

**Human Rights and
Equal Opportunity Commission**

Human Rights Commissioner

Our Ref: 2001/172

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

Dear Senator Lightfoot

Inquiry into Norfolk Island Electoral Matters.

Thank you for your letter of 20 August 2001.

Your suggestion that the Commission's original submission of March 2001 to the Joint Standing Committee on the National Capital and External Territories' Inquiry into Norfolk Island Electoral Matters (the "original submission") was prepared without knowledge of the content of the *Norfolk Island Amendment Bill* 1999 (the "Bill") is incorrect.

As you note, that Bill does not prevent existing enrollees (who remain on the roll) from continuing to exercise their right to vote. However, the terms of reference for this inquiry were not so limited. They required consideration of:

whether Australian citizenship should be a requirement for **eligibility** to vote for, or be elected to, the Legislative Assembly (emphasis added).

The Commission sought to address those terms of reference (which appeared to envisage the possibility of legislation being drafted so as to extend the citizenship requirement beyond future enrolment). I regret if that approach has created confusion. I have attached, on behalf of the Commission, supplementary submissions.

Naturally, please feel free to contact the Commission if you require any further information or clarification.

Yours sincerely

Dr Sev Ozdowski OAM
Human Rights Commissioner

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Human Rights and Equal Opportunity Commission

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Supplementary submissions on citizenship requirements under the *Norfolk Island Amendment Bill 1999*

Human Rights and Equal Opportunity Commission

The *Norfolk Island Act 1979* (Cth) originally imposed no requirement for citizenship upon electors.¹

Members of the Assembly were originally required, under section 38(a) of the *Norfolk Island Act 1979* (Cth), to be Australian citizens or to otherwise have the status of British subjects. However, that requirement was abolished by the Commonwealth Parliament in 1985.²

As was noted in the original submission, the removal of the citizenship requirement, in respect of enrolment and candidature, may be seen as reflecting a perceived need to grant rights of self-government to a population that includes persons with a ‘special relationship’ to Norfolk Island (being the descendants of the settlers from Pitcairn Island).³ Removing the citizenship requirement allowed all such persons to fully participate in decisions that fundamentally affected their day-to-day lives.

The *Norfolk Island Amendment Bill 1999* (the “Bill”) would re-establish a citizenship requirement for entitlement to enrolment on the electoral roll. The Commission is concerned with the following aspects of the Bill:

1. The Bill makes more fragile the voting rights of non-Australian citizens currently on the Norfolk Island electoral roll.
2. The Bill infringes on the contingent voting rights of non-Australian citizens who are not on the roll, but who otherwise meet the elector requirements.
3. The Bill derogates from the rights of certain Norfolk Islanders to stand as candidates for the Legislative Assembly.

The Commission is concerned that in each of these areas there is derogation from or infringement upon existing or contingent rights and that this has implications for Australia’s obligations under the *International Covenant on Civil and Political Rights* (“ICCPR”). I will deal with each aspect in turn.

1. The voting rights of non-Australian citizens currently on the Norfolk Island electoral roll.

Under the *Legislative Assembly Amendment Act 1991* (NI), it is relatively easy to be removed from the electoral roll. One must merely have been:

¹ Such a requirement was contained in s6(1)(a) of the *Legislative Assembly Ordinance 1979* (NI). However, that requirement was removed by the *Statute Law Revision Status (No 3) Act 1986* (NI).

² See *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*.

³ Such an approach would be consistent with the preamble to the *Norfolk Island Act 1979* (Cwth)

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 8.⁴

This would potentially result in the removal from the roll of:

- people studying elsewhere in Australia or overseas;
- people holidaying elsewhere in Australia or overseas; and
- people forced to relocate for a temporary period for work.

At present, the voting rights of the persons in the examples outlined could be reinstated immediately if, upon their return, they satisfied the requirements of section 6(1) of the *Legislative Assembly Amendment Act 1991* (NI) (which includes a requirement that the person has been present in Norfolk Island for a total of 900 days during the period of 4 years immediately preceding the application for enrolment). Such persons could either re-enrol and continue voting immediately or, having first satisfied those requirements, re-enrol and continue voting at a later date.

The effect of proposed section 39A(1)(b) of the *Norfolk Island Act* would be to impose a further obstacle on non-citizens resuming their voting rights after a temporary absence by requiring that citizenship be attained before enrolment is permitted.

Article 26 of the ICCPR states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

As discussed in the original submission, a breach of article 26 of the ICCPR may arise in circumstances where rights were previously conferred on individuals for reasons totally unrelated to nationality or citizenship and those rights are subsequently sought to be revoked or derogated from, solely on the basis that those individuals are not Australian citizens.

As noted above, voting rights for the Norfolk Island Legislative Assembly were created without reference to nationality in apparent recognition of the special circumstances of the residents of Norfolk Island.

The effect of the Bill is to impose a qualification making the voting rights of certain enrolled Norfolk Islander voters (ie those who do not meet the citizenship requirement) far more precarious. As was the case in *Gueye* (discussed in the original submission), there is no nexus between the origin of the rights in question and the additional citizenship qualifications derogating from them.

⁴ See Section 7(1)(b)

2. The voting rights of non-Australian citizens who are not on the roll, but who otherwise meet the elector requirements.

One should also consider the rights of those not on the roll, but who currently otherwise meet the elector requirements (or, the case of persons who have not yet reached the age of 18, who will do so). The Commission considers that those persons have a “contingent” right to be part of the political process. Those rights are contingent in the sense that they may only be exercised after meeting a certain requirement or requirements. Contingent rights are plainly within the purview of article 26 of the ICCPR. Indeed, the rights considered in the *Gueye* case were rights to future monies (with an obvious contingency, being the continued survivorship of the veterans).

Again, the effect of proposed section 39A(1)(b) of the *Norfolk Island Act* is to put in place a further obstacle to the exercise of such rights.

3. The rights of certain Norfolk Islanders to stand as candidates for the Legislative Assembly.

Finally, proposed subsection 38(b) of the *Norfolk Island Act* derogates from the existing rights of certain Norfolk Islanders to stand as candidates for the Legislative Assembly. The derogation from that contingent right wrought by the Bill potentially breaches article 26 of the ICCPR.