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The Parliament of the Commonwealth of Australia

# **Quis custodiet ipsos custodes?**

**Inquiry into Governance on Norfolk Island**

**Joint Standing Committee on the National Capital and External Territories**

December 2003  
Canberra

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Who is to guard the guards themselves?  
**Juvenal** AD c. 60 – c. 130: *Satires*

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# Contents

Foreword .....	vi
Membership of the Committee .....	ix
Terms of reference .....	x
List of recommendations .....	xi
<b>1 The Way Forward .....</b>	<b>1</b>
<b>The Focus of the Inquiry .....</b>	<b>1</b>
<b>Structure of the Report .....</b>	<b>3</b>
<b>Role of the Committee .....</b>	<b>4</b>
<b>Conduct of the Inquiry .....</b>	<b>5</b>
<b>2 The Case for Reform .....</b>	<b>7</b>
<b>The 'Isle of Saints' .....</b>	<b>7</b>
The 'Shining Beacon' .....	8
<b>The Perils of Speaking Out .....</b>	<b>10</b>
<b>The Need for Reform .....</b>	<b>15</b>
<b>Options for Reform .....</b>	<b>22</b>
Implementing Reform .....	27
<b>The Territory's Status .....</b>	<b>28</b>
The Legal Position .....	32
The <i>Norfolk Island Act 1979</i> (Cth) .....	35
The Commonwealth's Responsibility .....	39

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<b>3</b>	<b>Improving the Quality of Governance</b> .....	<b>41</b>
	<b>Re-examining the Commonwealth's Role</b> .....	<b>43</b>
	<b>Mechanisms of Good Governance</b> .....	<b>49</b>
	Codifying Ethical Conduct.....	51
	The Disclosure of Pecuniary and Non-Pecuniary Interests.....	55
	The Need for a Standing Anti-Corruption Body.....	60
	<b>An Administrative Law Package</b> .....	<b>66</b>
	Administrative Appeals.....	68
	Adequacy of Social and Health Services Programmes.....	71
	Immigration.....	75
	The Right to Know – Freedom of Information.....	78
	The Right to a Review – An Ombudsman.....	80
	Whistleblower Legislation.....	82
	<b>Public Reporting</b> .....	<b>85</b>
	Auditing.....	86
	Annual Reports.....	93
<b>4</b>	<b>Reforming the Structure of Government</b> .....	<b>97</b>
	<b>The Existing System</b> .....	<b>97</b>
	The Administrator.....	99
	The Legislative Assembly.....	100
	The Speaker and Deputy Speaker.....	101
	The Executive Council and Executive Offices.....	101
	Politics without Parties.....	104
	A Corporate Board?.....	106
	A Culture of Direct Democracy.....	109
	<b>Proposals for Reform</b> .....	<b>113</b>
	The Cook Model.....	115
	Choosing a Government.....	117
	The Presiding Officer.....	121
	The Legislative Assembly.....	124
	The Term of the Legislative Assembly.....	128
	The Powers and Functions of the Administrator.....	132
	The Electoral System.....	134

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Federal Parliamentary Representation .....	141
The Adequacy of the Territory's Laws .....	145
<b>Appendix A – Minister's Statement .....</b>	<b>153</b>
<b>Appendix B – List of Submissions .....</b>	<b>159</b>
<b>Appendix C - List of Exhibits.....</b>	<b>163</b>
<b>Appendix D - Witnesses appearing at public hearings.....</b>	<b>165</b>
Norfolk Island, Tuesday, 15 July 2003.....	165
Norfolk Island, Wednesday, 16 July 2003 .....	166
Canberra, Friday, 25 July 2003 .....	166



## Foreword

Parliaments of the Commonwealth of Nations vary greatly in size and many other aspects. Their essential functions include legislation, scrutiny of government, representation and legitimation. Parliaments need to reform and to adapt in order to perform these key roles effectively.<sup>1</sup>

This is the first of two reports on the governance and financial sustainability of Norfolk Island. It is an attempt to recommend real and meaningful reform for Norfolk Island. The overwhelmingly evidence, from this inquiry and previous inquiries that this Committee and others have conducted, is that Norfolk Island is in deep and growing trouble and needs help. In order to ensure that real and meaningful reform does take place, the Committee has chosen to deliver an unambiguous report that provides the catalyst and framework for reform to begin.

The Committee is in no doubt that the majority of the community are peaceful and law abiding, hardworking, conscientious, possessing a strong sense of civic duty and with an inherent ethic of supporting those in the community who may be less well off. Yet, evidence available to the Committee points to the fact that elements within the community are able to exploit the current governance system, with its lack of effective checks and balances, for their own ends. It has become increasingly clear that beneath the surface, informal mechanisms can and do operate with relative impunity.

There will be a vocal, self-interested minority that will criticise the Committee's efforts and attempt to stifle considered debate on our recommendations. Those opposed to real reform on the Island will, undoubtedly, endeavour to stymie any attempts at reform. The Committee expects that this minority group will organise a petition condemning the report and initiate a referendum to demonstrate popular opposition to Federal Government 'interference' in the affairs of Norfolk Island. The Committee, however, has serious concerns with the practices

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1 Donahoe, A. R. 2002, *The Value of Parliament*, in *Australasian Parliamentary Review*, Vol. 17 (1), pp. 109-118.

associated with the conduct of petitions and referendums on Norfolk Island. There will be those who seek to ensure this report joins the long list of other reports by Federal and Norfolk Island inquiries that have never been implemented and which now gather dust. If they succeed, the Committee will have wasted its time and that of the Island community, the cause of genuine reform on Norfolk Island will be set back irrevocably and the future of the Island community seriously undermined.

In this report, the Committee seeks to preserve the principle of self-government for the Island and to make it more effective through the introduction of a similar range of accountability and transparency mechanisms that apply to all levels of government elsewhere in the nation.

The financial and administrative burden of implementing the report's recommendations will fall primarily on the Federal Government - and not the Norfolk Island Government and community. The Commonwealth will bear the cost – as it should and must given the nature of the difficulties facing the Norfolk Island community and the Commonwealth's role and responsibilities for that community. Nor on any dispassionate and impartial examination of the report's recommendations, can there be any serious argument that implementation of those recommendations will have an undue cultural impact. The findings and recommendations of the report are drawn primarily from - and are supported by - the evidence and suggestions of the Norfolk Island community and from previous reports, especially Norfolk Island Legislative Assembly or Norfolk Island Government reports.

The report is entirely consistent with previous reports of this Committee, reports of other bodies, and reports of Norfolk Island committees as well. The report is also entirely consistent with Federal Government policy. Australia's interest in facilitating good governance throughout the Pacific must mean that all appropriate steps be taken to ensure that these same principles of good governance protect those who live in a part of Australia that is located in the Pacific.

All Members of the Committee, therefore, hope that this report will be used by the Norfolk Island community and the Federal Government as the basis for overdue manifest reform on the Island. My Committee colleagues and I will continue to take a keen and active interest in the responses to this report and in ensuring equality and a sustainable future for the Norfolk Island community.

The Committee is grateful to all those who participated in the first stage of this very important inquiry. We are especially grateful to those on the Island who assisted the Committee, in particular to the Members of the Norfolk Island Legislative Assembly for their advice and assistance and in kindly allowing the

use of the Assembly chamber for our hearings, and for the hospitality shown to the Committee by residents of the Island during our many visits.<sup>2</sup>

**Senator Ross Lightfoot**  
**Chairman**

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<sup>2</sup> Acknowledgement: Cover photograph courtesy Geoscience Australia, Canberra.  
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## **Membership of the Committee**

**Chairman**     Senator Ross Lightfoot

**Deputy Chair**     Senator Trish Crossin

<b>Members</b>	The Hon. Ian Causley MP	Senator John Hogg
	Ms Annette Ellis MP	Senator Kate Lundy
	Mr Michael Johnson MP	Senator Nigel Scullion
	Mr Paul Neville MP	Senator Natasha Stott Despoja
	The Hon. Warren Snowdon MP	
	Mr Cameron Thompson MP	

## **Committee Secretariat**

**Secretary**             Mrs Margaret Swieringa

**Inquiry Secretary**     Mr Quinton Clements

**Research Officers**     Ms Jane Hearn (from 1 July  
to 18 September 2003)

Mr Justin Baker

**Administrative Officers**     Mr Daniel Miletic

Ms Tiana Di Iulio



## Terms of reference

That the Joint Standing Committee on the National Capital and External Territories report on measures to improve the operations and organisation of the Territory Ministry and Legislature on Norfolk Island, with particular emphasis on the need for a financially sustainable and accountable system of representative self-government in the Territory.

The inquiry should consider possible alternative measures, such as:

- a) direct elections for the position of Chief Minister; and*
- b) fixed terms of government.*

These matters should be considered in the context of the financial sustainability of self-government arrangements on Norfolk Island, with particular consideration of -

- a) the findings of the Commonwealth Grants Commission documented in its 1997 report on Norfolk Island on the Territory's capacity to administer and fund obligations associated with:
  - current and future government functions and responsibilities;
  - the Island's current and foreseeable infrastructure requirements;
  - the provision of government services on Norfolk Island at an appropriate level;*
- b) subsequent government and parliamentary reports relevant to the above; and*
- c) the role of the Commonwealth and its responsibilities for Norfolk Island as part of remote and regional Australia.*



## List of recommendations

### 2 The Case for Reform

#### Recommendation 1

That the continuation of self-government for Norfolk Island, as provided for under the *Norfolk Island Act 1979* (Cth), be conditional on the timely implementation of the specific external mechanisms of accountability and reforms to the political system recommended in this report.

### 3 Improving the Quality of Governance

#### Recommendation 2

That the Federal Government reassess its current policies with respect to Norfolk Island and the basis for the Territory's exclusion from Commonwealth programmes and services, with a view to determining:

- a clearly understood and consistent rationale and framework for Commonwealth funding, advice and assistance that will be provided across government to the Norfolk Island community;
- a means of assessing Norfolk Island's need for Commonwealth financial and other assistance and of determining the extent of Commonwealth assistance or input to be provided, both now and in the future, and how it should be provided;
- a clear and achievable end point or coordinated set of policy outcomes; and
- the means of achieving those outcomes such as any preconditions that must be met before assistance will be provided, independent and external monitoring, and consideration of the various mechanisms for

providing assistance such as an agreed plan with set time-lines and deadlines.

### **Recommendation 3**

That, consistent with other Australian jurisdictions, the *Norfolk Island Act 1979* (Cth) be amended to:

- adopt a Code of Conduct for Members of the Legislative Assembly as a Schedule to the Act;
- introduce a duty for Members of the Legislative Assembly to act in an honest and impartial manner in the interests of the whole community and in conformity with the Code of Conduct;
- specify penalties in the Act including disqualification from office for wilful or serious breach of the Code;
- confer jurisdiction on the Commonwealth Ombudsman to investigate alleged breaches; and
- confer jurisdiction on the Supreme Court of Norfolk Island, constituted as a Leadership Tribunal, to enforce the Code.

### **Recommendation 4**

That, consistent with other Australian jurisdictions, the *Norfolk Island Act 1979* (Cth) be amended to:

- tighten the requirement for ad hoc disclosure of any material interest in which a Member of the Legislative Assembly, their immediate family or associate(s) will directly or indirectly benefit or suffer a loss depending on the outcome of debate;
- prohibit the Member of the Legislative Assembly from being present during the debate; and
- insert new provisions that:
  - ⇒ establish a register of pecuniary and non-pecuniary interests as part of the Code of Conduct;
  - ⇒ require annual declaration of a specified list of interests to be adopted as a Schedule to the Act;
  - ⇒ require notification of changes to the register within 28 days;
  - ⇒ establish penalties for proven breaches, including disqualification from office for up to 5 years for wilful or serious breaches;

- 
- ⇒ confer jurisdiction on the Commonwealth Ombudsman to investigate alleged breaches; and
  - ⇒ confer jurisdiction on the Supreme Court of Norfolk Island, constituted as a Leadership Tribunal, to enforce the disclosure requirements.

#### Recommendation 5

That the *Norfolk Island Act 1979* (Cth) be amended to engage an independent institution with jurisdiction to investigate allegations of ‘corrupt conduct’ within the Norfolk Island Legislative Assembly, Administration and all statutory boards and government business enterprises.

#### Recommendation 6

That, in order to implement Recommendation 5, the Federal Government negotiate with the Government of New South Wales with a view to amending the *Norfolk Island Act 1979* (Cth), as recommended above, to apply the *Independent Commission Against Corruption Act 1988* (NSW) to the Norfolk Island Legislative Assembly, Administration and all statutory boards and government business enterprises.

#### Recommendation 7

That, consistent with other Australian jurisdictions, the *Norfolk Island Act 1979* (Cth) be amended to:

- extend the provisions of the Model Criminal Code with respect to corruption to Norfolk Island;
- provide that a substantial breach of the Code of Conduct amounting to corrupt conduct be grounds for disqualification from office as a Member of the Legislative Assembly, and empower the Administrator to declare the office vacant on the advice of the Federal Minister; and
- empower the Administrator to declare all offices of the Legislative Assembly vacant on the ground of systemic corruption on the advice of the Federal Minister having regard to a report of the above-mentioned investigative body (the NSW Independent Commission Against Corruption).

#### Recommendation 8

That, regardless of the outcome of the recommended Federal Government review on extending Commonwealth social and health services legislation and programmes to Norfolk Island outlined in Recommendation 9, the Federal Government take all necessary steps in

the intervening period to implement the following measures, including amendment of the *Norfolk Island Act 1979* (Cth) if required:

- the Norfolk Island *Social Services Act 1980* and *Healthcare Act 1989* be amended to rationalise application procedures and clarify entitlements to pensions and benefits under the respective laws, including the right to review;
- the jurisdiction of the Norfolk Island Administrative Review Tribunal be extended to all decisions concerning pensions and benefits and related health and medical assistance matters; and
- subject to implementation of the proposed social services regime, the Norfolk Island Claims Committee and the Social Services Board be abolished.

#### Recommendation 9

That, as part of the wider reassessment proposed in Recommendation 2, the Federal Government review and assess the level of income support and health and medical assistance on Norfolk Island with a view to:

- ensuring parity with entitlements paid to Australian citizens and residents domiciled on the mainland, and
- identify which government services and responsibilities currently provided to the Island community by the Norfolk Island Government might be better provided by the Federal Government.

That the Federal Government report to the Federal Parliament on the outcomes of this review.

#### Recommendation 10

That, depending on the findings of the proposed review in Recommendation 9, the Commonwealth resume responsibility for social security and extend Medicare and the Pharmaceutical Benefits Scheme to Norfolk Island.

#### Recommendation 11

That, as recommended by the Human Rights and Equal Opportunity Commission, the Federal Government extend the operation of the *Migration Act 1958* (Cth) in full to the Territory of Norfolk Island, and that Schedule 3 of the *Norfolk Island Act 1979* (Cth) be amended to delete reference to 'immigration' and to remove from the Norfolk Island Legislative Assembly and Administrator their powers with respect to immigration.

### Recommendation 12

That, as recommended by the Human Rights and Equal Opportunity Commission, the Federal Government take immediate steps to work with the Norfolk Island Government to develop and implement a regime to regulate the permanent resident population, temporary residency and tourist numbers by the lawful operation of land, planning and zoning regulations.

### Recommendation 13

That the Federal Government apply an administrative law regime, based on the Australian Capital Territory model, to Norfolk Island to provide for independent and external scrutiny of administrative action, and that a *Norfolk Island (Consequential Provisions) Bill* be drafted and introduced to the Federal Parliament as matter of urgency to:

- extend the jurisdiction of the Commonwealth Ombudsman under the *Ombudsman Act 1976* (Cth) to conduct occurring under a Norfolk Island enactment or by a Territory authority;
- apply the *Freedom of Information Act 1982* (Cth) or, subject to negotiation with the Australian Capital Territory, the *Freedom of Information Act 1988* (ACT);
- apply the *Public Interest Disclosure Act 1988* (ACT); and
- confer jurisdiction on the Commonwealth Ombudsman to deal with matters arising under freedom of information and whistleblower legislation.

### Recommendation 14

That sections 51-51F of the *Norfolk Island Act 1979* (Cth) be amended to provide for the following:

- the appointment of the Commonwealth Auditor-General as Auditor for the Norfolk Island Administration to provide both finance and performance audit reports;
- financial and performance audit reports be tabled, in their entirety including any remarks concerning significant irregularities, in the Norfolk Island Legislative Assembly by the Executive Member responsible for Finance within two sitting days of the Assembly after receipt of the report; and
- provision of the report by the Commonwealth Auditor-General directly to the Federal Minister for Territories to be tabled, in its entirety, in the Federal Parliament as soon as practicable during the next sitting of the Parliament.

**Recommendation 15**

That subsection 8 (2), *Public Accounts and Audit Committee Act 1951* (Cth) be amended to require the Federal Parliament's Joint Statutory Committee of Public Accounts and Audit to examine the financial affairs of the Administration of Norfolk Island and review all reports of the Commonwealth Auditor-General on the Administration of Norfolk Island.

**Recommendation 16**

That the *Norfolk Island Act 1979* (Cth) be amended to require the Norfolk Island Government to report annually to the Legislative Assembly within three months of the end of each financial year, and that:

- the Annual Report include all information on all Norfolk Island Administration operations including government business enterprises;
- the Executive Member must table the report within two sitting days of receipt;
- the annual report to be forwarded to the Administrator within two days of being tabled in the Legislative Assembly for transmission to the Federal Minister for Territories for tabling in the Federal Parliament; and
- the Joint Standing Committee on the National Capital and External Territories to be given, through its Resolution of Appointment, the role of reviewing the annual report of the Norfolk Island Administration.

**4 Reforming the Structure of Government****Recommendation 17**

That the *Norfolk Island Act 1979* (Cth) be amended to incorporate:

- the designation of Chief Minister and the role of Chief Minister as leader of the government;
- the election of the Chief Minister, from among the sitting Members of the Legislative Assembly, at the first meeting of the Assembly immediately following a general election;
- the power of the Legislative Assembly to dismiss the Chief Minister through a vote of no confidence passed with a two thirds majority of the Assembly Members, at any time during the life of the Assembly;



- 
- the duty of the Chief Minister to appoint up to three Ministers, from among the sitting Members of the Legislative Assembly;
  - the power of the Chief Minister to dismiss a Minister from office at any time;
  - the duty of the Chief Minister to allocate portfolio responsibilities and to table in the Legislative Assembly and publish in the *Norfolk Island Government Gazette* the division of executive responsibilities;
  - the duty of a Minister to administer the matters allocated to him or her by the Chief Minister; and
  - the number of Ministers not to exceed three.

#### **Recommendation 18**

That Section 35 of the *Norfolk Island Act 1979* (Cth) be amended to provide that in the event the Legislative Assembly resolves to dismiss the Chief Minister through a vote of no confidence passed with a two thirds majority of the Assembly Members, the Legislative Assembly is dissolved and writs for an election shall be issued by the Administrator.

#### **Recommendation 19**

That Sub-section 11 (8) of the *Norfolk Island Act 1979* (Cth) be repealed.

#### **Recommendation 20**

That Sections 41 and 42 of the *Norfolk Island Act 1979* (Cth) be amended to provide that:

- the Speaker and Deputy Speaker of the Legislative Assembly be appointed from among suitably qualified persons who are not elected Members of the Legislative Assembly;
- the Speaker and Deputy Speaker of the Legislative Assembly be appointed by the Administrator on the advice of the Federal Minister for Territories;
- the Speaker and Deputy Speaker of the Legislative Assembly be appointed immediately following each general election for the life of the Assembly;
- the role of the Speaker, and in the Speaker's absence, the Deputy Speaker, is to preside over meetings of the Legislative Assembly, and therefore, the Speaker does not have a vote on any matter before the Assembly; and
- the Speaker and Deputy Speaker not hold any executive office or any other public office on Norfolk Island.

**Recommendation 21**

That Section 40 of the *Norfolk Island Act 1979* (Cth) be amended to provide that:

- all meetings of the Legislative Assembly must be held in public, except during debate on matters relating to the employment conditions of public officers;
- all Members of the Legislative Assembly, unless excluded on the grounds of conflict of interest, are entitled to be present;
- the authority to call meetings of the Legislative Assembly rests with the Speaker, acting on the advice of the Chief Minister;
- notice of the time and place of meetings of the Legislative Assembly be published in the *Norfolk Island Government Gazette*;
- a 12 month forward calendar of Legislative Assembly sittings be issued and published in the *Norfolk Island Government Gazette*;
- the Speaker, on the advice of the Chief Minister, may recall the Legislative Assembly for a special sitting to deal with a matter that requires urgent attention;
- seven days notice of the special meeting must be given in writing to each Member of the Legislative Assembly and include an outline of the business to be considered; and
- the Speaker may extend the period of recall of the Legislative Assembly if the Speaker believes that for any reason insufficient notice has been given.

**Recommendation 22**

That the *Norfolk Island Act 1979* (Cth) and the *Public Moneys Act 1979* (NI) be amended to establish a Norfolk Island Legislative Assembly Standing Committee to Review Government Expenditure, with the power to examine the financial affairs of the Norfolk Island Administration and all statutory authorities and review the reports of the Commonwealth Auditor-General in relation to Norfolk Island, as outlined in Recommendation 14.

**Recommendation 23**

That Section 35 of the *Norfolk Island Act 1979* (Cth) be amended to provide that the term of the Legislative Assembly shall be four years from the date of its election, and that after the third anniversary of the declaration of the election results by the Australian Electoral Commission, the

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Legislative Assembly may be dissolved by the Administrator at the request of the Legislative Assembly following a resolution to do so, passed by two-thirds majority.

#### Recommendation 24

That, consistent with other Australian jurisdictions, the *Norfolk Island Act 1979* (Cth) be amended to provide that the Administrator may, at his own discretion or on the advice of the Federal Minister:

- terminate at any time the appointment of an individual Minister or the Executive as a whole, where the Administrator is satisfied that the Minister or the Executive has acted unlawfully or corruptly;
- dissolve the Legislative Assembly and issue writs for a new election, where the Administrator is satisfied that the Legislative Assembly is incapable of effectively performing its functions, or is conducting its affairs in a grossly improper manner;
- that the Administrator publish a statement of reasons in the *Norfolk Island Government Gazette* as soon as practicable after the day of the dissolution;
- that the Federal Minister publish the statement of reasons in the *Commonwealth Gazette* as soon as practicable after the day of the dissolution and table the statement in each House of the Federal Parliament within 15 sitting days of that House after the day of the dissolution; and
- that the general election be held on a day specified by the Administrator by notice published in the *Norfolk Island Government Gazette*, not more than 90 days after the day of dissolution of the Legislative Assembly.

#### Recommendation 25

That Section 20 of the *Legislative Assembly Act 1979* (NI) be amended to introduce the 'block vote' variation of the first-past-the-post method of voting for elections to the Legislative Assembly, and that the Federal Government support this amendment.

#### Recommendation 26

That the *Norfolk Island Act 1979* (Cth) and the *Commonwealth Electoral Act 1918* (Cth) be amended to:

- ensure that all elections and referenda on Norfolk Island come under the supervision of the Australian Electoral Commission;
- that the Australian Electoral Commission be responsible for preparing and maintaining the electoral roll for Norfolk Island; and

- that the *Legislative Assembly Act 1979* (NI) be amended to reflect the amendments to the Commonwealth statutes.

#### Recommendation 27

That the *Norfolk Island Act 1979* (Cth) be amended to provide that Australian citizenship be reinstated as a requirement for eligibility to vote for and be elected to the Norfolk Island Legislative Assembly, with appropriate safeguards for the right to vote of all those currently on the Norfolk Island electoral roll.

#### Recommendation 28

That the *Norfolk Island Act 1979* (Cth) be amended to provide that the period for which an Australian citizen must reside on Norfolk Island before being eligible to enrol to vote in Territory elections and referenda be a minimum of six months.

#### Recommendation 29

That the *Electoral Act 1918* (Cth) and other relevant Commonwealth statutes be amended to provide for the inclusion of Norfolk Island in the Federal electorate of Canberra for the purposes of voting in Federal elections and referendums, and that:

- the existing provision, under the *Electoral Act 1918* (Cth), for optional enrolment by Norfolk Island residents be replaced with compulsory enrolment for all Norfolk Island residents who qualify under Section 93 of the *Electoral Act 1918* (Cth);
- those Norfolk Island residents currently enrolled in Federal electorates under the provisions of the *Electoral Act 1918* (Cth) to change their enrolment to the Federal Electoral Division of Canberra; and
- Norfolk Island residents who qualify for enrolment must, following the amendment, do so in the Federal Electoral Division of Canberra.

#### Recommendation 30

That, with the assistance of the Federal Government, the Norfolk Island Government immediately commence:

- a phased reform of Norfolk Island law, with priority for redrafting of existing laws to be determined by both the Federal and Territory governments, with the Federal Government having the final say in the case of disagreement;

- 
- a new and dedicated legislative drafter be funded, supported by and report to the Commonwealth Office of Parliamentary Counsel and Commonwealth Attorney-General's Department to draft the aforementioned reforms; and
  - the new laws, once drafted, be implemented by an Ordinance introduced into the Norfolk Island Legislative Assembly by the Governor-General pursuant to Section 26 of the *Norfolk Island Act 1979* (Cth).

#### Recommendation 31

That, with the assistance of the Federal Government, the Norfolk Island Government enter into a service delivery agreement with the Commonwealth Office of Parliamentary Counsel and the Commonwealth Attorney-General's Department for the provision of its usual drafting services.

#### Recommendation 32

That the Federal Government assist the Norfolk Island Government in the immediate reform of the laws of Norfolk Island in relation to the following:

- review the Territory's child welfare law to ensure that it conforms with the *Convention on the Rights of the Child* and best practice in Australia;
- provide assistance to ensure reform of the Territory's child welfare law is complete within 12 months of acceptance of this recommendation;
- provide assistance to ensure reform of the Territory's criminal justice laws is complete within 12 months of acceptance of this recommendation;
- investigate the regulation of companies with a view to applying Federal company, bankruptcy and insolvency laws to the Territory;
- ensure that proposed uniform national legal profession laws apply to legal practitioners who practice in the jurisdiction of Norfolk Island;
- pending promulgation of the proposed national legal profession laws, legal practitioners on Norfolk Island be required to register in some other Australian legal jurisdiction; and
- review the *Employment Act 1988* (NI) to ensure it is consistent with best practice and legislation in other Australian jurisdictions and is in compliance with International Labour Organization Conventions and Australia's other international obligations.

