

1979

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

NORFOLK ISLAND BILL 1979

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Science and the
Environment, Senator the Hon. J.J. Webster)

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Preamble - Outlines the legislation and other formal acts that have determined the status of Norfolk Island since 1843, recognises the special relationship of the descendants of the Pitcairn settlers with Norfolk Island, and expresses the Parliament's desire that Norfolk Island achieve, over a period of time, internal self-government.

PART 1 - PRELIMINARY

Clause 1 - Gives the short title of the Bill.

Clause 2 - provides that except for Clauses 1, 2, 4, 31, 38, 39, 67, 68 and 69 the Bill is to come into operation on a date to be fixed by Proclamation. This will enable the existing form of government to continue until after the date of the first general election of the Legislative Assembly.

Clause 3 - Repeals the Norfolk Island Act 1957 and subsequent amendments. A number of provisions of the repealed Acts will be re-enacted in this Bill. In these notes such provisions are denoted by ø.

Clause 4 - Contains the definitions necessary for the purposes of the Act. Sub-clause 4(2) ensures that specific matters in Schedules 2 and 3 will not be limited because of the inclusion of any other item in those Schedules. Sub-clause 4(3) ensures the validity of provisions of existing laws which have not yet come into operation.

PART II - ADMINISTRATION

Clause 5 - Provides for the government of the Territory to be administered by an Administrator and formally establishes the Administration as a body politic by the name of the Administration of Norfolk Island.

Clause 6ø - Existing provision relating to the appointment of the Administrator.

Clause 7 - Provides for the exercise of the Administrator's powers. These powers are exercised in accordance with the advice of the Executive Council in relation to all matters over which the Legislative Assembly has exclusive powers. In respect of Schedule 3 matters he acts in accordance with a recommendation of the Executive Council except where such a recommendation is inconsistent with a ministerial instruction. In some specific cases (e.g. sub-clause 13(1)) he acts on the advice of the Legislative Assembly. In other cases (e.g. para. 21(2)(a)) he acts on his own discretion. In all other matters he is subject to the instructions of the Minister.

Clause 8ø - Existing provision relating to the appointment of an Acting Administrator.

Clause 9ø - Existing provision relating to the appointment of a Deputy Administrator.

Clause 10ø - Existing provision relating to the making and subscribing of an oath or affirmation of allegiance by the Administrator, Acting Administrator and Deputy Administrator. (The existing provision has been slightly modified to enable the oath or affirmation to be made before a Judge of the Norfolk Island Supreme Court or any other Judge of a Federal Court.)

PART III - THE EXECUTIVE COUNCIL

Clause 11 - Creates the Executive Council of Norfolk Island to advise the Administrator on all matters relating to the government of the Territory. The Executive Council is to consist of executive members but all members of the Legislative Assembly are entitled to attend all meetings of the Executive Council. The Administrator presides at all meetings that he attends.

Clause 12 - Provides that the number and designations of executive offices are to be determined by the Legislative Assembly. Executive members will have executive authority over the matters specified in Schedules 2 and 3.

Clause 13 - Provides that the Administrator may appoint members of the Legislative Assembly to executive office, or may terminate such appointments on the advice of the Legislative Assembly. The Administrator may, however, in exceptional circumstances, terminate such an appointment without the Assembly's advice. An officer of the Public Service is eligible for election to the Assembly but may not be appointed to an executive office.

Clause 14 - Specifies the circumstances in which an executive member ceases to hold office.

Clause 15 - Provides that members of the Executive Council and all others who attend Executive Council meetings, must make and subscribe certain oaths or affirmations.

PART IV - LEGISLATION

- Clause 16 - Provides for the laws in force in the Territory immediately before the commencement of the Act to remain in force.
- Clause 17ø - Existing provision. This clause refers to the amendment and repeal of the laws referred to in clause 16. Sub-clause 17(2) refers to the laws that were in force prior to the commencement of the Norfolk Island Act 1913 on 1 July 1914.
- Clause 18ø - Existing provision which provides that a Commonwealth Act shall not be in force in the Territory unless expressed to extend to the Territory.
- Clause 19 - Defines the legislative power of the Legislative Assembly. Sub-clause 19(2) provides that any acquisition of property in the Territory will be on just terms and ensures that the Assembly cannot legislate with respect to armed forces or coinage.
- Clause 20 - Enables the Legislative Assembly to make laws as to its powers, privileges and immunities, but so as not to exceed the powers, privileges and immunities of the House of Representatives as apply at any time.
- Clause 21 - Assent provisions. Administrator shall assent to, withhold assent to, or reserve for the Governor-General's pleasure, every proposed law passed by the Legislative Assembly. In respect of those laws dealing with matters over which the Assembly has complete power (Schedule 2), the Administrator must act on the advice of the Executive Council. The Administrator retains a power of veto over Schedule 3 matters.
- Clause 22 - Provides that where a proposed law is reserved for the Governor-General's pleasure, the Governor-General may assent to, withhold assent to, or withhold assent to part and assent to the remainder of, the proposed law.

Clause 23 - Provides that the Governor-General may, within 6 months after the Administrator's assent to a law, disallow the law or part of the law or recommend any amendments of the laws of the Territory that he considers desirable as a result of his consideration of the law.

Clause 24 - Provides that the reasons for withholding assent to a law or disallowance of a law must be laid before the Legislative Assembly.

Clause 25 - Provides that all money measures must be recommended by message of the Administrator to the Legislative Assembly.

Clause 26 - Empowers the Governor-General to introduce a proposed law into the Legislative Assembly on any matter.

Clause 27 - Establishes the procedure for making Ordinances in exceptional circumstances. Sub-clauses 27(3) and (4) have been included to overcome any crisis situation which may arise should no provision or insufficient provision be made for the expenditure of moneys for the purposes of the government of the Territory.

Clause 28 - Provides that Ordinances made by the Governor-General under clause 27 must be laid before each House of the Parliament.

Clause 29 - Provides that where there is conflict between an enactment made by the Legislative Assembly and an Ordinance made by the Governor-General then the latter is to prevail. Where there is no conflict they will operate concurrently.

Clause 30 - Provides that the making of all enactments must be notified in the Norfolk Island Government Gazette and, unless there is a contrary intention in an enactment, enactments come into operation on the date of publication of the notice.

PART V - THE LEGISLATIVE ASSEMBLY

- Clause 31 - Creates the Legislative Assembly and provides for its composition. Electoral arrangements are to be provided for by enactment.
- Clause 32 - Provides that members of the Legislative Assembly must make and subscribe an oath or affirmation of allegiance and office.
- Clause 33 - Provides that writs for elections are to be issued by the Administrator.
- Clause 34 - Provides that members of the Legislative Assembly hold office from the date of their election until the date of the next general election.
- Clause 35 - Provides that the date of a general election is to be determined by the Administrator. Elections must be held at least once every 3 years.
- Clause 36 - Sets out the procedure for the resignation of members of the Legislative Assembly.
- Clause 37 - Establishes the procedure for filling a casual vacancy in the office of a member of the Legislative Assembly.
- Clause 38 - Establishes qualifications for election to the Legislative Assembly.
- Clause 39 - Establishes disqualifications for membership of the Legislative Assembly.
- Clause 40 - Ensures that the Legislative Assembly will meet at least once every 2 months. Other meetings of the Assembly will be prescribed by the standing rules and orders of the Assembly. Members of the Assembly will be also able to request the Administrator to convene a meeting of the Assembly.

Clause 41 - Covers the election and tenure of office of the President and Deputy President of the Legislative Assembly.

Clause 42 - Establishes the procedure to be followed at meetings of the Legislative Assembly.

Clause 43 - Validates acts done by the Legislative Assembly where a person sitting or voting at a meeting of the Legislative Assembly was not duly elected member or had vacated his office.

Clause 44 - Provides for the keeping of minutes of the proceedings of the Legislative Assembly.

Clause 45 - Provides that the Legislative Assembly may make standing rules and orders.

PART VI - FINANCE

Clause 46 - Definitions.

Clause 47 - Establishes the Public Account of Norfolk Island and makes particular provisions for the control of revenues raised for Schedule 2 purposes.

Clause 48 - Provides for control over the disposal of public moneys.

Clause 49 - Enables the Commonwealth to lend money to the Territory.

Clause 50 - Enables the Administration and Territory Authorities to borrow elsewhere with the approval of the Commonwealth Treasurer. The Treasurer may guarantee such borrowings and may require indemnity from the Administration.

Clause 51 - Provides that the Administration or a Territory Authority may not borrow moneys except as provided by the Bill.

PART VII - THE JUDICIAL SYSTEM

Clause 52ø - Preserves the Supreme Court of Norfolk Island as the Superior Court of Record.

Clause 53ø - Existing provision relating to the appointment of judges of the Supreme Court. The existing provision has been modified to permit the views of the Norfolk Island Executive Council to be considered in relation to the appointment of judges.

Clause 54ø - Existing provision establishing the seniority of judges of the Supreme Court.

Clause 55ø - Existing provision setting out the qualifications of the persons who may be appointed as judges of the Supreme Court.

Clause 56ø - Existing provision providing for the salaries and travelling expenses of judges of the Supreme Court.

Clause 57ø - Existing provision relating to the taking of an oath or affirmation by a judge of the Supreme Court. The existing provision has been slightly modified to allow the oath or affirmation to be taken before another judge of the Supreme Court or before any other judge of a Federal Court.

Clause 58ø - Existing provision providing for the exercise of the jurisdiction of the Supreme Court.

Clause 59ø - Existing provision providing that the jurisdiction, practice and procedure of the Supreme Court will be as provided by enactment.

Clause 60ø - Existing provision enabling other Courts and tribunals to be set up by enactment.

PART VIII - MISCELLANEOUS

- Clause 61ø - Existing provision enabling the establishment of the Public Service of the Territory.
- Clause 62ø - Existing provision enabling the Minister to make grants of Crown land in the Territory.
- Clause 63ø - Existing provision enabling the Commonwealth Auditor-General to audit the accounts of the Territory.
- Clause 64ø - Existing provision providing that goods of certain classes imported into Australia from Norfolk Island are not subject to Commonwealth Customs Duty.
- Clause 65 - Enables the remuneration and allowances of members of the Legislative Assembly, Executive Councillors and executive members to be determined by the Remuneration Tribunal or prescribed by Regulations under the Bill where there is no Remuneration Tribunal determination.
- Clause 66ø - Existing provision relating to the powers of the Governor-General to grant pardons and remit sentences.
- Clause 67ø - Existing provision enabling regulations to be made under the Bill. Sub-clause 66(2) will enable the legislative and executive authority of the Legislative Assembly to be increased by Regulation. The exclusive powers of the Legislative Assembly will not be able to be altered in any way without the consent of the Assembly.

PART IX - TRANSITIONAL

- Clause 68 - Definitions.
- Clause 69 - Transitional provisions providing for the holding of the first general election of the Legislative Assembly.
- Clause 70 - Saving provision to continue existing appointments of Administrator, Acting Administrator and Deputy Administrator (vide clauses 6, 8 and 9).

Clause 71 - Transitional provision to cover certain proposed Ordinances which had not been made before the date of commencement of the Act.

Clause 72 - Transitional provision to ensure that Ordinances made by the Governor-General before the date of commencement of the Act are laid before both Houses of the Parliament.

Clause 73 - Provision to ensure the validity of Ordinances which may need to be made before the date of commencement of the Act.

Clause 74 - Transfers existing contracts and agreements entered into on behalf of the Commonwealth to the Administration of Norfolk Island.

Clause 75 - Transfers moneys in the existing Public Account of Norfolk Island to the Public Account established by sub-clause 47(1) of the Bill.

Clause 76 - Transitional provision to ensure that all accounts of the Territory in respect of any period before the commencing date are subject to audit by the Commonwealth Auditor-General.

Clause 77 - Transitional regulation-making power (effective until 30 June 1980) to facilitate the establishment of the Administration as a body politic.

SCHEDULES

Schedule 1 - Defines the Territory of Norfolk Island. The description includes Philip and Nepean Islands.

Schedule 2 - Lists the matters over which the Legislative Assembly has complete Legislative and executive control.

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schedule 3 - Lists the matters over which the Administrator has a power of veto.

schedules 4 to 9 - Form of oaths and affirmations referred to in clauses 10, 15, 32 and 57.