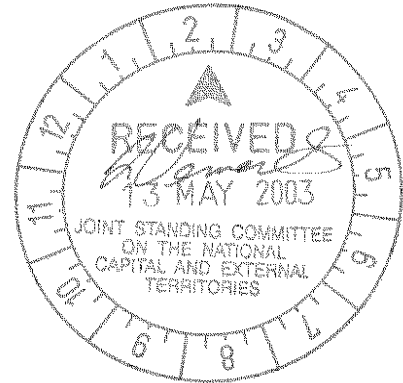


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SUBMISSION 13

Senator Ross Lightfoot
Chairman
Joint Standing Committee on the National Capital and
External Territories
Parliament House
Canberra ACT 2600



Dear Senator Lightfoot

**SUBMISSION TO THE JOINT STANDING COMMITTEE ON THE NATIONAL
CAPITAL AND EXTERNAL TERRITORIES
INQUIRY INTO NORFOLK ISLAND GOVERNANCE**

Please find attached the Department's submission to the above Inquiry. I would be happy to provide any clarification or further documentation on aspects of Norfolk Island governance covered in the submission.

Yours sincerely



Mike Mrdak
First Assistant Secretary
Territories and Local Government Division

13 May 2003


**SUBMISSION TO THE JOINT STANDING COMMITTEE ON THE NATIONAL
CAPITAL AND EXTERNAL TERRITORIES
INQUIRY INTO NORFOLK ISLAND GOVERNANCE**

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Department of Transport and Regional Services

**SUBMISSION TO THE JOINT STANDING COMMITTEE ON THE
NATIONAL CAPITAL AND EXTERNAL TERRITORIES
INQUIRY INTO NORFOLK ISLAND GOVERNANCE**

Terms of Reference

On 31 March 2003 the Joint Standing Committee On The National Capital And External Territories (JSC) accepted a reference from the Minister for Regional Services, Territories and Local Government, the Hon Wilson Tuckey MP, to inquire into and 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 for governments.*

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.*

1. Background of Reference

Issues relating to Norfolk Island governance have been under consideration for a number of years. Electoral reforms have been recommended by the Joint Standing Committee (JSC) on the National Capital and External Territories' in its June 2002 Report *Electoral Affairs on Norfolk Island*.

The JSC recommended:

- an Australian citizenship criterion to enrol or stand for election to the Norfolk Island Legislative Assembly (Recommendation 1),
- a six month residential period for enrolment (Recommendation 3), and
- supervision by the Australian Electoral Commission of Island elections and referenda (Recommendation 2).

The JSC's inquiry into these matters followed amendments proposed to the *Norfolk Island Act 1979* by the Commonwealth which sought to bring Island electoral requirements into line with those applying on the mainland.

Following the tabling of the JSC report, further consultations by the Minister for Regional Services, Territories and Local Government, the Hon Wilson Tuckey MP on Norfolk in November 2002, looked for common ground in the hope that the Island would itself act to remove the electoral anomalies. However, the Norfolk Island Legislative Assembly Amendment Bill, passed in March 2003, remains inconsistent with mainland standards.

The Minister has announced that the Government will be bringing forward legislation implementing the JSC's recommendations 1 and 3 in 2003.

Electoral and economic viability issues on Norfolk have been addressed in a series of reports in recent years, notably the *Report on Norfolk Island* by the Commonwealth Grants Commission in 1997, but also a number of reports commissioned by the Norfolk Island Administration itself. All have pointed to the difficulty faced by successive Island Governments in coming to grips with the significant social and economic issues facing Government.

The JSC itself has had the opportunity to review the linkages between the structure of government and performance on a number of occasions. Its July 2001 Report *In the Pink or in the Red* noted serious shortcomings in the provision of health services, which is the responsibility of the Norfolk Island Government.

Currently, the Committee is pursuing its review of the Annual Reports of the Department of Transport and Regional Services (DOTARS) and the Department of the Environment and Heritage, examining the provision of services and programmes relative to mainland standards. During Island consultations in March 2003, issues were raised about the Island's capacity to provide governance at the standard expected in modern communities, particularly given the small population and narrow revenue base.

In May 2002 the Norfolk Island Government acknowledged that its financial situation is not sustainable, and commissioned a complete review of the Administration's finances. The recently presented *Focus 2002* report calls for the Legislative Assembly to urgently examine the potential for a broader revenue base. That report is currently under consideration by the Norfolk Island Government.

Following a number of governance reviews in the 1990s, the Norfolk Island Government has also commissioned a Select Committee to inquire into a broad range of electoral, governance and constitutional issues. A copy of the Committee's terms of reference is at **Attachment A**. That inquiry will take into account the background of Commonwealth Grants Commission findings on the Island's revenue capacity, and will revisit the JSC's electoral recommendations, among wider considerations. It is not likely to report until 1 October 2003 and the Legislative Assembly expects to respond by Christmas 2003.

Against this background, the current reference to the JSC on Norfolk Island Governance asks the Committee to inquire into specific measures, within the current framework of self-government, to improve the structure of governance on the Island. The Commonwealth's intention, in keeping with its ultimate responsibility to ensure good governance on the Island, is to enhance the capacity of Norfolk Island's Government to make the difficult decisions necessary to ensure economic and social development of the Island.

It is evident that difficult decisions must be made in the near to medium term with respect to the financial future of the Norfolk Island. The onus lies with the Norfolk Island Government in the first instance to consider the options open to it to develop a long term and sustainable financial position for government.

It is apparent, however, that there are aspects of the system and style of governance on Norfolk Island that are likely to hinder its elected representatives in that process. For this reason, it is suggested that any discussions of fiscal and financial reforms should include consideration of options for reform designed to secure good and effective governance in the Territory.

2. Norfolk Island – the Context of Governance

A Territory within Australia

Norfolk Island became a Territory of the Commonwealth of Australia in 1914. An overview of the history, geography and economy is at **Attachment B**.

Its current governance arrangements are the result of the Federal Parliament's decision in 1979, given effect by the *Norfolk Island Act 1979*, to establish a form of internal self government for the people of Norfolk Island as a Territory within the Commonwealth of Australia. That measure of self-governance is similar in status to that conferred by the Commonwealth Parliament on the Australian Capital Territory and the Northern Territory, although there is some variation in actual powers.

The Commonwealth's law making power under section 122 of the Constitution in regard to Norfolk Island is not constrained. This reflects the fact that the Federal Government retains ultimate responsibility for the Territory's good governance and for ensuring representative democracy and proper financial management.

The Statutory Framework

The *Norfolk Island Act 1979* (the Act) provides the framework for Island governance, including the establishment of a representative Legislative Assembly and administrative and judicial institutions. The Act indicates that consideration would be given within five years for the further extension of internal self-government as appropriate (Preamble to the Act). The system of government was to be self-sustaining, that is, “the revenue necessary to sustain that government would be raised internally by its own system of law” (Second Reading Speech, *Norfolk Island Bill 1979*).

The Act provides for the appointment by the Governor-General of an Administrator “who shall administer the government of the Territory as a Territory under the authority of the Commonwealth”. It also provides for a nine member Legislative Assembly, elected for a maximum three year term, with wide powers “for the peace, order and good government of the Territory”, and for an Executive Council to advise the Administrator on all matters relating to government.

Detailed arrangements within this framework are specified by local (Norfolk Island) legislation.

The policy of successive Federal Governments since 1979 has been: -

- (a) to reaffirm the undertaking given by the Federal Government in 1976 that it would retain responsibility for maintaining Norfolk Island as a viable community;
- (b) to reaffirm the commitment made in 1979 to internal self-government for Norfolk Island as enshrined in the Act; and
- (c) that the funds necessary to sustain self-government will be raised primarily by the Norfolk Island Government itself under legislative and executive powers provided to it by Federal Parliament for that purpose.

This policy position reflects the choice made by the Norfolk Island community - both prior to self-government in 1979 and subsequently - not to participate in federal financial arrangements and to remain exempt from federal taxation.¹ Federal Governments have taken the view that federal taxpayers should not subsidise that choice and, as the Island community wishes to remain outside the usual federal financial arrangements, it is therefore right to ask the Island to carry the burden and cost of self-government. As such, it is the Norfolk Island Government that is primarily responsible for the delivery of government services on the Island and the Norfolk Island community currently imposes its own taxes and duties in order to fund the Island’s government and public infrastructure.

¹ A report prepared for the Norfolk Island Council in 1974 concluded that the Island's lack of sufficient public finances was a result of the local advisory council's 'consistent unwillingness to recommend the imposition of sufficient taxation on the resident population' and 'the use of mainland immigrants of the Island as a financial tax haven without consideration of the long term interests of the Island'. See Professor GJ Butland *Population Study of Norfolk Island*, University of New England NSW 31 March 1974 at p.19.

Allocation of executive powers

The Norfolk Island Act provides the Norfolk Island Government with wide ranging law making powers in respect of “peace, order and good government”. There are only four exemptions: acquisition of property on other than just terms, defence, coinage and euthanasia. This is similar but not identical to the other self-governing Territories. Norfolk Island is also responsible for its own customs, quarantine and immigration.

While the Act allows the Norfolk Island Legislative Assembly to pass laws on any subject matter, federal endorsement is required for some matters of particular sensitivity or national importance.

Schedules 2 and 3 of the Act provide for this by means of the assent process under Section 21 of the Act. In short, Schedule 2 lists matters for which the Norfolk Island Government has full executive authority. Laws on matters listed in Schedule 3 must be referred by the Administrator to the Commonwealth Minister for Territories while matters that are not listed on either schedule are referred by the Administrator for the pleasure of the Governor-General. These requirements ensure that Territory laws are not in conflict with national policies, programmes and agreements, or with Australia’s international obligations.

Attachment C provides more specific details on the structures established under the Act, notably the Norfolk Island Legislative Assembly, the Executive Council or Territory Ministry, the role of the Administrator and the Speaker; and Norfolk Island legislation detailing the operation of local structures

Revenue powers

The Norfolk Island Government has wide revenue raising powers within certain limitations (for example its borrowing must be approved by the relevant Commonwealth Minister). Revenue is raised through local (indirect) tax and imposts from which the Norfolk Island Government funds a range of State, local government-type and some Commonwealth services. It does not participate in Commonwealth-State-Territory revenue sharing arrangements. However, in administrative and financial terms the Commonwealth Government retains responsibility for a range of matters. Direct and indirect Commonwealth funding is estimated to amount to around \$4 million annually.

Notwithstanding the above, there are some exceptions to the policy of financial self-sufficiency, with the result that Norfolk Island does receive funding from the Commonwealth Government. These include:

- funding as part of the transfer of federal assets to the Norfolk Island Government or others (eg, the various upgrades of the Territory's only airport, various Crown land reviews and initiatives);

- funding provided under general national grant programs open to all States and Territories and Australian communities (such as *Networking the Nation* or the *National Heritage Trust*); specific federal assistance and funding provided in respect of issues or matters of national interest (such as policing, legal aid or immigration in the Territory); and
- Norfolk Island's right as an Australian Territory and part of regional and remote Australia to apply to the Federal Government for grants or loans for specific purposes, including public infrastructure projects. Examples include the \$3m interest free loan in respect of the Cascade Cliff Safety Project and the \$5.8m interest free loan currently under negotiation to fund the reseal of the Norfolk Island Airport (which is owned and operated by Norfolk Island Government).

Ongoing review of Norfolk Island's powers and functions

In 1979 it was envisaged that there would be a review of the extent of self-government powers within five years of passage of the Act. This review was intended to address the scope of Schedules 2 and 3 of the Act. There was (and is) no intention to review the Act itself.

However, in 1980 the Commonwealth Government agreed to a proposal by the Norfolk Island Government that instead of waiting for up to five years and then having comprehensive review self-government powers, discussions on the transfer of further powers should commence immediately and be ongoing.

Consequently, since 1979, significant additional legislative powers have been transferred to Norfolk Island.

Inter governmental discussions on proposed transfers of power have been guided by the following considerations, among others:

- The degree of support within the Norfolk Island community for the proposal;
- Whether the power or function is normally exercised by the Australian States and other self governing Territories with the Australian federal system; and
- The capacity of the Norfolk Island Government to discharge its present and future obligations.

It has been suggested in some quarters (including by the Commonwealth Grants Commission in its 1997 Report, below), that there should be a wider review of the Act. The Commission suggested that the Act could be improved:

- to reverse the current situation so that all Commonwealth responsibilities are specified and the powers of the Norfolk Island Government remain unstated;
- greater accountability in regard to Norfolk Island Legislative Assembly; and
- improved conflict of interest provisions applying to the Norfolk Island Legislative Assembly.

As indicated above, the division of responsibilities has been a matter of ongoing review since 1979. However, from time to time matters of national interest occur that are difficult to foresee, such as the issue of gun law reform. The legislative arrangements must incorporate the necessary degree of flexibility to allow the Commonwealth to address these as need arises.

Successive Commonwealth Governments have taken the view that the Act in its current format strikes the appropriate balance between the Norfolk Island community's desire for self government and the legitimate interests of the national government.

Some unique aspects of governance on Norfolk Island

The system of governance established by the above-mentioned laws has several unique aspects. For example:

- Unlike other Australian communities, Norfolk Island is not represented in Federal Parliament. Norfolk Island does not form part of any federal electorate and has no Federal Member or Senator. However, Norfolk Island residents do have the option of enrolling in federal electorates with which they have some connection or, failing that, in the electorate of Canberra. Enrolment is not compulsory. Only approximately 250 residents have enrolled on the Federal Electoral Roll to date. Otherwise, the community lacks the usual mechanisms and avenues for representation in Federal Parliament.

Norfolk Island residents' lack of federal representation was canvassed in evidence presented to, and the report of, the House of Representatives Legal and Constitutional Committee inquiry into the External Territories' legal regimes.²

- The Norfolk Island Government, despite its small size and limited economic base is required by the current legislative framework to carry out the full range of local government, State-type and some national functions.
- Within the Norfolk Island Legislative Assembly, there is no limit on the number of Executive Members that may be appointed. The number has varied from 2 to 6 since 1979. Since 1986, the number of Executive Members has always been less than the number of backbenchers, ostensibly to ensure accountability of the Executive to the wider Assembly membership.
- The conventions that the elected Members who received the greatest number of votes in a general election shall be appointed as Ministers and that the Member elected with the highest number of votes should be appointed as Chief Minister. Ministerial appointments and portfolios are determined by majority vote of the Legislative Assembly - not by the Chief Minister, who lacks any ability to appoint or terminate ministerial appointments.

² See 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]

- An 'Illinois' style voting system is used for general elections. This means that each of the approximately 1100 electors can cast 9 votes (ie, the same number of votes as vacant positions). However, an elector can only allocate a maximum of 4 of these 9 votes to any one candidate see **Attachment C**.
- There are no political parties or party politics on Norfolk Island. All candidates stand for election to the Legislative Assembly as independents and generally vote and operate as such when elected. This is also true of the Ministry due to the lack of a convention or requirement for Cabinet solidarity. This has resulted in Ministers voting against policy and legislative proposals being pursued by other Ministers.
- The view that the 9 Members of the Assembly as a whole constitute the 'Government of Norfolk Island' rather than the Executive Members or Ministers. This can result in Ministers deferring decisions until the majority view of the Assembly is known on a particular issue.
- The practice of holding weekly informal meetings of Assembly Members and Ministers to discuss and resolve government business, with more contentious or controversial issues being left for formal vote or resolution at the monthly public Assembly meetings.
- A significant community involvement in public decision making. Considerable use is made of statutory Boards comprised of lay community members and non-executive Assembly Members in key areas of governance. An overview of these Boards is at **Attachment C(iii)**. Their function is generally to advise Territory Ministers on specific matters. In this sense, there is a blurring of the usual division or the 'separation of powers' between the Legislature and the Executive.

Locally appointed lay Magistrates also play a large part in determining the civil and criminal matters arising on-island.

- Unlike legislatures elsewhere, the Speaker of the Norfolk Island Assembly can be, and has been, appointed as an Executive Member.
- The ability of public servants to be elected to the Assembly and serve as Members of the Legislative Assembly.
- The practical need for the head of the Territory's public service or Administration to maintain support among a majority of Assembly Members, as a majority can vote to terminate his or her employment. Elsewhere, senior public sector executives must only retain the confidence of a Minister or Ministers.

- It is understood that a register of pecuniary interests is not maintained for Members of the Legislative Assembly. Nor is there a requirement that a Member must not participate in discussion of a matter or vote on a question in the Assembly in which he or she may have a conflict of interest. The apparent practice to date is for Members to declare a potential or real conflict of interest and then to participate fully in the debate. The Department is unaware of whether Members who have declared a conflict of interest have always refrained from voting.
- The average term of the Legislative Assembly is approximately 2.5 years. Large changes in the Executive Council's membership tend to occur with each general election. There have also been relatively frequent ministerial reshuffles between elections. However, membership of the Assembly has not changed dramatically over time, with a majority of Members having served in earlier Assemblies and Governments.
- Published Norfolk Island Government papers show that the Norfolk Island Legislative Assembly - as currently constituted - costs the approximately 2000 Island residents around \$500,000 a year, the overwhelming bulk of which is spent on salaries of Assembly Members and parliamentary support staff. The Government recently advertised an additional position of Secretary to Government with a tax-free salary of \$53,000.

The cost of government may explain calls by some residents - noted in Legislative Assembly debates - for a return to the pre-1979 Advisory Council model, where a Council of locally elected members, serving largely on a voluntary basis, advised the Administrator on the exercise of executive powers and functions.

- Within the community and Government a ready recourse to referenda to either inform or influence government decision-making, especially in respect of controversial matters is evident (see above and **Attachment C(ii)**). Some might suggest that this indicates a lack of leadership and authority within Government and an abdication of responsibility on difficult issues. In response, it can be said that this reflects the community's traditional consensual and inclusive approach to decision-making.
- The relatively high incidence of petitions for a community of approximately 2000 people.

A petition on any subject can be addressed to the Assembly and signed by one or more electors. As with referenda (see above), petitions are not binding on the government. However, petitions with a significant number of electors' signatures are usually considered persuasive by Assembly Members on the matter in question and can be decisive or prompt a referendum. At the same time, the Department is aware of concerns occasionally expressed on-island, including during debates in the Legislative Assembly, about the manner in which some petitions are conducted - with claims of harassment and that some only sign petitions due to a perceived need to conform in a small community.

- Members and public officials also face difficulties symptomatic of governance in isolated and close knit communities.

- It is evident that the burden of public office in isolated and tight knit communities such as Norfolk Island can be greater when compared to larger communities or metropolitan centres. Reports have identified how difficult it can be for public officials in remote communities to separate their social life from their public functions, with many of the decisions they must take affecting family, friends and work colleagues. Remoteness from information and training and the smaller pool of applicants for recruitment and contracting can also pose problems.
- The NSW Independent Commission Against Corruption's report on Lord Howe is a case in point.³ That report noted:

“A greater potential for conflicts of interests as a result of the small population and isolated location of Lord Howe Island, leading to the emergence of a number of well known associations of individuals based on family, business, church and social ties. Many small communities share this feature. It is also a feature of small communities that perceptions can arise that a public official decided to employ a person solely on the basis that they are the friend or relative of an influential person, and not because they are the best qualified for that position”.⁴

- A feature of small communities is that people who are involved in decision making, or can otherwise influence it, have a greater degree of relative impact on the day to day lives of people in the community because there are fewer immediately accessible options in the way of services, schooling, health, employment opportunities or social, sporting and cultural activities.
- Decision makers in small communities do not always have access to the necessary expertise to make the best decisions for the community if they do not look outside their own physical jurisdiction for assistance from time to time.
- A concern symptomatic of one of the many dilemmas facing people in small and isolated communities is the fear that if they complain, they will be victimised.

3. Norfolk Island– Fiscal Capacity and Performance

The terms of Norfolk Island’s self-government in 1979 included, among other things, that any additional revenue necessary to meet any additional expenditure (other than the cost of maintaining the Administrator and his staff) should come from sources on Norfolk Island.

³ ICAC, *Preserving Paradise - good governance guidance for small communities - Lord Howe Island*, November 2001. See also the Discussion Paper released by ICAC prior to that report.

⁴ On 15 November 2000, the then Norfolk Island Chief Minister argued in the Assembly that there was a need for Members to "tackle conflict and pecuniary interests ... (which are) seen in the community as a single most important issue related to the whole self government process. The issue of conflict, pecuniary interest has been ignored with the result ... (there are) claims by the community of systematic and blatant abuse."

In recent years, a number of reports and reviews have expressed concerns about the Norfolk Island Government's capacity to implement, administer and fund its delivery of government services and maintain public infrastructure at appropriate levels.⁵ An outline of these studies is provided at **Attachment D**.

These reports confirm that successive Norfolk Island Governments have been unwilling to use the powers available to them to broaden their revenue base and its reliance on indirect taxes and charges. Instead they have sought to 'balance' their budget and thereby avoid a sizeable deficit, by severely reducing required operational and capital expenditure to meet projected annual revenue. That is, running down assets of Norfolk Island Government-owned enterprises to finance recurrent expenditure. It is apparent that there is an ongoing lack of capital investment and forward planning to take into account of the need to maintain and replace the Island's ageing infrastructure and plant and equipment (especially with respect to public health).⁶

The result - as confirmed in the 1997 Grants Commission report - is that public infrastructure and service delivery in a number of areas are either substandard or likely to become so.

At the same time, the Commission concluded that the Norfolk Island Government and community have the financial capacity to redress the situation and to raise sufficient funds on-island to provide public infrastructure and services at appropriate levels. The Commission highlighted a need for action to prevent the risk of the Island's economy declining, of revenue capacity falling and levels of services deteriorating.

The Commission identified a lack of administrative capacity as a major factor limiting the Norfolk Island Government's ability to deliver services. The term 'administrative capacity', as used by the Commission, refers to the Island's political and administrative arrangements and the extent that they support and facilitate existing and future responsibilities. The Commission argued that the present government arrangements were too complex for a community the size of Norfolk Island.

Importantly, the Norfolk Island Government appears to have accepted the need for action and endorsed the Commission's report as providing considerable guidance in this regard. In a letter (August 2002) Chief Minister Gardner, in seeking Commonwealth assistance with airport upgrading, acknowledged the Commonwealth Grants Commission report and the need for hard financial decisions to be made. On 19 March 2003 speaking in the Norfolk Island Legislative Assembly appropriation bill debate Minister Donaldson also outlined the Island's difficult financial situation and the need for a new revenue strategy.

⁵ The 1997 Grants Commission report, Access Economics, *Norfolk Island: Recent Economic Performance, Present Situation and Future Economic Viability*, the Howard Report and the JSC's *In the Pink or in the Red*.

⁶ See evidence given by Hospital Director to JSC when last on-island, See also Grants Commission report

The Norfolk Island Government and Assembly embarked on a review of the Territory public service's organisational and management arrangements, which culminated in the *Public Sector Management Act 2000* (NI). It appears too soon to determine the long-term impact of these public sector reforms on governance.⁷

Focus Report: Norfolk's current fiscal situation

In May 2002, the Norfolk Island Government conceded that the budgetary and taxation policies adopted to date were 'unsustainable'. It therefore agreed to a comprehensive review of the Island finances, allied to short term budget cutbacks, with community involvement. An Administration media announcement at the time noted that:

“Growing demands on social welfare health, education and tourism expenditure were escalating in excess of the Island's capacity to pay. Legislative Assembly Members are now faced with making a decision to adopt a regressive budget which makes severe cuts to government services and requires substantial increases in existing duties and charges... the introduction of new fees ... and even this will not be enough to provide for badly needed infrastructure services.”

In correspondence to the Federal Minister for Territories in August 2002, the Norfolk Island Chief Minister also acknowledged that there were financial pressures facing the Island and stated that:

“there is now a clear and widely accepted appreciation in the Assembly, the Administration and the broader community that this program will require some hard decisions to be made and that our organisation and revenue regimes will change significantly as a result of this review.”

The Review's Report was released in March 2003. A copy is at **Attachment E**. It indicated the primary focus of the Review had been on possible measures to reduce public expenditure, with little or no real consideration being given to new revenue or tax measures. This appears to reflect earlier community resistance to taxation and a political need to have been seen to have identified all possible savings before asking the community to contribute more.

The Review's Report confirms that in recent years, expenditure has risen at a greater rate than income, and that the Territory's financial situation is not sustainable. The original 2002-03 Budget would, if approved in its original form, have resulted in a \$3.965m deficit. The Review also identified various 'external' factors impacting on the Territory's finances: instability in the Island's air services, volatility in tourism – the major industry, and the loss of Norfolk's relative competitiveness or duty free appeal with the introduction of the GST on the mainland, leading to declines in tourist spending. Also cited was the ageing of the population and a rundown in infrastructure. This is most noted in relation to the airport – critical given the Island's economic and social dependence on air services, and the hospital.

⁷ There have been significant changes within senior management of the public service, with the departure - with some controversy - of the first CEO appointed under the new legislation.

The Report identified a number of possible small short-term savings and increased charges. However, it clearly stated that these are insufficient in themselves to balance annual budgets and that there are few opportunities for further savings. Major areas identified for savings included social services benefits (\$100,000 in 2002-03) and reduction in size of the Legislative Assembly (\$80,000). The Report therefore recommended that 'approval be given for intense investigation into new revenue options as soon as possible' (recommendation 30).

The Report also notes that, while the Norfolk Island Government has put in place some initiatives to improve public service efficiency and effectiveness, there remains a need for ongoing reform of Administration practices in line with contemporary public sector practice to provide a more robust, productive and flexible workforce. It looked to a further Administration Review to address these issues.

The Review's report was tabled at the Assembly Meeting on 19 March 2003. At that meeting, the Norfolk Island Minister for Finance publicly reiterated that the past practice of cutting required expenditure to 'balance' with projected revenue is itself unsustainable, and that there is a need for the Territory Government to introduce new revenue measures. Revenue projections at that time indicated that the Government's deficit for 2002-2003 will be \$750,000. This would leave the Government with total reserves in the order of \$1.3m as at 30 June 2003.

To this end, the Finance Minister outlined a two-stage reform proposal:

- (a) Firstly, enactment of additional funding measures to fund immediate and anticipated budget shortfalls.

For example, increased liquor duties (\$110,000 pa), increased tobacco duty (\$400,000 pa), increased phone call charges (\$300,000 pa) increased departure tax (\$175,000 pa), and a new communications levy (\$160,000 pa).

- (b) The second stage would see the development and implementation of a wider and hence more robust, equitable and sustainable revenue base. That is, initially through an investigation of a broad based consumption tax - Government Members having recognised that the existing range of indirect levies and taxes are inequitable in that they fell disproportionately on specific community groups, such as low income earners.

It remains to be seen whether the Government will be able to move from debate of the problem, to implementation of a package of financial reform, especially in the context of the forthcoming Budget and a general election expected at the end of this year. Statements made in the Assembly indicate that some current Members of the Assembly appear likely to oppose reform.

Commonwealth assistance

Norfolk Island continues to benefit from Commonwealth programmes designed to improve services at the national level. This can be seen in the Federal Government commitment to regional programmes such as *Networking the Nation*. An extract from DOTARS' website providing examples of Commonwealth assistance made available to Norfolk Island is at **Attachment F**. An outline of the Commonwealth Government's role from the DOTARS website is at **Attachment G**.

4. Norfolk Island and Governance: some options for change?

Background

The acceptance by the Norfolk Island Government and Assembly of the Island's 'unsustainable' economic position appears largely to have come about through the appointment of an externally recruited public service management team and its assessment of the Island's financial position in drawing up the proposed 2002-03 budget.

The subsequent *Focus 2002* report found that the Island could not continue its traditional reliance upon a largely static revenue stream, derived from a limited range of indirect levies and charges and falling significantly on non-resident tourists. The Island faces the rising costs of providing services (especially health and education), an ageing and obsolete infrastructure with little provision by way of depreciation or capital works replacement funding, a lack of public sector reserves (\$2.1m at 30 June 2002, falling to around \$1.3m at 30 June 2003), and little scope for risk management or contingency planning.

There are considerable obstacles to the implementation the *Focus 2002* report's recommendations, in particular addressing new revenue options. These include:

- lack of capacity at Executive and Assembly level to assess issues and to develop options adequately, identified in both the Commonwealth Grants Commission report and in the subsequent 1998 Howard review of the Norfolk Island Administration (see **Attachment D**);
- continuing lack of information and data (eg income data) on which to model options for administrative, financial and political reform;
- real political difficulties facing Norfolk Island Ministers (in the absence of collegiate or political consensus) in first agreeing on any significant reform, in gaining support from other Assembly Members and then in implementing changes which are electorally unpopular however necessary, such as increases in fees or cuts to public sector expenditure;
- lack of stability and continuity in successive Norfolk Island Ministries and Governments due to the Territory's electoral system, and the nature of local politics; and
- continuing instability within the Norfolk Island Public Service at senior level, evident in the relatively recent resignation of the Chief Executive Officer and the high turnover of senior executives including legal personnel.

In a small community such as Norfolk, members of the public service and their families can represent a significant political force, with public servants comprising some 250 voters within the total electorate of about 1100. There has been resistance within the Norfolk Island Public Service in the past to significant organisational and financial reform, such as replacing overtime with more flexible work practices. With some 40% of Norfolk Island's expenditure going to public services salaries and the Public Service being the largest local employer, the potential impacts of reform can be significant.

While it can be argued that Norfolk's unique system of governance is highly representative, it also poses substantial barriers to effective government and to long term strategic planning. There are no political parties on Norfolk and all candidates stand for election as Independents. Consequently, Administrations (Governments) do not represent a united political platform or a Cabinet collectively responsible for policy making. Rather, Executive Members (Ministers) are chosen usually on the basis of the four Members with the largest vote.

Norfolk's size and remoteness pose particular difficulties in that there is only a small pool of expertise on which to draw for the manifold management and executive responsibilities of government. Yet despite its small size and limited economic base the Norfolk Island Government is required to deal with the full range of local government, State-type and some national functions.

Difficulties are compounded by the Illinois voting system is used on the Island, under which each elector can apply 4 of his ~~eleven~~ ^{* nine} votes to a single candidate. In a small electorate such as this, the impact of an electoral swing will be magnified upon the composition of the Government. There is a danger that the views of particular groups may be given disproportionate weight by Assembly Members, against the broader needs of the community as a whole.

In the absence of a fixed term for elections, the threat of dissolution may be seen as a disincentive to long term decision making, again magnified by the possibility of elections initiated by referenda such as those in 1983 and 2001. In this atmosphere, elections may be seen as a 'quick fix' response to short term issues, serving to discourage Members from joining together to work through longer-term solutions and more strategic approaches to problems.

New political structures – some options

In a number of different countries options such as fixed term parliaments and the direct election of leaders are being considered or introduced as ways of revitalising government at the local community level, providing clear and stable community leadership, and improving accountability and outcomes for the voting public. There is considerable diversity in the models established around the world – from the national down to local government with the choice reflecting local circumstances.

The issue for Norfolk Island is whether its current political and administrative structures are best suited to assist the Norfolk Island Government in leading the community in today's difficult economic circumstances.

The most appropriate style of governance may be difficult to judge on Norfolk, with its history of individuals and families taking the lead in governance and a consensual style of decision-making with a strong sense of community involvement in public affairs.

An elected Chief Minister?

There are many examples of directly elected leaders at the national, regional or municipal level with varying but often considerable power to govern. In such systems of government, the separation of the executive from the legislative roles in government appears crucial to effective leadership and local democracy. In effective models, each role has separate powers, within a total system that provides checks and balances.

In these systems, the Executive arm of Government is responsible for leadership: the Executive proposes the policy framework, and implements decisions and budgets that have been agreed by the wider Legislature. The role of the backbench Members of the Legislature is to represent their constituents, to share in the policy and budget decisions made by the full Legislature or Assembly, and to scrutinise the Executive's policy proposals and performance in implementation.

Commentators have described the advantages of directly elected leaders as including:

- Strengthening local democracy and encouraging greater community involvement and interest in elections;
- Providing greater focus for community leadership and local governance; and
- Strengthening internal leadership and thereby providing more effective direction and cohesion.

Elected leaders have a powerful voice: the extent of that power reflecting the strength of their mandate from the people, and their legislated executive powers. Where they have a substantial popular mandate, they can use that mandate to rally consensus for a political programme.

A directly elected leader can raise the profile of the community, act as its champion and provide strong and clear leadership that fosters community cohesion. Such a system may enhance the opportunity for talented and dynamic individuals to enter politics, with a real opportunity to achieve change.

An elected leader who has the necessary executive powers to carry through their policy platform may improve accountability and streamline decision-making and reduce the ability of individuals in government to evade responsibility for unpopular decisions or failed policies.

However, commentators also sound cautionary notes. This system may be seen as unduly favouring candidates from wealthy or special interest groups capable of financing election campaigns. Too much power could be concentrated in the hands of a single person, risking policy mistakes and the misuse of power and patronage. There can be problems where a directly elected leader is matched against a Legislature of opposing views, leading to paralysis or instability of government. This is particularly a problem where the choice of leader is not clear-cut, as when the winning margin of the leader is slim.

The position of elected leader could also attract maverick, populist or single issue candidates. Such a leader could focus attention on a particular issue or interest while neglecting the everyday or mainstream issues of government, ignoring the views of minority groups and over time alienating the general voter and other elected representatives. This type of candidate could discredit local governance and the community, with negative impacts on investment and on future development.

Consideration of a model for the direct election of the Chief Ministers must therefore also include the need to provide suitable checks and balances, particularly if considered in conjunction with a fixed term of government.

Elected leaders - overseas practice

A brief survey of practice overseas indicates that elected leaders are at every level, from national to local government. The most obvious examples of directly elected national leaders are the Presidents of the USA and France. In the USA, many key State government office holders are also directly elected, including the State Governor, Deputy Governor, Attorney General, Secretary of State and Auditor. At the local government level, directly elected positions include local councillors, mayors, county sheriffs, auditors and even judges.

In the United Kingdom and Australia, leaders of national and State/Territory governments continue to be appointed by elected representatives (usually under a party system). However, the popularity of direct election is growing. Mayors of most Australian State capital cities are now directly elected, most notably in Sydney. Many overseas jurisdictions (Germany, Norway, the United Kingdom, and New Zealand) are introducing elected leader systems at the local authority level, with the aim either of re-invigorating and strengthening democratic government, or of enhancing effectiveness and capacity. The result can be stronger executive government and, often, a reduction in the number of decision makers.

In New Zealand, local councils have mayors elected 'at large' and therefore with a direct mandate that is separate from that of local councillors, who are elected at the same time. In New Zealand, however, the mayor lacks executive powers – the elected mayor works alongside a chief executive who is employed by the local council and has delegated executive authority.

In the United Kingdom, legislation passed in 2000 provides local government authorities with a choice of three models, based on separation of the executive from the legislative role. Models outlined in the 1998 UK White Paper *Modern Local Government- In Touch with the People* are:

- A directly elected mayor – the mayor is elected by the whole electorate, and selects a cabinet from among the elected councillors. The mayor is the political leader of the community, proposing policy and legislation for approval by the elected council and steering implementation through administrative officers;
- A cabinet with a leader - a leader is elected by council, and a cabinet is either appointed by the leader or elected by the council. The leader therefore relies on the support of members of Council for power rather than a direct mandate from the electorate. The leader could have similar executive powers to that of the directly elected leader model, but in practice these powers are likely to be lessened;
- A directly elected mayor, and council manager – a directly elected leader gives political leadership and proposes the broad policy framework, the elected Council decides the budget and policy framework and appoints the Council Manager and senior staff, who under the political guidance of the mayor implements policy and service delivery, with delegated strategic and daily decision making powers.

Generally speaking, directly elected leaders when coupled with executive powers represent a trend to a presidential rather than a parliamentary system.

Fixed term parliaments

Another reform advocated as a means of strengthening parliamentary democracy and improving the accountability of governments is that of fixed term parliaments or governments. Under this system, governments remain in place for a fixed term, usually of three or four years. In some cases (eg Germany) the legislature can be dissolved early only where a government loses its majority and another government cannot be formed.

In every political system, governments must balance the pressures of daily political survival with the need for deliberate strategic planning focussed on the long-term needs of their communities. Governments may be discouraged from taking the difficult and sometimes politically unpopular but necessary decisions, in favour of the short term and politically expedient choice. Unnecessarily frequent elections are not only a nuisance and a cost to the electorate, but also adversely affect business confidence.

The proponents of fixed term parliaments argue that they can overcome many of these objections and may also assist in overcoming instability, in giving factional groups the incentive to negotiate constructively to solve their differences, or to form new governments, within the life span of a parliament.

Commentators have identified the following advantages of fixed terms of government:

- Government leaders or a legislative majority no longer have the political advantage of calling early elections to suit their political convenience.
- As all governments can generally serve out their full term of office, stability of government allows more strategic and in depth planning, avoiding the political pressures for short term expedient decision-making.
- Independent candidates have more time to plan and to effectively campaign.
- A reduction in the number of elections and the associated costs – both monetary and administrative.
- Less frequent elections can mean less uncertainty and less likelihood of investment decisions being postponed, enhancing economic planning in both public and private sectors.
- Improved accountability and independence. That is, elected members are encouraged to maintain greater scrutiny of government proposals and to negotiate together to develop a cooperative approach to problems, knowing that governments and members have security of tenure, and that governments cannot be forced 'to the people' early, as a means of resolving problems.

At the same time, commentators have noted that fixed term parliaments:

- are somewhat at odds with the democratic tenet that the will of the people is supreme;
- have the potential to perpetuate unpopular government, especially if a government should implement decisions that lose its popular support early in its term of office; and
- have the potential for instability and deadlock where independent or minority interest Members hold the balance of power and there is a succession of weak minority governments.

Fixed term parliamentary systems have been introduced into all Australian parliaments other than the Commonwealth and Queensland. Fixed term parliaments are also common in Europe, and in America where Presidents, Senators, Congressmen, State legislators, mayors and local and councillors are all elected for fixed terms. A bill for fixed term Parliaments was passed by the Commonwealth Senate in 1982, but lapsed at the subsequent general election.

Fixed term parliaments can take different forms (as in the maximum term with fixed term component, to the unqualified fixed term found in the United States).

Half term elections

Another option is to stagger the timing for elections rather than requiring all elected members to seek election at the same time. This approach has been adopted in the Australian Senate. Such an approach would provide crucial continuity of government across successive parliaments. This is an issue for the Norfolk Island community concerned that electoral changes could see outsiders assuming control of government.