

4 APPOINTMENT OF SELECT COMMITTEE TO CONSIDER CERTAIN ISSUES INCLUDING ELECTORAL AND GOVERNANCE ISSUES

1. That pursuant to Standing Order 24, a Select Committee of this House be appointed to consider and report upon:
 - (a) laws in force in Norfolk Island relating to eligibility to vote and candidature for election to this House, with particular regard to the following matters:
 - (i) whether Australian citizenship should be a requirement for eligibility to vote for, or be elected to, this House or for participating in a referendum; and
 - (ii) the time period before which a person resident in Norfolk Island can enrol to vote in elections for membership of this House or in a referendum; and
 - (iii) the adequacy, efficiency and integrity of administrative procedures relating to the conduct of Norfolk Island elections and referendums; and
 - (b) the constitutional status of Norfolk Island, the governance of the Island and relations between Norfolk Island and the Commonwealth of Australia, with particular regard to the following matters:
 - (i) the desirability or otherwise of a constitution or charter or similar legal document for the Island, and the means by which any such proposed document should be developed; and
 - (ii) the desirability or otherwise of rendering the principles of self-government, on which the Norfolk Island Act 1979 is based, less amenable to unilateral alteration by either Norfolk Island or the Commonwealth of Australia, and the means by which such an outcome might be achieved; and
 - (iii) the structure of the executive government of Norfolk Island and the administrative and public policy consequences of any proposed change.
2. That the Committee shall consist of five members – three non executive members and 2 executive members – who shall be nominated by the House by separate motion.
3. That at any meeting of the Committee 3 members shall constitute a quorum.
4. That the Committee shall have leave to adjourn from place to place; have leave to make visits of inspection within Norfolk Island; have power to take evidence and send for persons and papers.
5. That the Committee shall report by 1 October 2003.
6. That the Legislative Assembly consider and vote on the recommendations contained within the report by 25 December 2003

Motion by leave –

Membership of Select Committee

THAT the Select Committee shall consist of 5 members as follows:

- a) three members not being executive member; and
- b) two members being executive members,

who shall be nominated in writing to the Clerk of the Legislative Assembly by, respectively, for (a) the non-executive members of this House; and for (b) by the Chief Minister. Nominations are to be with the Clerk by the close of business on Monday 23 December 2002

Orders of the Day 4 and 5 were called on and withdrawn by leave of the House

ATTACHMENT B

Norfolk Island - an overview

(a) Geography

Norfolk Island is one of Australia's most geographically isolated communities.

The Island is located in the South Pacific Ocean, roughly half way along a submarine ridge between New Caledonia and New Zealand, and some 1500 kilometres from the eastern coast of mainland Australia. As noted by the Commonwealth Grants Commission, the Island is heavily dependent on sea and air services and telecommunications for the maintenance of a standard of living higher than subsistence level.

The Island is a small, isolated, fertile volcanic outcrop of about 34.5 square kilometres. Two small uninhabited islands, Nepean and Phillip, lie close to the south. The coastline of 32 kilometres consists largely of precipitous cliffs, except near Kingston in the south where there is a jetty and a coral reef. There is another jetty at Cascade Cliff in the north. There is no harbour. Most of the Island exceeds 100 metres in elevation and twin peaks, Pitt and Bates, rise to 320 metres in the north-west. Several creeks drain to the north and south coasts. There are no lakes or natural reservoirs.

The Island offers a special quality of life. The natural environment is attractive and the climate mild all year. As an oceanic island, much of Norfolk's flora and fauna is unique to the Island. There is little pollution, although the water supply is fragile.

(b) Population

Norfolk Island is a small and close knit community.

At the last census in August 2001, Norfolk Island's total population (excluding visitors or tourists) was 2037. Of these, 1574 people live permanently on Norfolk Island. The remainder are mostly workers from mainland Australia and New Zealand allowed on the Island under short term entry permits issued by the Norfolk Island Government. Nearly half of Norfolk Island's permanent population are descendants of the Pitcairn Islanders who settled on Norfolk Island in 1856.

In 1997, the Commonwealth Grants Commission found that Norfolk Island has:

- a relatively stable permanent population level with little or no unemployment;
- a constant turnover in population, with a high number of permanent residents who have arrived within the last five years (immigration reviews have shown that relatively few General Entry Permit Holders remain on-island and acquire residency status);
- two thirds of Norfolk Island's permanent population were born in Australia (including on Norfolk Island) and over 80 percent are Australian citizens;

- a high mobility between Norfolk Island and the Australian mainland, rather than with other countries; and
- declining numbers of children, teenagers and young adults, a stable population of those aged between 30 and 50 and an increasing number of adults aged over 50.¹ Reports have also identified a trend for younger residents to relocate for their children's education and training and, in older age groups, an intake of immigrants who are not of Pitcairn descent.

The Norfolk Island polity consists of approximately 1130 voters enrolled on the Norfolk Island electoral roll. In comparison, the Department understands that approximately 250 Norfolk Island residents have chosen to enrol on the Federal electoral roll and vote in Federal elections.

(c) Economy

The Island economy and, thereby, the Norfolk Island Government's capacity to raise revenue and fund self-government, is dependent on outside and remote markets and reliant on one main industry, tourism. The Island has a limited agricultural and manufacturing industry, with the main exports being tobacco re-exports and palm seeds/sprouts.

The Grants Commission estimated that the size of the Norfolk Island economy in 1997 to be \$80 million. Of this, \$57m was contributed in 1997 by the commercial sector, \$11.5m by the Norfolk Island Government, \$7.6m in indirect taxes and charges, and \$3.8M by the Federal Government. The Commission noted that it had been conservative in its estimation and it is likely that the economy is now larger than \$80 million.

The Norfolk Island August 2001 Census indicated that 70% of the Island's ordinarily resident population earns less than \$32,000 per annum, with \$20,800 being the rough mean annual income. The Grants Commission's report also considered that the cost of living on Norfolk Island was significantly higher than on the mainland in many respects.

The Grants Commission noted that there are natural limitations to possible economic activity on Norfolk and there are important issues of infrastructure affecting development efforts (such as the Island's lack of a water supply system, limited sewerage and electrical power capacities, waste disposal deficiencies, inadequate harbour and lighterage facilities, and the high cost of communications). The Commission considered that there was limited room for any general economic expansion until these issues are addressed.

Public sector activity on Norfolk Island is primarily the direct responsibility of the Norfolk Island Government, and is principally funded from revenues raised by that Government.² The Federal Government provides some direct funding for particular activities on-island, and some indirect support (see **Attachment F**).

¹ Permanent population includes those people who are either residents or holders of a General Entry Permit, as defined in the *Norfolk Island Immigration Act 1980*.

² A summary of the Administration's audited consolidated accounts, extracted from the Norfolk Island Annual Report for 2001/2002 is at ATTACHMENT E.

LEGISLATIVE FRAMEWORK FOR GOVERNANCE

Legal Framework for Governance on Norfolk Island

1. The Norfolk Island Act (Commonwealth)

The Federal Parliament enacted the *Norfolk Island Act 1979* (Cth) to confer a considerable degree of self-government on the Island's 2000 residents. The Act provides for:

- a Norfolk Island Legislative Assembly able to make laws for the peace, order and good government of the Territory, including laws to raise taxes and impose charges;
- an Executive Council or Ministry drawn from the Legislative Assembly and appointed by the Administrator on the recommendation of the Assembly;
- an Administrator appointed by the Governor-General to act as the nominal head of the Norfolk Island Government;
- the Administrator to act on ministerial advice;
- the Governor-General to make Ordinances for the Island in limited circumstances;
- the Norfolk Island Supreme Court and continuation of Norfolk Island's system of laws; and
- a Norfolk Island public service, known as 'the Administration'.

(i) The Legislative Assembly

Division 2 of Part IV and Part V of the Norfolk Island Act establishes the Norfolk Island Legislative Assembly and details its powers. The Act provides that:

- The Assembly has the power to legislate for all things except coinage, the raising of defence forces, the acquisition of property on other than just terms, and euthanasia. This means that the Assembly can enact laws on virtually any topic that it chooses, including on matters that are the preserve of the Federal Government elsewhere (such as customs and immigration). The Assembly also is empowered to pass laws declaring the powers (other than legislative powers) privileges and immunities of the Assembly and of its members and committees (subject to the proviso that these must not exceed the powers, privileges and immunities of the Federal House of Representatives).

- Laws passed by the Assembly must be presented to the Administrator for assent (see below).
- The Assembly shall consist of 9 members. This number may be changed by regulation made under the Act.
- Members of the Assembly shall be elected in accordance with laws passed by the Assembly, subject to a limited set of requirements contained in the Norfolk Island Act itself. These include:
 - The Administrator shall issue writs for election of Assembly members and shall determine the date of general elections.
 - There must be a general election at least once in every three year period.
 - Candidates for election to the Assembly must be: 18 years of age; be entitled to vote or enrol to vote in Territory elections; and meet the residence requirements prescribed by laws passed by the Assembly (if no such law exists - then candidates must have been ordinarily resident in the Territory for five years prior to their nomination). A person cannot qualify as a candidate if he or she is: an undischarged bankrupt; has been convicted of and under sentence of imprisonment for a Federal, State or Territory offence for one year or longer; or is the holder of a prescribed office or appointment under a Federal or Norfolk Island law.
- The Administrator must convene a meeting of the Assembly following a general election, after which the Assembly must meet at least once every two months. The Administrator must convene an Assembly meeting when requested to do so by a prescribed number of Assembly members (currently 3).

[In practice, each Assembly meeting is adjourned at the end of business and a date set by Members for when they will meet again. In the event that some Members may wish to have a formal meeting in the interim, the Administrator is requested to convene a meeting as above.]

- The term of office of an Assembly Member commences from the date of his or her election and ends immediately before the date of the next general election.

However, Members vacate their office as Assembly Members if they are declared bankrupt; are convicted and sentenced to imprisonment for certain offences for a period of one year or longer; are appointed to a prescribed office; if they fail to attend 3 consecutive Assembly meetings, or cease to be entitled to vote or be enrolled to vote in Territory elections. The Act also provides that Members shall vacate their office if they receive or agree to receive any remuneration, allowance etc for their service as an Assembly Member other than in accordance with the Act. (Remuneration and allowances of Assembly Members - including Executive Members - are currently determined by a Remuneration Tribunal under Norfolk Island law.)

- An Assembly Member who has a direct or indirect interest in a contract for the supply of goods or services to the Administration or the Federal Government must not participate in discussion of a matter or vote on a question in the Assembly which relates directly or indirectly to that contract. The Act provides that it is for the Assembly to consider and determine any alleged contravention of this requirement.
- Meetings of the Assembly are to be presided over by the Speaker or Deputy Speaker and conducted in accordance with Standing Rules and Orders made by the Assembly. The quorum for a meeting is 5 members (it is open to the Assembly to pass a law to change this number).
- Questions arising at Assembly Meetings are decided by a majority of the votes of Members present and voting by secret or open ballot. The Speaker or other presiding member has a deliberative vote only and, if a vote is tied, the motion or question is defeated.
- Minutes of Assembly meetings must be kept and shall be made public upon payment of any prescribed fee.

(ii) The Executive Council or Territory Ministry

Part III of the Act establishes the Norfolk Island Executive Council 'to advise the Administrator on all matters relating to the government of the Territory'.

The Executive Council consists of Assembly Members appointed to executive office by the Administrator on the recommendation of the Assembly. The Assembly, by resolution, determines the number of executive offices and which Assembly Members shall be appointed to those positions. Persons who are not Assembly Members cannot be appointed to the Executive Council. Federal and Territory Public Servants also cannot be appointed. An appointment expires or ceases on resignation, vacation of office as an Assembly Member (see above), after a general election or on termination by the Administrator. The Administrator may terminate an appointment on the advice of the Legislative Assembly or where the Administrator considers that there are exceptional circumstances to justify termination.

As noted above, all 9 Assembly Members stand down on the day of a general election. However, the Executive Members and the Speaker continue to hold Office until the time when the newly elected Assembly first meets and appoints their successors.

The matters over which the Executive Council has executive authority are those listed in Schedule 2 and 3 of the Act. A copy of both Schedules is at **Attachment C (i)**. These matters include 'matters in respect of which duties, powers, functions or authorities are expressly imposed or conferred on executive members by or under laws in force in the Territory'. See Item 42 of Schedule 2. In short, this means that, when the Legislative Assembly enacts a law - including a law on a matter or topic not listed in Schedule 2 or 3 - Norfolk Island Ministers are equipped with broad executive powers and responsibilities to administer, fund and enforce that law. This recognises the fact that it is the Norfolk Island Government that is primarily responsible for the delivery of government services and infrastructure on the Island.

The Act provides that Executive Members - as a group - share and exercise the executive authority outlined above. This means, for example, if one or more of the Executive Members are overseas, the remaining Executive Members have authority to carry out any required executive action in the interim. In practice, the Assembly, when determining Executive Council appointments, agrees on a set of 'Administrative Arrangements' whereby each of the appointed Executive Members is allocated a portfolio of duties and responsibilities, including statutory and non-statutory responsibilities. For example, the current Chief Minister responsibilities include acting as the Minister for Inter governmental Relations, the functions of which do not require any statutory oversight or administration. A copy of the current Administrative Arrangements is at **Attachment C (iii)**.

It is equally important to understand that the Act provides that the Norfolk Island Executive Council may advise the Administrator on all matters relating to the Government of the Territory (ie, including matters or topics not listed in Schedule 2 or 3 of the Act). In practice therefore, the Administrator when exercising his or her powers and functions, generally relies on advice provided by the members of the Norfolk Island Executive Council (see below).

Meetings of the Executive Council are convened by the Administrator. He or she can convene a meeting at any time and must do so when requested by three Council members. The Administrator is entitled to attend Executive Council meetings and must preside over any meeting at which he or she is present. In the Administrator's absence, a Council member chosen by other members presides at the meeting. Non-executive Assembly members may attend Executive Council meetings, but may not participate.

(iii) The Speaker of the Assembly

The Act creates the position of the Speaker and Deputy Speaker and establishes their power to preside at all meetings of the Assembly. All of the Speaker's other powers are derived from the Standing Orders and Rules of the Assembly.

The Act provides that the Speaker and Deputy Speaker must be elected from among the Assembly Members at the first meeting of each new Assembly. They are elected by majority vote of the Assembly. If the Speaker and Deputy Speaker are absent from any meeting, the Assembly shall elect one of the Assembly Members present to preside over the meeting.

The Speaker can vote on matters in the same way as other Assembly Members while remaining in the Chair. The convention is that if the Speaker wishes to take part in debate he or she must vacate the Chair, which is filled by the Deputy Chair.

There is no prohibition or convention against the Speaker of the Norfolk Island Assembly also being appointed as an Executive Member. It is common for the Speaker of the Assembly to also be a Norfolk Island Government Minister or Executive Member.

(iv) Norfolk Island Finances

The Act provides little, if any, role for Federal Government in the administration of the Island's financial affairs other than in respect of borrowing.

The Act provides that the receipt, control and expenditure of Norfolk Island public moneys shall generally be regulated by laws passed by the Legislative Assembly. The Act does require that all public moneys must be kept in a fund known as the Public Account and that all issue or expenditure of moneys from that Account must be authorised by laws passed by the Legislative Assembly.

Proposals to dispose of, or charge public moneys for, the Territory cannot be raised or debated unless recommended by a message from the Administrator to the Legislative Assembly. The Administrator makes such a recommendation on the advice of the Executive Council.

The Act provides that the Federal Government must approve all borrowings by the Norfolk Island Government otherwise from the Federal Government itself. The Act also authorises the Federal Government to choose to act as the Territory Government's guarantor if and when it so borrows.

The Act provides for a Norfolk Island Government Auditor appointed by the Administrator on the recommendation of the Norfolk Island Assembly. The Act also provides that the Auditor-General for the Commonwealth may accept the latter appointment.

The Act requires the Auditor to inspect and audit the Territory's accounts at least once a year and to draw to the Speaker's attention to any noteworthy irregularities. Auditing standards are prescribed by the Act, which also provides the Auditor with statutory powers of access and inspection. The Auditor's report is to be provided to the Speaker, who is required to table the report in the Assembly. A copy is also provided to the Federal Minister responsible for Territories via the Administrator's Office.

The current Norfolk Island Government Auditor is the Auditor-General for Queensland (appointed in January 2003). A New Zealand based commercial firm of auditors and accountants had previously been appointed on the recommendation of the Norfolk Island Government.

(iv) The Administration

The government of the Territory, or the 'Administration' is established as a body politic with perpetual succession under section 5(2) of the Act. The Act also confers on the Administration all the legal powers of a body corporate (eg, to contract, to sue, to acquire and dispose of assets).

(v) Legislative Power of the Governor-General

The Act provides that the Governor-General may introduce into the Legislative Assembly Ordinances for the peace order and good government for the Territory. It is then for the Assembly to consider and pass such Ordinances.

In the event that the Assembly rejects or does not pass the Ordinance as introduced, the Governor General is only authorised by the Act to make such an Ordinance in a very limited set of circumstances. Any such Ordinance is subject to disallowance in Federal Parliament.

This power has never been used.

(vi) Application of Federal Laws

The Act provides that Federal laws generally do not extend to Norfolk Island unless expressed to do so. The fact that not all Federal laws apply to the Island does not give the Territory a special constitutional status. Nor does this provision of the Act restrict the Federal Government's powers under the Constitution to enact laws for the Territory. A significant number of federal laws do extend to and apply to the Territory.

(vii) The Office of the Administrator

The Norfolk Island Act provides for an Administrator of the Territory “who shall administer the government of the Territory as a Territory under the authority of the Commonwealth.” The Administrator is appointed by the Governor-General by Commission and holds office during the pleasure of the Governor-General.

The role of the Administrator

The role of the Administrator is essentially threefold.

The first element is akin to the role of a State Governor, in which the Administrator acts as the representative of the Crown, acting on advice from the Norfolk Island Government on matters falling within its responsibility. In carrying out this role, the Administrator forms part of the executive arm of the Norfolk Island Government and is involved in Norfolk Island’s legislative and parliamentary processes. The Administrator’s formal and ceremonial duties as the Crown’s representative on-Island include attending or hosting community events, commemorations and receptions, receiving visiting Heads of State or Government and other dignitaries and VIPs. In this capacity, the Administrator is also closely involved with the Island’s community, charitable and service organisations and plays an important part in acknowledging the important contribution by organisations and individuals to the well-being of the Island community.

The second element of the Administrator’s role is to act as the Federal Government’s representative on the Island. Here the responsibilities of the Office include:

- providing a regular channel of communication between the Federal and Territory Governments and between Norfolk Island residents and Federal Ministers and agencies;
- providing advice to Norfolk Island Ministers, officials and residents on Federal Government agencies, services, programs and proposals that may be relevant to the Territory;

- liaising with the Australian Defence Force on behalf of the Island community;
- participation in various community and governmental committees and working groups on Norfolk Island related issues or on federally funded projects on Norfolk Island, as requested; and
- responding to representations from the public concerning federal and territory matters, where appropriate.

As the Federal Government's on-Island representative, the Administrator and his or her Office staff also provide a range of services to Norfolk Island residents and visitors on behalf of various Federal Departments and agencies.

The third element of the Administrator's role is to exercise statutory functions conferred on his or her Office by Norfolk Island laws, by the Norfolk Island Act and by other federal laws (such as federal immigration, citizenship and environmental laws). Norfolk Island laws confer various powers and functions on the Administrator in a number of areas such as education, immigration, quarantine, customs, social services, and the management of Crown land on the Island. In exercising these powers and functions, the Administrator generally acts on ministerial advice (see below).

Exercise of the Administrator's power and functions

Although the Act states that it is the Administrator who is to administer the Government of Norfolk Island, section 7 of the Act makes provision as to the manner in which the Administrator is to exercise his or her powers and functions. That is, the Administrator is to exercise such powers and functions in accordance with the tenor of his or her Commission and the following:

- In relation to those matters specified in Schedule 2 of the Act, the Administrator is to act in accordance with the advice of the Norfolk Island Ministers in Executive Council.
- In relation to those matters which are specified in Schedule 3 of the Act, the Administrator is to act in accordance with the Norfolk Island Executive Council's advice if that advice is consistent with any instructions given by the Federal Minister responsible for the administration of the Norfolk Island Act. The Administrator must abide by instructions issued by the Federal Minister in respect of matters specified in Schedule 3 of the Act.
- In relation to matters concerning issues or subjects not specified in the Act or in a Schedule to the Act, the Administrator is to act in accordance with the instructions, if any, given by the Federal Minister. As mentioned above, the Act provides that the Norfolk Island Executive Council may advise the Administrator on all matters relating to the Government of the Territory. In practice therefore, the Administrator relies on advice provided by the members of the Norfolk Island Executive Council in the absence of any contrary instructions from the Federal Minister.

Responsibilities of the Administrator in Executive Council

The above-mentioned requirement for the Administrator in Executive Council to act on ministerial advice does not mean that the Administrator must blindly follow that advice. The principles of responsible government and the rule of law impose an obligation on the Administrator to satisfy himself or herself as to the legality or propriety of the recommended action - that the processes followed and actions to be taken are lawful or within power.

Administrator's responsibilities in the Legislative Process

Section 21 of the Act provides that every proposed law passed by the Norfolk Island Legislative Assembly shall be presented to the Administrator for assent.

The Act provides that, in respect of proposed laws that make provision only for or in relation to matters specified in Schedule 2 or Schedule 3 of the Act or both, the Administrator may assent to the proposed law, withhold assent or return to the Legislative Assembly with recommended amendments. In doing so, the Administrator must act on the advice of the Executive Council in respect of proposed laws that make provision only for or in relation to matters specified in Schedule 2 of the Act. In the case of proposed laws that make provision only for or in relation to matters specified in Schedule 3 of the Act or in both Schedules 2 and 3 of the Act, the Administrator must refer the proposed law to the Federal Minister for instructions.

In the case of a proposed law dealing with a subject matter not specified in either Schedule 2 or Schedule 3 of the Act, the Administrator is required to reserve the proposed law for the Governor-General pleasure. The Governor-General may then assent to the proposed law, withhold assent or return it to the Legislative Assembly with recommended amendments.

Fewer matters requiring referral to the Federal Minister or Governor-General

The preamble to the Norfolk Island Act states that it was the intention of the Federal Government in 1979 to review the operation of the Act after five years to decide whether the powers conferred on the Legislative Assembly should be extended. That is, whether the powers listed in Schedule 2 and Schedule 3 of the Act should be extended. Provision was made in the Act for such a review through section 67 of the Act, which allows for the making of regulations to add items to Schedule 2 or Schedule 3 and, thereby, extend the executive and legislative powers of the Norfolk Island Executive and Legislative Assembly. There was not and is not an intention that there would be a wholesale review of the Act itself.

In 1980 (a few months after self-government) the Norfolk Island Government proposed that, instead of waiting for five years to pass and then having a review of the Schedules of the Act, discussions on the addition of items to the Schedules should commence immediately and be held on an annual or ongoing basis. The then Federal Minister agreed and the discussions held since then have led to a wide array of matters being added to the list of legislative topics on which prior consultation between the two Governments is not required under the Act.

Inter-governmental discussions concerning these matters or the transfer of responsibilities or assets (such as Crown land) has been guided by the following considerations, among others:

- the degree of support within the Norfolk Island community for the changes being sought;
- whether the powers or functions under discussion are normally exercised by other Australian State or Territory Governments; and
- the capacity of the Norfolk Island Government to discharge its present and future obligations to the Norfolk Island community.

In considering these matters, regard has been had to, among other things, the findings of Commonwealth Grants Commission's 1997 report on the Island's economy and its financial and administrative capacity. The Commission in that report concluded, among other things, that the legislative assent arrangements contained in the Norfolk Island Act were generally well tailored to the Island and its circumstances.

Reason for referral mechanism (ie, to refer proposed laws and to seek instructions)

Referral to the Federal Minister or Governor-General and the subsequent inter-governmental consultation on referred proposed laws is a means of ensuring consistency between the laws or programs of the two Governments and of avoiding conflict with national obligations under international law. It also ensures consultation occurs on issues of national interest or impact.

The extent of federal involvement provided by the Act appears significant in theory, but is limited in reality. As mentioned above, policy development and service provision on Norfolk Island remains the primarily responsibility of the Norfolk Island Government - consistent with the desire of the Island community. Moreover, there have been few instances where instructions have been issued to the Administrator under section 7 of the Act. A notable example is the set of instructions issued by the Federal Minister which bind the Administrator when issuing leases or licences under the *Crown Lands Act 1996* (NI). These instructions were agreed with the Norfolk Island Government before they were issued. Similarly, relatively few proposed laws are referred under section 21 of the Act out of the annual legislative program of the Norfolk Island Assembly. Most referred laws in recent times have been those affecting Crown land held in right of the Commonwealth and arising out of the joint Federal - Norfolk Island Government Land Initiative.

The Act's arrangements provide the flexibility required to address the matters of national interest that arise from time to time and which are difficult to foresee. An example is the implementation of national gun laws following the Port Arthur Massacre. At the same time, the Act allows the Norfolk Island Government broad executive and legislative powers, with very few exceptions.

It is recognised that the Act's current framework means that there will remain the potential for demarcation problems at the margins or differences of opinions on the merits of a particular course of action. Inevitably, there will be occasional federal decisions and actions that appear to local politicians and residents as unreasonable interference in Island affairs. This does not automatically mean, however, that the Federal Government must therefore legislate to remove or minimise the scope for friction. It must be recognised that the Act and the above arrangements reflect the Federal Government's responsibilities and contingent liabilities with respect to Norfolk Island. The Federal Government and taxpayer are exposed to significant contingent liabilities and responsibilities in respect of Norfolk Island. These may result in heavy financial cost if the Territory incurs commitments greater than it can afford to pay out of its own resources or if it fails to manage its affairs properly.¹

The aim of the Norfolk Island Act is to provide the broad framework for the Island's self-governance consistent with the above federal responsibilities and obligations. The Act contains very little by way of specific machinery of government provisions. The intention is that the detail of how Norfolk Island system of governance will work would generally be spelt out in laws enacted by the Norfolk Island Legislative Assembly. At the same time, the Act provides appropriate mechanisms to monitor on-island decisions and actions to minimise the risk that the Federal Government will be called upon. For this reason, successive Federal Governments have taken the view that the Act in its current form strikes the appropriate balance between the Norfolk Island community's desire for self government and the legitimate interests of the Federal Government.

2. Norfolk Island laws relating to governance

As mentioned, the intention of the Norfolk Island Act is that the detail of how Norfolk Island system of governance will work would generally be spelt out in laws enacted by the Norfolk Island Legislative Assembly. These laws are outlined below.

(i) The Legislative Assembly Act 1979 (NI)

The Legislative Assembly Act provides for:

- The appointment by the Administrator of a Norfolk Island Returning Officer.
- An electoral roll of Norfolk Island maintained by the Returning Officer and prescribed qualifications for enrolment on the roll.
- The rules, procedures and process for general elections and by-elections of Members of the Legislative Assembly under the supervision of the Norfolk Island Returning Officer, including the open and closing of the roll, the method of voting and absentee voting.
- Procedures governing objections, recounts and disputes as validity of elections and offences relating to proscribed conduct during elections.

¹ The same can be said of other federal laws applied to Norfolk Island.

- The appointment by the Speaker of a Clerk of the Legislative Assembly in accordance with a recommendation of the Assembly. The Clerk is to be responsible to the Speaker and has such powers, functions and duties as the Speaker determines. The terms and conditions of the Clerk are determined by the Speaker in accordance with a recommendation of the Assembly.

At present, a person is entitled to enrol on the Norfolk Island electoral roll if the person is 18 years of age and has been present in Norfolk Island for a total of 900 days in the four years immediately preceding their application for enrolment. Persons previously enrolled, but who have been removed from the roll (eg, because they have been off-island for a prescribed period) are entitled to enrol after having been present on-island for 150 days in the 240 day period immediately preceding their application for enrolment.

The Act provides that persons who become entitled to enrol to vote must apply to do so within one month. Once enrolled, voting in elections is compulsory.

The date of an election or polling day is determined by the Administrator when issuing the writ for an election (see section on the Norfolk Island Act above). Nominations for election must be lodged with the Returning Officer by the twenty first day before polling day (ie, on nomination day). If on nomination day, the number of candidates does not exceed the number of vacancies, the Act provides that those candidates must be declared to be elected. If the number of candidates exceeds the number of vacancies, a poll must be held on the designated polling day.

Polling is to occur by secret ballot between 8.00 am and 5.00 pm on the designated polling day and must occur at a polling place or places appointed by the Returning Officer. Provision is made for the appointment of polling officials and scrutineers to oversight voting and for the counting of votes.

The Act provides for an 'Illinois style voting system' for general elections. This means that each of the approximately 1100 electors can cast 9 votes (ie, the same number of votes as vacant positions). However, an elector can only allocate a maximum of 4 of these 9 votes to any one candidate. That is, they can vote

- 4, 4, 1 (ie, allocate 4 votes for Candidate A, 4 votes for Candidate B, 1 vote for Candidate C); or
- 4, 3, 2; or
- 3, 3, 3;
- 3, 2, 2, 2; and so on.

The nine candidates with the highest number of total votes cast for them are elected to the Assembly.

The Department is aware of suggestions by some on Norfolk Island that, in a small community, this system may confer an electoral advantage on candidates with extended family networks or with strong sectional support (such among the commercial sector or public service).²

(ii) The Legislative Assembly Privileges Act 1987 (NI)

The Legislative Assembly Privileges Act declares in statutory form the powers (other than legislative powers), privileges and immunities of the Legislative Assembly. As mentioned above, the Norfolk Island Act empowers the Assembly to make laws declaring the latter on the proviso that these may not exceed those applicable to the Federal House of Representatives.

The Act is based on the *Parliamentary Privileges Act 1987* (Cth). It contains provisions designed to protect freedom of speech in the Assembly and to prevent Assembly proceedings or evidence given to Assembly committees from being impeached, examined or used to support a cause of action in a court or place outside of the Assembly.

It protects Members and others against contempt by defamation for statements in the Assembly, except where the contempt occurs in the face of the Assembly. Offences against the Assembly are established and the Assembly is empowered to fine a person in respect of such offences. The Assembly does not have the power to imprison a person. The Assembly also does not have the power to expel a member from membership of the Assembly.

(iii) The Public Moneys Act 1979 (NI)

The Public Moneys Act 1979 provides for the administration, investment, collection and payment of all public moneys by the Government of Norfolk Island. This includes revenue, trust, loan and other moneys as well as securities (including bonds and debentures) over the property of the Administration.

The Act provides that the Public Account created by the Norfolk Island Act (see above) consists of 4 separate accounts, called:

- the Revenue Fund, which supports most Government services and gathers revenue from general government sources;
- the Administration Services Fund, which provides a framework for the various Norfolk Island Government Business Enterprises to account separately for their operations;
- the Trust Fund, which is intended to hold monies for management of longer term liabilities such as suspense accounts for products or services yet to be provided (eg, legal aid, long service leave); and
- the Loan Fund, in which any borrowing by the Government is to be managed.

² The Commonwealth Government rejected in the early 1980s alternate voting systems proposed by Norfolk Island, including one vote per voter, out of a desire to ensure that minority views were protected. The current voting system was endorsed by the community at a referendum in 1982, following a federally funded inquiry into appropriate voting for the Island.

Accrual accounting principles have been adopted across Administration entities.

Further information on the Act and operation of the above Funds is contained in the 1997 Grants Commission Report and the audited Financial Statements published by the Norfolk Island Government for each financial year.

(iv) The Public Sector Remuneration Tribunal Act 1992 (NI)

The Act establishes a one-member tribunal called the Public Sector Remuneration Tribunal. The Administrator is authorised to appoint a person to be the Public Sector Remuneration Tribunal, and to determine the terms and conditions of the person's appointment, in accordance with a recommendation of the Legislative Assembly. The person cannot be a member of the Legislative Assembly, a member of the Public Service Board, or a public sector employee.

The Tribunal's functions are generally (i) to determine whether adjustments are to be made to wages payable to Territory public servants and (ii) to determine the remuneration and allowance of Members of the Legislative Assembly and Members of the Executive Council. In performing its functions, the Tribunal must take into account —

- (a) the public interest;
- (b) economic conditions in the Norfolk Island community;
- (c) concepts of equity and fairness that apply in the Norfolk Island community; and
- (d) such other matters as are, in the opinion of the Tribunal, relevant to the proper performance of its functions.

(v) The Public Sector Management Act 2000 (NI)

This Act governs the Territory public service and defines who is responsible for management of the public service as well as objectives, standards of conduct and terms and conditions for public sector employees.

Approximately 250 people are employed in the Territory public service. The Government is the largest employer on the Island.

The Act was a response by the Norfolk Island Government to the findings of the Commonwealth Grants Commission's Report on the Administration's lack of capacity and the 1998 strategic review of the Administration undertaken by Howard and Associates. The aim was to implement a contemporary management structure for the Territory's public service.

The Act provides for:

- The office of Chief Executive Officer, which is responsible for management of the public service, implementation of Government policy decisions and delivery of public service functions to the community. The CEO is generally answerable to the Minister responsible for the public service and is subject to ministerial directions in certain circumstances. Appointments to the position of CEO are made by the responsible Minister on the recommendation of the Legislative Assembly. A recruitment process is prescribed.
- Determination of an organisational structure and Executive Director positions with specified titles and duties.³ Executive Directors are appointed by the CEO subject to prescribed procedures in the Act.
- A statutory Public Service Board with investigative powers to, among other things:
 - determine appeals from public sector employment and recruitment decisions;
 - evaluate compliance with public sector general principles and the employment standards;
 - consider and report to the executive member on any matter relating to the public service (including a matter referred to it by the responsible Minister);
 - if required, advise the Legislative Assembly on the appointment of the Chief Executive Officer and the terms and conditions of that appointment; and
 - undertake tasks related to the administration of this Act referred to it by the executive member
- The making - by disallowable determination - of a Human Resources Policy detailing the rights and responsibilities of Territory public servants, including: recruitment and engagement; leave; promotion; occupational health and safety; suspension and termination of employment; performance management; and training and development.
- A Staff Consultative Committee
- The application of the Merit Principle in public service appointments.
- The making and approval of public sector enterprise bargaining agreements.
- Procedures for suspension, termination and redundancy of public servants.
- Determination of appeals in respect of public sector employment and recruitment decisions.

³ A copy of the Administration's current organisational structure and management arrangements is attached.

Public servants are not prevented from being elected and serving as Assembly Members. However, public servants employed in specified positions within the Administration (ie, the more senior management and policy positions) are deemed by the *Public Sector Management Act 2000* (NI) to have resigned from the public service upon their election to the Legislative Assembly.

(vi) The Referendum Act 1964 (NI)

The Act provides that a referendum on a matter relating to the peace order and good government of Norfolk Island may be initiated by:

- (a) The Federal Minister with a view to introducing proposed federal legislation in respect of that matter.
- (b) The Norfolk Island Legislative Assembly, acting through the Speaker, after resolving to hold a referendum on the matter.
- (c) A petition signed by one third or more of the electors listed on the roll and presented to the Administrator (ie, a citizen-initiated referenda).

A referendum - including a citizen-initiated referendum (CIR) - cannot be held on the same or similar topic within a 2 year period.

A CIR cannot also be held on 'any matter relating to the constitution of the Legislative Assembly'. Legal advice has confirmed that this prevents a CIR on whether a by-election or a general election should be held or in relation to the laws, rules or practices regulating the Legislative Assembly. Referenda initiated by the Federal Minister or the Legislative Assembly are not subject to this restriction.

Referenda results are not legally binding on the Norfolk Island Government or Legislative Assembly. The Government and Assembly can ignore the result and proceed accordingly.

15 referenda have been held in the 22 years since self-government in 1979 (see attached). Five of these have been CIR.

Only 2 referenda have been held on the question whether an election should be held (1983 and 2001). Neither was a CIR. Both stemmed from a formal resolution by the Legislative Assembly to hold a referendum following the Assembly's consideration of a petition presented to it by Territory electors. Essentially, this was a political decision by Members of the Assembly as petitions are not binding on the Assembly.

Procedures for referenda

The Act requires the Administrator to direct a CIR be held once the required petition has been presented to his Office. Legal advice is that, in directing a CIR to be held, the Administrator should follow the language of the petition as closely as possible, with only minor changes of language being permissible (eg, to express the matter as a question).

The Act provides the Minister, Speaker or Administrator (depending on how the referendum was initiated):

- (a) *may* prepare and distribute to electors a statement setting out such matters as he/she considers would assist an elector in considering the question or questions asked:
- (b) shall approve for distribution to electors any statement prepared by electors in favour of the question or questions; and
- (c) shall approve for distribution to electors any statement prepared by electors who oppose adoption of the question or questions.

Not every referendum held on Norfolk Island has had a Yes or No case prepared and circulated.

Voting in referenda is compulsory and polling and the count is supervised by the Norfolk Island Returning Officer. The Administrator may appoint scrutineers to represent his Office and electors at polling places and to attend the counting of votes.

The Joint Standing Committee in its June 2002 Report on Norfolk Island's electoral laws expressed concerns over the design of referenda questions and the extent of the information provided to electors in the 1998 and 1999 referenda on electoral reform. To that end, the JSC recommended that Norfolk Island elections and referenda come under the supervision of the Australian Electoral Commission.

(vii) The Administrative Review Tribunal Act 1996 (NI)

The Act establishes an Administrative Review Tribunal consisting of a President and senior members with jurisdiction to review certain decisions made by Territory Ministers and public officials.

The Tribunal's Presiding Officer is Norfolk Island's Chief Magistrate (ie, currently the Canberra-based Chief Magistrate of the Australian Capital Territory). Senior members of the Tribunal are appointed by the Administrator (acting on the advice of the Executive Council) and must be an experienced legal practitioner in order to be appointed. The Department understands that only one senior Member has been appointed at present (ie, Dr John Walsh of Brannagh). The President or Senior Member generally sit alone to determine a matter.

The Tribunal's jurisdiction is conferred under other Territory laws (eg, Norfolk Island's land and planning laws confer jurisdiction on it to review certain decisions made under those laws). The Tribunal has wide powers to take evidence and hear matters. In determining a matter, the Tribunal can affirm or vary the original decision, set it aside and substitute a new decision or remit the original decision back for reconsideration.

The Tribunal was established as part of the joint Federal - Norfolk Island Land Initiative in 1995-6 and with federal financial and other assistance. As part of this initiative, officers of the Federal Attorney-General's Department provided on-island training to Territory officials in administrative law and on the proposed operation of the Tribunal.

(viii) The Court of Petty Sessions Act 1960 (NI) and the Supreme Court Act 1960 (NI)

Norfolk Island's Court of Petty Sessions (or Magistrates Court) can hear civil claims of less than \$10,000 and summary criminal offences. It can sit with either one magistrate of the Australian Capital Territory or three local lay magistrates appointed from the Island community. Most matters are heard by the three local lay Magistrates. The Chief Magistrate of the Australian Capital Territory has been appointed as the Court's Chief Magistrate.

The Norfolk Island Supreme Court has jurisdiction over civil matters involving claims of more than \$10,000 in damages and over indictable criminal offences. Judges of the Federal Court of Australia have been appointed to the bench of the Supreme Court. The Norfolk Island Supreme Court can sit and hear matters on the Australian mainland (other than in respect of criminal matters) when required in the interests of justice.

Residents can seek to challenge Administration and Ministerial decisions and actions by applying to the Supreme Court for the grant of prerogative writs.

Appeals from decisions of the Supreme Court are determined by the Federal Court of Australia and by the High Court of Australia.

Legal aid is available on Norfolk Island. Funding is provided by the Federal Government [80%] and the Norfolk Island Government [20%].