SUBMISSION 6

THE GOVERNMENT OF NORFOLK ISLAND

Submission

of the

Government of Norfolk Island

to the

Joint Standing Committee on the

National Capital and External Territories

Inquiry into the

Territories Law Reform Bill 2010

Norfolk Island

April 2010

Table of Contents

1 INTRODUCTION 4

1.1 RECOMMENDATIONS 4

2 **BACKGROUND TO THE *TLR BILL* 4**

2.1 BACKGROUND TO THE *TLR BILL*: 4

2.2 DIFFERENCES BETWEEN THE EXPOSURE DRAFT AND THE *TLR BILL*: 6

2.3 NORFOLK ISLAND IS OBVIOUSLY THE REAL FOCUS OF THE *TLR BILL*:..6

3 STRUCTURE OF THE *TLR BILL* 8

TABULAR OVERVIEW OF SCHEDULE 1 OF THE TLR BILL............................9

4 GOVERNMENT CONCERNS AT CHANGES TO PROPOSED BY THE *TLR BILL* 16

4.1 CONCERN ONE- 16

4.2 CONCERN TWO-...16

4.3 CONCERN THREE- 17

4.4 CONCERN FOUR- 17

4.5 CONCERN FIVE- 17

4.6 CONCERN SIX- 17

4.7 CONCERN SEVEN- 18

4.8 EXLANATORY MEMORANDUM THE TRL BILL 18

5 GOVERNANCE & ELECTORAL CHANGES..................................... 19

5.1 CONCERN ONE- IN DETAIL 19

5.1.2 NORFOLK ISLAND GOVERNMENT COMMENT....................................20

5.2 CONCERN TWO- IN DETAIL 21

5.2.2 NORFOLK ISLAND GOVERNMENT COMMENT:...................................22

5.3 CONCERN THREE- IN DETAIL 22

5.3.2 NORFOLK ISLAND GOVERNMENT COMMENT:...................................27

5.4 CONCERN FOUR- IN DETAIL 30

5.4.2 NORFOLK ISLAND GOVERNMENT COMMENT....................................31

5.5 CONCERN FIVE- IN DETAIL 32

5.5.2 NORFOLK ISLAND GOVERNMENT COMMENT:.................................... 33

5.6 CONCERN SIX- IN DETAIL 34

5.6.2 NORFOLK ISLAND GOVERNMENT COMMENT:.................................... 36

5.7 CONCERN SEVEN- IN DETAIL 38

6 PART 4 OF SCHEDULE 1 OF THE *TLR BILL*: AAT 39

7 PART 5 OF SCHEDULE 1 OF THE *TLR BILL*: FOI 40

8 PART 6 OF SCHEDULE 1 OF THE *TLR BILL*: OMBUDSMAN 40

9 PART 7 OF SCHEDULE 1 OF THE *TLR BILL*: PRIVACY 41

10 CONCLUSIONS 41

1 INTRODUCTION

This submission is made by the Norfolk Island Government to the Joint Standing Committee on National Capital and External Territories in its Inquiry into the *Territories Law Reform Bill 2010* (the *TLR Bill*)

The Norfolk Island Government recognises in principle the need for changes but the draft provisions largely do not address the changes required and essentially do not improve the situation on Norfolk Island. It is an inappropriate way to move forward.

1.1 Recommendations

1.1.1 The Norfolk Island Government's recommendations regarding the *TLR Bill* are –

1.1.2 Further passage of the *TLR Bill* should be deferred;

1.1.3 The Commonwealth and Norfolk Island Governments should commence immediate discussions on agreeing appropriate approaches and time-lines regarding the pursuit of the common goal of improving the quality of self-government in Norfolk Island;

1.1.4 A working group be established composed of nominated members of the Norfolk Island Legislative Assembly together with an equal number of members of the Commonwealth Parliament with experience and demonstrated interest in the external territories (such as say, members of the Joint Standing Committee) to jointly review the bill and prepare appropriate alternatives suitable to Norfolk Island's circumstances and that expand opportunities for democratic outcomes; and

1.1.5 In the above processes consideration must be given at every stage to the impact on Norfolk Island financially, the potential impact of all such provisions on Norfolk Island laws, the operation of the Assembly, and the practicality of the provisions in terms of self government. Detailed consultation, in many cases already requested but not commenced, needs to be given the time and resources to be properly and thoroughly completed.

2 BACKGROUND TO THE *TLR BILL*

2.1 Background to the TLR Bill:

2.1.1 On 12 February 2010 an Exposure Draft of the *TLR Bill* was provided to the Norfolk Island Government.

2.1.2 From 15 to 17 February 2010 officers of the Attorney-General's Department and Department of Finance and Deregulation visited Norfolk Island to present details of the Exposure Draft to the Government, Legislative Assembly,

Administration officers and the general community. Restrictions imposed on this consultation and information exercise included –

i. Commonwealth officers displayed little practical knowledge of the Norfolk Island environment and relevant governance/administrative structures among those officers charged with primary responsibility for fleshing out the detail and implementing new procedures. This disadvantage is exacerbated when accompanied by a prescriptive approach to their duties;

ii. The Exposure Draft was not permitted to be publicly distributed in printed or electronic form. A public meeting was held where a presentation was made but no materials were distributed to those attending and the officers directed that the proceedings could neither be recorded and local media were discouraged from reporting on the Exposure Draft. Community comment at the meeting was listened to by the officers but the concerns were not noted. One (1) copy of the exposure draft was subsequently made available for public consideration. Copies were supplied by the Administrator to interested parties; and

iii. No Explanatory Memorandum was provided with respect to the Exposure Draft.

2.1.3 Notwithstanding that much of the regulatory changes regarding finance and electoral changes were to be contained in regulations, which in some cases override the Norfolk Island Act, no draft regulations were (or have since been) provided.

2.1.4 Submissions or comments on the Exposure Draft were required to be lodged with the Attorney Generals Department only nine (9) days later on 25 February 2010.

2.1.5 On 25 February 2010 the Norfolk Island Government lodged a submission regarding the Exposure Draft with the Attorney-General's Department.

2.1.6 The defects identified by the Government in its submission on the Exposure Draft are retained in the TLR Bill. Consequently the observations and criticisms made in those submissions will be repeated in these submissions.

2.1.7 In general the Norfolk Island Government's concerns and criticisms include –

i. The presentation of an Exposure Draft bill by itself could not reasonably be considered to be a bona fide attempt at consulting or informing the people of Norfolk Island on matters of such importance. The process appears designed to obscure the intent and deter informed comment. Public access to the materials and opportunity for public comment were consciously inhibited.

ii. In many cases the detailed provisions of the Exposure Draft appeared to be "solutions" for which no problem exists or has been identified.

iii. The lack of detail, incomplete information on regulations and procedures as well as extremely limited time hampers the Government's ability to make detailed and meaningful comment. It is reasonable to expect that 'constitutional' change of this magnitude should not proceed without detailed and reasoned consultation.

iv. Structural governance changes are made with no rationale or evidence supporting the need for such change.

v. Of particular concern is that a number of the governance changes remove democratic freedoms and checks and balances such as Parliamentary scrutiny and Senate review and place powers into the hands of unelected officials or the Federal Minister where they are not subject to transparent overview or review, which is contrary to the stated rationale for the need for change.

2.1.8 On 17 March 2010, the day of the Norfolk Island general elections, the TLR Bill was introduced into the Federal House of Representatives by the Minister for Home Affairs. The bill was introduced and read a first time, the second reading was moved and debate on the bill subsequently adjourned.

2.1.9 On 18 March 2010 the Senate referred the bill to the Joint Standing Committee. The Committee is required to conduct its inquiry and report on 11 May 2010. The Committee has invited submissions by Wednesday 7 April 2010.

2.2 Differences between the Exposure Draft and the TLR Bill:

2.2.1 It is apparent that there are significant and material differences between the Exposure Draft and the TLR Bill. These appear to largely consist of extensive changes to Schedule 1 - Part 3 – Amendments relating to finance. While consistent with the manner in which the *TLR Bill* has been handled to date, the Government regrets that no attempt was made to highlight or explain the various changes made to the Exposure Draft.

2.3 Norfolk Island is obviously the real focus of the TLR Bill:

2.3.1 Notwithstanding it's short title as the "Territories Law Reform Bill" the Bill is primarily, in content and intent, a Norfolk Island (Self-Government) (Amendment) Bill. Schedule 1—Amendments relating to Norfolk Island is by far the major component of the *TLR Bill*. Provisions relating to other territories are largely incidental –

i. Schedules 2 and 3 revise (in identical terms) a vesting section of the Christmas Island Act 1958 and the Cocos (Keeling) Islands Act 1955.

ii. Item 241 of Part 7 of Schedule 1 of the Bill inserts a subsection into the Australian Capital Territory Government Service (Consequential Provisions) Act 1994.

3 STRUCTURE OF THE *TLR BILL*

3.1 Structure of the TLR Bill, as denoted by the Contents page of the Bill as set out below-

Sections

1 Short title

2 Commencement

3 Schedule(s)

Schedule 1—Amendments relating to Norfolk Island

Part 1—General amendments

Division 1—Amendment of the Norfolk Island Act 1979

Norfolk Island Act 1979

Division 2—Consequential amendments

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

Carbon Pollution Reduction Scheme Act 2010

Environment Protection and Biodiversity Conservation Act 1999

Freedom of Information Act 1982

Hazardous Waste (Regulation of Exports and Imports) Act 1989

Historic Shipwrecks Act 1976

International Criminal Court Act 2002

International Transfer of Prisoners Act 1997

National Health Security Act 2007

Privacy Act 1988

Remuneration Tribunal Act 1973

Part 2—Amendments relating to elections

Division 1—Dates for elections

Norfolk Island Act 1979

Division 2—Other matters

Norfolk Island Act 1979

Part 3—Amendments relating to finance

Norfolk Island Act 1979

Part 4—Amendments relating to the Administrative Appeals Tribunal

Administrative Appeals Tribunal Act 1975

Part 5—Amendments relating to freedom of information

Freedom of Information Act 1982

Part 6—Amendments relating to the Ombudsman

Norfolk Island Act 1979

Ombudsman Act 1976

Part 7—Amendments relating to privacy

Australian Capital Territory Government Service (Consequential Provisions) Act 1994

Privacy Act 1988

Schedule 2—Amendments relating to Christmas Island

Christmas Island Act 1958

Schedule 3—Amendments relating to the Cocos (Keeling) Islands

Cocos (Keeling) Islands Act 1955

Tabular overview of Schedule 1 of the TLR Bill

Norfolk Island Act 1979	**Territories Law Reform Bill 2010 Schedule 1**		
	Part 1 Div 1	**Part 2**	**Part 3**
Provisions	Items	Items	Items
Part I—Preliminary 1 Short title 2 Commencement 3 Repeals			
4 Interpretation	1,2,3,4,5,6,7, 8,9,10,11		86A, 86B, 87, 88, 89, 90, 91, 92, 92A, 93, 94, 95, 96, 97, 98, 99
4A Application of the *Criminal Code* **Part II—Administration** 5 Administrator and Administration 6 Appointment of Administrator			
7 Exercise of Administrator's powers etc	12,13,14,15, 16,17,18		
8 Acting Administrator			
9 Deputy Administrator	19		
10 Oath or affirmation of Administrator etc	20		
Part III—The Executive Council			
11 The Executive Council	21,22		
~~12 Executive offices~~ ~~13 Appointment of executive members~~ ~~14 Tenure of office~~ *12 Ministers* *12A Nomination of Chief Minister* *13 Appointment of Ministers* *14 Termination* *14A Dismissal of Ministers*	23		
15 Oath or affirmation of member of Executive Council and ~~executive member~~ Minister etc.	24,25		

Norfolk Island Act 1979	**Territories Law Reform Bill 2010 Schedule 1**		
	Part 1 Div 1	**Part 2**	**Part 3**
Provisions	Items	Items	Items
15A Ministerial Portfolios	26		
Part IV—Legislation **Division 1—Laws** 16 Continuance of existing laws 17 Amendment and repeal of existing laws 18 Application of Commonwealth Acts **Division 2—Legislative power of Legislative Assembly** 19 Legislative power of Legislative Assembly 20 Powers, privileges and immunities of Legislative Assembly			
21 Presentation of proposed laws	27,28,29,30, 61		
22 Signification of pleasure on proposed law reserved	31,61		
23 Disallowance of laws by Governor-General 24 Reason for withholding assent etc to be tabled in Legislative Assembly			
25 Proposal of money votes			100,10A
26 Governor-General may introduce proposed law			
26A Responsible Commonwealth Minister may introduce proposed law	32		
Division 3—Legislative powers of the Governor-General			
27 Legislative powers of the Governor-General	33, 34, 35, 36		101
28 Laying of certain Ordinances before the Parliament 28AA Ordinance not to be re-made while required to be tabled 28AB Ordinance not to be re-made while subject to disallowance 28AC Disallowed Ordinance not to be re-made unless resolution rescinded or House approves 28AD Application of sections 28AA, 28AB and 28AC			
28A Laying of certain regulations before the Parliament	37		
Division 4—Miscellaneous 29 Inconsistency of laws			

Norfolk Island Act 1979	**Territories Law Reform Bill 2010 Schedule 1**		
	Part 1 Div 1	**Part 2**	**Part 3**
Provisions	Items	Items	Items
30 Commencement of enactments **Part V—The Legislative Assembly** **Division 1—Constitution and membership of Legislative Assembly**			
31 Legislative Assembly		82,83	
32 Oath or affirmation 33 Writs for elections 34 Term of office of member			
35 Dates of elections	38	80,81	
36 Resignation of members of Legislative Assembly			
37 Filling of casual vacancy		84	
37A Arrangements with the Australian Electoral Commission		85	
38 Qualifications for election 39 Disqualifications for membership of Legislative Assembly			
39AA Dismissal of members of the Legislative Assembly *39AB Resolution of no confidence in the Chief Minister* *39AC Dissolution of Legislative Assembly by the Governor-General*	39		
Division 1A—Qualifications of electors 39A Entitlement to enrolment on the electoral roll 39B Entitlement to vote 39C Alteration of the electoral roll 39D Definitions **Division 2—Procedure of Legislative Assembly** 40 Meetings of Legislative Assembly 41 Speaker and Deputy Speaker of Legislative Assembly			
42 Procedure at meetings	40		
42A Resolution of no confidence in the Chief Minister	41		
43 Validation of acts of Legislative Assembly 44 Minutes of proceedings			

Norfolk Island Act 1979	**Territories Law Reform Bill 2010 Schedule 1**		
	Part 1 Div 1	**Part 2**	**Part 3**
Provisions	Items	Items	Items
45 Standing rules and orders **Part VI—Finance**			
46 Interpretation			102
47 Public Account of Norfolk Island			102A, 103,104,105, 105A, 106, 107, 107A
48 Withdrawals from Public Account of Norfolk Island			108, 108A, 108B, 109
Division 2 – Financial management and accountability *48A Preparation of annual budgets by the Minister for Finance* *48B Preparation of annual financial statements by the Minister for Finance* *48C Audit of financial statements* *48D Audit fees for statement audits* *48E Performance audits* *48F Comments on proposed performance audit report* *48G Audits – application of Auditor-General Act 1997* *48H Preparation of periodical financial statements by the Minister for Finance* *48J Preparation of annual report by the Chief Executive Officer* *48K Minister for Finance may obtain information from the responsible manager or managers of Territory authority* *48L Chief Executive Officer may obtain information from the responsible manager or managers of Territory authority* *48M Promoting efficient, effective and ethical use etc. of Administration resources* *48N Promoting efficient, effective and ethical use etc. of the resources of Territory authorities* *48P Accounts and records of the Administration*			110

Norfolk Island Act 1979	**Territories Law Reform Bill 2010 Schedule 1**		
Provisions	**Part 1 Div 1** Items	**Part 2** Items	**Part 3** Items
48Q Accounts and records of Territory authorities *48R Regulations about financial management and accountability – Administration* *48S Regulations about financial management and accountability – Territory authorities* *48T Commonwealth Finance Minister's Orders*			
Division 3 – Borrowing etc.			111
49 Borrowing from Commonwealth	42		
50 Borrowings otherwise than from Commonwealth	43		
50A Guarantee of borrowings	44,45		
50B Administration may give security 50C Borrowings not otherwise permitted			
50D Delegation by Finance Minister	46,47,48		
~~51 Appointment of Norfolk Island Government Auditor~~ ~~51A Restrictions on appointment of Auditor etc~~ ~~51B Auditor-General may accept appointment~~ ~~51C Audit~~ ~~51D Tabling of report etc~~ ~~51E Access to documents~~ ~~51F Auditor not subject to direction~~ ~~51G Auditing standards~~ ***Division 4 – Commonwealth Ministers to be kept informed*** *51 Minister for Finance must keep responsible Commonwealth Minister informed* *51A Minister for Finance must keep Commonwealth Finance Minister informed* *51B Responsible manager or managers of Territory authority must keep responsible Commonwealth Minister informed* *51C Responsible manager or managers of Territory authority must keep Commonwealth Finance Minister informed*			112

Norfolk Island Act 1979 Provisions	**Territories Law Reform Bill 2010 Schedule 1** **Part 1 Div 1** Items	**Part 2** Items	**Part 3** Items
Division 5 – Commonwealth Finance Officer for Norfolk Island *51D Commonwealth Financial Officer for Norfolk Island* ***Division 6 – Injunctions*** *51E Injunctions – enforcement of financial management and accountability provisions*			
Part VII—The Judicial System 52 Constitution of Supreme Court			
53 Appointment of Judges	49		
53A Acting Chief Justice 54 Seniority of Judges 55 Holding of other judicial offices 56 Salaries and travelling allowances 57 Oath or affirmation of Judge 58 Exercise of jurisdiction 59 Jurisdiction of Supreme Court 60 Establishment of courts and tribunals **Part VIII—Miscellaneous** 61 Officers			
61A Norfolk Island Public Service Values	50		
62 Grants of land	51		
64 Customs duty on certain goods			
65 Remuneration and allowances	52		
66 Grant of pardon, remission etc			
67 Regulations	53		
Part IX—Transitional 68 Interpretation 69 Election of Legislative Assembly 70 Administrator etc to continue in office 71 Proposed Ordinances and regulations			

Norfolk Island Act 1979	Territories Law Reform Bill 2010 Schedule 1		
	Part 1 Div 1	**Part 2**	**Part 3**
Provisions	Items	Items	Items
72 Laying of Ordinances before the Parliament 73 Validity of Ordinances and enactments 74 Contracts and agreements 75 Public Account of Norfolk Island 76 Audit 77 Regulations **Schedules** **Schedule 1—The Territory of Norfolk Island**			
Schedule 2	54		
Schedule 3 **Schedule 4** **Schedule 5**			
Schedule 6	55		
Schedule 7 **Schedule 8** **Schedule 9**			

4 GOVERNMENT CONCERNS AT CHANGES PROPOSED BY THE *TLR BILL*

4.1 Concern One-

4.1.1 Expanding the veto power of the Federal Minister and reducing the authority of the Executive Council regarding advice to the Administrator as to the exercise of powers conferred on the Administrator.

(NIA s. 7; TLR items 12,13,14,15,16,17,18);

4.2 Concern Two-

4.2.1 Creating new Commonwealth public service positions notionally attributable to Norfolk Island (which effectively return to the Colonial rule in place before 1979) through -

i. Appointments of potentially multiple "deputies of the Administrator"; and

ii. A "Commonwealth Financial Officer for Norfolk Island".

(NIA s. 4,9, 10; TLR items 19, 20)

4.3 Concern Three-

4.3.1 Imposing of a fixed form of Government on the Norfolk Island community by

i. Removing the ability of the Legislative Assembly to select, structure and allocate portfolios to the executive members of the Legislative Assembly which form the Norfolk Island Government;

ii. Imposing a form of Norfolk Island Government focussing on a Chief Minister with power to appoint and remove Ministers.

iii. Limiting the number of Ministers that might be appointed.

iv. Enabling the Chief Minister to be removed by the Administrator if "in the Administrator's opinion, there are exceptional circumstances that justify the Administrator so doing".

v. Limiting the power to allocate or reallocate Ministerial Portfolios to the Chief Minister.

(NIA ss. 12,13,14, 42 proposed new s 12A, 14A, 42A; TLR items 21, 22, 23, 24, 25, 26, 40, 41)

4.4 Concern Four-

4.4.1 Reducing the Legislative Assembly's power, as the elected representatives of the Norfolk Island community, to enact legislation by –

i. Empowering the Administrator to reserve all proposed laws, regardless of character, for Governor-General's assent.

ii. Empowering the Federal Minister to veto all advice from the Executive Council to the Administrator regarding proposed laws that previously were under the sole authority of the Executive Council.

iii. Empowering the Federal Minister (in addition to the existing power conferred on the Governor-General) to introduce a proposed law into the Legislative Assembly.

(NIA ss. 21, 22; TLR items 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37)

4.5 Concern Five-

4.5.1 Facilitating the non-democratic and non-judicial removal of the Legislative Assembly by enabling –

i. The dismissal of individual members of the Legislative Assembly by the Administrator for "seriously unlawful conduct" or "grossly improper conduct".

ii. The dissolution of the Legislative Assembly by the Governor-General if, in the opinion of the Governor-General the Legislative Assembly is "incapable of effectively performing its functions" or "is conducting its affairs in a grossly improper manner".

(NIA proposed new sections 39AA, 39AC; TLR item 39)

4.6 Concern Six-

4.6.1 Reducing the legislative capacity of the Legislative Assembly through the use of Commonwealth regulations to -

i. Override Norfolk Island laws regarding standards of conduct applying to Norfolk Island public servants.

ii. Repeal or alter items in Schedule 2 or 3 of the Norfolk Island Act 1979 without the current requirement for a Legislative Assembly resolution approving such regulation.

iii. Override existing Norfolk Island electoral laws.

iv. Override existing Norfolk Island laws regarding public moneys and public stores.

v. Overriding existing Norfolk Island laws regarding financial management by entities falling within the control of the Norfolk Island Government.

(NIA s. 4, 31, 37, 67 proposed new section 61A; TLR items 10, 50, 53, 82, 83, 84)

4.7 Concern Seven-

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

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

4.8 Explanatory Memorandum the TRL Bill

4.8.1 The Explanatory Memorandum introduced into Federal Parliament with the *TLR Bill* describes the changes in the following terms –

4.8.2 "Parts 1 and 2 of Schedule 1 make general governance and electoral amendments to the NI Act to:

i. Reform the voting system for the Norfolk Island Legislative Assembly and provide more certainty about when elections are held.

ii. Prescribe a process for selecting a Chief Minister and Ministers and their roles and responsibilities.

iii. Allow the Administrator to access a greater range of advice when presented with bills for assent under Schedule 2 of the NI Act.

iv. Allow the Governor-General and the Minister responsible for Territories to take a more active role in the introduction and passage of Norfolk Island legislation.

4.8.3 Part 3 of Schedule 1 makes further amendments to the NI Act to enable the implementation of a contemporary financial management framework that will assist the Norfolk Island Government to meet the expectations of its community and to plan for the future. This includes provisions to establish a customised and proportionate financial framework which provides for the responsible management of public money and public property, preparation of budgets, financial reporting, annual reports and procurement."

4.8.4 The Norfolk Island Government's submissions on the "reforms" are set out below in the context of the "concerns" noted above.

5 GOVERNANCE & ELECTORAL CHANGES

5.1 Concern One-

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

"Allow the Administrator to access a greater range of advice when presented with bills for assent under Schedule 2 of the NI Act."

REDUCING THE AUTHORITY OF THE EXECUTIVE COUNCIL

EXTRACT FROM THE EXPLANATORY MEMORANDUM
Item 12 – Paragraph 7(1)(e)
Items 13 and 14 – Subsection 7(2)
Item 15 – Subsection 7(2)
Item 16 – Subsection 7(3)
Item 17 – Subsection 7(3)
Item 17 omits 'paragraph (1)(b)' from subsection 7(2) and replaces it with 'paragraphs (1)(a) or (b). Subsection 7(3) provides that the Minister may give the Administrator instructions in respect of advice tendered to the Administrator by the Executive Council for the purposes of subparagraph 7(1)(b), which is matters specified in Schedule 3. Item 17 amends subsection 7(3) to allow the Minister to also give instructions in respect of advice tendered to the Administrator by the Executive Council for the purposes of subparagraph 7(1)(a), which is matters specified in Schedule 2.

This Item supplements Items 13 and 14 to broaden the Administrator's authority to seek Commonwealth advice on legislative matters by authorising the responsible Commonwealth Minister to provide such advice. In essence, under the reforms, the Administrator must seek advice from the Commonwealth on Schedule 3 matters, and may also seek such advice on Schedule 2 matters. For example, instructions may be issued in situations where it is necessary for Norfolk Island legislation to be consistent with the national interest or comply with Australia's international obligations.

To ensure that these instructions are effective the Act provides that Commonwealth advice must be taken over inconsistent advice from the Norfolk Island Executive Council.

Item 18 – Subsection 7(3)

5.1.2 NORFOLK ISLAND GOVERNMENT COMMENT

5.1.3 The assertion that these proposed amendments are directed to facilitate the advice available to the Administrator is obviously disingenuous. Section 7 of the Norfolk Island Act 1979 is not limited to assent to proposed laws. In any event an assent authority is obviously not an essential feature of appropriate parliamentary procedure. A notable feature of the Australian Capital Territory (Self-Government) Act 1988 is the absence of an Administrator as an assent authority for the ACT Legislative Assembly.

5.1.4 In its submissions of 25 February 2010 to the Attorney Generals Department the Norfolk Island Government made the following observations -

> *"3.2 The Bill appears to change the existing process for assent by requiring the Administrator to act in accordance with the instructions (if any) of the Commonwealth Minister in assenting to all laws, including Schedule 2 matters. As well, Schedule 2 laws may be reserved for the Governor-General's pleasure. While departmental officials referred to these changes as "reserve" powers which would be used only in exceptional circumstances, they clearly create a situation where an activist Commonwealth Minister could intervene on all legislation passed by the Legislative Assembly. We have previously raised the situation of the very long times taken for assent on Schedule 3 matters (frequently beyond six months), and are of the view that, even in circumstances where there is no conflict of views between the Assembly and the Commonwealth Minister, these new procedures could make government nearly unworkable In Norfolk Island.*
>
> *3.3 In 2006, the Norfolk Island Government proposed a detailed 10-point plan to streamline legislative and assent processes, based in part on procedures in place in the Australian Capital Territory. Among other advantages, the proposal had the benefits of reducing red tape and bureaucratic processes in assent procedures and significantly reducing Commonwealth costs. In the event, the Commonwealth withdrew all of its Norfolk Island governance proposals in 2006 and no decision was taken on the applicability of the Norfolk Island submission on a simplified and more effective governance model. We are still of the view that the 10 point plan previously proposed is more cost effective and democratic than the complex and undemocratic proposals concerning legislative powers embodied in the exposure draft bill. Nothing in that model would remove the existing ability of the Commonwealth Parliament to disallow Norfolk Island legislation, regulations or subordinate legislation."*

5.1.5 The intent of the proposed amendments is to extend greater control to the Federal Minister at the expense of the Norfolk Island Government/Executive Council. No rationale is provided nor is there any evidence supporting the need for such a change. The proposed change will virtually guarantee lengthy delays in the exercise of statutory powers and passage of legislation.

5.2 Concern Two-

5.2.1 Creating new Commonwealth public service positions notionally attributable to Norfolk Island through -

(i) Appointments of potentially multiple "deputies of the Administrator"; and

(ii) A "Commonwealth Financial Officer for Norfolk Island"

(NIA s. 4, 9, 10 proposed new section 51D; TLR items 19, 20, 89, 112)

CREATING NEW COMMONWEALTH PUBLIC SERVICE POSITIONS
EXTRACT FROM THE EXPLANATORY MEMORANDUM

Item 19 – Section 9
Item 19 repeals section 9 of the NI Act and substitutes a new section 9. The new section 9 provides that the responsible Commonwealth Minister can appoint one or more people jointly or severally to be the deputy or deputies of the Administrator. The deputy or deputies exercise powers and functions of the Administrator as assigned to them by the responsible Commonwealth Minister and exercised during his or her pleasure. The appointment of a deputy or deputies does not affect the exercise or performance of a function by the Administrator. This amendment will provide the Commonwealth with more options for a 'replacement' Administrator when the Administrator is unable to perform his or her duties.

Item 19 also includes a subsection that provides that a reference in Commonwealth legislation to a 'Deputy Administrator' is a reference to a deputy of the Administrator. This ensures that Commonwealth legislation which uses the current section 9 terminology will still have effect after this section commences. The existing references will now refer to the new office of Deputy of the Administrator.

Item 20 – Subsection 10(2)
Item 20 omits 'The Deputy Administrator' and substitutes 'A deputy of the Administrator'. This Item reflects the change made to section 9 of the NI Act at Item 19.

Item 89 – Subsection 4(1)
Item 89 adds a definition of ***Commonwealth Financial Officer for Norfolk Island*** to subsection 4(1).

The Commonwealth Financial Officer for Norfolk Island means the Commonwealth Financial Officer for Norfolk Island appointed under regulations made for the purposes of section 51D. Section 51D is a new section, inserted by item 112. The inclusion of the definition makes it clear that the Commonwealth Financial Officer is appointed in accordance with section 51D and the regulations.

Item 112 – Sections 51, 51A, 51B, 51C, 51D, 51E, 51F and 51G
Item 112 repeals sections 51, 51A, 51B, 51C, 51D, 51E, 51F and 51G. The repealed sections related to audit provisions, which are amended at Item 110.
Section 51D
New section 51D enables the appointment of a Commonwealth Financial Officer for Norfolk Island. The Commonwealth Financial Officer for Norfolk Island must be appointed by the Governor-General, and will hold office at his or her pleasure.

The Commonwealth Financial Officer for Norfolk Island will have access to all relevant financial accounts, records, documents and information related to the Administration or a Territory authority. Additional functions and powers may be prescribed by regulation.

The Commonwealth Financial Officer is intended to be an optional appointment, to be made at the discretion of the Governor-General. It is intended that such an appointment may be made in the event that the Governor-General is of the view that Norfolk Island would benefit from Commonwealth assistance, for example in the implementation of the financial framework obligations under this Part of the NI Act.

5.2.2 NORFOLK ISLAND GOVERNMENT COMMENT:

5.2.3 In its submissions of 25 February 2010 to the Attorney Generals Department the Norfolk Island Government made the following observations -

> "4.5 Without some rationale for the change, it is difficult to comment on the proposal to appoint one or more Deputy Administrators. On the face of the proposal, it is a Departmental push for more well-paid positions without any explanation of what it would produce in terms of good public administration or beneficial outcomes for Norfolk Islanders. The Bill leaves open the situation where there could be more than one Deputy Administrator at a time, based simply on appointment by the Commonwealth Minister, not the Governor-General as at present. We submit that there should be no more than one Deputy Administrator at anyone time and that the position should be located only in Norfolk Island, not within the Canberra bureaucracy. Without some explanation of the benefits of the change to Deputy Administrator appointments and roles, change, we do not support the proposal and suggest that it be removed from the Bill on the grounds of cost and lack of demonstrated need."

5.2.4 The operation of the "Commonwealth Financial Officer for Norfolk Island" remains as equally obscure as the "deputies of the Administrator".

5.3 Concern Three-

5.3.1 Imposing of a fixed form of Government on the Norfolk Island community by-

(a) Removing the ability of the Legislative Assembly to select, structure and allocate portfolios to the executive members of the Legislative Assembly which form the Norfolk Island Government;

(b) Imposing a form of Norfolk Island Government focussing on a Chief Minister with power to appoint and remove Ministers.

(c) Limiting the number of Ministers that might be appointed

(e) Enabling the Chief Minister to be removed by the Administrator if "in the Administrator's opinion, there are exceptional circumstances that justify the Administrator so doing".

(f) Limiting the power to allocate or reallocate Ministerial Portfolios to the Chief Minister.

(NIA s. 2,13,14, 42 proposed new s 12A, 14A, 42A; TLR items 21, 22, 23, 24, 25, 26, 40, 41)

“Prescribe a process for selecting a Chief Minister and Ministers and their roles and responsibilities.”

Codification of Chief Minister role & responsibilities

EXTRACT from the Explanatory Memorandum

Item 1 – Subsection 4(1)

Item 5 – Subsection 4(1) (definition of executive member)

Item 6 –Subsection 4(1) (definition of executive office)

Item 8 – Subsection 4(1)

Item 8 inserts a definition of Minister into subsection 4(1). Minister is defined as the Chief Minister or a Minister appointed under section 13. This definition is necessary as the NI Act contains a number of provisions addressing the appointment and termination of Ministers. The use of the term Minister replaces the previously used term of executive officer.

This change was recommended by the Joint Standing Committee on the National Capital and External Territories in its report Quis custodiet ipsos custodes (recommendation 17). The change reflects current practice on Norfolk Island and is a more readily understood and recognised term.

Item 21 – Subsection 11(2)

Item 23 – Sections 12, 13 and 14

Section 12

Section 12 provides that there is to be a Chief Minister and at least one, but not more than 3, Ministers and that the Ministers have executive authority for the matters specified in Schedules 2 and 3. The provision of a maximum number of Ministers, being three plus a Chief Minister, is intended to ensure effective backbench scrutiny of the Assembly’s business – 4 Ministers and 4 backbenchers, with the Speaker being the 9th member. This entrenches the important separation of executive and legislative responsibility under the NI Act. This change was recommended by the Joint Standing Committee on the National Capital and External Territories in its report Quis custodiet ipsos custodes (recommendation 17). The amendments reflect the change in terminology from executive members to Ministers. A Minister is a more easily understood and recognised term which is already currently used in practice in the Norfolk Island Legislative Assembly. The Joint Standing Committee on the National Capital and External Territories recommended the change in terminology in its report Quis custodiet ipsos custodes? (recommendation 17).

The new section 12 replaces the old sections 12 and 13 and retains the existing restriction that people employed in the Public Service of the Territory, or of the Commonwealth, are not eligible to be Ministers (the restriction is located in the previous section 13). Section 12 also retains the provision that if a Minister becomes an employee of the Public Service of the Territory or the Commonwealth they vacate their ministerial office (also located in the previous section 13).

Section 12

Section 12A provides the process for the nomination of the Chief Minister. The Legislative Assembly must, at the first meeting after a general election, nominate one of the Members to be the Chief Minister. The nomination of Chief Minister must occur after the election of the Speaker and Deputy Speaker, but before any other business.

This amendment codifies the current practice of the Legislative Assembly in nominating one executive member to have the designation of Chief Minister. The nomination by the Legislative Assembly also provides a clear line of accountability and responsibility for the office of the Chief Minister. Section 12A also provides process for filling vacancies in the office of Chief Minister. Vacancies that occur during a meeting are filled at the meeting by nominating a Member to be Chief Minister. If a vacancy occurs at any other time, the Speaker must convene a meeting as soon as practicable, so that a Member can be nominated to be Chief Minister.

Section 12A further provides that the Speaker and Deputy Speaker of the Legislative Assembly are not eligible to be nominated as Chief Minister. This reflects the Westminster system of government where the Speaker is an independent office. The Chief Minister is nominated by the Legislative Assembly and appointed by the Administrator under the new section 12A. The Legislative Assembly is deemed to have advised the Administrator to appoint a member as Chief Minister once the nomination has occurred.

Section 13

Section 13 provides for the appointment of Ministers. The Administrator may also appoint one or more members of the Legislative Assembly as a Minister on the advice of the Chief Minister. This process differs from the previous section 13 of the NI Act, where formerly, the Administrator appointed all executive members on the advice of the Legislative Assembly.

The change aligns the Norfolk Island process for appointing Ministers with the Westminster system of government. As the Chief Minister is the leader of the Norfolk Island Government he or she advises the Administrator on who the other Ministers will be. This change establishes clear lines of Ministerial responsibility – the Ministers are responsible to the Chief Minister, who is responsible to the Legislative Assembly and the Legislative Assembly is responsible to the Norfolk Island community.

New section 13 also provides that the appointment of the Chief Minister and Ministers take effect at the time of the appointment or the time specified in the instrument of appointment if this is a later time.

Section 14

Section 14 provides for the termination of the Chief Minister's and other Ministers' appointments. The Chief Minister ceases to hold office when:

- they cease to be a member of the Legislative Assembly by resignation or by reason of section 39 (disqualifications for membership of the Legislative Assembly) or section 39AA (dismissal of members of the Legislative Assembly, see Item 39 below); orthey are dismissed from office by the Administrator under section 14A (dismissal of Ministers); or
- they resign from office, in writing and signed, delivered to the Administrator; or
- the Legislative Assembly passes a resolution of no confidence in them; or
- a notice about a general election is published under subsection 39AB(1) (resolution of no confidence in the Chief Minister, see Item 39 below); or
- the Legislative Assembly is dissolved under section 39AC (dissolution of the Legislative Assembly the Governor-General, see Item 39 below); or
- the Legislative Assembly first meets after a general election of the Legislative Assembly that occurred after their most recent appointment to the office of Chief Minister;

whichever happens first. The new section includes existing section 14 restrictions on the tenure of executive office. The new provisions dealing with removal from office are also included in the new section including dismissal from office by the Administrator (section 14A), removal from office by a no-confidence motion (section 39AB) and dissolution of the Legislative Assembly by the Governor-General (section 39AC).

Other Ministers cease to hold office when:

- they cease to be a member of the Legislative Assembly by resignation or by reason of section 39 (disqualifications for membership of the Legislative Assembly) or section 39AA (dismissal of members of the Legislative Assembly, see Item 39 below); or
- they are dismissed from office by the Administrator under section 14A (dismissal of Ministers); or
- they resign from office, in writing and signed, delivered to the Administrator; or
- a notice about a general election is published under subsection 39AB(1) (resolution of no confidence in the Chief Minister, see Item 39 below); or
- the Legislative Assembly is dissolved under section 39AC (dissolution of the Legislative Assembly the Governor-General, see Item 39 below); or
- the Legislative Assembly first meets after a general election of the Legislative Assembly that occurred after their most recent appointment to the office of Chief Minister;

whichever happens first. The new section includes existing section 14 restrictions on the tenure of executive office. The new provisions dealing with removal from office are also included in the new section including dismissal from office by the Administrator (section 14A) and dissolution of the Legislative Assembly by the Governor-General (section 39AC).

Section 14A

Section 14A provides that the Administrator may dismiss the Chief Minister from office if, in the Administrator's opinion, there are exceptional circumstances for doing so.

The power may only be exercised by the Administrator if exceptional circumstances exist. The power is based on the former section 13(1) and supplements the authority of the Legislative Assembly to pass a motion of no confidence in the Chief Minister.

Section 14A also provides that the Administrator may dismiss a Minister from office on the advice of the Chief Minister. As the Chief Minister has the power to advise the Administrator on who should be appointed as a Minister, it is appropriate that the Chief Minister has the power to advise the Administrator to dismiss a Minister from office.

Item 24 – Subsection 15(2)

Item 25 – Subsection 15(3)

Item 26 – At the end of Part III

Item 26 inserts new section 15A into the NI Act. Section 15A provides that the Chief Minister is to administer such matters relating to the powers of the Administration as the Chief Minister allocates to him- or herself. Ministers are to administer such matters relating to the powers of the Administration as the Chief Minister allocates to them. In doing so, the Chief Minister may authorise a Minister or Ministers to act on the Chief Minister's or another Ministers' behalf.

The Chief Minister must publish details of the arrangements in the Norfolk Island Government Gazette which publically informs the Norfolk Island community of the allocation of ministerial responsibilities. It also provides clarity and transparency in the roles and responsibilities of the Norfolk Island Ministers and reinforces the chain of Ministerial responsibility. The Joint Standing Committee on the National Capital and External Territories recommended these amendments in its report Quis custodiet ipsos custodes? (recommendation 17).

Item 40 – At the end of section 42

Item 37 (sic) inserts new subsection 42(7). Subsection 42(7) provides that if a motion of no confidence in the Chief Minister is before the Legislative Assembly, the Assembly must deal with that motion before dealing with any other business. This amendment will ensure that the possible removal of a Chief Minister is dealt with expeditiously by the Legislative Assembly.

Item 41 – After section 42

Item 41 inserts new section 42A into the NI Act. Section 42A provides that a resolution of no confidence in the Chief Minister has no effect unless:

- it affirms a motion that is expressed to be a motion of no-confidence in the Chief Minister; and
- at least 14 days notice of the motion has been given, in accordance with the standing rules and orders; and
- the resolution is passed by at least the number of members necessary to be quorum; and
- the resolution is passed by a majority of the number of members present and voting at the meeting of the Assembly.

If a motion for a resolution of no confidence in the Chief Minister is being voted on in the Legislative Assembly, each member present at the meeting must cast a vote on the motion. The minimum of two weeks' notice of the motion will provide sufficient time for Members of the Legislative Assembly who are on the mainland or overseas to return to Norfolk Island for the motion. Passing the resolution by a majority of members present is consistent with the established practice in section 42 of the NI Act. The obligation for all members present to vote will ensure that the Legislative Assembly gives considered thought to the motion of no confidence as the role of Chief Minister is pivotal to an effective Norfolk Island Government.

5.3.2 NORFOLK ISLAND GOVERNMENT COMMENT:

5.3.3 These provisions directed to codifying in the legislation the position and role of the Chief Minister are based on provisions (see ss. 39, 40 and 41) in the Australian Capital Territory (Self-Government) Act 1988. There are no such provisions in the Northern Territory (Self-Government) Act 1978.

5.3.4 The Explanatory Memorandum in a number of its remarks places reliance on the fact that changes were recommended in recommendation 17 of the 2003 JSC Governance Report "Quis custodiet ipsos custodes".

5.3.5 The Joint Standing Committee's 20003 Governance report "Quis custodiet ipsos custodes" was delivered on 3 December 2003. Recommendation 17 of the Report recommended -

> *"That the Norfolk Island Act 1979 (Cth) be amended to incorporate:*
>
> - *the designation of Chief Minister and the role of Chief Minister as leader of the government;*
> - *the election of the Chief Minister, from among the sitting Members of the Legislative Assembly, at the first meeting of the Assembly immediately following a general election;*
> - *the power of the Legislative Assembly to dismiss the Chief Minister through a vote of no confidence passed with a two thirds majority of the Assembly Members, at any time during the life of the Assembly;*
> - *the duty of the Chief Minister to appoint up to three Ministers, from among the sitting Members of the Legislative Assembly;*

- *the power of the Chief Minister to dismiss a Minister from office at any time;*
- *the duty of the Chief Minister to allocate portfolio responsibilities and to table in the Legislative Assembly and publish in the Norfolk Island Government Gazette the division of executive responsibilities;*
- *the duty of a Minister to administer the matters allocated to him or her by the Chief Minister; and*
- *the number of Ministers not to exceed three."*

5.3.6 The Norfolk Island Government delivered its response to the 2003 Governance Report on 17 December 2003. The Norfolk Island Government made the following response to Recommendation 17-

> *"The matters in this recommendation, among others, are currently before the Norfolk Island Legislative Assembly Select Committee into Electoral and Other Matters, established in December 2002. Following its public hearings and consideration of submissions, that Committee is in the process of preparing its final report to the Assembly.*
>
> *Without pre-empting the report of the Select Committee, the Government notes that some of the matters referred to in this JSC recommendation are existing practice, and doubts the need to codify them in law. For example, the Chief Minister is already elected by the Members of the Legislative Assembly. The Assembly also has existing powers to move "no confidence" in any member of the Executive, including the Chief Minister, or to withdraw a Ministry, and has used these powers.*
>
> *The Government does not favour a model in which the size of the Executive is prescribed in legislation, as this may prove restrictive or unworkable in some circumstances, given the small size of the Legislative Assembly. The Government further believes that the JSC has misunderstood the direct nature of democratic processes in Norfolk Island, by which the entire Assembly has the ability to select or remove an Executive Member.*
>
> *It is the Government's view that the matters in this recommendation should properly be debated and decided by the entire Legislative Assembly, not imposed from outside. Despite this view, the Government is prepared to enter into discussions with the Federal Minister on the issues contained in the recommendation, following tabling and consideration of the Legislative Assembly Select Committee report."*

5.3.7 The Commonwealth Government delivered its final response to the 2003 Governance Report on 13 September 2007. The response to Recommendation 17 stated -

> *"Not agreed. The Norfolk Island Act 1979 allows the Administrator to appoint members as required to executive offices (and to terminate such appointments) but there is no explicit provision in relation to the officer of Chief Minister. This is similar to the arrangements in the Northern Territory (section 36 of the Northern Territory (Self-Government) Act 1978).*
>
> *The operation of the Norfolk Island Legislative Assembly is a matter for the Norfolk Island Government."*

(a) In its submissions of 25 February 2010 to the Attorney Generals Department the Norfolk Island Government made the following observations -

"2.3 It is unclear why the Commonwealth would seek to remove the democratic right of an Assembly to elect Ministers (which is the current situation) and replace this with a power for the Chief Minister to appoint Ministers. Since, under the proposed changes, the Chief Minister becomes subject to legislative provisions for no confidence, it is likely that a Chief Minister who appointed other Ministers without the consent of the majority of the Assembly would be subject to a no confidence motion, leading to instability and delay in forming a government. We submit that this proposed change is impractical and likely to be wasteful and should be removed from the Bill. We further question why it is considered necessary to codify in legislation the position and role of the Chief Minister, when this is not the case for the Prime Minister or state Premiers and has in fact been considered but deliberately not implemented in other Australian jurisdictions on grounds that codifying such roles runs the risk of limiting powers through unpredicted consequences."

4.1 No rationale is put forward for the unprecedented proposal to prescribe in legislation the maximum number of Ministers permitted in Norfolk Island. We are not aware of any other Australian jurisdiction with such a provision, which limits the sovereignty of the parliament and the need for flexibility in allocation of portfolios for no apparent good purpose. While Norfolk Island is a small jurisdiction, the range of ministerial responsibilities covers a wide spectrum of areas which fall within federal, state and local government jurisdictions in Australia. The limiting of the number of Ministers denies the flexibility which might be needed to deal with a major natural disaster or a significant ongoing change in the external environment. In our view, the existing flexible arrangements work well and there is no justification for the proposed change, which we submit should be removed from the Bill.

5.3.8 The only jurisdiction that we are aware of where there is a restriction on Ministerial numbers, albeit in a limited form, is s.41(2A) of the Australian Capital Territory (Self-Government) Act 1988 which states -

"(2A) Until provision is made, the number of Ministers is not to exceed 5."
(The reference in s.41(2A) to "provision" is to provision under ACT enactment.)

5.4 Concern Four-

5.4.1 Reducing the Legislative Assembly's power, as the elected representatives of the Norfolk Island community, to enact legislation by –
(a) Empowering the Administrator to reserve all proposed laws, regardless of character, for Governor-General's assent.

(b) Empowering the Federal Minister to veto all advice from the Executive Council to the Administrator regarding proposed laws that previously were under the sole authority of the Executive Council.

(c)Empowering the Federal Minister (in addition to the existing power conferred on the Governor-General) to introduce a proposed law into the Legislative Assembly.
(NIA ss. 21, 22; TLR items 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37)

"Allow the Governor-General and the Minister responsible for Territories to take a more active role in the introduction and passage of Norfolk Island legislation."

REDUCING THE LEGISLATIVE ASSEMBLY'S POWER TO ENACT LEGISLATION

EXTRACT FROM THE EXPLANATORY MEMORANDUM

Item 27 – After subsection 21(1)
Item 28 (sic) inserts subsection 21(1A). Subsection 21(1A) provides that the Administrator must reserve a proposed law introduced by the Governor-General for the Governor-General's pleasure. The Governor-General has the power to introduce a proposed law under section 26 of the NI Act. It is appropriate that proposed laws introduced by the Governor-General are reserved for the Governor-General's pleasure because the Legislative Assembly can amend the proposed laws during passage in the Assembly. The reservation of the proposed law for the Governor-General's pleasure allows the Governor-General to consider whether or not he or she agrees to any amendments made by the Legislative Assembly during passage.

Item 28 – At the end of paragraph 21(2)(a)
Item 27 (sic) inserts new subparagraph (iii) into paragraph 21(2)(a). Paragraph 21(2)(a) provides that the Administrator, when presented with a proposed law which provides for matters specified in Schedule 2 or 3 or both, shall declare that they assent to the proposed law or that they withhold assent to the proposed law. Item 27 (sic) adds a third option for the Administrator – to reserve the proposed law for the Governor-General's pleasure. This amendment will expand the options available to the Administrator when presented with a proposed law. It will allow the Administrator to refer laws where their assent, or withholding of assent, could be seen as a conflict of interest or otherwise controversial.
For example, it will allow the Administrator to refer laws that may be inconsistent with a national policy objective to the Governor-General for consideration and oversight, via the giving or withholding of assent.

Item 29 – Subsection 21(5)
Item 29 amends subsection 21(5). Subsection 21(5) provides that the Administrator, when considering a proposed law that provides only for matters specified in Schedule 2, shall not assent, withhold assent, or return the proposed law to the Legislative Assembly with amendments, except in accordance with the advice of the Executive Council. Item 29 amends subsection 21(5) so that the Administrator shall not assent, withhold assent or return to the Legislative Assembly with amendments, a proposed law dealing with matters specified in Schedule 2 except in accordance with the advice of the Executive Council and any instructions from the responsible Commonwealth Minister.

Subsection 21(5) further provides that if there is an inconsistency between the advice of the Executive Council and any instructions from the responsible Commonwealth Minister, the Commonwealth Minister's instructions are to prevail to the extent of the inconsistency. This Item supplements Items 13, 14 and 17.

Item 32 – At the end of Division 2 of Part IV
Item 32 inserts new section 26A to the NI Act. Section 26A provides that the responsible Commonwealth Minister may introduce a proposed law for the peace, order and good government of the Territory into the Legislative Assembly. This change will increase the Commonwealth's legislative powers. It will allow the responsible Commonwealth Minister to introduce a proposed law, or proposed amendments to a current law, for the Legislative Assembly's consideration.

For example, this power may be used to implement national policy objectives (such as those agreed at the Council of Australian Governments) and to ensure that Norfolk Island legislation is consistent with the national interest or Australia's international obligations.

Item 33 – At the end of paragraph 27(1)(a)
Item 33 adds 'and' to paragraph 27(1)(a). This amendment is necessary as subparagraph 27(1)(c) is being removed at Item 35, leaving only two subparagraphs in subsection 27(1).

Item 34 – Paragraph 27(1)(b)

Item 34 omits the word 'and' from paragraph 27(1)(b). This amendments is necessary for drafting purposes as subparagraph 27(1)(c) is repealed at Item 35, leaving paragraph (1)(b) as the last subparagraph in subsection 27(1).

Item 35 – Paragraph 27(1)(c)
Item 35 repeals paragraph 27(1)(c). Paragraph 27(1)(c) restricted the Governor-General's power to make an Ordinance in the same terms as a proposed law introduced by the Governor-General, if the Legislative Assembly did not pass the proposed law within 60 days, to matters not specified in Schedules 2 or 3. This removal of paragraph 27(1)(c) will allow the Governor-General to make an Ordinance, in the same terms as a proposed law introduced under section 26, that makes provision for matters specified in Schedules 2 and 3.

This amendment will increase the Commonwealth's legislative powers. It will allow the Governor-General to introduce a proposed law (and pass an Ordinance in the same terms as the proposed law if necessary) on any topic. For example, this power may be used to implement national policy objectives (such as those agreed at the Council of Australian Governments) and to ensure that Norfolk Island legislation is consistent with the national interest.

Item 36 – Subsection 27(4)

Item 37 – Subsection 28A(1)

5.4.2 NORFOLK ISLAND GOVERNMENT COMMENT

5.4.3 In its submissions of 25 February 2010 to the Attorney Generals Department the Norfolk Island Government made the following comments in this regard –

> *"3. Legislative powers*
>
> ***3.1 We note that the Bill proposes to reduce the legislative powers of the Legislative Assembly and to give new powers to legislate to the Governor- General and the Commonwealth Minister. No rationale or explanation is given for these measures, which would reduce the ability of Norfolk Island to govern itself and erode the democratic. right of Norfolk Islanders to elect representatives who can govern in the interests of the peace, order and good government of the Island. "***

5.4.4 These “reforms” exemplify the criticisms of the Commonwealth conduct of this matter –

i. There was no consultation on the need for this “reform”;

ii. The “reforms” are “solutions” for which no problem exists;

iii. No clear rationale has been provided for the “reforms”;

iv. The reforms diminish the power of elected representatives of the people of Norfolk Island.

5.5 Concern Five-

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

DISMISSAL OF CHIEF MINISTER, MEMBERS OF THE LEGISLATIVE ASSEMBLY AND DISSOLUTION OF THE LEGISLATIVE ASSEMBLY

EXTRACT FROM THE EXPLANATORY MEMORANDUM
Item 39 – At the end of Division 1 of Part V
Item 39 inserts new sections 39AA, 39AB and 39AC into the NI Act.

Section 39AA
Section 39AA provides that the Administrator may dismiss a member of the Legislative Assembly from office if they have engaged in, or are engaging in, seriously unlawful conduct or grossly improper conduct. This amendment will work in partnership with the current section 39, which provides that a member of the Legislative Assembly vacates their office if they become an undischarged bankrupt or are convicted of an offence and sentenced to imprisonment for one year or longer. The amendment will capture behaviour that is not covered by section 39, but is serious enough to require being dismissed from the Legislative Assembly. It is intended that the authority be used at the Administrator’s discretion, and taking into account the gravity of action taken under this section. The section requires the Administrator to evaluate the seriousness of the conduct in question in acting under this section.

Section 39AB
Section 39AB provides the process for holding a general election if there is a successful no-confidence motion in the Chief Minister, the Legislative Assembly does not appoint a new Chief Minister within a period of 10 days, and the Governor-General does not dissolve the Legislative Assembly within that period of 10 days. If this occurs, a general election of members of the Legislative Assembly will be held on a day specified by the responsible Commonwealth Minister by notice in the Commonwealth Gazette. This date must also be published in the Norfolk Island Gazette as soon as practicable.

The specified day chosen must not be earlier than 36 days and not later than 90 days after the period of 10 days. The specified day also cannot be a polling day for an election of the Senate or a general election of the House of Representatives. During the time between when the notice is published in the Commonwealth Gazette, and the first meeting of the Legislative Assembly after the election, the Administrator exercises all the powers of the Administration, the Executive Council and Ministers in accordance with any directions from the Governor-General. For clarity, it is intended that this power be exercised to the exclusion of the Legislative Assembly, which would be unable to function without a Chief Minister.

If the Administrator decides it is necessary to issue or spend public money of the Territory when an enactment does not authorise the issuing or spending, the Administrator may do so with the authority of the Governor-General. The Governor-General exercises his or her power to issue directions and to authorise the issuing or spending of money by proclamation, which is not a legislative instrument.

Section 39AC

Section 39AC provides that the Governor-General can dissolve the Legislative Assembly if it is incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner. If the Legislative Assembly is dissolved under this section then a general election of members of the Legislative Assembly will be held on a day specified by the responsible Commonwealth Minister by notice in the Commonwealth Gazette. This date must also be published in the Norfolk Island Gazette as soon as practicable.

The specified day chosen must not be earlier than 36 days after the dissolution and not later than 90 days after the dissolution. The specified day also cannot be a polling day for an election of the Senate or a general election of the House of Representatives.

During the time between when the Legislative Assembly is dissolved, and the first meeting of the Legislative Assembly after the election, the Administrator exercises all the powers of the Administration, the Executive Council and Ministers in accordance with any directions from the Governor-General. If the Administrator decides it is necessary to issue or spend public money of the Territory when an enactment does not authorise the issuing or spending, the Administrator may do so with the authority of the Governor-General. The Governor-General exercises his or her power to issue directions and to authorise the issuing or spending of money by proclamation, which is not a legislative instrument.

The responsible Commonwealth Minister must cause a statement of the reasons for the dissolution to be published in both the Commonwealth Gazette and the Norfolk Island Government Gazette as soon as practicable. The statement of the reasons for the dissolution must also be tabled in both Commonwealth Houses of Parliament within 15 sitting days of the Houses after the dissolution.

5.5.2 NORFOLK ISLAND GOVERNMENT COMMENT:

5.5.3 In its submissions of 25 February 2010 to the Attorney Generals Department the Norfolk Island Government made the following observations -

> *"2.1 The Bill proposes a new power for the Administrator to dismiss a member of the Assembly for seriously unlawful conduct or grossly improper conduct, without defining those terms. We are of the view that "unlawful conduct" should properly be determined by the courts, not the Administrator. Section 39 of the Norfolk Island Act 1979 (Cth.) already contains strong provisions in relation to disqualification of individuals from standing for election and from remaining in office in a range of circumstances, including conviction for unlawful behaviour. We see no reason for providing an unelected official with the ability to dismiss from the Assembly a member lawfully and democratically elected, other than those already provided in the Norfolk Island Act. This is especially so in light of the lack of definition of "grossly improper conduct" and we suggest that this provision be removed from the Bill.*
>
> *2.2 A new power is given to the Governor-General to dissolve the Assembly if, in his or her opinion, it is incapable of effectively performing its functions or is conducting its affairs in a "grossly improper manner" (again undefined). In such*

circumstances, pending a general election the Administrator would exercise executive authority in place of the democratically elected ministers. This "reserve power" is way in excess of that which applies in other Australian jurisdictions and again removes the ability of the elected Assembly to govern based on an undefined opinion of "grossly improper" conduct. There is no indication that consideration was given to appointing a caretaker government pending an election in circumstances where the Assembly is unworkable, as applies in most other Australian jurisdictions. We suggest that further consideration be given to this provision with a view to amending the Bill to reflect the conventions and constitutional provisions in other Australian states and territories.

4.2 Under existing provisions, the Administrator can dismiss an executive member (Minister) from office (but not from the Assembly) in "exceptional circumstances". The draft Bill changes this so that only the Chief Minister can be dismissed in exceptional circumstances, while other Ministers can be dismissed on the advice of the Chief Minister. It would appear that if this proposal is enacted the Administrator would not be able to dismiss one of the other Ministers on the basis of "exceptional circumstances", but only on the basis of the Chief Minister's advice. If that advice was not forthcoming, the Minister would presumably remain in office unless dismissed from membership of the Assembly altogether. We believe these provisions to be self-defeating and less workable than the status quo, and suggest that they should be excised from the Bill."

5.5.4 While proposed new section 39AC is based on s16 of the *Australian Capital Territory (Self-Government) Act 1988* in providing the Administrator with power to dissolve the Legislative Assembly there are no comparable provisions in the *Northern Territory (Self-Government) Act 1978*.

5.5.5 Proposed new section 39AA which provides the Administrator with power to dismiss members of the Legislative Assembly seems to be a unique provision in Australian self-government legislation.

5.6 Concern Six-

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

EXTRACT FROM THE EXPLANATORY MEMORANDUM

Item 10 – Subsection 4(1)

Item 10 inserts a definition of ***Norfolk Island Public Service Values*** into subsection 4(1). The Norfolk Island Public Service Values are defined as the rules prescribed by regulations made for the purposes of subsection 61A(1).

Item 50 – After section 61

Item 50 inserts new sections 61A into the NI Act. Section 61A provides that the regulations may prescribe rules to be known as the Norfolk Island Public Service Values. People appointed or employed under an enactment mentioned in section 61 of the NI Act (an enactment providing for the appointment and employment of people necessary for the purposes of the Act and the proper government of Norfolk Island) must behave in a way that upholds the Norfolk Island Public Service Values at all times. This amendment will allow the Commonwealth to prescribe values for the Norfolk Island Public Service in regulations.

Item 53 – Subsection 67(2)

Item 53 amends subsection 67(2). Existing subsection 67(2) provides that the Governor-General may make regulations to repeal, alter, or add a new Item to Schedule 2 or 3 of the NI Act, but regulations repealing or altering an Item in Schedule 2 may not be made unless a copy of the proposed regulations has been laid before the Legislative Assembly and the Assembly has passed a resolution approving the proposed regulations. Item 53 amends subsection 67(2) so that regulations repealing or altering an Item in Schedule 2 or 3 must not be made unless a copy of the proposed regulations has been tabled in the Legislative Assembly on a sitting day and at least one sitting day has passed since the sitting day on which the proposed regulations were tabled.

This amendment will ensure that the Legislative Assembly and the Norfolk Island community are aware of proposed regulations that repeal or alter an Item or Items in Schedule 2 or 3. The removal of the requirement for the Legislative Assembly to pass a resolution approving proposed regulations which repeal or alter an Item in Schedule 2 will provide the Commonwealth with control over the Items listed in Schedule 2. In practice, the Norfolk Island Government is consulted prior to the tabling of proposed regulations repealing, altering, or adding a new Item to Schedules 2 or 3.

Part 2 – Amendments relating to elections

Division 1 – Dates for Elections

Norfolk Island Act 1979

Item 80 – Subsection 35(2)

Subsection 35(2) stipulates the maximum time before the term of the Norfolk Island Legislative Assembly expires or must be dissolved. Item 80 amends subsection 35(2) to provide for a minimum term of three years and a maximum term of four years. This amendment intends to provide stability to Norfolk Island's electoral system and assist the Norfolk Island Government in implementing its legislative program. The amendment will give effect to recommendation 23 of the Joint Standing Committee on the National Capital and External Territories in its 2003 report on the Inquiry into Governance on Norfolk Island, *Quis custodiet ipsos custodes?*

Item 81 – At the end of section 35

Item 81 inserts new subsection 35(3) which sets out exceptions to the new requirements in subsection 35(2) (see Item 80) regarding the minimum and maximum time for the term of the Norfolk Island Legislative Assembly. Subsection 35(3) is necessary to supplement amendments under this Act which insert new sections 39AB and 39AC (see Item 39). New section 39AB enables the Commonwealth Minister who administers the NI Act to dissolve the Legislative Assembly where it has passed a resolution of no confidence in the Chief Minister and where the Legislative Assembly has not nominated a new Chief Minister within 10 days. New section 39AC enables the Governor-General to dissolve the Legislative Assembly where, in the opinion of the Governor-General, it is incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner.

The new subsection 35(3) provides that where an election is required as a result of the application of section 39AB or 39AC then that election may be held within the minimum term stipulated by section 35(2).

Part 2 – Amendments relating to elections

Division 2 – Other matters

Norfolk Island Act 1979

Item 82 – Subsection 31(3)
Item 82 enables the making of regulations prescribing the electoral system to be used in Norfolk Island Legislative Assembly elections and the filling of casual vacancies. This will give effect to the need for electoral reform identified by the Joint Standing Committee on the National Capital and External Territories in its 2003 report on the Inquiry into Governance on Norfolk Island, *Quis custodiet ipsos custodes?*

Item 83 – At the end of section 31
Item 83 inserts new subsections 31(4) and (5) into the NI Act. The new subsections enable the method and manner in which votes are to be cast and counted in Norfolk Island Legislative Assembly elections, as well as the filling of casual vacancies, to be determined via regulations. The use of regulations will allow flexibility in determining an electoral system that best suits the community of Norfolk Island. The new subsections also allow scope for matters related to the electoral system that are yet to be considered to be determined at a later time via regulations.

Item 84 – Section 37
Item 84 repeals existing section 37 of the NI Act, which deals with the filling of casual vacancies in the Norfolk Island Legislative Assembly. The insertion of the new subsection 31(5) (see Item 83), which enables the making of regulations providing for the filling of casual vacancies, makes section 37 unnecessary.

Item 85 – Before section 38
Item 85 inserts section 37A. This new section enables the Norfolk Island Government to make arrangements with the Australian Electoral Commission to conduct general elections on their behalf, as well as the filling of casual vacancies. This amendment will give effect in part to recommendation 26 of the Joint Standing Committee on the National Capital and External Territories in its 2003 report on the Inquiry into Governance on Norfolk Island, *Quis custodiet ipsos custodes?*

5.6.2 NORFOLK ISLAND GOVERNMENT COMMENT:

5.6.3 In its submissions of 25 February 2010 to the Attorney Generals Department the Norfolk Island Government made the following observations regarding “Public Services Values” -

> *“4.6 The Bill proposes, but does not specify any details of, "Public Service Values". The Public Sector Management Act 2000 (NI) already includes Part 2, comprising three sections establishing public sector general principles and standards of conduct. These are supported in subordinate legislation by a detailed code of conduct. We do not necessarily disagree with the proposal to place in legislation a statement of values modelled on the Commonwealth APS Values and Code of Conduct, and suggest that a joint working group of officials could be established to achieve this. Any such legislative change should be in the relevant Norfolk Island legislation and regulations, rather than in Commonwealth enactments.”*

(a) In it’s submissions of 25 February 2010 to the Attorney Generals Department the Norfolk Island Government made the following observations regarding voting methods -

> *“2.5 Under the provisions of the Bill, the method of voting at elections including "the manner in which voters' votes are to be used to obtain a result for an election" is to be prescribed by Commonwealth regulations, for which no draft terms are available. We strongly oppose this measure, on grounds that it is inappropriate for regulations to override the principal Act. In any event, provisions for the counting of votes and conduct of elections should reside in the Legislative Assembly Act 1979 (NI), not in Commonwealth regulations. We would be prepared to consult the Australian Electoral Commission about the conduct of elections, should the need ever arise, as provided for in the Bill. To date that need has not arisen. “*

(b) The Norfolk Island Government in its 2003 response to the Joint Standing Committee's *Quis custodiet ipsos custodes* Report indicated that it did not see the need to require Norfolk Island Government elections or referenda to be supervised by the Australian Electoral Commission but was happy to welcome independent observers including the Australian Electoral Commission to view their conduct.

(c) **Recommendation 23** of the JSC 2003 Governance Report recommended -

"That Section 35 of the Norfolk Island Act 1979 (Cth) be amended to provide that the term of the Legislative Assembly shall be four years from the date of its election, and that after the third anniversary of the declaration of the election results by the Australian Electoral Commission, the Legislative Assembly may be dissolved by the Administrator at the request of the Legislative Assembly following a resolution to do so, passed by two-thirds majority."

(d) The Commonwealth Government's 13 September 2007 response to Recommendation 23 was in these terms –-

"Not agreed. The Australian Government considered alternative governance arrangements for Norfolk Island in 2006. The Australian Government accepted the assurances of the Norfolk Island Government and decided not to proceed with changes to the governance arrangements of Norfolk Island.

(e) In it's submissions of 25 February 2010 to the Attorney Generals Department the Norfolk Island Government made the following observations –

2.4 We generally agree with the creation of "fixed" terms for the Legislative Assembly of not less than three years or more than four years, while noting that this would place limitations on citizen-initiated referendums under the Referendum Act 1964 (NI). However, we believe that there should be a right for the Assembly to dissolve itself when necessity dictates. In practice, the Governor-General might be obliged to dissolve the Assembly and call an election in circumstances such as the resignation of all nine members.

(f) The Norfolk Island Government repeats the view expressed in the submission of 25 February 2010 that the creation of fixed terms is generally acceptable.

(g) As a general principle the Norfolk Island Government opposes the emerging Commonwealth preference to establish a statutory framework that would enable it to use Commonwealth regulations to override Norfolk Island legislation. The use of what are known in the Westminster system as "Henry VIII" clauses* is a generally frowned upon approach to legislation and it is an inappropriate approach to maintenance and development of Norfolk Island's self-government. [*These clauses provide for primary legislation to be amended or repealed by secondary legislation, often pursuant to the authority of a Minister, without the normally expected level of Parliamentary scrutiny.]

5.7 Concern Seven-

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

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

5.7.2 In it's submissions of 25 February 2010 to the Attorney Generals Department the Norfolk Island Government made the following observations regarding introduction of the "Financial Framework" -

> *"5.1 An officer-level working group has already been established to fine-tune and work toward implementation of the new financial framework. The CEO of the Administration is writing in detail to the Acting Assistant Secretary of the Attorney-General's Department about a range of practical and administrative issues requiring clarification and action, including the costs of the changes and how these will be reimbursed in terms of the Commonwealth's commitment that the changes would be made without cost to Norfolk Island.*
>
> *5.2 In principle, we agree that a new financial framework is desirable but believe that wherever practicable this should be established under Norfolk Island legislation and regulations, not Commonwealth legislation. The Norfolk Island Government is prepared to cooperate in making the necessary changes in consultation with the Commonwealth."*

5.7.3 The Norfolk Island Government is strongly of the view that the Commonwealth will only succeed in its goals of improving Norfolk Island's governance arrangements and strengthen the accountability of the Norfolk Island Government if it takes the time and makes the effort to consult with the Norfolk Island Government in a timely and bona fide manner.

5.7.4 There are concerns that arise on a casual reading of the proposed amendments contained in Part 3 of the *TLR Bill*. This includes –

(i) The item 98 definition of "responsible manager" is extremely vague and likely in the variety of circumstances in which the Administration and related entities operate give rise to confusion.

(ii) There are serious financial resource implications for the Administration that will arise from the imposition of Commonwealth Auditor-General requirements, the *Auditor-General Act 1997* and particularly in the context of regulations made under proposed new sections 48R and 48S. The Commonwealth will need to give early consideration to financial assistance to address costs of implementation, conversion and compliance with proposed changes.

(iii) Proposed new section 48F(5) should be amended to enable the Minister for Finance to request a copy of all written comments on a performance audit report.

(iv) The Norfolk Island Government considers it inappropriate that provisions such as proposed new sections 48J, 48L, 48M, 48N, 51B and 51C subject Norfolk Island public sector employees to direct obligations to the Commonwealth.

(v) The Norfolk Island Government similarly considers it extremely inappropriate that the Commonwealth proposes to use the threat and application of Federal Court injunctions under proposed new section 51E as a means of enforcing financial management and accountability provisions. There are no such provisions in the *Australian Capital Territory (Self-Government) Act 1998* or the *Northern Territory (Self-Government) Act 1978*. The existence of such obligations and their enforcement should be dealt with under Norfolk Island legislation.

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

Part 4—Amendments relating to the Administrative Appeals Tribunal

Administrative Appeals Tribunal Act 1975

(b) In its submissions of 25 February 2010 to the Attorney Generals Department the Norfolk Island Government made the following observations regarding introduction of the administrative law and administrative review changes -

6.2 The extension of the Administrative Appeals Tribunal Act 1975 (Cth) would appear to be a complex and costly manner of extending appeal rights compared with an extension of the powers of review of the existing Administrative Review Tribunal. The AAT The proposals in the draft Bill would still leave in place the cumbersome and slow procedures for review of certain immigration and social welfare decisions made under statute by Norfolk Island Ministers. We suggest that the previous working group which looked at immigration appeals should be re-established to consider more expeditious, effective and less costly mechanisms to deal with appeals against Ministerial decisions. This might also lead to simplified procedures which could be adapted for dealing with social welfare appeals. One option might be for a member of the MRT [Migration Review Tribunal] *or SSAT*[Social Services Appeals Tribunal*] to be delegated to sit on such matters as part of the Norfolk Island ART."*

(c) Given the transitional period needed to develop procedures and train staff the proposed commencement date of 1 July 2010 is not realistic. At least a further 12 months should be allowed.

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

Part 5—Amendments relating to freedom of information

Freedom of Information Act 1982

7.1 In it's submissions of 25 February 2010 to the Attorney Generals Department the Norfolk Island Government made the following observations in this context-

> *"6.1 We acknowledge the much greater degree of consultation between the Commonwealth and Norfolk Island on the development of transparency and accountability measures through administrative law and administrative review changes. The changes are generally welcomed, although we note the Department's desire to implement costly and bureaucratic measures for Freedom of Information and Privacy, rather than the less complex and costly proposals for administrative schemes more suitable for smaller jurisdictions, as proposed by the Commonwealth Ombudsman and the Norfolk Island Government*

7.2 The complexity of the proposed FOI model exacerbates the time and resources needed to implement such a system. The Norfolk Island Government does not accept that the Commonwealth has realistic timeframes for the introduction of this complex and time consuming system nor has any consideration been given to the suitability of the system or the significant cost of implementation and operation in a small jurisdiction. (see comments in 8 and 9 below, relating to preferred alternatives).

8 Part 6 of Schedule 1 of the *TLR Bill*: OMBUDSMAN

Part 6—Amendments relating to the Ombudsman

Norfolk Island Act 1979

Ombudsman Act 1976

8.1 The Norfolk Island Government considers that proposed model based on the introduction of a Norfolk Island enactment with provision for appointment of the Commonwealth Ombudsman is appropriate to Norfolk Island's circumstances.

8.2 The model and the legislation were developed by consultation between the Office of the Commonwealth Ombudsman and the Norfolk Island Government and were specifically drafted by the Commonwealth having regard to the special circumstances appropriate to a small jurisdiction and to the need to minimise bureaucratic complexity and cost of implementation and operation

8.3 The outcome achieved in respect of the Ombudsman is a perfect example of what could be achieved through proper and careful consideration of what is appropriate and suitable for Norfolk Island in the areas of “FOI” (Part 5 of Schedule 1) and “Privacy” (Part 7 of Schedule 1).

9 PART 7 OF SCHEDULE 1 OF THE *TLR BILL*: PRIVACY

Part 7—Amendments relating to privacy

Australian Capital Territory Government Service (Consequential Provisions) Act 1994

Privacy Act 1988

9.1 The Norfolk Island Government reiterates the concerns expressed above regarding the FOI system. The time and resource costs arising from the complexity of such a system have been underestimated as has the short time frames allowed to implement the system, train staff and adjust existing systems

9.2 The process of consultation and customisation utilised in the implementation of the ‘Ombudsman’ area (see 8 above) must be employed in respect of the “Privacy” changes as well.

10 CONCLUSIONS

10.1 The *TLR Bill* in its current form seeks to undo the concept of self-government that has operated in Norfolk Island since the enactment of the *Norfolk Island Act 1979* and return to the system of colonial overview by Commonwealth Government appointees. Examples are the additional “Deputy Administrators” who presumably would be located in Canberra, the appointment of the Commonwealth Financial Officer for Norfolk Island also located in Canberra.

10.2 The “colonial” features of the Bill includes –

i. Limiting the consultation processes with the Legislative Assembly and the Government of Norfolk Island before the introduction of the *TLR Bill* into Federal Parliament.

ii. Overriding or removing the powers of the fundamental representatives of self-government such as executive members, the Executive Council/Norfolk Island Government and the Legislative Assembly. Examples are the interposing of the views of the Commonwealth Minister which will prevail over the recommendations of the Executive Council in matters traditionally the exclusive domain of the Norfolk Island Government (Schedule 2 matters) and prescribing the financial structure required by the Commonwealth which in many ways is not as comprehensive or transparent as the system now in use utilising the International Financial Reporting Standards

iii. Transfer of power from the institutions referred to at ii above to non-representative entities such as Commonwealth officers, the Commonwealth department, the Federal Minister and Governor-General. The rule of such non-representative entities is by prescriptive executive orders or authorisations, external regulation or ordinance.

iv. The design and management of the *TLR Bill* to date has displayed undue haste. These pressures seem to owe more to external Commonwealth circumstances than the issues and challenges facing the Norfolk Island community. That the Commonwealth will shortly be facing a general election is not, and should not, be a consideration that engenders a perception of crises in the context of the issues facing Norfolk Island.

10.3 A conspicuous feature of the undue haste associated with the Bill is that issues have not been considered through to their logical conclusion.

10.4 The inference arising from a lack of local consultation is that the architects and implementers of the Bill overstate their understanding of Norfolk Island conditions. This lack of understanding can be overcome by bona fide local consultation but not by mere reading and uncritical adoption of external reports such as the 2003 Quis custodiet ipsos custodes Report. This particular report was the subject to quite serious criticism by previous Commonwealth and Norfolk Island governments as to its methodology in giving credence and emphasis to untested, confidential and unreliable evidence given to the Committee of the day.

10.5 There is obviously basis for concern that many of the impositions contained in the Bill are marred by excessive complexity which, inevitably, will result in undue cost and delay.

10.6 A most striking feature of the prescriptive nature of the Bill is that it fails to tap into the, by and large, complete agreement on the part of the Norfolk Island Government to the need to improve issues of governance, administrative law and review.