

## The Adequacy of Services

- 4.1 As explained in Chapter One the policy position of both the Norfolk Island and Federal Governments to date has been that the provision of and funding for services and infrastructure on Norfolk Island are primarily matters for the Norfolk Island Government. As also explained, it is this policy choice by both Governments which underlies the Norfolk Island community's exclusion to date from federal services, programmes and funding. Some of the consequences for Island residents of this policy position or choice have been identified by the Commonwealth Grants Commission's 1997 report and also more recently in the Committee's reports on the Island's public health system and governance structure.<sup>1</sup> These reports canvassed the broader aspects of whether services and infrastructure are being provided to the Norfolk Island community at an appropriate standard. Nevertheless, there were some specific matters of concern raised by residents during the gathering of evidence in this inquiry which are of significance and are therefore discussed in this chapter. These include the state of the Norfolk Island hospital and public health system, access to vocational education and training (VET) and legal aid.

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1 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra. Joint Standing Committee on the National Capital and External Territories, 2001, *In the Pink or in the Red?: Health Services on Norfolk Island*; and 2002, Canprint, Canberra. See Joint Standing Committee on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra.

## The Norfolk Island Hospital and Health System

- 4.2 On the mainland, health is a State responsibility and the States organise and deliver public health and hospital services, although the Federal Government makes large specific purpose payments to support health services. The Federal Government also makes considerable contributions to the health expenditure of individuals through medical and pharmaceutical benefit payments.<sup>2</sup>
- 4.3 The Norfolk Island Government is responsible for the delivery of public health and hospital services and programmes on Norfolk Island and for the funding of such services and programmes.<sup>3</sup> For the reasons outlined above and in Chapter One, federal legislation and funding relating to health and hospital matters do not extend to Norfolk Island.
- 4.4 The Committee notes, however, the Federal Government recently agreed to include the Island community in the Federal Government's national medical indemnity insurance guarantee and thereby, in effect, to partially subsidise the Territory Government's operation of Norfolk Island's hospital. The guarantee was a national response to the crisis in the medical indemnity insurance market and underpins policies issued by medical indemnity insurance providers to doctors and medical specialists, including those on Norfolk Island. One consequence of the Federal Government not including Norfolk Island in the national guarantee would have been that visiting medical practitioners and specialists would not have had medical indemnity insurance coverage for services they provided on Norfolk Island. The Committee understands that, despite requests from Territory health managers, medical indemnity insurance providers declined to cover the visiting medical specialists without the extension of the guarantee and, moreover, that the lack of insurance cover would have in effect prevented the medical specialists from practising on-Island. This would have had grave and costly consequences for the Island's health system and for the Island community.
- 4.5 In light of representations received from Island residents and medical and nursing staff, the Committee has had concerns about health services on Norfolk Island for some time and reported on these

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2 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, p. 83.

3 Joint Standing Committee on the National Capital and External Territories, July 2001, *In the Pink or in the Red? Health Services on Norfolk Island*, Canprint, Canberra, p. 5.

concerns as recently as 2001 in its report, *In the pink or in the red? Health Services on Norfolk Island*. In that report the Committee made 36 recommendations which were aimed at improving health services on the Island to levels comparable with those provided for other Australian residents.<sup>4</sup> The Federal Government has not yet responded to the report. The Committee does not intend to revisit all the matters covered in that report, but it remains particularly concerned about the state of the only health facility on the island, the Norfolk Island Hospital.

- 4.6 Nearly all health services on Norfolk Island are delivered through the hospital, a 24-bed facility which includes a dental clinic and prescription dispensary. A detailed description of the hospital, its administration and organisation and the services it provides may be found in Chapter Two of *In the Pink or in the Red? Health Services on Norfolk Island*. The Committee observed that there was a patent need for a new hospital. Its inspection of the hospital two years on has confirmed that observation.
- 4.7 As well as the Committee's report there have been two other recent inquiries into the Norfolk Island hospital. The reports from these inquiries have identified a number of concerns raised by Island residents including the cost of medivacs to the hospital, the replacement of equipment, increasing budgetary needs and capital equipment needs. The inquiries have also alluded to benchmarking with other organisations of the same size in Australia and moving to accreditation processes for standards of care and quality.<sup>5</sup>
- 4.8 However, the Committee has learnt that despite the findings of these recent inquiries, the situation has not changed.<sup>6</sup> There has been no dedicated and ongoing capital replacement programmes, additional funding, or forward budgeting. According to the acting Director of the Hospital, Mr David McCowan, in order to implement the recommendations handed down in these inquiries, the hospital

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4 Joint Standing Committee on the National Capital and External Territories, July 2001, *In the Pink or in the Red? Health Services on Norfolk Island*, Canprint, Canberra.

5 Mr David McCowan, Transcript, 18 February 2003, p. 26.

6 For example, one instance of the problems brought to the Committee's attention by residents is the advice by the acting Director of the Hospital, Mr David McCowan, that "we have several pieces of equipment that have broken down requiring emergency replacement. These include Diathermy machines that broke down during an operating theatre case, the mobile x-ray unit and the standing X-ray Bucky, Blood Red Cell Washer and the Biochemistry Analyser." (*emphasis added*) McCowan, Submissions, p. 669.

“would need significant funding, which is very difficult in the current climate”.<sup>7</sup>

- 4.9 Mrs Sheila Grimshaw, a member of the Norfolk Island Hospital Board, but giving evidence in a private capacity, considered that a new facility is needed. She stated that:

If part of the brief is that all Australians should receive the same standard of health service no matter where they reside, the Commonwealth should give considerable thought to the funding of this project.<sup>8</sup>

- 4.10 Mr McCowan noted that a recent review of the Norfolk Island Hospital Enterprise commissioned by the Territory Government Minister responsible for health estimated that complete replacement of the hospital with a multi-purpose centre, similar to those in many other rural and isolated areas of Australia, would cost approximately \$15 million. It is also clear the hospital’s needs extend beyond the provision of new buildings alone, but also to the replacement of crucial plant and equipment and maintenance of the latter on an ongoing basis.<sup>9</sup>

- 4.11 The Norfolk Island Minister for Finance stated, when commenting in the wider context of the island’s infrastructure needs, that the hospital buildings are still proving adequate for the task.<sup>10</sup> While this may be correct, the Norfolk Island Government’s own *Focus 2002* report identified a hospital upgrade or replacement as one of the major expenses that the Administration needs to plan for over the next ten years.<sup>11</sup>

- 4.12 Replacement of the hospital - and key plant and equipment - is becoming increasingly urgent, particularly given the time that it will take to construct a new facility. In its previous, comprehensive report on health services on Norfolk Island, the Committee recommended as follows:

That the Norfolk Island Government should examine funding options for a new multi-purpose health facility, taking into consideration a range of options including borrowing

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7 Mr David McCowan, Transcript, 18 February 2003, p. 26.

8 Mrs Sheila Grimshaw, Transcript, 19 February 2003, p. 54.

9 Mr David McCowan, Transcript, 18 February 2003, p. 29.

10 Mr Graeme Donaldson, Minister for Finance, Norfolk Island Government, Submissions, p. 521.

11 Norfolk Island Government, *Focus 2002*, p. 23.

(possibly through a low-interest Commonwealth loan), raising new taxes, attracting private investment and applying for a Commonwealth grant for part-funding.<sup>12</sup>

- 4.13 The \$15 million required for a multi-purpose health facility is obviously well beyond the current resources of the Norfolk Island Government. The Committee is aware that the Territory Government has sought - and is committed to repaying - a number of interest-free loans from the Federal Government, the most recent being for a runway upgrade. The Norfolk Island Government, therefore, may have difficulty servicing new borrowings at this time.
- 4.14 As for raising additional revenue on-island, the capacity of a small community to fund major infrastructure will remain limited. The Committee is aware that the Norfolk Island Government has embarked upon a review to identify alternate sources of revenue.<sup>13</sup> However, as noted in the Committee's first report, the history of previous attempts at financial reform on-Island, the independent findings as to the Territory Government's lack of administrative capacity and the fact that political opposition and criticism to additional revenue proposals is already evident on-Island all cast doubt on whether the review will move from rhetoric to reality.<sup>14</sup> In any event, there is no realistic prospect that increased revenue raising alone - even if immediately introduced by the Norfolk Island Government - will pay for the new facility in the required time frame. In this context the Committee notes that the Norfolk Island Government's *Focus 2002* review recommended that the Island's hospital fees and charges be increased, but this is intended to fund the cost of continuing to run the Hospital as is - not the required replacement of buildings and ongoing replacement and upgrading of medical equipment.
- 4.15 In summary, the Federal Government and perhaps the private sector are the only realistic sources of significant levels of finance. As addressed in the Committee's Norfolk Island governance report, the inability of the Island government to administer sufficient funds in

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12 Joint Standing Committee on the National Capital and External Territories, July 2001, *In the Pink or in the Red? Health Services on Norfolk Island*, Canprint, Canberra, p. 79.

13 See *Discussion Paper: Taxation Options for Norfolk Island* prepared by the Commonwealth Treasury at the request of the Norfolk Island Government. Located at: <http://www.aph.gov.au/house/committee/ncet/NorfolkGovPart2/subs.htm>

14 See Joint Standing Committee on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra, p. 19. See also footnote 16 in Chapter One of this report.

this area illustrates the necessity for federal assistance.<sup>15</sup> As also explained in the Committee's earlier reports on health and governance, federal assistance in this area is also warranted given the Federal Government's role and responsibilities towards the Norfolk Island community and also its national responsibilities for Australians no matter where they live in the Australian federation. The Committee therefore recommends:

### **Recommendation 17**

- 4.16 That the Federal Government, as a matter of urgency, provide funding for the construction and equipping of a multi-purpose health facility on Norfolk Island.**

## **Mammograms**

- 4.17 There is currently no mammography screening on Norfolk Island. There are no facilities available on the Island and residents, even if they travel to the mainland, are not eligible for the free screening provided by BreastScreen Australia, which on the mainland is a joint Federal, State and Territory public health program.<sup>16</sup>
- 4.18 An attempt was made to locate a breast cancer screening unit on the island. One witness stated that there were impediments to the success of this venture, including the transportation of the machines because of their size and the need for a trained, competent reader of the images. The witness considered that if these obstacles could be overcome, a visit by a breast screening unit to the Island every two years would be beneficial.<sup>17</sup> The Norfolk Island Government and NSW Health signed a Memorandum of Understanding in December 1996 to provide breast cancer screening services to the women of Norfolk Island, but:

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15 See Joint Standing Committee on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra, pp. 71-74.

16 Department of Health and Ageing, Submissions, p. 730. The BreastScreen Australia applies to women aged 50-69 years only. See the following websites:  
<http://www.health.gov.au/pcd/campaigns/breastsc/index.htm>  
<http://www.breastscreen.info.au/index.htm>

17 Mrs S Grimshaw, Transcript, 19 February 2003, p. 56.

prior to the implementation of the service the Norfolk Island Government decided not to allocate funding for this purpose and withdrew from the agreement.<sup>18</sup>

- 4.19 Island residents, especially in this case the women of Norfolk Island are, yet again, disadvantaged by the current governmental arrangements for the Island and the policy positions of the Federal and Territory Governments which underlie those arrangements. The problems Island residents face in attempting to access basic services enjoyed by all other Australians as a result of current Federal and Norfolk Island Government policies has been addressed in the Committee's report on governance. Nonetheless, given the existing need, the Committee recommends:

### **Recommendation 18**

- 4.20 **That the Federal Government, as a matter of urgency, take action to ensure that women on Norfolk Island have access to an effective breast screening program, and that BreastScreen Australia review the provision of this service to Norfolk Island.**

## **Vocational Education and Training**

- 4.21 Education on Norfolk Island – including Vocational Education and Training (VET) - is the responsibility of the Norfolk Island Government and is funded by that Government. In accordance with a Memorandum of Understanding with the Commonwealth Government, the Norfolk Government purchases an education package including teaching services from the NSW Department of Education and Training. Norfolk Island's one school provides free infant, primary and secondary schooling. In 2002-2003, the Norfolk Island Government spent \$2.029 million on education.<sup>19</sup>
- 4.22 A limited number of VET courses are available on-island, namely through the Norfolk Island school. However, their availability is subject to VET accredited teachers being selected or recruited from

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18 Department of Health and Ageing, Submissions, p. 731.

19 Helen Pedel and Patricia Magri, Submissions, p. 637.

NSW to teach at secondary classes on Norfolk Island.<sup>20</sup> Students on Norfolk Island may also still enrol in off-island units or course components to obtain their qualifications. The Committee also understands that there was an arrangement whereby Island residents would be regarded as being registered in a NSW apprentice scheme, undertake the practical component of an apprenticeship with Island employers, but would have to complete their technical studies on the mainland.<sup>21</sup>

- 4.23 Norfolk Island youth, their families and their employers can face significant obstacles in accessing VET, especially when compared to their fellow Australians on the mainland, because of geographic isolation coupled with limited financial and other support.<sup>22</sup> Essentially, these problems stem from the exclusion of Norfolk Island from federal funding and the limited assistance which the Norfolk Island Government is able to provide in this area. The extent of the problem was reported by the Commonwealth Grants Commission:

The provision of government funded Vocational Education and Training services, other than for Norfolk Island based apprentices, is below that offered in remote areas of the mainland. This is resulting in an under trained workforce and is a threat to the long term viability of the Island's economy.<sup>23</sup>

- 4.24 On the mainland, VET is a joint Federal-State responsibility. States are primarily responsible for the provision of training services, although they are required to meet national objectives. The Federal Government provides funding through the Australian National Training Authority (ANTA).<sup>24</sup> ANTA is governed by the *Australian National Training Authority Act 1992* (Cth). The other Act which

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20 Helen Pedel and Patricia Magri, Submission No. 109 to the House of Representatives Standing Committee on Education and Training Inquiry into vocational education in schools; see House of Representatives Standing Committee on Education and Training, March 2004, *Learning to work: Report on the inquiry into vocational education in schools*, Canprint, Canberra. Located at: <http://wopared/house/committee/edt/ves/subs/sub109.pdf>

21 Helen Pedel and Patricia Magri, Submission No. 109 to the House of Representatives Standing Committee on Education and Training Inquiry into vocational education in schools; see House of Representatives Standing Committee on Education and Training, March 2004, *Learning to work: Report on the inquiry into vocational education in schools*, Canprint, Canberra. Located at: <http://wopared/house/committee/edt/ves/subs/sub109.pdf>

22 Helen Pedel and Patricia Magri, Transcript 18 February 2003, p. 3A.

23 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, p. 83. See also pp 81-83, 196-198, 210.

24 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, p. 81. For details of the Federal Government's apprenticeships scheme - see <http://www.newapprenticeships.gov.au/>



impacts on the funding of VET activities nationwide is the *Vocational Education and Training Funding Act 1992* (Cth). Consistent with the policy position of both the Territory and Federal Governments to date with respect to federal funding and assistance for Norfolk Island residents, neither of these Acts applies to Norfolk Island.

- 4.25 As well as being excluded from the Federal Government's New Apprenticeships Incentives Programme, Island residents are also excluded from other benefits such as Austudy.<sup>25</sup> To qualify for these, they must move to the mainland to reside and enrol there and seek to meet the relevant eligibility requirements. In addition, families on the Island are not eligible for other Federal Government benefits such as family allowance which would help to offset the costs and problems caused by isolation. Nor are employers on Norfolk Island provided with the same financial and other incentives to take on apprenticeships and offer traineeships as are provided to their counterparts on the mainland.<sup>26</sup>
- 4.26 The Committee is deeply concerned that there are no avenues for Island residents to register as apprentices.<sup>27</sup> It appears that people wishing to register as apprentices must undertake training on the mainland. While the cost of travel fares alone can be prohibitive, the cost of having to complete technical training on the mainland is also a major deterrent. The Norfolk Island Government provides limited support for those travelling to the mainland for study purposes in the form of a VET Scholarship. However, this appears unrealistic as the Norfolk Island scholarships are relatively small and not designed to cover the full costs of relocation and study.<sup>28</sup>

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25 Helen Pedel and Patricia Magri, Submission No. 109 to the House of Representatives Standing Committee on Education and Training Inquiry into vocational education in schools; see House of Representatives Standing Committee on Education and Training, March 2004, *Learning to work: Report on the inquiry into vocational education in schools*, Canprint, Canberra. Located at: <http://wopared/house/committee/edt/ves/subs/sub109.pdf>

26 Details of the subsidies and incentives provided to apprentices and their employers are available at <http://www.newapprenticeships.gov.au/>.

27 Ms P. Magri, Transcript, 18 February 2003, p. 3A.

28 In 1996, the Norfolk Island Government funded one return airfare a year and contributed to the costs of books. See Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, pp. 82-83. See also Helen Pedel and Patricia Magri, Submission No. 109 to the House of Representatives Standing Committee on Education and Training Inquiry into vocational education in schools; see House of Representatives Standing Committee on Education and Training, March 2004, *Learning to work: Report on the inquiry into vocational education in schools*, Canprint, Canberra. Located at: <http://wopared/house/committee/edt/ves/subs/sub109.pdf>

- 4.27 The frustrations of local teachers at not being able to access Commonwealth funding was made clear to the Committee. Assistant Principal Helen Pedel pointed out that:

a lot of money is earmarked for schools such as ours in isolated rural areas and for programs such as the staying-on programs and VET programs. They do have a lot of money available for funding, yet we have not been allowed to tap into that. I'm not sure if that is a Commonwealth attitude or if it is more that our government do not allow us to tap into it. It is a bit to do with pride – pride does not allow them to ask the Australian government for some help when we really need it. We have had lots of times when that funding would be almost essential to the running of the school, and we have not been allowed to access it.<sup>29</sup>

- 4.28 The justification for Norfolk Island's exclusion from federal funding and assistance with respect to VET is – once again - that the policy position of both the Norfolk Island and Federal Governments that the Territory should be self funding and therefore exempt from federal services and programmes and, as such, exempt from federal taxation. This was confirmed by the Department of Transport and Regional Services:

...our previous understanding has been that the decision of Norfolk Island not to participate in normal federal financial arrangements was a significant issue in terms of its non mention in the [*Vocational Education and Training Funding Act 1992* (Cth) and the *Australian National Training Authority Act 1992* (Cth) ]...the presumption in the [*Norfolk Island Act 1979* (Cth)] is that the Commonwealth legislation has to expressly mention that it will apply there; it does not automatically extend there, because Norfolk Island is not part of the normal Australian tax system. For those financial reasons – and inter-government financial relations not being in place, as they would be with any other state or territory – they do not necessarily apply. This has been the policy position to this point.<sup>30</sup>

- 4.29 As stated in the Committee's report on governance, the policy position that Norfolk Island's exemption from Federal taxation means exemption from Federal programs and services appears
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29 Mrs H. Pedel, Transcript, 18 February 2003, p. 3A.

30 Department of Transport and Regional Services, Transcript, 12 May 2003, p. 253.

fundamentally flawed and contradicts the stated policy aim of providing Norfolk Island residents with ‘the same opportunities and responsibilities as other Australians enjoy in comparable communities’.<sup>31</sup> The Committee’s report on governance also addressed the “general lack of administrative and financial capacity of the Territory Government to manage the broad range of responsibilities it has been given”.<sup>32</sup> Mrs Pedel and Ms Magri pointed out that “budget constraints and competing priorities limit what the Norfolk Island Government and community can do on its own”.<sup>33</sup> This reinforces the critical need for the Federal Government to provide assistance in this area.

- 4.30 While the Committee accepts that people from rural and remote areas on the mainland face difficulties due to their geographical isolation from TAFE institutions, Norfolk Island residents are significantly disadvantaged by comparison. The Committee has been informed that the Norfolk Island Government has sought to have students from the Island charged at the same rate as their Queensland and New South Wales counterparts, but its efforts have been unsuccessful to date. In any event, having Island residents enrolled in courses on the mainland, paying the same rate as their Queensland and New South Wales counterparts, would not appear to help young Island residents and their families and local employers interested in VET overcome the obstacles caused by a lack of on-island support and incentives. The Committee, therefore, concludes that intervention from the Federal Government is essential.
- 4.31 Federal intervention on this issue is justified by the Federal Government’s national responsibilities, which include its role and responsibilities towards the Norfolk Island community (outlined in the Committee’s report on governance). More specifically, the Federal Government’s national responsibilities for education funding and coordination and for ensuring protection of human rights also make it

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31 Joint Standing Committee on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra. See, for example, pp 43-45.

32 Joint Standing Committee on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra. See reports listed therein.

33 Helen Pedel and Patricia Magri, Submission No. 109 to the House of Representatives Standing Committee on Education and Training Inquiry into vocational education in schools; see House of Representatives Standing Committee on Education and Training, March 2004, *Learning to work: Report on the inquiry into vocational education in schools*, Canprint, Canberra. Located at: <http://wopared/house/committee/edt/ves/subs/sub109.pdf>

responsible for ensuring the appropriate provision of VET in remote and isolated Australian communities - such as Norfolk Island.<sup>34</sup>

Federal Government intervention would also honour the undertaking given in 1976 by the Federal Government that it was responsible for maintaining Norfolk Island as a viable community.<sup>35</sup>

- 4.32 As stated above, the Commonwealth Grants Commission concluded that the lack of access to VET on Norfolk Island and the relative lack of support and incentives for Island residents and employers interested in VET is a threat to the viability of the Island community.<sup>36</sup> The Grants Commission found that greater VET training and opportunities were required to facilitate economic growth and to help improve the efficiency of service delivery in Norfolk Island's private and public sectors. Also, improving access to and support for VET on the Island would help halt the drift of young residents away from the Island and may also make the Island community less reliant on workers recruited from offshore, especially skilled tradespeople and professionals.<sup>37</sup>
- 4.33 The Committee understands that, in addition to assistance with respect to VET, the Federal Government offers a range of services and programmes to primary and secondary schools and students throughout Australia.<sup>38</sup> The Committee also understands that Norfolk Island students and the Norfolk Island school are essentially excluded from these programmes and services for same the reasons as
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34 See Human Rights and Equal Opportunity Commission, March 2000, *Emerging Themes: National Inquiry into Remote and Rural Education*, Sydney. The HREOC inquiry concluded that, while the Federal Government's role in education is largely limited to that of funding and not service provision, its funding capacity enables it to some extent to coordinate policy and to fill gaps in provision and quality. This includes gaps caused by differences arising from students' socio-economic background or geographic location. HREOC also concluded that access to VET was an integral element of the human right to work as well as the human right to education and that the Federal Government was ultimately responsible under international law for ensuring the enforcement and protection of human rights such as the right of all Australians to an education.

35 In a preliminary response to the Report of the Nimmo Royal Commission, tabled in the Parliament in November 1976, the Federal Government reaffirmed its commitment to its responsibility for maintaining Norfolk Island as a viable community and that it would remain a Territory of the Commonwealth of Australia. See: <http://www.dotars.gov.au/terr/norfolk/history.htm>

36 This fact was also recognised in the Norfolk Island Government's own 'Paddick Report'. Browyn Paddick, 2000, *Review of Immigration System of Norfolk Island; Volume 1 – Preliminary Study*, London Orion Press, pp 13-14.

37 See Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, pp. 81-83, 196-198, 210.

38 See, for example, <http://www.dest.gov.au/schools/programmes/default.htm>

outlined above. The same arguments and justifications that apply in respect of federal intervention and assistance with respect to VET on Norfolk Island apply equally to federal services and programmes to primary and secondary schools and students.

## Language Teaching

- 4.34 Included in these federal programmes are various programmes to support adults and others with the development of language, literacy and numeracy skills, including languages other than English.
- 4.35 Norfolk Island has a unique history as both a former penal settlement and home to the descendants of the mutineers from HMAV Bounty and their Tahitian companions who had settled on Pitcairn Island in 1790.<sup>39</sup> They were subsequently relocated to Norfolk Island in 1856 by the British Government with the consent of the Pitcairn Island population.<sup>40</sup> Norfolk Island's history and cultural heritage are highly valued as part of Australia's national and multicultural heritage. In this respect, Australia's national interest and responsibility is also served by ensuring these aspects of Norfolk Island life are maintained. The Committee respects the strong desire of many Island residents to preserve the traditions of the Pitcairn Island descendants, in particular their language.<sup>41</sup> Not only is the language of the Pitcairn Island descendants an important part of Australia's multicultural heritage, the language plays an important role in the development and maintenance of personal and group identity on the Island.
- 4.36 The Committee believes that, consistent with its responsibilities for the Territory, the Federal Government should appropriately support the efforts of those in the Norfolk Island community who are dedicated to preserving the language of the Pitcairn Island

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39 Recent discovery of early Polynesian settlement on the Island now indicates occupation before its settlement by the British in 1788. For an excellent, historically accurate account of the mutiny on HMAV Bounty and its aftermath, including the discovery in 1808 of the surviving mutineer, Alexander Smith (real name John Adams), and a community of primarily women, youths and children on Pitcairn Island, see Alexander, C. 2003, *The Bounty: The True Story of the Mutiny on the Bounty*. HarperCollins, London.

40 See Nobbs, R. 1984, *George Hunn Nobbs 1799-1884: Chaplain on Pitcairn and Norfolk Island*, The Pitcairn Descendants Society, Norfolk Island.

41 English remains the common language among Island residents. However, members of the community also speak a unique language brought to the Island by the Pitcairners. It is traditionally an oral one and is a creole established through a combination of Platt Deutch, 18th Century English and Tahitian. See Human Rights and Equal Opportunity Commission, 1999, *Territorial Limits: Norfolk Island's Immigration Act and Human Rights*, J. S. McMillan Printing Group, Sydney.

descendants, primarily through the relatively recent introduction of a language programme at the Island's school. Federal assistance in this regard could, for example, facilitate the provision of expert advice and guidance on linguistics and language maintenance and also the development or procurement of the specialised resources required by teachers and students for Language Information and Language Learning.

### **Recommendation 19**

**4.37 That the Federal Government negotiate with the Norfolk Island Government the most effective way to deliver vocational education and training opportunities to Norfolk Island residents and students.**

### **Recommendation 20**

- 4.38 That the Federal Government:**
- **undertake a review of the assistance, services and programmes that it provides in respect of primary and secondary school education with a view to ensuring that Norfolk Island residents and students enjoy access and opportunities equal to that enjoyed by other Australians; and**
  - **that this include the teaching of the language/dialect of the Pitcairn Island descendants in the Norfolk Island School.**

## **Legal Aid Contribution**

**4.39** The Federal and Norfolk Island Governments jointly established a legal aid scheme on Norfolk Island in 1995 to assist disadvantaged Island residents obtain legal representation and advice. The Governments entered into a memorandum of understanding (MOU) whereby the Federal Government would provide 80% of the total projected annual costs of the scheme (that is, some \$45,000 per annum). The *Legal Aid Act 1995* (NI), which implemented the Agreement, was passed by the Norfolk Island Legislative Assembly, and the scheme commenced on 1 July 1995. The Australian Capital Territory's Legal Aid Commission acts as the providing agency for

the purposes of the Act and helps administer the scheme, primarily by engaging the services of local practitioners as necessary. The Department of Transport and Regional Services' annual report for 2001-2002 reported that in that year the Federal Government contributed \$75,000 to the Norfolk Island Legal Aid Fund.<sup>42</sup>

- 4.40 In February 2000, the Administrator requested that the Chief Executive Officer of the ACT Legal Aid Commission, Mr Chris Staniforth, conduct a review of Norfolk Island Legal Aid Scheme. The aim was to determine whether the needs of those in the Norfolk Island community in genuine need of legal aid are being met and identify any practicable measures that could be taken to assist them. Mr Staniforth undertook the review in August 2000, and his findings and recommendations were forwarded to the Norfolk Island Government in September 2000.
- 4.41 Section 31 of the *Legal Aid Act 1995* (NI) requires the Norfolk Island Legal Aid Committee to prepare reports for the executive member to present to the Assembly. Clause 12 of the above-mentioned MOU provides that copies of these reports will also be provided to the Federal Government. The Department of Transport and Regional Services stated in evidence that reports from the Norfolk Island Government have been irregular despite continued requests from the Federal Government.<sup>43</sup>
- 4.42 In its report on governance, the Committee made a number of recommendations regarding federal assistance to reform a range of Territory laws.<sup>44</sup> There is a clear need for Federal Government oversight, in consultation with the Norfolk Island Government, to determine which Territory laws must be reformed, when and the content of the new laws, in particular to ensure that these laws conform with national standards and international obligations. The starting point would be to redraft Norfolk Island legislation of importance to both the Federal and Norfolk Island governments and agreed upon by both, and over time move onto less important laws.

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42 Department of Transport and Regional Services, *Annual Report 2001-02*, p. 140. In 2002-2003, the Department made no contribution to the Fund because the Fund has reached the maximum accumulation threshold of \$250,000 at which point neither the Territory nor Federal governments is obliged to make an annual contribution. Advice provided by the Department of Transport and Regional Services.

43 Department of Transport and Regional Services, *Submissions*, p. 39.

44 Joint Standing Committee on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra. See, for example, pp 43-48. See, in particular, Recommendation 29, which calls for "a phased reform of Norfolk Island law".

Implementation of these recommendations would present an opportunity for a new, more effective and broader legal aid regime. Accordingly, the Committee reiterates recommendations 30 and 32 of its 2003 report, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*.

## **Recommendation 21**

**4.43 That the Federal Government take immediate steps to ensure:**

- **the commencement of a phased reform of Norfolk Island law, with priority for redrafting of existing laws to be determined by both the Federal and Territory governments, with the Federal Government having the final say in the case of disagreement;**
- **a new and dedicated legislative drafter, supported by and reporting to the Commonwealth Office of Parliamentary Counsel and Commonwealth Attorney-General's Department, to draft the aforementioned reforms; and**
- **the new laws, once drafted, be implemented by an Ordinance introduced into the Norfolk Island Legislative Assembly by the Governor-General pursuant to Section 26 of the *Norfolk Island Act 1979* (Cth).**

## **Recommendation 22**

**4.44 That the Federal Government take immediate steps to ensure:**

- **reform of the Territory's child welfare law to ensure that it conforms with the Convention on the Rights of the Child and best practice in Australia;**
- **completion of the reform of the Territory's child welfare law within 12 months of acceptance of this recommendation;**
- **reform of the Territory's criminal justice laws, which is to be completed within 12 months of acceptance of this recommendation;**
- **reform of the regulation of companies in the Territory with a view to applying Federal company, bankruptcy and insolvency**



**laws to the Territory;**

- **application of the proposed uniform national legal profession laws to legal practitioners who practice in the jurisdiction of Norfolk Island;**
- **that, pending promulgation of the proposed national legal profession laws, legal practitioners on Norfolk Island be required to register in some other Australian legal jurisdiction; and**
- **review of the Employment Act 1988 (NI) to ensure it is consistent with best practice and legislation in other Australian jurisdictions and is in compliance with International Labour Organization Conventions and Australia's other international obligations.**

4.45 The implementation of these recommendations also provides an opportunity to extend the legal aid regime to allow Island residents affected by decisions taken by Norfolk Island Ministers and officials to apply for legal aid assistance to help them appeal or seek review of such decisions.

4.46 Such an extension is justified by the Island's circumstances and the Committee's earlier findings and recommendations. It is clear that the decisions taken by the Norfolk Island Administration and Government can affect the quality of life of every person on Norfolk Island. As explained in Chapter One, the Island's governance arrangements mean that the Administration is generally the principal source of government services on-island. The Administration is also the major contributor to the economic well being of the Territory as well as the largest single employer of people and service provider on-island. It is also features among the larger customers for Island businesses and suppliers. At the same time, the Administration is also the primary regulator on the Island and the primary provider of public health, social services and benefits to residents. It is clear that decisions taken by Norfolk Island Ministers and officials can have a significant impact on individual residents and businesses. This makes it imperative that the Administration operate efficiently, effectively, and in a manner that is both accountable and transparent.

4.47 An individual resident aggrieved by a Norfolk Island Government or Administration decision currently has three options:

- ⇒ appeal to the responsible Norfolk Island Ministers;
- ⇒ seek assistance from one or more members of the Assembly or of Norfolk Island's supervisory boards; or
- ⇒ appeal to the courts.

4.48 Each option can be problematic for individual residents, especially those who lack access to legal advice and representation. Appeals to Norfolk Island Ministers may be problematic in that the Minister is more likely than not to be the person who made the decision complained of or to be reliant on the advice of those who have made that decision. Lobbying of Assembly members can be problematic in that non-executive Assembly members lack any formal review role and powers and are not – and should not be – a substitute for review by an independent tribunal or body specifically established and equipped for that purpose. The problems facing review by the Administrative Review Tribunal or by one of the Island's review boards are detailed in the Committee's first report and elsewhere in this report.<sup>45</sup> Similar issues of costs, compliance with and understanding of procedural requirements as well as having to fund and argue an appeal also arise in respect of seeking review through the courts.<sup>46</sup>

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### **Recommendation 23**

**4.49 That the Federal Government take immediate steps to extend access to legal aid to those Island residents seeking to appeal or have reviewed the decisions of Norfolk Island Government Ministers and officials affecting them.**

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45 See paragraph 3.61 – 3.68, Joint Standing Committee on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra. See also paragraph 2.55 of Chapter 2 of this report.

46 The issues of delay and costs that can be associated with seeking redress by judicial review are illustrated by the case of *Snell v Sanders*. In June 1992, Mr William Sanders, who was then Minister for Tourism in the Government of Norfolk Island, allegedly directed the Tourist Bureau of the Territory to terminate the contract of its Executive Officer, Mr Lisle Snell. This set off a train of litigation which has been before the courts for over ten years, including the Norfolk Island Supreme Court, the Full Federal Court and the High Court of Australia. See *Sanders v Snell* [1997] 229 FCA (9 April 1997); *Sanders v Snell* [1998] HCA 64 (8 October 1998); *Snell v Sanders* [2000] NFSC 2 (20 June 2000); *Snell v Sanders* [2000] NFSC 5 (24 November 2000) and *Sanders v Snell* [2003] FCAFC 150 (2 July 2003). It is understood that the matter remains before the courts and unresolved.

- 4.50 The Committee has commenced the second part of the inquiry into governance of Norfolk Island in which it is examining the financial sustainability of Territory. This second part of the governance inquiry provides an opportunity for the Committee to examine the progress and outcomes of any significant changes to the legal aid regime on the Island and the Committee would welcome receiving any submissions from the community in this regard.

## Postscript

- 4.51 In respect of the examination of the financial sustainability of Territory, the Committee notes recent media reports suggesting that, during a radio interview on Norfolk Island, the Federal Minister for Territories, Senator the Hon. Ian Campbell, offered the opinion that “Norfolk Island is being well-governed”, “has very good services”, “ought to preserve the status quo” and need not become part of the federal-state taxation arrangements that apply on the mainland, ostensibly on the basis that access to federal programmes, including Medicare, costs “a lot of money”.<sup>47</sup> The same reports also indicate that the Minister expressed his view that seeking access to federal programmes such as Medicare will mean that Norfolk Island will be “forced into the Australian Tax System”, presumably by the Federal Government.
- 4.52 In light of the fact that Island residents have contacted the Committee to express their concern in respect of these and other comments reportedly made during the Minister’s visit, the Committee considers itself obliged to note the following:
- The inquiry into governance on Norfolk Island was referred to the Committee by the Federal Government. It is not an inquiry initiated by the Committee itself.
  - The independent findings of the Commonwealth Grants Commission in 1997 that, in the areas that the Norfolk Island Government does choose to tax, its tax rates are high and indicate a revenue raising effort more than twice that found on the mainland. The Commission also found that the Territory’s current taxation

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<sup>47</sup> See the transcript of the interview with Senator the Hon. Ian Campbell, Minister for Local Government, Territories and Roads, on Radio 2NI in *The Norfolk Islander*, 27 March 2004.

system was regressive and inequitable. In 2003, Norfolk Island Government representatives endorsed these findings and have now embarked upon consideration of alternative options to raise the revenue required to fund appropriately the provision of services on Norfolk Island.

- The findings of independent inquiries – including the Commonwealth Grants Commission – and the evidence of Island residents themselves that crucial services and infrastructure on-island are not being provided by the Territory Government at appropriate levels. Health and social services were specifically considered by the Grants Commission to be requiring attention. As mentioned above, these conclusions were confirmed by the Committee’s own inquiry into Norfolk Island’s public health system and by evidence presented to that and other inquiries by the Territory’s own officials and residents. They were also reflected in the submissions and evidence given by the Department of Transport and Regional Services to the Committee in those inquiries. They also reflect the advice that the Committee understands was provided to the Department by the Norfolk Island Government in 2002 that it would welcome the extension of Medicare to the Territory.
- In a recently released Discussion Paper on taxation options for Norfolk Island commissioned by the Norfolk Island Government, the Commonwealth Treasury expressed the view that Norfolk Island’s inclusion in the federal taxation and welfare systems “would provide a far more efficient and equitable outcome for residents” than is currently provided under the Territory’s rudimentary and regressive tax system. Treasury’s view was that “the majority of the Island’s population are low to middle income earners who could be expected to benefit from a switch in taxes to a more equitable income tax system”. However, “a small number of very wealthy residents may oppose the removal of the ‘tax free status’ they have enjoyed to date”.
- It is not self-evident that resumption by the Federal Government of responsibility for the provision of certain services on Norfolk Island would automatically result in the Territory’s inclusion in the ‘Australian Tax System’.<sup>48</sup> In any event, as the Committee

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48 Norfolk Island is already included in the Australian Taxation System in that key federal taxation laws already apply to Norfolk Island and to income earned on Norfolk Island. In general, income earned by persons residing on the Island for more than a specified period is exempt from federal taxation.

acknowledged in its first report for the governance inquiry, even if it were ever agreed that federal income taxation arrangements ought to be applied, there is no fundamental legal or policy reason why a special set of arrangements could not be designed specifically for Norfolk Island and which took into account the circumstances of the Island's residents and business community. These are all issues to be canvassed by the Committee, in consultation with the Island community and others, during the second stage of its inquiry into governance on Norfolk Island.

- The Minister has stated that his "remarks on the island were misinterpreted".<sup>49</sup>

**Senator Ross Lightfoot**  
**Chairman**

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<sup>49</sup> See Transcript, 27 May 2004, Senate Rural and Regional Affairs and Transport Committee, p. 56.

