

Ric Robinson
P.O.Box 333
Norfolk Island
20th April 2003

The Inquiry Secretary,
Joint Standing Committee on the National Capital and External Territories,
Department of the House of Representatives,
Parliament House,
Canberra ACT 2600.

Dear Sir or Madam,

In December last year the elected representatives of the people of Norfolk Island formed a Select Committee to inquire into "certain issues of significance to Norfolk Island, including electoral and governance issues." The Select Committee is still making inquiries.

Now we have this Australian Parliamentary Joint Standing Committee, (consisting of members who were not elected by the people of Norfolk Island, nor do they represent Norfolk Island), giving advice to a Minister, (who is also not elected by, nor does he represent the people of Norfolk Island), on how the Island is to be governed. Is this Australian democracy at work?

How can a Committee that ignores the legitimate referenda of the people of Norfolk Island possibly give advice on the good governance of Norfolk Island? This is a perfect example of the utter contempt that a Colonial Overlord has for its dependent territories' people and their elected representatives.

It seems rather strange that the Minister requested this Committee to investigate the governance of Norfolk Island when he was invited to have input into the properly constituted Norfolk Island Select Committee that is also looking into, amongst other things, the governance of Norfolk Island. Also the fact that the Joint Committee has a tighter time frame is of concern. Are these the same tactics the Commonwealth used to reduce the governance of Christmas Island to a Shire Council?

I would like to address item (c) of the Committees' Terms of reference in that Norfolk Island is still a dependent territory of the Commonwealth, not a part of the Commonwealth itself.



“What is not so granted to the Parliament of the Commonwealth is denied to it”
Quick and Garran – “Annotated Constitution of the Australian Commonwealth”

This speaks of the powers granted to the Commonwealth Parliament, most of which are listed in section 51 of that document.

Section 122 of that piece of legislation states:- “The Parliament may make laws for the government of any territory surrendered by any state to and accepted by the Commonwealth, or any territory placed by the queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.”

Section 122 only grants the (Commonwealth) Parliament the power to make laws for the government of the “territory placed by the Queen under the authority of and accepted by” It does not grant the Commonwealth Parliament any other power over the aforementioned territories. Nor does it give the Commonwealth the right to claim our waters or E.E.Z. as theirs.

Can Norfolk Island be said to be self-governing when the Commonwealth can override/change any law made by the elected representatives of Norfolk Island simply by the Commonwealth changing the *Norfolk Island Act 1979*? I think not. As a non-self-governing dependency of the Commonwealth of Australia section 73(e) of the United Nations Charter should be acted on.

If you can understand the advice tendered by Robert Garran in 1905, which was accepted by the then Attorney-General, that Norfolk Island would be a “dependency of the Commonwealth, not a part of the Commonwealth itself”, then it makes it easier to understand why: -

1. In 1925 the British “ORDER IN COUNCIL APPLYING PART II. OF THE FUGITIVE OFFENDERS ACT. 1881 (44 & 45 VICT. C 69) TO, INTER ALIA, NORFOLK ISLAND” states:

“ And whereas Papua and Norfolk Island are British Possessions which have been placed under the authority of the said Commonwealth”

2. Halsburys Laws of Australia includes Norfolk Island in its list of “Dependencies”
3. In 1973 the Government of the Commonwealth of Australia enacted the *Statute Law Revision Act 1973*, which amended various Acts of the Commonwealth Government that extended to the dependent territories. It omitted phrases such as “Territories not forming part of the Commonwealth” and inserted “External Territories” instead. (“Federal Jurisdiction in Australia” Cowen and Zines 1978, Oxford University Press, Melbourne at page 146.)

It was High Court Justice Deane who declared that “.....parliament cannot ‘expunge the past’” [Clr 478, ALR 22}

4. Section 35 of the International Labor Organization’s Constitution require that signatories declare why particular I.L.O. Conventions do not apply to a particular place after they have been ratified. In over 30 cases the Commonwealth claimed exemption for Norfolk Island on the grounds that Norfolk Island was not a part of metropolitan Australia.

5. The Australian High Court Case, *Capital Duplicators v. The Australian Capital Territory* (1992, 177 CLR @ 274), Justices Brennan, Deane and Toohey were of the opinion that; "... The Commonwealth of Australia Act ensured that the territory of the Commonwealth was coterminous with the aggregate of the territories of the Original States. A colony or territory which was not then a part of a State did not become a part of the Commonwealth."
6. In a letter dated 14th June 1996 the British Commonwealth and Foreign Office stated that, it was the British Governments' opinion that Norfolk Island was legally "a dependent territory of the Commonwealth of Australia."
7. On March 18th 1998 the Norfolk Island Legislative Assembly unanimously agreed that Norfolk Island was a dependent territory of the Commonwealth of Australia.
8. The Commonwealth Governments' "Acts Interpretation Act 1901" states at section 17 "(a) *Australia or the Commonwealth* means the Commonwealth of Australia and, when used in a geographical sense, includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory,"

Attached are 5 copies of a United Nations of Australia Association Report (with Appendices). I submitted this report to a previous Australian Parliamentary Committee and one member moved that in order to save printing costs it would be listed as an exhibit. Needless to say it was not printed as part of my submission, nor was it listed in the Committees' "list of exhibits". I hope the same fate does not happen to the report this time.

Also attached are 5 copies of a " Political History of the Pitcairn People in Norfolk Island. I hope that at least some members will find the time to read them.

Yours Sincerely,

A handwritten signature in cursive script that reads "Robinson".

Ric. N. I. Robinson