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The Parliament of the Commonwealth of Australia

# An advisory report on the Territories Law Reform Bill 2010

Joint Standing Committee on the National Capital and External Territories

May 2010  
Canberra

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## Chair's foreword

In 2002, the then Minister for Regional Services, Territories and Local Government tabled in the Norfolk Island Legislative Assembly, a document outlining the Government's interests in and obligations to Norfolk Island. The policy document stated:

*..the Federal Government retains ultimate responsibility for the welfare of all Australian citizens throughout Australia and has an obligation to protect their basic individual rights. It must therefore encourage strong partnership with all States and Territories.*

More recently, in the same vein, the Minister for Home Affairs in his second reading speech stated that the reforms contained in the Territories Law Reform Bill 2010 (the Bill) represent 'the Government's ongoing commitment to fulfilling its obligations to provide the legislative frameworks for the future growth and sustainability of Australia's territories.'

The Bill will amend the *Norfolk Island Act 1979* (Cwlth) to strengthen accountability and transparency through reform of Norfolk Island's administrative law, governance, electoral and financial structures. The Bill also has a second feature, which is to provide a vesting mechanism for powers and functions under Western Australian laws applied in the Indian Ocean Territories. While the Bill has two purposes, the Bill's main component relates to Norfolk Island.

The *Norfolk Island Act 1979* (Cwlth) granted self government to Norfolk Island and empowers the Norfolk Island Legislative Assembly to make laws for the peace, order and good government of the Territory. This is with the exception of only four areas: acquisition of property otherwise than on just terms, raising defence forces, coining money, and euthanasia. It is by virtue of the Norfolk Island Act that Norfolk Island's Legislative Assembly and system of Government is unique.

The Bill provides the Commonwealth Government with greater oversight and scrutiny of Norfolk Island legislation in regard to ensuring compliance with Australia's international obligations and other areas of national interest, but it does not diminish the legislative power of the Norfolk Island legislature.

In May 2009, when the Minister for Home Affairs announced the proposed reforms relating to Norfolk Island, (now contained in the Bill) the Government of Norfolk Island welcomed moving towards greater transparency and accountability to strengthen administrative and financial systems and thereby improving Norfolk Island's long term stability.

Since that time, a new Legislative Assembly has been elected and has presented its concerns about the Bill to the committee. The committee has considered the general

concerns raised by the Government of Norfolk Island in regard to various aspects of the Bill and has also taken into consideration information received from Norfolk Island residents and organisations.

Based on the views and evidence presented to it, the committee has recommended that the Bill be passed. In addition, the committee recommended:

- The Attorney-General's Department continue to consult with the Government of Norfolk Island, its Administration and the Norfolk Island community on the content of regulations that establish the reform elements of the Bill. This includes the timeframe for implementation of regulations.
- Improving the timeframe for Commonwealth scrutiny of Norfolk Island legislation.
- A review of items under Schedules 2 and 3 of the Norfolk Island Act.
- Removal of Schedule 1, Part 2 – Amendments relating to elections, from the Bill and deferral of this matter until 2011.

Notwithstanding consultation to develop regulations, it is important that the Bill be considered and passed by the Commonwealth Parliament in the intended timeframe to allow for the financial management framework to be implemented prior to the start of the 2010-11 financial year.

Further, the committee received evidence that the governance reforms will undermine the consensus style of democracy practiced by the Norfolk Island Legislative Assembly. This style of democracy was likened to that which operates on the Isle of Mann and the Canadian Northwest Territories. This is similar to how local government operates in other Australian jurisdictions and is not commensurate with the Norfolk Island Legislative Assembly's status as a Territory legislature.

In this regard, the committee has supported the principle underlying the governance reforms which not only will improve the accountability and transparency of the Norfolk Island Legislative Assembly and Norfolk Island Government, but together with the administrative law and financial reforms will assist in ensuring a robust and efficient system of self government.

In addition, the committee has received evidence that implementation of the Bill will not present a financial cost to the Government of Norfolk Island or its Administration, with ongoing assistance to be provided by Commonwealth agencies.

On the committee's behalf, I thank the Government of Norfolk Island and its Administration, individuals and organisations who contributed to the inquiry either by lodging a submission, appearing as a witness or extending assistance to the committee during the course of the inquiry.

Senator Kate Lundy  
Chair



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## Membership of the committee

Chair            Senator Kate Lundy

Deputy Chair   Mr Michael Johnson MP

Members        Hon Dick Adams MP

Ms Anna Burke MP

Ms Annette Ellis MP

Mr Paul Neville MP

Mr Jim Turnour MP

Senator Judith Adams

Senator Trish Crossin

Senator the Hon Alan Ferguson

Senator Gary Humphries

## Committee secretariat

Secretary            Mr Stephen Boyd

Inquiry Secretary   Ms Stephanie Mikac

Administrative Officers   Ms Natasha Petrovic

Mrs Renee Burton



## Terms of reference

On 18 March 2010, the Senate resolved that the provisions of the Territories Law Reform Bill 2010 be referred to the Joint Standing Committee on the National Capital and External Territories for inquiry and report by 11 May 2010.



## List of abbreviations

AAT	Administrative Appeals Tribunal
ACT	Australian Capital Territory
AEC	Australian Electoral Commission
APS	Australian Public Service
ART	Norfolk Island Administrative Review Tribunal
CEO	Chief Executive Officer
Cwth	Commonwealth
DSL	Digital Subscriber Line
DVA	Department of Veteran's Affairs
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1982</i>
GFC	Global Financial Crisis
IFRS	International Financial Reporting Standards
IOTs	Indian Ocean Territories
MLA	Member of the Legislative Assembly
MRT	Migration Review Tribunal
NI	Norfolk Island
NIDS	Norfolk Island Data Services

NIRSL	Norfolk Island sub branch of the Returned and Services League of Australia
NRMP	Natural Resource Management Plan
PAEC	Public Accounts and Estimates Committee
SDAs	Service Delivery Arrangements
SSAT	Social Services Appeals Tribunal
WA	Western Australia



# List of recommendations

## 1 Introduction

### Recommendation 1 (paragraph 1.60)

The committee supports the general provisions of the Territories Law Reform Bill 2010 and recommends that the Bill be passed by the Senate.

### Recommendation 2 (paragraph 1.61)

The committee recommends that the Attorney-General's Department continue to consult with the Government of Norfolk Island, the Norfolk Island Administration and Norfolk Island community in regard to the content of regulations (including the timeframe for their development and entering into force) relating to the Territories Law Reform Bill 2010.

## 2 Part 1 – General amendments

### Recommendation 3 (paragraph 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 (paragraph 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).

## 3 Part 2 – Amendments relating to elections

### Recommendation 5 (paragraph 3.27)

The committee recommends that Part 2 – Amendments relating to elections be removed from the Territories Law Reform Bill 2010.

The Commonwealth Government should consult with the Norfolk Island Government and community about the proposals for electoral reform and reintroduce amending legislation to the Commonwealth Parliament in 2011.

When the amending legislation is tabled in the Commonwealth Parliament, it should be referred to the Joint Standing Committee on the National Capital and External Territories for a bills inquiry.



## Introduction

- 1.1 The purpose of the Territories Law Reform Bill 2010 (the Bill) is to:
- provide for the implementation of reforms to strengthen Norfolk Island governance arrangements and transparency, and improve the accountability of the Government of Norfolk Island and its Administration; and
  - amend the *Christmas Island Act 1958* (Cwlth) and the *Cocos (Keeling) Act 1955* (Cwlth) 'to provide a vesting mechanism for powers and functions under Western Australian (WA) laws applied in the Indian Ocean Territories' (IOTs) leading to greater efficiency in the administration of service delivery arrangements.<sup>1</sup>

## Background

- 1.2 In May 2009, the then Minister for Home Affairs, the Hon Bob Debus MP, announced a proposed package of reforms to governance and administrative arrangements for Norfolk Island. It was envisaged that the reforms would be implemented in consultation with the Government of Norfolk Island, its Administration and the Norfolk Island community. The aim of the reforms was to improve governance arrangements and increase the accountability and transparency of the Government of Norfolk Island and its Administration.<sup>2</sup>
- 1.3 Specifically the reforms would:

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

2 B Debus (Minister for Home Affairs), *Open letter to the Norfolk Island Community*, media release, Parliament House, Canberra, 28 May 2009.

- allow the Commonwealth Ombudsman and the Administrative Appeals Tribunal to operate on Norfolk Island and provides for judicial review of decisions made by the Norfolk Island Administration
  - apply the provisions of the *Freedom of Information Act 1982* (Cwlth) and the *Privacy Act 1988* (Cwlth) to information held by the Norfolk Island Government and its Administration. This would include a role for the Commonwealth Privacy Commissioner.
  - allow the Administrator of Norfolk Island to access a greater range of advice when presented with bills for assent under Schedule 2 of the *Norfolk Island Act 1979* (Cwlth)
  - allow the Governor-General and the Territories Minister to take a more active role in the introduction and passage of Norfolk Island legislation
  - provide for changes to the process for the election of the Norfolk Island Legislative Assembly
  - provide for the selection of and prescribe the roles of Chief Minister and other Ministers
  - include enacting a code of conduct for Members of the Norfolk Island Legislative Assembly
  - provide for fixed terms for the Norfolk Island Legislative Assembly
  - implement a contemporary financial management framework including provision for contemporary guidelines for financial reporting and budgeting and auditing of the Administration's financial statements by the Commonwealth Auditor-General.
- 1.4 In addition, *Quis custodiet ipsos custodes? Inquiry into Governance on Norfolk Island* (the 2003 report), was the first of two reports relating to Norfolk Island governance and financial arrangements by the committee. While the 2003 report examined governance arrangements for Norfolk Island, the second report entitled *The Challenge: Sink or swim* examined ways of achieving financial sustainability for Norfolk Island.
- 1.5 The 2003 report made recommendations aimed at improving the transparency and accountability of Norfolk Island administrative, governance and financial arrangements. This would entail implementation of a comprehensive Administrative law review system, in addition to possible changes to the governance and financial frameworks.
- 1.6 In February 2009, Minister Debus acknowledged the progress by the Government of Norfolk Island in implementing a new administrative complaints system. Further, Minister Debus commented on discussions

with the Government of Norfolk Island regarding strengthening transparency and accountability measures, especially in relation to future appointment of the Commonwealth Ombudsman. Minister Debus stated:

This is a step in the right direction which paves the way for the Commonwealth Ombudsman to be appointed to handle matters of a serious nature arising out of the new Administrative Complaints System. Strong accountability and anti-corruption checks and balances are essential to any modern government.<sup>3</sup>

- 1.7 In regard to the discussions between the Government of Norfolk Island and the Minister for Home Affairs, the Chief Minister of Norfolk Island commented that there was agreement on areas of the Norfolk Island Act which could be further examined and amended. The Chief Minister stated:

There was significant agreement on areas of the Norfolk Island Act which could be further examined and amended to improve accountability. The Commonwealth has offered us assistance in implementing these changes.<sup>4</sup>

- 1.8 In May 2009, following the announced proposed reforms for Norfolk Island, the Chief Minister stated that he welcomed moves towards greater transparency and accountability to strengthen Norfolk Island's administrative and financial systems to improve long term stability. The Chief Minister stated:

While there are many areas of detail still to be settled, in general I welcome the decisions by the Commonwealth to share in our moves toward greater transparency and accountability and to work together for structural change which will strengthen our administrative and financial systems and lay the foundations for long term stability in our mutual relationship. I have continually reported to the Norfolk Island community that we have moved in many areas to build stronger transparency and accountability mechanisms but needed the cooperation of the Commonwealth in undertaking legislative and programme changes ... to make further progress. The Commonwealth has now agreed to both

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3 B Debus (Minister for Home Affairs) and A Nobbs (Chief Minister), Joint Media Release, *Discussions Progress on Norfolk Island Reforms*, Parliament House, Canberra and Norfolk Island Legislative Assembly, Kingston, 27 February 2009.

4 B Debus (Minister for Home Affairs) and A Nobbs (Chief Minister), Joint Media Release, *Discussions Progress on Norfolk Island Reforms*, Parliament House, Canberra and Norfolk Island Legislative Assembly, Kingston, 27 February 2009.

make the necessary changes and to provide the funding to ensure that they are effective.<sup>5</sup>

- 1.9 The Chief Minister also acknowledged the need for a more sophisticated financial and information technology system to enable forward strategic and budget planning. The Chief Minister stated:

We have recognised for a long time the need for more sophisticated financial and information technology systems, but lacked some of the specific internal expertise and financial resources to implement integrated change across the whole public sector”, Mr Nobbs said. “In my discussions with Minister Debus, I have raised our need for assistance with training, hardware and software to greatly enhance our financial management and IT systems and provide us with much better data to enable forward strategic and budget planning.<sup>6</sup>

## Purpose and overview of the Bill

- 1.10 There are three schedules contained in the Bill. Schedule 1 consists of seven parts and amends a number of Commonwealth Acts. Schedules 2 and 3 of the Bill will amend the *Christmas Island Act 1958* (Cwlth) and the *Cocos (Keeling) Islands Act 1955* (Cwlth).
- 1.11 In particular, Schedule 1 of the Bill will amend a range of Commonwealth legislation to improve Norfolk Island governance arrangements and strengthen the accountability of the Norfolk Island Government.
- 1.12 Schedules 2 and 3 of the Bill will provide a vesting mechanism for powers and functions under WA laws applied to Christmas Island and the Cocos (Keeling) Islands.
- 1.13 Proposed Schedule 1, Parts 1 and 2 will:
- Reform the electoral system for the Norfolk Island Legislative Assembly including prescribing minimum and maximum terms.
  - Prescribe a process for selection of Chief Minister and Ministers including outlining their roles and responsibilities.

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5 A Nobbs (Chief Minister), *Norfolk Island Self Government achieves greater maturity and transparency: Chief Minister*, Norfolk Island Legislative Assembly, Kingston, 29 May 2009.

6 A Nobbs (Chief Minister), *Norfolk Island Self Government achieves greater maturity and transparency: Chief Minister*, Norfolk Island Legislative Assembly, Kingston, 29 May 2009.

- Provide the Administrator with additional avenues to seek advice in regard to Bills for assent under Schedule 2 of the Norfolk Island Act.
  - Provide a mechanism for the Governor-General and Territories Minister to participate more actively in regard to the passage of Norfolk Island legislation.
- 1.14 Proposed Schedule 1, Part 3 will:
- Provide for the implementation of a customised and proportional financial management framework. This financial framework will allow for the 'responsible management of public funds, property, budget formulation, financial reporting, annual reporting and procurement.
  - Extend the jurisdiction of the Commonwealth Auditor-General to Norfolk Island and allow for the possibility of the appointment of a Commonwealth Financial Officer for Norfolk Island.
- 1.15 Proposed Schedule 1, Part 4 will amend the *Administrative Appeals Tribunal Act 1975* (Cwlth) to apply the powers and procedures under the Act to Norfolk Island enactments.
- 1.16 Proposed Schedule 1, Part 5 will amend the *Freedom of Information Act 1982* (Cwlth) to allow residents of Norfolk Island to have the right to access information held by Norfolk Island Government agencies.
- 1.17 Proposed Schedule 1, Part 6 will allow the Commonwealth Ombudsman to perform the functions of the Norfolk Island Ombudsman upon enactment by either the Commonwealth Parliament or the Norfolk Island Legislative Assembly. This includes the provision of reporting requirements.
- 1.18 Proposed Schedule 1, Part 7 will allow for the provisions under the *Privacy Act 1988* (Cwlth) to be applied to information held by the Norfolk Island Government and Administration.
- 1.19 Proposed Schedules 2 and 3 will amend the *Christmas Island Act 1958* (Cwlth) and the *Cocos (Keeling) Act 1955* (Cwlth) to allow WA Government officers engaged under service delivery arrangements to be automatically vested with the powers required to perform their job.

## General comments about the Bill

### Consultation

#### Norfolk Island

- 1.20 There were two main consultation periods undertaken and coordinated by the Attorney-General's Department on behalf of the Government in regard to the package of reforms for Norfolk Island.<sup>7</sup>
- 1.21 Consultation with the Norfolk Island Legislative Assembly, Administration and community was undertaken in October 2009 in regard to the proposed reforms to administrative law and again in mid February 2010 after the exposure draft of the Bill was released for comment.<sup>8</sup>
- 1.22 In December 2009, the Minister for Home Affairs, the Hon Brendan O'Connor MP visited Norfolk Island to discuss possible reforms with the Norfolk Island Government and community. At this time, the Minister advised the Norfolk Island Legislative Assembly 'that the Bill was scheduled for introduction in the autumn sittings, and that on-island consultation would occur early in' 2010.<sup>9</sup>
- 1.23 On 12 February 2010, the exposure draft of the Bill was made available to Norfolk Island. From 15-17 February 2010,<sup>10</sup> officers of the Attorney-General's Department and the Department of Finance and Deregulation met with Members of the Norfolk Island Legislative Assembly on the exposure draft of the Bill. The closing date to receive submissions or comment on the Bill was 25 February 2010.<sup>11</sup>
- 1.24 A total of 119 submissions were received from Norfolk Island in regard to the exposure draft Bill consultation and 'were used to inform further amendments to the exposure draft Bill prior to its introduction into Parliament on 17 March 2010.'<sup>12</sup>
- 1.25 On 24 March 2010, the consultation period on the Bill was extended to 16 April 2010.<sup>13</sup>

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7 Attorney-General's Department, *Submission 7*, p. 5.

8 Attorney-General's Department, *Submission 7*, p. 5.

9 Attorney-General's Department, *Submission 7.1*, p. 23.

10 Government of Norfolk Island, *Submission 6*, p. 4.

11 Attorney-General's Department, *Submission 7*, p. 5.

12 Attorney-General's Department, *Submission 7*, p. 5.

13 Attorney-General's Department, *Submission 7*, p. 5.

- 1.26 Members of the Norfolk Island 12<sup>th</sup> and 13<sup>th</sup> Legislative Assemblies have since expressed their concern that the timeframe for lodging submissions was too short and that a draft explanatory memorandum to the Bill was not made available during the consultation process.<sup>14</sup>
- 1.27 In particular, the Government of Norfolk Island commented that:
- The inference arising from a lack of local consultation is that the architects and implementers of the Bill overstate their understanding of Norfolk Island conditions. This lack of understanding can be overcome by bona fide local consultation but not by mere reading and uncritical adoption of external reports such as the 2003 *Quis custodiet ipsos custodes* Report. This particular report was the subject of quite serious criticism by previous Commonwealth and Norfolk Island governments as to its methodology in giving credence and emphasis to untested, confidential and unreliable evidence given to the committee of the day.<sup>15</sup>
- 1.28 The Government of Norfolk Island advocated that:
- Detailed consultation, in many cases already requested but not commenced, needs to be given the time and resources to be properly and thoroughly completed.<sup>16</sup>
- 1.29 Further, the Government of Norfolk Island was of the strong view that the reforms for Norfolk Island required time and effort to engage in consultation prior to implementation. The Government of Norfolk Island stated:
- The Norfolk Island Government is strongly of the view that the Commonwealth will only succeed in its goals of improving Norfolk Island's governance arrangements and strengthen the accountability of the Norfolk Island Government if it takes the time and makes the effort to consult with the Norfolk Island Government in a timely and bona fide manner.<sup>17</sup>
- 1.30 The Commonwealth Government stated that the extension of the consultation period to 16 April 2010 was intended to 'ensure that a

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14 Government of Norfolk Island, 12<sup>th</sup> Legislative Assembly, *Submission in relation to the Exposure Draft Territories Law Reform Bill 2010*, Exhibit 4, p. 1; Government of Norfolk Island, *Submission 6*, p. 5 and 41; Government of Norfolk Island, *Submission 6.1*, p. 7; Government of Norfolk Island, Hon David Buffett, *Transcript T1*, p. 3.

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

16 Government of Norfolk Island, *Submission 6*, p. 4.

17 Government of Norfolk Island, *Submission 6*, p. 38.

rigorous, good faith consultation is undertaken on this significant Bill, including providing the incoming members of the Norfolk Island Legislative Assembly the opportunity to provide comments.’<sup>18</sup>

- 1.31 In addition, on the closing date of the extended consultation period, the Minister for Home Affairs stated:

The additional comments received from the community reaffirm the need for the Australian Government to continue with these important reforms.<sup>19</sup>

### Indian Ocean Territories

- 1.32 The provisions in the proposed Bill relating to Australia’s IOTs of Christmas Island and the Cocos (Keeling) Islands will not have a direct impact on the IOTs communities. In this respect, the Attorney-General’s Department held discussions with officers of the WA Government, the Australian Government Solicitor and the Office of Parliamentary Counsel to develop the Bill.<sup>20</sup>
- 1.33 On 19 March 2010, the Attorney-General’s Department invited the IOTs Shires and communities to provide comment to the Bill.<sup>21</sup>

### Development of regulations

- 1.34 The proposed Bill provides for regulations to be made in regard to changes to Norfolk Island’s financial framework, the electoral system, the Public Service Values and ‘the specification of decisions under Norfolk Island legislation which may be subject to merit review by the Administrative Appeals Tribunal.’<sup>22</sup>
- 1.35 The Attorney-General’s Department advised the applicable regulations would override any inconsistent Norfolk Island regulations as ‘any other outcome would result in legislative inconsistencies and confusion as to rights, responsibilities and obligations’ under the Norfolk Island Act. The Attorney-General’s Department stated:

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18 Attorney-General’s Department, *Submission 7.1*, p. 25.

19 B O’Connor (Minister for Home Affairs), *Minister welcomes input from Norfolk Island on Territories Law Reform Bill*, media release, Parliament House, Canberra, 16 April 2010.

20 Attorney-General’s Department, *Submission 7*, pp 5 and 6; Attorney-General’s Department, Mr Julian Yates, *Transcript T2*, p. 8.

21 Attorney-General’s Department, *Submission 7.1*, p. 24.

22 Attorney-General’s Department, Mr Julian Yates, *Transcript T2*, p. 4.



The bill provides for the making of regulations in respect of a number of issues, such as the financial frameworks, the electoral system, 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. Arrangements have already commenced to form a Commonwealth and Norfolk Island officer level working group to develop the regulations to support the financial management and accountability reforms contained in the Territories Law Reform Bill. It is anticipated that a similar process will be used in respect of the remaining regulations. To ensure the successful operation of the provisions the Commonwealth regulations will by necessity override any inconsistent Norfolk Island regulation. Any other outcome would result in legislative inconsistencies and confusion as to rights, responsibilities and obligations under the act.<sup>23</sup>

- 1.36 The Government of Norfolk Island was concerned that draft regulations had not been provided during the exposure draft Bill consultation and stated:

Notwithstanding that much of the regulatory changes regarding finance and electoral changes were to be contained in regulations, which in some cases override the Norfolk Island Act, no draft regulations were (or have since been) provided.<sup>24</sup>

- 1.37 The Government of Norfolk Island was of the view that 'the lack of detail, incomplete information on regulations and procedures as well as extremely limited time hampers the Government's ability to make detailed and meaningful comment.' The Government of Norfolk Island advocated delaying passage of the Bill until further consultation was conducted and stated:

It is reasonable to expect that 'constitutional' change of this magnitude should not proceed without detailed and reasoned consultation.<sup>25</sup>

- 1.38 A working group consisting of officers from the Attorney-General's Department, the Department of Finance and Deregulation, representatives of the Government of Norfolk Island and Administration are currently

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

24 Government of Norfolk Island, *Submission 6*, p. 5.

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

assisting with the development of the financial framework regulations. The working group is expected to meet again before July 2010.<sup>26</sup>

- 1.39 The Department of Finance and Deregulation commented that regulations allow for new financial arrangements to be tailored and detailed and can be easily revised. The Department of Finance and Deregulation stated:

We really are trying to tailor the arrangements to be as clear, simple and effective as possible. That is why we believe that the better approach is through subsidiary legislation. I acknowledge there are comments that, if the primary act changes – and the details are yet to be seen and worked through – that will lead to some difficulty. The alternative would have been that we would be attempting to address these issues in legislation, potentially going to a level of detail in the primary act that needed to be subject to later adjustment as we learned better what we were trying to react to and also to really keep an eye to clarity and simplicity as we do that.<sup>27</sup>

- 1.40 Regulations prescribing Norfolk Island Public Service Values and application of the Administrative Appeals Tribunal to Norfolk Island are expected to be drafted by the end of 2010. No specific time frame was provided for the drafting of regulations regarding elections.
- 1.41 In regard to consultation on development of regulations, the Attorney-General's Department stated the Department of Finance and Deregulation, the Australian Electoral Commission and the Norfolk Island Government and Administration would be consulted during the drafting process.<sup>28</sup>
- 1.42 In addition, the Attorney-General's Department stated that the Government of Norfolk Island and its Administration will be provided with 'the opportunity to comment on the draft regulations before they are registered.'<sup>29</sup>
- 1.43 Additional discussion about regulations for specific areas of the Bill is contained in Chapters 2, 3 and 4.

## Financial impact of the Bill

- 1.44 Amendments contained in the Bill are expected to have a minimal financial impact. The Bill will have resource implications for
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26 Attorney-General's Department, *Submission 7*, p. 10.

27 Department of Finance and Deregulation, Mr Marc Mowbray-d'Arbela, *Transcript T2*, p. 15.

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

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

Commonwealth agencies in relation to providing training and information for the Norfolk Island Administration and Government 'to ensure effective implementation of the Bill.'<sup>30</sup> This includes implementation of the new financial framework, freedom of information, privacy and other obligations under administrative law.<sup>31</sup>

1.45 The Government of Norfolk Island raised concerns about the possibility of bearing costs associated with implementation of various parts of the Bill.

1.46 In particular, the Government of Norfolk Island was concerned 'that many of the impositions contained in the Bill are marred by excessive complexity which, inevitably, will result in undue cost and delay.'<sup>32</sup>

1.47 The Government of Norfolk Island advocated that 'consideration must be given at every stage to the impact on Norfolk Island financially, the potential impact of all such provisions on Norfolk Island laws, the operation of the Assembly, and the practicality of the provisions in terms of self government.'<sup>33</sup>

1.48 In particular, the Government of Norfolk Island raised concerns about financial resource implications for the Administration that will arise from the imposition of Commonwealth Auditor-General requirements. The Government of Norfolk Island stated:

There are serious financial resource implications for the Administration that will arise from the imposition of Commonwealth Auditor-General requirements, the *Auditor-General Act 1997* and particularly in the context of regulations made under proposed new sections 48R and 48S. The Commonwealth will need to give early consideration to financial assistance to address costs of implementation, conversion and compliance with proposed changes.<sup>34</sup>

1.49 The Attorney-General's Department 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 Government of Norfolk Island and its Administration.<sup>35</sup>

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30 *Explanatory Memorandum, Financial Impact Statement*, p. 2.

31 *Explanatory Memorandum, Financial Impact Statement*, p. 2.

32 Government of Norfolk Island, *Submission 6*, p. 42.

33 Government of Norfolk Island, *Submission 6*, p. 4.

34 The Government of Norfolk Island, *Submission 6*, p. 38.

35 Attorney-General's Department, Ms Alison Green, *Transcript T2*, p. 10.

- 1.50 The Attorney-General's Department expanded on the Commonwealth Government's commitment to implement the key reforms contained in the Bill. The Attorney-General's Department stated:

I cannot give specific commitments to any future appropriations that the Commonwealth may or may not apply to any activity, but our willingness to engage on island with the community, which compared to the past has significantly increased in the last 12 months; our bringing to the island the other agencies that are going to participate, such as the Ombudsman and the Administrative Appeals Tribunal; the willingness of the department of finance to contribute senior staff to help develop the financial framework, for example; and the commitment to work at the officer level to deliver the results give an indication of our intention to implement this effectively for the future.<sup>36</sup>

## Conclusions

- 1.51 Regulations relating to specific provisions in the proposed Bill will be developed through consultation with various Commonwealth agencies and Norfolk Island stakeholders.
- 1.52 The regulations will then be presented to the Parliament and be required to sit before the Parliament as disallowable instruments for a specified period of sitting days before entering into force. The regulations will also be subject to scrutiny by the Senate Regulations and Ordinances Committee.
- 1.53 The timeframe for development of the majority of regulations is by the end of 2010 with the exception of regulations relating to electoral reform.
- 1.54 While the committee acknowledges there will be future scrutiny of the regulations, the committee suggests it would be beneficial for Commonwealth agencies to continue to develop regulations in consultation with Norfolk Island stakeholders to specific timeframes. This may enable more meaningful and productive consultation with Norfolk Island stakeholders in regard to the implementation of the main parts of the Bill.
- 1.55 The committee acknowledges that the time taken for initial consultation on the draft exposure Bill with the Government of Norfolk was short, but notes that the Minister for Home Affairs extended this period to ensure that a more rigorous consultation was undertaken. The extended
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36 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 21.

timeframe for comment also provided the opportunity for incoming members of the Norfolk Island Legislative Assembly to provide comments.

- 1.56 In terms of the financial impact of implementation of various provisions under the Bill, the Attorney-General's Department provided an assurance that the Government of Norfolk Island will not incur any costs in terms of implementation. In addition, Commonwealth agencies with relevant responsibility associated with the reforms contained in the Bill will continue to provide assistance to the Government of Norfolk Island and its Administration.
- 1.57 Throughout the report, the evidence received suggests that while there were concerns raised in regard to specific areas of the Bill, the committee believes these concerns can be worked through within a short period through the established working group process.
- 1.58 More broadly, the reforms contained in the proposed Bill are the culmination of consultation that has been undertaken with various Norfolk Island stakeholders including past and present Norfolk Island Governments, the Administration and the Norfolk Island community over a number of years. In addition, issues concerning administrative law reform, governance, electoral and financial arrangements have been raised with the committee through a number of parliamentary inquiries.
- 1.59 Notwithstanding the comments made in regard to development of regulations associated with the Bill, the committee supports the general provisions of the Bill.

### **Recommendation 1**

- 1.60 **The committee supports the general provisions of the Territories Law Reform Bill 2010 and recommends that the Bill be passed by the Senate.**

### **Recommendation 2**

- 1.61 **The committee recommends that the Attorney-General's Department continue to consult with the Government of Norfolk Island, the Norfolk Island Administration and Norfolk Island community in regard to the content of regulations (including the timeframe for their development and entering into force) relating to the Territories Law Reform Bill 2010.**

## Scope of the inquiry

- 1.62 The majority of the submissions received in reference to this inquiry relate to the proposed reforms relevant to Norfolk Island. While a number of submissions and evidence received supported the Bill, concerns were also raised regarding consultation of the exposure draft Bill and future implementation of the reforms contained in the Bill.
- 1.63 Notwithstanding the committee's comments about complementary issues raised during the course of the inquiry, the main focus of this inquiry is on the practicality of the components of the proposed Bill, rather than scrutiny of the policy aspects of the Bill.
- 1.64 The committee provided the Government of Norfolk Island and the Norfolk Island community with the opportunity to directly address issues associated with the Bill through a public hearing. The committee was also able to scrutinise the approach taken by the Commonwealth Government in formulating the Bill and also by the Attorney-General's Department in conducting consultation on the exposure draft bill and on the development of regulations through the working group process.
- 1.65 To ensure that the issues raised with the committee during the course of the inquiry are reported, the committee has included the additional issues raised by Norfolk Island residents in the final chapter of this report.

## Conduct of the review

- 1.66 On 19 March 2010, a media release was issued announcing the inquiry and called for submissions to be received by 7 April 2010. Submissions were also sought by advertising the inquiry in *The Australian* on 24 March 2010, *The Norfolk Islander* on 20 March 2010 and the Christmas Island and Cocos (Keeling) Islands community bulletin in English, Malay and Chinese on 19 and 22 March 2010.
- 1.67 The committee also sought submissions from the Government of Norfolk Island, including Members of the 12<sup>th</sup> and 13<sup>th</sup> Norfolk Island Legislative Assemblies, the Shire Councils of Christmas and Cocos (Keeling) Islands and the Minister for Home Affairs.
- 1.68 The committee received 14 submissions and 8 exhibits to the inquiry, which are listed at appendices A and B respectively.

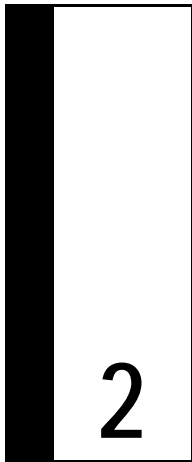
- 1.69 Public hearings were held on Norfolk Island on 8 April 2010 and in Canberra on 12 April 2010.
- 1.70 Witnesses who provided evidence to the committee at these public hearings are listed at Appendix C. Transcripts of evidence of these public hearings are available on the committee's website at [www.aph.gov.au/ncet](http://www.aph.gov.au/ncet)

## Report structure

- 1.71 Chapter 2 outlines the proposed amendments contained in Schedule 1, part 1 of the Bill which relate to machinery of government reform for Norfolk Island.
- 1.72 Chapter 3 outlines the proposed amendments contained in Schedule 1, part 2 of the Bill which relate to electoral reform for Norfolk Island.
- 1.73 Chapter 4 outlines the proposed amendments contained in Schedule 1, part 3 of the Bill which relate to financial management reform for Norfolk Island.
- 1.74 Chapter 5 outlines the proposed amendments contained in Schedule 1, parts 4, 5, 6 and 7 of the Bill which relate to administrative law reform for Norfolk Island.
- 1.75 Chapter 6 examines proposed Schedules 2 and 3 of the Bill which relate to vesting powers and functions under WA laws applied in the IOTs.
- 1.76 Chapter 7 outlines additional issues of concern raised by Norfolk Island residents during the course of the inquiry.







## 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.’<sup>1</sup>

### 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.

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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.<sup>2</sup> 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*

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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.’<sup>3</sup>
- 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.’<sup>4</sup>
- 2.29 Proposed subsection 7(3) authorises ‘the responsible Commonwealth Minister to provide such advice.’<sup>5</sup>
- 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.’<sup>6</sup>
- 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.’<sup>7</sup>

## 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,

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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 Island<sup>8</sup> (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

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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.<sup>9</sup>

- 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.<sup>10</sup>

- 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.’<sup>11</sup>

- 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.’<sup>12</sup>

- 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.<sup>13</sup>

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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.<sup>14</sup>

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.<sup>15</sup>

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

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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.<sup>16</sup>

- 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.<sup>17</sup>

- 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.<sup>18</sup>

- 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

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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.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup>

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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.<sup>22</sup>

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*

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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.’<sup>23</sup>
- 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.

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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.'<sup>24</sup>
- 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.

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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.'<sup>25</sup>
- 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.'<sup>26</sup>
- 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.'<sup>27</sup>

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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.<sup>28</sup>

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.<sup>29</sup>

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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.<sup>30</sup>

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.<sup>31</sup>

## 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.'<sup>32</sup>

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.

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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.<sup>33</sup>
- 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 9<sup>th</sup> member. This entrenches the important separation of executive and legislative responsibility under the Norfolk Island Act.’<sup>34</sup>
- 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.<sup>35</sup>
- 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.<sup>36</sup>

### 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

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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.<sup>37</sup>

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.<sup>38</sup>

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.<sup>39</sup>

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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.<sup>40</sup>

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.<sup>41</sup>

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.*

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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.'<sup>42</sup>

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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.<sup>43</sup>
- 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.'<sup>44</sup>

### 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.<sup>45</sup>
- 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.'<sup>46</sup>

## 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

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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.<sup>47</sup>

- 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.*

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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.'<sup>48</sup>
- 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.'<sup>49</sup>
- 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.'<sup>50</sup>

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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."<sup>51</sup>

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.<sup>52</sup>

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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.'<sup>53</sup>
- 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.'<sup>54</sup>

### 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.<sup>55</sup>

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

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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.<sup>56</sup>

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.’<sup>57</sup>

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.<sup>58</sup>

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.<sup>59</sup>

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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.’<sup>60</sup>
- 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.’<sup>61</sup>

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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.’<sup>62</sup>
- 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.’<sup>63</sup>
- 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.’<sup>64</sup>
- 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.’<sup>65</sup>

### 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.’<sup>66</sup> 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.<sup>67</sup>
- 2.121 However, ‘if there is an inconsistency between the advice of the Executive Council and any instructions from the responsible Commonwealth

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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.'<sup>68</sup>

### 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.<sup>69</sup>

### 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.<sup>70</sup>

- 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

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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.<sup>71</sup>

- 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.<sup>72</sup>

## 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.

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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.'<sup>73</sup>

## **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.'<sup>74</sup> 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:*

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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.’<sup>75</sup>
- 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.’<sup>76</sup>

## 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:

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<sup>75</sup> Explanatory Memorandum, p. 14.

<sup>76</sup> 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.<sup>77</sup>

- 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.<sup>78</sup>

- 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:

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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.<sup>79</sup>

## 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.’<sup>80</sup>
- 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.’<sup>81</sup>
- 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

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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.<sup>82</sup> 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.<sup>83</sup>

- 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*

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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.<sup>84</sup> 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.<sup>85</sup>

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-*

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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).'<sup>87</sup>*

## 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.<sup>88</sup>
- 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.'<sup>89</sup>

## 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.<sup>90</sup>

- 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.<sup>91</sup>

- 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

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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.<sup>92</sup>

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.<sup>93</sup>

## 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.

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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.’<sup>94</sup>
- 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.’<sup>95</sup>
- 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.’<sup>96</sup>
- 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.’<sup>97</sup>

### **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

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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.<sup>98</sup>

- 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.]<sup>99</sup>

- 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].<sup>100</sup>

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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.



## Part 2 – Amendments relating to elections

### Summary of key sections

- 3.1 Part 2 of the Territories Law Reform Bill 2010 (the Bill) introduces amendments relating to elections. In 2003 the committee examined the term of the legislative assembly and other features of the Norfolk Island electoral system.<sup>1</sup> In particular, the committee recommended that the term of the Legislative Assembly be extended to four years and that the House can be dissolved after three years from the declaration of the election results.
- 3.2 The key provisions under Part 2 include:
- **Proposed subsection 35(2)** provides for the maximum time of 4 years and the minimum time of 3 years before the term of a Norfolk Island Legislative Assembly expires or must be dissolved.
  - **Proposed subsection 35(3)** provides that if the next succeeding general election is required because of section 39AB or 39AC, that election may be held less than 3 years after the first meeting mentioned in subsection 35(2). New section 39AB enables the Commonwealth Minister who administers the Norfolk Island Act to dissolve the Legislative Assembly where it has passed a resolution of no confidence in the Chief Minister and where the Legislative Assembly has not nominated a new Chief Minister within 10 days. 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

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<sup>1</sup> Joint Standing Committee on the National Capital and External Territories, *Quis custodiet ipso custodes?*, December 2003, pp. 128-131 and pp. 134-140.

performing its functions or is conducting its affairs in a grossly improper manner. Sections 39AB and 39AC are examined in Chapter 2.

- **Proposed subsection 31(3)** enables the making of regulations prescribing the electoral system to be used in Norfolk Island Legislative Assembly elections and the filling of casual vacancies.
- **Proposed subsections 31(4) and 31(5)** enable the method and manner in which votes are to be cast and counted in Norfolk Island Legislative Assembly elections as well as filling of casual vacancies to be determined via regulations.
- **Proposed section 37A** enables the Norfolk Island Government to make arrangements with the Australian Electoral Commission (AEC) to conduct general elections on their behalf, as well as the filling of casual vacancies.

## **Proposed subsections 31(4) and (5) – regulations to determine method for counting and casting votes**

### **Background**

3.3 Proposed new subsections 31(4) and (5) enable the method and manner in which votes are to be cast and counted in Norfolk Island Legislative Assembly elections, as well as the filling of casual vacancies, to be determined via regulations. Proposed subsections 31(4) and 31(5) are reproduced in full below:

#### ***Proposed subsections 31(4) and 31(5)***

- (4) The regulations may make provision for or in relation to the following matters:*
  - (a) the method of balloting;*
  - (b) the manner in which voters are to indicate their votes;*
  - (c) the manner in which voters' votes are to be used to obtain a result for an election;*
  - (d) matters incidental or ancillary to the above matters.*
- (5) The regulations may make provision for or in relation to the following matters:*
  - (a) the filling of casual vacancies in the offices of members of the Legislative Assembly;*
  - (b) matters incidental or ancillary to the above matter.*

## Analysis

3.4 The Norfolk Island Government strongly opposed change to voting and vote counting methods to be prescribed in Commonwealth regulations on the grounds that these were already provided for in Norfolk Island legislation. The Norfolk Island Government stated:

We strongly oppose this measure, on grounds that it is inappropriate for regulations to override the principal Act. In any event, provisions for the counting of votes and conduct of elections should reside in the *Legislative Assembly Act 1979* (NI), not in Commonwealth regulations.<sup>2</sup>

3.5 The Explanatory Memorandum states:

[The] use of regulations will allow flexibility in determining an electoral system that best suits the community of Norfolk Island. The new subsections also allow scope for matters related to the electoral system that are yet to be considered to be determined at a later time via regulations.<sup>3</sup>

3.6 In relation to the drafting of regulations, the Attorney-General's Department stated:

The Attorney-General's Department is planning to commence drafting regulations in relation to elections in the future. The Department of Finance and Deregulation, the Australian Electoral Commission and the Norfolk Island Government and Administration will be consulted in the drafting process. The Norfolk Island Government and Administration will also be given the opportunity to comment on the draft regulations before they are registered.<sup>4</sup>

3.7 During the Canberra public hearing, the Attorney-General's Department was scrutinised about the absence of the regulations in relation to the financial framework and the electoral system.

3.8 The Attorney-General's Department indicated that during February 2010 it was having discussions with the Norfolk Island administration 'on setting up a working group to formulate the regulations.'<sup>5</sup> In relation to the release of draft regulations, the Attorney-General's Department

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2 Government of Norfolk Island, 25 February 2010, *Submission in relation to the Exposure Draft Territories Law Reform Bill 2010*, p. 3.

3 *Explanatory Memorandum*, p. 24.

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

5 Ms Alison Green, Attorney-General's Department, *Transcript T2*, p. 7.

indicated that the aim is to have them available 'by the time the bill is being debated in the winter sittings.'<sup>6</sup>

- 3.9 The Norfolk Island Government, in a supplementary submission, advised that it 'continues to hold the view that voting methods should be specified in the *Legislative Assembly Act 1979* as the relevant Norfolk Island enactment.'<sup>7</sup>
- 3.10 The EcoNorfolk Foundation, in addressing the electoral reforms generally, stated that 'we agree with Minister O'Connor that the amendments to the *Norfolk Island Act 1979* to reform the electoral system and establish a contemporary financial management framework will assist the Norfolk Island government in meeting the needs and expectations of our community and in planning for our future.'<sup>8</sup> Similarly, Mr Michael King MLA and Leader of the Opposition indicated his general support for the provisions in the Bill.
- 3.11 Dr Candice Snell in relation to the proposed electoral reforms asked 'have the people of Norfolk Island asked for the change, where is the implied need???'<sup>9</sup>

## **Proposed subsections 35(2), 35(3) – terms of Legislative Assembly**

### **Background**

- 3.12 Proposed subsection 35(2) will provide for a minimum term of three years and a maximum term of four years. This amendment intends to provide stability to Norfolk Island's electoral system and assist the Norfolk Island Government in implementing its legislative program. The amendment will give effect to recommendation 23 of the Joint Standing Committee on the National Capital and External Territories in its 2003 report on the Inquiry into Governance on Norfolk Island, *Quis custodiet ipsos custodes?*
- 3.13 Proposed subsection 35(3) provides that if the next succeeding general election is required because of section 39AB or 39AC, that election may be held less than 3 years after the first meeting mentioned in subsection 35(2).

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6 Ms Alison Green, Attorney-General's Department, *Transcript T2*, p. 25.

7 Government of Norfolk Island, *Submission 6.1*, p. 8.

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

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



- 3.14 New section 39AB enables the Commonwealth Minister who administers the Norfolk Island Act to dissolve the Legislative Assembly where it has passed a resolution of no confidence in the Chief Minister and where the Legislative Assembly has not nominated a new Chief Minister within 10 days.
- 3.15 New Section 39AC enables the Governor-General to dissolved 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. New sections 39AB and 39AC are examined in Chapter 2.

## Analysis

- 3.16 The Norfolk Island Government generally agrees with the implementation of fixed terms for the Legislative Assembly. The Norfolk Island Government stated:

We generally agree with the creation of "fixed" terms for the Legislative Assembly of not less than three years or more than four years, while noting that this would place limitations on citizen-initiated referendums under the Referendum Act 1964 (NI). However, we believe that there should be a right for the Assembly to dissolve itself when necessity dictates. In practice, the Governor-General might be obliged to dissolve the Assembly and call an election in circumstances such as the resignation of all nine members.<sup>10</sup>

- 3.17 The Speaker of the Norfolk Island Legislative Assembly, Ms Robin Adams JP was critical of the proposal to fix the terms of the Assembly. Ms Adams said in relation to this and other measures that 'there are several key changes proposed in the bill which, in my opinion, clearly diminish evolving trends and the basic tenets of democracy.'<sup>11</sup> In relation to the proposal for fixed terms, Ms Adams stated:

...fixing the term of the assembly to be no less than three years is a devolution by default of the community's existing right, under the *Referendum Act 1964*, through a citizen initiated referendum to request the Administrator to dissolve the assembly, as was

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

11 Ms Robin Adams JP, Speaker of the Norfolk Island Legislative Assembly, *Transcript T1*, p. 27.

initiated in 2001. The proposal to fix the term is not in keeping with local trends to have the power of recall in legislation.<sup>12</sup>

## **Proposed section 37A Arrangements with the Australian Electoral Commission**

### **Background**

3.18 Proposed section 37A enables the Norfolk Island Government to make arrangements with the AEC to conduct general elections on their behalf, as well as the filling of casual vacancies. This recommendation derives from recommendation 26 made by the committee in its 2003 report *Quis custodiet ipsos custodes?* The committee in recommendation 26 and in its 2002 Report entitled *Norfolk Island Electoral Matters* recommended that all elections and referenda on Norfolk Island come under the supervision of the AEC.

3.19 Proposed section 37A is reproduced in full below:

#### **37A Arrangements with the Australian Electoral Commission**

*The Chief Minister may, on behalf of the Administration, enter into an arrangement under section 7A of the Commonwealth Electoral Act 1918 in relation to:*

- (a) general elections of members of the Legislative Assembly; and*
- (b) the filling of casual vacancies in the offices of members of the Legislative Assembly.*

### **Analysis**

3.20 The Norfolk Island Government in relation to the possible role of the AEC stated:

We would be prepared to consult the Australian Electoral Commission about the conduct of elections, should the need ever arise, as provided for in the Bill. To date that need has not arisen.<sup>13</sup>

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12 Ms Robin Adams JP, Speaker of the Norfolk Island Legislative Assembly, *Transcript T1*, p. 27.

13 Government of Norfolk Island, 25 February 2010, *Submission in relation to the Exposure Draft Territories Law Reform Bill 2010*, p. 3.

## Conclusions

- 3.21 The measures under Part 2 of the Bill propose reform to the electoral system focusing on the term of the Norfolk Island Legislative Assembly, the method for counting and casting votes, and possible arrangements with the AEC. The committee notes the concern raised by the Norfolk Island Government that at the time of considering the Bill, the regulations had not been developed. A general comment about this has been made by the committee in Chapter 1.
- 3.22 Proposed subsection 31(4) states that ‘regulations may make provisions for or in relation to the following matters:
- (a) the method of balloting;
  - (b) the manner in which voters are to indicate their votes.
- 3.23 These issues are not insignificant. In 2003 the committee examined the electoral system in detail and identified the advantages and disadvantages of various electoral systems.
- 3.24 Proposed subsection 35(2) will provide for a minimum term of three years and a maximum term of four years. The Norfolk Island Government stated that ‘we generally agree with the creation of "fixed" terms for the Legislative Assembly of not less than three years or more than four years.’
- 3.25 Proposed section 37A enables the Norfolk Island Government to make arrangements with the AEC to conduct general elections on their behalf. The AEC is highly regarded internationally for its effective and reliable electoral administration. The current and future Norfolk Island Governments could benefit significantly by consulting with the AEC, where necessary, and more importantly allowing the AEC to take on the role of conducting general elections as well as filling casual vacancies. This role may become more significant as the role and status of opposition members in the Norfolk Island Legislative Assembly increases over time. The role of the AEC in conducting elections will bring a high degree of assurance for all candidates and, in the event that there is disputation over election results, the AEC’s reputation will provide assurance to all candidates that the election has been conducted to the highest standards.
- 3.26 The most recent election on Norfolk Island was held on 17 March 2010 with the declaration of the poll being gazetted on 19 March 2010. The date for the next poll is up to three years away. The committee believes that there would be merit in delaying consideration of the measures in Part 2 of the Bill until 2011. This will provide additional time for the

Commonwealth to consult with the Norfolk Island Government and community about the future electoral framework. The committee recommends that the Government in the first year of the next parliament reintroduce amending legislation which deals with electoral reform on Norfolk Island. The measures should be reflected in the relevant Norfolk Island Legislation. In addition, when the Commonwealth legislation is introduced to the Parliament it should be referred to the Joint Standing Committee on the National Capital and External Territories for a bills inquiry.

### **Recommendation 5**

**3.27 The committee recommends that Part 2 - Amendments relating to elections be removed from the Territories Law Reform Bill 2010.**

**The Commonwealth Government should consult with the Norfolk Island Government and community about the proposals for electoral reform and reintroduce amending legislation to the Commonwealth Parliament in 2011.**

**When the amending legislation is tabled in the Commonwealth Parliament, it should be referred to the Joint Standing Committee on the National Capital and External Territories for a bills inquiry.**

## Part 3 – Amendments relating to finance

### Background

- 4.1 Schedule 1, Part 3 of the Bill will amend the *Norfolk Island Act 1979* (Cwlth) to 'enable the implementation of a contemporary financial management framework.'<sup>1</sup>
- 4.2 In particular, the new financial management framework will be 'a customised and proportionate...framework that addresses the management of public money and public property, preparation of budgets, financial reporting, annual reports and procurement' by the Government of Norfolk Island and its Administration.'<sup>2</sup>
- 4.3 This includes appointment of the Commonwealth Auditor-General to undertake audits of the annual financial statements of the Administration and Territory authorities.<sup>3</sup> The option of appointing a Commonwealth Financial Officer to provide assistance to Norfolk Island is also included.<sup>4</sup>
- 4.4 Further, the provisions in the proposed Bill implementing a financial framework will come into effect on 1 July 2010.

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1 Minister for Home Affairs, *Second Reading Speech*, Territories Law Reform Bill 2010, 17 March 2010, p. 6.

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

3 *Explanatory Memorandum*, p. 29.

4 *Explanatory Memorandum*, p. 36.

## Summary of key sections

- 4.5 A summary of the key sections contained in Schedule 1, Part 3 follows.
- 4.6 **Proposed subsection 4(1) and sections 25, 27, 47 and 48** will clarify the definition of public money and public property of the Territory to correspond with the definition contained in section 5 of the *Financial Management and Accountability Act 1997* (Cwlth).
- 4.7 **Proposed subsection 4(1) and section 46** will define *Territory Authority* modelled on the definition of Commonwealth Authority in section 7(1) of the *Commonwealth Authorities and Companies Act 1997* (Cwlth).
- 4.8 **Proposed section 48** will require the Legislative Assembly to make appropriations to support expenditure by the Government of Norfolk Island, including Ministers and the Administration.
- 4.9 **Proposed new section 48A** will require the Norfolk Island Minister of Finance to prepare annual budgets for the Administration and Territory Authorities. These annual budgets must be prepared in accordance with Regulations and Ordinances made under the Norfolk Island Act. This section also provides that the Norfolk Island Minister for Finance must as soon as practicable cause copies of annual budget statements to be tabled in the Legislative Assembly and provided to the Administrator. Once received, the Administrator is required to provide a copy to the relevant Commonwealth Minister.
- 4.10 **Proposed new section 48B** will require the Norfolk Island Minister for Finance to prepare annual financial statements for the Administration and Territory Authorities as soon as practicable after the end of a financial year and then provide the financial statements to the Commonwealth Auditor-General for audit.
- 4.11 **Proposed new section 48C** will require the Commonwealth Auditor-General to prepare an audit report on the annual financial statements required under section 48B. The Commonwealth Auditor-General must provide a copy of the audit report to the Norfolk Island Minister for Finance, the Administrator and the responsible Commonwealth Minister. The Norfolk Island Minister for Finance must table a copy of that audit report in the Legislative Assembly, accompanied by the annual financial statements, as soon as practicable after receiving it. The responsible Commonwealth Minister must cause a copy of the audit report to be tabled in each House of the Parliament as soon as practicable.

- 4.12 **Proposed new section 48D** enables the Commonwealth Auditor-General to charge audit fees for statement audits made under section 48C.
- 4.13 **Proposed new section 48E** will allow the Commonwealth Auditor-General to conduct performance audits of the Administration and Territory Authorities. The Commonwealth Auditor-General must provide a copy of the report to the Norfolk Island Minister for Finance, the Administrator and the responsible Commonwealth Minister. The Auditor-General must cause reports on performance audits under this section to be tabled in each House of the Parliament. The Norfolk Island Minister for Finance must table a copy of that report in the Legislative Assembly as soon as practicable after receiving it. The responsible Commonwealth Minister must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable. Copies of the audit report must also be supplied to the relevant Chief Executive Officer and manager or managers of the Territory authority which was the subject of the audit.
- 4.14 **Proposed new section 48F** requires the Commonwealth Auditor-General to seek comments on proposed reports required under section 48E. Where the Administration was the subject of the audit, the Auditor-General must provide the Chief Executive Officer with a copy of the proposed report. Where a Territory authority was the subject of the audit, the Auditor-General must provide the responsible manager or managers with a copy of the proposed report.
- 4.15 **Proposed new section 48G** will ensure that the Commonwealth Auditor-General has all of the powers and functions necessary to undertake his or her obligations under the Norfolk Island Act.
- 4.16 **Proposed new section 48H** will require the Norfolk Island Minister for Finance to prepare periodic financial statements in relation to the Administration and each Territory authority. The financial statements must be prepared in accordance with regulations and Orders made under the Norfolk Island Act. This section also provides that the Norfolk Island Minister for Finance must as soon as practicable cause copies of the financial statements to be tabled in the Legislative Assembly and provided to the Administrator. Once received, the Administrator is required to provide a copy to the relevant Commonwealth Minister.
- 4.17 **Proposed new section 48J** will require the Chief Executive Officer to prepare annual reports as soon as practicable after the end of a financial year. The annual report must be prepared in accordance with regulations, and must report on the operations of the Administration and Territory authorities in that financial year. This section also provides that the annual report must be given to the Norfolk Island Chief Minister, who, as soon as

practicable after receiving it must table a copy of the annual report in the Norfolk Island Legislative Assembly, and provide a copy of the annual report to the Administrator. As soon as practicable after receiving a copy of the report, the Administrator must send it to the responsible Commonwealth Minister.

- 4.18 **Proposed new sections 48K and 48L** will provide for the Chief Executive Officer and/or the Minister for Finance to request, by written notice, a Territory authority to provide information in order to prepare the reports and statements required to be produced by them under the Norfolk Island Act.
- 4.19 **Proposed new section 48M** will place an obligation on the Chief Executive Officer to manage the affairs of the Administration in a way that promotes the proper use of the Administration's resources.
- 4.20 **Proposed new section 48N** will place an obligation on the Manager or managers of a Territory Authority to manage the affairs of the Territory Authority in a way that promotes the proper use of the Authority's resources.
- 4.21 **Proposed new section 48P** will require the Norfolk Island Minister for Finance to ensure that the accounts and records of the Administration properly record and explain the transactions and financial position of the Administration.
- 4.22 **Proposed new section 48Q** will require the responsible manager or managers to ensure that the accounts and records of a Territory Authority are prepared and kept in accordance with regulations and Orders made under the Norfolk Island Act.
- 4.23 **Proposed new section 48R** will provide for regulations to be made in relation to public money and public property of the Territory, and other resources of the Administration. This provision will allow the Commonwealth to prescribe regulations to supplement and provide further detail of the financial framework provisions in Part VI of the Norfolk Island Act.
- 4.24 **Proposed new section 48S** will provide for regulations to be made in relation to public money, property and other resources of the Territory and Territory Authorities. This provision will allow the Commonwealth to prescribe regulations to supplement and provide further detail of the financial framework provisions in Part VI of the Norfolk Island Act.



- 4.25 **Proposed new section 48T** will allow the Commonwealth Finance Minister to make Orders to supplement and provide further detail of the financial framework provisions in Part VI of the Norfolk Island Act.
- 4.26 **Proposed new section 51** will require the Norfolk Island Minister for Finance to provide to the responsible Commonwealth Minister reports, documents and information relating to the operations of the Administration.
- 4.27 **Proposed new section 51A** requires the Norfolk Island Minister for Finance to provide to the Commonwealth Finance Minister, reports, documents and information relating to the operations of the Administration.
- 4.28 **Proposed new section 51B** will require the Norfolk Island Minister for Finance to provide to the responsible Commonwealth Minister reports, documents and information relating to the operations of a Territory authority. These are to be provided on request and in accordance with time limits set by the responsible Commonwealth Minister.
- 4.29 **Proposed new section 51C** provides the Commonwealth Finance Minister with the same authority to access relevant documents and information as the responsible Commonwealth Minister under section 51B.
- 4.30 **Proposed new section 51D** will enable the appointment of a Commonwealth Financial Officer for Norfolk Island at the discretion of the Governor-General. It is intended that such an appointment may be made in the event that the Governor-General is of the view that Norfolk Island would benefit from Commonwealth assistance, for example in the implementation of the financial framework obligations under this Part of the Norfolk Island Act.
- 4.31 **Proposed new section 51E** will provide a power for the responsible Commonwealth Minister to apply for an injunction to enforce compliance with the financial management and accountability provisions (defined in subsection 4(1)).

## A new financial framework

### Current financial reporting practice

- 4.32 The Norfolk Island *Public Moneys Act 1979* requires that each of the four funds (Revenue Fund, the Administration Services Fund, the Trust Fund

and the Loan Fund) prepare: an income and expenditure statement, appropriation account, balance sheet, statement of cash flows, and notes to and forming part of the financial statements.<sup>5</sup>

4.33 The Government of Norfolk Island for the first time recently produced audited financial statements in accordance with International Financial Reporting Standards (IFRS). 'Statements required by the *Public Moneys Act 1979* were also produced, but not audited.<sup>6</sup>

4.34 The Attorney-General's Department stated that the Department of Finance and Deregulation had 'advised that in its view, these statements are not prepared in accordance with accepted accounting conventions.'<sup>7</sup>

4.35 In addition, the Attorney-General's Department advised that previous annual financial statements of the Government of Norfolk Island did not follow generally accepted accounting conventions. While annual financial statements were prepared for the Norfolk Island Administration, these did not include the two Territory authorities.<sup>8</sup> Monthly financial indicators are prepared, 'although they are limited to certain financial statements and only for certain funds.'<sup>9</sup>

4.36 In its 2008 report entitled *Review of the cost to maintain the public grounds and reserves by the public sector*, the Norfolk Island Legislative Assembly Public Accounts and Estimates Committee (PAEC) made a number of findings in regard to performance management and financial management relating to the Norfolk Island Administration.

4.37 In particular, in regard to performance management, the PAEC found that the Administration did not have in place a system that quantifies work output against financial input. The PAEC stated:

Unfortunately, the Administration does not have in place at this time, a system that quantifies work output against financial input. The inability to measure work output undermines a manager's capacity to both evaluate and compare his/her department's efficiency. Regrettably, the Committee could not expand on performance with managers however sees it as an important aspect of necessary reform which was highlighted from this inquiry. Management must monitor their service delivery against

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5 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 33.

6 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 33.

7 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 33.

8 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 33.

9 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

key performance indicators on an ongoing basis to meet their relevant objectives. The continued effectiveness, including relevance and priority of every core business unit within every department must be evaluated annually.<sup>10</sup>

4.38 However, the PAEC noted that measuring and monitoring performance in the public sector is provided for in the Human Resources Policy and Procedures Manual, created under the Norfolk Island *Public Sector Management Act 2000*.

4.39 Recommendation 11 of the PAEC's report stated:

The CEO and CMG establish and implement the Norfolk Island Administration Performance Management System as provided for in Human Resources Policy and Procedures Manual.<sup>11</sup>

4.40 In regard to financial management, the PAEC stated that creation of the performance management system under recommendation 11 is the first step towards financial and public sector reform. Further, the obligation of the Norfolk Island public sector to plan, budget and report on accruals, outcomes and outputs was emphasised and tied to the effective delivery of services. The PAEC stated:

The creation of the Performance Management System at Recommendation 11 is seen as the first tangible step towards financial and public sector reform. The 12<sup>th</sup> Legislative Assembly have included in their strategic objectives the continued improvement and reform of service delivery by the public sector. Clearer accountability, underpinned by a robust performance monitoring and evaluation regime must create a performance culture within the public sector. Management focus must improve the responsiveness of the public sector to the needs of the government and the community. Financial management must put departments on more business like footings with management obligation to plan, budget and report on accruals, outcomes and outputs. The Committee sees effective financial management as closely connected to the public sector's ability to meet the

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10 Public Accounts and Estimates Committee, First Report to the Parliament, March 2008, *Review of the Cost to Maintain the Public Grounds and Reserves by the Public Sector*, Norfolk Island Legislative Assembly, pp 26-27.

11 Public Accounts and Estimates Committee, First Report to the Parliament, March 2008, *Review of the Cost to Maintain the Public Grounds and Reserves by the Public Sector*, Norfolk Island Legislative Assembly, p. 27

expectations of the Norfolk Island Government in delivery of their objectives.<sup>12</sup>

4.41 Norfolk Labor was critical of the financial management capacity of the Government of Norfolk Island and highlighted various issues in regard to financial management. Norfolk Labor drew attention to:

- 'Gross and ill-considered public spending in most recent years has depleted the public account and undermined the capacity to maintain existing services and to fund on-going government in general
- Over-spending tarnished further by a distinct lack of transparency, misinformation and accountability
- Government policy is now driven by a desire to contain and/or reduce expense resulting in continuing poor quality outcomes for the island community
- Statutory deadlines for financial reporting not being met.<sup>13</sup>

4.42 EcoNorfolk agreed with the need for a new financial framework and stated:

We agree with Minister O'Connor that the amendments to the Norfolk Island Act 1979 to reform the electoral system and establish a contemporary financial management framework will assist the Norfolk Island Government in meeting the needs and expectations of our community and to plan for our future.<sup>14</sup>

4.43 Mr Michael King MLA was highly critical of the current budgetary position of the Government of Norfolk Island since 2006 when the Government of Norfolk Island had undertaken to reform its financial management practices. Mr Michael King MLA stated:

Measures to improve the budgetary position have failed in the extreme. Since 2006 the Government's general reserves have been steadily depleted; its quick ratio of liquidity (current realisable assets to current liabilities) falling from 1.2:1 to 0.4:1 clearly evidencing an inability to pay debts as they fall due. Capital outlay in the general revenue area is non-existent having fallen steadily since 1979 from some 12% of expenditure, through to some 2% in

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12 Public Accounts and Estimates Committee, First Report to the Parliament, March 2008, *Review of the Cost to Maintain the Public Grounds and Reserves by the Public Sector*, Norfolk Island Legislative Assembly, p. 27

13 Norfolk Labor, *Submission 3*, p. 1.

14 EcoNorfolk Foundation Inc, *Submission 13*, p. 2.

2006, to zero in 2008/2009. A persistent decline in capital outlay is a clear sign that capital maintenance, capital replacement and capital purchases are being deferred (even ignored) with resultant obsolescence, inefficiencies, OHS issues and mounting long-term outlays which in Norfolk's case are totally unfunded. The 'current cash balance' of the consolidated public account diminished by some \$9m in 2008/2009. A lay appreciation of this fall is that some \$3m can be attributed to the GFC [Global Financial Crisis] or the resultant decline in visitor numbers. The remainder of this fall can be sheeted home to excessive, improperly planned and managed and unbudgeted expenditure by the Government. There is ample evidence available to support claims that projects were not properly costed, that public procurement processes were not followed and that some expenditure was not warranted. These features reflect a distinct departure from any reform path and an abandonment of any concept of financial planning.<sup>15</sup>

## Purpose of the new financial framework

- 4.44 The financial management framework included in the proposed Bill will:
- 'bring Territory authorities into Norfolk Island's consolidated financial statements, budgets and annual reports (providing a more complete picture of Norfolk Island's financial position)'; and
  - 'introduce a statutory requirement for all financial statements, annual reports, audit reports and budgets to be tabled in the Norfolk Island Legislative Assembly (currently some of these documents are tabled, by convention only).'<sup>16</sup>
- 4.45 Further, subject to consultation with Norfolk Island, the financial management framework may address:
- 'minimum budget requirements including the production of qualitative and quantitative statements (e.g. comprehensive budget financial statements, based on external reporting standards, including forward projections);
  - commitments to spend public money; and
  - accounts and records.'<sup>17</sup>

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15 Mr Michael King MLA, *Submission 2*, pp 2-3.

16 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

17 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 35.

## Regulations and orders

- 4.46 The details of the financial framework will be 'included in regulations and/or Commonwealth Finance Minister's Orders made under the *Norfolk Island Act 1979 (Cwlth)*.'<sup>18</sup>
- 4.47 This reflects the current Commonwealth financial framework, 'which provides details supplementing financial management and accountability requirements in the *Financial Management and Accountability Act 1997*, the *Commonwealth Authorities and Companies Act 1997*, the *Charter of Budget Honesty Act 1998* and others in instruments such as the *Financial Management and Accountability Regulations 1997* and *Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 1 July 2009)*.'<sup>19</sup>
- 4.48 The Attorney-General's Department advised that the Commonwealth Finance Minister's Orders 'are likely to establish minimum requirements for budgeted, periodic and annual financial statements, providing for greater transparency, comparability and readability of Norfolk Island's financial statements.'<sup>20</sup>
- 4.49 The minimum requirements established 'are likely to include compliance with Australian Accounting Standards, which are based on IFRS, and include additional disclosure to reflect requirements particular to Australia and the not-for-profit sector, in particular.'<sup>21</sup>
- 4.50 Compliance with Australian Accounting Standards will ensure that Norfolk Island practice 'is consistent with Australian Local Governments, State Governments and the Commonwealth Government.'<sup>22</sup>
- 4.51 In addition, the Orders may 'formalise the recent change to IFRS-compliant annual financial statements.' The Attorney-General's Department commented that the benefit is that 'periodic financial statements' produced for Norfolk Island 'are likely to be more comprehensive than those currently produced, providing more complete and accurate financial information as to the ongoing financial position of the Norfolk Island Government.'<sup>23</sup>

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18 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

19 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

20 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

21 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

22 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

23 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

- 4.52 The Government of Norfolk Island will be able to add further detail to Orders ‘where they see additional benefit to users of those statements in doing so.’<sup>24</sup>

## Implementation of a new financial framework

- 4.53 The Government of Norfolk Island agreed in principle that a new financial framework is desirable, but that it should be established under Norfolk Island legislation and regulations. The Government of Norfolk Island stated:

In principle, we agree that a new financial framework is desirable but believe that wherever practicable this should be established under Norfolk Island legislation and regulations, not Commonwealth legislation. The Norfolk Island Government is prepared to cooperate in making the necessary changes in consultation with the Commonwealth.<sup>25</sup>

- 4.54 The Attorney-General’s Department advised that a working group had been established to develop regulations which would enable the implementation of the new financial framework for Norfolk Island. The working group consists of departmental officers, Norfolk Island Administration officers and members of the Government of Norfolk Island. The Attorney-General’s Department stated:

A joint working group is to be convened to discuss and develop the financial framework regulations. This working group will involve officers from the Attorney-General’s Department, the Department of Finance and Deregulation and the officers you have nominated from the Norfolk Island Administration and the Norfolk Island Government. The purpose of the working group will be to discuss the proposed content of the regulations, and ensure that proposals are understood and able to be implemented by the Norfolk Island Administration and Territory authorities.<sup>26</sup>

- 4.55 The Government of Norfolk Island commented that as part of the working group process, the Administration was raising issues about the costs associated with the proposed Bill. The Government of Norfolk Island stated:

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24 Attorney-General’s Department, *Submission 7.1*, Question No. 7, p. 34.

25 Government of Norfolk Island, *Submission 6*, p. 38.

26 Attorney-General’s Department, *Submission 7.1*, Question No. A, Attachment A, p. 1.

An officer-level working group has already been established to fine-tune and work toward implementation of the new financial framework. The CEO of the Administration is writing in detail to the Acting Assistant Secretary of the Attorney-General's Department about a range of practical and administrative issues requiring clarification and action, including the costs of the changes and how these will be reimbursed in terms of the Commonwealth's commitment that the changes would be made without cost to Norfolk Island.<sup>27</sup>

- 4.56 The Attorney-General's Department stated that the working group would meet before July 2010 to discuss the content of regulations relating to the new financial framework. The Attorney-General's Department stated:

It is anticipated that this working group will meet prior to July to discuss the content of the regulations. The Norfolk Island Government and Administration will be given the opportunity to comment on draft regulations before they are registered.<sup>28</sup>

## Conclusions

- 4.57 While the annual financial statements of the Government of Norfolk Island have recently been prepared using International Financial Reporting Standards, the statements did not comply with accepted accounting conventions.
- 4.58 Further, previous annual financial statements of the Government of Norfolk Island did not follow generally accepted accounting conventions. Although annual financial statements were prepared for the Norfolk Island Administration, these did not include the two Territory authorities and monthly financial indicators are limited to certain financial statements and only for certain funds.
- 4.59 Further, the Norfolk Island Public Accounts and Estimates Committee (PAEC) in its 2008 report, made a number of critical findings in regard to performance and financial management by the Norfolk Island public sector. In particular, the committee notes the PAEC findings which state that:

Financial management must put departments on more business like footings with management obligation to plan, budget and report on accruals, outcomes and outputs. The Committee sees

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27 Government of Norfolk Island, *Submission 6*, p. 38.

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



effective financial management as closely connected to the public sector's ability to meet the expectations of the Norfolk Island Government in delivery of their objectives.<sup>29</sup>

- 4.60 Taking into consideration the PAEC's findings and further evidence received, implementation of a new financial framework will assist the Government of Norfolk Island and its Administration by allowing for greater financial transparency and accountability and comparison between other Australian jurisdictions.
- 4.61 A joint working group has been established to develop regulations to enable the implementation of a new financial framework for Norfolk Island.
- 4.62 The committee supports the working group approach to developing regulations accompanying the proposed changes to the financial management framework as it will allow for any issues or concerns to be discussed and addressed prior to implementation.

## **Proposed subsection 4(1) – definition of *responsible manager***

### **Background**

- 4.63 Proposed subsection 4(1) will include a definition of *responsible manager*. The term *responsible manager* 'will identify the person responsible for the finances of the Territory authority for the purpose of the new financial framework in Part VI of the Norfolk Island Act.'<sup>30</sup>

### **Analysis**

- 4.64 The Government of Norfolk Island made a number of comments in relation to 'concerns that arise on a casual reading of the proposed amendments contained in Part 3' of the Bill.<sup>31</sup>
- 4.65 Specifically, the Government of Norfolk Island raised concern about the definition of *responsible manager* and stated the definition 'is extremely

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29 Public Accounts and Estimates Committee, First Report to the Parliament, March 2008, *Review of the Cost to Maintain the Public Grounds and Reserves by the Public Sector*, Norfolk Island Legislative Assembly, p. 27

30 *Explanatory Memorandum*, p. 27.

31 Government of Norfolk Island, *Submission 6*, p. 38.

vague and likely in the variety of circumstances in which the Administration and related entities operate give rise to confusion.’<sup>32</sup>

- 4.66 The Explanatory Memorandum states that ‘the definition of responsible manager means the most senior individual (or group of individuals - where the body has a governing council) with the body who (or which) is responsible for the operation and finances for the Territory Authority.’<sup>33</sup>

## Conclusions

- 4.67 Subsection 4(1) will create a definition for *responsible manager* that is then applied to other relevant items that apply to the new financial framework, provided for under Part 3 of the Bill.
- 4.68 The definition of *responsible manager* is provided in the Explanatory Memorandum as ‘the most senior individual (or group of individuals - where the body has a governing council) with the body who (or which) is responsible for the operation and finances for the Territory Authority.’

## **Proposed new section 48(F) – Requirement of Commonwealth Auditor-General to seek comments on proposed performance audit reports**

### Background

- 4.69 New section 48F will require the Commonwealth Auditor-General to seek comments on proposed [performance audit] reports required under section 48E.<sup>34</sup>
- 4.70 In cases ‘where the Administration was the subject of the audit, the Auditor-General must provide the Chief Executive Officer with a copy of the proposed report.’<sup>35</sup>
- 4.71 Further, ‘where a Territory authority was the subject of the audit, the Auditor-General must provide the responsible manager or managers with

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32 Government of Norfolk Island, *Submission 6*, p. 38.

33 *Explanatory Memorandum*, p. 27.

34 *Explanatory Memorandum*, p. 31

35 *Explanatory Memorandum*, p. 31

a copy of the proposed report.’ A timeframe is imposed on receiving comments.<sup>36</sup>

## Analysis

- 4.72 New Division 2 of the Bill inserts several new proposed sections ‘which provides that the Auditor-General’s powers and functions apply in respect of Norfolk Island as provided under the Auditor-General Act.’ In addition, ‘where the scope of that Act does not otherwise extend, the Norfolk Island Act is amended to enable those provisions to apply.’<sup>37</sup>
- 4.73 The Government of Norfolk Island advocated that ‘proposed new section 48F(5) should be amended to enable the Minister for Finance to request a copy of all written comments on a performance audit report.’<sup>38</sup>
- 4.74 Section 48F is modelled on section 19 of the *Auditor-General Act 1997* (Cwlth). Section 19 appears in full below.

### 19 *Comments on proposed report*

- (1) *After preparing a proposed report on an audit of an Agency under section 15, the Auditor-General must give a copy of the proposed report to the Chief Executive of the Agency.*
- (2) *After preparing a proposed report on an audit of a body under section 16 or 17, the Auditor-General must give a copy of the proposed report to:*
  - (a) *if the body is a Commonwealth authority or a subsidiary of a Commonwealth authority – an officer of the Commonwealth authority or the subsidiary of the Commonwealth authority; or*
  - (b) *if the body is a Commonwealth company or a subsidiary of a Commonwealth company – a director or senior manager of the Commonwealth company or the subsidiary of the Commonwealth company.*
- (3) *After preparing a proposed report on an audit under section 15, 16, 17 or 18, the Auditor-General may give a copy of, or an extract from, the proposed report to any person (including a Minister) who, or any body that, in the Auditor-General’s opinion, has a special interest in the report or the content of the extract.*

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36 *Explanatory Memorandum*, p. 31

37 Attorney-General’s Department, Submission 7.1, p. 7.

38 Government of Norfolk Island, *Submission 6*, p. 38.

- (4) *If the recipient of the proposed report, or the extract from the proposed report, gives written comments to the Auditor-General within 28 days after receiving the proposed report, or the extract from the proposed report, the Auditor-General must consider those comments before preparing a final report.*
- (5) *The Auditor-General must, in the final report, include all written comments received under subsection (4).*
- 4.75 The Explanatory Memorandum provides that new section 48(F) will ‘ensure that auditees and other persons considered by the Auditor-General to have a special interest [in an audit] have the opportunity to review all proposed reports arising from a performance audit.’<sup>39</sup>
- 4.76 Further, under this section ‘recipients of proposed reports [will] have 28 days to respond to the Auditor-General on the proposed report.’<sup>40</sup>
- 4.77 The confidentiality requirements provided by Part 5, Division 2 of the Auditor-General Act will apply, and under subsection 36(3) of that Act, ‘recipients must not disclose information in the reports except as authorised by the Auditor-General.’<sup>41</sup>
- 4.78 Subsection 19(4) of the Auditor-General Act provides that if written comments are provided to the Auditor-General after receipt of a proposed audit report or an extract of a proposed audit report, then these comments must be considered by the Auditor-General. Subsection 19(4) appears below.
- (4) *If the recipient of the proposed report, or the extract from the proposed report, gives written comments to the Auditor-General within 28 days after receiving the proposed report, or the extract from the proposed report, the Auditor-General must consider those comments before preparing a final report.*
- 4.79 Subsection 19(5) which follows then requires the Auditor-General to include all written comments received in the final report.
- (5) *The Auditor-General must, in the final report, include all written comments received under subsection (4).*
- 4.80 Proposed subsection 48F(4) of the Bill provides a similar process to follow in the case of consideration of written comments for Norfolk Island audits. Proposed subsection 48(F) appears below.
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39 *Explanatory Memorandum*, 31.

40 *Explanatory Memorandum*, 31.

41 *Explanatory Memorandum*, 31.

(4) *If the recipient of the proposed report, or the extract from the proposed report, gives written comments to the Auditor-General within 28 days after receiving the proposed report, or the extract from the proposed report, the Auditor-General must consider those comments before preparing a final report.*

4.81 Proposed subsection 48F(5) provides, (similarly to subsection 19(5) of the Auditor-General Act) that all written comments received must be included in the final report under section (4).

4.82 Further, under proposed new section 48E copies of a performance audit report 'must be provided to the Minister for Finance, the Administrator and the responsible Commonwealth Minister.' The report must also be 'tabled in both the Commonwealth Parliament, and the Norfolk Island Legislative Assembly. This is consistent with performance audits undertaken under sections 15 and 16 of the *Auditor-General Act 1997*.'<sup>42</sup>

## Conclusions

4.83 Proposed new section 48(F) of the Bill is almost identical to section 19 of the Auditor-General Act and provides for the same process to be followed in terms of preparing a proposed performance audit report, receiving written comments and inclusion of the written comments in a final report.

4.84 As proposed subsection 48F(5) of the Bill requires that all written comments received under subsection (4) must be included in the final report, any person may have access to the written comments received by the Auditor-General by accessing the final report.

4.85 In addition, Auditor-General's reports are required to be tabled within the Commonwealth Parliament and the Norfolk Island Legislative Assembly. Reports are also made available to public sector agencies that are the subject of performance or audit reports. Further, reports are generally available on the Australian National Audit Office website.

4.86 The Commonwealth Auditor-General is an independent officer of the Parliament and works within the parameters of the *Auditor-General Act 1997* (Cwlth) to provide auditing services to the Parliament and public sector agencies.

4.87 The committee believes it would be inappropriate to amend the Auditor-General Act to allow a Minister to receive written comments provided to the Auditor-General as it infringes on the independence of the office of

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42 Attorney-General's Department, *Submission 7.1*, p. 7.

Auditor-General. Further, the anonymity of those providing written comments would be compromised and could over time create reluctance for officials to provide information for performance audits.

## **Proposed new section 51D - option to appoint a Commonwealth Financial Officer for Norfolk Island**

### **Background**

- 4.88 New section 51D will enable the appointment of a Commonwealth Financial Officer for Norfolk Island at the discretion of the Governor-General.<sup>43</sup>
- 4.89 The appointment of a Commonwealth Financial Officer is an optional appointment and would be 'made in the event that the Governor-General is of the view that Norfolk Island would benefit from Commonwealth assistance, for example in the implementation of the financial framework obligations under this Part of the Norfolk Island Act.'<sup>44</sup>
- 4.90 Under this new section, the Commonwealth Financial Officer would have 'access to all relevant financial accounts, records, documents and information related to the Administration or a Territory authority. Additional functions and powers may be prescribed by regulation.'<sup>45</sup>

### **Analysis**

- 4.91 The Government of Norfolk Island was concerned about the creation of new Commonwealth Public Service positions such as the Commonwealth Financial Officer and deputy or deputies to the Administrator. Appointment of a deputy or deputies to the Administrator is discussed in Chapter 2.
- 4.92 Specifically, the Government of Norfolk Island stated the creation of the Commonwealth Financial Officer 'effectively again returns Australian rule prior to 1979.'<sup>46</sup>

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43 *Explanatory Memorandum*, p. 36.

44 *Explanatory Memorandum*, p. 36.

45 *Explanatory Memorandum*, p. 36.

46 Government of Norfolk Island, Hon David Buffett MLA, *Transcript T2*, p. 4.

4.93 The Government of Norfolk Island added that it welcomed further dialogue to clarify the Commonwealth’s intentions. The Government of Norfolk Island stated:

The Norfolk Island Government’s concerns are that the practical purpose and function of such officials remains unknown. The Government therefore welcomes further dialogue with the Commonwealth to clarify and particularise Commonwealth intentions in this regard.<sup>47</sup>

4.94 Dr Candice Snell did not support the appointment of a Commonwealth Financial Officer instead advocated retaining authority for financial matters with the Norfolk Island Minister for Finance. Dr Candice Snell stated:

[If] the changes in the bill were to say that the current finance minister would no longer have control of finances on Norfolk Island, and that would be changed to a Commonwealth financial officer or member. What I am saying is that I still think that we could utilise our finance minister here. I think that making changes and making decisions on payments and things like that should be still done here, but I do agree that instead of taking that power away from him we could work together and use a Commonwealth financial audit every six months or every three months – or whatever they find appropriate – rather than taking that power away.<sup>48</sup>

4.95 The Attorney-General’s Department advised that the appointment of the Commonwealth Financial Officer is optional and would be made in consultation with the Government of Norfolk Island and the Administration. The Attorney-General’s Department stated:

In relation to the Commonwealth financial officer ... it is in fact not an inevitability. It is in fact a further possibility. I suspect the department of finance might be involved in talking with the Attorney-General’s Department about issues that might have arisen, but it may indeed be through some issues raised by the Norfolk Island administration itself that means there would be some extra benefit of further resources. My understanding is that it is an officer who would be appointed by the responsible minister, so it would be a matter for advice from the Attorney-General’s Department. But I expect there would be consultation

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

48 Dr Candice Snell, *Transcript T2*, p. 57.

with the Norfolk Island administration and ministers and also with the department of finance and the Commonwealth.<sup>49</sup>

4.96 In addition, the Attorney-General's Department outlined the circumstances where a Commonwealth Financial Officer would be appointed for Norfolk Island and exemplified the implementation of the financial and accountability provisions of the Bill. The Attorney-General's Department stated:

The position of Commonwealth financial officer would be filled by an existing Commonwealth officer in the event that such an appointment is considered necessary by the responsible Commonwealth minister – for example, if Norfolk Island requested assistance from the Commonwealth in the implementation of the financial management and accountability provisions contained in this bill.<sup>50</sup>

4.97 Further, the Attorney-General's Department advised that in the event a Commonwealth Financial Officer was required to be appointed either on request by the Government of Norfolk Island, Administration or by the Commonwealth, 'the position [would] provide support, assistance, expertise, information or training.' The Commonwealth intends to monitor ... progress in implementing the reforms to determine if the appointment of such an officer is necessary.<sup>51</sup>

4.98 The EcoNorfolk Foundation supported financial management reform and the implementation of a new financial framework for Norfolk Island, including the appointment of a Commonwealth Financial Officer for Norfolk Island. The EcoNorfolk Foundation stated:

On financial frameworks, we thank the Commonwealth government for its continual commitment in assisting Norfolk Island in implementing the frameworks effectively. It is an important milestone that the appointment by the Commonwealth of a Commonwealth Financial Officer for Norfolk Island is undertaken as a priority, as is the amendment to the Norfolk Island Act to provide for the appointment of the Commonwealth Attorney-General to conduct audits of the Norfolk Island administration financial statements.<sup>52</sup>

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49 Department of Finance and Deregulation, Mr Marc Mowbray-d'Arbela, *Transcript T2*, pp 10-11.

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

51 Attorney-General's Department, *Submission 7.1*, Question No. 8, p. 36.

52 EcoNorfolk, Ms Denise Quintal, *Transcript T2*, p. 45.



## Conclusions

- 4.99 The Government of Norfolk Island raised concerns about the intent and purpose of a Commonwealth Financial Officer. However, there was also support for the appointment of a Commonwealth Financial Officer in the context of assisting with the implementation of the financial framework included in the Bill.
- 4.100 The appointment of a Commonwealth Financial Officer is an optional appointment which may be made at the discretion of the Governor-General.
- 4.101 The Attorney-General’s Department stated that a Commonwealth Financial Officer may be appointed at the request of the Government of Norfolk Island or Administration to provide support, assistance, expertise, information or training in relation to the implementation of the new financial framework. Further, the Attorney-General’s Department indicated that it would monitor progress in implementing the reforms to determine if the appointment of a Commonwealth Financial Officer is necessary.
- 4.102 The committee believes the option of appointing a Commonwealth Financial Officer provides an important safety net for the Government of Norfolk Island and Administration in the event that support, assistance, expertise, information or training is required in relation to the implementation of the new financial framework.

## **Proposed new section 51E – Power of Commonwealth Minister to apply for an injunction to force compliance with financial management and accountability provisions**

### Background

- 4.103 Proposed new section 51(E) ‘provides a power for the responsible Commonwealth Minister to apply for an injunction to enforce compliance with the financial management and accountability provisions [as] defined in subsection 4(1).’<sup>53</sup>
- 4.104 Pursuant to this section, an injunction may be ordered by the Federal Court of Australia ‘requiring a person to restrain from doing an action, or

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53 *Explanatory Memorandum*, p. 37.

compel a person to do an action, in order to comply with the financial management and accountability provisions.’ In addition, an interim injunction may be granted, ‘however it specifies that no undertakings as to damages are to be made where the interim injunction is granted.’<sup>54</sup>

- 4.105 For a restraining action – ‘an injunction may only be granted where the person has previously engaged in conduct that contravenes the financial management and accountability provisions, or where it appears to the Court that the person will engage in conduct of that kind.’<sup>55</sup>
- 4.106 In regard to compelling a person to do an action, ‘an injunction may only be granted where the Court is satisfied the person has previously refused or failed to do the action in contravention of the financial management and accountability provisions, or if it appears to the Court that it is likely the person will refuse or fail to do the action.’<sup>56</sup>

## Analysis

- 4.107 The Government of Norfolk Island stated that it is extremely inappropriate that a Federal Court injunction be used as a way to enforce compliance with financial management and accountability provisions as provided under section 51(E). The Government of Norfolk Island stated:

The Norfolk Island Government similarly considers it extremely inappropriate that the Commonwealth proposes to use the threat and application of Federal Court injunctions under proposed new section 51E as a means of enforcing financial management and accountability provisions. There are no such provisions in the *Australian Capital Territory (Self-Government) Act 1998* or the *Northern Territory (Self-Government) Act 1978*. The existence of such obligations and their enforcement should be dealt with under Norfolk Island legislation.<sup>57</sup>

- 4.108 There is no provision in Commonwealth legislation applying to other jurisdictions which allows for an injunction to be sought enforcing compliance with financial management and accountability provisions as contained in new section 51(E).

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54 *Explanatory Memorandum*, p. 37.

55 *Explanatory Memorandum*, p. 37.

56 *Explanatory Memorandum*, p. 37.

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

## Conclusions

- 4.109 The Government of Norfolk Island stated that it considers the provision of enforcement of compliance with financial management and accountability provisions under new section 51(E) to be ‘extremely inappropriate.’ Then advocates that ‘the existence of such obligations and their enforcement should be dealt with under Norfolk Island legislation.’
- 4.110 Proposed Part 3 of the Bill establishes a new financial framework for Norfolk Island. The committee believes that it is appropriate to include provisions which require performance obligations under the Act to be undertaken.
- 4.111 While new section 51(E) allows for an injunction to be sought to enforce compliance with financial management and accountability measures included in the Bill, there is no penalty attached to non compliance.
- 4.112 It is unclear whether the Government of Norfolk Island agrees with inclusion of proposed section 51(E) in the Bill. The committee suggests that the issues relating to section 51(E) and the concerns raised by the Government of Norfolk Island can be addressed through the financial framework joint working group.



## 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.<sup>1</sup> 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.’<sup>2</sup>
- 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.’<sup>3</sup> The Commonwealth Ombudsman noted that high quality merit review was not available to Island residents.<sup>4</sup>

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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.’<sup>5</sup>

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.’<sup>6</sup>

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.<sup>7</sup>

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.’<sup>8</sup>

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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.<sup>9</sup>

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;

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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.<sup>10</sup>

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

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.'<sup>12</sup> 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,

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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.<sup>13</sup>

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.'<sup>14</sup> 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.'<sup>15</sup>

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 Quintals 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.<sup>16</sup>

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

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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.<sup>17</sup>

## 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.’<sup>18</sup>
- 5.20 In 1995, the Australian Law Reform Commission recommended the enactment of freedom of information legislation on Norfolk Island.<sup>19</sup>
- 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.<sup>20</sup>
- 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:

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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.<sup>21</sup>

## 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.<sup>22</sup>

- 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.'<sup>23</sup> 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.'<sup>24</sup> 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

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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.<sup>25</sup>

- 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.'<sup>26</sup>

## 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.<sup>27</sup>
- 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.

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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.<sup>28</sup>
- 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.'<sup>29</sup>
- 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.'<sup>30</sup>
- 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.<sup>31</sup>

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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.<sup>32</sup>

## 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.

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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).’<sup>33</sup> 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.<sup>34</sup>
- 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.<sup>35</sup>

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.<sup>36</sup>

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.’<sup>37</sup> The Explanatory Memorandum explains that this amendment ‘is intended to provide protection to personal information held by a contractor to the Norfolk Island Government.’<sup>38</sup>

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.

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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.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup>

## Conclusions

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

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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.

## Schedules 2 and 3 – Amendments relating to Australia’s Indian Ocean Territories

### Background

- 6.1 Proposed schedules 2 and 3 of the Territories Law Reform Bill 2010 (the Bill) make identical amendment to the *Christmas Island Act 1958* (Cwlth) and the *Cocos (Keeling) Islands Act 1955* (Cwlth) ‘to provide an automatic vesting mechanism for powers and functions under the Western Australian (WA) laws applied in the Indian Ocean Territories’ (IOTs).<sup>1</sup>

### Summary of key sections

- 6.2 The following sections apply to identical amendments contained in Schedule 1 which relates to Christmas Island, and Schedule 2 which relates to the Cocos (Keeling) Islands.
- 6.3 **Proposed new section 8G** establishes an arrangement for vesting and delegating powers under WA laws applied in the IOTs.
- 6.4 **Proposed subsection 8G(1)** provides that powers of a Minister, Governor or Governor-in-Council of WA by a WA law in force in the IOTs are instead vested in the Commonwealth Minister.
- 6.5 **Proposed subsection 8G(5)** provides that if a person or authority is subject to an arrangement under section 8H, the Commonwealth Minister is taken to have vested those powers under WA law applied in the IOTs that the

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1 Attorney-General’s Department, Mr Julian Yates, *Transcript T2*, p. 2.

person or authority would normally hold in WA in that person or authority.

- 6.6 **Proposed subsection 8G(6)** allows the Commonwealth Minister to direct that subsection 8G(5) does not apply to a specified power, despite the existence of an arrangement under section 8H.
- 6.7 **Proposed subsection 8G(10)** clarifies that the operation of section 8G does not interfere with the application of WA laws to Christmas Island under section 8A.

## **Proposed new section 8G – arrangements for vesting and delegating powers under WA laws applied on Christmas Island and the Cocos (Keeling) Islands**

### **Background**

- 6.8 The Bill will repeal the existing section 8G. The current section 8G:
- provides that once WA laws are applied to the IOTs, powers and functions under these laws become vested in the Commonwealth Minister
  - ‘establishes a mechanism for the Commonwealth Minister to vest or delegate powers and functions under WA law.’<sup>2</sup>
- 6.9 Common delegations by the Minister include: ‘Commonwealth officers, WA Government officers and authorities, administration staff in the IOTs, local government authorities and other qualified people.’<sup>3</sup>
- 6.10 The proposed new section 8G is different from the current section 8G as it ‘will include an automatic vesting mechanism for certain powers.’<sup>4</sup> In particular:
- new subsection 8G(1) ‘ensures the powers of a WA Minister and the WA Governor remain vested in the Commonwealth Minister and are not subject to automatic vesting or delegation.’<sup>5</sup>

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2 Attorney-General’s Department, *Submission 7*, p. 9.

3 Attorney-General’s Department, *Submission 7*, p. 9.

4 Attorney-General’s Department, *Submission 7*, p. 9.

5 Attorney-General’s Department, *Submission 7*, p. 9.

- new subsection 8G(5) provides that where a 'WA Government officer or authority is acting in these Territories under a Service Delivery Arrangement (SDA) with the Commonwealth, the officer or authority is automatically vested with those powers ordinarily used when acting in WA.'<sup>6</sup>
- new subsection 8G(6) allows for the Commonwealth Minister to 'remove an automatic vesting or delegation, either completely or subject to conditions.'<sup>7</sup>

## Analysis

- 6.11 The *Law Reform Act* (Cwlth) provides for WA laws to be applied to the IOTs. Laws applied under section 8A of the *Law Reform Act* are considered subordinate Commonwealth laws.<sup>8</sup>
- 6.12 This legislative framework allows the Commonwealth to retain control over legal arrangements as the applied laws scheme provides that a list of any new laws enacted (at the state level, which may apply to the IOTs) are to be tabled in the Commonwealth Parliament every six months. These laws may be terminated by either House of the Commonwealth Parliament by passing a motion.<sup>9</sup>
- 6.13 The Christmas Island and Cocos (Keeling) Islands Acts provide that the Minister with responsibility for the Territories may delegate or vest the powers and functions contained in the applied laws to the IOTs Administrator or Commonwealth and WA government officials. The most common delegation is from the Minister to WA Government officials through a SDA.<sup>10</sup>
- 6.14 SDAs between the Commonwealth Government and WA State agencies are currently in place for a wide range of areas including: health, education, consumer and business advocacy, public housing and emergency services.<sup>11</sup>

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6 Attorney-General's Department, *Submission 7*, p. 9.

7 Attorney-General's Department, *Submission 7*, p. 9.

8 Joint Standing Committee on the National Capital and External Territories, *Inquiry into the changing economic environment in the Indian Ocean Territories*, March 2010, p. 14.

9 Joint Standing Committee on the National Capital and External Territories, *Inquiry into the changing economic environment in the Indian Ocean Territories*, March 2010, p. 14.

10 Joint Standing Committee on the National Capital and External Territories, *Inquiry into the changing economic environment in the Indian Ocean Territories*, March 2010, p. 14.

11 Attorney-General's Department, viewed 20 April 2010, <[www.ag.gov.au](http://www.ag.gov.au)>.

- 6.15 The Attorney-General's Department stated the intent of the proposed changes to the Christmas Island and Cocos (Keeling) Acts is to provide certainty for delegations made by the Commonwealth Minister under SDAs. The Attorney-General's Department commented:

The purpose of this amendment is to ensure that all delegations that are vested in the Minister – and they are all still vested in the minister – also automatically follow the Western Australian delegation regime so that the Western Australian government officer who carries that delegation in the normal course of events in Western Australia can also use them when they go to the Indian Ocean territories without the need for a separate and specific delegation instrument. Its effect should essentially be to provide greater certainty about the operation of delegations, because they all operate automatically.<sup>12</sup>

- 6.16 The Attorney-General's Department advised the changes would provide for a more efficient and effective process for managing delegations and stated:

We have had legal advice on various ways of making the process more efficient and effective, and this was suggested as being the most appropriate way, in that most delegations fall automatically to the relevant Western Australian officer without impacting on the Minister's ultimate authority to give direction on any particular delegations or indeed to withdraw them should that be appropriate.<sup>13</sup>

- 6.17 Further, the Attorney-General's Department stated the changes would be beneficial for the IOTs Shires and communities by providing greater certainty for relevant delegations for WA officers when they visit the IOTs. The Attorney-General's Department stated:

I am of the view that the operation of this will in fact improve things for the shires and the community in, as I said, providing greater certainty that the relevant delegations for the Western Australian officers, when they visit the IOTs, are in fact effective.<sup>14</sup>

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12 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 7.

13 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 8.

14 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 8.



## Conclusions

- 6.18 The proposed changes to the *Christmas Island Act 1958* (Cwlth) and the *Cocos (Keeling) Acts 1955* (Cwlth) will repeal the current section 8(G) and replace it with a new section 8(G) to provide an automatic vesting mechanism for powers and functions under the WA laws applied in the IOTs.
- 6.19 The proposed new section 8G is intended to increase the efficiency of and provide greater certainty for relevant delegations vested in the Commonwealth Minister in regard to the delivery of services for the IOTs provided by WA public servants and authorities.



## Additional issues

### Introduction

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

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

### Waste management

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

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

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

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

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

- 7.4 Norfolk Island's dumping its waste into the sea presents issues in regards to Australia's international obligations under the *1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972*.<sup>3</sup>
- 7.5 The EcoNorfolk Foundation stated that the issue of waste dumping into the sea will have to cease by 2015.<sup>4</sup>

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

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

3 *Transcript T1*, p. 47.

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

## Measures and procedures to eradicate Argentine ants

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

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

## Water quality

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Application of Trade Practices Act to Norfolk Island

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

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

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

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

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

## Absence of workers compensation protocols

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

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

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

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



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

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

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

7.22 In regard to rehabilitation, Ms Denise Quintal noted 'There appears to be no formal process by which rehabilitation assessment and treatment can be provided.'<sup>20</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Government [gave] those eligible a small reduction in utilities, vehicle [registration], electricity, etc.' NIRSL stated 'we are now approaching 9[years] and four ministers later of lobbying for DVA pensions 'not' to be deemed as income.'<sup>24</sup>

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

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

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

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

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

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

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

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

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

## **Extending Commonwealth legislation to Norfolk Island**

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

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

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

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

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

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

## Conclusions

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

**Senator Kate Lundy**  
**Chair**

**3 May 2010**





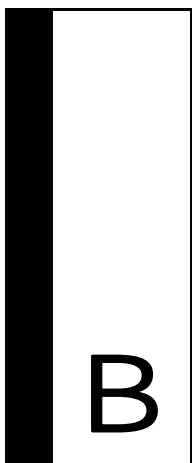
## Appendix A – Submissions

### **No. Individual/Organisation**

- 1 Australian Privacy Commissioner
- 2 Mr Michael King MLA
- 2.1 Mr Michael King MLA
- 3 Norfolk Labor
- 4 The Society of Pitcairn Descendants
- 5 CONFIDENTIAL
- 5.1 CONFIDENTIAL
- 6 Government of Norfolk Island
- 6.1 Government of Norfolk Island
- 7 Attorney-General's Department
- 7.1 Attorney-General's Department
- 8 Ms Robin Adams JP
- 9 Norfolk Island sub branch of the Returned and Services League of Australia
- 10 Mr Simon Bigg
- 11 Ms Katherine Adams-Friend and Mr Ernie Friend
- 12 EcoNorfolk Incorporated
- 13 Dr Candice Snell
- 13.1 Dr Candice Snell

- 14 Ms Denise Quintal
- 15 Norfolk Island Data Services
- 16 Mr Ian Anderson

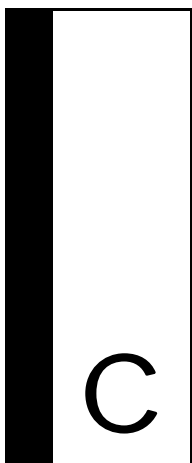




## Appendix B – Exhibits

- 1 Mr Michael King MLA  
*Graphs relating to the financial performance of various Norfolk Island Government Business Enterprises over the period 2002-2009.*  
(Related to Submission 2)
  
- 2 The Honourable Adrian Cook RFD QC  
*Upcooks, Submission to the Attorney-General's Department consultation on the Exposure Draft of the Territories Law Reform Bill, 25 February 2010.*
  
- 3 Department of Finance and Deregulation  
*Structure of the Norfolk Island Government Accounts, 2010.*  
(Related to Submission 7)
  
- 4 Government of Norfolk Island  
*Government of Norfolk Island submission to the Attorney-General's Department consultation on the Exposure Draft of the Territories Law Reform Bill, 25 February 2010.*  
(Related to Submission 6)
  
- 5 Ms Nicole Diatloff  
*Waste Management on Norfolk Island, March 2010.*

- 6 Attorney-General's Department  
Department of Transport and Regional Services, *Norfolk Island Government  
Financial Advisory Report*, November 2005.  
(Related to Submission 7.1)
- 7 Attorney-General's Department  
Commonwealth Grants Commission, *Review of the Financial Capacity of  
Norfolk Island 2006*, 29 September 2006.  
(Related to Submission 7.1)
- 8 Attorney-General's Department  
CONFIDENTIAL  
(Related to Submission 7.1)



## Appendix C – Hearings and witnesses

**Thursday, 8 April 2010 - Norfolk Island**

### **Individuals**

Ms Robin Adams JP

Mr Simon Bigg

Mr Michael King MLA

Dr Candice Snell

### **EcoNorfolk**

Ms Denise Quintal

Ms Barbara Shelley

### **Norfolk Island Government**

Hon David Buffett MLA, Chief Minister

Hon Craig Anderson MLA, Minister for Finance and the Attorney-General

Hon Andre Nobbs MLA, Minister for Tourism, Industry and  
Development

Hon Timothy Sheridan MLA, Minister for Community Services

Ms Robin Adams JP, Speaker

Hon Lisle Snell MLA, Deputy Speaker

Ms Rhonda Griffiths MLA

Mrs Melissa Ward MLA

**Norfolk Island sub-branch of the Returned and Services League of Australia**

Mr Warren Finch, President

Mr Wesley Cooper, Honorary Treasurer and Trustee

Mr Albert Buffett, Welfare Officer

**Monday, 12 April 2010 - Canberra****Attorney-General's Department**

Mr Julian Yates, Acting First Assistant Secretary, Territories Division

Ms Alison Green, Acting Assistant Secretary, Territories East

Mr Liviu Mihov-Nicotodis, Acting Assistant Secretary, Territories West

**Department of Finance and Deregulation**

Mr Marc Mowbray-d'Arbela, Assistant Secretary, Legislative Review

Mr Andrew Johnson, Director, Electoral Policy