



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL  
AND EXTERNAL TERRITORIES

**Reference: Norfolk Island electoral matters**

MONDAY, 2 APRIL 2001

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

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**JOINT COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES**

**Monday, 2 April 2001**

**Members:** Senator Lightfoot (*Chair*), Senators Crossin (*Deputy Chair*), Greig, Lundy, Watson and West (the Deputy President and Chairman of Committees) and Mr Cameron, Ms Ellis, Mr Neville, Mr Snowdon and Mr Somlyay

**Senators and members in attendance:** Senators Crossin, Lightfoot, Watson and West and Ms Ellis and Mr Snowdon

**Terms of reference for the inquiry:**

To inquire into and report on:

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.

**WITNESSES**

**ELLIS, Mrs Maureen Therese, Director, Self-Governing Territories Section, Territories and Regional Support Division, Department of Transport and Regional Services .....97**

**GAYLER, Ms Dianne Louise, Assistant Secretary, Regional Support and Self-Governing Territories Branch, Department of Transport and Regional Services.....97**

**O'BRIEN, Ms Mary Gerardine, Assistant Director, Self-Governing Territories Section, Department of Transport and Regional Services.....97**

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**Committee met at 10.03 a.m.**

**ELLIS, Mrs Maureen Therese, Director, Self-Governing Territories Section, Territories and Regional Support Division, Department of Transport and Regional Services**

**GAYLER, Ms Dianne Louise, Assistant Secretary, Regional Support and Self-Governing Territories Branch, Department of Transport and Regional Services**

**O'BRIEN, Ms Mary Gerardine, Assistant Director, Self-Governing Territories Section, Department of Transport and Regional Services**

**STRICKLAND, Mrs Susan Elizabeth, Assistant Director, Self-Governing Territories Section, Territories and Regional Support Division, Department of Transport and Regional Services**

**CHAIRMAN**—I declare open this public hearing of the Joint Standing Committee on the National Capital and External Territories inquiry into electoral matters on Norfolk Island. On 1 November 2000, the committee received a reference from the minister to inquire into and report on electoral matters on Norfolk Island. The purpose of the inquiry is to examine the consistency of laws relating to eligibility to vote and candidature for the Legislative Assembly of the Territory of Norfolk Island with other Australian jurisdictions. In particular, the committee will focus on (a) whether Australian citizenship should be a requirement for eligibility to vote for or to be elected to the Legislative Assembly and (b) the time period before which an Australian citizen resident in the territory can enrol to vote for the local legislature.

The committee visited Norfolk Island on 21 and 22 March 2001 in order to hear from members of the Norfolk Island community on the issues which are the subject of this inquiry. At the conclusion of the inquiry the committee will table its findings, conclusions and recommendations in the parliament in a report which will be publicly available. The committee normally authorises submissions for publication and they are placed on the committee's web site. To date, the committee has received 10 submissions from interested parties.

I now turn to proceedings at hand. I welcome witnesses from the Department of Transport and Regional Services. Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of parliament and warrant the same respect as proceedings of the parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Are there any corrections or amendments that you would like to make to your submissions?

**Ms Gayler**—Yes. This morning we have submitted a brief letter outlining amendments to the written submission.

**CHAIRMAN**—Is it the wish of the committee that the additional submissions tabled by the department be accepted as evidence to the inquiry and authorised for publication? There being no objection, it is so ordered. The committee prefers that evidence be given in public but if you wish to give confidential evidence to the committee you may request that the hearing be held in camera and the committee will consider your request. Before we ask you some questions, do you wish to make an opening statement, Ms Gayler?

**Ms Gayler**—Yes, thank you, Senator. I do wish to make an opening statement and I have copies for the committee. With respect to the current electoral situation on Norfolk Island, as you are aware, this inquiry has resulted from the federal government's concerns regarding the current electoral arrangements on Norfolk Island. In a recent public lecture at Parliament House, the head of the Constitution Unit at the University College, London, Professor Robert Hazell, stated that Australia led the world in its system of franchise and voting. This is not the case in relation to Norfolk Island.

First, Australian citizens are not entitled to enrol to vote until they have resided on Norfolk Island for 900 days in the preceding four years. This results in certain Australian citizens residing on Norfolk Island being treated as though they are citizens of a foreign state without political rights. It is unjust and unreasonable. Second, people who are not Australian citizens are entitled to stand for election to the Norfolk Island Legislative Assembly and determine the future of that territory and its community. This means that in this Australian territory one can have non-Australian citizens as members of the Legislative Assembly and as executive members, the equivalent of ministers, in the Norfolk Island government. 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.

Electoral provisions for the Legislative Assembly are contained in a Commonwealth act—the Norfolk Island Act—and a Norfolk Island act, the Legislative Assembly Act 1979. The Norfolk Island Act 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 five years preceding the date of nomination. The Legislative Assembly Act prescribes that a person is qualified to enrol to vote where that person has attained the age of 18 years and has been present on Norfolk Island for 900 days during the four years immediately preceding their application for enrolment. This equates to an aggregate period of just less than 2½ years.

I turn now to the federal government's proposal to regularise these anomalies. The federal government's Norfolk Island Amendment Bill 1999 proposed to align the electoral arrangements on Norfolk Island with other mainland jurisdictions by: requiring Australian citizenship for eligibility to enrol and stand for election to the Legislative Assembly; including an 'ordinarily resident' qualifying period of six months for enrolment on the electoral roll; and preserving the enrolment rights of those currently on the electoral roll, who would otherwise be ineligible to enrol under the proposed provisions, through a grandfathering clause. The federal government believes that the voting rights of Australian citizens in Australian territories and the fundamental candidacy requirements for territory assemblies are national issues for decision at a national level.

I turn briefly to Norfolk Island's constitutional position. 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 a part of Australian territory in the same sense as any part of the Australian mainland. The words in the Norfolk Island Act 1979 referring to Norfolk Island as a 'territory under the authority of the Commonwealth' afford no special status. The wording is taken from section 122 of the

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Constitution. The same wording is used in legislation dealing with other territories that are part of the Commonwealth.

The issue of Norfolk Island's constitutional status has been the subject of considerable correspondence with the Norfolk Island government over the years. This has largely been due to representations from Norfolk Island suggesting that Norfolk Island is not part of the Commonwealth but a dependent territory under the authority of the Commonwealth and that it has never been ceded to or annexed by the Commonwealth. This is not the case. The Commonwealth's rights and duties under international law in respect of Norfolk Island are no more limited than they are in respect of the Australian Capital Territory, the Northern Territory or any of the Australian states.

Norfolk Island is administered in accordance with the provisions of the Norfolk Island Act 1979 by which the Australian parliament has conferred a measure of internal self-government on Norfolk Island as a territory under the authority of the Commonwealth.

**CHAIRMAN**—Could I interrupt you there, Ms Gayler. Is it your intention to read the whole nine pages?

**Ms Gayler**—That was my intention, Senator.

**CHAIRMAN**—I have to leave just prior to quarter to one and I would like to get to questions as soon as we can. I understand the necessity of ensuring that the committee hear precisely what you have to say. The committee may have read this—in which case I have not predetermined this with the committee—but I could put it to the committee that, there being no objection, we seek to incorporate the document in *Hansard* rather than have you read it in. It is going to take a long time to read it into the record.

**Ms Gayler**—I am in the committee's hands, Mr Chairman.

**CHAIRMAN**—Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

*The document read as follows—*

## JOINT STANDING COMMITTEE ON NATIONAL CAPITAL

**AND EXTERNAL TERRITORIES****INQUIRY INTO NORFOLK ISLAND ELECTORAL MATTERS**

## OPENING STATEMENT

## THE CURRENT ELECTORAL SITUATION ON NORFOLK ISLAND

As you are aware, this inquiry has resulted from the Federal Government's concerns regarding the current electoral arrangements on Norfolk Island. In a recent public lecture at Parliament House, the head of the Constitution Unit at University College, London, Professor Robert Hazel stated that Australia led the world in its system of franchise and voting. This is not the case in relation to Norfolk Island.

First, Australian citizens are not entitled to enrol to vote until they have resided on Norfolk Island for 900 days in the preceding four years. This results in certain Australian citizens residing on Norfolk Island being treated as though they are citizens of a foreign state, without political rights. It is unjust and unreasonable.

Second, people who are not Australian citizens are entitled to stand for election to the Norfolk Island Legislative Assembly and determine the future of that Territory and its community. This means that in this Australian Territory one can have non-Australian citizens as Members of the Legislative Assembly, and as Executive Members, the equivalent of Ministers, in the Government of Norfolk Island.

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.

Electoral provisions for the Legislative Assembly are contained in a Commonwealth Act - the *Norfolk Island Act 1979* and a Norfolk Island Act - the *Legislative Assembly Act 1979* (NI).

The *Norfolk Island Act 1979* 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 to vote where that person has attained the age of 18 years 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.

**THE FEDERAL GOVERNMENT'S PROPOSAL TO REGULARISE THESE ANOMALIES**



The Federal Government's Norfolk Island Amendment Bill 1999 proposed to align electoral arrangements on Norfolk Island with other mainland jurisdictions by:

requiring Australian citizenship for eligibility to enrol and stand for election to the Legislative Assembly; including an 'ordinarily resident' qualifying period of 6 months for enrolment on the electoral roll; and preserving the enrolment rights of those **currently** on the electoral roll, who would otherwise be ineligible to enrol under the proposed provisions, through a grandfathering clause.

The Federal Government believes that the voting rights of Australian citizens in Australian Territories, and the fundamental candidacy requirements for Territory Assemblies, are national issues for decision at national level.

### NORFOLK ISLAND'S CONSTITUTIONAL POSITION

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 a part of Australian territory in the same sense as any part of the Australian mainland. The words in the *Norfolk Island Act 1979* referring to Norfolk Island as a "Territory under the authority of the Commonwealth" afford no special status. The wording is taken from section 122 of the Constitution. The same wording is used in legislation dealing with other territories that are part of the Commonwealth.

The issue of Norfolk Island's constitutional status has been the subject of considerable correspondence with the Norfolk Island Government over the years. This has largely been due to representations from Norfolk Island suggesting that Norfolk Island is not a part of the Commonwealth, but a dependent territory under the authority of the Commonwealth and that it has never been ceded to or annexed by the Commonwealth. This is not the case.

The Commonwealth's rights and duties under international law in respect of Norfolk Island **are no more limited** than they are in respect of the Australian Capital Territory, the Northern Territory or any of the Australian States.

Norfolk Island is administered in accordance with the provisions of the *Norfolk Island Act 1979*, by which the Australian Parliament has conferred a measure of internal self-government on Norfolk Island as a territory under the authority of the Commonwealth.

Norfolk Island has no international status independent of Australia and its internal self-government is broadly comparable to that in the Northern Territory and the ACT. However, because the Island is outside the Commonwealth customs, quarantine and immigration barriers these powers, which would normally be reserved to the Commonwealth, are exercised by the Norfolk Island Government by virtue of the powers conferred by the Commonwealth under the *Norfolk Island Act 1979*.

While Commonwealth legislation generally does not extend to the Island unless expressed to do so, and under the Norfolk Island Immigration legislation Australian citizens do not have an automatic right of entry to Norfolk Island, this does not give the Territory a special

constitutional status. In the past Commonwealth legislation including migration laws did not apply to external territories as a general principle.

The Report of the Royal Commission into matters relating to Norfolk Island, (the Nimmo Report of 1976), recommended the extension of all Commonwealth legislation to Norfolk Island. The decision of the government of the day not to extend mainland taxes and social security benefits to the Island resulted in the Commonwealth legislation not extending to the Territory unless expressed to do so.

As was the case with the other external territories several years ago, Australian income tax is not payable on income derived within the Territory. Other federal taxes, including the Goods and Services Tax, also do not apply and the Norfolk Island Government does not participate in the revenue sharing arrangements established between the states and other self-governing territories and the Commonwealth.

Under a Cabinet decision of 1 May 1978, the terms of NI self-government in 1979 included, among other things, that any additional revenue necessary to meet any additional expenditure (other than the cost of maintaining the Administrator and his staff) should come from sources on Norfolk Island.

#### COMMONWEALTH POSITION

The Federal Government has a responsibility to ensure that Norfolk Island has a fair and representative electoral system and one that caters appropriately for all within the community.

A residency period of 900 days during a period of 4 years immediately preceding an application for enrolment is neither fair nor equitable. Nor is it reasonable.

The Norfolk Island Immigration Officer has advised the Office of the Administrator on a number of occasions that the average period of residency for the majority of Temporary Entry Permit holders on Norfolk Island is 6 months. Many of these people work in the hospitality and services industry.

In recognition of the concerns expressed by Norfolk Island, the structure of the Island economy, its historical background and its way of life, the Federal Government has proposed a residency period of 6 months for eligibility to enrol and not the 1 month period of residency required in all other mainland jurisdictions other than Tasmania. [The six month period is currently under review in Tasmania. As part of the review of the Tasmanian Electoral Act it has been suggested the 6 months contiguous residency requirement be removed from the Constitution Act to bring Tasmania into line with other States and the Commonwealth. Discussion papers are available on the Tasmanian electoral office website at [www.electoral.tas.gov.au](http://www.electoral.tas.gov.au)].

A 6 month residency period would address the concerns of those in Norfolk Island who are concerned that to allow transient, short-term residents, without an appreciation of the local culture and practices, the right to vote, could distort the outcome of elections.

At the same time, the 6 month residency period would provide those Australian mainland teachers, doctors, managers, police officers, bank officers and public servants who have chosen to work on Norfolk Island for a period of time, with the right to participate in the governance of the Territory if they so choose. Without it, they are effectively guest workers, without political rights.

These Norfolk Islanders contribute to Norfolk Island in very real ways. They also enrol their children in the Norfolk Island School, they contribute to and support the local economy, and they rely on the Islands public health system and community services, and are required to contribute to the public health insurance system and taxes and levies.

Opponents of their right to vote say that such residents do not understand or appreciate Norfolk Island society. This argument sells short people who make an important contribution to Norfolk Island society and is reminiscent of the argument that used to be made against granting women the right to vote or to deny aborigines the right to vote.

The citizenship requirement was removed from Norfolk Island in 1985 as a consequence of the *Australian Citizenship Amendment Act 1983*, the main aim of which was to remove references to 'British subject'. The Federal Government of the day provided the Norfolk Island Government with two options:

- delete reference to 'British subject' only, consistent with the Commonwealth and State Parliaments; or
- delete the citizenship requirement completely which was generally in keeping with local government requirements at the time.

The Norfolk Island Government chose the latter option.

With the gradual evolution of the Norfolk Island Assembly from a 'local government' polity to an Assembly more akin to the ACT and NT (a further 61 powers have been transferred over time to the Assembly since self-government in 1979) the Federal Government has, over recent years, attempted unsuccessfully to persuade the Norfolk Island Government to reinstate the Australian citizenship requirement for electoral purposes.

In 1990 the then Minister for Territories, the Hon David Simmons, wrote to the Assembly seeking its views on an amendment to the Norfolk Island Act to reinstate the citizenship requirement.

The Assembly debated the issue and passed a resolution opposing the proposal.

In 1991 the House of Representatives Standing Committee on Legal and Constitutional Affairs report, *Islands in the Sun*, recommended the reinstatement of the citizenship requirement.

**Recommendation 41:** *The Committee recommends that Australian citizenship be a requirement for eligibility to stand for election or to vote in 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.*

Such action would bring Norfolk Island into line with recent arrangements for the Indian Ocean Territories of Christmas and the Cocos (Keeling) Islands.

The Norfolk Island response to consultation on this recommendation was “the community does not want voting rights, or the ability to stand for the Assembly, restricted to Australian citizens”. (*page 250 Islands in the Sun*). The Committee proceeded to make this recommendation despite the Norfolk Island response.

In 1997 the Commonwealth Grants Commission report noted “*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 roll.*” (*CGC Report 1997 – Chapter 9, page 185, para 16*)

The report further noted “*The Norfolk Island Electoral Act 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*”. (*CGC Report 1997 - Chapter9, page 186 para 18*)

Two referenda held on Norfolk Island in 1998 and 1999 maintained the opposition to the proposed changes. Those most affected by the residency requirement change were not entitled to participate in these referenda.

The Norfolk Island Amendment Bill 1999 was introduced into the Senate in March 1999 after consultation on the issues and proposed changes. The basis of the Norfolk Island opposition was not sufficient to dissuade the Commonwealth from aligning the Territory with other mainland jurisdictions and ensuring the voting rights of a disenfranchised group of Australians who chose to live and work on Norfolk Island. The fundamental basis of this reform is that the right to vote is the cornerstone of representative democracy.

Successive Federal Governments and High Court decisions have confirmed that Australian citizenship should be prerequisites for membership of an Australian legislature.

## OPPOSITION TO THE PROPOSALS

Much has been made of the uniqueness and identity of Norfolk Island in opposition to the proposals.

Norfolk Island is the most historic of Australia’s external Territories and integral to Australia’s national heritage. The traditions and culture of the Pitcairn descendants are acknowledged in the Preamble to the *Norfolk Island Act 1979* and highly valued as part of multicultural Australia, but not to the extent that they should impinge on the rights of other Australians.

Opponents of the reforms have failed to identify how the changes would be inimical to the traditions and culture of Norfolk Island.

Norfolk Island’s history and its natural and cultural heritage are unique – its circumstances are not. There are other isolated and remote communities elsewhere in Australia that also claim

a distinct cultural heritage and history, a long occupation of a region or an area, with economic interests and needs that differ from the rest of Australia. Nevertheless Australian citizenship, with one to six months residence within a community, remains the expected electoral norm.

Concern has been expressed by some that the change to the residency status will see a swamping of the voting pool on Norfolk Island with a group of people who lack any understanding of local culture, tradition or lifestyle.

The assumption that mainlanders like doctors, teachers, senior public servants and business people who choose to work on Norfolk Island lack the ability to develop an understanding or appreciation of local culture and lifestyle in a six-month period is not supported by any evidence.

At the heart of the argument is local opposition in some sectors of the community to Norfolk Island being an integral part of Australia. Sections of the community oppose the constitutional position of the Territory of Norfolk Island while others strongly support the maintenance of traditional close ties with the mainland.

Because Norfolk Island is an integral part of Australia as a Territory under the authority of the Commonwealth, the Federal Government carries the responsibility of ensuring fair and equitable treatment of all Australian citizens, including in relation to the electoral franchise.

Briefly, I would like to take the opportunity to address the conclusions reached by the Norfolk Island Government in their submission to the Committee. That submission concluded that:

***Any change of requirements to the qualifications of electoral on the Norfolk Island Electoral Roll, or for election to the Legislative Assembly, are matters within the responsibility of the Norfolk Island Government under the Legislative Assembly Act 1979.***

Commonwealth Response:

The proposed Commonwealth amendments would extend the right to vote to those Australian citizens who meet the 6-month residency requirement, preclude future enrolment by non-Australian citizens to vote, and impose a requirement for Australian citizenship to be a candidate for the Assembly. None of these matters are outside the Commonwealth's power to legislate. Indeed, the Commonwealth has a legitimate and continuing interest and role in Norfolk Island electoral matters. Federal Parliament retains ultimate responsibility for Territory electoral systems consistent with the Australian Constitution, electoral law and policy, and Australia's international obligations. This includes good governance and representative democracy. In this context, the Federal Parliament retains reserve powers with respect to Norfolk Island.

***The Committee should give consideration to recommending mutual inter-governmental negotiations and discussion for any future proposals arising out of concerns of individual Ministers, or Cabinet, before the unilateral referral of such concerns to a committee of inquiry.***

Commonwealth Response:

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It is a matter for the Federal Government, Ministers and indeed Commonwealth Parliament itself to determine which matters are referred to Parliamentary Committees for investigation.

***The Committee should give consideration to recommending that the terms of reference to the current inquiry become matters for mutual inter-governmental discussion and agreement with a view to the Norfolk Island Government taking appropriate legislative action under the Legislative Assembly Act 1979, if there is a community mandate for change.***

Commonwealth Response:

Over a number of years the Norfolk Island Government has been unwilling to make the changes proposed. Most recently, the Minister for Regional Services, Territories and Local Government, Senator the Hon Ian Macdonald, in discussions with the Norfolk Island Chief Minister in June 2000, explained the importance of this issue to the Commonwealth and encouraged the Chief Minister (and the Assembly) to consider ways of addressing the electoral anomalies. This was to no affect.

4(a) That the Committee should, in all circumstances, reach a conclusion that any changes to the electoral system in Norfolk Island, as contemplated by the terms of reference, would be in breach of, or inconsistent with, the International Covenant on Civil and Political Rights, in force in Australia.

Commonwealth Response:

On the contrary, our advice of March 2001 from the Attorney General's Department is that the relevant provisions of the *Legislative Assembly Act 1979* are likely to be in breach of article 25 of the International Covenant in that a period of 900 days may be an 'unreasonable restriction'.

Australia's international obligations under section 25 of the ICCPR extend only to Australian citizens. (The same is true of other countries such as New Zealand – if Norfolk Islanders and other Australians move to New Zealand, they must take out New Zealand citizenship to stand for Parliament in New Zealand.) The suggestion that denying non-citizens on Norfolk Island their existing right to vote and stand for election may be in breach of Article 25 of the Covenant fails to take into consideration the grandfathering clause proposed by the Commonwealth. It would retain all existing rights of those currently on the Norfolk Island electoral roll.

In addition, the practice to date has been for New Zealanders elected to the Legislative Assembly to take out Australian citizenship (they inevitably qualified by virtue of their period of residency on Norfolk Island). New Zealanders also have special concessions in respect of a grant of Australian citizenship. Countries of origin for most non-Australian residents allow their citizens to hold dual citizenship, e.g. New Zealand, United Kingdom, Canada, United States and France.

4(b) In all the circumstances, and in view of the submissions received by the Committee, including those from the Society of Pitcairn Descendants, there is no justification for considering or imposing any change.

Commonwealth Response:

The Federal Government has proposed changes to the Norfolk Island electoral arrangements to protect the political rights of Australian citizens; to preserve the existing rights of those currently enrolled on the Norfolk Island electoral roll; and to ensure that Australian citizenship is a prerequisite to stand as a candidate for the Norfolk Island Legislative Assembly.

In summary, it would appear that those on Norfolk Island who oppose the proposed changes, oppose them as much from the standpoint of the Commonwealth's right to make these changes, as they do based on the merits or otherwise of the proposed changes.

**CONCLUSION**

The proposed change to the residency period from 900 days to 6 months, rather than 1 month, is a reasonable compromise. "Reasonableness" is the relevant test in international law.

The change would recognize the rights of those Australian citizens who choose to reside on Norfolk Island as part of the community, contribute to the local labour force and economy, and pay local taxes, to also play a role in the governance of the community if they so choose.

No one who remains enrolled on the Norfolk Island electoral roll will lose any existing right to vote for the Legislative Assembly as a result of the proposed changes.

Based on data provided by the Norfolk Island Administration, there will be no "swamping" of a small pool of voters by a transient group of Australian citizens. The 6-month residency period will protect against this.

In the event that a number of short term residents do chose to enrol to vote and have the opportunity at an election, the provisions relating to candidacy ensure they may only vote for individuals who meet the 5 year residency requirement to stand for the Legislative Assembly. Any potential for the Assembly to be "stacked" is exceedingly remote.

The citizenship requirement will only apply to all new enrollees on the Norfolk Island electoral roll. Those non-Australian residents wanting to play a meaningful role in local governance have the option of taking out Australian citizenship.

The proposed changes will bring the Norfolk Island electoral provisions prescribing enrolment and entitlement to stand for election fundamentally into line with those in all other Australian Parliaments.

The provisions do not interfere with Norfolk Island's right to internal self-government or pose any threat to the traditions and culture of the Pitcairn descendants.

To have those who are not Australian citizens as members of the Norfolk Island Legislative Assembly or members of the Executive Government is unacceptable. Norfolk Island Ministers regularly deal with matters of national significance (including matters that are normally federal powers), and are involved in inter-governmental relations, sit on Australian Ministerial Councils

and participate in Federal delegations negotiating international agreements with other nation states. It is vital to Australia's national interest that Ministers and Legislative Assembly members are Australian citizens.

It is the Federal Government's position that the proposed changes are necessary and appropriate to bring electoral provisions on Norfolk Island in line with those in all other Australian Parliaments and to ensure the voting rights of all Australians are preserved.

Dianne Gayler,

Assistant Secretary

Self-Governing Territories

Department of Transport and Regional Services

2 April 2001



**CHAIRMAN**—Ms Gayler, please proceed with the highlights.

**Ms Gayler**—The situation with all of the mainland states and territories is that a one-month residency period is required for entitlement to enrol. Six months is the position in Tasmania, although they are looking at whether they should move into line with the other states and territories. One of the Norfolk Island concerns is that highly transient residents who are on Norfolk for a very short period of time, if allowed to vote under a one-month residency requirement, could have the potential to stack the outcome of elections. Therefore, the Commonwealth has proposed instead a six-month period. This is important because the bulk of those highly transient short-term residents of Norfolk Island are there for an average of less than six months.

**CHAIRMAN**—When you say the bulk of them, can you give the committee any idea of numbers?

**Ms Gayler**—We will come back to that.

**CHAIRMAN**—You can take it on notice if you wish.

**Ms Gayler**—Thank you. We think that the six-month residency period would enable those Australian mainland teachers, doctors, managers, police officers and public servants who are there giving their services on Norfolk Island the right to participate through the franchise. In the case of the issue of the right to stand for election, the Commonwealth's position is that members of the Legislative Assembly, and most particularly ministers of the Norfolk Island government, are involved in exercising a range of what would normally be federal powers. They participate in certain ministerial councils, together with the Commonwealth and other Australian territories, and they are on occasions involved in Australian delegations on international matters, the latest being a request to participate as part of the Australian delegation on negotiations with New Zealand in relation to the exclusive economic zone. For these reasons we think it is important that Australian citizenship be a requirement to stand as a member of the Legislative Assembly and potentially belong to the Norfolk Island government.

We canvass in the opening statement some of the history and the particular findings of committee reports, such as *Islands in the Sun*, and the report of the Grants Commission, where this issue has been canvassed. We then look at the opposition to the proposals from sectors of the Norfolk Island community. We address the argument that the uniqueness, identity and culture of Norfolk Island are such that only people of longstanding residency should be entitled to vote.

We then canvass each of the final recommendations of the Norfolk Island government's submission and we put the Commonwealth's response in relation to each of those four conclusions in the Norfolk Island government's submission. In that we point out that, for those non-Australian residents who would for the future not be eligible to vote if the Australian citizenship requirement is applied, there are options available to them, particularly in terms of taking out Australian citizenship.

We then conclude on page 8 by saying that we think the proposed change to the residency period to six months rather than one month is a reasonable compromise. We point out that 'reasonableness' is the relevant test in international law. The change would recognise the rights

of those Australian citizens who choose to reside on Norfolk Island as part of the community, contribute to the local labour force and economy and pay local taxes, to also play a role in the governance of the community if they so choose.

We remind the committee that no-one who remains on the electoral roll will lose any existing right. Based on data provided by the Norfolk Island administration, there will be no swamping of the pool of voters by a transient group of Australian citizens. Short-term residents enrolling would still be choosing candidates for election to the assembly who meet the five-year residency requirement in the Norfolk Island legislation, so any potential for the assembly to be stacked is exceedingly remote.

The proposed changes will bring the provisions fundamentally into line with those in all other Australian parliaments. The provisions do not interfere with Norfolk Island's right to internal self-government or pose any threat to the traditions and culture of the Pitcairn descendants. To have those who are not Australian citizens as members of the Norfolk Island Legislative Assembly or members of the executive government is unacceptable and I have mentioned the reasons for that.

Finally, it is the federal government's position that the proposed changes are necessary and appropriate to bring the provisions on Norfolk Island into line with all other Australian parliaments and to ensure that the voting rights of all Australians are preserved.

**CHAIRMAN**—Thank you, Ms Gayler. Where there is conflict between federal and state laws, in so far as the conflict is concerned, the Commonwealth law prevails. That applies to Norfolk Island, does it not?

**Ms Gayler**—It does.

**CHAIRMAN**—If, then, the Norfolk Island government was not cooperative in changing its laws—and there has been an element of that but I stress an element only—and did not want to change its select rules, what is the process that the Commonwealth can use and from whom or what is that strength drawn? Is it drawn from the minister's advice to the administrator, who then advises the government of Norfolk Island that they must, under law, change?

**Ms Gayler**—The position is that the Commonwealth may itself legislate in a way which overrides Norfolk Island law. If Norfolk Island passed an act which dealt with electoral provisions, that act is reserved for the Governor-General's final assent. The Governor-General acts on the advice of his minister, in this case the Minister for Regional Services, Territories and Local Government. This is because electoral matters other than the electoral roll are unspecified legislative matters which fall into that category of laws that are for the Governor-General's assent.

**CHAIRMAN**—The Governor-General then advises the Administrator?

**Ms Gayler**—The minister would advise the Administrator.

**CHAIRMAN**—The Governor-General would advise the minister and the minister in turn would then advise the Administrator?

**Ms Gayler**—The Governor-General would deal with such a bill in Executive Council with relevant ministers. The minister would know what action the Executive Council determined.

**CHAIRMAN**—At the stage when the minister would advise the Governor-General, the Governor-General is bound to act upon the advice of the minister; the Governor-General then readvises the minister. At what stage does it get down to the Administrator?

**Ms Gayler**—The minister would advise the Administrator.

**Mr SNOWDON**—I was impressed by your submission. Could you give us your view as to why there is such opposition to non-Australian citizens who are residents becoming Australian citizens.

**Ms Gayler**—Approximately 80 per cent of the Norfolk Island population are Australian citizens.

**Mr SNOWDON**—Yes, I know that.

**Ms Gayler**—If 80 per cent are Australian citizens, I am not sure it is true to say that there is great opposition to Australian citizenship. Approximately 16 per cent of the population hold New Zealand citizenship, as at the last census. Sorry, perhaps I have not answered your question.

**Mr SNOWDON**—The guts of this is that these people are not Australian citizens. What is their concern?

**Ms Gayler**—There might be two concerns. There is, in some sectors of the Norfolk Island community, opposition to Norfolk's constitutional status in relation to Australia. In other cases, I assume people prefer to retain their original citizenship.

**Mr SNOWDON**—Under your proposals they, like any other resident in Australia who is not an Australian citizen, would have the same choice. They would either become an Australian citizen or not vote.

**Ms Gayler**—That is correct.

**Mr SNOWDON**—That would seem eminently fair to most Australians.

**Ms Gayler**—That is correct.

**Senator WATSON**—Under your proposal New Zealand citizens resident on Norfolk Island can vote but not hold executive positions in government. That is right, isn't it?

**Ms Gayler**—No, the federal government's proposal would require Australian citizenship.

**Senator WATSON**—Even to vote?

**Ms Gayler**—To vote and to stand for election, except for those currently on the electoral roll, whose entitlement is preserved.

**Senator WATSON**—People who are on the electoral roll at the moment can continue to have that entitlement even though they are New Zealanders.

**Ms Gayler**—Yes.

**Mr SNOWDON**—As is the case for New Zealanders who are long-term residents of Australia who fulfil the requirements for residency.

**Senator WATSON**—What would happen about current members of the government who are not Australians? Would they be allowed to serve out their time?

**Ms Gayler**—Yes.

**Senator WATSON**—It would be from the next election?

**Ms Gayler**—After the passage of the legislation.

**Mr SNOWDON**—How many people in the current government are not Australian citizens?

**Ms Gayler**—None, but there have been recent cases.

**Mr SNOWDON**—I am aware of them. I support the proposals from the government. It is time for us to ensure that all Australian citizens share the same rights as other Australian citizens, no matter where they live, as long as they are in Australia. Also, this argument about sovereignty has been had and lost. The Australian community is the sovereign for Norfolk Island as a result of the transfer in 1914. I am sure international legal experts will support that view.

**Ms Gayler**—Indeed.

**Ms ELLIS**—If the recommendations from this committee reflect Mr Snowdon's position outlined just a moment ago, what, if any, flow-on or implication would occur in relation to federal electoral matters? We are currently speaking in terms of electoral matters within the island and there are provisions that currently affect Australian citizens on Norfolk Island in relation to Commonwealth electoral matters. Would we need to also—whilst they are not in our terms of reference directly—indirectly begin to consider any flow-on implications that would occur at the Commonwealth electoral level?

**Ms Gayler**—No, there would be no effect on the entitlements of those on the Norfolk Island electoral roll to vote in federal elections. In the future, as the shape of the electoral roll changes because Australian citizenship is required, then it is those people then on the electoral roll who would have all of the rights that currently apply in relation to voting in federal elections.

**Ms ELLIS**—Could you outline those very briefly?

**Ms Gayler**—Yes.

**Ms ELLIS**—Just so that we have it in the context of the discussion.

**Ms Gayler**—Page 8 of the original written submission deals with this matter:

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, voting is compulsory. Norfolk Island residents may enrol for an electoral division in an Australian 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 he or she has the closest connection. If a Norfolk Island resident does not wish to enrol in a division in a state, then he or she may enrol in the division of Canberra.

**Ms ELLIS**—My understanding is that if they are on the Australian electoral roll and they do not nominate, they are notionally connected to the electoral division of Canberra, for want of them ticking a box to say which one they would like. Is that right?

**Ms Gayler**—I need to check that, Ms Ellis.

**Ms ELLIS**—The HREOC inquiry into immigration matters that reported in March 1999, whilst being not of direct connection, has an indirect connection to this issue. Immigration is now on one of the schedules for the Norfolk Island government to conduct their immigration affairs. Can you outline for us, from the Commonwealth's viewpoint, how important any connection you see can be between our future actions on the electoral matter vis-à-vis the immigration issue. There seems to be some tenuous connection at the very least in terms of people's rights on the island, and immigration and therefore succession through to citizenship within the island itself.

**Ms Gayler**—Of course, any entitlement to enrol to vote or to stand for election presumes that one has passed the first hurdle of being entitled to reside on Norfolk Island, either as a permanent resident, under a general entry permit or under a temporary entry permit. The Norfolk Island government has that initial power to determine who is entitled to live on Norfolk Island.

Of course, while the Norfolk Island Assembly has the right to legislate in relation to immigration matters, because of the Norfolk Island Act, immigration laws are nevertheless subject to Commonwealth scrutiny and final resolution. The federal minister must be advised of any immigration law passed. He consults his colleague the minister for immigration to determine whether such a law might breach Australia's international obligations or otherwise run counter to Commonwealth policy on this matter. The most recent case in point was the agreement of the Norfolk Island government to amend their immigration act to preclude what we term backdoor entry into Australia via Norfolk Island.

**Ms ELLIS**—Do you know whether the Commonwealth has formally responded to the HREOC report of March 1999, the territorial limit report? I understand that the Norfolk Island minister for immigration had initiated a review of immigration policy and practice. What is the Commonwealth's view of the Norfolk Island government initiating a review of immigration practice itself? How does that fit in with the Australian immigration minister and his processes?

**Ms Gayler**—To date there has not been a formal Commonwealth response to the HREOC report into the Norfolk Island immigration regime. You are correct in saying that the Norfolk Island government is involved in a comprehensive review of the immigration regime. That review has been delayed due to other priorities, one of which I mentioned a moment ago, which was the Australian visa requirement. This review was to address, amongst other things, those concerns about backdoor entry. The Norfolk Island government has recently appointed a new Minister for Immigration and Community Services and he is progressing the review.

In addition, a review of the Norfolk Island plan is under way and it is examining matters such as population and restrictions on development rights to protect the natural resources of Norfolk Island, such as the landscape and the water resources. That is to go to public consultation shortly. It is hoped that those reviews, together with the electoral changes that the federal minister is proposing, will go some way towards addressing the concerns raised in the HREOC report.

**ACTING CHAIR (Senator Crossin)**—Ms Gayler, how many members of the Norfolk Island Assembly are there at present in total?

**Ms Gayler**—Nine members.

**ACTING CHAIR**—How many of those are Australian citizens?

**Ms Gayler**—They all are.

**ACTING CHAIR**—Can I take you to your original submission at page 24. You state there that the number of people who hold a temporary entry permit is 293, so the total itinerant population is 302. Is that correct?

**Ms Gayler**—Those figures are based on the 1996 census.

**ACTING CHAIR**—They are the most recent figures anyone has. Is that right?

**Ms Gayler**—Yes, Senator.

**ACTING CHAIR**—In relation to Senator Lightfoot's question before, when you talk about a transient population, is that predominantly the figure we are talking about—302?

**Ms Gayler**—Yes, Senator.

**ACTING CHAIR**—About a sixth of the population would be itinerant. Are they currently the people who are predominantly excluded from voting?

**Ms Gayler**—Those, plus any other non-Australian citizens who have been resident for less than 900 days in the preceding four years.

**ACTING CHAIR**—Of the GEP people.

**Ms Gayler**—Yes.

**ACTING CHAIR**—It seems to me there are two issues here: the length of time you have been on the island plus the residency. I can sympathise with the six-month proposal as opposed to 900 days out of four years. It seems like a rather long time to have been there. What about future citizens of the island, future New Zealanders, for example, in terms of their rights to vote? What sorts of industries are happening on the island that might require people from other countries to come and go for a two-year or three-year period?

**Ms Gayler**—As to the first part of your question in relation to New Zealanders specifically, the Australian citizenship legislation which extends to Norfolk Island allows a New Zealand citizen who has lived 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 normal citizenship requirements—to take out Australian citizenship. Temporary entry permit holders are generally engaged in the tourism industry and the building sector. Longer term residents tend to be the doctors, nurses, teachers and public servants.

**ACTING CHAIR**—What you are saying is that in a future environment a person from New Zealand who went to Norfolk Island, if they wanted to vote, would have to take out Australian citizenship.

**Ms Gayler**—Unless they are currently on the roll, yes.

**ACTING CHAIR**—About 18 months ago I went to the British Isles and conducted a bit of a study of what was happening there. I am not sure if you remember that. They were, at the time, going through a debate about broadening the representation as to who could vote on the island because of the way in which the industries on the island were now being restructured—that is, they were mainly in the international financing market and international computing market.

**Ms Gayler**—Which island, Senator?

**ACTING CHAIR**—Guernsey, predominantly. They were bringing people onto the island for a two-year or three-year period and then they were relocating elsewhere. They were going through a debate about broadening who could vote, as opposed to contracting who could vote. They did not have a 900 days out of four years requirement. Theirs was nine months, I think, that you had to have been on the island. But they were thinking about not being predominantly British citizens any more. Can you ever see a situation where that might occur on Norfolk Island, given any future industries they propose?

**Ms Gayler**—The Commonwealth's proposal broadens the franchise to include Australian citizenship. We should not see it simply as a narrowing of the franchise. As to whether one should be more inclusive beyond Australian citizens, there is currently not a problem, as I understand it, in attracting the work force in terms of the tourism sector and so on, although recruiting doctors has been difficult. Recruiting doctors to work in Norfolk from time to time is a difficulty.

**Senator WEST**—What makes them so different from anywhere else in Australia?

**Ms Gayler**—That is right. Exactly.

**ACTING CHAIR**—Looking at your 1996 figures, you are telling me here that there are only 22 people from other countries and 25 from the United Kingdom. We are talking about less than 50 out of 1,700.

**Ms Gayler**—Very small numbers. That is correct.

**ACTING CHAIR**—The bulk of their work force does come from Australia.

**Ms Gayler**—Yes, Senator.

**ACTING CHAIR**—What I am trying to get at is that on Norfolk Island we have a different economic climate and needs to, say, the British Isles.

**Ms Gayler**—If Norfolk Island were faced with that situation in the future, they would not be precluded from proposing legislation to broaden the franchise beyond what the Commonwealth is currently proposing. Of course, that legislation would ultimately require Commonwealth support.

**ACTING CHAIR**—The Norfolk Island government relied a lot on the two referenda that they held in 1998 and 1999. Who was eligible to vote in the referenda?

**Ms Gayler**—The people on the Norfolk Island electoral roll were eligible to vote. Those people most affected by the proposed legislation were not entitled to vote.

**ACTING CHAIR**—Which is those 300 or so that we identified.

**Ms Gayler**—Yes, Senator.

**ACTING CHAIR**—Would that have made a difference to the outcome?

**Ms Gayler**—That would have to be tested, Senator.

**ACTING CHAIR**—Do we have figures for the outcome of that referenda? We probably have on Norfolk Island.

**Ms Gayler**—The results of the referenda are in the submission, Senator.

**Senator WEST**—Do you have any comments about the wording of that referenda? How statistically valid is the wording of that?

**Ms Gayler**—I do not think it is statistically valid at all.

**Senator WEST**—Would you like to tell us why? Do you want to answer Senator Crossin's question while somebody else finds them?



**ACTING CHAIR**—It might be on page 9 of your submission to us.

**Ms Gayler**—Yes, we have the figures. The figures are before us. I do not think the figures are at issue.

**Senator WEST**—No.

**Ms Gayler**—The first referendum really was couched in terms of whether the federal government and Commonwealth parliament should be entitled to pass such laws, so I do not think it really addressed the particular issues at hand.

**Senator WEST**—Do you have the wording of the referendum question there?

**Ms Gayler**—Yes, the first referendum question and the results are in the second-last box of the table on page 42. The second question then follows. The first question did not go to the heart of the two proposed changes but instead canvassed whether Norfolk Islanders thought the Australian government in Canberra should be allowed to dictate the electoral process for Norfolk Island, which is a bit provocative and avoids the two questions that were really at issue. The second referendum in 1999 did at least pose the two questions but enabled people to have one vote on those two questions in a combined way, which would hardly give you an idea of which of the two questions people were concerned about or whether they were equally concerned about both of the questions.

**Ms ELLIS**—Is there a requirement on the island, when they run a referendum, to publish and distribute appropriate information on the yes-no case?

**Mrs Ellis**—Yes, there is.

**Ms ELLIS**—Do you hold copies of how that was done?

**Mrs Ellis**—There would be copies on file, yes.

**ACTING CHAIR**—The second referendum asked them about the six months eligibility and the Australian citizenship requirement. Your figures tell us that 964 out of 1,110 voted.

**Ms Gayler**—Voted no.

**ACTING CHAIR**—No. You have here that of the 1,110 enrolled, 964 voted.

**Ms Gayler**—Yes, in total.

**ACTING CHAIR**—In total.

**Ms Gayler**—Sorry, I am looking at the table. Perhaps we have an error here. I have a total on the roll of 1,100. There were 247 that voted yes—

**Mr SNOWDON**—That is a different question.

**Ms Gayler**—This is the second referendum?

**ACTING CHAIR**—This is the second referendum.

**Ms Gayler**—Yes, on the second referendum 247 voted yes.

**Ms ELLIS**—And 146 failed to vote.

**Ms Gayler**—You are adding them, are you, Senator?

**Ms ELLIS**—Yes.

**Ms Gayler**—Sorry.

**ACTING CHAIR**—No. I am looking at your figures on page 9 of your submission, which tell me that there were 1,110 on the roll.

**Mr SNOWDON**—You have three figures for the roll. There are 1,113, 1,100 and now it appears 1,110.

**ACTING CHAIR**—No. I am looking at the 1,110. It is the second referendum that I am interested in, because they are the questions that most go to the heart of the matter. So there are 1,110 on the roll.

**Ms Gayler**—Yes.

**ACTING CHAIR**—Not according to your figures you just read to me. You said 1,100.

**Ms Gayler**—We have a discrepancy in our figures, Senator. Can I take that on notice and come back to the committee with the correct numbers?

**ACTING CHAIR**—What I am trying to get at, though, is that if around 690 people voted no to that and 247 voted yes, there are around 300 people who are itinerants or temporary entry permit holders. Even if all of those 300 people had voted yes, the referendum still would not have got up.

**Ms Gayler**—That is quite possible.

**ACTING CHAIR**—It would have been 691 to 549, for example.

**Ms Gayler**—That is quite possible, although if people are enfranchised they may well take a more active role in the community and participate in the debates and so on. One cannot be certain, but it is likely. We do not know how many general entry permit holders were also excluded.

**ACTING CHAIR**—Because of their length of time on the roll?

**Ms Gayler**—Yes, Senator.

**ACTING CHAIR**—The last thing I wanted to clarify with you was the accusations by the Norfolk Island government in relation to the breach or inconsistency of the International Covenant on Civil and Political Rights. Can you put forward your reasons as to why you believe that covenant would not be breached or that this law is not inconsistent with that?

**Ms Gayler**—Yes, Senator. In relation to the International Covenant on Civil and Political Rights, which is in force in Australia, our advice of March 2001 from the Attorney-General's Department is that, on the contrary, the relevant provisions of the Norfolk Island's Legislative Assembly Act are likely to be in breach of article 25, in that a period of 900 days may be an unreasonable restriction on entitlement to vote. I mentioned earlier that 'unreasonableness' is the test in international law as to the length of residency requirement. Australia's international obligations under article 25 of the covenant extend only to Australian citizens. The same is true of other countries, such as New Zealand. If Norfolk Islanders and other Australians move to New Zealand, they must take out New Zealand citizenship to stand for parliament. With one qualification, they also have a grandfather clause that goes back, I think, to 1975 that applies to people who were entitled to vote before 1975. The suggestion that denying non-citizens on Norfolk Island their existing right to vote and stand for election may be in breach of article 25 fails to take into consideration the grandfather clause proposed by the Commonwealth. It would retain all existing rights of those currently on the Norfolk Island electoral roll.

**ACTING CHAIR**—Is it the view of the department that those who are opposing this change really essentially oppose the role the Commonwealth has in relation to the governance of Norfolk Island matters, as opposed to the substance of the changes proposed here? Is it a constitutional based objection rather than a rights of citizens objection?

**Ms Gayler**—Certainly to a large degree, Senator. That is evident from the submission of the Norfolk Island government.

**Senator WEST**—Was the material for the yes and no campaign distributed to every eligible voter on the island, or was it something they had to voluntarily acquire from a particular point?

**Ms Gayler**—Senator, we will need to take that question on notice and provide the information to the committee.

**Senator WEST**—I think, from recollection of a private conversation, it was at a central point and people had to go and pick it up. I do not know whether this has been asked before, but when the Australian citizenship requirement was dropped in 1984 do we know if that was done in consultation with anybody?

**Ms Gayler**—Yes, Senator, it was. That was a matter on which the Commonwealth and all states and territories were acting at the time, so that action was taken in concert. In addition, the Norfolk Island government was consulted about two options for dealing with the question—the essence of which went to the striking out of the requirement for British citizenship. This was a secondary aspect of the matter. The Norfolk Island government at that time was seen as more in the nature of a local government. The options given were to retain the Australian citizenship requirement and simply delete British citizenship or, alternatively, to strike out the requirements

altogether. As this was generally the case for local government within mainland Australia, that option was offered. That was the option selected by Norfolk Island at the time.

**Senator WEST**—What process did Norfolk Island undertake to select that method?

**Ms Gayler**—Senator, I do not know of the extent, if any, of Norfolk Island consultation.

**Senator WEST**—That is the question I am asking, yes.

**Ms Gayler**—We understand that the then Norfolk Island Chief Minister was written to by the Commonwealth.

**Senator WEST**—Who was the chief minister at the time?

**Ms Gayler**—Mr David Buffett.

**Senator WEST**—You do not know what consultative process he undertook to determine whether they would go with Australian citizenship?

**Ms Gayler**—We are not aware of any consultation, Senator.

**Mr SNOWDON**—This issue was raised in the 1994 report *Islands in the Sun*. It has been the subject of ongoing discussion between the Commonwealth and Norfolk Island since that time and, indeed, prior to that time. Is that correct?

**Ms Gayler**—Yes.

**Mr SNOWDON**—So there is no way it could be said that there has been no consultation, discussion or negotiation with the Norfolk Island government.

**Ms Gayler**—That is correct.

**Ms ELLIS**—Senator West mentioned the information you have taken on notice in relation to the referendum. Can we also, if possible, get a copy of the yes and no cases? Can we also find out who was responsible for framing and writing each of those cases on the island?

**Ms Gayler**—We will do our best.

**Ms ELLIS**—As best you can, I understand. It would probably be true to reflect that the Norfolk Island government is continuing to seek an increase in its level of self-government and the roles connected there to it. Would there be any reason why it should continue to equate itself to a local government by its lack of citizenship requirement? In one sense it is like having cake and eating it too.

**Ms Gayler**—I do not think the Norfolk Island government would, these days, equate itself with a local government.

**Ms ELLIS**—No, but that is the point I am making. Given the smallness of the island and the fact that there is one newspaper—and dissemination of information would be questionable in terms of community participation, discussion, forums and so on—do you see any way that we could promote an improvement in that area? Is that beyond our means at this point?

**Ms Gayler**—It is not at all beyond our means. To be fair to the *Norfolk Islander*, which is the one publication, our recent experience has been that where the federal government had an important message to convey they have been very accommodating in publishing the information in a factual way in full without any editing.

**Ms ELLIS**—That is useful to know. It was suggested to me and a couple of others, when we were on the island recently, that there used to be a Commonwealth department newsletter of some kind and that maybe we should consider reinitiating it. That could be a little bit inflammatory to some extent.

**Mr SNOWDON**—We did that at Christmas Island.

**Ms ELLIS**—Yes. But if the local newspaper is accommodating, then maybe we should consider more often or more possibly the sorts of information that we put in it—for instance, the fact that most people on the island would not be aware that there is a discussion on the mainland at the moment about changing requirements for local government in relation to Australian citizenship. That could change the context in which some people on the island view this whole debate. I am wondering to what extent we need to consider more carefully or more often how we use the *Norfolk Islander*.

**Ms Gayler**—Yes, I agree we should do that, Senator. Quite recently we have been involved jointly with the Norfolk Island government on a land package. In order to get information out to the community about the options that the minister was considering and to hear community views, my officers went to the island, conducted a consultation outside the local supermarket and dealt with questions then and there. In addition, because it is such a small population, we are in the process of writing to Commonwealth leaseholders on the island to be sure that those leaseholders get the real facts, the true picture, and understand what their options are. We are trying to be more proactive in communicating the Commonwealth issues.

**Ms ELLIS**—That is all I have for the moment.

**Ms Gayler**—There was quite a bit of information provided by way of the *Norfolk Islander* on the recent immigration issue and the Australian visa requirements, including answering the questions that were being generated in the community and making sure the facts got out.

**Senator WATSON**—I would like added to your questions on notice the reasons behind informal voting. You were asked a number of questions that were going to be put on notice. We would like your response to that.

**Ms Gayler**—We will see what we can find.

**Ms ELLIS**—One other thing I picked up on our recent visit was the difficulty that some folk—who are maybe second or third generation removed, in a physical sense, from the original

family connection to Norfolk Island—may be experiencing in re-establishing or reconnecting their rights within the Norfolk Island governance. Grandma and grandpa may have been born there—or there may be some other connection—but there could be a one or two generation gap in residency and then the younger person may wish to go back and basically claim their heritage. There seems to be a bit of a debate on the island about how that is done. Are you aware of that in relation to land?

**Ms Gayler**—No, I cannot say that I am.

**Ms ELLIS**—If we can get more information on that, we might make it available to you.

**Ms O'Brien**—Can I say something about that in relation to the immigration side of things. This issue came up in connection with the visa proposal. Of course, now there is a mainland visa requirement for entry to Norfolk Island, and there was concern expressed by Norfolk Island about what would happen if Pitcairn descendants—that is, people who have had a link—then go away and want to come back. The basic answer to that was they are still going to have to meet that mainland visa requirement now, but we were not interfering with them. If they can comply with that, it is then up to Norfolk Island to look at their application under the immigration act.

The immigration act has a section in relation to the 'special relationship'. The development of that section is what delayed the immigration act from being passed in 1980—and coming into effect in 1984—because Norfolk Island wanted specific reference to Pitcairners and Pitcairn descendants. Because that is contrary to racial discrimination, after quite a bit of toing and froing with Attorney-General's they developed this special relationship section, but they had to prove a link with the island as it is now. It cannot just be racial, but they can have people on the island supporting them, they can talk about culture and traditions. The HREOC report lists all of the criteria in there. It has a rundown on that.

Aside from meeting all the normal general entry permit criteria for financial position and intentions with respect to the livelihood and that type of thing, they are looking at the closeness of the applicant's relationship to the resident family, or the extent of the resident family sponsorship, the extent of any period of residence they might have had and their knowledge of culture and traditions. A lot of people who have had family on the island in the past generally will still have some links there. There may well be sponsorship on the island for those people.

**Ms ELLIS**—And if there is not?

**Ms O'Brien**—If there is not, I suppose those people will have to go through the normal process. Again, this is the immigration regime talking, not us. They would have to go through the normal process for getting a general entry permit and they would have to have some reasonable means of supporting themselves. They would need some financial proposal or business proposal or would need to be bringing some skills to the island—that type of thing.

**Ms ELLIS**—They can go through—and I have no objection to this at all—what we would call, for want of this discussion here, the Australian visa immigration requirements.

**Ms O'Brien**—Yes.

**Ms ELLIS**—But when they get on the island they could be, in some cases, then put through the process under the current regime of having to re-prove themselves through this 900 days and four years process.

**Ms O'Brien**—Yes, they will not re-establish—

**Ms ELLIS**—There could be a contradiction to some extent.

**Ms Gayler**—A second hurdle at least.

**Ms ELLIS**—Yes, possibly a very high second hurdle in some cases. That is what you are saying, too, isn't it?

**Ms Gayler**—Yes, but that again is an immigration issue until they get on the island.

**Ms ELLIS**—And then it is an immigration issue on the island.

**Ms Gayler**—Then it is an immigration and an electoral issue once they are on the island.

**Ms ELLIS**—Exactly.

**Senator WEST**—There was also an issue of them needing to demonstrate a long-term commitment to the island, wasn't there?

**Ms O'Brien**—Are we talking about the immigration regime or the electoral one here?

**Senator WEST**—Electoral.

**Ms O'Brien**—I am not across the electoral detail. I thought the commitment side of things came out when it came back to be a basic thing that you have to be present on the island for the 900 days in four years, whereas with the previous regime you did have to prove some sort of long-term commitment. My understanding was that when they brought in the most recent changes a lot of that long-term commitment side of it went. It was such a subjective thing. How do you demonstrate a long-term commitment?

**Senator WEST**—That was going to be my next guess.

**Ms O'Brien**—It is the same thing—it is a subjective thing—in relation to the immigration criteria as well.

**Senator WEST**—That was the issue I was going to try to raise. How do you indicate what your commitment is, unless you can walk in with \$1 million and build a whole lot of things and price a whole lot of things?

**Ms O'Brien**—Again, I would have to defer to my better informed colleagues here, but my understanding of the electoral side of it was simply that you were looking at a straight 900 days in four years. It was not a case of what your commitment was. It used to be, before that

amendment, that you had to demonstrate a long-term commitment. If you look at the immigration, there are people who are on general entry permits who have had to demonstrate some long-term interest and commitment to Norfolk Island and, of course, the GEP is the prerequisite to residency. Those people have demonstrated a whole range of things in terms of commitment to Norfolk Island, yet they have to wait out the 900 days the same as a TEP does.

**Mr SNOWDON**—Could you provide us with a piece of paper which gives us a demonstration of these conflicts or contradictions?

**Ms O'Brien**—We could provide that.

**Ms ELLIS**—This is again a side issue that, in my view, is directly connected. I understand that there are cases where people progress from TEP to GEP. Correct me if I am wrong, but my memory is that you can then have an issue where a person is knocked back on the island in progressing from a GEP to residency. That person then appeals to the minister and has a decision handed down contrary to the on island decision. I would really like to find out, if we can, how many appeals on GEP residency issues are received by the minister and what the outcomes are.

**Ms Gayler**—We can provide those figures.

**Ms ELLIS**—That would be very useful because it is in the same area of debate.

**Mr SNOWDON**—And also the reasons why GEP holders are refused residency.

**Ms ELLIS**—I do not know whether you would have it but it would be lovely to know how many applications occur. That may be just on island information.

**Ms O'Brien**—We would have statistics on those who get as far as appealing to the minister. We would not have any statistics on those who have it turned down and do not exercise their appeal rights.

**Mr SNOWDON**—But it would be a useful thing to do, to communicate with the Norfolk Island community and ask them that question. It is clear that there may well be an element of favouritism, or possibility thereof, or of a whole range of other matters which might affect the way in which people are dealt with.

**Ms Gayler**—To be fair to Norfolk Island, the review of their regime in part goes to the issue of putting policies that are applied into some proper legal framework. There is an endeavour to address that issue at least.

**Ms O'Brien**—While not pre-empting anything the statistics might show, there have not been very many appeals over the years on the GEP to residency step. They are more likely to be something to do with TEPs or getting a GEP in the first instance.

**Ms ELLIS**—We would like all of that background information on that to give us a picture of what the position is.



**Mr SNOWDON**—You were going to tell us in the beginning the average length of stay of a TEP.

**Ms Gayler**—The average stay of the majority is less than six months.

**Mr SNOWDON**—If there are stats on that, could you give them to us, because that is fairly germane to the issue.

**Ms Gayler**—Yes.

**Senator WEST**—The health staff on the island, are they all GEPs, or are there some there permanently? You might take that on notice.

**Ms Gayler**—Nursing staff would include local residents. The three doctors are off island people.

**Senator WEST**—At a Norfolk Island general election you could have some of the health staff able to vote on matters that are island matters and other health staff not able to vote, even though they are in the business of providing a professional service to the island. They are people whose professional qualifications are recognised on the mainland and internationally.

**Ms Gayler**—That is correct, Senator. The same is the case for police officers, teachers and so on. There are two resident doctors who have recently retired who provide a back-up service to the three doctors on the hospital staff.

**Mr SNOWDON**—They are residents?

**Ms Gayler**—Yes.

**Mr SNOWDON**—Have they been there the required time to become stamped on the forehead?

**Ms Gayler**—Yes.

**ACTING CHAIR**—Thank you for your attendance here today and for taking the time to appear before us. If there are any other matters on which we might need additional information, the secretary will write to you. Of course, you will be sent a copy of the transcript of your evidence to which you can make editorial corrections, if you so choose. Further information can be found on our committee's web site, details of which are available from the committee staff.

Resolved (on motion by **Mr Snowdon**, seconded by **Senator Watson**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

**Committee adjourned at 11.17 a.m.**