



Territories Law Reform Act 2010

No. 139, 2010

**An Act to amend the law relating to Norfolk Island,
Christmas Island and the Cocos (Keeling) Islands,
and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title	1
2	Commencement	1
3	Schedule(s)	3
Schedule 1—Amendments relating to Norfolk Island		4
Part 1—General amendments		4
Division 1—Amendment of the Norfolk Island Act 1979		4
<i>Norfolk Island Act 1979</i>		4
Division 2—Consequential amendments		19
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>		19
<i>Environment Protection and Biodiversity Conservation Act 1999</i>		19
<i>Freedom of Information Act 1982</i>		20
<i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i>		20
<i>Historic Shipwrecks Act 1976</i>		20
<i>International Criminal Court Act 2002</i>		20
<i>International Transfer of Prisoners Act 1997</i>		20
<i>National Health Security Act 2007</i>		21
<i>Privacy Act 1988</i>		21
<i>Remuneration Tribunal Act 1973</i>		21
Part 2—Amendments relating to elections		22
Division 1—Dates for elections		22
<i>Norfolk Island Act 1979</i>		22
Division 2—Other matters		22
<i>Norfolk Island Act 1979</i>		22
Part 3—Amendments relating to finance		24
<i>Norfolk Island Act 1979</i>		24
Part 4—Amendments relating to the Administrative Appeals Tribunal		49
<i>Administrative Appeals Tribunal Act 1975</i>		49
Part 5—Amendments relating to freedom of information		55
<i>Freedom of Information Act 1982</i>		55

Part 6—Amendments relating to the Ombudsman	72
<i>Norfolk Island Act 1979</i>	72
<i>Ombudsman Act 1976</i>	72
Part 7—Amendments relating to privacy	74
<i>Australian Capital Territory Government Service (Consequential Provisions) Act 1994</i>	74
<i>Privacy Act 1988</i>	74
Schedule 2—Amendments relating to Christmas Island	84
<i>Christmas Island Act 1958</i>	84
Schedule 3—Amendments relating to the Cocos (Keeling) Islands	88
<i>Cocos (Keeling) Islands Act 1955</i>	88



Territories Law Reform Act 2010

No. 139, 2010

An Act to amend the law relating to Norfolk Island, Christmas Island and the Cocos (Keeling) Islands, and for other purposes

[Assented to 10 December 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Territories Law Reform Act 2010*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2010
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	11 December 2010
3. Schedule 1, Part 2	The start of the first meeting of the Legislative Assembly of Norfolk Island held after the first general election of the Legislative Assembly that occurs after the day this Act receives the Royal Assent. The Minister must announce by notice in the <i>Gazette</i> the time of the start of the first meeting of the Legislative Assembly of Norfolk Island held after the first general election of the Legislative Assembly that occurs after the day this Act receives the Royal Assent. The notice is not a legislative instrument.	
4. Schedule 1, Part 3	The day after this Act receives the Royal Assent.	11 December 2010
5. Schedule 1, Part 4	1 January 2011.	1 January 2011
6. Schedule 1, items 155 to 175	1 January 2011.	1 January 2011
7. Schedule 1, items 176 to 182	Immediately after the commencement of item 3 of Schedule 2 to the <i>Freedom of Information Amendment (Reform) Act 2010</i> .	1 May 2011
8. Schedule 1, items 183 to 239	1 January 2011.	1 January 2011
9. Schedule 1, Part 6	A single day to be fixed by Proclamation. However, if any of the provision(s) do not	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
10. Schedule 1, Part 7	1 January 2011.	1 January 2011
11. Schedules 2 and 3	The day after this Act receives the Royal Assent.	11 December 2010

Note: This 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.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act 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 relating to Norfolk Island

Part 1—General amendments

Division 1—Amendment of the Norfolk Island Act 1979

Norfolk Island Act 1979

1 Subsection 4(1)

Insert:

Chief Minister means the Chief Minister appointed under section 13.

2 Subsection 4(1)

Insert:

Commonwealth Finance Minister means the Commonwealth Minister who administers the *Financial Management and Accountability Act 1997*.

3 Subsection 4(1)

Insert:

Commonwealth Gazette means the *Commonwealth of Australia Gazette*.

4 Subsection 4(1)

Insert:

Commonwealth Minister means a Minister of State of the Commonwealth.

5 Subsection 4(1) (definition of *executive member*)

Repeal the definition.

6 Subsection 4(1) (definition of *executive office*)

Repeal the definition.

7 Subsection 4(1) (definition of *Finance Minister*)

Repeal the definition.

8 Subsection 4(1)

Insert:

Minister means:

- (a) the Chief Minister; or
- (b) a Minister appointed under section 13.

9 Subsection 4(1)

Insert:

Minister for Finance means the Minister who is responsible for the administration of the Public Account of Norfolk Island.

10 Subsection 4(1)

Insert:

Norfolk Island Public Service Values means the rules prescribed by regulations made for the purposes of subsection 61A(1).

11 Subsection 4(1)

Insert:

responsible Commonwealth Minister means the Commonwealth Minister who administers this Act.

12 Paragraph 7(1)(e)

Omit “Minister”, substitute “responsible Commonwealth Minister”.

13 Subsection 7(2)

Omit “paragraph (1)(b)”, substitute “paragraphs (1)(a) and (b)”.

14 Subsection 7(2)

Omit “that paragraph”, substitute “paragraph (1)(a) or (b)”.

15 Subsection 7(2)

Omit “Minister”, substitute “responsible Commonwealth Minister”.

16 Subsection 7(3)

Omit “Minister” (first occurring), substitute “responsible Commonwealth Minister”.

17 Subsection 7(3)

Omit “paragraph (1)(b)”, substitute “paragraph (1)(a) or (b)”.

18 Subsection 7(3)

Omit “Minister” (second occurring), substitute “responsible Commonwealth Minister”.

19 Section 9

Repeal the section, substitute:

9 Deputies of Administrator

- (1) The responsible Commonwealth Minister may appoint a person, or persons jointly or severally, to be the deputy or deputies of the Administrator in the Territory, and in that capacity to exercise during the pleasure of the responsible Commonwealth Minister such powers and functions of the Administrator as the responsible Commonwealth Minister assigns to the deputy or deputies.
- (2) The appointment of a deputy does not affect the exercise of a power or performance of a function by the Administrator.
- (3) A reference in a law of the Commonwealth to a *Deputy Administrator* of Norfolk Island is a reference to a deputy of the Administrator.

20 Subsection 10(2)

Omit “The Deputy Administrator”, substitute “A deputy of the Administrator”.

21 Subsection 11(2)

Repeal the subsection, substitute:

- (2) The Executive Council consists of:
 - (a) the Chief Minister; and
 - (b) such other Ministers as are appointed by the Administrator under section 13.

22 Subsection 11(8)

Repeal the subsection.

23 Sections 12, 13 and 14

Repeal the sections, substitute:

12 Ministers

- (1) There is to be:
 - (a) a Chief Minister of the Territory; and
 - (b) at least one, and not more than 3, other Ministers of the Territory.
- (2) The matters in respect of which the Ministers have executive authority are the matters specified in Schedules 2 and 3.
- (3) A person who is employed in the Public Service of the Territory or of the Commonwealth is not eligible to be a Minister, and a person holding office as a Minister vacates his or her office if he or she becomes so employed.
- (4) For the purposes of subsection (3), a person who:
 - (a) is an APS employee; or
 - (b) is employed under a law relating to the Public Service of the Territory as a temporary employee; or
 - (c) is employed under a law relating to the Public Service of a Territory or of the Commonwealth as an officer or employee to whom any provisions of that law do not apply;is taken to be employed in the Public Service of the Territory or of the Commonwealth, as the case requires.

12A Nomination of Chief Minister

- (1) At the first meeting of the Legislative Assembly after a general election, the members present must, after electing a Speaker and Deputy Speaker and before any other business, nominate one of their number to be the Chief Minister.
- (2) If there is a vacancy in the office of Chief Minister (otherwise than because of paragraph 14(1)(e) or (f)), then:

- (a) if the vacancy happens at a meeting of the Legislative Assembly—the members present must nominate one of their number to be the Chief Minister; or
 - (b) if the vacancy happens at any other time—the Speaker must convene a meeting of the Legislative Assembly as soon as practicable and, at the meeting, the members present must nominate one of their number to be the Chief Minister.
- (3) If a resolution of no confidence in the Chief Minister is passed, the members present must nominate one of their number to be the Chief Minister.
 - (4) The Speaker or Deputy Speaker is not eligible to be nominated as Chief Minister.
 - (5) If a member of the Legislative Assembly is nominated to be the Chief Minister, the Legislative Assembly is taken to have advised the Administrator to appoint the member as the Chief Minister.

13 Appointment of Ministers

- (1) The Administrator may, on the advice of the Legislative Assembly, appoint a member of the Legislative Assembly as the Chief Minister.
- (2) The Administrator may, on the advice of the Chief Minister, appoint one or more other Ministers from among the members of the Legislative Assembly.
Note: The maximum number of other Ministers is 3—see subsection 12(1).
- (3) An appointment under subsection (1) or (2) takes effect at the time when it is made or, if a later time is specified in the instrument of appointment, at that later time.
- (4) The Speaker or Deputy Speaker is not eligible to be appointed under subsection (2) as a Minister.

14 Termination

Chief Minister

- (1) A person ceases to hold office as the Chief Minister when:

- (a) he or she ceases, by reason of his or her resignation or by reason of section 39 or 39AA, to be a member of the Legislative Assembly; or
- (b) he or she is dismissed from office by the Administrator under section 14A; or
- (c) he or she resigns his or her office by writing signed by him or her and delivered to the Administrator; or
- (d) the Legislative Assembly passes a resolution of no confidence in him or her; or
- (e) a notice about a general election is published under subsection 39AB(1); or
- (f) the Legislative Assembly is dissolved under section 39AC; or
- (g) the Legislative Assembly first meets after a general election of the Legislative Assembly that takes place after his or her most recent appointment to the office of Chief Minister takes effect;

whichever first happens.

Other Ministers

- (2) A person ceases to hold office as a Minister (other than the Chief Minister) when:
 - (a) he or she ceases, by reason of his or her resignation or by reason of section 39 or 39AA, to be a member of the Legislative Assembly; or
 - (b) he or she is dismissed from office by the Administrator under section 14A; or
 - (c) he or she resigns his or her office by writing signed by him or her and delivered to the Administrator; or
 - (d) a notice about a general election is published under subsection 39AB(1); or
 - (e) the Legislative Assembly is dissolved under section 39AC; or
 - (f) the Legislative Assembly first meets after a general election of the Legislative Assembly that takes place after his or her most recent appointment to an office of Minister takes effect;
- whichever first happens.

14A Dismissal of Ministers

- (1) The Administrator may dismiss the Chief Minister from office if, in the Administrator's opinion, there are exceptional circumstances that justify the Administrator so doing.
- (2) The Administrator may dismiss a Minister from office on the advice of the Chief Minister.

24 Subsection 15(2)

Omit "appointed to an executive office shall", substitute "appointed to an office of Minister must".

Note: The heading to section 15 is altered by omitting "**executive member**" and substituting "**Minister etc.**".

25 Subsection 15(3)

Omit "does not hold executive office", substitute "is not a Minister".

26 At the end of Part III

Add:

15A Ministerial portfolios

- (1) The Chief Minister is to administer such matters relating to the powers of the Administration as are allocated to the Chief Minister from time to time by the Chief Minister.
- (2) A Minister (other than the Chief Minister) is to administer such matters relating to the powers of the Administration as are allocated to that Minister from time to time by the Chief Minister.
- (3) The Chief Minister may authorise a Minister or Ministers to act on behalf of the Chief Minister or any other Minister.
- (4) The Chief Minister must publish particulars of such arrangements in the *Norfolk Island Government Gazette*.

27 After subsection 21(1)

Insert:

(1A) If the proposed law was introduced into the Legislative Assembly by the Governor-General, the Administrator must reserve the proposed law for the Governor-General's pleasure.

28 At the end of paragraph 21(2)(a)

Add:

(iii) that he or she reserves the proposed law for the Governor-General's pleasure; or

29 Subsection 21(5)

Omit "Executive Council.", substitute "Executive Council and the instructions (if any) of the responsible Commonwealth Minister. If there is an inconsistency between the advice of the Executive Council and the instructions of the responsible Commonwealth Minister, the instructions of the responsible Commonwealth Minister are to prevail to the extent of the inconsistency."

30 Subsection 21(6)

Omit "Minister", substitute "responsible Commonwealth Minister".

31 Subsection 22(3)

Omit "21(2)", substitute "21(1A) or (2)".

32 At the end of Division 2 of Part IV

Add:

26A Responsible Commonwealth Minister may introduce proposed law

The responsible Commonwealth Minister may, by message of the Administrator, introduce into the Legislative Assembly a proposed law for the peace, order and good government of the Territory.

33 At the end of paragraph 27(1)(a)

Add "and".

34 Paragraph 27(1)(b)

Omit "and".

35 Paragraph 27(1)(c)

Repeal the paragraph.

36 Subsection 27(4)

Omit “Minister”, substitute “responsible Commonwealth Minister”.

37 Subsection 28A(1)

Omit “Minister”, substitute “responsible Commonwealth Minister”.

38 After subsection 35(1)

Insert:

- (1A) Subsection (1) does not apply to a general election held in accordance with section 39AB or 39AC.

39 At the end of Division 1 of Part V

Add:

39AA Dismissal of members of the Legislative Assembly

The Administrator may dismiss a member of the Legislative Assembly from office if the member has engaged, or is engaging, in:

- (a) seriously unlawful conduct; or
- (b) grossly improper conduct.

39AB Resolution of no confidence in the Chief Minister

(1) If:

- (a) on a particular day, the Legislative Assembly passes a resolution of no confidence in the Chief Minister; and
- (b) the Legislative Assembly does not, within the period of 10 days after that day, nominate a member of the Legislative Assembly to be the Chief Minister; and
- (c) the Governor-General does not, within that period of 10 days, dissolve the Legislative Assembly under section 39AC;

a general election of members of the Legislative Assembly is to be held on a day specified by the responsible Commonwealth Minister by notice published in the *Commonwealth Gazette*.

- (2) The specified day must not be earlier than 36 days, or later than 90 days, after the end of that period of 10 days.

- (3) The specified day must not be the polling day for:
 - (a) an election of the Senate; or
 - (b) a general election of the House of Representatives.
- (4) As soon as practicable after the publication of the notice under subsection (1), the responsible Commonwealth Minister must cause notice of the specified day to be published in the *Norfolk Island Government Gazette*.
- (5) During the period:
 - (a) beginning when the notice is published under subsection (1); and
 - (b) ending when the Legislative Assembly meets after the general election mentioned in subsection (1);the Administrator:
 - (c) is to exercise all the powers of the Administration, the Executive Council and Ministers in accordance with any directions given by the Governor-General; and
 - (d) if it is necessary to issue or spend public money of the Territory when not authorised to do so by or under enactment—may do so with the authority of the Governor-General.
- (6) The powers of the Governor-General under subsection (5) are to be exercised by Proclamation.
- (7) For the purposes of this Act, if a notice is published under subsection (1) on a particular day, the notice is taken to have been published at the last moment of that day.
- (8) A notice under subsection (1) or (4) is not a legislative instrument.
- (9) A Proclamation under subsection (5) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the Proclamation.

39AC Dissolution of Legislative Assembly by the Governor-General

- (1) If, in the opinion of the Governor-General, the Legislative Assembly:
 - (a) is incapable of effectively performing its functions; or

- (b) is conducting its affairs in a grossly improper manner;
the Governor-General may dissolve the Legislative Assembly.
- (2) If the Legislative Assembly is dissolved, a general election of members of the Legislative Assembly is to be held on a day specified by the responsible Commonwealth Minister by notice published in the *Commonwealth Gazette*.
- (3) The specified day must not be earlier than 36 days, or later than 90 days, after the dissolution.
- (4) The specified day must not be the polling day for:
- (a) an election of the Senate; or
 - (b) a general election of the House of Representatives.
- (5) As soon as practicable after the publication of the notice under subsection (2), the responsible Commonwealth Minister must cause notice of the specified day to be published in the *Norfolk Island Government Gazette*.
- (6) During the period:
- (a) beginning when the Legislative Assembly is dissolved; and
 - (b) ending when the Legislative Assembly meets after the first general election of the Legislative Assembly that takes place after the dissolution;
- the Administrator:
- (c) is to exercise all the powers of the Administration, the Executive Council and Ministers in accordance with any directions given by the Governor-General; and
 - (d) if it is necessary to issue or spend public money of the Territory when not authorised to do so by or under enactment—may do so with the authority of the Governor-General.
- (7) The powers of the Governor-General under this section are to be exercised by Proclamation.
- (8) The responsible Commonwealth Minister must cause a statement of the reasons for the dissolution to be:
- (a) published in the *Commonwealth Gazette* and the *Norfolk Island Government Gazette* as soon as practicable after the dissolution; and

(b) tabled in each House of the Parliament within 15 sitting days of that House after the dissolution.

(9) A notice under subsection (2) or (5) is not a legislative instrument.

(10) A Proclamation under this section is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the Proclamation.

40 At the end of section 42

Add:

(7) If a motion of no confidence in the Chief Minister is before the Legislative Assembly, the Legislative Assembly must deal with that motion before proceeding to the despatch of any other business.

41 After section 42

Insert:

42A Resolution of no confidence in the Chief Minister

- (1) A resolution of no confidence in the Chief Minister passed by the Legislative Assembly has no effect unless:
- (a) it affirms a motion that is expressed to be a motion of no confidence in the Chief Minister; and
 - (b) at least 14 days notice of the motion has been given in accordance with the standing rules and orders; and
 - (c) the resolution is passed by at least the number of members necessary to be a quorum; and
 - (d) the resolution is passed by a majority of the number of members present and voting at the meeting of the Assembly.
- (2) If a motion for a resolution of no confidence in the Chief Minister is being voted on by the Legislative Assembly, each member present at the meeting of the Assembly must cast a vote on the motion.

42 Section 49

Omit “Finance Minister” (wherever occurring), substitute “Commonwealth Finance Minister”.

43 Subsection 50(1)

Omit “Finance Minister”, substitute “Commonwealth Finance Minister”.

44 Subsection 50A(1)

Omit “Finance Minister”, substitute “Commonwealth Finance Minister”.

45 Subsection 50A(2)

Omit “Finance Minister” (wherever occurring), substitute “Commonwealth Finance Minister”.

46 Subsection 50D(1)

Omit “Finance Minister”, substitute “Commonwealth Finance Minister”.

Note: The heading to section 50D is altered by omitting “**Finance Minister**” and substituting “**Commonwealth Finance Minister**”.

47 Subsection 50D(1)

Omit “Finance Minister’s”, substitute “Commonwealth Finance Minister’s”.

48 Subsection 50D(2)

Omit “Finance Minister”, substitute “Commonwealth Finance Minister”.

49 Subsection 53(2)

Omit “Minister”, substitute “responsible Commonwealth Minister”.

50 After section 61

Insert:

61A Norfolk Island Public Service Values

- (1) The regulations may prescribe rules, to be known as the Norfolk Island Public Service Values.
- (2) A person appointed or employed under an enactment mentioned in section 61 must at all times behave in a way that upholds the Norfolk Island Public Service Values.

51 Section 62

Omit “Minister”, substitute “responsible Commonwealth Minister”.

52 Subsection 65(4)

Omit “executive member”, substitute “Minister”.

53 Subsection 67(2)

Omit all the words after “or 3,”, substitute:

but regulations repealing or altering an item in Schedule 2 or 3 must not be made unless:

- (a) a copy of the proposed regulations has been tabled in the Legislative Assembly on a sitting day of the Legislative Assembly; and
- (b) at least one sitting day of the Legislative Assembly has occurred since the sitting day mentioned in paragraph (a).

54 Item 42 of Schedule 2

Omit “executive members”, substitute “Ministers”.

55 Schedule 6

Omit “holding executive office” (wherever occurring), substitute “holding office as a Minister”.

56 Transitional—Chief Minister

- (1) This item applies to a person if:
 - (a) immediately before the commencement of this item, the person held an executive office under section 13 of the *Norfolk Island Act 1979*; and
 - (b) the person was designated as the Chief Minister.
- (2) The *Norfolk Island Act 1979* as amended by this Division has effect as if, immediately after the commencement of this item, the Administrator had, on the advice of the Legislative Assembly, appointed the person as the Chief Minister under subsection 13(1) of that Act.
- (3) The *Norfolk Island Act 1979* as amended by this Division has effect as if the person had complied with section 15 of that Act in relation to the appointment covered by subitem (2).

57 Transitional—other Ministers

- (1) This item applies to a person if:
 - (a) immediately before the commencement of this item, the person held an executive office under section 13 of the *Norfolk Island Act 1979*; and
 - (b) the person was not designated as the Chief Minister.
- (2) The *Norfolk Island Act 1979* as amended by this Division has effect as if the Administrator had, immediately after the commencement of this item, on the advice of the Chief Minister, appointed the person as a Minister under subsection 13(2) of that Act.
- (3) The *Norfolk Island Act 1979* as amended by this Division has effect as if the person had complied with section 15 of that Act in relation to the appointment covered by subitem (2).

58 Transitional—maximum number of Ministers

- (1) This item applies if, immediately before the commencement of this item, the number (the *transitional number*) of persons holding executive office under section 13 of the *Norfolk Island Act 1979* (other than the person who was designated as the Chief Minister) exceeded 3.
- (2) During the period:
 - (a) beginning at the commencement of this item; and
 - (b) ending at the start of the first meeting of the Legislative Assembly of Norfolk Island held after the first general election of the Legislative Assembly that occurs after the commencement of this item;the following provisions of the *Norfolk Island Act 1979* as amended by this Division:
 - (c) paragraph 12(1)(b);
 - (d) the note at the end of subsection 13(2);have effect as if each reference in those provisions to 3 were a reference to the transitional number.

59 Application of amendments—nomination of Chief Minister

Subsection 12A(1) of the *Norfolk Island Act 1979* as amended by this Division applies in relation to the first meeting of the Legislative Assembly of Norfolk Island after a general election that occurs after the commencement of this item.

60 Application of amendments—presentation of proposed laws

The amendments of sections 21 and 22 of the *Norfolk Island Act 1979* made by this Division apply in relation to a proposed law presented to the Administrator under subsection 21(1) of that Act after the commencement of this item.

Division 2—Consequential amendments

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

61 Subsection 13(1) (definition of *Minister*)

Repeal the definition.

Environment Protection and Biodiversity Conservation Act 1999

62 Subsection 393(3)

Omit “person holding an office under section 13 of the *Norfolk Island Act 1979*”, substitute “Minister of Norfolk Island”.

63 Subsection 393(3)

Omit “that Act”, substitute “the *Norfolk Island Act 1979*”.

64 Subsection 398(2)

Omit “person holding an office under section 13 of the *Norfolk Island Act 1979*”, substitute “Minister of Norfolk Island”.

65 Subsection 398(2)

Omit “that Act”, substitute “the *Norfolk Island Act 1979*”.

Freedom of Information Act 1982

66 Subparagraph 4(3)(a)(iii)

Omit “an executive office created pursuant to section 12 of the *Norfolk Island Act 1979*”, substitute “of Minister of Norfolk Island”.

Hazardous Waste (Regulation of Exports and Imports) Act 1989

67 Subsection 42(4)

Repeal the subsection.

Historic Shipwrecks Act 1976

68 Paragraph 4A(12)(c)

Omit “person holding office under section 13 of the *Norfolk Island Act 1979*”, substitute “Minister of Norfolk Island”.

International Criminal Court Act 2002

69 Section 4 (paragraph (d) of the definition of *State Minister*)

Omit “executive member (within the meaning of the *Norfolk Island Act 1979*)”, substitute “Minister of Norfolk Island”.

70 Section 4 (definition of *State Minister*)

Omit “or executive member” (wherever occurring).

71 Section 4 (definition of *State Minister*)

Omit “or executive member’s”.

International Transfer of Prisoners Act 1997

72 Subsection 4(1) (paragraph (b) of the definition of *Territory Minister*)

Omit “executive member (within the meaning of the *Norfolk Island Act 1979*)”, substitute “Minister of Norfolk Island”.

73 Subsection 4(1) (definition of *Territory Minister*)

Omit “or executive member” (wherever occurring).

74 Subsection 4(1) (definition of *Territory Minister*)

Omit “or executive member’s”.

National Health Security Act 2007

75 Subsection 3(1) (paragraph (d) of the definition of *State or Territory Health Minister*)

Repeal the paragraph, substitute:

(d) the Minister of Norfolk Island;

Privacy Act 1988

76 Subsection 6C(3) (subparagraphs (d)(vi) and (f)(vi) of the definition of *State or Territory authority*)

Repeal the subparagraphs.

Remuneration Tribunal Act 1973

77 Paragraph 3(4)(jaa)

Omit “executive member”, substitute “Minister”.

Part 2—Amendments relating to elections

Division 1—Dates for elections

Norfolk Island Act 1979

78 Subsection 35(2)

Omit “shall not be more than 3 years”, substitute “must not be less than 3 years and must not be more than 4 years”.

79 At the end of section 35

Add:

- (3) However, if the next succeeding general election is required because of section 39AB or 39AC, that election may be held less than 3 years after the first meeting mentioned in subsection (2) of this section.

Division 2—Other matters

Norfolk Island Act 1979

80 Subsection 31(3)

After “this Act”, insert “and regulations made for the purposes of subsection (4) or (5)”.

81 At the end of section 31

Add:

- (4) The regulations may make provision for or in relation to the following matters:
 - (a) the method of balloting;
 - (b) the manner in which voters are to indicate their votes;
 - (c) the manner in which voters’ votes are to be used to obtain a result for an election;
 - (d) matters incidental or ancillary to the above matters.

- (5) The regulations may make provision for or in relation to the following matters:
- (a) the filling of casual vacancies in the offices of members of the Legislative Assembly;
 - (b) matters incidental or ancillary to the above matter.

82 Section 37

Repeal the section.

83 Before section 38

Insert:

37A Arrangements with the Australian Electoral Commission

The Chief Minister may, on behalf of the Administration, enter into an arrangement under section 7A of the *Commonwealth Electoral Act 1918* in relation to:

- (a) general elections of members of the Legislative Assembly;
and
- (b) the filling of casual vacancies in the offices of members of the Legislative Assembly.

84 Application of amendments

- (1) The amendments made by this Division, in so far as they relate to a general election of members of the Legislative Assembly, apply to a general election, where writs for the general election are issued after the commencement of this item.
- (2) The amendments made by this Division, in so far as they relate to a casual vacancy in the office of a member of the Legislative Assembly, apply in relation to a casual vacancy that occurs after the commencement of this item.

Part 3—Amendments relating to finance

Norfolk Island Act 1979

85 Subsection 4(1) (definition of *accounts of the Territory*)

Repeal the definition.

86 Subsection 4(1) (definition of *Auditor*)

Repeal the definition.

87 Subsection 4(1)

Insert:

Chief Executive Officer has the same meaning as in the *Public Sector Management Act 2000* of Norfolk Island.

88 Subsection 4(1)

Insert:

Commonwealth Finance Minister's Orders means Orders made under section 48T.

89 Subsection 4(1)

Insert:

Commonwealth Financial Officer for Norfolk Island means the Commonwealth Financial Officer for Norfolk Island appointed under regulations made for the purposes of section 51D.

90 Subsection 4(1)

Insert:

Federal Court means the Federal Court of Australia.

91 Subsection 4(1)

Insert:

financial management and accountability provisions means:
(a) the provisions of Divisions 2, 3 and 4 of Part VI; or

- (b) regulations made for the purposes of a provision of Division 2 of Part VI; or
- (c) the Commonwealth Finance Minister's Orders.

92 Subsection 4(1)

Insert:

money of a Territory authority means:

- (a) money in the custody or under the control of a Territory authority; or
- (b) money in the custody or under the control of any person acting for or on behalf of a Territory authority in respect of the custody or control of the money;

and includes such money that is held on trust for, or otherwise for the benefit of, a person other than a Territory authority.

93 Subsection 4(1)

Insert:

performance audit has the same meaning as in the *Auditor-General Act 1997*.

94 Subsection 4(1)

Insert:

property of a Territory authority means:

- (a) property in the custody or under the control of a Territory authority; or
- (b) property in the custody or under the control of any person acting for or on behalf of a Territory authority in respect of the custody or control of the property;

including such property that is held on trust for, or otherwise for the benefit of, a person other than a Territory authority.

95 Subsection 4(1)

Insert:

Public Account of Norfolk Island means the Public Account of Norfolk Island established by subsection 47(1).

96 Subsection 4(1)

Insert:

public money of the Territory means:

- (a) money in the custody or under the control of the Administration; or
- (b) money in the custody or under the control of any person acting for or on behalf of the Administration in respect of the custody or control of the money;

and includes such money that is held on trust for, or otherwise for the benefit of, a person other than the Administration, but does not include money standing to the credit of the Norfolk Island Provident Account established under the *Provident Account Act 1958* of Norfolk Island.

97 Subsection 4(1) (definition of *public moneys of the Territory*)

Repeal the definition.

98 Subsection 4(1)

Insert:

public property of the Territory means:

- (a) property in the custody or under the control of the Administration; or
- (b) property in the custody or under the control of any person acting for or on behalf of the Administration in respect of the custody or control of the property;

including such property that is held on trust for, or otherwise for the benefit of, a person other than the Administration.

99 Subsection 4(1)

Insert:

responsible manager, in relation to a Territory authority, means an individual who is responsible for the finances of the Territory authority.

100 Subsection 4(1)

Insert:

Territory authority means:

- (a) a body corporate established for a public purpose by or under an enactment; or
- (b) a body, entity, organisation or group of persons specified in the regulations; or
- (c) a body corporate in which:
 - (i) the Administration; or
 - (ii) a body corporate referred to in paragraph (a); or
 - (iii) a body, entity, organisation or group of persons referred to in paragraph (b);has a controlling interest.

For the purposes of this definition, *entity* has the same meaning as in the *Income Tax Assessment Act 1997*, but does not include an individual.

101 Section 25

Omit “, vote, resolution or question, the object or effect of which is to dispose of or charge any public moneys”, substitute “for the appropriation of public money”.

Note: The heading to section 25 is altered by omitting “**votes**” and substituting “**Bills**”.

102 At the end of section 25

Add:

Note: See also section 48 (withdrawals from the Public Account of Norfolk Island).

103 Paragraph 27(3)(a)

Omit “moneys”, substitute “money”.

104 Section 46

Repeal the section.

105 Before section 47

Insert:

Division 1—Public Account of Norfolk Island

106 Subsections 47(1) and (2)

Omit “public moneys”, substitute “public money”.

107 Subsection 47(4)

After “Public Account”, insert “of Norfolk Island”.

108 Subsection 47(4)

Omit “moneys” (first occurring), substitute “money”.

109 Subsection 47(4)

Omit “those moneys”, substitute “that money”.

110 Subsection 47(5)

After “Public Account”, insert “of Norfolk Island”.

111 Subsection 47(5)

Omit “moneys” (first occurring), substitute “money”.

112 Subsection 47(5)

Omit “those moneys”, substitute “that money”.

113 Subsection 48(1)

Omit “moneys”, substitute “money”.

114 Subsection 48(1)

After “by”, insert “an appropriation made by”.

115 At the end of subsection 48(1)

Add:

Note: See also section 25 (proposal of money Bills).

116 Subsection 48(2)

Omit “moneys”, substitute “money”.

117 After section 48

Insert:

Division 2—Financial management and accountability

48A Preparation of annual budgets by the Minister for Finance

- (1) The Minister for Finance must prepare annual budgets in relation to:
 - (a) the Administration; and
 - (b) each Territory authority.
- (2) Annual budgets must be prepared in accordance with:
 - (a) the regulations; and
 - (b) the Commonwealth Finance Minister's Orders.
- (3) Annual budgets must be prepared within the period ascertained in accordance with:
 - (a) the regulations; or
 - (b) if no regulations are in force for the purposes of paragraph (a)—the Commonwealth Finance Minister's Orders.
- (4) The Minister for Finance must cause a copy of each annual budget to be tabled in the Legislative Assembly as soon as practicable after it is prepared.
- (5) The Minister for Finance must give a copy of each annual budget to the Administrator as soon as practicable after it is prepared.
- (6) As soon as practicable after receiving a copy of an annual budget, the Administrator must send a copy of the annual budget to the responsible Commonwealth Minister.

48B Preparation of annual financial statements by the Minister for Finance

- (1) As soon as practicable after the end of each financial year, the Minister for Finance must prepare annual financial statements in relation to:
 - (a) the Administration; and
 - (b) each Territory authority.
- (2) The statements must be prepared in accordance with:
 - (a) the regulations; and

- (b) the Commonwealth Finance Minister's Orders.
- (3) The Minister for Finance must give the statements to the Auditor-General as soon as practicable after they are prepared.
- (4) If the Minister for Finance has not given the statements to the Auditor-General within 5 months after the end of the financial year, the Minister for Finance must cause to be tabled in the Legislative Assembly a statement of the reasons why the statements were not given to the Auditor-General within that period.

48C Audit of annual financial statements

- (1) As soon as practicable after receiving financial statements under section 48B, the Auditor-General must examine the statements and prepare an audit report.
- (2) Instead of preparing a single report, the Auditor-General may prepare an initial report and one or more supplementary reports.
- (3) The Auditor-General must give a copy of each report to:
 - (a) the Minister for Finance; and
 - (b) the responsible Commonwealth Minister; and
 - (c) the Administrator.
- (4) The Minister for Finance must cause a copy of each report to be tabled in the Legislative Assembly as soon as practicable after receiving the copy of the report. Except in the case of a supplementary report, the copy that is tabled must be accompanied by a copy of the annual financial statements.
- (5) As soon as practicable after receiving a copy of a report, the responsible Commonwealth Minister must cause:
 - (a) a copy of the report; and
 - (b) a copy of the annual financial statements to which the report relates;to be tabled in each House of the Parliament.

48D Audit fees for statement audits

- (1) If financial statements relating to the Administration are audited as mentioned in section 48C, the Administration is liable to pay audit

fees for the audit, based on a scale of fees determined by the Auditor-General.

- (2) If financial statements relating to a Territory authority are audited as mentioned in section 48C, the authority is liable to pay audit fees for the audit, based on a scale of fees determined by the Auditor-General.
- (3) Fees are payable within 30 days after issue of a payment claim. Payment claims for instalments may be issued before the audit is completed.
- (4) The Auditor-General, on behalf of the Commonwealth, may recover unpaid fees as a debt in a court of competent jurisdiction.
- (5) In the annual report under section 28 of the *Auditor-General Act 1997*, the Auditor-General must include details of the basis on which the Auditor-General determined the audit fees that applied during the financial year concerned.
- (6) This section does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.

48E Performance audits

- (1) The Auditor-General may at any time conduct a performance audit of:
 - (a) the Administration; or
 - (b) a Territory authority.
- (2) As soon as practicable after completing the report of an audit under this section, the Auditor-General must:
 - (a) cause a copy of the report to be tabled in each House of the Parliament; and
 - (b) give a copy of the report to:
 - (i) the Minister for Finance; and
 - (ii) the responsible Commonwealth Minister; and
 - (iii) the Administrator; and
 - (c) if the report relates to the Administration—give a copy of the report to the Chief Executive Officer; and

- (d) if the report relates to a Territory authority—give a copy of the report to the responsible manager or managers of the authority.
- (3) The Auditor-General may give a copy of, or an extract from, the report to any person (including a Norfolk Island Minister or a Commonwealth Minister) who, or any body that, in the Auditor-General’s opinion, has a special interest in the report or the content of the extract.
- (4) As soon as practicable after receiving a copy of the report, the Minister for Finance must cause a copy of the report to be tabled in the Legislative Assembly.

48F Comments on proposed performance audit report

- (1) After preparing a proposed report on an audit of the Administration under section 48E, the Auditor-General must give a copy of the proposed report to the Chief Executive Officer.
- (2) After preparing a proposed report on an audit of a Territory authority under section 48E, the Auditor-General must give a copy of the proposed report to the responsible manager or managers of the authority.
- (3) After preparing a proposed report on an audit under section 48E, the Auditor-General may give a copy of, or an extract from, the proposed report to any person (including a Norfolk Island Minister or a Commonwealth Minister) who, or any body that, in the Auditor-General’s opinion, has a special interest in the report or the content of the extract.
- (4) If the recipient of the proposed report, or the extract from the proposed report, gives written comments to the Auditor-General within 28 days after receiving the proposed report, or the extract from the proposed report, the Auditor-General must consider those comments before preparing a final report.
- (5) The Auditor-General must, in the final report, include all written comments received under subsection (4).

48G Audits—application of the *Auditor-General Act 1997*

- (1) The *Auditor-General Act 1997* extends to Norfolk Island.
-

- (2) The *Auditor-General Act 1997* has effect as if:
- (a) a reference in section 24 or 26 of that Act to Division 1 of Part 4 of that Act included a reference to section 48C of this Act; and
 - (b) a reference in section 23A or 24 of that Act to Division 2 of Part 4 of that Act included a reference to section 48E of this Act; and
 - (c) a reference in section 30 of that Act to laws of the Commonwealth included a reference to an enactment; and
 - (d) a reference in section 30 of that Act to a House of the Parliament included a reference to the Legislative Assembly; and
 - (e) a reference in section 33 of that Act to the Commonwealth included a reference to the Administration; and
 - (f) a reference in section 33 of that Act to a Commonwealth authority included a reference to a Territory authority.
- (3) Section 37 of the *Auditor-General Act 1997* has effect, in relation to a report that relates to:
- (a) the Administration; or
 - (b) a Territory authority;
- as if:
- (c) a reference in that section to the Attorney-General were a reference to the Minister who is responsible, or principally responsible, for the administration of the *Interpretation Act 1979* of Norfolk Island; and
 - (d) a reference in that section to the Cabinet included a reference to a body that:
 - (i) consists of Ministers of Norfolk Island; and
 - (ii) corresponds to the Cabinet; and
 - (e) a reference in paragraph (2)(c) or (d) of that section to the Commonwealth included a reference to Norfolk Island; and
 - (f) a reference in that section to the Crown in right of the Commonwealth included a reference to the Administration; and
 - (g) a reference in that section to a House of the Parliament included a reference to the Legislative Assembly; and
 - (h) a reference in that section to the Prime Minister were a reference to the Chief Minister; and

- (i) a reference in that section to the Finance Minister were a reference to the Minister for Finance; and
- (j) a reference in that section to a responsible Minister were a reference to both:
 - (i) a Minister of Norfolk Island; and
 - (ii) the responsible Commonwealth Minister.

48H Preparation of periodic financial statements by the Minister for Finance

- (1) The Minister for Finance must prepare periodic financial statements in relation to:
 - (a) the Administration; and
 - (b) each Territory authority.
- (2) The statements must be prepared in accordance with:
 - (a) the regulations; and
 - (b) the Commonwealth Finance Minister's Orders.
- (3) The statements must be prepared within the period ascertained in accordance with:
 - (a) the regulations; or
 - (b) if no regulations are in force for the purposes of paragraph (a)—the Commonwealth Finance Minister's Orders.
- (4) The Minister for Finance must cause a copy of the statements to be tabled in the Legislative Assembly as soon as practicable after the statements are prepared.
- (5) The Minister for Finance must give a copy of the statements to the Administrator as soon as practicable after they are prepared.
- (6) As soon as practicable after receiving a copy of the statements, the Administrator must send a copy of the statements to the responsible Commonwealth Minister.

48J Preparation of annual report by Chief Executive Officer

- (1) The Chief Executive Officer must, as soon as practicable after the end of each financial year, prepare and give to the Chief Minister a report on the operations of:
-

- (a) the Administration; and
 - (b) Territory authorities;
- during that year.
- (2) The report must be prepared in accordance with:
 - (a) the regulations; and
 - (b) the Commonwealth Finance Minister's Orders.
 - (3) The Chief Minister must cause a copy of the report to be tabled in the Legislative Assembly as soon as practicable after receiving the report.
 - (4) As soon as practicable after receiving the report, the Chief Minister must give a copy to the Administrator.
 - (5) As soon as practicable after receiving a copy of the report, the Administrator must send a copy of the report to the responsible Commonwealth Minister.

48K Minister for Finance may obtain information from the responsible manager or managers of a Territory authority

Scope

- (1) This section applies to a Territory authority if the Minister for Finance believes on reasonable grounds that the authority has information that is relevant to the performance of a function, or the exercise of a power, conferred on the Minister for Finance by:
 - (a) section 48A; or
 - (b) section 48B; or
 - (c) section 48H; or
 - (d) regulations made for the purposes of this Part; or
 - (e) the Commonwealth Finance Minister's Orders.

Requirement

- (2) The Minister for Finance may, by written notice given to the responsible manager or managers of the Territory authority, require the responsible manager or managers to give to the Minister for Finance, within the period and in the manner and form specified in the notice, any such information.

- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

Compliance

- (4) The responsible manager or managers must comply with a requirement under subsection (2) to the extent that the responsible manager is, or the managers are, capable of doing so.

48L Chief Executive Officer may obtain information from the responsible manager or managers of a Territory authority

Scope

- (1) This section applies to a Territory authority if the Chief Executive Officer believes on reasonable grounds that the authority has information that is relevant to the performance of a function, or the exercise of a power, conferred on the Chief Executive Officer by:
- (a) this Part; or
 - (b) regulations made for the purposes of this Part; or
 - (c) the Commonwealth Finance Minister's Orders.

Requirement

- (2) The Chief Executive Officer may, by written notice given to the responsible manager or managers of the Territory authority, require the responsible manager or managers to give to the Chief Executive Officer, within the period and in the manner and form specified in the notice, any such information.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

Compliance

- (4) The responsible manager or managers must comply with a requirement under subsection (2) to the extent that the responsible manager is, or the managers are, capable of doing so.

**48M Promoting efficient, effective and ethical use etc. of
Administration resources**

- (1) The Chief Executive Officer must manage the affairs of the Administration in a way that promotes proper use of the Administration resources for which the Chief Executive Officer is responsible.
- (2) In doing so, the Chief Executive Officer must comply with this Act, the regulations, the Commonwealth Finance Minister's Orders and any other law.
- (3) In this section:

proper use means efficient, effective and ethical use that is not inconsistent with the policies of the Administration.

**48N Promoting efficient, effective and ethical use etc. of the
resources of Territory authorities**

- (1) The responsible manager or managers of a Territory authority must manage the affairs of the authority in a way that promotes the proper use of the resources of the authority for which the responsible manager or managers is or are responsible.
- (2) In doing so, the responsible manager or managers must comply with this Act, the regulations, the Commonwealth Finance Minister's Orders and any other law.
- (3) In this section:

proper use means efficient, effective and ethical use that is not inconsistent with the policies of the Administration.

48P Accounts and records of the Administration

- (1) The Minister for Finance must ensure that there are prepared and kept accounts and records that properly record and explain the transactions and financial position of the Administration.
- (2) The accounts and records must be prepared and kept in accordance with:
 - (a) the regulations; and
 - (b) the Commonwealth Finance Minister's Orders.

- (3) The Minister for Finance must ensure that the accounts and records are retained for the period ascertained in accordance with:
 - (a) the regulations; or
 - (b) if no regulations are in force for the purposes of paragraph (a)—the Commonwealth Finance Minister’s Orders.

48Q Accounts and records of Territory authorities

- (1) The responsible manager or managers of a Territory authority must ensure that there are prepared and kept accounts and records that properly record and explain the transactions and financial position of the authority.
- (2) The accounts and records must be prepared and kept in accordance with:
 - (a) the regulations; and
 - (b) the Commonwealth Finance Minister’s Orders.
- (3) The responsible manager or managers of a Territory authority must ensure that the accounts and records are retained for the period ascertained in accordance with:
 - (a) the regulations; or
 - (b) if no regulations are in force for the purposes of paragraph (a)—the Commonwealth Finance Minister’s Orders.

**48R Regulations about financial management and accountability—
Administration**

- (1) The regulations may make provision in relation to the following matters:
 - (a) public money of the Territory;
 - (b) public property of the Territory;
 - (c) other resources of the Administration.
 - (2) Regulations made for the purposes of subsection (1) may make provision in relation to the following matters:
 - (a) the control and management of public money of the Territory;
 - (b) financial and accounting systems in relation to:
-

- (i) public money of the Territory; or
 - (ii) public property of the Territory; or
 - (iii) other resources of the Administration;
 - (c) the control and management of grants of public money of the Territory;
 - (d) the control and management of public property of the Territory;
 - (e) the procurement of property and services by the Administration;
 - (f) the disposal of public property of the Territory;
 - (g) the audit of the annual financial statements prepared under section 48B in relation to the Administration.
- (3) Regulations made for the purposes of subsection (1) may make provision for ensuring or promoting the following:
- (a) the proper use and management of:
 - (i) public money of the Territory; or
 - (ii) public property of the Territory; or
 - (iii) other resources of the Administration;
 - (b) proper accountability for the use and management of:
 - (i) public money of the Territory; or
 - (ii) public property of the Territory; or
 - (iii) other resources of the Administration.
- (4) Regulations made for the purposes of subsection (1) may confer functions or powers on:
- (a) the Auditor-General; or
 - (b) the Minister for Finance; or
 - (c) the Chief Executive Officer; or
 - (d) the responsible manager or managers of a Territory authority.
- (5) Subsections (2), (3) and (4) do not limit subsection (1).
- (6) If an enactment is inconsistent with regulations made for the purposes of subsection (1), the enactment has no effect to the extent of the inconsistency.

**48S Regulations about financial management and accountability—
Territory authorities**

- (1) The regulations may make provision in relation to the following matters:
 - (a) money of a Territory authority;
 - (b) property of a Territory authority;
 - (c) other resources of a Territory authority.
- (2) Regulations made for the purposes of subsection (1) may make provision in relation to the following matters:
 - (a) the control and management of money of a Territory authority;
 - (b) financial and accounting systems in relation to:
 - (i) money of a Territory authority; or
 - (ii) property of a Territory authority; or
 - (iii) other resources of a Territory authority;
 - (c) the control and management of grants of money of a Territory authority;
 - (d) the control and management of property of a Territory authority;
 - (e) the procurement of property and services by a Territory authority;
 - (f) the disposal of property of a Territory authority;
 - (g) the audit of the annual financial statements prepared under section 48B in relation to a Territory authority.
- (3) Regulations made for the purposes of subsection (1) may make provision for ensuring or promoting the following:
 - (a) the proper use and management of:
 - (i) money of a Territory authority; or
 - (ii) property of a Territory authority; or
 - (iii) other resources of a Territory authority;
 - (b) proper accountability for the use and management of:
 - (i) money of a Territory authority; or
 - (ii) property of a Territory authority; or
 - (iii) other resources of a Territory authority.
- (4) Regulations made for the purposes of subsection (1) may confer functions or powers on:

- (a) the Auditor-General; or
 - (b) the Minister for Finance; or
 - (c) the Chief Executive Officer; or
 - (d) the responsible manager or managers of a Territory authority.
- (5) Subsections (2), (3) and (4) do not limit subsection (1).
- (6) If an enactment is inconsistent with regulations made for the purposes of subsection (1), the enactment has no effect to the extent of the inconsistency.

48T Commonwealth Finance Minister's Orders

- (1) The Commonwealth Finance Minister may, by legislative instrument, make Orders:
- (a) on any matter on which this Act requires or permits Commonwealth Finance Minister's Orders to be made; and
 - (b) on any matter on which regulations may be made for the purposes of:
 - (i) subsection 48R(1); or
 - (ii) subsection 48S(1).
- (2) An Order cannot create offences or impose penalties.
- (3) If an enactment is inconsistent with an Order, the enactment has no effect to the extent of the inconsistency.

118 Before section 49

Insert:

Division 3—Borrowing etc.

119 Sections 51, 51A, 51B, 51C, 51D, 51E, 51F and 51G

Repeal the sections, substitute:

Division 4—Commonwealth Ministers to be kept informed

51 Minister for Finance must keep responsible Commonwealth Minister informed

- (1) The Minister for Finance must give the responsible Commonwealth Minister such reports, documents and information in relation to the operations of the Administration as the responsible Commonwealth Minister requires.
- (2) A report, document or information required under subsection (1) must be relevant to:
 - (a) this Part; or
 - (b) regulations made for the purposes of this Part; or
 - (c) the Commonwealth Finance Minister's Orders.
- (3) The Minister for Finance must comply with requirements under subsection (1) within the time limits set by the responsible Commonwealth Minister.

51A Minister for Finance must keep Commonwealth Finance Minister informed

- (1) The Minister for Finance must give the Commonwealth Finance Minister such reports, documents and information in relation to the operations of the Administration as the Commonwealth Finance Minister requires.
- (2) A report, document or information required under subsection (1) must be relevant to:
 - (a) this Part; or
 - (b) regulations made for the purposes of this Part; or
 - (c) the Commonwealth Finance Minister's Orders.
- (3) The Minister for Finance must comply with requirements under subsection (1) within the time limits set by the Commonwealth Finance Minister.

51B Responsible manager or managers of Territory authority must keep responsible Commonwealth Minister informed

- (1) The responsible manager or managers of a Territory authority must give the responsible Commonwealth Minister such reports, documents and information in relation to the operations of the authority as the responsible Commonwealth Minister requires.
- (2) A report, document or information required under subsection (1) must be relevant to:
 - (a) this Part; or
 - (b) regulations made for the purposes of this Part; or
 - (c) the Commonwealth Finance Minister's Orders.
- (3) The responsible manager or managers must comply with requirements under subsection (1) within the time limits set by the responsible Commonwealth Minister.

51C Responsible manager or managers of Territory authority must keep Commonwealth Finance Minister informed

- (1) The responsible manager or managers of a Territory authority must give the Commonwealth Finance Minister such reports, documents and information in relation to the operations of the authority as the Commonwealth Finance Minister requires.
- (2) A report, document or information required under subsection (1) must be relevant to:
 - (a) this Part; or
 - (b) regulations made for the purposes of this Part; or
 - (c) the Commonwealth Finance Minister's Orders.
- (3) The responsible manager or managers must comply with requirements under subsection (1) within the time limits set by the Commonwealth Finance Minister.

Division 5—Commonwealth Financial Officer for Norfolk Island

51D Commonwealth Financial Officer for Norfolk Island

- (1) The regulations may provide that there is to be a Commonwealth Financial Officer for Norfolk Island.
- (2) If the regulations do so, the regulations must provide that the Commonwealth Financial Officer for Norfolk Island is to:
 - (a) be appointed by the Governor-General; and
 - (b) hold office during the pleasure of the Governor-General.
- (3) The regulations may:
 - (a) provide that the Commonwealth Financial Officer for Norfolk Island is entitled at all reasonable times to full and free access to all accounts, records, documents and papers relating directly or indirectly to:
 - (i) the receipt or payment of money by the Administration or a Territory authority; or
 - (ii) the acquisition, receipt, custody or disposal of assets by the Administration or a Territory authority; and
 - (b) provide that the Commonwealth Financial Officer for Norfolk Island is entitled to make copies of, or take extracts from, any such accounts, records, documents or papers.
- (4) If an enactment is inconsistent with regulations made for the purposes of subsection (3), the enactment has no effect to the extent of the inconsistency.
- (5) Regulations made for the purposes of subsection 48R(1) or 48S(1) may confer functions and powers on the Commonwealth Financial Officer for Norfolk Island.

Division 6—Injunctions

51E Injunctions—enforcement of financial management and accountability provisions

Restraining injunctions

- (1) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of any of the financial management and accountability provisions, the Federal Court may, on the application of the responsible Commonwealth Minister, grant an injunction:
 - (a) restraining the person from engaging in the conduct; and
 - (b) if, in the Court’s opinion, it is desirable to do so—requiring the person to do something.

Performance injunctions

- (2) If:
 - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of any of the financial management and accountability provisions;the Federal Court may, on the application of the responsible Commonwealth Minister, grant an injunction requiring the person to do that act or thing.

Grant of interim injunction

- (3) If an application is made to the Federal Court for an injunction under subsection (1), the Court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that subsection.

No undertakings as to damages

- (4) The Federal Court is not to require an applicant for an injunction under subsection (1), as a condition of granting an interim injunction, to give any undertakings as to damages.

Discharge or variation of injunctions

- (5) The Federal Court may discharge or vary an injunction granted under this section.

Certain limits on granting injunctions not to apply

- (6) The power of the Federal Court under this section to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
- (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.
- (7) The power of the Federal Court under this section to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

Other powers of the Federal Court unaffected

- (8) The powers conferred on the Federal Court under this section are in addition to, and not instead of, any other powers of the Court, whether conferred by this Act or otherwise.

120 Application—annual budgets

Section 48A of the *Norfolk Island Act 1979* as amended by this Part applies in relation to annual budgets for:

- (a) the financial year beginning on 1 July 2011; or
- (b) a later financial year.

121 Application—annual financial statements

Section 48B of the *Norfolk Island Act 1979* as amended by this Part applies in relation to financial statements for:

- (a) the financial year beginning on 1 July 2011; or
- (b) a later financial year.

122 Application—periodic financial statements

Section 48H of the *Norfolk Island Act 1979* as amended by this Part applies in relation to financial statements for periods that begin on or after 1 July 2011.

123 Application—annual reports

Section 48J of the *Norfolk Island Act 1979* as amended by this Part applies in relation to annual reports for:

- (a) the financial year beginning on 1 July 2011; or
- (b) a later financial year.

124 Transitional—audit

Despite the following repeals effected by this Part:

- (a) the repeal of the definition of *accounts of the Territory* in subsection 4(1);
- (b) the repeal of the definition of *Auditor* in subsection 4(1);
- (c) the repeal of sections 51, 51A, 51B, 51C, 51D, 51E, 51F and 51G;

the *Norfolk Island Act 1979* continues to apply, after the commencement of this item, in relation to:

- (d) an inspection and audit under section 51C of the *Norfolk Island Act 1979* that relates to:
 - (i) the financial year that began on 1 July 2010; or
 - (ii) an earlier financial year; and
- (e) a report on the inspection and audit;

as if those repeals had not been effected.

125 Transitional—pre-commencement appropriation

If any issue or expenditure of money was authorised by an enactment that commenced before the commencement of this item, subsection 48(1) of the *Norfolk Island Act 1979* as amended by this Part has effect as if the issue or expenditure had been authorised by an appropriation made by an enactment.

Part 4—Amendments relating to the Administrative Appeals Tribunal

Administrative Appeals Tribunal Act 1975

126 Subsection 3(1)

Insert:

authority of Norfolk Island means an authority, tribunal or other body, whether incorporated or not, that is established by a Norfolk Island enactment.

127 Subsection 3(1) (paragraph (b) of the definition of *enactment*)

Omit “or the Australian Capital Territory”, substitute “, the Australian Capital Territory or Norfolk Island”.

128 Subsection 3(1) (at the end of the definition of *enactment*)

Add:

Note: See also subsection 25(8) (Norfolk Island enactments).

129 Subsection 3(1)

Insert:

Norfolk Island enactment means:

(a) an enactment (within the meaning of the *Norfolk Island Act 1979*); or

(b) an instrument (including rules, regulations or by-laws) made under such an enactment;

and includes a Norfolk Island enactment as amended by another Norfolk Island enactment.

130 Subsection 3(1)

Insert:

Norfolk Island Justice Minister means the Norfolk Island Minister who is responsible, or principally responsible, for the administration of the *Interpretation Act 1979* of Norfolk Island.

131 Subsection 3(1)

Insert:

Norfolk Island Minister means a Minister of Norfolk Island.

132 After subsection 25(1)

Insert:

- (2) The regulations may provide that applications may be made to the Tribunal for review of decisions made in the exercise of powers conferred by a Norfolk Island enactment.

133 Subsection 25(3)

After “(1)”, insert “or (2)”.

134 After subsection 25(5)

Insert:

- (5A) For the purposes of regulations that make provision in accordance with this section for the making of applications to the Tribunal for review of decisions made in the exercise of powers conferred by a Norfolk Island enactment, a failure by a person to do an act or thing within the period prescribed by:
- (a) that Norfolk Island enactment; or
 - (b) another Norfolk Island enactment having effect under that Norfolk Island enactment;
- as the period within which that person is required or permitted to do that act or thing is taken to constitute the making of a decision by that person at the end of that period not to do that act or thing.

135 At the end of section 25

Add:

Norfolk Island enactment

- (8) If the regulations make provision in accordance with subsection (2) for the making of applications to the Tribunal for review of

decisions made in the exercise of powers conferred by a Norfolk Island enactment (the *primary Norfolk Island enactment*), this Act, other than:

- (a) the definition of *authority of the Commonwealth* in subsection 3(1); and
- (b) subsections (1), (5) and (6) of this section; and
- (c) subsection 21(1); and
- (d) subsection 27(1); and
- (e) paragraph 27A(2)(b); and
- (f) paragraph 33(1)(a); and
- (g) paragraph 43B(1)(a); and
- (h) section 59;

has effect as if:

- (i) the primary Norfolk Island enactment; and
- (j) any other Norfolk Island enactment, in so far as it relates to the primary Norfolk Island enactment;

were an enactment (within the meaning of this Act).

136 Paragraph 26(1)(a)

Before “the enactment”, insert “if regulations made for the purposes of subsection 25(2) (which deals with Norfolk Island) did not authorise the making of the application—”.

137 After paragraph 26(1)(a)

Insert:

- (aa) if regulations made for the purposes of subsection 25(2) authorised the making of the application—the Norfolk Island enactment under which the decision was made expressly permits the decision to be altered; or

138 Subsection 27(1)

After “authority of the Commonwealth”, insert “or Norfolk Island or an authority of Norfolk Island”.

139 At the end of subsection 27(1)

Add:

- Note: The enactment may be regulations made for the purposes of subsection 25(2) (review of decisions made in the exercise of powers conferred by a Norfolk Island enactment).

140 Paragraph 27A(2)(a)

After “25(5)”, insert “or (5A)”.

141 Paragraph 29(1)(d)

After “25(5)”, insert “or (5A)”.

142 Subsection 29(3)

After “25(5)” (wherever occurring), insert “or (5A)”.

143 At the end of section 36B

Add:

Norfolk Island

(6) In this section:

Attorney-General, in relation to Norfolk Island, means the Norfolk Island Justice Minister.

Cabinet, in relation to Norfolk Island, means a body that:

- (a) consists of Norfolk Island Ministers; and
- (b) corresponds to the Cabinet.

State includes Norfolk Island.

144 At the end of section 36C

Add:

Norfolk Island

(4) In this section:

Attorney-General, in relation to Norfolk Island, means the Norfolk Island Justice Minister.

State includes Norfolk Island.

145 At the end of section 36D

Add:

Norfolk Island

(8) In this section:

Attorney-General, in relation to Norfolk Island, means the Norfolk Island Justice Minister.

State includes Norfolk Island.

146 At the end of subsection 43B(1)

Add:

Note: The enactment may be regulations made for the purposes of subsection 25(2) (review of decisions made in the exercise of powers conferred by a Norfolk Island enactment).

147 Section 59

Before “If an enactment”, insert “(1)”.

148 At the end of section 59

Add:

- (2) If the regulations so provide, the Tribunal may give an advisory opinion on a matter or question:
- (a) arising under a Norfolk Island enactment; and
 - (b) referred to the Tribunal in accordance with the regulations;
- and, for the purpose of giving such an opinion, the Tribunal may hold such hearings and inform itself in such manner as it thinks appropriate.

149 Subsection 66(4)

Insert:

enactment includes a Norfolk Island enactment.

150 Section 66A

Before “If:”, insert “(1)”.

151 At the end of section 66A

Add:

(2) In this section:

enactment includes a Norfolk Island enactment.

152 Section 67A

Before “A notice”, insert “(1)”.

153 Section 67A

After “a decision”, insert “(other than a decision under a Norfolk Island enactment)”.

154 At the end of section 67A

Add:

- (2) A notice that is required or permitted by this Act to be given to the person who made a decision under a Norfolk Island enactment may be given to the Chief Executive Officer (within the meaning of the *Public Sector Management Act 2000* of Norfolk Island).

Part 5—Amendments relating to freedom of information

Freedom of Information Act 1982

155 Subsection 3(1)

After “the Commonwealth”, insert “or the Government of Norfolk Island”.

156 Subsection 4(1) (definition of *agency*)

Omit “or a prescribed authority”, substitute “, a prescribed authority or a Norfolk Island authority”.

157 Subsection 4(1)

Insert:

Australia, when used in a geographical sense, includes Norfolk Island.

158 Subsection 4(1) (definition of *Cabinet*)

Repeal the definition, substitute:

Cabinet includes:

- (a) a committee of the Cabinet; and
- (b) a body that:
 - (i) consists of Norfolk Island Ministers; and
 - (ii) corresponds to the Cabinet.

159 Subsection 4(1) (paragraph (a) of the definition of *Commonwealth contract*)

After “the Commonwealth”, insert “, Norfolk Island”.

160 Subsection 4(1) (subparagraph (b)(iii) of the definition of *Commonwealth contract*)

After “the Commonwealth”, insert “, Norfolk Island”.

161 Subsection 4(1)

Insert:

Minister includes a Norfolk Island Minister.

162 Subsection 4(1)

Insert:

Norfolk Island authority means:

- (a) a public sector agency (within the meaning of the *Public Sector Management Act 2000* of Norfolk Island); or
- (b) a body (whether incorporated or not) established for a public purpose by or under a Norfolk Island enactment, other than a body established or registered under:
 - (i) the *Companies Act 1985* of Norfolk Island; or
 - (ii) the *Associations Incorporation Act 2005* of Norfolk Island; or
- (c) a body established or appointed by:
 - (i) the Administrator of Norfolk Island; or
 - (ii) a Norfolk Island Minister;otherwise than by or under a Norfolk Island enactment; or
- (d) a person holding or performing the duties of:
 - (i) an office established by or under a Norfolk Island enactment; or
 - (ii) an appointment made under a Norfolk Island enactment; or
- (e) a person holding or performing the duties of an appointment, where the appointment was made by:
 - (i) the Administrator of Norfolk Island; or
 - (ii) a Norfolk Island Minister;otherwise than under a Norfolk Island enactment.

163 Subsection 4(1)

Insert:

Norfolk Island enactment means:

- (a) an enactment (within the meaning of the *Norfolk Island Act 1979*); or
- (b) an instrument (including rules, regulations or by-laws) made under such an enactment;

and includes a Norfolk Island enactment as amended by another Norfolk Island enactment.

164 Subsection 4(1)

Insert:

Norfolk Island Minister means a Minister of Norfolk Island.

165 Subsection 4(1) (at the end of the definition of *principal officer*)

Add:

; or (c) in relation to a Norfolk Island authority—the person holding, or performing the duties of, the office of Chief Executive Officer under the *Public Sector Management Act 2000* of Norfolk Island.

166 Subsection 4(1) (at the end of paragraph (d) of the definition of *responsible Minister*)

Add “or”.

167 Subsection 4(1) (after paragraph (d) of the definition of *responsible Minister*)

Insert:

(e) in relation to a Norfolk Island authority—the Chief Minister of Norfolk Island;

168 After subsection 4(3)

Insert:

(3A) If an unincorporated body consists of a board, council, committee, sub-committee or other body established by or under a Norfolk Island enactment for the purpose of assisting, or performing functions connected with, a Norfolk Island authority:

- (a) the unincorporated body is taken not to be a Norfolk Island authority for the purposes of this Act; and
- (b) the unincorporated body is taken to be comprised within that Norfolk Island authority.

(3B) A person is not taken to be a Norfolk Island authority:

- (a) because he or she holds:

- (i) an office of member of the Legislative Assembly of Norfolk Island; or
 - (ii) the office of Administrator of Norfolk Island; or
 - (iii) an office of Deputy Administrator of Norfolk Island; or
 - (iv) an office of Norfolk Island Minister; or
- (b) because he or she holds, or performs the duties of:
- (i) a prescribed office; or
 - (ii) an office the duties of which he or she performs as duties of his or her employment as an officer of a Norfolk Island authority; or
 - (iii) an office of member of a Norfolk Island authority; or
 - (iv) an office established by a Norfolk Island enactment for the purposes of a Norfolk Island authority.

169 After section 4A

Insert:

4B Extension to Norfolk Island

This Act extends to Norfolk Island.

170 Section 5

Before “For the purposes”, insert “(1)”.

171 Paragraph 5(a)

After “court”, insert “(other than a court of Norfolk Island)”.

172 Paragraph 5(b)

After “judicial office”, insert “(other than a judicial office in a court of Norfolk Island)”.

173 Paragraph 5(b)

After “a court”, insert “(other than a court of Norfolk Island)”.

174 Paragraph 5(c)

After “a court”, insert “(other than a court of Norfolk Island)”.

175 At the end of section 5

Add:

(2) For the purposes of this Act:

- (a) a court of Norfolk Island is taken to be a Norfolk Island authority; and
- (b) if a person is the holder of a judicial office in a court of Norfolk Island—the person, in his or her capacity as the holder of the office, is taken not to be a Norfolk Island authority and is not to be included in a Norfolk Island authority; and
- (c) if:
 - (i) a person is the holder of an office (other than a judicial office) that relates to a court of Norfolk Island; and
 - (ii) the office is established by a Norfolk Island enactment; the person, in his or her capacity as the holder of the office, is taken not to be a Norfolk Island authority and is not to be included in a Norfolk Island authority; and
- (d) a registry or other office of a court of Norfolk Island, and the staff of such a registry or other office when acting in a capacity as members of that staff, are taken to be a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

176 Paragraph 8(2)(d)

Repeal the paragraph, substitute:

- (d) details of the following appointments:
 - (i) appointments of officers of the agency that are made under Acts (other than APS employees within the meaning of the *Public Service Act 1999*);
 - (ii) appointments of officers of the agency that are made under Norfolk Island enactments (other than officers appointed or employed under the *Public Sector Management Act 2000* of Norfolk Island);

177 At the end of paragraph 8(2)(e)

Add “or the Legislative Assembly of Norfolk Island”.

178 Paragraph 8(2)(h)

After “provided to the Parliament”, insert “or the Legislative Assembly of Norfolk Island”.

179 At the end of paragraph 8(2)(h)

Add “or the Legislative Assembly of Norfolk Island, as the case may be”.

180 At the end of section 8 (before the notes)

Add:

Definition

(6) In this section:

enactment includes a Norfolk Island enactment.

181 At the end of section 8C

Add:

Definition

(4) In this section:

enactment includes a Norfolk Island enactment.

182 At the end of Part II

Add:

10B Transitional—Norfolk Island authorities

This Part does not apply to a Norfolk Island authority at any time during the 2-year period beginning at the commencement of this section.

183 After paragraph 11B(4)(a)

Insert:

(aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;

184 Section 12

Before “A person is not entitled”, insert “(1)”.

185 At the end of section 12

Add:

- (2) A person is not entitled to obtain access under this Part to a document or a part of a document that became:
- (a) a document of a Norfolk Island agency; or
 - (b) an official document of a Norfolk Island Minister;
- more than 5 years before the commencement of this subsection unless:
- (c) the document, or that part of the document, contains information that is:
 - (i) personal information about that person; or
 - (ii) information relating to that person’s business, commercial or financial affairs; or
 - (d) the document, or that part of the document, is a document or a part of a document access to which is reasonably necessary to enable a proper understanding of:
 - (i) a document of a Norfolk Island agency; or
 - (ii) an official document of a Norfolk Island Minister;to which that person has lawfully had access.

- (3) In this section:

enactment includes a Norfolk Island enactment.

186 Subsection 15(6)

After “26A,”, insert “26AA,”.

Note: The heading to subsection 15(6) is altered by inserting “26AA,” after “26A,”.

187 Paragraph 20(3)(c)

Omit “or a State”, substitute “, Norfolk Island or a State”.

188 At the end of paragraphs 21(1)(a) and (b)

Add “or”.

189 At the end of subsection 21(1)

Add:

; or (e) if:

- (i) the request is received by a Norfolk Island Minister or a Norfolk Island authority; and
 - (ii) a Norfolk Island Minister considers that the document concerned is of such general public interest that the Legislative Assembly of Norfolk Island should be informed of the contents of the document before the document is otherwise made public;
- until the end of 5 sitting days of the Legislative Assembly of Norfolk Island.

190 Subparagraph 26A(1)(c)(i)

After “relations”, insert “etc.”.

191 At the end of section 26A

Add:

Definition

- (6) In this section:

State includes Norfolk Island.

Note: The heading to section 26A is altered by adding at the end “etc.”.

192 After section 26A

Insert:

**26AA Consultation—documents affecting Norfolk Island
intergovernmental relations**

Scope

- (1) This section applies if:
- (a) either:
 - (i) arrangements have been entered into between Norfolk Island and the Commonwealth about consultation under this section; or
 - (ii) arrangements have been entered into between Norfolk Island and a State about consultation under this section;
- and

- (b) if subparagraph (a)(i) applies—a request is made to a Norfolk Island authority or Norfolk Island Minister for access to a document that:
 - (i) originated with, or was received from, the Commonwealth or an authority of the Commonwealth; or
 - (ii) contains information (*Commonwealth-originated information*) that originated with, or was received from, the Commonwealth or an authority of the Commonwealth; and
- (c) if subparagraph (a)(ii) applies—a request is made to a Norfolk Island authority or Norfolk Island Minister for access to a document that:
 - (i) originated with, or was received from, the State or an authority of the State; or
 - (ii) contains information (*State-originated information*) that originated with, or was received from, the State or an authority of the State; and
- (d) if subparagraph (a)(i) applies—it appears to the Norfolk Island authority or Norfolk Island Minister that the Commonwealth may reasonably wish to contend that:
 - (i) the document is conditionally exempt under section 47B (Commonwealth-State relations etc.); and
 - (ii) access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5); and
- (e) if subparagraph (a)(ii) applies—it appears to the Norfolk Island authority or Norfolk Island Minister that the State may reasonably wish to contend that:
 - (i) the document is conditionally exempt under section 47B (Commonwealth-State relations etc.); and
 - (ii) access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

Consultation required

- (2) The Norfolk Island authority or Norfolk Island Minister must not decide to give the applicant access to the document unless consultation has taken place between:
- (a) if subparagraph (1)(a)(i) applies—Norfolk Island and the Commonwealth in accordance with the arrangements mentioned in that subparagraph; or
 - (b) if subparagraph (1)(a)(ii) applies—Norfolk Island and the State in accordance with the arrangements mentioned in that subparagraph.

Decision to give access

- (3) If, after such consultation has taken place, the Norfolk Island authority or Norfolk Island Minister decides to give the applicant access to the document, the Norfolk Island authority or Norfolk Island Minister must give written notice of the decision to:
- (a) if subparagraph (1)(a)(i) applies—the Commonwealth; and
 - (b) if subparagraph (1)(a)(ii) applies—the State; and
 - (c) in any case—the applicant.

Access not to be given until review or appeal opportunities have run out

- (4) However, the Norfolk Island authority or Norfolk Island Minister must not give the applicant access to the document unless, after all the opportunities of:
- (a) if subparagraph (1)(a)(i) applies—the Commonwealth; or
 - (b) if subparagraph (1)(a)(ii) applies—the State;
- for review or appeal in relation to the decision to give access to the document have run out, the decision still stands, or is confirmed.

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have *run out*, see subsection 4(1).

*Edited copies, Commonwealth-originated information and
State-originated information*

- (5) This section applies:
- (a) in relation to an edited copy of a document in the same way as it applies to the document; and
 - (b) in relation to a document containing Commonwealth-originated information—to the extent to which the document contains such information; and
 - (c) in relation to a document containing State-originated information—to the extent to which the document contains such information.

193 At the end of section 38

Add:

- (4) In this section:

enactment includes a Norfolk Island enactment.

194 Subsection 45(1)

Omit “or the Commonwealth”, substitute “, the Commonwealth or Norfolk Island”.

195 Subsection 45(2)

After “prescribed authority”, insert “or Norfolk Island authority”.

196 Paragraph 45(2)(b)

Omit “or the Commonwealth”, substitute “, the Commonwealth or Norfolk Island”.

197 Subsection 47(3)

After “the Commonwealth”, insert “, Norfolk Island”.

**198 Subsection 47A(1) (at the end of the definition of
electoral roll)**

Add:

- ; or (c) an electoral roll prepared under the *Legislative Assembly Act 1979* of Norfolk Island; or
- (d) any part of an electoral roll referred to in paragraph (c).

199 At the end of section 47B (before the note)

Add:

- ; or (c) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and Norfolk Island; or
- (d) would divulge information or matter communicated in confidence by or on behalf of the Government of Norfolk Island or an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or
- (e) would, or could reasonably be expected to, cause damage to relations between Norfolk Island and a State; or
- (f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of Norfolk Island, to an authority of Norfolk Island or to a person receiving the communication on behalf of Norfolk Island or of an authority of Norfolk Island.

Note: The heading to section 47B is altered by adding at the end “etc.”.

200 Subsection 47C(1)

Omit all the words after “involved in”, substitute:

the functions of:

- (a) an agency; or
- (b) a Minister; or
- (c) the Government of the Commonwealth; or
- (d) the Government of Norfolk Island.

201 Section 47D

After “the Commonwealth”, insert “, of Norfolk Island”.

Note: The heading to section 47D is altered by adding at the end “or Norfolk Island”.

202 Paragraph 47E(c)

After “the Commonwealth”, insert “, by Norfolk Island”.

203 Paragraph 47G(1)(b)

After “to the Commonwealth”, insert “, Norfolk Island”.

204 Subsection 47G(4)

After “the Commonwealth”, insert “, Norfolk Island”.

205 After subsection 47J(2)

Insert:

(2A) For the purposes of paragraph (2)(b), Norfolk Island is taken to be a region of Australia.

206 Paragraph 47J(3)(g)

After “by the Commonwealth,”, insert “Norfolk Island,”.

207 Paragraph 47J(3)(g)

After “of the Commonwealth”, insert “, of Norfolk Island”.

208 Section 53B

Before “An *access grant decision*”, insert “(1)”.

209 Section 53B (note)

Omit “item 1”, substitute “items 1 and 1A”.

210 Section 53B (table item 1)

After “relations”, insert “etc.”.

211 Section 53B (after table item 1)

Insert:

- | | | |
|----|---|---|
| 1A | consultation with the Commonwealth or a State under section 26AA (documents affecting Norfolk Island intergovernmental relations) is required | a decision of an agency or Minister to give the applicant access to the document (or an edited copy of the document) because:
(a) the document is not conditionally exempt under section 47B (Commonwealth-State relations etc.);
or
(b) access to the document would not, on balance, be contrary to the public interest for the purposes of subsection 11A(5). |
|----|---|---|

212 At the end of section 53B

Add:

- (2) For the purposes of table item 1, *State* has the same meaning as in section 26A.

213 Section 53C

Before “The following table”, insert “(1)”.

214 Section 53C (after table item 1)

Insert:

- | | | |
|----|---|--|
| 1A | consultation with the Commonwealth or a State under section 26AA (documents affecting Norfolk Island intergovernmental relations) is required | the Commonwealth or the State, as the case may be. |
|----|---|--|

215 At the end of section 53C

Add:

- (2) For the purposes of table item 1, *State* has the same meaning as in section 26A.

216 Paragraph 54P(1)(a)

After “26A,”, insert “26AA,”.

217 Paragraph 54S(2)(b)

After “26A,”, insert “26AA,”.

218 Subsection 54Y(2) (note)

Before “27”, insert “26AA (documents affecting Norfolk Island intergovernmental relations),”.

219 Subsection 55G(1) (note)

Before “27”, insert “26AA (documents affecting Norfolk Island intergovernmental relations),”.

220 At the end of section 55M

Add:

- (3) In this section:

enactment includes a Norfolk Island enactment.

221 At the end of section 58AA

Add:

(3) In this section:

enactment includes a Norfolk Island enactment.

222 Subsection 60AA(1)

After “26A,”, insert “26AA,”.

223 Subsection 61(2)

After “26A,”, insert “26AA,”.

224 At the end of subsection 66(1)

Add “or Norfolk Island”.

225 Subsection 74(1)

Omit “dealt with by the Ombudsman under the *Ombudsman Act 1976*.”,
substitute:

dealt with:

- (a) by the Ombudsman under the *Ombudsman Act 1976*; or
- (b) by the Ombudsman under a particular Norfolk Island
enactment.

226 Subsection 74(5)

Omit “A complaint”, substitute “If paragraph (1)(a) applies, a
complaint”.

227 At the end of section 74 (before the note)

Add:

- (6) If paragraph (1)(b) applies, a complaint transferred under
subsection (3) is taken to be a complaint made to the Ombudsman
under the Norfolk Island enactment concerned.

228 At the end of section 89D

Add:

(4) In this section:

enactment includes a Norfolk Island enactment.

229 At the end of section 89J

Add:

(3) In this section:

enactment includes a Norfolk Island enactment.

230 Subsection 90(1)

After “the Commonwealth,”, insert “Norfolk Island,”.

231 Subsection 91(1A)

After “26A,”, insert “26AA,”.

232 Subsection 91(1B)

After “the Commonwealth,”, insert “Norfolk Island,”.

233 Subsection 91(1B)

After “26A,”, insert “26AA,”.

234 After paragraph 91(1C)(a)

Insert:

(aa) consultation with the Commonwealth or a State under subsection 26AA(2);

235 After paragraph 91(1C)(d)

After “the Commonwealth,”, insert “Norfolk Island,”.

236 After paragraph 91(2A)(a)

Insert:

(aa) consultation with the Commonwealth or a State under subsection 26AA(2);

237 At the end of section 91

Add:

(4) For the purposes of paragraphs (1C)(a) and (2A)(a), *State* has the same meaning as in section 26A.

238 After paragraph 92(2)(a)

Insert:

- (aa) consultation with the Commonwealth or a State under subsection 26AA(2);

239 At the end of section 92

Add:

- (3) For the purposes of paragraph (2)(a), *State* has the same meaning as in section 26A.

Part 6—Amendments relating to the Ombudsman

Norfolk Island Act 1979

240 After section 66

Insert:

66A Reports by Ombudsman

Scope

- (1) This section applies if an enactment:
 - (a) requires that the Commonwealth Ombudsman must give a report to a Minister; and
 - (b) requires that the Minister must cause the report to be tabled in the Legislative Assembly.

Requirement

- (2) The Minister must give a copy of the report to the responsible Commonwealth Minister.
- (3) The responsible Commonwealth Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the responsible Commonwealth Minister receives the report.

Note: See also section 4 of the *Ombudsman Act 1976*.

Ombudsman Act 1976

241 At the end of subsection 4(2)

Add:

; or (d) an enactment of Norfolk Island.

242 At the end of section 4

Add:

- (6) The Commonwealth Ombudsman, in performing functions under an enactment of Norfolk Island, may, if he or she so chooses, be called the Norfolk Island Ombudsman.

Part 7—Amendments relating to privacy

Australian Capital Territory Government Service (Consequential Provisions) Act 1994

243 After subsection 23(1)

Insert:

- (1A) Until the day fixed for the purposes of subsection (1), the definition of *enactment* in subsection 6(1) of the *Privacy Act 1988* does not imply that a reference in that Act to an enactment does not include a reference to an ACT enactment.

Privacy Act 1988

244 Subsection 6(1) (after paragraph (h) of the definition of agency)

Insert:

- (ha) a Norfolk Island agency; or

245 Subsection 6(1)

Insert:

- Cabinet*, in relation to Norfolk Island, means a body that:
- (a) consists of Norfolk Island Ministers; and
 - (b) corresponds to the Cabinet.

246 Subsection 6(1) (definition of Commonwealth contract)

After “the Commonwealth”, insert “, Norfolk Island”.

247 Subsection 6(1)

Insert:

enactment includes a Norfolk Island enactment.

248 Subsection 6(1)

Insert:

Norfolk Island agency means:

- (a) a Norfolk Island Minister; or
- (b) a public sector agency (within the meaning of the *Public Sector Management Act 2000* of Norfolk Island); or
- (c) a body (whether incorporated or not), or a tribunal, established for a public purpose by or under a Norfolk Island enactment, other than a body established or registered under:
 - (i) the *Companies Act 1985* of Norfolk Island; or
 - (ii) the *Associations Incorporation Act 2005* of Norfolk Island; or
- (d) a body established or appointed by:
 - (i) the Administrator of Norfolk Island; or
 - (ii) a Norfolk Island Minister;otherwise than by or under a Norfolk Island enactment; or
- (e) a person holding or performing the duties of:
 - (i) an office established by or under a Norfolk Island enactment; or
 - (ii) an appointment made under a Norfolk Island enactment; or
- (f) a person holding or performing the duties of an appointment, where the appointment was made by:
 - (i) the Administrator of Norfolk Island; or
 - (ii) a Norfolk Island Minister;otherwise than under a Norfolk Island enactment; or
- (g) a court of Norfolk Island.

249 Subsection 6(1)

Insert:

Norfolk Island enactment means:

- (a) an enactment (within the meaning of the *Norfolk Island Act 1979*); or
 - (b) an instrument (including rules, regulations or by-laws) made under such an enactment;
- and includes a Norfolk Island enactment as amended by another Norfolk Island enactment.

250 Subsection 6(1)

Insert:

Norfolk Island Justice Minister means the Norfolk Island Minister who is responsible, or principally responsible, for the administration of the *Interpretation Act 1979* of Norfolk Island.

251 Subsection 6(1)

Insert:

Norfolk Island Minister means a Minister of Norfolk Island.

252 At the end of paragraphs 6(5)(a), (b) and (c)

Add “or”.

253 After paragraph 6(5)(c)

Insert:

(ca) an office established by or under a Norfolk Island enactment for the purposes of a Norfolk Island agency; or

254 At the end of subsection 6(5)

Add:

; or (f) an office of member of a tribunal that is established by or under a Norfolk Island enactment and that is prescribed for the purposes of this paragraph.

255 After subsection 6(10)

Insert:

(10A) For the purposes of this Act, the Supreme Court of Norfolk Island is taken not to be a federal court.

256 At the end of subparagraphs 7(1)(a)(i) and (ii)

Add “or”.

257 After subparagraph 7(1)(a)(ii)

Insert:

(ia) a court of Norfolk Island; or

258 At the end of subparagraph 7(1)(a)(iii)

Add “or”.

259 After subparagraph 7(1)(a)(iii)

Insert:

(iiiiaa) a Norfolk Island Minister; or

260 After paragraph 7(1)(b)

Insert:

(ba) an act done, or a practice engaged in, as the case may be, by a court of Norfolk Island, being an act done, or a practice engaged in, in respect of a matter of an administrative nature; or

261 Paragraphs 7(1)(d) and (e)

After “other than”, insert “a Norfolk Island agency,”.

262 After paragraph 7(1)(e)

Insert:

(eaa) an act done, or a practice engaged in, as the case may be, by a Norfolk Island Minister in relation to the affairs of a Norfolk Island agency, not being an act done, or a practice engaged in, in relation to an existing record; or

(eab) an act done, or a practice engaged in, as the case may be, by a Norfolk Island Minister in relation to a record that is in the Norfolk Island Minister’s possession in his or her capacity as a Norfolk Island Minister and relates to the affairs of a Norfolk Island agency; or

263 Paragraph 8(1)(b)

After “Commonwealth enactment”, insert “or a Norfolk Island enactment”.

264 Subsection 9(3)

After “Commonwealth enactment”, insert “or a Norfolk Island enactment”.

265 Subsection 10(3)

After “Commonwealth enactment”, insert “or a Norfolk Island enactment”.

266 Subsection 11(3)

After “Commonwealth enactment”, insert “or a Norfolk Island enactment”.

267 After subsection 15(1)

Insert:

- (1A) Information Privacy Principles 1, 2, 3, 10 and 11 do not apply to information collected by a Norfolk Island agency before the commencement of this subsection.

268 Before section 16

Insert:

15B Special provision relating to the application of the Information Privacy Principles in relation to Norfolk Island

In relation to a record-keeper that is a Norfolk Island agency, a reference in Information Privacy Principle 5, 6 or 7 to a *law of the Commonwealth* includes a reference to a Norfolk Island enactment.

269 Paragraph 27(1)(b)

Before “) a proposed”, insert “or a Norfolk Island Minister”.

270 Paragraph 27(1)(f)

Before “, agency”, insert “, a Norfolk Island Minister”.

271 Paragraph 27(1)(k)

Before “) a proposal”, insert “or a Norfolk Island Minister”.

272 Paragraph 30(3)(d)

Before “responsible”, insert “or Norfolk Island Minister (if any)”.

273 Subsection 30(4)

Before “responsible”, insert “or Norfolk Island Minister (if any)”.

274 At the end of section 33

Add:

Norfolk Island

(5) In this section:

State includes Norfolk Island.

275 At the end of Division 3 of Part IV

Add:

33B Copies of certain reports to be given to the Norfolk Island Justice Minister

(1) If:

(a) the Commissioner gives a report to the Minister under section 30, 31 or 32; and

(b) the report relates to a Norfolk Island matter;

the Commissioner must, at the same time, give a copy of the report to the Norfolk Island Justice Minister.

(2) For the purposes of this section, a report relates to a Norfolk Island matter if:

(a) in the case of a report under section 30—the report relates to an act or practice of a Norfolk Island agency; or

(b) in the case of a report under section 31—the report relates to a proposed Norfolk Island enactment; or

(c) in the case of a report under section 32—the report relates to an activity or audit of a Norfolk Island agency.

276 Paragraph 34(2)(a)

Before “, being”, insert “or a Norfolk Island Minister”.

277 At the end of paragraph 34(2)(b)

Add “or a Norfolk Island Minister”.

278 Section 37 (after table item 5)

Insert:

5A	A public sector agency (within the meaning of the <i>Public Sector Management Act 2000</i> of Norfolk Island)	The Chief Executive Officer (within the meaning of the <i>Public Sector Management Act 2000</i> of Norfolk Island)
----	---	--

Schedule 1 Amendments relating to Norfolk Island
Part 7 Amendments relating to privacy

5B	An unincorporated body, or a tribunal, referred to in paragraph (c) of the definition of <i>Norfolk Island agency</i> in subsection 6(1)	The Chief Executive Officer (within the meaning of the <i>Public Sector Management Act 2000</i> of Norfolk Island)
5C	A body referred to in paragraph (d) of the definition of <i>Norfolk Island agency</i> in subsection 6(1)	The Chief Executive Officer (within the meaning of the <i>Public Sector Management Act 2000</i> of Norfolk Island)
5D	A court of Norfolk Island	The registrar or principal registrar of the court or the person occupying an equivalent office

279 Subsection 43(7)

Before “that the matter”, insert “or Norfolk Island Minister (if any)”.

280 Subsection 43(8)

Before “concerned”, insert “or a Norfolk Island Minister”.

281 Subsection 43(8A)

After “a Minister”, insert “or a Norfolk Island Minister”.

282 At the end of paragraph 43(9)(b)

Add “or Norfolk Island Minister”.

283 Subsection 50(1)

Insert:

Norfolk Island Public Service Board means the Public Service Board established under the *Public Sector Management Act 2000* of Norfolk Island.

284 After subparagraph 50(2)(a)(ii)

Insert:

(ia) to the Ombudsman under a particular Norfolk Island enactment; or

285 At the end of paragraph 50(2)(b)

Add “or”.

286 After paragraph 50(2)(b)

Insert:

- (ba) an application with respect to that matter has been, or could have been, made by the complainant to the Norfolk Island Public Service Board under the *Public Sector Management Act 2000* of Norfolk Island;

287 After subparagraph 50(3)(a)(ii)

Insert:

- (ia) to the Ombudsman under the Norfolk Island enactment concerned; or

288 At the end of paragraph 50(3)(b)

Add “or”.

289 After paragraph 50(3)(b)

Insert:

- (c) an application made to the Norfolk Island Public Service Board under the *Public Sector Management Act 2000* of Norfolk Island;

290 Before subsection 60(3)

Insert:

- (2B) If a determination relates to a Norfolk Island agency, the reference in subsection (2) to the *Commonwealth* is to be read as a reference to Norfolk Island.

291 At the end of section 66

Add:

Norfolk Island

(12) In this section:

Attorney-General, in relation to Norfolk Island, means the Norfolk Island Justice Minister.

State includes Norfolk Island.

292 At the end of subsection 68(1)

Add “or documents in respect of which the Norfolk Island Justice Minister has given a certificate under subsection 70(4)”.

293 At the end of section 70

Add:

(4) If the Norfolk Island Justice Minister gives to the Commissioner a certificate certifying that:

- (a) the giving to the Commissioner of information concerning a specified matter (including the giving of information in answer to a question); or
- (b) the production to the Commissioner of a specified document or other record;

would be contrary to the public interest because it would:

- (c) involve the disclosure of communications between a Norfolk Island Minister and a Minister of the Commonwealth or of a State, being a disclosure that would prejudice relations between the Government of Norfolk Island and the Government of the Commonwealth or of a State; or
- (d) involve the disclosure of deliberations or decisions of the Cabinet of Norfolk Island; or
- (e) prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued, or prejudice the fair trial of any person; or
- (f) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement of the criminal law; or
- (g) prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or
- (h) endanger the life or physical safety of any person;

the Commissioner is not entitled to require a person to give any information concerning the matter or to produce the document or other record.

294 Subsection 80G(1) (definition of *secrecy provision*)

Omit “, including a provision of this Act,”, substitute “(including a provision of this Act), or of a Norfolk Island enactment,”.

295 After subsection 80R(1)

Insert:

- (1A) The operation of this Part is not limited by a secrecy provision of a Norfolk Island enactment (whether made before or after the commencement of this subsection) except to the extent that the secrecy provision expressly excludes the operation of this subsection.

296 At the end of section 89

Add:

- ; or (c) that arises under or by virtue of a Norfolk Island enactment that is in force.

297 Application—Commonwealth contracts

To the extent that the amendment of the definition of *Commonwealth contract* in subsection 6(1) of the *Privacy Act 1988* made by this Part is relevant to section 95B of that Act, the amendment applies in relation to a contract entered into after the commencement of this item.

Schedule 2—Amendments relating to Christmas Island

Christmas Island Act 1958

1 Section 8G

Repeal the section, substitute:

8G Powers and functions under the applied Western Australian laws

Vesting of powers in the Minister

- (1) If a power is vested in:
 - (a) a Minister of Western Australia; or
 - (b) the Governor of Western Australia; or
 - (c) the Governor-in-Council of Western Australia;by a Western Australian law in force in the Territory under section 8A, the power is, in relation to the Territory, vested in the Minister instead of the person or authority mentioned in paragraph (a), (b) or (c).
- (2) If:
 - (a) a power is vested in a person (other than a court officer of Western Australia) or an authority (other than a court of Western Australia) by a Western Australian law in force in the Territory under section 8A; and
 - (b) subsection (1) does not apply to the power;the power is, in relation to the Territory, vested in the Minister instead of the person or authority mentioned in paragraph (a).

Delegation etc.

- (3) If a power is vested in the Minister under subsection (1) or (2), the Minister may, in writing:
 - (a) direct that the power is also vested in a specified person or authority; or
 - (b) delegate the power to a specified person.

- (4) A person or authority in whom a power is vested under paragraph (3)(a) may, if the person is so empowered by the Minister in the direction, delegate the power, in writing, to a specified person.
- (5) If:
- (a) a power is vested in the Minister under subsection (2); and
 - (b) a person, or an authority, who is:
 - (i) an officer or employee of Western Australia; or
 - (ii) an authority of Western Australia; or
 - (iii) an officer or employee of an authority of Western Australia;is subject to an arrangement under section 8H; and
 - (c) the power corresponds to a power that the person or authority is authorised, under a law in force in Western Australia, to exercise in, or in a part of, Western Australia:
 - (i) whether in the person's own right or the authority's own right; or
 - (ii) whether in the capacity of a delegate; or
 - (iii) whether in any other way;the Minister is taken to have directed under paragraph (3)(a) that the first-mentioned power is also vested in the person or authority, as the case may be.
- (6) The Minister may direct that subsection (5) does not apply to a specified power.
- (7) A direction under subsection (6) may be unconditional or subject to such conditions (if any) as are specified in the direction.

Other matters

- (8) An instrument under this section may identify a power by reference to a class of powers.
- (9) The validity of the exercise of a power under a law by a person or authority under this section is unaffected by the failure of the person or authority to hold a qualification required of a person exercising that power under the law as in force in Western Australia.

(10) This section does not affect the operation of section 8A in relation to the application in or in relation to the Territory of a law (a *subordinate law*) made under a Western Australian law, whether the subordinate law is made after this section's commencement or not.

(11) An instrument under this section is not a legislative instrument.

(12) In this section:

authority means:

- (a) a body corporate, or an unincorporated body, established for a public purpose; or
- (b) an authority (within the ordinary meaning of that expression).

authority of Western Australia means an authority established by or under a Western Australian law.

power includes function or duty, and, in that context, *exercise* means perform.

2 Subsection 8H(2)

Omit all the words after “duties”, substitute:

by:

- (a) an officer or employee of Western Australia; or
- (b) an authority of Western Australia (within the meaning of section 8G); or
- (c) an officer or employee of an authority of Western Australia (within the meaning of section 8G);

in or in relation to the Territory.

3 Transitional—directions under paragraph 8G(3)(a) of the *Christmas Island Act 1958*

- (1) This item applies to a direction if:
- (a) the direction was given under paragraph 8G(3)(a) of the *Christmas Island Act 1958*; and
 - (b) the direction was in force immediately before the commencement of this item.

- (2) The direction has effect, after the commencement of this item, as if it had been given under paragraph 8G(3)(a) of the *Christmas Island Act 1958* as amended by this Schedule.

4 Transitional—delegations under paragraph 8G(3)(b) of the *Christmas Island Act 1958*

- (1) This item applies to a delegation if:
- (a) the delegation was made under paragraph 8G(3)(b) of the *Christmas Island Act 1958*; and
 - (b) the delegation was in force immediately before the commencement of this item.
- (2) The delegation has effect, after the commencement of this item, as if it had been made under paragraph 8G(3)(b) of the *Christmas Island Act 1958* as amended by this Schedule.

5 Transitional—delegations under subsection 8G(4) of the *Christmas Island Act 1958*

- (1) This item applies to a delegation if:
- (a) the delegation was made under subsection 8G(4) of the *Christmas Island Act 1958*; and
 - (b) the delegation was in force immediately before the commencement of this item.
- (2) The delegation has effect, after the commencement of this item, as if it had been made under subsection 8G(4) of the *Christmas Island Act 1958* as amended by this Schedule.

Schedule 3—Amendments relating to the Cocos (Keeling) Islands

Cocos (Keeling) Islands Act 1955

1 Section 8G

Repeal the section, substitute:

8G Powers and functions under the applied Western Australian laws

Vesting of powers in the Minister

- (1) If a power is vested in:
 - (a) a Minister of Western Australia; or
 - (b) the Governor of Western Australia; or
 - (c) the Governor-in-Council of Western Australia;by a Western Australian law in force in the Territory under section 8A, the power is, in relation to the Territory, vested in the Minister instead of the person or authority mentioned in paragraph (a), (b) or (c).
- (2) If:
 - (a) a power is vested in a person (other than a court officer of Western Australia) or an authority (other than a court of Western Australia) by a Western Australian law in force in the Territory under section 8A; and
 - (b) subsection (1) does not apply to the power;the power is, in relation to the Territory, vested in the Minister instead of the person or authority mentioned in paragraph (a).

Delegation etc.

- (3) If a power is vested in the Minister under subsection (1) or (2), the Minister may, in writing:
 - (a) direct that the power is also vested in a specified person or authority; or
 - (b) delegate the power to a specified person.

- (4) A person or authority in whom a power is vested under paragraph (3)(a) may, if the person is so empowered by the Minister in the direction, delegate the power, in writing, to a specified person.
- (5) If:
- (a) a power is vested in the Minister under subsection (2); and
 - (b) a person, or an authority, who is:
 - (i) an officer or employee of Western Australia; or
 - (ii) an authority of Western Australia; or
 - (iii) an officer or employee of an authority of Western Australia;is subject to an arrangement under section 8H; and
 - (c) the power corresponds to a power that the person or authority is authorised, under a law in force in Western Australia, to exercise in, or in a part of, Western Australia:
 - (i) whether in the person's own right or the authority's own right; or
 - (ii) whether in the capacity of a delegate; or
 - (iii) whether in any other way;the Minister is taken to have directed under paragraph (3)(a) that the first-mentioned power is also vested in the person or authority, as the case may be.
- (6) The Minister may direct that subsection (5) does not apply to a specified power.
- (7) A direction under subsection (6) may be unconditional or subject to such conditions (if any) as are specified in the direction.

Other matters

- (8) An instrument under this section may identify a power by reference to a class of powers.
- (9) The validity of the exercise of a power under a law by a person or authority under this section is unaffected by the failure of the person or authority to hold a qualification required of a person exercising that power under the law as in force in Western Australia.

(10) This section does not affect the operation of section 8A in relation to the application in or in relation to the Territory of a law (a *subordinate law*) made under a Western Australian law, whether the subordinate law is made after this section's commencement or not.

(11) An instrument under this section is not a legislative instrument.

(12) In this section:

authority means:

- (a) a body corporate, or an unincorporated body, established for a public purpose; or
- (b) an authority (within the ordinary meaning of that expression).

authority of Western Australia means an authority established by or under a Western Australian law.

power includes function or duty, and, in that context, *exercise* means perform.

2 Subsection 8H(2)

Omit all the words after “duties”, substitute:

by:

- (a) an officer or employee of Western Australia; or
- (b) an authority of Western Australia (within the meaning of section 8G); or
- (c) an officer or employee of an authority of Western Australia (within the meaning of section 8G);

in or in relation to the Territory.

3 Transitional—directions under paragraph 8G(3)(a) of the Cocos (Keeling) Islands Act 1955

- (1) This item applies to a direction if:
- (a) the direction was given under paragraph 8G(3)(a) of the *Cocos (Keeling) Islands Act 1955*; and
 - (b) the direction was in force immediately before the commencement of this item.

- (2) The direction has effect, after the commencement of this item, as if it had been given under paragraph 8G(3)(a) of the *Cocos (Keeling) Islands Act 1955* as amended by this Schedule.

4 Transitional—delegations under paragraph 8G(3)(b) of the *Cocos (Keeling) Islands Act 1955*

- (1) This item applies to a delegation if:
- (a) the delegation was made under paragraph 8G(3)(b) of the *Cocos (Keeling) Islands Act 1955*; and
 - (b) the delegation was in force immediately before the commencement of this item.
- (2) The delegation has effect, after the commencement of this item, as if it had been made under paragraph 8G(3)(b) of the *Cocos (Keeling) Islands Act 1955* as amended by this Schedule.

5 Transitional—delegations under subsection 8G(4) of the *Cocos (Keeling) Islands Act 1955*

- (1) This item applies to a delegation if:
- (a) the delegation was made under subsection 8G(4) of the *Cocos (Keeling) Islands Act 1955*; and
 - (b) the delegation was in force immediately before the commencement of this item.
- (2) The delegation has effect, after the commencement of this item, as if it had been made under subsection 8G(4) of the *Cocos (Keeling) Islands Act 1955* as amended by this Schedule.

*[Minister's second reading speech made in—
House of Representatives on 29 September 2010
Senate on 17 November 2010]*

(209/10)

92 *Territories Law Reform Act 2010* *No. 139, 2010*