



THE GOVERNMENT OF NORFOLK ISLAND

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3 July 2002

Ms Margaret Sweringa
 Secretary
 Joint Standing Committee on the National Capital and External Territories
 Department of House of Representatives
 Parliament House
 CANBERRA ACT 2600

FAX NO. 02 6277 2067

Dear Madam

**JOINT STANDING COMMITTEE INQUIRY INTO NORFOLK ISLAND
 ELECTORAL MATTERS**

I refer to my letter dated 26 May 2002 and to previous correspondence dated 23 April 2001 from Mr Nobbs, the then Chief Minister, which in part advised of the Norfolk Island Government's intent to respond to several inaccuracies and/or omissions in evidence given to the Joint Standing Committee by officers from the Territories section of the Department of Transport and Regional Services. I have attached herewith the Norfolk Island Government's response for the Committee's consideration. For ease of reference, the Commonwealth officer's comments have been included and referenced with a reply to each below.

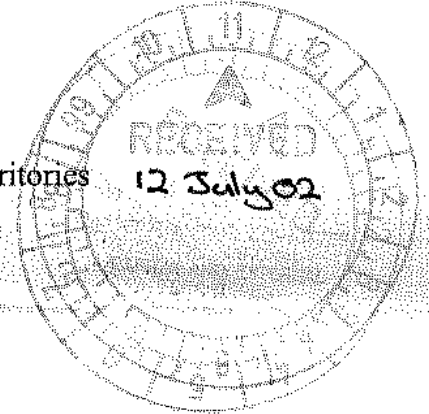
In light of the time-frame since this Inquiry began it is appropriate however to reinforce the Norfolk Island Government's position in relation to the Inquiry.

The Norfolk Island Government's detailed submissions (already provided) include concerns regarding constitutional issues as well as practical difficulties and issues of inequity. In essence:

- Norfolk Island is a unique internally self governing community. Its uniqueness is enshrined in the Norfolk Island Act 1979, an Act to which there is no other comparison throughout the Australian Federal system.
- The Norfolk Island community, through its elected representatives and directly on two occasions by way of referenda, has repeatedly urged the Federal Government to recognise that it wishes to be governed by those with 'community of interest'. The present electoral arrangements recognise this wish and do not cause any significant harm to the franchise of Australian citizens. Australian citizens remain entitled to vote in their location of origin.

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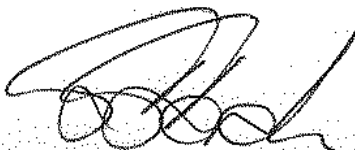
4.7.02.



- There is no evidence to show that any significant number of short term visitors to the Island are disenfranchised or, more specifically, desirous of participating in Norfolk Island's electoral system. It is not clear from where the motivation for change has originated.
- The current entitlement for participation in the Norfolk Island Assembly is appropriate and representative of the community interest of the electorate in Norfolk Island. No harm is, or can be caused, to Australia's international position as a consequence of the current composition.
- The key issue that should be considered by the Committee is the right of the Norfolk Island Community to ensure that those people who receive the franchise for the Norfolk Island internal government represent the community of interest for Norfolk Island.
- Over the past decade several inquiries have canvassed these electoral matters forming different conclusions. None of these inquiries has involved consultation with the Norfolk Island community to any real extent. The Norfolk Island Government is of the view that if the Commonwealth wishes to pursue these issues, whilst we continue to consider the enquiry is meaningless to the Norfolk Island community and consequently of no benefit it would be preferable to do so by way of an inter-governmental working group.

On behalf of the Norfolk Island Government, I urge the Committee to give thoughtful consideration to the above points, our earlier detailed submissions, and the further comments attached to this letter. The Norfolk Island Government would be pleased to expand upon any of the points raised herein in writing or in person before the Committee.

Yours sincerely



GEOFF GARDNER
CHIEF MINISTER AND
MINISTER FOR INTERGOVERNMENT RELATIONS

**RESPONSE TO TERRITORY OFFICERS COMMENTS TO THE JOINT
STANDING COMMITTEE (NCET) INQUIRY INTO NORFOLK ISLAND
ELECTORAL MATTERS**

“... 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 at 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.” (ref: Ms Gayler, Hansard of proceedings of the Joint Standing Committee on the National Capital and External Territories, 2 April 2001 (‘NCET’) page 99, paragraph 2)

While the Norfolk Island Government accepts the general thrust of this assertion, it is submitted that the very significant difference between Norfolk Island and other Territories and States is that the Norfolk Island Act 1979(Cth) (‘the NI Act’) confers powers on the Administration of Norfolk Island that are in essence federal powers and powers which are consistent with the powers retained by the Norfolk Island community since 1856. It is submitted that such powers were conferred upon the Island because it was not part of the Federation.

In any event, it is the view of the Norfolk Island Government that the international arrangements which have been well established over a period of time have no real impact, and should have no impact, on the internal self government arrangements for Norfolk Island.

It is conceded that Australia is responsible in respect of those national interest matters referred to in sub-section 19(2) of the NI Act. In respect of all other matters of legislative responsibility which have been agreed to by other States and Territories as being federal responsibilities, the inclusion of Norfolk Island is on the basis of the Federal Government maintaining a power of veto to be used in extraordinary circumstances, not a brief to subsume the Island in those matters either automatically or by design.

To support this inference, reference is made to the paragraphs 11, 12 and 13 of the opinion of James Crawford SC, Whewell Professor of International Law, University of Cambridge, which concludes that Norfolk Island is an external territory and constitutionally not an integral part of the Commonwealth of Australia.

“... 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” (Gayler: NCET, page 109, paragraph 2)

The Norfolk Island Government’s primary concern in this respect is based on the principle of ‘community of interest’. Distance, isolation, population size and

aspirations of any community require that those who vote and represent the community genuinely have the community interest at heart. A balance must be struck between this objective and the objective of providing Australian citizens the right to vote to influence the internal governance of Norfolk Island. That balance must have regard to the fact that a significant majority of short-term employees in Norfolk Island constitute a transient population with no real community interest.

"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" (Gayler: NCET page 109, paragraph 6)

The Norfolk Island Government's comments above apply equally to those persons who are being paid to provide professional services to the Island. Most of these persons are engaged at the direct invitation of the Norfolk Island Government. Such persons have ample opportunity to exercise their right to vote in the jurisdiction from which they have been temporarily appointed. These persons do not 'give' their professional services – they are amply rewarded upon conditions that they accepted at the commencement of their employment. The Norfolk Island Government does not see why these people should be given special consideration over and above other Australian citizens.

"[The Norfolk Island Government] participates in certain ministerial councils, together with the Commonwealth and other Australian territories, and they are on occasion, 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 ..."(Ms Gayler: NCET page 109, paragraph 6)

This is a misleading statement. Norfolk Island Ministers and government representatives participate as observers, and on occasion, are asked to provide comments. Norfolk Island is not able to contribute to the preparation of agendas, and in fact is usually only represented at Councils where matters that directly affect Norfolk Island are concerned. The Norfolk Island Government has never been able to vote or express a view at an international forum that would usurp Australia's position. Therefore, the suggestion of a requirement for any potential members of any Norfolk Island delegations to be Australian is irrelevant.

It is a clear fact that New Zealand and New Guinea are also invited to attend certain Ministerial Councils and entitled to make comment at such Councils. There is obviously no suggestion that either New Zealand's or New Guinea's delegations should be limited to a membership comprising Australian citizens.

"We address [in our opening statement] the argument that uniqueness, identity and culture of Norfolk Island are such that only people of longstanding residency should be entitled to vote..." (Ms Gayler: NCET page 109, paragraph 7)

The statement to which Ms Gayler refers provides that, *"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."

This generalisation applies to the mainland of Australia. It cannot, however be ignored that Norfolk Island has unique internal self-government arrangements pursuant to the Norfolk Island Act. The very reason the Act came into being was that the Island was recognised as a unique community. There is no similar legislation governing the communities to which Ms Gayler referred in this excerpt.

"There will be no swamping of the pool of voters by a transient group.... so any potential for the Assembly to be stacked is exceedingly remote" (Ms Gayler: NCET page 110, paragraph 2)

The above statement does not remove the possibility of a stacked Assembly and is based only on assumption. Even a remote possibility should be of concern and is of concern to the Norfolk Island Government and the Norfolk Island community.

At page 111 of the NCET there is discussion about why there is opposition in Norfolk Island to non-Australian citizens who are residents becoming Australian citizens. Ms Gayler submits that 80% of Island residents are Australian and that only 16% of the population hold New Zealand citizenship.

Mr Snowden then asked Ms Gayler what is her view of the concern and she replied, *"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."* (Ms Gayler: NCET page 111, paragraph 9)

By referring to these percentages Ms Gayler seems to suggest that the group that have opposition to the constitutional position of Norfolk Island to Australia is limited to a small number. The Norfolk Island Government's basis for its concerns are the result of two referenda.

In any event, the constitutional discussion, though part of the issue, is not and has never been a major issue. The most important issue is the community of interest issue reiterated previously.

"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."
(NCET page 116 through to 118)*

Copies of the referenda questions are attached. Also attached are the full results of voting. There is no basis for the Department to conclude that the referenda results were statistically invalid.

“Acting Chair - Is it the view of the Department that those who are opposing this change really essentially oppose the role of 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. This is evident from the submission of the Norfolk Island Government.”

(NCET page 119, paragraphs 3 and 4)

The Norfolk Island Government's submissions included constitutional issues as well as practical difficulties and issues of inequity. The committee is referred to the Submission of the Norfolk Island Government paragraphs 75 – 98, in particular.

“The relevant provisions of the NI Legislative Assembly Act are likely to be in breach of Article 25 (of the International Covenant on Civil and Political Rights) in that a period of 900 days may be an unreasonable restriction on entitlement to vote.”

What should be made clear is that Australian citizens are not denied the right to vote. They are fully able to vote in their home electorates at the local, State and Federal level. If they reside in Norfolk Island for a period of 2 and a half years they can vote locally on Norfolk Island.

If a person moves to Australia, but is not a citizen, then that person must reside for a continuous period of two years before being eligible to apply for citizenship and then qualify to vote. This equates to the same period of time with processing etc. Australia recognises the principle of community of interest in its own electoral system.