SUBMISSION OF

THE SOCIETY OF PITCAIRN DESCENDANTS

TO

THE JOINT STANDING COMMITTEE

ON THE NATIONAL CAPITAL AND

EXTERNAL TERRITORIES'

INQUIRY INTO NORFOLK ISLAND

ELECTORAL MATTERS

The Society of Pitcairn Descendants is the principal organisation of the people whose ancestors in 1856 accepted Norfolk Island as their new homeland. The most recent Norfolk Island census records that 46.5% of the permanent population of Norfolk Island are of Pitcairn descent.

The Present enquiry and its context

The terms of reference of the present Inquiry are as requested by the Minister for Regional Services, Territories and Local Government, Senator the Hon Ian Macdonald. Those terms of reference echo the inquiry recently conducted by the Senate Legal and Constitutional Legislation Committee on the Norfolk Island Amendment Bill 1999, also sponsored by Senator Macdonald, which (among other things) sought to require candidates for future elections to the Norfolk Island Legislative Assembly to hold Australian citizenship; sought to add Australian citizenship to the requirements for future enrolment on the Island's electoral roll; and sought to reduce to 6 months the residency requirement for enrolment on the electoral roll.

The Norfolk Island Amendment Bill 1999 was opposed by this Society, by the Norfolk Island Government and by the overwhelming majority of Island residents as evidenced by two statutory referendums held in the Island. The Bill was subsequently defeated by the Senate on 9 March 2000.

A major factor in the Bill's defeat was the fact that the Federal Government's level of consultation with the Norfolk Island community on the proposed changes was defective: despite a Senate resolution on 25 May 1999 calling for formal negotiations with the Norfolk Island Government on the issues, no such negotiations occurred. As Senator Mackay said in the Bill's second reading debate: "This Bill is a stark illustration of this governments reluctance to engage in genuine discussion with the community on Norfolk Island".

This situation has not changed. We are unaware of any subsequent Federal Government discussions with the Norfolk Island Government on these issues. Certainly, there have been no such discussions with the wider Norfolk Island community.

The present Committee should put aside the reference until the Federal Government has complied with the Senate's resolution of 25 May 1999 by initiating formal negotiations with the Norfolk Island community and its representatives.

To proceed with the reference in the absence of such negotiations would constitute another example of the recurrent distractions faced by the Norfolk Island community in developing and resourcing its attitude to Federal proposals, more especially when the present Inquiry is a reprise of another inquiry only recently conducted by the Senate Legal and Constitutional Legislation Committee.

Why we feel strongly about the issues

The philosophical basis of the proposed Australian citizenship requirement for electoral enrolment and eligibility for Assembly membership was set out in correspondence by the then Federal Minister in March 1998, namely that such a requirement is a "central tenet of Parliamentary democracy *throughout Australia* ", as a matter of "fundamental national policy" in order "to ensure that the primary loyalty" of parliamentarians is "to Australia", and in order to prevent "subversion by foreign governments"

That attitude has previously been described by Norfolk Island's elected representatives as provocative, insensitive and impolitic.

It ignores the fact that Norfolk Island has been a semi-autonomous polity for 144 years, and that integration into the metropolitan political community (first New South Wales, and subsequently the Commonwealth) has been both intensely controversial and successfully resisted. Many eminent commentators from the then Secretary of the Commonwealth Attorney-General's Department (Sir Robert Garran) in 1905 to the Whewell Professor of International Law in the University of Cambridge (James Crawford SC) in 1999, have expressed the view that Norfolk Island is not an integral part of the Commonwealth of Australia. Accordingly, there is no justification for treating it is as if it were.

That is not to deny the loyalty of Norfolk Islanders to Australia: the Norfolk Island community contributed disproportionately to the Australian war effort in both World Wars and a range of other conflicts in spite of the historical fact that the principal responsibility for defending the Island from prospective Japanese aggression in the Second World War was undertaken by New Zealand, not Australia. In the light of that, the reference in the above correspondence to "subversion by foreign governments" is a clumsy insult.

But the Island has for nearly a century and a half consistently and continually defended its own view of the correct characterisation of the relationship with the metropolitan country, and we have no doubt it will continue to do so.

Against that background, the imposition of an Australian citizenship requirement would be deeply provocative. It would also be counter-productive: the 1979 Federal position that "although Norfolk Island is part of Australia and will remain so, this does not require Norfolk Island to be regulated by the same laws as regulate other parts of Australia", is a position with - were it adhered to by the Commonwealth - would avoid divisive and resource-intensive debate over the Island's fundamental status. For the Commonwealth not to adhere to its 1979 position both invites and requires the Norfolk Island community to respond by resolving once and for all the issue of the Island's fundamental status as a matter of both constitutional and international law. Thus the impolitic pursuit of what is described as a 'fundamental national policy' may very well result in divisiveness, and not desired unity.

The specific merits of the citizenship proposal

Our central objection to any proposal for Australian citizenship as a requirement for eligibility to vote and to be elected is that, for the reasons set out above, it would adversely affect the Island' self-identity. But there are also more specific objections.

First, the Federal Government's view that citizenship should be a pre-condition of political participation is by no means universally shared around the world. Inquiries conducted in 1999 by the Norfolk Island Government through the Inter-Parliamentary Union PARLINE database shows that 19 countries do not impose such a requirement, including Germany, Ireland, Jamaica, Netherlands, New Zealand the United Kingdom. There is nothing organically self-evident about a citizenship requirement.

Secondly, the demographic make-up of Norfolk Island differs from that of Australia in that the Island's permanent population includes a much higher proportion of New Zealand citizens, ranging from 19.6% as at the 1986 census to 16.01% as at the 1996 census. The demographics of the Island reflect its close economic, cultural and historical links with New Zealand. A Commonwealth proposal to impose an Australian citizenship requirement runs the risk of being characterised as a desire to exclude New Zealanders from the self-government of a community of which they constitute a significant part.

Thirdly, it is not an answer to the above concern that dual citizenship would (usually) be available to affected New Zealand citizens. The explicit basis of a citizenship requirement is to "ensure...primary loyalty to Australia". Dual citizenship does not do so, as was made plain by the High Court's decision in Sue v Hill (1999) HCA 30.

Fourthly, the existing position (where no citizenship requirement is required) came about because of a Commonwealth initiative, to which the then Norfolk Island Government agreed. The abolition in the early 1980s of "British subject" status led to a proposal by the Commonwealth in 1984, in which the Federal Government offered two options:

"As you know, sections 38 and 39 of the Norfolk Island Act 1979 prescribe Australian citizenship or British subject status as a qualification for election to the legislative Assembly. In line with the Government's policy these references to British subject status should be deleted. One option would be simply to delete the British subject status requirement, making Australian citizenship the qualification for membership of the Legislative Assembly. *...The other option is to delete the citizenship requirement entirely. This would be consistent with the practice generally for local government, and perhaps better suited ti Island circumstances".*

The second option was adopted by the Federal Government in pursuing changes to the Norfolk Island Act 1979, and by the Norfolk Island Government in pursuing changes to a range of Island legislation - including electoral legislation.

Residence qualification for eligibility to vote

The Inquiry's second term of reference addresses the question for the time period before which "an Australian citizen" resident in Norfolk Island can enrol to vote in legislative Assembly elections.

The present position is that anyone (not just Australian citizens) may enrol on the Island's electoral roll if the person has attained the age of 18 years and has "been present in Norfolk Island for a total of 900 days during the period of 4 years immediately preceding the person's application for enrolment". This equates to an aggregate period of slightly less than 2 -1/2 years.

Although differently expressed from time to time, the present requirement has a long history. It first arose in response to demographic changes resulting from the post-War growth of the tourism industry. Specifically, in 1976 the enrolment qualification was 6 months' ordinary residence plus the holding of permanent immigration status. In 1986, the formal link between immigration status and voting rights was severed and instead the legislation required residency for "periods totalling 2 years and 6 months" during the period of 3 years prior to the application for enrolment.

The present residential qualification therefore substantially replicates its predecessors. Its explicit basis is that, as Norfolk Island is a uniquely fragile and sensitive polity, only those with a demonstrable long-term commitment to the Island should participate in its governance.

It is important to appreciate that at least two wide-ranging Federal inquiries into Norfolk Island's affairs have supported the retention of that policy, as follows:

- The Nimmo Royal Commission reported in 1976 that:

"Until a recent amendment...to the Norfolk island Council Ordinance 1960, itinerant workers in the Island and other persons who had been ordinarily resident in the Island for the previous 12 months could exercise a vote in elections for the Island's Council. *The Commission agrees with the policy behind the amendment which restricts eligibility to vote largely to a bona fide long-term residents or those intending to be such eg holders of certificates of residency or enter and remain permits. Itinerants are excluded"*

The House of Representatives Standing Committee on legal and Constitutional Affairs "Islands in the Sun" report of 1991 stated: "The right to vote in elections for the Norfolk Island Legislative Assembly and in referendums is currently available to persons resident in the Island for a period of 3 years (or 2 years and 6 months in the preceding 3 years) who satisfy the Administrator that they intend to reside permanently on the Island.

The Committee is satisfied that the current residency provision should remain unchanged".

The Society supports the view expressed on this issue in 1976 by the Nimmo Royal Commission and in 1991 by the House of Representatives Standing Committee on Legal and Constitutional Affairs.

If the qualification period were reduced to 6 months, there is a serious risk that the effect would be to reduce Pitcairn descendants to being a quaint minority in our own homeland.

This is especially so when the demographic position is analysed. Calculations undertaken by the Society during the controversy over the Norfolk island Amendment Bill 1999 indicated that the mooted change would add about 168 transient Australians to the Island's electoral roll. As the total of electors who voted at the then most recent election stood at 964, a change to a 6-month qualifying period would have added some 17% to the total of electors, constituting a major electoral shift.

The Norfolk Island Government is responsible for almost the whole of public sector outlays in the Island, levies all taxes and plans the vast majority of expenditure. This requires a long-term concern for the Island's economic and fiscal future. Transient workers, in general, have no reason to share in that concern. They are (quite properly) concerned with their jobs saving some money whilst they are here and enjoying their interlude in the Island. They can, in general, continue to vote in their home electorates. We do not think it is in the Island's long-term interests to require them to vote in Island elections, and we are fortified in this view by the recommendations of Sir John Nimmo and of the "Islands in the Sun" report.

Further, the 1996 census shows that the proportion of New Zealanders in the *temporarily* resident population is higher than for permanent residents, at 25.2% the mooted change to the residency qualification would there certainly not have comprehensive effect, because a large proportion of temporary residents would be excluded for citizenship reasons.

Leave well alone

Norfolk Island is probably the best-run Island in the Pacific. It is certainly the best-run of Australia's external Territories: in 1901 the "Islands in the Sun" report described direct Commonwealth administration of the Indian Ocean Territories as "seriously out of date and inadequate", characterised "by abuses of rights, exploitation and limited opportunities for self-management". In contrast, the same report was generally complimentary to Norfolk Island, suggesting "no wholesale reform...favouring instead some modifications and fine-tuning".

This shows that self-government is likely to be good government: the stewardship of the Island - on the present issues as on others - should rest with people of goodwill and energy, elected by the Islanders themselves. Demonstrably, that is the approach most likely to be successful.

The Island is economically and fiscally self-sustaining to a very large extent, certainly much more so that the States or other Territories. The Commonwealth Grants

Commission, in its 1997 report on Norfolk Island, concluded that "Norfolk Island's financial dependence on the Commonwealth is comparatively low". The Commission found that Norfolk Island had a dependency ratio of about 8% on recurrent expenditure, as compared with 78% for the Northern Territory and 34% for Christmas Island (Australian average: 44%).

Self-government has been a success. It deserves to be encouraged. Inappropriate external tinkering with fundamental principles is not the way to do so.

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