

Legislative Changes on Norfolk Island since 2015: A Primer

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Norfolk Island
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1. In Olden Days: The Commonwealth's *Norfolk Island Act 1979*

The Commonwealth's *Norfolk Island Act 1979* established the Norfolk Island Legislative Assembly (consisting of nine members, elected by island-suffrage every three years), a Norfolk Island Government to be drawn from the elected members and with certain powers, and a parallel public service. The Act set out three categories of powers:

- (i) Powers transferred to Norfolk Island as listed in Schedule 2 to the Act. Any matter under this head, having been debated and passed in the Legislative Assembly, could be approved by the Executive Council consisting of the Norfolk Island Government Ministers and including the Administrator as Chair. In this body the Administrator could tender advice but had no vote. The Administrator was required to recommend to the Governor General that the proposed legislation be agreed, although provision was also made for the Administrator, as the delegate of the Governor General, to give or withhold consent to the legislation. (With the passage of the Commonwealth's *Territory Law Reform Act 2010* the Commonwealth granted itself as *government* the authority to veto laws made by the Legislative Assembly);
- (ii) A short list of items, listed in Schedule 3 to the Act, and associated with the Commonwealth tier of government. In such matters the Legislative Assembly could pass laws, but with final assent at the discretion of the Commonwealth Minister. In its initial form the Act specified four items in Schedule 3, namely: fishing, customs (other than the imposition of duties), immigration, and education; and
- (iii) The balance of items, referred to as the 'retained function', were unlisted and retained in the authority of the Commonwealth. The Legislative Assembly had the capacity to initiate laws in this category, but these could only receive Assent via the Commonwealth Minister and the Governor-General.

The initial form of the Act and its Schedules, can be found at the Federal Register of Legislation (1).

2. The Commonwealth's *Norfolk Island Legislation Amendment Act 2015*

The passage of the *Norfolk Island Legislation Amendment Act 2015* (NILAA) in the Australian Parliament ushered in the most far-reaching changes in Norfolk Island in over a third of a century. The NILAA gutted most of the content of the pre-existing *Norfolk Island Act 1979* (NIA) and the limited self-government that this Act had given to Norfolk Island, and replaced its content with the description of a form of government directed by Canberra and with a manner of local government for Norfolk Island constructed along NSW local government lines. The Amendment Bill was described in its Explanatory Memorandum thus:

The Bill abolishes the NI Legislative Assembly and Executive Council and replaces them with a NI Advisory Council appointed to support the transition to an elected NI Regional Council. The Regional Council is to commence on 1 July 2016. New South Wales (NSW) laws will apply on NI from 1 July 2016 and that State will deliver services and administer laws following agreement between NSW and the Commonwealth.

And further:

The Bill provides for consequential amendments to numerous Acts, including omitting references to the territory of NI, extending legislation to NI and amending or repealing relevant definitions. (2)

The NILAA was the Act that removed the Preamble to the NIA which reflected the importance of the Pitcairn heritage to Norfolk Island. No explanation was offered for the necessity this removal, which

was felt keenly and painfully by many on Norfolk Island. All that the Explanatory Memorandum to the Bill could offer was the statement: ‘the preamble no longer reflects the Parliament’s intention for the governance of Norfolk Island’ (p. 15). Schedules 2 and 3 of the original Norfolk Island Act 1979 were, of course, deleted in their entirety.

To these purposes, and as a consequence of the passage of the *Territories Legislation Amendment Act 2016*, the 6 July 2016 compilation (No. 16) of the *Norfolk Island Act 1979* added the following amendments into Section 18 of that Act for the first time:

(i) identifying that all Commonwealth Acts extend to Norfolk Island except as provided otherwise. This reversed the earlier provision that Commonwealth Acts extended to Norfolk Island only if declared to do so. Thus:

Section 18 Application of Commonwealth Acts

(1) *An Act or a provision of an Act extends to the Territory of its own force except so far as the Act or another Act expressly provides otherwise.*

(ii) identifying that all NSW laws in force extend to Norfolk Island (see further below). These laws would however need to be applied as Commonwealth laws: Norfolk Island being an external territory dependent from the Commonwealth.

Section 18A Application of New South Wales laws

(1) *Subject to this section and section 18B, the provisions of the law of New South Wales (whether made before or after the final transition time), as in force in New South Wales from time to time, are in force in the Territory. (3)*
(section 18B relates to vesting and delegation)

Many of the laws passed by the Norfolk Island Government between 1979 and 2015 remain in effect. However as a consequence of the two declarations just detailed, where any Norfolk Island law is in conflict with Commonwealth law the latter prevails, and where in conflict with applied NSW law the former prevails. In addition, the fact that Norfolk Island laws remain in effect does not preclude the Commonwealth from changing them howsoever they may wish.

In parallel with these Commonwealth developments, the New South Wales Parliament in June 2016 passed the *Norfolk Island Administration Act 2016 (NSW)* which authorised the NSW government to enter into arrangements with the Commonwealth to provide services and exercise functions in connection with the administration of Norfolk Island.

(Note: To follow good legal practice, the names of laws are succeeded by an indication – in brackets – of the jurisdiction in which they exist. Thus Commonwealth laws (*Cth*), NSW laws (*NSW*), Norfolk Island laws (*NI*). This convention will be followed from here on.)

3. Commonwealth Ordinances

As a general rule Commonwealth legislation considered relatively minor does not come onto the floor of the Australian Parliament for debate in the way in which major bills do. Rather it is handled as "delegated legislation" i.e. legislative power is delegated by the Parliament to the Executive – the Prime Minister and Cabinet – under a specific Act. Delegated legislation includes the making of regulations, statutory rules, ordinances, standards etc. Under this approach the proposed legislation must be tabled for a period in each House to allow parliamentary scrutiny, and can be disallowed by a motion agreed to by either House.

Commonwealth legislative change in relation to Norfolk Island is commonly made by ordinance, the legitimacy of which is established in Clause 19(A) of the original *Norfolk Island Act 1979 (Cth)* and which has been retained to this day.

Prior to 2015 the Norfolk Island Government under the *Immigration Act 1980 (NI)* maintained control of migration to Norfolk Island and provided a path to permanent residency on the island for those desiring it. This enabled the Government to keep some balance between employment supply and demand on the island, and to try to ensure that newcomers would fit into the island community. In 2015 the *Norfolk Island Continued Laws Ordinance 2015 (Cth)* (Schedule 2) repealed in total the ability of Norfolk Island to control migration to the island i.e. the *Immigration Act 1980 (NI)* was cancelled. No controls now exist in difference from those of Australia. This has serious repercussions for the island, particularly in regard to management of the island, its environment, and its resources. (The matter of immigration to Norfolk will be discussed elsewhere and at another time.)

It is the *Norfolk Island Land Transfer Ordinance 2016 (Cth)* (Section 4) which allowed the Commonwealth Minister to transfer Norfolk Island interests in land to the Commonwealth (and *vice versa*) by "writing signed by the Minister", and in parallel the *NILAA 2015 (Cth)* (Sections 358 and 362) allowed the vesting of other Norfolk Island assets in the Commonwealth. These were the two instruments by which the Commonwealth took possession of the land and assets of the Norfolk Island Hospital, Norfolk Island Central School, and Police Station – all paid for by the Norfolk Island community itself, and cherished symbols of their values and commitments – and of most of the land comprising the KAVHA area, without other acknowledgement or compensation, and which caused significant distress on the island.

Another contentious legislative change was the removal of the right of non-Australian Norfolk Island residents to vote in local elections on Norfolk Island. In olden days, permanent residents of the island from whatever country (and in particular New Zealand and the UK) were welcomed as part of the community to cast their ballots in local elections. Since 2016 this has not been permitted under applied NSW law, which requires as a prerequisite that individuals not only reside on Norfolk Island but in addition be on the Commonwealth electoral roll (which requires Australian citizenship or a *laissez-passer* for British subjects based on their 1984 status). The residency qualification for the right to vote on the island is one month. Non-residents of Norfolk Island who own or lease rateable property on the island can also vote provided they are registered on a supplementary roll maintained by the local authority's general manager (GM). This NSW applied law requirement however is merely that state's choice: it is not an inevitability. In South Australia the law provides for a local authority's GM to maintain in the supplementary local authority roll, the names of those residents who have applied to vote but are not enrolled as electors for state elections. (4) That perspective would be much more sympathetic to Norfolk Island's traditionally welcoming and open approach to community representation.

Following the passage of the NILAA, the Commonwealth under the *Norfolk Island Applied Laws Ordinance 2016 (Cth)* (Composition No. 1, registered 26/7/2016) temporarily suspended the application of all NSW laws to Norfolk Island for six months (from 1 July 2016 until 1 January 2017) – with the exception of four such laws: the *Local Government Act 1993(NSW)* (as the *Local Government Act 1993(NSW)(NI)*), and the *Health Services Act 1997(NSW)*, together with the *Interpretation Act 1987(NSW)* and the *Long Service Leave Act 1955(NSW)*. The explanation given for the suspension was that it was "intended to allow further negotiations with the NSW government for its officers and employees to perform functions and to provide services in relation to Norfolk Island". (5) In a further move under this Ordinance registered on 29 November 2016, the Commonwealth extended the suspension of the unnamed NSW laws until 1 July 2018. In a further change registered on 4 April 2018, some NSW industrial relations laws were extended to Norfolk Island to apply to NSW officials and service providers on Norfolk Island; and on 4 June 2018 the status quo at that date was extended until 1 July 2021.

The reasons for these actions taken by the Commonwealth are unclear. Perhaps the plan all along was to implement only selected NSW laws? Or perhaps the Commonwealth had recognised that the application of NSW laws across the board would be grossly inappropriate, as well as being too complex and too costly for a small isolated island (e.g. *Government Railways Act 1912 (NSW)*)? (The NSW

Government lists over 950 Acts currently in force in NSW, the wholesale imposition of which would likely provide a feast for lawyers, increased costs to Norfolk Island, and little or no benefit to the island.) The application of all NSW laws to Norfolk Island on 1 July 2021 – as presently envisaged – is a recipe for chaos.

4. Provision of services on Norfolk Island

With regard to responsibility for the provision of services on the island, the logic of the foregoing legal changes determined that:

- o the Commonwealth would in future determine what manner of Commonwealth-type services would be provided to Norfolk Island, and provide them through the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) as the coordinating department;
- o the Commonwealth would in future determine what manner of state-type services would be provided to Norfolk Island (through NSW legislation applied by the Commonwealth to Norfolk Island), and provide them through NSW departments answerable to DITRDC as the coordinating body;
- o Norfolk Island Regional Council (NIRC) would in future provide local-government-type services, together with some Commonwealth- and state-type services under Service Delivery Agreements (SDAs) with the Commonwealth.

The allocation of responsibility for services provision to Norfolk Island is set out diagrammatically on DITRDC webpage "Government Services on Norfolk Island" and is reproduced here as Appendix I. This tabulation can be compared with the Schedules 2 and 3 of the original *Norfolk Island Act 1979 (Cth)*. (q.v.) The wholesale removal of the Norfolk Island community's abilities to control decisions about its own future is breathtaking.

5. NSW government withdrawal from services provision

The NSW Government, following its adoption of the *Norfolk Island Administration Act 2016 (NSW)*, announced that it would enter into a five-year Agreement with the Commonwealth to provide a limited range of services to Norfolk Island, including health and education, from July 2016 to June 2021. However in mid-2018 the NSW Government advised the Commonwealth that NSW would not renew this Agreement beyond June 2021. This appears to have set off a flurry of activity within DITRDC, of which little is known publicly. However it is known that they approached the ACT Government amongst others to find out whether they would be prepared to take over these responsibilities from the Government of NSW. (6) All such overtures have so far been rejected, it is understood.

On 4 September 2020 the Minister for Regional Development and Territories issued a media release announcing that the NSW Government had agreed to extend school services on Norfolk Island to the end of 2021. To the great concern of families on Norfolk Island over the uncertainties and disruptions caused to students' education and staff careers over the past two years – let alone the future – the Minister could only offer: "The Australian Government continues to develop arrangements for future service delivery".

It is not known publicly why the NSW government has chosen to withdraw from service provision to Norfolk Island. However we might glean some possibilities from a consideration of the debates in the NSW legislature that accompanied the passage of the *Norfolk Island Administration Act 2016 (NSW)*. The Bill was introduced in the NSW Legislative Council on 4 May 2016 by Hon. Sarah Mitchell from the government (Liberal) benches. The government believed that the NSW Government provided "a strong track record of high-quality service delivery in health and education" and that it "welcomed the opportunity to continue to work with the community of Norfolk Island". Government caveats were

expressed however with regard to any service provision arrangement being "reviewed regularly" and that any activity undertaken "will be on a cost-recovery basis". Mr Michael Daley, primary spokesperson for the opposition Labor Party in the Legislative Assembly did not support the Bill, particularly as it was short on detail in such matters as regarding "the responsibility for Norfolk Island remaining with the Commonwealth Government" and the "no net cost for New South Wales" requirement. He recalled "the continuing disagreement between the States and the Commonwealth governments about funding for health and education on mainland Australia" and stated his primary concern thus: "It may be that the remuneration offered by the Commonwealth Government is, in its view, adequate to undertake those tasks, but not in the view of the New South Wales Government." (7)

Following debate the Bill was passed by the NSW Parliament. If in fact Mr Daley's primary concern latterly became that of the NSW Liberal government as well, it may be that the highly successful and mutually beneficial 123-year partnership between the NSW Education Department and the Norfolk Island Central School has been wrecked upon the rocks of Commonwealth folly.

Furthermore it needs to be noted that there is no evidence currently available from the Commonwealth that would indicate that the provision of medical services on Norfolk Island beyond 2021 will not descend into a similar mess.

6. Legal distribution of power on Norfolk Island

Another Norfolk Island Act that has been eviscerated as part of the new regime and put to new purposes is the *Interpretation Act 1979 (NI)*. Amongst other things this Act now identifies that:

- (i) all powers previously held by Norfolk Island Ministers (in the Norfolk Island Legislative Assembly) and the Norfolk Island Administrator, have passed to the Commonwealth Minister responsible for Territories; and
- (ii) in making any decision, the Commonwealth Minister is not obliged to consult with anyone on Norfolk Island viz.:

(2) The Commonwealth Minister may exercise the power or perform the function or duty without receiving or following the authority's recommendation about the matter or approval of the matter. (8)

Under the Norfolk Island Delegation Instrument 2019 (legitimised under the *Interpretation Act 1979 (NI)*) the Commonwealth Minister can delegate many of that position's responsibilities under Commonwealth Acts. The instrument signed 9 December 2019 by the current Minister is a document of nine pages in length which sets out to whom the Minister can delegate functions under 87 different Commonwealth Acts extant on Norfolk. In the vast majority of these cases, the Minister's primary delegate is the Norfolk Island Administrator, followed by the Deputy Secretary of the Territories Branch in DITRDC, and followed by the Director of the Territories Branch of the Department. (9)

At this point it is salutary to remind ourselves of the fact that these persons are Commonwealth bureaucrats, and with the conceivable exception of the Administrator, behind desks in Canberra 1,900km away, with little or no experience of life on Norfolk Island, and to whom Norfolk Islanders have little or no recourse. It also highlights the extraordinary powers held by the Minister, and the Administrator, over Norfolk Island (of which more below).

7. The Regional Council under the current regime

Given the fact that Norfolk Island residents are represented in the Australian Parliament by the member for Bean, a southern suburb of Canberra, and are not represented at all in the NSW Parliament whose laws they are subject to, the only real representative body that now exists on Norfolk Island is the

Regional Council of five councillors. This in itself is shocking in both efficiency and democratic terms. All power with regard to anything but minor functions on Norfolk Island has been re-routed to Canberra. Key Acts under which the NIRC operates on a daily basis are the *Local Government Act 1993 (NSW)(NI)* and the *Planning Act 2002 (NI)*. The *Local Government Act 1993 (NSW)(NI)* came into operation on 1 July 2016. In its present form it is a grossly inappropriate Act for Norfolk Island. This is because, amongst other reasons, the sharp distinction made in the Act between policy matters (which are supposedly the preserve of the elected councillors) and operational matters (which are supposedly the preserve of the administration management). Such a sharp separation is absurd, inefficient and dangerous, as policy and practice commonly overlap. Particularly is this so in the case of Norfolk Island where the NIRC has such a wide range of responsibilities, relating to telecommunications, electricity supply, harbours and so on. The Act has also established a barrier between councillors and council staff, and community and council staff, and decreased the public accountability of the latter. (See further (10))

In January 2017 the Commonwealth amended the *Local Government Act (NSW)(NI)* to require that Norfolk Island raise a minimum revenue from land rates for the year ending 30 June 2017 of \$500,000 and for any later year of \$1,000,000. Despite the concerns expressed by many traditional land owners on Norfolk Island – for whom land is more than a mere fungible asset – it is not known that any alternative revenue-raising methods were examined before this edict was made.

The *Planning Act 2002 (NI)* is another of those Acts gutted by the Commonwealth and reconstituted to reflect the altered governance regime. It is a key Act for the NIRC and for Norfolk Island as it controls all development on the island.

In olden days the Norfolk Island Government was in charge of planning decisions, being advised by a Planning and Environment Board established by the relevant Minister, and which had the power to engage in public consultation on any matter referred to it. (*Norfolk Island Planning and Environment Board Act 2002 (NI)*). The Commonwealth Minister was however the final arbiter in such decisions.

Under the Planning Act as it currently exists:

- o The Norfolk Island Plan is prepared by the Minister (or his/her delegate), and approved by him/her after public consultation [Act, Part 2];
- o Development control plans under the Norfolk Island Plan are prepared by the Minister (or his/her delegate); and approved by him/her after public consultation [Act, Part 3];
- o The process of consideration of development applications is the responsibility of the GM, however all applications must go to the NIRC for approval and be signed off by the Minister (or his/her delegate) [Act, Part 5, Division 2];
- o Infrastructure projects deemed to be "significant developments" must be referred by the GM (with a report) to the NIRC which, following consideration and preparation of its own report, must refer it to the Minister (or his/her delegate) for decision [Act, Part 3A], which is not appealable or reviewable further on-island;
- o The Administrator has the authority to make regulations prescribing a wide range of issues relevant to the Act [Act, Section 100].
- o The Minister can delegate any of his/her powers under the Act to any specified person, or holder of a specified office or position [Act, Section 92].

Quite apart from powers on Norfolk Island under Commonwealth law (as identified above in Section 6), the Minister and Administrator have almost unlimited powers under the local government laws as well. The NIRC's independence of thought and action has been almost extinguished. Furthermore with the removal of Vice-Regal powers in relation to Norfolk Island (by the NILAA), it is unclear whether

or not the Norfolk Island Administrator merely exercises functions at the behest of DITRDC (as well as the Minister). In addition the independent presence of DITRDC's own staff on the island continues to augment, with answerability to no one on the island apart from, possibly, the Administrator.

Since 2015 there have also been important changes in other laws impinging on sectoral matters, including biosecurity and KAVHA.

Biosecurity. Over the period 1979 to 2016 the control of biosecurity was exercised under three Norfolk Island Acts: the *Plant and Fruit Diseases Act 1959 (NI)*, *Animals (Importation) Act 1983 (NI)*, and *Stock Diseases Act 1936 (NI)*. The very high phytosanitary and animal health standards maintained on the island over these years – and in earlier years – was identified by the Norfolk Island Quarantine Survey 2012-14, carried out by the then Commonwealth Department of Agriculture. (11) The Commonwealth Government recently acknowledged Norfolk Island's "unique biosecurity status". (12)

Following the change of regime, these laws were scrapped and Norfolk Island came under the Commonwealth's *Biosecurity Act 2015* (in force on Norfolk from 1 July 2016). It is not apparent that those charged with developing this Act ever consulted with Norfolk Island representatives about the island's needs, either in the formulation of the Bill or in the subsequent phase of explanation and consultation with clients and stakeholders. The effect of this Act has been to divorce biosecurity decisions from those who have had to live by the decisions taken, and installed in its place a regime to the Commonwealth's convenience. There has been an overall decline in the level of biosecurity protection on the island, as exemplified by issues arising in relation to: increased permissible import of fresh fruit and vegetables, relaxation of honey and bee product import standards (particularly serious in view of the proposal for a Norfolk Island bee sanctuary), abolition of ruminant imports (except for high-cost artificial insemination), decreased level of ship freight inspections, the winding back of the fruit fly monitoring programme, and the withdrawal of airport detection dog. What Norfolk Island needs as a fundamental requirement is its own biosecurity zone, determined on the basis of island's economic, environmental and risk needs. This case has been argued elsewhere. (13)

KAVHA. As a World Heritage Area, it is the Commonwealth Department of the Environment and Energy that is the Australian government organisation with responsibility to UNESCO, for the conservation, preservation and management of KAVHA under the *Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)*. As the Commonwealth owns most of the land and buildings in the KAVHA area, DITRDC is the current responsible department. The DITRDC Minister's delegate with regard to Norfolk Island is the Administrator, who thereby has overall responsibility for Commonwealth properties in the KAVHA area. Whereas previously the Commonwealth and Norfolk Island shared the costs and the management of KAVHA, now the Island is devoid of any management role. The KAVHA Advisory Committee of five includes two Norfolk Island residents as members chosen by the Administrator following a public call for expressions of interest.

Overall, and regrettably, the NIRC has virtually no power to relieve the island's asphyxiation. Norfolk Island continues to try to live under the increasing weight of Commonwealth and applied NSW legislation, appropriate or not, efficient or not. Under the regime introduced in 2016 the only power that the NIRC has for changing a law – for example a minor change in the Planning Act – is to go cap in hand to the Administrator's office or to DITRDC, requesting it. This limitation has led to immensely frustrating situations, well-aided by councillors in NIRC monthly meetings. The record over recent years of the Commonwealth's response to Norfolk Island requests of this and similar nature gives no confidence for the future.

In 2017, increasingly cognisant of many inadequacies in the applied law regime on Norfolk Island, and of the fact that Norfolk Islanders have no vote in the NSW parliament whose laws they were being subjected to, the NIRC at its meeting of 15 February resolved to write to the Minister: "*requesting the Commonwealth prioritise the establishment of a task force of Commonwealth and Norfolk Island officers to consider the merits of modernising current Norfolk Island legislation with amendments modelled where appropriate on current NSW legislation, or of another jurisdiction if thought more*

appropriate, in preference to the wholesale application of NSW legislation to Norfolk Island as is currently proposed to take place on 1 July 2018." (The resolution is given in whole in Appendix II.)

The then-Minister responsible for Norfolk Island rejected the entreaty. Alternatively, the Minister proposed a Legislation Consultation Framework which would guide the Australian Government's consultation on any legislative changes. Unfortunately from a Norfolk Island viewpoint it is the Minister who decides what scale of effects a proposed change would have on the island and consequently the level of consultation deemed appropriate.

As a result of the continued frustration of councillors and their felt inability to respond adequately to their stifling situation, at the Regional Council meeting of September 2020 the NIRC made a further appeal to the Minister, this time in a resolution requesting the Minister advocate for a Royal Commission to seek "*Options to provide for the most appropriate form of government for the non-self-governing territory of Norfolk Island that can achieve the majority support of the Norfolk Island People; and build a pathway to peace*" (see Appendix II). The Norfolk Island Chamber of Commerce has also raised its voice in declaring that the current governance model for Norfolk Island is not working. (14)

8. Conclusions

In the foregoing an attempt has been made to record the changes in law that have been experienced on Norfolk Island since 2015 and to point to some of the consequences of these changes: particularly in the abilities of Norfolk Island residents to adequately manage their own affairs.

Some of the changes noted have been very hurtful to many on the island. Also significant is the current distribution of powers and responsibilities and their consequences for the future well-being of the island. On the basis of the foregoing evidence it appears that:

- (i) Norfolk Island is now being suffocated by laws not of its own choosing, many of which are inappropriate to a small isolated island. The NIRC – the only representative body on the island, and responsible for a much smaller portfolio of issues than the former Legislative Assembly – has virtually no power in its own right to alter its situation;
- (ii) The Norfolk Island Administrator is, de facto and de jure, the government of Norfolk Island. Little moves without the Administrator's (or indeed the Minister's) authority. This is a more problematic situation for Norfolk Island than in the years prior to 1979, because of the scale and nature of the changes now being made to the island;
- (iii) All major decisions about Norfolk Island not taken by the Administrator are determined in a bureaucracy 1,900km away, which has over time shown itself unresponsive to many of the Norfolk Island community's needs (except in accordance with the bureaucracy's own dogmata), and which has had little or no experience of life on isolated islands. It is a prescription for policy inefficiency and even incoherence;
- (iv) The legal changes introduced in 2016 have laid bare a considerable diminution of the democracy previously enjoyed on the island, and undermined the pride and self-esteem felt by Norfolk Island residents in the island's own history, culture and achievements.

It will of course be up to each individual reader to determine his or her moral and political stance in relation to the facts presented here. Based on the evidence, my own view is that in these matters at least, the Australian Government takes us Norfolk Island residents either as fools, or as sheep, and neither is acceptable. There is an urgent need for the reassessment of, and change to, the governance arrangements currently enforced on this island.

Note:

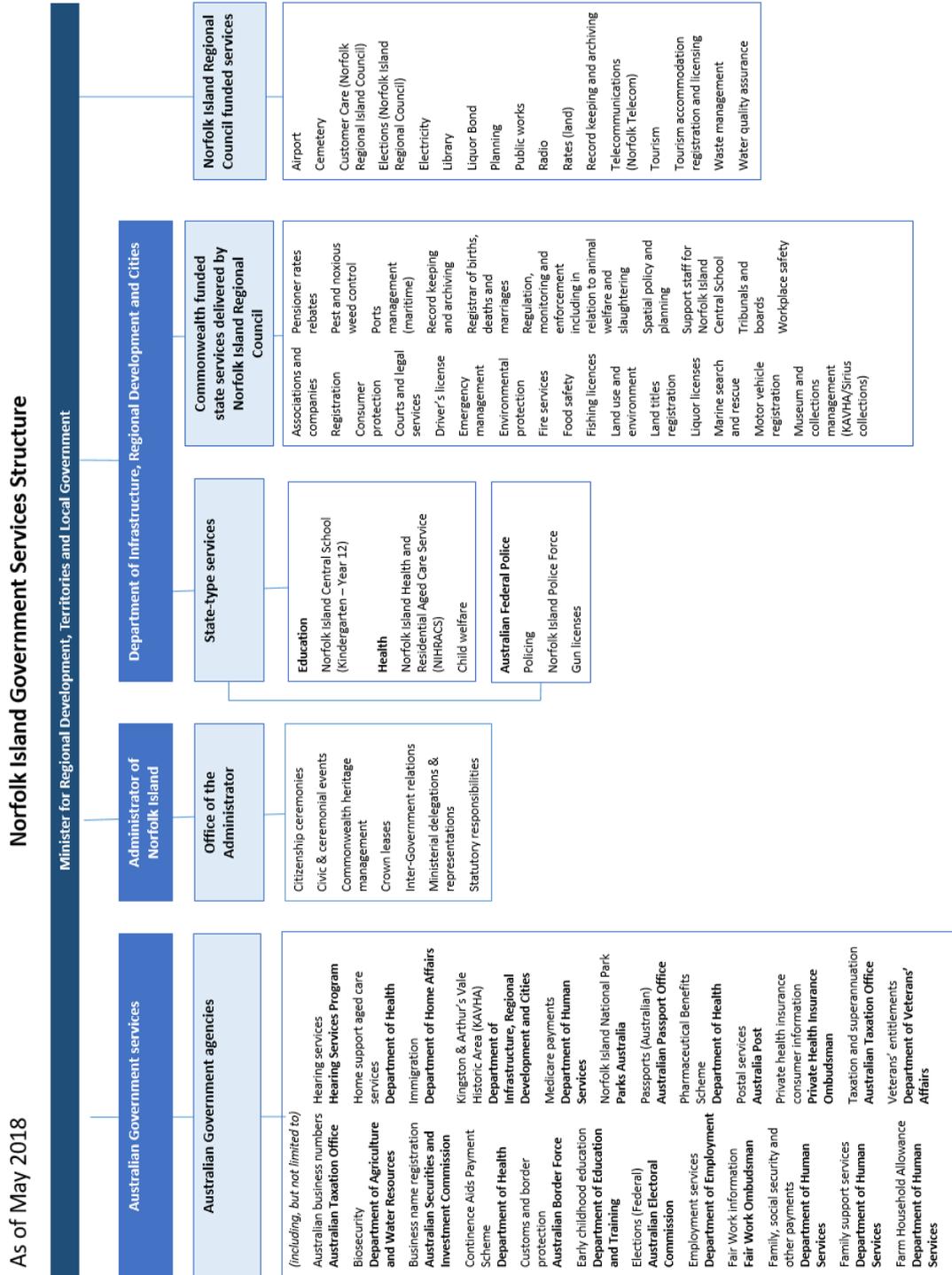
This article is concerned with legislative regimes: it is not concerned with any individual personalities involved. Anyone who would like to discuss matters raised in this article is invited to do so by contacting me at: nobbs298@gmail.com. In particular if I have made any factual errors in the text I'd particularly like to hear of them.

References

- (1) Federal Register: <https://www.legislation.gov.au/Details/C2004A02035/> (accessed 29/08/2020)
- (2) Parliamentary Library, 2015. Explanatory Memorandum: Norfolk Island Legislation Amendment Bill 2015: Bills Digest No. 102, 2014-15. 12 May.
- (3) Federal Register, *Norfolk Island Act 1979*, Compilation 16, 6 July 2016:
<https://www.legislation.gov.au/Details/C2016C00736>
- (4) *Local Government (Elections) Act 1999 (SA)*, Clause 14, Part 4.
- (5) Commonwealth of Australia, 2016. Norfolk Island Applied Laws Ordinance 2016. Explanatory statement, Ordinance No. 9, 2016.
<https://www.legislation.gov.au/Details/F2016L00729/Explanatory%20Statement/Text>
- (6) Whyte, S., 2018. "The ACT government could deliver Norfolk Island services", *Sydney Morning Herald*, 29 September; Whyte, S., 2018. "Barr: ACT 'highly unlikely' to deliver Norfolk Island services", *Canberra Times*, 6 November.
- (7) Parliament of New South Wales, 2016. Hansard for Norfolk Island Administration Bill 2016.
<https://www.parliament.nsw.gov.au/hansard/Pages/hansard-by-bill.aspx?bill=Norfolk%20Island%20Administration%20Bill%202016>
- (8) *Interpretation Act 1979 (NI)* Schedule Part II, Clauses 5 and 6.
- (9) See: www.norfolkisland.gov.nf/sites/default/files/docs/NIRC/Policy_and_Governance/Norfolk_Island_Legislation/Ministers%20Norfolk%20Island%20Delegation%20Instrument%202019.pdf
- (10) Nobbs, C., 2017. "Norfolk Island Regional Council process is flawed and must be fixed", *The Norfolk Islander* and *Norfolk Online News*, 23 September.
- (11) Maynard, G.V., Lepschi, B.J. and Malfroy, S.F., 2018. Norfolk Island Quarantine Survey 2012-2014 – a Comprehensive Assessment of an Isolated Subtropical Island, *Proceedings of the Linnean Society of New South Wales* 140, 7-243. Summary report published as: Department of Agriculture, undated. 'Norfolk Island Quarantine Survey 2012-2014. Technical Report.
- (12) Commonwealth Government, "Protecting Norfolk Island's Biosecurity", 21 February 2018.
- (13) Nobbs, C., 2019. "A biosecurity zone for Norfolk Island", *The Norfolk Islander* and *Norfolk Online News*, 7 September.
- (14) Norfolk Island Chamber of Commerce, 2020. "Fix the governance model that you broke!", *The Norfolk Islander*, 12 September.

Appendix I Norfolk Island Government Services Structure

[https://www.regional.gov.au/territories/norfolk_island/governance/government-services.aspx]



Appendix II

Norfolk Island Regional Council Ordinary Meeting of Council, Wednesday 15 February 2017

Resolution 2017/6: Applied Law Regime – A Better Way forward for Norfolk Island

In acknowledgement that –

1) The proposal to apply NSW legislation to Norfolk Island from 1 July 2018 is democratically deficient as the people of Norfolk Island do not have a vote in the NSW Parliament that makes those laws;

2) The customs and traditions of the Norfolk Island people and the legislation applied to the Norfolk Island people from 1856 to 2015 evolved independently of the customs and laws of the people of New South Wales; and

3) The current system of laws for Norfolk Island being made by the Commonwealth without the sanction of the Federal Parliament is also democratically deficient:

Council requests the Mayor to write formally to the Commonwealth requesting the Commonwealth prioritise the establishment of a task force of Commonwealth and Norfolk Island officers to consider the merits of modernising current Norfolk Island legislation with amendments modelled where appropriate on current NSW legislation, or of another jurisdiction if thought more appropriate, in preference to the wholesale application of NSW legislation to Norfolk Island as is currently proposed to take place on 1 July 2018.

The resolution was carried

Norfolk Island Regional Council Extraordinary Meeting of Council, Wednesday 3 September 2020

Resolution 2020/143: Mayoral Minute: Royal Commission – Norfolk Island and the Commonwealth bridging the Divide

Council calls on the Assistant Minister for Regional Development and Territories the Hon Nola Marino MP, to advocate to the Australian Government that a Royal Commission funded by the Commonwealth be formally established by the Governor-General to inquire into and to report and make recommendations on:

Options to provide for the most appropriate form of government for the non-self-governing territory of Norfolk Island that can achieve the majority support of the Norfolk Island People; and build a pathway to peace.

[There follows a list of reports and matters that the Inquiry and Recommendations is invited to consider. See original for details.]

The resolution was carried

