



SUBMISSION 39

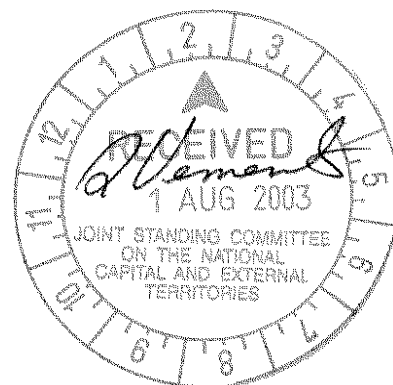
## ADMINISTRATIVE REVIEW COUNCIL

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Our ref: 03/7736

31 July 2003

Senator Ross Lightfoot  
Chairman  
Joint Standing Committee on the National Capital  
& External Territories  
Parliament House  
CANBERRA ACT 2600



Dear Senator Lightfoot

### **Submission to the Joint Standing Committee on the National Capital and External Territories Inquiry into Norfolk Island Governance**

Thank you for the opportunity to make a late submission to the Committee's Inquiry into Norfolk Island Governance.

The Administrative Review Council is a statutory body, established under the *Administrative Appeals Tribunal Act 1975* to advise the Commonwealth Attorney-General on a broad range of matters relating to the Commonwealth system of administrative law.

Having regard to the terms of reference for the Inquiry, particularly the reference to the need for a financially sustainable and accountable system of representative self-government for Norfolk Island, the focus of the Council's submission is upon the role that administrative law could play in ensuring good governance for the Territory..

#### *The Commonwealth System of Administrative Review*

The Commonwealth has a comprehensive system of administrative law. Through the provision of avenues of redress for those affected by the decisions

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Wayne Martin QC  
Professor John McMillan  
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Stephen Gageler SC  
Melanie Sloss SC  
Andrew Metcalfe

Justice Garry Downes AM  
Professor David Weisbrot  
Professor Robin Creyke  
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of administrative decision-makers and the normative effect of external review on the quality of decision-making, the system has contributed substantially to good governance at the Commonwealth level.

Merits review of Commonwealth administrative decisions is available by five major Commonwealth tribunals, the Administrative Appeals Tribunal, the Migration Review Tribunal, the Refugee Review Tribunal, the Social Security Appeals Tribunal and the Veterans' Review Board.

Judicial review of administrative decisions under Commonwealth enactments is available under the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act) and also, by way of the more complex processes associated with the common law remedies of prohibition, certiorari or mandamus and the equitable remedies of injunction or declaration.

Additionally, access to information held by Commonwealth agencies is available under the *Freedom of Information Act 1982* and protection is afforded to personal information under the *Privacy Act 1988*. Under the *Ombudsman Act 1976*, the Ombudsman has jurisdiction to investigate complaints against Commonwealth agencies.

Similar administrative law systems exist in other Australian States and Territories.

#### *Administrative Review and Norfolk Island*

The administrative review system for decisions of the Territory Government is less comprehensive than that of the Commonwealth, providing for:

- judicial review by way of the complex processes associated with common law writs and equitable remedies in the Supreme Court of Norfolk Island as a superior court of the record, with no equivalent to the ADJR Act; and
- merits review by the Territory's Administrative Review Tribunal. Decisions made under at least five Norfolk Island Acts, the *Public Reserves Act 1997*, the *Norfolk Island Broadcasting Authority Act 2001*, the *Lands Title Act 1996*, the *Land Administration Fees Act 1996* and the *Crowns Lands Act 1986* are reviewable by the Tribunal.

The Territory does not have freedom of information legislation, privacy legislation or an ombudsman's office.

Relevantly in this context, the Territory has been granted a large degree of autonomy under the *Norfolk Island Act 1979*. As a result, the Government of the Territory is responsible for a range of matters that are generally handled by the Commonwealth government elsewhere in Australia.

In particular, the Council notes that social welfare, customs, immigration and quarantine are matters regulated under Territory rather than Commonwealth legislation.

As a result, in contrast to the situation in other States and Territories, administrative decisions in these areas are not subject to the comprehensive Commonwealth administrative review regime described above. Rather, review rights in relation to such decisions derive from the system of administrative review prevailing in the Territory.

#### *Council Comment*

As a matter of principle, the Council supports access to comprehensive administrative review rights for all Australians, both as a means of redress for individuals in the face of adverse administrative decisions, and also as a means of encouraging high quality decision-making by government decision-makers.

However, the Council recognises that the Territory's small population and related high level of community involvement in administrative decision-making present a somewhat different environment to that which prompted the development of the Commonwealth system of administrative review described above. Nonetheless, in the Council's view, the significance of the distinctions to be drawn and the difficulties associated with extending the current review system should not be overstated.

While wholesale adoption of all of the elements of the Commonwealth administrative system may not be appropriate for Norfolk Island, there are aspects of the Territory's review system which would seem to be amenable to change without a significant increase in the complexity of governance in the Territory.

An extension of the jurisdiction of the Territory's Administrative Review Tribunal to cover decisions under Territory legislation that are currently subject to merits review by Commonwealth tribunals elsewhere in Australia would seem to fall within this category.

Additionally, the Council has had the opportunity to read the Commonwealth Ombudsman's submission to the Committee and considers that the suggestion for the creation of a Norfolk Island Ombudsman would provide a significant avenue for the review of administrative decisions.

While in view of that office's familiarity with areas such as immigration and social security, there might be particular advantage in appointing the Commonwealth Ombudsman to this role, the role could undoubtedly equally be undertaken by either the Queensland or the NSW statutory ombudsman.

The Council also suggests that to simplify access to judicial review of decisions made by the Government of the Territory, in keeping with the situation elsewhere in Australia, consideration might be given to the adoption of legislation similar to the Commonwealth's Administrative Decisions (Judicial Review) Act.

I would of course be pleased to discuss any aspect of this submission with you further, at your convenience. The contact officer in the first instance is David Ward of the Council Secretariat who may be reached on tel. 02 6250 5806.

Yours sincerely

A handwritten signature in cursive script that reads "Wayne Martin". The signature is written in dark ink and is positioned above a solid horizontal line.

Wayne Martin QC  
President