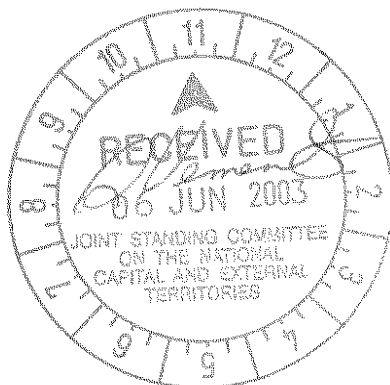


SUBMISSION ..... 20 .....



P.O. Box 5285  
KINGSTON A.C.T. 2604

5th June, 2003.

Dear Mr Chairman,

### **INQUIRY INTO NORFOLK ISLAND GOVERNANCE**

This is a submission to the current inquiry of the Joint Standing Committee on the National Capital and External Territories into the governance of Norfolk Island. I realise that the date for receipt of submissions is 2nd May 2003, but I hope that these thoughts can nevertheless be considered.

I served as Secretary to the Government of Norfolk Island from 1993 to 1996 and additionally as Secretary to the Executive Council of Norfolk Island from 1994 to 1995. This has given me some background knowledge on the matters the Committee is considering but I emphasise that I make this submission as a private individual.

I do not wish to comment on the current levels of service provided on Norfolk Island or the conclusions of the Commonwealth Grants Commission in its report of 1997. I do wish to comment on the possible alternative measures suggested in the Committee's Terms of Reference relating to the election of the Chief Minister and fixed terms. I also wish to suggest some changes to the Norfolk Island Act which I believe would enhance the effective operation of the Assembly.

#### **DIRECTION ELECTIONS FOR THE POSITION OF CHIEF MINISTER**

I do not believe that direct election of a Chief Minister would add anything to the current system on Norfolk Island, indeed it would be a departure from the practice in the Commonwealth, the States and the other two self-governing territories. I believe that the Chief Minister should be *primus inter pares*. There would be less incentive for persons to offer themselves as candidates for the Assembly if they thought they could not aspire to be Chief Minister. In addition, if the Chief Minister was directly elected you could have a result whereby a person was elected as Chief Minister but did not have the support of a single other MLA. There are, however, some measures which I believe could be taken to strengthen the office of Chief Minister by minor amendment to the Norfolk Island Act, which are suggested below.

I am aware that in some States local Mayors are directly elected, and in others the Councillors elect one of their number to be Mayor. Despite the size of the Island, I do not think it is valid to correlate the Norfolk Island Legislative Assembly as a 'local government' – it has all local, all state-type and some federal-type responsibilities, and deserves to be considered in this light.

## **FIXED TERMS OF GOVERNMENT**

Section 35 of the Norfolk Island Act fixes three years as the maximum term for the Legislative Assembly of Norfolk Island. Over the last ten or so years several Norfolk Island Legislative Assemblies have been dissolved before their three year term had been completed. I believe that this has contributed to the lack of stability in the governance of the Island because premature dissolution does not give Ministers or MLAs adequate time to become fully conversant with all of their responsibilities, and it has created uncertainty both in the Administration and in the wider community, notably the business community on the island. This is undesirable in any jurisdiction, but it is exacerbated in a very small place, especially one reliant on a single main industry.

The Committee could perhaps consider an amendment to provide that an Assembly's term shall run for four years from the date of its first meeting, but that it may be dissolved by the Administrator following a resolution of two-thirds of the Members after the third anniversary of the election. This would provide some flexibility but would at least provide three years of relatively stable government. It would also ensure that, should the Assembly become wholly unworkable in a third year, it would take more than a simple majority for it to be dissolved.

Alternatively, the Committee may prefer a simple amendment to provide for a set four-year term, with an election to be held within a one-month period after the fourth anniversary of the previous general election.

## **THE NORFOLK ISLAND LEGISLATIVE ASSEMBLY – A CHAMBER OF INDEPENDENTS**

One of the characteristics of Norfolk Island since the First Assembly was elected in 1979 is that, while loose alliances have sometimes formed between Members of the Legislative Assembly, no political parties have taken hold and my observation is that on occasions when individuals have attempted to stand for election as any sort of 'bloc', the electors of Norfolk Island have indicated that they prefer to return MLAs as individual Independents. I do not consider that the lack of organised parties has been to the detriment of the governance of Norfolk Island.

However, one of the things which I believe has hamstrung Norfolk Island self-government is that there has been a lack of cohesion between elected Ministers which has hampered their ability to formulate a united programme for the Assembly's consideration. During the three years I was living and working on Norfolk Island the practice was that four Ministers were elected from the nine-member Assembly. On many occasions the Ministers would fail to agree on matters and on a number of occasions Ministers would vote against proposals of other Ministers on the floor of the Assembly. This was of course their prerogative, because they were all Independents, but it made it progress difficult in certain areas.

## **PRESENT ARRANGEMENTS FOR THE FORMATION OF A 'GOVERNMENT'**

The present arrangements under the *Norfolk Island Act 1979* provide that, following an Assembly election, the MLAs meet together to hear a formal speech delivered by the Administrator. This is in ceremonial terms similar to a Governor-General's Speech or Governor's Speech on the mainland, but it differs markedly in that the

Administrator has no 'government' to advise him and so his speech is necessarily short and directed to wishing the Assembly well – there are no policy matters to outline.

The Assembly then elects a Speaker and Deputy Speaker and determines, first, the portfolios of the Ministries and, secondly, the MLA who should be appointed by the Administrator to each portfolio.

The Administrator then formally swears in the Ministers at a ceremony at Government House – however he has no discretion as to these matters; the advice has effectively been provided to the Administrator by the Assembly.

Since 1979 there have been fluctuating numbers of Ministers but the number has generally been four, which results in a permanent 'minority' government. There is no provision in the Act relating to the numbers of members holding executive office.

#### **A POSSIBLE ALTERNATIVE APPROACH**

The approach on Norfolk Island is different from that adopted in the Australian Capital Territory. In the ACT the person to hold office as Chief Minister is elected by the Assembly at the first meeting following an Assembly election. The Chief Minister then decides who shall hold executive office and tables a list of Ministers.

The *Australian Capital Territory (Self Government) Act 1988* provides that at the first meeting after a general election the Assembly shall, before proceeding to any other business, elect a Presiding Officer (Speaker). It further provides that the Assembly shall elect one of its Members to be Chief Minister, and that the Chief Minister must then appoint Ministers from among the other MLAs.<sup>1</sup> The Act provides that the Chief Minister can dismiss a Minister. It also provides that the Assembly can remove a Chief Minister by a vote of no confidence.

The ACT legislation also provides that the allocation of portfolios defining the executive responsibilities of the Ministers is made by the Chief Minister who must gazette those responsibilities.<sup>2</sup>

The ACT Act provides that the Speaker may not be appointed as a Minister.<sup>3</sup> On Norfolk Island the Speaker may also concurrently hold office as a Minister (and this has periodically been the case); this is undesirable, even in a small legislature, because it confuses the distinction between the legislature and the executive.

I submit that the governance of Norfolk Island would be enhanced if similar provisions to the ACT Self Government Act were inserted in the *Norfolk Island Act 1979*. This would preserve the current power of the Assembly to elect its Speaker and Chief Minister, but it would give the Chief Minister an authority to appoint Ministers and allocate their responsibilities which is currently lacking.

It is my considered view that one of the reasons for the terms of some of the Norfolk Island Assemblies since self-government being cut short is because of the perceived unworkability of the Assembly at the time. I think that giving a Chief Minister some authority to decide whom his or her fellow Ministers are would have the consequence of providing some cohesion to the government. I also believe that giving the Chief

Minister the authority to determine the portfolios (and therefore the structure of the Administration) would be desirable. It has long been accepted that a government is entitled to make what administrative arrangements (e.g. portfolios, department structure) it sees as necessary to carry out its programme; I believe that that consideration is no less valid in the case of Norfolk Island, in spite of the small size of the polity.

The ACT Self-Government Act provides that there should be a set number of Ministers (5 out of an Assembly of 17), until that is altered by an Assembly enactment. The Norfolk Island Act could be amended to make a similar provision that there should be, say, four Ministers (including the Chief Minister) until the Assembly otherwise enacts. This would preserve the current 'minority' government situation and also provide for flexibility in the future, if that is required by the Assembly.

#### **AN ESSENTIAL INGREDIENT – LEGISLATIVE DRAFTING**

Since 1979 the Norfolk Island Administration has engaged a legislative counsel on contract to work on Norfolk Island to draft bills, regulations and other instruments. On some occasions this person has been a general lawyer with drafting skills, which has been very satisfactory because the person can then undertake other government legal work. It is increasingly difficult to find general lawyers who have legislative drafting skills, or legislative counsel who are comfortable doing other legal work. For major legal projects, the Assembly has sometimes contracted out the drafting work (e.g. the significant Land Reform Package of the mid-1990s was contracted to the ACT Legislative Counsel).

It is essential that any legislature have access to adequate drafting skills, preferably on hand. I urge the Committee to consider a recommendation that an arrangement be made, perhaps with some modest Commonwealth assistance, for an officer of the Commonwealth Office of Parliamentary Counsel or a State parliamentary counsel to be seconded to Norfolk Island for, say, a twelve-month appointment, on a continuing arrangement.

#### **SUMMARY**

In summary, therefore, I suggest the Committee consider the following amendments to the *Norfolk Island Act 1979*:

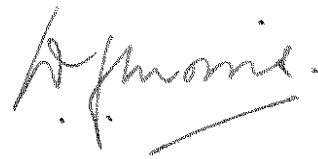
- To provide for an office designated as Chief Minister (no current provision exists);
- To provide that immediately following a general election the Assembly at its first meeting shall elect a Speaker, a Deputy Speaker and a Chief Minister;
- To provide that the Speaker or Deputy Speaker may not be elected Chief Minister or appointed a Minister;

- To provide that the Chief Minister shall choose up to three other Members to serve as Ministers (the phrase 'executive member' in the Act is patronising and archaic);
- To provide that the Chief Minister will determine the portfolios of the Ministers and must table in the Assembly, and publish in the gazette, the division of executive responsibilities;
- To provide that a Chief Minister may dismiss a Minister;
- To provide that a Chief Minister may be removed by a resolution of no confidence passed by the Assembly;
- To provide that the Administrator shall administer the Oath/Affirmation of office to the person elected as Chief Minister and the persons nominated as Ministers; and
- To provide that the term of the Legislative Assembly shall be for four years from the date of its first meeting, but that, after the third anniversary of the election, the Administrator may dissolve the Assembly if two-thirds of all the Members of the Assembly pass a resolution so requesting.
- Or, as an alternative to the last point, to provide that the term of the Legislative Assembly shall be for four years from the date of its first meeting and that an election shall be held within one month of the fourth anniversary of the election.

I also suggest the Committee consider an arrangement to ensure adequate on-island legislative drafting support, perhaps by an arrangement to second an officer from another jurisdiction.

I wish the Committee well in its deliberations.

Yours sincerely,



Senator P. R. Lightfoot  
 Chairman  
 Joint Standing Committee on the  
 National Capital and External Territories  
 Parliament House  
 CANBERRA ACT 2600

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Footnotes

1. *Australian Capital Territory (Self Government) Act 1988* – section 41
2. *Ibid* – section 43
3. *Ibid* – section 42