

## Part 3 – Amendments relating to finance

### Background

- 4.1 Schedule 1, Part 3 of the Bill will amend the *Norfolk Island Act 1979* (Cwlth) to ‘enable the implementation of a contemporary financial management framework.’<sup>1</sup>
- 4.2 In particular, the new financial management framework will be ‘a customised and proportionate...framework that addresses the management of public money and public property, preparation of budgets, financial reporting, annual reports and procurement’ by the Government of Norfolk Island and its Administration.’<sup>2</sup>
- 4.3 This includes appointment of the Commonwealth Auditor-General to undertake audits of the annual financial statements of the Administration and Territory authorities.<sup>3</sup> The option of appointing a Commonwealth Financial Officer to provide assistance to Norfolk Island is also included.<sup>4</sup>
- 4.4 Further, the provisions in the proposed Bill implementing a financial framework will come into effect on 1 July 2010.

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1 Minister for Home Affairs, *Second Reading Speech*, Territories Law Reform Bill 2010, 17 March 2010, p. 6.

2 Attorney-General’s Department, *Submission 7*, p. 7.

3 *Explanatory Memorandum*, p. 29.

4 *Explanatory Memorandum*, p. 36.

## Summary of key sections

- 4.5 A summary of the key sections contained in Schedule 1, Part 3 follows.
- 4.6 **Proposed subsection 4(1) and sections 25, 27, 47 and 48** will clarify the definition of public money and public property of the Territory to correspond with the definition contained in section 5 of the *Financial Management and Accountability Act 1997* (Cwlth).
- 4.7 **Proposed subsection 4(1) and section 46** will define *Territory Authority* modelled on the definition of Commonwealth Authority in section 7(1) of the *Commonwealth Authorities and Companies Act 1997* (Cwlth).
- 4.8 **Proposed section 48** will require the Legislative Assembly to make appropriations to support expenditure by the Government of Norfolk Island, including Ministers and the Administration.
- 4.9 **Proposed new section 48A** will require the Norfolk Island Minister of Finance to prepare annual budgets for the Administration and Territory Authorities. These annual budgets must be prepared in accordance with Regulations and Ordinances made under the Norfolk Island Act. This section also provides that the Norfolk Island Minister for Finance must as soon as practicable cause copies of annual budget statements to be tabled in the Legislative Assembly and provided to the Administrator. Once received, the Administrator is required to provide a copy to the relevant Commonwealth Minister.
- 4.10 **Proposed new section 48B** will require the Norfolk Island Minister for Finance to prepare annual financial statements for the Administration and Territory Authorities as soon as practicable after the end of a financial year and then provide the financial statements to the Commonwealth Auditor-General for audit.
- 4.11 **Proposed new section 48C** will require the Commonwealth Auditor-General to prepare an audit report on the annual financial statements required under section 48B. The Commonwealth Auditor-General must provide a copy of the audit report to the Norfolk Island Minister for Finance, the Administrator and the responsible Commonwealth Minister. The Norfolk Island Minister for Finance must table a copy of that audit report in the Legislative Assembly, accompanied by the annual financial statements, as soon as practicable after receiving it. The responsible Commonwealth Minister must cause a copy of the audit report to be tabled in each House of the Parliament as soon as practicable.

- 4.12 **Proposed new section 48D** enables the Commonwealth Auditor-General to charge audit fees for statement audits made under section 48C.
- 4.13 **Proposed new section 48E** will allow the Commonwealth Auditor-General to conduct performance audits of the Administration and Territory Authorities. The Commonwealth Auditor-General must provide a copy of the report to the Norfolk Island Minister for Finance, the Administrator and the responsible Commonwealth Minister. The Auditor-General must cause reports on performance audits under this section to be tabled in each House of the Parliament. The Norfolk Island Minister for Finance must table a copy of that report in the Legislative Assembly as soon as practicable after receiving it. The responsible Commonwealth Minister must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable. Copies of the audit report must also be supplied to the relevant Chief Executive Officer and manager or managers of the Territory authority which was the subject of the audit.
- 4.14 **Proposed new section 48F** requires the Commonwealth Auditor-General to seek comments on proposed reports required under section 48E. Where the Administration was the subject of the audit, the Auditor-General must provide the Chief Executive Officer with a copy of the proposed report. Where a Territory authority was the subject of the audit, the Auditor-General must provide the responsible manager or managers with a copy of the proposed report.
- 4.15 **Proposed new section 48G** will ensure that the Commonwealth Auditor-General has all of the powers and functions necessary to undertake his or her obligations under the Norfolk Island Act.
- 4.16 **Proposed new section 48H** will require the Norfolk Island Minister for Finance to prepare periodic financial statements in relation to the Administration and each Territory authority. The financial statements must be prepared in accordance with regulations and Orders made under the Norfolk Island Act. This section also provides that the Norfolk Island Minister for Finance must as soon as practicable cause copies of the financial statements to be tabled in the Legislative Assembly and provided to the Administrator. Once received, the Administrator is required to provide a copy to the relevant Commonwealth Minister.
- 4.17 **Proposed new section 48J** will require the Chief Executive Officer to prepare annual reports as soon as practicable after the end of a financial year. The annual report must be prepared in accordance with regulations, and must report on the operations of the Administration and Territory authorities in that financial year. This section also provides that the annual report must be given to the Norfolk Island Chief Minister, who, as soon as

practicable after receiving it must table a copy of the annual report in the Norfolk Island Legislative Assembly, and provide a copy of the annual report to the Administrator. As soon as practicable after receiving a copy of the report, the Administrator must send it to the responsible Commonwealth Minister.

- 4.18 **Proposed new sections 48K and 48L** will provide for the Chief Executive Officer and/or the Minister for Finance to request, by written notice, a Territory authority to provide information in order to prepare the reports and statements required to be produced by them under the Norfolk Island Act.
- 4.19 **Proposed new section 48M** will place an obligation on the Chief Executive Officer to manage the affairs of the Administration in a way that promotes the proper use of the Administration's resources.
- 4.20 **Proposed new section 48N** will place an obligation on the Manager or managers of a Territory Authority to manage the affairs of the Territory Authority in a way that promotes the proper use of the Authority's resources.
- 4.21 **Proposed new section 48P** will require the Norfolk Island Minister for Finance to ensure that the accounts and records of the Administration properly record and explain the transactions and financial position of the Administration.
- 4.22 **Proposed new section 48Q** will require the responsible manager or managers to ensure that the accounts and records of a Territory Authority are prepared and kept in accordance with regulations and Orders made under the Norfolk Island Act.
- 4.23 **Proposed new section 48R** will provide for regulations to be made in relation to public money and public property of the Territory, and other resources of the Administration. This provision will allow the Commonwealth to prescribe regulations to supplement and provide further detail of the financial framework provisions in Part VI of the Norfolk Island Act.
- 4.24 **Proposed new section 48S** will provide for regulations to be made in relation to public money, property and other resources of the Territory and Territory Authorities. This provision will allow the Commonwealth to prescribe regulations to supplement and provide further detail of the financial framework provisions in Part VI of the Norfolk Island Act.

- 4.25 **Proposed new section 48T** will allow the Commonwealth Finance Minister to make Orders to supplement and provide further detail of the financial framework provisions in Part VI of the Norfolk Island Act.
- 4.26 **Proposed new section 51** will require the Norfolk Island Minister for Finance to provide to the responsible Commonwealth Minister reports, documents and information relating to the operations of the Administration.
- 4.27 **Proposed new section 51A** requires the Norfolk Island Minister for Finance to provide to the Commonwealth Finance Minister, reports, documents and information relating to the operations of the Administration.
- 4.28 **Proposed new section 51B** will require the Norfolk Island Minister for Finance to provide to the responsible Commonwealth Minister reports, documents and information relating to the operations of a Territory authority. These are to be provided on request and in accordance with time limits set by the responsible Commonwealth Minister.
- 4.29 **Proposed new section 51C** provides the Commonwealth Finance Minister with the same authority to access relevant documents and information as the responsible Commonwealth Minister under section 51B.
- 4.30 **Proposed new section 51D** will enable the appointment of a Commonwealth Financial Officer for Norfolk Island 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 Norfolk Island Act.
- 4.31 **Proposed new section 51E** will provide a power for the responsible Commonwealth Minister to apply for an injunction to enforce compliance with the financial management and accountability provisions (defined in subsection 4(1)).

## A new financial framework

### Current financial reporting practice

- 4.32 The Norfolk Island *Public Moneys Act 1979* requires that each of the four funds (Revenue Fund, the Administration Services Fund, the Trust Fund

and the Loan Fund) prepare: an income and expenditure statement, appropriation account, balance sheet, statement of cash flows, and notes to and forming part of the financial statements.<sup>5</sup>

- 4.33 The Government of Norfolk Island for the first time recently produced audited financial statements in accordance with International Financial Reporting Standards (IFRS). 'Statements required by the *Public Moneys Act 1979* were also produced, but not audited.<sup>6</sup>
- 4.34 The Attorney-General's Department stated that the Department of Finance and Deregulation had 'advised that in its view, these statements are not prepared in accordance with accepted accounting conventions.'<sup>7</sup>
- 4.35 In addition, the Attorney-General's Department advised that previous annual financial statements of the Government of Norfolk Island did not follow generally accepted accounting conventions. While annual financial statements were prepared for the Norfolk Island Administration, these did not include the two Territory authorities.<sup>8</sup> Monthly financial indicators are prepared, 'although they are limited to certain financial statements and only for certain funds.'<sup>9</sup>
- 4.36 In its 2008 report entitled *Review of the cost to maintain the public grounds and reserves by the public sector*, the Norfolk Island Legislative Assembly Public Accounts and Estimates Committee (PAEC) made a number of findings in regard to performance management and financial management relating to the Norfolk Island Administration.
- 4.37 In particular, in regard to performance management, the PAEC found that the Administration did not have in place a system that quantifies work output against financial input. The PAEC stated:

Unfortunately, the Administration does not have in place at this time, a system that quantifies work output against financial input. The inability to measure work output undermines a manager's capacity to both evaluate and compare his/her department's efficiency. Regrettably, the Committee could not expand on performance with managers however sees it as an important aspect of necessary reform which was highlighted from this inquiry. Management must monitor their service delivery against

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5 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 33.

6 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 33.

7 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 33.

8 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 33.

9 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

key performance indicators on an ongoing basis to meet their relevant objectives. The continued effectiveness, including relevance and priority of every core business unit within every department must be evaluated annually.<sup>10</sup>

4.38 However, the PAEC noted that measuring and monitoring performance in the public sector is provided for in the Human Resources Policy and Procedures Manual, created under the Norfolk Island *Public Sector Management Act 2000*.

4.39 Recommendation 11 of the PAEC's report stated:

The CEO and CMG establish and implement the Norfolk Island Administration Performance Management System as provided for in Human Resources Policy and Procedures Manual.<sup>11</sup>

4.40 In regard to financial management, the PAEC stated that creation of the performance management system under recommendation 11 is the first step towards financial and public sector reform. Further, the obligation of the Norfolk Island public sector to plan, budget and report on accruals, outcomes and outputs was emphasised and tied to the effective delivery of services. The PAEC stated:

The creation of the Performance Management System at Recommendation 11 is seen as the first tangible step towards financial and public sector reform. The 12<sup>th</sup> Legislative Assembly have included in their strategic objectives the continued improvement and reform of service delivery by the public sector. Clearer accountability, underpinned by a robust performance monitoring and evaluation regime must create a performance culture within the public sector. Management focus must improve the responsiveness of the public sector to the needs of the government and the community. Financial management must put departments on more business like footings with management obligation to plan, budget and report on accruals, outcomes and outputs. The Committee sees effective financial management as closely connected to the public sector's ability to meet the

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10 Public Accounts and Estimates Committee, First Report to the Parliament, March 2008, *Review of the Cost to Maintain the Public Grounds and Reserves by the Public Sector*, Norfolk Island Legislative Assembly, pp 26-27.

11 Public Accounts and Estimates Committee, First Report to the Parliament, March 2008, *Review of the Cost to Maintain the Public Grounds and Reserves by the Public Sector*, Norfolk Island Legislative Assembly, p. 27

expectations of the Norfolk Island Government in delivery of their objectives.<sup>12</sup>

4.41 Norfolk Labor was critical of the financial management capacity of the Government of Norfolk Island and highlighted various issues in regard to financial management. Norfolk Labor drew attention to:

- 'Gross and ill-considered public spending in most recent years has depleted the public account and undermined the capacity to maintain existing services and to fund on-going government in general
- Over-spending tarnished further by a distinct lack of transparency, misinformation and accountability
- Government policy is now driven by a desire to contain and/or reduce expense resulting in continuing poor quality outcomes for the island community
- Statutory deadlines for financial reporting not being met.<sup>13</sup>

4.42 EcoNorfolk agreed with the need for a new financial framework and stated:

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 to plan for our future.<sup>14</sup>

4.43 Mr Michael King MLA was highly critical of the current budgetary position of the Government of Norfolk Island since 2006 when the Government of Norfolk Island had undertaken to reform its financial management practices. Mr Michael King MLA stated:

Measures to improve the budgetary position have failed in the extreme. Since 2006 the Government's general reserves have been steadily depleted; its quick ratio of liquidity (current realisable assets to current liabilities) falling from 1.2:1 to 0.4:1 clearly evidencing an inability to pay debts as they fall due. Capital outlay in the general revenue area is non-existent having fallen steadily since 1979 from some 12% of expenditure, through to some 2% in

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12 Public Accounts and Estimates Committee, First Report to the Parliament, March 2008, *Review of the Cost to Maintain the Public Grounds and Reserves by the Public Sector*, Norfolk Island Legislative Assembly, p. 27

13 Norfolk Labor, *Submission 3*, p. 1.

14 EcoNorfolk Foundation Inc, *Submission 13*, p. 2.



2006, to zero in 2008/2009. A persistent decline in capital outlay is a clear sign that capital maintenance, capital replacement and capital purchases are being deferred (even ignored) with resultant obsolescence, inefficiencies, OHS issues and mounting long-term outlays which in Norfolk's case are totally unfunded. The 'current cash balance' of the consolidated public account diminished by some \$9m in 2008/2009. A lay appreciation of this fall is that some \$3m can be attributed to the GFC [Global Financial Crisis] or the resultant decline in visitor numbers. The remainder of this fall can be sheeted home to excessive, improperly planned and managed and unbudgeted expenditure by the Government. There is ample evidence available to support claims that projects were not properly costed, that public procurement processes were not followed and that some expenditure was not warranted. These features reflect a distinct departure from any reform path and an abandonment of any concept of financial planning.<sup>15</sup>

## Purpose of the new financial framework

- 4.44 The financial management framework included in the proposed Bill will:
- 'bring Territory authorities into Norfolk Island's consolidated financial statements, budgets and annual reports (providing a more complete picture of Norfolk Island's financial position)'; and
  - 'introduce a statutory requirement for all financial statements, annual reports, audit reports and budgets to be tabled in the Norfolk Island Legislative Assembly (currently some of these documents are tabled, by convention only).'<sup>16</sup>
- 4.45 Further, subject to consultation with Norfolk Island, the financial management framework may address:
- 'minimum budget requirements including the production of qualitative and quantitative statements (e.g. comprehensive budget financial statements, based on external reporting standards, including forward projections);
  - commitments to spend public money; and
  - accounts and records.'<sup>17</sup>

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15 Mr Michael King MLA, *Submission 2*, pp 2-3.

16 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

17 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 35.

## Regulations and orders

- 4.46 The details of the financial framework will be 'included in regulations and/or Commonwealth Finance Minister's Orders made under the *Norfolk Island Act 1979 (Cwlth)*.'<sup>18</sup>
- 4.47 This reflects the current Commonwealth financial framework, 'which provides details supplementing financial management and accountability requirements in the *Financial Management and Accountability Act 1997*, the *Commonwealth Authorities and Companies Act 1997*, the *Charter of Budget Honesty Act 1998* and others in instruments such as the *Financial Management and Accountability Regulations 1997* and *Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 1 July 2009)*.'<sup>19</sup>
- 4.48 The Attorney-General's Department advised that the Commonwealth Finance Minister's Orders 'are likely to establish minimum requirements for budgeted, periodic and annual financial statements, providing for greater transparency, comparability and readability of Norfolk Island's financial statements.'<sup>20</sup>
- 4.49 The minimum requirements established 'are likely to include compliance with Australian Accounting Standards, which are based on IFRS, and include additional disclosure to reflect requirements particular to Australia and the not-for-profit sector, in particular.'<sup>21</sup>
- 4.50 Compliance with Australian Accounting Standards will ensure that Norfolk Island practice 'is consistent with Australian Local Governments, State Governments and the Commonwealth Government.'<sup>22</sup>
- 4.51 In addition, the Orders may 'formalise the recent change to IFRS-compliant annual financial statements.' The Attorney-General's Department commented that the benefit is that 'periodic financial statements' produced for Norfolk Island 'are likely to be more comprehensive than those currently produced, providing more complete and accurate financial information as to the ongoing financial position of the Norfolk Island Government.'<sup>23</sup>

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18 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

19 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

20 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

21 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

22 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

23 Attorney-General's Department, *Submission 7.1*, Question No. 7, p. 34.

- 4.52 The Government of Norfolk Island will be able to add further detail to Orders ‘where they see additional benefit to users of those statements in doing so.’<sup>24</sup>

## Implementation of a new financial framework

- 4.53 The Government of Norfolk Island agreed in principle that a new financial framework is desirable, but that it should be established under Norfolk Island legislation and regulations. The Government of Norfolk Island stated:

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.<sup>25</sup>

- 4.54 The Attorney-General’s Department advised that a working group had been established to develop regulations which would enable the implementation of the new financial framework for Norfolk Island. The working group consists of departmental officers, Norfolk Island Administration officers and members of the Government of Norfolk Island. The Attorney-General’s Department stated:

A joint working group is to be convened to discuss and develop the financial framework regulations. This working group will involve officers from the Attorney-General’s Department, the Department of Finance and Deregulation and the officers you have nominated from the Norfolk Island Administration and the Norfolk Island Government. The purpose of the working group will be to discuss the proposed content of the regulations, and ensure that proposals are understood and able to be implemented by the Norfolk Island Administration and Territory authorities.<sup>26</sup>

- 4.55 The Government of Norfolk Island commented that as part of the working group process, the Administration was raising issues about the costs associated with the proposed Bill. The Government of Norfolk Island stated:

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24 Attorney-General’s Department, *Submission 7.1*, Question No. 7, p. 34.

25 Government of Norfolk Island, *Submission 6*, p. 38.

26 Attorney-General’s Department, *Submission 7.1*, Question No. A, Attachment A, p. 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.<sup>27</sup>

- 4.56 The Attorney-General's Department stated that the working group would meet before July 2010 to discuss the content of regulations relating to the new financial framework. The Attorney-General's Department stated:

It is anticipated that this working group will meet prior to July to discuss the content of the regulations. The Norfolk Island Government and Administration will be given the opportunity to comment on draft regulations before they are registered.<sup>28</sup>

## Conclusions

- 4.57 While the annual financial statements of the Government of Norfolk Island have recently been prepared using International Financial Reporting Standards, the statements did not comply with accepted accounting conventions.
- 4.58 Further, previous annual financial statements of the Government of Norfolk Island did not follow generally accepted accounting conventions. Although annual financial statements were prepared for the Norfolk Island Administration, these did not include the two Territory authorities and monthly financial indicators are limited to certain financial statements and only for certain funds.
- 4.59 Further, the Norfolk Island Public Accounts and Estimates Committee (PAEC) in its 2008 report, made a number of critical findings in regard to performance and financial management by the Norfolk Island public sector. In particular, the committee notes the PAEC findings which state that:

Financial management must put departments on more business like footings with management obligation to plan, budget and report on accruals, outcomes and outputs. The Committee sees

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27 Government of Norfolk Island, *Submission 6*, p. 38.

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

effective financial management as closely connected to the public sector's ability to meet the expectations of the Norfolk Island Government in delivery of their objectives.<sup>29</sup>

- 4.60 Taking into consideration the PAEC's findings and further evidence received, implementation of a new financial framework will assist the Government of Norfolk Island and its Administration by allowing for greater financial transparency and accountability and comparison between other Australian jurisdictions.
- 4.61 A joint working group has been established to develop regulations to enable the implementation of a new financial framework for Norfolk Island.
- 4.62 The committee supports the working group approach to developing regulations accompanying the proposed changes to the financial management framework as it will allow for any issues or concerns to be discussed and addressed prior to implementation.

## **Proposed subsection 4(1) – definition of *responsible manager***

### **Background**

- 4.63 Proposed subsection 4(1) will include a definition of *responsible manager*. The term *responsible manager* 'will identify the person responsible for the finances of the Territory authority for the purpose of the new financial framework in Part VI of the Norfolk Island Act.'<sup>30</sup>

### **Analysis**

- 4.64 The Government of Norfolk Island made a number of comments in relation to 'concerns that arise on a casual reading of the proposed amendments contained in Part 3' of the Bill.<sup>31</sup>
- 4.65 Specifically, the Government of Norfolk Island raised concern about the definition of *responsible manager* and stated the definition 'is extremely

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29 Public Accounts and Estimates Committee, First Report to the Parliament, March 2008, *Review of the Cost to Maintain the Public Grounds and Reserves by the Public Sector*, Norfolk Island Legislative Assembly, p. 27

30 *Explanatory Memorandum*, p. 27.

31 Government of Norfolk Island, *Submission 6*, p. 38.

vague and likely in the variety of circumstances in which the Administration and related entities operate give rise to confusion.’<sup>32</sup>

- 4.66 The Explanatory Memorandum states that ‘the definition of responsible manager means the most senior individual (or group of individuals - where the body has a governing council) with the body who (or which) is responsible for the operation and finances for the Territory Authority.’<sup>33</sup>

## Conclusions

- 4.67 Subsection 4(1) will create a definition for *responsible manager* that is then applied to other relevant items that apply to the new financial framework, provided for under Part 3 of the Bill.
- 4.68 The definition of *responsible manager* is provided in the Explanatory Memorandum as ‘the most senior individual (or group of individuals - where the body has a governing council) with the body who (or which) is responsible for the operation and finances for the Territory Authority.’

## **Proposed new section 48(F) – Requirement of Commonwealth Auditor-General to seek comments on proposed performance audit reports**

### Background

- 4.69 New section 48F will require the Commonwealth Auditor-General to seek comments on proposed [performance audit] reports required under section 48E.<sup>34</sup>
- 4.70 In cases ‘where the Administration was the subject of the audit, the Auditor-General must provide the Chief Executive Officer with a copy of the proposed report.’<sup>35</sup>
- 4.71 Further, ‘where a Territory authority was the subject of the audit, the Auditor-General must provide the responsible manager or managers with

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32 Government of Norfolk Island, *Submission 6*, p. 38.

33 *Explanatory Memorandum*, p. 27.

34 *Explanatory Memorandum*, p. 31

35 *Explanatory Memorandum*, p. 31

a copy of the proposed report.’ A timeframe is imposed on receiving comments.<sup>36</sup>

## Analysis

- 4.72 New Division 2 of the Bill inserts several new proposed sections ‘which provides that the Auditor-General’s powers and functions apply in respect of Norfolk Island as provided under the Auditor-General Act.’ In addition, ‘where the scope of that Act does not otherwise extend, the Norfolk Island Act is amended to enable those provisions to apply.’<sup>37</sup>
- 4.73 The Government of Norfolk Island advocated that ‘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.’<sup>38</sup>
- 4.74 Section 48F is modelled on section 19 of the *Auditor-General Act 1997* (Cwlth). Section 19 appears in full below.

### 19 *Comments on proposed report*

- (1) *After preparing a proposed report on an audit of an Agency under section 15, the Auditor-General must give a copy of the proposed report to the Chief Executive of the Agency.*
- (2) *After preparing a proposed report on an audit of a body under section 16 or 17, the Auditor-General must give a copy of the proposed report to:*
  - (a) *if the body is a Commonwealth authority or a subsidiary of a Commonwealth authority – an officer of the Commonwealth authority or the subsidiary of the Commonwealth authority; or*
  - (b) *if the body is a Commonwealth company or a subsidiary of a Commonwealth company – a director or senior manager of the Commonwealth company or the subsidiary of the Commonwealth company.*
- (3) *After preparing a proposed report on an audit under section 15, 16, 17 or 18, the Auditor-General may give a copy of, or an extract from, the proposed report to any person (including a Minister) who, or any body that, in the Auditor-General’s opinion, has a special interest in the report or the content of the extract.*

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36 *Explanatory Memorandum*, p. 31

37 Attorney-General’s Department, Submission 7.1, p. 7.

38 Government of Norfolk Island, *Submission 6*, p. 38.

- (4) *If the recipient of the proposed report, or the extract from the proposed report, gives written comments to the Auditor-General within 28 days after receiving the proposed report, or the extract from the proposed report, the Auditor-General must consider those comments before preparing a final report.*
- (5) *The Auditor-General must, in the final report, include all written comments received under subsection (4).*
- 4.75 The Explanatory Memorandum provides that new section 48(F) will ‘ensure that auditees and other persons considered by the Auditor-General to have a special interest [in an audit] have the opportunity to review all proposed reports arising from a performance audit.’<sup>39</sup>
- 4.76 Further, under this section ‘recipients of proposed reports [will] have 28 days to respond to the Auditor-General on the proposed report.’<sup>40</sup>
- 4.77 The confidentiality requirements provided by Part 5, Division 2 of the Auditor-General Act will apply, and under subsection 36(3) of that Act, ‘recipients must not disclose information in the reports except as authorised by the Auditor-General.’<sup>41</sup>
- 4.78 Subsection 19(4) of the Auditor-General Act provides that if written comments are provided to the Auditor-General after receipt of a proposed audit report or an extract of a proposed audit report, then these comments must be considered by the Auditor-General. Subsection 19(4) appears below.
- (4) *If the recipient of the proposed report, or the extract from the proposed report, gives written comments to the Auditor-General within 28 days after receiving the proposed report, or the extract from the proposed report, the Auditor-General must consider those comments before preparing a final report.*
- 4.79 Subsection 19(5) which follows then requires the Auditor-General to include all written comments received in the final report.
- (5) *The Auditor-General must, in the final report, include all written comments received under subsection (4).*
- 4.80 Proposed subsection 48F(4) of the Bill provides a similar process to follow in the case of consideration of written comments for Norfolk Island audits. Proposed subsection 48(F) appears below.
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39 *Explanatory Memorandum*, 31.

40 *Explanatory Memorandum*, 31.

41 *Explanatory Memorandum*, 31.



(4) *If the recipient of the proposed report, or the extract from the proposed report, gives written comments to the Auditor-General within 28 days after receiving the proposed report, or the extract from the proposed report, the Auditor-General must consider those comments before preparing a final report.*

4.81 Proposed subsection 48F(5) provides, (similarly to subsection 19(5) of the Auditor-General Act) that all written comments received must be included in the final report under section (4).

4.82 Further, under proposed new section 48E copies of a performance audit report 'must be provided to the Minister for Finance, the Administrator and the responsible Commonwealth Minister.' The report must also be 'tabled in both the Commonwealth Parliament, and the Norfolk Island Legislative Assembly. This is consistent with performance audits undertaken under sections 15 and 16 of the *Auditor-General Act 1997*.'<sup>42</sup>

## Conclusions

4.83 Proposed new section 48(F) of the Bill is almost identical to section 19 of the Auditor-General Act and provides for the same process to be followed in terms of preparing a proposed performance audit report, receiving written comments and inclusion of the written comments in a final report.

4.84 As proposed subsection 48F(5) of the Bill requires that all written comments received under subsection (4) must be included in the final report, any person may have access to the written comments received by the Auditor-General by accessing the final report.

4.85 In addition, Auditor-General's reports are required to be tabled within the Commonwealth Parliament and the Norfolk Island Legislative Assembly. Reports are also made available to public sector agencies that are the subject of performance or audit reports. Further, reports are generally available on the Australian National Audit Office website.

4.86 The Commonwealth Auditor-General is an independent officer of the Parliament and works within the parameters of the *Auditor-General Act 1997* (Cwlth) to provide auditing services to the Parliament and public sector agencies.

4.87 The committee believes it would be inappropriate to amend the Auditor-General Act to allow a Minister to receive written comments provided to the Auditor-General as it infringes on the independence of the office of

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42 Attorney-General's Department, *Submission 7.1*, p. 7.

Auditor-General. Further, the anonymity of those providing written comments would be compromised and could over time create reluctance for officials to provide information for performance audits.

## **Proposed new section 51D - option to appoint a Commonwealth Financial Officer for Norfolk Island**

### **Background**

- 4.88 New section 51D will enable the appointment of a Commonwealth Financial Officer for Norfolk Island at the discretion of the Governor-General.<sup>43</sup>
- 4.89 The appointment of a Commonwealth Financial Officer is an optional appointment and would 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 Norfolk Island Act.'<sup>44</sup>
- 4.90 Under this new section, the Commonwealth Financial Officer would 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.'<sup>45</sup>

### **Analysis**

- 4.91 The Government of Norfolk Island was concerned about the creation of new Commonwealth Public Service positions such as the Commonwealth Financial Officer and deputy or deputies to the Administrator. Appointment of a deputy or deputies to the Administrator is discussed in Chapter 2.
- 4.92 Specifically, the Government of Norfolk Island stated the creation of the Commonwealth Financial Officer 'effectively again returns Australian rule prior to 1979.'<sup>46</sup>

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43 *Explanatory Memorandum*, p. 36.

44 *Explanatory Memorandum*, p. 36.

45 *Explanatory Memorandum*, p. 36.

46 Government of Norfolk Island, Hon David Buffett MLA, *Transcript T2*, p. 4.

4.93 The Government of Norfolk Island added that it welcomed further dialogue to clarify the Commonwealth’s intentions. The Government of Norfolk Island stated:

The Norfolk Island Government’s concerns are that the practical purpose and function of such officials remains unknown. The Government therefore welcomes further dialogue with the Commonwealth to clarify and particularise Commonwealth intentions in this regard.<sup>47</sup>

4.94 Dr Candice Snell did not support the appointment of a Commonwealth Financial Officer instead advocated retaining authority for financial matters with the Norfolk Island Minister for Finance. Dr Candice Snell stated:

[If] the changes in the bill were to say that the current finance minister would no longer have control of finances on Norfolk Island, and that would be changed to a Commonwealth financial officer or member. What I am saying is that I still think that we could utilise our finance minister here. I think that making changes and making decisions on payments and things like that should be still done here, but I do agree that instead of taking that power away from him we could work together and use a Commonwealth financial audit every six months or every three months – or whatever they find appropriate – rather than taking that power away.<sup>48</sup>

4.95 The Attorney-General’s Department advised that the appointment of the Commonwealth Financial Officer is optional and would be made in consultation with the Government of Norfolk Island and the Administration. The Attorney-General’s Department stated:

In relation to the Commonwealth financial officer ... it is in fact not an inevitability. It is in fact a further possibility. I suspect the department of finance might be involved in talking with the Attorney-General’s Department about issues that might have arisen, but it may indeed be through some issues raised by the Norfolk Island administration itself that means there would be some extra benefit of further resources. My understanding is that it is an officer who would be appointed by the responsible minister, so it would be a matter for advice from the Attorney-General’s Department. But I expect there would be consultation

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47 Government of Norfolk Island, *Submission 6.1*, p. 6.

48 Dr Candice Snell, *Transcript T2*, p. 57.

with the Norfolk Island administration and ministers and also with the department of finance and the Commonwealth.<sup>49</sup>

4.96 In addition, the Attorney-General's Department outlined the circumstances where a Commonwealth Financial Officer would be appointed for Norfolk Island and exemplified the implementation of the financial and accountability provisions of the Bill. The Attorney-General's Department stated:

The position of Commonwealth financial officer would be filled by an existing Commonwealth officer in the event that such an appointment is considered necessary by the responsible Commonwealth minister – for example, if Norfolk Island requested assistance from the Commonwealth in the implementation of the financial management and accountability provisions contained in this bill.<sup>50</sup>

4.97 Further, the Attorney-General's Department advised that in the event a Commonwealth Financial Officer was required to be appointed either on request by the Government of Norfolk Island, Administration or by the Commonwealth, 'the position [would] provide support, assistance, expertise, information or training.' The Commonwealth intends to monitor ... progress in implementing the reforms to determine if the appointment of such an officer is necessary.<sup>51</sup>

4.98 The EcoNorfolk Foundation supported financial management reform and the implementation of a new financial framework for Norfolk Island, including the appointment of a Commonwealth Financial Officer for Norfolk Island. The EcoNorfolk Foundation stated:

On financial frameworks, we thank the Commonwealth government for its continual commitment in assisting Norfolk Island in implementing the frameworks effectively. It is an important milestone that the appointment by the Commonwealth of a Commonwealth Financial Officer for Norfolk Island is undertaken as a priority, as is the amendment to the Norfolk Island Act to provide for the appointment of the Commonwealth Attorney-General to conduct audits of the Norfolk Island administration financial statements.<sup>52</sup>

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49 Department of Finance and Deregulation, Mr Marc Mowbray-d'Arbela, *Transcript T2*, pp 10-11.

50 Attorney-General's Department, Mr Julian Yates, *Transcript T2*, p. 4.

51 Attorney-General's Department, *Submission 7.1*, Question No. 8, p. 36.

52 EcoNorfolk, Ms Denise Quintal, *Transcript T2*, p. 45.

## Conclusions

- 4.99 The Government of Norfolk Island raised concerns about the intent and purpose of a Commonwealth Financial Officer. However, there was also support for the appointment of a Commonwealth Financial Officer in the context of assisting with the implementation of the financial framework included in the Bill.
- 4.100 The appointment of a Commonwealth Financial Officer is an optional appointment which may be made at the discretion of the Governor-General.
- 4.101 The Attorney-General's Department stated that a Commonwealth Financial Officer may be appointed at the request of the Government of Norfolk Island or Administration to provide support, assistance, expertise, information or training in relation to the implementation of the new financial framework. Further, the Attorney-General's Department indicated that it would monitor progress in implementing the reforms to determine if the appointment of a Commonwealth Financial Officer is necessary.
- 4.102 The committee believes the option of appointing a Commonwealth Financial Officer provides an important safety net for the Government of Norfolk Island and Administration in the event that support, assistance, expertise, information or training is required in relation to the implementation of the new financial framework.

## **Proposed new section 51E – Power of Commonwealth Minister to apply for an injunction to force compliance with financial management and accountability provisions**

### Background

- 4.103 Proposed new section 51(E) 'provides a power for the responsible Commonwealth Minister to apply for an injunction to enforce compliance with the financial management and accountability provisions [as] defined in subsection 4(1).'<sup>53</sup>
- 4.104 Pursuant to this section, an injunction may be ordered by the Federal Court of Australia 'requiring a person to restrain from doing an action, or

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53 *Explanatory Memorandum*, p. 37.

compel a person to do an action, in order to comply with the financial management and accountability provisions.’ In addition, an interim injunction may be granted, ‘however it specifies that no undertakings as to damages are to be made where the interim injunction is granted.’<sup>54</sup>

- 4.105 For a restraining action – ‘an injunction may only be granted where the person has previously engaged in conduct that contravenes the financial management and accountability provisions, or where it appears to the Court that the person will engage in conduct of that kind.’<sup>55</sup>
- 4.106 In regard to compelling a person to do an action, ‘an injunction may only be granted where the Court is satisfied the person has previously refused or failed to do the action in contravention of the financial management and accountability provisions, or if it appears to the Court that it is likely the person will refuse or fail to do the action.’<sup>56</sup>

## Analysis

- 4.107 The Government of Norfolk Island stated that it is extremely inappropriate that a Federal Court injunction be used as a way to enforce compliance with financial management and accountability provisions as provided under section 51(E). The Government of Norfolk Island stated:

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.<sup>57</sup>

- 4.108 There is no provision in Commonwealth legislation applying to other jurisdictions which allows for an injunction to be sought enforcing compliance with financial management and accountability provisions as contained in new section 51(E).

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54 *Explanatory Memorandum*, p. 37.

55 *Explanatory Memorandum*, p. 37.

56 *Explanatory Memorandum*, p. 37.

57 Government of Norfolk Island, *Submission 6*, p. 39.

## Conclusions

- 4.109 The Government of Norfolk Island stated that it considers the provision of enforcement of compliance with financial management and accountability provisions under new section 51(E) to be ‘extremely inappropriate.’ Then advocates that ‘the existence of such obligations and their enforcement should be dealt with under Norfolk Island legislation.’
- 4.110 Proposed Part 3 of the Bill establishes a new financial framework for Norfolk Island. The committee believes that it is appropriate to include provisions which require performance obligations under the Act to be undertaken.
- 4.111 While new section 51(E) allows for an injunction to be sought to enforce compliance with financial management and accountability measures included in the Bill, there is no penalty attached to non compliance.
- 4.112 It is unclear whether the Government of Norfolk Island agrees with inclusion of proposed section 51(E) in the Bill. The committee suggests that the issues relating to section 51(E) and the concerns raised by the Government of Norfolk Island can be addressed through the financial framework joint working group.