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AND EXTERNAL TERRITORIES

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JOINT COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES

Friday, 25 July 2003

Members: Senator Lightfoot (*Chair*), Senator Crossin (*Deputy Chair*), Senators Colbeck, Greig, Hogg, Lundy, Scullion and Stott Despoja and Mr Causley, Ms Ellis, Mr Johnson, Mr Neville, Mr Snowdon and Mr Cameron Thompson

Senators and members in attendance: Senator Crossin, Senator Hogg, Senator Lightfoot and Mr Neville

Terms of reference for the inquiry:

To inquire into and report on:

Measures to improve the operations and organisation of the Territory Ministry and Legislature on Norfolk Island, with particular emphasis on the need for a financially sustainable and accountable system of representative self-government in the Territory.

The inquiry should consider the following:

- a) direct elections for the position of Chief Minister; and
- b) fixed terms of government

These matters should be considered in the context of the financial sustainability of self-government arrangements on Norfolk Island, with particular consideration of:

- a) the findings of the Commonwealth Grants Commission documented in its 1997 report on Norfolk Island on the Territory's capacity to administer and fund obligations associated with:
 - current and future government functions and responsibilities;
 - the Island's current and foreseeable infrastructure requirements;
 - the provision of government services on Norfolk Island at an appropriate level;
 - subsequent government and parliamentary reports relevant to the above; and
 - the role of the Commonwealth and its responsibilities for Norfolk Island as part of remote and regional Australia.

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Committee met at 9.36 a.m.

BRENT, Mr Ronald Ian, Deputy Commonwealth Ombudsman

McMILLAN, Professor John Denison, Commonwealth Ombudsman

CHAIRMAN—I declare open this public hearing of the Joint Standing Committee on the National Capital and External Territories inquiry into Norfolk Island. I would like to welcome the Chief Minister of Norfolk Island, the Hon. Geoffrey Gardner MLA; the Minister for Community Services and Tourism and Speaker of the Norfolk Island Assembly, the Hon. David Buffett MLA; and the former official secretary Mr Owen Walsh.

I now turn to proceedings at hand. Welcome, Mr Brent and Mr McMillan. These hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as contempt of parliament. The committee has received a submission from the Commonwealth Ombudsman, No. 14. Are there any corrections or amendments you would like to make to your submission?

Prof. McMillan—No.

CHAIRMAN—The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee you may request that the hearings be held in camera and the committee will consider your particular request. Before we ask you some questions, do you wish to make an opening statement?

Prof. McMillan—I shall make a brief opening statement, if I may.

CHAIRMAN—Please proceed.

Prof. McMillan—Firstly, thank you to the committee for the opportunity to address the committee and to supplement our submission with an oral presentation. Our submission indicates that my officers have little contact with Norfolk Island. The Commonwealth Ombudsman does not have jurisdiction over the Norfolk Island administration. While I can receive complaints from Norfolk Island residents about Commonwealth government decisions, few are received—probably about one a year. To that extent, our submission has addressed the issues before the committee from the standpoint of general principle rather than from any practical experience or detailed knowledge about problems in the Norfolk Island government administration. The thrust of our submission has been that consideration should be given to establishing an ombudsman function as part of the framework of government in Norfolk Island. It is a matter that we simply raise for the committee's consideration.

We have made that suggestion for a number of reasons, which are outlined in the submission, and I will briefly touch on three of them. Firstly, we have submitted that the right to complain against governments should be viewed as both a fundamental human right and a fundamental democratic right. The right to complain against—to challenge—government is embodied in the system of government in many ways nowadays, but the ombudsman in the Australian system is a chief way in which the right to complain against government is formally captured. Secondly, an

ombudsman institution can bring an independent, impartial, objective eye to the resolution of disputes that people have with government and in that way can bolster community trust in government decision making while at the same time improve incrementally the quality of public administration. Thirdly, compared to other methods of review and scrutiny of government decisions, the ombudsman is distinctly a low-cost option. It operates informally and is less expensive than, say, tribunal or court review and less expensive than the periodic inquiry or royal commission. History illustrates that disputes do arise and do erupt in litigation between, for example, residents of Norfolk Island and the administration in that jurisdiction.

Our submission presented a number of options for establishing an ombudsman function on Norfolk Island, but our view is that the more viable of the options would be a service arrangement between the Norfolk Island government administration and one of the Australian statutory ombudsmen—essentially the Commonwealth Ombudsman or a state ombudsman. The investigations could be carried out under a Norfolk Island ombudsman act. It need not be an ornate or highly staffed option; it can be done simply and efficiently. Indeed, most ombudsman investigations even in Australia are undertaken at arm's length by email, telephone and written correspondence. Arrangements can be made in the exceptional case for interviews to be conducted and documents to be inspected on site by people under delegation—perhaps by people who are members of, say, the Norfolk Island Administrative Review Tribunal.

The main objection likely to be raised against the issue—as I say, we have raised it for consideration—is simply the small size of the population and the government administration on Norfolk Island, but we do not see that as a strong objection. There are many organisations of small size that have an ombudsman function built in: local councils, universities. The ACT, as we have outlined in our submission, has a service arrangement with the Commonwealth Ombudsman. Finally, as our submission also intimates, the smallness of the government system and indeed the close interpersonal links that then permeate many aspects of policy development and service delivery can in fact give rise to problems of their own kind that speak the need for some independent method of scrutiny of administrative decision making. That concludes the opening submission.

CHAIRMAN—Before I go to the Deputy President of the Senate, Senator Hogg, could I ask: what legal machinery would have to be in place before the office of the Commonwealth Ombudsman or indeed a visiting ombudsman could operate on Norfolk Island? Could it be accepted without any legal framework being passed by the Norfolk Island government?

Prof. McMillan—It is something that could be undertaken by executive arrangement. It seems to me it would be within the framework of the Commonwealth Ombudsman Act at the moment for the Commonwealth Ombudsman to make such an arrangement, bearing in mind that Norfolk Island is an Australian government territory, and it would be within the executive capacity of the Norfolk Island administration to make such an arrangement with an Australian ombudsman. The main difficulty with an arrangement that rested on an executive basis is that, in the exceptional circumstance that coercive powers had to be exercised, currently under the Ombudsman Act and under the Norfolk Island Act it would not be possible for coercive powers to be exercised. Only the non-coercive executive arrangements could be exercised.

There is no doubt that the best arrangement is, for example, the kind of arrangement that exists, say, with the ACT where there are essentially two items of legislation. The ACT has

enacted the ACT Ombudsman Act, which says there shall be an ACT Ombudsman and so on, and then there is the Commonwealth consequential provisions act which says that, until the ACT appoints its own ombudsman, the Commonwealth Ombudsman shall discharge that function. A memorandum of understanding at an executive level is then entered into between the Commonwealth Ombudsman and the ACT government administration to facilitate that. It is an understanding which essentially covers cooperation and an annual payment to defray the costs.

CHAIRMAN—Do I take that statement then to mean that the Commonwealth Ombudsman's office could not be imposed on?

Prof. McMillan—No. There are two legal obstacles to imposing the Commonwealth Ombudsman on the Norfolk Island administration at the moment. One is the section in the Commonwealth Ombudsman Act that excludes the Norfolk Island administration from the Commonwealth Ombudsman's jurisdiction, and the second is the provision in the Norfolk Island Act which says that Commonwealth acts do not apply unless—I forget what the formula is, but the presumption is that they do not apply.

CHAIRMAN—Does the Ombudsman Act specifically include any other state or territory?

Prof. McMillan—No, I think from memory the Norfolk Island Act simply declares in general terms that Commonwealth laws do not operate unless they are specifically invoked or applied.

CHAIRMAN—What about section 109 of the Constitution?

Prof. McMillan—Section 109 of the Constitution essentially gives the Commonwealth parliament that override power, and parliament can exercise its legislative supremacy essentially under section 122 of the Constitution—the territories power. I should step back and say that I am drawing on my previous knowledge in constitutional and public law here. There are two legal mechanisms the Commonwealth could use to assert its legislative authority in Norfolk Island. One is the exercise of its territories power, under section 122, and the second is, in many cases, its override power in section 109 of the Constitution, although that is usually exercised in relation to states. I must say that I am heading into territory for which I was not prepared and am drawing on my past knowledge. I have just given what is colloquially called a kerb-stand opinion.

CHAIRMAN—I have a distinct advantage over you, Professor McMillan: I have a copy of section 122, which the committee secretary has just put in front of me. It says *inter alia*:

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth ...

That would seem to cover—

Prof. McMillan—From memory, there is a decision of the High Court—

CHAIRMAN—Before you go into that, Professor, could I just interrupt you? I apologise for that. I understand that Senator Crossin, one of the two senators for the Northern Territory, is on

the line now, participating via teleconference. Senator Crossin, I have just asked Professor McMillan to amplify section 122 of the Constitution to see whether that in fact does cover Norfolk Island.

Prof. McMillan—Good morning, Senator Crossin. I was just mentioning that my understanding is that the High Court, in the decision in *Berwick Ltd v. Gray* (1976) in 133 Commonwealth Law Reports 603, confirmed that Norfolk Island is part of the Commonwealth of Australia and that the Commonwealth law-making authority under section 122 extends to Norfolk Island. That alone would provide an adequate constitutional basis for legislation of the kind that we have been discussing.

Mr Brent—I might intervene here to add that certainly in the operation of the Ombudsman's office it is very important to us that we operate cooperatively with administration, rather than aggressively.

CHAIRMAN—We agree.

Mr Brent—In that context, clearly, while the Commonwealth may have the power under 122 to impose an ombudsman on Norfolk Island, what we would be looking for would be an arrangement that would see that sort of an institution welcomed brought into the administration of the island.

CHAIRMAN—I am sure the committee agrees that it is not something that we would necessarily wish to impose.

Senator HOGG—I will follow that up, because I want some clarification on one of the things that I think you have mentioned. Whilst everyone wishes everything in this world to happen cooperatively, there are some instances where things might not happen cooperatively. I am interested in Professor McMillan's comment that you might have a cooperative power but not a coercive power, if I can put it in that sense. It seems to me, if that sort of arrangement were entered into, it would be a lesser quality of ombudsman than one would have in other jurisdictions. That, to me, is completely undesirable. Regardless of whether or not it might be used, one must have the big stick available if it needs to be used, it seems to me.

Prof. McMillan—I agree with what you have said, Senator. The experience of the Commonwealth Ombudsman's office certainly amplifies that point. The Commonwealth Ombudsman's office relies only exceptionally on the exercise of its formal and coercive powers under the Ombudsman Act, but it does rely on them. There are probably about 40 to 50 occasions a year when it is necessary to invoke the formal procedures.

I must say that usually the invocation of those formal procedures is happily accepted, and sometimes welcomed, by government agencies, because there is a degree of clarity for both sides in an arrangement that is being exercised formally. I can think of an instance recently, for example, where an agency was reluctant, for privacy reasons, to provide information to the Commonwealth Ombudsman's office. The only satisfactory way of clarifying the doubt was for the Ombudsman to exercise the formal powers and require the information to be provided.

Senator HOGG—There would seem no doubt, in my mind, that the fact that the Ombudsman has those formal powers does, in a number of the other cases where you do not necessarily have to push people, convince them anyway before you get to the push stage that it is wise to cooperate with the Ombudsman.

Prof. McMillan—Yes. It is the existence of the draconian option that encourages people quite often to work at a cooperative level.

Senator HOGG—In respect of Norfolk Island, I think you said that you receive a complaint a year. Are you able to tell us the nature of those complaints or are those complaints something that we would need to take as in camera evidence?

Prof. McMillan—I do not have precise details of the complaints here with me. Perhaps I should preface it by saying that that estimate on our part that we receive, say, on average one complaint a year, is taken from our database which we interrogated by asking it which complaints had come from a Norfolk Island address. It is conceivable that somebody from Norfolk Island could, using an Australian address, have lodged a complaint. That is probably a reliable estimate. But from memory, the complaints are about, for example, a decision made by Australian immigration authorities or a person in Norfolk Island being in receipt of a social security benefit in Australia.

Senator HOGG—So they do not necessarily get to the issue of governance on the island?

Prof. McMillan—No.

Senator HOGG—And they probably do not get to the issue of governance because your authority does not extend to that issue.

Prof. McMillan—Correct. I have no personal knowledge from within the Ombudsman's office about issues of governance on Norfolk Island having arisen in any of our investigations.

Senator HOGG—In your position are you aware of any state or territory of the Commonwealth where the citizens do not have access to an ombudsman?

Prof. McMillan—No. In every state government, the Commonwealth and the mainland territories, there is an ombudsman arrangement established by legislation of the host jurisdiction. Indeed Australia essentially leads the world in the development of the ombudsman institution in a contemporary setting.

Senator HOGG—And the ombudsman, in many of those instances—that is, established under the legislation—would be a fairly independent agency or operator?

Prof. McMillan—Yes. Each of the Commonwealth, state and territory ombudsmen in Australia readily satisfies the criteria for independence that are internationally accepted now. There are now international benchmarks for what is an ombudsman institution in the true model, and each of those government or statutory ombudsmen in Australia readily satisfies those criteria.

Senator HOGG—Could you give us those criteria?

Prof. McMillan—Yes, I can provide the criteria.

Senator HOGG—Take that on notice. I think that would be helpful. In respect of those criteria, I would imagine that part of the difficulty on a place such as Norfolk Island would be to have someone who was independent, given the small size of the population that exists on the island. Would that be encompassed within those criteria?

Prof. McMillan—Yes. Independence probably is the keystone of the ombudsman concept or institution as it has been practised in Australia.

Mr NEVILLE—You talked about Norfolk Island being excluded from the Ombudsman Act. Is that specifically for territory matters or for all matters?

Prof. McMillan—I do not know the precise detail, but it is decisions made under the Norfolk Island Act or by an agency of the Norfolk Island government which are excluded from the Ombudsman's jurisdiction.

Mr NEVILLE—So if you got a complaint from Norfolk Island of a purely Commonwealth nature referring to some conduct of the Commonwealth in respect of Norfolk Island, or lack of activity, you would be obliged to investigate it?

Prof. McMillan—Correct. And those are the few complaints that we have received over the years.

Mr NEVILLE—If we take the theoretical situation of—either by alteration to the existing act, by way of using the Commonwealth Ombudsman or by way of some arrangement with a state—making ombudsman activities available to the island, would you see that having to be endorsed by Norfolk Island law or would a memorandum of understanding, that you alluded to at the beginning of your address, be sufficient? Finally, to whom would that ombudsman report? Would he report to Minister Tuckey or would he report to the Chief Minister of Norfolk Island? What would the process be if, by one means or another, an ombudsman was put in place?

Prof. McMillan—I should preface my answer by saying that I am exploring issues that I have not thought about at length. Generally speaking, most of the activity of government, even when there is a legislative backdrop, is in fact undertaken at an executive level. It is possible at an executive level to establish a variety of different complaint or grievance inquiry mechanisms. As I have said this is a preliminary view, but my opinion is that it would be possible by arrangement between the Commonwealth and Norfolk Island to establish at an executive level an ombudsman inquiry and complaint function where reports would go to the Norfolk Island administration.

However, to reiterate points that I have made earlier, I think that would be an unsatisfactory option for two reasons. Firstly, it denies the formal protections and the formal coercive powers that are provided by an act—the Ombudsman Act provides not only coercive powers to require information but also statutory protection and immunity for those who supply that information, so that can be an important element in investigation. Secondly, as I have indicated there are exclusionary provisions in both the Commonwealth Ombudsman Act and in the Norfolk Island

Act about the interaction of Commonwealth and Norfolk Island law. Though it would, I think, be possible to establish an executive arrangement that was compatible with those exclusionary provisions they nevertheless provide an awkward backdrop for doing so. So, in summary, my preliminary view is that it would be possible to make an executive arrangement. But if this option were to be given serious consideration, the more satisfactory course would be to look at the legislative option.

Mr NEVILLE—Would that use the Commonwealth Ombudsman or make provision for a state ombudsman to be made available?

Prof. McMillan—I have no concluded view on whether the Commonwealth Ombudsman or a state ombudsman is the more suitable. Certainly, I can say that the Commonwealth Ombudsman's office would be prepared to do it. I think we have an ideal range of experience in dealing with Commonwealth matters and also, through our ACT jurisdiction, dealing with what is a local community level type of government administration.

Mr NEVILLE—Has there ever been a suggestion at the ACT level that people have been embarrassed or coerced in any way by virtue of the fact of them giving evidence to you in your capacity as the ACT Ombudsman?

Prof. McMillan—As far as I am aware no suggestion has been made in those terms. There is a view that a system of government like the ACT should demonstrate its distinctive character by having its own institutions of government—its own court system and its own ombudsman—but that argument to my knowledge has only ever been put at the level of principle and symbolism and not at the practical level of difficulty or embarrassment.

Mr NEVILLE—You mentioned impracticality and that you had reservations about it being invoked at the Norfolk Island level. What did you mean by that? You said earlier that the invoking of an ombudsman at the local level may not work. Is that because of the size of the island?

Prof. McMillan—With a population of essentially 2,000 with a small governmental system, my estimate—and this is not based on any independent study of arrangements on Norfolk island—is that it would not support or justify the infrastructure of a stand-alone ombudsman. It would be the elaborate option essentially.

Mr Brent—There is also the benefit of achieving an important feature, which is independence. When you have such a small community, it would be more difficult to be confident that somebody was going to be independent of all the sorts of issues that might arise in that small community.

Mr NEVILLE—While recognising that, the other element that you alluded to was that if something like this was going to be invoked it would require the cooperation of the Norfolk Island administration; it should not be a matter of imposition but, rather, of request.

Prof. McMillan—I would agree with that. It has certainly been the experience of the Commonwealth Ombudsman over 26 years that another key to its success is its good working relationship with the executive agencies against which the complaints are being handled. Unless

there is a good, close working relationship of trust and respect it is very difficult to undertake investigations in an informal, flexible fashion.

CHAIRMAN—I now call by telephone link-up in Darwin the deputy chairman of the committee, Senator Crossin.

Senator CROSSIN—This has just occurred to me: what area of responsibility do you have for the other external territories, being Christmas Island and the Cocos islands?

Prof. McMillan—Again, I am venturing into areas that I have not looked at recently. My understanding is that the administration of those areas is undertaken by Commonwealth government agencies and so the jurisdiction that I have over the government administration in those areas is simply the jurisdiction that I have over Commonwealth government activity generally.

Senator CROSSIN—They are quite separate to Norfolk Island; they are actually like a shire council. I do not suppose you know if you get many complaints from Christmas or Cocos, do you, or what the nature of those might be?

Prof. McMillan—I have no personal knowledge, but I can, again, check on that matter, essentially by interrogating the fairly sophisticated database we have to see whether there are complaints that give an address from Cocos (Keeling) Islands or Christmas Island. So, if you would like, I will have a check made of that matter.

Senator CROSSIN—In the case of your operations in the ACT, is that because there is no ACT based appeals system or tribunal system, therefore they just refer everything to the Commonwealth Ombudsman?

Prof. McMillan—There is probably both a historical and a contemporary explanation. Historically, when the ACT was given self-government in 1989, interestingly one of the features or conditions of self-government was that the ACT would commence life with an administrative law system the same as the Commonwealth's. Self-government was not seen as an opportunity to move away from the accountability framework that had built up. So the ACT, in summary, commenced life with a system of judicial review, a freedom of information act, an administrative appeals tribunal and an ombudsman. The first of those three features—judicial review, freedom of information and administrative appeals—is now undertaken in the ACT by ACT agencies. There is, for example, an ACT Administrative Appeals Tribunal that is separately staffed. In the early days, it relied on the Commonwealth Administrative Appeals Tribunal as its host body. But the ACT has retained the Commonwealth Ombudsman as its ACT Ombudsman.

There is no suggestion at the moment that that arrangement should be discontinued. The ACT government, from discussions I have had with them, find that it works very well. There is a great advantage for them, too, in that by using the Commonwealth Ombudsman's office as their ACT Ombudsman's office they draw upon a very large office, with capacity for training and web delivery, with more than 80 staff with a diversity of experience, and whose Ombudsman and Deputy Ombudsman themselves each bring to the institution 30 years of experience in government practice, community practice, academic practice and so on. So it is my

understanding that that is why they find it satisfactory to retain a joint Commonwealth-ACT function.

Senator Crossin—Are there any benefits in extending your role to Norfolk Island, given there is no local appeal or administrative tribunal process there?

Prof. McMillan—As our submission indicates, and in my view, there are distinct benefits, though I preface that by saying that the distinct benefits I have outlined are placed at the level of general theory and experience rather than dealing with any problems of which I am aware. I am not personally aware of problems in the Norfolk Island administration, but the general structural and practical benefits I see are: it would recognise as part of the framework or fabric of government in Norfolk Island that the right to complain against and challenge government should be institutionalised; it would provide for objective, independent, impartial scrutiny of decisions; and it would be, as I have said, a low-cost option for bringing that degree of independent scrutiny to government decision making.

Mr NEVILLE—First, is what the ACT pays the Ombudsman's office confidential? If not, what is the amount? Is there an annual fee or is payment on a per activity basis?

Prof. McMillan—I do not think it is confidential. Is it?

Mr Brent—No, it is not confidential.

Prof. McMillan—In round terms, the figure is \$390,000 for the discharge of the ACT Ombudsman function and there is an additional figure of about \$440,000 for handling the function of complaints against the Australian Federal Police in respect of its community policing function in the ACT.

Mr NEVILLE—So that is \$390,000?

Prof. McMillan—It is \$390,000 for the ACT Ombudsman.

Mr NEVILLE—It is all-up about three-quarters of a million dollars to cover 300,000 people?

Prof. McMillan—Yes. There are about 600 complaints and inquiries a year and probably fewer than 100 sustained or formal inquiries and investigations.

Mr NEVILLE—So, in round figures, it is about \$1,000 per complaint?

Prof. McMillan—Yes.

Mr NEVILLE—Thank you.

CHAIRMAN—Just before we finish off, Professor McMillan, could you tell the committee whether the Ombudsman Act, insofar as it affects the Australian Capital Territory, has the power to inquire into MLAs as well as the Public Service and the Australian Federal Police?

Prof. McMillan—In the ACT we work under a separate act called the ACT Ombudsman Act, which is for most purposes a mirror copy of the Commonwealth Ombudsman Act. It does not extend to the behaviour, actions or whatever of members of the Legislative Assembly. Our jurisdiction over the community policing role undertaken by the Australian Federal Police in the ACT is undertaken under a separate act again, called the Complaints (Australian Federal Police) Act.

CHAIRMAN—An act that you would have something to do with, no doubt?

Prof. McMillan—Yes.

CHAIRMAN—So it circumvents the Ombudsman Act insofar as the latter act applies to the ACT?

Prof. McMillan—Or supplements it.

CHAIRMAN—Or supplements that act.

Prof. McMillan—Yes. I have early in my term raised as an independent matter for consideration the option of combining both the Ombudsman Act and the complaints against the police act, because it is a bifurcated legislative scheme that goes back 20 years and is currently awkward.

CHAIRMAN—The ACT also has whistleblower legislation, and the ACT government is required to disclose contracts worth more than \$50,000. Do you see any value in that type of legislation being extended to other territories of the Commonwealth?

Prof. McMillan—Yes. Indeed most of the state and territory jurisdictions in Australia now do have public interest disclosure, or whistleblower protection, legislation. This is one area in which the Commonwealth distinctly lags in law reform. One feature of the ACT public interest disclosure legislation is that it designates certain institutions as bodies to which protected disclosures, complaints or whistleblowing can be made. The Ombudsman is designated under the ACT public interest disclosure legislation as a protected authority to whom a whistleblowing allegation can specifically be made. Again, to bring that closer to the subject of this inquiry, if, for example, there were a public interest disclosure act in Norfolk Island then an arrangement similar to that in the ACT could easily be adopted as well.

CHAIRMAN—It would appear, by what you say, that Norfolk Island may be the only Australian territory that does not have that kind of legislation.

Prof. McMillan—Yes. Offhand I think most of the states in Australia have enacted whistleblower protection legislation. I am not sure whether the Northern Territory has it yet. From memory, I think all of the other states have now done so. The ACT is a state that has certainly done so.

Mr NEVILLE—Not very effectively, some would argue.

Prof. McMillan—Whistleblower protection legislation is awkward because the complaints that arise under it are, in another guise, often complaints of a personnel disciplinary kind. Whistleblower protection legislation does have the danger of overshadowing other mechanisms in the system of government for resolution of personnel management problems.

CHAIRMAN—I just have one last question, because we are over time. The Norfolk Island police force is structured numerically—three officers are seconded from the Australian Federal Police and three special constables are appointed from within the island community. If there were reports that were brought to your attention now, of incompetence, lack of sufficient numbers to investigate sufficiently, lack of forensic specialist support or perhaps going soft in the small community—as sometimes does happen—without any further extension of your powers in Norfolk Island would you be able to investigate them?

Prof. McMillan—Yes. When the Commonwealth Ombudsman receives complaints at the periphery of its jurisdiction of a serious nature about integrity in government, it certainly regards it as part of its function to at least refer them to somebody, or alert somebody to them, who can take them seriously. Indeed there have been instances in the past where, even with jurisdictional doubts, the Commonwealth Ombudsman has spoken to the agency against which a complaint has been made and facilitated some kind of inquiry to resolve the complaint. I should say, though, that the moment you get into territory where there is doubtful jurisdiction you have to tread warily.

CHAIRMAN—That is an equivocal answer, purposely framed in that way. I wonder whether you would be kind enough to take that on notice and come back with more specific and perhaps less ambiguous detail.

Prof. McMillan—I would be happy to. You have accurately characterised my answer.

Mr NEVILLE—If I ask one question for clarification on this, it might solve the problem. Again without imposing things on Norfolk Island, if the Norfolk Island government were to enact legislation which mirrored the ACT legislation with regard to complaints against police, then ipso facto it would apply on the island and you would be able to investigate it.

Prof. McMillan—That is correct, Mr Neville.

Mr NEVILLE—Wouldn't that be a much simpler way of doing it and treat the islanders with much more respect?

Prof. McMillan—Yes. That is our preference in every instance.

CHAIRMAN—Professor McMillan and Mr Brent, on behalf of the committee I thank you for your attendance here today. If there are any matters on which we might need additional information, the secretary will write to you.

[10.21 a.m.]

BACKHOUSE, Ms Margaret, Director, Self-Governing Territories, Territories and Local Government, Department of Transport and Regional Services

BERESFORD-WYLIE, Mr Adrian, Assistant Secretary, Self-Governing Territories, Local Government and Natural Disaster Management, Department of Transport and Regional Services

DOHERTY, Mr John, First Assistant Secretary, Territories and Local Government, Department of Transport and Regional Services

CHAIRMAN—I welcome you on behalf of the committee. The committee has received a submission from the department, submission No. 13. Are there any corrections or amendments that you would like to make to your submission?

Mr Doherty—No, thank you, Mr Chairman.

CHAIRMAN—The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee you may request that the hearings be held in camera, and the committee will consider your request. Before we ask you some questions, do you wish to make an opening statement?

Mr Doherty—I am conscious that we have already lodged a submission, which provided a range of information. I do not want to go back over that territory, but there are just a couple of general comments that we might make which respond essentially to issues raised in submissions.

CHAIRMAN—Please proceed.

Mr Doherty—We are conscious that the Norfolk Island people are strongly jealous of their identity and their ability to control their own affairs. It is perhaps not surprising that there should be challenges, given the size, the remote location and the range of responsibilities of the community. This inquiry offers the opportunity to examine ways in which governments might work more effectively in the interests of the Norfolk Island residents.

A number of submissions have expressed concerns about an underlying agenda on the part of the Australian government to reduce Norfolk Island's status. There is no agenda. Norfolk Island was granted a substantial measure of self-government in 1979 as a territory within the Commonwealth of Australia, under the provisions of the Norfolk Island Act 1979. The level of self-government is broadly comparable with, though not identical to, that applying in the other self-governing territories—the ACT and the Northern Territory. The government's arrangements for Norfolk Island generate a range of responsibilities and obligations that are unique. No other community of equivalent size in Australia has such wide responsibility to manage its own affairs. The Norfolk Island community looks to the Norfolk Island government and to the Legislative Assembly to make decisions on effective governance arrangements and on services and infrastructure appropriate to meet its needs into the future.

In this context, the Australian government retains an overarching but essentially residual responsibility for the territory's governance. The Australian government has reaffirmed in successive policy statements since 1979 its commitment to self-government for Norfolk Island, its underlying obligation to provide a safety net and its responsibility for maintaining Norfolk Island as a viable community. However, that responsibility needs to be viewed in the light of Norfolk Island's unique financial situation. Norfolk Island has opted not to be a part of the wider Australian taxation framework and does not participate in tax-sharing arrangements.

A key finding by the Commonwealth Grants Commission was that Norfolk Island has the financial capacity to provide services and infrastructure at mainland standards should it choose to implement appropriate revenue measures. The department see a real challenge for the Norfolk Island government in the development and implementation of appropriate revenue measures. We see the governance issues raised in the terms of reference for this inquiry as relevant to the capacity of the Norfolk Island authorities to respond effectively to those challenges. We recognise that Norfolk Island is a small community and that its government faces wide responsibilities. The department are happy to assist Norfolk Island government in its task, as we can, and to facilitate the involvement of other Commonwealth agencies.

Mr NEVILLE—I notice in your submission you talk about a figure of \$500,000 a year. What are the total Commonwealth contributions to the budget of Norfolk Island as you understand them?

Mr Beresford-Wylie—The Commonwealth contribution is around \$4 million a year to Norfolk Island, in monetary terms. But I do not think there is an actual specific contribution to the Norfolk Island administration's budget per se.

Mr NEVILLE—Where does the \$4 million go? Are you talking about things like department of environment activities on the island?

Mr Beresford-Wylie—That is correct: the broad scope of federal funding that goes into Norfolk Island. That would include the contributions the department makes to KAVHA, the Kingston and Arthur's Vale Heritage Area; the cost of the Administrator's office and the official secretary's role there; the contributions that are made by, as you have said, Environment Australia; and in rough terms the contributions that are made through a number of programs that the federal government runs which Norfolk Island accesses.

Mr NEVILLE—I see this linked to governance. I am concerned about some aspects of infrastructure on the island. The argument is used by the Commonwealth that, as Norfolk Island does not contribute to income tax and some other taxes, it has no right to special grants. Yet we recognise that in areas such as the environment, foreign affairs, defence and trade they have a right, and there is a responsibility on the part of the Commonwealth to deliver those services. I have a concern regarding health. Can you tell me what the department's attitude is to health? I know you are DOTARS and do not have primary responsibility for the detail of health. I am talking broadly now. How do you see your responsibility fitting into the provision of health services on the island?

Mr Doherty—In broad terms, we would see our role as largely limited to a facilitative one. We would see the provision of health services as a matter for the Norfolk Island government,

under their arrangements. We would expect that there may be areas where Commonwealth authorities could provide expert assistance with that, and we would be happy to be the agent to facilitate that involvement.

Mr NEVILLE—What about financial contributions?

Mr Doherty—We have not seen a role for the Commonwealth.

Mr NEVILLE—The Commonwealth provides assistance to the states in some remote areas. For example, I have a very remote area of my electorate, the Miriam Vale area, between Bundaberg and Gladstone. It is not on the west of the Great Divide, but it is isolated and has special needs, and I received a grant for that area of \$2 million to provide a regional health service. I want to know why Norfolk Island is somehow different. Is it just this taxation matter? Isn't the primary delivery of health to territories an overarching responsibility of the Commonwealth?

Mr Doherty—I think the taxation matter is critical in it. Obviously the provision of services through the Commonwealth government or through financial assistance from the Commonwealth to the states and other territories is based on the Commonwealth's revenue collection through taxation. The same cannot be expected for a territory that is not participating in those taxation arrangements.

Mr NEVILLE—What do we contribute each year to Christmas Island and Cocos Island? About \$60 million, don't we?

Mr Doherty—I do not have the figures in front of me.

Mr NEVILLE—Surely the revenue tax bases of Cocos Island and Christmas Island would be infinitesimal against the outlays?

Mr Doherty—We can check that, but, no, the revenue in fact is significant, including from mining royalties in relation to Christmas Island.

Mr NEVILLE—Could you get back to the committee on that?

Mr Doherty—Yes.

Mr NEVILLE—What do you say to the proposition that any small community, anywhere in Australia, be it state or territory, that has a particular catch-up need should be assisted? I am not saying that it should be on a drip-feed, but it was recognised with the restoration of the cliff on Norfolk Island—even though the community will pay that back over time. Is there a case, where a primary health need is concerned, for some Commonwealth intervention? Of a positive nature, I might add.

Mr Doherty—I think again the answer to that is that there is certainly a role there. The question is first of all can the community itself provide for those needs? Has it done everything it can to provide those services? Looking at the Grants Commission's response, the finding was that there is the capacity to raise the revenue to provide an equivalent standard of services

through the Norfolk Island government. The government itself has identified a program for additional revenue raising to support that.

Mr NEVILLE—Do you think it is acceptable, for example, that the cost of \$27,000 should be imposed on an islander or on the administration of Norfolk Island to transfer a seriously ill patient to Brisbane or Sydney or Auckland? Do you think that is a reasonable expectation of any Australian citizen?

Mr Doherty—I think that is part of this health service issue that has to be addressed by the Norfolk Island government.

Mr NEVILLE—We send people out to collect yachtsmen and all sorts of things, and we do not apply that formula when we are rescuing people. I wonder why we have this fascination with the theory of tax collection as overriding humanitarian things on Norfolk Island. Quite frankly, it makes me very angry.

Mr Doherty—I understand that. Again, I think the issue becomes the capacity of the community to provide for itself. Other communities in Australia are expected to contribute to the public purse from which those benefits are paid to them.

Mr NEVILLE—Thank you.

Senator CROSSIN—Do you clearly see a link between the terms of reference of this inquiry and the capacity for the island, as I think your submission actually says, to improve any sorts of deficiencies in its financial and administrative capacity? In other words, will changing the voting system or the way in which elections are held—and when they are held—improve the capacity of the island in its economic terms?

Mr Doherty—Senator, I do see a link there. The issue that confronts the Norfolk Island government in raising the additional revenue to provide those services calls for a degree of sustained government activity, the capacity to take the hard decisions and carry them through. That, to me, is where the governance questions come in, as well as the issue of whether the way the Legislative Assembly and the government's arrangements in Norfolk Island are set up supports that need.

Senator CROSSIN—Do you believe it is a change that should be driven from the Commonwealth or driven by the people on the island?

Mr Doherty—Fundamentally I think the ideal is that the change in government arrangements should come from within the island. Certainly it would be better to go forward with an agreed set of changes than something that was forced upon the island.

Senator CROSSIN—I had a look at your submission last night. Do you have an indication of the range of public servants who are employed by the Norfolk Island administration, or is that best asked of the Chief Minister later on in the morning? I am referring to a breakdown of those 250 or so. Do you know if that includes, say, people who work at the hospital as nurses or teachers in the school? What constitutes that number?

Mr Doherty—Senator, I think our information on that would be in very broad terms compared to what you could obtain from the Norfolk Island witnesses later today.

Senator CROSSIN—What is your current information on that?

Mr Beresford-Wylie—Our understanding, Senator, is that the 250 identified in the public sector would include the people that you have talked about in the hospital. But, as Mr Doherty said, there are representatives here from the government of Norfolk Island who would be better placed to answer that question.

Senator CROSSIN—You do not have a breakdown of that?

Mr Beresford-Wylie—No, Senator.

Senator CROSSIN—Have you sought an opinion or a comment from other departments such as Treasury or Finance about possible reforms that could be undertaken on the island in terms of, say, different tax arrangements or financial arrangements that could operate there?

Mr Doherty—Senator, consistent with the approach that I have outlined, our role in that has been to try and bring Treasury to assist the Norfolk Island government in looking at those possibilities. That is happening, I understand.

Senator CROSSIN—Can you expand on what you mean by that? What has happened and who is involved?

Mr Beresford-Wylie—As you are probably aware and certainly as was covered in our submission, a process called Focus 2002 was undertaken on the island last year. The Commonwealth Treasury did provide some support for the Norfolk Island administration in looking at possible revenue-raising options and the scope of things that were being covered by Focus 2002.

Senator CROSSIN—So your initial answer refers to that review.

Mr Doherty—There is an update on that as well, I think.

Mr Beresford-Wylie—Subsequent to that we have approached the Treasury and asked them whether they would be willing to provide further advice to Norfolk Island. Their response has been that, should they receive a request from Norfolk Island, they would be willing to look at providing what further advice they are capable of providing.

Senator CROSSIN—Are there any plans from your office to take this further if no such request comes forward?

Mr Beresford-Wylie—We would see the request for advice on issues associated with the Norfolk Island economy and Norfolk Island financial matters as one which would come primarily from the Norfolk Island administration to the Treasury. It is not something that we were intending to initiate.

Senator CROSSIN—If that request does not come, there is nothing your department intends to do about that?

Mr Doherty—That is right. At this stage, we would not propose trying to put together our plans for how the Norfolk Island government might go about raising extra revenue.

Senator CROSSIN—Is what you are trying to say to us that we can conduct as many inquiries as is needed, make as many suggestions as possible but, at the end of the day, the Commonwealth is looking for the initiative to come from either the Norfolk Island Legislative Assembly or the people for any major changes to be made?

Mr Doherty—In relation to the areas which are the responsibility of the Norfolk Island government, the preferred position clearly is that those issues should be solved within their capacity and in the way they see as most appropriate.

Mr Beresford-Wylie—As Mr Doherty mentioned, this inquiry presents an opportunity for the government to receive the views of your committee. We do not want to pre-empt how the government might respond to any recommendations that the committee might make with regard to what it might see as a further role for the Commonwealth.

Senator HOGG—What scrutiny is your section of the department subject to in terms of operations relating to Norfolk Island?

Mr Doherty—We are subject to the normal arrangements for Commonwealth Public Service agencies, so we are subject to the Ombudsman and accountability arrangements through the parliament.

Senator HOGG—What accountability arrangements would they be? I am leading you down a path here for an obvious reason. I just want to tease out what you are subject to.

Mr Doherty—They are the transparency requirements in relation to budgeting, the Senate estimates process, the Auditor-General and associated provisions and the Ombudsmen in relation to our dealings with members of the public—although you will be aware from what we have said that our actual dealings with members of the public on Norfolk Island are very limited.

Senator HOGG—Are you subject to FOI?

Mr Doherty—Yes, we are subject to FOI.

Senator HOGG—Are any of those things that you have mentioned here applicable to the Norfolk Island government that you are aware of—either by internal legislation of the Norfolk Island government or by Commonwealth legislation?

Mr Doherty—I will just check on this. My sense is that the general Commonwealth legislation relating to FOI and the Ombudsman would not apply to the Norfolk Island government. In relation to Norfolk Island legislation, I am not aware of FOI legislation.

Mr Beresford-Wylie—Nor am I, but I am aware that there is an administrative review tribunal that operates on the island. We may have covered that in our submission—I am sure you will find a reference to that. As Mr Doherty said, the structure that we talked about here is really limited to decisions taken by the Commonwealth agencies.

Senator HOGG—Would it be fair to characterise the government of Norfolk Island as not being bound by many of the normal transparency arrangements that either federal, state or local governments are subject to on mainland Australia?

Mr Doherty—I think that is a fair characterisation. A lot of the provisions which have been put in place in other jurisdictions have not been put in place on Norfolk Island.

Senator HOGG—Would it also be fair to say that many of those things have been in place now for a substantial period of time?

Mr Beresford-Wylie—Certainly in the Commonwealth and the states that is correct. I think the administrative law review legislation was put in place in the 1970s.

Senator HOGG—Would it also be fair to say that the likes of the public accounts committee—which operates in the federal parliament and also in other jurisdictions—is not operating on Norfolk Island?

Mr Beresford-Wylie—I am not aware that there is that specific structure operating on Norfolk Island.

Senator HOGG—It would be difficult to have a public accounts committee operating in a legislature of nine people, wouldn't it?

Mr Beresford-Wylie—It is a relatively small legislature but it is a relatively small population.

Senator HOGG—Yes, that is right.

CHAIRMAN—I have some prepared questions here. The committee has heard allegations of corruption—and I emphasise that they are allegations—and what appears to be a clear culture of intimidation on the island. Some witnesses in fact refused to give evidence to the inquiry because it was held in the assembly building and they feared reprisals. This is their evidence. Is DOTARS aware of this and, if so, what is your department's view?

Mr Doherty—We have not had complaints of that nature drawn to our attention. If that is the case then it is a concern, particularly so if the complaints are that it is an ongoing matter rather than an isolated incident. We have not had those put to us at this stage, so we have given them no consideration and we have nothing in train.

CHAIRMAN—What does DOTARS see as the major difficulties on Norfolk Island in achieving transparent and accountable governance? What changes to the Norfolk Island political system, if any, does DOTARS recommend? If you do, could you please explain why?

Mr Beresford-Wylie—As we have stated, one of the underlying reasons why the minister issued this reference was to obtain the committee's views on issues which had been raised with him on-island. There had been some expressions of concern about a variety of issues. His reference to the committee reflects those concerns and his desire that the committee provide him with some advice. I think that some of the issues that we have covered in this submission are issues in fact that have been raised before by others.

CHAIRMAN—When you say 'others', who are they?

Mr Beresford-Wylie—I think that there would be other members of the community who have concerns relating to specific things such as the voting system, which has the potential to create some swings in terms of support. I think there are also concerns—and have been concerns expressed in the past—about conflicts of interest. This is something that the Grants Commission report identified.

CHAIRMAN—What do you understand as conflicts of interest?

Mr Beresford-Wylie—My understanding would be the colloquial understanding—that it is difficult, particularly in a small community, to segregate one's interests when there is such a relatively small number of people involved in such a broad number of activities. Inevitably, there will be a crossover of people's interests. This is something that was drawn out in the report on Lord Howe Island, which we referred to in our submission. It identified those difficulties which are really characteristics of small and isolated communities, such as that this conflict of interest situation can arise.

Mr Doherty—Just to come to the heart of your question, I think that the real challenges are the ones that we have already mentioned. One is the range of issues which confront a small community and small government organisations, and being able to bring the expertise to and be effective across that wide range of functions. The other, in a governance sense, is being able to bring sustained policy attention to a particular area of problems so that you are not continually pulled in different directions with different policies and are unable to sustain a consistent, firm line over a period of time. That is where we get to the actual structure of the governance arrangements.

CHAIRMAN—Are you aware of the Illinois electoral system that ultimately leads to government on the island?

Mr Doherty—In broad terms, yes.

CHAIRMAN—Is the department happy with the system that is used? Is there some move to recommend that a different system be used?

Mr Doherty—We are not moving to recommend a different system. A possible implication of the Illinois system is those quick and dramatic changes in representation which can result. That may be a contributing factor in relation to the governance issue I just mentioned.

Consistent with what I have said previously, we do not claim to be experts in electoral systems. I think it would be useful for the Norfolk Island government and for the people within

the Commonwealth who are experts—the Electoral Commission—and perhaps DOTARS to look at whether that is a contributing factor and if there is some better form of electoral system for the particular requirements of that small community.

CHAIR—There seems to be a significant deficiency in the Norfolk Island legal regime. The criminal law and the administration of justice require updating if they are to be commensurate with those on mainland Australia—I speak of the territories on mainland Australia. Child welfare law appears to be lagging behind that of the mainland. There is a lack of freedom of information, privacy and ombudsman legislation. What is the department's view with respect to this? Is the department of the mind to facilitate change, of a technological nature perhaps, to some of those areas I have mentioned?

Mr Doherty—I am not sure that I understand the reference to technology. In broad terms, these are issues which are within the responsibility of the Norfolk Island government. We are conscious that they have been looking at a package in relation to legal issues.

CHAIR—But are you conscious that they lag behind those same areas in Australia? That is what I am asking, Mr Doherty. If you are, are you prepared to offer some technical assistance with respect to that?

Mr Doherty—We are certainly prepared to engage the people in the Commonwealth who have the technical assistance, which would be the Attorney-General's Department, to provide what expertise they can.

CHAIR—Okay. That is part of the question answered. Let us go back to the first part of my question. Are you aware that those areas that I have mentioned are lagging behind those same areas in mainland Australia?

Mr Doherty—I do not profess to be aware of the details of any, let alone all, of those areas. In general terms, we are aware of growing concern that they are falling behind.

CHAIR—Mr Beresford-Wylie, could you comment on those areas in terms of their comparison to the mainland area?

Mr Beresford-Wylie—I cannot make any comparison, Senator. Obviously, we are not from the Attorney-General's Department. However, what I can say is that we have been aware that the Norfolk Island administration itself is seeking to rectify what it might see as some deficiencies in justice. We know it has had some contact with the Attorney-General's Department about a justice reform package. We are aware that there has been correspondence between the relevant Norfolk Island minister and the Minister for Justice, Senator Ellison, but I am not aware that it has progressed any further than a discussion about the need for that package.

There are other areas where we have attempted to play a facilitative role. One that specifically we could mention is bankruptcy. We did take an initiative in this area a short time ago following, I think, the receipt of some correspondence by the minister where a member of the Norfolk Island community was concerned that there was not a bankruptcy structure in place. This had previously been discussed between the Norfolk Island administration and the Attorney-General's Department. The minister wrote to the Chief Minister suggesting that this was an area where the

two governments might work together to put in place something that met Norfolk Island's requirements. The Chief Minister, I think, responded to that letter, noting that he would have a member of his administration contact me specifically to pursue those issues. That contact was made from the Norfolk Island administration. We have provided an options paper to the Norfolk Island administration which identifies the options that they might follow in putting in place a bankruptcy regime, and they are considering those options.

CHAIR—Ms Backhouse, could I ask you to comment on those areas that I have mentioned.

Ms Backhouse—I really do not think that I could add anything further to what Mr Doherty and Mr Beresford-Wylie have said.

CHAIRMAN—If I could collect and aggregate but reduce what you have said, it sounds as if the department has a reasonable level of satisfaction with how those areas are being administered on Norfolk Island.

Mr Doherty—I am not sure that that is a fair assessment. We do not see it as our role to monitor in detail each area of activity of the Norfolk Island government. We would expect at a general level that the standards of services and the sophistication of the infrastructure around those services would be variable, particularly in a community of 2,000 people, and that there needs to be a level of judgment about what is practical. If this inquiry is hearing that there are serious deficiencies which are causing major concern to the community, that is not something we have had drawn to our attention. I would not like it to be seen in the sense that we are not serious.

Senator HOGG—That is also not your role; is that correct? It is not your role to be the receiver of that sort of information.

Mr Doherty—Not in a direct sense, but at the ultimate we do have a role in advising the Commonwealth government in the exercise of the final reserve power that it has. So, if those issues have come to a major level, yes, it is something we are interested to hear about.

CHAIRMAN—How many times does your department visit the island on average each year?

Mr Beresford-Wylie—Senator, it is difficult to say, but it would be somewhere between half a dozen and a dozen times a year. I should point out that this division is the division responsible for funding the office of the official secretary, who is of course on the island full time.

CHAIRMAN—What about the regulation for financial aspects of the island?

Mr Doherty—The regulation of financials—so the budget planning, budget control—

CHAIRMAN—Yes, budget planning. Do you look to see whether the financials that the Commonwealth supplies are being directed in the proper and correct areas?

Mr Beresford-Wylie—In terms of financial administration on the island, the Norfolk Island government is responsible for its own financial administration, and it provides, I think, audited

accounts. It has a process which it goes through, and no doubt that is a process that could be expanded upon further as you talk to the Norfolk Island government representatives later today.

With regard to specific contributions of funding that might be made by the Commonwealth, when it comes to contributions or funding that might be provided under programs such as Networking the Nation they of course are subject to the normal rigours of the Audit Office and, potentially, performance audits which might relate to the administration of that funding. When it comes to the provision of funding for the Norfolk Island Administrator's office and the official secretary, we of course are responsible for accounting for that funding under the normal course of events through the Senate estimates process.

CHAIRMAN—So you do not draw any level of satisfaction or dissatisfaction from your visit to the Administrator's office and anything that he or his office may collect with respect to the administration of the island, particularly those areas that I have mentioned—criminal law, the administration of justice, child welfare, age pension and so on? You do not draw any conclusions from your six or a dozen visits to Norfolk Island?

Mr Beresford-Wylie—I should point out that the official secretary is free and does in fact call our office on a very regular basis—it would not be six or 12 times a year that we have contact with the Administrator or the official secretary.

CHAIRMAN—And the official secretary does not mention any concerns about the island to your department?

Mr Beresford-Wylie—The official secretary provides us with feedback and his impressions of the island, and this helps inform our policy position, Senator.

CHAIRMAN—What sort of an answer is that? That has not given us a picture at all. Was that an answer of wellbeing or an answer that you have some concerns? All I am drawing from the conclusion, and I am sure my colleagues are the same, is that there seems to be—and I am pleased if this is the fact—a high level of satisfaction with some areas. I think there should be a high level of satisfaction with some areas of the island administration, but there seems to be an overall aggregation of a reasonable level of satisfaction with the island administration. Is that correct?

Mr Beresford-Wylie—We have not reached a conclusion—certainly I have not—on the overall nature of the island's administration. Clearly there are issues, such as the bankruptcy one, where I have had discussions with the official secretary which resulted in us agreeing that if this is a potential area of concern we should pursue it. It is always going to be dealt with on a case by case basis in terms of the issues that may arise.

CHAIRMAN—I do not want to put words in your mouth but, as I understand it, there has been no level of concern expressed anywhere by the official secretary or the Administrator to you or your department at any time. You have not yet told me of any level of concern that anyone has expressed on the island about the administration of any department—either theirs or the Commonwealth's.

Mr Beresford-Wylie—I think there is a difference between discussions we may have on an informal basis and concern that might be expressed officially to the department by either the Administrator or the official secretary or anybody else on the island.

CHAIRMAN—So there has been some concern expressed unofficially to the department by the official secretary and/or the Administrator and/or other people on the island?

Mr Beresford-Wylie—In the normal course of events, people often express views about the nature of a variety of things.

CHAIRMAN—This is getting to be a bit like *Yes, Minister*. Let me just ask you one more time: has any area of the administration on the island ever expressed concern to you about any of those departments and the others that I have mentioned, the administration of the police, the unsolved murder, the torching of houses, the torching of the utility of a tradesman on the island in recent times, or other acts of arson? Has your department ever heard of them? Have you heard of the murder? Are you happy with that?

Mr Beresford-Wylie—Yes, we have heard of the murder. No, we would like the murder solved.

CHAIR—Do have some concerns about it?

Mr Beresford-Wylie—We would like to see that murder solved.

CHAIRMAN—That is good. So you have some concern about that—that is one point. Let me get on to the torching of a house that overlooked the beautiful, little, partly restored township of Kingston on the island. Have you heard of that?

Mr Beresford-Wylie—This was the arson attack on Mr and Mrs Cardano's residence?

CHAIRMAN—Yes, when it was just about finished. So you have heard of that?

Mr Beresford-Wylie—Yes.

CHAIRMAN—That did not cause you any concern?

Mr Beresford-Wylie—Yes, it did.

CHAIRMAN—How about you, Mr Doherty? Did that cause you some concern?

Mr Doherty—I am not aware of the details of that.

CHAIRMAN—You are not aware of it. What about the torching of the utility of a young tradesman from New Zealand when he was on the island? He brought his utility onto the island. Have you heard of that?

Mr Beresford-Wylie—No, I have not heard of that.

CHAIRMAN—Have you heard of that, Mr Doherty?

Mr Doherty—No.

CHAIRMAN—What about other acts of arson on the island? Is that the only act of arson that you have heard about—where the house was torched?

Mr Beresford-Wylie—That is the only act I have details of.

CHAIRMAN—You have had no other reports to you and your department? We have three fairly senior—very senior—heads of that department here today. Could I ask you collectively: have you ever heard of any other acts of arson or violence on the island or have they been reported to you? Has there been any concern from a high level reported to you? What you have said to date—with a bit of prompting—is that the only thing you are concerned about is the tragic murder on the island and the torching of a house, an act of arson. Is there anything else you have heard of that is of some concern?

Mr Doherty—These relate obviously to issues that you have heard of through this inquiry, and we are interested—

CHAIRMAN—They are known publicly, with respect. They have been in every newspaper in Australia—and even overseas newspapers as well. And you are saying that you have no concern? That is what you are telling me. You are telling this committee that you have no concerns regarding the running of the island; no concerns at all. But, on prompting, you have said yes, you do. What else is there that we could perhaps winkle out that is of some concern to you? Now remember, you are senior heads of DOTARS.

Mr Doherty—The biggest concern from the point of view of governance is if those arrangements have not been properly followed up as law enforcement issues. For example, I understand that the murder is the subject not only of a longstanding investigation but also of serious reward offers. There is a serious attempt being made to resolve that issue. In relation to a range of the other areas that you have mentioned, my sense is that things could be much better on the island, that there could be a greater level of provision of services in the area of health and probably a whole range of services. That is a question of what is feasible within the constraints of the community. The government, we know, is looking at that and working on ways—

CHAIRMAN—Because the government is concerned about it.

Mr Doherty—to raise the revenue.

CHAIRMAN—The government has some level of concern about those areas.

Mr Doherty—I am talking about the Norfolk Island government. It certainly has a range of concerns—

CHAIRMAN—Which have been expressed to you.

Mr Doherty—We would support that activity.

CHAIRMAN—Do you support that concern?

Mr Doherty—I do. The general concern is that we should try and enhance the standard of living for everyone on the island.

CHAIRMAN—I am glad we have got a little bit of concern expressed by the officers of DOTARS here today.

Senator HOGG—Following directly from what Senator Lightfoot was asking, do you keep a balanced score card for the island in any way?

Mr Beresford-Wylie—No; we do not have a formal mechanism.

Senator HOGG—You do not have any benchmarking arrangements?

Mr Beresford-Wylie—No, we do not.

Mr NEVILLE—Which of the three of you is responsible for policing matters—public safety, that sort of thing? Which one of your sections specifically acts in that area or liaises with the Commonwealth police, the Federal Police?

Mr Doherty—We do not have direct dealings with the police. Our role is at a more removed level.

Mr NEVILLE—You say you are concerned about these matters. I am more interested in looking at this from a positive point of view. Has the department had any discussions with, for example, Mr Buffett, as the minister for police, on some temporary increase in resources to overcome these things? Have we engaged with the Norfolk Island government about how they might be able to address these matters? Have we offered an additional police officer for two years or something of that nature that would assist him and assist the island, if there is a bit of a rogue element there, in getting it under control? Have we done anything of a proactive nature? That is my question.

Mr Doherty—As a department we have not taken it upon ourselves to be directly involved in those issues. I am aware that there have been some discussions between the Norfolk Island government and the Attorney-General's Department around law enforcement. It would be Attorney-General's Department people who are better able to assist on law enforcement issues.

Mr Beresford-Wylie—We do have dialogue with the Australian Federal Police. If I could just allude to what Senator Lightfoot said earlier—we read the *Norfolk Islander*. We are aware of the community debates that exist with regard to health, with regard to policing. We are aware that the Norfolk Island administration looks at these issues. We understand that obviously there are statistics produced which talk about the level of crime, statistics which do not necessarily indicate that the level of crime is burgeoning. Nevertheless, this is an issue that relates directly to the relationship between the Norfolk Island administration and the Federal Police in the provision of services under the agreement on policing that exists between the Federal Police and the Norfolk Island administration. This is an issue that is raised, no doubt, between those two parties. We are aware, for instance, that the Federal Police did offer additional resources, at no

cost, in terms of meeting the extra burden associated with the Janelle Patton murder. So, while we are aware of these issues, we do not become directly involved in the relationship between those who provide policing services on the island, which at this moment is the Federal Police, and the Norfolk Island administration.

Mr NEVILLE—My point, Mr Beresford-Wylie, was this: I think there is more to this than just being critical of the administration of the island and the law and order issue if the department that is primarily responsible for liaison with the island has not done something proactive and engaged with the appropriate minister on the island and said, ‘Can we help? Can we facilitate anything?’ I just do not like this standing at arm’s length and being critical and not doing anything about assisting.

Mr Beresford-Wylie—I understand, Mr Neville. But we are not aware that we have been critical per se and come out and made a formal policy statement or position statement that there is a wave of crime and that there is a problem on the island.

Senator HOGG—Your difficulty also is that no other processes are available in the situation, such as an ombudsman or an independent commission against crime. There is no safety valve for you people to make the judgments. If there were an ICAC and there were problems with the police on the island or the government on the island, someone could go to the ICAC, raise the complaint and it would be independently and legitimately looked into. Then you as a department would not be involved. You would not be asked to make a judgment about what you thought of the policing arrangements or the governance arrangements. There would be an independent tribunal, with the appropriate investigative powers and the independence to make a judgment on the performance there, and you would be guided by that. Is that a fair assessment?

Mr Doherty—If there are these serious allegations, then a process which brought additional transparency would assist everyone.

Senator HOGG—There are none of these processes available, are there, like an independent commission against crime or whatever it might be?

Mr Doherty—No.

Mr Beresford-Wylie—That is true, but there is one important point to remember, and I feel it is important to make it. This department and this division are responsible for the self-governing territories. That includes not only Norfolk Island, but the ACT and the Northern Territory. There may be difficulties associated with those territories as well, but they have self-government and they have a structure in place for dealing with them. Norfolk Island also has, under the Norfolk Island Act, that self-governing structure and the ability to deal with its own problems. That was a decision by the federal government, and it is a policy position which has been reiterated by successive ministers. The expectation is that Norfolk Island—the Norfolk Island population, the Norfolk Island administration—is best placed to deal with those issues.

I feel that I must make the point—and the point is made in our submission and has been made earlier—that we have attempted to carefully tread a line which looks at Norfolk Island as a self-governing territory. The Department of Transport and Regional Services has a residual

responsibility at the end of the day under the Norfolk Island Act, but not a day-to-day responsibility in administering the territory or getting involved in these issues.

Senator HOGG—You still get the blame from a lot of Norfolk Islanders for a lot of their problems—you and this committee.

Mr Beresford-Wylie—This reflects the historical basis for the relationship between Norfolk Island and the mainland, or the rest of Australia, Senator.

Mr Doherty—In terms of Mr Neville's question, the distinction we are drawing is that we are quite happy to be involved or to draw in assistance on those issues if requested. We do not see it as our role to proactively be looking at how we, the Commonwealth, could intervene or solve the issues that arise.

Mr NEVILLE—The third tranche of the terms of reference asks us to report on the role of the Commonwealth and its responsibilities for Norfolk Island as part of remote and regional Australia. To what extent have you engaged with the administration there in assisting them? Obviously, people who are remote and regional have special needs.

Mr Doherty—We certainly have on occasions, and we are certainly prepared to do that. The trigger, as we see it, in most cases is a request from the Norfolk Island government to assist. That is going to mean in a lot of cases that we are not involved because either they do not want us to be involved or our understanding of the Commonwealth's residual role does not demand an involvement in that issue.

CHAIRMAN—The Commonwealth has more than a residual role there, Mr Doherty. Perhaps you ought to go back—and I do not say this facetiously—and refresh yourself with respect to the 1979 Norfolk Island Act to see that the Commonwealth has an integral role there, not a peripheral role.

On behalf of the committee, I thank you for your attendance here today, Mr Doherty, Mr Beresford-Wylie and Ms Margaret Backhouse. If there are any matters on which we might need additional information, the secretary will write to you.

[11.16 a.m.]

ELLICOTT, Mr Robert James (Private capacity)

CHAIRMAN—Good morning, sir. On behalf of the committee, I welcome you back. These hearings are legal proceedings of the parliament and warrant the same respect as proceedings of parliament itself. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of parliament. The committee has received a submission from you, No. 11. Are there any corrections or amendments you would like to make to your submission?

Mr Ellicott—All I would say, off the top of my head, is that I did not do any research but I believe the submission accurately represents the basis upon which self-government was given to Norfolk Island under the act of 1979.

CHAIRMAN—The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee you may request that the hearings be held in camera, and the committee will consider your request. Before we ask you some questions, I invite you to make an opening statement.

Mr Ellicott—The letter I wrote sets out what I think is reasonably accurate, and I have not had anyone writing to me saying that I am off the mark, but I did not do any research, and it is 25 years ago. I would emphasise that the bill in question, when it was before the parliament here, was framed in a way to—as far as possible—repeat the principles that lay behind the self-government act of the Northern Territory, it being desirable to have a uniform approach. You will notice that there are similarities. On the other hand, it must be understood that self-government came to Norfolk Island as a result of long consultations, both at a departmental but particularly at a ministerial level. The Administrator of the day and I sat with representatives and officers of my department. The bill represented the hammering out of the principles that we thought would be applicable. I am happy to hear that after 24 years things are still going strong and it has been a success. I do not think there is any doubt that the Norfolk Islanders have lived up to their expectations.

May I also, from just listening, say something that is a bit of a comment. I do not know how the Commonwealth or the officers of a department that is called the Department of Transport and Regional Services would immediately think that they had any responsibility for Norfolk Island. If the department has ceased to have a proactive interest in Norfolk Island, it is probably due to the fact that at a ministerial level over the years that sense of responsibility has been allowed to wane—and I am a strong believer in ministerial responsibility. I would emphasise, as far as I am concerned, the importance of ministers responsible for the territories to take a keen interest. I am not being critical, of course, of any minister or of the present minister. I only stress the importance of that.

Cocos Island is another illustration. I do not understand where Cocos Island is at at the moment, but the self-government we established for it resulted again from ministerial involvement. There has to be an involvement and an interest, not an interference. I would not myself tolerate a situation—and I do not blame these officers who are here today—where there

was no-one in the department at a high level, such as senior assistant secretary or FAS, if you like, who had immediate responsibility in relation to any territory's affairs. That is to say, they would have to be the point of contact and also be someone who was expected to know in a broad sense what was going on on the island. It is part of Australia, and it is a very significant part of Australia. It is part of our heritage. The people there are just as important as other people in the Commonwealth.

It is a remote area. It is bound to have its own problems. They are an island community, and as far as I could see at the time they deserved to have the right to govern their own lives, consistent with being part of Australia, because island communities are like that. Any of us who have had anything to do with the bush know that in remote areas of Western Australia, New South Wales, Queensland et cetera people have their own identities, and the people on Norfolk Island have too. I think the responsibility of the Commonwealth is one that goes to ongoing concern for the island, ongoing watchfulness, to make sure that there is not something that can be done to assist. Things can go wrong. You instanced the recent murder. I noticed Mr Howard this morning was saying that, if any other island in the Pacific had some concern about law and order, they should let the Australian government know. Obviously this is part of Australia, and if there is a problem with criminal elements we ought to be helping.

The health service was mentioned. If it cannot cope with the cost of modern equipment, the Commonwealth should have a beneficent attitude towards that. For instance, if they need a CAT scanner over there, it may be beyond their means. The Commonwealth should help, just as the Commonwealth would help somebody at Mount Isa or wherever it might be. Norfolk Island is deserving of the same interest.

I noticed when I came in that you had been discussing—and I hope I am not assuming too much—the question of the Ombudsman. From listening to what transpired this morning I think it would be very desirable for the island to have some sort of a sounding board, as I think one member of the committee mentioned. Obviously, it will not bear the cost of an Ombudsman on Norfolk Island. Just as the judiciary is serviced by the Federal Court now, I see no reason why Norfolk Island could not be serviced by the Ombudsman. Nor do I see any reason why, if there are allegations of corruption or the like—and you mentioned intimidation—there shouldn't be some function added to the Ombudsman's function to deal with those matters. You do not need an independent commission against corruption, for instance, over there. There may be occasions when such complaints need to be investigated, and either they are ticked off and said to be not worthy of investigation or, alternatively, if they need the police, the police are called in.

But there ought to be some functionary—and the Commonwealth Ombudsman may be such a person—to whom the island affairs could relate. Maybe there is some local antipathy towards it, but I would have thought that the Norfolk Island government would welcome some such thing as long as it comes through them. That is to say that they pass some act that empowers and the Commonwealth cooperates and enables the particular Commonwealth official—for example, the Ombudsman—to accept the role under that particular act.

There are also issues about the fixed term of the parliament. One of the basic propositions that I found—and I do not know whether it is any different now—is that there is a great need for flexibility. The people are different and because I had to get involved I got to know a lot of people and got to know the cross-section of the island. There would be different people but I

doubt that the cross-section would be different. Some will come from New Zealand, some will come from Australia, some will come from the United Kingdom and maybe one or two will come from Canada or wherever, but half the population is probably derived from Pitcairners. I would expect that over the last 25 years those forces are not quite as disparate as I found them. There were tensions and divisions of some sort, but there was a will to get rid of them. I will not mention particular individuals but I know how they moved over the last 20 years, and the place has become, I would expect, much more cohesive.

The secret of the government there has to be flexibility. That is to say I think it is unwise to impose a fixed term of, say, three years because of that need for flexibility. If there is some tension—for instance, if there have been successive governments or elections that have caused a disruption in financial affairs, which can be significant—then maybe there is a basis for saying that you cannot go to the people for 12 or 15 months. My own opinion would be not to have a fixed term.

As to the electoral system, we had first past the post. I think the Labor government may have introduced the Illinois system, which I do not completely understand, in 1984. All I can say is that, so far as my concern went, first past the post seemed to work all right. Again it was a matter of flexibility. You had to be sure. But I imagine that, if you went through the parliaments since 1979, you would find that the Pitcairners have been well represented.

It is essential that their culture and their presence be recognised. That is in part why Norfolk Island has the privilege of having self-government for 2,000 people. It is not a usual thing to find an island with self-government with so few people. But the Pitcairn people were given the island by Queen Victoria—in 1856, if I am right—and that is still a very important thing to them, and you can understand it and put yourself in their position.

They are on the edge of being a trust territory actually. I had to argue this in front of the Supreme Court over there the last time I was there, in 1983. I do not want to encourage them to think that they are, but they are very close to it. I do not think they are. In my view they are clearly part of the Commonwealth and they have no United Nations rights, but because of the way in which the Commonwealth came to obtain jurisdiction over Norfolk Island, in 1911 I think it was, it is very close to being a trust territory under article 33, I think, of the United Nations charter—whichever the article is.

There are historical aspects of Norfolk Island that make it essential in my view that they be treated differently, but the basic reason is that people in our country ought to be free to be what they want to be, within the confines of proper government, and I think that is how island communities within the Commonwealth have to be treated and respected. I am talking about the question of flexibility, and what I have just been saying does have something to do with it. The people there are continually cross-cultural in a way. They have different interests and different loyalties—some to the British crown, others to New Zealand and others to Australia—and they are adjusting to each other. There are people there who think they should be part of Australia completely, but the consensus is to stay as one. That flexibility is important to it, and that is why I would not introduce too much that was ironclad. I understand the need for fiscal responsibility and for fiscal and financial stability, but one has to tread the path warily. Those are just some broad comments. I hope they are helpful. I hope I have not crossed any paths that I should not have crossed.

CHAIRMAN—They were very good comments, and the committee thank you very much for them, Mr Ellicott.

Senator CROSSIN—Thank you, Mr Ellicott. When you first developed the Norfolk Island Act, was there a view that it was in stages? Was there a view that this act would last in perpetuity, basically, or was it deemed to be management for the island that might need some sort of review in the years to come?

Mr Ellicott—I regarded it as something that was as near permanent as it could be. Unless things went awry, it seemed to me we had started out on a path and if the path was successful it would be permanent. I had no reason to doubt that it would succeed because, if I may be frank about it, we did our best. That is to say, the Administrator of the time, the people who were on the legislative council and the advisory body, the department, which had officers who were actually running the island in a sense in those days, did. Those officers knew all about the island, and they would come in front of the committee and they would not be apologising for not knowing anything; they would know everything—in fact they would know too much and you would have to restrain them.

Senator CROSSIN—What is the rationale for a higher level of governance, if I can use those words? You compared it, for example, to the Northern Territory (Self-Government) Act. The population is about as large as some of the major Indigenous communities we have here in the Northern Territory, for example, yet they are run as shire councils or local community councils. Why was there a view to have a different structure on Norfolk Island compared to a comparable population size in the Northern Territory?

Mr Ellicott—Let us use some useful analogies because I was involved in a number of changes in the territories. Take Cocos Island, for instance. When I went to Cocos Island in January 1978, the first thing I confronted—I had never been there of course—was Mr Clunies-Ross. By confronted, I mean I confronted him. Nobody had bothered to confront him up til that point of time. I told him as far as I was concerned he was about to lose the island. It was going to be resumed.

CHAIRMAN—I think his island was also granted by Queen Victoria.

Mr Ellicott—That is right, it was granted to him by Queen Victoria. When I saw women lining up for the pill every Monday morning—or rather was told about it—and using currency that was token currency and buying goods that he supplied, I thought that, however benevolent John Clunies-Ross was, it was not the sort of thing that should go on in Australia, not only because it was in Australia but because it was a trust territory. What we introduced was something very special for them. They had an island council. I do not know whether it still operates, but some of them were employed at the airport, others were employed on a copper plantation, others were employed in the school in education.

Senator CROSSIN—It is pretty much similar these days except I think there is a move by the department of territories to further devolve responsibilities to Christmas and Cocos islands.

Mr Ellicott—The council, being basically Malay, had a tradition of sharing. You will remember the ‘common fund’ of Acts 2 or 4 or something, if I could be biblical for a moment. If

there was anything that was close to the common fund, it was the funds of Norfolk Island because they all pooled their wages and then they distributed them amongst the families. That is one form of self-government. We took it as far as we could.

I do not mean this disparagingly, but the people on Norfolk Island are—quite frankly—more sophisticated. Their cultural background is different. Their educational qualifications et cetera are different. They could make a living in Sydney or Melbourne or anywhere, but they just happen to be people who are on Norfolk Island. It seemed to us at the time that self-government in the Northern Territory form was an appropriate thing to give them.

Senator CROSSIN—Yes, except the way in which the assembly operates on Norfolk Island is so very different to the Northern Territory (Self-Government) Act. The Northern Territory (Self-Government) Act resembles pretty much what happens in other states, but at a much lower level.

Mr Ellicott—But there had to be a division of power. That was formulated through the two schedules and still is, I think, to some degree.

Senator CROSSIN—I am talking more about the way in which people are elected, like the Illinois system, and the lack of separation of powers—where you can have people elected by government actually sitting on tribunals or boards that might make further decisions. That sort of stuff is not inherited in the Northern Territory (Self-Government) Act, and I am wondering if it was seen to be stage 1, and perhaps stage 2 was to follow.

Mr Ellicott—Nobody thought it was fixed. In fact, stage 1 left it measurably different but not far different from local council responsibilities—that is, a council that runs a city, like the Brisbane City Council, has more power than, say, the Sydney City Council—and Norfolk Island at first had added to it its customs duty and it had its stamps and corporate taxes and the like, and those were thought to be sufficient to meet those services. I think that was stage 1. Stage 2 was to take out of schedule 3—I think it was—other powers and put them into stage 2. Really, the proof of the pudding is in the eating, and as I would understand it there has been a measure of success. The question of transparency came up. As you know, if you are in a small community most people know everything anyhow; there will be a few who do not, but things get around.

Senator CROSSIN—But do you think there was or is now a need to have some sort of register of interest so that the interests of those who are elected as either chief minister or members of the executive council are declared and that that is publicly known? I suppose you could call Darwin a relatively small community, with 90,000 people, but that is not an excuse not to be publicly accountable. What if there were even some sort of administrative law to ensure that there is some accountability? Is there not a need for the island to move in that direction?

Mr Ellicott—I do not see any reason why there should not be some register of interests. That ought to be an acceptable proposition to anybody who acts in an area where there may be conflict of interest. I looked recently for another person—but I do not think there is any confidence attached to it—at the issue of the role of the speaker and at whether the speaker could also be the chief minister. I gave the opinion that I thought the chief minister and the speaker could be the one person. Really, you have to cut your cloth to some degree to suit the position, and Norfolk Island does not have a lot of people. I do not know how involved some of the

expatriate people who have capacities are. Sometimes they can be seen as interfering, and therefore they do not want to get involved. On the other hand, I know there are some ex-judges and quite a number of ex-businesspeople there who would have capacities to go on tribunals.

Senator CROSSIN—But isn't the concept of the chief minister also being able to be the speaker comparable to, say, a chairman also being the executive officer of a community based organisation? On mainland Australia, that would be unheard of.

Mr Ellicott—In the parliaments it might be unheard of but in the Westminster system it is not unheard of. There is no taboo in the Westminster system on the speaker also being the Prime Minister, but we have gotten used to applying it in a different way.

Senator CROSSIN—Thank you.

Mr NEVILLE—One of the sticking points that leads to some of the tensions between the Commonwealth and Norfolk Island is this matter of where Norfolk Island derives its power from. Does it derive its power from a grant from Queen Victoria? It has been variously administered by Sydney, Hobart, Wellington, again by Sydney and Canberra.

Mr Ellicott—There is no doubt constitutionally that its power comes from section 122 of the Constitution. There should be no doubt about that. The history of it needs to be borne in mind.

Mr NEVILLE—I want to understand this myself. In 1901 all the other territories, other than those granted by the United Nations, were within the bounds of the Commonwealth. The Northern Territory was cut off from South Australia, and so on. But Norfolk Island was a remote area. It did not come into the Commonwealth proper until 1911. Does that create any legal thread that may be different from the other territories?

Mr Ellicott—Constitutionally no, because the power of the Commonwealth parliament was there to accept territories, and it accepted that territory from the United Kingdom government, if I remember rightly. As such, it fell within section 122 of our Constitution. The argument about whether it is a trust territory is, in a sense, trying to implant on that process of acceptance by the Commonwealth the history behind it—that is, these people were there, and they were separate and independent from 1856 or whenever it was. Of course, it was part of New South Wales for a long time.

They were separate and independent. It was the home of the Pitcairners et cetera. Therefore, when it was accepted by the Commonwealth it was then trusted to the care of the Commonwealth. That can be an argument, but my research as Solicitor-General, Attorney-General, minister, and since then as counsel has led me to the view that basically it is a section 122 responsibility and the Commonwealth has absolute power over Norfolk Island.

Mr NEVILLE—But, notwithstanding that, you think the Commonwealth should recognise it as a separate territory on the basis of its unique ethnic mix?

Mr Ellicott—That is one of the reasons. The other reason is that it is an island. I found that island mentalities abound over Australia. Even in the inland, they are islands in a way. But, more particularly, if you are out there in the middle of the Pacific Ocean and you have the disparity of

background and you have this fundamental relationship with the Pitcairners, you should be given separate treatment by Australia, even though you are part of Australia.

Mr NEVILLE—Having regard to it being part of Australia, do you think it is acceptable for a New Zealand citizen to be a voter, part of the roll—or, for that matter, a UK or Canadian citizen? Should it be a condition of the roll that everyone be an Australian citizen? You know what I am driving at.

Mr Ellicott—I know what you are driving at. I think that, because what we have been trying to do is give the island a sense of coherence in the population, all of those who have been accepted into the population under their migration act, or whatever it is, should be treated as voters to elect the parliament that is going to govern the island. They might have Canadian or English citizenship. They could have Australian citizenship now, as well, because of the recent removal of section 17, I think it was, by the government. They could have dual citizenship because they have been resident in Australia, obviously, for the required period. They have been permanently resident there, so they are probably entitled to Australian citizenship. They are like some of the people who come from the United Kingdom—quite a large number; I think there were 300,000 of them—who are not on the roll here but who are permanent residents and who in every sense of the word are Australians. These people are, too. In the confines of the local situation, I think there is every justification—both from the point of view of their rights and, more particularly, from the point of view of developing a sense of community on the island—that they be involved. A lot of them probably have much to contribute. Think of some of the people who live there—they probably do make their contribution. If they do not, and they just use the island, then I would hope they would rethink their attitude.

CHAIRMAN—I wonder whether you would be kind enough to clarify for the committee the variance of views with respect to the Queen Victoria grant. As you are no doubt aware, there are many so-called Queen Victoria grants throughout Australia. There are some in the hinterland of Western Australia where the minerals, instead of being reserved for the Crown or the people of Australia, as its wider definition is, have devolved to the title of the so-called Queen Victoria grant. And there are the Cocos (Keeling) Islands, which were established by Clunies-Ross, who was granted the island by Queen Victoria, which is not the case now. A lot of those Queen Victoria grants have in fact been absorbed into the general title system, whether it is the Torrens system or another system within Australia.

With respect to Norfolk Island, is it more correct to say that, when the Norfolk Islanders opted to shift from Pitcairn because of the perception or actuality of its overcrowding at the time—it was very difficult to be self-sufficient with so many people—they were given blocks of land. I think there was a stipulated area of 20-odd acres, although there was some difference in the amounts given to females and males. Queen Victoria sort of agreed—and I guess it was endorsed by the Imperial Parliament, remembering that she was not an absolute monarch at that stage, although she was revered—to give the land rather than the island. Would it be more correct to say that?

Mr Ellicott—If I can go to Clunies-Ross, initially his grandfather I think got a grant from Queen Victoria in 1825 of the land. Although the British dominion would remain, that was a personal title to him. My recollection is that the dominion in effect went across to Singapore and then after the last war the Singapore government, which was self-governing I think by that stage,

transferred the dominion to Australia and it accepted the Cocos (Keeling) Islands as a territory. Again my recollection is that, when I said to Clunies-Ross that we are going to resume your ownership—and it was like resuming your block of land or my block of land—the title was taken, he got his \$6¼ million and there it was. He remained there, but he remained there under a lease on Home Island. I guess you are familiar with the Cocos (Keeling) Islands. He had a lease over the main house there and also of the smaller house alongside. The Commonwealth then owned both the dominion and the land as such.

CHAIRMAN—That was after 1901, of course.

Mr Ellicott—This is after 1901; this happened in 1978 from recollection. Norfolk Island I think happened in much the same way. The Pitcairners got title to specific blocks of land. That is my understanding. I cannot say that I am a close student of just how it happened, but my understanding is that they had title over specific blocks of land, but it would be true to say that the rest of the island was Crown land—the Crown in right of Queen Victoria.

CHAIRMAN—That is our understanding too.

Mr Ellicott—When it came across to Australia then it became the Crown in right of the Commonwealth. These Pitcairners had their titles. No doubt they had to be surveyed and there would not have been the sophistication of a title system, but they worked it out by common usage or whatever was the situation and they got titles to the land.

CHAIRMAN—Given the pioneering approach—if I could use that term—to that type of legislation enacted under the Fraser government, with you as the architect in 1979; given that it was somewhat new and there was no template in other areas of the Commonwealth or the former British Empire for you to use, are there aspects of the legislation that you would perhaps refine, better define, or perhaps exclude or include in a bill today were you to have that 20/20 vision of hindsight that we have?

Mr Ellicott—It is difficult to say. I have not been there since 1983. I have kept in touch with, for instance, Mr Buffett, who is here today. He was the Chief Minister and now he is the Speaker and the minister for tourism, I think. He has kept me up to date to some degree on what is happening on the island, and I have had contact with people there. I always think it is important to see how something is working. The result has been basically very good. It would be a lot better if you could increase the population. But the population cannot increase; it has to stay around 2,000 otherwise the island would disintegrate, in my view. You are always going to have a limited population and it can only afford a smaller assembly. Therefore, you are going to have to either treat it as a local council or alternatively give it the status of a Westminster government. It has been given that status and, by and large, it has worked very well. It will inevitably face fiscal problems, and this is where the Commonwealth needs to nurture Norfolk Island, in my view. It is part of our heritage as well as being part of Australia.

That is the reason why I think the Commonwealth has to come in and assist it from time to time. In other words, if you ask me whether the framework should be changed or the details should be changed, I would say that from what I understand I think it is working. It is a question of adding things. I think the ombudsman idea is a good one. I think the register of interests is a good one. I think that, if people are kept out of knowledge of things, some limited form of

freedom of information would be all right. But I doubt if a sophisticated and expensive system or privacy legislation is needed in a small community. I think the framework is all right; it is a question of adjustment as it goes along. If issues arise then add things to the system in order to make it work better. That is my judgment on it.

CHAIRMAN—I ask for your view, sir, on the establishment of, say, a visiting magistrate from the mainland—rather than a magistrate or someone with the powers of a magistrate or a judge being drawn from the island—on the basis that that may be seen to be breaking the nexus between islanders judging islanders.

Mr Ellicott—This is one of the things that a minister should have some idea about if he is doing his job. Again, I am not been critical, but it might be a particular magistrate's personality that makes it awkward for the magistrate to come from the island. On the other hand, if the system is working reasonably well over a period, I think it is better for the person to be a person who lives on the island, who understands the island. I think that there are aspects of Pitcairn custom—how the island works and how the people think—that are important for a magistrate to understand.

Justice always has to be tempered to some degree—although it has basic principles—by reference to community ideas and standards. This is an extreme example. I happened to be born in Moree. Recently there was a great demonstration outside the magistrates court by the women of Cobar, because various persons were being treated lightly, and they resented the local magistrate. That is an isolated area, as I know, because my family had a farm out near there. I understand how they feel about these things. They are a bit extreme, and I do not agree with their point of view, but I can understand why they take a particular point of view and rally outside the magistrates court. It is just an example of what can occur in a local community.

I think there is a need for a magistrate; they are very important people. The local judiciary is different, because I think you need the standard. When I introduced self-government, we had an unsatisfactory situation with the judge of Norfolk Island, but that has passed. Ever since, we have had people who are held in very high regard and with the stature of Justice Morling, who is the chairman of the Australian Electoral Commission; Justice Beaumont; and Justice Fox, who was living there for a while. So the standard of the judiciary at that level is very high. They are from the mainland, but people can relate to the magistrates. If they were local, that would be the ideal in my view.

CHAIRMAN—Thank you very much, sir. It has been a pleasure having you here today and welcoming you back to parliament. On behalf of the committee, I thank you for your attendance here today. If there are any matters on which we need additional information, the secretary will write to you.

Mr Ellicott—Thank you for the courtesy of the committee.

Proceedings suspended from 12.03 p.m. to 12.14 p.m.

BUFFETT, Mr David Ernest, Minister and Speaker, Norfolk Island Government

GARDNER, the Hon. Geoffrey Robert, Chief Minister and Minister for Intergovernment Relations, Norfolk Island Government

WRIGHT, Mr Donald Rae, Adviser to Norfolk Island Government, Norfolk Island Government

CHAIRMAN—These hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as contempt of parliament. The committee has received a submission from the government of Norfolk Island, No. 27. Are there any corrections or amendments you would like to make to your submission?

Mr Gardner—I do not believe so.

CHAIRMAN—The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee you may request that the hearings be held in camera and the committee will consider your particular request. Before we ask you some questions, do you wish to make an opening statement?

Mr Gardner—Firstly, thank you for the opportunity to appear before the joint standing committee this afternoon. It is also a great privilege, a great honour, for me to today be in the presence of arguably the architect of self-government for Norfolk Island, the Hon. Robert Ellicott QC, and also in the company of what I term the father of the Norfolk Island parliament, my colleague the Hon. David Buffett. I will restrict my remarks, if I may, to commentary on some of the evidence that I have heard today, which in a broad manner cover the terms of reference and in some cases go beyond the terms of reference of this committee but are interesting and worthy of some remark. I start by commenting on the evidence given by the Ombudsman's office and some of the matters that were raised there.

There is obviously an interest in review and scrutiny of things that happen on Norfolk Island. I know Senator Crossin, from the Northern Territory, was interested in our tribunals. I think she mentioned that she was not aware that we had any tribunal system on Norfolk Island. In fact we do. We have an administrative review tribunal which currently deals with matters in the planning regime. However, it is proposed to extend the matters that it deals with into the areas of immigration and social welfare. We also have on Norfolk Island a health care claims committee. Matters can be taken further, to court, if people are dissatisfied with the result from the ART or the health care claims committee.

I need to make it quite clear today that the Norfolk Island Legislative Assembly—in fact, I think two previous legislative assemblies—has passed unanimous motions to explore the establishment of an ombudsman type situation for Norfolk Island. I am pleased that Mr Owen Walsh is in the public gallery today. I have had worthwhile discussion with him on that matter, and I am very keen to explore the options that have been provided by the Ombudsman's office for the establishment of such an entity on Norfolk Island. I am interested in pursuing, along

those lines, the necessary amendments—whatever it would take under Norfolk Island legislation—to put those things in place. I am interested to seek the agreement of the Commonwealth, if necessary, to put in similar legislation to that in the ACT, to allow a similar mechanism to that in the ACT, for the Commonwealth's Ombudsman's office to have oversight in ombudsman type matters. I am certainly not averse to the pursuit, in tandem with that, of the establishment of an MOU with the Commonwealth for the delivery of those services.

The submission by DOTARS was interesting. I have read their written submission and listened carefully and keenly to the evidence that they have provided today. I commend Mr Doherty on his appointment to heading up the department in relation to Norfolk Island. I understand he is coming to Norfolk Island for a three-day visit and I look forward to welcoming him on the island from Sunday. It will be his first visit to the island, and we will endeavour to make him welcome and bring him up to speed with the machinery of government on Norfolk Island, the matters that we believe are critical to the future of Norfolk Island and how best we can work through those cooperatively with his department.

There have been concerns raised in relation to our revenue-raising capacity, and there have been concerns raised in some of the evidence given that we are not prepared to make the hard decisions. I would like to say that we are rising to meet that challenge. We welcome the involvement of Commonwealth agencies. We welcome the involvement of departments that are willing to assist Norfolk Island's cause.

In the Norfolk Island government's submission there are a number of issues that we raise in relation to our capacity. Obviously we accept the findings of the Commonwealth Grants Commission report of 1997, which makes it very clear that Norfolk Island has the necessary revenue-raising capacity. As I say, getting back to making the hard decisions, it is interesting to note—and for the public record—that this year the Norfolk Island government made an unpopular decision, but one that we were not scared to make, in practically increasing the revenue take by 10 per cent, or in excess of \$1 million, with tweaking at the edges of our fees and charges structure. It came about because there was a need to raise the extra revenue. By no means is that the end of our exploration of those matters, and that is why there has been contact with Treasury, as I think DOTARS mentioned. Treasury is keen to accept a submission from us and to assist us in developing a more broadly based taxation regime for Norfolk Island, and we are committed to doing that.

There was a question asked of DOTARS about the contribution that the Commonwealth makes directly to the Norfolk Island budget. I can say that there is no direct contribution at all to the Norfolk Island budget. However, it is important to note that matters such as the maintenance of KAVHA—that is, the Kingston and Arthur's Vale Heritage Area, which incidentally is a Commonwealth property—the provision of police services and legal aid are acknowledged in our budget process and obviously presented to the public in a very transparent and open fashion.

I have talked about working with Treasury, and it is only in recent days—just before my arrival in Canberra—that I was alerted to the recent correspondence that has been received from Treasury with regard to their offer to assist us in developing our taxation base. It is important; we do recognise that we have limitations on our locally available expertise, but we are not too proud to go outside and ask for the assistance when and if that is necessary. We regularly seek that

assistance, and I think you will find that demonstrated if you look closely at the content of the Norfolk Island government's submission.

A lot has been said about the Norfolk Island government not having the same transparency mechanisms, the same legislative structures, as exist in other states and territories of Australia. I would like to add to our submission by briefly touching on our involvement in the Standing Committee of Attorneys-General, which I attend as the minister responsible for legal matters on Norfolk Island. As you would be aware, there is a great deal of development of model legislation for states and territories, for which there is a joint effort by the states, territories and the Commonwealth and to which Norfolk Island has paid particular interest over the years. That model legislation has extended to such things as domestic violence, which Norfolk Island adopted to suit its own situation. We are currently looking at things like the public liability issue, and hopefully Norfolk Island is going to be in a position to finalise legislation in that regard following SCAG in a couple of weeks time. Norfolk Island will be in a position to take forward the legislation and to have wide-ranging consultation with the Norfolk Island community on those matters.

As far as the legislation is concerned, our current legislative program—and I can make a copy of that available to the committee—covers things such as the provision of legislation covering freedom of information. I am not aware that the issue of an ombudsman is on there, because we have to go through a negotiation stage with the various bodies involved—including the Commonwealth—to come to some sort of agreement before we put in place a legislative structure. Some people might well say, 'Just because you are going to go ahead and throw together some legislation and pass it doesn't necessarily mean it is going to be effective and going to be enforced.' One of the requirements of our legislative drafting process is that it is properly funded and that we can give proper effect to it when it is passed. We are serious about it. It appears on our legislative drafting program, as do a number of the other issues and concerns that have been raised about our legislative capacity inadequacies that have been identified in some of the submissions that have been given.

Mr Chairman, I was somewhat disturbed to hear your line of questioning regarding the corruption and alleged intimidation that may occur on Norfolk Island. I am not aware of any complaints; DOTARS are not aware of any complaints in that area. I personally have no knowledge of such complaints. I am under oath here today.

CHAIRMAN—Could you outline those complaints you have no knowledge of?

Mr Gardner—It is the issue of the complaints you raised about alleged corruption and intimidation on Norfolk Island. I am not aware of that issue or of the complaint being raised. This is the first time—this morning—that I became aware of that.

Senator HOGG—That was raised by me at the hearing on Norfolk Island. You obviously were not in the room.

Mr Gardner—No, I was not in the room.

Senator HOGG—I understand that.

CHAIRMAN—Please proceed, Mr Gardner.

Mr Gardner—I can assure the committee that this is a matter of serious concern that could easily be addressed if we were armed with some of the facts. We find ourselves in a position, obviously, where some allegations have been raised but we are not in a position to respond to them. My colleagues are not in a position to respond to them. We are a sensitive bunch of people out on Norfolk Island, as you can appreciate, and if somebody is going to raise a serious allegation like that we think it is only fair and fitting that we be given an adequate opportunity to respond.

Senator HOGG—But would you not also say that it is only fair that there be a process independent of yourselves and of ourselves by which those charges could be reasonably judged? It seems to me that, if people are appealing to you, they are appealing to Caesar.

Mr Gardner—I have absolutely no difficulty with that. I have explained that we are keen to consider, take on and embrace an ombudsman's office and to develop our appeals mechanism. I do not think there is any difficulty in that. I get the very strong feeling that the committee detects some resistance from the Norfolk Island government in wanting to embrace that. I just want to clarify the situation with regard to that: we are serious and we are committed to that.

If I could continue, there was some question in regard to the Norfolk Island government lagging behind in some legislative areas and I have touched on some of those. That is fair criticism in some areas. We are a small parliament, we have limited resources and we have to establish priorities in the way we deal with them. As you are only too well aware, Mr Chairman, Rome was not built in a day. It takes time, and running off in a headstrong manner to quickly put something in place because it is lacking is not really the way that we should do things. They should be properly considered so that, at the end of the day, the result delivers on what is expected.

In some areas we are probably ahead of other states and territories. I refer back to our involvement in SCAG, which is still dealing with model legislation as far as forensic procedures are concerned. Unfortunately, because we faced the murder last year—but fortunately, from another view—we have been able to move very quickly on that to adopt the ACT legislation and put it in place, and we have done that in close consultation with the Australian Federal Police. We have actually been able to jump ahead of the rest as far as that is concerned. I understand that there are still states and territories that have not adopted updated forensic procedures legislation. There are still states and territories yet to fall in line with the model legislation developed by SCAG.

I am pleased, Mr Chairman, that there have been no serious deficiencies of service brought to the attention of the Department of Transport and Regional Services. That is of no real surprise to me, because I do not believe that there are serious deficiencies in the services that we provide on Norfolk Island. I wish to make some comments in regard to some media statements that have been made recently, but I will save that until later on in this discussion, if I may. I believe that there is an overall level of satisfaction in the services that are provided on Norfolk Island. I say that not only as a member of the Norfolk Island government but as a member of the Norfolk government community. As the father of two children and as somebody who is, believe it or not, ageing and needing to look to the future, I have every confidence in the services that are

provided on Norfolk Island. They will provide me with security in my old age and provide my children's ongoing security, whether it be in education, career, the health system, social services and the different areas that obviously they will fall under as they grow older and develop and raise their own families on Norfolk Island. I have every confidence in our system.

I do not know, but I think it would be fair to say that even the Commonwealth does not enjoy the superior position of the level of satisfaction in services on Norfolk Island. There are always going to be, whether it is on Norfolk Island, in New Zealand or in a state or territory in Australia, expressions of dissatisfaction in not only government or the people that are in government—the party that is in power at the time—but the decisions that are made by government. The Australian population have experienced exactly that dissatisfaction with recent international events—Australia's involvement in the Iraq war. There are a number of matters where people will be dissatisfied with the decisions that are taken and in the direction that the governance structure takes a population. It is an everyday occurrence in every jurisdiction.

You made a lot, Mr Chairman, of the fact that we have unfortunately suffered a murder on Norfolk Island and that we have experienced arson. Mr Chairman, for your information, we also have drink-driving and petty theft from time to time. We are often painted as paradise but occasionally there are a few snakes about. But, Mr Chairman, are you seriously suggesting to me that that is any bigger problem than is experienced in any other place in the whole of Australia?

CHAIRMAN—I am not suggesting anything to you, Mr Gardner.

Mr Gardner—Are you trying to suggest to me that there are no unsolved murders or unsolved arson cases in Australia, in your electorate?

CHAIRMAN—That is something that you will obviously have to ascertain for yourself. I am not suggesting anything to you, Mr Gardner. I have not had the chance yet.

Mr Gardner—You make a great deal of mileage on it, Mr Chairman, with all due respect. We also rely on the Australian Federal Police to provide us with the expertise and services to assist us to resolve those. I believe they do a tremendous job. I believe that the community has assisted them; the Norfolk Island government certainly have assisted them. We have not been backward in coming forward in seeking assistance from the Australian Federal Police, through the department of territories, through the office of the Administrator, and through the minister's office, to try to get the assistance of the Commonwealth to have the necessary resources on the ground to resolve those issues.

We regularly discuss a range of issues—it was brought up again in the DOTARS submission—with different agencies within the Commonwealth. We regularly do that. Certainly, in my limited experience in the Legislative Assembly of Norfolk Island over the last three governments, I have had tremendous interaction, assistance and advice, as I said, from the office of the Administrator, the Department of Territories and Regional Services, the department of health, Senator Minchin's office, Finance, Treasury—the list goes on. We are not backwards in coming forward. We recognise our limitations. If we need assistance, we will go looking in the appropriate area to try and get the necessary assistance on board, and that is not an unusual practice. I believe that even Australia sometimes goes looking for assistance in specialist areas in

the United States—maybe even from New Zealand, especially when it comes to playing rugby and things like that.

In Mr Ellicott's submission there was some questioning from Senator Crossin regarding disclosure of interests. Norfolk Island is a small place. Again, I am not averse to the establishment of a disclosure of interests arrangement. In a small place like Norfolk Island, most people already know your business—they know what you do from day to day; they know what I do from day to day, and they know what my family are involved in. But I think Mr Ellicott made a very interesting remark regarding the size of Norfolk Island and the size of the legislature—that you have to cut your cloth sometimes.

I am not averse to having somebody with the necessary expertise, who may be a member of the Legislative Assembly, providing advice to members to consider. I think I have done it myself in the past through my involvement in the nursery industry on Norfolk Island, when a matter has come up. I obviously have not participated in any vote or outcome on the matter but tried as best I could to explain to people the benefits of whatever course they wanted to take and provide unbiased advice on the matter. At times you have to do that. You are forced to do that because of the size of the community, but I have stepped back when it has come to actually making a decision.

When I was first elected to the Legislative Assembly some seven or eight years ago, I declared to the then Chief Minister, who maintained a register, my lack of interests at that time. I did not have a great deal: I had a house, I was an employee, I had no shares, and I had no other interests in anything else. I try in my daily life, as I expect and believe my colleagues on the Legislative Assembly try—and remember I am under oath here today—to be as open and transparent as I possibly can, and I am sure that my colleagues are when it comes to disclosing their interests. Time and time again, and I know you have received evidence on this, members of the assembly have declared their interests, have still tried to make a contribution and have stood aside from making a vote. I think that is a fair and honest appraisal of the situation on Norfolk Island. In my closing remarks, may I just say that I am happy to disclose my business interests and any other interests as necessary. I could do that here today. I have nothing to hide. With that, I will pass on to my colleague the Hon. David Buffett.

Mr Buffett—Thank you. I will provide the second part of the Norfolk Island government's opening statement. Our written submission was lodged earlier, as you mentioned. I will elaborate on two issues: firstly, governance concerns and, secondly, financial capacity. In terms of governance concerns, at the 1979 mark—enabled by the Norfolk Island Act and other legislative measures of the Commonwealth parliament—a number of mechanisms were put into place to commence and to sustain self-government in Norfolk Island. There was the provision for a parliament, an executive government, the transfer of both legislative and executive controls in a range of powers, control over its own public purse plus a range of additional matters. Most of these functions were brand new for Norfolk Island.

Whilst Norfolk Island had a self-governing capacity with the Pitcairners arriving in 1856, this capacity was withdrawn in 1896 and Norfolk Islanders had not really held positions of self-governing capacity for some 80-plus years. Thus, most of these functions were new to most in Norfolk Island in their daily lives. Whilst we changed the method of voting and we experimented with the number of executives or ministers in the government, we have

experienced the introduced machinery of government for just some 24 years—say, a quarter of a century.

Mr Chairman, whilst a question of a quarter of a century is a major portion in your life and in mine, it is really but a wink of an eye in a time frame to measure the development of governance. The methods and mechanisms require time to be appreciated, properly understood and experienced—with both good and bad experiences. Those who use them—for example, the community, the elected members, the ministers—all need to grow and mature in their new responsibilities. Many have seen opportunities for authority and power without immediately accompanying that with the recognition of responsibility, but that grows too. We all recognise that the cycles of government are sometimes swift but at other times ponderous, and neither all the good nor all the bad characteristics and traits necessarily exhibit in the first few strokes of play. Growth and maturity take some years.

I will turn to things that you will know better about than me. The Australian governance process is still developing. There are some parliamentary procedures that you are still walking through, and you are also experiencing debates in various places on fixed terms or otherwise. The federal sphere has been at it for something like 100 years; I mentioned that we have been for only 24 years. This is important to say when there are moves to tinker—and I may use that word ill-advisedly—with some of the Norfolk Island governance mechanisms. In this case, they go to how our Chief Minister is positioned—and, by implication, the accompanying question of how ministers are positioned—and to whether there should be a fixed term for a parliament or a legislative assembly. This has also brought onto the scene for probably gratuitous comment the number of Legislative Assembly members in the parliament, the proportion of ministers to backbenchers, the method of voting, the desire or length of parliamentary terms, pecuniary interests and a number of other issues. Many of the matters I have just mentioned are not specifically within the terms of reference, but they have been significantly included in some submissions and in some of the questioning processes.

It must be said that, whilst these matters may need to be debated at some time or another—indeed, discussion and awareness is very healthy—there are two real questions. The first is: which authority should conduct and conclude the debate? The second is: given the need that I have just mentioned for some experience with the governmental machinery, with the proper testing and proper scrutiny, when is the testing timely? To come back to the first question, without doubt the authority to conduct the debate rests with the Norfolk Island community. It does not rest with an external authority imposing its imprint. Governance methods will survive in Norfolk Island only if they are ultimately owned by the Norfolk Island community. I have heard comment from both yourselves and others to confirm that view. A prime example of an imposed method is the 1979 voting system. It failed very quickly after self-government commenced and it continues to be contentious. We continue to have views about the voting system and about what it should be.

The second question, of timely testing, is a more difficult one to answer. Some of those matters that I mentioned earlier may well be examined now. There is probably no doubt that some of them can be—for example, the voting system. But other aspects may require more mature consideration and may evolve by convention and community usage. Let me give you a couple of examples. Firstly, part of the generated debate includes the question of how many executive members we should have. The reality is that in Norfolk Island we have already

experimented with between two and six. Given factors such as workload and keeping the executive accountable, the number has really now settled on four, and it has been four for a number of parliaments. In other words, the existing arrangements have been settled amongst the community and those who have been elected to the parliament, over a reasonable period of time. It did not require an external heavy hand to come in and dictate it.

Another example is forced earlier elections. Some have been afeared of this and want to legislate against it. That really raises the question of the fixed term. On examination, there have been only three early elections out of 10—that accepts that the present one, which is the 10th, might run its full term. That aside for a moment, what I am trying to say is that three out of 10 is not overwhelming enough to say that you must bring in a particular measure overriding what the community might work through on its own account. Let me just give an example about the most recent forced election. A number of electors were really hesitant about forcing an early election, notwithstanding that they had good reasons to want it. They were apprehensive about creating instability in the whole governmental process, which is an undesirable flow-on, maybe, if you do it too frequently. I get the impression that they would be hesitant to do this with regularity, and certainly not without just cause. So the point that I am making again is that, as time tests these processes, communities can decide on a balanced course on their own account. Mandatory restrictive legislation is not necessarily required. In summary, can I mention in terms of this area that Norfolk Island governance issues are best handled by the Norfolk Island community. Secondly, it is not necessarily timely for major governance issues to all be overturned and reviewed, although a phased program of evaluation may be appropriately prepared—but you would judge which of those are timely for now and which might need to have a further course to run.

May I now turn to the second matter, financial capacity. The success or otherwise of self-government, no matter which internal machinery you use, does depend upon our financial capacity. Although some wish to engender doom and gloom, we do have financial capacity, and self-government is alive and well. You have had some reference to that by the architect himself at this sitting this morning. Successive Norfolk Island governments have delivered more benefits and advancements—that I earlier described to you—over the past 24 years than the Australian government in the 70 years prior to 1979. In the period that we have been there, to just quickly pick up a couple of items, we have introduced a sewerage system, a social welfare scheme, a workers compensation scheme, a health care scheme, minimum wage legislation and revised immigration legislation—just amongst a few. They are very important matters, as you will recognise by just the headings.

The Grants Commission report of 1997, which I think you are all familiar with, is the major authority for assessing our financial capacity. It estimates the economy at a figure of something like \$80 million. There are other pointers as well, although it has to be said that they are estimates at this time. In viewing that \$80 million economy, it needs to be asked whether there is a preparedness to contribute more from a taxing regime and, secondly, whether an elected government is willing to carry through some of those measures.

In answering those questions, I think you need to have some account of the historical sequence—and I do not want to stress the historical scene too much—of availability of money in Norfolk Island. For example, 100 years ago, in 1903, it was a subsistence economy; there was very little cash. There was no great deal of money within the community, but it could exist with

very little because there was self-help, family help, community help and barter and trade in that context. It was when you needed to go outside the community that you needed to have more hard cash, and when that happened there was a customs duty arrangement so the community was able to capture some of it by that method.

But things changed, obviously, as time went on and in the 1960s we had the development of the tourist industry. That has been going now for something like 40 years. It is the longest succeeding industry that Norfolk Island has experienced, and it brought and still brings significant prosperity. There were taxing regimes that adjusted to some degree to address the new industry, but most of the taxes were on the visible arrangements. The taxing regime did not really address the wider picture as to how money moves in comparison with that of, say, 100 years ago. It needs to be said that the community was very attracted to the minimum taxing regime. Everyone understands that, and that is to a certain extent how things in Norfolk Island have travelled. What also goes without saying is that the range of services expected—indeed, demanded—by the community has increased enormously, and the old taxing regime no longer copes with that.

The Canberra scene, which you are familiar with—specifically the minister in your spheres who has responsibility for some elements in Norfolk Island—has become agitated and, to address that, it has injected into your committee a number of additional references querying financial sustainability of self-government. They are in your terms of reference and do not need my elaboration. I need to explain to you that Norfolk Island attitudes are adjusting to this new financial need. Let me be clear: I am certainly not saying that the community is applauding or will applaud new revenue raising methods, but I do want to signal to the committee the observation that, say, five years ago, mention of such measures was not dared. There was no public debate or discussion. More recently, there has been public debate on the cost of community services and there is the clear impression that they cannot be afforded and continued under the existing, more limited, tax regime.

Today—or, more accurately, at your hearings in Norfolk Island on 15 and 16 July—you will have personally heard individual proposals about how taxes can be levied to raise revenue for much needed community services and infrastructure. I have to say that some of the suggestions may not stand up to scrutiny, but that is not the point. The point is that there is a changing attitude and an acceptance that review is required, to the extent that individuals from the community are making taxation proposals.

More than that, the matter of forward planning relates also to the matter of adequate revenue. It must be explained that forward plans have been made. It is not something that we have never done, but they have not necessarily been delivered, for lack of funds. Disincentive for forward planning is significant if the plans fall in a heap for want of money.

I need to confirm the Chief Minister's earlier advice to you that the government is examining a wider revenue base, and it is doing so in two phases. The first phase is to introduce new taxes into the financial year that we have already commenced. The Chief Minister made mention of that. That has already been done, and that will raise something like \$1.2 million in the financial year that we commenced on 1 July. So the Norfolk Island government has commenced establishing this wider revenue base. The second phase is that the longer term solution needs to incorporate a new tax, perhaps a form of broad based consumption tax. That is being examined

in detail as the second phase. It is important to emphasise that that is the planning arrangement that is continuing.

I additionally mention that the public service is embarked upon strategies to deliver forward plans—both financial and otherwise. To reinforce this administration capacity, the Norfolk Island parliament only two days ago endorsed a new head of the public service, a step which will provide stability and expertise in those fields that have been mentioned.

One of the reasons put forward for a fixed term of office was that it would offer protection for a government in office so that it could tackle the hard decisions, such as taxation reform. But, given time and opportunity for the community to mature its thinking—as it is doing and as I have endeavoured to briefly describe to you—a fixed form for the legislature may be less needed. The community may well be able to tackle that on its own account, and there are positive signs to that effect.

I now move on to say this: notwithstanding what I have said about capacity, there are some quite big-ticket items in some essential areas which would be difficult for a small place, community and island to fund. I will give you a couple of examples: port facilities and a hospital. These facilities, whilst still functioning in Norfolk Island at an appropriate standard—and I stress that—will soon require replacement and attention. For example, the port facility was convict built, so it has that age attached to it, and there is a heritage issue attached to that as well. The hospital building is immediate postwar vintage. The point I want to additionally make is that they were aged during the period of the Commonwealth's administration. The Commonwealth made no provision for their replacement or for their refurbishment.

There may be a legitimate role for the Commonwealth to play in terms of its responsibilities, which are asked about in the terms of reference. There may be a sound case for the Commonwealth to assist in bringing these facilities to a long-term standard, and we, with our new revenue system and stream, would fulfil obligations for their ongoing requirements and then eventual replacement in the next cyclic movement. I did not necessarily want to labour those points, but I wanted on the Norfolk Island government's behalf to give some emphasis to some of the components, particularly where they have drawn comment and queries by other participants in this committee process.

CHAIRMAN—I am going to defer to my colleague Mr Neville, because he has to catch a plane back to Brisbane for some urgent meetings there.

Mr NEVILLE—I would first like to apologise to the witnesses, especially the current witnesses. I had intended to stay the full term but if I do not accept this flight I just do not get home—it is as simple as that. In your submission you take some exception to DOTARS's description of the administration in our previous report, in the annual report consideration that we did recently. You say they refer to it as being 'like a shire council' and that they say:

... the Government is rarely a cohesive force, with the Assembly often restricting the Government's capacity for maintaining an up to date legal regime and longer term planning and direction for the Island bureaucracy ...

Do you contest that very strongly?

Mr Gardner—Yes, we do.

Mr NEVILLE—Mr Buffett's evidence is that there is a planning process on. You heard a lot of evidence today about things like the cumulative interest register and access to an ombudsman. Do you think that the island would embrace that if it were explained how it would work? In other words, are you prepared to initiate it rather than have it imposed?

Mr Gardner—I believe that is the wish of the Legislative Assembly of Norfolk Island. As I said in my introductory remarks, on two occasions a motion passed unanimously through the Legislative Assembly to explore those options. The most recent one was sometime last year. As I have explained, I initiated some discussion with the then official secretary to make some inquiries of the Commonwealth about the different options that would be available. We have that paper and that is now being supported by the Commonwealth Ombudsman's office. The only thing that has restricted that is—as I said, again in my opening remarks—that we need to establish a list of priorities. It is obviously an emerging priority in many people's minds. As I said, we are not averse to pursuing that, and I do not believe that the community are averse to that.

Mr NEVILLE—I just want to make sure that I understand you properly: you are not averse to some Commonwealth intervention in health on the basis, if I understand Mr Buffett correctly, that even by 1978 standards the hospital that was left there was pretty primitive.

Mr Gardner—There is an argument that the arrangements put in place in 1979 suggested that at the end of a five-year period not only would the matters of the powers be revisited but also it would be an ideal opportunity to revisit the things that may have been forgotten or overlooked in 1979—the infrastructure audit arrangements may have been overlooked at that time in everybody's desire to take on board the mantle of self-government and deliver it for Norfolk Island. It is only in more recent years—and I think Mr Buffett may have touched on that—that health services have come under the full control or umbrella of the Norfolk Island government. That was as late as about 1989, from my recollection. So it is only a little over 10 years since we have had control.

Mr NEVILLE—Who was administering it before that?

Mr Gardner—My understanding is that it was a Commonwealth responsibility.

Mr NEVILLE—The Commonwealth department of health?

Mr Gardner—I would need to take that on notice. I can give you the details of that.

Mr NEVILLE—Can you come back to us on that?

Mr Gardner—Yes. Mr Buffett, as the current minister for health, may be able to give a better insight into that than I can at this time.

Mr NEVILLE—What do you say to that, Mr Buffett?

Mr Buffett—Norfolk Island in fact administered the hospital. However, until 1989 the responsibility formally rested with the Commonwealth. The Commonwealth were not doing the funding process. Nevertheless, they continued to have the formal responsibility up until 1989.

Mr NEVILLE—You have been a minister continuously—

Mr Buffett—Can I just elaborate in this way: prior to 1979, when there was no Norfolk Island Legislative Assembly, the Administrator was the Australian government's resident representative and he had authority for health in Norfolk Island. All of that time frame related to Commonwealth responsibility. When we commenced in 1979, there were a bundle of powers that were transferred forthwith—health was not amongst them. Health came in 1989, 10 years later. Between 1979-89 Norfolk Island did the paying, notwithstanding that it was a Commonwealth responsibility.

Mr NEVILLE—Were there any tacit understandings given—either pre-1978 or pre-1989—that the Commonwealth would do something about the standard of the hospital?

Mr Buffett—There have been discussions from time to time, but the reality is that to date the funding has remained substantially in the Norfolk Island government's court, notwithstanding that the responsibility may have been elsewhere for some of the time.

CHAIRMAN—Mr Buffett, you mentioned the minimum wage health scheme and that you have introduced bills, proposed to introduce bills or enacted bills—or they are waiting for enactment. What was the minimum wage set under that particular legislation? You can take that on notice.

Mr Buffett—I probably need to take that on notice to give you the current figure. It has varied since we introduced it. It is not new; we have had it in place for a number of years. If I remember correctly, none of the things that I quoted to you are pending. They are items of fact and they have been in place for some time. The sewerage scheme, for example, has been around for decades now.

CHAIRMAN—I understand that you do not impose rates with the sewerage scheme. How then do you recuperate your capital costs?

Mr Buffett—When you say rates, I assume that you mean land rates?

CHAIRMAN—Yes.

Mr Buffett—There are no land rates in that context. However, there is a fee when you are connected to the sewerage scheme.

CHAIRMAN—Is it compulsory to be connected or will it be compulsory?

Mr Buffett—It is compulsory in designated areas.

CHAIRMAN—How long before all habitable areas of the island will be covered?

Mr Buffett—That is very difficult to answer because some of the areas are quite isolated in terms of population numbers. It is not practical or feasible to extend, at significant cost, a sewerage branch for one or two people, especially when you have a space that could cope with an individual septic arrangement for the households in that context. Since the scheme commenced in the Burnt Pine areas we have extended it to the higher density area of Norfolk Island. For example, over a period we extended it up to the school. You will remember where the school is.

CHAIRMAN—Yes.

Mr Buffett—There have been extensions to the scheme over a number of years. I am not able to give you a guarantee of whether it will reach every household on the island, which was your original question.

CHAIRMAN—What about the percentage? Can you give the committee some idea of the percentage covered by dwellings on the island to date?

Mr Buffett—Not off the cuff, but I can provide that to you.

CHAIRMAN—Thank you. Incidentally, could I make it quite clear that the views and questions that the committee put are not based on perceived problems on the island but on the evidence the committee has received. Often, if not invariably, the evidence that we receive is corroborated by other evidence. So the questions that the committee formulate are based on evidence received and a multiplicity of evidence on the same subject—not a multiplicity invariably, but often. That is how the questions from the committee are arranged and that is why we deliver them to you.

We have some evidence from a woman of Pitcairn origin. She worked on the Australian mainland, as Pitcairners do, and we welcome that. She retired with her husband on the island—this is a confidential matter and I do not want to give too much away—but they are unable to cope because of the lack of Medicare and the lack of benefits of a scheme like the Pharmaceutical Benefits Scheme and intend to return to the mainland. Does this go on often? We have received evidence of others who have done the same. They want to live in their homeland but find it difficult because of the lack of proper facilities and the benefits of a scheme like the Pharmaceutical Benefits Scheme that operates for the benefit of the aged in Australia. Could you respond to that?

Mr Buffett—It would depend upon their category as to what assistance might be available to them on Norfolk Island. If they were Australian pensioners and their pensions were transportable to Norfolk Island they would almost forthwith pick up some ancillary medical related benefits provided by the Norfolk Island government.

CHAIRMAN—For which they would have to pay.

Mr Buffett—No, not necessarily.

CHAIRMAN—Could you explain that.

Mr Buffett—If they are an Australian pensioner and they return to Norfolk Island, in most circumstances—and I am not able to say whether this applies in this particular circumstance; it would have to be tested on its merits—they would be able to have hospital and medical benefits provided by the Norfolk Island government without cost to them. That would also include, in certain circumstances, some pharmaceutical benefits. I am unable to say whether that meets the situation that you have described to me. For example, there is an income test applied to this. If there is a huge income involved, maybe they would not gain the same eligibility that I have described.

CHAIRMAN—At what level of income does that cut out?

Mr Buffett—I cannot give you a figure.

CHAIRMAN—Would you take that on notice?

Mr Buffett—I can certainly provide that to you.

CHAIRMAN—Do you have a pharmaceutical benefits scheme there as well?

Mr Buffett—It is not a separate one.

CHAIRMAN—It is part of the health benefit.

Mr Buffett—It is part of the health benefit, yes. It is not described by us as a pharmaceutical benefit; it is just part of the overall medical benefit.

CHAIRMAN—Is the pharmacy administered by the hospital?

Mr Buffett—Yes, it is.

CHAIRMAN—Is that the only pharmacy on the island?

Mr Buffett—There are some other limited facilities but that is the main arrangement, yes. Others have come, varied and gone.

CHAIRMAN—We have also had some evidence—I am sticking with health for the moment—about the ambulance service and heard about the recent tragic loss of two young and very valued lives. The sole ambulance, which is driven by volunteers, can take only one stretcher patient. At the time the wireless facility used to trigger the beepers was down and, as a consequence, it was some time before the hospital was able to alert the ambulance drivers to the scene of the accident. We were informed that the ambulance drivers have to buy not only their own batteries for the beeper devices but also a second pair of overalls. We have also heard evidence that the ambulance was, in effect, inadequate on other occasions as well. Could you respond to the evidence that we took?

Mr Buffett—I cannot respond to all of it at this time. I have not had reports of an inadequate ambulance. As to the details of the purchase of batteries, I cannot claim to be the expert before you at this moment.

CHAIRMAN—Could you rebut what I have said?

Mr Buffett—In terms of batteries, I do not know. What I can say to you, however, is that I certainly did have a report to me in terms of one of the pages issued to people who undertake ambulance service that had some dysfunction that related to that incident, and that is being examined. But you gave the impression to me that that was more widespread—

CHAIRMAN—Yes.

Mr Buffett—and I have no knowledge of its being more widespread than one.

CHAIRMAN—I only give you that impression because that is the evidence that the committee took. It is not something that I have personal knowledge of, other than from one of the drivers who gave evidence to that effect.

Mr Buffett—Overall, I have not had adverse comment in terms of that particular difficulty—of difficulty in terms of an accident. I have not had any adverse comment about the performance of that service being provided in that context, notwithstanding that there may have been one element of personal difficulty by one of the participants.

CHAIRMAN—Perhaps we should not pre-empt the coroner's findings. I do not propose to pursue that line of questioning any further. Would you please be kind enough to explain to the committee your—

Mr Buffett—Could I just make an additional comment?

CHAIRMAN—Please do.

Mr Buffett—I have identified to you that one component of what you have reported to me just now has been made known to me, and that has quite promptly gone to the director in the hospital arena with a brief to give me a prompt report about that. I just wanted to emphasise to you that, when complaints of that nature are brought forward, they are properly looked at by the appropriate people and I will get a report about it immediately I get home.

CHAIRMAN—We are comforted by that. How does your 'adequate financial capacity', which is the term you used, fit? I do not want you to think, every time I ask a negative question, that there are not aspects of the island that are absolutely delightful. There are. The overwhelming part of Norfolk Island is that it is something of a paradise, it is administered well, the people are invariably friendly—at least they are subdued to me at times but nonetheless still in that category of being friendly. I do not want to preface everything I have to say of a negative nature by saying that all the time. I want that to be something that accompanies those negative things that we ask. We only ask negative things, by and large.

With your adequate financial capacity there has been, I understand, a little thing of this nature: a zebra crossing in the main street that has been requested for some years with, it seems, little effect. I think that, given the traffic that goes through there, it seems probably to be a reasonable request. There has been some comment made on the main road that goes through your pretty village and has been patched and repatched et cetera. That obviously needs some attention.

There has been pointed out to us, and we have inspected, the facility for rubbish disposal and the concrete chute where the rubbish is tipped straight into the sea.

There has been often mentioned an inadequacy with respect to the hospital, in relation to the average standard on the mainland. There has been comment made about the device at the airport procured by the Norfolk Island government for navigation, bringing a plane in to the airport on a safer basis. I think there was something like half a million dollars spent on it but it is still to be erected. And I could mention the lack of adequate wharfage facilities. You could excuse people for thinking that these things are not done because of lack of financial capacity to do them. Couldn't one arrive at that conclusion, Mr Gardner?

Mr Gardner—I will take those one at a time and briefly pass some comment in relation to each. Certainly there has been talk about a zebra crossing—a pedestrian crossing—in the main street, but if you were armed with the facts you would know that there used to be one in existence before there was a major upgrade in the middle of town. The speed control mechanism which zebra crossings seem to impart has been in part replaced by the roundabout in the middle of town. That does not mean that we have been able to provide, or that we need to provide, a safe crossing on the busy street. However, the speed and safety issue has in part been addressed by the placement of the roundabout in town.

You talked about the waste management facilities and the concrete slide that drops things into the sea—I do not know whether you talked about that. That has been replaced, over a period of time, through a conscious and very cooperative effort between the Norfolk Island government and the Commonwealth through the Coast and Clean Seas project. I do not know whether you took the opportunity on your visits to the island to go and see the ongoing development of the new waste management facilities—

CHAIRMAN—Yes, I have seen both.

Mr Gardner—around by the airport. They are not too far away from being opened and will address to a large degree the concerns about inadequate waste management facilities on Norfolk Island. By the way, pursuing that was viewed as a joint responsibility. Again, I guess it goes back to the question of what was in place in 1979. Exactly those types of arrangements were in place. In fact before 1979 and for a period of time shortly after that, waste management was in part a landfill dump that was directly behind our most popular beach and at the end of the golf course, which was a totally unacceptable situation to continue with. As things have progressed, there has been a steady improvement to that. Those facilities were on Commonwealth land and within reserves, so it was a joint and cooperative effort to try to remove the blot on the landscape—not only the impact being experienced on the Commonwealth reserves but also the impact being experienced within Commonwealth waters. Necessarily, a joint approach to trying to address those problems was taken. It has been very successful to date and will, I am sure, serve the community very well into the future.

The standard of the hospital is another matter that I want to discuss. It is an important matter. You say that the Joint Standing Committee on the National Capital and External Territories has statements, comments and questions to put based on submissions that have been made to them. I can accept that. A number of people will say that the hospital may not be an appropriate structure for the delivery of our health services and that our health services may not be up to standard. Mr

Chairman, statements attributed to you and to other members of this committee have gone to the press. You said before that matters dealing with the murder and the state of law and order on Norfolk Island had been widely reported in the Australian, New Zealand and other international press. So too have the comments about Third World health standards and provision of Third World health services on Norfolk Island attributed to Liberal and National Party members of the committee. That was in the *Australian*. I know from the transcripts of the hearings on Norfolk Island that a couple of committee members—who were, I believe, Labor and National Party members—ran from that, so that only leaves two others who it could be attributed to. I would very much like to hear any supplementary comments that members of the committee might wish to make in relation to that statement. I guess the most upsetting claims, which have caused a great deal of concern and on which I am prepared to provide evidence that I believe refutes them, have been attributed to you, Mr Chairman, in a recent ABC interview entitled ‘Norfolk Government under scrutiny over services’.

In the interview it was said that the government ‘doesn’t collect any income tax’ and that ‘its affairs have come under the scrutiny this week of the visiting Parliamentary External Territories Committee’. It is reported that according to you, Mr Chairman, the health system is of a ‘Third World’ standard. That comes from you, as the chairman of the parliamentary inquiry that has been on the island this week. In the interview you stated:

It doesn’t really deliver services of any nature that is commensurate with that on the average of mainland Australia or, indeed in our other external Territories.

Fair comment if you have been provided with that evidence. I think it is important to give a fair reporting and a balanced view. I submit to you that there are a number of matters that I should bring to the attention of the committee to assist me in refuting those claims. The first one is from a visiting doctor to the island from Queensland, who was kind enough to provide some plans to the Norfolk Island hospital of the new hospital proposed to be built in Queensland at a cost of \$5.38 million, which would provide 10 acute care and 10 nursing home beds. That contract is about to be let. But the doctor had a concern. He had heard harsh criticism of the island’s health system by the inquiry on the radio, saying something about it being of a Third World standard. He said that he found this quite puzzling, as he believed that the current Norfolk Island facilities were of a much higher standard than his own current facility in Queensland, and of a much higher standard than facilities in many comparable sized communities in rural Australia. That is one example.

CHAIRMAN—Will you table that later?

Mr Gardner—I am happy to table that. We have also recently built a new dental clinic on the island. The provision of health services includes the provision of dental services. Our recently departed dentist has gone to work in the Northern Territory. In a letter to the editor in the *Norfolk Islander* of 27 June 2003 he said that he would like to thank the community of Norfolk Island for allowing him the privilege of working on the island, that we are indeed a very special place and that we will always hold very special memories for him. He went on to say that we are a community privileged to have such an up-to-date facility and that he is envious of what we have when it is compared to the facilities he will work with in the remote Northern Territory Aboriginal communities. I will table that as well.

There are some comments made in regard to the lack of an x-ray machine, or one that was not in working order, by a member of the committee, Mr Thompson, who is, unfortunately, not here today. A letter appeared in the *Norfolk Islander* of 19 July 2003 from the hospital board. It was able to say that the facts of the matter are that the dialysis machine is up and running and presently catering for the needs of two patients six days per week and that an allocation of \$22,200 had been made in the current financial year for a new machine.

CHAIRMAN—I think what he said was that it had broken down at the time of his inspection.

Mr Gardner—I understand that and I appreciate it. That is a problem that is faced by, I think, most health providers—

CHAIRMAN—We are not denying that.

Mr Gardner—in Australia, but certainly I will seek to have that tabled to you, Mr Chairman. Getting back to the Third World standard of health services: I took the opportunity before I came down to Canberra on Monday to make contact with those of our visiting specialists that I could get in touch with and I asked them if they would be prepared to provide a few lines in support of the system on Norfolk Island—or, indeed, if they felt that the system did not necessarily warrant their support, words to that effect as well, so that we could get some balanced evidence on the subject. I am pleased to say that the three that I was able to contact all came back with very similar comments regarding the standard of health services that are provided on Norfolk Island. If you will bear with me, I would like to read those into *Hansard*. I will be brief.

CHAIRMAN—If you were going to table them, that would be better than reading them in.

Mr Gardner—I think it is important that I read them into the public record. I will be as brief as I possibly can.

CHAIRMAN—They do not need to be read out. They need to be incorporated, and they will be there.

Senator HOGG—I am quite happy to have them read, rather than sitting here having an argument.

Mr Gardner—Thank you, Senator. I think I can probably get it done within a couple of minutes.

Senator HOGG—Take five minutes.

CHAIRMAN—Proceed, then. But we are a long way over time.

Mr Gardner—Thank you, Mr Chairman. It is important that this is on the public record. The first one is from Dr Bryan Yeo, who is the Conjoint Associate Professor of Surgery at the University of New South Wales and our visiting specialist surgeon. It is addressed to me and reads:

Dear Sir,

As a visiting specialist general surgeon to Norfolk Island for over 10 years, I have obtained some appreciation of the surgical and other specialist medical services, which have been provided to the residents of and visitors to the Island. In my opinion these services have been provided with a high standard of care and at intervals, which seem reasonable, given the number of residents and the workload.

Furthermore, the services to residents and visitors by the Hospital's Medical and Nursing Staff are comprehensive and cover a wide range of general medical practice, obstetrics, gynaecology, paediatrics, anaesthesia, trauma, orthopaedics, psychiatry and basic emergency surgery. Over the past 10 years or more I have observed this practice to be of a high standard.

In addition, Hospital Medical Staff have regularly consulted with specialists on the mainland when any help or advice was required. I understand from the printed transcript of the ABC's AM programme on 17th July that Senator Ross Lightfoot suggested that Norfolk Island "*doesn't really deliver services of any nature that is commensurate with that on mainland Australia*". Senator Lightfoot suggested, from my reading of the report this applied to general and specialist health services. Not only are the Senator's comments superficial, they are misleading, inaccurate and uninformed. As a surgeon at the Prince Henry and Prince of Wales Hospitals for 34 years, I can offer some comparisons about the two hospitals. The waiting list for a cholecystectomy at the Prince of Wales Hospital is over two years for many patients. On Norfolk Island routine specialist general surgery is available within six months. More urgent or more complicated surgery is rapidly transported to mainland centres such as the Prince of Wales in Sydney by arrangements which have been in place and working for several years.

Senator Ross Lightfoot should re-examine the precise health needs of the Norfolk Island population, and more accurately look at what has been and is presently taking place.

The second one is from Dr Mervyn Thomas, who is another visiting specialist. Again it is addressed to me. It reads:

Dear Jeff,

I was saddened that there has been criticism of the Norfolk Island Health System in terms of comparisons with Third World countries. I would certainly agree that there are some aspects of the Norfolk Island Health System which certainly share attributes of Third World Health and these would include very personal care of patients which is sadly losing its place in the hospital system in Australia. My experience of your system in gastroenterology is that it is possible to give quite a good service to your community particularly as we have achieved many goals not achieved in comparable areas in Australia. These would include broad based screening for colorectal cancer with detection of many early cases and prevention of many others. Although specialist emergency care could not be available in Norfolk Island under any system I think the service provided by visiting specialists in conjunction with your government medical officers is remarkably good and fairly timely. Whilst many improvements can be made in all systems it is not entirely clear to me how a better system of health care delivery would be achieved under Medicare, except perhaps in providing capital funds which is an area in which I have no special knowledge.

The last and most brief is from another visiting specialist. It is addressed to me again, and reads:

Dear Geoff

It is with great concern that I heard of the ABC report on Senator Lightfoot's visit to Norfolk Island in which he described the health system equivalent to third world standards. I would suggest this is a very ill-informed statement and would like to register my support for what I feel is an excellent system of health delivery on Norfolk Island and that the standards of

medicine are equivalent to anywhere in Australia. You have a breadth of visiting specialists who are committed to providing high levels of care to standards equivalent to what they provide within Australia. As an Ophthalmologist who visits the island, providing both consultative and surgical services, I find it insulting to have an ill-informed Senator suggesting that I provide a third-world standard of medicine. Should you require any support in putting a case to justify the current medical services, please do not hesitate to contact me.

That is signed by Dr Bill Glasson, who, as you would be aware, is the Federal President of the Australian Medical Association.

CHAIRMAN—Is it the wish of the committee that those documents be tabled? There being no objection, it is so ordered.

Senator HOGG—I made a statement the other day—and I will stick by that statement; you can read it in the *Hansard*—about the transparency and accountability of the governance of Norfolk Island. I still stick by those statements. Nothing that has been said here today has convinced me otherwise at this stage. From where I sit, there are definitely no processes in place. Whilst you advocate that things will be put in place—and that is very good; I welcome those statements—the fact is that nothing is in place at this stage which facilitates FOI, an ombudsman and an independent crime or corruption type of committee or commission, external to the forces that operate on the island. Until that can be shown to me, I will not be convinced that there is transparency and accountability of the government.

Another thing is that, whilst there are financial audits of various services of the island, there are no performance audits. Performance audits play a very significant role in identifying the weaknesses of various arms and elements of the Public Service. Comparisons can sometimes be odious. Someone was allegedly talking about government facilities being comparable with those of Third World countries. I will not make an odious comparison for you, but people can draw their own conclusions. The evidence to date says there is a lot left to be desired.

The issue that has been before the committee of corruption and intimidation on the island is a grave concern indeed and is not taken lightly, particularly by me. Most importantly, one of the cherished features of the parliamentary system for me is that evidence is taken in public and matters can be raised and debated in public. But, in particular in this inquiry, there has been a grave reluctance on the part of people to appear before this committee and give evidence publicly—you are obviously not aware of this and I cannot blame you for that—for fear of personal reprisal. That causes me grave concern indeed. Independent mechanisms that are able to be tested, aside from this committee and aside from your Legislative Assembly, must be in place because, as I said earlier, it is now Caesar appealing to Caesar and that is not a very good model to have. Given the closed and close nature of your island, it seems to me that immediate action needs to be taken to give some sort of confidence to people such as me that good governance principles are in place. You might want to respond.

Mr Gardner—Thank you, Senator, for those comments. Certainly, I take them on board and I am looking forward to putting your mind at rest in relation to those matters.

Senator HOGG—Thank you.

Senator CROSSIN—Mr Gardner and Mr Buffett, my apologies for not being with you today. It would have been nice to catch up with you and see you again. I asked the territories division earlier if they had a breakdown of the role that public servants undertook on Norfolk Island. Are you able to provide us with that?

Mr Gardner—I am probably in a position to give you some general figures in relation to that. I think that you quoted somewhere in the region of 250 when you asked that question. My understanding is that the public service administration in Kingston and those environs that deals with government type services and activities is probably somewhat under 200—around the 190 mark. But the inclusion of teaching and hospital staff would probably take that number to something in excess of 200.

Senator CROSSIN—Are you not able to provide us with a breakdown of different departments and numbers?

Mr Gardner—We are unable to do that today, but certainly we will take that on notice and make sure that you are furnished with those details.

Senator CROSSIN—What is the background to your having adopted the way in which you elect the members of your assembly at the moment—the Illinois system—rather than an optional preferential system or some other system?

Mr Buffett—I too am disappointed that we are not able to see you, but thank you for your greetings. This is the history in terms of this system. I know that other people are referring to it as the Illinois system; it is really called the cumulative system of voting. The term ‘Illinois’ derives of course from where it seems to have originated—and where it may have some continuing use—in the United States of America. When we commenced the self-governmental process that I endeavoured to earlier briefly describe, it came with a new voting system, because prior to 1979 we had first-past-the-post. The new system that was presented to us was proportional representation.

That system was not well received, probably for two reasons. Firstly, it was significantly more complex than the system to which we had been accustomed. You could quite readily see where your votes went to under the old system; it was more difficult to track your votes—in its various proportions and the like—under the new system. So there was some element of not knowing how it worked. Coupled with that, however, was the perception that the system was thrust upon the Norfolk Island community by the Commonwealth in that particular instance. Without a doubt, there was a short time frame for its introduction and, whilst there was some element of education, there was not a significant educational program that came with it to let people know how it all worked. So there was a significant backlash against it, to the extent that there was a referendum as to whether we should have it or not, and the referendum said, ‘No, we don’t want this, thank you very much.’

Following that, there was a review of what the system should be. That review came up with the system that we have now, which as I have mentioned to you is the cumulative system. It was put forward as having these attributes: it meant that you still played with Xs, to which the community was accustomed, because of the old first past the post system, while equally it had an element of proportion because you could load your Xs onto candidates of your choice.

Senator CROSSIN—Yes, I understand how it works.

Mr Buffett—I might say this, however: there is some dissatisfaction expressed about the system, because four Xs may well be too many in the view of some—I am not passing a view about that.

Senator HOGG—It depends what beer you drink.

Mr Buffett—Yes, that may well be.

Senator CROSSIN—I understand that. And under your system, I could give you all of my nine votes, is that right?

Mr Buffett—I am sorry I missed that.

Senator CROSSIN—Under your system, could I give you all of my nine votes or is it only a maximum of four?

Mr Buffett—No. Under the system as it stands at this moment you can only provide a maximum loading of four for any one candidate.

Senator CROSSIN—I see.

Mr Buffett—Therefore, if you have nine vacancies to be filled, you have nine Xs to play with and you can only give four to one candidate. So you must vote for at least three people in that context. But you do not have to vote for nine. The wider you spread it, the thinner your vote becomes. That was the background to it. We had a referendum on Norfolk Island to ask the community whether they wanted that system, and the community accepted it.

Senator CROSSIN—When was that referendum?

Mr Buffett—It was probably in the life of the second or third assembly, but I would need to check that date.

Senator CROSSIN—All right.

Mr Buffett—I have just been prompted. It was at the end of the second Legislative Assembly.

Senator CROSSIN—I see. Do you find it a bit curious that there is the suggestion of moving Norfolk Island to fixed terms when the Commonwealth does not seem to want to do that itself? Do you find there is a bit of an anomaly there in the committee or even the minister raising that issue?

Mr Buffett—My apologies, Senator Crossin. I did not really hear the question; I was endeavouring to equip myself.

Senator CROSSIN—That is fine. I wondered if you thought that there was a bit of an anomaly in this inquiry—which you understand the minister has referred to the committee—with regard to a fixed term arrangement for your government when the Commonwealth, and a number of state governments, still do not have a fixed term requirement.

Mr Buffett—Yes, the fixed term proposal is not one that has come necessarily from the Legislative Assembly of Norfolk Island.

Senator CROSSIN—Right. It is nothing that you have discussed? People on the island have not discussed that issue?

Mr Buffett—The evidence given to the committee to date indicates that the majority of people prefer not to have a fixed term, if I have interpreted the submissions correctly. There are varying views about how long the term should be, and the Norfolk Island government has not necessarily put forward a view about that, but there does not appear to be a body of opinion saying, ‘Yes, let’s have a fixed term on Norfolk Island.’ There are, however, some variations put forward in terms of that—that there may be some merit in having a minimum term but that does not mean it should be fixed for the full capacity of time. For example, if there was a four-year term, you might have some element of it—say, half of that, or another percentage—being fixed.

Senator CROSSIN—What is the current length of term?

Mr Buffett—It is a maximum of three years at this moment.

Senator CROSSIN—And you generally run close to the three-year timeline?

Mr Gardner—That is correct. As an interesting aside, it seems to reflect the term of the lives of federal parliaments over the same period of time.

Mr Buffett—Senator Crossin, you mentioned an average of something like 2½. In using the word ‘average’ in that context, probably one needs to understand in a wider community sense this point: it is a maximum of three, and in averaging things out you usually average the pluses and minuses of the particular matter. But you cannot go more than three, so when you average it it is inevitable that the figure must be less than the term that is mentioned at this moment. That is not necessarily a good argument to handle it differently.

Mr Gardner—In relation to that matter, I seek to table a document entitled *Past and present Legislative Assembly memberships since 1979*. It provides, for the benefit of the joint standing committee, a historical review of the terms of all past assemblies. It details in that document the terms served.

CHAIRMAN—We do have a copy of that already. Thank you for drawing that to our attention.

Senator CROSSIN—You have statutory and non-statutory boards on the island—and I note the comment you made earlier about the appeals mechanism when it comes to planning matters. Let us take the social security board as an example. It is involved in decision making on applications for benefits and it also advises the minister of policy. Yet I understand that the

chairman of the board and other members are in fact members of the government. Is that not seen as a conflict between the executive arm and the administrative arm of your operations?

Mr Gardner—The social services board has, as I understand it, one member—a non-executive member—of the Legislative Assembly, who is required to be on the membership of that particular board. I am not aware of any member of government ever having been involved in the membership of that board, but I do not see it as being a conflict or a muddying of the waters as far as the separation of powers—or authorities or roles—is concerned. The board is there to make a recommendation to the executive member; it is not a decision making body as far as I am aware.

Senator CROSSIN—But you do have a member of parliament who actually has input into these recommendations that then go to an executive member of parliament. Is that correct?

Mr Gardner—Yes; input and oversight. Having a non-executive member involved in those types of operations is partly, too, a cruder accountability and transparency method.

Senator HOGG—That is not a valid point. You make those statements, but that one is not valid.

CHAIRMAN—Senator Crossin, do you have any more questions? We are right out of time.

Senator CROSSIN—I have one more question and it goes to the area that has been touched on before about conflict of interest. I understand the Legislative Assembly Act 1979 goes to looking after the interests of shareholders, property or businesses, but I do not know whether that has actually been enforced by the government and I do not know whether a code of conduct has been implemented by the government. I think you talked about that in one of your previous assemblies—or you endorsed it at one of your previous assemblies.

Mr Gardner—I think that was in relation to a register of interests that was held by the then Chief Minister. That is as far as that went though. It was a register; it was a voluntary thing. I understand that at that time most, if not all, members of the assembly participated in a declaration at that time.

Senator CROSSIN—So there has not been a code of conduct or any such matter examined by the assembly or endorsed by the assembly?

Mr Gardner—Not that I am aware of. The matter has been examined, but I guess establishing priorities is what has kept that out of the limelight.

Senator CROSSIN—Is subsection (39) of the Legislative Assembly Act the issue that you said went to the Chief Minister's interests? I thought that was a subsection that looked at covering the interests of a whole range of issues, or am I confusing the two?

Mr Gardner—You are confusing me, with all due respect, Senator. Are you talking about the Norfolk Island Act or the Norfolk Island Legislative Assembly Act?

Senator CROSSIN—The Norfolk Island Legislative Assembly Act. I understand that subsection (39) looks at covering the interests of shareholders, property, business and direct interests through family connections. Is that enforced at all?

CHAIRMAN—Senator Crossin, I will have to make that your last question. We are an hour over time.

Senator CROSSIN—All right. Maybe it is something that needs to be taken on notice and for you to get back to me.

CHAIRMAN—Yes. Could you take that on notice. Thank you, Senator Crossin. I appreciate your input today. I have two brief questions. The first is for you, Mr Gardner. You said, ‘In a small place like Norfolk Island, they know your business, they know my business.’ I think you were talking about a register of interests or transparency or both. If that is the case—and I accept that—how is it that you cannot solve your major crime on the island? A lot of your major crime and serious crime goes unanswered. How is it that, when everyone knows your business and you know their business, you are unable to solve a recent murder, several serious arson attacks and domestic violence that never seems to have a closure to it?

Mr Gardner—Mr Chairman, I am not in the business of crime. People know my business. Crime is a different matter. Crime is something that—

CHAIRMAN—But you were not talking literally of business when you said that. You were talking about everyone’s personal knowledge, everyone’s background, everyone’s pet aversions; you were talking about people generally on the island, not business.

Mr Gardner—With all due respect, what I was talking about was exactly that—my business, the business that I am involved in, the interests that I have. People make themselves aware, in a small community, about just where you are from, what you do, what you are involved in. That was my reference.

CHAIRMAN—Why isn’t the island able to solve some of its major crimes?

Mr Gardner—I am not an investigator. I am not a police officer.

CHAIRMAN—I acknowledge that. But why isn’t it so? What is your opinion of your being unable to solve your major crimes?

Mr Gardner—I think we face no greater difficulty in that area than any other community in Australia. There are crimes that are solved on Norfolk Island, believe it or not, just as there are crimes that are unsolved.

CHAIRMAN—Let me just finish off with perhaps more a statement than a question. Mr Buffett, the voting system, as we understood from Mr Ellicott QC, was one that was accepted by the Norfolk Island administration of 1979, the first administration. The one that Mr Ellicott accepted, if I am reading him right, was first past the post. It was not the Illinois system. That may have been imposed on the Norfolk Island Administrator at some later stage, maybe the second administration. But I understood Mr Ellicott to say that the system that they suggested to

the first administration, and the one which was accepted, was first past the post. In fact, I think he said that the Labor Party imposed that second one. I think that is what he said, but I would have to check the *Hansard*. Does that refresh your memory at all?

Mr Buffett—I am very hesitant to doubt in any way what Mr Ellicott has presented to you in evidence, Mr Chairman, but I do need to confirm that, prior to August 1979, the system was first past the post. The system that was used to elect the first Legislative Assembly in August 1979 was the proportional representation system. That then changed to the system that we have now, fairly rapidly—in other words, in the life of the second assembly.

CHAIRMAN—That is the Illinois system. It came from Illinois but does not operate there now, we also were informed. So you are probably the only place in the world where the Illinois system operates.

Mr Buffett—Yes.

CHAIRMAN—Anyway, we are an hour over time.

Mr Buffett—If you are coming to the stage of winding up, I would like to leave you with four headings, if I might have an opportunity to do that.

CHAIRMAN—I would appreciate it if you tabled those.

Mr Buffett—I would like to say them to you, Mr Chairman.

CHAIRMAN—Anyone else and I would move on, but please read them quickly into *Hansard*.

Mr Buffett—Thank you, Mr Chairman. I leave you with these four headings for consideration: firstly, that Norfolk Island does revise its revenue-raising regime to ensure that it has the ongoing capacity for both maintenance and eventual asset replacement and also to ensure capacity to implement forward planning arrangements; secondly, that the Commonwealth, in consultation with Norfolk Island, might participate to bring up to date some elements of Norfolk Island infrastructure, in the context of my earlier description; thirdly, that the Norfolk Island and Commonwealth governments cement into place the parameters of activity and authority of both governments to elaborate further responsibilities and to guard against unnecessary excursions by one upon the other; and, fourthly, that the Norfolk Island government might set a generous time for review of governance processes such as the voting system over the next period—not all at once, but on a staged basis.

CHAIRMAN—Thank you, Mr Buffett. On behalf of the committee I thank the Chief Minister, Mr Geoff Gardner, the Speaker of the Norfolk Island Legislative Assembly, Mr David Buffett, and Mr Donald Wright. If there are any matters on which we might need additional information, the secretary will write to you. On behalf of the committee, I thank you again for your attendance.

[2.03 p.m.]

JONES, Ms Katherine Ellen, Acting Assistant Secretary, Administrative Law and Civil Procedure Branch, Attorney-General's Department

MINIHAN, Mr Colin, Acting Assistant Secretary, Information Law Branch, Attorney-General's Department

CHAIRMAN—I welcome witnesses from the Attorney-General's Department. These hearings are legal proceedings of the parliament and warrant the same respect as the proceedings of parliament itself. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of parliament. The committee has received your submission, No. 367. The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee you may request that the hearings be held in camera, and the committee will consider your particular request. Before we ask you some questions, do you wish to make a short opening statement?

Ms Jones—Yes.

CHAIRMAN—Please proceed.

Ms Jones—The department is appearing today in response to the committee's request to provide information on the application of Commonwealth administrative law to Norfolk Island. We have prepared a brief which provides general introductory information on the Commonwealth administrative law system, including merits review and judicial review as well as freedom of information and privacy laws. The brief also discusses the current application of Commonwealth administrative law to Norfolk Island, including the availability of Administrative Appeals Tribunal review of Commonwealth government decisions, Administrative Appeals Tribunal review of Norfolk Island government decisions, judicial review, the Administrative Decisions (Judicial Review) Act 1977, and freedom of information and privacy laws.

CHAIRMAN—That was very short; you took me literally. It is very difficult for us to ask you questions, because we did not have your submission.

Senator CROSSIN—I do not have it at all, because it was not in the pack I was sent.

CHAIRMAN—We have not had a chance to look at it either, but I think we have some prepared questions.

Senator HOGG—Could I suggest that it may be best, unless there are some general questions, that specific questions be put on notice in writing.

CHAIRMAN—There are a couple of questions here that I would not mind asking, notwithstanding the lateness of the time, and that may at least justify in part the way that we

have kept you waiting. Could you explain which, if any, of the federal administrative laws apply to Norfolk Island? I am not talking about section 109 or section 122 of the Constitution.

Ms Jones—I might address that in relation to the Administrative Appeals Tribunal Act because section 4 of that act extends to Norfolk Island. Therefore, if a Norfolk Island resident is aggrieved by a decision under a Commonwealth enactment and that enactment confers jurisdiction on the Administrative Appeals Tribunal, then they would have a right of review in the Administrative Appeals Tribunal. Currently in relation to the Administrative Decisions (Judicial Review) Act, there is no review relevant to Norfolk Island residents, because of the definition of enactment in that act.

CHAIRMAN—Is there any reason why the Freedom of Information Act and the Commonwealth Ombudsman Act should not apply to Norfolk Island, or does that need a separate legislative process from the Norfolk Island government?

Mr Minihan—I will respond in relation to the FOI Act. The FOI Act and the Privacy Act apply to Commonwealth activities on Norfolk Island. They do not apply to Norfolk Island assembly or administration activities. The FOI Act is expressed in section 3, which sets out the object of the act: to give a right to the Australian community to information in the possession of the government of the Commonwealth. That is the object of the act. Then it defines agencies thereafter, and those definitions do not include Norfolk Island agencies. It would be a question of policy for the government as to whether or not the FOI Act was to apply to the Norfolk Island assembly and the administration. That is a question which has not been put to the Attorney-General. However, I would note that the object of the act is to apply to Commonwealth holdings of information, and so it would require careful consideration of the change in the nature of the FOI Act to apply it to the holdings of information of a different jurisdiction.

CHAIRMAN—Norfolk Island has its own rather complex and comprehensive suite of criminal laws. Do the laws in Australia that apply to, for instance, money laundering, corruptness or corrupt officials, or offences against the Customs Act, also apply to Norfolk Island?

Ms Jones—Those laws are criminal justice laws. There is no representative here at the moment from the criminal justice area of the department.

CHAIRMAN—I am happy for you to take those on notice.

Ms Jones—Certainly.

CHAIRMAN—Thank you. Are you aware whether Norfolk Island comes under crime prevention funds for remote communities guidelines, with respect to the allocation of those funds?

Ms Jones—Again, that is a question that would need to be answered by the criminal justice area.

CHAIRMAN—I understand. So are you happy to take that on notice as well?

Ms Jones—Yes.

CHAIRMAN—The committee understands that the Norfolk Island government wrote to the federal Minister for Justice and Customs, Senator Ellison, in 2002 seeking advice on whether federal funding could be made available to assist the Norfolk Island government with what was called a justice package, updating their criminal law once again. It involved sentencing and other areas of the law. Are you familiar with that package?

Ms Jones—No, I am afraid not.

CHAIRMAN—You may be kind enough to take that on notice. I do empathise with you when asking you questions on criminal law, given that it is not your particular area of expertise. Could you also take on notice whether the minister for justice has responded to that request and whether the Attorney-General's Criminal Justice Division is able to provide this type of assistance, and, if not, can you ascertain why not?

On behalf of the committee, I thank you for your attendance here. I apologise most profusely and abundantly for keeping you waiting so long. For the short appearance here, we have enjoyed you coming. If there are any matters on which we may need additional information, the secretary will write to you.

I thank all the witnesses who appeared before the committee for their attendance here today and for their patience. Some people have come a long way, particularly from Norfolk Island.

Resolved (on motion by **Senator Lightfoot**, seconded by **Senator Hogg**):

That this committee authorises publication of the evidence given to it at public hearing today.

Committee adjourned at 2.12 p.m.