



SUBMISSION to the
COMMONWEALTH PARLIAMENT'S
JOINT STANDING COMMITTEE on the
NATIONAL CAPITAL and EXTERNAL
TERRITORIES

“Norfolk Island Governance Inquiry”

This brief submission is in response to the personal invitation by Chairman, Senator Ross Lightfoot, seeking “..*views and suggestions on possible ways to improve governance on Norfolk Island and, in particular, on the steps that could be taken to assist the Island community develop a financially sustainable and accountable system of representative self-government for Norfolk Island*”.

Before ‘looking forward’ it is necessary to look ‘behind’ at the pathway already travelled, and to identify and acknowledge without fear or favour the pitfalls and setbacks that have impeded good progress, and been responsible in part for parliamentary/government instability and, in some instances, stalled progress. Such instability has led to some failings in being able to conclude (including funding) some major initiatives and major infrastructure upgrading programmes.

There are many ‘impeding ingredients’ on both sides, and many things to set right. There is too much interference, too many demands, and too much patronising from Canberra, instead of the much-needed guidance and willingness to help the Island ‘build’ and develop its polity in a sustainable manner. Without wishing to rate the problems in any order of importance, or prioritise the most obvious shortcomings, this submission will simply ‘range across the field’ of both existing, and missed, opportunities.

What is most-often overlooked is the realisation and acceptance from Canberra that whilst the people of Norfolk Island wished to commence down the pathway to self-government in 1979, they (the people of Norfolk Island) also understood that as ‘babes in the woods’ (in a parliamentary and governance sense) so to speak, that they would need a lot of guidance and assistance in the formative years. Very little of this guidance occurred in the early years, and nor was a ‘Report Card’ completed (by the Commonwealth) at the end of 5 years as per the written agreement. Despite numerous requests, no such review ever occurred. Instead, over the last decade and a half, has been an incessant run of around ten Federal Parliamentary Committee Inquiries into all manner of things. The reports from such inquiries have generally served-up a very public ‘slap on the wrists’ for our Parliament, our Executive, and parts of the Public Service, as a result of ‘discovered’ shortcomings here.

One of the more pressing needs of today, is to curb the interventionism of these endless Parliamentary Committee Inquiries – around ten inquiries in a decade and a half is a little ‘over the top’!! The inquiries do little but pander to a few egos. Such

forced (uninvited) inquiries are considered to be an abuse of the plenary power provisions of the Australian Constitution; they severely tax and divert the Island's precious resources and time in defence of the inquiry 'thrusts'; they generally produce outcomes/findings that many consider contrived; they persistently ignore the majority viewpoint in favour of the minority and Department (External Territories) standpoints (which happen to be so similar?); and the inquiries do little for the relationship-building exercise between the Australian and Norfolk Island Governments that is so important to the process of maintaining and further developing, sustainable self-governance.

It is recognised that most (previous) 'Committees of Inquiry' have resisted attempts to look backwards too far, espousing their desire to 'move forwards'. Thus, the opportunity to seek out some of the 'root causes' of present difficulties has been lost. To many, such a folly has seen a perpetuation of the failure to adequately resolve the 'causes' or contributing factors behind the evolving difficulties in the governance of the Island. Rather, the formal enquiries have always tended to focus simply on the 'symptoms/effect' complained about, or commented upon, by a few local electors, and/or observed by the Commonwealth representatives and officers. This approach has not proven to be very successful, at all – in fact it has added to the exacerbation of the core problems besetting the self-government 'experiment of 1979' (which were identified at an early time), but ignored or rejected by those with the authority to 'right the wrongs'.

Finally, the Committee-process has in part been a farce. On the one hand the espoused intention is to 'consult' with the Government (NIG) and the people (albeit during very brief visits) and to obtain the widest possible range of views. But, on the other hand, the Committees generally reject any referendum results (on very spurious grounds) and refuse to use the provisions of the Referendum Ordinance to obtain for themselves the most accurate views of the electors about issues. One could be forgiven for believing that the Australian Parliament's interpretation of 'consult' is simply to briefly visit, listen to 3 or 4 contributors, listen to some views expressed at cocktail gatherings/lunches, read 8-10 submissions, and conclude that the Department's wishes were found to be the most desirable outcome of the particular Committee inquiry, in any case! By and large, Committees tend not to be well read or well briefed about Norfolk Island's 'transition', especially in relation to the 'pre-birth' and 'birthing' of the Norfolk Island Act 1979. It seems that Committee members rely upon previous Committee Reports and suchlike (of which there are numerous) and departmental/officer briefings for their 'backgrounding'. (The notable exception was the Commonwealth Grants Commission). And sadly, as an observation, Committee members in the main have seldom evidenced any special qualities, expertise, or understanding, that might impart confidence that reasoned judgements and recommendations arising from their deliberations, are or were sound. Contributors who dare to speak/write harshly about the 'machinery' from Canberra often have their submissions and selves berated and ridiculed.

It does little for the confidence of the people of the Island to know ahead of the written outcome, that the recommendations that will be 'delivered' by the visiting Committee', will be against their wishes.

Some of the key ingredients contributing to the perceived diminishing success in delivering 'good governance', including those that will be need to be 'addressed' before any tangible improvement could reasonably be expected, are –

1. The Federal Parliament and/or Federal Minister's persistent interventionism by way of uninvited/forced Committee Inquiries
2. Lack of trust between Norfolk Island and the Commonwealth
3. The real impact of the 'shifting of the goalposts' in terms of Australia's policy towards Norfolk Island
4. Lack of 'openness' between both parties.
5. Mistrust of each other's 'motives'.
6. Blurred Commonwealth objectivity causing uncertainty
7. Perpetuation of 'mistruths' – reliance upon Commonwealth funding; part of Australia; etc. (The Australian Government's espoused position is that Norfolk Island is "part of Australia" AND NOT a dependency or dependent territory. This is in stark contrast to the written advice from the Foreign & Commonwealth Office (U.K. Government) who say, "*Norfolk Island is legally a dependent territory of the Commonwealth of Australia.*" There is no doubt whose opinion is correct!!
8. Unwillingness by the Commonwealth to acknowledge (or even discuss!) their 'shortcomings' with the whole 'handover' in 1979 – an inappropriate Public Service structure; broken-down infrastructure; major tasks left undone; the inappropriate electoral system forced upon the Island's electors; etc.
9. Lack of proper consultation AND guidance especially with difficult and complex tasks/programmes.
10. Gross and often unwarranted interference, and bullying and threats – the rebirth of colonialist responses?
11. The deliberate dismissal of the majority view in favour of acceptance of that of the minority – almost all referendum results ignored.
12. Failure to support and guide attempts to secure long-term secondary industries to reduce the reliance upon the existing one-industry economy.

Many of these enumerated points have inevitably evolved into 'festering sores' in some quarters. They have become the 'chestnuts' that just will not go away! Unless there is a mutually-committed attempt to resolve some or all of these matters, the self-government model introduced as an experiment in 1979, will drift towards almost certain failure. Thus, Norfolk Island, still considered the "shining beacon in the South Pacific" (Centre for Independent Studies, 2003), will in time revert to something similar to the basket-case scenario of many South Pacific island polities, and like Christmas and Cocos Keeling Islands, will drain very heavily on Treasury's resources. Treasury, no doubt, would be delighted by this looming prospect! The Foreign Affairs division of DEFAT would no doubt be similarly disturbed that the one 'shining light' (perceived to be economically sound with stable governance) or solid reference point for hope in the South Pacific region, was 'under threat'.

It might well be considered crass to suggest that the Canberra bureaucracy never had anything but eventual integration on their 'unwritten' agenda. However, a quick look back at the troublesome pre-birth and birth of self-government in the late 1970's and early 1980's might persuade learned readers to 'scratch around' a little more and examine the evolved situation in more depth. History now records many of the

hurdles ('milestones') over which the Island Government has had to overcome, or deal with as best they might -

- (i) The (Nimmo) Royal Commission Report of 1976 was not well accepted. To many, the outcome was 'contrived' – the Report that provided the means to the end for the Australian Government of the day. Of the many galling conclusions of the Report, the late inclusion of material from the exquisitely-timed outcome of the High Court case – Berwick v. Gray – was the most sinister. Words carefully plucked out of the lengthy decision about a tax reporting matter, no less, soon became the lodestone the Island has borne since. To have relied so heavily on the outcome of this case without allowing recourse or counter argument to be proffered from the people for whom the Royal Commission's recommendations affected, was outrageous to say the least.
- (ii) The Nimmo recommendations were just what the Commonwealth were hoping for – a 'noble' exit from one of the last of their colonial outposts. Many still hold to the view that integration of Norfolk Island into an Australian State or Territory was always the objective (the 'end game') and Nimmo provided the 'means'.
- (iii) The 8th & 9th Norfolk Island Advisory Council fought 'tooth and nail' for three years to have Nimmo rejected out of hand. The Commonwealth was 'dragged' kicking and screaming into accepting a middle course self-government 'experiment' designed by the highly-principled Federal Minister, the Hon. Robert Ellicott.
- (iv) However, no sooner had the ink dried on the 'approval in principle' document (the draft Norfolk Island Bill 1978) than the interference or 'nobbling' by Commonwealth officers of its expected course and outcome began. Their 'reluctance' manifested itself in what are believed to have been deliberate attempts towards the failure of the 'experiment' by both forced compliance (in the case of the eleventh-hour change to the method of electing members to the Legislative Assembly) and inaction in the cases of 'tidying-up' the backyard before handover, and providing adequate 'support' for the difficult settling-in processes.
- (v) This 'interference' coupled with sudden departures from agreed policy positions in a wider sphere, continues through to this day. As does the failure to provide adequate compensation for the additional cost-burdens borne by the Island.
- (vi) The non-provision of the completed (especially commissioned) "Feasibility Study" in 1979 despite having been advised that the findings had been concluded and the finalisation of the report was simply being tidied for printing or some such. This document ought to have been a crucial tool for the new Assembly. Were the findings too good?
- (vii) No audit done of the condition etc. of the infrastructure to be handed over, nor any audit completed of all the outstanding major infrastructure issues yet to have been attended to – Cascade Cliff; protection of underground water; new Hospital; roads; waste disposal methodology; etc. etc.
- (viii) No one-off grant in lieu of the liabilities handed over!
- (ix) Failure to upgrade and modernise the existing outmoded and old-fashioned Public Service structure to dovetail with the new executive type government, including a failure to recognise and restructure the new role

of the Administration of Norfolk Island with former Commonwealth-subsidised services e.g. Postal Services, particularly the handling costs of incoming mail.

- (x) The forcing upon the Island of the ill-fated Hare-Clark system of Proportional Representation as our unwanted new Voting System, only a few months before the 'commencement' of the provisions of the Norfolk Island Act 1979. What a disaster! Thrown out by the people in 1981, the Island was again forced to accept a 'monster' of another kind in 1982, the Illinois Cumulative Voting System providing an ability to 'stack' the outcome. Both unaccepted systems appear to have had the propensity to cause large swings in votes achieved by candidates from election to election, thus causing a lamentable lack of continuity especially among Executive Members.
- (xi) The Commonwealth was adamant that the Electoral System for the Island from 1979 onwards should be of a kind that facilitated minority groups to be part of the elected Legislative Assembly. Aside from the gross short-sightedness of this dictate, it raises the obvious question – if this magnanimous posturing was seen as being so democratic and representative, why is not the Federal Parliament's House of Representatives not elected in this manner? The answer is patently obvious – the multiplicity of factions and minority groups ultimately elected and represented would simply stymie substantial programs and movements for change, severely hindering governance. Why then is such an outcome so acceptable on the one hand here? (The other hand makes critical comment about the effects of the lack of continuity!)
- (xii) LATE NEWS! Minister Wilson Tuckey has finally accepted (on behalf of the Federal Government?) that our Voting System was inappropriate for the purpose of electing to multiple vacancies – "*The Norfolk Islander*" 3rd May 2003.

Later decisions, as well as the re-positioning of the External Territories branch in the Federal Bureaucracy; the creation of mega-Departments; the 'down-grading' of the political oversight role of External Territories with the attendant Junior Ministers (often inexperienced or incompetent) being appointed; the successive 'moves' to first 'bureaucratise' and then to 'politicise' of the role of Administrator of Norfolk Island after more than half a century of retired military personnel and other noted persons filling the post, have all in some way contributed to affecting/altering the process of governance, greatly hindering progress down the intended pathway to full internal self-government. Some further examples –

- The accelerated extension of Commonwealth Legislation to Norfolk Island (or providing for the simple extension by regulation) despite the Cabinet Handbook acceptance that such an extension process should only occur in exceptional circumstances, or after adequate consultation with the Norfolk Island Government. To what extent this was a deliberate strategy or simply a bureaucratic oversight, we may never know, however the outcome is much the same. The resources of the Island's legal section (including drafting tasks) were constantly diverted to preparing 'mirroring' legislation instead of keeping pace with the demands and priorities of the NIG's legislative programs. In

many instances, the extension of some Commonwealth Legislation was just plain silly – Snowy Mountain and Great Barrier Reef Legislation as examples – there are several more silly instances! In other instances, exclusive powers under Schedule 2 of the Norfolk Island Act 1979 have been usurped!

- The end of the Island's privileged access to a quality Head of Department after the 'downgrading' of External Territories in the Federal system, saw the last of the high-level working co-operation between the two governments, so adamantly espoused from the outset as an important ideal of the pathway to self-government.
- Access to Medicare abruptly withdrawn. Just ten days notice of the end of access given to the Norfolk Island Government three days before Christmas Day in 1986 despite the NIG complying with an earlier request to sign-off a reciprocal health services agreement, prior to the agreed 'handover' of the Health Power to the NIG. (An extension was sought to allow time to create a Healthcare Scheme for Norfolk Island. This was achieved, and despite the rush to complete, the result is a Healthcare Scheme operating well - the envy of many Western nations!)
- The attempted 'dumping' of the Norfolk Island Airport with runways in poor condition under the A.L.O.P. arrangement caused protracted negotiations over several years before eventual transfer under a better arrangement was achieved.
- Major policy shifts occurred by the Federal Department of External Territories without any consultation or advice about the 'change of heart'. (Whatever happened to the agreed (1978) official and documented position that, "*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, that did not require Norfolk Island to be regulated by the same laws as regulate other parts of Australia*". Soon after the commencement of the self-government process, this policy position began to be 'watered down' by the Federal officials, WITHOUT any advice as to why. From "substantial measure" (of self-government) to an "appropriate level", and then to the edict that, "*all Australians living here were entitled to the same rights and benefits as all other Australians*". In other words, access to and protection by, the same laws as apply in Australia!! Is it any wonder there is mistrust when the goalposts are continually being moved, and without prior advice!!
- The emergence of multiple Parliamentary Committees inquiring in to all manner of things over and over again. The constant rising to defend the Island's patch from further intrusion in itself has severely taxed the Island's resources, and its spirit. This is particularly galling when very little if any of the evidence provided in the lengthy NIG Submissions been taken heed of – the Committees have almost entirely taken heed of the Department and local minority voices which just happen to be in sync with the Department's wish to fully 'Australianise' the Island. (Including the taking heed of the many recommendations and other contributions made in a bogus submission

- to the Legal Regimes Inquiry. Despite the Committee being made aware of its existence, it 'featured' well in the report!!)
- The unannounced abolishing of tax-exempt status for Norfolk Island contributors participating in superannuation schemes in Australia. Exemption had been sought and given years earlier (in 1987), as a means of improving a worker's retirement options and thus minimising the call on the Island's Social Welfare support mechanism.
 - The acceleration over recent years of publicised Commonwealth 'freebees' and other generous 'offerings' – access to this grant or that; this scholarship or that; money available for this or that. Many see the growing proliferation of this material as a means to 'woo' the electors to the good of Australia and to 'soften' the responses to the obvious intention of further diminishing the Island's self-government arrangement, in favour of that of a local body council. (Minister Tuckey has indeed been saying this week – Mayoral-type elections for the Chief Minister (Mayor?) and his Council.) This is the closest public admission of the Australian Government's continuing intention to revert to the 'integration plan' (a la Nimmo of 1976), revealed by the Minister during his early-May 2003 visit to Norfolk Island.
 - Veiled threats used by the current Federal Minister that non-compliance with his dictates (and Prime Minister Howard's, no less!), might indeed cause an end to some of the Island's international affiliations.

Is there a way forward? Many believe that it is still possible for the self-government ideal to be reached/achieved. What might need to be addressed to rid the 'pathway' of its 'obstacles'?

1. End the uninvited Australian Parliamentary inquiries into matters about Norfolk Island. Such inquiries should only occur when joint agreement between the two governments is achieved. (This has occurred but once to date.)
2. Commence an immediate and full-scale Parliamentary inquiry into the role, responsibilities, and activities of the Department of External Territories – the Norfolk Island Section – from the commencement of self-government in 1979 to the present
3. Develop without delay a much-more improved relationship between the Australian and Norfolk Island Governments based upon openness; honesty; a willingness to proffer sound advice one to another; a willingness to address and put right some of the 'wrongs' of the past; a willingness to accept that full internal self-government for Norfolk Island can still work if responsibly and seriously nurtured.
4. Provide a proper and (truthful) explanation for the non-consulted or pre-advised policy shifts. We are all aware that the changes probably relate to either or all of the following – the massive oil-shale deposit nearby (refer Australian Petroleum Exploration Journal, Dec. 1998); the 200-mile Fishing Zone; and Defence requirements (strategic). It is a

nonsense (and demeaning) for the Australian Government to persistently deny any real relevance to any of the above in their policy formulation. We are not silly!!

5. Bring about to Ministerial bullying and threats, departmental paternalism, and the irksome patronising of the people and their elected representatives. These are the remnants of colonialism and are obnoxious.
6. The Australian Government needs to re-measure, and gain a more accurate perspective of, its 'fear' of the independence movement in Norfolk Island. For goodness sake, this group has always been in the minority and unlikely to ever dominate or sway public opinion in this direction in sufficient numbers to ever be a threat!
7. A greater level of support from the Australian Government in the development of 'alternative' industries to augment the Island's reliance upon Tourism. (Attempts at developing both Internet Gambling and an Offshore Finance Centre were apparently thwarted by indifference and a failure to gain Federal Government support.) Both governments have a responsibility to ensure that the Island's economy remains buoyant!
8. Last of all, but incredibly important, elected representatives of the Norfolk Island Legislative Assembly and Executive must acknowledge that the tasks of governing Norfolk Island are difficult requiring from time to time a preparedness to seek assistance whenever the task is beyond the scope of our resources or experience to deal with. Burying one's head in the sand will not make the problem go away, OR solve it!

In closing, it is interesting to reflect upon the adages that, "*the more things change the more they stay the same*", and/or, "*history (often) repeats itself*". Never before have such adages had such relevance to the vexed question of the competing desires of, on the one hand, the people of Norfolk Island for autonomy, and integration into the Australian scene (in one sense or another) on the other hand. An example -

In the first few years after the Nimmo Royal Commission findings had recommended that Norfolk Island be integrated into Australia, the then Liberal/National Coalition Government appointed a West Australian 'hard-man', Senator (the 'Toecutter') Withers to force the integration issue with the people of Norfolk Island. History shows that the Island stood firm against integration, and Senator Withers' efforts were thwarted.

Twenty five years on, and another Liberal/National Coalition Government (West Australian) 'hard-man', the Hon. Wilson ('Ironbar') Tuckey has been appointed and is the incumbent Minister with the obvious brief to 'jackboot-out' or 'topple' the present self-government arrangements in favour of a local-body type Council with an elected 'dictator' serving sets of 4 year terms! One need only to refer to Press Releases, interviews, and/or be present at a gathering in his presence, to become acutely aware of his current 'agenda' and the force by which he is prepared to impose his ideals! The degree to which the Island will again stand firm against Minister

Tuckey's 'program for change', will now depend upon the number of self-government supporters of the past that, in the interim, have been 'wooded' by Commonwealth benevolence, and the general dissatisfaction that exists with the efforts of the present Legislative Assembly membership, to manage the economy and key infrastructure developments.

Enough is enough! There is still time to set the self-government process solidly 'back on the rails' if both sides are willing. However, this time the concluded process will require some greater surety and tenure in a form that cannot be altered or terminated without joint consent.

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