

Commonwealth interests in Norfolk Island

The Hon. Wilson Tuckey MP, Minister for Regional Services, Territories and Local Government, The Federal Government's Interests in, and Obligations to, Norfolk Island, tabled in the Legislative Assembly on 25 September 2002 and published in The Norfolk Islander, 28 September 2002.

The last comprehensive public policy statement on Norfolk Island was made in 1978, and was intended to set the scene for the self-government arrangements introduced under the *Norfolk Island Act 1979*. That statement by the then Territories Minister, the Hon Bob Ellicott QC, was the outcome of extensive consultation, negotiation and discussion throughout all levels of the Federal Government. Since then there have been a number of policy statements on specific issues, dealing with particular concerns.

The most significant of the more recent statements was made in August 1999 by my predecessor, Senator the Hon Ian Macdonald. In a letter to the then Chief Minister Senator Macdonald explained the Commonwealth position on the form of self-government envisaged for Norfolk Island and the status of the Territory within the Australian Federation. He also emphasised the need for greater involvement by the Norfolk Island Government in Federal consultation processes such as Ministerial Councils and other national forums. The approach taken in that letter was formally endorsed by the Prime Minister.

Although that statement contained some references to the national interest, particularly in the context of the need for Norfolk Island to be involved in discussions on issues of national importance, it is clear to me that significant misunderstandings still exist. I agree with the view put in the Administrator's opening speech to the Tenth Legislative Assembly that misunderstandings can generate mistrust and stand in the way of acceptance and cooperation. I therefore believe it would be helpful for all concerned if I tried to clarify the Federal Government's interests in, and responsibilities for, Norfolk Island.

At the outset I know I must acknowledge that there is one particular issue which still seems to have the power to create division on the Island. That contentious issue is of course **the Island's constitutional status**. Now I could spend a lot of time going through the various legal and constitutional proofs and counter some of the more imaginative claims which have been made over recent years. However, the experiences of my predecessors indicate that such an approach would not change the views of the minority elements. I will therefore simply say that the Federal Government's position hasn't changed since the 1978 policy statement I referred to earlier. As Mr Ellicott emphasised then: "Norfolk Island is part of Australia and will remain so".

Much has been said and questioned over the years concerning the extent of the Federal Government's national interests and role in Norfolk Island. While the Federal

Government certainly has interests in the sense of gaining benefits, such as a strategic base for defence activities, significantly increased Exclusive Economic Zone etc, these are only a relatively small part of the Government's overall role.

Perhaps a better word to describe the Federal Government's relationship with the Island would be obligations. **The Government has certain obligations to its citizens, and their environment, wherever they live within the existing Federal arrangements.** These include the obligation to defend its citizens and territory, ensure that the laws under which they are governed are just and reasonable, that criminal elements are deterred from taking advantage of geographic remoteness or idiosyncratic regulatory regimes, that the environment is protected for current and future generations and that the nation's cultural heritage is preserved in all its diversity. There are also overarching obligations to ensure compliance with international agreements.

In summary, the Federal Government retains ultimate **responsibility for the welfare of all Australian citizens throughout Australia and has an obligation to protect their basic individual rights.** It must therefore encourage strong partnerships with all the States and Territories. In Norfolk Island's case, the principles on which the partnership is based, the areas of Commonwealth and local responsibility and the reciprocal nature of responsibilities encompass a number of unique elements.

I will try to address the main elements in more detail.

Firstly, and perhaps most importantly, the Federal Government remains committed to internal self-government for Norfolk Island and respects the rights of Norfolk Islanders to govern their day to day lives. The Federal Government also recognises the special relationship between Norfolk Island and the Norfolk Islanders of Pitcairn descent.

At the same time, Norfolk Island is part of the Australian federal system of government in which powers and functions are shared between the national, state and territory governments. As already explained in the Administrator's address, the *Norfolk Island Act 1979* confers wide ranging powers on the Assembly to make laws for the "peace, order and good government of the Territory". The exceptions, and there are only four (euthanasia, raising of defence forces, coining of money and acquisition of property on other than just terms), are listed at section 19 of the Act. This is much the same as for the Legislative Assemblies of the other self-governing Territories, the Northern Territory and the Australian Capital Territory, although the lists of exclusions are not identical.

Schedules 2 and 3 to the Norfolk Island Act do not restrict the powers of the Assembly to pass proposed laws, but rather they indicate how the assent process provided for by section 21 of the Act is to operate. In short, laws on topics that are not listed in Schedule 2 must be referred to the Territories Minister or the Governor-General. In the Norfolk Island context this "right of veto", as described by Mr Ellicott in 1978, generally relates to matters of "particular sensitivity and national importance" such as immigration, customs etc. The referral process is aimed at avoiding conflict with any relevant Federal Government laws, policies or programs or with national obligations under international law.

This brings me back to the question of what exactly are the Federal Government's national interests and obligations. While I do not believe that an all-encompassing list is possible, there are a number of broad categories which I will briefly describe.

As already mentioned, the most obvious of the national interests are **national security and defence**. As Australian sovereign territory within Australia's sphere of influence in the Pacific, Norfolk Island has clear strategic significance. It has been used for Australian Defence Force special operations and as a support base for patrol boats and Coastwatch aircraft conducting surveillance. In return the Federal Government guarantees to protect the Island's residents at need.

It is also in the national interest that Norfolk Island generates an **Exclusive Economic Zone for Australia** and significantly increases Australia's Legal **Continental Shelf**, as defined under the United Nations Convention on the Law of the Sea. These areas include fisheries (and potentially oil and mineral resources) which can be used for the benefit of all Australians. From these interests flow obligations to ensure the **sustainable management and conservation of living and non-living marine resources around Norfolk Island**. The sea and seabed surrounding Norfolk Island from the low water mark out to 200 nautical miles (the Exclusive Economic Zone) and beyond (the Contiguous Zone) is vested in and regulated by the Federal Government in accordance with national and international laws. Similar arrangements apply to the States and the Northern Territory.

Another significant national interest is **law enforcement**. The Federal Government has an obligation to ensure that **appropriate laws are enacted and effectively enforced to protect the residents** and reputation of Norfolk Island, and Australia as a whole. For example, I am sure that the Federal Government's interest in the Island's immigration, customs and quarantine regimes is readily understood by the Norfolk Island community. Naturally it is important that the Island's laws complement the mainland regime to ensure that Australia's borders, environment and flora and fauna are protected, and that there are significant **deterrents for unacceptable activities** such as drug trafficking, people smuggling, financial and corporate abuses etc. It is also inevitable that national issues will arise which require a coordinated national response. Gun control is a good example.

I must also emphasise that the Federal Government's interest in Norfolk Island is an extension of its obligation to **assist remote and regional areas** throughout Australia. For example, the need to develop or improve telecommunications nationwide has resulted in an ongoing commitment from the Federal Government to regional programmes such as Networking the Nation. Norfolk Island continues to benefit from such programmes.

The Federal Government has related obligations to ensure the sustainable **management and conservation of the Territory's unique environmental, cultural and heritage assets**. To meet its obligations to protect matters of national environmental significance the Federal Government has implemented a major environmental law reform agenda through the *Environment Protection and Biodiversity Conservation Act 1999*. That Act imposes obligations on the Federal Government in relation to its interests in Norfolk Island. I should also mention here

that, in its pursuit of a sustainable community, the Federal Government seeks a high standard of environmental health, economic stability and social equity in all States and Territories including Norfolk Island.

Another important obligation on the Federal Government is providing national leadership and direction in the identification, conservation and protection of the nation's treasured places. It therefore has an obligation to ensure that these assets are managed and conserved for the benefit of all Australians including the residents of Norfolk Island. For example, the rich convict history and heritage of the Island are an important part of Australia's national heritage and culture. The Kingston and Arthur's Vale Historic Area in particular is one of the foremost national examples of a cultural landscape, with exceptional heritage values. The Federal Government has an ongoing interest in, and commitment to, the protection and conservation of the site.

These issues all converge in what could be considered an overarching responsibility to **ensure good governance** on the Island. Reciprocal obligations arise out of the fact that the Federal Parliament devolved legislative and executive power to Norfolk Island under the *Norfolk Island Act 1979*. The Federal Government retains residual responsibilities for the Territory's good government and proper financial management. It therefore has an obligation to ensure political stability and efficient, honest and accountable government, and to facilitate economic and social development.

The Federal Government also remains responsible for ensuring that activities on Norfolk Island **comply with national obligations under international law**.

This leads me finally to the important issue of management of the Commonwealth's contingent liabilities in Norfolk Island. As with other Australian States and Territories, Commonwealth assistance may be required should Norfolk Island's resources ever prove insufficient. The Federal Government recognises that Norfolk Island faces unique constraints arising from its small size, remoteness, and relative economic and environmental vulnerability. The Island currently remains dependent on outside and remote markets and overly reliant on its one main industry, tourism.

Ultimately, the Federal Government's underlying interest and obligation is to **provide a "safety net" and continue to accept responsibility for maintaining Norfolk Island as a viable community**. However, to avoid the need for such intervention, the Federal Government retains an interest in ensuring the Territory remains as resilient as possible: for example, by maintaining a sound financial system, effective public accountability and appropriate risk management and disaster preparedness and planning. This is particularly relevant at present when the Federal and Norfolk Island Governments are working together on developing solutions to the Island's acknowledged economic difficulties and investigating alternative revenue sources.

In summary, the relationship between the Federal Government and the Norfolk Island Government creates obligations on both sides. Among other things, the Federal Government is committed to defend the Territory, protect the individual rights of its residents, encourage its sustainable development, ensure that its environment and cultural heritage are preserved and protected and to look after its interests locally and internationally. While encouraging and promoting self-reliance, the Federal

Government provides a “safety net” in the event of natural or economic catastrophes. In return, the Federal Government has the right to expect good governance, probity, law and order, the highest standards of financial regulation (to combat financial crime, regulatory abuse etc) and compliance with Australia’s international obligations.

Meeting these obligations is of course dependent on cooperation - based on mutual understanding, respect and trust.

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