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Norfolk Island Government's Supplementary Submission to the Joint Standing Committee for National Capital and External Territories Inquiry into the *Territories Reform Bill 2010*

The Norfolk Island Government would like to take this opportunity to make a supplementary submission to the Joint Standing Committee for the National Capital and External Territories inquiry into the *Territories Law Reform Bill 2010 (TLR Bill)* following its appearance on Thursday 8th April 2010. .

We accept and are heartened by subsequent assurances that the intent of the current *TLR Bill* is not to erode the self-government of Norfolk Island. It must be identified however that we live in an arena of political change and the head powers of this Bill allow for the erosion of the ability for Norfolk Island to self govern.

It also appears from the Hansard documents that the concerns of the Attorney General's Department stem from issues that are already incorporated in Schedule 3 of the Norfolk Island Act 1979. The government position on this issue is identified below.

The Norfolk Island Government would like to commend the initiatives in the Bill which related 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. To this end we have outlined below how these functions can be achieved within the Norfolk Island financial and resource capacity.

PART 4 OF SCHEDULE 1 OF THE *TLR BILL*: AAT

Part 4—Amendments relating to the Administrative Appeals Tribunal
Administrative Appeals Tribunal Act 1975

- (a) In principle the Norfolk Island Government is supportive of AAT processes being implemented within the Norfolk Island jurisdiction.
- (b) In its Submission of the 7th of April 2010 the Norfolk Island Government indicated however, that the format for the AAT proposed within the *TLR Bill* would be unsustainable for Norfolk Island from both a financial and resource perspective. This format was the general

application of Commonwealth Statute in Norfolk Island which prohibits accessibility to the community to serve its purpose as a tribunal. .

- (c) In addition the proposals in the draft Bill would leave in place the current, cumbersome and slow procedures for the review of certain Immigration and Social Welfare issues.
- (d) It is proposed by the Norfolk Island Government therefore, that a working group be established immediately to determine a suitable way forward. 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.
- (e) In relation to this concept the Norfolk Island Government propose the following
 - i. 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.
 - ii. 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;
 - 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.

PART 5 OF SCHEDULE 1 OF THE *TLR BILL*: FOI

Part 5—Amendments relating to freedom of information

Freedom of Information Act 1982

- a) In principle the Norfolk Island Government is prepared to implement an FOI process that is suitable to the Island's resources and financial restraints.
- b) In its Submission of April 2010 the Norfolk Island Government however, reiterated that the format for the FOI proposed within the *TLR Bill* would be unsustainable for Norfolk Island from both a financial and resource perspective.

This format was the general application of Commonwealth Statutes in Norfolk Island.

- c) Additional impediments to implementing the processes provided for by the *TLR Bill* are as follows:
- iii. The current record keeping whilst thorough is a paper based system with an electronic tracking component. The tracking system was implemented in 2008 and as such FOI enquiries as required by the *TLR Bill* prior to this would be extremely time consuming and resource intensive.
 - iv. Extensive training would be required for all Administration and Legislative Assembly staff to increase awareness of record keeping processes and the FOI concepts.
- d) The timeframe indicated by the *TLR Bill* are unrealistic for the Norfolk Island Government. However it is acknowledged that a contracted version of the FOI concepts, such as an FOI process for enquiries relating to documents post 2008, could be implemented within a suitable timeframe. This contracted FOI process would be the first component in a staged approach which would result in complete FOI processes being implemented over a period of time within Norfolk Island Legislation and the financial and resource restraints of the Norfolk Island Government.
- e) It is proposed by the Norfolk Island Government that a working group be established immediately to determine a suitable way forward similar to the Ombudsman process, which successfully incorporated the requirements of the Commonwealth within the confines of the financial and resource restraints of the Norfolk Island Government.
- f) The Norfolk Island Government proposes the following:
- i. That a working group be established immediately with the following members, the Secretary to Government, the Information Technology Manager and the Records Officer from the Norfolk Island Government, the Acting Assistant Secretary Territories East Branch, and a member from the relevant Commonwealth Department.
 - ii. That the Terms of reference for this group include:
 - The development of a contracted FOI process which could be implemented within the timeframes indicated in the *TLR Bill*;
 - The Development of a long term plan for implementation of a full FOI process over a number of years;
 - The provision of a full costing of the implementation of the FOI implementation stages, including, funding sources, staff training, required upgrades to record systems and the development of procedures and instruments; and
 - Develop a legislative reform program including timeframes to implement the full FOI process.

PART 7 OF SCHEDULE 1 OF THE TLR BILL: Privacy

Part 7—Amendments relating to privacy

Australian Capital Territory Government Service (Consequential Provisions) Act 1994

Privacy Act 1988

- (f) In principle the Norfolk Island Government agree, that the right to privacy within a government and wider community context is imperative for good governance and stability
- (g) The Norfolk Island Government is committed to providing the citizens of Norfolk Island with the security of legislation which protects individual's right to privacy.
- (h) The Norfolk Island Government however reiterates the concerns expressed above regarding the FOI system. The time and resource costs arising from the complexity of such a system as suggested in the *TLR Bill* have been underestimated, as has the short time frames allowed to implement the system, train staff and adjust existing systems.
- (i) It is proposed by the Norfolk Island Government that a working group be established immediately to determine a suitable way forward similar to the Ombudsman process, which successfully incorporated the requirements of the Commonwealth within the confines of the Norfolk Island Legislation and the financial and resource restraints of the Norfolk Island Government.
- (j) The Norfolk Island Government proposes the following:
- i. That a working group be established immediately with the following members, Secretary to Government, the Acting Executive Director Corporate and Community Services and Legal Counsel from the Norfolk Island Government and members of the relevant Commonwealth Department and the Acting Assistant Secretary Territories East Branch, Attorney General's Department.
 - ii. That the Terms of reference for this group include:
 - The development of a Privacy process suitable to a small self governing community, which could be implemented within the timeframes indicated in the *TLR Bill*;
 - The development of a long term plan for the implementation of a suitable comprehensive Privacy process over a number of years;
 - The provision of a full costing of the implementation of the Privacy processes, including funding sources, staff training, community training and the development of procedures and instruments; and

- Develop a legislative reform program including timeframes to implement the privacy processes.

GOVERNANCE AND ELECTORAL ISSUES

In regard to the Governance and Electoral issues in the context of the provision of head powers under the Bill, the Norfolk Island Government would like to reiterate the following points

The Norfolk Island Government has had the opportunity to review the submission lodged with the Joint Standing Committee by the Territories Division of the Attorney-General's Department as well as the transcript of evidence received by the Joint Standing Committee during the Public Hearings conducted in Canberra on 12 April 2010.

The Norfolk Island Government notes that at the Public Hearings on 12 April 2010 on many significant matters officers from the Attorney-General's Department have taken questions on notice. While noting this qualification that the Department's considered explanation on a number of issues has yet to be delivered, the Government makes the following further submissions in light of the information received which again address the concerns identified in the Government's written submission.

Concern One-

- Expanding the veto power of the Federal Minister and reducing the authority of the Executive Council regarding advice to the Administrator as to the exercise of powers conferred on the Administrator. (NIA s. 7; TLR items 12,13,14,15,16,17,18);

The Norfolk Island Government remains concerned that the wholesale conversion of Schedule 2 matters to the assent procedures of Schedule 3 has the potential to impose systemic delays in the legislative process that will make self-government unworkable.

Nevertheless the Norfolk Island Government notes the Commonwealth's concerns that Norfolk Island legislation should be consistent with the national interest or comply with Australia's international interests.

The Commonwealth's particular concern regarding Commonwealth type functions such as immigration, customs, quarantine, social security, industrial relations and so on are presently addressed in Schedule 3 of the *Norfolk Island Act 1979* (Cth) which includes the following matters –

1. Fishing.
2. Customs (including the imposition of duties).
3. Immigration.
4. Education.
5. Human quarantine.
6. Animal quarantine.
7. Plant quarantine.
8. Labour and industrial relations, employees' compensation and occupational health and safety.
9. Moveable cultural heritage objects.
10. Social Security.

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 this regard.

Concern Two-

- Creating new Commonwealth public service positions through -
 - Appointments of potentially multiple "deputies of the Administrator"; and
 - A "Commonwealth Financial Officer for Norfolk Island".
- (NIA s. 4,9, 10; TLR items 19, 20)

The Norfolk Island Government believes that the need for an array of non-remunerated deputies in the event of the Administrator's incapacity or being out of phone range is somewhat overstated.

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.

Concern Three-

- Removing the ability of the Legislative Assembly to select, structure and allocate portfolios to the executive members of the Legislative Assembly which form the Norfolk Island Government;
 - Imposing a form of Norfolk Island Government focussing on a Chief Minister with power to appoint and remove Ministers.
 - Limiting the number of Ministers that might be appointed.
 - Enabling the Chief Minister to be removed by the Administrator if "in the Administrator's opinion, there are exceptional circumstances that justify the Administrator so doing".
 - Limiting the power to allocate or reallocate Ministerial Portfolios to the Chief Minister.
- (NIA ss. 12,13,14, 42 proposed new s 12A, 14A, 42A; TLR items 21, 22, 23, 24, 25, 26, 40, 41)

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.

Concern Four-

- Empowering the Administrator to reserve all proposed laws, regardless of character, for Governor-General's assent.
 - Empowering the Federal Minister to veto all advice from the Executive Council to the Administrator regarding proposed laws that previously were under the sole authority of the Executive Council.
 - Empowering the Federal Minister (in addition to the existing power conferred on the Governor-General) to introduce a proposed law into the Legislative Assembly.
- (NIA ss. 21, 22; TLR items 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37)

As indicated above the Norfolk Island Government is willing to discuss with the Commonwealth any perceived need to pass regulations amending Schedule 3 of the Act.

However regarding these further changes the concerns of the Norfolk Island Government remain that -

- there was no consultation on the need for these changes;
- the changes are “solutions” for which no problem exists;
- no clear rationale has been provided for such change; and
- of fundamental importance, these changes diminish the power of elected representatives of the people of Norfolk Island.

Further dialogue with the Commonwealth is needed as a matter of urgency in this regard.

Concern Five-

- The dismissal of individual members of the Legislative Assembly by the Administrator for “seriously unlawful conduct” or “grossly improper conduct”.
 - The dissolution of the Legislative Assembly by the Governor-General if, in the opinion of the Governor-General the Legislative Assembly is “incapable of effectively performing its functions” or “is conducting its affairs in a grossly improper manner”.
- (NIA proposed new sections 39AA, 39AC; TLR item 39)

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 provided by judicial review provide very little safeguard against incorrect or improper invocation of such powers.

Concern Six-

- Commonwealth regulations to override Norfolk Island laws regarding standards of conduct applying to Norfolk Island public servants.
 - Commonwealth regulations to repeal or alter items in Schedule 2 or 3 of the Norfolk Island Act 1979 without the current requirement for a Legislative Assembly resolution approving such regulation.
 - Commonwealth regulations to override existing Norfolk Island electoral laws.
 - Commonwealth regulations to override existing Norfolk Island laws regarding public moneys and public stores.
 - Commonwealth regulations to override existing Norfolk Island laws regarding financial management by entities falling within the control of the Norfolk Island Government.
- (NIA s. 4, 31, 37, 67 proposed new section 61A; TLR items 10, 50, 53, 82, 83, 84)

The Norfolk Island Government remains of the view that a joint working group at officer level could achieve a statement of values based on the Commonwealth APS Values where they represent an improvement on existing code of conduct provisions. Again such changes are considered more appropriately made in Norfolk Island legislation.

The Norfolk Island Government recommends that section 67 of the Norfolk Island Act 1979 remain unchanged precisely because it embodies an appropriate model of communication and co-operation regarding changes of great significance to self-government in Norfolk Island.

With respect to the proposal to fix minimum terms of 3 years and maximum terms of 4 years for Legislative Assemblies the Norfolk Island Government as previously indicated has no objection to such a change, subject to there being provision for general elections earlier than 3 years where either a referendum has voted for such earlier election or a special resolution of, say 7 of the 9 members of the Assembly so resolve.

The Norfolk Island Government continues to hold the view that voting methods should be specified in the Legislative Assembly Act 1979 as the relevant Norfolk Island enactment.

Concern Seven-

- Unilaterally imposing a new financial framework as to the Public Account of Administration and related public sector entities.

(NIA s4, 25, 27,46, 47, 48, proposed new sections 48A, 48B, 48C, 48D, 48E, 48F, 48G, 48H, 48J, 48K, 48L, 48M,48N, 48P, 48Q, 48R, 48S, 48T, 51, 51A, 51B, 51C,51D, 51E; TLR items 86A, 86B, 87, 88, 89, 90, 91, 92, 92A, 93, 94, 96, 97, 98, 99, 100, 100A,101, 102, 102A, 103, 104, 105, 105A, 106, 107, 107A, 108, 108A, 108B, 109, 110,111, 112)

The Norfolk Island Government notes that a joint working group has been established to address the detail of these issues. The Government remains concerned that the approach has been legislate first and consult later. The Government notes that officers of the Department of Finance and Deregulation significantly changed the Exposure Draft in light information it received during consultation with the Administration.

In conclusion the Norfolk Island Government would like to stress that whilst we are keen to develop partnerships and are extremely open to the notion of working together the Norfolk Island Government would recommend that the passage of the Bill be paused to develop the identified working groups to allow for collaborative mechanisms to enable positive outcomes.