

Additional issues

Introduction

7.1 This chapter briefly outlines additional issues relating to Norfolk Island, raised during the course of the Inquiry into the Territories Law Reform Bill 2010 (the Bill). The issues presented to the committee include:

- waste management practices
- measures and procedures used to eradicate Argentine ants
- water quality
- application of the Trade Practices Act
- absence of workers compensation protocols
- treatment of disability pensions issued by the Department of Veterans' Affairs as income, and
- extending Commonwealth legislation to Norfolk Island.

Waste management

7.2 The EcoNorfolk Foundation drew attention to the waste management issues currently facing Norfolk Island and stated there is presently limited on-island financial capacity to solve waste management issues. The EcoNorfolk Foundation stated:

We feel that there is not the capacity on-island to solve these issues. Financially, we do not have the revenue coming in to solve

the first issue, which is waste. It has been ongoing. We have had so many meetings I have lost count. We have stopped even meeting the waste management group because, when we got so far with the incinerator, it became apparent that we just could not do it, so that just went by the bye. Now we are just open-pit burning and burning at Headstone, and that will probably start again soon, going back to the centre of town. The health and wellness of the community has to be considered.¹

- 7.3 The EcoNorfolk Foundation was concerned that there are no performance indicators relating to waste management, nor public education about improving waste management practices. In addition, EcoNorfolk noted that raising awareness about waste management is difficult as there is no community consensus that waste management is of concern. The EcoNorfolk Foundation stated:

We do not see any performance indicators that have come forward from the administration and we have offered much assistance. We brought to the island a specialist in waste management education programs and we put together such a program for the island. We cannot even raise the funding to have that going, where a person would go into the community and assist the community in learning how to reduce their waste stream. Our words seem to fall on deaf ears. Maybe it is because we are so outspoken. Because of the way the government system is set up ... in a small community if one speaks out then one has to be punished – and, of course, if you are not working with the group. But it is sometimes very difficult to work with the group when you see what is going on, and the priorities are not waste or now the Argentine ant issue.²

- 7.4 Norfolk Island's dumping its waste into the sea presents issues in regards to Australia's international obligations under the *1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972*.³
- 7.5 The EcoNorfolk Foundation stated that the issue of waste dumping into the sea will have to cease by 2015.⁴

1 EcoNorfolk Foundation Inc., Ms Denise Quintal, *Transcript T1*, p. 46.

2 EcoNorfolk Foundation Inc., Ms Denise Quintal, *Transcript T1*, p. 46.

3 *Transcript T1*, p. 47.

4 EcoNorfolk Foundation Inc., Ms Denise Quintal, *Transcript T1*, p. 46.

Measures and procedures to eradicate Argentine ants

- 7.6 The EcoNorfolk Foundation raised the issue of the way eradication of Argentine Ants was undertaken on Norfolk Island and specifically the absence of a risk assessment undertaken for areas affected by chemical eradication.
- 7.7 In regard to Argentine Ant eradication on the Island, the EcoNorfolk Foundation stated that no risk assessment was undertaken prior to eradication of Argentine Ants in the area of the EcoNorfolk organic farm. The EcoNorfolk Foundation stated:

There were absolutely no risk assessments, which of course causes enormous issues. For instance, EcoNorfolk is located on a 28-acre parkland, and the infestation came across the land. We did ask for a risk assessment prior to it even coming onto the land. That did not eventuate. They came onto the land with a letter of authority. We were in our fifth year of organic certification through Biological Farmers of Australia, to be the first organic farm on the island to show the way that Australians would have lived here 220 years ago. We do not even know where that is at the moment – it is in no-man’s-land.⁵

Water quality

- 7.8 A recent report entitled *Assessment of ground and surface water contamination in the built-up areas of Norfolk Island and the Lower Catchment* (the water assessment report) found that Norfolk Island ‘has a heavy reliance on groundwater, so effective wastewater management practices are imperative for the future sustainability of the island.’⁶
- 7.9 The water assessment report found that across 24 sample sites located in the built-up areas and Lower Catchment of Norfolk Island that the water in these areas ‘indicated serious levels of faecal contamination.’⁷
- 7.10 The water assessment report could not identify the exact points at which contamination of the water supply was occurring and stated:

5 EcoNorfolk Foundation Inc., Ms Denise Quintal, *Transcript T1*, p. 46.

6 Wilson P, March 2010, *Assessment of ground and surface water contamination in the built-up areas of Norfolk Island and the Lower Catchment*, Executive Summary.

7 Wilson P, March 2010, *Assessment of ground and surface water contamination in the built-up areas of Norfolk Island and the Lower Catchment*, Executive Summary.

This analysis cannot fully explain the extent of contamination or the exact points in which the contamination is entering the receiving environment. It can however prove beyond reasonable doubt that the source of contamination is from raw human effluent.⁸

- 7.11 Importantly, the water assessment report found that the contamination from human effluent of the water was greater on the southern side of Norfolk Island and a threat to the ongoing health and safety of the residents and visitors to Norfolk Island. The water assessment report also found that the health of Norfolk Island's waterways is poor and recommended that the source of the contamination be found and rectified. The water assessment report stated:

The contamination on the southern side is much greater than the contamination on the northern side of the sample area. For this project, time does not permit sampling across a larger area and to incorporate all catchments. However, it is recommended that future work is carried out to determine the extent of the contamination. Comparisons made between the status of our natural waterways and the Queensland Water Recycling Guidelines (shown earlier), show that the health of Norfolk Island's natural waterways is poor. Given that water (for all uses included potable) is being extracted from numerous locations within the sample area, it is imperative that the source of contamination is found and rectified, as it represents a threat to the ongoing health and safety of the residents and visitors to Norfolk Island.⁹

- 7.12 The EcoNorfolk Foundation advocated taking action to address the poor water quality and the identified contamination issues, but indicated that the issue of limited funds was blocking progress in this area. The EcoNorfolk Foundation stated:

... we have been informed that the underground spring at the EcoNorfolk Foundation is not suitable for drinking. We have had reports of the issues of the piping where the effluent is being pumped at the moment being tremendously corroded and probably at a serious level and of a number of other areas on the island that are hot spots. We talked to the Environmental

8 Wilson P, March 2010, *Assessment of ground and surface water contamination in the built-up areas of Norfolk Island and the Lower Catchment*, Executive Summary.

9 Wilson P, March 2010, *Assessment of ground and surface water contamination in the built-up areas of Norfolk Island and the Lower Catchment*, p. 17.

Defender's Office in August 2008 and their chief scientist was so concerned that he wanted water tests on the island at that time. Unfortunately, we have not been able to raise the funding for that to occur to discover the total extent of the severity of the issues. We do not want to be in a fight with the government; we just want to accept that, if there is no money and these are serious issues for all people living here. ... we have to address them. How are we going to do that in a joint effort?¹⁰

7.13 On 16 April 2010, the Norfolk Island Minister for Community Services issued a media release in which he stated that 'there is no need to be overly alarmed in regards to the water situation on Norfolk Island at this time.'¹¹ The Norfolk Island Minister for Community Services indicated he was investigating the 'validity and extent of the issues raised within the [water assessment] report.'¹²

7.14 Water issues were raised in January 2010 through the tabling of the Norfolk Island Natural Resource Management Plan (NRMP). At the time of tabling of the NRMP, the relevant Norfolk Island Minister stated:

... there is evidence that the Island's water resources are polluted...the main sources of contaminants in the catchment are considered to be from livestock waste and sewage effluent which is making its way down to the groundwater and into the creeks. It should also be remembered that there are some water supplies on the Island that are not for potable use, those of you who regularly access water at Headstone or Watermill would be more than aware of this fact. The quality of the water at these points is such that there are public notices warning that the water is not safe for potable use.¹³

7.15 The Government of Norfolk Island has encouraged those residents concerned about the ground water quality to seek testing through the Norfolk Island Administration.¹⁴

10 EcoNorfolk Foundation Inc., Ms Denise Quintal, *Transcript T1*, p. 47.

11 T Sheridan (Minister for Community Services), *Water issues an issue for the whole community*, media release, Norfolk Island, Kingston, 16 April 2010p. 1.

12 T Sheridan (Minister for Community Services), *Water issues an issue for the whole community*, media release, Norfolk Island, Kingston, 16 April 2010p. 1.

13 T Sheridan (Minister for Community Services), *Water issues an issue for the whole community*, media release, Norfolk Island, Kingston, 16 April 2010p. 1.

14 T Sheridan (Minister for Community Services), *Water issues an issue for the whole community*, media release, Norfolk Island, Kingston, 16 April 2010p. 1.

Application of Trade Practices Act to Norfolk Island

7.16 Norfolk Island Data Services (NIDS) is a commercial internet services company operating on Norfolk Island.

7.17 After encountering a situation where line rental charges leased to NIDS were doubled without notice, NIDS sought to address the issue through the Norfolk Island Administration. A month later, following the increase in the price of line rentals, Norfolk Island Administration disallowed NIDS further Asymmetric Digital Subscriber Line (DSL)¹⁵ installs. This had the effect of increasing NID's operating costs and limiting its stream of future additional income. NIDS stated:

The issues primarily relate to regaining access to Norfolk Island's copper network infrastructure for the provision of internet services to our customers and the Norfolk Island community. In short, on the eve of us introducing our VDSL2/ADSL2+ services, Norfolk Telecom doubled our line rentals fees, followed a month later by an embargo from the Norfolk Island Administration prohibiting us from any further DSL installs. Despite numerous attempts from us, there has been little to no communication nor effort from the Norfolk Island Government to resolve this issue.¹⁶

7.18 NIDS approached the Norfolk Island Administration to seek resolution on the matter, but did not manage to do so. As a result NIDS advocated:

It is apparent to us that there is no remedy for this situation under current Norfolk Island legislation. Our advice to date indicates that we require sections of the *Trade Practices Act 1974 (Cth)* to extend to Norfolk Island in order to remedy this situation.¹⁷

Absence of workers compensation protocols

7.19 The Norfolk Island *Employment Act 1988* provides compensation for work related accidents.

15 An Asymmetric Digital Subscriber Line provides for a high speed internet service using existing copper telephone lines and greatly exceeds the speed and data provided by regular dial-up modems.

16 Norfolk Island Data Services, *Submission 15*, p. 1.

17 Norfolk Island Data Services, *Submission 15*, p. 1.

7.20 Ms Denise Quintal raised concerns about the absence of protocols which require a case worker to be assigned to an injured party who is eligible for workers compensation. This has led to a situation where a decision affecting the medical treatment options for an injured worker is likely made by a person with inappropriate qualifications. Ms Denise Quintal stated:

The most significant lack, within workers compensation services on this island, is that there is no provision for, what is the norm in all Australian States and Territories, of the appointment of a suitably qualified case manager. Currently the primary coordination of all workers compensation cases on the Island are managed by the Employment Liaison Officer, who is appointed to that role by the Administration of Norfolk Island. This has created a situation whereby a person without appropriate qualifications can, and does, make decisions which impact upon the medical services provided to an injured worker.¹⁸

7.21 Ms Denise Quintal highlighted that ‘a number of other people who have either had workers compensation denied or removed without notice ... simply do not have the capacity to deal with these issues and have been severely disadvantaged as a result.’¹⁹

7.22 In regard to rehabilitation, Ms Denise Quintal noted ‘There appears to be no formal process by which rehabilitation assessment and treatment can be provided.’²⁰

7.23 Ms Denise Quintal outlined her own experience in having to be assessed under the Norfolk Island Employment Act to access workers compensation and noted the differences in the workers compensation protocols operating on the mainland and Norfolk Island. This creates a situation of uncertainty for injured parties required to seek medical treatment on the mainland as to what types of medical treatment are covered by Norfolk Island workers compensation provisions. This would in some instances require personal expense for the injured party in accessing required medical treatment. Ms Denise Quintal stated:

If I was resident in mainland Australia at this time and as is the normal, a case manager would be appointed to me. I would automatically be provided with a full assessment early in the process and further assessment for rehabilitation for process

18 Ms Denise Quintal, *Submission 14*, p. 1.

19 Ms Denise Quintal, *Submission 14*, p. 1.

20 Ms Denise Quintal, *Submission 14*, p. 2.

provided and paid for. As you can imagine the lack of clarity regarding my future health and welfare is not assisting my recovery. I have found it extremely difficult to identify a formal mechanisms by which either I as a patient or my health practitioners, in the provision of treatment can identify the appropriate protocols under which my treatment should be managed.²¹

- 7.24 Ms Denise Quintal also stated that 'it is important that individuals on Norfolk Island have the same rights to seek access to services as other Australians. It is obvious that the health and wellness of our community is suffering because of the lack of accountability and oversights.'²²

Treatment of disability pensions issued by the Department of Veterans' Affairs as income

- 7.25 The Norfolk Island sub branch of the Returned and Services League of Australia (NIRSL) was concerned about a number of families and residents of Norfolk Island who depend on disability pensions paid by the Department of Veterans' Affairs (DVA) and are disadvantaged under the Norfolk Island *Social Services Act 1980*. NIRSL outlined its concern and stated:

A small number of Norfolk Island residents and their families currently depend on disability pensions paid by the Australian Department of Veterans' Affairs. These pensions are paid as compensation for the effects of war or defence caused injury or disease and only after the resident concerned has been assessed as being incapacitated and unable to work because of that injury or disease. The Norfolk Island Government treats these as "income" under Norfolk Island's social services act 1980. This means that these pensioners are either: (i) barred from assistance or benefits under the act 1980; or (ii) only receive a reduced benefit.²³

- 7.26 While income received under DVA disability pensions on the mainland and in other countries is exempt from treatment as income, the Government of Norfolk Island has not fully adopted an exemption policy in relation to these services. 'Late last year [2009], the Norfolk Island

21 Ms Denise Quintal, *Submission 14*, p. 2.

22 Ms Denise Quintal, *Submission 14*, p. 2.

23 Norfolk Island sub branch of the Returned and Services League of Australia, *Submission 9*, p. 1.

- Government [gave] those eligible a small reduction in utilities, vehicle [registration], electricity, etc.' NIRSL stated 'we are now approaching 9[years] and four ministers later of lobbying for DVA pensions 'not' to be deemed as income.'²⁴
- 7.27 NIRSL stated that there would be no cost incurred by the Government of Norfolk Island in adopting an income exemption policy for DVA disability pensions, and as a small number of people are currently receiving the pension, this will reduce over time. Further, NIRSL stated that 'Norfolk Island Ministers have refused to take action on this issue.'²⁵
- 7.28 In December 2009, NIRSL approached the Commonwealth Minister for Home Affairs 'about the disadvantages experienced by veterans living on Norfolk Island as a result of the DVA pension issue.'²⁶
- 7.29 In his response to NIRSL in March 2010, the Minister for Home Affairs advised that the Minister for Veterans' Affairs had written to the Government of Norfolk Island in February 2009. The Minister for Veterans' Affairs, the Hon Alan Griffin MP, wrote to the Government of Norfolk Island to advise 'that the Australian Government supports amendment to the *Social Services Act 1980* (NI) to exempt veterans' disability pensions from that Act's income test.' The Minister for Veterans' Affairs 'asked the Norfolk Island Government to consider that proposal, but to date has not received a response.'²⁷
- 7.30 The Minister for Home Affairs advised that NIRSL should approach the incoming Ministers of the 13th Legislative Assembly to address the issue raised. Further the Minister for Home Affairs highlighted the 'need for reform and improvement in the Territory's governance and services.'²⁸
- 7.31 In February 2010, the Minister for Home Affairs 'asked the Administrator to remind the Norfolk Island Government of the earlier approach from Minister Griffin and to encourage it to act on his recommendation.'²⁹
- 7.32 The Attorney-General's Department noted that redress of the issues raised by NIRSL could be resolved by the proposed amendments which have

24 Norfolk Island sub branch of the Returned and Services League of Australia, *Submission 9*, p. 2.

25 Norfolk Island sub branch of the Returned and Services League of Australia, *Submission 9*, p. 2.

26 Letter to Mr Warren Finch, President, Norfolk Island sub branch of the RSL Memorial Club, 19 March 2009 regarding DVA pension recipients living on Norfolk Island.

27 Letter to Mr Warren Finch, President, Norfolk Island sub branch of the RSL Memorial Club, 19 March 2009 regarding DVA pension recipients living on Norfolk Island.

28 Letter to Mr Warren Finch, President, Norfolk Island sub branch of the RSL Memorial Club, 19 March 2009 regarding DVA pension recipients living on Norfolk Island.

29 Attorney-General's Department, *Submission 7.1*, Question No. E, p. 12.

been included in the Bill if enacted. In addition, the use of the relevant proposed provisions in the Bill would be at the discretion of the Minister. The Attorney-General's Department stated:

In applying these amendments to the issues raised in the submission from the Norfolk Island Sub Branch of the RSL, this would enable the Commonwealth to intervene at two levels. Firstly, the responsible Commonwealth Minister may provide advice to the Administrator on the assent to Norfolk Island Bills, even where the matter is within Schedule 2. Secondly, in the event that the issue relates to existing legislation, then the responsible Commonwealth Minister, or the Governor-General, would have the authority to introduce a proposed law or amending Bill into the Norfolk Island Legislative Assembly for consideration. The legislative powers are intended to be used as a last resort if the Norfolk Island Government does not undertake action to ensure its legislation is consistent with the national interest and Australia's international obligations. The use of this power is a decision that would be made at Ministerial level, therefore the Department is unable to comment on the likelihood of Commonwealth intervention on the particular issues raised in the specified submission.³⁰

Extending Commonwealth legislation to Norfolk Island

7.33 The EcoNorfolk Foundation commented that all Commonwealth legislation should be extended to Norfolk Island to enable Norfolk Islanders to have the same rights as other Australians. In particular, the EcoNorfolk Foundation advocated legislation was required for 'mental health, gender equity, child protection and racial discrimination'³¹ and environmental concerns such as pollution from improper waste management practices.³²

7.34 In addition, EcoNorfolk advocated that Corporations Law and the Companies Act should be applied to Norfolk Island.³³

30 Attorney-General's Department, *Submission 7.1*, Question No. E, p. 12.

31 EcoNorfolk Foundation Inc., *Submission 12*, p. 2.

32 EcoNorfolk Foundation Inc., Ms Denise Quintal, *Transcript T1*, p. 43.

33 Ms Denise Quintal, *Transcript T1*, p. 44.

Conclusions

- 7.35 Norfolk Island residents and business have highlighted a number of important issues facing Norfolk Island including waste management, methods and procedures for eradicating Argentine ants, water quality findings, the absence of workers compensation protocols and application of the Trade Practices Act and other Commonwealth legislation.
- 7.36 The committee is deeply concerned by the findings of the water assessment report on Norfolk Island that the health of Norfolk Island's natural waterways is poor and in places contaminated. In regard to the remaining environmental issues raised, the committee believes these issues are serious and warrant further investigation with a view to their resolution. The committee urges the Government of Norfolk Island and the Commonwealth Government to take immediate action to resolve these environmental issues as they may pose a serious threat to the health and safety of the Norfolk Island community.
- 7.37 The committee received evidence that there is an apparent absence of workers compensation protocols in place for Norfolk Island. The committee believes this issue is important and suggests that the Commonwealth Government investigate the issue further.
- 7.38 The committee urges the Government of Norfolk Island to consider adopting an exemption policy in regard to the treatment as income of Department of Veterans' Affairs disability pensions, in line with the policy currently operating on the mainland.
- 7.39 Based on the information provided by Norfolk Island Data Services, the committee agrees with the principle of applying the Commonwealth Trade Practices Act to Norfolk Island, but believes the application of this Act to Norfolk Island needs further investigation.
- 7.40 Further, the application of relevant Commonwealth legislation should be examined with a view to extending legislation to Norfolk Island such as Corporations Law.

Senator Kate Lundy
Chair

3 May 2010