

# Submission to the Joint Standing Committee on the National Capital and External Territories

## Inquiry into Norfolk Island Electoral Matters

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## Department of Transport and Regional Services

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

#### Terms of Reference

On 1 November 2000 Senator the Hon Ian Macdonald, Minister for Regional Services, Territories and Local Government, requested the Joint Standing Committee on the National Capital and External Territories to inquire into and report upon:

*The consistency of the laws relating to eligibility to vote and candidature for the Legislative Assembly of the Territory of Norfolk Island with other Australian jurisdictions, in particular*

*(a) whether Australian citizenship should be a requirement for eligibility to vote for, or be elected to, the Legislative Assembly;*

*(b) the time period before which an Australian citizen resident in the Territory can enrol to vote for the local legislature;*

*and that the Committee report to both Houses on or before the first sitting day in 2001.*

#### 1. Background to Reference:

The proposal to refer the matter of electoral reform on Norfolk Island appeared as a recommendation in the minority dissenting report of three members of the Senate Legal and Constitutional Legislation Committee on the Norfolk Island Amendment Bill 1999 in August 1999 and was referred to during debate in the Senate on this Bill. The Bill sought to regularise anomalies in the voting and citizenship requirements of the Norfolk Island Legislative Assembly when compared with other Australian jurisdictions.

Electoral provisions for the Legislative Assembly are contained in the *Norfolk Island Act 1979* (Cth) and the *Legislative Assembly Act 1979* (NI). The *Norfolk Island Act 1979* (Cth) prescribes qualifications for election to the Legislative Assembly. Under existing provisions a person can stand for election to the Assembly if the person is aged 18 or over, is entitled to vote at elections, and has been ordinarily resident for 5 years immediately preceding the date of nomination.

The *Legislative Assembly Act 1979* (NI) prescribes that a person is qualified to enrol where that person has attained the age of 18 and has been present on Norfolk Island for 900 days during the period of 4 years immediately preceding their application for enrolment. This equates to an aggregate period of just less than two and a half years.

Under the *Norfolk Island Act 1979* (Cth), territory laws relating to the Norfolk Island Legislative Assembly and electoral provisions are non-scheduled matters; that is, they are not

listed in Schedules 2 or 3 of the *Norfolk Island Act 1979* (Cth) and are therefore reserved for the Governor-General's pleasure.

The Federal Government has genuine concerns regarding the current electoral arrangements on Norfolk Island. Essentially, Australians in a part of Australia are not entitled to enrol to vote until they have met the 900 day over the past four (4) years residency qualification and people who are not Australian citizens are entitled to stand for election to a Legislative Assembly in an Australian Territory. This qualifying period for enrolment on Norfolk Island far exceeds the one (1) month that applies to the Commonwealth and in all States and Territories on the mainland. Tasmania has a qualifying period of six (6) months.

The Legislative Assembly of Norfolk Island is the only Australian State or Territory legislative body where non-Australian citizens are entitled to vote and stand for election. There is no requirement to declare citizenship when enrolling to vote - voting rights are related to period of "residency", not citizenship.

## **2. Norfolk Island Amendment Bill 1999**

The Government introduced the Norfolk Island Amendment Bill 1999 into the Senate in March 1999. Amongst other things the Bill proposed amendments to bring electoral provisions prescribing enrolment and entitlement to stand for election into line with those in the other Australian jurisdictions. Under the proposed provisions, only Australian citizens would have been eligible to enrol and stand for election to the Legislative Assembly. An 'ordinarily resident' qualifying period of 6 months for enrolment was also proposed. The enrolment rights of those currently on the electoral roll, who would otherwise be ineligible to enrol, would have been preserved<sup>1</sup>.

On 21 April 1999 the Senate referred the Bill to the Senate Legal and Constitutional Legislation Committee for inquiry and report. The Committee accepted that, amongst other things, the Bill would bring Norfolk Island's electoral laws into line with the rest of Australia and recommended that it be passed without amendment. In its report the Committee noted that "given the significant transfer of legislative power from the Federal government to the Norfolk Island Legislative Assembly since 1979, and hence the expansion of self-government on the Island, it is highly appropriate for the Commonwealth to redress the anomalies that exist with Norfolk Island's electoral laws."<sup>2</sup>

However, the minority report by three members of the Committee concluded that the matters of electoral reform contained in the Bill required wider consultation and much more consideration than the Senate Legal and Constitutional Legislation Committee was able to give. It recommended that the Bill not be proceeded with and the matter of electoral reform in Norfolk Island be referred to the Joint Standing Committee for the National Capital and External Territories for consideration by way of inquiry, which would include consultation with the Norfolk Island Government and the residents of Norfolk Island.

Similar sentiments about insufficient consultation with Norfolk Island and support for referral to the Joint Standing Committee for the National Capital and External Territories were

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<sup>1</sup> Clause 4, p.10 refers

<sup>2</sup> Report of the Senate Legal and Constitutional Legislation Committee, 23 August 1999 - paragraph 4.24

expressed by non-Government parties during the debate on the Bill in the Senate<sup>3</sup>. For these reasons the second reading of the Bill was resolved in the negative in the Senate on 9 March 2000.

### Consultation on the Bill

Extensive consultation occurred between the Federal Government and the Norfolk Island Government on the electoral provisions contained in the Norfolk Island Amendment Bill 1999. This consultation took a number of forms including the referral of draft amendments, correspondence and meetings between governments, provision of transcripts of interviews to Norfolk Island and media statements in the local print media. A full chronology of the consultations which took place from early March 1998 to August 1999 is at Attachment G. The result of the consultation was that, after considering the Norfolk Island Government's position, the Federal Government believed it appropriate to pursue reforms. It had also sought to ensure that those likely to be affected were aware of the proposed changes well before they would have taken effect. It also took care in the reform proposals to ensure that existing rights were preserved.

The Norfolk Island Government instigated two referenda in August 1998 and May 1999 on the proposed amendments. The result was that the Bill was opposed. However, it is important to note that those people entitled to vote in a referendum would only include those who fulfilled the criteria for enrolment on the electoral roll under the Legislative Assembly Act. Those people disenfranchised by the Territory's current laws were not entitled to vote at either referendum, as a consequence, people of whom approximately 20% were not Australian citizens, took a decision which negatively affected a group of Australian citizens who did not meet the requirements to participate in the electoral process on Norfolk Island.

### **3. Norfolk Island constitutional position and Federal Government policy on internal self-government**

Constitutionally and internationally, Norfolk Island has been an integral part of the Commonwealth of Australia since 1914 when it was accepted as a Territory under the authority of the Commonwealth pursuant to section 122 of the Constitution. It is administered in accordance with the provisions of the *Norfolk Island Act 1979* (Cth), by which the Australian Parliament conferred a measure of self-government on Norfolk Island as a territory under the authority of the Commonwealth.

The fact that Norfolk Island has achieved a measure of internal self-government *is of no greater significance* than the self-government conferred by the Australian Parliament on the Northern Territory and the Australian Capital Territory.

Through the mechanism of the Norfolk Island Act, the Federal Parliament devolved legislative and executive power to Norfolk Island, to elect its own government, to have its own Administration and be responsible for raising its own revenue (with certain limitations<sup>4</sup>).

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<sup>3</sup> Senate Hansard 9 March 2000

<sup>4</sup> Under the Norfolk Island Act, the Norfolk Island Government has the following revenue raising powers:

- The raising of revenues for purposes of matters specified in this Schedule (item 1, Schedule 2);
- Lotteries, betting and gaming (item 45, Schedule 2);

In this context, the Federal Government retains residual responsibilities for the Territory's good governance and representative democracy and its proper financial management. The Federal Government also remains responsible for ensuring that laws in, and activities on, Norfolk Island comply with its obligations under international law. Nationally the Federal Parliament also retains ultimate responsibility for the development of Australian electoral systems, for which it is responsible, consistent with the Australian Constitution, electoral law and policy, and with Australia's international obligations.

The Federal Parliament has utilised its reserve powers before to ensure that Norfolk Island has a fair and representative electoral system and one that caters appropriately for minority groups. For example, in 1980, after obtaining advice from the Australian Electoral Commission and the Federal Attorney-General's Department, the Federal Government rejected two Territory Bills which sought to change the method of voting and requirements for candidates (See table at Attachment H for further details.)

#### **4. Federal Government interest in electoral reform**

The Federal Government believes that the voting rights of Australian citizens are a national issue for decision at the national level. Importantly, Australian citizens should not be denied basic rights in parts of Australia based on the outcome of a referendum by a small group/community, a number of whom themselves are not Australian citizens.

##### *Basic democratic tenet*

It is a generally accepted tenet of representative government worldwide that a country's voters and elected representatives must be citizens of that country.

The concept of citizenship defines membership of the nation-state, as well as the rights and obligations derived from that membership such as being subject to its laws and entitled to its protection. The website of the Commonwealth Department of Immigration and Multicultural Affairs states that

in Australia citizens 18 years and older have the right and the responsibility to enrol and vote. Voting in Federal, State and local elections is a powerful way for citizens to have a say in the decision-making which affects the quality of people's lives.<sup>5</sup>

It has been claimed that Federal interest in reform of Norfolk Island's electoral system is contrary to the wishes of most Norfolk Islanders and, therefore, undemocratic and inconsistent with the commitment to self-government for Norfolk Island. The Federal Government's interest in this matter *is solely with the question of eligibility to vote and to stand for election*. The reforms proposed by the Federal Government would have had no impact on the question of self-government. Norfolk Island remains part of Australia with its own system of government provided by the *Norfolk Island Act 1979* (Cth). There were and

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- Fees or taxes imposed by the following enactments of the Territory: *Absentee Landowners Levy Act 1976*; *Cheques (Duty) Act 1983*; *Departure Fee Act 1980*; *Financial Institutions Levy Act 1985*; *Fuel Levy Act 1987*; and
  - Customs (including the imposition of duties) (item 2, Schedule 3)

<sup>5</sup> Department of Immigration and Multicultural Affairs webpage on citizenship - <http://www.immi.gov.au/citizen/index.html>.

are no plans to change any of the self-governing arrangements that Norfolk Island enjoys under this arrangement other than the removal of anomalies in the electoral system.

Moreover, the Federal Government remains committed to self-government for Norfolk Island. Intergovernmental discussions on the transfer of certain Federal assets (land), powers and functions to the Norfolk Island Government are continuing. Further information on transfer of powers is provided at Attachment A.

### *Consistency with other jurisdictions*

Successive Federal Governments and High Court decisions have confirmed that Australian citizenship should be a prerequisite for membership of an Australian legislature. In all States and other self-governing Territories, Australian citizenship is a requirement for enrolment and election. This includes the other Territory Legislative Assemblies to which the Federal Government has delegated a range of internally self-governing powers – as it has with Norfolk Island. Moreover, in most States and Territories, Australian citizenship is now a requirement, or is being considered as a requirement, for enrolment and election at the local government level<sup>6</sup>.

While Norfolk Island has a relatively stable permanent population level, it is a highly mobile population and large numbers of Islanders have moved to reside on the mainland (See Attachment C). Australians who live on Norfolk Island and who move to New South Wales and Queensland, for example, need only be ordinarily resident for one month before being eligible to enrol to vote and, moreover, to stand for election to the Parliaments in those jurisdictions. At any one time on Norfolk Island there are normally around 200-300 temporary residents working in the construction, hospitality and tourism industries, a significant number of whom are ordinarily Australian residents. Unlike those Australian citizens moving from Norfolk Island, these Australians would have to be present on Norfolk Island for two and a half years during the period of four (4) years immediately preceding their application for enrolment to vote. They have to be ordinarily resident for five (5) years immediately preceding the date of nomination to stand for election.

## **5. Term of Reference: Whether Australian citizenship should be a requirement for eligibility to vote for, or be elected to, the Legislative Assembly.**

### Australian Citizenship Act

Australian citizenship is not a new concept for Norfolk Island. *The Nationality and Citizenship Act 1948*, later the *Australian Citizenship Act 1948*, extended from inception to Norfolk Island, in the same way as it did to the mainland. That is, people born on Norfolk Island had, and still have, the same citizenship status as those born on the mainland.

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<sup>6</sup> For example, amendments were incorporated in the South Australian Local Government (Elections) Act 1999 with effect from 1/1/00 to provide that a candidate must be an Australian citizen or be a prescribed person, that is someone who held office as a council member between 5/5/97 and 1/1/00 (and consequently met the previous nomination standards). A voter is defined as an elector for the House of Assembly which incorporates the standard British subject qualification (date of effect 26/10/83).

Northern Territory Local Government legislation defers, through the Northern Territory Electoral Act 1995, ultimately to the Commonwealth Electoral Act and, where relevant, the NT Self-Government Act. To vote, someone must be an Australian citizen or British subject (prior to the date of effect of 26/1/84) and resident for one month. However, to stand for election, a candidate must be an Australian citizen who has been resident within the Commonwealth for at least 6 months and within the Territory for at least 3 months.

## Commonwealth Electoral Act

Unlike the rest of Australia, enrolment for Federal elections is not compulsory for Australian citizens resident on Norfolk Island. However, if a person chooses to enrol, unless they have a valid and sufficient reason<sup>7</sup>, voting is compulsory<sup>8</sup>.

As a result of a recommendation of the March 1991 House of Representative's Standing Committee on Legal and Constitutional Affairs' report, *Islands in the Sun: The Legal Regimes of the External Territories and the Jervis Bay Territory*, Norfolk Island residents may enrol for an electoral division in an Australian State in the division in a State for which they were last enrolled; or in the division in which their next of kin is currently enrolled; or in the division in which they were born. If none of these apply, a Norfolk Island elector may enrol in the division with which she/he has the closest connection.

If a Norfolk Island resident does not wish to enrol in a division in a State, then she/he may enrol in the division of Canberra. Enrolled Norfolk Islanders are only entitled to vote in Federal elections, not State/Territory elections. These provisions are designed to ensure that Norfolk Island residents are not disenfranchised in relation to Federal elections and may participate in electing members of the Parliament of Australia.

### History of amendments to Norfolk Island Act in relation to electoral arrangements

It is a basic tenet of Australia's electoral system that those elected to State, Territory and Federal Parliament must be Australian citizens. Until 1985 it was also the case for Norfolk Island. The *Norfolk Island Act 1979* (Cth) initially required anyone elected to the Legislative Assembly to be an Australian citizen or a British subject. However in 1985, as a consequence of the Australian Citizenship Amendment Act 1983, which was introduced to "remove all discriminations from the *Australian Citizenship Act 1948*", the Federal Government repealed the provisions of the *Norfolk Island Act 1979* (Cth) that referred to citizenship.

The aim was to remove references to 'British subject'. Norfolk Island was given two options to either delete the reference to 'British subject' which was consistent with the amendments for Commonwealth and State Parliaments, or delete the citizenship requirement entirely which was generally in keeping with local government requirements at that time. The Federal Government acceded to the Norfolk Island Government's preference to delete the citizenship requirement entirely<sup>9</sup>. It was considered that the status of the Legislative Assembly at that time was similar to that of a local government or Shire Council (in terms of powers and responsibilities) and this approach would be consistent with the practice (at the time) generally for local government.

Thus from 1986 there have been no citizenship requirements for election to the Legislative Assembly, or for enrolling on the Norfolk Island electoral roll.

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<sup>7</sup> Section 245, Commonwealth Electoral Act 1918

<sup>8</sup> Section 245 (15)(a) of the Electoral Act states that "Every elector who fails to vote at an election without a valid and sufficient reason for such failure; ... is guilty of an offence."

<sup>9</sup> DASETT Background Paper *Citizenship Requirements for Membership of the Norfolk Island Legislative Assembly* June 1990.



## Calls for reinstatement of citizenship

With the gradual evolution of the Norfolk Island Legislative Assembly (in terms of powers and functions) to an Assembly more akin to that of the ACT and NT, there have been attempts by the Federal Government to reinstate the Australian citizenship requirements but to date none have been successful.

### *1990 Correspondence from Minister for Territories to Norfolk Island Government*

In October 1990, the then Minister for Territories, the Hon David Simmons, wrote to the Norfolk Island Legislative Assembly seeking its views on an amendment to the *Norfolk Island Act 1979* (Cth) to re-instate Australian citizenship as a necessary qualification for membership of the Legislative Assembly. He suggested that given the Island's progress towards internal self-government and its authority over a wide range of Federal and State-type functions, its relationship with the Federal Government had become more akin to a Federal-State relationship than a Federal-local government relationship. Consequently, the justification for not requiring Australian citizenship for membership of the Legislative Assembly on the basis of practice applying at the local government level no longer seemed appropriate<sup>10</sup>.

Furthermore, given that the Legislative Assembly of Norfolk Island was in every sense a Parliament, the reinstatement of the Australian citizenship requirement for membership of the Assembly would bring Norfolk Island into line with the Parliaments of the States and the Commonwealth. It would also be consistent with the qualifications for membership of the Legislative Assemblies of the ACT and the Northern Territory.

The Norfolk Island Legislative Assembly debated the issue and passed a resolution opposing the citizenship proposal. Given that the report into the legal regimes of the external territories was imminent it was decided to await its recommendations before proceeding any further with the proposal.

### *1991 Islands in the Sun: The Legal Regimes of the External Territories and the Jervis Bay Territory*

The 1991 House of Representative's Standing Committee on Legal and Constitutional Affairs' report, *Islands in the Sun*, recommended the reinstatement of citizenship requirements. The report stated that the residency provision should be coupled with a citizenship requirement so that only Australian citizens were eligible to stand, or vote in Legislative Assembly elections, a requirement which was consistent with the Federal Government's resolution to require Australian citizenship for voters in the Indian Ocean territories.

### *1997 Commonwealth Grants Commission Report*

In 1996 the then Minister, the Hon Warwick Smith MP, and the then Norfolk Island Government agreed to an independent and authoritative assessment by the Commonwealth

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<sup>10</sup> Even were this still the case the Senate Legal and Constitutional Legislation Committee noted in 1999 that citizenship requirements pertaining to elections for local government have begun to change, and there is a move towards members of local government requiring Australian citizenship. The Northern Territory Local Government Act is cited as an example of this shift [paragraph 4.29]. See also reference to South Australia in footnote #6 above.

Grants Commission of the economy and of the Island's financial and administrative capacity as the basis for review of the self-government arrangements.

The Commission delivered its report in August 1997. In examining Norfolk Island representation and its legislature, the report noted in relation to residency requirements for voting that "Australian citizens who do not pass the eligibility rules cannot vote, and non-Australian citizens who pass the rules can vote."<sup>11</sup> It further observed that the current legislation "can and does result in non-Australian citizens, who are elected to the Assembly, making decisions on behalf of some Australian citizens who are prevented from voting."<sup>12</sup>

#### *1998 Minister for Territories – Federal Government decision to pursue changes*

In March 1998 the then Federal Minister for Territories, the Hon Alex Somlyay, announced that, with the further transfer of powers, the Federal Government wished to 'tidy up' some anomalies in relation to the voting and election rights of Australian citizens for the Norfolk Island Legislative Assembly. He stated that this was because the Norfolk Island Assembly was the only Parliament in Australia where it was not mandatory to be an Australian citizen to enrol in local elections, to be an Assembly member, or a Minister in the government. Furthermore, unlike these other Parliaments, depending on the term of their residency, Australian citizens ordinarily resident on the Island at the time of the elections were not necessarily entitled to enrol to vote in the Legislative Assembly elections.

The Minister specifically pointed out that his proposal was only restoring provisions which had been in place when self-government was originally granted in 1979 and that there had been a Parliamentary inquiry report and two High Court decisions which supported the requirement for the primary loyalty of members of the Australian Parliament to be to Australia. The reinstatement of the Australian citizenship requirement would remove any possible doubt about these matters.

#### *1998 Norfolk Island Amendment Bill*

The Norfolk Island Amendment Bill introduced into the Senate in March 1999 proposed, amongst other things, amendments to bring electoral provisions prescribing enrolment and entitlement to stand for election into line with those in all other Australian Parliaments. Under the proposed provisions, only Australian citizens would have been eligible to enrol and stand for election to the Legislative Assembly. An 'ordinarily resident' qualifying period of six months for enrolment was also proposed. The enrolment rights of those currently on the electoral roll, who would otherwise be ineligible to enrol, would have been preserved.

The Senate Legal and Constitutional Legislation Committee noted that the Norfolk Island government was concerned that the Federal Government was attempting to usurp the rights granted to it under the 1979 Act and constrain rather than progress the self-government of the Territory. However, as stated above, the proposal was only restoring provisions which had been in place when self-government was originally granted in 1979 and thereafter until 1985.

In the public hearings for the Senate Legal and Constitutional Legislation Committee's inquiry representatives of the Norfolk Island Government claimed that the Federal Government allowed the situation to arise in the first place because they gave the Norfolk

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<sup>11</sup> Commonwealth Grants Commission 1997 *Report on Norfolk Island* p 185, paragraph 16.

<sup>12</sup> *Ibid.* p 186, paragraph 18.

Island Assembly the choice of whether to retain the requirement for Australian citizenship or delete all reference.

As noted above, this was done because the circumstances of the Assembly at that time were similar to that of a local government, but with the transfer of more powers to the Norfolk Island Assembly<sup>13</sup> the nature of the relationship between the Norfolk Island and the Federal governments has more parallels with that of a Federal-State relationship. For example Norfolk Island holds member or observer status on various Commonwealth-State/Territory Ministerial Councils, a right not accorded local governments. Under current arrangements it is highly possible that the Norfolk Island Minister on such Ministerial Councils may not be an Australian Citizen (eg a number of Ministers since 1979 have not been Australian citizens).

The Senate Legal and Constitutional Legislation Committee's report noted that the Norfolk Island Government was concerned that because the citizenship requirement only referred to Australian citizenship, a large minority (~1 in 5) of the population, those with New Zealand or British citizenship, would be disenfranchised<sup>14</sup>. The report notes however that this concern is addressed by either the option to hold dual citizenship, enabling those Norfolk Islanders affected by the proposals to hold Australian citizenship whilst retaining their original citizenship or by permitting persons already enrolled to remain on the roll. Thus, the only people likely to be affected would be those non-Australian citizens who were not yet enrolled, who wish to enrol in the future, and who fail to take out Australian citizenship.

The Norfolk Island Government has maintained its opposition to the changes and initiated two referenda on the issue in August 1998 and again in May 1999. The results of the first referendum, which asked those on the current electoral roll whether Norfolk Islanders felt it appropriate that "the Australian Government in Canberra dictates the electoral process on Norfolk Island", were that of the 1114 enrolled, 917 voted with 78.4% voting "no", 20.1% voting "yes", and 1.5% voting informal.

The second referendum asked whether Norfolk Islanders agreed with the Federal Government's proposal to alter the Norfolk Island Act so that in future people who have been ordinarily resident on the Island for six months would be entitled to enrol on the electoral roll for Legislative Assembly elections; and Australian citizenship be a requirement for election to the Assembly and for enrolment on the electoral roll for Assembly elections. Of the 1110 enrolled 964 voted, with 71.7% voting "no", 25.6% voting "yes", and 2.7% voting informal.

It is considered that the local argument, however, went more to the issue of the right of the Federal Government to take any action in respect of Territory electoral matters than with some Australian citizens being denied the right to vote while foreign nationals had a right to vote and be elected to the local Assembly.

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<sup>13</sup> Since the commencement of the Norfolk Island Act when there were 42 items in Schedule 2 and 4, in Schedule 3 in 1979, a total of 61 additional matters have been transferred to the responsibility of the Norfolk Island Government. Existing items were also varied as part of that process. Each extension or variation of power was the result of consultation and consideration at Departmental and Ministerial level (not by Parliament). At the end of the most recent transfer process, in 1992, 19 powers were added to Schedule 2 of the Act.

<sup>14</sup> The 1996 Census identified 80.8% of the permanent population of Norfolk Island as Australian citizens (up from 77% in 1991) and 16% as New Zealand citizens (down from 18.5%) UK citizens account for less than 2% of the population, and the remaining 1.5% holds other citizenship.

As has been emphasised, non-Australian citizens voted in both referenda, while some Australian citizens resident on Norfolk Island were denied a right to vote.

### Implications for Norfolk Island residents

It has been claimed that restriction of the franchise to Australian citizens will disenfranchise a significant part of the Territory's permanent population. Furthermore, it is claimed the proposal ignores the role that New Zealanders play in Norfolk Island, their significant contribution to the Island and its economy and will discriminate against non-Australian citizens, particularly New Zealanders, who move to Norfolk Island in the future.

#### *Existing non-Australian Norfolk Islanders*

Citizenship is a requirement for candidature to many other western legislatures. For example Norfolk Islanders and other Australians wishing to stand for election to the New Zealand Parliament are required to take out New Zealand citizenship.

It is claimed that grandfathering provisions, such as those proposed in the 1999 amendment Bill, will not prevent Norfolk Islanders currently on the electoral roll from being disenfranchised: that is, those with existing rights to vote who leave the Island and have their names removed from the electoral roll will be caught by the new restrictions. For these reasons, the Norfolk Island Government proposed in July 1999 that United Kingdom, Australian and New Zealand citizens be allowed to vote in Territory elections (ie, the pre-1979 situation)<sup>15</sup>.

However no one who *remains enrolled* on the Norfolk Island electoral roll would lose an existing right to vote as a result of the anomalies in the Norfolk Island electoral system being corrected. The Federal Government's amendments proposed in 1999 would have preserved the present rights of all those who remain on the Island's electoral roll. The only changes were that, for future elections, citizenship would be a requirement for candidature and the residency qualifications to enrol to vote would have been reduced from 900 days in four (4) years, to six (6) months. All other requirements would remain as they were. Those Members of the Legislative Assembly who were not Australian citizens would have been entitled to serve out the current period for which they were elected. Thereafter, if they wished to stand for election, they could have sought Australian citizenship.

#### **6. Term of Reference: The time period before which an Australian citizen resident in the Territory can enrol to vote for the local legislature.**

The right to vote in the electoral jurisdiction of one's usual place of residence is a fundamental right of all Australian citizens in all parts of Australia. It is the cornerstone of representative government. In this context the first principle of a democratic system of government is surely the extension of franchise rather than the restriction of the franchise by the imposition of excessive residence requirements.

The minimum period of residence to be "ordinarily resident" for electoral purposes does not exceed one month in any mainland jurisdiction. Tasmania has a six months minimum residency requirement.

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<sup>15</sup> See submission to the Senate Legal and Constitutional Legislation Committee, 5 July 1999.

## Restriction of 900 days is unreasonable

Norfolk Island's current electoral laws discriminate against elements within the Norfolk Island community. The requirement of an aggregate physical presence on Island of 900 days in the previous four (4) years effectively disenfranchises Australian citizens who live and work on Norfolk Island (ie, under a Temporary Entry Permit (TEP) or a General Entry Permit Holders (GEP))<sup>16</sup>.

The Federal Government is concerned that Australians in an Australian Territory are being denied the right to vote by being required to wait two and a half years to get on the electoral roll. As noted above, the Federal Government is further concerned that at the same time, non-Australian citizens can be elected to an Australian legislature and determine the future of an Australian Territory while Australian citizens are denied their right to vote for that legislature.

## International obligations

The existing electoral arrangements on Norfolk Island do not sit well with Australia's international commitments. The following is based on advice from the Attorney-General's Department. The Committee may wish to seek further advice from the Attorney-General's Department.

### *Article 25 of the International Covenant on Civil and Political Rights (ICCPR)*

Article 25 of the ICCPR provides that all citizens must have reasonable access to vote and be elected and to take part in public affairs. In its General Comments on Article 25, the UN Human Rights Committee noted that "If residence requirements apply to registration, they must be reasonable".<sup>17</sup> It is likely that Section 6(1) of the Legislative Assembly Act 1979 (NI) which requires, *inter alia*, that a person must be present in Norfolk Island for a total of 900 days during the period of four (4) years immediately preceding their application for enrolment, is a breach of this Article<sup>18</sup>.

The Human Rights and Equal Opportunity Commission notified the Norfolk Island Government in November 1994 that, in its considered view, Norfolk Island's electoral laws

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<sup>16</sup> **Temporary Entry Permits (TEPs)** are designed for short-term residence, and may be granted subject to conditions for up to one year (extendible to three years or more in special circumstances [eg, an applicant possesses required work skills not otherwise readily available on-Island]). They are usually granted for employment purposes only, and not to the detriment of the locals. TEPs are generally applicable to the itinerant workforce and are not normally issued to enable business ventures to be undertaken. TEPs are not subject to a quota.

**General Entry Permits (GEPs)** are designed for those wishing to stay indefinitely, or to settle on, Norfolk Island. They are usually granted subject to conditions, remain in force for 5.5 years and may be extended [an applicant must generally make a declaration of intent to reside on NI for the foreseeable future and to make a substantial commitment in terms of purchase of property and or a business]. Other than those granted on the basis of a 'special relationship' [with Norfolk Island] new GEPs are subject to a quota that is set annually by the Norfolk Island Legislative Assembly.

<sup>17</sup> The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. ICCPR General comment 25. Adopted by the Committee at its 1510th meeting (fifty-seventh session) on 12 July 1996. At [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CCPR+General+comment+25.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CCPR+General+comment+25.En?OpenDocument)

<sup>18</sup> Legal advice obtained by DoTRS from the Office of International Law, Attorney-General's Department, 1 March 2001. This advice also noted that it is also likely that section 38 of the Norfolk Island Act 1979 breaches the rights of Australian citizens to stand for election under Article 25 of the ICCPR. Section 38 requires *inter alia* that a person be ordinarily resident within the Territory for a period of 5 years immediately preceding the date of nomination.

which require a person to be present on Norfolk Island for 900 days before they are eligible to vote were in breach of Australia's international obligations under Article 25 of the ICCPR.

At that time the Human Rights Commissioner suggested that the legislation must be appropriately amended at the earliest opportunity<sup>19</sup>. That request was not considered by the 1995 Report of the Norfolk Island Legislative Assembly Select Committee into Electoral and Constitutional Matters and by Norfolk Island Governments to date.

#### 'Unique' Norfolk Island argument

It is claimed by the Norfolk Island Government<sup>20</sup> that the requirement that a person must be present on the Island for 900 days during the period of four (4) years immediately preceding their application for enrolment on the electoral roll is because the Island is unique and that people need to understand the Island and its politics before they vote. It is suggested that the proposed changes would threaten its culture and heritage. That is, allowing transient workers with sectional interests to vote would have an undue effect on the Island's long term residents, who regard the Island as their home.

Norfolk Island's history and its natural and cultural heritage are unique. However, Norfolk Island's circumstances are not. There are other communities elsewhere in Australia, many of which are isolated or are island communities, which also claim a distinct cultural heritage and history, a long and unbroken occupation of a region or an area, and who have economic interests and needs that differ from the rest of Australia. They would also regard themselves as culturally and ethnically distinct, fragile and vulnerable and share with Norfolk a concern about "new" people adversely affecting their community fabric.

Nevertheless Australian citizenship and one to six months' residence within a community remains the expected electoral norm. All other Australian jurisdictions and communities trust the good sense of those who choose to live in their communities. Why should an exception be made for that part of Australia that is Norfolk Island?

An electoral qualification based on a long on-Island physical presence (ie, two and a half years in four years) discriminates against those who have in fact made a commitment to the Island. It ignores those TEP and GEP holders who work and/or own property and businesses on the Island, who contribute to and rely on the Territory health system and other government community services, and who pay Norfolk Island taxes and levies.

It is considered wrong to suggest that those permit holders who do remain longer than six months can have little or no appreciation of the Territory or for its well being. A long on-Island physical presence does not necessarily translate into an understanding of Norfolk Island's politics or system of governance. A 1995 inquiry by a Norfolk Island Legislative Assembly Select Committee into Electoral and Constitutional Matters noted that,

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<sup>19</sup> Letter from Mr Brian Burdekin, Federal Human Rights Commissioner, Human Rights and Equal Opportunity Commission, 4 November 1994 to Mrs Monica Anderson, MLA in her capacity as convenor of the Norfolk Island Legislative Assembly's Select Committee into Electoral and Constitutional Matters.

<sup>20</sup> Submission to the Senate Legal and Constitutional Legislation Committee's inquiry into the Norfolk Island Amendment Bill 1999, June 1999

notwithstanding the residential electoral requirements, Norfolk Island residents had little understanding of Norfolk Island's electoral system<sup>21</sup>.

### Compromise Position of 6 Months Instead of 1 Month.

The Norfolk Island Government has itself recognised the need to reduce the qualifying period of residence but only in certain circumstances. In May 1999, the Norfolk Island Legislative Assembly passed a motion recommending that the qualifying period of residence *for a person holding resident status under the [Norfolk Island] Immigration Act* be reduced to 150 days residence in the 240 days before any application for enrolment, subject to the person having been ordinarily resident in Norfolk Island for a total of at least ten years in previous times. This recommendation is to be addressed in a review of the Legislative Assembly Act 1979 (NI)

The Legislative Assembly also agreed (as part of the same motion in relation to the Legislative Assembly Act) to add residency qualifications for candidates for election to the Assembly which extend the current provisions in the *Norfolk Island Act 1979 (Cth)* from the current "ordinarily resident within the Territory for a period of 5 years immediately preceding the date of nomination" to "requiring a presence on Norfolk Island of 1825 days (5 years) in the previous 2738 days (7.5 years) before nomination.

The original Federal Government proposal suggested a qualifying period of 6 months, without any previous residency requirements. This is not a new qualification for Norfolk Island. From the Declaration of Laws and Regulations on Norfolk Island in 1857 until the amendment of the electoral laws by the Norfolk Island Council Ordinance 1968, enrolment on the electoral roll was based upon a residency requirement of six months. In 1968 the Council formally linked voting rights to immigration status by removing the right of holders of Temporary Entry Permits to enrol on the electoral roll.

The Legislative Assembly Amendment Act 1991 (NI) removed references to 'residence', 'ordinary residence' and the test of intention to reside indefinitely which had been provisions of earlier legislation<sup>22</sup>. A person was now entitled to enrolment if the person had attained the age of 18 years and had been present in Norfolk Island for a total of 900 days during the period of four years immediately preceding their application for enrolment. A person whose name had been removed from the roll under the Act was entitled to enrol if he or she had been present in Norfolk Island for a total of 150 days during the period of 240 days immediately preceding their application for enrolment.

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<sup>21</sup> Report of the Select Committee on Electoral and Constitutional Matters, Norfolk Island October 1995. Page 34, paragraph 3.101

<sup>22</sup> See table at Attachment H for a full listing

Not all permit holders will be qualified to enrol or nominate for election.

The Norfolk Island Administration has confirmed that most Temporary Entry Permit holders work in the Island's service and hospitality industries and only stay on the Island for around six months. On this basis it is unlikely that there would be any great increase in the numbers on the electoral roll. (See analysis of TEP numbers at Attachment C.)

Moreover, as acknowledged by Norfolk Island's Select Committee into Electoral and Constitutional Matters in 1995, the lack of party politics and the fact that each candidate for the Legislative Assembly stands as an independent makes it unlikely that someone without Island connections would ever be elected to the Legislative Assembly. As the former Norfolk Island Chief Minister stated last year: "to get elected to the Norfolk Island Legislative Assembly is a hell of a lot harder than it is to get elected into any Parliament in Australia because everybody knows you. ... You could not have somebody who could stand for election to the Legislative Assembly on a platform that the majority of the people did not want."<sup>23</sup>

All other electoral requirements and qualifications will continue to apply.

In order to vote or be nominated for election, an Australian citizen must abide by Norfolk Island's immigration laws and requirements. To be eligible for election to the Legislative Assembly, the *Norfolk Island Act 1979* (Cth) requires Australian citizens to have lived in Norfolk Island for a period of five years immediately preceding the date of nomination. This will continue to be the case.

Australian citizens and others are generally required to obtain and retain a permit to remain in the Territory longer than 30 days. Failure to do so will lead to their deportation. Those who hold a Temporary Entry Permit must apply to renew their permits every 12 months. In the absence of special circumstances (such as possessing special work skills that are not readily available on-Island), permits are usually only extended to allow a maximum stay on-Island of three years. However this limit is currently a policy imposition and has no statutory basis.

## **7. Conclusion**

The Federal Government believes that it is still necessary and appropriate to bring electoral provisions on Norfolk Island prescribing enrolment and entitlement to stand for election, into line with those in all other Australian Parliaments. Accordingly it is recommended that the provisions proposed in the Norfolk Island Amendment Bill 1999 be further pursued. That is, that Australian citizenship be a requirement for eligibility to enrol and stand for election to the Legislative Assembly and an 'ordinarily resident' qualifying period of 6 months be required for enrolment on the electoral roll. Again, the enrolment rights of those currently on the electoral roll, who would otherwise be ineligible to enrol, should be preserved.

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<sup>23</sup> See evidence to the Senate Legal and Constitutional Legislation Committee, 5 July 1999.



**A. Extent of the Powers of the Norfolk Island Government**

**(a) Statutory framework**

The *Norfolk Island Act 1979* (Cth) confers comprehensive legislative powers on the Norfolk Island Government. Section 19 of that Act provides that the Norfolk Island Legislative Assembly can make any law with respect to ‘the peace, order and good government’ of Norfolk Island - other than laws with respect to euthanasia, the unjust acquisition of property, the raising of a military force or authorising the coining of money. The High Court has confirmed that the expression ‘peace, order and good government’ confers a very wide discretion on a legislature to pass laws.

The Act therefore allows the Legislative Assembly to pass laws on any subject matter, including matters listed in Schedules 2 and 3 of the Act or matters that are not listed in either Schedule.

Schedules 2 and 3 of the Act list the matters over which the Norfolk Island Government has executive authority. Laws passed by the Legislative Assembly relating to any non-scheduled matter are reserved for the Governor-General’s pleasure.

The Act requires federal endorsement of laws passed by the Assembly that relate to matters listed in Schedule 3 or a matter that is not listed in Schedule 2 or 3. It does so by requiring such laws to be referred to either the Federal Minister for instruction or to the Governor-General-in-Council. This consultative mechanism is designed to ensure that certain laws enacted in the Territory accord with policies and agreements implemented at the national level and also with Australia’s international obligations and national interests.

**(b) Administration of Territory laws**

Various powers and functions are conferred on the Norfolk Island Administrator by Territory laws. The *Norfolk Island Act 1979* (Cth) generally requires the Administrator, when exercising these powers and functions, to act on the advice of Norfolk Island Ministers in respect of an issue that relates to a matter specified in Schedule 2 or 3 of the Act. However, in respect of an issue that relates to a matter specified in Schedule 3 or a non-schedule matter, the Administrator must seek instructions from the Federal Minister.

Current standing instructions issued by the Federal Minister are those relating to the management of Crown land and which were agreed with the Territory Government following a joint review of land management in the Territory.

The range of powers conferred on the Administrator under Norfolk Island laws has decreased since 1979 as they have been transferred to Territory Ministers (see below).

## **B. Transfer of further powers and functions to the Norfolk Island Government**

### Current Government Policy

The Coalition Election Statement *Our External Territories* of 30 September 1998 included the commitment to continue

- *measures to appropriately streamline the administration of Commonwealth retained functions; and*
- *the development of internal self-government in Norfolk Island, in cooperation with the Island's Government and Legislative Assembly, and appropriate to the efficient administration of the Territory.*

Federal Governments have consistently taken the position that Norfolk Island is and will remain Australian sovereign territory. Internal self-government is interpreted as giving the Norfolk Island Government a range of powers similar to the Northern Territory and the Australian Capital Territory. There has never been any intention that the range of powers and functions of the Norfolk Island Government be extended to all matters other than foreign affairs, defence and coinage. To do this would go well beyond the powers of other states and self-governing territories and would equate to the free association status that Nuie and the Cook Islands have with New Zealand.

On the other hand, the Federal Government is prepared to consider the transfer of future functions by expanding the range of matters listed in Schedules 2 and 3 of the *Norfolk Island Act 1979* (Cth). During his visit to Norfolk Island in January 1999 the Prime Minister said the Commonwealth would consider "realistic" proposals.

In discussions on the transfer of powers, the Federal Government has been guided by the following considerations, among others:

- whether the powers or functions under discussion are normally exercised by the States and other self-governing Territories within the Federal arrangement;
- the capacity of the Norfolk Island Government to discharge its present and future obligations to the people of Norfolk Island; and
- the degree of support within the community for the changes being sought.

In 1981, 1985, 1989 and 1992 powers were transferred to the Norfolk Island Government. Most of these powers are those that are normally exercised by State and Local Governments. Quarantine and social security were amongst those added in 1989 to the list of powers in respect of which the Federal Minister had a veto. At present, discussions are focused on the transfer of responsibility to the Norfolk Island Government for heritage matters and some fisheries responsibilities.

Significant federal assets have also been transferred. In 1992, following a federally funded multi-million-dollar upgrade, the Norfolk Island Government assumed responsibility for the Norfolk Island Airport. It is now a major income earner for the Territory Government<sup>24</sup>.

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<sup>24</sup> Administration of Norfolk Island Annual Reports 1999-98 and 1999-2000

Inter-governmental discussions are currently under way on the future ownership of the Island's Crown leasehold land held by the Crown in right of the Commonwealth. At the June 2000 Intergovernmental meeting the Territories Minister announced his in-principle support for the withdrawal of the Commonwealth from the ownership of certain Crown land subject to the completion of a number of prerequisites and the resolution of a number of cross portfolio issues.

The Commonwealth Grants Commission in its 1997 Report on Norfolk Island noted among other things, that:

The powers of the Norfolk Island Government are very wide-ranging. They cover all the functions that are local or State functions elsewhere in Australia, as well as a range of functions that are elsewhere exclusively exercised by the Commonwealth<sup>25</sup> [customs, immigration, quarantine, education, departure taxes, and public health insurance].

One of the objectives of the Commonwealth is to use this report as a background document to a review of the *Norfolk Island Act 1979* [(Cth)]. We [the Grants Commission] think that such a review is needed, particularly to clarify responsibilities, to make the Act more administratively useful and to strengthen accountability and conflict of interest requirements. It will also be necessary if changes in responsibility for particular functions are to occur.

On the assumptions we [the Grants Commission] have made, the Norfolk Island Government would have the capacity to fund some additional responsibilities [providing it increases its revenue raising effort<sup>26</sup>]. Nevertheless, we suggest that, before any discussion of transfers of additional functions takes place, the Norfolk Island Government should take steps to meet its existing obligations, particularly in Commonwealth type functions.

In our [the Grants Commission] view, change is needed. The Commonwealth has a responsibility to ensure that certain services are provided to Australians at appropriate levels and this is not happening on Norfolk. If the Norfolk Island Government were to do nothing to improve these services, it should expect the Commonwealth to reclaim responsibility for them and some revenue powers to pay for them. If the Norfolk Island Government were to do nothing to improve its administrative capacity and infrastructure, there would be a risk of the Island economy declining, of revenue capacity falling and levels of services deteriorating. The Commonwealth could then be forced to take responsibility for a wider range of service provision and revenue raising for the Island. The level of independence of Norfolk Island would thereby be reduced<sup>27</sup>.

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<sup>25</sup> Commonwealth Grants Commission 1997 *Report on Norfolk Island* p 19, paragraph 33.

<sup>26</sup> *Ibid.* p.177, paragraph 49

<sup>27</sup> *Ibid.* p 217-218, paragraphs 34, 42, 43

***Norfolk Island Act 1979 (Cth) – Schedules 2 and 3 (1999)***

***Norfolk Island Act 1979 (Cth), No. 25 of 1979, as amended***

**SCHEDULE 2**

Sections 4, 7, 12, 21, 27, 47 and 67

1. The raising of revenues for purposes of matters specified in this Schedule.
2. Public moneys of the Territory (other than the raising of revenues).
3. Surface transport (including road safety, traffic control, carriers, vehicle registration and the licensing of drivers).
4. Roads, footpaths and bridges.
5. Street lighting.
6. Water supply.
7. Electricity supply.
8. Drainage and sewerage.
9. Garbage and trade waste.
10. Primary production.
11. The slaughtering of livestock.
12. Domestic animals (including birds).
13. Public pounds.
14. Pests and noxious weeds.
15. Recreation areas.
16. Cemeteries.
18. Fire prevention and control.
19. Quarrying.
20. Building control (including the repair or demolition of dangerous buildings).
21. Advertising hoardings.
22. The prevention and suppression of nuisances.
23. Noxious trades.
24. Gases and hydrocarbon fuels.
25. Firearms.
26. Explosives and dangerous substances.
27. Tourism.
28. Places of public entertainment.
29. Boarding houses and hotels.
30. Museums, memorials and libraries.
31. Foodstuffs and beverages (including alcoholic liquor).
32. Trading hours.
33. Markets and street stalls.
34. Hawkers.
35. Radio and television.
36. Postal services.
37. Coastlines, foreshores, wharves and jetties.
38. The transporting of passengers or goods to and from ships.
39. The maintenance of rolls of residents of the Territory.
41. The registration of births, deaths and marriages.

42. Matters in respect of which duties, powers, functions or authorities are expressly imposed or conferred on executive members by or under laws in force in the Territory other than a matter that relates to immigration or the operation of the Immigration Act 1980 of the Territory.
43. Public Service of the Territory.
44. Public works.
45. Lotteries, betting and gaming.
46. Civil defence and emergency services.
47. Territory archives.
48. The provision of telecommunications services (within the meaning of the Telecommunications Act 1989) and the prescribing of rates of charge for those services.
49. Branding and marking of livestock.
50. Pasturage and enclosure of animals.
51. Registration of bulls.
52. Bees and apiaries.
53. Exportation of fish and fish products from the Territory.
54. Livestock diseases (other than quarantine).
55. Plant and fruit diseases (other than quarantine).
56. Water resources.
57. Energy planning and regulation.
58. Fences.
59. Business names.
60. Navigation, including boating.
61. Price and cost indexes.
62. Fund-raising from the public for non-commercial purposes, and associations registered for fund-raising of that type.
63. Administration of estates and trusts.
64. Census and statistics.
65. Inquiries and administrative reviews.
66. Registration of medical practitioners and dentists.
67. Public health (other than: dangerous drugs, within the meaning of the Dangerous Drugs Ordinance 1927 of the Territory; psychotropic substances; quarantine).
68. Mercantile law (including sale or lease of goods; charges and liens on goods or crops; supply of services).
69. Law relating to the interpretation of enactments.
70. Civil legal proceedings by and against the Administration of the Territory.
71. Official flag and emblem, and public seal, of the Territory.
72. Fees or taxes imposed by the following enactments of the Territory: Absentee Landowners Levy Ordinance 1976; Cheques (Duty) Act 1983; Departure Fee Act 1980; Financial Institutions Levy Act 1985; Fuel Levy Act 1987; Public Works Levy Ordinance 1976.
73. Protection of birds.
74. Matters incidental to or consequential on the execution of executive authority.
75. Remuneration, allowances and other entitlements in respect of services of members of the Legislative Assembly, members of the Executive Council and other offices in or in connection with the Legislative Assembly that can be held only by members of the Assembly.
76. Prices and rent control.
77. Printing and publishing.
78. Public utilities.

79. Housing.
  80. Community and cultural affairs.
  81. Industry (including forestry and timber, pastoral, agricultural, building and manufacturing).
  82. Mining and minerals, (excluding uranium or other prescribed substances within the meaning of the Atomic Energy Act 1953 and regulations under that Act as in force from time to time), within all the land of the Territory above the low-water mark.
  83. Provision of rural, industrial and home finance credit and assistance.
  84. Scientific research.
  85. Legal aid.
  86. Corporate affairs.
  87. Censorship.
  88. Child, family and social welfare.
  89. Regulation of business and professions.
  90. The legal profession.
  91. Maintenance of law and order and the administration of justice.
  92. Correctional services.
  93. Private law.
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### **SCHEDULE 3**

Sections 4, 7, 12, 21, 27 and 67

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.

## Norfolk Island's Immigration Regime

The following is drawn from the Commonwealth Grants Commission's 1997 Report on Norfolk Island.

Entry to and residence on Norfolk Island are controlled by the Norfolk Island Immigration Act 1980. Inherent in the Act is "a desire to preserve the environment of Norfolk Island and the way of life of its permanent residents". Its primary objective 'is to protect the rights and expectations of Island residents'<sup>28</sup>.

The Act provides for four categories of persons who are allowed entry to the Island:

- **Visitors** may stay for 30 days without a written permit and may apply for a written permit to stay an additional 30 days (extendible to 120 days maximum from date of entry). Written approval is required for visitors to undertake employment beyond seven days from arrival.
- **Temporary Entry Permits (TEPs)** are designed for short-term residence, and may be granted subject to conditions for up to one year (extendible to three years or more in special circumstances [eg, an applicant possesses required work skills not otherwise readily available on-Island]). They are usually granted for employment purposes only, and not to the detriment of the locals. TEPs are generally applicable to the itinerant workforce and are not normally issued to enable business ventures to be undertaken. TEPs are not subject to a quota. [Residence on Island as a TEP does not count towards a declaration of residency (see below).]
- **General Entry Permits (GEPs)** are designed for those wishing to stay indefinitely, or to settle on, Norfolk Island. They are usually granted subject to conditions, remain in force for 5.5 years and may be extended. [An applicant for a GEP must generally make a declaration of intent to reside on NI for the foreseeable future and to make a substantial commitment in terms of purchase of property and or a business.] Other than those granted on the basis of a 'special relationship' [with Norfolk Island] new GEPs are subject to a quota that is set annually by the Norfolk Island Legislative Assembly ... .
- **Residents** are not required to hold entry permits under the Act and may, in general enter and leave the Island as they wish. A person born on the Island, one of whose parents was a resident at that time, is also a resident of the Island ... . Further, a person can be declared a resident if that person has been ordinarily resident on the Island under a GEP for a period of at least five years during the seven years immediately preceding the application, and must not be ordinarily resident elsewhere during that time<sup>29</sup>.

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<sup>28</sup> *Ibid.* p 21, paragraph 43

<sup>29</sup> *ibid.* pp 21-22

In order to be declared a resident, a TEP holder will generally have to: retain a TEP for three years, then apply for and hold a GEP for approximately five years, then apply for a grant of residency.



### Demographics:

The Grants Commission found that Norfolk Island has:

- a relatively stable permanent population level with little or no unemployment;
- a constant turnover in population, with a relatively high number of permanent residents who have arrived within the last five years;
- two thirds of Norfolk Island's permanent population were born in Australia (including on Norfolk Island) and over 80 percent are Australian citizens;
- a high mobility between Norfolk Island and the Australian mainland, rather than with other countries;
- a declining numbers of children, teenagers and young adults, a stable population of those aged between 30 and 50 and an increasing number of adults aged over 50<sup>30</sup>.

#### *Number of Long Term Temporary Entry Permit Holders*

TEP numbers fluctuate over time according to the level of economic and building activity on-Island. At present, for example, there is a number of relatively large construction projects under way on-Island, mainly associated with tourist accommodation.

The 1996 Norfolk Island Census showed that there were 302 TEPs on-Island. Of these, the usual place of residence for 214 (or 71.2%) was on the Australian mainland. Out of the 302 TEPs, some 66 were aged under 15 years and 11 were aged between 15-19 years of age. This left some 225 persons over the age of 18 years.

The Norfolk Island Administration has confirmed that the majority of TEPs work in the hospitality and construction industries and only stay on-Island for between 3 to 6 months. Those working on construction projects normally stay only for the term of the project (in accordance with the condition of their permit).

There are relatively few TEPs whose employment contracts would normally require them to stay on the Island for three years or more. These include officers employed by the Norfolk Island Administration (such as teachers, medical staff, legal advisers, and tourist, philatelic and hospital managers), seconded federal public servants (eg, Parks Australia, Bureau of Meteorology) and those employed by mainland businesses (eg, Telstra, the Commonwealth Bank and Westpac). This group would include approximately 35-40 TEPs. If spouses and partners are included, this group would include approximately 60 to 70 people. This constitutes a potential increase of approximately 6% in Norfolk Island's electoral roll (ie. there were 1150 enrolled voters in 1999) if a qualifying period of six months residence was introduced on Norfolk Island.

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<sup>30</sup> *Ibid.* pp22-25

**From: Administration of Norfolk Island Census of Population and Housing  
6 August 1996** (<http://www.nf/census/census.html>)

**Total Population: Residency Status**

Residency Status	Census, 6 August 1996				Census, 6 August 1991			
	Males	Females	Total	Percent of Total	Males	Females	Total	Percent of Total
Resident (a)	629	653	1,282	58.8	654	640	1,294	56.6
G.E.P. (b)	104	84	188	8.6	82	102	184	8.1
Permanent Population	733	737	1,470	67.4	736	742	1,478	64.7
T.E.P. (c)	138	155	293	13.4	213	211	424	18.6
Other (d)	2	7	9	0.4	4	6	10	0.4
Itinerant Population	140	162	302	13.8	217	217	434	19.0
Ordinarily Resident Population	873	899	1,772	81.2	953	959	1,912	83.7
Tourist and Visitor Population	166	243	409	18.8	158	215	373	16.3
<b>Total</b>	<b>1,039</b>	<b>1,142</b>	<b>2,181</b>	<b>100.0</b>	<b>1,111</b>	<b>1,174</b>	<b>2,285</b>	<b>100.0</b>

- (a) A RESIDENT within the meaning of the Immigration Act 1980.
- (b) The holder of a GENERAL ENTRY PERMIT under the Immigration Act 1980.
- (c) The Holder of a TEMPORARY ENTRY PERMIT under the Immigration Act 1980.
- (d) Mostly persons not requiring permits, with some awaiting permits.

### Permanent Population: Grouped Ages

	Census, 6 August 1996				Census, 6 August 1991			
Age Last			Persons				Persons	
Birthday(Years)	Males	Females	Total	Percent of Total	Males	Females	Total	Percent of Total
0 - 4	50	44	94	6.4	61	47	108	7.3
5 - 9	54	49	103	7.0	45	57	102	6.9
10 - 14	44	54	98	6.7	69	58	127	8.6
Under 15	148	147	295	20.1	175	162	337	22.8
15 - 19	41	33	74	5.0	32	25	57	3.9
20 - 24	28	19	47	3.2	35	31	66	4.5
25 - 29	40	35	75	5.1	47	47	94	6.4
30 - 34	45	49	94	6.4	60	63	123	8.3
35- 39	55	63	118	8.0	51	48	99	6.7
40 - 44	61	46	107	7.3	52	58	110	7.4
45 - 49	54	61	115	7.8	57	67	124	8.4
50 - 54	63	64	127	8.6	42	53	95	6.4
55 - 59	49	55	104	7.1	43	41	84	5.7
60 - 64	37	42	79	5.4	43	35	78	5.3
65 - 69	42	36	78	5.3	50	36	86	5.8
70 - Over	70	86	156	10.6	48	73	121	8.2
Not Stated	-	1	1	0.1	1	3	4	0.3
<b>Total</b>	<b>733</b>	<b>737</b>	<b>1,470</b>	<b>100.0</b>	<b>736</b>	<b>742</b>	<b>1,478</b>	<b>100.0</b>

### Permanent Population: Place of Birth

	Census, 6 August 1996				Census, 6 August 1991			
			Persons				Persons	
<b>Place of Birth</b>	Males	Females	Total	Percent of Total	Males	Females	Total	Percent of Total
New Zealand	153	180	333	22.7	167	190	357	24.2
United Kingdom	25	30	55	3.7	31	42	73	4.9
Other Countries	33	41	74	5.0	32	33	65	4.4
Australia- mainland	220	239	459	31.2	191	221	412	27.9
Total, Not born on Norfolk Island	431	490	921	62.6	421	486	907	61.4
Australia - Norfolk Island	298	243	541	36.8	306	245	551	37.3
Not Stated	4	4	8	0.5	9	11	20	1.3
<b>Total</b>	<b>733</b>	<b>737</b>	<b>1,470</b>	<b>100.0</b>	<b>736</b>	<b>742</b>	<b>1,478</b>	<b>100.0</b>

### Permanent Population: Country of Citizenship

Country of Citizenship	Census, 6 August 1996				Census, 6 August 1991			
	Males	Females	Persons				Persons	
			Total	Percent of Total	Males	Females	Total	Percent of Total
Australia	609	579	1,188	80.8	586	552	1,138	77.0
New Zealand	105	130	235	16.0	124	149	273	18.5
United Kingdom	9	16	25	1.7	13	27	40	2.7
Other Countries	10	12	22	1.5	9	9	18	1.2
Not Stated	-	-	-	0.0	4	5	9	0.6
<b>Total</b>	<b>733</b>	<b>737</b>	<b>1,470</b>	<b>100.0</b>	<b>736</b>	<b>742</b>	<b>1,478</b>	<b>100.0</b>

### Permanent Population: Usual Major Activity

Usual Major Activity	Census, 6 August 1996				Census, 6 August 1991			
	Males	Females	Persons		Males	Females	Persons	
			Total	Percent of Total	Males	Females	Total	Percent of Total
Working in Job or Business	440	380	820	55.8	448	356	804	54.4
Unpaid Home Duties	9	66	75	5.1	37	165	202	13.7
Child Not At School (a)	61	57	118	8.0	80	66	146	9.9
Student (a)	119	114	233	15.9	100	106	206	13.9
Retired	101	118	219	14.9	65	41	106	7.2
Not Stated	3	2	5	0.3	6	8	14	0.9
<b>Total</b>	<b>733</b>	<b>737</b>	<b>1,470</b>	<b>100.0</b>	<b>736</b>	<b>742</b>	<b>1,478</b>	<b>100.0</b>

(a) Primary or Secondary School

## Citizenship

Australia's citizenship legislation extends to Norfolk Island. A person born in Australia (including Norfolk Island) is an Australian citizen provided that one parent is either an Australian citizen or a permanent resident.

A person is eligible for the grant of Australian citizenship if he or she: -

- is a permanent resident of Australia (including Norfolk Island);

This category includes persons (other than New Zealand citizens – see below) who have been declared residents of Norfolk Island under the Immigration Act 1980 (NI) after having resided in Norfolk Island or mainland Australia for a total period of 5 years and 6 months immediately preceding the date of application for Australian citizenship.

- has attained the age of 18 years;
- understands the nature of the application;
- has lived in Australia (including Norfolk Island) as a permanent resident for a total of at least two years in the last five years, **and** a total of at least 12 months in the last two years;
- is able to speak and understand basic English;
- is of good character;
- is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia; and
- understands the responsibilities and *privileges* of Australian citizenship.

### OR

- is a New Zealand citizen who has resided in Australia (including Norfolk Island) for a total of two years in the last five years **and** a total of at least 12 months in the last two years and meets all other requirements.

Those people who are eligible and generally apply for the grant of Australian citizenship in Norfolk Island are: -

- (a) New Zealand citizens who have been in Norfolk Island for two years in the last five years, and twelve months in the last two years immediately prior to the application; and
- (b) permanent residents of Norfolk Island who are not already Australian citizens.

## **Outline of the Electoral System**

The *Norfolk Island Act 1979* (Cth) provides for an elected nine member Legislative Assembly and for elections at least every three years. The whole of the Island forms one electorate. Voting for the Legislative Assembly is compulsory for all persons who fulfil the criteria for enrolment and are on the electoral roll.

Australian citizens who do not pass the eligibility rules cannot vote and non-Australian citizens who pass the rules can vote. There are about 1130 people on the electoral role.

First past the post arrangement was the traditional means of voting prior to 1979. Because it was felt that this disadvantaged significant minority groups it was replaced by the system known as the 'Illinois system' after the state in the United States. This electoral system provides for each elector to have as many votes as there are vacancies and for a maximum of four votes to be given to any one candidate.

Any person ordinarily resident on the Island for five years and eligible to vote can stand for election to the Legislative Assembly. The Norfolk Island Legislative Assembly therefore can and does result in non-Australian citizens who are elected to the Assembly making decisions on behalf of Australian citizens who are prevented from voting.

Elected Members usually four of those who received the greatest number of votes are chosen by the Assembly for Executive positions (ie to be appointed Minister by the Administrator). One of the Executives holds the position of Chief Minister. Public servants elected to the Assembly cannot be elected to Executive Positions, but can be elected Speaker of the Assembly.

Matters can be brought to the attention of the House by Ministers or members (including the Speaker if a non-Executive member) or by petition by one or more electors. A referendum can be initiated by the Federal Minister, the Assembly or by petition of not more than one third of electors.

As there are no political parties on the Island all candidates stand as independents. While there is no attempt by the Executive Members to form a Government position on issues, it is the expected practice for Executive Members to inform their colleagues of the legislation that they are taking to the House.

In the absence of political parties, and in such a small Assembly, much of the apparatus normally associated with a Westminster style of Parliament is absent.

## Attachment F

### State/Territory Comparisons for Eligibility to Enrol to Vote

STATE/ TERRITORY	AUSTRALIAN CITIZEN REQUIREMENT <sup>#</sup>	LENGTH OF RESIDENCE FOR ELIGIBILITY TO ENROL
		STATE <sup>###</sup>
Tasmania	Yes	6 months
VIC	Yes	1 month
NSW	Yes	1 month
QLD	Yes	1 month
WA	Yes	1 month
NT	Yes	1 month
SA	Yes	1 month
ACT	<i>Yes</i>	1 month
Christmas Island	Yes	1 month
Cocos Island	Yes	1 month
<u>Lord Howe Is</u> <sup>##</sup>	Yes	1 month
<u>Norfolk Island</u>	No	900 days in 4 years

<sup>#</sup> The only non-Australian citizens eligible to enrol are British subjects who were on a State, Territory or Commonwealth roll on 25 January 1984.

<sup>##</sup> Lord Howe Island is part of New South Wales.

<sup>###</sup> For eligibility to enrol in a Division for Federal elections the residency requirement is one (1) month.

**Federal/Norfolk Island Government Consultation  
Norfolk Island Amendment Bill 1999 – Electoral Provisions**

5 March 1998	The then Minister wrote to Chief Minister advising of proposed changes. Media release announcing firearms and electoral changes (published Norfolk Islander 7 March)
11 March 1998	Radio 2CN interview with the then Minister addressing criticism from the Island
12 March 1998	The then Minister met with Chief Minister and other Norfolk Island Ministers in Canberra to discuss the electoral proposals
23 March 1998	The then Minister wrote to the Chief Minister outlining the Federal Government's reasons for the changes (letter published in the Norfolk Islander on 28 March)
23 April 1998	The Norfolk Island Government wrote in response to the then Minister's letter of 23 March advising that a referendum might be held on the matter but not before the Minister's next visit to allow more detailed discussions on the matter
14 May 1998	The then Minister replied agreeing to discuss the matter during his mid 1998 visit to the Island
6/7 August 1998	Minister's visit to Norfolk to discuss a range of issues including the electoral change proposals
28 August 1998	The Chief Minister wrote to the then Minister advising of the 26 August referendum outcome
25 Nov 1998	The new Minister met with Norfolk Island Government representatives in Canberra (electoral issues not directly raised)
19 January 1999	The Minister wrote to the Chief Minister advising that Norfolk Island Government views had been taken into account. However the Federal Government decision stood.
21/26 Jan 1999	Minister held further discussions on Norfolk Island
1 March 1999	Draft amendments forwarded to the NI Government for comment
23 March 1999	Meeting with Chief Minister in Canberra to further discuss the proposed electoral changes
27 March 1999	Norfolk Islander publishes transcript of Radio New Zealand interview with Minister
31 March 1999	Norfolk Island Amendment Bill 1999 introduced to Senate



### Chronology of Norfolk Island electoral laws concerning immigration, entitlement to vote and stand for election

1857	<p>Declaration of the Laws and Regulations of Norfolk Island.</p> <p>New Executive / electoral Arrangements</p>	<p>Established an on-Island Executive - subject to direction by the Governor in NSW – consisting of an elected Magistrate and 2 councillors.</p> <p>To be elected as Chief Magistrate, a person had to be resident on the Island, own land and be over the age of 28 years. The Councillors had to be over the age of 25 years and be resident on the Island.</p> <p>Every person over the age of 20 years, who had resided on Island for 6 months and who could read and write was able to vote. Councillors had to be resident on the Island and over the age of twenty-five years to be elected.</p>
1896	Laws amended	Establishment of a Council of Elders. To be elected by all males aged over 25 years who had resided on-Island for a period of 6 months
1903	Laws amended.	Council of Elders replaced by an Executive Council consisting of 6 members, two of whom were elected by all males aged over 25 years
1914	<p>Transfer to the Commonwealth</p> <p>New Executive / Electoral Arrangements</p>	<p><i>Norfolk Island Act 1913</i> (Cth) commenced. Act provided for an Executive Council to be constituted as determined by a Territory Ordinance.</p> <p>Executive Council Ordinance 1913 (NI). Executive Council constituted, consisting of 12 members with six nominated by the Administrator and six elected by all British subjects over the age of 21 years who resided on the Island for six months. All electors were eligible for appointment or election to the Council.</p>
1922	New Immigration restrictions	<p>Immigration Restriction Ordinance 1922 (NI). Codification of entry requirements. Entry into Norfolk Island was generally prohibited unless otherwise exempted by or under the Ordinance.</p> <p>From 1866 to 1922, there was no firm policy with respect to entry to the Island and ‘people came and when virtually unhindered’. Prior to 1866 there were some restrictions on sale of land to Norfolk Island by non-</p>

		Pitcairn Islanders, but these rules tended to be honoured in the breach. See <i>Report of the Report of the Royal Commission into matters relating to Norfolk Island 1976</i> (p.256).
1935	Laws amended	Advisory Council Ordinance 1935 (NI). Executive Council replaced by an Advisory Council consisting of 8 members elected by all British subjects over the age of 21 years who had been resident on the Island for six months. All electors were eligible for election to the Council.
1960	Laws amended	<i>Norfolk Island Act 1957</i> (Cth) commenced. Act provided for a Norfolk Island Council to be constituted as determined by a Territory Ordinance.  Norfolk Island Council Ordinance 1960 (NI) Norfolk Island Council established, consisting of 8 members. All British subjects who had attained the age of 21 years and who had lived on the Island for six months preceding an application for enrolment or who had previously been an elector and had left the Island but had returned within two years were entitled to vote. All electors were eligible for election to the Council.
	Proposal for new voting system	Norfolk Island Council resolved to introduce a numerical voting system whereby a British subject resident on the Island for 6 months would have one vote; resident on the Island for three years would have 2 votes; and if he or she owned land on the Island would have 3 to 4 votes. Not implemented.
1967	Immigration laws amended	Immigration (Temporary Provisions) Ordinance 1967 (NI). Introduction of a requirement for all persons wishing to enter and reside on Norfolk Island for longer than 30 days to obtain a permit.
1968	Referendum	Citizen initiated referendum held on 4 December 1968 rejected the following proposals:  (a) ‘The laws of Norfolk Island should permit British subjects being Australians to visit Norfolk Island, make their home on Norfolk Island, be enrolled as electors of Norfolk Island and be eligible for election to the Norfolk Island Council on the same terms and conditions as persons born on Norfolk Island are permitted to visit Australia, make their home in Australia and be eligible for election to the House of Representatives in Australia.’  (b) ‘The laws of Norfolk Island should apply to all other British subjects and Aliens as regards Norfolk Island similar conditions as apply to them under the laws of Australia in respect of visiting Australia, making their home in Australia and being enrolled as electors of the Commonwealth of Australia and being eligible for election to the House of Representatives in Australia.’

1968	Immigration Laws amended	<p>Immigration Ordinance 1968 (NI) commenced.</p> <p>Persons entering Norfolk Island are deemed to hold a visitors' permit allowing a stay of 30 days, with a possible extension of a further 30 days. A person wishing to stay longer than this is required to obtain a six month Temporary Entry Permit or an Enter and Remain Permit. A person who had resided on the Island for five out of seven consecutive years under an Enter and Remain Permit could be declared a Resident.</p>
1968	<p>Electoral laws amended.</p> <p>Voting rights now formally linked to immigration status.</p>	<p>Norfolk Island Council Ordinance 1968 (NI) Enrolment on electoral role limited to: -</p> <p>(a) All adult British subjects who had lived on the Island for six months preceding an application for enrolment or who had previously been an elector and had left the Island but had returned within two years, provided that they were not holders of a Temporary Entry Permit issued under the Immigration (Temporary Provisions) Ordinance 1967 (NI); or</p> <p>(b) All British subjects resident on the Island for twelve months preceding an application for enrolment and who were holders of a Temporary Entry Permit issued under the Immigration (Temporary Provisions) Ordinance 1967 (NI).</p>
1976	<p>Electoral laws amended</p> <p>Removed ability of Temporary Entry Permit holders to vote in Council elections.</p>	<p>NI Council Amendment Ordinance 1976 (NI). Persons declared to be residents, or holding enter and remain permits, or who were registered on the electoral roll at 5 June 1974 were eligible to vote in elections and referendums provided that they were also an adult British subject who had lived on the Island for six months preceding an application for enrolment or who had previously been an elector and had left the Island but had returned within two years.</p>
1976	<p>Report of the Royal Commission into matters relating to Norfolk Island</p>	<p>The Commission confirmed that until 1976 itinerant workers in the Island and others who had been ordinarily resident in the Island for the previous twelve months could exercise a vote in Council elections. (See p.351.)</p> <p>The Commission endorsed the policy behind the 1976 amendment that restricts eligibility to vote to bona-fide residents or those intending to be such: eg, holders of residency certificates or enter and remain permits. (See p. 351.)</p>

1979	Laws amended	<p><i>Norfolk Island Act 1979 (Cth)</i>. Section 38 originally provided that a person was eligible to be a candidate for election to the Legislative assembly if at the date of nomination, he or she:</p> <p>(a) is an Australian citizen or otherwise had the status of a British subject;</p> <p>(b) has attained the aged of 18 years;</p> <p>(c) is entitled to vote or qualified to become entitled to vote at elections of the Legislative Assembly; and</p> <p>(d) has such qualifications relating to residence as are specifically prescribed for this purpose or, if no such law is in force, has been ordinarily resident within the Territory for a period of five years immediately preceding the date of nomination.</p>
1979	Laws amended	<p>Legislative Assembly Act 1979 (NI) A person is entitled to enrol if he or she resides on Norfolk Island and:</p> <p>(a) is an Australian citizen or otherwise has the status of a British subject;</p> <p>(b) has attained the age of 18 years;</p> <p>(c) is a resident or the holder of an entry permit other than a temporary entry permit; and</p> <p>(d) has been ordinarily resident in Norfolk Island during the 6 months immediately preceding his application for enrolment or, being a person whose name had been removed from the electoral roll under the Act, has again lived on Norfolk Island within two years after the removal of his or name.</p>
1979	Referendum	<p><i>Should the method of election of members of the Legislative Assembly of Norfolk Island be by the system of Proportional Representation used in the Legislative Assembly election of August 1979 instead of by the system used in the election of members of the ninth Norfolk Island Council?</i></p> <p>Yes – 339. No – 463. Informal – 3. Total votes cast – 805.</p> <p>As the ‘Yes’ votes did not exceed the ‘No’ votes (let alone by the required 10% of votes cast), the electors of Norfolk Island were deemed not to have expressed their opinion in favour of the question.</p>
1980	Immigration laws amended	Immigration Act 1980 (NI) commenced.

1980-81	Federal intervention in the Territory's voting system.	<p>Rejection of the Legislative Assembly Act 1980 (NI) and the Legislative Assembly (Amendment) Bill 1981 (NI). These sought to (a) change in method of voting in the Territory from proportional to first-past-the-post voting system and (b) require candidates for election to the Legislative Assembly to be (i) residents within the Immigration Ordinance 1968 (NI) and (ii) ordinarily resident on Norfolk Island for period of 5 years.</p> <p>The Federal Government intervened by recommending that assent to both Bills be withheld. It's view was that it was undesirable for Territory elections to conducted under the block system because such a system of voting would not provide adequate means of ensuring fair representation. See also in this regard the HOR debates on the <i>Norfolk Island Bill 1979</i> (Cth). After rejecting the Bills, the Federal Government instigated a federal inquiry into the Territory's voting system that subsequently recommended the adoption of a proportional voting system for the Territory.</p>
1982	Federal Inquiry into Electoral System for Norfolk Island	Federally funded inquiry into Norfolk Island electoral system by Messrs Abbott and Snyder aimed at implementing a voting system that would ensure fair representation.
1982 (Dec)	Referendum	<p><i>Are you in favour of a change from proportional representation type of system of voting to a new cumulative system of voting?</i></p> <p>Yes – 535. No – 302. Informal – 6. Total votes cast – 843.</p> <p>As the 'Yes' votes exceeded the 'No' votes by more than the required 84 votes (10% of votes cast), the question was resolved in the affirmative.</p>
1983	Proposal to amend electoral laws	<p>Legislative Assembly Amendment Bill 1983 (NI). The Bill provided that a person entitled to enrolment if he resides in Norfolk Island Proposal and is</p> <ul style="list-style-type: none"> <li>(a) an Australian citizen or otherwise has the status of a British subject</li> <li>(b) has attained the age of 18 year;</li> <li>(c) is a resident or the holder of an entry permit:</li> <li>(d) if the holder of an Entry and Remain Permit has been ordinarily resident in Norfolk Island for a period of six months immediately preceding his application;</li> <li>(e) if the holder of a Temporary Permit has been: (i) ordinary resident in Norfolk Island for 2 years and (ii) intends to continue to reside in Norfolk Island indefinitely.</li> </ul>

		Amendment was not assented to on the advice from Territory Government.
1983	Proposal to amend electoral laws  Federal Intervention in Territory Electoral System	Legislative Assembly (Extension of Franchise) Bill 1984 (NI). Private Member's Bill introduced to provide voting rights for TEPs in accordance with an earlier resolution of the NILA. TEP would have had the right to vote if they had been domiciled on Norfolk Island for three years. GEPs / residents only required to live on Island for period of 6 months prior to closing of the roll prior to election. The Bill was subsequently defeated in Assembly (5 votes to 4).
1983	Referendum	<i>Do you want an election for a new Legislative Assembly to be called immediately?</i>  The question was resolved in the affirmative.
1984	Proposal to amend electoral laws	Legislative Assembly (Amendment No 2) Bill 1983 (NI). Proposed that a person could enrol to vote if he or she: (a) resides in Norfolk Island; (b) is an Australian citizen or British subject; (c) has attained 18 years and has been ordinarily resident in the Territory for six months if a resident or GEP or two years for anyone else.  The Bill was passed by the Assembly. The Federal Government intervened to recommend that assent to the Bill be withheld. It did so as it was considered to be undesirable to change Norfolk Island's electoral qualifications prior to the holding of a general election (that had been requested by a majority of Territory voters in referendum held in February 1983).  The Assembly introduced and enacted an identical Bill in 1985 (see below)
1984 (October)	Electoral reform proposals put to Norfolk Island Government	Federal Minister wrote to advise the Norfolk Island Government of amendments being made to federal citizenship laws and of the need to amend Norfolk Island electoral qualifications. Two options were put to the Territory Government: bring Norfolk Island's electoral qualifications into line with other State and Territory electoral requirements and make Australian citizenship a requirement; or adopt the local government approach and delete references to citizenship all together.
1985	Electoral laws amended	Legislative Assembly Amendment Act 1984 (NI) (No 3 of 1985) enacted to provide that a person is entitled

	<p>Removed the formal link between immigration status and voting rights.</p> <p>However, one was still subject to immigration laws and policies that determined who remained on-Island and therefore who could eligible to participate in elections.</p>	<p>to enrolment if:</p> <p>(a) he or she lives on Norfolk Island;</p> <p>(b) is an Australian citizen or otherwise has the status of a British subject;</p> <p>(c) is aged 18 years and over;</p> <p>(d) has resided on Norfolk Island for 3 years continuously or for 2.6 years during the last three years immediately prior to making an application; and</p> <p>(e) satisfies the test that he or she proposes to live on Norfolk Island indefinitely.</p> <p>There was no <u>formal</u> link between residency status and entitlement to vote. The test was changed to one of a physical presence on the Island for an aggregate number of days over a prescribed number of months or years. The criteria for the test of intention included: whether the applicant was employed, the extent and nature of assets held on Island (car / land / freehold versus leased land); details of bank account and assets, the extent of any family connections on-Island and / or participation in the community.</p>
1985	<p><i>Norfolk Island Act 1979</i> (Cth) amended</p> <p>Federal citizenship laws amended.</p>	<p><i>Statute Law Miscellaneous Provisions Act (No.1) 1985</i> (Cth) enacted to, among other things, remove references to Australian citizenship from <i>Norfolk Island Act 1979</i> (Cth)</p> <p>Removal of references in <i>Australian Citizenship Act 1948</i> (Cth) to ‘British subject’. Consequential changes to federal, state and Territory electoral laws to restrict future enrolments to Australian citizens only.</p>
1986	<p>Federal citizenship laws amended.</p>	<p><i>Citizenship Amendment Act 1986</i> (Cth). The Act changed the law concerning citizenship by birth. From then on, children born in Australia (including Norfolk Island) are Australian citizens by birth if one parent was an Australian citizen or permanent resident.</p>
1990	<p>Federal Parliamentary Inquiry</p>	<p><i>Islands in the Sun: The Legal Regimes of the External Territories and the Jervis Bay Territory</i> - inquiry conducted by the House of Representatives Standing Committee on Legal and Constitutional Affairs.</p> <p>An Options Paper, released on Island in 1990, prior to the Hearings as a basis for discussion and to give the community another opportunity to comment, set out the following options for voting in, and standing for, the Norfolk Island Legislative Assembly:</p> <ul style="list-style-type: none"> <li>• Retain the status quo;</li> <li>• Provide, in addition to other conditions of residency, that only Australian citizens be eligible to stand, or vote, in Legislative Assembly elections;</li> </ul>

		<ul style="list-style-type: none"> <li>• Reduce the length of the residency requirement (p. 222).</li> </ul> <p>In addition to the Options Paper, a Working Paper was subsequently produced and circulated to MLAs in February 1991. It canvassed leaving the residency provisions unchanged but coupling them with a citizenship requirement so that only Australian citizens would be eligible to stand, or vote, in Legislative Assembly elections. It suggested a gradual phasing-in of this proposal to only apply to new enrollees registering on the Norfolk Island electoral roll, leaving non-Australian citizens who were already on the roll unaffected, and able to exercise all of their present rights (p.238-9).</p> <p>The March 1991 report of the inquiry made nine (9) recommendations in relation to Norfolk Island. The two which apply here are:</p> <p><u>Recommendation 39</u>: The Committee recommends that the Commonwealth Parliament amend the <i>Commonwealth Electoral Act 1918</i> to give optional enrolment rights to the people of Norfolk Island; the electorate to which the votes would be attached to be determined on the advice of the Australian Electoral Commission.</p> <p><u>Recommendation 41</u>: The Committee recommends that Australian citizenship be a requirement for eligibility to stand for election or to vote in the Norfolk Island Legislative Assembly elections, for all new enrollees registering on the Norfolk Island electoral roll on or after a commencement date to be determined before the end of 1991 (xxvi).</p>
1991 (Jan)	Referendum	<p>Referendum initiated by the Norfolk Island Government:</p> <p><i>With respect to matters discussed by the Legal Regimes Inquiry, including the question of Federal Representation, should the constitutional position of Norfolk Island be changed?</i></p> <p>Total on roll – 1051. Result: Yes – 162; No – 788; Informal – 8; Failed to vote – 93</p>
1991 (August)	Laws amended	<p>Legislative Assembly Amendment Act 1991 (NI). Removed references to ‘residence’, ‘ordinary residence’ and the test of intention to reside indefinitely. <u>Also removed requirement to hold Australian citizenship</u>. A person was now entitled to enrolment if the person had attained the age of 18 years and had been present in Norfolk Island for a total of 900 days during the period of four years immediately preceding their application for enrolment. A person whose name had been removed from the roll under the Act is entitled to enrol if he</p>



		or she had been present in Norfolk Island for a total of 150 days during the period of 240 days immediately preceding their application for enrolment.
1991 (October)	Referendum	<p>21 October 1991. <i>The Commonwealth proposes to pass a law to make Norfolk Island part of Canberra for Federal electoral purposes. Are you in favour of this proposal?</i></p> <p>Yes – 178. No – 801. Informal – 7.</p> <p>Federal electoral laws subsequently amended to provide for optional enrolment on the federal electoral roll in mainland federal electorates by Norfolk Island residents.</p>
1992	Federal electoral laws amended to provide for optional enrolment.	<p><i>Norfolk Island (Electoral and Judicial) Amendment Act 1992</i> (Cth). The Act provided Australian citizens living on Norfolk Island with the right of optional enrolment for the purposes of representation in the Australian Parliament and participating in National Referendums. The then Minister in the Second Reading Speech stated that optional enrolment recognised both that for historical reasons Norfolk Island was unique and the basic democratic right to vote of Australians who wished to vote but who until then were being denied the opportunity to do so.</p> <p>See debate in HOR Hansard of 18 August 1992 where the then Government members argued for Australian citizenship to be made a requirement for enrolment in Territory elections – eg that “a basic principle of democratic franchise right through this country that the rights and responsibilities of participating as an elector are conditional upon acceptance of Australian citizenship.” the Hon Duncan Kerr, MP (Member for Denison) p.38</p>
1995	Norfolk Island Legislative Assembly Select Committee into Electoral and Constitutional Matters	<p>Report by Norfolk Island Legislative Assembly <i>Select Committee into Electoral and Constitutional Matters</i>. Tabled in Assembly in October 1995. Debated in Assembly on 14 February 1996. The Select Committee was established in response to a view within the community that the present electoral system was unsatisfactory. The Select Committee was to canvass the views of the community – it received 34 submissions out of 1195 electors. It was conceded that these cannot be said to be views of the community. The Committee Recommended a <u>New Electoral Act</u>.</p> <p>Mr Brian Burdekin, Federal Human Rights Commissioner, Human Rights and Equal Opportunity Commission, wrote on 4 November 1994 to Mrs Monica Anderson, MLA in her capacity as convenor of the Select Committee, advising that, in its considered view, Norfolk Island’s electoral laws which require a person to be present on Norfolk Island for 900 days before they are eligible to vote were in breach of</p>

		Australia's international obligations under Article 25 of the ICCPR. The Human Rights Commissioner therefore suggested that the legislation must be appropriately amended at the earliest opportunity.
1996 - 1997	Human Rights Inquiry	In 1996 and 1997 the Human Rights and Equal Opportunity Commission received four complaints regarding Norfolk Island's immigration regime and restrictions on Australian citizens in Norfolk Island. See HREOC's 1999 Report.
1997	Commonwealth Grants Commission  Inquiry and report on Norfolk Island	In its Report the Commonwealth Grants Commission noted that the current legislation can and does result in non-Australian citizens, who are elected to the Assembly, making decisions on behalf of some Australian citizens who are prevented from voting.  The Commission also noted that federal representation (see above) and assent procedures are well tailored to the Island.
1998	Federal Government decision to pursue legislative reforms to correct anomalies in Norfolk Island electoral system	The Norfolk Island Government advised in March 1998. Consultation commenced via ministerial meetings, ministerial correspondence and formal inter-governmental meetings. See Attachment G for details.
1998  (August)	Referendum	Referendum initiated by Norfolk Island Government:  <i>The Australian Government has recently indicated its intention to bring about changes to Norfolk Island's electoral process. Given this situation do you feel that it is appropriate that the Australian Government in Canberra dictates the electoral process for Norfolk Island?</i>  Total on roll – 1114. Result: Yes – 184; No – 719; Informal – 14; Failed to vote - 197.
1999  (May)	Referendum	Referendum initiated by Norfolk Island Government: <i>Do you agree with the Australian Federal Government's proposal to alter the Norfolk Island Act so that:</i>  <i>(a) people who have been ordinarily resident in the Island for six months will in the future be entitled to enrol on the electoral roll for Legislative Assembly elections; and</i>  <i>(b) Australian citizenship will in the future be required as a qualification to be elected to the Assembly and</i>

		<p><i>as a qualification for people who in future apply for enrolment on the electoral roll for Assembly elections?</i></p> <p>Total on roll – 1100 - Result: Yes – 247; No – 691, Informal – 26; Failed to vote – 146</p>
1999	Motion in House / Review of Legislative Assembly Act	<p>In May 1999, the Norfolk Island Legislative Assembly passed a motion recommending that the qualifying period of residence for a person holding resident status under the [Norfolk Island] Immigration Act be reduced to 150 days residence in the 240 days before any application for enrolment, subject to the person having been ordinarily resident in Norfolk Island for a total of at least ten years in previous times. This recommendation is to be addressed in a review of the <u>Legislative Assembly Act 1979</u> (NI).</p> <p>The Legislative Assembly also agreed (as part of the same motion in relation to the Legislative Assembly Act) to add residency qualifications for candidates for election to the Assembly which extend the current provisions in the Norfolk Island Act 1979 (Cth) from the current “ordinarily resident within the Territory for a period of 5 years immediately preceding the date of nomination” to “requiring a presence on Norfolk Island of 1825 days (5 years) in the previous 2738 days (7.5 years) before nomination.</p> <p>Review of the Legislative Assembly Act is one of the Norfolk Island Government’s priority projects.</p>