



**Norfolk Island  
People for Democracy**



**NORFOLK ISLAND**  
*Council of Elders*  
INASMUCH

## **NORFOLK ISLAND RESTORATION OF DEMOCRACY**

**Grievances and Objections in Relation to**  
**a) The Process & Outcomes of the Norfolk Island Governance  
Committee (NIGC)**  
**b) Unilateral Action of the Australian Government**  
**May 2025**

## Government versus Governance:

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**Government** refers to the formal institutions and systems that exercise authority over a community, country, or organization. It includes structures like executive, legislative and judicial branches that make and enforce law, manage public resources and uphold policies.

**Governance** is the broader concept of how decisions are made and implemented whether by governments, corporations, organizations or societies. It involves the processes used to guide and regulate actions ensuring accountability.

Government is the structure managing a State or Territory, while Governance is the way those systems function and interact to achieve goals.

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### Preface

This List of Grievances prepared by the Norfolk Island People for Democracy (NIPD) and the Norfolk Island Council of Elders (CoE) is a formal complaint regarding the Norfolk Island Governance Committee (NIGC) process and the Australian Government's unilateral imposed outcome of a Local Government Model for Norfolk Island to be created by Ordinance.

This document seeks to ensure that the Norfolk Island Community's position is accurately represented, and to counter possible misinterpretation in official reports and media coverage.

The evidence presented here demonstrates that whilst the Norfolk Island Governance Committee (NIGC) process has failed to meet the standards of Fair Process (Annex 1), Norfolk Islanders continue to press their fundamental right to shape their own political future. The NIGC process has systematically denied fair process to Norfolk Island Community representatives through structural and administrative controls imposed by the Australian Federal Government and its agents.

Further, Norfolk Islanders are entitled to Due Process including the ability to test governance proposals through a local referendum or other properly conducted vote. This universal right has been denied by the Australian Government against the will of the Norfolk Island community.

The NIGC was established in response to advocacy by the Norfolk Island People for Democracy and the Council of Elders. They offered to work jointly to develop a framework for a return to self-government for Norfolk Island. However, the Australian Federal Government Minister at the time structured the NIGC as a strictly advisory body devoid of any direct decision-making authority.

Norfolk Island People for Democracy (NIPD) are of the opinion that the NIGC committee was undermined by numerical and executive imbalances, heavily favouring Australian Government interests, ensuring that every NIGC outcome remained under federal control without procedural, research, or structural fairness for Norfolk Island representatives. The entire process ought to have been run by Norfolk Islanders on Island.

As a result of the NIGC process:

- Norfolk Island representatives have been unable to meaningfully contribute to decisions affecting their community.
- The removal of Norfolk Islanders' ability to exercise Due Process through a referendum has silenced the community's voice and denied democratic participation.

The community demands governance solutions which align with Norfolk Islanders stated interests and aspirations, rather than the Australian Governments imposed governance model designed solely to integrate Norfolk Island into Australia. This is deemed unalterable, as "the will of the people", expressed through mandate of the elected representatives of the NIGC. The Commonwealth imposed governance model also disregards Norfolk Island's constitutional status established in 1856.

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## **Background: Key Issues**

### **Norfolk Island's Constitutional Status & Right to Self-Determination**

Norfolk Island's constitutional status was established as a distinct and separate settlement at the time of settlement in June 1856. This status cannot be altered except by an Imperial Act, as confirmed in the 1975 legal opinion by Attorney General R.J. Ellicott Q.C. and M.H. McLelland Q.C. (Annex 2) Given its origins under Imperial authority, Norfolk Island is entitled to determine its own government, economic system, and social and cultural development, independent of Australia, New Zealand, Britain, or any other entity.

The right to self-determination—the ability of a people to freely determine their political status and pursue economic, social, and cultural development—is enshrined in the United Nations Charter (Article 1, Paragraph 2 and Article 55, Paragraph 1) and other key international legal instruments. This principle forms a cornerstone of international law, particularly in the context of decolonization (Annex 3).

Norfolk Island has petitioned the United Nations Special Committee on Decolonization to be inscribed as a Non-Self-Governing Territory under Article 73 of the UN Charter. The petition was supported by legal opinions confirming that Norfolk Island meets the criteria for listing.

[United Nations Charter – Full Text](#)

[Article 73 – UN Charter](#)

### **Formation & Purpose of the Norfolk Island Governance Committee (NIGC)**

In 2022, the Norfolk Island People for Democracy (NIPD) and Council of Elders (COE) initiated discussions with the Australian Government to pave the way for the Norfolk Island Governance Committee (NIGC). The committee was intended to address democratic deficits, resolve governance failures of the Norfolk Island Regional Council, and provide solutions following the abolition of Norfolk Island's Self-Government on 18 June 2015.

However, rather than enabling substantive discussions about restoring Norfolk Island's self-government within the NIGC, the Australian Government referred the issue to the Joint Standing Committee on the National Capital and External Territories "Restoring Democracy (JSCNET). The JSCNET, commenced on 7 February 2023, an inquiry with limited focus i.e., only on local government models and revenue sources. The committee was restricted to examining:

- Alternative approaches to property-based taxation suitable for Norfolk Island.
- The categorization of the Norfolk Island Regional Council (NIRC) as a rural council under the Local Government Act 1993 (NSW)(NI) and whether this status provides adequate funding.
- The existing governance model of the NIRC, alongside possible alternative approaches.

### **Manipulation of the Governance Process & Denial of Democratic Rights**

Despite concerns raised by JSCNET members and their recommendation to immediately restore democracy to Norfolk Island, the Australian Government deliberately weakened the consultation process. Instead of delivering meaningful reform, the Norfolk Island Governance Committee (NIGC) was established with imbalance in representation:

- Three elected Norfolk Island representatives
- Norfolk Island Administrator (employed by the Australian Government)
- One representative from the Australian Federal Government

- One representative from the Queensland Government, despite Norfolk Islanders having no voting rights or representation in Queensland

When one of the Norfolk Island representatives resigned in protest in November 2024, the committee failed to replace her in violation of NIGC's own Terms of Reference (TOR), and in failing to do so, further diminished Norfolk Island's representation. This compromised the integrity and remaining credibility of NIGC and its operations.

The NIGC process did not address the democratic rights of Norfolk Islanders. By Australian Government decree, the committee was limited to discussing local council governance, while self-government restoration was declared "out of scope"—contrary to the expressed wishes of elected Norfolk Island representatives and the broader Norfolk Island community.

### **Imposition of Local Government Against Constitutional Authority & Community Will**

Rather than adhering to JSCNCET recommendations, (Annex 4) the Australian Government unilaterally announced in November 2024 that Norfolk Island would be subjected to a new local government model—a third tier of Australian governance, despite municipal local government being a state function, not a federal one.

Since the Australian Federal Government is not authorised by the Australian Constitution to create and manage a Local Council, this imposition lacks constitutional authority. Titling the proposed Council as a "bespoke model" to avoid the truth is disingenuous. The creation of the bespoke council directly contradicts Norfolk Island community sentiment:

- Two-thirds of Norfolk Island submissions to JSC supported Self-Government, rejecting externally controlled governance models.
- The temporary NIGC operates solely in an advisory capacity, dominated by Australian Government interests, preventing Norfolk Island representatives from acting as equal negotiating partners.
- The Minister retains final decision-making power, dismissing recommendations from local NIGC representatives, allowing federal authorities to override Norfolk Island interests at every stage.
- The NIGC has overlooked the known failings of the imposed NIRC in 2016, which is the very reason the NIGC was proposed and agreed to in the first place - to resolve the misfit of an Australian local government model for governance of Norfolk Island, in place of self-government.

### **Structural Bias, Conflicts of Interest & Denial of Fair Process**

The Norfolk Island Governance Committee (NIGC) has been overrepresented by the Australian Government Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DIRD&A) and Department of Regional Development, Local Government and Territories (Territories).

Structural biases include:

- DIRD&A employees serving as committee members, with secretariat support, legal advisors, and direct Ministerial access—while local NIGC representatives were denied direct access to the Minister.
- The failure to replace the resigned Norfolk Island representative, further weakening democratic representation in violation of NIGC's own Terms of Reference.
- A conflict of interest created by Australian Government officials acting as both advisors to the Minister and committee members, allowing federal agencies to dictate outcomes.

## **Pre-Determined Governance Outcomes & Continued Denial of Self-Government**

The Joint Standing Committee Terms of Reference (TOR) were structured by the Australian Government to restrict Norfolk Island's governance discussions to local council structures and financial extraction models, ensuring a pre-determined outcome whilst appearing democratic. This was raised in the Norfolk Island Law Association submission to the JSC (Annex 5).

This deliberate limitation prevented:

- The return of self-government and democratic voting rights
- Restoration of human rights and political rights
- A referendum on Norfolk Island's governance future

The resulting local government model fails to reflect the aspirations of the Norfolk Island community and does not address the democratic deficits. Instead, it serves Australian Government interests, disregarding Norfolk Island's constitutional status established in 1856, which cannot be legally altered without Imperial authority.

# List of Grievances Concerning the NIGC Process

## 1. Pre-Determined Governance Outcome

The Norfolk Island Governance Committee (NIGC) was constrained by the Terms of Reference (TOR) of the Joint Standing Committee (JSCNCET), which restricted discussions solely to local government models. This deliberate limitation excluded the possibility of restoring Norfolk Island's democratically elected government, despite initial indications that self-government could be considered.

Instead of enabling fair and open dialogue, the TOR pre-determined the outcome to align with the Australian Government's integration agenda, preventing any meaningful exploration of alternative governance structures that reflected the wishes of Norfolk Islanders.

## 2. Lack of Electoral Mandate and Constitutional Authority for imposition of Local Government

The Norfolk Island Governance Committee (NIGC) election on 11 October 2023 did not provide a mandate for local government.

- Candidates stood on a platform of self-government, advocating for a modernized constitution, reinstatement of the Norfolk Island Act preamble, and legislative autonomy.
- Public statements, newspaper articles, social media videos, and community meetings reinforced their commitment to self-governance, not local government.
- The Norfolk Island community has rejected the local government model, recognizing its failure.
- The NIGC has no democratic legitimacy to impose local government, as Norfolk Islanders did not vote for this outcome.

The Norfolk Island Governance Committee (NIGC) outcome is ultra vires anent the Australian Constitution.

- Referenda in 1974, 1988, and 2013 attempted to amend the Constitution to mandate local government, but all failed.
- In 2010, Attorney General Robert McLelland confirmed that constitutional recognition of local government requires a referendum (Annex 7).
- "...the laws passed by the Parliament of the Commonwealth, a subordinate Parliament, must be within the limits of the delegation of powers or they are null and void". Quick and Garran (Annex 10).
- The Australian Government is acting outside its own constitutional framework by imposing local government on Norfolk Island without a referendum or legal authority.
- Local government is a state power, not a federal one. Including Norfolk Island under Australian Capital Territory jurisdiction and applying Commonwealth laws undermines its distinct constitutional status established in 1856.

## 3. Community-Driven Governance Model Disregarded

In May 2024, Norfolk Island Governance Committee (NIGC) community representatives published a community-driven policy framework for Norfolk Island governance, developed through local consultation. However, at a June 2024 Brisbane workshop, this model was set aside in favour of a hybrid model based on Queensland's local government system, presented by QLD participants.

- The Norfolk Island model was based on community consultation, while the QLD hybrid model was not, meaning it does not reflect the views of Norfolk Islanders.

- Local NIGC members were pushed along a pre-determined pathway, sidelining Norfolk Island's governance aspirations.
- The community-driven draft model was discarded, making Norfolk Island's input redundant in the process.

Norfolk Islanders have been denied the opportunity to genuinely shape their governance future.

 [Community Update on Governance Model](#)

#### **4. Unauthorized Position Taken at the Brisbane June 2024 Workshop**

The Norfolk Island Governance Committee (NIGC) agreement log from the June 2024 Brisbane workshop states that NIGC representatives agreed by consensus to the application of Commonwealth law to Norfolk Island. However, this position was never endorsed by the Norfolk Island community, nor has the community formally requested integration into Australia under full Commonwealth law.

- The consensus recorded in the agreement log contradicts the Norfolk Island community's established position, which is based on historical evidence that Norfolk Island is not part of the Commonwealth of Australia and cannot be annexed or integrated by ordinance or stealth.
- Norfolk Island NIGC representatives have stated that the agreement log did not accurately reflect their position, raising concerns about inaccurate representation of community interests.

#### **Legal Precedent & Governance Limitations**

- Attorney General R.J. Ellicott Q.C. and M.H. McLelland Q.C. (1975) affirmed that any exercise of power over Norfolk Island must solely benefit the territory and its inhabitants.
- Legislation imposed on Norfolk Island must have a direct connection to its governance, meaning extending all Australian laws to Norfolk Island does not meet this legal requirement.
- The application of Commonwealth law without community consent risks unforeseen consequences, including loss of Norfolk Island's distinct governance framework.

There are serious concerns about whether the NIGC process has been manipulated to align with Australian Government objectives, rather than reflecting the will of Norfolk Islanders.

 [NIGC Communique – June 2024 Workshop](#)

 [Senate Inquiry on Norfolk Island Governance](#)

#### **5. Lack of Transparency & Oversight**

The Norfolk Island Governance Committee (NIGC) and community members had no oversight of the cabinet paper that identified the options and recommendations put to the Minister and Australian government, before it was submitted to the Australian Federal Cabinet, raising serious concerns about transparency and accountability.

- NIGC representatives were excluded from reviewing the policy before Cabinet approval.
- The Norfolk Island community does not support the policy, yet it forms the basis of the new governance model.
- Once adopted by Cabinet, the decision cannot be re-prosecuted, making it a *fait accompli*—a predetermined outcome without community consent.



- The lack of transparency in the policy’s development and adoption undermines democratic principles, leaving Norfolk Islanders without a voice in decisions affecting their governance.

The governance process has not been conducted in good faith, it has been engineered to impose an outcome without legitimate consultation.

 [Parliamentary Inquiry into Norfolk Island Governance](#)

 [Australian Government Announcement on Norfolk Island Governance](#)

 [Norfolk Island Governance Committee Overview](#)

## **6. No Binding, Compulsory Vote as Promised**

The Joint Standing Committee on the National Capital and External Territories (JSCNCET) Restoring Democracy Report (2023) explicitly recommended that Norfolk Islanders must approve the final governance model through a binding, compulsory vote.

- No such vote has taken place, meaning Norfolk Islanders have not formally given consent to the proposed governance model.
- This JSC recommendation for due process has been bypassed and ignored by the Minister.

## **7. Imposed, Undemocratic Outcome**

The NIGC was originally intended to facilitate transparent discussions between Norfolk Island and the Australian Government, with a democratic vote or referendum determining the preferred governance model. Instead, the Australian Government unilaterally imposed an outcome without public approval—a direct violation of democratic principles.

## **8. Community Rejection of Local Government & Board Models**

The Norfolk Island community has overwhelmingly opposed both the local government and board models, as confirmed in the Norfolk Island Governance Committee (NIGC) End-of-Year Progress Report (18 October 2024).

- Community engagement from October 2023 to April 2024 consistently reflected strong opposition to these governance models.
- Despite this, the NIGC discussions have continued toward a model requiring consensus between the community and the Australian Government, raising concerns about whether community opposition is being disregarded.
- The lack of consensus highlights a disconnect between community aspirations and the governance model being pursued, reinforcing concerns about whether Norfolk Islanders have a genuine say in shaping their future governance.

The NIGC’s process has shown a lack of respect towards democratic principles, and is clearly structured to impose an outcome despite overwhelming community rejection.

 [Norfolk Island Governance Committee Overview](#)

 [Parliamentary Inquiry into Norfolk Island Governance](#)

 [Australian Government Announcement on Norfolk Island Governance](#)

## 9. Community Overwhelmingly Opposes Local Government Model

On 9 November 2024, the elected representatives of the Norfolk Island Governance Committee (NIGC)—Alma Davidson, Chelsea Evans, and Chris Magri—issued a statement rejecting the local government framework proposed by the Australian Government.

- The Minister was briefed on the June 2024 NIGC workshop outcomes, indicating that the government’s recommendations were based on:
- A local government model within an Australian local government framework.
- Responsibilities beyond local government remaining under Commonwealth control.

### NIGC Representatives’ Response

- The Norfolk Island community has overwhelmingly opposed the local government framework, citing concerns that it perpetuates the existing democratic deficit and remote administration.
- The model would retain the current inefficient legislative and service delivery framework, failing to address Norfolk Island’s governance needs.
- Despite statements made during Senate Estimates, the NIGC has not agreed to any recommendations for a governance model within the local government framework.

This rejection underscores Norfolk Islanders’ continued resistance to governance models that fail to restore democratic rights and reinforce external control.

 [Australian Government Set to Decide on Norfolk Island’s Future Governance Framework](#)

 [Norfolk Island Governance Committee Overview](#)

 [Parliamentary Inquiry into Norfolk Island Governance](#)

## 10. Failure to Restore the Norfolk Island Preamble

The Joint Standing Committee on the National Capital and External Territories (JSCNCET) Restoring Democracy Report (2023) recommended that the Norfolk Island Governance Committee (NIGC) incorporate a Preamble in the establishing legislation to define Norfolk Island’s relationship with Australia.

A Preamble serves as an introductory statement in legislation, outlining its purpose, principles, and intent.

- The Australian Government unilaterally removed the Preamble from the Norfolk Island Act (1979) in 2016, erasing formal recognition of Norfolk Island’s distinct culture and heritage.
- Norfolk Islanders were led to believe that the Preamble wording would be an outcome of the NIGC process and submitted preferred versions.
- However, Minister McBain announced that the new governance model will be created by Ordinance, not primary legislation, bypassing parliamentary scrutiny and oversight.
- This removes the opportunity to reconstitute the Preamble, preventing formal recognition of Norfolk Island’s status.

The use of Ordinance instead of legislation highlights the lack of transparency and accountability within the NIGC process, and the erosion of Norfolk Island’s distinct identity.

 [Defining Norfolk Island’s Relationship with Australia](#)

 [Community Update on Governance Model](#)

### **11. Failure to Recognize Norfolk Island's Constitutional Status**

The Norfolk Island Governance Committee (NIGC) has disregarded Norfolk Island's distinct and separate constitutional status, established by Imperial Order in Council (1856), which cannot be altered except by Imperial Act.

Under United Nations Resolution 2625, Norfolk Island remains "distinct and separate" from Australia until its people exercise their right to self-determination via a transparent referendum where the people decide—a right that has been denied throughout the NIGC process (Annex 6).

 [UN Resolution 2625](#)

### **12. Risk to Norfolk Island's UN Standing**

The NIGC does not constitute an act of self-determination, yet its imposed local government model could be misrepresented internationally as Norfolk Islanders' consent to integration.

Norfolk Island has petitioned the United Nations for recognition as a non-self-governing territory; Australia must not use the NIGC process to falsely argue compliance with UN principles. No alternative governance models have been considered, eliminating free choice for the community.

 [UN Resolution 2625](#)

### **13. NIGC: A Facade of Democratic Representation**

The Norfolk Island Governance Committee (NIGC) was established to create the appearance of democratic representation, following the removal of elected officials from the Norfolk Island Regional Council (NIRC) in 2021.

#### **Suspension & Dismissal of Norfolk Island's Elected Representatives**

- On 15 December 2020, Assistant Minister Nola Marino MP notified the NIRC of her intention to suspend the Council under Section 438K of the Local Government Act 1993 (NSW)(NI).
- On 6 December 2021, the Councillors were formally dismissed, and an election for new representatives was initiated but later cancelled, depriving Norfolk Islanders of democratic voting rights.
- Instead of reinstating elected officials, the Australian Government appointed an interim administrator, Michael Colreavy, without consultation or consent from Norfolk Islanders.
- The Australian Government stated that Colreavy "replaces the elected Mayor and Councillors" and would function independently, yet he reported directly to the Australian Government, effectively centralizing control.

#### **Contradiction in Democratic Process**

- The Australian Government refused to reinstate elected Councillors for four years yet supported the democratic election of representatives to the NIGC, an advisory-only body.
- The NIGC has now recommended a new local government model, despite the failure of the previous model and community opposition.
- This raises concerns about the fate of any future locally elected representatives—if they disagree with Australian Government policies, will they face similar dismissal?

The NIGC process has not restored democracy but instead reinforced federal control, raising serious concerns about Norfolk Island's political autonomy and future governance.

## 14. No Community Consent or Mandate for NIGC Outcome

The Norfolk Island Governance Committee (NIGC) has no democratic mandate to impose its governance outcome, as no referendum or vote has taken place to determine whether Norfolk Islanders accept integration with Australia or the proposed local government model.

- The NIGC process remains advisory-only.
- Any extension of Australian laws to Norfolk Island without a referendum constitutes forced integration, violating international legal principles.

### International Law & Self-Determination

Under United Nations decolonization principles, a territory's people must be given three options for self-determination:

1. Independence
  2. Integration
  3. Self-Government in Free Association
- No such referendum has taken place to determine the will of Norfolk Islanders or Australians regarding Norfolk Island's future.
  - The Australian Government's imposition of a local government model via the NIGC appears to be an attempt at annexation, which violates international law.

Norfolk Island's governance transition has not been conducted in good faith, it is being used as a strategic initiative to further integrate Norfolk Island into Australia, without legal or democratic legitimacy, by transferring authority to a local government entity, run locally yet still controlled by Australia.

 [Norfolk Island Governance Committee Overview](#)

 [Parliamentary Inquiry into Norfolk Island Governance](#)

 [Australian Government Announcement on Norfolk Island Governance](#)

## 15. NIGC: History Repeating Itself

The NIGC process mirrors past governance failures, repeating the 2016 imposition of a local government model following the abolition of the Norfolk Island Legislative Assembly.

- In 2015, an advisory council was handpicked by the Australian Government, leading to the forced implementation of the Norfolk Island Regional Council (NIRC).
- The NIRC model failed, prompting the need for a new governance process, yet the same approach has been followed by the NIGC, imposing another local government model.
- The new governance model does not resolve existing democratic deficits, failing to address state and federal power imbalances.
- The recommendations do not align with international standards of governance, raising concerns about whether the process was designed to restore democracy or further entrench federal control.

 [Reference Documents – Norfolk Island People for Democracy](#)

 [Parliamentary Inquiry into Norfolk Island Governance](#)

The NIGC's stated aim of restoring democracy has not been achieved, and for many Norfolk Islanders, the continued erosion of self-governance, democracy, human rights and justice appears intentional.

## Conclusion

The Norfolk Island community engaged with the Minister and the Australian Government in good faith, believing it would provide a new and genuine partnership with Australia by restoring democracy on Norfolk Island.

The Australian Government's response to this process has been to continue a flawed local government governance model. It is very clear from evidence collated in this document that the Norfolk Island community has again been denied justice via fair and honest process.

The Australian Government model declines to address democratic deficits and does not resolve the governance failures of the Norfolk Island Regional Council (NIRC) and provides no solutions following the abolition of Norfolk Island's self-government on 18 May 2015.

The Australian Government's way forward fails to resolve the governance shortcomings of the past 9 years. Deciding to implement another Australian local government model, burdened to inherit the financial burdens and administrative mistakes of the NIRC, looks like history repeating itself.

The Norfolk Island Assembly model risks the same fate as the failed NIRC because it fails to restore genuine democracy in Norfolk Island, preferencing the strategic interests of the Australian Government. Cabinet in confidence papers from 3<sup>rd</sup> February 1998 revealed that Australia's strategic interests are to deny Norfolk Island self-government (Annex 8). It is clear, the model, is not only one more step towards that strategic goal, but a gross misrepresentation of democratic process by the Australian Government.

Minister McBain and the Australian government have provided no evidence why this new model will succeed when its predecessor failed, and because of this they have been unsuccessful in getting the community on board with its outcome and public trust has been eroded.

The Norfolk Island People for Democracy and The Norfolk Island Council of Elders reject Australian government misrepresentation that the new Norfolk Island Assembly is fit for purpose or what the people of Norfolk Island want.

A new properly constituted democratic institution is essential and fundamental to the restoration of Democracy on Norfolk Island.



Ric Robinson  
**President**  
**Norfolk Island People for Democracy**



David Buffett, AM  
**President**  
**Norfolk Island Council of Elders**

## Additional Supporting Information

### 1. David Pocock – Senate estimates 4<sup>th</sup> Nov 2024

*"I just want to convey the frustration of the people of Norfolk Island. Time and time again they have trusted in the Australian Government and have been disappointed. I am just hoping that this process is not setting them up for another disappointment".*

There is substantial disappointment in the Norfolk Island community regarding the NIGC process and public trust has been eroded.

### 2. Australian Government Press Release, fact sheet on the formation of the Norfolk Island Assembly Nov 2024:

Law-making powers *"It is proposed the NI Assembly may make and enforce laws necessary or convenient for the peace, order and good government of Norfolk Island on those subject matters, ordinarily within the responsibilities of local government".*

*"In some cases, the NI Assembly may also make laws in relation to matters covered by the current body of Norfolk Island continued laws. (These are laws in operation prior to 2015 which have been continued as Commonwealth legislation under the Norfolk Island Continued Laws Ordinance 2015)".* Local government may make or enforce by-laws. *"Revocation and suspension of laws: The Australian Government Minister with responsibility for Territories may suspend or revoke a law if they reasonably believe the law is contrary to any other Norfolk Island or Commonwealth law, inconsistent with the governance principles".*

### 3. Local Government Powers:

Local government does not restore democratic governance to Norfolk Island. In Australia Local government has the power to make local laws within their jurisdiction. These laws often referred to as by-laws and must align with state and federal legislation and cannot contradict higher-level laws. Local councils use these laws to regulate matters such as public spaces, waste management, pet control, parking, and community safety. However, their legislative power is limited to areas where they have been granted authority under state legislation.

### 4. Minister McBain's Press Release 13th November 2024

**States:** *"The new model was informed by the recommendations of the Norfolk Island Governance Committee (NIGC), which followed extensive community consultation."*

The Minister cannot falsely claim the imposed local government model was informed by recommendations of the NIGC. Such a claim is blatantly untrue. The truth is that most of the aspirations of the Norfolk Island community, which were obtained from extensive consultation by Norfolk Island NGOs, were deemed by the Minister to be "out of scope" and were set aside. The majority of the Norfolk Island Community members' submissions to the JSC were in support of Self Government. It would appear the Minister has made an assertion which cannot be substantiated by the facts.

### 5. NIGC Member resignation letter

In a public letter Alma Davidson, one of the three local representatives on NIGC resigned in protest. She said she did not stand for election to NIGC to simply continue the State level disconnect which currently exists on the island. Alma Davidson said that the new local government model will be created by Ordinance *"with the new Council to operate under an Ordinance based on the Queensland Local Government Act"*. And *"Instead of establishing a new Norfolk Island Act, which was central to the NIGC's recommendations, the Government has opted to implement its changes via an ordinance due to timing requirements"*. Alma Davidson stated that critical issues raised by the community have

been dismissed as “out of scope” by the Minister, *“these include direct populations controls, reassessment of Commonwealth laws that negatively impact the island, and local control over Crown land. Other matters have been deferred for future discussion between the new governing body of the Australian Government”*.

## **6. NIGC Not Filling Vacancy**

The Norfolk Island Governance Committee TOR states *“If a NIGC member can no longer fulfil their duty on the NIGC, that member may resign by writing to the Chair of the NIGC stating their resignation. In the event of a resignation, the remaining NIGC members will identify a suitable process to fill that vacancy at the time the vacancy arises”*. Following the resignation of Alma Davidson from NIGC in November 2024, the vacancy for the third representative has not been filled. The NIGC has not followed its own Terms of Reference, reducing community representation.

## **7. Suspicion that NIGC process is being used to deny Norfolk Island self-determination**

To avoid the risk that Norfolk Island might be viewed by the Trusteeship Council of the United Nations as being a non-self-governing, dependent colonial territory administered by a national government so as to be a mandated territory requiring decolonization, and movement toward autonomy or independent self-government of some kind, it is suspected that a policy decision of some kind may have been taken in Canberra to implement a system of local government for Norfolk Island, (the decisions and operation of which could be controlled and overridden by the federal government as needed) with the result that the Australian government might easily argue to the UN that Norfolk Island was not “non-self-governing” as a matter of strict international law.

## **8. Questionable Heads of Power**

In the case of Norfolk Island, the Federal Minister for Local Government and the Territories exercises the role of the state government Minister for Local Government. As all Commonwealth law must have a traceable power back to the Commonwealth Constitution 1900, the Minister must point to the enumerated head of power that empowers the Parliament to write laws for the establishment and continuation of local government within the Commonwealth including Norfolk Island (Annex 9). It appears that there is none. Equally where does the Minister derive the power from to enable the laws of a State (Local Government Act NSW and QLD) to be applied to an external territory, Norfolk Island, beyond the State geographical regional powers as provided and limited within section 5 of the NSW State Constitution and section 2 of the Queensland State Constitution 1867.

One may additionally ask: Where is the enumerated head of power in the Commonwealth of Australia constitution that empowers the Parliament to write laws creating a Minister for Local Government within the Commonwealth, if no head of power exists in the Constitution for the valid creation of a system of local government. A letter from the Attorney General in 2010 confirms that local government has not received constitutional recognition.

## **9. Norfolk Island: Model for a neo-colonial Oceanian dystopia?**

Quote from Lorenz Gonschor Senior Lecturer in Politics and International Affairs. University of the South Pacific:

*“In 2015 Australia unilaterally abolished Norfolk Island's partially autonomous territorial government and restored an authoritarian colonial system of administration on the island, even though a two-thirds majority of the islanders had previously rejected any such moves in a plebiscite. This unprecedented recolonization of an island territory by its administrative power without the territory's consent not only goes against the trend towards decolonization or at least granting of self-governance of the past six decades, but also blatantly violates the principle of democracy. Yet the international community, including Pacific Island governments that have normally been vocal on decolonisation matters in the region, have remained remarkably silent on this issue. Recently,*



*however, the Norfolk Island community has gained the support of the key international decolonisation experts and initiated a process that may lead to inscription on the UN list of non-self-governing territories. At the same time, the release of an internal memorandum has exposed very disconcerting motivations for the takeover, aiming at the suppression of the islander's indigenous identity. Even more disturbing is a recent blog post by a former Australian prime minister, who identified the current colonial regime on Norfolk Island as a **blueprint** for the takeover of independent Pacific Island states by Australia in the future. Contrary to some recent trends towards accelerated decolonisation in the region, Norfolk Island hence offers a contrasting, dystopian model of neo-colonialism that deserves to be watched closely."*

## **10. Questionable Media Spin**

**Minister McBain's end of Year Message 2024 stated:** *"This year has seen a number of significant milestones reached, where decisions have been made and a **blueprint** for the years ahead designed. The biggest achievement is the new bespoke local governance model for Norfolk Island – the design of which reflected feedback from the community".*

The rhetoric in the media from the Minister for Local Government and Territories departs from the truth and misrepresents the NIGC process. The design of the bespoke local government model for Norfolk Island does not reflect feedback from the community. The majority of the community rejected the local government model, whilst the community-driven draft model was set aside at the June 2024 workshops in Brisbane. The Norfolk Island local NIGC reps did not have oversight of the local government model or policy sent to Cabinet.

## Annex 1

### Fair Process in Governance

Fair process in governance refers to the principles and mechanisms that ensure transparent, participatory, and accountable decision-making. It is essential for maintaining legitimacy, trust, and cooperation within a governing system. Key elements of fair process in governance include:

1. Consistency – Decisions should be applied uniformly and fairly across all individuals and situations.
2. Transparency – Clear communication of rules, procedures, and rationales behind decisions.
3. Participation – Involving stakeholders in the decision-making process, ensuring their voices are heard.
4. Accountability – Holding decision-makers responsible for their actions and ensuring mechanisms for review.
5. Adaptability – The ability to adjust governance processes based on new evidence or changing circumstances.

Fair process is particularly relevant in governance structures where public trust and legitimacy are crucial, such as in democratic institutions, corporate boards, and territorial administration.

## Annex 2

### 1) 1975 legal opinion by Attorney General R.J. Ellicott Q.C. and M.H. McLelland Q.C.

*“Accordingly, in our opinion the status of Norfolk Island as “a distinct and separate settlement” thus effected by the 1856 Order in Council under the authority of the 1855 Act was not capable of being altered otherwise than by or pursuant to some other Imperial Act”.*

**2) The Australia Act 1986 (Au)** states no Act of Parliament of the UK shall be extended to any Australian State or Territory. Even if a British Act of parliament was passed, it would not apply to an Australian Territory. Norfolk Island is not mentioned in the Australia Act 1986. The Act states:

*“Be it therefore enacted by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia as follows:*

#### **Termination of power of Parliament of United Kingdom to legislate for Australia.**

*No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the Commonwealth, to a State or to a Territory as part of the law of the Commonwealth, of the State or of the Territory.”*

### Annex 3

The right to self-determination is enshrined in key international legal instruments:

1. **United Nations Charter (1945) – Article 1(2)**  
*"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."*
2. **International Covenant on Civil and Political Rights (ICCPR) – Article 1(1)**  
*"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."*
3. **International Covenant on Economic, Social and Cultural Rights (ICESCR) – Article 1(1)**  
*(Same wording as ICCPR, affirming the right to self-determination.)*
4. **UN General Assembly Resolution 1514 (1960) – Declaration on the Granting of Independence to Colonial Countries and Peoples**  
*"All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."*
5. **UN General Assembly Resolution 2625 (1970) – Declaration on Principles of International Law**  
*"Every State has the duty to respect this right in accordance with the provisions of the Charter."*

### Annex 4

#### JSCNET Terms of Reference and Recommendations

The Joint Standing Committee will inquire into and report on equitable revenue sources to support the economic viability of the Norfolk Island Regional Council and the operation and governance of local government, with specific reference to:

- a) alternative approaches to property-based taxation revenue collection ('land rates') that are appropriate and equitable for the Norfolk Island community;
- b) whether the categorisation of the Norfolk Island Regional Council as a 'Rural Council', for the purposes of the *Local Government Act 1993 (NSW)(NI)* results in an appropriate quantum of funding given the geographic remoteness and population density of Norfolk Island;
- c) the impact of limiting access to state-partner grants on the financial sustainability of the Norfolk Island Regional Council;
- d) the relationship between property-based taxation and the delivery of commensurate local government services;
- e) the resilience and sustainability of current and alternative revenue approaches, noting the impact of COVID-19 on Norfolk Island's economy;
- f) the current governance model that supports the Norfolk Island Regional Council under the *Local Government Act 1993 (NSW)(NI)*;
- g) alternative approaches to local government and local representation utilised across Australia;
- h) whether alternative approaches sustainably achieve the key outcomes of local government;
- i) whether alternative approaches equitably increase local representation and decision-making; and
- j) whether alternative approaches would appropriately support the additional functions the Norfolk Island Regional Council provide on behalf of the Commonwealth.

## **JSCNET Recommendations:**

### **Recommendation 1**

6.112 The Committee recommends that the Norfolk Island Governance Committee incorporate into its terms of reference consideration of the development of a preamble for the establishing legislation that:

recognises the culture, traditions, heritage and history of Norfolk Island;

defines the nature of the relationship between Norfolk Island and Australia; and

sets out the shared aspirations for the future direction of the relationship.

### **Recommendation 2**

6.121 The Committee recommends a new bespoke model of local governance for Norfolk Island, to be enacted through Commonwealth legislation after thorough community consultation to define some key aspects of the model.

### **Recommendation 3**

6.127 The Committee recommends that the new governing body include both democratically elected and appointed members with specific expertise in public administration, and that:

the governing body consist of at least six members;

a majority of members be elected, with elected members holding the balance of power on the body;

the appointed positions be reserved for individuals with expertise in relevant matters of public administration, selected via a merit-based process that preferences qualified local community members where possible; and

capacity building be a key responsibility of the governing body to ensure that more Norfolk Islanders are qualified to hold future governance positions either in the governing body or local administration, and in the procurement of goods and services by the administration.

### **Recommendation 4**

6.132 The Committee recommends that the Norfolk Island community have a say in the governing body, including that:

the recommendations contained in this report be referred to the Norfolk Island Governance Committee for further consultation and refinement;

this consultation and refinement result in a model that includes a clearly defined preamble for the establishing legislation, the size of the governing body, the specific expertise required by this governing body, and the revenue models to be incorporated into the establishing legislation; and

a binding, compulsory vote of registered voters on Norfolk Island is required to approve the final model determined by the Norfolk Island Governance Committee.

### **Recommendation 5**

6.134 The Committee recommends that the first elections for the new governing body should be held prior to December 2024.

### **Recommendation 6**

6.138 The Committee recommends that the governing body be adaptive and supportive of the unique local history and identity of Norfolk Island, and that:

the new Commonwealth legislation contain the form of the preamble developed by the Norfolk Island Governance Committee; and

the legislation contain provisions for periodic review to ensure that the governing body is adaptable and can meet the future needs and interests of both Norfolk Island and Australia.

### **Recommendation 7**

6.145 The Committee recommends that the responsibilities of the new governing body and the mechanism for local input into Commonwealth and State responsibilities be clearly defined following the restoration of local democracy on Norfolk Island, including that:

to ensure Commonwealth and State services meet local needs—the governing body should have a formal advisory role in relation to education, health, population strategy, heritage management, biosecurity, sea-freight and tourism;

the management of key historical sites of cultural importance to the local community be subject to joint management between the Commonwealth and the local community; and

these matters be incorporated into the terms of reference of the Norfolk Island Governance Committee for further local consultation and refinement.

## Annex 5

**Norfolk Island Law Association (NILA) Inc submission to the JSCNET 24, March 2023** wrote:

*TERMS OF REFERENCE – TOR: “It is regrettable that little or no effort appears to have been made by the TOR drafting team of the Department of Infrastructure to provide the widest possible scope for the Joint Standing Committee to assess what other forms of governance for Norfolk Island may be better suited to the return of democratic voting rights and the democratic self-determination human rights to the people of the remote South Pacific community of Norfolk Island.*

*In effect, the legal profession of Norfolk Island through the NILA expresses significant concern that the objective of the drafting team seems to have been to limit or restrict the power of the JSCNET to only considering a continuation of local government/local council style governance to the exclusion of all other options and models for the governance of the territory and*

*To the extent that the present TOR purport to restrict the JSCNET inquiry to a particular outcome or result, there is a serious concern that the TOR are seeking to limit the power of the Australian parliament to properly and fully explore all options for governance of Norfolk Island into the future as times and technology change”.*

*“Other options for governance seemingly currently and deliberately excluded by government officials from the TOR to be considered by the JSCNET, seem to be as follows:*

*Territory level full self-governance – i.e. return to locally elected territory level governance having regard to the current continuation of territory level governments for the internal territories of Australia such as to discriminate against the external territories” ....*

Link:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/National\\_Capital\\_and\\_External\\_Territories/LocalgovernanceNorfolk/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Capital_and_External_Territories/LocalgovernanceNorfolk/Submissions)

The Norfolk Island Law Association submission to the JSCNET at the above link, details nine other options for governance deliberately excluded by government officials from the TOR for consideration by the JSCNET

## Annex 6

1. **United Nations resolution 2625:** *“The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State*

*administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right to self-determination in accordance with the Charter, and particularly its purposes and principles"*

Link [https://treaties.un.org/doc/source/docs/A\\_RES\\_2625-Eng.pdf](https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf)

## Annex 7

Letter from the Attorney General Hon Robert McClelland 8<sup>th</sup> July 2010 – the constitution does not recognise local government. Any change to the constitution would need approval from voters at referendum.



ATTORNEY-GENERAL  
THE HON ROBERT McCLELLAND MP

10/6264, MC10/8705

08 JUL 2010

Brunswick Heads  
NSW 2483

Dear Mr Thompson

I refer to your letter received on 10 June 2010 regarding the 1988 referendum.

In 1988, four proposals to amend the Constitution were put to voters in accordance with section 128 of the Constitution. One of those proposals sought to give constitutional recognition to local government but the proposal was not carried.

The Constitution does not currently recognise local government. Any change to the Constitution to recognise local government would need to be approved by voters at a referendum. The Government will continue to explore reform, including constitutional recognition, to facilitate cooperation with local government.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Rob McClelland'.

Robert McClelland

Parliament House, Canberra ACT 2600 • Telephone (02) 6277 7300 • Fax (02) 6273 4102 [www.ag.gov.au](http://www.ag.gov.au)

## Annex 8

**Cabinet in Confidence papers 3<sup>rd</sup> February 1998 - revealing Australia's Strategic Interests in Norfolk Island**

The islands constitutional status and right to self-determination have been raised in several forums recently.

The island is significantly important to Australia's national interests. In the national security and regional Defence contexts, the island has obvious strategic significance. It is conveniently situated Australian sovereign territory deep within Australia's sphere of influence in the Pacific. It has also shown utility for Australian Defence Force special operations particularly as a forward support base as it did in the 1987 Fiji coup de' ta, and as a support base for patrol boats and coast watch aircraft conducting surveillance of Australia's Exclusive Economic Zone (EEZ). The Island generates its own EEZ for Australia as well as significantly Australia increasing Australia's Legal Continental Shelf .... These areas include fisheries and potential oil/mineral resources. Moreover, the rich convict history and heritage of the island is an important part of Australia's national heritage and culture.

The options for future governance of the territory are as follows:

Independence - this would be contrary to Australia's interests ...

Free Association (like the Cook Islands and Niue have with NZ) – like (a), this also does not protect Australia's national interests, would be costly and would merely place the island in a more vulnerable position for exploitation by outside commercial and other interests.

Incorporation into NSW (like Lord Howe Island) – this would possibly be the most sensible option in the longer term but is practically and politically very difficult to pursue given that the territory has enjoyed self-government for nearly 20 years. In any event it would require the support of the NSW Parliament and the majority of NSW electors, both of which would be problematic in the face of strong resistance which could be expected from the island.

Status Quo [limited self-government] - this is not recommended as Norfolk Island will continue to provide opportunities for independence claims.

Retain as a Territory but remove major anomalies (essentially like NT and ACT) ....

## Annex 9

**Quick and Garran page 385 at 52 on the powers of the Federal Parliament.**

*"The powers of the Federal Parliament can only be found by searching through the federal constitutional instrument. It has no scrap or particle of authority except such as can be discovered or inferred somewhere within the document".*

## Sovereignty

### *Sovereignty lies within the people of Norfolk Island.*

- That is why her Majesty gave the Governor of Norfolk Island, in 1856, the Royal Seal of Norfolk Island. Also, why Her Majesty did not reserve the right to change the **“distinct and separate settlement”** part of her Order in Council of 1856.
- On 5th December 1856 a warrant giving Norfolk Island a seal of Crown in Right of Norfolk Island was delivered to the Governor of Norfolk Island. In the Ellicott and McClelland Opinion of 1975; “Norfolk Island is, in effect a Crown Colony of Australia. The Crown in Right of the United Kingdom has no surviving powers emanating from Section 5 of the 1855 Act.”
- In 1973 the Government of the Commonwealth of Australia enacted the “Statute Law Revision Act 1973” which amended various Acts of the Commonwealth Government that extended to the Dependent Territories. It omitted phrases such as “Territories not forming part of the Commonwealth” and inserted “external Territories” instead. (“Federal Jurisdiction in Australia.” Cowen and Zines, 1978 Oxford University Press at page 146).
- The Australian “Fisheries Management Act 1991 - “Australian Fishing Zone means (b) the waters adjacent to each external Territory within the outer limits of the exclusive economic zone.6. Act binds the Crown. (1) This Act binds the Crown in Right of the Commonwealth, of each of the States, The Australian Capital Territory, of the Northern Territory and of Norfolk Island”.
- The “Native Title Act 110 of 1993” states: This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of Norfolk Island.”
- On 17th December 2020 the Commonwealth Parliament passed the ‘Territories Legislation Amendment Bill,’ to become Act number 154, 2020. It was an omnibus bill which included - “to remove outdated references to ‘the Crown in Right of Norfolk Island.”
- In a legal opinion from R.J. Ellicott QC (former Commonwealth Attorney General) and M.H. McLelland QC. 1975 it states; “Norfolk Island is a ‘distinct and separate settlement’, and its status as such cannot be altered. This is relevant in a political sense because it recognises that the Parliament’s relationship to it is that of a sovereign exercising power over territory committed to its government but not as part of its territory. The distinction we have drawn is very relevant to any enquiry into what should be the Constitutional relationship between the Commonwealth and Norfolk Island. It is also of considerable relevance in considering the application of Article 73 of the United Nations Charter.”
- Halsbury’s Laws of England, 2nd Ed, Vol.11 @page 113 states; “but the imperial Orders in Council under Imperial legislation cannot be overridden by a Commonwealth Act.”
- According to Quick and Garran “The annotated Constitution of the Commonwealth of Australia” Page 346 at 33; “...but the laws passed by the Parliament of the Commonwealth, a subordinate Parliament, must be within the limits of the delegation of powers or they will be null and void. To be valid and binding they must be within the domain of jurisdiction **mapped out and delimited in express terms, or by necessary implication, in the Constitution itself. What is not so granted to the Parliament of the Commonwealth is denied to it.**”



- Quick and Garran Page 385 at 52 ***“The power of the Federal Parliament can only be found by searching through the federal constitutional instrument. It has no scrap or particle of authority except such as can be discovered or inferred somewhere within the document.”***
- Section 122 of the Australian Constitution; *“The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority to and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of Parliament to the extent and on the terms which it thinks fit.”*
- This is often referred to as a “Plenary Power” According to Butterworths Australian Legal Dictionary, the definition of plenary power is “Unlimited legislative power. The power of the Commonwealth to legislate with the respect to the ‘peace, order, and good government of the Commonwealth is, ‘subject to the Commonwealth Constitution’.
- Section 122 does not say that the Commonwealth can claim our EEZ as theirs. It does not say that the Commonwealth Parliament can make laws for a municipal council of a territory placed under their authority.
- In the *“Opinions of the Attorney General 1901-1914, Vol 1, at page 440, at 346 in 1909, the Premier of NSW wrote to the Attorney General: “It may be further noted that the section referred to empower the Parliament to make laws for the government of a territory, but I do not find any authority in the Constitution for the Governor-General legislating through the medium of ordinances.”*
- In 1857 Governor Denison (then Governor of Norfolk Island) rewrote the laws and regulations of Norfolk Island in keeping with the Royal Instructions. This act constituted a legislature and system of Government for the Island.
- According to *Halsbury’s Laws of England* (3rd Edition at 1202): *Limitations on the power of the Crown. The Crown has, however, no power to amend the constitutions of settled colonies which had a legislature before the British Settlements Act 1887.....”*
- **Here is a list of United Nations agreements, treaties and obligations that the Commonwealth of Australia have signed in relation to non-self-governing territories but have chosen to ignore:**  
Article 73 of the United Nations Charter,  
Article 2 of the Universal Declaration of Human Rights,  
Resolution 1514 (XV) of the U.N. General Assembly,  
Resolution 1541 (XV) of the U.N. General Assembly,  
Article 1. Of the International Covenant on Civil and Political Rights,  
Article 1. Of the International Covenant on Economic, Social and Cultural Rights.