the Australian Capital Territory that does not include the Jervis Bay Territory (effectively, the Division of Canberra), the Electoral Commissioner must delete the annotation made under section 95AC, and must take action required or may take such action permitted by the rules (subitem 52(3)). The Electoral Commissioner must notify the relevant person in writing about the deletion of the annotation or any action taken in accordance with the rules (sub-subitem 52(3)(d)).

The Electoral Commissioner must not delete an annotation or take any action specified under the rules in respect of a person not entitled to be on the roll during the period when the rolls have closed for an election to be held in the relevant Division of the Australian Capital Territory that includes Norfolk Island (subitem 52(5)).

Item 53 provides that for the purposes of items 51 and 52, a notice may be given by an electronic communication as defined in the *Electronic Transactions Act 1999*, whether or not the person consents. This is consistent with the treatment of notices under sections 103A and 103B, which deal with updating or transferring a person's enrolment, or enrolling an unenrolled person, without a claim or notice from the person.

Item 54 allows the Electoral Commissioner to delegate all or any of his or her powers or functions under items 51 and 52 to any officer or other member of staff of the Electoral Commission (subitem 54(1)). Under section 4, "officer" covers Australian Electoral Officers and Divisional Returning Officers, as well as various other people. In exercising powers or performing delegated functions, the delegate must comply with any directions of the Electoral Commissioner. The class of potential delegates in this item is consistent with that provided

for in section 28 of the Act. The need for this broad delegation power in relation to items 51 and 52 is necessary to allow all officers and staff of the Electoral Commission in various geographical locations to be utilised to derive maximum efficiency in enrolment processing.

Item 55 allows persons living on Norfolk Island to make claims for enrolment in the eight week period prior to 1 July 2016, and allows those claims that are in accordance with the Electoral Act to be treated as though they were made immediately after 1 July 2016. This allows the Electoral Commissioner and his or her delegates to efficiently process new enrolments and assist those persons living in Norfolk Island who were not previously enrolled to comply with their obligations under the Electoral Act in a timely manner.

Item 56 provides that section 87 of the Electoral Act applies as if the reference in that section to action taken under section 103A or 103B of that Act included a reference to action taken under item 51 or 52. Section 87 requires that, where new rolls are to be prepared, the Electoral Commissioner must make additions, alterations and corrections to the roll and remove names from the roll pursuant to action taken under section 103A or 103B up until the date of the notification that the rolls have been prepared.

Items 57 and 58 specify the application of sections 390 and 390A of the Electoral Act to notices given under item 51 and 52.

Section 390 limits the circumstances in which an officer is required to produce, disclose or communicate to courts particular documents or information related to enrolment. Section 390A prevents the seizure under a warrant of particular documents related to enrolment. For the purposes of these sections, a notice given under item 51 or 52 is to be treated in the same manner as notices under sections 103A or 103B, which deal with updating or transferring a person's enrolment, or enrolling an unenrolled person, without a claim or notice from the person.

Item 59 provides that for the purposes of voting at a referendum, a name must not be deleted from a roll or entered on a roll under item 51 or 52 during a suspension period for the referendum within the meaning of subsection 4(2) of the *Referendum (Machinery Provisions) Act 1984*.

Item 60 provides for the responsible Commonwealth Minister (with the same meaning as in the *Norfolk Island Act 1979*) to prescribe matters of a transitional nature relating to the amendments or repeals made to the Electoral Act or the *Referendum (Machinery Provisions) Act 1984* by this Schedule. However, the transitional rules are not able to create an offence or civil penalty; provide powers of arrest or detention; or entry, search or seizure; impose a tax; appropriate from the Consolidated Revenue Fund; or directly amend the text of the Act.

## **SCHEDULE 5 - Application of Acts to Norfolk Island**

### **Part 1—General amendments**

#### **Division 1—Amendments**

##### ***Acts Interpretation Act 1901***

Item 1 amends the definition of “Australia” in section 2B of the *Acts Interpretation Act 1901* (Acts Interpretation Act). This section provides that “Australia” means “the Commonwealth of Australia and, when used in a geographical sense, includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory”. This amendment inserts “Norfolk Island,” after the word “includes”, therefore includes Norfolk Island in the meaning of “Australia” when used in a geographical sense. The effect of this amendment is that other Commonwealth legislation which relies on the definition of “Australia” provided by the Acts Interpretation Act will include Norfolk Island. This amendment enables the normalisation of federal legislative arrangements for Norfolk Island.

Item 2 amends the definition of “Commonwealth” in section 2B of the Acts Interpretation Act. This section provides for the meaning of “Commonwealth”, which is identical to the meaning of Australia: “the Commonwealth of Australia and, when used in a geographical sense, includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory”. This amendment inserts “Norfolk Island,” after the word ‘includes’, therefore includes Norfolk Island in the meaning of Commonwealth when used in a geographical sense. The effect of this amendment is that other Commonwealth legislation which relies on the definition of Commonwealth provided by the Acts Interpretation Act will include Norfolk Island. This amendment enables the normalisation of federal legislative arrangements for Norfolk Island.

##### ***Norfolk Island Act 1979***

Item 3 repeals section 18 of the *Norfolk Island Act 1979* and substitutes it with a new section 18. Subsection 18(1) provides that a Commonwealth Act (or provision of an Act) extends to the Territory of Norfolk Island of its own force, except so far as that Act (or another Commonwealth Act) expressly provides otherwise. Subsection 18(2) qualifies subsection 18(1) to provide that, except as provided by the *Norfolk Island Act 1979*, an enactment has no effect so far as it purports to affect the application of a Commonwealth Act (or provision of an Act) in, or in relation to, the Territory of Norfolk Island. Subsection 18(3) provides that subsections 18(1) and 18(2) apply to Commonwealth Acts passed before, on or after 1 July 2016.

In effect, section 18 provides that a Commonwealth Act is in force on Norfolk Island, except as otherwise provided by an Act. This means that Commonwealth Acts which do not state whether or not they extend to Norfolk Island now extend to Norfolk Island (even if there is no practical effect of this extension). Commonwealth Acts which expressly state they do not extend to Norfolk Island do not extend to Norfolk Island. Commonwealth Acts which state that they extend to Norfolk Island continue to extend (although this is technically unnecessary

as a result of new section 18). This amendment enables the normalisation of federal legislative arrangements for Norfolk Island.

## **Division 2—Transitional provisions**

Item 4 provides for two definitions for the transitional provisions in item 5. “Responsible Commonwealth Minister” means the same as in the *Norfolk Island Act 1979*, and “transitional rules” means the rules made under item 5.

Item 5 provides for a transitional rule-making power for the responsible Commonwealth Minister (as defined in the *Norfolk Island Act 1979*). Subitem 5(1) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Schedule 5. Subitem 5(2) provides limits and safeguards on the Minister’s transitional rule-making power. That is, the transitional rules may not create an offence or civil penalty; provide powers of: arrest or detention; or entry, search or seizure; impose a tax; set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act; or directly amend the text of the *Norfolk Island Act 1979*. Subitem 5(3) provides that transitional rules made before 1 July 2017 may provide that this Act or any other Act or instrument has effect with any modifications prescribed by the transitional rules. Subitem 5(4) provides that subsection 12(2) of the *Legislation Act 2003* concerning the retrospective application of legislative instruments does not apply to transitional rules made before 1 July 2017. Subsection 12(2) of the *Legislation Act 2003* prevents a legislative instrument from taking effect before registration if this would affect the rights of a person to their disadvantage or impose a liability upon them for things done or omitted before that registration.

The scope of the changes in Schedule 5 to normalise federal legislative arrangements on Norfolk Island is broad. It is possible that amendments made to the *Acts Interpretation Act 1901* and section 18 of the *Norfolk Island Act 1979* may affect the application of Commonwealth legislation to Norfolk Island in a way that was unintended. The transitional rule-making power provides the Minister (in consultation with the relevant portfolio Minister) with an expedient way of resolving unforeseen issues or unintended consequences associated with the Schedule 5 amendments.

To provide for the unusual circumstances created by the extension of Commonwealth laws to Norfolk Island, transitional rules made in the first year may amend the application of Commonwealth legislation to Norfolk Island and be retrospective. Retrospectivity may pre-date the commencement of this Schedule and impose a retrospective disadvantage, contrary to subsection 12(2) of the *Legislation Act 2003*. However, subitem 5(2) places limits on what transitional rules can do, and the capacity for the transitional rules to retrospectively impose a disadvantage is time limited, starting with the commencement of the Schedule and not applying to transitional rules made on or after 1 July 2017. The transitional rules may also operate to retrospective advantage.

Item 6 is a constitutional safety net provision. Subitem 6(1) provides that if the operation of Schedule 5 or the transitional rules would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable

amount of compensation to the person. Subitem 6(2) provides that if the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Item 7 is a constitutional limits' provision, and provides that Schedule 5 has no effect to the extent (if any) to which it imposes taxation.

Item 8 provides that Division 2 of Schedule 5 does not, by implication, limit the matters that may be dealt with by Ordinances under section 19A of the *Norfolk Island Act 1979*.

## **Part 2—Specific amendments**

### ***Agricultural and Veterinary Chemicals Act 1994***

Item 9 amends the definition of “participating Territory” in section 4 by adding a reference to Norfolk Island in new paragraph (aa), to the effect that Norfolk Island becomes a participating Territory under the Act.

Item 10 amends the definition of “Territory” in section 4 by omitting the reference to Norfolk Island, to the effect that Norfolk Island becomes a Territory under the Act.

### ***Australian Capital Territory (Self-Government) Act 1988***

Item 11 amends subsection 69(1) by inserting Norfolk Island after Northern Territory. This provides that, subject to subsection (2), trade, commerce and intercourse between the Australian Capital Territory and the Norfolk Island (and the other places listed) shall be absolutely free.

### ***Australian National Preventive Health Agency Act 2010***

Item 12 amends section 5 by omitting the reference to “other than Norfolk Island”, to the effect that the *Australian Preventive Health Agency Act 2010* extends to every external Territory (including Norfolk Island).

### ***Australian Postal Corporation Act 1989***

Item 13 repeals the heading in section 8 and substitutes it with the heading, “Extension of Act to external Territories”. This is a consequential amendment to item 14.

Item 14 amends section 8 to omit the words “(other than Norfolk Island)”, to the effect that the *Australian Postal Corporation Act 1989* extends to the external Territories, including Norfolk Island.

Item 15 repeals the definition of *Territory* in subsection 9(4). This means a reference to Territory in section 9 includes Norfolk Island.



Item 16 amends the definition of “Australia” in subsection 27(5) by inserting a reference to Norfolk Island after “includes”. This means a reference to Australia in section 27 includes Norfolk Island.

### ***Australian Securities and Investments Commission Act 2001***

Item 17 inserts new subsections 4(1A) and 4(1B) after subsection 4(1). Subsection 4(1A) provides that, subject to paragraph (1)(c), the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) does not apply on Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands. Subsection 4(1B) provides that for the purposes of subsection (1A), it does not matter whether paragraph (1)(c) operates because of regulations made before, on or after the commencement of subsection 4 (1A).

The ASIC Act expressly provides that it does not extend to Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands, except to the extent prescribed by regulations. The provision has been included to avoid doubt over the application of the ASIC Act to Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands. Item 17 also clarifies that the extension of the ASIC Act to Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands under the regulations will continue to operate where the regulations were made prior to these amendments being introduced.

### ***Bankruptcy Act 1966***

Item 18 inserts two new definitions in subsection 5(1). Subsection 5(1) provides that “Australia”, when used in the geographical sense, does not include Norfolk Island; and “Territory of the Commonwealth” means a Territory referred to in section 122 of the Constitution, other than Norfolk Island. These amendments are consequential to the amendment in item 19.

Item 19 inserts section 9A at the end of Part IB to expressly provide that the *Bankruptcy Act 1966* does not extend to Norfolk Island. This has the effect of excluding Norfolk Island from the application of the *Bankruptcy Act 1966*.

### ***Bankruptcy (Estate Charges) Act 1997***

Item 20 inserts section 3A after section 3 to expressly provide that the *Bankruptcy (Estate Charges) Act 1997* does not extend to Norfolk Island. This has the effect of excluding Norfolk Island from the application of that Act.

### ***Broadcasting Services Act 1992***

Item 21 inserts section 10AA after section 10. Section 10AA provides that the operation of the *Broadcasting Services Act 1992* in relation to Norfolk Island is not affected by the amendments made by Division 1 of Part 1 of Schedule 5 to the *Territories Legislation Amendment Act 2016*. This means that the *Broadcasting Services Act 1992* is unaffected by

this Schedule. The provisions of the *Broadcasting Services Act 1992* which applied to Norfolk Island continue to apply, and the provisions of that Act which did not apply continue to not apply with the commencement of this Schedule.

### ***Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992***

Item 22 inserts section 3A at the end of Part 1, expressly providing that the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* does not extend to Norfolk Island.

### ***Business Names Registration Act 2011***

Item 23 amends the definition of “affected Territory” in section 3 by inserting paragraph (ba) after paragraph (b) to include Norfolk Island in the list of affected Territories. This has the effect of extending the application of the *Business Names Registration Act 2011* to Norfolk Island.

Item 24 repeals the definition of “Australia” in section 3. This is a consequential amendment to item 23.

### ***Competition and Consumer Act 2010***

Item 25 amends section 151AC to insert a “(1)” before the words “This Part”. This is a consequential amendment to item 26.

Item 26 amends section 151AC to add subsection (2). New subsection 151AC(2) provides that the operation of Part XIB, and the other provisions of the *Competition and Consumer Act 2010* so far as they relate to Part XIB, in relation to Norfolk Island is not affected by the amendments made by Division 1 of Part 1 of Schedule 5 to the *Territories Legislation Amendment Act 2016*. This means that Part XIB of the *Competition and Consumer Act 2010* is unaffected by this Schedule. The provisions of the *Competition and Consumer Act 2010* which applied to Norfolk Island continue to apply, and the provisions of that Act which did not apply continue to not apply with the commencement of this Schedule.

Item 27 amends section 151AE to insert a “(1)” before the words “This Part”. This is a consequential amendment to item 28.

Item 28 amends section 151AE to add subsection (2). New subsection 151AE(2) provides that the operation of Part XIB, and the other provisions of the *Competition and Consumer Act 2010* so far as they relate to this Part, in relation to Norfolk Island is not affected by the amendments made by Division 1 of Part 1 of Schedule 5 to the *Territories Legislation Amendment Act 2016*. This means that Part XIB of the *Competition and Consumer Act 2010* is unaffected by this Schedule. The provisions of the *Competition and Consumer Act 2010* which applied to Norfolk Island continue to apply, and the provisions of that Act which did not apply continue to not apply with the commencement of this Schedule.

### ***Copyright Act 1968***

Item 29 amends the definition of “Australia” in subsection 152(1) to insert the words “other than Norfolk Island” after “external Territories”. This has the effect of including Norfolk Island in the definition of Australia where it is referred to in section 152. Section 152 is about applications to the Copyright Tribunal of Australia for determinations of amounts payable for broadcasting published sound recordings. Regarding the application of the rest of the *Copyright Act 1968* to Norfolk Island, this remains the same.

### ***Cross-Border Insolvency Act 2008***

Item 30 amends section 4 to insert “Norfolk Island” after the words “extend to”, to the effect that the *Cross-Border Insolvency Act 2008* expressly provides that it does not extend to Norfolk Island.

The *Cross-Border Insolvency Act 2008* applies the Model law on Cross-Border Insolvency of the United Nations Commission on International Trade Law to Australia in relation to the *Bankruptcy Act 1966* and the insolvency provisions in Chapter 5 of the *Corporations Act 2001*. As the *Bankruptcy Act 1966* and Chapter 5 of the *Corporations Act 2001* do not apply in Norfolk Island, the *Cross-Border Insolvency Act 2008* is also excluded from operating in Norfolk Island to avoid uncertainty or any unintended consequences.

Item 31 amends the definition of “Australia” in subsection 5(1) to insert “Norfolk Island,” after “include”, to the effect that Norfolk Island is not included in the definition of Australia for the purposes of the *Cross-Border Insolvency Act 2008*. This is a consequential amendment to item 30.

Item 32 amends the note in subsection 7(2) to insert “Norfolk Island” after “includes” to update the cross-reference to definition of Australia in section 2B of the *Acts Interpretation Act 1901* which has been amended by this Schedule.

### ***Customs Licensing Charges Act 1997***

Item 33 inserts section 3A after section 3 to expressly provide that the *Customs Licensing Charges Act 1997* does not extend to Norfolk Island.

### ***Customs Securities (Penalties) Act 1981***

Item 34 inserts section 3A after section 3 to expressly provide that the *Customs Securities (Penalties) Act 1981* does not extend to Norfolk Island.

### ***Customs Tariff Act 1995***

Item 35 inserts section 3A after section 3 to expressly provide that the *Customs Tariff Act 1995* does not extend to Norfolk Island.

### ***Customs Tariff (Anti-Dumping) Act 1975***

Item 36 inserts section 6A after section 6 to expressly provide that *Customs Tariff (Anti-Dumping) Act 1975* does not extend to Norfolk Island.

### ***Customs Undertakings (Penalties) Act 1981***

Item 37 inserts section 3A after section 3 to expressly provide that the *Customs Undertakings (Penalties) Act 1981* does not extend to Norfolk Island.

### ***Do Not Call Register Act 2006***

Item 38 repeals the definition of “Australia” in section 4 and substitutes a new definition which provides that “Australia” means the Commonwealth of Australia and, when used in a geographical sense, includes the eligible Territories, but does not include any other external Territory. This is a consequential amendment to item 40.

Item 39 amends section 8 to insert a “(1) before “This Act”, insert “(1)”. This is a consequential amendment to item 40.

Item 40 amends section 8 to add subsection 8(2) which expressly provides that the *Do Not Call Register Act 2006* does not extend to Norfolk Island unless it is prescribed to extend.

### ***Education Services for Overseas Students Act 2000***

Item 41 inserts section 4C after section 4B to expressly provide that the *Education Services for Overseas Students Act 2000* does not extend to Norfolk Island.

### ***Equal Employment Opportunity (Commonwealth Authorities) Act 1987***

Item 42 repeals the definition of “Australia” in subsection 3(1). This is a consequential amendment to item 43.

Item 43 repeals section 4 to the effect that the *Equal Employment Opportunity (Commonwealth Authorities) Act 1987* extends to Norfolk Island as a result of the amendments to the *Norfolk Island Act 1979* and the *Acts Interpretation Act 1901* in the Schedule. Despite the repeal of section 4, this Act continues to extend to the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island as section 8E of the *Cocos (Keeling) Islands Act 1955* and section 8E of the *Christmas Island Act 1958* extend this Act to the relevant Territories.

### ***Excise Act 1901***

Item 44 amends the definition of “Australia” in subsection 4(1) by inserting paragraph (aa) before paragraph (a) to exclude Norfolk Island from the definition of “Australia” for the purposes of the *Excise Act 1901*. This is the same as for the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

### ***Export Control Act 1982***

Item 45 amends subsection 4A(1) to insert paragraph (aa) before paragraph (a) to the effect that the *Export Control Act 1982* expressly provides that it does not extend to Norfolk Island. This is the same as for the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

Item 46 amends subsection 4A(2) to omit the words “either or both of the Territories”, and substitute them with “one or more of the Territories”, such that Regulations may be made to extend the whole or a part of the *Export Control Act 1982* to one or more of the Territories, including Norfolk Island. This is a consequential amendment to item 45.

Item 47 amends the definition of “Australia” in subsection 23(1A) to insert “Norfolk Island” after the words “does not include”. This is a consequential amendment to item 45.

Item 48 amends subsection 23(1AA) to insert “Norfolk Island” after “goods to be exported from”. This is a consequential amendment to item 47.

Item 49 amends subsection 23(1AA) to insert “the ‘Australian Territory of Norfolk Island’,” after “goods are from”. This is a consequential amendment to item 4.

### ***Fair Entitlements Guarantee Act 2012***

Item 50 inserts new section 9A of the *Fair Entitlements Guarantee Act 2012* (FEG Act). New section 9A gives the Minister the ability to make rules modifying the FEG Act and regulations made under the FEG Act in regards to their operation in Norfolk Island. Rules made under section 9A may make modifications that are necessary or appropriate for the transition of the Act to Norfolk Island.

The Minister’s rule making power is subject to limits and safeguards. The Minister does not have the power to make a rule which would:

- a) create an offence or civil penalty;
- b) provide powers of arrest or detention or entry, search or seizure;
- c) impose a tax;
- d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
- e) directly amend the text of this Act or the regulations.

If modifications are made, the FEG Act and regulations will apply as modified in relation to Norfolk Island. A note to section 9A makes clear that in the absence of any such rules, the FEG Act and regulations will apply in Norfolk Island as they apply in relation to the rest of Australia.

### ***Fair Work Act 2009***

Item 51 amends the Dictionary in section 12 of the *Fair Work Act 2009* (Fair Work Act) to insert definitions of the terms “Australia” and “Commonwealth”. Section 12 of the Fair Work Act contains the Act’s Dictionary. The new definitions of “Australia” and “Commonwealth”

provide that, when used in a geographical sense, those terms include Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands but not any other external Territory.

This item has the effect of extending the Fair Work Act to Norfolk Island, in addition to the other external territories to which the Fair Work Act currently applies — that is, Territory of Christmas Island and the Territory of Cocos (Keeling) Islands. This is consistent with items 1 and 2 of Schedule 5, which amend the definitions of those terms in the *Acts Interpretation Act 1901*. The Fair Work Act provides at section 40A that it is the *Acts Interpretation Act 1901* as in force on 25 June 2009 that applies to the Fair Work Act.

Item 52 repeals the note to the definition of “connected with a Territory” in section 12 of the Fair Work Act and substitutes a new note. The new note provides that the definition of “connected with a territory” operates in conjunction with the definition of “Australia” inserted by item 51. The new note provides that, in the context of the definition of “connected with a Territory,” the term “Australia” includes Norfolk Island together with the Territories of Christmas Island and Cocos (Keeling) Islands.

Item 53 repeals note 1 to subsection 14(1) of the Fair Work Act (which provides the definition of ‘national system employer’) and substitutes a new note 1. New note 1 indicates that the definition of “Australia” inserted by item 51 informs the operation of this provision. New note 1 provides that, in the context of the meaning of “national system employer,” the term “Australia” includes Norfolk Island together with the Territories of Christmas Island and Cocos (Keeling) Islands.

Item 54 repeals note 1 to subsection 31(1) of the Fair Work Act and substitutes a new note 1. Subsection 31(1) provides that the regulations may prescribe the exclusion of persons or entities insufficiently connected with Australia from the application of the Fair Work Act (or provisions of that Act). New note 1 indicates that the definition of “Australia” inserted by item 51 informs the operation of this provision. New note 1 provides that, in the context of subsection 31(1), the term “Australia” includes Norfolk Island together with the Territories of Christmas Island and Cocos (Keeling) Islands.

Item 55 inserts new section 32A of the Fair Work Act. New section 32A gives the Minister the ability to make rules modifying the Fair Work Act and Regulations in regard to their operation in Norfolk Island. New section 32A refers to “this Act”. The definition of “this Act” in section 12 of the Act includes the regulations. Rules made under section 32A will make modifications to the Fair Work Act that are necessary or appropriate for the transition of the Act to Norfolk Island.

The Minister’s rule making power is subject to limits and safeguards. The Minister does not have the power to make a rule which would:

- a) create an offence or civil penalty;
- b) provide powers of arrest or detention or entry, search or seizure;
- c) impose a tax;
- d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

- e) directly amend the text of this Act.

If modifications are made, the Fair Work Act will apply as modified in relation to Norfolk Island. A note to the section makes clear that in the absence of any such rules, this Act will apply in Norfolk Island as it applies in relation to the rest of Australia.

Item 56 amends subsection 792(1) of the Fair Work Act to prevent the Minister from delegating the power to make a rule modifying the application of the Fair Work Act in Norfolk Island (see item 55). The Minister must personally exercise the power to make such a rule.

Subsection 792 of the Fair Work Act enables the Minister to delegate any or all of his or her functions and powers under the Act to the Secretary of the Department of Employment, or to a Senior Executive Service (SES) employee, or acting SES employee in the Department.

### ***Federal Proceedings (Costs) Act 1981***

Item 57 amends the definition of *Territory* in subsection 3(1) to omit the words “or Norfolk Island”. As a consequence, the *Federal Proceedings (Costs) Act 1981* extends to Norfolk Island. This makes the Act consistent with the *Federal Court of Australia Act 1976* and the *Federal Circuit Court of Australia Act 1999*.

Item 58 amends section 5 to omit the words “except Norfolk Island”, in effect removing the exclusion of Norfolk Island from the scope of the Act. The Act now extends to every external territory, including Norfolk Island.

### ***Gene Technology Act 2000***

Item 59 amends section 7 to omit the words “other than Norfolk Island”, in effect removing the exclusion of Norfolk Island from the scope of the Act. The Act now extends to every external territory, including Norfolk Island.

### ***Health Insurance Commission (Reform and Separation of Functions) Act 1997***

Item 60 amends section 8 to omit “, of the Northern Territory and of Norfolk Island” and substitutes it with “and of the Northern Territory”, in effect providing that the Crown will no longer be bound in respect of Norfolk Island. This is a consequential amendment relating to the *Norfolk Island Legislation Amendment Act 2015*.

### ***Hearing Services and AGHS Reform Act 1997***

Item 61 amends section 7 to “, of the Northern Territory and of Norfolk Island” and substitutes it with “and of the Northern Territory”, in effect providing that the Crown will no longer be bound in respect of Norfolk Island. This is a consequential amendment relating to the *Norfolk Island Legislation Amendment Act 2015*.

### ***Imported Food Charges (Collection) Act 2015***

Item 62 amends section 5 to insert “Norfolk Island,” after the words “does not extend to”. This means that *Imported Food Charges (Collection) Act 2015* expressly provides that it does not extend to Norfolk Island unless the *Imported Food Control Act 1992* extends to that Territory.

### ***Imported Food Charges (Imposition – Customs) Act 2015***

### ***Imported Food Charges (Imposition – Excise) Act 2015***

### ***Imported Food Charges (Imposition – General) Act 2015***

Items 63 to 65 amend section 4 of the *Imported Food Charges (Imposition–Customs) Act 2015*, the *Imported Food Charges (Imposition – Excise) Act 2015* and the *Imported Food charges (Imposition–General) Act 2015* to insert “Norfolk Island” after the words “does not extend to”. This means that these Acts are expressly provided to not extend to Norfolk Island unless the *Imported Food Control Act 1992* extends to that Territory.

### ***Imported Food Control Act 1992***

Item 66 inserts a new subsection 3 in section 4, to provide that the *Imported Food Control Act 1992* does not extend to Norfolk Island unless regulations made for the purposes of this subsection provide that the Act is to extend to that Territory.

### ***Import Processing Charges Act 2001***

Item 67 inserts new section 3A after section 3 to expressly provide that the *Import Processing Charges Act 2001* does not extend to Norfolk Island.

### ***Independent Contractors Act 2006***

Item 68 inserts new section 5A of the *Independent Contractors Act 2006* (IC Act) at the end of Part 1. New section 5A gives the Minister the ability to make rules modifying the IC Act and regulations in regards to their operation in Norfolk Island. Rules made under new section 5A will make modifications that are necessary or appropriate for the transition of the IC Act to Norfolk Island.

The Minister’s rule making power is subject to limits and safeguards. The Minister does not have the power to make a rule which would:

- a) create an offence or civil penalty;
- b) provide powers of arrest or detention or entry, search or seizure;
- c) impose a tax;
- d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;



- e) directly amend the text of this Act or the regulations.

If modifications are made, the IC Act and regulations will apply as modified in relation to Norfolk Island. A note to the section makes clear that in the absence of any such rules, the IC Act and regulations will apply in Norfolk Island as they apply in relation to the rest of Australia.

### ***Industry Research and Development Act 1986***

Item 69 inserts a definition of “Australia” in subsection 4(1) to provide that Australia has the same meaning as in the *Income Tax Assessment Act 1997*.

Item 70 repeals section 5 and substitutes it with new section 5. New section 5 provides that the *Industry Research and Development Act 1986* extends to every external Territory referred to in the definition of “Australia”.

Item 71 amends paragraph 28D(2)(a) to omit “or an external Territory”. This is a consequential amendment to item 69.

Item 72 amends subsection 28D(4) to omit “or the external Territories” (wherever occurring). This is a consequential amendment to item 69.

Item 73 amends paragraphs 28D(5)(b) and (d) to omit “and the external Territories”.

### ***Insurance Contracts Act 1984***

Item 74 amends subsection 6(1) of the *Insurance Contracts Act 1984* (Insurance Contracts Act) to extend its application to Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands. The amendment stating that the Insurance Contracts Act applies to the Territory of Christmas Island and the Territory of the Cocos (Keeling) Islands does not affect the date on which the Insurance Contracts Act commenced operation in those territories. The date on which the Insurance Contracts Act commenced operation for Territory of Christmas Island and the Territory of Cocos (Keeling) island is the same as their respective proclamations.

### ***Motor Vehicle Standards Act 1989***

Item 75 amends the definition of ‘Australia’ in section 5(1) of the *Motor Vehicle Standards Act* to expressly provide that the Act does not extend to Norfolk Island.

### ***National Land Transport Act 2014***

Item 76 repeals the definition of *Indian Ocean Territory* in subsection 4(1).

Item 77 inserts a definition in subsection 4(1) “relevant external Territory” which means Norfolk Island; the Territory of Christmas Island; or the Territory of Cocos (Keeling) Islands.

Item 78 amends paragraphs 10(a), (c), (e) and (f) to remove the references to “Indian Ocean Territory” and substitute them with references to “relevant external Territory”. This is a consequential amendment to items 76 and 77.

#### ***Passenger Movement Charge Collection Act 1978***

Item 79 repeals the definition of “Australia” in section 3.

Item 80 amends the definition of “external Territory” in section 3 to insert Norfolk Island, such that external Territory for the purposes of the *Passenger Movement Charge Collection Act 1978* does not include Norfolk Island, the Territory of Christmas Island or the Territory of the Cocos (Keeling) Islands.

#### ***Plant Breeder’s Rights Act 1994***

Item 81 inserts new section 9B after section 9A. Section 9B provides that the *Plant Breeder’s Rights Act 1994* does not extend to Norfolk Island unless prescribed by the regulations.

#### ***Protection of Moveable Cultural Heritage Act 1986***

Items 82 and 83 remove the words “other than Norfolk Island” from the subsection 3(1) definition of “Australia” and from section 6 on the application of the Act so that the *Protection of Moveable Cultural Heritage Act 1986* extends to Norfolk Island.

#### ***Public Order (Protection of Persons and Property) Act 1971***

Item 84 amends the definition of “Territory” in subsection 4(1) to add Norfolk Island. This means that Territory, subject to subsection 25(2) of the *Public Order (Protection of Persons and Property) Act 1971*, now includes Norfolk Island. This item is necessary to avoid doubt as to whether the laws apply in Norfolk Island.

#### ***Road Safety Remuneration Act 2012***

Item 85 inserts new section 15A of the *Road Safety Remuneration Act 2012* (RSR Act). New section 15A gives the Minister the ability to make rules modifying the RSR Act and regulations in regards to their operation in Norfolk Island. Rules made under new section 15A will make modifications that are necessary or appropriate for the transition of the Act to Norfolk Island.

The Minister’s rule making power is subject to limits and safeguards. The Minister does not have the power to make a rule which would:

- a) create an offence or civil penalty;
- b) provide powers of arrest or detention or entry, search or seizure;
- c) impose a tax;

- d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
- e) directly amend the text of this Act or the regulations.

If modifications are made, the RSR Act and regulations will apply as modified in relation to Norfolk Island. A note to the section makes clear that in the absence of any such rules, the RSR Act and regulations will apply in Norfolk Island as they apply in relation to the rest of Australia.

### ***Telecommunications Act 1997***

Items 86 and 87 add a new subsection (2) in section 10 to provide that the operation of the *Telecommunications Act 1997* in relation to Norfolk Island is not affected by the amendments in this Schedule. The provisions of the *Telecommunications Act 1997* which applied to Norfolk Island continue to apply, and the provisions of that Act which did not apply continue to not apply with the commencement of this Schedule.

### ***Telecommunications (Carrier Licence Charges) Act 1997***

Items 88 and 89 add a new subsection (2) in section 4 to provide that the operation of the *Telecommunications (Carrier Licence Charges) Act 1997* in relation to Norfolk Island is not affected by the amendments in this Schedule. The provisions of the *Telecommunications (Carrier Licence Charges) Act 1997* which applied to Norfolk Island continue to apply, and the provisions of the *Telecommunications (Carrier Licence Charges) Act 1997* which did not apply continue to not apply with the commencement of this Schedule.

### ***Telecommunications (Industry Levy) Act 2012***

Items 90-92 amend section 4B to replace the reference to section 10 with subsection 10(1) and to add a new subsection (2) to provide that the operation of the *Telecommunications (Industry Levy) Act 2012* in relation to Norfolk Island is not affected by the amendments in this Schedule. The provisions of the *Telecommunications (Industry Levy) Act 2012* which applied to Norfolk Island continue to apply, and the provisions of that Act which did not apply continue to not apply with the commencement of this Schedule.

### ***Telecommunications (Interception and Access) Act 1979***

Item 93 inserts new section 4B at the end of Part 1-1. New subsection 4B(1) provides that this section does not extend to Norfolk Island. New subsection 4B(2) provides that subsection (1) ceases to be in force when the *Telecommunications Act 1992* (NI) is repealed. New subsection 4B provides a note to clarify that once subsection (1) ceases to be in force the *Telecommunications (Interception and Access) Act 1979* extends to Norfolk Island because of section 18 of the *Norfolk Island Act 1979*. This means that upon the repeal of the *Telecommunications Act 1992* (NI), the *Telecommunications (Interception and Access) Act 1979* will extend to Norfolk Island.

***Telecommunications (Numbering Charges) Act 1997***

Item 94 and 95 insert new subsection 4(2) to provide that the operation of the *Telecommunications (Numbering Charges) Act 1997* in relation to Norfolk Island is not affected by the amendments made by Division 1 of Part 1 of Schedule 5 to the *Territories Legislation Amendment Act 2016*. The provisions of the *Telecommunications (Numbering Charges) Act 1997* which applied to Norfolk Island continue to apply, and the provisions of that Act which did not apply continue to not apply with the commencement of this Schedule.

***Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991***

Item 96 inserts new subsection 3(3) to provide that the operation of this Part in relation to Norfolk Island is not affected by the amendments made by Division 1 of Part 1 of Schedule 5 to the *Territories Legislation Amendment Act 2016*. The provisions of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991* which applied to Norfolk Island continue to apply, and the provisions of that Act which did not apply continue to not apply with the commencement of this Schedule.

***Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997***

Item 97 inserts new section 2A at the end of Part 1. New section 2A provides that the operation of this Act in relation to Norfolk Island is not affected by the amendments made by Division 1 of Part 1 of Schedule 5 to the *Territories Legislation Amendment Act 2016*. The provisions of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997* which applied to Norfolk Island continue to apply, and the provisions of that Act which did not apply continue to not apply with the commencement of this Schedule.

Items 86-97 ensure that any reference to the terms “Australia” or “the Commonwealth” throughout these Acts continues to have the same effect in relation to whether the term includes or excludes Norfolk Island, as was the case before the amendments contained in this Schedule came into effect.

***Tradex Duty Imposition (Customs) Act 1999***

***Tradex Duty Imposition (Excise) Act 1999***

***Tradex Duty Imposition (General) Act 1999***

Items 98-100 insert new section 2A after section 2 in each Act to provide that these Acts do not extend to Norfolk Island. The *Tradex Duty Imposition (Customs) Act 1999*, *Tradex Duty Imposition (Excise) Act 1999*, *Tradex Duty Imposition (General) Act 1999* expressly provide that they do not extend to Norfolk Island.

### ***Water Efficiency Labelling and Standards Act 2005***

Item 101 amends section 5 to omit the words “other than Norfolk Island”. This means that the *Water Efficiency Labelling and Standards Act 2005* extends to Norfolk Island.

### ***Workplace Gender Equality Act 2012***

Item 102 repeals subsection 3(3). This is a consequential amendment to item 103.

Item 103 repeals section 4. This means that the *Workplace Gender Equality Act 2012* extends to Norfolk Island, without the need for this to be prescribed by regulations.

### **SCHEDULE 6 – Nature of Norfolk Island Regional Council**

Item 1 amends the definition of “Norfolk Island Regional Council” in item 17 of Part 2 in Schedule 2 of the *Norfolk Island Legislation Amendment Act 2015*, by omitting the reference to “corporate” in “body corporate”. This means that the Norfolk Island Regional Council may be any type of body, including a body corporate or a body politic. The purpose of the amendment is to provide flexibility in the application of local government law to Norfolk Island.

## **PASSENGER MOVEMENT CHARGE AMENDMENT (NORFOLK ISLAND) BILL 2016**

### **OUTLINE**

The purpose of the *Passenger Movement Charge Amendment (Norfolk Island) Bill 2016* (the Bill) is to amend the *Passenger Movement Charge Act 1978* so that most departures from Norfolk Island to another country will attract the Passenger Movement Charge.

The Bill relates to the broader Norfolk Island reform legislative package, which is being implemented through the *Territories Legislation Amendment Bill 2016*.

The *Passenger Movement Charge Act 1978*, together with the *Passenger Movement Charge Collection Act 1978*, applies a financial charge upon the departure of a passenger from mainland Australia to another country. The charge also applies to departures from the Indian Ocean Territories to another country. The Bill, together with the *Territories Legislation Amendment Bill 2016*, extends these arrangements to Norfolk Island so that people departing Norfolk Island for another country will also be liable to pay the charge.

The Bill recognises the special air transport arrangements in place on Norfolk Island, whereby travel to the mainland may require transit through an international country from time to time. The Bill provides that a person is exempt from liability for passenger movement charge if they depart Norfolk Island for another country (or for an installation in the Joint Petroleum Development Area) with the intention of returning to another place in Australia within 7 days.

### **NOTES ON CLAUSES**

#### **Clause 1: Short Title**

Clause 1 specifies the short title of the Bill, when enacted, as the *Passenger Movement Charge Amendment (Norfolk Island) Act 2016*.

#### **Clause 2: Commencement**

Clause 2 sets out the commencement provisions for the *Passenger Movement Charge Amendment (Norfolk Island) Act 2016*, in accordance with the table in subclause 2(1) (the commencement table). Subclause (2)(2) provides that any information in column 3 of the commencement table is not part of this Act. Information may be inserted in column 3, or information in it may be edited, in any published version of this Act.

Table Item 1 provides that sections 1 to 3 of the *Passenger Movement Charge Amendment (Norfolk Island) Act 2016* and anything else in the Act not covered elsewhere by the commencement table commence on the day the Act receives the Royal Assent.

Table Item 2 provides that Schedule 1 of the Act commences at the same time as Schedule 5 to the *Territories Legislation Amendment Act 2016*. However, the provisions of Schedule 1 of the *Passenger Movement Charge Amendment (Norfolk Island) Act 2016* do not commence at all if Schedule 5 of the *Territories Legislation Amendment Act 2016* does not commence.

The commencement table contains a clarifying note that the table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

### **Clause 3: Schedule(s)**

Clause 3 is an enabling provision for the Schedules. It provides that legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### **Schedule 1—Amendments**

#### ***Passenger Movement Charge Act 1978***

Item 1 repeals the definition of “Australia” in section 3 of the Act.

Section 5 of the *Passenger Movement Charge Act 1978* (the Charge Act) applies passenger movement charge for any flight departing Australia for another country. “Australia” is currently defined in section 3 of the *Passenger Movement Charge Collection Act 1978* (the Collection Act) as including Christmas Island and the Cocos/Keeling Islands, but not as including other external Territories such as Norfolk Island. This means that a person who departs Norfolk Island for another country is not liable to pay passenger movement charge.

The repeal of the definition of “Australia” in section 3 of the Act will mean that the definition of “Australia” in the *Acts Interpretation Act 1901* will apply, which will include Norfolk Island. The consequence of this is that for the purposes of liability for passenger movement charge, a departure from Norfolk Island to another country is treated in the same way as a departure from anywhere else in Australia.

Items 2 inserts “Norfolk Island or” after the words “depart from” in paragraph 4(3)(a) of the Act.

Item 3 omits “Indian Ocean” from paragraph 4(3)(b) of the Act.

The effect of these amendments is that a person is exempt from liability for passenger movement charge if they depart Norfolk Island for another country (or for an installation in the Joint Petroleum Development Area) with the intention of returning to another place in Australia within 7 days. These amendments recognise that people who, for example, depart Norfolk Island for another country only because they wish to travel on to mainland Australia should not be liable for passenger movement charge.

Item 4 inserts “Norfolk Island” after “other than” in paragraph 4(4)(a) of the Act.

Item 5 inserts “Norfolk Island or” after “Joint Petroleum Development Area, for” in paragraph 4(4)(b) of the Act.

The effect of these amendments is that a person is exempt from liability for passenger movement charge if they depart from a part of Australia other than Norfolk Island for another country (or for an installation in the Joint Petroleum Development Area) with the intention of

departing that other country or installation for Norfolk Island within 7 days. These amendments recognise that people who, for example, depart mainland Australia for another country only because they wish to travel on to Norfolk Island should not be liable for passenger movement charge.