

Parts 4-7 – Amendments relating to the Administrative Appeals Tribunal, freedom of information, the Ombudsman and privacy

Introduction

- 5.1 An Administrative law package comprising an Administrative Appeals Tribunal (AAT), Freedom of Information (FOI) legislation, Ombudsman and privacy legislation are the cornerstones of a strong and open democracy. All Commonwealth, State and Territory governments are subject to extensive administrative law arrangements.
- 5.2 Parts 4 to 7 of the Territory Law Reform Bill seek to provide Norfolk Islanders with this same level of protection and openness. This chapter deals with each part separately but some of the evidence is relevant to all sections. Therefore, the generic comments about the reform proposals are dealt with in Part 4 dealing with the Administrative Appeals Tribunal.
- 5.3 The conclusion at the end of the chapter provides the committee's position in relation to parts 4 to 7.

Part 4 – Amendments relating to the Administrative Appeals Tribunal

Background

- 5.4 In 1991 the House of Representatives Standing Committee on Legal and Constitutional Affairs took a considerable amount of evidence about the adequacy of mechanism available to Norfolk Islanders seeking reviews of administrative decisions.¹ The Committee on Legal and Constitutional Affairs recommended extending the jurisdiction of the Commonwealth Administrative Appeals Tribunal (AAT) to decisions made under a Norfolk Island enactment and applying both the Commonwealth *Freedom of Information Act 1982* and the *Ombudsman Act 1976* to ensure residents of Norfolk Island had increased access to review processes as a matter of priority.
- 5.5 In 2003, the committee referred to evidence that suggests ‘considerable frustration within the Island community with the quality of public sector decision making, with the lack of arms-length administrative appeal mechanisms and with the consequent adverse impact on the rights and interests of individuals and businesses.’²
- 5.6 In 1996, an Administrative Review Tribunal (ART) for Norfolk Island was established. Provision for the ART to review a matter is subject to inclusion in specific Norfolk Island legislation. The committee stated that it ‘has serious concerns in relation to the procedural aspects associated with seeking review by the Administrative Review Tribunal, such as the limited number of decisions subject to review, a lack of standing by affected residents to seek review, inadequate notification of decisions affecting residents and tight deadlines in which an application for review must be lodged.’³ The Commonwealth Ombudsman noted that high quality merit review was not available to Island residents.⁴

1 House of Representatives Standing Committee on Legal and Constitutional Affairs, *Islands in the Sun: the Legal regimes of Australia’s External Territories and the Jervis Bay Territory*, March 1991.

2 Joint Standing Committee on the National Capital and External Territories, *Quis custodiet ipso custodes?*, December 2003, p. 68.

3 Joint Standing Committee on the National Capital and External Territories, *Quis custodiet ipso custodes?*, December 2003, p. 69.

4 Joint Standing Committee on the National Capital and External Territories, *Quis custodiet ipso custodes?*, December 2003, p. 69.

Analysis

5.7 The Norfolk Island Government stated that it ‘would like to commend the initiatives in the Territories Law Reform Bill 2010 (the Bill) which relate to personal rights and the ability of the community of Norfolk Island to access the services which pertain to Administrative Appeals, Freedom of Information, the Ombudsman and privacy issues.’⁵

5.8 The Norfolk Island Government, however, stated ‘that the format for the AAT proposed within the Bill would be unsustainable for Norfolk Island from both a financial and resource perspective.’⁶

5.9 The Norfolk Island Government, in its first submission, was sceptical of the need to extend the AAT to Norfolk Island and suggested that it would be more effective to extend the powers of the existing Administrative Review Tribunal. The Norfolk Island Government stated:

The extension of the *Administrative Appeals Tribunal Act 1975* (Cth) would appear to be a complex and costly manner of extending appeal rights compared with an extension of the powers of review of the existing Administrative Review Tribunal. The AAT ... proposals in the draft Bill would still leave in place the cumbersome and slow procedures for review of certain immigration and social welfare decisions made under statute by Norfolk Island Ministers. We suggest that the previous working group which looked at immigration appeals should be re-established to consider more expeditious, effective and less costly mechanisms to deal with appeals against Ministerial decisions. This might also lead to simplified procedures which could be adapted for dealing with social welfare appeals. One option might be for a member of the MRT [Migration Review Tribunal] or SSAT [Social Services Appeals Tribunal] to be delegated to sit on such matters as part of the Norfolk Island ART.⁷

5.10 In relation to the proposed implementation time, the Norfolk Island Government stated that ‘given the transitional period needed to develop procedures and train staff the proposed commencement date of 1 July 2010 is not realistic’ and ‘at least a further 12 months should be allowed.’⁸

5 Government of Norfolk Island, *Submission 6.1*, p. 1.

6 Government of Norfolk Island, *Submission 6.1*, p. 1.

7 Government of Norfolk Island, *Submission 6*, p. 39.

8 Government of Norfolk Island, *Submission 6*, p. 39.

5.11 Throughout the debate about the administrative law reforms, the Norfolk Island Government drew attention to the positive approach and outcomes relating to the Ombudsman arrangements. In view of this, the Norfolk Island Government was asked what mechanisms could be applied and whether a similar approach to the Ombudsman arrangements could be used in relation to the introduction of AAT, FOI and privacy laws. The Norfolk Island Government stated:

I am not too sure that we know the answer to all of that at this time. It would be a matter exploring in a number of Commonwealth areas to see where the resources might be drawn together to commence the conversation. For example, in the appeals area we already have appeal arrangements. It must be acknowledged that there is room for improvement in those appeal arrangements but we do have appeal arrangements. We also have some overlapping arrangements in terms of appeals about immigration. So, yes, we do have some channels there and we have explored those over on other occasions. But this is more wide reaching than just the immigration arrangement. But without a doubt there is a practical approach that can be found.⁹

5.12 The Norfolk Island Government, in a supplementary submission, proposed that a working group be established to determine a suitable way forward. The Norfolk Island Government commented that the 'working group's outcomes should be modelled on the recent Ombudsman process, which successfully incorporated the requirements of the Commonwealth Government within the confines of the Norfolk Island Legislation and financial and resource restraints of the Norfolk Island Government. The Norfolk Island Government proposed the following approach:

- That a working group be established immediately with the following members, the Secretary to Government, the Manager of Community Services, the Acting Crown Counsel from the Norfolk Island Government and nominated members from the relevant Commonwealth Department and the Acting Assistant Secretary Territories East Branch, Attorney General's Department.
- That the working group terms of reference include the following:
 - ⇒ The development of sustainable, cost effective, expeditious mechanisms to deal with appeals against Ministerial and Administration decisions;

9 Government of Norfolk Island, Hon David Buffett MLA, *Transcript T1*, p. 12.

- ⇒ The development of simplified procedures for dealing with social welfare and immigration appeals;
- ⇒ The delivery of a full costing regarding, the implementation of these mechanisms, including funding streams, staff training, and the development of procedures and instruments;
- ⇒ Determine the delegation process (if required) to implement these mechanisms; and
- ⇒ Develop a legislative reform program including timeframes to implement these mechanisms.¹⁰

5.13 The Norfolk Island Government proposed the establishment of similar working groups to develop regimes for FOI and privacy.¹¹

5.14 The Norfolk Island Government drew attention to the effective process used to extend the role of the Commonwealth Ombudsman to Norfolk Island and suggested that this could be a model for the application of the Privacy Act, FOI and the AAT to Norfolk Island.

5.15 The Attorney-General's Department was scrutinised about the approach used to implement administrative law reform measures including FOI, AAT and privacy in comparison to the approach used to extend the role of the Ombudsman. The Attorney-General's Department commented that 'the manner of implementation of the freedom of information, privacy and administrative appeals tribunal reforms in the Territories Law Reform Bill is intended to enable Norfolk Island to take advantage of the Commonwealth's experience and resources.'¹² The Attorney-General's Department stated:

Norfolk Island's small population size provides its own unique challenges for the operation of administrative law. For example, the small population creates difficulty in providing an 'arms-lengths' independent appeals process on-island. The approach taken in the Bill will overcome this difficulty by facilitating the use of established Commonwealth review processes and agencies.

Administrative law schemes are already well established at the Commonwealth level. The extension of Commonwealth administrative law mechanisms will enable the Norfolk Island Government and community to access expert knowledge,

10 Government of Norfolk Island, *Submission 6.1*, p. 2.

11 Government of Norfolk Island, *Submission 6.1*, p. 3 and p. 4.

12 Attorney-General's Department, *Submission 7.1*, p. 29.

experience and resources in administrative law including both in the provision of legislative frameworks and in the application of that legislation through the operation of agencies such as the Office of the Privacy Commissioner and the Administrative Appeals Tribunal.¹³

5.16 The Attorney-General's Department explained that there were practical and policy advantages in 'providing a level of harmonisation and consistency with the Commonwealth in the provision of rights and obligations in respect of administrative law.'¹⁴ The Attorney-General's Department stated that 'the approach taken in the administrative law reforms will ensure that the standards of administrative law enjoyed by Australians on the mainland are similarly extended to Norfolk Islanders.'¹⁵

5.17 The EcoNorfolk Foundation endorsed the Australian Government's initiative to bring into the House the Bill. A representative of EcoNorfolk, Ms Denise Quintal stated that all Australians including those living in Norfolk Island should have the same rights and argued that all Commonwealth laws should be extended to Norfolk Island. Ms Quintal stated:

We commend the amendments to the administrative law legislation which will strengthen the transparency and accountability of the Norfolk Island government and public sector. It is important that the joint standing committee considers that all Australians, especially those of us who are in a territory of Australia, have the same rights. We should be able to have all Commonwealth laws extended to our territory. Not only should the Administrative Appeals Tribunal Act 1975, the Freedom of Information Act 1982 and the Privacy Act 1988 to Norfolk Island be provided to us but other laws are also required. Some issues that are of concern include mental health, gender equity, child protection and racial discrimination, to name a few.¹⁶

5.18 Mr Michael King MLA, commented that 'there did not appear to be much recognition that the issues addressed in the bill were those which had been addressed by the committee over some decades and that the

13 Attorney-General's Department, *Submission 7.1*, p. 29.

14 Attorney-General's Department, *Submission 7.1*, p. 29.

15 Attorney-General's Department, *Submission 7.1*, p. 29.

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

recommendations and reports of those earlier committees formed the basis of the provisions of the Territories Law Reform Bill.¹⁷

Part 5 – Amendments relating to freedom of information

Background

- 5.19 Freedom of information or the ‘right to know’ has been increasingly accepted as a core feature of participatory democracy. In 2003 the committee noted that ‘more than 40 countries provide access to government held information as a means of making government more accountable, preventing corruption, improving the quality of government decision making and enhancing participatory democracy.’¹⁸
- 5.20 In 1995, the Australian Law Reform Commission recommended the enactment of freedom of information legislation on Norfolk Island.¹⁹
- 5.21 Section 3 of the *Freedom of Information Act 1982* (FOI Act) sets out the objectives of the Act which includes extending ‘as far as possible the right of the Australian community to access information in the possession of the Government of the Commonwealth’. Subsection 3(1) extends this primary objective to also include community access to information in the possession of the Government of Norfolk Island. The Explanatory Memorandum states:
- The amendment reflects the overall objective of this Part of the amending Bill, which is to ensure that the residents of Norfolk Island have a right of access to the same information held by Norfolk Island Government agencies as do all Australians in respect of Commonwealth information.²⁰
- 5.22 A new definition of Cabinet in relation to Norfolk Island is inserted into subsection 4(1) of the FOI Act. The Explanatory Memorandum states:

17 Mr Mike King MLA, *Transcript T1*, p. 35.

18 Joint Standing Committee on the National Capital and External Territories, *Quis custodiet ipso custodes?*, December 2003, p. 78.

19 Australian Law Reform Commission, *Report No. 77, Open Government: a review of the federal Freedom of Information Act 1982*, 1995.

20 *Explanatory Memorandum*, p. 45.

The amendment recognises the Norfolk Island Government structure which does not have a 'Cabinet', and therefore in relation to Norfolk Island Cabinet is defined in practical terms as being a body that consists of Norfolk Island Ministers and corresponds to the Cabinet. The intention of this amendment is to provide that where a body of Norfolk Island Ministers meets in a manner that accords with a Commonwealth or State Cabinet equivalent, then they are afforded the same rights, responsibilities and protection in respect of the FOI Act.²¹

Analysis

- 5.23 The Norfolk Island Government raised concerns about simply applying Commonwealth administrative law to Norfolk Island. The Norfolk Island Government stated:

Equally, freedom of information appears to impose all of the Commonwealth machinery, with all of its complexities. You work with that so you will know its complexities and, in a small jurisdiction, there are better ways of doing it and equally so with privacy.²²

- 5.24 The Norfolk Island Government commented that 'we acknowledge the much greater degree of consultation between the Commonwealth and Norfolk Island on the development of transparency and accountability measures through administrative law and administrative review changes.'²³ The Norfolk Island Government further commented that 'the changes are generally welcomed, although we note the Department's desire to implement costly and bureaucratic measures for Freedom of Information and Privacy, rather than the less complex and costly proposals for administrative schemes more suitable for smaller jurisdiction, as proposed by the Commonwealth Ombudsman and the Norfolk Island Government.'²⁴ The Norfolk Island Government stated:

The complexity of the proposed FOI model exacerbates the time and resources needed to implement such a system. The Norfolk Island Government does not accept that the Commonwealth has realistic timeframes for the introduction of this complex and time consuming system nor has any consideration been given to the

21 *Explanatory Memorandum*, p. 45.

22 Government of Norfolk Island, Hon David Buffett MLA, *Transcript T1*, p. 5.

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

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

suitability of the system or the significant cost of implementation and operation in a small jurisdiction.²⁵

- 5.25 The Norfolk Island Government suggested that the model used for the provision and appointment of the Commonwealth Ombudsman is more appropriate to Norfolk Island's circumstances. The Norfolk Island Government stated 'the outcome achieved in respect of the Ombudsman is a perfect example of what could be achieved through proper and careful consideration of what is appropriate and suitable for Norfolk Island in the areas of FOI and Privacy.'²⁶

Part 6 – Amendments relating to the Ombudsman

Background

- 5.26 The lack of an Ombudsman on Norfolk Island was noted by the Commonwealth Grants Commission in 1997. In the period that followed there was little effort to investigate or establish arrangements for an Ombudsman function despite calls to do so by some members of the Legislative Assembly.²⁷
- 5.27 The Commonwealth *Ombudsman Act 1976* applies in all States and Territories, including Norfolk Island and Christmas and Cocos (Keeling) Islands, but is limited to the actions of Commonwealth agencies operating in those jurisdictions. An exception to this rule is the arrangement with the Australian Capital Territory. In that jurisdiction, the Commonwealth Ombudsman holds office as the Australian Capital Territory Ombudsman. In 2003, the committee believed that this model should also apply to Norfolk Island.
- 5.28 The role of the Ombudsman is to inquire into administrative processes in response to complaints of alleged maladministration and is distinct from merit review by an administrative tribunal. The ombudsman is equipped with powers to compel production of documents and witnesses. These investigative powers allow an independent person with statutory authority to scrutinise conduct that is otherwise hidden from public view.

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

26 Government of Norfolk Island, *Submission 6*, p. 41.

27 See Norfolk Island Legislative Assembly, *Hansard*, 16 August 2000 and 27 March 2002.

- 5.29 The Territories Law Reform Bill includes amendments to the *Ombudsman Act 1976*. Item 239 of the Bill inserts 4(2(d)) to the Ombudsman Act which extends the Commonwealth Ombudsman's authority to also include functions conferred on the office by a Norfolk Island enactment. In addition, new subsection 4(6) provides that the Commonwealth Ombudsman, in performing his or her functions under a Norfolk Island enactment, may be called the Norfolk Island Ombudsman.²⁸
- 5.30 Proposed section 66A in the Norfolk Island Act relates to the presentation of reports by the Ombudsman. The Explanatory Memorandum states that 'new section 66A applies only where under enactment, the Commonwealth Ombudsman is required to give a report to a Norfolk Island Minister (being either the Chief Minister or a Minister appointed under section 13 of the Norfolk Island Act), and where an enactment also requires that the Norfolk Island Minister table that report in the Norfolk Island Legislative Assembly.'²⁹
- 5.31 Where the above circumstances apply, new section 66A requires the Norfolk Island Minister to give the Commonwealth Ombudsman's report to the responsible Commonwealth Minister under subsection 66(2). The Commonwealth Minister is then required to cause a copy of the report to be tabled in each House of the Parliament of the Commonwealth within 15 sitting days after receiving the report.
- 5.32 The Explanatory Memorandum states that 'the operation of the section is dependent upon an enactment (Commonwealth or Norfolk Island enactment) to provide for the authority of the Commonwealth Ombudsman to investigate complaints in the Territory of Norfolk Island.'³⁰
- 5.33 The Explanatory Memorandum states:
- It is anticipated that the guidance and oversight that the Commonwealth Ombudsman can provide will assist the development of a sound and effective administrative process on Norfolk Island. An externally appointed Ombudsman is of particular benefit in a small community such as Norfolk Island.³¹

28 *Explanatory Memorandum*, pp. 62-63.

29 *Explanatory Memorandum*, p. 62.

30 *Explanatory Memorandum*, p. 62.

31 *Explanatory Memorandum*, p. 62.

Analysis

5.34 The Norfolk Island Government is positive about the process and approach used to extend the role of the Commonwealth Ombudsman to Norfolk Island. The Norfolk Island Government stated:

I want to dwell upon the fourth area and that relates to the Ombudsman. I would like to dwell on this for a moment because it is a success story. There are not a great deal of them around but, in this particular instance, this is a success story. Let me just work through these. The Norfolk Island government considers that the proposed model in this particular piece of legislation is based upon the introduction of Norfolk Island enactments, with provision for appointment of the Commonwealth Ombudsman to act in accordance with that particular piece of Norfolk Island legislation. It would be appropriate, therefore, to Norfolk Island circumstances. The model and the legislation were developed by consultation between the officers of the Commonwealth Ombudsman and the Norfolk Island government. They were specifically drafted by the Commonwealth, having regard to the special circumstances appropriate to a small jurisdiction and the need to minimise bureaucracy, complexity and cost. The outcome achieved in respect of the Ombudsman is a perfect example of what can be achieved through proper and careful consideration of what is appropriate and suitable in this place. You could use that model for the freedom of information and privacy examples that we have turned to here. That is a success story and, as such, is a very good example to cite.³²

Part 7 – Amendments relating to privacy

Background

5.35 Part 7 of the Bill will extend coverage of the *Privacy Act 1988* (Cwlth) to Norfolk Island. Norfolk Island public agencies will be required to adhere to the Information Privacy Principles contained in section 14 of the Privacy Act. The Privacy Act already applies to private sector organisations, as defined in section 6C, of the Act.

32 Government of Norfolk Island, Hon David Buffett MLA, *Transcript T1*, p. 5.

- 5.36 The Information Privacy Principles include principles for the collection, use and disclosure of personal information by agencies. New subsection 15(1A) to the Privacy Act provides that in relation to a Norfolk Island authority, the Information Privacy Principles 1, 2, 3, 10 and 11 apply only in relation to information collected by an agency after the commencement of the relevant part of this amending bill. The Explanatory Memorandum states that ‘this is consistent with the existing application of those specific Information Privacy Principles to Commonwealth agencies under section 15(1).’³³ The Information Privacy Principles 4 to 9 inclusive will apply to a Norfolk Island agency in the equivalent way in which they apply to a Commonwealth agency as per existing subsection 5(2) of the Privacy Act.
- 5.37 New section 15B to the Privacy Act establishes special provisions to ensure the Information Privacy Principles are applied to Norfolk Island agencies in a manner equivalent to Commonwealth agencies. The Explanatory Memorandum states:
- These Principles are central to the imposition of duties and responsibilities to agencies under the Privacy Act. The new section 15B ensures that they are properly amended to apply effectively to the Norfolk Island agencies. Specifically, section 15B provides that where the ‘record-keeper’ is a Norfolk Island agency the reference to the law of the Commonwealth at Principles 5 (Information relating to records kept by a record-keeper), 6 (Access to records containing personal information) and 7 (Alteration of records containing personal information), includes a reference to Norfolk Island.³⁴
- 5.38 The definition of agency in subsection 6(1) of the Privacy Act is amended to include a ‘Norfolk Island agency’. In addition, a new definition of Norfolk Island agency is included in subsection 6(1). A Norfolk Island agency is defined as:
- (a) a Norfolk Island Minister;
 - (b) a public sector agency, as defined in section 4 of the *Public Sector Management Act 2000* of Norfolk Island;
 - (c) a body (incorporated or not), or a tribunal, established or appointed for a public purpose by a Norfolk Island enactment, other than a corporation established or registered under the Norfolk Island *Companies Act 1985*, or *Associations Incorporation Act 2005*;
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33 *Explanatory Memorandum*, p. 69.

34 *Explanatory Memorandum*, p. 70.

- (d) a body established or appointed by the Administrator or a Norfolk Island Minister other than under a Norfolk Island enactment;
- (e) a person holding or performing the duties of an office established by or under, or an appointment made under, a Norfolk Island enactment;
- (f) a person holding or performing the duties of an appointment made by the Administrator of Norfolk Island, or a Norfolk Island Minister, other than under a Norfolk Island enactment; or
- (g) a court of Norfolk Island.³⁵

5.39 A new definition of Cabinet in relation to Norfolk Island is also inserted into subsection 6(1) of the Privacy Act. The Explanatory Memorandum states:

The amendment defines Cabinet in practical terms as being a body that consists of Norfolk Island Ministers and corresponds to the Cabinet. The intention of this amendment is to provide that where a body of Norfolk Island Ministers meets in a manner that accords with a Commonwealth or State Cabinet equivalent, then they are afforded the same rights, responsibilities and protection in respect of the Privacy Act.³⁶

5.40 The definition of Commonwealth Contract is amended in subsection 6(1) of the Privacy Act ‘to extend the references to Commonwealth contracts under that Act to also include contracts to which the Norfolk Island Government (or agency) is a party.’³⁷ The Explanatory Memorandum explains that this amendment ‘is intended to provide protection to personal information held by a contractor to the Norfolk Island Government.’³⁸

5.41 Section 30 of the Privacy Act provides for the provision of a report by the Privacy Commissioner following the investigation of an act or practice under the Privacy Act. Paragraph 30(4) requires the Privacy Commissioner to serve a further report on the responsible Minister (if any) where a report is served under subsection 30(3) and after 60 days, the Commissioner is still of the view that the act or practice interferes with the privacy of an individual and is not satisfied that reasonable steps have been taken to prevent continuation of the practice or repetition of the act.

35 *Explanatory Memorandum*, p. 65.

36 *Explanatory Memorandum*, p. 64.

37 *Explanatory Memorandum*, p. 64.

38 *Explanatory Memorandum*, p. 64.

Item 271 amends subsection 30(4) by inserting ‘or Norfolk Island Minister (if any).

Analysis

5.42 The Norfolk Island Government was not specifically opposed to the application of the privacy laws to Norfolk Island but was concerned about resource implications. The Norfolk Island Government stated:

As the Chief Minister has pointed out, the proposals for some of the new mechanisms such as the AAT, privacy and FOI are not necessarily things that we do not support, but we need to be able to manage the resourcing of those mechanisms, and there needs to be an understanding and a mechanism that associates them with the locale that they are used in.³⁹

5.43 The Australian Privacy Commissioner advised that she had been consulted in the development and drafting of the Bill. In relation to resources, the Australian Privacy Commissioner stated:

Please note that my Office will be resourced to provide assistance to Norfolk Island public sector agencies in ensuring their information management practices align with the requirements of the Privacy Act and to take action to resolve any complaints.⁴⁰

5.44 The need for consistency and harmonisation in the application of privacy principles was raised by the EcoNorfolk Foundation. Ms Denise Quintal of EcoNorfolk stated:

It is important that part 7 of the bill proposes amendments to the Privacy Act be applied so that the act will apply to the Norfolk Island public sector. It is agreed that the Norfolk Island public sector be required to adhere to the information privacy principles in the same manner as other Australian government public sector agencies.⁴¹

Conclusions

5.45 A range of laws and mechanisms have developed in Australia and other western democracies to institutionalise the principle of ‘good governance.’

39 Government of Norfolk Island, Hon Andre Nobbs MLA, *Transcript T1*, p. 9.

40 Australian Privacy Commissioner, *Submission 1*, p. 1.

41 EcoNorfolk Foundation Inc., Ms Denise Quintal, *Transcript T1*, p. 42.

Finance and performance audits, annual reporting and access to an Ombudsman are now routine ways of ensuring accountability to the public. Freedom of information and privacy laws regulate the accuracy and disclosure of personal information and provide access to public policies and guidelines of government agencies. Administrative tribunals provide merit review of decisions which affect the rights and entitlements of individuals and businesses.

- 5.46 All Commonwealth, State and Territory governments are subject to extensive administrative law regimes. The Territories Law Reform Bill will provide this outcome for Norfolk Island.
- 5.47 In 1991, the House of Representatives Standing Committee on Legal and Constitutional Affairs recommended extending the jurisdiction of the Commonwealth AAT to decisions made under a Norfolk Island enactment and applying both the Commonwealth *Freedom of Information Act 1982* and *Ombudsman Act 1976* to ensure residents of Norfolk Island had increased access to review processes as a matter of priority.
- 5.48 In 1995 the Australian Law Reform Commission recommended the enactment of freedom of information legislation on Norfolk Island. In 1997 the Commonwealth Grants Commission noted the lack of an Ombudsman on Norfolk Island.
- 5.49 The Norfolk Island Government indicated that it commends the initiatives in the Bill which relate to personal rights and the ability of the community of Norfolk Island to access the services which relate to Administrative Appeals, Freedom of Information, the Ombudsman and privacy legislation. However, Norfolk Island asserted that the development of this package should be implemented along the lines used to extend the powers of the Commonwealth Ombudsman to Norfolk Island. Accordingly, the Norfolk Island Government has proposed that a series of working groups be established to progress the areas of AAT, FOI and privacy.
- 5.50 The Attorney-General's Department was heavily scrutinised about the processes used to introduce regimes for AAT, FOI and privacy. The Attorney-General's Department commented that administrative law schemes are already well established at the Commonwealth level. In particular, the department advised that 'the extension of Commonwealth administrative law mechanisms will enable the Norfolk Island Government and community to access expert knowledge, experience and resources in administrative law including both in the provision of legislative frameworks and in the application of that legislation through

the operation of agencies such as the Office of the Privacy Commissioner and the Administrative Appeals Tribunal.'

- 5.51 The committee agrees with the advice provided by the Attorney-General's Department and disagrees with the need to start up working groups which will just create further delay in the introduction of an effective administrative law package. The Norfolk Island administration has been advised of the need for reform in these areas since 1991 and little or no action has occurred. Mr Michael King MLA commented that 'there did not appear to be much recognition that the issues addressed in the Bill were those which had been addressed by the committee over some decades and that the recommendations and reports of those earlier committees formed the basis of the provisions of the Territories Law Reform Bill.'
- 5.52 The Commonwealth is correct in introducing these reforms and through this action providing certainty and confidence for the Norfolk Island community. Ms Denise Quintal commented that 'all Australians including those living in Norfolk Island should have the same rights and argued that all Commonwealth laws should be extended to Norfolk Island.'
- 5.53 The Norfolk Island Government raised concerns about resourcing the implementation of these reforms. The committee has commented on the financial impact of the legislation in Chapter 1. The key point is that the Attorney-General's Department has advised that the Norfolk Island Government will not incur any costs associated with implementation of the Bill. In addition, Commonwealth agencies with relevant responsibility associated with the reforms contained in the Bill will continue to provide assistance to the Norfolk Island Government and Administration.