

New rights committee is right for the job

A new **Joint Parliamentary Committee on Human Rights** is to be established to ensure that all new national laws comply with Australia's international human rights obligations.

Attorney-General, Robert McClelland said *The Human Rights (Parliamentary Scrutiny) Bill 2010* would establish the new Committee which would examine and report to Parliament on the compatibility of legislation with international human rights obligations.

Mr McClelland said the Committee would include representatives from both Houses of Parliament and have the power to initiate inquiries into Bills, existing Acts and delegated legislation, as well as conduct broader human rights inquiries.

Parliament gets new watchdog He said it could conduct public hearings when it believed it would benefit from submissions from the public or particular expertise.

"This will be the first Parliamentary Committee, at a Federal level, dedicated to human rights scrutiny," Mr McClelland said.

Under the reforms, each new Bill introduced into Parliament will be required to have a Statement of Compatibility with Australia's international human rights obligations.

"The Statements will assist in explaining the purpose and intent of legislation, to contextualise human rights considerations, and where appropriate, justify restrictions or limitations on rights in the interests of other individuals or society more generally," Mr McClelland said.

He said the Bill also introduced amendments to appoint the President of the Australian Human Rights Commission as an ex officio member of the Administrative Review Council to ensure the business of Government regarded how legislation impacted on the rights of ordinary citizens.

The Attorney-General said the Bill was a key part of Australia's Human Rights Framework which aims to enhance the understanding of, and respect for, human rights in Australia.

Mr McClelland said Australia had obligations under seven core international human rights treaties:

- *International Covenant on Civil and Political Rights;*
- *International Covenant On Economic, Social and Cultural Rights;*
- *Convention for the Elimination of All Forms of Racial Discrimination;*
- *Convention for the Elimination of Discrimination Against Women;*
- *Convention against Torture and Cruel and Inhumane and Unusual Punishment;*
- *Convention on the Rights of the Child;* and
- *Convention on the Rights of Persons with Disabilities.*

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9/06/2010



THE HON BRENDAN O'CONNOR MP

Minister for Home Affairs

01 MAR 2009

10/260, MC10/190

Ms Rachel Nebauer-Borg
PO Box 796
NORFOLK ISLAND 2899

Dear Ms Nebauer-Borg

Thank you for your letter of 14 December 2009 raising concerns about the lack of services and support for people with disabilities in the Norfolk Island community.

I sympathise with the difficulties being experienced by people with disabilities and their carers. As you know, the lack of access to many Australian Government health and welfare services is the direct result of the degree of self-government sought by and granted to the Norfolk Island community under the *Norfolk Island Act 1979* (Cth). The governance model was granted on the condition that the funds needed to sustain it would be raised by the Norfolk Island Government itself (using the powers given to it by the federal Parliament for that purpose). This placed Norfolk Island outside of the Australian taxation system and the Australian Government programs and services (including disability goods and services) which are linked to the taxation system.

Under the Norfolk Island Act, the Norfolk Island Government has legislative and executive authority for 'Public Health' and 'Child, family and social welfare' and executive authority for 'Social Security'. The Norfolk Island Government is therefore responsible for providing its own health and welfare services, and associated health and social services benefits, under Norfolk Island legislation. The equivalent Australian Government legislation (such as the *National Health Act 1953*, *Social Security Act 1991*, *Ageed Care Act 1997* etc) does not extend to Norfolk Island. This means that Norfolk Island residents are unable to access the support services available elsewhere in Australia.

The disadvantages and difficulties experienced by certain sectors of the Norfolk Island community continue to be highlighted as evidence of the need for improvement in the Territory's governance and services.

Meanwhile, I encourage you to approach the Norfolk Island Government again about the apparent inequities in services and support for the aged and people with disabilities in the community. The senior counsel you have engaged may also wish to make representations on your behalf.

The officer responsible for this matter in the Attorney-General's Department is Alison Green who can be contacted on 61 2 6141 4106.

Yours sincerely

Brendan O'Connor



THE GOVERNMENT OF NORFOLK ISLAND

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OLD MILITARY BARRACKS
KINGSTON NORFOLK ISLAND
2899 SOUTH PACIFIC

17 February 2010

Dear Rachel

I am in receipt of your letter dated 14 December 2009 and apologise for my delay in responding.

Your enquiry refers to Health and Medical Assistance (HMA) provided to certain beneficiaries of the Social Services Act 1980 (the Act). HMA is not prescribed in legislation or regulations; it is dealt with by policy and ex gratia payments. However there is the ability for the Act to be amended to provide a statutory framework for the HMA scheme and for the provision of medical and ancillary services to welfare recipients. I am nearing the end of my current term but I am prepared to begin the process of reviewing the current Act to consider such an amendment to the statutory framework and what implication such an amendment may have.

I will be forwarding a memo to the CEO, Mr George Plant, to initiate the process with the relevant section in the Administration.

In the meantime I inform you that the Administration's Social Service section has no assets e.g. geriatric equipment, instead the section, under agreements with the Norfolk Island Hospital pays the hire cost, short and long term, for specialist geriatric equipment required by those entitled to receive HMA under the Act.

I understand that currently Miss Alice Buffett OAM, uses two pieces of equipment sourced from the NI Hospital and paid for by HMA. Should Miss Buffett require the use of other equipment currently unavailable through the hospital I ask that you write to both the Director of the Hospital, Mr David McCowan, and the Social Service officer, Mrs Kim Edward, expressing your desire for a greater range of equipment to be purchased and made available that will assist the elderly in our community to maintain a greater degree to their quality of life and independence in their day to day activities.

Your request would be considered, with others, during the hospital's budget review period and if successful, in part or whole, an agreement regarding rates of hire for the equipment would need to be drawn up between the hospital and social service section prior to any equipment being made available for hire.

I would be more inclined to push for the formation of Home Care Services that would be able, through its funding, to purchase equipment. Recipients would be able to hire the equipment for a reasonable/nominal fee and when the recipient no longer required it could be stored at the N.I. Hospital, until such time as another HMA recipient required it.

I thank you for sharing your very valid concerns with me and hope that my response provides you some degree of satisfaction to resolving those concerns.

Yours sincerely,

[Handwritten signature of Vicky Jack]

Vicky Jack
Minister for the Environment,
Education & Social Welfare

04/03/10 - Spoke to Vicky Jack. Said care burden for both Aged & Disabled people will increase. Drastically into the future - ads in local paper support this. (I said the needs of an amputee for a wheelchair are immediate! Waiting for next budgetary rounds are not an option. She then said to me that NIH could provide Alice with a wheelchair (I am gobsmashed!) Alice's care team contacted Kim Edward and were told that it could not be provided, I thanked Vicky for acknowledging my letter, and my concerns.

Wanted to do this with David through Aust all grants program! letter attached.

YES!



**Australian
Human Rights
Commission**

everyone, everywhere, everyday

Our Ref: TM2025481FC

19 May 2010

Ms Rachel Nebauer-Borg
P O Box 116
NORFOLK ISLAND NSW 2899

Dear Ms Nebauer-Borg

**Your complaint on behalf of Alice Buffett against Commonwealth of Australia –
Norfolk Island Minister for Health**

I refer to your complaint on behalf of Alice Buffett against Commonwealth of Australia and Norfolk Island Minister for Health. Your complaint has been assessed as alleging disability discrimination in the provision of goods, services and facilities under the *Disability Discrimination Act 1992* (DDA) and breaches of human rights under the *Australian Human Rights Commission Act 1886* (AHRCA) in relation to the *Convention on the Rights of Persons with Disabilities* (CRPD).

I am the officer who is handling your complaint on behalf of the President of the Commission.

Request for Additional Information

The Commission seeks clarification as to the correct respondents you wish to lodge your complaint against to better enable the Commission to seek a response from the correct legal entities. In addition, could you please clarify the previous correspondence you refer to in your complaint, as you state the Commission has never responded to other matters you have sought to bring to the Commission's attention. The Commission has no record of correspondence from you.

The Commission also requests a contact telephone number in which to contact you on or if you prefer, please provide an email address to contact you.

Next steps

After I have received the information from you I will contact you to discuss the next steps in the process.

Who should you contact?

If you have any questions about your complaint, please contact Ms Tamera McManis, Investigation/Conciliation Officer, on (02) 9284 9795 or by fax on (02) 9284 9611 or by e-mail at tamera.mcmanis@humanrights.gov.au. Ms McManis is handling your complaint on behalf of the President.

Yours sincerely



Tamera McManis
Delegate of the President

30 June 2010

Dear Inquiry Members,

ADDITIONAL SUBMISSION RE. TERRITORIES LAW REFORM BILL 2010
(Second Reading – House of Representatives Monday 21 June 2010)

I would also like to put the scope of your inquiry into the wider context of current moves afoot in the area of review and reform processes with regards to Norfolk Island which are currently being addressed in the Federal sphere as I believe it brings to the fore a number of issues pertinent to the general ambit of your Inquiry, should you in fact concede that Norfolk Island is to be a part of a 'national interest' inquiry such as the one you are undertaking. I respectfully submit that while Norfolk Island does have a degree of self-government, it is also part of Australia and the Australian parliament retains ultimate responsibility for territorial matters.

In my view it is essential that all jurisdictions including Norfolk Island, comply with Australian government policy objectives and Australia's obligations under international law. I further submit that any lack of Norfolk Island's inclusion in such 'national interest' inquiries will see the Island continue to fall between the cracks in very important areas such as disability goods and services delivery. In my opinion a failure to ensure compliance with Australia-wide standards will see the Island regressively falling further away from both accepted national and international standards.

Whilst this Bill makes very significant, and some might say long overdue, changes to the governance, electoral and financial mechanisms for Norfolk Island, many of the issues and principles surrounding it are generic, and therefore provably of some interest in your considerations with regard to Norfolk Island's inclusion in your Inquiry.

This Bill makes changes in a number of significant areas including:

- It allows the Governor-General and the responsible Commonwealth minister to take a more active role in the introduction and passage of Norfolk Island legislation including provision of the Commonwealth minister to give direction in Schedule 2 [*Norfolk Island Act 1979 (Cth)*] matters and to reserve Schedule 2 matters for the Governor-General's consideration. Both Public Health and Child, Family, & Social Welfare are Schedule 2 matters. Incidentally, the need for reforms in these two highly relevant areas has already been identified in a number of Federal Government reports during the period of self-government (post-1979 to date).
- For the first time the *Territories Law Reform Bill* also proposes to allow the Commonwealth Ombudsman and the Administrative Appeals Tribunal to operate on Norfolk Island and provide for merits review of decisions made by the Norfolk Island Administration.

Much of the content of the statements made during the Second Reading of this Bill speak to a wider more generalized context and puts the Norfolk Island situation into some perspective, particularly as it relates all issues concerning Norfolk Island, including health and social welfare.

In speaking to the Bill Mr Keenan stated 'In considering the need for electoral reform, it is important to bear in mind that the Australian parliament has the overarching responsibility to protect the rights of its citizens, wherever they may live in the federation. Indeed we have an obligation to ensure that the laws in all Australian jurisdictions are consistent with national obligations and also our obligations under international law.' He went on to say that in light of the limited self-government arrangements established in 1979 'residents of Norfolk Island are not represented in the Commonwealth Parliament of Australia, making them the only group of residents of an Australian state or territory not directly represented here'. He went on to say that the opposition acknowledges that 'both the Norfolk government and the Islanders recognize, at least in principle, that there is a need for reform.'

Mr Debus in speaking to the Bill stated "It needs to be borne in mind that Norfolk Island has a population of fewer than 2,000 -- less than a single ward in most local government council in Australia. Nevertheless, the status of Norfolk Island is still sometimes contested by those who see it as a separate, culturally distinct dependency with a right to independence. That independence proposition has been argued in courts and asserted to the United Nations, but I cannot find any suggestion that that view has ever been entertained by the Australian Government or the Australian legal system. Indeed I have found instead a consistent and general level of consensus in the many reports of the Joint Standing Committee on territories over the last 30 years and in the comments of a long succession of territories ministers, both Labor and coalition. All agree that Norfolk Island is part of the Australian federation. ... Therefore, all agree that it is desirable to have some form of self-government and that it is better to modify the existing system than to withdraw self-government. However, all agree as well that the way of actually doing government has to be improved a lot'. Two court cases have clearly outlined the Island's status; *Newbery v. The Queen* in which Justice Eggleston found that in 1914 Norfolk Island became 'a Territory placed by the Crown under the authority of the Commonwealth within the meaning of Section 122 of the Constitution. Again in 1976 the High Court of Australia (*Berwick's case*) stated that the history of the Island made it 'abundantly clear that Norfolk Island forms part of the Commonwealth of Australia'".

As a pre-cursor to self-Government a Royal Commission into Matters Relating to Norfolk Island was undertaken by Justice Sir John Nimmo. Some of Justice Nimmo's recommendations were not followed, including those concerned with taxation, grant assistance arrangements and social security. Mr Debus in his address went on to say 'Those matters are difficult. They have been discussed by ministers and the joint standing committee over the subsequent years. They are, I believe, of fundamental importance. They need to be addressed, and I think that some issues on the island will never be resolved until they are.'

Mr Debus also explains the transfer of powers process which established a unique form of internal self-government found nowhere else in Australia:-

"The Norfolk Island Act was drafted to enable the Commonwealth minister responsible to carry out the checks and balances necessary to ensure that the Norfolk Island legislative proposals comply with Australian government policy objectives and Australia's national obligations under international law. The right of the Australian government to intervene is therefore an existing part of the island's system of governance. The assent processes established under that act are designed to protect the Australian government's national interests in Norfolk Island. This is particularly important precisely because the Norfolk Island government has responsibility for a range of Commonwealth type powers ... as presently drafted the act does not allow for

Commonwealth scrutiny of schedule 2 matters. The present strict designation of matters in schedules 2 and 3 does not recognize the difficulty of making an absolute determination about which particular matters may affect the national interest or of attempting to foresee what issues will be of interest to the Commonwealth in the future. The inability of the Commonwealth to intervene on Schedule 2 matters limits its ability to respond to new and emerging national policy interest or objective. For example, a number of matters presently listed in schedule 2 could easily intersect with national policy objectives including ... **item 88 Child, Family and Social Welfare.**'

I would also include Public Health, also a Schedule 2 matter, in this particular consideration as both the Island's social welfare and public health legislation provide, in my opinion, a somewhat piecemeal substitute for full and proper disability provision. Many of the powers transferred continue to not be supported by legislation or subject to inadequate legislation and the Commonwealth's ability to intervene on Schedule 2 matters remains limited to the passage of Commonwealth legislation under the overarching constitutional territories power. The *Territories Law Reform Bill* very importantly proposes to amend the *Norfolk Island Act* to extend the Commonwealth's legislative oversight of Norfolk Island legislation by providing the responsible Commonwealth minister with the power to issue instructions on Schedule 2 matters.

As Mr Debus so rightly points out "These provisions will assist the Australian government to fulfill its obligations to the community of Norfolk from a national perspective.' He goes on to recognize Norfolk's 'outsider' status 'It is an obvious fact that, since 1979, there have been quite massive changes in the way government is held to account for its performance in every Australian jurisdiction and at every level, with the singular exception of Norfolk Island. A series of measures is therefore proposed in the bill before the House to increase public accountability and transparency. Not a few of them have been recommended by various inquiries for up to 20 years. You would have to say that the Commonwealth really bears far more responsibility than the Norfolk Island government for the failure to implement them. One understands that a government as small as the Norfolk Island government cannot have the resources to easily meet the rigorous requirements of modern administration in all respects; after all, much larger local governments on the mainland routinely rely on state governments to legislate much of the provision of the machinery of accountability. Nevertheless, it is unacceptable for any Australian jurisdiction to fail to meet even the most basic standards in this respect. Credibility depends on it'.

Mr Neville spoke next to the Bill. He takes the view that 'a lot of the problems that have occurred on Norfolk Island with regard to governance have not all been the fault of the Norfolk Islanders and I think that we in Australia take a heavy share of that responsibility. I think that consultation could have been closer and perhaps we could have been more amenable to their views at earlier stages than now to have to come on with a bill of this magnitude and purpose.'

Mr Neville goes on to say that "there has been greater social development throughout the Commonwealth and, might I say, the Commonwealth of Nations, the OECD and the UN have adopted matters of respect ... and they have become enshrined in legislation throughout these groups of countries, and no less so in Australia'. The issue of properly organized formal disability care and its inclusion in properly supported legislative frameworks has certainly been a very significant part of this social change in the wider Australian context since circa the 1960s.

In terms of 'national interest' inquiries, in my opinion, it is essential that parallel laws apply throughout the Commonwealth to properly meet international obligations, albeit that they may need to make specific considerations for the jurisdiction in which they apply.

In his address Mr Gray made some valid points on the question of fundamental rights. He stated that the Island 'does not rely on Commonwealth funding; however, funding from the Commonwealth government does provide crucial assistance and support. It has to be said that in the recent past the island has been suffering financially'. He continues by saying: "It is the duty of this House to strengthen the Norfolk Island's system of government to benefit the residents. We must make sure that the Norfolk Island government is accountable to the community and residents and has access to fundamental rights As it stands today, the Norfolk Island government has an informal means of good governance and, quite frankly, it is not enough when it comes to fundamental rights and responsibilities of the Norfolk Island community.'

Mr Gray also touches on an issue pivotal to the ongoing reform process and that is the Norfolk Island's ability to implement, fund and meet the resource needs of some of the processes connected to these basic rights. It might be argued that the Norfolk Island Government could not implement the Australian models in their entirety. Mr Gray however argues that 'these reforms are essential and I am confident that any issues can be worked through appropriately by the Norfolk Island government and the Commonwealth government.'

In terms of the need for wider review and reform Ms Annette Ellis stated 'In my view, this is probably not the beginning and end of reform of governance arrangements on Norfolk Island.... I would like to think that both sides of the federal parliament could agree to implement a properly formulated reform program for Norfolk Island, one that would effectively establish the island as a jurisdiction within which Australian citizens have the same access to law, to freedom of information and to a raft of governance arrangements that we here take for granted. Those things need to be brought into line on the island.'

Mr Brendan O'Connor in summing up the debate on the Bill drew attention the Joint Standing Committees on the National Capital and External Territories inquiry into this bill tabled on 11 May. Amongst its recommendations it suggested 'that a review be undertaken of items in schedules 2 and 3 of the Norfolk Island Act'. The Government accepted these recommendations. I submit that in the very least if the matters listed under Schedule 2 associated with healthcare and social services delivery (which go towards deal in some way with disability issues on the Island) are not considered by your review processes, they very clearly will fall within the above review recommendations.

Minister O'Connor said 'The Commonwealth authority is intended to be used as a last resort if the Norfolk Island government does not undertake action to ensure its legislation is consistent with the national interests and Australia's international obligations'. Following his December 2009 visit to the Island he also stated "The Australian Government wants to ensure Norfolk Island's long-term sustainability and the effective delivery of government services to the Territory's residents'.

In closing, I hope that the above considerations might put the question of disability goods and services delivery within the context of other moves currently afoot to bring the Norfolk Island situation into line with the generally accepted rights and entitlements of other Australian citizens. The matters being addressed by the *Territories Law Reform Bill* appear to mark a significant change in the way Norfolk Island is being regarded within the Federal sphere; it looks towards a co-operative approach in bringing about positive and effective change in our community. It is my hope that such an approach can extend to disability provisions so that our disabled people can be afforded equitable or at least similar basic rights extended to other Australian citizens within the wider Australian community.

Yours ~~sincerely~~,

Rachel M. Nebauer-Borg

Please Note

1. Bolding is my own.
2. This additional submission has been prepared from House of Representatives Hansard