

**Findings and recommendations of
earlier reports and reviews on Norfolk Island Governance**

1. Earlier reports raising concern over public administration in an isolated community. The 1896 Inquiry into Norfolk Island's administration by locally appointed Magistrates and officials. The 1926 Royal Commission into the activities of the Administrator and Magistrate.
2. **1976 Report of the Royal Commission on Norfolk Island**
3. **Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs, "Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis bay Territory", [March 1991, Canberra]**

Recommendations included the extension to the Territory of federal laws (eg, Administrative Appeals Tribunal, Ombudsman Act, and Freedom of Information) as an interim measure until local laws were developed to provide for an independent Administrative Review Tribunal.

4. **Australian Law Reform Commission Report No 69, Part II, [1994], "Equality Before the Law: Women's Equality". See in particular Chapter 14 'Women in remote communities: Norfolk Island - a case study'.**
 - Identified a disregard in the community for the operation of the rule of law; limited understanding about the law on Norfolk Island; lack of access to legal advice and resources; community reluctance to speak out or take action for fear of repercussions; and submissions calling for a 'proper administrative review system to ensure objectivity in decision-making. Recommended that the Administrator be appointed as the agent for the lodgement by residents of complaints under federal human rights and antidiscrimination laws.
5. **1995 report by NILA Select Committee on electoral and constitutional matters.**
6. **Australian Law Reform Commission Report No 77, [1995], "Open Government: a review of the federal Freedom of Information Act 1982".**
 - Recommended the enactment of freedom of information legislation on Norfolk Island.

Note resolutions of the Legislative Assembly in 2002 calling for a paper on the option of establishing an Ombudsman for Norfolk Island and for freedom of info legislation.

7. 1996 Report of the NILA Committee to define the roles and responsibilities of Members the Legislative Assembly of Norfolk Island

8. 1997 Commonwealth Grants Commission Report on Norfolk Island

In relation to governance issues, the Commission noted that Norfolk's idiosyncratic system of governance creates some special problems that provide an obstacle to strategic planning and cohesive action:

- (a) the big changes in the Assembly and Executive Membership after each election slow decision making and make long term planning difficult;
- (b) the change in membership causes discussion of many ideas to be started again in a number of Assemblies before they are dealt with;
- (c) there are no guidelines or formal procedures for handling conflicts of interest, yet these are more likely in a small community;
- (d) independent members are not answerable to a community based parliamentary group that might minimise the extent to which decisions could be influenced by their other (commercial or social) interests;
- (e) the informal nature of many of the Assembly's operations and the lack of a formal committee structure do not always give sufficient transparency of government; and
- (d) the Assembly does not have the time or administrative support under current arrangements to cover its areas of responsibility sufficiently well.

The Commission itself concluded that:

- (a) There was a significant lack of administrative and financial capacity within the Administration (including the Norfolk Island Government)
- (b) The large changes in Assembly and Executive Membership at each election create problems. These might be reduced if the Assembly were to adopt a long term strategic focus, with planning going beyond the life of one Assembly.
- (b) With an Assembly and therefore a Ministry made up of independent Members, no legislation is formally proposed by a 'Government' or agreed by a Cabinet prior to its introduction to the Assembly. Any changes that increased collegiality among the Ministry itself would smooth the passage of legislation and reduce the potential for conflict inherent in a Government where Minister can work alone.
- (c) The wide powers given to the Assembly seems very difficult for it to deal with, given present levels of remuneration and expected work loads.

It went on to conclude that “administrative capacity is the major factor limiting the Norfolk Island Government’s ability to deliver services” and that the “present arrangements are too complex for a community the size of Norfolk Island”.

The Commission suggested that one solution might be to review the Norfolk Island Act with a view to the following::

1. Listing all the federal responsibilities in one Schedule in the Norfolk Island Act with the result that the 'powers' of the Norfolk Island Government are not stated.
2. Providing greater accountability in regard to the Norfolk Island Legislative Assembly, for example through requirements for annual reporting, and timely presentation of audit reports and establishment of an Ombudsman’s Office or extension of the powers of the Administrative Review Tribunal; and
3. Extending the conflict of interest provisions in the Norfolk Island Act to require the Norfolk Island Legislative Assembly to establish legislation or guidelines governing conflicts of interest whether by the executive or the public service.

The Federal Government did not agree that there was a need to review the Norfolk Island Act as such. As explained, above, successive Governments have taken the view that the Act in its current format strikes an appropriate balance between self-government and the Federal Government's responsibilities towards Norfolk Island. The above suggestions could be implemented: by specific amendment to the Norfolk Island Act; administratively; or through the enactment of Norfolk Island laws; or by amendment and / or extension of other Federal laws (such as federal administrative law statutes).

9. 1998 Howard review of the Norfolk Island Administration

In a 1998 strategic review of the Norfolk Island Administration prepared for the Norfolk Island Government, John Howard and Associates noted that:

- The Ministry or Executive, consisting of the four Executive Members, did not have a majority in the Assembly, with the result that policy direction and strategic decisions are overturned.
- The Ministry does not constitute a 'Cabinet' and does not conform to conventions of collective responsibility.
- Non-executive members act to hold the Ministry to account, but at the same time are involved in policy and decision-making.
- Non-executive members can and do initiate policies and propose expenditure which, by implication, bind the Government (whereas under a Westminster system only the Crown or Government can initiate a spending proposal)
- Non-executive members establish and maintain direct lines of communication with the public service.

- Rules covering relationships between the Assembly, the Ministry and Administration have not emerged and are not covered by convention and precedent. This is despite 25 years of self-government.

The Howard report concluded that the Westminster structure and conventions of ministerial responsibility and accountability do not and cannot work effectively in current system. It recommended that the Norfolk Island Legislative Assembly and Ministry continue to develop and adopt the principles of corporate governance rather (ie, rather than continuing to rely on the precedents of the Westminster system to guide the formation and operation of Government on Norfolk Island).

The reports generally endorsed the findings of the Commonwealth Grants Commission on a lack of administrative and financial capacity.

10. Joint Standing Committee on the National Capital and External Territories, "Island to Islands: communications with Australia's External Territories", [March 1999, Canberra].

- Report identified a need for reform to protect consumer rights and protection and concluded that 'Norfolk Islanders are disadvantaged in that they cannot access the same protections as Australian citizens living elsewhere in Australia'. It was suggested that the Norfolk Island Act be reviewed to address these concerns. However, the problems identified in the report were to do with the federal Trade Practices legislation and a perceived lack of consumer protection on-island. The solution to these problems would appear to be to extend the operation of other Acts such as the Trade Practices Act.

11. 2000 Report of NILA Select Committee to inquire into allegations of political interference and intimidation

12. 2001 progress report of the Review of the NILA Working Group on NI parliamentary system.

Interim report tabled in 21 Nov 2001 prior to general election.

13. JSC Report on Health Services on Norfolk Island – In the pink or in the red?

Cites failing infrastructure and lack of forward planning. Note also the evidence given to JSC in March 2003, which confirms that nothing appears to have changed despite the *In the Pink or in the Red* report, the Focus 2002 review and the Territory Government's acknowledgement of there being a problem.