



Australian Government

Attorney-General's Department

**SUBMISSION TO THE
JOINT STANDING COMMITTEE INQUIRY
INTO THE TERRITORIES LAW REFORM BILL 2010**

**JOINT STANDING COMMITTEE
ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES**

**Territories Division
Attorney-General's Department
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1. Overview – Background to the Territories Law Reform Bill

The Territories Law Reform Bill 2010 has two main purposes:

1. The implementation of reforms to strengthen Norfolk Island governance arrangements and the transparency and accountability of the Government and Administration.
2. Amendments to the *Christmas Island Act 1958* and the *Cocos (Keeling) Islands Act 1955* to provide a vesting mechanism for powers and functions under Western Australian laws applied in the Indian Ocean Territories.

The Norfolk Island reforms were announced by the Australian Government in May 2009. This announcement followed in the wake of a large number of Commonwealth Parliamentary and other reports recommending amendments to Norfolk Island's governance system, most notably the Joint Standing Committee on the National Capital and External Territories 2003 Report: *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island* (the 2003 Report).

The 2003 Report recommended a broad range of reforms which at their root aimed to instil more formalised mechanisms of transparency and accountability in Norfolk Island's governance arrangements. The theme of strengthened transparency and accountability is the touchstone to the reforms proposed in the Territories Law Reform Bill. The theme is applied to reforms of general governance arrangements such as the designation of Chief Minister and Ministers, and procedures for appointment and dismissal. These reforms are intended to clarify the lines of Ministerial and Parliamentary responsibility and reinforce the separation of legislative and executive authority in the Norfolk Island Legislative Assembly.

The theme is equally applied to the electoral reforms in the Bill which provide for a specified term of the Legislative Assembly enabling greater levels of governmental stability. The Bill also implements the 2003 Report's recommendation for the adoption of a comprehensive financial accountability framework, including auditing and reporting requirements.

Finally, the Bill will extend to Norfolk Island the benefits of a comprehensive system of administrative law, commensurate to that available to other Australians, including the availability of administrative review by the Administrative Appeals Tribunal, the office of the Commonwealth Ombudsman, and statutory protections and rights in relation to freedom of information and personal information.

The second part of the Territories Law Reform Bill relates to identical amendments to the Christmas Island Act and the Cocos (Keeling) Islands Act. There are approximately 800 instruments made for hundreds of pieces of applied Western Australian legislation. The majority of these instruments simply vest or delegate powers back to the officer or authority who would ordinarily hold them in Western Australia and who exercises these powers in the Territories under Service Delivery Arrangements with the Commonwealth.

New Western Australian legislation applies to the Territories on its commencement. Delegation or vesting instruments must be prepared for the powers and functions in any new legislation to be accessed. In addition, any changes to Western Australian legislation, any restructuring within WA Government Departments and any changes in service delivery needs in the Territories require the relevant vesting or delegation instruments to be amended. The automatic vesting mechanism contained in the Bill will reduce the need for the bulk of instruments made under section 8G, leading to increased efficiency under the service delivery arrangements.

2. Consultation

Norfolk Island

The former Minister for Home Affairs, the Hon Bob Debus MP, announced the proposed Norfolk Island governance reforms by open letter to the Norfolk Island community dated 28 May 2009.

On-island consultation with the Norfolk Island Legislative Assembly, Administration and community was undertaken by Commonwealth officers from relevant Departments in October 2009 and February 2010. The format of both consultations involved meetings with the members of the Legislative Assembly and the Administration in addition to open community information sessions to provide information on the proposed reforms and to answer questions. On both occasions, officers also made themselves available for individual meetings with community members by appointment.

The October 2009 consultations provided information specifically on the proposed administrative law reforms, being the Administrative Appeals Tribunal, freedom of information, privacy, and the Ombudsman. The consultations took place over two weeks and involved participation by officers from the Attorney-General's Department, together with the Privacy Commission, the Australian Government Solicitor, the Administrative Appeals Tribunal, and the office of the Commonwealth Ombudsman.

Consultations in February 2010 were preceded by the release of the exposure draft Territories Law Reform Bill on 12 February 2010. Copies of the exposure draft Bill were made available on Island in hard-copy format through the Office of the Administrator. The focus of this consultative round was the general governance and financial framework amendments (Schedule 1, Parts 1, 2 and 3 of the Bill). Officers from the Attorney-General's Department and the Department of Finance and Deregulation visited Norfolk Island to provide information and answer questions on the exposure draft Bill.

The Minister for Home Affairs announced that written submissions on the exposure draft Bill could be provided by 25 February 2010, for consideration prior to introduction of the Bill into Parliament. The Minister received 119 submissions by this date. The submissions and summaries from on-island consultations were used to inform further amendments to the exposure draft Bill prior to its introduction into Parliament on 17 March 2010.

On 24 March 2010, the Minister for Home Affairs announced an extended consultation period on the Bill, requesting that comments on the Bill be provided by 16 April 2010. No further submissions have been received by the Department to date.

Christmas Island and Cocos (Keeling) Islands

The amendments to the Christmas Island Act and the Cocos (Keeling) Islands Act were developed in close consultation with officers from the Western Australian

Government, the Australian Government Solicitor and the Office of Parliamentary Counsel. The terms of the provision have been agreed by all parties.

The proposed provision includes transitional arrangements that ensure any existing delegation and vesting instruments remain in force until they are repealed. Instruments will be progressively repealed and replaced with instruments that do not include Western Australian Government officers and authorities.

3. Key reforms in the Territories Law Reform Bill 2010

As described above, the Territories Law Reform Bill has two main purposes, firstly the reform of Norfolk Island's governance arrangements, and secondly, the provision of a vesting mechanism for powers and functions under Western Australian laws applied in Christmas Island and Cocos (Keeling) Islands.

Norfolk Island

Machinery of Government

Schedule 1, Part 1 of the Bill proposes amendments to the *Norfolk Island Act 1979* to strengthen governance arrangements and to enshrine the existing practices and procedures that ensure responsibility and accountability in the Norfolk Island parliamentary process. The key reforms include:

- prescribing a process for selecting a Chief Minister and Ministers and their roles and responsibilities
- providing for a no-confidence motion process for the Chief Minister
- providing for dismissal processes for Ministers and members of the Legislative Assembly
- allowing the Commonwealth Minister to give advice to the Administrator on Schedule 2 matters
- allowing the Administrator to reserve bills on Schedule 2 and 3 matters for the Governor-General's pleasure
- allowing the Commonwealth Minister to introduce a proposed law into the Legislative Assembly, and
- allowing the Governor-General to dissolve the Legislative Assembly if it is incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner.

Electoral reforms

Schedule 1, Part 2 of the Bill proposes amendments to the Norfolk Island Act to provide for a minimum 3 year term for the Legislative Assembly, with a maximum term of 4 years. This amendment is intended to provide certainty about the Legislative Assembly's term. The Bill also proposes amendments to allow the Australian Government to make regulations on the voting system to be used for Legislative Assembly elections.

Financial framework

Schedule 1, Part 3 of the Bill proposes amendments to the Norfolk Island Act to implement a customised and proportionate financial framework that addresses the management of public money and public property, preparation of budgets, financial reporting, annual reports and procurement by the Norfolk Island Government and Administration. This includes providing for the appointment of the Commonwealth Auditor-General to conduct audits of the Administration's financial statements. The details of the financial framework will be developed through the implementation of regulations and the Commonwealth Finance Minister's Orders.

Administrative reforms

Administrative Appeals Tribunal

Schedule 1, Part 4 of the Bill proposes amendments to the *Administrative Appeals Tribunal Act 1975* which will confer on the Administrative Appeals Tribunal merits review jurisdiction for specified decisions under Norfolk Island legislation. In essence the reforms will mean that administrative decisions which are made under Norfolk Island laws can be reviewed by the Administrative Appeals Tribunal on request by an affected party.

The amendments in the reform Bill will be supplemented by regulations. The regulations will specify which Norfolk Island laws may be subject to Administrative Appeals Tribunal merits review. This will enable a staged implementation of the reforms to be undertaken in consultation with the Administrative Appeals Tribunal and Norfolk Island.

Freedom of information

Schedule 1, Part 5 of the Bill proposes amendments to the *Freedom of Information Act 1982* to apply that Act to Norfolk Island. The scope of the application of the Act to Norfolk Island will be consistent with its application to Australian Government agencies on mainland Australia. The amendments will give individuals on Norfolk Island the right to:

- a) seek access to documents held by the public sector and to official documents of Norfolk Island government ministers; and
- b) ask for their personal information in such documents to be changed if it is incomplete, incorrect, out of date or misleading.

Privacy

Schedule 1, Part 7 of the Bill proposes amendments to the *Privacy Act 1988* to apply that Act to the Norfolk Island public sector. The Bill will provide that the Norfolk Island public sector will be required to adhere to the Information Privacy Principles in the same manner as Australian Government public sector agencies. It is expected that the Australian Government Office of the Privacy Commissioner will play a significant and ongoing educative role about the rights and obligations established by the Privacy Act in relation to the community of Norfolk Island and its public sector.

The Ombudsman

Schedule 1, Part 6 of the Bill proposes minor amendments to the Norfolk Island Act and the *Ombudsman Act 1976*. The amendments will enable the Commonwealth Ombudsman to assume the function of the Norfolk Island Ombudsman under Norfolk Island legislation. The Norfolk Island Government tabled the Norfolk Island Ombudsman Bill in Parliament last year.

Christmas Island and Cocos (Keeling) Islands

Schedules 2 and 3 of the Territories Law Reform Bill will make identical changes to the Christmas Island Act and the Cocos (Keeling) Islands Act, respectively.

The changes relate to section 8G of both Acts. The Bill will repeal the current section 8G and replace it with a new provision.

The current section 8G

Section 8G forms part of a suite of provisions that apply Western Australian laws to Christmas Island and the Cocos (Keeling) Islands. Section 8G provides that, once Western Australian laws are applied to these Territories, the powers and functions under those laws are vested in the Commonwealth Minister.

Section 8G also establishes a mechanism for the Commonwealth Minister to vest or delegate powers and functions under Western Australian law. This occurs where it would be inefficient or inappropriate for the Minister to exercise powers personally.

The Minister commonly delegates to or vests powers in Commonwealth officers, Western Australian Government officers and authorities, administration staff in the Territories, local government authorities and other qualified people.

The proposed new section 8G

The proposed new section 8G achieves substantially the same outcome as the current version, with several important changes. Most importantly, the new provision will include an automatic vesting mechanism for certain powers.

Subsection 8G(5) provides that where a Western Australian Government officer or authority is acting in these Territories under a Service Delivery Arrangement with the Commonwealth, the officer or authority is automatically vested with those powers ordinarily used when acting in Western Australia.

Subsection 8G(6) allows the Minister to remove an automatic vesting or delegation, either completely or subject to conditions. Subsection 8G(1) ensures the powers of Ministers and the WA Governor remain vested in the Commonwealth Minister and are not subject to automatic vesting or delegation.

Subsection 8G(12) contains a new definition of *authority*. The new definition is broader in scope and will ensure that the Minister is able to delegate to or vest in a wide range of Western Australian Government bodies, including bodies corporate and unincorporated bodies.

4. Development of regulations

The Attorney-General's Department, the Department of Finance and Deregulation and representatives from the Norfolk Island Government and Administration will be participating in a working group to assist with the development of financial framework regulations. 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.

The Attorney-General's Department is planning to commence drafting of regulations prescribing Norfolk Island Public Service Values before the end of 2010. The Norfolk Island Government and Administration will be consulted in the drafting process, and will be given the opportunity to comment on the draft regulations before they are registered.

The Attorney-General's Department is planning to commence drafting of 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.

The Attorney-General's Department is planning to commence drafting of regulations in relation to the application of the Administrative Appeals Tribunal to Norfolk Island during 2010. All relevant administrative law agencies are being consulted in the drafting process. The Norfolk Island Government and Administration will be given the opportunity to comment on the draft regulations before they are registered.

5. Conclusion

The Norfolk Island reforms contained in the Territories Law Reform Bill, in the Department's view, implement the Government decision announced by the former Minister in May 2009 to "improve Norfolk Island governance arrangements and make them more consistent with those found in other Australian territories".

The reforms to Norfolk Island support the ongoing self-governing of Norfolk Island established by the passage of the Norfolk Island Act in 1975. The reforms are intended to reinforce standards of transparency and accountability in the Norfolk Island Government and Administration including through designation of parliamentary processes, the creation of financial frameworks and reform of electoral processes. The reforms also provide to the Norfolk Island community the protections and rights arising from established Commonwealth administrative law regimes such as administrative review, complaints handling processes and freedom of information and privacy.

The Bill also makes important reforms to the Christmas Island and the Cocos (Keeling) Islands which will ensure that powers under Western Australian laws applied in each Territory are automatically vested in Western Australian officers where an agreement with the Commonwealth exists for them to act in the Territories.