

Part 2 – Amendments relating to elections

Summary of key sections

- 3.1 Part 2 of the Territories Law Reform Bill 2010 (the Bill) introduces amendments relating to elections. In 2003 the committee examined the term of the legislative assembly and other features of the Norfolk Island electoral system.¹ In particular, the committee recommended that the term of the Legislative Assembly be extended to four years and that the House can be dissolved after three years from the declaration of the election results.
- 3.2 The key provisions under Part 2 include:
- **Proposed subsection 35(2)** provides for the maximum time of 4 years and the minimum time of 3 years before the term of a Norfolk Island Legislative Assembly expires or must be dissolved.
 - **Proposed subsection 35(3)** provides that if the next succeeding general election is required because of section 39AB or 39AC, that election may be held less than 3 years after the first meeting mentioned in subsection 35(2). New section 39AB enables the Commonwealth Minister who administers the Norfolk Island 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

¹ Joint Standing Committee on the National Capital and External Territories, *Quis custodiet ipso custodes?*, December 2003, pp. 128-131 and pp. 134-140.

performing its functions or is conducting its affairs in a grossly improper manner. Sections 39AB and 39AC are examined in Chapter 2.

- **Proposed subsection 31(3)** enables the making of regulations prescribing the electoral system to be used in Norfolk Island Legislative Assembly elections and the filling of casual vacancies.
- **Proposed subsections 31(4) and 31(5)** enable the method and manner in which votes are to be cast and counted in Norfolk Island Legislative Assembly elections as well as filling of casual vacancies to be determined via regulations.
- **Proposed section 37A** enables the Norfolk Island Government to make arrangements with the Australian Electoral Commission (AEC) to conduct general elections on their behalf, as well as the filling of casual vacancies.

Proposed subsections 31(4) and (5) – regulations to determine method for counting and casting votes

Background

3.3 Proposed new subsections 31(4) and (5) 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. Proposed subsections 31(4) and 31(5) are reproduced in full below:

Proposed subsections 31(4) and 31(5)

- (4) The regulations may make provision for or in relation to the following matters:*
 - (a) the method of balloting;*
 - (b) the manner in which voters are to indicate their votes;*
 - (c) the manner in which voters' votes are to be used to obtain a result for an election;*
 - (d) matters incidental or ancillary to the above matters.*
- (5) The regulations may make provision for or in relation to the following matters:*
 - (a) the filling of casual vacancies in the offices of members of the Legislative Assembly;*
 - (b) matters incidental or ancillary to the above matter.*

Analysis

3.4 The Norfolk Island Government strongly opposed change to voting and vote counting methods to be prescribed in Commonwealth regulations on the grounds that these were already provided for in Norfolk Island legislation. The Norfolk Island Government stated:

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.²

3.5 The Explanatory Memorandum states:

[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.³

3.6 In relation to the drafting of regulations, the Attorney-General's Department stated:

The Attorney-General's Department is planning to commence drafting regulations in relation to elections in the future. The Department of Finance and Deregulation, the Australian Electoral Commission and the Norfolk Island Government and Administration will be consulted in the drafting process. The Norfolk Island Government and Administration will also be given the opportunity to comment on the draft regulations before they are registered.⁴

3.7 During the Canberra public hearing, the Attorney-General's Department was scrutinised about the absence of the regulations in relation to the financial framework and the electoral system.

3.8 The Attorney-General's Department indicated that during February 2010 it was having discussions with the Norfolk Island administration 'on setting up a working group to formulate the regulations.'⁵ In relation to the release of draft regulations, the Attorney-General's Department

2 Government of Norfolk Island, 25 February 2010, *Submission in relation to the Exposure Draft Territories Law Reform Bill 2010*, p. 3.

3 *Explanatory Memorandum*, p. 24.

4 Attorney-General's Department, *Submission 7*, p. 10.

5 Ms Alison Green, Attorney-General's Department, *Transcript T2*, p. 7.

indicated that the aim is to have them available 'by the time the bill is being debated in the winter sittings.'⁶

- 3.9 The Norfolk Island Government, in a supplementary submission, advised that it 'continues to hold the view that voting methods should be specified in the *Legislative Assembly Act 1979* as the relevant Norfolk Island enactment.'⁷
- 3.10 The EcoNorfolk Foundation, in addressing the electoral reforms generally, stated that 'we agree with Minister O'Connor that the amendments to the *Norfolk Island Act 1979* to reform the electoral system and establish a contemporary financial management framework will assist the Norfolk Island government in meeting the needs and expectations of our community and in planning for our future.'⁸ Similarly, Mr Michael King MLA and Leader of the Opposition indicated his general support for the provisions in the Bill.
- 3.11 Dr Candice Snell in relation to the proposed electoral reforms asked 'have the people of Norfolk Island asked for the change, where is the implied need???'⁹

Proposed subsections 35(2), 35(3) – terms of Legislative Assembly

Background

- 3.12 Proposed subsection 35(2) will 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?*
- 3.13 Proposed subsection 35(3) provides that if the next succeeding general election is required because of section 39AB or 39AC, that election may be held less than 3 years after the first meeting mentioned in subsection 35(2).

6 Ms Alison Green, Attorney-General's Department, *Transcript T2*, p. 25.

7 Government of Norfolk Island, *Submission 6.1*, p. 8.

8 EcoNorfolk Foundation, Ms Denise Quintal, *Transcript T1*, p. 42.

9 Dr Candice Snell, *Submission 13*, p. 2.

- 3.14 New section 39AB enables the Commonwealth Minister who administers the Norfolk Island 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.
- 3.15 New Section 39AC enables the Governor-General to dissolved 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. New sections 39AB and 39AC are examined in Chapter 2.

Analysis

- 3.16 The Norfolk Island Government generally agrees with the implementation of fixed terms for the Legislative Assembly. The Norfolk Island Government stated:

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.¹⁰

- 3.17 The Speaker of the Norfolk Island Legislative Assembly, Ms Robin Adams JP was critical of the proposal to fix the terms of the Assembly. Ms Adams said in relation to this and other measures that 'there are several key changes proposed in the bill which, in my opinion, clearly diminish evolving trends and the basic tenets of democracy.'¹¹ In relation to the proposal for fixed terms, Ms Adams stated:

...fixing the term of the assembly to be no less than three years is a devolution by default of the community's existing right, under the *Referendum Act 1964*, through a citizen initiated referendum to request the Administrator to dissolve the assembly, as was

10 Government of Norfolk Island, *Submission 6*, p. 37.

11 Ms Robin Adams JP, Speaker of the Norfolk Island Legislative Assembly, *Transcript T1*, p. 27.

initiated in 2001. The proposal to fix the term is not in keeping with local trends to have the power of recall in legislation.¹²

Proposed section 37A Arrangements with the Australian Electoral Commission

Background

3.18 Proposed section 37A enables the Norfolk Island Government to make arrangements with the AEC to conduct general elections on their behalf, as well as the filling of casual vacancies. This recommendation derives from recommendation 26 made by the committee in its 2003 report *Quis custodiet ipsos custodes?* The committee in recommendation 26 and in its 2002 Report entitled *Norfolk Island Electoral Matters* recommended that all elections and referenda on Norfolk Island come under the supervision of the AEC.

3.19 Proposed section 37A is reproduced in full below:

37A Arrangements with the Australian Electoral Commission

The Chief Minister may, on behalf of the Administration, enter into an arrangement under section 7A of the Commonwealth Electoral Act 1918 in relation to:

- (a) general elections of members of the Legislative Assembly; and*
- (b) the filling of casual vacancies in the offices of members of the Legislative Assembly.*

Analysis

3.20 The Norfolk Island Government in relation to the possible role of the AEC stated:

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.¹³

12 Ms Robin Adams JP, Speaker of the Norfolk Island Legislative Assembly, *Transcript T1*, p. 27.

13 Government of Norfolk Island, 25 February 2010, *Submission in relation to the Exposure Draft Territories Law Reform Bill 2010*, p. 3.

Conclusions

- 3.21 The measures under Part 2 of the Bill propose reform to the electoral system focusing on the term of the Norfolk Island Legislative Assembly, the method for counting and casting votes, and possible arrangements with the AEC. The committee notes the concern raised by the Norfolk Island Government that at the time of considering the Bill, the regulations had not been developed. A general comment about this has been made by the committee in Chapter 1.
- 3.22 Proposed subsection 31(4) states that ‘regulations may make provisions for or in relation to the following matters:
- (a) the method of balloting;
 - (b) the manner in which voters are to indicate their votes.
- 3.23 These issues are not insignificant. In 2003 the committee examined the electoral system in detail and identified the advantages and disadvantages of various electoral systems.
- 3.24 Proposed subsection 35(2) will provide for a minimum term of three years and a maximum term of four years. The Norfolk Island Government stated that ‘we generally agree with the creation of "fixed" terms for the Legislative Assembly of not less than three years or more than four years.’
- 3.25 Proposed section 37A enables the Norfolk Island Government to make arrangements with the AEC to conduct general elections on their behalf. The AEC is highly regarded internationally for its effective and reliable electoral administration. The current and future Norfolk Island Governments could benefit significantly by consulting with the AEC, where necessary, and more importantly allowing the AEC to take on the role of conducting general elections as well as filling casual vacancies. This role may become more significant as the role and status of opposition members in the Norfolk Island Legislative Assembly increases over time. The role of the AEC in conducting elections will bring a high degree of assurance for all candidates and, in the event that there is disputation over election results, the AEC’s reputation will provide assurance to all candidates that the election has been conducted to the highest standards.
- 3.26 The most recent election on Norfolk Island was held on 17 March 2010 with the declaration of the poll being gazetted on 19 March 2010. The date for the next poll is up to three years away. The committee believes that there would be merit in delaying consideration of the measures in Part 2 of the Bill until 2011. This will provide additional time for the

Commonwealth to consult with the Norfolk Island Government and community about the future electoral framework. The committee recommends that the Government in the first year of the next parliament reintroduce amending legislation which deals with electoral reform on Norfolk Island. The measures should be reflected in the relevant Norfolk Island Legislation. In addition, when the Commonwealth legislation is introduced to the Parliament it should be referred to the Joint Standing Committee on the National Capital and External Territories for a bills inquiry.

Recommendation 5

3.27 The committee recommends that Part 2 - Amendments relating to elections be removed from the Territories Law Reform Bill 2010.

The Commonwealth Government should consult with the Norfolk Island Government and community about the proposals for electoral reform and reintroduce amending legislation to the Commonwealth Parliament in 2011.

When the amending legislation is tabled in the Commonwealth Parliament, it should be referred to the Joint Standing Committee on the National Capital and External Territories for a bills inquiry.