

Citizenship

It is a basic tenet of Australia's electoral system that those elected to State, Territory and Federal Parliament must be Australian citizens. Until 1985 it was also the case for Norfolk Island.¹

- 3.1 The Committee believes that this tenet of representative government, that a country's voters and elected representatives must be citizens of that country, is widely accepted among the world's democratic countries.
- 3.2 A study of potential restrictions on the right to vote in 63 democracies found that in 48 countries the right to vote was restricted to citizens, while only four countries did not require citizenship.² In these four countries residency does not automatically lead to enfranchisement. Some countries have long residence requirements for non-citizens. New Zealand, for example, requires that non-citizens be permanent residents in order to be allowed to vote, and citizens in order to stand for election.
- 3.3 The eleven remaining democracies in the study grant the vote to non-citizens from specific countries: all but one of these are former British colonies which give the right to vote to residents who are citizens of another Commonwealth country. The 'Commonwealth clauses' found in Australia and Canada limit this right to British subjects who were on the electoral roll before a specified date, which led the authors of the study to conclude that the experience of these two countries suggests that existing 'Commonwealth clauses' may eventually disappear.³

1 Department of Transport and Regional Services, Submissions, p 97.

2 Blais, Massicotte and Yoshinaka, 'Deciding who has the right to vote: a comparative analysis of election laws', *Electoral Studies* 20 (2001), pp 41-62. The authors' main sources of data were the constitutions and electoral laws and regulations of the 63 countries.

3 Blais, Massicotte and Yoshinaka, 'Deciding who has the right to vote: a comparative analysis of election laws', *Electoral Studies* 20 (2001), p 52.

- 3.4 The concept of citizenship defines membership of the nation-state, as well as the rights and obligations derived from that membership, such as being subject to its laws and entitled to its protection:

Voting in Federal, State and local elections is a powerful way for citizens to have a say in the decision-making which affects the quality of people's lives.⁴

- 3.5 Successive Commonwealth governments and High Court decisions have confirmed that Australian citizenship should be a prerequisite for membership of an Australian parliament. Australian citizenship is a requirement for both enrolment and election in all states and other self-governing territories, including the other territory legislative assemblies to which the Commonwealth has delegated a range of powers for self-government.⁵
- 3.6 Citizenship is also a requirement in some jurisdictions, and being considered in others, for enrolment and election at the local government level.⁶

Removal of the citizenship requirement

- 3.7 People born on Norfolk Island have Australian citizenship in the same way that people born on the mainland have. The *Australian Citizenship Act 1948* applied on Norfolk Island from its inception in the same way that it did on the mainland until 1985. In that year the Commonwealth Government removed references to 'British subjects' from the Act and consequential changes to Commonwealth, state and territory electoral laws restricted future enrolment to Australian citizens only. Based on the preference expressed by the Norfolk Island Government of the day, the Commonwealth Government repealed all the provisions of the *Norfolk Island Act 1979* which related to citizenship.
- 3.8 The reason for the change was the desire to remove references to 'British subject' which were seen as discriminatory. The *Australian Citizenship Amendment Act 1983* had sought to remove all discriminations apparent in the existing act. As a consequence, the Norfolk Island Assembly was offered the choice of references to 'British subject' in the *Norfolk Island Act*

4 Department of Immigration and Multicultural Affairs web page on citizenship, <http://www.immi.gov.au/citizen/index.html>, quoted in Department of Transport and Regional Services, Submissions, p 95.

5 Department of Transport and Regional Services, Submissions, p 96.

6 Department of Transport and Regional Services, Submissions, p 96.

1979 being deleted, which was consistent with amendments for the Commonwealth and state parliaments, or of the citizenship requirement being deleted altogether, which was consistent with the requirements for local governments at that time.

- 3.9 On 11 December 1984 Ms E B Reed MLA, the Norfolk Island Minister for Community Services, advised the Administrator that ‘the Government has no difficulty with the proposal that the phrase [‘British Subject’] should be omitted from enactments in which it occurs, and is prepared to introduce legislation to that effect.’ The letter also expressed a preference for deleting citizenship requirements entirely:

However, the Government is reluctant to replace the present requirements with a requirement that Australian citizenship be necessary for the purposes of the enactments mentioned in your letter. The Government would prefer to delete citizenship requirements entirely.⁷

- 3.10 As the status of the Legislative Assembly at the time, in terms of powers and responsibilities, was closer to that of a shire council or other form of local government, the Commonwealth Government acceded.

Attempts to reinstate the citizenship requirement

- 3.11 Norfolk Island has made considerable progress towards internal self-government since the time when the citizenship requirement was abandoned, with the transfer of many additional powers. The Norfolk Island Government now has a considerably wider range of powers than the states, including responsibility for important, exclusive, Commonwealth functions such as immigration, customs and quarantine matters.

- 3.12 As early as 1990 the then Commonwealth Minister for Territories noted that the justification for not requiring Australian citizenship for membership of the Legislative Assembly, on the basis that it was the practice applying at the local government level, no longer seemed appropriate. He observed that:

The Norfolk Island Government now has authority over a wide range of Federal and State-type functions including social security, radio and television, immigration, customs, telecommunications, labour and industrial relations, public health, energy planning and

7 EB Reed, letter to Air Vice Marshal RE Trebilco, 11 December 1984, Exhibit 2.

regulation, registration of medical practitioners, public works, to name but a few. The relationship between the Commonwealth and Norfolk Island is now more akin to a Federal-State relationship than a Federal-local government relationship. In these circumstances, the justification for not requiring Australian citizenship for membership of the Legislative Assembly on the basis of practice applying at the local government level would no longer seem appropriate.⁸

- 3.13 The Minister also raised the related issue of citizenship as a prerequisite for enrolment to vote in Assembly elections. He suggested that the franchise of non-Australian citizens currently on the Norfolk Island electoral roll could be preserved using the approach adopted by the Commonwealth for British subjects who were already enrolled in 1984, i.e. that they be permitted to remain on the roll regardless of citizenship. The Minister asked for the views of the members of the Assembly on both matters. The Assembly debated and opposed the proposal.
- 3.14 The Committee believes that the level of government that the Norfolk Island Assembly was perceived to be in the mid-1980s, both by the Commonwealth and by its own members, was the main reason for eliminating the citizenship requirement at that time. With the very significant increase in the responsibilities of the Norfolk Island Government since then, the situation has changed and it is now appropriate that the Australian citizenship requirement be reinstated.
- 3.15 The Senate Legal and Constitutional Legislation Committee noted in 1999 that there had been a move towards the requirement of Australian citizenship even at the local government level. According to the DOTRS submission to the current inquiry:

in most States and Territories, Australian citizenship is now a requirement, or is being considered as a requirement, for enrolment and election at the local government level.⁹

For example, amendments to the South Australian *Local Government (Elections) Act 1999* provide that a candidate must be an Australian citizen or a prescribed person. Section 9 of the Northern Territory *Local Government Act* requires that all members of local councils be Australian citizens.

8 The Hon David Simmons MP, letter to the Hon D Buffett MLA, President, Norfolk Island Legislative Assembly, 24 October 1990, Exhibit 3.

9 Department of Transport and Regional Services, Submissions, p 96.

- 3.16 It seems anomalous that while local government, with its important but limited functions and responsibilities, is requiring Australian citizenship as a prerequisite for enrolment and election, a jurisdiction in Australia with a range of functions and responsibilities at Commonwealth level does not. Executive Members or Ministers of the Norfolk Island Government not only regularly deal with matters of national significance and are involved in inter-governmental relations, but also sit on Australian Ministerial Councils and participate in Commonwealth delegations negotiating international agreements with other nation states.¹⁰
- 3.17 The Committee believes that it is in Australia's national interest that Ministers and other members of the Legislative Assembly on Norfolk Island be Australian citizens.
- 3.18 The issue of Australian citizenship in the external territories was examined in 1990-91 by the House of Representatives Standing Committee on Legal and Constitutional Affairs which recommended in its report that:
- Australian citizenship be a requirement for eligibility to stand for election or to vote in the Norfolk Island Legislative Assembly election, for all new enrollees registering on the Norfolk Island electoral roll on or after a commencement date to be determined before the end of 1991.¹¹
- 3.19 A submitter to that inquiry, the late Ms Merval Hoare, who also gave evidence to the current inquiry, expressed a view on an Options Paper which was circulated on the Island prior to the public hearings in order to give the community an opportunity to comment:
- Moreover, in retaining the status quo, Option 1, there is always the possibility, far-fetched as it may seem today, that we could get a majority of five members in the Assembly who did not hold Australian citizenship, had no allegiance to Australia, and perhaps were even hostile to Australia. Such a situation could have very serious repercussions in Australia as well as on Norfolk.¹²
- 3.20 Writing to this Committee in February 2001, Ms Hoare said:

10 Department of Transport and Regional Services, Transcript, p 108.

11 House of Representatives Legal and Constitutional Affairs Committee, *Islands in the Sun: The Legal Regimes of the External Territories and the Jervis Bay Territory*, March 1991.

12 Ms Merval Hoare, Submission to inquiry into the legal regimes of the External Territories by the House of Representatives Standing Committee on Legal and Constitutional Affairs, 25 October 1990.

Norfolk Island is passing through a very difficult time of social and political unrest ... We have the haves and have-nots, those who seek to distance the island politically from Australia and those who look to Australia as a protector, and conflict in the Assembly ... Eleven years on I believe the risk of a majority of Assembly members being hostile to Australia still exists.¹³

- 3.21 Mr Michael King, a Norfolk Islander whose background includes two periods as a minister in the local Assembly and one term as Chief Minister, told the Committee that he believes that only Australian citizens should be able to participate in electoral affairs:

particularly given the wide and extensive range of powers and functions that the Norfolk Island Assembly and government have. It is not a local government. They have very extensive and very real legislative powers and authorities ...

In fact, it is very tempting to suggest that the inclusion of non-Australian citizens in elected public office has already adversely impacted on Norfolk's culture and tradition. My experience in elected office is that anti-Australian attitude or sentiment has already impeded the progress of self-government by generating or spawning that unproductive, uncomfortable relationship between Norfolk Island and the Commonwealth.¹⁴

- 3.22 In 1997, the Commonwealth Grants Commission report commented wryly that 'Australian citizens who do not pass the eligibility rules cannot vote, and non-Australian citizens who pass the rules can vote.'¹⁵ The current electoral situation on Norfolk Island:

can and does result in non-Australian citizens, who are elected to the Assembly, making decisions on behalf of some Australian citizens who are prevented from voting.¹⁶

- 3.23 The Committee notes a parallel incongruity in a Norfolk Island referendum where non-Australian citizens were able to vote to deny the right to vote to Australian citizens.¹⁷

- 3.24 In 1998, another Commonwealth Minister for Territories raised the issue of citizenship with the Norfolk Island Government.¹⁸ The Minister pointed

13 Ms Merval Hoare, Submissions, pp 10-11.

14 Mr Michael King, Transcript, p 20.

15 Commonwealth Grants Commission, Report on Norfolk Island 1997, p 185.

16 Commonwealth Grants Commission, Report on Norfolk Island 1997, p 186.

17 Referendum held on 12 May 1999.

out that the Norfolk Island Assembly was the only parliament in Australia where it was not mandatory to be an Australian citizen to enrol to vote, to be an assembly member or to be minister in the government. The Minister's letter also noted that the proposal to reinstate the citizenship requirement would only restore provisions which had existed when self-government was originally granted, and that since 1979 there had been a parliamentary inquiry and two High Court decisions which supported the requirement for the primary loyalty of members of an Australian Parliament to be to Australia.¹⁹

- 3.25 The Commonwealth Government has attempted unsuccessfully over a number of years to persuade the Norfolk Island Government to reinstate the Australian citizenship requirement. While there is little evidence that the community was involved in any way in the decision to delete the requirement in 1984, the Norfolk Island Government now points to the results of several referenda as proof that Norfolk Islanders have changed their minds significantly about something that was taken for granted until the mid-1980s. The relevance of the referenda results as evidence of strong community preference is discussed below.
- 3.26 The Committee notes that there is little evidence that the decision by the Norfolk Island Government in 1985 to drop the citizenship requirement was discussed in the Assembly, let alone canvassed more widely in the island community. There is no reference to the subject in the Assembly Hansards for that period.

Commonwealth position

- 3.27 Representatives of the Department of Transport and Regional Services succinctly expressed the Commonwealth's position on Norfolk Island's laws relating to eligibility to vote and candidature for the Legislative Assembly:

The Federal Government has proposed changes to the Norfolk Island electoral arrangements to protect the political rights of Australian citizens; to preserve the existing rights of those currently enrolled on the Norfolk Island electoral roll; and to

18 Letter from the Hon Alex Somlyay MP, 21 March 1998. Attachment A, Department of Transport and Regional Services, Submissions, p. 258.

19 *Sykes v Cleary* (1992) 176 CLR 77 and *Free v Kelly* (1996) 185 CLR 296.

ensure that Australian citizenship is a prerequisite to stand as a candidate for the Norfolk Island Legislative Assembly.²⁰

None of these matters are outside the Commonwealth's power to legislate. Indeed, the Commonwealth has a legitimate and continuing interest and role in Norfolk Island electoral matters. Federal Parliament retains ultimate responsibility for Territory electoral systems consistent with the Australian Constitution, electoral law and policy, and Australia's international obligations.²¹

It is the Federal Government's position that the proposed changes are necessary and appropriate to bring electoral provisions on Norfolk Island in line with those in all other Australian Parliaments and to ensure the voting rights of all Australians are preserved.²²

3.28 In its submission the Department stressed that amendments proposed by the Commonwealth Government in the 1999 Bill would have ensured that:

no one who *remains enrolled* on the Norfolk Island electoral roll would lose an existing right to vote ... Those Members of the Legislative Assembly who were not Australian citizens would have been entitled to serve out the current period for which they were elected. Thereafter, if they wished to stand for election, they could have sought Australian citizenship.²³

Norfolk Island objections

3.29 The submission from the Norfolk Island Government, which was essentially the same as that submitted to the earlier Senate inquiry, raised two objections to the proposed electoral amendments: the adverse impact on the Island's self-identity, and perceived practical problems and inequities. It also expressed the opinion that there should be more discussion of the issues at inter-governmental meetings, that it was resentful that the matter had been referred to a committee of inquiry, and

20 Department of Transport and Regional Services, Transcript, p 107.

21 Department of Transport and Regional Services, Transcript, p 106.

22 Department of Transport and Regional Services, Transcript, p 108.

23 Department of Transport and Regional Services, Submission, p 101.

that, if changes to the electoral system are to be made, they should be made through local legislation.

- 3.30 The first objection focused on Norfolk Island's constitutional relationship with Australia, which it claimed has long been a matter of controversy. The Committee agrees with the view expressed by the Department of Transport and Regional Services at the public hearing on 2 April 2001:

In summary, it would appear that those on Norfolk Island who oppose the proposed changes, oppose them as much from the standpoint of the Commonwealth's right to make these changes, as they do based on the merits or otherwise of the proposed changes.²⁴

- 3.31 There is no question of the rights and powers of the Commonwealth to act in this area. This is discussed in Chapter 2.

- 3.32 The second objection expressed in the submission focused on the fact that a considerable part of the population might be disenfranchised. Sixteen per cent of the permanent population of Norfolk Island are New Zealand citizens, including Pitcairn Island descendants who were born in New Zealand. However, as indicated above, the Commonwealth has made it clear that:

No one who remains enrolled on the Norfolk Island electoral roll will lose any existing right to vote for the Legislative Assembly as a result of the proposed changes.

The citizenship requirement will only apply to all new enrollees on the Norfolk Island electoral roll. Those non-Australian residents wanting to play a meaningful role in local governance have the option of taking out Australian citizenship.²⁵

and:

Thus, the only people likely to be affected would be those non-Australian citizens who were not yet enrolled, who wished to enrol in the future, and who failed to take out Australian citizenship.²⁶

- 3.33 The Committee has encountered some opponents to the idea of electoral change who, either from ignorance or in using hyperbole to express their disagreement with the proposals, have omitted reference to the safeguards that have been proposed for the electoral rights of New Zealanders who

24 Department of Transport and Regional Services, Transcript, p 107.

25 Department of Transport and Regional Services, Transcript, p 108.

26 Department of Transport and Regional Services, Submissions, p 100.

are already on the Norfolk Island electoral roll. This has not been helpful in advancing public knowledge or understanding of the proposed changes.

- 3.34 Given that under the proposals of the 1999 bill no current elector would lose the vote and any future resident could apply for citizenship in order to be eligible to vote, the claim by the Norfolk Island Government that such a proposal would ‘disenfranchise and discriminate against’ a section of the Norfolk Island community appears to be without foundation.²⁷
- 3.35 The Norfolk Island Government’s claim was echoed in a comment in the first submission from the Human Rights and Equal Opportunity Commission, that: ‘A pre-requisite of Australian citizenship will have the immediate effect of disenfranchising at least the approximately 16% of Norfolk Islanders with New Zealand citizenship.’²⁸ This observation appears to have been made without taking into consideration the fact that Australian citizenship had been an original requirement under the *Norfolk Island Act 1979*, that New Zealanders who had the vote in the period from 1979 until 1985 had it on the basis that they were British subjects and that there was always intended to be provision for those already enrolled to remain so, as well as the option of dual citizenship.
- 3.36 Given that no existing right was to be withdrawn, that all those already on the electoral roll would continue to have the right to vote, the suggestion in the HREOC submission that a citizenship requirement that denied a right previously conferred on an individual was inconsistent with the ICCPR is not relevant to consideration of the proposals of the 1999 bill. It also appears not to have taken into account the other factors outlined above.
- 3.37 The HREOC comment was enthusiastically seized upon by Members of the Assembly and incorporated into the Norfolk Island Government submission during the public hearing on 22 March 2001,²⁹ without careful reading and the realisation that it was based on a false premise. The Committee expects that as people become more familiar with the logic of the proposals there will be less of a negative reaction. Hence its belief that there is a need on Norfolk Island for the ready dissemination of factual

27 Government of Norfolk Island, Submissions, p 140.

28 Human Rights and Equal Opportunity Commission, Submissions, p 170.

29 The Norfolk Island Government seeks to add to its conclusion and recommendations at page 31 of its substantive submission in the following terms:

4 (a) That the Committee should, in all the circumstances, reach a conclusion that any changes to the electoral system in Norfolk Island, as contemplated by the terms of reference, would be in breach of, or inconsistent with, the International Covenant on Civil and Political Rights, in force for Australia.

information about fundamental issues such as those which form the basis of this inquiry, as well as opportunities for public debate in which those with differing or minority opinions can express them without fear of intimidation.

- 3.38 The Committee is aware that in recognition of the close relationship between Australia and New Zealand, there is a special provision to facilitate the taking out of Australian citizenship by a New Zealander.
- 3.39 Concerns have been expressed that, under the amendment proposed in the 1999 bill, non-Australians who have lived for a years on Norfolk Island and are currently enrolled may become disenfranchised by leaving the Island for a period and having their names removed from the electoral roll. Such a concern could readily be addressed by the Norfolk Island Government, for example, by increasing the period of time before an absent elector's name is removed from the roll.³⁰ The Norfolk Island Government also has the option of varying its policy on people seeking residency on the basis of a 'special relationship' with the Island. The Committee was advised of the difficulties that second and third generations of Pitcairn descendants may encounter when wishing to settle on the Island where their parents or grandparents were born.
- 3.40 Concerns that the children and grandchildren of New Zealanders on Norfolk Island may be disenfranchised in the future overlook two considerations: the relative ease with which a New Zealander may acquire Australian citizenship without renouncing New Zealand citizenship, and the fact that a child born of a long-term resident of Norfolk Island is automatically an Australian citizen even if neither parent is an Australian.³¹
- 3.41 The Norfolk Island Government believes that since electoral law is within its wide-ranging powers, any changes such as those proposed in the Norfolk Island Amendment Bill 1999 should be made through its own local legislation:

Any change of requirements to the qualifications of electors on the Norfolk Island Electoral Roll, or for election to the Legislative Assembly, are matters within the responsibility of the Norfolk Island Government under the *Legislative Assembly Act 1979*.³²

30 Currently 150 days in the previous 240 days. DOTRS Submission p. 104, Government of Norfolk Island Submission p. 146.

31 The *Citizenship Amendment Act 1986* (Cth) changed the law concerning citizenship by birth so that children born in Australia (including Norfolk Island) are Australian citizens by birth if one parent was an Australian citizen or *permanent resident*.

32 Norfolk Island Government, Submissions, p 165.

3.42 While accepting that changes could be made this way, the Committee does not believe that the issue would be dealt with if left to the Norfolk Island Government. A succession of Assemblies since 1990 has rejected suggestions that the changes are needed, and inter-governmental discussions about the issue have not led to an acceptance that the changes are legitimate interests of the Commonwealth on behalf of its citizens. Where the Norfolk Island Government does not discharge its obligations to the people of Norfolk Island, it is both appropriate and lawful for the Commonwealth to intervene. This observation was made by the Commonwealth Grants Commission in its 1997 report and is still a consideration which guides Commonwealth actions.³³

3.43 A former Norfolk Island Chief Minister supported this view:

They have the capacity; they have the power to do a whole host of things – which they have not used. So it is not a strong argument to say to any joint standing committee or committee of the Commonwealth parliament, ‘Stay out of our affairs; we’ll look after these things ourselves.’ I personally do not have any confidence in their being able to do that or in their going ahead and doing it.³⁴

The referenda

3.44 The Norfolk Island Government instigated two referenda on the electoral issues that were the subject of the proposed amendments to the *Norfolk Island Act 1979*, i.e. citizenship and residency requirements. One was conducted in August 1998 and a second was held in May 1999.³⁵ Both

33 Commonwealth Grants Commission, *Report on Norfolk Island 1997*, p 17. Department of Transport and Regional Services, Submissions, p 107.

34 Mr Michael King, Transcript, p 22.

35 Referendum initiated by the Norfolk Island Government, August 1998:

The Australian Government has recently indicated its intention to bring about changes to Norfolk Island’s electoral process. Given this situation do you feel that it is appropriate that the Australian Government in Canberra dictates the electoral process for Norfolk Island?

Total on Roll – 1114. Results: Yes – 184, No – 719, Informal – 14, Failed to vote – 197.

Referendum initiated by the Norfolk Island Government, May 1999:

Do you agree with the Australian Federal Government’s proposal to alter the Norfolk Island Act so that:

(a) *people who have been ordinarily resident in the Island for six months will in the future be entitled to enrol on the electoral roll for Legislative Assembly elections; and*

(b) *Australian citizenship will in the future be required as a qualification to be elected to the Assembly and as a qualification for people who in future apply for enrolment on the electoral roll for Assembly election?*

referenda resulted in a negative vote, which is the basis for the Norfolk Island Government's claim that the community does not want change. The Committee not only has concerns about the validity of both referenda as a gauge of public opinion, but also believes that it is not appropriate to grant or withhold a fundamental right of citizens on the results of a referendum.

Those people disenfranchised by the Territory's current laws were not entitled to vote at either referendum. As a consequence, people of whom approximately 20% were not Australian citizens, took a decision which negatively affected a group of Australian citizens who did not meet the requirements to participate in the electoral process on Norfolk Island.³⁶

- 3.45 The Committee believes that voting rights are a national issue for decision at a national level. While citizenship may not be needed in order to have a say in purely local issues such as pothole repair and garbage removal, which in the past was the situation for local governments around Australia and in other countries, it is an important requirement when a legislature has the primary responsibility for the welfare of the community, as well as responsibilities at a national level. Norfolk Island, with self-government, now has responsibilities for matters at the state and national level.
- 3.46 Put simply, Australian citizens should not be denied a fundamental right on the basis of 700 votes in a referendum of approximately 1100 people, some of whom are not themselves Australian citizens.
- 3.47 Notwithstanding that the Committee does not believe that a referendum result is a sufficient basis to deny citizens the right to vote, the Committee also wishes to express its concern at the process of framing the referenda questions and the possible motives behind this. The design of the two referenda was seriously flawed. The first contained emotive language without the pretence of objectivity:
- do you feel that it is appropriate that the Australian Government in Canberra dictates the electoral process for Norfolk Island?
- 3.48 As one witness told the Committee, the resulting 'no' vote was:

Total on Roll – 1100. Results: Yes – 247, No – 691, Informal – 26, Failed to vote 146.

36 Department of Transport and Regional Services, Submissions, p 94.

probably the result you would get if you had a referendum in New South Wales and asked the people whether they wanted a Commonwealth government interfering in their affairs.³⁷

3.49 The referendum conducted in 1999, while containing the neutral language of the Commonwealth proposal, combined two questions so that voters were obliged to answer both with a single yes or no. The Committee has heard evidence that some people would have said yes for one proposal and no for the other, but voted in the negative overall. The Committee notes that the information contained within this double question was incomplete in that it did not convey the fact that the existing right to vote of people already on the roll was to be protected. Despite this omission, the Committee notes that there was a significant increase in the number of 'yes' votes in this referendum, where the question was more neutral and more detailed.

3.50 Ms Merval Hoare told the Committee on Norfolk Island that:

Regarding the referendums, the questions have generally been phrased to get a certain response.³⁸

3.51 Mr Michael King made some frank observations about the use of referenda to gauge public opinion on Norfolk Island:

I hate CIRs, citizen initiated referenda, yet I have used them on both sides. I have used them outside the parliament...and we used them to force elections and to force certain actions. We understand the issue of framing your questions to attract the negative answers. We understand how to get people to sign petitions by suggesting to them that they know all about the paper that is in front of them-when they do not know a darn thing about it, and yet they sign it anyway. Over here you only have to get one-third, I think, of the electorate to force a referendum question.

People vote on their emotions rather than the facts. There was a referendum that we had when I was in government... We put out 1000 information packs with 'the facts', and we wanted people to inform themselves of all the facts before they voted at the referendum. Only five of these packs were picked up... People were not interested in informing themselves fully on the facts of the issue.

...when you have a referendum question that is initiated by a parliament seeking an answer in a particular way, and they get to

37 Mr Michael King, Transcript, p 25.

38 Ms Merval Hoare, Transcript, p 19.

frame the question and they have the resources to push the issue one way or another to fire up the emotion in the community, the outcome is almost inevitable.³⁹

- 3.52 The Committee believes that if referenda are to be accepted as a valid method of gauging public opinion on other important issues, the procedures required for either the government or citizens to initiate one must be re-examined. Guidelines for the framing of neutral, accurate, complete, single-response questions need to be framed and implemented.
- 3.53 The Committee also believes that there is a need for an accountable system of delivering to every voter, and the general community, information about the issues involved in a referendum. Accurate and comprehensive statements for and against a proposal need to be disseminated to every household in much the same way as the Australian Electoral Commission provides this service before a Federal referendum. While this might seem an onerous responsibility for such a small community, its importance must not be underestimated if the referendum process is to have validity and credibility.

Conclusions

- 3.54 The Committee believes that a requirement for Australian citizenship in order to vote or stand for election to the Legislative Assembly is appropriate. It is satisfied that adequate safeguards can be provided for non-citizens who are already enrolled and notes both the relative ease with which a New Zealand citizen may acquire Australian citizenship and the opportunity that exists in both nations for holding dual citizenship.
- 3.55 Since Norfolk Island has made very considerable progress towards self-government, and has assumed powers and responsibilities far beyond that of a local government, the justification for continuing the situation agreed to by the Commonwealth and Norfolk Island governments in the 1980s no longer exists. The Committee also notes that Australian citizenship is now a requirement, or is being considered as a requirement, for enrolment and election at local government level on the mainland.
- 3.56 The Committee believes that, given the Norfolk Island Government's participation in matters which have national significance, it is vital to Australia's national interest that Ministers and other Legislative Assembly members be Australian citizens.

39 Mr Michael King, Transcript, p 25.

- 3.57 If the proposals of the 1999 bill are implemented, there will be no change to the level of Norfolk Island's self-government. Neither the changes, nor the fact of making the changes through Commonwealth legislation rather than in local legislation, should affect Norfolk Island's level of self-government as feared and suggested by some witnesses. The *Norfolk Island Act 1979* is an appropriate instrument for an issue as fundamental as citizenship, and a requirement to be an Australian citizen or a British subject appeared in the original Act.
- 3.58 As successive Norfolk Island governments have rejected proposals to reinstate the requirement, despite assuming a great deal of additional responsibility, the Committee believes that at this stage it is unlikely that a Norfolk Island Government would act to bring about change through its own legislation. It is a legitimate and responsible action of the Commonwealth Government to require Australian citizenship as a qualification to vote and stand for election, with provision for those already entitled to vote to retain the vote, and the readily accessible option of dual citizenship.
- 3.59 The Committee doubts the value of the referenda conducted on Norfolk Island as a measure of public opinion generally, and regards referenda as especially inappropriate as a means of determining who can vote.
- 3.60 The Committee believes that the Norfolk Island community needs to have greater access to information about important issues such as those raised by this inquiry. It also sees a need for the establishment of means to encourage lively and informed debate about issues relating to the democratic process and other vital issues, in a climate where differing or minority opinions may be expressed without fear of intimidation.

Recommendation 1

- 3.61 **The Committee recommends that Australian citizenship be reinstated as a requirement for eligibility to vote for and be elected to the Norfolk Island Legislative Assembly, with appropriate safeguards for the right to vote of all those currently on the electoral roll.**

The Committee further recommends that these changes be incorporated into the Commonwealth *Norfolk Island Act 1979*.

Recommendation 2

- 3.62 **The Committee recommends that the Government amend all appropriate legislation, including the *Norfolk Island Act 1979* and the *Commonwealth Electoral Act 1918*, to ensure that all elections and referenda on Norfolk Island come under the supervision of the Australian Electoral Commission.**