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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NORFOLK ISLAND (ELECTORAL AND JUDICIAL) AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Arts and
Territories, the Hon Wendy Fatin MP)



NORFOLK ISLAND (ELECTORAL AND JUDICIAL) AMENDMENT BILL 1992

OUTLINE

The primary purpose of this Bill is to extend to Australian citizens living on Norfolk Island the opportunity to vote in Federal elections and referendums.

The Bill will amend the Commonwealth Electoral Act 1918 to provide a form of optional enrolment to eligible Norfolk Island residents to enable them to enrol in a mainland (State) electoral division with which they can establish a connection. Where such a connection cannot be established, the option of enrolling in a particular Territory Division will be available.

The Bill will also amend the Referendum (Machinery Provisions) Act 1984 to allow those Norfolk Islanders enrolling in this way to participate in referendums as required by section 128 of the Constitution.

The opportunity has been taken to also make a minor amendment to section 56 of the Norfolk Island Act 1979 in relation to the travelling expenses of Judges of the Norfolk Island Supreme Court so as to encompass "travelling allowances", and to place beyond doubt the legality of past payments of travelling expenses purportedly made under that section.

FINANCIAL IMPACT STATEMENT

The electoral provisions of the Bill will have a negligible impact on Commonwealth revenues and expenditure.

The Norfolk Island Government meets the travel-related costs of Judges visiting the Island from its own budget. The amendments to the Norfolk Island Act will therefore have no impact on Commonwealth revenues and expenditure.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

1. This clause provides for the Act to be cited as the Norfolk Island (Electoral and Judicial) Amendment Act 1992.

Clause 2 - Commencement

2. This clause provides that the Act will commence on the day on which it receives Royal Assent.

PART 2 - AMENDMENT OF THE COMMONWEALTH ELECTORAL ACT 1918
AND A RELATED ACT

Clause 3 - Principal Act

3. Identifies the Commonwealth Electoral Act 1918 as the Principal Act in this Part.

Clause 4 - Interpretation

4. This clause amends subsection 4(1) of the Principal Act to insert a new definition of "Australia" to include Norfolk Island, and substitutes a new subsection 4(6) to extend the operation of the Principal Act to Norfolk Island.

Clause 5 - Act to Bind Crown

5. This clause amends section 4B of the Principal Act to bind the Crown in right of the Australian Capital Territory (by virtue of section 7 of the Australian Capital Territory Self Government (Consequential Provisions) Act 1988), and of Norfolk Island.

Clause 6 - Interpretation

6. Section 45 presently provides that Norfolk Islanders are not to be counted as people of the Commonwealth for the purposes of determining representation entitlements. This clause inserts new subsection 45(2) to countermand this for those Norfolk Islanders who are enrolled for a Subdivision in a State.

Clause 7 - Ascertainment of numbers of people of Commonwealth and States

7. This clause inserts new subsection 46(2) to ensure that Norfolk Islanders who are enrolled in a Subdivision of a one-Territory Division in a Territory will be counted as people of the Territories for the purposes of determining representation entitlements.

Clause 8 - Choice of member for Territory

8. This clause amends section 51 of the Principal Act to ensure that a member of the House of Representatives representing a one-Territory Division of a Territory is directly chosen by all the electors of that Territory, including the Norfolk Islanders enrolled in that Division.

Clause 9 - Enrolled voters leaving Australia

9. This clause inserts new subsection 94(16) to ensure that the overseas elector provisions continue to be available to electors temporarily resident in Norfolk Island.

Clause 10 - Eligibility of spouse or child of eligible overseas elector

10. This clause inserts new subsection 95(17) to ensure that the overseas elector provisions continue to be available to the spouse and children of electors temporarily resident in Norfolk Island.

Clause 11 - Norfolk Island electors

11. This clause inserts new subsection 95AA(1) which, by defining an exclusive and an inclusive Territory, and the words 'State' and 'Territory', provides a definition of a one-Territory Division of a Territory in which certain qualified Norfolk Islanders may enrol. This definition is required because it was agreed that the current Division of Canberra should not be named in the legislation. New subsection 95AA(1) also provides a definition of a qualified Norfolk Islander.

12. New subsection 95AA(2) provides that if a qualified Norfolk Islander is one of the people of a State within the meaning of sections 7 and 24 of the Constitution, then he or she is entitled to be enrolled in any Subdivision of a State, provided a connection with that Subdivision can be established.

13. New subsection 95AA(3) provides that if a qualified Norfolk Islander is not one of the people of a State, then he or she is entitled to enrol for a Subdivision of a one-Territory Division of a Territory.

14. New subsection 95AA(4) provides that a qualified Norfolk Islander is not entitled to be enrolled for more than one Subdivision at a time.

Presumption about Norfolk Island electors

15. New section 95AB enables Divisional Returning Officers to accept that a qualified Norfolk Islander who claims to be one of the people of a State for the purposes of sections 7 and 24 of the Constitution, and has established a connection with a Subdivision of that State, is deemed to be such a person, unless a court has found otherwise.

Rolls relating to Norfolk Island electors

16. New subsection 95AC(1) provides that a Divisional Returning Officer must annotate the Roll so as to indicate enrolled Norfolk Islanders, and new subsection 95AC(2) provides that a Divisional Returning Officer must conduct a review of the enrolment entitlements of Norfolk Islanders so annotated on the Roll if directed to do so by the Electoral Commission, and make such alterations as are necessary as a result of that review.

Clause 12 - Itinerant electors

17. This clause inserts a new subsection 96(13) to ensure that Norfolk Islanders cannot enrol as itinerant electors.

Clause 13 - Claims for enrolment or transfer of enrolment

18. This clause amends subsection 99(3) of the Principal Act to ensure that qualified Norfolk Islanders will be entitled to enrol for an address in a Subdivision other than the address on Norfolk Island at which they live.

Clause 14 - Compulsory enrolment and transfer

19. This clause amends subsections 101(1), 101(4) and 101(5), and inserts subsections 101(1A) and 101(5A), to ensure that whilst enrolment and transfer of enrolment is not compulsory for qualified Norfolk Islanders, such persons may enrol if they wish.

Clause 15 - No state referendum or vote to be held on polling day

20. This clause amends subsection 394(2) of the Principal Act to ensure that no election, referendum or vote of the electors of Norfolk Island will be held, without the authority of the Governor-General, on a polling day for an election of the Senate or a general election for the House of Representatives.

Clause 16 - Consequential Amendment

21. This clause inserts a new subsection 9(3) in the Australian Capital Territory (Electoral) Act 1988 to ensure that the Territory Roll annotated to identify enrolled Norfolk Islanders is deemed not to be so annotated for the purposes of an Australian Capital Territory Legislative Assembly election, and that copies of the Roll and habitation indexes provided under section 24 of the Act shall not contain the name or any other information about enrolled Norfolk Islanders.

PART 3 - AMENDMENT OF THE REFERENDUM (MACHINERY PROVISIONS) ACT 1984

Clause 17 - Principal Act

22. Identifies the Referendum (Machinery Provisions) Act 1984 as the Principal Act in this Part.

Clause 18 - Reason for this Part

23. This clause establishes that, because new subsection 95AA(3) of the Commonwealth Electoral Act 1918 allows the representation of Norfolk Islanders enrolled in a one-Territory Division of a Territory in both of the Houses of Parliament, a reference to a Territory in section 128 of the Constitution is taken to include Norfolk Island.

Clause 19 - Interpretation

24. This clause amends subsection 3(1) of the Principal Act to extend the definition of Australia to include Norfolk Island and amends subsection 3(3) to extend the operation of the Principal Act to Norfolk Island.

Clause 20 - Application to Crown

25. This clause amends section 3B of the Principal Act to bind the Crown in respect of the Australian Capital Territory and Norfolk Island.

Clause 21 - Norfolk Islanders

26. This clause inserts a new section 98A in the Principal Act to provide that, for the purposes of the statement of a referendum result by Australian Electoral Officers and the return of the writ for a referendum by the Electoral Commissioner, the vote of Norfolk Islanders enrolled for a one-Territory Division of a Territory is to be taken in relation to that Territory.

PART 4 - AMENDMENTS TO THE NORFOLK ISLAND ACT 1979

Clause 22 - Principal Act

27. This clause identifies the Norfolk Island Act 1979 as the Principal Act in this Part.

Clause 23 - Repeal and substitution of new description

28. Clause 23 omits the words "travelling expenses" from subsection 56(2) and substitutes the expression "travelling allowances" which is the term more generally used in relation to travel-related entitlements.

Clause 24 - Validation of certain payments

29. This clause validates payments of travelling expenses purportedly made under subsection 56(2) prior to 25 July 1991.

Clause 25 - Transitional

30. This clause preserves the Governor-General's approval of 25 July 1991 of "travelling expenses" notwithstanding the repeal of that expression and the substitution of the expression "travelling allowances".

