



Australian Government

Department of Infrastructure, Transport,  
Cities and Regional Development

# Norfolk Island Regional Council Elections

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Discussion paper

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Director - Publishing and Communications  
Communications Branch  
Department of Infrastructure, Transport, Cities and Regional Development  
GPO Box 594  
Canberra ACT 2601  
Australia

Email: [publishing@infrastructure.gov.au](mailto:publishing@infrastructure.gov.au)

Website: [www.infrastructure.gov.au](http://www.infrastructure.gov.au)

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## Purposes of this discussion paper

This discussion paper outlines proposed changes to legislation relating to Norfolk Island Regional Council (NIRC) elections and invites the community to provide comment.

The Department of Infrastructure, Transport, Cities and Regional Development has published a legislation consultation framework on its website at [www.infrastructure.gov.au/ni-legislation](http://www.infrastructure.gov.au/ni-legislation).

The framework sets out different methods of community engagement that can be used to discuss proposed changes to legislation.

Publishing this paper and calling for written submissions are consistent with that framework. Depending on the issues raised in submissions, other forms of engagement, such as targeted meetings, may also be appropriate.

## Background

The NIRC is the elected local government body for Norfolk Island. It was established in 2016 with the intention that it would operate in a similar way to local government bodies in NSW.

The 2016 election to establish the NIRC was conducted in accordance with the Norfolk Island Regional Council Preparatory Election Ordinance 2016, which was a one-off ordinance that has since been repealed.

After the 2016 election, the Local Government Act 1993 (NSW) (NI) (the applied LGA) and Local Government (General) Regulation 2005 (NSW) (NI) (the applied LGR) were applied in Norfolk Island. NIRC elections are regulated mainly by Chapter 10 of the applied LGA and Part 11 of the applied LGR. Before now, it has not been necessary to review the elections-related aspects of those laws in detail because there have been no elections since they came into force.

The date for the next NIRC elections is in September 2020. In preparation for the 2020 NIRC elections, the Norfolk Island Applied Laws Amendment (Local Government Elections) Ordinance 2018 made some preliminary changes to the applied LGA and the applied LGR. The department released a fact sheet explaining those changes in late 2018, which is available on its website at [www.infrastructure.gov.au/ni-legislation](http://www.infrastructure.gov.au/ni-legislation).

The department is now proposing legislation changes to make sure the law for the election in September 2020 and filling vacancies on the NIRC is similar to the local government legislation in NSW and is appropriate to the Norfolk Island context.

## Topics discussed in this paper

The topics discussed in this paper are:

- whether political parties and groups can register for NIRC elections
- which organisations cannot make political donations
- rules about lobbying local government officials
- when NIRC elections and by-elections are held
- who can vote in NIRC elections
- who can hold civic office on the NIRC
- offences relating to NIRC elections and how they are enforced.

Many of these topics are already dealt with in the applied LGA and the applied LGR, and all of them are dealt with in laws that regulate local council elections in NSW. Similar measures are also a feature of local government laws in other Australian states and territories.

The changes proposed in this paper are based closely on the parts of the laws that regulate local council elections in NSW that are most relevant to NIRC elections. The proposed changes are also intended to reflect the Norfolk Island context.

## Political parties, groups, political donations and lobbying

### Political parties

Under existing law, political parties can apply to register for NIRC elections.<sup>1</sup> Once registered, a political party could apply for their party name to appear next to endorsed candidates on the ballot-paper for a NIRC election.<sup>2</sup>


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

Under the proposed approach, political parties would not be able to register for NIRC elections and, as a result, could not apply for their name to appear on the ballot-paper. Political parties do not appear on the ballot-paper for local government elections in some other Australian jurisdictions, for example Victoria and Tasmania.

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<sup>1</sup> Applied LGA, s320.

<sup>2</sup> Applied LGA, s321.



Political parties would still be able to conduct election-related activities and the benefits political parties and their candidates enjoy (for example, administrative efficiency) would continue to be available.

Proposal number 1: Do not provide the ability for political parties to register for NIRC elections in Norfolk Island.

## Groups

Currently, 2 or more candidates can apply to have their names included in a group on the ballot-paper and can also request a group voting square.<sup>3</sup> Listing groups on the ballot-paper is similar to including political parties on the ballot-paper, because both groups and parties link individual candidates with a larger group or a particular political platform.

Under the proposed approach, candidates would not be able to register a group for the purposes of the ballot-paper. However, candidates could still campaign as a group if they wanted to and the benefits groups enjoy (e.g. administrative efficiency) would not change. This change would be consistent with the changes proposed for political parties.

Proposal number 2: Do not provide the ability to register a group for the purposes of the ballot-paper at NIRC elections.

## Donations from property developers and tobacco, liquor or gambling industries

In NSW, political donations from property developers and tobacco, liquor and gambling industries are prohibited at local government elections.<sup>4</sup> Property developers are also prohibited from making political donations under Queensland local government electoral law.<sup>5</sup> This is to prevent undue influence on local government officials, candidates and voters.

The proposed changes would ensure political donations from property developers and tobacco, liquor and gambling industries would also be banned in NIRC elections.

Proposal number 3: Ban donations from property developers and tobacco, liquor and gambling industries at NIRC elections.

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<sup>3</sup> Applied LGA, s308A.

<sup>4</sup> Electoral Funding Act 2018 (NSW), Part 3, Division 7.

<sup>5</sup> Local Government Electoral Act 2011 (Qld), Part 6, Division 1A.

## Lobbying local government officials

In NSW, it is an offence to agree to, give or receive a success fee for lobbying a local government official.<sup>6</sup> This is also the case in Queensland.<sup>7</sup> Success fees are fees where payment depends on achieving a particular outcome for the client.<sup>8</sup> They do not include fees for professional advice or for professional services by a lawyer, accountant, financial advisor or other technical specialist.<sup>9</sup>

Under the proposed changes, a ban on success fees for lobbying local government officials would be introduced in Norfolk Island. This proposed change would reduce the incentive for lobbyists and those paying for lobbying services to attempt to corrupt or exert undue influence on local government officials.

Proposal number 4: Ban success fees for lobbying Norfolk Island local government officials.

## When NIRC elections are held

### Increasing the time to hold ordinary elections if necessary

Under the applied LGA, regular elections of councillors for the NIRC are due to occur on the second Saturday of September in 2020 and every 4 years after that.<sup>10</sup>

Currently, the Commonwealth Minister responsible for Norfolk Island has the power to delay regular elections for up to 28 days where it would be impracticable or inconvenient to hold them as scheduled.<sup>11</sup> Under the proposed changes, the Minister would be able to delay an ordinary election for up to 6 months.

This would allow arrangements to be made to run an election in situations where circumstances prevent an election from being held when it is due. The period of 6 months would allow enough time to engage an electoral services provider to conduct an election on Norfolk Island. The proposed changes could only be used in a limited set of circumstances.

Proposal number 5: Extend the time by which an ordinary election may be delayed from 28 days to 6 months.

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<sup>6</sup> Lobbying of Government Officials Act 2011 (NSW), Part 5.

<sup>7</sup> Integrity Act 2009 (Qld), s69.

<sup>8</sup> Lobbying of Government Officials Act 2011 (NSW), s14.

<sup>9</sup> Lobbying of Government Officials Act 2011 (NSW), s17.

<sup>10</sup> Applied LGA, s287.

<sup>11</sup> Applied LGA, s288.

## Increasing the time to fill vacancies on the NIRC

Currently, a by-election must generally be held in the 3 months after a vacancy occurs, but the Commonwealth Minister can delay the by-election for up to 28 days if it would be impractical or inconvenient to hold it as scheduled.<sup>12</sup> After September 2020, a countback election must be held within 49 days after a vacancy occurs.<sup>13</sup>

A countback election is conducted by recounting the votes on the ballot-papers used at the original election in accordance with Schedule 9A to the applied LGR.<sup>14</sup>

Under the proposed changes, the time for holding a countback election would be increased to 3 months, and the Minister would have the option to extend the time for holding a by-election or a countback election by up to a further 3 months if necessary (6 months in total).

The reason for this proposed change is that, if the original electoral services provider were unavailable, it would be necessary to engage another provider to run the by-election or countback election. Extending the time for holding a by-election or countback election would allow enough time for this to occur.

Proposal number 6: Allow up to 3 months to hold a by-election or countback election, with an option for the Minister to extend the time by up to a further 3 months (6 months in total).

## Voting in NIRC elections

### Eligible to vote if entitled to vote in a Commonwealth House of Representatives election

Currently under the applied LGA a person may vote in a NIRC election if they can vote either in a NSW Legislative Assembly election or a Commonwealth House of Representatives election, provided the person:

- is a resident, owner of rateable land, or occupier or ratepaying lessee of rateable land in Norfolk Island, and
- is not in prison serving a sentence of 12 months or more<sup>15</sup>

Under the proposed changes, a person would only be entitled to vote in a NIRC election if they are a resident, owner of rateable land, or occupier or ratepaying lessee of rateable land in Norfolk Island, are entitled to vote in a Commonwealth House of Representatives election and are not serving a relevant sentence of imprisonment (see proposal 8 below).

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<sup>12</sup> Applied LGA, ss292 and 293.

<sup>13</sup> Applied LGA, s291A; Applied LGR, clause 393C; Applied LGR, Schedule 9A, clause 2.

<sup>14</sup> Applied LGR, Schedule 9A, clause 7.

<sup>15</sup> Applied LGA, s266.





The reference in the applied LGA to eligibility to vote in a NSW Legislative Assembly election would be removed. This would ensure NSW electors are not favoured over electors in other states and territories of Australia.

The only people potentially affected by the proposed changes would be NSW residents who are incapable of understanding the nature and significance of enrolment and voting or who have been convicted of treason or treachery and have not been pardoned.<sup>16</sup> This is because these are the only people who can vote in a NSW Legislative Assembly election but cannot vote in a Commonwealth House of Representatives election.

The proposed changes would, in practice, only prevent a very small number of people (if any) from voting in NIRC elections.

Proposal number 7: Only allow a person to vote in NIRC elections if they are a resident, owner of rateable land, occupier or ratepaying lessee of rateable land in Norfolk Island, are eligible to vote in a Commonwealth House of Representatives election and are not serving a relevant sentence of imprisonment. Remove the references to eligibility to vote in a NSW Legislative Assembly election.

### Prisoners serving a sentence under 3 years able to vote

At the moment, people serving a term of imprisonment of 12 months or more are not allowed to vote in NIRC elections.<sup>17</sup> This is also the situation in NSW for local council and Legislative Assembly elections.<sup>18</sup> However, for elections to the Commonwealth House of Representatives, prisoners serving a sentence of less than 3 years are able to vote. If a person is in prison serving a sentence of 3 years or more, they cannot vote at a federal election.<sup>19</sup>

Norfolk Island residents can vote at federal elections but they cannot vote at NSW Legislative Assembly elections. For this reason, it would be more appropriate if the same people could vote at NIRC elections as can vote at federal elections. This would mean voting arrangements are more consistent between different levels of government. In addition, the residential roll for NIRC elections will be based on the Commonwealth electoral roll and aligning franchise entitlement will mean fewer changes to roll information.

Under the proposed changes, a person who is in prison serving a sentence of less than 3 years would be able to vote. However, a person serving a sentence of imprisonment of 3 years or more would not be able to vote.

The proposed changes would slightly expand the vote because prisoners serving a term of imprisonment between 12 months and less than 3 years would be able to vote. In practice, this would affect very few (if any) people.


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<sup>16</sup> Commonwealth Electoral Act 1918 (Cth), s93(8).

<sup>17</sup> Applied LGA, s266.

<sup>18</sup> Local Government Act 1993 (NSW), s266; Electoral Act 2017 (NSW), s30(4).

<sup>19</sup> Commonwealth Electoral Act 1918 (Cth), s93(8AA).



In order to vote, prisoners would still need to be a resident, owner of rateable land, or occupier or ratepaying lessee of rateable land in Norfolk Island.

Proposal number 8: Consistent with Commonwealth elections, allow prisoners to vote in NIRC elections except if they are serving a sentence of imprisonment of 3 years or more.

## Postal voters

Currently the applied LGR says that NSW residents who are registered as early postal voters under the EA are automatically registered as early postal voters for NIRC elections.<sup>20</sup> However, this is not the case because the list of early postal voters under the EA is not available for NIRC elections.

The proposed changes would make it clear that NSW residents registered as early postal voters under the EA will need to apply to be registered as postal voters for the NIRC elections if they want to vote by post.

Similarly, voters who are registered for postal voting at Commonwealth elections and want to vote by post at NIRC elections will also need to apply to register as postal voters for NIRC elections because the Australian Electoral Commission cannot share this information with the organisations involved in NIRC elections.

More information about how to register for postal voting at NIRC elections will be provided to the community closer to the election in September 2020.

Proposal number 9: NSW residents who are registered early postal voters under the Electoral Act 2017 (NSW) and voters registered for general postal voting at Commonwealth elections will also need to register as postal voters in order to vote by post at NIRC elections.

## Eligibility to hold civic office

The proposed changes in this section deal with who can hold civic office on the NIRC as a councillor or mayor and are based on the law as it currently stands in NSW. These measures are intended to uphold the integrity of the civic office holder positions and are a feature of local government laws in other Australian states and territories.


### Parliamentarians and judges not able to hold civic office

Currently, a person cannot hold civic office, for example as a councillor of the NIRC, while they are a member of the Parliament of NSW or while a judge of any court of Norfolk Island or the Commonwealth.<sup>21</sup> This avoids the situation where a holder of civic office could have a conflict between their responsibilities as a member of the NSW Parliament or as a judge and their role on the NIRC.

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<sup>20</sup> Applied LGR, clause 315.

<sup>21</sup> Applied LGA, ss275(1)(a1) and 275(1)(b).



Norfolk Island is not part of NSW nor of any other state or territory so it is not appropriate that only members of the NSW Parliament should be banned from holding civic office on the NIRC. It is also important judges of other Australian states and territories do not have a role on the NIRC.

Under the proposed changes, parliamentarians of any parliament and judges of any state or territory would not be able to hold civic office on the NIRC. This would make sure civic office holders on the NIRC would not hold other roles that could be in conflict with their local government role.

Transitional arrangements would be made to ensure anyone who holds civic office when the changes start can complete their current term of office.

Proposal number 10: Prevent parliamentarians of any parliament and judges of any state or territory from holding civic office on the NIRC.

### Disqualification because of misused enrolment or election information

In NSW, a person cannot hold civic office if they are, while holding that office, or were in the 2 years before nominating for election, election or appointment to the office, convicted of an offence about misusing enrolment information or election information.<sup>22</sup>

Currently, it is not clear whether this is also the case for the NIRC because the EA does not apply in Norfolk Island.<sup>23</sup>

The relevant offences are:

- using enrolment information the Electoral Commission (EC) has provided to a candidate for a purpose not connected with a local government election
- disclosing information the EC has provided to a candidate if not in connection with a local government election, or using such information for a commercial purpose
- using or permitting the use of election information that the election manager has provided to a councillor or mayor, if not in connection with an election.

These offences are an important way of protecting people's privacy and ensuring the lawful use of personal information. The proposed changes would put it beyond doubt that a person convicted of one or more of these offences would be disqualified from being a councillor or the mayor of the NIRC.

Transitional arrangements would be made to ensure the proposed change does not disqualify anyone who holds civic office when the changes start because of past actions that were not previously a reason for disqualification.

Proposal number 11: A person cannot hold civic office on the NIRC if convicted of misusing enrolment or election information.

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<sup>22</sup> Local Government Act 1993 (NSW), s275(1)(d); Local Government (General) Regulation 2005 (NSW), clauses 284B, 284C and 393.

<sup>23</sup> Applied LGA, s275(1)(d); applied LGR, clauses 284B, 284C and 393.

## Disqualification because of an electoral funding offence

The law currently states that a person cannot hold civic office if they are, while holding civic office, or were in the 2 years before nominating for election, election or appointment to civic office, convicted of an offence under the Election Funding, Expenditure and Disclosures Act 1981 (NSW) (EFEDA) that is punishable by 2 years or more in prison.<sup>24</sup> Such offences include deliberately making false or misleading statements in a claim for public funding or in a disclosure of political donations or electoral expenditure.

It is important that former NSW civic office holders who have been disqualified from civic office because of an offence under the EFEDA are not treated differently to former holders of civic offices in other Australian states and territories who have been convicted of similar offences.

Under the proposed changes, a person would not be able to hold civic office on the NIRC if they have been convicted of an offence under the electoral funding laws of any state or territory that is punishable by 2 years or more in prison. These offences are an important way of contributing to the integrity of the NIRC.

Arrangements would be made to ensure the proposed change does not disqualify anyone who holds civic office when the changes start because of past actions that were not previously a reason for disqualification.

Proposal number 12: A person cannot hold civic office if convicted of an offence under the electoral funding laws of any state or territory that is punishable by 2 years or more in prison.

## Disqualification because of bribery and corruption


Currently, the law says a person cannot hold civic office while disqualified from holding civic office under sections of the Crimes Act 1900 (NSW) which are about corruptly receiving commissions and other corrupt practices.<sup>25</sup> However, the Crimes Act 1900 (NSW) does not apply in Norfolk Island.

Under the proposed changes, a person would not be able to hold civic office on the NIRC if they have been found guilty of bribery or corruption under the Criminal Code 2007 (NI). The bribery and corruption offences under Norfolk Island law are similar to the offences in NSW and would be an important way of contributing to the integrity of the NIRC.

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<sup>24</sup> Applied LGA, s275(1)(e1).

<sup>25</sup> Applied LGA, s275(1)(g).



Arrangements would be made to ensure this proposed change does not disqualify anyone who holds civic office when the changes start because of past actions that were not previously a reason for disqualification.

Proposal number 13: A person cannot hold civic office if found guilty of bribery or corruption under Norfolk Island law.

### Disqualification because of disqualification from managing a corporation

Currently, a person cannot hold civic office while disqualified from managing a corporation under the Corporations Act 2001 (Cth)<sup>26</sup> but they can hold civic office if they are subject to a restriction under the Companies Act 1985 (NI).

Under the proposed changes, no-one who has been disqualified from managing a corporation would be able to hold office on the NIRC regardless of whether they have been disqualified under the Corporations Act 2001 (Cth) or under the Companies Act 1985 (NI). This is an important way of contributing to the good governance of the NIRC.

Arrangements would be made to ensure this proposed change does not disqualify anyone who holds civic office when the changes start because of past actions that were not previously a reason for disqualification.

Proposal number 14: A person cannot hold civic office if they have been banned from managing a corporation, whether under Commonwealth or Norfolk Island law.

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<sup>26</sup> Applied LGA, s275(1)(h).

## Oversight and compliance

### Electoral offences

Currently, it is unclear whether the offences of electoral bribery, treating and selling of votes and interference with the right to vote apply to NIRC elections because the EA does not apply in Norfolk Island.<sup>27</sup> The proposed changes would put beyond doubt that a person must not:

- bribe a person to influence a person's election conduct or ask for such a bribe
- hinder or interfere with a person's free exercise of the right to vote
- influence a person's vote by violence or intimidation.

Proposal number 15: Clarify that bribery, treating and selling of votes and interference with the right to vote are offences at NIRC elections.

### Investigative and enforcement powers of the Electoral Commission

Currently the law says that, in order to enforce the NIRC elections laws, the EC may exercise investigative or other functions it has under the Electoral Funding Act 2018 (NSW) (the EFA).<sup>28</sup>

Because the EFA does not apply in Norfolk Island, the EC may not be able to enforce the NIRC elections laws.

Under the proposed changes, it would be clear the EC has the powers it needs to investigate possible breaches of the NIRC elections laws. The changes would mean the EC would have the same powers as the NSW Electoral Commission.

For example, the proposed changes would mean that, if an inspector believes a NIRC elections law has been broken, they would be able to enter at any reasonable time any place where they reasonably believe relevant documents are kept, and ask the owner or occupier of the place to produce any relevant documents kept there. As in NSW, it would be an offence for a person to refuse or intentionally delay the entry of an inspector into a place to exercise the inspector's functions, to intentionally obstruct the inspector, or to fail to comply with an inspector's request for relevant documents.<sup>29</sup>

In addition, the EC or an inspector would be able to require a person to provide information they reasonably need to make sure a NIRC elections law is complied with. As in NSW, failure to comply would be an offence. If a person intentionally provides a false document, answer or information in supposed compliance with such a requirement, they would be guilty of an offence.<sup>30</sup>


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<sup>27</sup> Applied LGR, clauses 375 and 377.

<sup>28</sup> Applied LGA, s325.

<sup>29</sup> Electoral Funding Act 2018 (NSW), s137.

<sup>30</sup> Electoral Funding Act 2018 (NSW), s138.



As is the case in NSW, the EC would also be able to make an arrangement with the Commissioner of Police so that a police officer can exercise the functions of an inspector.<sup>31</sup>

The proposed changes would also give the EC the power it has in NSW to make a written agreement with a person to make sure the person complies with the applied LGA or makes good an apparent breach of the applied LGA. People with whom the EC could make an agreement include a party, a group, a councillor and a candidate in a NIRC election.<sup>32</sup>

Proposal number 16: Make sure the EC has the power to enforce the NIRC elections laws.

## How can you have your say?

The department invites your comments on the changes proposed in this paper by 5pm Friday 26 July 2019. You can make comments in writing to: [NI\\_Legislation@infrastructure.gov.au](mailto:NI_Legislation@infrastructure.gov.au) or to Norfolk Island and Mainland Territories Branch, Department of Infrastructure, Transport, Cities and Regional Development, GPO Box 594, Canberra ACT 2601.

If you are unable to meet this timeframe, please contact us to discuss an extension.

The department intends to publish all submissions to this discussion paper, unless a submission is confidential or contains other information that is not suitable to publish. We will publish your name and any organisation you represent, but we will not publish any personal contact details such as your private email address or residential address.

If you would like part or all of your submission, including your name, to remain confidential, please indicate this clearly in the body of your submission. Automatically generated statements in an email are not sufficient. Confidential submissions will be kept securely and will only be disclosed to third parties where authorised or required by law.

Where it is not possible to publish submissions due to confidentiality or other reasons, a summary of submissions may be published.

All submissions will be considered and depending on the issues raised, further more specific consultation may be undertaken.

After consultation, instructions will be given for legislation to be drafted. Depending on the subject matter, an exposure draft of the legislation may be made available for comment. This is generally appropriate where there are people or organisations that will need to administer the new legislation, so that any practical implementation issues can be identified and addressed before legislation is made.

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<sup>31</sup> Electoral Funding Act 2018 (NSW), s140.

<sup>32</sup> Electoral Funding Act 2018 (NSW), s155.



## Privacy notice

The department will use the personal information it collects in this consultation only for the purpose of progressing this particular work, including where we may wish to communicate with you about your submission or about the work more generally.

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