CHAPTER 2

OVERVIEW OF THE BILL AND EXISTING TERRITORY POWERS

2.1 Chapter 2 provides an outline of the provisions of the Bill and the proposed amendments, as well as background information on the existing self-government legislation in the Northern Territory (passed in 1978), Norfolk Island (passed in 1979) and the Australian Capital Territory (passed in 1988).

Provisions of the Bill as proposed to be amended

2.2 As originally introduced on 29 September 2010, the Bill would have affected only the ACT. However, proposed amendments circulated on 1 March 2011 (but not yet introduced into the Senate) would change the title of the Bill to the Territories Legislation (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010, and would extend the operation of the Bill to the NT and Norfolk Island.

2.3 For the purposes of this report—given the wide public discussion of the Bill as affecting all three territories, and for convenience—the Bill is treated as if these amendments have already been incorporated.

Objects clause

2.4 The main part of the Bill contains an objects clause which states that the object of the Bill is to:

- remove the Governor-General's power to 'disallow or amend' any Act of the Legislative Assembly of each of the three territories; and
- ensure that the Legislative Assembly of each of the three territories has 'exclusive legislative authority and responsibility for making laws' for that territory.[1]

Repeals

2.5 Schedules 1, 2 and 3 of the Bill respectively would repeal one provision from the self-government Act for each of the three territories, namely:

- section 35 of the *Australian Capital Territory (Self-Government) Act 1988* (ACT Act);
- section 9 of the *Northern Territory (Self-Government) Act 1978* (NT Act); and
- section 23 of the *Norfolk Island Act 1979* (NI Act).

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1 Australian Capital Territory (Self Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010, clause 4, as if amended by the circulated amendments.

Provisions to be repealed by the Bill

2.6 The three sections in each of the self-government Acts that would be repealed by the Bill provide as follows:

- the Governor-General may disallow a law or part of a law made by the relevant Legislative Assembly within six months after it is made;
- the Governor-General may recommend to the Administrator of the NT or Norfolk Island, or to the ACT Legislative Assembly, any amendments of a law (or of another law affected by that law) within six months of the passing of the first law;
- if amendments are recommended, the time within which the law may be disallowed is extended by six months from that date;
- once the disallowance is published on the Federal Register of Legislative Instruments,[2] the law is considered to be repealed, and any law that was amended or repealed by the disallowed law comes back into force.

2.7 The constitutional convention surrounding the power of the Governor-General to disallow territory laws is the same as applies to other exercises of power by the Governor-General: the assumption is that 'all executive acts will be performed by the Governor-General by and with the advice of the Federal Executive Council'. In other words:

> The functional relations between the institutions that comprise the executive government depend on the proposition that the formal repositories of executive powers, generally the Governor-General and the Executive Council, will carry out those functions under the de facto control of the current ministers. Ministers 'advise' the Governor-General, either collectively through the Cabinet or (on more routine and less sensitive matters) individually.[3]

2.8 The tabling and disallowance provisions of the *Legislative Instruments Act 2003* (Cth) provide that any instrument of disallowance by the Governor-General can be overturned by either House of the Federal Parliament within 15 days after the disallowance is made.[4]

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2 Although the three provisions to be removed by the Bill require a disallowance to be gazetted before it comes into force, section 56 of the *Legislative Instruments Act 2003* (Cth) makes registration on the Federal Register of Legislative Instruments sufficient to fulfil the gazettal requirements.

3 *Halsbury's Laws of Australia*, Title 90—Constitutional Law, IV The Executive Governments, (2) Federal Government, (C) Ministers, Cabinet and the Executive Council, [90-2445] Responsible government.

4 *Legislative Instruments Act 2003* (Cth), sections 38 and 42. The Legislative Instruments Act commenced on 1 January 2005.

Legislative and governmental structure in territories

2.9 Despite certain similarities, each of the three territories has a different legislative and governmental structure under its respective self-government Act. There are also a number of 'reserve powers' that the Commonwealth retains in each territory.

Australian Capital Territory

2.10 In the ACT, bills passed by the ACT Legislative Assembly are not subject to any assent procedure (as in most jurisdictions), but become law once they are passed by the Legislative Assembly and notified in the ACT Legislation Register.[5] This process applies because of the absence of an administrator (as is usual in territories), or a governor (as is usual in the states), and appears to be based on the ACT's status as the seat of government.[6]

2.11 The ACT Act imposes certain constraints on the powers of the ACT Legislative Assembly. For example:

- the number of members of the Legislative Assembly is set at 17 and can be changed if the Legislative Assembly passes a resolution to that effect, but any change must be done by way of associated Commonwealth regulations;[7]
- the Governor-General may dissolve the Legislative Assembly in certain circumstances;[8] and
- the Legislative Assembly does not have the power to pass laws in relation to certain matters, including euthanasia and matters relating to the protection of Commonwealth interests in the ACT.[9]

2.12 There is also a difference between the ACT, on the one hand, and the NT and Norfolk Island on the other, in that the Governor-General has power under Part V of

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5 ACT Act, section 25; and *Legislation Act 2001* (ACT), section 28.

6 A 1975 report on self-government in the ACT observed that 'The ultimate source of authority in the A.C.T. must remain the Australian Parliament and the Assembly will exercise a delegated power subject at all times to the supremacy of Parliament...Ordinances of the Assembly will not, therefore, require the assent of the Governor-General to become law once Parliament has delegated the power to make laws': Joint Committee on the Australian Capital Territory, *Self-government and public finance in the Australian Capital Territory*, March 1975, p. 42.

7 ACT Act, subsections 8(2) and (3).

8 ACT Act, section 16.

9 ACT Act, section 23. These matters include the provision by the Australian Federal Police of police services in relation to the ACT; the raising or maintaining of any naval, military or air force; the coining of money' and classification of materials for the purposes of censorship: subsection 23(1).

the *Seat of Government (Administration) Act 1910* (Cth) to directly make ordinances for the ACT which are relevant to its status as the seat of government.[10]

Northern Territory

2.13 Unlike the ACT, an administrator exists in the NT; and the NT Administrator has significant powers with respect to legislation.

2.14 Under subsection 7(1) of the NT Act, every proposed law passed by the Legislative Assembly of the Northern Territory (NT Legislative Assembly) must be presented to the Administrator for assent. Upon presentation of a proposed law and, in the case of a law making provision only for or in relation to a matter in respect of which NT Ministers have executive authority under section 35 of the NT Act,[11] the Administrator has the power to:

- assent to the proposed law;[12] or
- withhold assent to the proposed law.[13]

2.15 With respect to proposed laws relating to matters which fall outside section 35 of the NT Act, the Administrator has the power to:

- assent to the proposed law;[14]
- withhold assent to the proposed law;[15] or
- reserve the proposed law for the Governor-General's pleasure.[16]

2.16 Subsection 7(3) of the NT Act also allows the Administrator to return proposed laws to the NT Legislative Assembly with amendments that he or she recommends.

2.17 In relation to proposed laws which have been reserved by the NT Administrator for the Governor-General's pleasure, the Governor-General has the power to assent to the law, to withhold assent to the law, or to withhold assent to part

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10 The Governor-General can make ordinances for the ACT in relation to matters such as the ACT Supreme Court, censorship, national land, and companies. Current ordinances include the National Land Ordinance 1989 (ACT), the National Memorials Ordinance 1928 (ACT), and the Reserved Laws (Administration) Ordinance 1989 (ACT). However, very few ordinances have been made for the ACT by the Governor-General since self-government began in 1989.

11 Matters in respect of which NT Ministers have executive authority under section 35 of the NT Act are specified in regulation 4 of the Northern Territory (Self-Government) Regulations 1978. Such matters include, for example: taxation (including stamp duty); police; legal aid; civil liberties; tourism; industrial safety; environment protection and conservation; water resources; public works; public health; education; and censorship.

12 NT Act, subparagraph 7(2)(a)(i).

13 NT Act, subparagraph 7(2)(a)(ii).

14 NT Act, subparagraph 7(2)(b)(i).

15 NT Act, subparagraph 7(2)(b)(ii).

16 NT Act, subparagraph 7(2)(b)(iii).

of the law while assenting to its remainder.[17] The Governor-General may also return the proposed law to the Administrator with recommended amendments.[18]

2.18 Under section 10 of the NT Act, where assent is withheld by the Administrator or the Governor-General, or where a law is disallowed by the Governor-General, the Administrator must advise the NT Legislative Assembly of that action within six sitting days after the date on which the assent was withheld or the date of the disallowance.

2.19 Similarly to the ACT, the NT is specifically prevented from making laws in relation to certain forms of euthanasia.[19]

Norfolk Island

2.20 The situation on Norfolk Island—the smallest jurisdiction in terms of population and area, but with a self-government Act twice as long as those of the ACT and the NT—appears to be more complex than in either of the other two territories.

2.21 The complex governance of Norfolk Island, through the NI Act, was summarised in 2010 in a Parliamentary Library Bills Digest as follows (prior to further significant amendments being made to the NI Act by the *Territories Law Reform Act 2010* (Cth)):

> The legislative power of the Assembly is plenary (with four defined exceptions), but the conditions attaching to assent as well as other forms of overriding legislative authority mean that the Commonwealth retains a significant influence over the laws enacted to apply in Norfolk Island. Laws about matters listed in Schedule 2 are at the heart of Norfolk Island self-government, because the Administrator assents or not to such laws on the advice of the Executive Council (the NI Government). Schedule 3 to the NI Act lists a smaller range of topics which in 1979 the Commonwealth Minister described as 'matters of particular sensitivity or national importance'. Regarding assent to Schedule 3 laws, the Administrator appears again to act on the advice of the Executive Council, but importantly is subject to over-riding instructions from the Commonwealth Minister. Where a law relates to a matter in neither Schedule 2 nor 3, the Administrator reserves the law for the attention of the Governor-General (who will act on the advice of the Commonwealth Government). The Governor-General also has the power to make ordinances for the Island and to introduce legislation into the Assembly, although apparently this power has not been exercised since 1979. Finally the Commonwealth Parliament has the power to make laws which apply in Norfolk Island, but only if a Commonwealth Act expressly says so.[20]

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17 NT Act, subsection 8(1).

18 NT Act, subsection 8(2).

19 NT Act, section 50A.

20 MA Neilsen, *Territories Law Reform Bill 2010*, Bills Digest, no. 20, 2010–11, Parliamentary Library, Canberra, 19 October 2010, p. 5, http://www.aph.gov.au/library/pubs/bd/2010-11/11bd020.pdf (footnotes omitted).

Background on existing provisions

2.22 The following section of this chapter examines the background relating to the existing provisions which are proposed to be removed by the Bill.

Australian Capital Territory (Self-Government) Act 1988

2.23 When the Australian Capital Territory (Self-Government) Bill was introduced in 1988, the then Minister stated:

> The Assembly will have the power to make laws for the peace, order and good government of the Territory. Most Ordinance law in place in the Territory will become Assembly law on commencing day. The Governor-General will, as occurs in the Northern Territory, have the power to disallow any Assembly law within six months of the law being made. Commonwealth law will prevail over Assembly law.
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> Protections such as these are essential in the national capital. They are, of course, instruments of last resort and it is the Government's intention to resolve any potential conflict with the A.C.T. by consultation and negotiation.[21]

2.24 The Australian Democrats proposed an (unsuccessful) amendment to remove what is now section 35 of the ACT Act, in order to 'protect the rights of communities which vote to have matters determined by the people they vote for'.[22]

2.25 However, the Minister justified the disallowance power:

> The right of disallowance that is maintained here is the same right—no more and no less—as that retained in the Northern Territory. Yet here in the Australian Capital Territory there is obviously a greater imperative to keep it because…it is here that we have the ultimate constitutional responsibility. It is worth noting that this power has never been used in the Northern Territory and here, where we have an even stronger right, I would imagine that we would almost always be able to deal with these matters by consultation and negotiation. I think it is a reasonable power to retain given our constitutional responsibility.[23]

2.26 As first introduced, section 35 gave the Federal Parliament no explicit role in reviewing a disallowance by the Governor-General. However, Independent Senator Brian Harradine moved amendments so that any disallowance by the executive would be subject to further review, and potential disallowance, by either House of the Parliament:

> These amendments would enable either House of Parliament in effect to reverse the decision of the Executive Government, which then would

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21 Senator the Hon. Graham Richardson, Minister for the Arts, Sport, the Environment, Tourism and Territories, *Senate Hansard*, 7 November 1988, p. 2126.

22 Senator Jean Jenkins, *Senate Hansard*, 23 November 1988, pp 2600–01; 24 November 1988, p. 2807.

23 Senator the Hon. Graham Richardson, Minister for the Arts, Sport, the Environment, Tourism and Territories, *Senate Hansard*, 24 November 1988, p. 2807.

> enable the enactment of the Australian Capital Territory legislature to remain intact. At present, as honourable senators know, the Federal Parliament has the power to disallow ordinances made by the Executive Government in respect of the ACT. Under the provisions of the Bill the Parliament is taken out of the legislation altogether, it has no role in respect of the laws governing the Australian Capital Territory other than those listed in schedule 4 of the Bill. It is interesting that the Parliament would still retain some power of veto in respect of the matters that are contained in schedule 4. I understand that the amendment has the support of all honourable senators…[24]

2.27 This amendment was accepted by the government and the opposition as 'a safeguard for a safeguard', and it was also considered prudent to 'be more cautious than disappointed'.[25]

Northern Territory (Self-Government) Act 1978

2.28 During the parliamentary debate in 1978, the opposition moved (ultimately unsuccessful) amendments to enable parliamentary oversight of any disallowance by the Governor-General:

> As it stands, clause 9 would allow the Governor-General to disallow any law of the Northern Territory Legislative Assembly within six months without any appeal to this Parliament. Any law could be negatived. It could be completely blocked by the Governor-General without recourse to any other opinion. We have already suggested that the Administrator should refer anything he disagrees with to the Northern Territory Legislative Assembly. We believe equally that if the Governor-General intends to override a law of the elected Legislative Assembly of the Northern Territory he should have to get the concurrence of this Parliament or at least have his decision laid before the Parliament so that there is another opportunity for the Legislative Assembly to have its law approved through debate in the Houses of Parliament. It should not be left to an executive decision.[26]

2.29 The failure of the opposition's amendment meant that (until commencement of the Legislative Instruments Act in 2005), any disallowance of an NT law by the Governor-General would not have been able to be overturned by the Federal Parliament.

2.30 The power contained in section 9 of the NT Act appears never to have been used, but there were two major controversies about NT laws in the mid to late 1990s: first in relation to euthanasia (1995–97); and second about mandatory sentencing (1996–2001).

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24 Senator Brian Harradine, *Senate Hansard*, 24 November 1988, p. 2810.

25 Senator Robert Hill, also supported by Senator Bob McMullan, *Senate Hansard*, 24 November 1988, p. 2810.

26 Dr Douglas Everingham MP, *House of Representatives Hansard*, 2 June 1978, p. 3049.

NT euthanasia law

2.31 The NT Legislative Assembly passed a euthanasia law—the *Rights of the Terminally Ill Act 1995* (NT)—on 24 May 1995, and it received assent on 16 June 1995. In late 1995, the President of the NT branch of the Australian Medical Association, Dr Chris Wake, appealed to the Prime Minister to disallow the law. In February 1996, a letter outlining the Keating Government's attitude to this issue was released by the NT Voluntary Euthanasia Society. The letter, from a 'senior prime ministerial adviser', stated that health and social welfare issues fell outside the four specific areas retained for the Commonwealth under the NT Act, and that the Federal Government believed the law was 'a valid law of the NT'. Further, 'it [was] up to the people of the NT to express their views on that legislation, rather than the Commonwealth'.[27]

2.32 The time-limit for Commonwealth disallowance of the euthanasia law expired on 16 December 1995, and the law therefore commenced on 1 July 1996 without federal intervention.[28]

2.33 However, following a change of government after the 1996 election, the Federal Parliament passed the Euthanasia Laws Bill 1996 (introduced as a private member's bill by Mr Kevin Andrews MP), amending the self-government Acts of the NT, ACT and Norfolk Island to prevent their legislatures from passing euthanasia laws.[29]

2.34 On 10 October 1996, the NT Legislative Assembly unanimously voted for a Remonstrance[30] to be presented to the Federal Parliament, opposing the passage of the Andrews Bill.[31]

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27 Letter from Ms Clare Nairn, Senior Adviser, Office of the Prime Minister, to Ms Lynda Cracknell, President, Voluntary Euthanasia Society, as reported in 'Federal Govt out of death bill row', *Northern Territory News*, 15 February 1996. At this time—given the failure of the ALP amendments in 1979—the Federal Parliament had no role in reviewing any disallowance of Northern Territory laws.

28 The *Rights of the Terminally Ill Act 1995* was amended in March 1996 by the *Rights of the Terminally Ill Amendment Act 1996* (NT), before the 1995 Act commenced.

29 *Euthanasia Laws Act 1997*. This Act arose from a private member's bill that was introduced into the House of Representatives by Mr Kevin Andrews MP on 9 September 1996, and agreed to with amendments on 9 December 1996. The bill was passed by the Senate on 25 March 1997.

30 Remonstrance is a term traditionally used to signify a formal statement of grievances by a parliament to a sovereign or, in this case, by a legislative assembly to a 'superior' parliament.

31 NT Legislative Assembly, *Parliamentary Record*, No. 26, 10 October 1996. The ACT Legislative Assembly also passed a motion against the Andrews Bill, and the Norfolk Island Government 'resisted the notion' that the Federal Parliament might, on an ad-hoc basis, pass legislation which inhibited or suppressed the right of the territory governments (ACT Legislative Assembly, *Debates*, 25 September 1996, pp. 3406–17; Mr Mike King, Head of the Norfolk Island Government, in a letter cited in NT Legislative Assembly, *Parliamentary Record*, No. 26, 10 October 1996).

NT mandatory-sentencing law

2.35 In 1996, the NT Legislative Assembly passed mandatory sentencing laws which required detention of at least 28 days for juveniles aged 15 to 17 who had previously been convicted of a property offence.[32]

2.36 On 25 August 1999, Senator Bob Brown introduced the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 into the Senate. The bill explicitly referred to the external affairs power in subsection 51(xxix) of the Australian Constitution as the source of Commonwealth power to legislate in this area.[33] The bill provided:

> A law of the Commonwealth, or of a State or of a Territory must not require a court to sentence a person to imprisonment or detention for an offence committed as a child.[34]

2.37 The bill was co-sponsored by Senator the Hon. Nick Bolkus and Senator Brian Greig; and the bill, along with the broader issue of mandatory sentencing, were referred to the Senate Legal and Constitutional References Committee. That committee reported in March 2000 and concluded as follows:

> The Committee would prefer that the respective governments take action to *'put their own houses in order*' in accord with national objectives and obligations, but it is not convinced that this will occur.
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> …
>
> The Committee does not believe that the Northern Territory and Western Australian Governments will act on their own volition to resolve the issue.
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> The Committee therefore recommends that the Bill be passed by the Parliament.[35]

2.38 The Senate passed the bill on 15 March 2000,[36] but the bill was not passed by the House of Representatives. Senator Bob Brown introduced a similar bill on 6 September 2000.[37] On 8 February 2001, the Senate passed a motion by Senator

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32 *Juvenile Justice Act* (NT), sections 53AE–AG, as inserted by the *Juvenile Justice Amendment Act (No. 2) 1996* (NT), which received assent on 31 December 1996; other amendments at the same time inserted new sections 78A, 78B and Schedule 1 into the *Sentencing Act 1995* (NT).

33 This was on the basis that the Commonwealth is a signatory to the Convention on the Rights of the Child. The long title of the bill reads: 'A Bill for an Act to implement Australia's human rights obligations to children under Articles 37(b) and 40(4) of the Convention on the Rights of the Child'.

34 Clause 5.

35 Senate Legal and Constitutional References Committee, *Inquiry into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999*, March 2000, pp 116–17.

36 The result of a division on the Second Reading was 34–30 in favour.

37 Human Rights (Mandatory Sentencing for Property Offences) Bill 2000. This bill, restored to the *Notice Paper* after the 2001 election, ultimately lapsed in 2004.

Brown calling on the Federal Government to override the NT's mandatory sentencing laws.[38]

2.39 The issue of mandatory sentencing abated after October 2001, when a newly elected NT Government passed legislation repealing mandatory sentencing of juveniles and adult property offenders.[39]

Norfolk Island Act 1979

2.40 When the Norfolk Island Bill 1979 was being debated, the then opposition—just as it had in the case of the NT—opposed the disallowance clause (ultimately unsuccessfully):

> Enshrined in [that clause] is the proposition that there is a necessity for real self-government for the people of Norfolk Island to be limited by this very extraordinary power of the Governor-General to disallow laws made by the Norfolk Island Legislative Assembly and approved by the Administrator. In a symbolic sense the Opposition finds that to be a most reprehensible provision. It is symbolic, in that it suggests a view of the type of government which should be applicable to Norfolk Island, totally different to that which the Opposition puts forward. Accordingly, in Amendment No. 1 which stands in the name of the Opposition, we urge the Senate to delete this clause.[40]

2.41 Section 23 of the *Norfolk Island Act 1979* is in identical terms to section 9 of the NT Act and, like that provision, it appears never to have been used. However, unlike the self-government Acts for the ACT and the NT, the NI Act has been subject to significant parliamentary review in recent years. This would appear to be a reflection of the serious financial and other challenges facing the Norfolk Island Government, and of the chequered progress of self-government in Norfolk Island.[41]

2.42 The *Territories Law Reform Act 2010* (Cth) (which received assent in December 2010), while not affecting section 23, provided the Commonwealth with additional powers under the NI Act, including a power for the Federal Minister to introduce legislation into the Norfolk Island Legislative Assembly, and for the Federal

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38 *Senate Hansard*, 8 February 2001, p. 21654.

39 *Juvenile Justice Amendment Act (No. 2) 2001* (NT) and *Sentencing Amendment Act (No. 3) 2001* (NT).

40 Senator John Button, *Senate Hansard*, 23 May 1979, p. 2027.

41 See, further, the 2005 report of the Joint Standing Committee on the National Capital and External Territories Inquiry into Governance on Norfolk Island, *Norfolk Island Financial Sustainability, The Challenge—Sink or Swim*, and the same inquiry's 2003 report, *Quis custodiet ipsos custodes?* The current financial crisis facing the Norfolk Island Government has been reported in articles such as: Mark Dodd, 'Labor revolt on Norfolk', *The Australian*, 3 November 2010, p. 7; Ean Higgins, 'Mutineer descendants opt for bounty', *The Australian*, 5 November 2010, p. 3; and Malcolm Brown, 'Down but not quite out in paradise', *Sydney Morning Herald*, 12 February 2011, p. 13.

Minister to give advice to the Administrator not to grant assent to a bill passed by the Legislative Assembly in relation to Schedule 2 matters.[42]

2.43 Assent to bills passed by the Norfolk Island Legislative Assembly has been withheld a number of times since 2003, including twice by the Governor-General and four times by the Administrator.[43]

2.44 Further, the Joint Standing Committee on the National Capital and External Territories made the following conclusion in its report on the Territories Law Reform Bill 2010:

> The committee is concerned about evidence received where over the past year there have been cases of bills dealing with schedule 3 and non schedule issues having been passed by the Legislative Assembly without consultation with the Commonwealth Government. In addition, there have been other cases where Commonwealth advice may have been received on proposed legislation, but not on future proposed amendments to legislation.
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> …
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> The committee believes that Commonwealth Government oversight of Norfolk Island legislation is necessary in ensuring that Norfolk Island legislation is consistent with Government policy, the national interest and complying with Australia's international obligations.[44]

2.45 The joint committee also observed that the items included in Schedule 2 of the NI Act have significantly grown since 1979, adding to the burden of responsibilities of the Norfolk Island Government.[45] The joint committee recommended that a review of the items contained in Schedules 2 and 3 of the NI Act should be undertaken by the

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42 *Norfolk Island Act 1979*, section 26A, and subsection 21(5) as amended in 2010.

43 The Governor-General has withheld assent in recent years for the Legislative Assembly Amendment Bill 2003 and Valuation of Land Bill 2009, while the Administrator has withheld assent for the Customs (Amendment) Bill 2005, Customs (Amendment No. 2) Bill 2005, Immigration (Amendment) Bill 2006 and Social Services (Amendment No. 2) Bill 2006 (*Norfolk Island Government Gazette*, 17 September 2004, p. 229; 28 May 2010, pp 99–100; 30 September 2005, p. 209; 6 January 2006, p. 1; 24 August 2007, pp 161–2). For a list showing ongoing Commonwealth involvement in assent processes for Norfolk Island legislation, see Answers to Questions on Notice provided by Department of Regional Australia, Regional Development and Local Government on 29 March 2011.

44 Joint Standing Committee on the National Capital and External Territories, *An advisory report on the Territories Law Reform Bill 2010*, May 2010, p. 29.

45 Schedule 2 of the NI Act lists matters over which the Norfolk Island Government has both legislative and executive authority. (Schedule 3 lists matters in respect of which the Norfolk Island Government has executive authority, but legislative authority is subject to Commonwealth veto.)

Federal Government;[46] and the Federal Government has accepted this recommendation.[47]

Commonwealth's plenary power under section 122 of the Constitution

2.46 By virtue of section 122 of the Constitution, the Federal Parliament retains the ability to override territory laws and restrict the powers of the legislative assemblies in the self-governing territories.

2.47 Section 122 of the Constitution provides:

> 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, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

2.48 The power in section 122 is a plenary power which is unlimited by subject matter, and it is the basis for continuing Commonwealth responsibility for the territories. The overarching Commonwealth power in section 122 cannot be changed except by way of a constitutional referendum, and is not affected by the Bill.

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46 Joint Standing Committee on the National Capital and External Territories, *An advisory report on the Territories Law Reform Bill 2010*, May 2010, pp 30–31.

47 The Hon. Simon Crean MP, Minister for Regional Australia, Regional Development and Local Government, *House of Representatives Hansard*, 16 November 2010, p. 2563.