



Part 1 – General amendments

Background

- 2.1 Schedule 1, Part 1 of the Bill amends the *Norfolk Island Act 1979* (Cwlth) and makes consequential amendments to a range of Commonwealth legislation.
- 2.2 In particular, Part 1 will ‘strengthen governance arrangements and ... enshrine the existing practices and procedures that ensure responsibility and accountability in the Norfolk Island parliamentary process.’¹

Summary of key sections

- 2.3 A summary of the key sections contained in Schedule 1, Part 1 follows.
- 2.4 **Proposed subsection 7(2)** broadens the Administrator’s authority to seek advice on legislative matters from the relevant Commonwealth Minister.
- 2.5 **Proposed subsection 7(3)** will allow the Commonwealth Minister to give instructions in respect of advice tendered to the Administrator by the Executive Council for the purposes of subparagraph 7(1)(a), which is matters specified in Schedule 2.
- 2.6 **Proposed section 9** provides for the Commonwealth Minister to appoint a deputy or deputies of the Administrator in the event the Administrator is unable to perform his or her duties.

¹ Attorney-General’s Department, *Submission 7*, p. 7.

- 2.7 **Proposed new subsection 11(2)** defines the Executive Council as consisting of the Chief Minister and such other Ministers as are appointed by the Administrator under section 13.
- 2.8 **Proposed repeal of subsection 11(8)**. Subsection 11(8) allows Members of the Legislative Assembly (MLAs) who do not hold executive office to attend all Executive Council meetings. Repeal of this section will restrict non executive MLAs from attending Executive Council meetings.
- 2.9 **Proposed new section 12** provides for a Chief Minister and at least one, but not more than three, Ministers and that the Ministers have executive authority for the matters specified in Schedules 2 and 3 of the Norfolk Island Act. This section also replaces the old sections 12 and 13 and retains the restriction that people employed in the public service of the Territory or of the Commonwealth are not eligible to be Ministers. Likewise, Ministers who become employees of the public service of Norfolk Island or the Commonwealth must vacate their ministerial office.
- 2.10 **Proposed new section 12A** provides the process for nomination and appointment of the Chief Minister by the Norfolk Island Legislative Assembly after a general election or if a vacancy exists in the office. Nomination of Chief Minister must occur after election of the Speaker and Deputy Speaker and before any other business. The Chief Minister is nominated by the Legislative Assembly and appointed by the Administrator. The Legislative Assembly is deemed to have advised the Administrator to appoint a MLA as Chief Minister once the nomination has occurred.
- 2.11 **Proposed new section 13** provides for the appointment of Ministers. The Administrator may appoint one or more MLAs as a Minister on the advice of the Chief Minister. This process differs from the previous process where the Administrator appointed all Executive Members on the advice of the Legislative Assembly.
- 2.12 **Proposed new section 14** provides for the termination of the position of Chief Minister and other Ministers when:
- A MLA ceases to be a MLA by resignation or disqualification for reasons specified under section 39 or dismissal under proposed new section 39AA.
 - They are dismissed from office by the Administrator under new section 14A.
 - They resign from office in writing to the Administrator.

- The Legislative Assembly passes a resolution of no confidence in the Chief Minister or Minister (as applicable).
- Notice about a general election is published under new subsection 39AB(1).
- The Legislative Assembly is dissolved pursuant to new section 39AC (dissolution of the Legislative Assembly by the Governor-General).
- The Legislative Assembly first meets after a general election of the Legislative Assembly that occurred after their most recent appointment to the office of Chief Minister.

or whichever happens first.

- 2.13 **Proposed new section 14A** provides that the Administrator may dismiss the Chief Minister from office if in the Administrator's opinion there are exceptional circumstances for doing so. This section supplements the authority of the Legislative Assembly to pass a motion of no confidence in the Chief Minister. This section also provides that the Administrator may dismiss a Minister from office on advice from the Chief Minister.
- 2.14 **Proposed new section 15A** provides that the Chief Minister allocate ministerial responsibilities and must publish details of ministerial arrangements in the Norfolk Island Government gazette. Section 15A also provides that the Chief Minister may authorise a Minister or Ministers to act on the Chief Minister's or another Ministers' behalf.
- 2.15 **Proposed subsection 21(1A)** allows for the reservation of a proposed law introduced by the Governor-General under section 26, to provide for the consideration of any amendments made by the Legislative Assembly during passage.
- 2.16 **Proposed new subparagraph 21(2)(a)(iii)** will allow the Administrator to refer laws where their assent, or withholding of assent, could be seen as a conflict of interest or otherwise controversial.
- 2.17 **Proposed subsection 21(5)** provides the Administrator shall not assent, withhold assent, or return to the Legislative Assembly with amendments, a proposed law dealing with matters specified in Schedule 2 except in accordance with the advice of the Executive Council and any instructions from the responsible Commonwealth Minister. If there is an inconsistency between the advice of the Executive Council and any instructions from the responsible Commonwealth Minister, the Commonwealth Minister's instructions are to prevail to the extent of the inconsistency.

- 2.18 **Proposed new section 26A** provides that the responsible Commonwealth Minister may introduce a proposed law for the peace, order and good government of the Territory into the Legislative Assembly. This power may be used to implement national policy objectives and to ensure that Norfolk Island legislation is consistent with Australia's international obligations.
- 2.19 **Proposed repeal of paragraph 27(1)(c)**. Repeal of this paragraph will allow the Governor-General to make an Ordinance, in the same terms as a proposed law introduced under section 26 that makes provision for matters specified in Schedules 2 and 3.
- 2.20 **Proposed new section 39AA** provides that the Administrator may dismiss an MLA from office if they have engaged in, or are engaging in, seriously unlawful conduct or grossly improper conduct. The amendment will capture behaviour that is not covered by section 39, but is serious enough to require being dismissed from the Legislative Assembly. The section requires the Administrator to evaluate the seriousness of the conduct in question in acting under this section.
- 2.21 **Proposed new section 39AB** provides the process for holding a general election if there is a successful no confidence motion in the Chief Minister, the Legislative Assembly does not appoint a new Chief Minister within 10 days and the Governor-General does not dissolve the Legislative Assembly within that period of 10 days. This section also provides for the Administrator to exercise all powers of the Administration, the Executive Council and Ministers in accordance with any directions from the Governor-General during the period between dissolution of the Legislative Assembly and the first meeting of the Legislative Assembly after election.
- 2.22 **Proposed new section 39AC** provides that the Governor-General can dissolve the Legislative Assembly if it is incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner.
- 2.23 **Proposed new subsection 42(7)** provides for the process to be followed in the case of a no confidence motion in the Chief Minister.
- 2.24 **Proposed new section 61A** will allow the Commonwealth to prescribe values for the Norfolk Island Public Service through regulations.
- 2.25 **Proposed subsection 67(2)** will provide that regulations repealing or altering an item in Schedule 2 or 3 must not be made unless a copy of the proposed regulation has been tabled in the Legislative Assembly on a sitting day and at least one sitting day has passed since the sitting day on

which the proposed regulations were tabled. This will ensure that the Legislative Assembly and the Norfolk Island community are aware of proposed regulations that repeal or alter an item or items in Schedule 2 or 3. The removal of the requirement for the Legislative Assembly to pass a resolution approving proposed regulations which repeal or alter an item in Schedule 2 will provide the Commonwealth with control over the items listed in Schedule 2.

Proposed subsections 7(2) and 7(3) – Broadening the Administrator’s authority to seek Commonwealth advice on Schedule 2 and Schedule 3 matters

Background

2.26 Subparagraphs 7(1)(a) and 7(1)(b) of the *Norfolk Island Act 1979* (Cwlth) provide that the Administrator must follow advice received from the Executive Council in relation to Schedule 2 and Schedule 3 matters respectively.² Section 7 of the *Norfolk Island Act* appears below.

7 Exercise of Administrator’s powers etc.

- (1) *The Administrator shall exercise all powers and perform all functions that belong to his or her office, or that are conferred on him or her by or under law in force in the Territory, in accordance with the tenor of his or her Commission and:*
 - (a) *in relation to a matter that, in his or her opinion, is a matter specified in Schedule 2—in accordance with such advice, if any, as is given to him or her by the Executive Council;*
 - (b) *in relation to a matter that, in his or her opinion, is a matter specified in Schedule 3—in accordance with the advice of the Executive Council;*
 - (c) *where it is provided by this Act that he or she is to act on the advice of the Executive Council or the Legislative Assembly—in accordance with that advice;*
 - (d) *in forming an opinion as provided by this Act—at his or her own discretion; and*
 - (e) *in all other cases—in accordance with such instructions, if any, as are given to him or her by the Minister.*
- (2) *Notwithstanding paragraph (1)(b), where the Executive Council advises the Administrator to take, or to refrain from taking, any specified action in relation to*

2 Explanatory Memorandum, p. 7.

a matter to which that paragraph applies and that advice is inconsistent with instructions given to the Administrator by the Minister in accordance with subsection (3), the Administrator shall not take that action, or shall not refrain from taking that action, as the case may be.

- (3) *For the purposes of subsection (2), the Minister may give the Administrator instructions in respect of advice tendered to the Administrator for the purposes of paragraph (1)(b), and may give the Administrator instructions in respect of the referral to the Minister of any such advice.*
- 2.27 Proposed subsection 7(2) provides ‘that the Administrator, notwithstanding subparagraphs 7(1)(a) and (b), shall not act in accordance with the Executive Council’s advice in relation to matters specified in either Schedule 2 or 3, if that advice is inconsistent with instructions given by the responsible Commonwealth Minister.’³
- 2.28 Under the proposed changes, ‘the Administrator **must** seek advice from the Commonwealth on Schedule 3 matters, and **may** also seek ... advice on Schedule 2 matters.’⁴
- 2.29 Proposed subsection 7(3) authorises ‘the responsible Commonwealth Minister to provide such advice.’⁵
- 2.30 The Explanatory Memorandum provides that broadening the Administrator’s authority to seek Commonwealth advice on legislative matters may be applied to ‘situations where it is necessary for Norfolk Island legislation to be consistent with the national interest or comply with Australia’s international obligations.’⁶
- 2.31 In addition, ‘to ensure that these instructions are effective the Act provides that Commonwealth advice must be taken over inconsistent advice from the Norfolk Island Executive Council.’⁷

Analysis

- 2.32 Schedules 2 and 3 of the Norfolk Island Act list those items for which the Norfolk Island Legislative Assembly may legislate.
- 2.33 Section 21 of the Norfolk Island Act requires the Administrator of Norfolk Island to give assent to Schedule 2 and 3 items following two processes,

3 *Explanatory Memorandum*, p. 7.

4 *Explanatory Memorandum*, p. 7.

5 *Explanatory Memorandum*, p. 7.

6 *Explanatory Memorandum*, p. 7.

7 *Explanatory Memorandum*, p. 7.

either on the advice of the Executive Council of Norfolk Island⁸ (for Schedule 2 matters) or on the advice of the Commonwealth Minister (for Schedule 3 matters). Essentially, executive authority for Schedule 2 rests with the Government of Norfolk Island and executive authority for Schedule 3 rests with the Commonwealth Government.

2.34 Section 21 appears in full below.

21 Presentation of proposed laws

- (1) *Every proposed law passed by the Legislative Assembly shall be Presented to the Administrator for assent.*
- (2) *Upon the presentation of a proposed law to the Administrator for assent, the Administrator shall, subject to this section, declare:*
 - (a) *in the case of a proposed law which, in the opinion of the Administrator, makes provision only for or in relation to matters specified in Schedule 2 or 3 or both:*
 - (i) *that he or she assents to the proposed law; or*
 - (ii) *that he or she withholds assent to the proposed law; or*
 - (b) *in any other case, that he or she reserves the proposed law for the Governor-General's pleasure.*
- (3) *The Administrator may return the proposed law to the Legislative Assembly with amendments that he or she recommends.*
- (4) *The Legislative Assembly shall consider the amendments recommended by the Administrator and the proposed law, with or without amendments, may be again presented to the Administrator for assent, and subsection (2) applies accordingly.*
- (5) *In the case of a proposed law which, in the opinion of the Administrator, makes provision only for or in relation to matters specified in Schedule 2, the Administrator shall not act under paragraph (2)(a) or subsection (3) except in accordance with the advice of the Executive Council.*
- (6) *In the case of a proposed law which, in the opinion of the Administrator, makes provision only for or in relation to matters specified in Schedule 3 or matters specified in Schedules 2 and 3, the Administrator shall not act under paragraph (2)(a) or subsection (3) except in accordance with the instructions of the Minister.*

2.35 The Attorney-General's Department outlined the process for seeking Commonwealth advice on Schedule 3 matters and stated:

The practice is that, once a bill is referred for Commonwealth action, the department seeks expert advice from any Australian government agency with responsibility for the subject matter

8 Under sections 11, 12 and 13 of the Norfolk Island Act, the Executive Council consists of Members of the Legislative Assembly which hold Executive Office and which have executive authority over items specified in Schedules 2 and 3 of the Act.

under consideration. For those bills dealing with potentially contentious or sensitive issues, the Minister for Home Affairs seeks advice from his ministerial colleagues.⁹

- 2.36 The Government of Norfolk Island raised concern about the inclusion of an assent authority under the Norfolk Island Act, noting it is not a feature of other legislatures such as the Legislative Assembly for the Australian Capital Territory. The Government of Norfolk Island stated:

The assertion that these proposed amendments are directed to facilitate the advice available to the Administrator is obviously disingenuous. Section 7 of the Norfolk Island Act 1979 is not limited to assent to proposed laws. In any event an assent authority is obviously not an essential feature of appropriate parliamentary procedure. A notable feature of the Australian Capital Territory (Self-Government) Act 1988 is the absence of an Administrator as an assent authority for the ACT Legislative Assembly.¹⁰

- 2.37 In its submission to the draft exposure Bill, the Government of Norfolk Island was also concerned that the proposed changes would allow ‘an activist Commonwealth Minister to intervene on all legislation passed by the Legislative Assembly.’¹¹

- 2.38 Further, the Government of Norfolk Island noted the extensive time taken, usually six months or more, for assent on Schedule 3 matters and was ‘of the view that, even in circumstances where there is no conflict of views between the Assembly and the Commonwealth Minister, these new procedures could make government nearly unworkable in Norfolk Island.’¹²

- 2.39 The Attorney-General’s Department responded to the Government of Norfolk Island concerns by stating the necessity of Commonwealth scrutiny of Norfolk Island legislation. The Attorney-General’s Department stated:

[The] consultation process is crucial to proper Commonwealth scrutiny of bills. The minister has an obligation to ensure that legislative proposals comply with the Australian government’s policy objectives and Australia’s international obligations.¹³

9 Attorney-General’s Department, Mr Julian Yates, *Transcript T2*, p. 3.

10 Government of Norfolk Island, *Submission 6*, p. 20.

11 Government of Norfolk Island, *Submission 6*, p. 20.

12 Government of Norfolk Island, *Submission 6*, p. 20.

13 Attorney-General’s Department, Mr Julian Yates, *Transcript T2*, p. 3.

2.40 In regard to the extensive time taken for assent on Schedule 3 matters, the Attorney-General's Department stated:

The Australian government has often encouraged the Norfolk Island government to consult early in the drafting process to minimise delays and to ensure that any concerns are addressed before final assembly consideration. However, in some cases over the past year bills dealing with schedule 3 or non-schedule issues have been passed by the assembly without any consultation from the Australian government.¹⁴

2.41 In response to the Attorney-General's comments, the Government of Norfolk Island noted Commonwealth concerns about the need for consistency of Norfolk Island legislation in areas affecting the national interest, but reiterated its concerns about delays to the legislative process on Schedule 2 and 3 matters.¹⁵

2.42 The Attorney-General's Department further commented that the Commonwealth's preferred approach is early consultation on Schedule 3 matters to ensure minimal delay to assent of Norfolk Island legislation and stated:

Early consultation during the drafting stage of the Bill enables the Commonwealth to contact and seek advice from subject matter experts in the relevant Australian Government agencies. This advice is then provided to the Norfolk Island Government to enable issues of concern to the Commonwealth to be dealt with in drafting of the Bill and prior to the Bill being introduced and passed by the Norfolk Island Legislative Assembly. Where this occurs, the referral process for the Bill can be shorter and more efficiently managed to minimise delays in assent to the Bill. In some cases over the past year, Bills dealing with Schedule 3 or non-schedule issues have been passed by the Norfolk Island Legislative Assembly without any prior consultation with the Australian Government. In other cases, even though there was extensive consultation during the drafting stage of the Bill, the Bill which was introduced into the Legislative Assembly included additional provisions, or alternatively, changes were made during the Assembly's consideration of the Bill. In such cases the additional or amended provisions may require further

14 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 3.

15 Government of Norfolk Island, *Submission 6.1*, p. 5.

consultation during the referral stage to ensure compliance with national obligations.¹⁶

- 2.43 The Government of Norfolk Island advocated that its 2006 ten-point plan could streamline existing legislative and assent processes and would allow for greater efficiency in assent procedures. The Government of Norfolk Island stated:

In 2006, the Norfolk Island Government proposed a detailed 10-point plan to streamline legislative and assent processes, based in part on procedures in place in the Australian Capital Territory. Among other advantages, the proposal had the benefits of reducing red tape and bureaucratic processes in assent procedures and significantly reducing Commonwealth costs. ... We are still of the view that the 10 point plan previously proposed is more cost effective and democratic than the complex and undemocratic proposals concerning legislative powers embodied in the exposure draft bill. Nothing in that model would remove the existing ability of the Commonwealth Parliament to disallow Norfolk Island legislation, regulations or subordinate legislation.¹⁷

- 2.44 The Attorney-General's Department highlighted the Commonwealth Grants Commission comment that assent procedures for Norfolk Island legislation are reasonably well tailored. The Attorney-General's Department stated:

In relation to the existing process for the Commonwealth scrutiny of schedule 3 and non-schedule bills, the August 1997 report of the Commonwealth Grants Commission noted that: ... the legislative assent arrangements, while not perfect, seem reasonably well tailored to the circumstances of the Norfolk Island community.¹⁸

- 2.45 The Attorney-General's Department advised that the proposed amendment respects Norfolk Island self government and that the authority of the Commonwealth to provide advice on Schedule 2 matters under the Bill is a permissive not a mandatory provision. The Attorney-General's Department stated:

Alternative options to the approach taken in the Bill could include reducing the number of matters in Schedule 2, or removing the distinction between Schedule 2 and 3 altogether. The Bill does neither of these things. The approach taken in the Bill respects the

16 Attorney-General's Department, *Submission 7.1*, p. 20.

17 Government of Norfolk Island, *Submission 6*, p. 20.

18 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 3.

Norfolk Island Government's role as a self governing territory as articulated in the Norfolk Island Act. The authority of the Commonwealth to provide advice on Schedule 2 matters under the Bill is a permissive and not a mandatory provision. The approach recognises the difficulty of making an absolute determination of which particular Schedule 2 matters may affect the national interest or attempting to foresee what issues *will be* of interest to the Commonwealth in the future.¹⁹

2.46 In regard to the powers of the Norfolk Island Legislative Assembly, the Attorney-General's Department advised that the amendments to the assent process would not restrict the power of the Legislative Assembly to pass proposed laws. The Attorney-General's Department stated:

Importantly, Schedules 2 and 3 of the Norfolk Island Act, and the amendments to the assent process for Schedule 2 under the Bill, do not restrict the powers of the Norfolk Island Legislative Assembly to pass proposed laws. The Schedules simply indicate how the assent process provided for by section 21 of the Act is to operate. The Legislative Assembly has power to 'make laws for the peace, order and good government of the Territory'. That power includes and extends beyond the matters listed in Schedules 2 or 3, with the only exceptions being those four matters listed at section 19 of the Act - acquisition of property otherwise than on just terms, the raising of defence forces, the coining of money and euthanasia.²⁰

2.47 Further, the Attorney-General's Department commented that extending the existing assent processes in relation to Schedule 2 and 3 matters is particularly important to protect the national interest given the Commonwealth type powers of the Government of Norfolk Island. The Attorney-General's Department stated:

The extension of the existing assent processes for schedule 3 matters to schedule 2 matters are designed to protect the Australian government's national interest in Norfolk Island. This is particularly important given the Norfolk Island government's executive responsibility for a range of Commonwealth type powers such as immigration, customs, quarantine, social security, industrial relations and so on.²¹

19 Attorney-General's Department, *Submission 7.1*, p. 19.

20 Attorney-General's Department, *Submission 7.1*, p. 19.

21 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 3.

2.48 In regard to the content of Schedules 2 and 3, the Attorney-General's Department stated that under section 67 of the Norfolk Island Act, items listed under Schedules 2 and 3 may be amended or added. Further, since 1979, 61 matters have been transferred and existing powers varied in regard to the schedules. The Attorney-General's Department stated:

Section 67 of the Act provides for the making of Regulations. These Regulations "may repeal or alter any item in, or add any new item to, Schedule 2 or 3". At commencement of the Norfolk Island Act there were 42 matters listed in Schedule 2 and four listed in Schedule 3 (fishing, customs (other than the imposition of duties), immigration and education). Since 1979 a total of 61 additional matters have been transferred and existing powers have also been varied as part of the transfer process. Each extension or variation of power was the result of consultation and consideration at Ministerial and Departmental level.²²

2.49 Subsection 67(2) of the Norfolk Island Act provides that any proposed changes to Schedule 2 must be tabled in and passed by the Norfolk Island Legislative Assembly. Section 67 appears below.

67 Regulations

- (1) *The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular:*
 - (a) *making provision for and in relation to sittings of the Supreme Court in a State or in a Territory other than Norfolk Island for the purpose of hearing and determining a matter, otherwise than in the exercise of its criminal jurisdiction, if a Judge is satisfied that the hearing of the matter outside the Territory is not contrary to the interests of justice; and*
 - (b) *prescribing penalties, not exceeding a fine of \$500 or imprisonment for 3 months, for offences against the regulations.*
- (2) *The regulations may repeal or alter any item in, or add any new item to, Schedule 2 or 3, but:*
 - (a) *regulations repealing or altering an item in Schedule 2 shall not be made except after:*
 - (i) *a copy of the proposed regulations has been laid before the Legislative Assembly; and*

22 Attorney-General's Department, *Submission 7.1*, Question No. F, p. 14.

- (ii) the Legislative Assembly has passed a resolution approving the proposed regulations; and*
 - (b) regulations made by virtue of this subsection reducing the scope of the matters specified in Schedule 3 do not have the effect of reducing the scope of the matters specified in Schedules 2 and 3.*
 - (3) A reference in subsection (2) to a Schedule shall be read as including a reference to that Schedule as varied from time to time by regulations made by virtue of that subsection.*
- 2.50 Additional amendments included in the proposed Bill will change subsection 67(2) to allow for notification of any proposed changes to Schedule 2 without the Norfolk Island legislative Assembly having to pass a motion. Discussion about the proposed subsection 67(2) is included later in this chapter.

Conclusions

- 2.51 The committee is concerned about evidence received where over the past year there have been cases of bills dealing with schedule 3 and non schedule issues having been passed by the Legislative Assembly without consultation with the Commonwealth Government. In addition, there have been other cases where Commonwealth advice may have been received on proposed legislation, but not on future proposed amendments to legislation.
- 2.52 The Government of Norfolk Island noted that there is usually a period of six months or more for assent on Schedule 3 matters and was concerned that ‘even in circumstances where there is no conflict of views between the Assembly and the Commonwealth Minister’ the proposed changes ‘could make government nearly unworkable in Norfolk Island.’²³
- 2.53 The committee believes that Commonwealth Government oversight of Norfolk Island legislation is necessary in ensuring that Norfolk Island legislation is consistent with Government policy, the national interest and complying with Australia’s international obligations.
- 2.54 Evidence received provides that early consultation during the drafting stage of Norfolk Island legislation enables a greater level of expert advice to be accessed prior to the introduction of legislation, thereby shortening referral and assent.

23 Government of Norfolk Island, *Submission 6*, p. 20.

- 2.55 In addition, the committee is of the view that Commonwealth advice on proposed Norfolk Island legislation should be dealt with expeditiously to minimise delay in the assent process.
- 2.56 The proposed changes contained in subsections 7(2) and 7(3) will extend the Commonwealth Government's oversight function for schedule 2 and 3 matters. The Attorney-General's Department advised that the authority of the Commonwealth to provide advice on Schedule 2 matters under the Bill is an optional and not a mandatory provision. In addition, the approach taken through the proposed amendments, 'recognises the difficulty of making an absolute determination of which particular Schedule 2 matters may affect the national interest or in attempting to foresee what issues will be of interest to the Commonwealth in the future.'²⁴
- 2.57 Section 19 of the Norfolk Island Act provides for the legislative power of the Norfolk Island Legislative Assembly. Subsection 19(1) empowers the Legislative Assembly to make laws for the peace, order and good government of the Territory. Subsection 19(2) provides that this power does not extend to four items: authorizing the acquisition of property otherwise than on just terms; raising of defence forces, coining money and euthanasia.
- 2.58 The committee received evidence that in accordance with section 19 of the Norfolk Island Act the proposed amendments will not restrict the power of the Norfolk Island Legislative to make laws for the peace, order and good government of the Territory.
- 2.59 Further, since 1979, a total of 61 additional items have been transferred to Schedule 2 of the Norfolk Island Act through consultation and consideration at the Ministerial and Departmental levels.
- 2.60 The committee is concerned that the items included in Schedule 2 have significantly grown since 1979 adding to the burden of responsibilities of the Government of Norfolk Island and the complexity of administration of these items. The committee suggests that a review of the items contained in Schedules 2 and 3 be undertaken in consultation with the Government of Norfolk Island to identify improvements which may be made and any efficiencies which may be gained.

24 Attorney-General's Department, *Submission 7.1*, p. 19.

Recommendation 3

- 2.61 The committee recommends that Commonwealth scrutiny of Norfolk Island legislation be dealt with expeditiously to minimise the legislative assent timeframe on these matters.

Recommendation 4

- 2.62 The committee recommends that the Commonwealth Government in consultation with the Government of Norfolk Island, undertake a review of items under Schedules 2 and 3 of the *Norfolk Island Act 1979* (Cwlth).

Proposed new section 9 – Power of Commonwealth Minister to appoint a deputy or deputies of the Administrator

Background

- 2.63 Proposed new section 9 will enable the Commonwealth Minister 'to appoint one or more people jointly or severally to be the deputy or deputies of the Administrator.'²⁵
- 2.64 The Explanatory Memorandum states that the 'deputy or deputies exercise powers and functions of the Administrator as assigned to them by the responsible Commonwealth Minister'... and that the 'appointment of a deputy or deputies does not affect the exercise or performance of a function by the Administrator.'²⁶
- 2.65 Further, the Explanatory Memorandum states the intent of this amendment is to 'provide the Commonwealth with more options for a replacement Administrator when the Administrator is unable to perform his or her duties.'²⁷

25 *Explanatory Memorandum*, p. 8.

26 *Explanatory Memorandum*, p. 8.

27 *Explanatory Memorandum*, p. 8.

Analysis

2.66 The Government of Norfolk Island was concerned about the creation of new Commonwealth public service positions under the Bill of deputy or deputies to the Administrator and the Commonwealth Financial Officer for Norfolk Island.

2.67 The appointment of a Commonwealth Financial Officer is discussed in Chapter 4 which relates to Part 3 – Amendments relating to finance.

2.68 The Government of Norfolk Island was concerned about the rationale, need and cost for the appointment of deputy or deputies to the Administrator. The Government of Norfolk Island stated:

On the face of the proposal, it is a Departmental push for more well-paid positions without any explanation of what it would produce in terms of good public administration or beneficial outcomes for Norfolk Islanders. The Bill leaves open the situation where there could be more than one Deputy Administrator at a time, based simply on appointment by the Commonwealth Minister, not the Governor-General as at present. We submit that there should be no more than one Deputy Administrator at any one time and that the position should be located only in Norfolk Island, not within the Canberra bureaucracy. Without some explanation of the benefits of the change to Deputy Administrator appointments and roles ... we do not support the proposal and suggest that it be removed from the Bill on the grounds of cost and lack of demonstrated need.²⁸

2.69 The Attorney-General's Department commented that the position of Deputy Administrator is not mandatory and is already provided for under the Norfolk Island Act. The proposed amendments will provide a safety net where the Administrator may be unable to perform their duties. The Attorney-General's Department stated:

The appointment of a deputy administrator by the Governor-General is already provided for under the Norfolk Island Act. These amendments will enable the appointment of multiple deputies of the administrator by the responsible Commonwealth minister, allowing the appointment to be made at short notice. These non-remunerated positions will provide an important safety net in the event of the administrator's incapacity.²⁹

28 Government of Norfolk Island, *Submission 6*, p. 22.

29 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 4.

2.70 Further, the Attorney-General's Department stated that there is no additional remuneration associated with performing the duties of Deputy Administrator and the appointment of a deputy or deputies to the Administrator is consistent with practice in the Indian Ocean Territories. The Attorney-General's Department stated:

The positions do not involve any additional remuneration; there is no additional person needed. It is, if you like, a reserve power that is available should it be required. It is not inconsistent with what we do in the Indian Ocean Territories, where there is an administrator and a number of people who hold a deputy administrator commission that can act if they need to. In the IOTs, there has been occasion where we have needed the administrator's authority but he has not been available because of communication difficulties. In those cases, one of the deputy administrators has discharged that authority.³⁰

2.71 The Attorney-General's Department also stated that it was considering appointment of two Deputy Administrators, one residing on Norfolk Island and another in Canberra.³¹

Conclusions

2.72 The appointment of a Deputy Administrator is already provided for under section 9 of the Norfolk Island Act. This Amendment will create a safety net for the Commonwealth Government by providing it 'with more options for a replacement Administrator when the Administrator is unable to perform his or her duties.'³²

2.73 The position of Deputy Administrator has no additional remuneration attached to it and is in line with practice for appointing a deputy administrator for Australia's external territories to provide for unforeseen contingencies.

2.74 Further, there will be no cost to the Government of Norfolk Island in the appointment of a deputy or deputies to the Administrator.

30 Attorney-General's Department, Mr Julian Yates, *Transcript 2*, p. 23.

31 Attorney-General's Department, Mr Julian Yates, *Transcript 2*, p. 23.

32 *Explanatory Memorandum*, p. 8.

Proposed new section 12 – provision of a Chief Minister and not more than 3 Ministers

Background

- 2.75 Proposed new section 12 provides for a Chief Minister and at least one, but not more than 3 Ministers and that the Ministers have executive authority for the matters specified in Schedules 2 and 3 of the Norfolk Island Act.³³
- 2.76 The Explanatory Memorandum explains that ‘the provision of a maximum number of Ministers, being 3 plus a Chief Minister, is intended to ensure effective backbench scrutiny of the Assembly’s business – 4 Ministers and 4 backbenchers, with the Speaker being the 9th member. This entrenches the important separation of executive and legislative responsibility under the Norfolk Island Act.’³⁴
- 2.77 In addition, new section 12 replaces the old sections 12 and 13 and retains the existing restriction that people employed in the Public Service of the Territory, or of the Commonwealth, are not eligible to be Ministers. Likewise, if a Minister becomes an employee of the Public Service of the Territory or the Commonwealth they vacate their ministerial office.³⁵
- 2.78 The change follows recommendation 17 of the committee’s report *Quis custodiet ipsos custodes* (the 2003 Report), including the change in terminology from Executive Member of the Legislative Assembly to Minister.³⁶

Analysis

- 2.79 The Government of Norfolk Island was concerned about limiting the number of Ministers to three stating there is no justification for the proposed change, and that it denies the flexibility of the Legislative Assembly in dealing with a major natural disaster or a significant ongoing change in the external environment. The Government of Norfolk Island stated:

No rationale is put forward for the unprecedented proposal to prescribe in legislation the maximum number of Ministers

33 *Explanatory Memorandum*, p. 8.

34 *Explanatory Memorandum*, p. 9.

35 *Explanatory Memorandum*, p. 9.

36 *Explanatory Memorandum*, p. 9.

permitted in Norfolk Island. We are not aware of any other Australian jurisdiction with such a provision, which limits the sovereignty of the parliament and the need for flexibility in allocation of portfolios for no apparent good purpose. While Norfolk Island is a small jurisdiction, the range of ministerial responsibilities covers a wide spectrum of areas which fall within federal, state and local government jurisdictions in Australia. The limiting of the number of Ministers denies the flexibility which might be needed to deal with a major natural disaster or a significant ongoing change in the external environment. In our view, the existing flexible arrangements work well and there is no justification for the proposed change, which we submit should be removed from the Bill.³⁷

2.80 Of the proposed reforms corresponding to changes to government, the 2003 report found that they:

... build on existing practice and create a greater imperative for Executive Members [Norfolk Island Ministers] to cooperate. This, in turn, should produce more coherent policy direction and strengthen accountability. Moreover, the proposed reforms are consistent with the Westminster system, but do not impede the widely expressed desire for a consensual approach to government.³⁸

2.81 In regard to limiting the number of Ministers to three, the 2003 report found that:

The Chief Minister must appoint up to three Ministers from among the Members of the Assembly and allocate portfolios to each. ... The number of Members must be established by enactment. It follows [that] the Act should also confer on the Chief Minister the power to dismiss the Minister at any time. ... Providing the Chief Minister with the authority to choose his or her fellow Ministers and determine their portfolios, would provide some cohesion to the government, and enable the Government to determine its own structure.³⁹

37 Government of Norfolk Island, *Submission 6*, p. 29.

38 Joint Standing Committee on the National Capital and External Territories, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, December 2003, p. 118.

39 Joint Standing Committee on the National Capital and External Territories, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, December 2003, p. 119.

2.82 In its response to the findings and recommendations of the 2003 report, the then Government of Norfolk Island commented:

The Government does not favour a model in which the size of the Executive is prescribed in legislation, as this may prove restrictive or unworkable in some circumstances, given the small size of the Legislative Assembly. The Government further believes that the JSC has misunderstood the direct nature of democratic processes in Norfolk Island, by which the entire Assembly has the ability to select or remove an Executive Member.⁴⁰

2.83 The Attorney-General's Department stated that defining the structure of government will provide for the separation of the executive and legislature. Further, limiting the number of Ministers corresponds with the Australian Capital Territory self government model. The Attorney-General's Department stated:

The basis of it comes to the importance of the separation of the powers between the legislative and the executive arms of government. It was considered important to specify the role of the Chief Minister and the Chief Minister's ability to appoint. We also felt it was appropriate to limit the size of the ministry. The analogous situation is with the Australian Capital Territory, where the Australian Capital Territory (Self-Government) Act provides expressly for the role of the Chief Minister and for the number of its ministers. I should note here that these proposals have been done in a way that is consistent with the previous report of this committee.⁴¹

2.84 Subsection 41(2A) of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) provides that a maximum number of five Ministers may be appointed to the Legislative Assembly for the Australian Capital Territory. Section 41 of the *Australian Capital Territory (Self-Government) Act* appears below.

41 Ministers for the Territory

- (1) *The Chief Minister must appoint Ministers for the Territory from among the members of the Assembly.*
- (2) *The number of Ministers is to be as provided by enactment.*
- (2A) *Until provision is made, the number of Ministers is not to exceed 5.*

40 Government of Norfolk Island, *Submission 6*, p. 28.

41 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 9.

- (3) *A Minister may be dismissed from office at any time by a person holding office as Chief Minister at that time.*

Conclusions

- 2.85 These reforms are aimed at implementing a system of government which reflects Westminster system practice and is founded on the importance of the separation of the powers between the legislative and the executive arms of government.
- 2.86 Limiting the number of Ministers to three will as outlined in the Explanatory Memorandum allow for an effective level of scrutiny within the Legislative Assembly and enable the Speaker to remain neutral. The change contained in new section 12 reflects the current practice in the Australian Capital Territory as provided for under subsection 41(1) the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth).
- 2.87 As expressed in the 2003 report, prescribing the role of Chief Minister and Ministers, limiting the number of Ministers and requiring the Chief Minister to appoint Ministers will allow greater cohesion within the Government of Norfolk, complement the consensual nature of the Legislative Assembly and is consistent with the Westminster system of government.

Proposed new sections 12A and 13 – nomination and appointment of Chief Minister and appointment of Ministers

Background

Proposed new section 12A – nomination and appointment of Chief Minister

- 2.88 Proposed new section 12A provides the process for nomination and appointment of the Chief Minister of the Legislative Assembly after a general election or if a vacancy exists in the office. Nomination of Chief Minister must occur after election of the Speaker and Deputy Speaker and before any other business. 'This reflects the Westminster system of government where the Speaker is an independent office.'⁴²

42 *Explanatory Memorandum*, p. 9.

- 2.89 The Chief Minister is nominated by the Legislative Assembly and appointed by the Administrator. The Legislative Assembly is deemed to have advised the Administrator to appoint a member as Chief Minister once the nomination has occurred.⁴³
- 2.90 The Explanatory Memorandum states the amendment codifies the current practice of the Legislative Assembly 'in nominating one executive member to have the designation of Chief Minister.' Further, 'the nomination by the Legislative Assembly also provides a clear line of accountability and responsibility for the office of the Chief Minister.'⁴⁴

Proposed new section 13 – appointment of Ministers

- 2.91 Proposed section 13 provides for the appointment of Ministers. The Administrator may appoint one or more Members of the Legislative Assembly as a Minister on the advice of the Chief Minister. 'As the Chief Minister is the leader of the Norfolk Island Government he or she advises the Administrator on who the other Ministers will be.' This process differs from the previous process where the Administrator appointed all Executive Members on the advice of the Legislative Assembly.⁴⁵
- 2.92 The Explanatory Memorandum states the change corresponds with the 'process for appointing Ministers within the Westminster system of government.' In addition, the Explanatory Memorandum explains 'this change establishes clear lines of Ministerial responsibility – the Ministers are responsible to the Chief Minister, who is responsible to the Legislative Assembly and the Legislative Assembly is responsible to the Norfolk Island community.'⁴⁶

Analysis

- 2.93 The Government of Norfolk Island was opposed to changes which would allow the Chief Minister to appoint Ministers stating this was undemocratic and could lead to instability and delay in forming a government. The Government of Norfolk Island stated:

It is unclear why the Commonwealth would seek to remove the democratic right of an Assembly to elect Ministers (which is the current situation) and replace this with a power for the Chief

43 *Explanatory Memorandum*, p. 9.

44 *Explanatory Memorandum*, p. 9.

45 *Explanatory Memorandum*, p. 10.

46 *Explanatory Memorandum*, p. 10.

Minister to appoint Ministers. Since, under the proposed changes, the Chief Minister becomes subject to legislative provisions for no confidence, it is likely that a Chief Minister who appointed other Ministers without the consent of the majority of the Assembly would be subject to a no confidence motion, leading to instability and delay in forming a government. We submit that this proposed change is impractical and likely to be wasteful and should be removed from the Bill.⁴⁷

- 2.94 In the 2003 report, the committee noted that it was ‘not convinced that a directly elected Chief Minister is appropriate or necessary to improve governance on Norfolk Island.’ However, the committee found that ‘there is a strong case for amending the Norfolk Island Act to clarify the roles and responsibilities of the Island’s elected representatives. An obviously identifiable head of government with a clearly defined role and powers, clearer lines of ministerial responsibility and clarification of the role of non executive members will strengthen responsible government.’ The committee advocated following the model operating in the Australian Capital Territory.
- 2.95 Subsection 41(1) of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) requires the Chief Minister or appoint Ministers for the Territory from among the members of the Assembly. Subsection 41(1) appears below.

41 Ministers for the Territory

- (1) *The Chief Minister must appoint Ministers for the Territory from among the members of the Assembly.*

- 2.96 Further, subsection 43(1) of the *Australian Capital Territory (Self-Government) Act* allows the Chief Minister to allocate ministerial portfolios to his or her Ministers (as appointed under section 41). Section 43 appears below:

43 Ministerial portfolios

- (1) *A Minister shall administer such matters relating to the powers of the Executive as are allocated to that Minister from time to time by the Chief Minister.*
- (2) *The Chief Minister may authorise a Minister or Ministers to act on behalf of the Chief Minister or any other Minister.*
- (3) *The Chief Minister shall publish particulars of such arrangements in the Territory Gazette.*

47 Government of Norfolk Island, *Submission 6*, p. 29.

Conclusions

- 2.97 The committee acknowledges the views of the Government of Norfolk Island in its opposition to the proposed change; however, the committee stresses the importance of the need for implementing new procedures and systems which correspond to the Westminster system of government in order to strengthen the lines of accountability and improve Norfolk Island's system of government.
- 2.98 The proposed changes contained in new sections 12A and 13 are modelled on the system operating in the Australian Capital Territory as provided by sections 41 and 43 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth). The proposed changes will establish clear lines of Ministerial responsibility, where the Ministers are responsible to the Chief Minister, who is responsible to the Legislative Assembly and the Legislative Assembly which is then responsible to the Norfolk Island community. Under the proposed change, the office of Speaker remains neutral.

Proposed new section 14A – powers of dismissal

Background

- 2.99 Proposed new section 14A provides that the Administrator 'may dismiss the Chief Minister from office if in the Administrator's opinion there are exceptional circumstances for doing so.'⁴⁸
- 2.100 The Explanatory Memorandum provides that 'the power may only be exercised by the Administrator if exceptional circumstances exist. The power is based on the former section 13(1) and supplements the authority of the Legislative Assembly to pass a motion of no confidence in the Chief Minister.'⁴⁹
- 2.101 This section also provides that the Administrator may dismiss a Minister from office on advice from the Chief Minister. The Explanatory Memorandum explains that 'as the Chief Minister has the power to advise the Administrator on who should be appointed as a Minister, it is appropriate that the Chief Minister has the power to advise the Administrator to dismiss a Minister from office.'⁵⁰

48 *Explanatory Memorandum*, p. 11.

49 *Explanatory Memorandum*, p. 11.

50 *Explanatory Memorandum*, p. 11.

Analysis

2.102 The Government of Norfolk Island was opposed to the proposed change on the basis the changes are self defeating and less workable than current practice. The Government of Norfolk Island stated:

Under existing provisions, the Administrator can dismiss an executive member (Minister) from office (but not from the Assembly) in "exceptional circumstances". The draft Bill changes this so that only the Chief Minister can be dismissed in exceptional circumstances, while other Ministers can be dismissed on the advice of the Chief Minister. It would appear that if this proposal is enacted the Administrator would not be able to dismiss one of the other Ministers on the basis of "exceptional circumstances", but only on the basis of the Chief Minister's advice. If that advice was not forthcoming, the Minister would presumably remain in office unless dismissed from membership of the Assembly altogether. We believe these provisions to be self-defeating and less workable than the status quo, and suggest that they should be excised from the Bill."⁵¹

2.103 The Attorney-General's Department stated that the arrangements for dismissal of the Chief Minister and other Ministers formed part of the general machinery of government changes prescribed in the proposed Bill. The aim of these changes is to strengthen the transparency and accountability of the Government of Norfolk Island and clarify the lines of Ministerial and Parliamentary responsibility. The Attorney-General's Department stated:

The 2003 Report recommended a broad range of reforms which at their root aimed to instil more formalised mechanisms of transparency and accountability in Norfolk Island's governance arrangements. The theme of strengthened transparency and accountability is the touchstone to the reforms proposed in the Territories Law Reform Bill. The theme is applied to reforms of general governance arrangements such as the designation of Chief Minister and Ministers, and procedures for appointment and dismissal. These reforms are intended to clarify the lines of Ministerial and Parliamentary responsibility and reinforce the separation of legislative and executive authority in the Norfolk Island Legislative Assembly.⁵²

51 Government of Norfolk Island, *Submission 6*, p. 34.

52 Attorney-General's Department, *Submission 7*, p. 3.

Conclusions

- 2.104 As mentioned in the previous discussion relating to proposed new sections 12, 12A and 13A, similarly, the proposed changes are intended to enhance the accountability and transparency within the Government of Norfolk Island and strengthen the overall workings of the Legislative Assembly in line with a Westminster system of government.

Proposed new section 15A – Allocating ministerial responsibilities

Background

- 2.105 Proposed new section 15A provides that the Chief Minister must allocate ministerial responsibilities to themselves and other Ministers. 'In doing so the Chief Minister may authorise a Minister or Ministers to act on the Chief Minister's or another Minister's behalf.'⁵³
- 2.106 In addition, 'the Chief Minister must publish details of the arrangements in the Norfolk Island Government Gazette which publicly informs the Norfolk Island community of the allocation of ministerial responsibilities.'⁵⁴

Analysis

- 2.107 The Government of Norfolk Island was opposed to codifying the role of the Chief Minister, stating it could limit power through unpredicted consequences. The Government of Norfolk Island stated:

We further question why it is considered necessary to codify in legislation the position and role of the Chief Minister, when this is not the case for the Prime Minister or state Premiers and has in fact been considered but deliberately not implemented in other Australian jurisdictions on grounds that codifying such roles runs the risk of limiting powers through unpredicted consequences.⁵⁵

- 2.108 The Explanatory Memorandum states the proposed change will reinforce the chain of ministerial responsibility by providing 'clarity and

53 *Explanatory Memorandum*, pp 11-12.

54 *Explanatory Memorandum*, p. 12.

55 Government of Norfolk Island, *Submission 6*, p. 29.

transparency in the roles and responsibilities of the Norfolk Island Ministers.⁵⁶

2.109 The 2003 Report recommended that ‘providing the Chief Minister with the authority to choose his or her fellow Ministers and determine their portfolios would provide some cohesion to the Government and enable the Government to determine its own structure.’⁵⁷

2.110 The Attorney-General’s Department advised that providing for a Chief Minister and their ability to appoint a ministry provided for the separation of the powers between the legislative and the executive arms of government. The Attorney-General’s Department stated:

Clearly defining the role and powers of the Chief Minister, the head of government, will strengthen responsible government on Norfolk Island. The responsibility of the Chief Minister to the Legislative Assembly extends to the appointment of Ministers. This provision is to establish clear lines of responsibility between the Ministers and Chief Minister and highlight the important distinction between the functions of the executive and the legislature.⁵⁸

2.111 The Government of Norfolk Island commented that it remains unconvinced as to the need for codifying or prescribing the operation of a Chief Minister and appointment of the Ministry. The Government of Norfolk Island stated:

The Norfolk Island Government remains unconvinced as to the need for codifying or prescribing the operation of a Chief Minister and appointment of the Ministry. The current system of executive members clearly establishes “responsible government” in Norfolk Island in the true parliamentary sense of that term. The Norfolk Island Government however continues to be willing to discuss underlying Commonwealth concerns that have prompted the resurrection of this previously rejected recommendation of the 2003 Governance Report.⁵⁹

56 *Explanatory Memorandum*, p. 12.

57 Joint Standing Committee on the National Capital and External Territories, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, December 2003, p. 119.

58 Attorney-General’s Department, *Submission 7.1*, p. 8.

59 Government of Norfolk Island, *Submission 6.1*, p. 6.

Conclusions

- 2.112 The proposed amendments will clarify the roles and portfolio responsibilities of the Chief Minister and the Ministers appointed by them. These changes in addition to those discussed in proposed sections 12, 12A, 13 and 14A will provide for the efficient operation of the Government of Norfolk Island and the Legislative Assembly in line with Westminster system practice.

Proposed subsection 21 (1A), subparagraph 21(2)(a)(iii), subsection 21(5) and new section 26A – Accessing advice on Schedule 2 and 3 matters and empowering Governor-General to reserve legislation

Background

Proposed subsection 21 (1A) – Reservation of proposed legislation for the Governor-General’s pleasure

- 2.113 Proposed subsection 21(1A) ‘provides that the Administrator must reserve a proposed law introduced by the Governor-General for the Governor-General’s pleasure. The Governor-General has the power to introduce a proposed law under section 26 of the Norfolk Island Act.’⁶⁰
- 2.114 Section 26 of the Norfolk Island Act appears below.

26 Governor-General may introduce proposed law

The Governor-General may, by message of the Administrator, introduce into the Legislative Assembly a proposed law for the peace, order and good government of the Territory.

- 2.115 Reservation of a proposed law for the Governor-General’s pleasure ‘allows the Governor-General to consider whether or not he or she agrees to any amendments made by the Legislative Assembly during passage.’⁶¹

60 *Explanatory Memorandum*, p. 12.

61 *Explanatory Memorandum*, p. 12.

Proposed subparagraph 21(2)(a)(iii) – Administrator may seek advice from Governor-General on matters in Schedules 2 and 3

- 2.116 The Explanatory Memorandum states that ‘paragraph 21(2)(a) provides that the Administrator, when presented with a proposed law which provides for matters specified in Schedule 2 or 3 or both, shall declare that they assent to the proposed law or that they withhold assent to the proposed law.’⁶²
- 2.117 Proposed new subparagraph 21(2)(a)(iii) ‘adds a third option for the Administrator – to reserve the proposed law for the Governor-General’s pleasure.’⁶³
- 2.118 This amendment has the effect of expanding ‘the options available to the Administrator when presented with a proposed law. It will allow the Administrator to refer laws where their assent, or withholding of assent, could be seen as a conflict of interest or otherwise controversial.’⁶⁴
- 2.119 Proposed subparagraph 21(2)(a)(iii) ‘will allow the Administrator to refer laws that may be inconsistent with a national policy objective to the Governor-General for consideration and oversight, via the giving or withholding of assent.’⁶⁵

Proposed subsection 21(5) – Administrator may seek advice from Commonwealth Minister on Schedule 2 matters

- 2.120 Subsection 21(5) provides ‘that the Administrator, when considering a proposed law that provides only for matters specified in Schedule 2, shall not assent, withhold assent, or return the proposed law to the Legislative Assembly with amendments, except in accordance with the advice of the Executive Council.’⁶⁶ The proposed amendment to subsection 21(5) will allow the Administrator to receive ‘any instructions from the responsible Commonwealth Minister’ in addition to that received from the Executive Council.⁶⁷
- 2.121 However, ‘if there is an inconsistency between the advice of the Executive Council and any instructions from the responsible Commonwealth

62 *Explanatory Memorandum*, p. 13.

63 *Explanatory Memorandum*, p. 13.

64 *Explanatory Memorandum*, p. 13.

65 *Explanatory Memorandum*, p. 13.

66 *Explanatory Memorandum*, p. 12.

67 *Explanatory Memorandum*, p. 12.

Minister, the Commonwealth Minister's instructions are to prevail to the extent of the inconsistency.'⁶⁸

Proposed new section 26A – Power of Commonwealth Minister to introduce legislation into the Legislative Assembly

- 2.122 Proposed section 26A provides that the responsible Commonwealth Minister may introduce a proposed law for the peace, order and good government of the Territory into the Legislative Assembly. This power may be used to implement national policy objectives and to ensure that Norfolk Island legislation is consistent with the national interest or Australia's international obligations.⁶⁹

Analysis

- 2.123 The Government of Norfolk Island was concerned the proposed changes would reduce the powers of the Legislative Assembly and bestow upon the Governor-General and the Commonwealth Minister, new powers to legislate. The Government of Norfolk Island stated:

We note that the Bill proposes to reduce the legislative powers of the Legislative Assembly and to give new powers to legislate to the Governor-General and the Commonwealth Minister. No rationale or explanation is given for these measures, which would reduce the ability of Norfolk Island to govern ... and erode the democratic right of Norfolk Islanders to elect representatives who can govern in the interests of the peace, order and good government of the Island.⁷⁰

- 2.124 The Attorney-General's Department responded to this concern by explaining that the proposed changes do not reduce the responsibilities of the Government of Norfolk Island, but rather create greater transparency and visibility, leading to more certainty for the community. The Attorney-General's Department stated:

... a large part of the reason for the bill itself [is] providing that transparency and visibility so that the community has a high level of certainty about what is happening and can act and make informed decisions on the best available information. It does not actually remove any responsibilities from the Norfolk Island

68 *Explanatory Memorandum*, p. 12.

69 *Explanatory Memorandum*, p. 13.

70 Government of Norfolk Island, *Submission 6*, p. 31.

government. ... In terms of the concerns about the alternative path to this, I can probably best respond by reflecting on the minister's repeated statements to members of the then government and to the community in December [2009] around the reality that Norfolk Island is self-governing. A decision was made in 1979 regarding self-government. The community itself needs to make any decisions about change there – it needs to be leading that. It can do that best by having good and accurate information, which this bill aims to provide.⁷¹

- 2.125 Further, the Attorney-General's Department stated the Commonwealth Government wanted to retain self government for Norfolk Island and that the reforms would assist the Norfolk Island community to make more informed decisions. The Attorney-General's Department stated:

I go back to what Minister O'Connor said on the island to the community, where it was very clear that self-government was something that the Norfolk Island community had chosen and that they needed to make decisions about their future. This reform process will assist them to make those decisions because they will have better information.⁷²

Conclusions

- 2.126 The concerns outlined by the Government of Norfolk Island have been reiterated in regard to a number of the proposed amendments. It is apparent that the proposed Bill is aiming to enhance the workings of the Government of Norfolk Island and the Legislative Assembly, while also providing the community with avenues for accessing information, leading to a better informed electorate.
- 2.127 Proposed subsections 21(1A), 21(5), subparagraph 21(2)(A)(iii) and new section 26(A) will increase the Commonwealth's oversight function and its legislative powers, but will not limit the powers of the Government of Norfolk Island to introduce legislation, nor limit the Legislative Assembly to make laws.
- 2.128 Further, evidence received clarifies that it is not the intention of the Commonwealth Government to diminish the importance or role of self government on Norfolk Island.

71 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 11.

72 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 12.

- 2.129 For proposed subsections 21(1A), 21(5) and subparagraph 21(2)(A)(iii) the increase in Commonwealth oversight of legislation is in line with other changes in this regard which are contained in the proposed Bill.
- 2.130 For proposed new section 26A where the Commonwealth's legislative powers are increased, it is done so to enable the Commonwealth to 'implement national policy objectives (such as those agreed at the Council of Australian Governments) and to ensure that Norfolk Island legislation is consistent with the national interest or Australia's international obligations.'⁷³

Proposed section 39AA – Power of Administrator to dismiss a member of the Legislative Assembly from office for seriously unlawful conduct or grossly improper conduct

Background

- 2.131 Section 39 of the Norfolk Island Act provides for the disqualifications for membership of the Legislative Assembly and includes: 'that a member of the Legislative Assembly vacates their office if they become an undischarged bankrupt or are convicted of an offence and sentenced to imprisonment for one year or longer.'⁷⁴ Section 39 appears below.

39 Disqualifications for membership of Legislative Assembly

- (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 or she is an undischarged bankrupt;*
 - (b) *he or she 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 or she is a member of the Police Force of the Territory or of the Commonwealth; or*
 - (d) *he or she 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.*
- (2) *A member of the Legislative Assembly vacates his or her office if:*

73 *Explanatory Memorandum*, p. 12.

74 *Explanatory Memorandum*, p. 14.

- (a) *he or she becomes a person to whom any of the paragraphs of subsection (1) applies; or*
 - (c) *he or she fails to attend the Legislative Assembly for 3 consecutive meetings of the Legislative Assembly without the permission of the Legislative Assembly; or*
 - (d) *he or she ceases to be entitled, or qualified to become entitled, to vote at elections of members of the Legislative Assembly; or*
 - (da) *he or she ceases to be an Australian citizen; or*
 - (e) *he or she 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) *A member of the Legislative Assembly who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Commonwealth or the Administration under which goods or services are to be supplied to the Commonwealth or the Administration shall not take part in a discussion of a matter, or vote on a question, in the Legislative Assembly where the matter or question relates directly or indirectly to that contract.*
- (4) *Any question concerning the application of subsection (3) shall be decided by the Legislative Assembly, and a contravention of that subsection does not affect the validity of anything done by the Legislative Assembly.*
- 2.132 New section 39AA provides that the Administrator may dismiss a MLA from office ‘if they have engaged in, or are engaging in, seriously unlawful conduct or grossly improper conduct.’⁷⁵
- 2.133 The Explanatory Memorandum states this ‘amendment will capture behaviour that is not covered by section 39, but is serious enough to require being dismissed from the Legislative Assembly.’
- 2.134 Further, ‘it is intended that the authority be used at the Administrator’s discretion, and taking into account the gravity of action taken under this section. The section requires the Administrator to evaluate the seriousness of the conduct in question in acting under this section.’⁷⁶

Analysis

- 2.135 The Government of Norfolk Island was of the view that unlawful conduct as bestowed upon the Administrator through the proposed amendment should be determined by the courts and not the Administrator. Further, there was concern that the term ‘grossly improper conduct’ was not clarified within the amendment. The Government of Norfolk Island stated:

⁷⁵ Explanatory Memorandum, p. 14.

⁷⁶ Explanatory Memorandum, p. 14.

The Bill proposes a new power for the Administrator to dismiss a member of the Assembly for seriously unlawful conduct or grossly improper conduct, without defining those terms. We are of the view that "unlawful conduct" should properly be determined by the courts, not the Administrator. Section 39 of the Norfolk Island Act 1979 (Cth.) already contains strong provisions in relation to disqualification of individuals from standing for election and from remaining in office in a range of circumstances, including conviction for unlawful behaviour. We see no reason for providing an unelected official with the ability to dismiss from the Assembly a member lawfully and democratically elected, other than those already provided in the Norfolk Island Act. This is especially so in light of the lack of definition of "grossly improper conduct" and we suggest that this provision be removed from the Bill.⁷⁷

- 2.136 The proposed amendment will work in partnership with section 39 of the Norfolk Island Act and is intended to capture behaviour that is not covered in section 39, but is serious enough to require dismissal from the Legislative Assembly. The Attorney-General's Department stated the amendment will:

... provide the ability to dismiss members of the Legislative Assembly if they are engaging in seriously unlawful conduct or grossly improper conduct and that the amendment works in partnership with the existing section 39 of the act regarding vacating the office if they become an undischarged bankrupt or are convicted of an offence and sentenced to imprisonment of one year or longer. Its aim is to capture behaviour that is not covered by section 39 – that is the undischarged bankrupt or being sentenced to imprisonment – but is serious enough to require dismissal from the Legislative Assembly. As we have noted, that is to do with either seriously unlawful conduct or grossly improper conduct.⁷⁸

- 2.137 In terms of providing the Administrator with the authority to determine grossly improper behaviour under section 39AA, the Attorney-General's Department explained that any decisions will be subject to judicial review. The Attorney-General's Department stated:

77 Government of Norfolk Island, *Submission 6*, p. 33.

78 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, pp 23-24.

... decisions are subject to judicial review. So it is not the case that it is a power that can be exercised arbitrarily without any form of review. There are safeguards in that respect as well.⁷⁹

Conclusions

- 2.138 New section 39AA will allow the Administrator to dismiss a Member of the Legislative Assembly from office ‘if they have engaged in, or are engaging in, seriously unlawful conduct or grossly improper conduct.’⁸⁰
- 2.139 The Government of Norfolk Island raised concerns about the authority provided to the Administrator to exercise his or her discretion under the proposed amendment to determine ‘seriously unlawful conduct or grossly improper conduct’.
- 2.140 The Explanatory Memorandum provides that ‘the amendment will capture behaviour that is not covered by section 39, but is serious enough to require being dismissed from the Legislative Assembly.’⁸¹
- 2.141 Although it is intended that the authority to dismiss a member of the Legislative Assembly for grossly improper conduct be used at the Administrator’s discretion, such decisions will be subject to judicial review.

Proposed section 39AC – Dissolution of Legislative Assembly by the Governor-General

Background

- 2.142 New Section 39AC enables the Governor-General to dissolve the Legislative Assembly where, in the opinion of the Governor-General, it is incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner.
- 2.143 The Explanatory Memorandum explains that ‘if the Legislative Assembly is dissolved under this section then a general election of members of the Legislative Assembly will be held on a day specified by the responsible

79 Attorney-General’s Department, Mr Julian Yates, *Transcript T2*, p. 24.

80 *Explanatory Memorandum*, p. 14.

81 *Explanatory Memorandum*, p. 14.

Commonwealth Minister by notice in the Commonwealth Gazette.⁸² In addition, this date must also be published in the Norfolk Island Gazette as soon as practicable. The specified day chosen must not be earlier than 36 days after the dissolution and not later than 90 days after the dissolution.

- 2.144 The Explanatory Memorandum explains that during the time between when the Legislative Assembly is dissolved, and the first meeting of the Legislative Assembly after the election, the Administrator exercises all the powers of the Administration, the Executive Council and Ministers in accordance with any directions from the Governor-General. In relation to the checks and balances applying to proposed section 39AC, the Explanatory Memorandum states:

The responsible Commonwealth Minister must cause a statement of the reasons for the dissolution to be published in both the Commonwealth Gazette and the Norfolk Island Government Gazette as soon as practicable. The statement of the reasons for the dissolution must also be tabled in both Commonwealth Houses of Parliament within 15 sitting days of the Houses after the dissolution.⁸³

- 2.145 The proposal that the Governor-General be able to dissolve the Norfolk Island Legislative Assembly is based on section 16(1) of the *Australian Capital Territory (Self-Government) Act 1988* (Cwth) which is reproduced in full below:

Section 16 Dissolution of Assembly by the Governor-General

- (1) *If, in the opinion of the Governor-General, the Assembly:*
- (a) *is incapable of effectively performing its functions; or*
 - (b) *is conducting its affairs in a grossly improper manner;*
- the Governor-General may dissolve the Assembly.*

- 2.146 As a comparison proposed section 39AC subsection (1) is reproduced in full below:

Proposed section 39AC Dissolution of Legislative Assembly by the Governor-General

- (1) *If, in the opinion of the Governor-General, the Legislative Assembly:*
- (a) *is incapable of effectively performing its functions; or*

82 *Explanatory Memorandum*, p. 15.

83 *Explanatory Memorandum*, p. 15.

- (b) *is conducting its affairs in a grossly improper manner;*
the Governor-General may dissolve the Legislative Assembly

Analysis

2.147 The Norfolk Island Government was critical of proposed section 39AC. The Norfolk Island Government noted that it 'remains concerned that there is inadequate guidance as to criteria for dismissal under these proposed provisions and the limited rights of review provided by judicial review provide very little safeguard against incorrect or improper invocation of such powers.⁸⁴ The Norfolk Island Government stated:

A new power is given to the Governor-General to dissolve the Assembly if, in his or her opinion, it is incapable of effectively performing its functions or is conducting its affairs in a "grossly improper manner" (again undefined). In such circumstances, pending a general election the Administrator would exercise executive authority in place of the democratically elected ministers. This "reserve power" is way in excess of that which applies in other Australian jurisdictions and again removes the ability of the elected Assembly to govern based on an undefined opinion of "grossly improper" conduct. There is no indication that consideration was given to appointing a caretaker government pending an election in circumstances where the Assembly is unworkable, as applies in most other Australian jurisdictions. We suggest that further consideration be given to this provision with a view to amending the Bill to reflect the conventions and constitutional provisions in other Australian states and territories.⁸⁵

2.148 Similarly, Dr Candice Snell stated:

Allowing the Governor-General to dissolve our assembly, or to dismiss Ministers is also all good and well but where is the definition of grossly inappropriate behaviour - does this include when our Assembly, Ministers or the people of Norfolk Island do not agree with a Commonwealth law to be introduced???

2.149 The Norfolk Island Government acknowledged that 'while proposed new section 39AC is based on section 16 of the *Australian Capital Territory (Self-*

84 Government of Norfolk Island, *Submission 6.1*, p. 7.

85 Government of Norfolk Island, *Submission 6*, p. 34.

86 Dr Candice Snell, *Submission 13*, p. 2.

Government) Act 1988 (Cwlth) in providing the Administrator with power to dissolve the Legislative Assembly there are no comparable provisions in the Northern Territory (Self-Government) Act 1978 (Cwlth).'⁸⁷

Conclusions

- 2.150 The Norfolk Island Government is critical of proposed section 39AC which provides for the Governor-General to dissolve the Legislative Assembly if it is incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner. The Norfolk Island Government 'remains concerned that there is inadequate guidance as to criteria for dismissal under these proposed provisions and the limited rights of review.' This measure is identical to that which exists in section 16 of the *Australian Capital Territory (Self Government) Act 1988 (Cwlth)*. The Governor-General can under identical provisions dissolve the ACT Legislative Assembly. The committee supports the introduction of proposed section 39AC and notes that Norfolk Island will have similar arrangements as those applied in the Australian Capital Territory.
- 2.151 It should be noted that proposed section 39AC provides sufficient transparency and accountability. If the Governor-General does take the very serious step of dismissing the Norfolk Island Legislative Assembly then under subsection 39AC(8) the responsible Commonwealth Minister must cause a statement of the reasons for the dissolution to be published in the Commonwealth Gazette and Norfolk Island Government Gazette as soon as practicable after the dissolution. In addition, the reasons must be tabled in each House of Parliament within 15 sitting days of the Houses after dissolution. This means that the responsible Minister can and will be held to account in the Federal Parliament for the decision.

Proposed subsection 61A – Regulations prescribing Norfolk Island public service values

Background

- 2.152 Section 61 of the Norfolk Island Act states *provision may be made by enactment for and in relation to the appointment and employment of such persons as are necessary for the purposes of this Act and for the proper government of the Territory.*
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87 Government of Norfolk Island, *Submission 6*, p, 34.

- 2.153 New section 61A provides that 'regulations may prescribe rules to be known as the Norfolk Island Public Service Values' which apply to those employed under section 61 of the Norfolk Island Act.⁸⁸
- 2.154 This amendment will require those employed under section 61 to 'behave in a way that upholds the Norfolk Island Public Service Values at all times.'⁸⁹

Analysis

- 2.155 The Government of Norfolk Island advised that the Norfolk Island *Public Sector Management Act 2000* establishes public sector general principles and standards of conduct and are supported by regulations providing for a code of conduct. The Government of Norfolk Island stated:

The Bill proposes, but does not specify any details of, "Public Service Values". The Public Sector Management Act 2000 (NI) already includes Part 2, comprising three sections establishing public sector general principles and standards of conduct. These are supported in subordinate legislation by a detailed code of conduct.⁹⁰

- 2.156 The Government of Norfolk Island commented that it did not necessarily disagree with prescribing of public service values modelled on the Commonwealth's Public Service Values and code of conduct, but favoured this as a Norfolk Island enactment. Further, the Government of Norfolk Island suggested that a joint working group could be established to achieve this. The Government of Norfolk Island stated:

We do not necessarily disagree with the proposal to place in legislation a statement of values modelled on the Commonwealth APS Values and Code of Conduct, and suggest that a joint working group of officials could be established to achieve this. Any such legislative change should be in the relevant Norfolk Island legislation and regulations, rather than in Commonwealth enactments.⁹¹

- 2.157 The Attorney-General's Department stated that drafting of regulations prescribing the Norfolk Island public service values would be underway before the end of 2010. The Attorney-General's Department will consult

88 *Explanatory Memorandum*, p. 17.

89 *Explanatory Memorandum*, p. 17.

90 Government of Norfolk Island, *Submission 6*, p. 36.

91 Government of Norfolk Island, *Submission 6*, p. 36.

with the Government of Norfolk Island and its Administration through the drafting process. The Attorney-General's Department stated:

The Attorney-General's Department is planning to commence drafting of regulations prescribing Norfolk Island Public Service Values before the end of 2010. The Norfolk Island Government and Administration will be consulted in the drafting process, and will be given the opportunity to comment on the draft regulations before they are registered.⁹²

2.158 In addition, the Attorney-General's Department advised that the Norfolk Island public service values would be subject to review by the Administrative Appeals Tribunal. The Attorney-General's Department stated:

... the Norfolk Island Public Service Values and the specification of decisions under Norfolk Island legislation which may be subject to merits review by the Administrative Appeals Tribunal.⁹³

Conclusions

- 2.159 The Explanatory Memorandum states 'this amendment will allow the Commonwealth to prescribe values for the Norfolk Island Public Service in regulations.' It is understood that the Norfolk Island public service values will be modelled on the Australian Public Service (APS) Values.
- 2.160 The Government of Norfolk Island has stated that it does not necessarily disagree with the application of APS Values for the Norfolk Island Public Service as defined under section 61 of the Norfolk Island Act.
- 2.161 The Government of Norfolk Island and the Attorney-General's Department are in agreement over the process that will be involved in arriving at prescribing public service values for Norfolk Island.
- 2.162 The Norfolk Island public service values will be subject to review by the Administrative Appeals Tribunal.

92 Attorney-General's Department, *Submission 7*, p. 10.

93 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 4.

Proposed subsection 67(2) – Power of Governor-General to make regulations to repeal, alter or add to Schedules 2 or 3 of the Norfolk Island Act

Background

- 2.163 Subsection 67(2) provides ‘that the Governor-General may make regulations to repeal, alter, or add a new item to Schedule 2 or 3 of the Norfolk Island Act.’ However, ‘regulations repealing or altering an item in Schedule 2 may not be made unless a copy of the proposed regulations has been laid before the Legislative Assembly and the Assembly has passed a resolution approving the proposed regulations.’⁹⁴
- 2.164 Amendment to subsection 67(2) will provide ‘that regulations repealing or altering an item in Schedule 2 or 3 must not be made unless a copy of the proposed regulations has been tabled in the Legislative Assembly on a sitting day and at least one sitting day has passed since the sitting day on which the proposed regulations were tabled.’⁹⁵
- 2.165 This amendment is intended to ‘ensure that the Legislative Assembly and the Norfolk Island community are aware of proposed regulations that repeal or alter an item or items in Schedule 2 or 3’ without the need for the ‘Legislative Assembly to pass a resolution approving regulations which repeal or alter an item in Schedule 2.’⁹⁶
- 2.166 This amendment will ‘provide the Commonwealth with control over the items listed in Schedule 2.’ However, ‘in practice, the Norfolk Island Government is consulted prior to the tabling of proposed regulations repealing, altering, or adding a new item to Schedules 2 or 3.’⁹⁷

Analysis

- 2.167 Section 67 of the Norfolk Island Act provides for the making of regulations which may repeal or alter any item in, or add any new item to, Schedule 2 or 3. The Attorney-General’s advised:

Section 67 of the Act provides for the making of Regulations. These Regulations ‘may repeal or alter any item in, or add any new item to, Schedule 2 or 3’. At commencement of the Norfolk

94 *Explanatory Memorandum*, p. 17.

95 *Explanatory Memorandum*, p. 17.

96 *Explanatory Memorandum*, p. 17.

97 *Explanatory Memorandum*, p. 17.

Island Act there were 42 matters listed in Schedule 2 and four listed in Schedule 3 (fishing, customs (other than the imposition of duties), immigration and education). Since 1979 a total of 61 additional matters have been transferred and existing powers have also been varied as part of the transfer process. Each extension or variation of power was the result of consultation and consideration at Ministerial and Departmental level.⁹⁸

- 2.168 The Government of Norfolk Island was opposed to establishing a practice where Commonwealth regulations may override Norfolk Island legislation and stated:

As a general principle the Norfolk Island Government opposes the emerging Commonwealth preference to establish a statutory framework that would enable it to use Commonwealth regulations to override Norfolk Island legislation. The use of what are known in the Westminster system as “Henry VIII” clauses* is a generally frowned upon approach to legislation and it is an inappropriate approach to maintenance and development of Norfolk Island’s self-government. [*These clauses provide for primary legislation to be amended or repealed by secondary legislation, often pursuant to the authority of a Minister, without the normally expected level of Parliamentary scrutiny.]⁹⁹

- 2.169 The Government of Norfolk Island was in favour of the existing subsection 67(2) of the Norfolk Island Act which provides for a co-operative approach in the making of regulations in regard to Schedule 2 and 3 items. The Government of Norfolk Island stated:

Section 67(2) of the Norfolk Island Act 1979 already confers on the Commonwealth a specific power to amend Schedules 2 or 3 by regulation. Such regulations require the laying of the proposed regulations before the Legislative Assembly and an Assembly resolution approving such regulations. The Norfolk Island Government considers that the inherently co-operative approach in the making of regulations under section 67 provides a far more appropriate mechanism to address both the Commonwealth’s and the Norfolk Island Government’s concerns in ... regard [to Schedule 2 and 3 items].¹⁰⁰

98 Attorney-General’s Department, *Submission 7.1*, p. 14.

99 Government of Norfolk Island, *Submission 6*, p. 37.

100 Government of Norfolk Island, *Submission 6.1*, p. 6.

Conclusions

- 2.170 Proposed subsection 67(2) will increase Commonwealth oversight over the items specified in Schedule 2 of the Norfolk Island Act.
- 2.171 The Commonwealth already has the power under current subsection 67(2) to amend Schedule 2 items; however it is with the agreement of the Norfolk Island Legislative Assembly.
- 2.172 The new subsection 67(2) will not require the agreement of the Norfolk Island Legislative Assembly, but the Commonwealth will be required to inform the Legislative Assembly of changes to Schedules 2 and 3 made through regulations by tabling the proposed regulation in the Legislative Assembly.
- 2.173 While this amendment will increase the Commonwealth's oversight over Schedule 2 items, it will not limit the powers of the Government of Norfolk Island to introduce legislation, nor limit the Legislative Assembly to make laws.