



**NORFOLK ISLAND  
SEVENTH LEGISLATIVE ASSEMBLY**

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**REPORT OF THE  
SELECT COMMITTEE  
ON  
ELECTORAL AND  
CONSTITUTIONAL MATTERS**

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**REPORT OF THE SELECT COMMITTEE  
ON ELECTORAL AND CONSTITUTIONAL MATTERS**

"We must look for a system whose virtues  
in the context of a particular time and place  
outweigh its defects."

Vernon Bogdanor

(Mr. Bogdanor is Reader in Government, Oxford University  
& Fellow of Braesnose College, Oxford)

## CHAIRMAN'S FOREWORD

The elections held in April 1994 were called early in light of the perceived inability of members of the Sixth Legislative Assembly to work in a cohesive manner. Two distinct factions had emerged and the community was divided amongst those who supported one faction, those who supported the other and a considerable number who felt that all the warring parties should be deposed and a completely fresh Assembly should be installed. This situation caused many to become very politically aware and critical of the present voting system.

A total of 27 candidates offered themselves for election, the highest number since the Legislative Assembly was first elected in 1979. Only four members of the Sixth Assembly who nominated were re-elected to the Seventh.

Because of the discussion which had taken place within the community in the run up to the elections and the widely expressed views that the present election system was unsatisfactory, it was thought appropriate that a Select Committee be set up to canvass the views of the electorate and the Hon. Mike King MLA so moved at the May 1994 sitting of the House.

Despite the furore at the time of the elections no such dissatisfaction was evident in the submissions made to the Select Committee. From a total electorate of 1195, only 34 submissions were received, despite repeated invitations and urgings from the Committee.

This Report has therefore been compiled from the views of those respondents and from research undertaken by members of the Committee and cannot in any way claim to be the collective views of the electorate of Norfolk Island.

The Report is prefaced with a summary of the Committee's recommendations which are expanded on more fully under the appropriate sections in Chapter 3.

Chapter 1 gives the background which led up to the formation of the Select Committee and the preparation of the final report. Chapter 2 briefly describes the seeking of submissions. Chapter 3 deals with the views expressed by the respondents under the various headings relating the Committee's Terms of Reference and the reasons for the recommendations made by the Committee.

The Committee wishes to thank all those who responded to this inquiry. A full list of respondents is attached at Appendix 2.

Chapter 4 outlines a brief history of voting on Norfolk Island. We are indebted to Mrs. Merval Hoare MBE for sharing her wealth of knowledge on the Island's history and for providing the background material used in this chapter.

In Chapter 5 we explore the requirements for voting in other small Commonwealth nations. The information regarding Alderney was taken from an article by Mrs. Elizabeth Robertson Member of the States of Alderney, Channel Islands.

The Committee also acknowledges the valuable assistance provided by Ms. Robin Graham, Mr. Don Morris, Mrs. Gaye Evans, Mr. David Hitchen, Mr. Phillip White, Mr. Ian Faulks, Mr. Lyn Barlin AM, the Office of the Administrator, the House of Representatives, and the Secretariat of the Commonwealth Parliamentary Association, London.

Monica Anderson, MLA  
Chairman

#### THE COMMITTEE

Chairman  
Members

Mrs. Monica Anderson MLA  
Mrs. Helen Sampson MLA  
Hon. Robert Adams MLA

Secretary to the Committee

Ms. Robin Graham JP

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## SUMMARY OF THE COMMITTEE'S RECOMMENDATIONS

### A new Electoral Act

#### Recommendation No. 1.

That a new Electoral Act be set up to cover all procedures and regulations for the conduct of elections to the Legislative Assembly, including eligibility to vote and eligibility to stand as a candidate for election.

### Qualifications for Enrolment

#### Recommendation No. 2

That the new Electoral Act provide that the qualifications for enrolment should be as follows :

That a person is entitled to enrolment if the person -

- a) has attained 18 years of age : and
- b) is a resident of Norfolk Island by virtue of having been born or deemed to have been born on Norfolk Island and has been present in Norfolk Island for a total of 90 days immediately preceding the date of the person's application for enrolment: or
- c) is a resident of Norfolk Island within the meaning of the Immigration Act 1980 and has been present in Norfolk Island for a total of 90 days immediately preceding the date of the person's application for enrolment : or
- d) has been present in Norfolk Island for a total of 900 days during the period of four years immediately preceding the person's application for enrolment

#### Recommendation No. 3

Enrolment shall not be compulsory

#### Recommendation No. 4

Voting shall be compulsory for all persons on the electoral roll and physically present on the Island on the day of the election.

#### Recommendation No. 5

That an absentee voting system be set up which would allow a voter who

- a) intends to be absent from the Island on polling day or
- b) for reasons of illness is unable to attend a polling booth

to cast his/her vote on the Island.

Recommendation No. 6

That a system of postal voting be set up which would allow an elector who is eligible to vote and who is not on the Island on polling day to cast his/her vote.

Recommendation No. 7

That any person who, in the opinion of the Returning Officer, is incapable of exercising a valid vote, and who does not express the desire to vote, be excluded from the requirement to vote.

Recommendation No. 8

That an elector who is departing or has departed the Island permanently may request the Returning Officer to cause his/her name to be removed from the roll.

Recommendation No. 9

That the Returning Officer be empowered to remove an elector's name from the roll where that elector has been absent from Norfolk Island for 900 days.

Recommendation No. 10

The Act should stipulate that, alone, the Returning Officer shall determine removal from the roll and eligibility for enrolment or re-enrolment.

Recommendation No. 11

That Nomination Day shall be the 28th day before polling day

Recommendation No. 12

That the closing time for lodgement of nomination papers shall be 11.00am to allow the Returning Officer sufficient time to attend the Court House for the declaration of the names of the candidates

Recommendation No. 13

That, under the new Act, the Returning Officer shall appoint a Presiding Officer in respect of each polling place.

A new Legislative Assembly Act

Recommendation No. 14

That a new Legislative Assembly Act be set up to cover the operation and "domestic management" of the Legislative Assembly, to provide for the office of Clerk and other Parliamentary Officers and to enhance the independence of the Assembly.

Term of the Legislative Assembly

Recommendation No. 15

That the term of the Legislative Assembly should remain at three years.

## Requirements for Candidates for Election

### Recommendation No. 16

That a person who is


- a) entitled, or qualified to become entitled, to vote at elections of members of the Legislative Assembly; and
  - b) who was born or is deemed to have been born on Norfolk Island; or
  - c) who is a resident of Norfolk Island within the meaning of the Immigration Act 1980,
- shall be eligible to stand for election.

However, this opportunity should be available to any resident regardless of nationality or citizenship as at present.


All other conditions of qualification of a candidate for election should remain.

## Membership of the Legislative Assembly


### Recommendation No. 17

That the number of members of the Legislative Assembly should be reduced to seven. 

### Recommendation No. 18

That the Public Service Ordinance be amended to provide that if a public servant is elected to membership of the Legislative Assembly he is deemed to be on leave without pay from the Public Service with the option to return to the Public Service at a similar level when he ceases to be a member of the Legislative Assembly. 

### Recommendation No. 19

That increased use should be made of committees to spread the workload amongst members and to allow members of the community to participate in the consideration of matters of importance to the community as a whole. 

### Recommendation No. 20

That the workload placed on all Members of the Legislative Assembly, should be recognised and that an application should be made to the Remuneration Tribunal that the rates of remuneration for Members and Executive Members should be aligned with those of appropriate classifications within the Norfolk Island Public Service and should include cost of living wage adjustments made from time to time in respect of Officers of the Public Service by the Public Sector Remuneration Tribunal.



## Office of Speaker

### Recommendation No. 21

That the Speaker of the House should continue to be chosen from amongst elected members.

## A New Voting System

### Recommendation No. 22

That a new voting system, representing a modified version of the First-past-the-post system, be introduced in which each elector is allocated a number of votes equal to the number of positions to be filled, currently nine, to be distributed one vote per candidate, but that the elector be only obliged to vote for a minimum of number of candidates being the next whole number higher than one half of the number of vacancies to be filled, up to the maximum number of votes to be cast.

### Recommendation No. 23

That, in the event that Recommendation no. 22 does not proceed, the present "Illinois System" of voting be retained but that the maximum number of votes that may be allocated to any one candidate should be reduced from four to three.

## Civic Education

### Recommendation No. 24

That a program of civic education be introduced into Years 11 and 12 at the Norfolk Island Central School to acquaint pupils with their rights and obligations as electors.

### Recommendation No. 25

That similar information be made available to the general public.

## An Australian Republic

### Recommendation No. 26

That the Legislative Assembly investigate the ramifications of the proposed Republic of Australia, the consequent breaking of ties with the Crown, the effect of these upon Norfolk Island and possible options available to the Island.

## A Norfolk Island Constitution

### Recommendation No. 27

That the Legislative Assembly look into the need for and desirability of a separate and distinct Norfolk Island Constitution and seek the views of the electorate in this regard.

## CHAPTER 1 - BACKGROUND

- 1.1 At its meeting of 18 May 1994, the 7th Legislative Assembly resolved to establish a Select Committee to inquire into and report on the provisions of the Legislative Assembly Ordinance 1979 and the Norfolk Island Act 1979 relating to :
- (i) elections to the Legislative Assembly
  - (ii) the term of the Legislative Assembly
  - (iii) requirements for candidates for election
  - (iv) requirements for Membership of the Legislative Assembly; and
  - (v) the present voting system
- 1.2 In addition, the Legislative Assembly directed that the Select Committee
- (i) may consider any other matter relevant to its inquiry
  - (ii) shall have the power to send for persons, papers or records
  - (iii) shall invite submissions from members of the public
  - (iv) shall report to the House on its conclusions and recommendations within six months unless the House otherwise orders; and
  - (v) shall comprise Monica Anderson, Robert Adams and Helen Sampson
- 1.3 The Committee first convened on 25 May 1994 at which meeting Mrs. Monica Anderson was elected Chairman.
- 1.4 By resolution of the House, at its September 1994 sitting, the date by which the Select Committee was to report on its findings was extended by four months. By further resolution at the February 1995 sitting of the House, the date was further extended to the September 1995 sitting. The Chairman sought this further extension in view of the fact that Mr. Robert Adams, a member of the Committee, was absent from the Island pursuing a Churchill Fellowship and also to allow the Committee time in which to consider information and documentation provided by Mr. Ian Faulks, Director of the New South Wales Joint Standing Committee on Road Safety.

## CHAPTER 2 - SUBMISSIONS FROM THE PUBLIC

- 2.1 In the lead up to the Legislative Assembly elections in April 1994 much dissatisfaction with the current electoral system was voiced within the community, which prompted the establishment of this inquiry. The Select Committee therefore considered that input from members of the public was essential to the preparation of this report.
- 2.2 By notice published in the Norfolk Islander on Saturday, 18 June 1994 and by means of a mail drop at the Norfolk Island Post Office, electors were invited to make written or oral submissions to the Committee. [Appendix 1]
- 2.3 In all 28 written submissions were received. Of these, 27 were from local residents and one from mainland Australia. One of those received was from the Society of Pitcairn Descendants so could be deemed to represent the views of a number of local residents. (See Appendix 2 for list of participants)
- 2.4 Requests to make oral submissions were received from six members of the public and, in response, the committee conducted public hearings on 27 July, 3 August and 10 August and an informal private hearing on 17 November 1994 and further public hearings on 20 July 1995.
- 2.5 The opinions of the participants varied widely and most respondents only expressed views on one or two of the terms of reference of the enquiry.

## CHAPTER 3 - VIEWS OF RESPONDENTS

- 3.1 In total 28 written submissions were received and six oral depositions were heard. For ease of reference the comments of the respondents are listed under the various headings of the Committee's Terms of Reference.

### Elections to the Legislative Assembly (including qualification for enrolment)

- 3.2 Qualifications for enrolment are governed by the Norfolk Island Legislative Assembly Ordinance 1979, Part II - The Electoral Roll.

Section 6. Qualifications for Enrolment states :

6. (1) Subject to subsection (3), a person is entitled to enrolment if the person -
- (a) has attained the age of 18 years; and
  - (b) has been present in Norfolk Island for a total of 900 days during the period of 4 years immediately preceding the person's application for enrolment
- (2) Subject to subsection (3), a person whose name has been removed from the electoral roll under paragraph 7(1)(b) or (c) is entitled to enrolment if the person has been present in Norfolk Island for a total of 150 days during the period of 240 days immediately preceding the person's application for enrolment.
- (3) A person who has been convicted, whether in Norfolk Island or elsewhere, and is under sentence of imprisonment for one year or longer for an offence against the law of the Commonwealth or of a State or Territory is not entitled to enrolment during the period of his imprisonment.
- (4) A person who is entitled to enrolment but is not enrolled shall apply to the Returning Officer for enrolment within one month after he becomes so entitled.
- (5) The Returning Officer shall not cause or permit the name and address of a person to be entered on the electoral roll unless that person has applied for enrolment.
- (6) Where the Returning Officer is satisfied that a person who has applied for enrolment is entitled to enrolment, the Returning Officer shall cause the name and address of that person to be entered on the electoral roll.

(7) Where the Returning Officer is satisfied that a person who has applied for enrolment is not entitled to enrolment, the Returning Officer shall reject the application and, within 14 days after the rejection of the application, shall give notice of the rejection to the applicant.

Section 7. Alteration of Roll, states in part :

7. (1) The Returning Officer shall cause to be removed from the electoral roll the name of a person who :

(a) is dead;

(b) has been absent from Norfolk Island for more than a total of 150 days during the period of 240 days immediately preceding the day on which the electoral roll is closed in accordance with section 8, or

(c) has ceased to be entitled to enrolment by reason of the application of subsection 6(5)

3.3 Not all respondents expressed an opinion on this question. The general response was :

Maintain the current system	4
No qualifying period for residents	2
No qualifying period for returning residents with Trade or Tertiary qualifications	1
Qualifying period of three years	1
Qualifying period of two years	1
Qualifying period of 150 days	1
Reduce the qualifying period from 900 days to 150	1
All residents and General Entry Permit Holders (GEPs) to be eligible to vote	1
Only residents to be eligible to vote	1
Returning Officer to have discretionary powers on eligibility	2
Provisional voter registration for 17 year olds	1

3.4 Since the Legislative Assembly Ordinance was drafted, just prior to the inauguration of Self Government in 1979, it has been amended on several occasions. This has resulted in, amongst other things, a confusing situation regarding removal from the electoral roll and identifying who is eligible to be restored to the roll. Cases prior to 7 August 1991 are dealt with by the Administrator and cases since that date are to be handled by the Returning Officer. It is suggested that this anomalous situation be rectified and that the Returning Officer should have sole authority as the person determining the roll.

3.5 The Returning Officer, Mr. David Rodgers, made the following observations :

Section 7A(b) - Calculation of presence in Norfolk Island

This clause needs to include a provision that an applicant for enrolment who by virtue of 7A(b) is eligible to be on roll has at least been domiciled on Norfolk Island for a specified period at some time in his/her life. At present a person over 18 years but under 25 years who has never lived on Norfolk Island but satisfies 7A(b)(ii) can apply to be enrolled. This has happened on one occasion.

Similarly, when the electoral roll is closed, the Returning Officer is unable to determine whether or not a person deemed to be present on the Island by virtue of section 7A(b)(ii) still meets that criteria when determining whether or not he/she should be removed from the roll by virtue of section 7(1)(b).

Section 12 - Nomination Day

It is suggested that nomination day shall be the 28th day before polling day to allow adequate time for postal voting and for lodgement of appeals to the Court of Petty Sessions.

Section 14 - Public declaration of nominations

Subsection (1) requires the Returning Officer to read out in public at the Court House the names of the candidates and their nominators. Section 13 provides for lodgement of nomination papers with the Returning Officer no later than noon on nomination day. It is a physical impossibility for the Returning Officer to be in two places at noon on the same day. In addition, the requirement to read out the names of the candidates (and also to publicly declare at the Court House the names of the member(s) elected) is perhaps archaic. The requirement to publish the names in the Gazette should suffice as by convention the names are given out over the local radio.

Section 17 - Polling Places

Amend subsection (2) to read -

The Returning Officer shall appoint a Presiding Officer in respect of each polling place.

Delete subsection (3) which states -

"(3) Where the Returning Officer appoints only one polling place, he shall be the Presiding Officer at that polling place."

Section 21 - Absentee Voting

The present absentee voting system is really the equivalent of the Australian postal voting system. The absentee voting arrangements should be amended to provide for both a postal voting system for those people off Island who are eligible to vote and who wish to exercise that vote and for an absentee voting arrangement whereby an elector proposing to be absent at the time of voting

or who through illness is unable to cast his vote at a polling booth may vote on Island.

Section 47 - Compulsory Voting

~~It is recommended that this section be amended to provide-~~

(a) that people who in the opinion of the Returning Officer are incapable of exercising a valid vote be excluded from the requirement.

The present arrangement distorts the statistics in relation to informal votes; and

(b) that persons absent from the Island on polling day not be required to vote

- 3.6 Through force of circumstance many young people from Norfolk Island spend several years away from the Island undergoing full-time educational or vocational training. It is suggested that such absence from Norfolk Island should not impair their eligibility to enrol at age 18 and that the Legislative Assembly Act should be clarified and made more specific on this point so that the Returning Officer is not required to make invidious judgements regarding eligibility under Section 7(a).

Recommendation No. 1.

That a new Electoral Act be set up to cover all procedures and regulations for the conduct of elections to the Legislative Assembly, including eligibility to vote and eligibility to stand as a candidate for election.

Recommendation No. 2

That the new Electoral Act provide that the qualifications for enrolment should be as follows :

That a person is entitled to enrolment if the person -

- a) has attained 18 years of age : and
- b) is a resident of Norfolk Island by virtue of having been born or deemed to have been born on Norfolk Island : and  
has been present in Norfolk Island for a total of 90 days immediately preceding the date of the person's application for enrolment or
- c) is a resident of Norfolk Island within the meaning of the Immigration Act 1985: and  
has been present in Norfolk Island for a total of 90 days immediately preceding the date of the person's application for enrolment : or
- d) has been present in Norfolk Island for a total of 900 days during the period of four years immediately preceding the person's application for enrolment.

3.7 The Committee felt that the current legislation can disenfranchise returning "native born" Norfolk Islanders who, although having been living away from the Island, could be expected to keep close ties with family remaining on the Island and therefore to be abreast of local issues. After all, it is the electorate which makes the ultimate choice. It was, however, deemed appropriate to stipulate a required period of residency before those returning become eligible to apply for enrolment.

Recommendation No. 3

Enrolment shall not be compulsory

Recommendation No. 4

Voting shall be compulsory for all persons on the electoral roll and physically present on the Island on the day of the election.

Recommendation No. 5

That an absentee voting system be set up which would allow a voter who

- a) intends to be absent from the Island on polling day or
- b) for reasons of illness is unable to attend a polling booth

to cast his/her vote on the Island.

Recommendation No. 6

That a system of postal voting be set up which would allow an elector who is eligible to vote and who is not on the Island on polling day to cast his/her vote.

Recommendation No. 7

That any person who, in the opinion of the Returning Officer, is incapable of exercising a valid vote, and who does not express the desire to vote, be excluded from the requirement to vote.

Recommendation No. 8

That an elector who is departing or has departed the Island permanently may request the Returning Officer to cause his/her name to be removed from the roll.



Recommendation No. 9

~~That the Returning Officer be empowered to remove an elector's name from the roll where that elector has been absent from Norfolk Island for 900 days.~~

Recommendation No. 10

The Act should stipulate that, alone, the Returning Officer shall determine removal from the roll and eligibility for enrolment or re-enrolment.

- 3.8 It is essential that the wording of the Act give strict criteria on which the Returning Officer can base his decisions.

Recommendation No. 11

That nomination day shall be the 28th day before polling day.

Recommendation No. 12

That the closing time for lodgement of nomination papers shall be 11.00am to allow the Returning Officer sufficient time to attend the Court House for the declaration of the names of the candidates.

Recommendation No. 13

That, under the new Act, the Returning Officer shall appoint a Presiding Officer in respect of each polling place.

Recommendation No. 14

That a new Legislative Assembly Act be set up to cover the operation and "domestic management" of the Legislative Assembly, to provide for the office of Clerk and other Parliamentary Officers and to enhance the independence of the Assembly.

- 3.9 The conduct of elections to the Legislative Assembly, maintaining of the electoral roll, etc., are separate and distinct functions from the procedures and management of the Legislative Assembly and should be the subject of a separate Act.

### The term of the Legislative Assembly

- 3.10 Pursuant to Section 35 of the Norfolk Island Act, the Legislative Assembly is elected for a term not exceeding three years.
- 3.11 Of those respondents who addressed this question, two advocated a reduction to a two year term, one of these suggesting that elections be held in April so as to allow the incoming Assembly members input into the budget. Ten preferred the status quo of a three year term and five an increase in the term to four years, one of these having a preference for five years.
- 3.12 The principal reason cited for the increase in the current term was that three years is not sufficient time for Members of the Assembly, and more specifically Executive Members, to become familiar with their tasks and therefore effective legislators. There was, however, an expressed concern that, if the term were longer than four years, there would be a danger of the Assembly losing touch with the electorate.

#### Recommendation No. 15

**That the term of the Legislative Assembly should remain at three years.**

- 3.13 The Committee felt that the argument that three years is insufficient for a Member of the Assembly, and more specifically an Executive Member, to fully come to grips with the complexities of government has merit but, where a Member has been seen to be effective he/she will more than likely be re-elected to continue that work. Likewise, where a Member is perceived to be ineffective, the electorate has the opportunity to remove him/her from office more rapidly. The Committee found no compelling argument for this provision to be changed.

## Requirements for candidates for election

3.14 Section 38 of the Norfolk Island Act 1979 specifies the qualifications for a candidate for election as follows :

### **Qualifications for election**

38. Subject to section 39, a person is qualified to be a candidate for election as a member of the Legislative Assembly if, at the date of nomination:

- (b) he has attained the age of 18 years;
- (c) he is entitled, or qualified to become entitled, to vote at elections of members of the Legislative Assembly; and
- (d) he has such qualifications relating to residence as are prescribed by enactment for the purposes of this paragraph or, if no such enactment is in force, he has been ordinarily resident within the Territory for a period of 5 years immediately preceding the date of nomination.

### **Disqualifications for membership of Legislative Assembly**

39. (1) A person is not qualified to be a candidate for election as a member of the Legislative Assembly if, at the date of nomination;

- (a) he is an undischarged bankrupt;
- (b) he has been convicted and is under sentence of imprisonment for one year or longer for an offence against the law of the Commonwealth or of a State or Territory;
- (c) he is a member of the Police Force of the Territory or of the Commonwealth; or
- (d) he is the holder of an office or appointment under a law of the Commonwealth or of the Territory, being an office or appointment that is prescribed for the purposes of this paragraph.

3.15 Of the eight respondents who addressed this question four advocated no change in the requirements for election, one stated that only persons with trade or business experience or tertiary qualifications should stand, two felt that anyone who was eligible to vote should be eligible to stand for election.

3.16 Two called for a five year residency requirement for "declared" residents, one called for a one year residency requirement for "born" residents, one advocated a three year requirement for residents, GEPs and TEPs, two preferred immediate eligibility for residents living on or recently returned to the island as long as they were on the electoral roll. The final suggestion was that only residents should be eligible and that they should have lived on the island for 150 days prior to the election date.

- 3.17 Here again the situation of Norfolk Island residents recently returned to the island was highlighted. As such a person does not fulfil the requirement of having been ordinarily resident for a period of five years prior to the election he/she is not currently eligible for election. The five-year period was felt to be excessive.
- 3.18 One suggestion was that the Electoral Act should clearly set down eligibility to stand for election. Eligibility to vote should not mean one is automatically eligible to stand for election. For example, temporary entry permit holders and prohibited immigrants could be eligible to vote. The Act should specify that all "residents" within the meaning of Immigration Act are eligible to stand without residence requirement.
- 3.19 Two respondents stated that citizens of any country should be eligible as at present.
- 3.20 Three respondents felt that only Australian citizens should be eligible to be members of the Legislative Assembly. The suggestion being that, in other legislatures, foreign nationals are not eligible for election and, like it or not, Norfolk Island is part of Australia.
- 3.21 One respondent felt that temporary entry permit holders should be eligible to stand for election if they fulfil the residency requirements.

Recommendation No. 16

That a person who is

- a) entitled, or qualified to become entitled, to vote at elections of members of the Legislative Assembly; and
- b) who was born or is deemed to have been born on Norfolk Island; or
- c) who is a resident of Norfolk Island within the meaning of the Immigration Act 1980,

shall be eligible to stand for election.

However, this opportunity should be available to any resident regardless of nationality or citizenship as at present.

27

All other conditions of qualification of a candidate for election should remain.

- 3.22 The Committee felt that, because of the unique nature of Norfolk Island, it was not appropriate for any person who had only been connected with the Island for a short time to be eligible to stand for election.

3.23 It was felt, however, that because there are no party politics on Norfolk Island and each candidate stands as an independent, it was unlikely that someone without Island connections, newly arrived on the Island, would be elected to the Legislative Assembly.


## Requirements for Membership of the Legislative Assembly

3.24 Section 38 (2) of the Norfolk Island Act 1979 states :


(2) A member of the Legislative Assembly vacates his office if :

- (a) he becomes a person to whom any of the paragraphs of subsection (1) applies;
- (c) he fails to attend the Legislative Assembly for 3 consecutive meetings of the Legislative Assembly without the permission of the Legislative Assembly;
- (d) he ceases to be entitled, or qualified to become entitled, to vote at elections of members of the Legislative Assembly; or
- e) he takes or agrees to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Legislative Assembly, otherwise than in accordance with section 65.

3.25 Of those who responded to this question, two saw no need for any changes to the criteria for disqualification. Two stated their preferred view that no public servant, whether employed by the Norfolk Island Administration or by the Commonwealth should hold the position of Minister or of President/Speaker of the Legislative Assembly. One respondent felt that a public servant should be required to vacate his/her position and accept Executive role. This is not currently a requirement.

3.26 The Commonwealth Government in 1979 recognised that it would be an anomalous situation that allowed a senior public servant to retain his/her position within the public service while at the same time holding a position of responsibility within the Legislative Assembly, hence the requirement that a public servant must relinquish his/her position if accepting executive responsibilities within the Government. 

3.27 In other jurisdictions there is a clear separation of powers between the Executive and the Legislature. Where a public servant nominates for a position in government he is automatically suspended from his position but, should he not be elected, he is entitled to resume his former position. It is not possible for even an intending politician, let alone a serving politician, to hold a position in the Public Service because of the conflict of interest. A public servant has access in the course of his employment to information which should not necessarily be available to a member of the Legislative Assembly.

3.28 Under the Norfolk Island Public Service Ordinance if a public servant resigns his position he loses his seniority, and has no guarantee of re-employment so most would be loath to accept a Executive position. 

3.29 In the current situation it is quite possible for a backbencher to also be a member of the Public Service and have access to information to which, under normal circumstances, Members of the Legislative Assembly would not have access. This can reportedly cause disquiet within the workplace.

3.30 Some claim, since 1979, Norfolk has progressed steadily towards internal self-government, so that the role of President/Speaker has become more demanding to the point where his workload might be closer to that of a Minister than that of a backbencher. This point is discussed further in the section relating to Speaker of the House.

### Number and duties of Members

- 3.31 The Norfolk Island Act 1979 provides for the election of nine members to the Legislative Assembly. Under Section 12 (1) it provides that the Legislative Assembly shall determine by resolution the number of Executive positions and their respective designations. Traditionally this number has been four, usually those receiving the highest number of votes at the election, leaving the balance of power with the backbench.
- 3.32 The views on the number and duties of members and Executive members varied widely. Four respondents called for seven members, two advocating three ministers and four backbenchers, one for four ministers and three backbenchers and the other five ministers and two backbenchers. One respondent preferred a three member Assembly, each with executive responsibility. One preferred a five member Assembly with three ministers and two backbenchers.
- 3.33 It was felt by many respondents that the number of Assembly members should be reduced.
- 3.34 One view was that the number of members should be reduced to seven, but that the number of Ministers should be increased to five to share the workload. It was felt important to have an odd number of Ministers but not necessary to have a majority of backbenchers. It was felt by this voter that the candidate receiving highest number of votes should become Chief Minister and should chair executive meetings and meetings of members. The next highest should become Ministers.
- 3.35 Another view was that there should be five elected members including two full time Executive Members working together but with different portfolios.
- 3.36 Most recognised the enormous work load placed on an Executive Member and called for a greater spread of the burden amongst members. This could be achieved by vesting executive responsibility in all members or, if a lesser number of Ministers is thought desirable, then either through delegation or a greater use of advisory committees.
- 3.37 One respondent felt strongly that there should be a clearly defined Head of Government or Chief Minister. It was generally felt that the candidate receiving the highest number of votes should have this position but there were varying views as to whether the Executive positions should be allocated to those with the next highest number of votes or to those with appropriate ability.
- 3.38 It was suggested that the Chief Minister should chair executive meetings and meetings of the members.



- 3.39 One suggestion was that the Administrator should serve as Speaker and that the Assembly should comprise three elected Ministers, to be supported by advisory committees, the candidate polling the highest number of votes being automatically named as Chief Minister, the one polling second highest, Deputy Chief Minister and the candidate with the fourth highest number of votes being named as a "reserve" in the event that one Minister should cease to serve.
- 3.40 The view that the Administrator should chair the Assembly meetings, in much the same way as in the previous Council, has support within the community.
- 3.41 The current Administrator, Mr. Alan Kerr, is widely respected and very popular within the community. The Committee felt that this view was perhaps subjective and influenced by the personality of the incumbent. This question is further explored in the section relating to the Speaker of the House.
- 3.42 One respondent addressed the Committee on the community perception that the present political system lacked accountability which therefore begged the question in a community of this size - Is the Westminster system the most appropriate system for Norfolk Island? Apart from elector representation by phone or letter, with no guarantee that his/her point of view will reach the total membership, there are no real channels of communication with the Parliament. This problem is compounded by an Assembly comprised of nine independents with individual ideologies and the absence of political platforms. This, it is suggested, must result in community apathy in the knowledge that once a member is elected there is no way to remove, or influence him or her for three years.
- 3.43 As a first step towards achieving a better communication process between the executives and the community it was proposed that a Business Council, comprising representatives of all sectors of the community, should be developed. This Council would discuss perceived problems and then present a unified voice to the elected members to acquaint them of matters of public concern.
- 3.44 The Committee noted the experience of the States of Alderney with regard to public consultation. This is outlined in greater detail in Chapter 5.
- 3.45 At the time of the election nine candidates are elected to be members of the Legislative Assembly. The electorate has no say in which of those nine are to hold Executive office but the general assumption is that any of them might be so selected unless, prior to the election, a candidate declares that he or she will not seek Executive office.
- 3.46 The nine members select one of their number to be Speaker of the House. This is traditionally the candidate polling the highest number of votes, being seen as the people's choice.
- 3.47 The members also determine which and how many of them will take Executive Office and how the portfolios will be distributed.

~~3.48 The members select the Leader of Government from amongst the Ministers. Again, this is traditionally the candidate receiving the highest number of votes but is not necessarily the same person as the Speaker. This can lead to confusion in the minds of the public at large.~~

3.49 The Committee found that there was an expectation within the electorate that those elected to govern the Island would in fact do so, not just four of the nine elected members.

**Recommendation No. 17**

**That the number of members of the Legislative Assembly should be reduced to seven.**

**Recommendation no. 18**

**That the Public Service Ordinance be amended to provide that if a public servant is elected to membership of the Legislative Assembly he is deemed to be on leave without pay from the Public Service with the option to return to the Public Service at a similar level when he ceases to be a member of the Legislative Assembly.**

3.50 The Committee found that it would be unacceptable for members of the Public Service to be disadvantaged if they chose to serve in public office as this would result in a significant proportion of the population being so affected. Indeed, as the Island population dwindles, it is likely that the percentage of the workforce employed by the Public Service will in fact increase.

**Recommendation No. 19**

**That increased use should be made of committees to spread the workload amongst members and to allow members of the community to participate in the consideration of matters of importance to the community as a whole.**

3.51 There was also evidence from the submissions received of a public perception that, as the Island moves forward on the path to internal self-government, the responsibilities placed on members of the Legislative Assembly increases. Executive office is seen as a full time position.

3.52 This fact was recognised by the Remuneration Tribunal in its determination of November 1993. The Determination states in its Section 12 :

"12. The Tribunal is satisfied that the position of an Executive Member is now effectively full-time."

3.53 The remuneration payable to an Executive member was increased, the figure being calculated by multiplying the amount payable to a non Executive member by three

and one third. This put it at a level approximately equal to that earned by a Level 3 Administrative Officer with three years of service.

- 3.54 There was no provision made for indexation of this amount and a subsequent Determination of the Remuneration Tribunal which granted an across-the-board increase of 6.5% effective February 1995 to members of the Public Service was not applied to remuneration of Members of the Legislative Assembly.

Recommendation No. 20

That the workload placed on all Members of the Legislative Assembly should be recognised and that an application should be made to the Remuneration Tribunal that the rates of remuneration for Members and Executive Members should be aligned with those of appropriate classifications within the Norfolk Island Public Service and should include cost of living wage adjustments made from time to time in respect of Officers of the Public Service by the Public Sector Remuneration Tribunal.

## The Office of Speaker

- 3.55 Standing Order no. 4 of the Norfolk Island Legislative Assembly provides that, on the first day of meeting of the House after an election, the President of the House shall be elected by the members from amongst themselves. It has been a tradition on Norfolk Island for the candidate polling the highest number of votes to be chosen as President.
- 3.56 At the time that public opinion was sought, several members of the community expressed the view that there must be a clearly defined Head of Government, to avoid any confusion with the President of the Legislative Assembly who may not necessarily be one and the same, as at the present time.
- 3.57 It was also suggested that this title could be mistakenly inferred as referring to the President of Norfolk Island.
- 3.58 As part of an omnibus bill, The Environment, Sport and Territories Legislation Amendment Bill (No. 2) 1994, which was introduced to the House of Representatives in Canberra in December 1994, all references in the Norfolk Island Act to the offices of President and Deputy President of the Legislative Assembly of Norfolk Island were deleted and the titles of Speaker and Deputy Speaker respectively were substituted. This followed on a decision of the Norfolk Island Legislative Assembly in December 1993.
- 3.59 The Environment, Sport and Territories Legislation Amendment Bill (No. 2) 1994 completed passage through the House of Representatives on 27 March 1995 and received Royal Assent on 6 April 1995.
- 3.60 By decision of the Legislative Assembly at its sitting of 12 April 1995 all references in the Standing Orders of the Legislative Assembly of Norfolk Island to "President" and "Deputy President" were amended accordingly. There is therefore no longer a "President" of the Legislative Assembly.
- 3.61 In a letter to the Deputy Administrator of Norfolk Island copied to the Norfolk Island Government, the Hon. Warren Snowdon MP, Parliamentary Secretary to the Minister for the Environment, Sport and Territories, stated *inter alia*
- "...the Government sees the changes in nomenclature of the Assembly's Presiding Officers as reflecting the more mature relationship which we are developing between the Commonwealth and Norfolk Island Governments. "President" and "Deputy President" are titles associated with local government; "Speaker" and "Deputy Speaker" are more consistent with the self-governing status of Norfolk Island which as you know the Commonwealth sees as akin to self government of the ACT/NT/State type."

- 3.62 There is an opinion that the position of Speaker (or President) of the Legislative Assembly should be separate and distinct from the Government and that the President, and possibly the Deputy President, should be precluded from holding Executive office.
- 3.63 Several submissions have suggested that, at the time of elections to the Legislative Assembly, elections should also be held for the position of independent Speaker for the term of that Assembly. The Speaker would take no part in debate, his/her role being principally to chair meetings. This would avoid the game of "musical chairs" which is currently played whenever the current Speaker wishes to express an opinion on matters before the House.
- 3.64 It was suggested that the remuneration for an independent Speaker should be the same as that of a backbencher. Another suggestion was that this should be an honorary position.
- 3.65 As previously stated, it has been suggested that the Administrator should fulfil the role of chairing meetings of the Legislative Assembly.
- 3.66 In an article entitled "The pros and cons of an 'elected' versus a 'non-elected' Speaker" published in *The Parliamentarian*, Philip Laundy, a noted Commonwealth authority on the Speakership and author of the book "The Office of Speaker in the Parliaments of the Commonwealth", states :
- "The traditional argument in favour of choosing the Speaker from among the elected Members of the Assembly is that his strength and prestige derive from his reaching the House by the same route as every other Member. He is one of them, he understands their problems, and he is chosen by his peers because they have confidence in him.
- "A British select committee which studied this question in 1938 came to the following conclusion *inter alia*: 'To alter the status of the Speaker so that he ceased to be returned to the House of Commons by the same electoral methods as other Members or as a representative of a parliamentary constituency, would be repugnant to the custom and tradition of the House.'"
- 3.67 However, Laundy goes on to say that, considered in a general context, the arguments in favour of an elected Speaker are strong. However the parliamentary jurisdictions of the Commonwealth differ very greatly and arguments which hold good for one legislature are not necessarily valid for another.
- 3.68 For hundreds of years the British Speaker has been elected by the Members of the House of Commons and a break with this tradition would be too radical. There are, however, a number of Commonwealth Parliaments which make provision for a non-elected Speaker.

- 3.69 Laundry concludes that the situation can only be assessed separately in every Parliamentary jurisdiction and that perhaps it is prudent to provide the option so that the Parliament is not locked in to one system or the other.
- 3.70 Under the Norfolk Island Act 1979 a public servant is required to resign from his position if he takes Executive responsibility within the Government. It was suggested that the role of Speaker of the House is akin in importance to that of a Minister and that a similar requirement should be placed on a public servant accepting the position of Speaker.
- 3.71 The argument is that a Minister, and similarly a Speaker, employed in the private sector would either relinquish his paid employment or would negotiate with his employer for part time or less onerous duties compatible with the requirements of his office. A self-employed person would either give up his trade or business or would arrange for a partner to take over his decision-making responsibilities. If he tried to handle both it is a fair assumption that his business would suffer.
- 3.72 The same holds true for a public servant, especially one in a managerial position.
- 3.73 Another argument put forward is that no man can serve two masters. Equally, no man can be both servant and master to the same person. This situation has been recognised with regard to Ministers but not with the position of Speaker and this, it is alleged, can cause significant difficulties. In the current scenario the present office-holder is both senior, as Speaker and a Member of the House, and subordinate, in his role as Administrative Services Manager, to the Chief Administrative Officer.

Recommendation No. 21

That the Speaker of the House should continue to be chosen from amongst Elected Members.

## The present voting system

- 3.74 Until 1976 when the Norfolk Island Council Ordinance 1960 was amended, itinerant workers in the Island and other persons who had been ordinarily resident in the Island for the previous twelve months could exercise a vote in elections for the Island's Council. In the Report of the Royal Commission into matters relating to Norfolk Island, October 1976, Commissioner Nimmo agreed with the policy behind the amendment which restricts eligibility to vote largely to bona fide long-term residents or those intending to be such; e.g. holders of certificates of residency or enter and remain permits. Itinerants are excluded.
- 3.75 Responsible government was introduced to Norfolk Island by the Norfolk Island Act 1979. This Act provides for a nine member Legislative Assembly to be elected. At this time the traditional block voting system or "first past the post" method, which had been used for elections to the Norfolk Island Council, was rejected by the Commonwealth as giving no guarantee that significant minority groups on the Island could secure representation. Under this system each voter was given as many votes as there were vacancies to be filled.
- 3.76 In its place a modified version of the Hare-Clark system of proportional representation, similar to that used in the Tasmanian House of Assembly, was introduced. This system gained little favour with the Norfolk Island electorate, as being too complicated, possibly because it was inadequately explained to the voters and insufficiently understood by a large number of them. By referendum in December 1979 a majority of voters indicated their desire to return to the first past the post system. Two Bills for a return to the block voting system have since passed the Legislative Assembly but on both occasions the Federal Government recommended that the Governor-General not give his Assent.
- 3.77 In 1982 a Commonwealth enquiry was held into an alternative voting system for Norfolk Island. This culminated in the "Report of an Inquiry into the Type of Electoral System Most Appropriate to Elections of the Norfolk Island Legislative Assembly" by L.J. Abbott and G.A. Snider, Canberra, August 1982.
- Abbott and Snider concluded that the Block Voting system was not appropriate since it provides no guarantee that significant minority groups or interests will be able to secure representation. They suggested ways in which the then-present Hare-Clark system could be modified but felt that, even modified, the system would meet stiff resistance from a significant portion of the Norfolk Island electorate and continue to provide the focus for controversy.
- 3.78 A short list of two methods was arrived at. The first was a "limited voting" system where electors are given a specified number of votes, fewer than there are vacancies, and counting is done in the same way as in first past the post voting.

- 3.79 The second system, and the one which was recommended by the Report, was a cumulative system in which each elector is given as many votes, indicated by crosses, as there are vacancies and each elector may at his own discretion give up to four votes to any one of the candidates. This is commonly referred to as the "Illinois System" as it is based on a system devised in that American state.
- 3.80 The authors also recommended that an electoral information program be developed to familiarise Norfolk Island electors with the electoral system and to acquaint them with the purposes it is designed to serve.
- 3.81 Four respondents preferred the current cumulative system and four proportional representation. Seven respondents advocated a return to the first past the post system as being the simplest, fairest and most easily understood.
- 3.82 A strong argument was raised against the current situation where a voter can give more than one vote to one candidate. This view, shared by several respondents, was that the present cumulative system allows small minorities or pressure groups a disproportionate say in who is elected. It likewise advantages those with connections with large groups such as family, the Public Service Association, etc., and disadvantages those without such support. It was viewed as being open to abuse and having potential for fraud.
- 3.83 There were also criticisms of the first past the post system, where an elector is given as many votes as there are vacancies, in that voters could be forced to vote for candidates they did not favour, just to use up all their votes, and that all votes, even those given to less favoured candidates, had equal weight.
- 3.84 It was variously suggested that votes could be allocated in order of preference and that this order be taken into account and, alternatively, that the order of preference only be taken into account in the case of a tied vote.
- 3.85 Another alternative suggested by three respondents was that each voter should be given nine votes but only be required to vote for those candidates they favoured. Under these circumstances ballot papers where fewer than nine votes had been cast would not be considered informal. In this scenario various minima were suggested, varying from seven to five.
- 3.86 An alternative suggestion was that, assuming seven places are to be filled, each voter place seven votes against his/her preferred candidate, six against the next choice and so on.
- 3.87 A further suggestion was that each voter be allocated nine votes to be allocated two votes to each of four candidates and one vote to one candidate.
- 3.88 One supporter of the cumulative system suggested that the maximum number of votes that could be allocated to one candidate should be three not four.



- 3.89 Two respondents provided statistical analysis of the results of recent elections and comparisons of the various voting methods.
- 3.90 Although not necessarily reflected in the written submissions received the committee noted that there is strong resistance within the community to the reintroduction of the system of proportional representation.
- 3.91 Much of the resistance to this system comes from the fact that it is poorly understood.
- 3.92 Proportional Representation (PR) is generally regarded elsewhere as offering a voter the best chance that his vote will in fact count in the overall and that his vote will not be wasted. This is particularly true in constituencies where there is a party system, which is not the case on Norfolk Island.
- 3.93 A form of PR is currently used in Ireland, Malta, Tasmania and in the Australian Senate. This is the Single Transferable Vote (STV) that, unlike list-PR systems, personalises voting and representation. It is said to offer electors the maximum degree of choice and also assure candidates that the victors will be those with the maximum degree of support. Under STV, parties have no formal role; votes are cast for candidates, not for parties. Each voter has a single transferable vote. Voters are given a ballot paper listing all candidates on which the voter write the figure 1 against his first choice, the figure 2 against his second choice and so on.
- 3.94 At the count, as soon as the ballot papers have been checked, an electoral quota is established showing the number of votes needed to entitle a candidate to one of the seats. Any candidate who gets more first preference votes than the quota is declared elected and any surplus is distributed proportionately to the second preferences of his supporters. Any candidate who fails to receive the minimum required number of votes is also eliminated and his votes distributed to the second preferences of his supporters. Further candidates are elected or eliminated until the required number of candidates is achieved.
- 3.95 The essence of the system is that votes are never distributed until a candidate is either elected or defeated; the electoral chances of a candidate for whom a higher preference is expressed cannot possibly be harmed by the expression of lower preferences for other candidates.
- 3.96 A modified version of STV is also used for elections to the House of the Keys in the Isle of Man. This allows a voter the option of either voting in the traditional manner or of "plumping" the vote by only indicating a preference for one candidate so that no surplus can be handed on to another candidate. This results, in effect, in a one-vote First Past the Post system.

3.97 Many within the electorate would prefer a return to the "first past the post" system as being the simplest and most easily understood. However, a great many electors have voiced an objection to being obliged to cast a total of nine votes in an election when there could well not be a total of nine candidates for whom they would wish to vote.

3.98 The Committee does note however that the electorate has twice expressed its desire to return to the first past the post system at referendum in December 1979 and December 1982 and that the Federal Government through the Governor - General has twice rejected the move to have the system reinstated. The principal reasoning being that it disadvantaged minority groups. The Committee found that, as each candidate stands as an independent and there are no party politics on Norfolk Island, this thesis is hard to substantiate. However, in view of the two past rejections the Committee feels that it may be injudicious to seek yet again to have "first past the post" reintroduced.

#### Recommendation No. 22

That a new voting system, representing a modified version of the First-past-the-post system be introduced in which each elector is allocated a number of votes equal to the number of positions to be filled, currently nine, to be distributed one vote per candidate, but that the elector be only obliged to vote for a minimum of number of candidates being the next whole number higher than one half of the number of vacancies to be filled, up to the maximum number of votes to be cast.

3.99 Should the Governor General again not give his Assent to this system, the Committee makes the following recommendation

#### Recommendation No. 23

That, in the event that Recommendation no. 22 does not proceed, the present "Illinois System" of voting be retained but that the maximum number of votes that may be allocated to any one candidate should be reduced from four to three.

3.100 The Committee considers that, with the suggested amendment, the present cumulative system would next best meet these criteria.

## Other points

3.101 In a small community such as Norfolk Island all electors feel personally involved and affected by the conduct of elections but it is perceived that a great number are ill-informed about the current electoral process. It was suggested that the public need to better understand the system if they are to make informed judgements and also that a program of civic education should be instituted at the Norfolk Island Central School.

### Recommendation No. 24

That a program of civic education be introduced into Years 11 and 12 at the Norfolk Island Central School to acquaint pupils with their rights and obligations as electors.

### Recommendation No. 25

That similar information be made available to the general public.

3.102 Considerable attention has been given in the media to the move to have Australia declared a Republic. Because of the unique relationship between Norfolk Island and the Crown and the deep-seated allegiance to the Monarchy dating back to the original grants of land by Queen Victoria, this constitutional issue is of special interest to the local community. The subject was not canvassed in the original request for submissions and has not been dealt with in the responses. The Committee feels that this matter is too far-reaching to be adequately covered within this report and recommends that a separate examination be undertaken.

### Recommendation No. 26

That the Legislative Assembly investigate the ramifications of the proposed Republic of Australia, the consequent breaking of ties with the Crown, the effect of these upon Norfolk Island and possible options available to the Island.

3.103 By virtue of an Order in Council dated 24 June 1856, Norfolk Island was declared to be a distinct and separate Settlement, the affairs of which should be administered by a Governor to be appointed by Her Majesty, Queen Victoria.

3.104 By virtue of an Order in Council dated 30 March 1914, His Majesty King George V ordered that Norfolk Island be placed under the authority of the Commonwealth of Australia.

3.105 The Norfolk Island Act 1979 provides for the government of Norfolk Island.

3.106 In the preamble to that Act, the Parliament of Australia declared that it considers it to be

"desirable and to be the wish of the people of Norfolk Island that Norfolk Island achieve, over a period of time, internal self-government as a territory under the authority of the Commonwealth and, to that end to provide, among other things, for the establishment of a representative Legislative Assembly and of other separate political and administrative institutions on Norfolk Island."

3.106 However, the Committee noted that no Constitution exists for Norfolk Island and that, because it is not a part of Australia but a territory under the authority of the Commonwealth of Australia, Norfolk Island is not covered by the Constitution of Australia. This has been recognised by the Commonwealth of Australia on many occasions.

3.107 One respondent addressed this question. He was of the opinion that the constitutional position of Norfolk Island has only been discussed straightly and of its own nature on one occasion, in an opinion written for the Australian Attorney-General, by Sir Robert Garran, Secretary to the Attorney-General, in 1905.

The Island could apparently be made a territory under control of the Commonwealth by joint operation of an Imperial Order-in-Council and a Commonwealth Act. The effect of this would be that the Parliament could make laws for its government, and that it would be a dependency of the Commonwealth, not a part of the Commonwealth itself, and the general laws of the Commonwealth would not be in force in the Island to any further extent than the Parliament thought fit to provide - nor would it necessarily be within the Commonwealth tariff fence. In other words, it would be in the same relation to the Commonwealth as British New Guinea will be if the Papua Bill is passed." (*Opinions of the Attorney-General of the Commonwealth of Australia, vol. 1, A.G.P.S., Canberra 1981, p.268.*)

3.108 This opinion was endorsed by the then Attorney-General, Sir Isaac Isaacs, himself a renowned constitutional lawyer, and forwarded to the Prime Minister..

3.109 The respondent further suggested that the only part of the Australian Constitution which applies to Norfolk Island is Section 122, which basically says that the Australian Parliament may make laws for the government of any territory placed by the Sovereign under the authority of (the 1914 Order-in-Council ) and accepted by the Commonwealth of Australia.

3.110 He also submitted that the Norfolk Island Act does not comply in some instances with the Australian Constitution in that :

- (a) Public servants serve on the Legislative Assembly in contravention of Section 44, v of the Australian Constitution;
- (b) Norfolk Island imposes its own customs and excise duties contrary to Section 90;
- (c) Other States of the Commonwealth of Australia do not have the rights enumerated in (a) and (b) under their respective Constitutions.

- 3.111 The Committee in its deliberations has been mindful of the lack of a formal Constitution for Norfolk Island.
- 3.112 The Committee found that insufficient comments on the subject had been received to enable it to form any conclusion on the opinions of the electorate on the subject.
- 3.113 The Committee found that the matter was of importance and should be investigated further.

Recommendation No. 27

That the Legislative Assembly look into the need for and desirability of a separate and distinct Norfolk Island Constitution and seek the views of the electorate in this regard.

#### CHAPTER 4 - THE HISTORY OF VOTING ON NORFOLK ISLAND

In Pitcairn, the Islanders date their formal incorporation into the British Empire from 30 November 1838 when they prevailed upon Captain Elliott of HMS Fly to draw up a brief constitution and a code of laws selected from those already in force. A Magistrate, who must be native born, was to be elected annually "by the free votes of every native born on the island, male or female, who shall have attained the age of eighteen years; or of persons who shall have resided five years on the Island". He was to be assisted by a Council of two members, one elected and one chosen.

Captain Arthur Phillip's Commission in 1787 had made him Governor of the colony of New South Wales including Norfolk Island which was subsequently settled as a penal colony. In 1844 Norfolk Island was annexed to the Government of Van Diemens Land in the Diocese of Tasmania and, by Order of the Queen-in-Council in 1856, Norfolk Island was declared to be a distinct and separate settlement with the Governor and Commander-in-Chief of New South Wales being constituted as the Governor of Norfolk Island. In June of that same year the tiny community of Pitcairn arrived in Norfolk Island to establish their new colony.

In 1857, after settling into Norfolk Island, the Governor of Norfolk Island, Sir William Denison, after communicating with leading citizens, formulated the Island's first set of laws which included the provision that, during the absence of the Governor, executive government of the Island was to be vested in a Chief Magistrate and two Councillors to be elected annually by the community. It was required that the Chief Magistrate be a resident in possession of landed estate and be at least twenty-eight years of age. The two Councillors were also required to be residents and to have attained the age of twenty-five. Every person who had resided on the Island for six months, who had attained the age of twenty years and who could read and write was entitled to vote.

In 1885, Special Commissioner Henry Wilkinson prepared a lengthy report for the then Governor of Norfolk Island, Lord Loftus, which resulted in the earlier laws by Denison being repealed and replaced by Lord Loftus' Proclamation of 1885 which also dealt with electoral matters.

Under this Proclamation the Chief Magistrate now had to be a person resident in Norfolk Island, be the owner in fee simple of landed estate and have attained the age of forty years. Provision was introduced for a system of balloted votes to elect persons to the positions of Chief Magistrate and Councillors. These elections were to take place on the day after Christmas Day each year. The Chief Magistrate was eligible to stand for re-election provided that he did not hold office for more than two years consecutively.

In 1896, Viscount Hampden, the Governor of Norfolk Island, issued a further Proclamation. The role of Chief Magistrate was enhanced by provision being made for a magistrates' court and the authority for him to summon a jury. A twelve-member Council of Elders was constituted. They would choose one of their number to be President who would preside at all meetings and have a casting vote only. The Council could make

suggestions to the Chief Magistrate as to any changes in the laws and regulations at a meeting summoned and presided over by him on the receipt of a petition signed by twenty or more of the Elders.

Election to the Council was to be held on the first Tuesday of January in each year and on failure to elect any or all of the members of the Council of Elders the Chief Magistrate could appoint a sufficient number. Councillors were to be elders of the age of thirty years or upwards and the Chief Magistrate was to keep a register of the names of the males natural born or naturalised of the age of twenty-five years and upwards who had resided on the Island for the previous six months.

This same Proclamation, by the wording defining the elders as, "... names of the males natural born..." disenfranchised the women whose voting powers had been established by law some forty years previously.

In 1903 the Council of Elders was replaced by an Executive Council of six members, of whom four were nominated by the governor and two were elected by all males over twenty-five years. Its powers and functions were much the same as those of the Council of Elders.

After Federation in 1901, Australia saw clearly that the Commonwealth was in a better position to control the affairs of Norfolk than was the State of New South Wales. Admiral Rawson, the Governor of New South Wales, requested the Imperial Government to annex Norfolk Island to the Commonwealth in accordance with the preamble to the 1897 Order-in-Council. At the same time he advised the Governor-General of his action, and asked the Commonwealth Government to accept the Island. In 1913 the Federal Parliament passed the Norfolk Island Act, accepting the Island as a Territory under the authority of the Commonwealth and providing for its future government. The Act came into operation on 1 July 1914, and subsequently the women of Norfolk Island were again enfranchised. In 1960 Mrs. LC Donkin, the first woman to be a Councillor on Norfolk, was elected to the Norfolk Island Advisory Council.

Under the Norfolk Island Act 1913 the offices of Administrator and Chief Magistrate continued to be combined, and the existing powers and functions were retained. The Executive Council was also retained but its composition was increased to twelve members. The council was to be elected annually. The law required that the Administrator attend the first meeting of each council and that such meeting should elect a member of the council to be president. Six members of the council were to be nominated by the Administrator and another six were to be elected. The Administrator would be an ex-officio member of the council and would preside at meetings at which he would have a deliberative as well as a casting vote.

The Executive Council Ordinance 1915 - which replaced the Executive Council Law - was amended from time to time and remained in force. But by 1935 dissatisfaction in the community caused pressure to be applied to the Commonwealth in the form of petitions and letters. In Australia the Minister for External Affairs, Senator George Pearce, sought leave of the House to introduce a bill to amend the Norfolk Island Act 1913 which stated :

"...Six members of the council are nominated by the Administrator and another six are elected, and the Administrator has a deliberative as well as a casting vote."

It was the undesirability of the Administrator having the power to nominate six of the twelve members to the Council that had caused the community to seek redress.

The 1935 Ordinance sought to remedy that state of affairs by abolition of the existing executive council and provision being made for a replacement body to be constituted as an advisory council consisting of eight elected members. The advisory council was to have the right to advise the Administrator and, through him, the Minister in relation to any matters affecting Norfolk Island. This would give the people a real voice in community matters.

The Island was to be divided into four wards with two men being elected from each ward. The candidate who topped the poll to be elected for two years, and the candidate with the next highest number of votes to be elected for one year.

On being asked by the Senate of the reason for having an annual election, Senator Pearce advised that the Administrator of Norfolk Island had told him that "...an election here costs only about ten pounds, and the people do love elections".

Under the new arrangements the council would elect its own chairman annually, and in case of an equality of votes, the Administrator would appoint the Chairman. When it is proposed to make an ordinance, a draft of it would be sent to the Advisory Council, which would be invited to express its opinion upon it. That opinion would be sent with the report of the Administrator to the Minister, who would determine what action was to be taken. Provision was made for urgent or special ordinances.

The Administrator of the Island was also the Chief Magistrate and Senator Pearce gave his intention to separate the office of Administrator from that of magistrate, to make arrangements for a stipendiary magistrate to visit the island as required and to allow for the appointment of local residents as honorary justices of the peace with summary jurisdiction in minor cases.

A Proclamation by the Governor-General fixed the commencement date for the new Norfolk Island Act 1935 at 21 June 1935.

On the 27 July 1935 the Advisory Council Elections Regulations were posted within the Island. They divided the Island into four wards for the purposes of voting.

They were the Kingston, Cascade, Ball Bay and Mt Pitt Wards. The first election for the newly constituted Advisory Council took place on 21 August in that same year. The President and Deputy President of Council were chosen by lot.

The Norfolk Island Act 1957 commenced in 1960 and was updated in 1973. Neither Act nor amendment gave any further reference to the voting system.



In 1979, under the Australian Parliament's recognition that the residents of Norfolk Island included descendants of the settlers from Pitcairn Island, and that those descendants had a special relationship with the Island and desired to preserve their traditions and culture, and where the Parliament considered it desirable and to be the wish of the people that Norfolk achieve over a period of time, internal self-government as a Territory under the authority of the Commonwealth, the Norfolk Island Act 1979 was enacted and provision made for the institution of a Legislative Assembly. The system of government as provided by this Act remains in force today.

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28. Executive Council Ordinance 1921 (No. 2)
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### 5.8 Nauru

All citizens who have attained the age of 20 years and are resident in the country are entitled to vote in general elections. Any citizen who has attained the age of 20 years is qualified to be elected as a member of Parliament. There are exceptions - insanity, undischarged bankrupt, under sentence for an offence punishable by death or imprisonment for at least one year, etc.

### 5.9 Tuvalu

No one is entitled to vote unless he/she is a citizen of Tuvalu. The criteria for eligibility to vote/enrol is not the time required to live in Tuvalu but whether or not he/she is a "real citizen of Tuvalu" - (What constitutes a "real citizen" is not known)

### 5.10 Solomon Islands

There is no specified or limited waiting period before a Solomon Islands citizen can vote. If he/she returns during the Registration Period and would like to vote in a particular Electorate he/she is automatically qualified to apply for enrolment in the Voters' List. Reviews of voters' lists are carried out annually.

### 5.11 Western Samoa

A person to be qualified to register on the electoral roll must be a Samoan Citizen and not be disqualified under the Constitution or any Act. The period of residency for the purpose of enrolment is not relevant. Samoan citizens living abroad can register with the Samoan consulates in countries where such exist. Voting however is possible only if the elector is in Samoa on the day of polling.

## 5.12 OTHER RELEVANT JURISDICTIONS

The Committee noted the following with regard to Alderney in the Channel Islands which bears a number of resemblances to Norfolk Island.

### 5.13 Alderney

Alderney is the third largest of the Channel Islands and measures approximately three and a half miles long by one and a half miles at its widest point. The population is about 2,500 and its industries are fishing and tourism.

The States of Alderney, as the island's Parliament is known, consists of a President and 12 States Members. The President is elected at a separate Presidential election and holds office for three years. Members also serve for three years. All men and women of 18 years of age and over who have been resident in the Island for 12 months on 15 October of any year are entitled to register to vote in the elections of that year, which are held within the first two weeks of December, and, if qualified by three years residence, to stand for election. There are no political parties. Four States Members are elected every year to serve for three years. At the present time five of the 12 States Members are women.

The President has the right to take part in a discussion in the States and to keep the States Members in order. However, he has no vote except the casting vote.

The public have the right to address the States on two occasions each year and the monthly States Meetings are, as in the past, preceded by a People's Meeting at which any members of the public who are on the electoral register may express their views on any item on the agenda which is coming up for discussion at the following meeting of the States. These meetings can become extremely vocal, but are usually pretty good hearted as any speaker who gets too carried away is usually told to sit down and shut up by the rest of the assembly. The meetings, held in the Island Hall, are chaired by a States Member assisted by the Clerk of the States.

The day-to-day administration of the Island is carried out by standing committees of the States consisting of four or five Members. There are nine committees, such as Finance, Health and Welfare, Tourism, etc. Most of the 12 States Members serve on several committees, and they are assisted by the Clerk of the States who is the secretary of all the committees.

Each committee works under a specific mandate of the States and separate budgets are collated and submitted to the States by the Finance Committee.