10 March 2011

Committee Secretary
Senate Legal and Constitutional Committees
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Canberra ACT 2600

Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010

I make this brief submission to the Committee based largely on my experience of working as Secretary to the Norfolk Island Government for over six years between 2003 and 2010. However, I have also drawn on my previous experience of Commonwealth/State constitutional relations while working as Chief of Staff to a South Australian Government Minister for two years and while being the delegate of the Commonwealth Human Rights Commissioner in administering federal legislation for more than three years. I wish to stress that this submission is made in my private capacity and not on behalf of the Norfolk Island Government nor any other person or organisation.

No doubt members of the Committee would be aware of the irony of consideration being given to removing a particular anti-democratic power in relation to the Australian Capital Territory which was imposed on the Territory of Norfolk Island in recent weeks with the passage of the *Territories Law Reform Bill 2010.* That power, in effect, is for a single Commonwealth Minister to override the democratic decision of a territory parliament through the mechanism of advising the Governor-General and/or the Administrator not to assent to particular legislation.

What does this mean in practice? Perhaps a simple example will illustrate the problem with treating voters in Territories as second-class citizens with less democratic rights than those of Australians living in the states. I live in New South Wales, less than 500 metres from the border with the Australian Capital Territory. The elected representatives for whom I can vote in the New South Wales Parliament make decisions on my behalf to pass legislation which comes into effect after passage through Executive Council, where the Governor must act on the advice of her Ministers.

My friends who have the misfortune to live just the other side of the railway line have no such democratic right. They vote for members of the Legislative Assembly, which acts in the interests of electors by passing legislation, but it can currently be effectively overruled by a single Minister, who may or may not have their interests at heart. In fact, in most cases they will be unable to access the advice given to the Governor-General which results in the decisions of their elected representatives being frustrated. In terms of the

inherent right to equality before the law of all Australians, I can see no good reason for this discrimination.

In my considerable experience in Norfolk Island of dealing with federal ministers, their advisers and departmental staff, I found that they often had little knowledge of the Norfolk Island economy, political structure or the expressed will of the community.

One obvious example is the almost universal view in Canberra that Norfolk Island is a tax haven. This view is false. In 1979, the Commonwealth Parliament agreed that under self-government Norfolk Island would continue to have its own taxation system (developed and maintained during 66 years of direct administration of Norfolk Island by the Commonwealth), and that therefore *bona fide* residents of the Island would pay local taxes but not be liable for federal taxes on incomes actually derived in Norfolk Island. Non-residents do not have any such exemptions and cannot therefore use Norfolk Island as a tax haven. As a consequence of Norfolk Islanders not paying federal taxes on local incomes, they are also not eligible for Commonwealth programmes including health, welfare and social security. Norfolk Island Government provides these services to its citizens in a manner broadly comparable with those on the mainland.

In its dealings with Commonwealth Ministers and public officials, the Norfolk Island Government had to spend inordinate amounts of time and resources to attempt to educate them on the actual social, political, economic and cultural environments of the Island. Lack of this knowledge has caused the Commonwealth to make many flawed decisions about how to deal with Norfolk Island issues, and this problem is likely to be exacerbated by the recently-introduced power for the Commonwealth Minister to effectively overrule the democratically elected Legislative Assembly. Voting in federal elections is not compulsory for Norfolk Islanders, and in any case their small numbers mean that they are unlikely to have any political influence through elections over the actions of a distant minister or of the make-up of the federal parliament.

This most recent change will result in the Commonwealth now having three methods to frustrate the will of the elected Norfolk Island MLAs:

- Direct intervention of the federal minister at Executive Council, where, to the extent that his/her opinion differs from that of the Legislative Assembly, the Administrator must hold that the minister's view prevails;
- Disallowance of Norfolk Island legislation or regulations by the Federal Parliament (in a similar way to the current provisions for Northern Territory and ACT); and
- On matters required by law to be reserved for the Governor-General's pleasure, or where Ministerial assent is required, effectively blocking passage by taking no action at all and allowing matters to lapse – a tactic which has been followed by successive Commonwealth governments.

I note that the Bill under consideration by the Committee will not remove the existing disallowance power from the Federal Parliament. This already restricts the rights of Territory residents to govern themselves, but at least disallowance motions in the Federal Parliament are open to the public and there is the ability for citizens and organisations from the Territories to take part in the debate. In democratic terms, I see no justification for the Federal Parliament to have the power to disallow legislation or regulations from the Territories when it has no such ability for the states. But if there is any opinion on the Committee that such a power is necessary, surely an additional power for a remote federal minister to effectively veto an elected parliament is gross overkill?

I urge the Committee to recommend that the *Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010* be agreed to by the Senate.

Thank you for agreeing to accept submissions on this matter.

Peter Maywald