

## Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### Norfolk Island Legislation Amendment Bill 2015 and related Bills

These Bills are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the Bill

The principal objective of this package of bills is to provide the necessary framework for the sustainable economic and social development of the Norfolk Island Community. This is achieved through two principal reforms. The first is amendment of the *Norfolk Island Act 1979* to reform governance and legal arrangements of Norfolk Island. This will implement in large measure the Government's response to the —Same Country: Different World— report of the Joint Standing Committee on the National Capital and External Territories.

The second principal object of this package of Bills is the extension of many mainland social security, immigration, and health arrangements to Norfolk Island. This will implement in large part the election commitment of the Australian Government made in September 2013 and is consistent with the general principle that as Norfolk Island is part of Australia, those Australians who live there should have the same obligations and receive the same access to benefits as other Australians.

A more detailed description of this package of Bills is set out in the Outline to the Explanatory Memorandum.

#### Human rights implications

The following human rights are engaged by this package of Bills:

- The right to self-determination
- The rights of minorities
- The right to take part in public affairs and elections
- The right to freedom of movement
- The right to social security
- The right to health
- The right to an adequate standard of living, and
- The right to work

#### *The right to self-determination*

Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR) and Art 1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) provide that all peoples have the right of self-determination and that by virtue of that right they can freely determine their political status and freely pursue their economic, social and cultural development.

Some parts of the Norfolk-Pitcairn population of Norfolk Island identify as a people with rights to self-determination. The proposed governance reforms, which effectively remove Norfolk Island's self-governing status, may be viewed by this group as being inconsistent with the right to self-determination.

Even if it is accepted that the Norfolk-Pitcairn population are a people with a right to self-determination, self-determination is widely understood to be exercisable in a manner that preserves the territorial integrity, political unity and sovereignty of a country, such as Australia. Self-government of Norfolk Island is thus not a prerequisite to exercising any right of self-determination.

The right to self-determination does, however, require that peoples be consulted about decision that impact on them and have the opportunity to participate in the making of such decisions, including through the processes of democratic government. It also includes a right to preserve group identity and culture.

The proposed governance reforms are the result of an extensive consultation process, including as led by the Administrator of Norfolk Island in response to the report of the Joint Standing Committee on the National Capital and External Territories —Same Country: Different World<sup>10</sup>. The Norfolk Island community was consulted over several months through public forums, facilitated discussions, meetings with community leaders and groups, and the option to provide views directly over the internet or by letter. Hundreds of community members participated in one or more of the consultation processes. These consultations found significant support for change within the Norfolk Island community.

The primary purpose of the proposed governance reforms and the extension of mainland social security, immigration and health arrangements to Norfolk Island is to provide for the sustainable economic and social development of Norfolk Island, which are important aspects of the right to self-determination. The maintenance of the Norfolk-Pitcairn culture relies to some extent on the opportunities for members of that community to remain living on Norfolk Island. The proposed reforms will facilitate this by providing for sustainable economic development on Norfolk Island.

During the interim transition time from the current governance arrangements to the new governance arrangements, the population of Norfolk Island, including the Norfolk-Pitcairn population, will be able to participate in the making of decisions that affect them through the Advisory Council.

Under the new governance arrangements, the Australian citizens of Norfolk Island will be able to directly elect a Norfolk Island Regional Council, which will be responsible for local level and municipal government functions on Norfolk Island, such as the provision and maintenance of roads, power, water and sewerage, waste disposal and treatment, land use planning, management of local natural areas, historic and cultural places and public recreation facilities. The population of Norfolk Island will also remain eligible to vote in Commonwealth elections.

In light of the above factors, the Norfolk Island Legislation Amendment Bill 2015 and related Bills are consistent with any applicable right to self-determination.

### ***Rights of minorities***

Article 27 of the ICCPR is an individual right which overlaps to some extent with the collective right of peoples to self-determination. Article 27 provides that:

‘In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language’. 11



The Norfolk-Pitcairn population of Norfolk Island may constitute a minority under Art 27. The proposed governance reforms and the extension of mainland social security, immigration and health arrangements to Norfolk Island do not limit in any way the existing rights of the Norfolk-Pitcairn population to enjoy their own culture or use their own language. As noted above, the primary purpose of these reforms is to provide for the sustainable economic and social development of Norfolk Island, which will in turn facilitate the maintenance of the Norfolk-Pitcairn culture.

***The right to take part in public affairs and elections***

Article 25 of the ICCPR sets out another right which is related to, but distinct from the right to self-determination. Article 25 relevantly provides that:

‘Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 (i.e. race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) and without unreasonable restriction:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) ...’

(see also Art 5(c) of the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD), Arts 7 and 8 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), and Art 29 of the *Convention on the Rights of Persons with Disabilities* (CRPD)).

The Bill engages this right through the abolition of the Norfolk Island Legislative Assembly. However, the Human Rights Committee has recognised that the right to take part in public affairs and elections can be met by different models of governance, so long as these are democratic and based on the consent of the people (see General Comment No 25 at para 1).

The final governance arrangements proposed for Norfolk Island, and of which the amendments made by this Bill are a significant component, will include the establishment of a Norfolk Island Regional Council, responsible for local and municipal issues, elected by the Australian citizens of Norfolk Island. Further, Norfolk Islanders who are Australian citizens will retain the right to vote in Commonwealth elections (the Commonwealth government will be responsible for certain aspects of the governance of Norfolk Island, through the application of Commonwealth laws including those relating to taxation, social security, the provision of health care, immigration, and through the administration of New South Wales laws as applied to Norfolk Island). This model is consistent with arrangements in Australia’s other inhabited external territories such as Christmas Island and the Cocos (Keeling) Islands.

The final governance arrangements proposed for Norfolk Island are thus consistent with Art 25(a) and (b), although the model for achieving this right is different to that currently in place on Norfolk Island.

During the interim transition time, the ability of individuals on Norfolk Island to participate in the conduct of public affairs at the local level will be more limited due to a lack of a democratically elected mechanism at the local level during this period. The transition from one governance model to another is a complicated process, which must be undertaken in a careful and considered manner to avoid unintended negative impacts on the community affected. The interim transition time from the current governance model, which has proved



itself over a number of years to be financially unsustainable and not to be serving the needs of the Norfolk Island community, to the new governance model is designed to avoid such negative impacts and give the necessary time to put the new governance model in place, while taking immediate action to redress Norfolk Island's depressed economy and the poor condition of its essential services. The present Norfolk Island Government has effectively been insolvent for a number of years and has been unable to deliver an appropriate level of services.

The short term limitation on local democratic representation is a reasonable, necessary and proportionate measure in light of the pressing need to address the numerous problems facing the Norfolk Island community. The creation of an Advisory Council of local community representatives will minimise the impact of the absence of local democratic representation for this interim period, which is expected to be less than 2 years. Participation in an advisory council is a recognised form of participation in the conduct of public affairs (see General Comment No 25 at para 6). Australian Citizens will still be able to vote in Federal elections and express their views to the responsible Commonwealth Minister, the Administrator on Norfolk Island or the Executive Director. Community members may also engage with elected representatives in the Federal Parliament.

#### ***The right to freedom of movement***

Article 12(1) of the ICCPR provide that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. A similar right is found in Art 10 of the *Convention on the Rights of the Child* (CRC), Art 18 of the CRPD, Art 5 of the CERD and Art 15 of CEDAW.

Norfolk Island is the only inhabited territory of Australia to which the *Migration Act 1958* does not extend. This Bill proposes to extend the application of the *Migration Act 1958* and the *Immigration (Guardianship of Children) Act 1946* to Norfolk Island, which will overtake the *Immigration Act 1980* (NI) in providing for migration related matters. This promotes the right to freedom of movement of Australians by reducing barriers to movement, including removing the need for Australians not resident on Norfolk Island to carry passports for travel to Norfolk Island (which is internal travel within Australia) and the removal of residency fees for those who wish to reside permanently on Norfolk Island.

#### ***The right to social security***

Article 9 of ICESCR recognises the right of everyone to social security, including social insurance. A similar right is found in Art 26 of the CRC and Art 28 of the CRPD. Under Art 2(1) of ICESCR, a country is obliged to take steps 'to the maximum of its available resources, with a view to achieving progressively the full realisation' of the rights recognised in ICESCR.

Extension of the mainland social security systems, including superannuation, payments and services available to other Australians living in Australia promotes Norfolk Island residents' right to social security. The mainland social security system is manifestly more comprehensive than the Norfolk Island Government's own welfare system, which does not provide any family assistance, childcare or unemployment payments.

#### ***The right to health***

Article 12 of ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A similar right is found in Art 24 of the CRC and Art 25 of the CRPD. Under Art 2(1) of ICESCR, a country is obliged to take steps 'to the maximum of its available resources, with a view to achieving progressively the full

realisation' of the rights recognised in ICESCR. Ensuring that health services are affordable is one component of this right.

The extension of the Medicare Benefits Schedule and the Pharmaceutical Benefits Scheme will promote the right to health of Australian citizens on Norfolk Island. The pre-existing Norfolk Island health scheme only subsidises expenses beyond a threshold, whereas Medicare and the PBS begin providing assistance immediately. This will improve the access of citizens, and particularly low income earners, to healthcare on the Island.

***The right to an adequate standard of living***

Article 11(1) of ICESCR recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. A similar right is found in Art 27 of the CRC and Art 28 of the CRPD. Under Art 2(1) of ICESCR, a country is obliged to take steps 'to the maximum of its available resources, with a view to achieving progressively the full realisation' of the rights recognised in ICESCR.

The primary objective of the governance reforms and extension of mainland social security, health and other arrangements to Norfolk Island is to address the effective insolvency of the current Norfolk Island Government and its inability to deliver an appropriate level of basic services to the Norfolk Island Community. Further, the governance reforms will allow investments to be made to revitalise Norfolk Island's depressed economy. All of these steps will assist in improving the standard of living on Norfolk Island.

***The right to work***

Article 6(1) of ICESCR recognises the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts. Under this Article, State Parties undertake to take appropriate steps to safeguard this right. A similar right is found in Art 27 of the CRPD. Under Art 2(1) of ICESCR, a country is obliged to take steps 'to the maximum of its available resources, with a view to achieving progressively the full realisation' of the rights recognised in ICESCR.

Steps that State Parties take to achieve the full realisation of the right to work must include policies and techniques to achieve steady economic, social and cultural development (see Art 6(2)). As noted above, one of the primary aims of the reforms set out in the Norfolk Island Legislation Amendment Bill 2015 and related Bills is to revitalise the Norfolk Island economy, which in turn should lead to the creation of more jobs on Norfolk Island hence facilitating the realisation of the right to work for Norfolk Island residents.

**Conclusion**

The Bill is compatible with human rights because it advances the protection of human rights. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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