



**NORFOLK ISLAND**

**SUBMISSION OF THE  
NORFOLK ISLAND GOVERNMENT**

**to the**

**JOINT STANDING COMMITTEE  
ON NATIONAL CAPITAL AND  
EXTERNAL TERRITORIES'  
INQUIRY INTO**

**NORFOLK ISLAND GOVERNANCE**

**JULY 2003**

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## **PREFACE**

Norfolk Island achieved self-government in August 1979, under the provisions of the Norfolk Island Act of that year.

For the previous 65 years, since 1914, the Island had been directly administered by the Commonwealth. After 65 years of direct administration, Norfolk Island had in 1979 no statutory social security benefits, no workers' compensation legislation, no socialised health insurance scheme, no meaningful planning or environmental protection legislation, no adequate health or immigration legislation, no proper statutory revenue base, no employment protection legislation, no reticulated sewerage scheme, an inadequate airport and a grossly out-of-date criminal justice system.

Since 1979, successive Norfolk Island Governments and Legislative Assemblies have addressed each of the above deficiencies, and more besides, with a considerable measure of success.

The principal issues which now require further progression as an imperative are the related questions of administrative and revenue-raising capacity. This was recognised by previous Island Governments, which jointly with the Commonwealth procured the 1997 Grants Commission Report about the Island. The recommendations of that report have been heeded. Major initiatives have already been taken to improve administrative capacity. A recognition also exists that revenue-raising must next be enhanced, and concrete steps have been taken to achieve that aim.

The practical success of self-government does not warrant significant changes, of doubtful effectiveness and dubious practicality, to the Island's political institutions.

There is of course still room for improvement. There always will be. But people of goodwill and energy, elected by the Islanders themselves, have achieved - and will continue to achieve - a sustainable and accountable system of self-government for the Island.

Norfolk Island Government

July 2003

## ABBREVIATIONS

"Grants Commission Report"	Report on Norfolk Island, Commonwealth Grants Commission AGPS, Canberra, August 1997
"Islands in the Sun"	Report of the House of Representatives' Standing Committee on Legal and Constitutional Affairs on the Legal Regimes of Australia's External Territories AGPS, Canberra, March 1991
"NIG"	Norfolk Island Government
"Nimmo"	Report of the Royal Commission into matters relating to Norfolk Island AGPS, Canberra, October 1976
"the Act"	<i>Norfolk Island Act 1979</i> of the Commonwealth

## **INQUIRY TERMS OF REFERENCE**

That the Joint Standing Committee on the National Capital and External Territories 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 possible alternative measures, such as:

- (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;
- (b) subsequent government and parliamentary reports relevant to the above; and
- (c) the role of the Commonwealth and its responsibilities for Norfolk Island as part of remote and regional Australia.

## **PART 1 - THE EFFECTIVENESS OF SELF-GOVERNMENT**

1. The issue of whether self-government has been effective for Norfolk Island, and will continue to be so, is relevant to a number of the Inquiry's terms of reference, including:

- The need for an accountable system of self-government.
- The need for a representative system of self-government.
- The question of whether measures need to be taken to "improve" the operations and organisation of the Ministry and Legislature.
- The scope of current and future governmental functions and responsibilities.
- The provision of government services in Norfolk Island at an appropriate level.

2. The effectiveness of self-government in Norfolk Island should appropriately be measured against:

- The position before the introduction of self-government.
- The stated objectives of the introduction of self-government.
- The subsequent achievements of self-government.

3. The position before the introduction of self-government. From 1914 until 1979 the Island was governed directly by the Commonwealth. A resident Administrator, usually a retired senior officer from the armed services, was appointed by the Commonwealth, generally for a term of 5 years. The Administrator was advised by a group of local residents (variously termed, but more latterly called the Norfolk Island Council). However, executive and legislative power lay with the Commonwealth, and there were no representative local institutions with legislative, or significant executive, powers.

4. Immediately prior to the introduction of self-government, after 65 years of direct administration, Norfolk Island had in 1979 no statutory social security benefits, no workers' compensation legislation, no socialised health insurance scheme, no meaningful planning or environmental protection legislation, no adequate health or immigration legislation, no proper statutory revenue base, no employment protection legislation, and a grossly out-of-date criminal justice system. Numerous other deficiencies and problems existed[1].

5. The stated objectives of the introduction of self-government. In 1978, the Federal Government announced its response to the 1976 recommendations of the Nimmo Report [see **Attachment A**][2]. That response was in summary as follows:

- "The Federal Government is prepared over a period to move towards a substantial measure of self-government for the Island, and is also of the view that, although Norfolk Island is part of Australia and will remain so, this does not require Norfolk Island to be regulated by the same laws as regulate other parts of Australia".

- "The present situation under which laws of the Australian Parliament only apply to the Island if special provision is made in the particular law, would continue".
- "For the present Australian taxation and Australian social security benefits would not be extended to the Island".
- "The [Federal] Government would see if the Island can develop an appropriate form of Government involving its elected representatives under which the revenue necessary to sustain that Government will be raised internally under its own system of law".

6. The subsequent achievements of self-government. In focussing on actual or supposed problems which currently face Norfolk Island, it is easy to lose sight of what has been achieved during the period since the introduction of self-government. That is not to say that the Island community should be complacent about its achievements - the NIG recognises that much remains to be done.

7. Nevertheless, at least some external appraisals of the Island's polity have recognised its progress. For example, *Islands in the Sun* concluded in respect of the Indian Ocean Territories that "the legal regime of each is seriously out of date and inadequate", and that their "legal and administrative requirements have been characterised by abuses of rights, exploitation and limited opportunities for self-management"[3]. In marked contradistinction to those conclusions, *Islands in the Sun* in relation to Norfolk Island "suggest[ed] no wholesale reform ... favouring instead some modifications and fine-tuning in specific areas of its extant legal regime"[4].

8. The principal achievements of self-government in Norfolk Island can be grouped as follows:

- Criminal law and the administration of justice.
- Economic activities.
- Employment issues.
- Environment protection and heritage conservation.
- Health.
- Immigration.
- Private law.
- Road traffic.
- Social security.
- Co-operation with the Commonwealth.

9. Criminal law and the administration of justice. The Island's criminal laws have been substantially revised since self-government. Penalties have been systematically reviewed in all laws in force. Sentencing options have been revised and extended, including the availability of community service. The criminal jurisdiction of the magistrates' court (Court of Petty Sessions) has been increased, and its sentencing powers increased. Domestic violence legislation was enacted in 1995, and a legal aid scheme was introduced in the same year. Firearms legislation was substantially revised in 1999. In addition to what has already been achieved, further measures are currently at an advanced stage of consideration: a "justice package" of legislation will incorporate new provisions dealing with bail, child protection, evidence, police powers and procedures, sentencing, young offenders and further revision of the Crimes Act and Court of Petty Sessions Act.

10. Economic activities. New legislation has been passed dealing with the licensing of tourism accommodation houses, which constitutes the main means of controlling the numbers of tourists visiting the Island (and hence their environmental impact). Legislation is in place to prevent the aggregation of tourist accommodation in too few hands, and to control the foreign ownership of tourist accommodation. The Norfolk Island Government Tourist Bureau has been established as a statutory authority, with promotional functions. Gaming and wagering - which was previously regulated by an out-of-date and inadequate Ordinance and by Imperial Acts - has been brought under an effective legislative and licensing regime. The export of sensitive fish species has been controlled. Electricians have become subject to an effective licensing and registration system, in order to ensure that electrical work is safely and competently performed. New legislation has been passed governing the importation of animals. Fair trading legislation has been passed and implemented.

11. Employment issues. For many years, only the public sector of the Island had any statutory employment framework. The issue of workers' compensation, in particular, was never satisfactorily resolved despite several attempts to do so[5]. This was recognised as a major problem by both the Norfolk Island and Commonwealth Governments. In 1986 the then Norfolk Island Government initiated an inquiry into wages, working conditions and compensation questions. This resulted in employment legislation, which was introduced into the Legislative Assembly in late 1986 and assented to (on a reserved basis) in December 1988. The legislation (Employment Act 1988) covers three areas - (1) minimum terms and conditions of employment, including a minimum wage, and an enforcement machinery for employment agreement providing for more than the minimum standards; (2) occupational health and safety; (3) workers' compensation. The thrust of the provisions dealing with minimum employment standards is to protect the position, especially, of itinerant workers. The workers' compensation provisions require employers to insure, either privately in limited circumstances or through a "public scheme" administered by the NIG, against their liability to pay lump sum and periodical benefits and medical expenses. Common law recovery is abolished.

12. Environmental protection and heritage conservation. The Island Government has been actively engaged in planning and environment protection issues throughout the 1980s and 1990s, although progress has not been as rapid as was hoped in 1979. Planning Bills were introduced into the Legislative Assembly in 1981 and again in 1983 but failed for a variety of reasons to become law. The Island Government then commissioned a firm of planning consultants to prepare an Island Plan. This document, following extensive consultations, was released in November 1985. The emphasis was on providing a conservation strategy. In 1985, interim legislative changes came into operation to implement



the conservation strategy. These changes made it necessary, for the first time in many cases, to seek approval when erecting significant structures. The result was that the erection, alteration, location and use of buildings and other structures came under comprehensive control. The legislation was later amended to require approval for topographical changes not connected with the erection or alteration of buildings, for example earthmoving or excavation works. In addition, a freeze was imposed in the 1980s on development in the Burnt Pine commercial centre, and land sub-division proposals have been subjected to successive temporary freezes pending the development of more permanent legislation.

13. These measures greatly improved environmental protection on the Island from inappropriate building development and uses, excavation works and subdivisional proposals. However, Norfolk Island Governments in the 1980s and early 1990s accepted that more needed to be done. A proposed Environment Act 1990 was intended to advance these issues by incorporating material relating to the reticulated sewerage scheme for the most developed parts of the Island, and related environmental health issues. The Act was only partially brought into force, as most of its subject-matter was superseded by a land legislation package enacted in 1996. The Public Reserves Act 1987 transferred significant responsibility for direct management of reserves to the Administration of Norfolk Island.

14. Since then, and consistently with the fact that most land issues are at present legally a Commonwealth responsibility (but practically a joint NIG-Commonwealth responsibility), the NIG has contributed significant resources to the current Joint Land Initiative with the Commonwealth. The Commonwealth has contributed 50% of direct costs, including consultancy fees. In addition to its own 50% costs contribution, the NIG has contributed hundreds of hours of staff resources. The Joint Land Initiative includes:

- Comprehensive revision of the following Norfolk Island land management instruments:
  - Norfolk Island Plan.
  - Planning Act and Regulations.
  - Building Act and Regulations.
  - Heritage Act and Regulations.
  - Legislation governing the Planning and Environment Board.
  - Roads Act.
  - Subdivision Act.
  - Land Titles Act.
- Plans of Management for public reserves: in this regard, plans of management have been developed finalised; the total area of reserves has been increased and boundaries rationalised; resources for the management of reserves have been increased enabling fencing, walkways and signage to be improved; community activities such as Art in the Park, National Tree Planting Days have been facilitated; school excursions and visits by university students are frequently arranged; research assistance is provided to visiting researchers and collectors; and the control of Permits has been improved.
- A number of draft Development Control Plans have been prepared, including a Water Resources DCP, a Roads DCP, a Signs DCP and a multi-dwelling DCP.

- A draft Norfolk Island Heritage Register has been completed.

15. Other initiatives include extending protection to all native tree species under the Trees Act 1997; the clearing of over 20 hectares of scrub in the National Park and 5 hectares at Middlegate and the re-planting of those areas with the Norfolk Island Pine.

16. Health. In the NIG's view, the most important single public health initiative undertaken since self-government has been the introduction of the water assurance scheme, which provides a reticulated sewerage service to the most developed areas of the Island. The need to undertake this work was recognised by the Commonwealth prior to self-government[6]. The initial work was funded jointly by the NIG and Commonwealth, pursuant to a memorandum of understanding, and the scheme has subsequently been extended. Further NIG investment in this facility is planned in 2003-04 in order to provide dewatering beds, thus improving treatment plant efficiency and enabling sludge to be removed and recycled.

17. Other public health initiatives include NIG expenditure on the construction of and equipping the Island's Waste Management Centre of the order of \$425,000, in conjunction with a grant from the Commonwealth Government Coast & Clean Seas Program of \$175,000 in which significant efforts have been made to minimise and recycle waste using best practice technologies and techniques appropriate to an isolated community; and improved environmental and operating standards at the Island's timber treatment plant.

18. On a quite different aspect of public policy relating to health, the Island has developed and implemented its own health insurance scheme (known as Healthcare). Although the Scheme has been criticised from time to time[7], its genesis and implementation illustrates clearly the capacity of this small community to respond quickly and flexibly to Commonwealth measures taken without adequate thought for the Island's circumstances. It provides a good example of why self-government, in which necessarily the focus is on local priorities, will nearly always address the specifics of local needs better than will generalist, centralised, policy initiatives which stem from a national context and reflect dissimilar underlying facts and political imperatives.

19. In brief, prior to 1988 Norfolk Island residents were entitled in general to Medicare benefits upon entry to mainland Australia. The same situation applied to others, including New Zealand citizens visiting Australia. For reasons which had nothing to do with Norfolk Island (and everything to do with New Zealand), a measure was introduced into the Federal Parliament to remove these entitlements[8]. Despite established consultative procedures, the Bill was brought to the attention of the then NIG on 23 December 1988. It was to take effect on 1 January 1989, one week later. The NIG was successful in temporarily deferring the impact of the Act on Norfolk Island, and in the subsequent 12 months the Island community developed, costed, drafted, had approved by referendum and administratively implemented alternative health insurance arrangements (which, unlike Medicare, also provided on-Island cover)[9].

20. Immigration. The pre-self-government legislation governing immigration[10] did not provide adequate population control mechanisms, and gave little guidance to decision-makers. It was replaced in 1984 by new legislation[11], a feature of which was "numerical" control of the number of intending long-term settlers by means of an annual quota. A regularly updated policy guide is available to applicants under the replacement legislation.

21. Private law. The legal age of majority was reduced to 18 years by the Age of Majority Act 1980. The Land (Easements) Act 1984 provided a mechanism for the creation of easements in gross. The Limitation of Actions (Real Property) Act 1988 provided, for the first time, modern limitation rules in respect of real property - previously the law on this subject was to be found in Imperial legislation, some of it dating back to the reign of Henry VIII. The Wills Ordinance 1973 was amended in 1986 to give effect to the Hague Convention on Testamentary Dispositions. Imprisonment for contempt of the Legislative Assembly was abolished by the Legislative Assembly Privileges Act 1987 (as well, this Act codified the Assembly's privileges). Amendments in 1986 to the Law Reform (Miscellaneous Provisions) Ordinance 1971 abolished the possibility of "double dipping" in respect of certain categories of common law damages.

22. During the 1990s, a major (and popular) private law initiative was the Land Titles Act 1996, which introduced for the first time a "guaranteed" (or Torrens) land title registration system. This was important for economic reasons, as it provided a degree of certainty to lenders on real estate securities which was not always available under the old "chain of title" system.

23. Road Traffic. The law relating to road traffic was comprehensively restated by the Road Traffic Act 1982, which has subsequently been the subject of numerous amendments to keep it up-to-date, including amendments relating to the taking of blood samples, infringement notices, demerit points and probationary licences, and speed limits in the vicinity of schools. A new draft Road Traffic Bill to provide for, amongst other things, compulsory third party and related matters has recently been drafted.

24. Social Security. The Social Services Act 1980 provides for the following range of benefits - age, invalid, widowed persons, orphans, handicapped children, special, supplementary children's and long-term care benefits. Unemployment benefits are available under the special benefits category. The current fortnightly benefit rates, as updated in July 2003, are as follows - age, invalid, widowed persons \$437.50 (single person), \$365.20 (married couple - each); orphans \$80.60, handicapped childrens \$105.30, supplementary childrens \$62.30; special \$437.50 (single person), \$365.20 (married couple - each). Long-term care benefits are available to beneficiaries who are hospitalised for a significant period. Rates of benefit are indexed twice-yearly. As at 16 July 2003, the Government was paying a total of \$29,597.10 per fortnight to 82 beneficiaries (66 age, 7 invalid, 0 orphans, 9 special). The rates of benefit currently paid within 3% of the total Commonwealth benefit paid which amounts to about 99% - 100% of equivalent Commonwealth benefits.

25. Previous and Ongoing Co-operation with the Commonwealth. Co-operation with the Commonwealth has over the years resulted in a number of intergovernmental agreements (and in certain cases cost-sharing arrangements) covering the Kingston and Arthurs Vale Historic Area (KAVHA), police services, education, immigration issues, legal aid, the water assurance scheme, the relics of the *Sirius*, the takeover by the NIG of the Norfolk Island Airport, and the stabilisation of the Cascade cliff face.

26. Conclusions on the effectiveness of self-government. The achievements set out above are very considerable having regard to the fact that they were undertaken by a small and isolated community in rather less than 25 years.

27. The sophistication, breadth and flexibility of the self-government experience is amply demonstrated by what has been achieved.

28. To a very real extent, what has been achieved justifies the principles underlying the *Norfolk Island Act 1979*, as recently restated by the former Minister, Hon R J Ellicott QC, in his Submission to the present Inquiry[12]. It is useful to set out those principles:

- To provide a framework within which consensus Government could operate.
- To encourage as far as practicable the adoption of Pitcairn traditions as the cultural heritage of the Island, whilst acknowledging that a diverse community with people coming from different countries (Australia, the United Kingdom, New Zealand) together with the Pitcairners, would necessarily have a different perspective on how they should be governed and their involvement in that government, than would mainland Australians.
- To acknowledge the Pitcairn tradition of self-help but also of community care for those in need, by allowing the Islanders to sustain their own welfare system.
- A realistic acceptance of the fact that there will be some services, for example the airport, large public works such as sewerage (and, one might add, the Cascade Cliff Project), which would be probably beyond the means of the Island population to sustain and therefore would need some substantial assistance from the Australian Government in providing and sustaining such services.
- To ensure that Norfolk Island did not become and was not used as a tax haven.
- To place the responsibility of raising revenue for the local economy by means of existing systems of taxation (Customs duty is instanced), but leaving the Island authorities free to adopt other measures to raise revenue.
- An acknowledgment that the promotion of tourism was vital to the economy of the Island, and that it should be encouraged as a source of revenue to local business, with the concomitant need for a viable airport and air services.
- To ensure that the pattern of government in Norfolk Island was broadly consistent with the Westminster system (the example of the Northern Territory is instanced).
- To "tread a delicate line" between an insistence that Norfolk Island is part of Australia, and a recognition of the fact that, the Island having a population of people with different backgrounds living on an Island remote from the Australian mainland, a measure of autonomy should be expected and accepted.
- To ensure that a high standard of education was maintained with assistance from the Australian Government.

29. Those recent comments of Mr Ellicott's should be given, the NIG believes, significant weight, having regard to Mr Ellicott's "... strong affection for the people of Norfolk Island and also for the reforms that were introduced whilst I was the Minister".

## **PART 2 - THE SUSTAINABILITY OF SELF-GOVERNMENT**

30. The present Inquiry's terms of reference mandate "particular consideration" of the Grants Commission's 1997 report on Norfolk Island, in relation to the Island's capacity to administer and fund obligations associated with current and future Government functions and responsibilities; current and foreseeable infrastructure requirements; and the provision of government services on Norfolk Island at an appropriate level.

31. In this portion of the NIG's Submission, the questions of "capacity to administer" and "capacity to fund" are dealt with together, as they are clearly related.

32. So far as is relevant to those issues, the main findings of the Grants Commission Report were as follows:

- Norfolk Island's financial dependence on the Commonwealth is comparatively low. The Norfolk Island Government in 1994-95 had a "dependency ratio" of about 8% on recurrent expenditure, compared with a "State" recurrent dependency ratio of 34% during the comparable period for Christmas Island, 78% for the Northern Territory and an Australian average of 44%[13]. It is certainly not the case that Norfolk Island is "... a mendicant territory"[14].
- The NIG is likely to face increased expenditures in the future. To bring all of Norfolk Island's recurrent services up to mainland standards was estimated to require additional annual expenditures of around \$2.5 million, and to bring the Island's infrastructure to those same standards would require expenditures or provisions of approximately \$5.5 million for each of the 10 years succeeding the preparation of the Report[15].
- However, those standards could be met by revenue raising efforts at mainland levels, noting that "Norfolk Island has a very large untapped revenue capacity". Accordingly, taking over additional powers should be within the financial capacity of the NIG, provided it increases its revenue raising effort[16].
- There is some justification for the Commonwealth to make contributions to overcome safety problems, or to improve items of infrastructure that were known to be inadequate before self-government, such as the Cascade Cliff and the Harbour[17].
- *Administrative capacity is the main factor limiting the Norfolk Island Government's ability to deliver services.* Conflict of interest guidelines should be developed, the Norfolk Island machinery of government should be reviewed and clearer lines of responsibility drawn between the Ministers, the Chief Administrative Officer [now, Chief Executive Officer], the Public Service and government enterprises[18].
- A new Public Service Act should be put in place, the skills of the Public Service upgraded and the structure of the public sector reviewed[19].

33. As will be seen, the central thrust of the above recommendations is that *revenue capacity* is adequate both to provide recurrent and capital expenditures at an appropriate level, and even to take over additional powers from the Commonwealth. What is also suggested, however, is that (as matters stood during the Grants Commission's investigations) *administrative capacity*, rather than revenue capacity, was the main limiting factor.

34. The Department of Transport and Regional Services' Submission to the present Inquiry (DOTARS, Submission No. 13), commenting on the findings and recommendations of earlier reports and reviews on Norfolk Island governance[20] states in relation to the JSC Report on Health Services on Norfolk Island (*In the Pink or In the Red?*) that that Report:

"Cites failing infrastructure and lack of forward planning. Note also the evidence given to JSC in March 2003, *which confirms that nothing appears to have changed* despite the In the Pink or In the Red Report, the Focus 2002 review and the Territory Government's acknowledgment of there being a problem" (emphasis added).

35. Administrative capacity. However, if (as the Grants Commission suggested) the central difficulty was lack of administrative capacity, rather than lack of revenue capacity, then the DOTARS comment quoted above is misplaced. To the contrary, major steps have been taken by the NIG, as a direct result of the Grants Commission Report, to address the issue of administrative capacity, and recent developments have been as follows:

- Over the past 4 years, a considerable amount of work has been undertaken to enhance the Norfolk Island public sector's human resources policies and procedures, and this has resulted in a number of significant improvements, embodied in the recent Public Sector Management Act 2000. That Act introduced a revised merit selection principle, and introduced a range of fundamental improvements such as Objects, Principles and Standards of Conduct for the Public Sector [see **Attachment B**].
- In addition, a Human Resources Policy and Procedures Manual was finalised by the Assembly in February 2001 to provide a further framework for ensuring a modern and accountable public service. A range of subsequent amendments have been and continue to be developed with a view to achieving greater improvements.
- A revised organisational structure is currently in the process of being implemented. This will considerably improve the Island's administrative capacity to deal with issues in a timely and professional manner, and will also provide a clearer progression for staff who undertake training and other career development steps. This process was somewhat delayed because of changes in the Administration's senior staff during the past 18 months. However, the NIG considers that those difficulties have now been overcome.
- Some current initiatives of relevance are as follows:
  - A review of salary relativities across the Administration.
  - A review of rostering principles, with a view to ensuring more equitable rostering and remuneration.

- An administrative review of the operations of the Immigration Section.
- Occupational Health and Safety training.
- A number of further reviews are planned to occur in accordance with additional priorities.
- In summary, with reference to the administrative capacity issues raised by the Grants Commission:
  - Administrative capacity has improved considerably, as a consequence of the enactment and implementation of the Public Sector Management Act 2000.
  - Conflict of interest guidelines have been put in place for all Public Service staff (see clause 5.4 of the Human Resources Policy & Procedures Manual), and for the Public Service Board (section 15, Public Sector Management Act 2000 - see Attachment B).
  - Clear lines of responsibility have been fixed, as set out in the Public Sector Management Act and Policy.
  - Public Service skills are under constant review, and training arrangements have been developed.
  - A system of forward estimates has been prepared as a draft document, and is currently under further consideration.
  - A process for preparing Annual Reports is in place, though there is an acknowledged need to improve the timeliness of these reports.

36. Information technology. In addressing issues of administrative capacity, information technology is in the NIG's view the second most important factor after human resources. Information technology solutions have tremendous potential, and importance, in a remote and relatively small community such as Norfolk Island.

37. Following an information technology review in 1999, major improvements have been made in the Administration's information technology systems, especially as a result of the implementation of the new financial package "Smartstream". This roll-out has enabled real-time financial information (such as expenditure, budgets, actuals and orders) to be available to managers and other key staff on their desktops, thereby greatly improving the information available for the NIG's decision-making processes. Further, the 2003-04 Budget includes an amount of \$200,000 to implement further improvements in streamlining accounts receivable information, and providing a range of customer service improvements.

38. The objective has been to meet the concerns articulated in the Administration's 2002 Information Technology Review, so that core business functions are efficient; processes are not undertaken manually, where computerisation would prevent duplication; and information required by Assembly members, executive members and public sector managers is readily available.

39. Management planning. The NIG is encouraging Administration management to develop a formal process of strategic/business planning. The implementation of a systematic process for planning and performance management will considerably improve administrative capacity. It is envisaged that the strategic/business Plan will:

- Be based on the strategic direction set by the Assembly.
- Establish clear and agreed goals, both long-term and short-term.
- Clearly identify timeframes, responsible officers and resource needs.
- Provide a structural process for providing progress reports to the Assembly.
- Measure performance to assist in learning from experience.

40. Development of the initial Management Plan is the responsibility of the Administration's corporate management group, and a schematic chart of the management planning process is attached as **Attachment C**.

41. Revenue capacity. The broad conclusions of the Grants Commission report with respect to the Island's revenue-raising capacity are set out at paragraph 32 above. At a more detailed level of specificity, the Grants Commission report concluded that:

- Norfolk Island imposes a more limited range of taxes and charges than do governments on the mainland of Australia[21].
- The taxation system in Norfolk Island is regressive, generally does not tax wealth or income, and falls disproportionately on tourists[22].
- In the areas that Norfolk Island does tax, its tax rates are high and indicate a revenue-raising effort more than twice that found in mainland Australia[23].
- For those taxes not imposed, Norfolk Island has a very large untapped revenue capacity, assessed to be about 60% higher than what is actually being raised[24].

42. It would however be unfair to conclude that nothing has been achieved since 1979 with respect to widening the revenue base. The principal pre-self-government taxes were customs duty and the public works levy. Since 1979, a range of new taxes have been established, including a departure fee (1980), cheque duty (1983), financial institutions levy (1985) and a fuel levy (1987). In addition, the public works levy has been abolished and in effect replaced by the Healthcare Levy (1990), and customs duty has been imposed on a wider range of imports and at higher rates.

43. Nevertheless, the NIG recognises that an opportunity exists to improve considerably the Island's revenue-raising regime, and accordingly a major emphasis has been placed on addressing this issue.

44. The expenditure review conducted as part of the "Focus" exercise [to avoid wasting resources, this is not attached to the present Submission as it already constitutes Attachment E(i) of DOTARS' Submission (Submission No. 13)] was an important element of progressing future enhancement of revenue-raising arrangements. The reason for this is that, in the NIG's view, previous endeavours to address revenue-raising issues were impeded because of an inability to demonstrate to the community that, prior to seeking to increase revenue,



expenditure had previously appropriately been reviewed. That threshold exercise has now been completed as part of the Focus programme, and efficiency improvements were identified and will of course continue to be sought. The flow-on effect is that, following the review of expenditure and identification of efficiencies, a broad range of revenue-raising options was able to be discussed in detail between executive members of the NIG and other members of the Legislative Assembly. Those discussions have resulted in the adoption of a two-phased approach to addressing revenue-raising issues, namely:

- Phase 1 - Revenue adjustments capable of immediate implementation to address current financial needs.
- Phase 2 - Long-term solutions to address revenue needs in an adequate manner, and having the following characteristics:
  - Equity.
  - Certainty.
  - Minimisation of avoidance.
  - Convenience.
  - Ease of implementation.
  - Efficiency.
  - Transparency.
  - Not focused on tourist visitors.
  - Not government monopoly.
  - User pays.
  - Likelihood of public acceptance.

45. Work has subsequently been undertaken with a view to pursuing a revised revenue regime, possibly including a form of broad-based consumption tax. A series of initial (Phase 1) adjustments have now been made in the 2003 Budget. Those adjustments will result in additional revenue in excess of \$1 million.

46. A revised revenue regime that appropriately addresses the broad range of optimum taxation characteristics is recognised by the NIG as being of fundamental importance. These issues are being addressed in accordance with the Phase 2 principles set out above. A financial strategy is also being developed and implemented, which it is expected will include:

- Financial directions policy.
- Pricing policy.

- Forward estimates and trend monitoring.
- Internally restricted cash reserves.
- Strategic/business planning process.

47. Forward estimates. The Grants Commission Report recommended the adoption of "a system of forward estimates which facilitate long-term planning of recurrent and capital needs and cashflows" [25]. Such a system of forward estimates is at an advanced stage of preparation, and will cover the 7 year period to 2009-10, so as to include new (that is, additional) non-discretionary capital and operational expenditure requirements, including the provision of funds to meet identified occupational health and safety issues. Financial inputs have been entered into the Administration's forward estimate model, and are currently being finalised.

48. There is broad acceptance, the NIG believes, that this will provide an essential financial tool which, with annual review, will greatly assist the strategic financial management of the Island. Regular scrutiny of such estimates will serve as a valuable decision-making tool during budget deliberations, and also provide early indications of emerging trends so as to allow the opportunity to take any necessary corrective action.

49. The local government model. Organisational issues concerning the structure of the Island's executive government and legislature are dealt with in Part 3 of this Submission. However, to the extent that a local government-style organisational model is considered to be relevant to the Island's circumstances (a proposition with which the NIG disagrees), then a note of warning should be sounded about the possible effects of such a model on the issue at present under consideration, namely revenue-raising capacity and financial sustainability.

50. The issue arises in this way. It is not customary for local government bodies to have access to funding sources which customarily are available only to government entities performing "State-type" or "Federal-type" functions. Should the organisational structure of the executive and legislature be re-aligned, so that it is akin to a local government body, the NIG believes that there would subsequently be pressure to remove the perceived "anomaly" that a body organised according to local government principles would nevertheless have the obligation to provide non-local government services and facilities, the cost of which would be defrayed from non-local government sources of revenue. Therefore if (as seems to be assumed by the present Inquiry's terms of reference) function is to follow form, then there is no reason to suppose that, ultimately, funding availability would not in turn follow function.

51. The risks inherent in such an approach raise a mixed political and legal problem which is relatively serious. The problem stems, ultimately, from the terms of section 90 of the Commonwealth Constitution, which gives to the Federal Parliament the exclusive power to impose duties of customs and of excise.

52. Of course, Norfolk Island has (and has had, since 1897[26]) its own customs legislation. But section 90 of the Commonwealth Constitution reposed the exclusive right to impose duties of customs in the Federal Parliament, after a brief transitional period which expired over a century ago (Constitution, section 88). Moreover, section 90 of the Constitution also gave to the Federal Parliament the exclusive power to impose excise duties.

53. Notoriously, section 90 has been the subject of judicial decisions which effectively removed from the States (not only the ability to impose customs duties) but also a range of other taxes which have been held to constitute duties of excise. This has led to the phenomenon known as "vertical fiscal imbalance", by which - in general terms - many rights to tax have been garnered by the Federal authorities, whereas the obligation to spend has on many subjects remained with the States. As well, the issue has expanded from the States to the internal Territories[27], such that the internal Territories are in no better or worse position than are the States in this regard. However, the High Court in *Capital Duplicators*[27] was careful to distinguish between the situation of the internal Territories on the one hand (because, at federation, they formed part of the federating Colonies) and the external Territories, on the other (which did not).

54. So the risk is, that if Norfolk Island were regarded as if it were a local government entity, a political imperative may arise which would diminish - not enhance - its revenue-raising capacity, not only by removing access to customs revenues, but also by invalidating a number of other actual (for example, fuel levy) or potential (for example, broad-based consumption tax) sources of revenue.

55. More succinctly put, the point is that if Norfolk Island were to be regarded as a local government entity then the consequence may very well be that its available sources of revenue would dramatically diminish.

56. Instead, the NIG prefers to continue its exploration of all presently available actual or potential revenue sources so that it can - as suggested by the Grants Commission - meet its obligations under the present and likely future scope of its responsibilities to the Island's community.

### **PART 3 - ORGANISATION OF THE EXECUTIVE AND LEGISLATURE**

57. The executive. It is important to appreciate that the executive members of the Legislative Assembly exercise executive authority through a collegiate structure. The "portfolios" allocated to individual executive members are purely conventional, and have no legal significance in determining the scope of the authority of any particular executive member[28]. Any executive member may lawfully exercise the functions of any other executive member, without any preliminary formality.

58. The significance of this is that it conforms - presumably as a matter of deliberate policy - with the intention of the then Federal Minister, Mr Ellicott, to structure the governmental arrangements for the Island in order to encourage "... a framework within which consensus Government could operate" (see paragraph 28 above).

59. To move from this, to a situation where a Chief Minister (whether or not directly elected) is enabled to select, and by extension dispose of, his or her executive colleagues would not, in the NIG's view, conduce to government by consensus[29].

60. Nor does the present NIG believe that the current organisational arrangements of the executive government lead to instability, or give rise to institutional impediments to effective decision-making. As to the latter, the number of executive members has ranged from as few as 2 (First Assembly) to as many as 6 (Third Assembly), and yet the outcomes set out in Part 1 of this Submission have nevertheless been achieved. As to the former, as is conceded by the DOTARS submission[30] the average life of an Assembly is approximately 2½ years. Given that the maximum life of an Assembly is not more than 3 years, this does not appear to present compelling circumstances which would justify a departure from the present well-tryed system.

61. An elected Chief Minister? The apparent genesis of this idea is commented upon by the Hon Ivens F Buffett MLA in his personal submission to the present Inquiry[31]. The passage to which Mr Buffett refers appears in DOTARS' submission to the JSC's "Annual Reports" Inquiry[32]:

"Norfolk's machinery of government arrangements is more characteristic of the exercise of local government. The nine member Assembly operates in some ways like a Shire Council and 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. ...

As with the ACT and Northern Territory, the head of the Territory Government is the Chief Minister and four of the nine members form the Norfolk Island Government".

62. The NIG disagrees with this pessimistic assessment of the respective roles of the Government and Legislature. The NIG also considers that the varying analogies used by the Federal authorities to characterise Norfolk's machinery of government are affected by the outcomes sought to be argued for, rather than necessarily by objectivity. In that sense, they are opportunistic.

63. For example, whether the Assembly "operates ... like a Shire Council", or whether instead it is more accurately described as a Parliament, depends upon the end sought to be

achieved by Federal authorities. In its submission to the Senate Committee inquiring into the Norfolk Island Amendment Bill 1999[33], which inter alia dealt with electoral issues, the then NIG sought to remind the Committee of the varying Federal views on the nature of the Island's legislature, commencing on 22 October 1984 when the Commonwealth wrote to the then Chief Minister in the following terms:

"One option would be simply to delete the British subject status requirement, making Australian citizenship the qualification for membership of the Legislative Assembly. This would be consistent with recent amendments to the Electoral Acts of the Commonwealth and the States and would bring the Legislative Assembly into line with the State Parliaments. The other option is to delete the citizenship requirement entirely. *This would be consistent with the practice generally for local government, and perhaps better suited to Island circumstances*"[34].

64. However, by 1990 the Commonwealth had resiled from the position expressed above. On 24 October 1990, the then Minister, Mr Simmons, wrote to seek the Assembly's views on a proposed amendment to the Norfolk Island Act 1979 to re-instate Australian citizenship as a necessary qualification for membership of the Legislative Assembly. His letter stated that:

"The Norfolk Island Government now has authority over a wide range of Federal and State-type functions. ... The relationship between the Commonwealth and Norfolk Island is now more akin to a Federal-State relationship than a Federal-Local Government relationship.

*The Legislative Assembly of Norfolk Island is in every sense a Parliament. Re-instating an Australian citizenship requirement for membership of the Assembly would bring Norfolk Island into line with the Parliaments of the States and the Commonwealth*"[35].

65. The latter position was adopted by the Senate Legal and Constitutional Legislation Committee in its report (August 1999), in which the majority stated:

"In 1979 the Norfolk Island Legislative Assembly more resembled a local government, ... Since then two major factors have changed. Firstly, the nature of the relationship between the Commonwealth Government and the Norfolk Island Government has altered. As noted previously, the relationship has moved away from that of a Federal-Local Government relationship, to the point where it now more parallels a Federal-State relationship"[36].

66. That conclusion was, in turn, adopted by DOTARS in its submission to the JSC Inquiry into Norfolk Island electoral matters[37]. After referring to the proposition that "... the Legislative Assembly of Norfolk Island was in every sense a Parliament"[38], DOTARS went on to state (with respect to the choice of whether to retain the requirement for Australian citizenship or delete all reference) that:

"... this was done because the circumstances of the Assembly at that time was similar to that of a local government, but with the transfer of more powers to the Norfolk Island Assembly the nature of the relationship between the Norfolk Island and the Federal Governments has more parallels with that of a Federal-State relationship"[39].

67. Conformably with that view of the matter, the present Committee, in its report on the Electoral Inquiry, reached the following conclusion on this issue:

"Since Norfolk Island has made very considerable progress towards self-government, *and has assumed powers and responsibilities far beyond that of a local government*, the justification for continuing the situation agreed to by the Commonwealth and Norfolk Island Governments in the 1980s no longer exists"[40].

68. On the basis of the above material, the NIG considers that the differing Commonwealth characterisations of the nature of the Assembly are rhetorical, in the sense that each is designed to advance a particular argument, and thus are of dubious significance for present purposes. The NIG considers that it is in a better position to form a considered view about the nature of the Legislative Assembly, and the NIG's view is that the Legislative Assembly of Norfolk Island is in every sense of the word a Parliament, and not akin to a "shire council".

69. Once that conclusion is accepted, the notion that Chief Ministers should be directly elected clearly becomes anomalous.

70. DOTARS submission to the present Inquiry[41] asserts that "There are many examples of directly elected leaders at the national, regional or municipal level ...". However, in specific terms that generalisation boils down to (1) directly-elected leaders in "presidential" systems (the USA and France are instanced), in which of course the elected leaders are not members of the legislature; and (2) local government practice in Australia, New Zealand and the United Kingdom.

71. The first of those analogies (the "presidential" system) is, the NIG believes, wholly inappropriate to Norfolk Island's circumstances. Such a system would contemplate a directly-elected Chief Executive who did *not* form part of the legislature.

72. In the second set of analogies, that of local government, it has already been argued in this submission that the Norfolk Island Legislative Assembly is not akin to a local government council. That is the view of the present NIG, and from time to time (depending on the rhetorical context) it is also the view of Commonwealth authorities.

73. There is a further consideration - which is that in many jurisdictions the elected leader of a local council is *not* the holder of executive authority. As the DOTARS submission states, in New Zealand a mayor lacks executive powers - the elected mayor works alongside a chief executive who is employed by the local council and has delegated executive authority [42]. This is broadly similar to the position also applying in New South Wales[43].

74. Having regard to the achievements since self-government of the present Norfolk Island executive and legislative institutions, the NIG considers that any proposal to directly elect the Chief Minister is unwarranted. Moreover, an institutional change of that magnitude would necessarily divert resources and energies into dealing with the resulting institutional and organisational changes, to the detriment of the core task of Norfolk Island's political institutions, namely the good governance of the Island and the achievement of positive practical outcomes for its inhabitants.

75. Fixed term parliaments? As has already been noted (paragraph 60 above), the average length of Assemblies equates to approximately 2½ years for each Assembly, which does not of itself appear to demonstrate that any major destabilising factor exists in the present arrangements. In addition, as the DOTARS submission to the present Inquiry states (and as the NIG knows from its own experience) "... membership of the Assembly has not changed dramatically over time, with a majority of members having served in earlier Assemblies and governments"[44].

76. A further consideration which does not appear to have been referred to, either in other submissions to the present Inquiry or in analyses of the experiences of other jurisdictions, is that neither the Norfolk Island Government, nor its alter ego the Norfolk Island Executive Council, have the power to give binding advice to the Administrator that an Assembly should be dissolved and a general election held[45].

77. In other jurisdictions without provision for fixed-term Parliaments, binding constitutional conventions require that the Governor or Governor-General will act in accordance with the advice of his or her executive government when dissolving a Parliament and issuing writs for a general election. In certain circumstances, such conventions may become subject to the so-called "reserve powers" of a head of State, but such considerations play no part in the Norfolk Island context where the statutory powers to call elections and to issue writs are firmly reposed by the Act in the Administrator alone. For that reason, if in practice short-lived Assemblies became common (noting that this has not occurred so far), then it would be open to the Administrator to refuse to call a fresh general election. No doubt such a refusal would be accompanied by an attempt to persuade Assembly members of their public responsibilities. The fact that such a circumstance has never arisen itself tends to argue that the present system works satisfactorily.

78. However, the Government concedes that this issue might fruitfully be further explored within the terms of reference of the Legislative Assembly's Select Committee, which was appointed on 18 December 2002 to inquire into and report on electoral and governance issues.

79. For the above reasons, and subject to any recommendations of the Assembly's Select Committee, the NIG is at present inclined to consider that both the direct elections for the position of Chief Minister issue, and the fixed terms of government issue, are unsupported by any demonstrable need to change the present arrangements. In addition, there is the important practical consideration that institutional changes to effect such proposals would divert resources and energies away from the practical issues currently challenging the Island's political institutions.

Norfolk Island Government

July 2003

## REFERENCE NOTES

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- [1] *Nimmo*, especially chapters 12, 14 and 16.
- [2] Announcement by Hon R J Ellicott QC MP on 8 May 1978. The full text of the announcement is at Attachment A.
- [3] *Islands in the Sun*, paragraphs 1.4.26 and 1.4.28.
- [4] *Islands in the Sun*, paragraph 1.4.33.
- [5] The history of the issue extends back to April 1954, when a deputation of Administration building workers approached Administrator Norman with a request that their workers' compensation entitlements be ascertained. The response was that "no genuine case of a major injury" would be likely to be left uncompensated by the Federal Minister. That response laid the foundation for the so-called "ex gratia policy", which remained the basis for compensation of Administration employees until the commencement of the Employment Act 1988. [Administration (old series) file 1/1/73, part 1.]
- [6] See for example the submission to the present Inquiry dated 19 May 2003 by the Hon Ivens F. Buffett MLA, (submission 18), annexure headed "Norfolk Island Infrastructure at Self-Government 1979", second page, third to last paragraph. See also Grants Commission Report, page 179, paragraphs 58-60.
- [7] For example, in the Report of the JSC on Health Services on Norfolk Island (In the Pink or In the Red?).
- [8] Community Services and Health Legislation Amendment (No. 2) Bill 1988.
- [9] Healthcare Act 1989.
- [10] Immigration (Temporary Provisions) Ordinance 1967; Immigration Ordinance 1968.
- [11] By the (somewhat misleadingly dated) Immigration Act 1980.
- [12] Submission No. 11.
- [13] *Grants Commission Report*, page xiii, paragraph 9; page 74, paragraph 72; page 75, Table 5-17.
- [14] Senator Lightfoot, JSC Inquiry into Norfolk Island electoral matters, Committee Hansard, 22 March 2001, page 89.
- [15] *Grants Commission Report*, page xiv, paragraph 21; page xv, paragraphs 22 and 23; page 168, paragraph 14; page 170, Table 8 - 2; page 171, paragraph 23; page 172, Table 8 - 3.
- [16] *Grants Commission Report*, page xiv, paragraph 19; pages 157-159, paragraphs 41-46; page 177, paragraph 49.
- [17] *Grants Commission Report*, page xv, paragraph 27; page 179, paragraph 60.
- [18] *Grants Commission Report*, page xv, paragraphs 29-31; page 205, paragraph 106; page 217, paragraph 40; pages 206-208, paragraphs 108-111.
- [19] *Grants Commission Report*, page xv, paragraph 32; page 206, paragraph 109.
- [20] Submission No. 13, attachment D, paragraph 13.
- [21] *Grants Commission Report*, page xiv, paragraph 16; page 148, Table 7-1.
- [22] *Grants Commission Report*, page xix, paragraph 17; page 149, paragraphs 22-25.
- [23] *Grants Commission Report*, page xiv, paragraph 18; page 156, paragraph 38.
- [24] *Grants Commission Report*, page xiv, paragraphs 19-20; pages 157-159, paragraphs 41-46; page 164, paragraph 67.
- [25] *Grants Commission Report*, page xvi, paragraph 33; page 207, paragraph 110.
- [26] Proclamation by Viscount Hampden, NSW Government Gazette, 7 April 1897.
- [27] *Capital Duplicators Pty Ltd v Australian Capital Territory* (No. 1) (1992) 177 CLR 248, and (No. 2) (1993) 178 CLR 561.
- [28] *Brown v Administration of Norfolk Island, Blucher & Ors* (1991) 101 ALR 201; 29 FCR 511, per Black CJ at paras 25-26; Lockhart J at paras 32-33; Beaumont J at para 7.
- [29] Contrary to the suggestion in Submission No. 20 by Mr D J Morris, a former Secretary to the Norfolk Island Government. (Although not apparent from the terms of Mr Morris's submission, it is perhaps relevant to note that immediately after his service with the NIG, he was employed in the private office of the then Federal Minister responsible for Norfolk Island affairs.)
- [30] Submission No. 13, page 9, second dot point.
- [31] Submission No. 18, third page, captioned paragraph.
- [32] Submission No. 2 to the JSC's Review of the Annual Reports of the Department of Transport and Regional Services 2000-01 and 2001-02, and the Department of the Environment and Heritage 2000-01 (Australia's external territories), page 14.
- [33] NIG submission (submission no. 15) to the Senate Legal and Constitutional Legislation Committee's consideration of the Norfolk Island Amendment Bill 1999, paragraphs 35-38.
- [34] *Ibid*, paragraph 35. Emphasis in original submission.
- [35] *Ibid*, paragraph 38. Emphasis added.



- [36] Senate Legal and Constitutional Legislation Committee, Consideration of legislation referred to the Committee, Norfolk Island Amendment Bill 1999 (August 1999), paragraphs 4.28 and 4.29 of the majority report.
- [37] DOTARS' submission (submission no. 5) to the JSC Inquiry into Norfolk Island Electoral Matters.
- [38] Ibid, page 9.
- [39] Ibid, page 11.
- [40] Report of the Joint Standing Committee on the National Capital and External Territories, Norfolk Island Electoral Matters, June 2002, paragraph 3.54.
- [41] Submission No. 13, pages 16-17.
- [42] Ibid, page 17.
- [43] See sections 226 (mayor's functions) and 335 (general manager's functions) of the Local Government Act 1993 (NSW).
- [44] Submission No. 13, page 9.
- [45] Norfolk Island Act 1979, sections 33 and 35.