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# Objection 46

Norfolk Island People for Democracy (NIPD)

20 pages

**From:** christopher magri  
**To:** [FedRedistribution - ACT](#)  
**Subject:** Norfolk Island  
**Date:** Tuesday, 1 May 2018 6:45:01 AM  
**Attachments:** [March 1992 Dr Roger Wettenhall Ni and Electorate of Canberra Community of Interest.pdf](#)  
[ATT00001.htm](#)

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To whom it may concern,

The Norfolk Island People for Democracy (NIPD), a group of 1284 people that came together to protest against the Commonwealth Government's decision to, amongst other things, illegally remove our self-government and put us into a federal seat such as Canberra.

NIPD wholeheartedly supports and endorses the objections previously sent to you by John and Rosemary Howard - see below.

We have also attached a copy of a Paper produced by Dr Roger Wettenhall in 1992 which highlights a lot of the major deficiencies in the placing Norfolk Island into a Federal seat such as Canberra, most of which remain relevant to this day.

Kind regards  
Chris Magri - Vice President NIPD

*Dear Australian Electoral Commission,*

*We write to object to the inclusion of Norfolk Island in the proposed ACT Federal Redistribution, 2018,*

*In 1856, by Orders in Council, Queen Victoria declared "Norfolk Island shall be a distinct and separate settlement." We believe that specific declaration has not been altered and holds to this day.*

*It is therefore not appropriate to include Norfolk Island as part of any mainland Australian electorate.*

*Until the legality of this contention is resolved, Norfolk Island must be treated as a separate entity.*

*In addition, the inclusion of Norfolk Island as part of a mainland electorate does not recognise that the economic, social, cultural and regional interests of the Island are entirely different from those of any Australian electorate, and that travel from Norfolk Island to Canberra is inconvenient, time consuming and costly. Further, the physical features of Norfolk Island are unique from any part of Australia. Being located on a ridge linking New Caledonia and New Zealand, Norfolk Island was formed by volcanic activity and has never been a part of the Australian continent. Norfolk island's flora, fauna and climate are entirely different from those of Canberra.*

*As an aside, we note that Norfolk Island residents have no representation in the Senate and are having laws of New South Wales imposed upon them despite having no voting rights in that State.*

*Yours sincerely*

*John and Rosemary Howard*

NORFOLK ISLAND AND  
THE ELECTORATE OF  
CANBERRA: "COMMUNITY OF  
INTEREST"?

REPORT TO THE NORFOLK ISLAND GOVERNMENT

By

ROGER WETTENHALL AND PHILIP GRUNDY

CANBERRA  
MARCH 1992

# NORFOLK ISLAND AND THE ELECTORATE OF CANBERRA: "COMMUNITY OF INTEREST"?

## 1. Introduction

### 1.1 Terms of Reference

The authors of this Report were commissioned to "provide a written report to the Norfolk Island Government with respect to whether a 'community of interest' exists between the Federal electoral division of Canberra and Norfolk Island".

### 1.2 Sources of Information

The authors of this Report have both visited Norfolk Island and have long been familiar with the broad issues of the general relationship between Norfolk Island and Australia. Their articles on the subject appeared in 1976 in the *Canberra Times* and the *Current Affairs Bulletin*.

The commissioning letter stated that "the methodology to be employed in addressing this question is, broadly speaking, as set out in the Electoral Commission's Research Report 3/85".

We have studied this Research Report and in addition have used the following sources:

- . personal interviews and discussions with residents of the Island, particularly those identified as leaders of community opinion;
- . correspondence between the Norfolk Island Government and the Department of Arts, Sport, the Environment, Tourism and Territories (DASETT);
- . documents originating from the Australian Electoral Commission, DASETT, the Attorney General's Department, and the Acting Solicitor General
- . legal opinion provided at the request of the Norfolk Island Government
- . submission by Mr Ed Howard to the House of Representatives Standing Committee on Legal and Constitutional Affairs and the Federal Government's response to it
- . written submissions from residents of Norfolk Island
- . the Nimmo Report
- . numerous other documents and articles on the development and government of Norfolk Island.

### 1.3 Other relevant material

The authors have extensive professional knowledge of issues of public administration and local government and have also drawn on the increasingly wide literature on the subject of the governance of small islands.

### 1.4 The onus of proof

The view has been expressed by the Australian Electoral Commission (AEC) that, while they were not asserting that there was a community of interest between Norfolk

Island and the electorate of Canberra, the Norfolk Island Government had not demonstrated that there was no such community of interest.

The authors strongly believe that this approach is unacceptable: if that principle were applied to the criminal law, the whole concept of being innocent until proven guilty would be subverted.

Moreover, despite the AEC's disclaimer, the proposed incorporation of Norfolk Island electors into the electorate of Canberra does assert, ipso facto, that such a community of interest exists, since the Electoral Act requires this. However, neither the AEC nor the Federal Government generally has so far made any known attempt to establish the existence of a community of interest, and it is not therefore possible to rebut the grounds for the assertion.

In these circumstances, we are able only to consider the question on its merits, as objectively as possible.

## 2. The Context of Community of Interest

The question of a community of interest between Norfolk Island and the electorate of Canberra would be of merely academic interest without the practical, political and administrative context in which it arises. We therefore wish to discuss that context briefly.

### 2.1 The political context

2.1.1 The proposal to attach Norfolk Island to the Canberra electorate arose from a concern that there were Australian citizens resident on the Island who were unable to vote in federal elections. This was seen as a violation of their human rights.

Against this, the *Norfolk Island Act* 1979 provided for a Norfolk Island Legislative Assembly, members of which are elected by all established Norfolk Island residents, whether Australian citizens or not.

Mr Howard's submission to the House of Representatives Standing Committee lists a wide range of local-type, state-type and national-type functions exercised by the Norfolk Island Government and Administration. In voting for the Norfolk Island Legislative Assembly, therefore, residents of the Island who are Australian citizens can hardly be regarded as disenfranchised. The issue is rather whether those Australian citizens wish, or should be allowed or compelled, to vote in federal elections.

If they do so, their vote will count towards:

- (i) issues of general concern to all Australians; and
- (ii) actions of the Commonwealth which directly affect Norfolk Island.

In respect of the first of these considerations, it should be noted that:

the scope of the Norfolk Island Government is so wide that many of the issues that concern Australians generally are dealt with separately on Norfolk Island

many of the major concerns of Australian voters generally, such as social security, child endowment, health insurance, income tax and unemployment benefits, do not apply to residents of Norfolk Island, since their own Government has separate jurisdiction in these matters.

Australian citizens resident in Norfolk Island would therefore be voting in federal elections mainly on issues of foreign affairs and defence. It may reasonably be questioned whether inability to vote on these issues alone amounts to disenfranchisement.

In respect of the second consideration, the decisions and actions of the Commonwealth which affect Norfolk Island directly are principally administrative actions of DASETT. Since these are governed by the *Norfolk Island Act 1979*, the composition of the Norfolk Island Legislative Assembly and the activities of its administration would seem to be of more moment than a few hundred votes in a distant mainland electorate.

2.1.2 The proposal of the Federal Government is that voting in federal elections by Australian residents of Norfolk Island should be voluntary and that for electoral purposes they should be enrolled in the electorate of Canberra. The Norfolk Island Government, by contrast, proposes that those residents of the Island who are Australian citizens and wish to be enrolled as voters in federal elections should be able to choose the constituency in which to vote, in accordance with a number of criteria which would establish a *personal* community of interest.

The matter of voluntary voting seems to us to raise two issues. The *first* is whether voluntary voting is likely to survive. Since all other Australian citizens are compelled to vote, and since part of the motivation for the present proposal appears to be that of administrative tidiness, it is difficult to see how the Federal Government could continue to justify the anomaly of voluntary voting for Norfolk Island residents. *Secondly*, if voting in federal elections is to continue to be voluntary, we must ask to what extent Australian citizens on Norfolk Island would avail themselves of the right to vote.

Clearly the 1991 Referendum is of crucial importance here. Residents of Norfolk Island were asked: "The Commonwealth proposes to pass a law to make Norfolk Island part of Canberra for Federal electoral purposes. Are you in favour of this proposal?" The result of the poll was 178 votes in favour (18.08%) and 801 votes against (81.24%).

If we assume that all the votes in favour were cast by Australian citizens, we can also assume that they would exercise the right to vote federally. Thus, Canberra's voting figures would be increased by 178.

The Secretary to the Norfolk Island Government has estimated, on the basis of the 1991 Norfolk Island Census of Population and Housing, that the likely number of Australian citizens on the Norfolk Island electoral roll is 818. This represents 77% of the residents who have reached the age of 18. The remaining 23% are mostly New Zealand citizens, together with a small number of UK citizens and a handful of other countries of citizenship.

It is important from a political point of view that, if voting were compulsory, 818 votes could, under certain circumstances, be enough to decide the outcome of an election in the federal seat of Canberra. On the other hand, if it were voluntary, we could expect few more than 178 Norfolk Island votes to be cast.

The implications of the Referendum figures are confirmed by the interviews conducted by Professor Wertenhall in February 1992. They may be summarised as follows:

#### *Pitcairn descendants*

Ten people expressed the view that there should be no Norfolk Island vote in Australian elections.

Three people favoured optional voting by Australian citizens, but they were divided on the issue of attachment to Canberra. One appeared to favour it on the

grounds that Norfolk Island votes in any mainland electorate will give the Island more political influence; a second preferred the Northern Territory or a rural electorate on the grounds of closer identity of interest; the third rejected attachment to any electorate and favoured a seat for Norfolk Island in the Commonwealth parliament.

#### *Australian settlers*

All four interviewed strongly opposed Norfolk Island voting in federal elections, saying that they had no intention of opting to vote. They have adopted the Island way of life and are involved in the Island political system.

#### *New Zealand and other settlers*

Two have no desire for Australian citizenship and are opposed to Norfolk Island voting in Australian elections.

Two have become Australian citizens and would probably vote. But both see Canberra as entirely inappropriate.

One favours the vote for Australian citizens who want it, but is indifferent about which electorate should be involved.

In general, interviews confirmed the Referendum result that few favour the attachment of Norfolk Island to the Canberra electorate. Those who voted "yes" at the Referendum seem mostly to have been voting in favour of electoral rights rather than specifically for the Canberra proposal. Since the Referendum did not allow voters to express a view in favour of the Norfolk Island Government's alternative proposal, it may be assumed that at least some of the "yes" voters would be lukewarm about using their vote in a Canberra election.

The political implications seem to us to be as follows:

compulsory voting could swing an election in Canberra. Such an event would be likely to be regarded with considerable alarm on the part of Canberra residents;

with voluntary voting, the number of votes likely to be cast would have little effect on Canberra; this in turn would minimise any political "clout" that Norfolk Island might expect to gain from the Federal Government's proposal.

It has been argued that the distribution of Norfolk Island votes among a number of mainland electorates, as proposed by the Norfolk Island Government, would be undesirable (even if constitutional) for two reasons.

The first of these is that the Norfolk Island vote would be ineffective, whereas it would carry more influence with government if it were concentrated on one electorate.

In our opinion, this argument does not withstand scrutiny. It assumes that candidates for the seat of Canberra would seek the Norfolk Island vote by taking an interest in Island affairs and promising to promote the Island's interests in Federal Parliament.

In reality, the number of votes available, especially if voting is voluntary, would be negligible; the actions of the Federal Parliament that directly affect Norfolk Island are, as we have noted, few; and it would be cynical to expect Norfolk Island voters to trade a vote on major national issues, in which they have little or no interest, for a marginal interest in their own affairs on the part of a single MP. Moreover, even with compulsory voting, a Canberra candidate would only be likely to seek Norfolk Island



votes if a close contest seemed probable; and would be unlikely to maintain much interest once the election was over.

The second argument relates to the USA. There, it is pointed out, the Supreme Court has frowned on the dissipation of group votes across constituencies in order to minimise their effectiveness.

We do not believe the US experience is relevant. In the USA the concern is about deliberate attempts to water down what may be perceived as block votes of particular interest-groups, especially racial or ethnic minorities. Australian citizens who happen to live on Norfolk Island cannot be considered an analogous group. There is no reason to suppose that a majority of their votes would be cast as a block on anything but issues that affected the Island. Unlike, say, an ethnic minority in the USA, there is no wide range of common issues that affect them as a whole.

## 2.2 The legal context

The legal argument stems from the requirement of the Electoral Act that there should be a "community of interest" between voters enrolled in the same electorate. The proposals of the Commonwealth and of the Norfolk Island Government both try to meet this requirement.

The Commonwealth proposal to attach Norfolk Island to the electorate of Canberra is based primarily on legal argument about the constitution. It assumes that the advice given by the Attorney General's Department is correct, and that the proposal of the Norfolk Island Government would be unconstitutional.

Against this view, the Norfolk Island Government has received strong contradictory advice from leading legal opinion.

The authors of this Report are not qualified to judge the constitutional arguments, but we would make the following comments.

The records of the High Court show that the opinion of the Attorney General's Department is far from infallible. Thus the statements by the Minister for Arts and Territories and by the Secretary of DASETT at the meeting with Norfolk Island representatives on 18 February 1992 that the Government had to stay with its own proposal "if our advice is right" was unfortunate. The Government cannot know whether its advice is right unless the issue is determined by the High Court. Presumably the Minister and Secretary meant that the Government would not legislate against the advice of A-G's. That is reasonable, but legislation so based can be and has been in the past amended and modified during the passage of Bills. Responsibility for legislation lies ultimately with Parliament, not with the Attorney General's Department.

If the Parliament of the Commonwealth legislated to enact the Norfolk Island Government's proposal, it seems unlikely that the matter would in fact be challenged in the High Court. Who would lodge the challenge? Who would have the desire or standing to do so?

On the other hand, if the Commonwealth proposal is enacted, the Norfolk Island Government would have an interest in recourse to the High Court. The expense would be considerable, and the opinions in favour of the Norfolk Island Government proposal are so weighty and from such eminent counsel that it would be rash to predict the victory of the views of the Attorney-General's Department and the Acting Solicitor General.

The Commonwealth's proposal seeks to overcome one perceived legal obstacle: that of the constitutionality of the Norfolk Island Government proposal. In doing so, it has had to be evasive on the legal obstacle to its own proposal: the Electoral Act's requirement of a "community of interest". The Commonwealth has attempted to evade this obstacle by (a) proposing a scheme of electoral enrolment which asserts, de facto, that a community of interest does exist between Norfolk Island and the Canberra electorate (for otherwise the proposal would infringe the requirements of the Electoral Act), but without producing any supporting evidence or argument; (b) by unloading the onus of proof on to the Norfolk Island Government; and (c) by pointing to the fact that the term "community of interest" is not defined in law and is "therefore not susceptible to confirmation or refutation". The Commonwealth therefore seems to us to be standing on two rather shaky legs: a constitutional opinion which has not been tested; and a legal fiction to escape the consequences of the Electoral Act.

The Norfolk Island Government's alternative proposal, as amended, seeks to comply with constitutional requirements, both as presented in the advice given to the Commonwealth and in its own advice. Furthermore, it clearly adheres much more closely than does the Commonwealth to the requirement of "community of interest" by spelling out precisely what that might mean in the case of the individual voter.

### 2.3 The administrative context

The administrative aspects of both proposals fall within the responsibility of the Australian Electoral Commission.

The AEC has stated:

- (i) that "it is by no means clear" that the relationship between Norfolk Island and Canberra is significantly different from that "between the Northern Territory and the Island Territories that vote as part of the Northern Territory at Commonwealth elections" and
- (ii) that the "scheme proposed by the Norfolk Island Government would be less administratively streamlined" (i.e. than the alternative proposed by the Commonwealth).

To the first of these points we would respond that it is by no means clear that the current arrangements for Christmas and Cocos Islands are a good and appropriate model. "Community of interest" with the Northern Territory has not been established. We understand also that, unlike Norfolk Island, there is a significant and growing shift of population from those Islands to the mainland (particularly in these cases to Western Australia); that there is growing dissatisfaction with the present arrangements; and that there is already some recognition that it would be more appropriate to incorporate those Islands within the State of Western Australia.

To the second point, we would respond that, with all due deference to the difficult administrative task of the AEC, it is not appropriate to elevate administrative convenience above the social, cultural, economic and governmental factors which must be taken into account when dealing with the right of citizens to vote in an appropriate electorate.

### 3. The Concept of "Community of Interest"

This brings us back to the matter of identifying and measuring community of interest. The AEC's Research Report 3/85 presents serious studies of this topic by sociologists

Ronald Wild (then of LaTrobe University) and geographer D.J. Walmsley (of the University of New England).

The Introduction to the Report points out that the phrase "community of interest" has always been listed among the criteria for redistribution. Arguments about community of interest "figure prominently in the suggestions, comments and objections which members of the public and organisations lodge with the Committees and Commissions which conduct redistributions." (Research Report 3/85, p.1)

The Wild and Walmsley studies originated in papers given to a workshop on community of interest conducted by the AEC on 25 February 1985. In summing up the workshop's proceedings, the Introduction to the Report comments:

At the end of the day there was no consensus on exactly what community of interest 'meant' or how it might be operationalised by those who sought to influence the decisions of Redistribution Committees or by the members of such bodies. If anything, there was a healthy scepticism that as the phrase would be taken up by those who wished to argue an essentially political case and used for their own purposes, there was limited scope for developing it into an analytical tool. (p.1)

Three conclusions may be drawn from this Report:

- (a) The extract quoted clearly represents a serious statement of AEC opinion on the issue.
- (b) In the context of metropolitan Australia, the opinion is no doubt realistic; but it applies indiscriminately to the whole of Australia, where there will often be very small differences between contiguous electorates between which it is proposed to shift subdivisions to reflect population changes.
- (c) Such considerations are not directed to the special case of an island territory many hundreds of kilometres from the mainland. The material in the Research Report suggests that such a case deserves special treatment.

Both studies support the view that there have been "massive" changes in Australia throughout the 20th century which have increased the "orientation of local community units towards national and even international-level systems" and have introduced new types of loose-knit communities which are "spatially far-flung" and are linked by professional, technical, managerial (etc.) values and interests rather than location-specific ones (Report, esp. pp. 10-11, 21).

Location-specific interests are, however, still indicators of community identity, and Walmsley cites suggestions by geographers that "clear territorial identity" has to be present before one can properly speak of community.

Such communities, much more common in the past, are usually characterised by "less complex" but tight-knit social arrangements, and a high degree of attachment to traditional interests and values, enhanced by geographic isolation and lack of easy communication. In them, the "sense of belonging" and "sense of place" are much more prominent than in industrialised, urban societies (pp.6-7, 20-22).

Such characteristics, it is argued, are rarely present in "mobile and developing countries like Australia, because few groups live together sufficiently long to develop interlocking communal relations", and the "possibility of identifying communities as the bases for electorates is therefore remote" (pp.21-22). Hence - and this is an important point - "the drawing of the electoral map is really an exercise in 'regionalization'", and

an important consideration there is "that the 'building blocks' of constituencies...be contiguous" (pp.19, 29).

Norfolk Island clearly possesses all the characteristics of what the authors call the "location-specific" community: the kind that is now abnormal for Australia. Consequently, it cannot be amenable to the current principles and practices applied in electoral redistribution to the very different conditions that apply on the mainland. Moreover, the proposal to integrate Norfolk Island with Canberra for electoral purposes patently does not satisfy the tests of regionality and contiguity.

The AEC Research Report, we suggest, therefore offers strong support for the view that the "slipperiness" of the concept of community of interest is not applicable to Norfolk Island, and that the distinctive circumstances of Norfolk Island warrant special treatment as a special case.

Before going on to examine the possible indicators of community of interest, or the lack of it, we must clarify what we believe would or would not count on either side.

It should be noted that in the contexts we have described above, the concept of community of interest is necessarily limited and particular, since it is a criterion that seeks to distinguish two or more groups of Australians from other groups, so that they may be thought to benefit from sharing the same Member of Parliament.

It is not therefore sufficient to list mere similarities. Community of interest in this sense is not established by the fact that two groups speak the same language, live in the same country under the same government, enjoy the same pastimes or do similar work. If those were to be criteria, then all Australians have a community of interest, and the term becomes useless for the purposes of electoral redistribution.

The assertion that two groups have a community of interest must therefore rest on evidence of a different kind. It may rest, for instance, on the fact that both groups share not similar but nearly identical services and facilities. Thus two small settlements in rural Australia might be presumed to have a community of interest because their people used the same roads, the same shops, had the same shire council, relied on the same large town for shopping and professional services, and so on.

Alternatively, the two groups might resemble each other, and be so distinct from other communities, that they might be presumed to have common interests. Thus two mining settlements, say, in an otherwise pastoral and rural area might be sufficiently like each other and distinct from their neighbours as to suggest some community of interest, even though they might use different services and facilities.

It is at once obvious that Norfolk Island and Canberra do not in any sense have the kind of community of interest referred to in the first of these examples. For convenience, the Commonwealth Government makes some ACT-based services available to the Island (Australian Federal Police, a Chief Magistrate, the services of DASETT: on the other hand, educational services are provided by New South Wales and Roman Catholic and Anglican clergy in the island belong to the respective dioceses of Sydney); but these do not and cannot constitute a community of interest in themselves. One might ask how the relevance of these slender connections would hold up if it were shown that all the Canberra officials concerned were residents of the electorate of Fraser.

Community of interest can therefore only be presumed if it can be shown that the *electorate* of Canberra (not the city or the electorate of Fraser) has so many features and characteristics which it shares with Norfolk Island - and not with other mainland electorates - that the two may be regarded as sharing common and particular interests and concerns.

Conversely, if it can be shown that the electorate of Canberra and Norfolk Island are essentially dissimilar in a substantial number of important respects, the case for community of interest falls away.

#### 4. The Case for Community of Interest

Arguments that favour incorporation in the Canberra electorate which are based on perceived political advantage or on administrative streamlining may show why some would find a community of interest desirable; but they do not show that it exists.

The authors of this report have received only one statement seeking to argue that a community of interest between Norfolk Island and the electorate of Canberra does exist. The writer began by offering as evidence the fact that both places shared the Westminster system of government and both were multicultural societies.

On the first point, we must note that the application of the Westminster system is very different in the ACT from Norfolk Island. On the second point, we must also point out that the multicultural composition of the two places is not merely different but importantly different.

It is clear from the recently published ACT volume of the *Atlas of the Australian People* that Canberra has one of the most diverse populations of any Australian city, containing people born in, or with parents born in, almost every country in the world. The predominant ethos of the city, however, in the sense of its institutions, government and administration, is essentially no different from that of other Australian towns and cities. That is, it derives directly from the British social and political ethos imported by the first white settlers.

Norfolk Island, on the other hand, has a predominant ethos which derives from the mixed British-Polynesian inheritance of the Pitcairn descendants. Even the Norfolk Island language is distinctive, still in use, and revered as a mark of difference. 'Multicultural' means something very different in Norfolk Island.

The respondent has since offered a list of further common features of Norfolk Island and Canberra as evidence of a community of interest. They are:

- ABC radio and TV
- Archives
- Australian National Parks and Wildlife Service
- Aviation
- Churchill Fellowships
- Community groups (churches, Rotary etc.)
- DASETT as a channel of communication between Norfolk Island and
- Commonwealth
- Defence
- Forestry
- ILO Conventions
- Justice - ACT magistrates
- KAHVA - restoration
- Library
- Medivac
- Meteorological service
- Museums
- Order of Australia awards
- Police
- Postal rates
- Sporting bodies
- Tourism

Veterans affairs  
Water and Sewerage.

Obviously, the great majority of these items are enjoyed in common between Norfolk Island and any Australian electorate at all, from Broome to Hobart. They do nothing to establish a specific community of interest between Norfolk Island and the Canberra electorate.

The few that may seem to point to a community of interest are DASETT, Justice, and the Police.

However, the relationships between DASETT and Norfolk Island on the one hand and DASETT and the ACT on the other have little in common; and the fact that justice in Norfolk Island is partly administered by ACT magistrates and the Australian Federal Police reflects only the administrative convenience of the Commonwealth Government; it does not illustrate any community of interest between the citizens of the two places.

On the other hand, at least three of the respondent's items are evidence against community of interest: ILO conventions (which were specially negotiated for Norfolk Island), the restoration of the Kingston historic area (which has no equivalent in Canberra), and Medivac (which is unknown in the ACT). Furthermore, if water and sewerage are to be counted as points in common, it is worth mentioning for the opposite view that Canberra enjoys benefits unknown to Norfolk Island, such as: kerbing and guttering, public transport, mail deliveries, and garbage collection.

In short, any such attempt to establish "community of interest" seems understandable only in the general sense that its authors value the link with Australia: for them, "Canberra" means the Commonwealth Government, not a particular electorate in which people very unlike Norfolk Islanders live, many of whom at any point in time will in fact not be supporters of the government of the day.

We must in all honesty confess that, despite every effort to discover or imagine points that would favour the view that a community of interest exists between Norfolk Island and Canberra, we have been unable to do so.

## 5. The Case Against Community of Interest

We have experienced no such difficulty in finding points which distinguish Canberra and Norfolk Island. We do not claim that any one of these factors is in itself sufficient to establish the absence of a community of interest; but we believe that cumulatively they establish the differences to the point where the case against such a common interest is overwhelming.

### 5.1 Location

Canberra is in Australia's greatest corridor of population, from Brisbane to Adelaide, and is itself the regional centre for a large part of southern New South Wales; Norfolk Island is isolated, surrounded by ocean, and more than 1500 kms from mainland embarkation points.

Canberra residents travel frequently and readily across the border to other Australian locations; Norfolk Island's communications with Australia, New Zealand and other Pacific islands are difficult, relatively infrequent, and expensive; Norfolk Island is not contiguous with any part of mainland Australia; and its inhabitants, if they do visit Australia, rarely go to Canberra.

Canberra and Norfolk Island lie in different time zones.

Because of geographical location, Canberra and Norfolk Island have very different climates.

Canberra's commercial, social and economic ties are essentially with other Australian towns and cities; Norfolk Island has almost as many ties with New Zealand as Australia.

## 5.2 History

Canberra is a new city with less than 80 years of history; its inhabitants share the historical perspective of other Australians and otherwise look to the place of origin of their families, in Australia and/or overseas; Norfolk Islanders, including many of those who are not of Pitcairn descent, regard the Pitcairn inheritance as the predominant characteristic of their history.

Canberrans are generally oriented in their historical awareness to the history of Australia since 1788 and the trend towards independence and national identity; the indigenous population of Norfolk Island is not, historically, Australian, looks to its British and Polynesian origins, and is strongly royalist in consequence.

Canberra shares Australian public holidays and national celebrations, and also celebrates the foundation of the city during Canberra Week; Norfolk Islanders celebrate their own history on Bounty Day and Thanksgiving Day.

## 5.3 Customs

The Norfolk Island language is spoken in many homes and sometimes in public places; it is unknown in Canberra, despite that city's multicultural nature.

Canberrans share the common lifestyle and characteristics of other Australians; Norfolk Islanders are distinctive in their character, which prizes courtesy and religious devotion, together with great respect for the individual, and in their customs which retain many of the Pitcairn ways, as in cooking, cultivation of sweet potatoes and bananas, weaving, and a reliance on self-help with the extended family as the economic support system. Australians resident in Norfolk Island are immigrants who accept Island ways.

## 5.4 Social

Canberra's population is heavily weighted towards public servants who live an urban life; Norfolk Island is a rural community which is very non-bureaucratic.

Norfolk Island has a low crime rate and a crime profile which is very different from that of Canberra.

Canberra has a relatively high rate of unemployment; there is no significant unemployment in Norfolk Island.

## 5.5 Political

Norfolk Islanders have confidence in their capacity to govern themselves well in the light of their own circumstances, are committed to self-government, and have past experience of it; in Canberra, self-government is new, untried and widely disliked.

Norfolk Island has a strong democratic tradition which relies heavily on consultation, a direct political style, and closeness between the people and the

local decision-makers; Canberra relies on indirect, party-style politics and bureaucratic government.

Norfolk Island raises much of its own revenue and is proud of having little or no public debt; Canberra is struggling to meet its fiscal needs.

Canberrans are mostly Australian citizens or, if not, permanent residents of Australia rather than Canberra; most Norfolk Islanders regard themselves pre-eminently as Norfolk citizens, not Australians, and insist that they have never been annexed by Australia.

Canberrans are highly aware of national politics and politicians and many deal with federal parliamentarians on a close and frequent basis; Norfolk Islanders have few close connections with Australian politicians or political issues.

Both the ACT and Norfolk Island have their own body of law; in the case of Norfolk Island this has now been efficiently codified, and it is distinct from that of the ACT.

Unlike the ACT, Norfolk Island has a separate immigration system, a separate welfare system (including health care), a separate postal system, a separate quarantine system, and a separate public service.

Norfolk Island has a different industrial relations law from the ACT, carefully crafted under ILO conventions to acknowledge the Island's special employment situation.

Unlike the ACT, Norfolk Island has its own authority over census and statistics, registration of companies, radio and TV, telecommunications, and movable cultural heritage objects.

Norfolk Island has a separate and distinct taxation system which emphasises customs and other non-income type taxes.

Norfolk Island has a distinctive voting system and a closer interweaving of legislative and executive functions than in any Australian legislature, including the ACT.

Unlike the ACT, Norfolk Island has an Administrator who, for some purposes, acts as the Island Head of State.

Other differences between the two communities could doubtless be listed; but we believe that the differences we have enumerated here are sufficient both in number and in significance to show beyond doubt that there does not exist between Norfolk Island and the Canberra electorate any "community of interest" greater than that between Norfolk Island and any other mainland electorate. In fact, if there is any community of interest to be found, it would more likely to be between Norfolk Island and a rural electorate in a remote area of the mainland.

In our opinion, the proposal of the Norfolk Island Government in respect of those residents of Norfolk Island who are Australian citizens and wish to vote in federal elections is much more in line with the concept of "community of interest" than the Commonwealth proposal; for it would allow voters to identify for themselves the electorate with which they felt some affinity.

Both proposals, however, assume that the only way to settle the matter of the political relationship between Norfolk Island and Australia is by means of enrolment on the Australian electoral register.



We believe that other ways are possible. To that end we wish to conclude with some observations on how similar situations have been dealt with by other nations, and to suggest possible applications of those approaches which might be of value to Australia.

## 6. Small Island Communities

There is now a small but specialised literature on small (often remote) island communities and the problem of fashioning appropriate governmental arrangements for them. Examples of works of this kind include Stanley de Smith's *Microstates and Micronesia* (New York University Press, 1970), John M. Ostheimer's edited collection *The Politics of the Western Indian Ocean Islands* (Praeger, New York, 1975), *Islands '88* (Proceedings of the Bicentennial Year Conference of Islands of the World at the University of Tasmania) and Randall Baker (ed.) *Public Administration in Small and Island States* (Kumarian Press, forthcoming). The last-named work assembles papers arising out of discussions over several years at meetings of the Small and Island States Working Group of the International Association of Schools and Institutes of Administration (IASIA, of which one of the authors of this report [Wettenhall] is currently Regional Vice-President for Australasia and the South Pacific). This and other groups (e.g. the Commonwealth Parliamentary Association) now devote much effort to the basic issue of governance of such communities, demonstrating a variety of relationships with what might be described as mentor states.

The underlying research has identified many characteristics which are shared in common by these communities and which distinguish them clearly from those metropolitan societies with which they are associated. Amongst other things, they share what the then Governor-General of Australia, Sir Ninian Stephen, described, in opening the Islands '88 Conference, as "a fundamental dilemma, one inherent in this fact of being an island, inherent in isolation". The dilemma arises essentially out of conflicting pressures to "preserve precious separateness of identity and uniqueness of culture" and to become more like (a part of?) the metropolitan societies (Conference Proceedings, Opening Address, p.3).

There is now a considerable body of knowledge about governmental arrangements in small islands with distinctive historical, cultural, social and often ethnic traditions, and a number of models of such governmental systems are available to provide insights for those seeking to solve Norfolk Island issues. If the Norfolk Island Government's own proposal remains unacceptable, it would seem appropriate to bring those models into account in discussions between the Commonwealth and Norfolk Island Governments rather than to impose a decision which is unacceptable to a large majority of Island residents.

### 6.1 Instructive cases

We have examined data\* about several such small island territories to discover what voting connections exist between them and their mentor states. It is emphasised that the cases we consider here are not ones in which full sovereignty as completely independent states has been granted. While information about these territories is still being collected, we can point to the following arrangements as being relevant to a consideration of Norfolk Island's situation:

\* We are grateful to Ian Beckett, research assistant in the Centre for Research in Public Sector Management at the University of Canberra, for assistance in gathering this information.

*United States Territories*

- American Samoa
- Guam
- Puerto Rico
- Virgin Islands

They have their own elected legislatures but do not vote in US presidential or senate elections. They do elect delegates to the US House of Representatives: these delegates ("resident commissioner" in the Puerto Rico case) can variously introduce legislation and vote in committees, but they do not vote in the House itself. In each case the territory forms a distinct electorate: it is not absorbed within a metropolitan electorate.

*French Overseas Departments and Territories*

- Departments: Guadeloupe, Martinique, French Guyana, Reunion
- Main Territories: New Caledonia, French Polynesia, Wallis and Futuna, St Pierre and Miquelon.

Residents participate in metropolitan elections and referenda, but as electorates in their own right. None is absorbed within a metropolitan electorate. The principal distinction between territories and overseas departments is that a number of the former enjoy a degree of regional autonomy with locally constituted assemblies, while the latter are considered parts of metropolitan France which just happen to be located overseas.

*Netherlands Antilles*

This group of islands in the Caribbean has autonomy under the Dutch crown, and has no involvement in metropolitan elections.

*New Zealand in the Pacific*

- Cook Islands
- Niue

Both enjoy associated statehood status with New Zealand. They have full internal self-government, with defence and external relations remaining the responsibility of the NZ government. They have their own elected legislatures, and do not participate in metropolitan elections.

*Danish Territories*

- Faroe Islands
- Greenland

Both have internal self-government, with their own elected legislatures. Each sends two representatives to the metropolitan parliament. For this purpose they form electorates in their own right: they are not absorbed within metropolitan electorates. The chronicler of Faroe history describes the Danish 1948 home rule ordinance for that territory as suggesting "a way of establishing a flexible relationship between a metropolitan power and a small dependency" (John F. West, *Faroe*, 1972, p.vi) (Though large in area, Greenland is small in population, and so merits inclusion in this group.)

### *UK Off-Shore Islands*

- Channel Islands (divided into the Bailiwicks of Guernsey and Jersey)
- Isle of Man

Each has internal self-government and elects its own legislature; they are not represented in the Westminster Parliament. The UK is responsible for external relations and defence and "certain other matters of an essentially non-local character" (Kenmode: *Devolution at Work: A Case Study of the Isle of Man*, 1979, p.2). They are not formally parts of the UK; rather their status is defined as "crown dependencies which enjoy a special relationship with the UK" (adapted from Kenmode, p.1).

### 6.2 Relevance for Norfolk Island

Three patterns of territorial-metropolitan voting links are apparent from the above data:

- (1) In the Danish and French cases, full participation in metropolitan elections, *but as electorates in their own right*.
- (2) In the US case, also as electorates in their own right: limited participation in metropolitan elections, with delegates elected to the lower house only and with limited voting rights.
- (3) In the UK, Netherlands and New Zealand cases, no such links at all.

*In none of the cases considered is an internally self-governing territory subsumed with a metropolitan electorate.*

We are convinced that the case of Norfolk Island presents many factors and considerations similar to those presented by the other small territories surveyed above, and that serious consideration should be given to these models. A strong case thus exists either for not requiring Norfolk Island to vote in metropolitan elections at all or, if that is required, for establishing it as an electorate in its own right.

The other federal context is that of the USA, and its example suggests only lower house representation, with restricted voting powers. We acknowledge that some assert that the Commonwealth Constitution prevents the fashioning of appropriate arrangements along such lines, but we point out that:

- This consideration did not prevent the fashioning of distinctive representational arrangements for the Northern Territory and the ACT in the earlier stages of their political development, which provides ample precedent for the fashioning of distinctive arrangements for Norfolk Island today.
- Unlike residents of the Australian States, Norfolk Islanders had no voice in the drafting and acceptance of the Commonwealth Constitution.
- There is strong legal opinion asserting that the Commonwealth Parliament, in legislating for the government of territories under s.122 of the Constitution, is not constrained by other sections of the Constitution.
- We are dealing with an essentially political issue which cannot be satisfactorily resolved by argument about constitutional niceties.

In pressing the view that governmental models from other island territories should be considered, we recognise that those reluctant to accept it will point to the *smallness* of Norfolk as an impediment to a solution along these lines. We acknowledge that one of

the other territories cited (Puerto Rico) has a comparatively large population. The others fall mostly in the range of 40,000 - 100,000, though the New Zealand associated states are much smaller (Cook's: about 20,000; Niue: less than 3,000). Apart from Puerto Rico, they are all small as self-governing societies go: this is an inevitable consequence of their particular character as small and mostly remote island communities. It is relevant also that Norfolk Islanders feel a particular affinity with other small Pacific communities, and that many of them are aware of the relevant governmental arrangements.

## 7. Conclusion

We have considered the nature and context of the notion of community of interest with respect to Norfolk Island and the electorate of Canberra for purposes of the Electoral Act, and we have concluded from all the evidence available to us that Norfolk Island and Canberra have very little in common except their associations with the Commonwealth Government.

In seeking to deal with the question concretely rather than as an abstract proposition, we have perhaps gone a little further than our strict terms of reference required. However, we feel that, while the issue is one of little importance to Australia as a nation, it is of vital concern to the inhabitants of Norfolk Island. At least some of those residents clearly feel that incorporation into the Canberra electorate would be the thin end of the wedge; that it would lead to more and more interference in Norfolk's way of life; and that this would both subvert the intention of the Norfolk Island Act and ultimately destroy a special and different way of life which they cherish.

We have ventured to discuss the question of the relations between other small islands and the metropolitan power, partly to illustrate that Norfolk Island is not alone in its concerns, and partly to suggest that the Commonwealth could do better than rely on the fiction of a "community of interest" between Canberra and the Island in order to satisfy its reasonable concern over the political rights of Australian citizens resident in the Island.

One thing that the survey of other islands reveals, we believe, is that Australia adopted an enlightened position when in 1979 it passed the Norfolk Island Act. Few other nations have solved similar problems in such an imaginative and creative way, and that 1979 solution is widely respected on Norfolk Island itself.

Australia has also dealt imaginatively and sympathetically with another small and remote island community: Namru. In doing so, it created one of the world's *smallest* sovereign states, and it has earned international credit and respect for that act of statesmanship.

We believe that Australia should again be prepared to show sympathy, creativity and imagination in its relations with Norfolk Island. The community of interest issue is highly relevant to this case: but it points emphatically away from the proposal to include Norfolk residents in the Canberra electorate for federal voting purposes.

Instead, we believe, it points towards *either*

- accepting the Norfolk Islands Government's proposal to allow Australian citizens resident on Norfolk to exercise an optional vote in an electorate of choice, *or*
- constituting Norfolk as a House of Representatives electorate in its own right, *this enabling the election of a Norfolk Islander*, possibly along lines that would give official representation short of full membership of the House of Representatives, *or*

- allowing Norfolk residents to concentrate on their own affairs as most of them obviously want to do, with no involvement in federal elections (i.e. maintenance of the system established under the 1979 solution).

Finally, we must assert our personal belief that Norfolk Island is a special place which deserves careful and sensitive treatment by the Commonwealth not only for the sake of the inhabitants, but in the interests of preserving for all Australians a valuable, indeed unique heritage.

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