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The Parliament of the Commonwealth of Australia

# **Norfolk Island**

## **Review of the Annual Reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage**

Joint Standing Committee on the National Capital and External Territories

July 2004  
Canberra

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## Foreword

The Committee commenced this review of the work of the departments of Transport and Regional Services and the Environment and Heritage on Norfolk Island in July 2002. The completion of the review was delayed by the Committee's inquiry into governance on Norfolk Island. This annual report review was conducted in conjunction with the inquiry into governance. The recommendations in this report are, therefore, conditional on the acceptance and implementation of the recommendations of the Committee's first report of the governance inquiry.

The overwhelming evidence, from this review, the governance inquiry and previous inquiries that this Committee and others (including the Norfolk Island Government) have conducted, is that Norfolk Island faces relatively considerable and growing administrative and financial challenges and needs help. I stress that the latter included evidence from those who had lived on Norfolk Island for many years, those who came from old Island families, residents of Pitcairn descent, serving and former members of the Norfolk Island Administration and the Norfolk Island Legislative Assembly. Of considerable concern to the Committee was the fact that many were only prepared to come forward if their identity and/or some or all of their evidence was kept confidential, principally because of their conviction that they would suffer some form of reprisal for speaking out.

The Committee believes that, in view of its role and responsibilities towards the Island community, the Federal Government should assist the Norfolk Island Government in providing or upgrading a range of essential services for that community. These include assistance with new sewage disposal facilities that protect the health of the Island's community, visitors, environment and economy; the construction and equipping of a multi-purpose health facility; ensuring access for the women of Norfolk Island to a regular and effective breast screening programme; assisting Island residents, students and employers with vocational education and training opportunities; and the teaching and preservation of the language of the Pitcairn Island descendants.

The Government Members of the Committee support the conversion of residential crown leasehold to freehold title on Norfolk Island. The Government Members believe that, as any transfer would be subject to the safeguards provided by the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), concerns regarding any conversion or transfer should be raised - and can be resolved - through the processes laid down by this Act. Furthermore, in this report, the land transfer would be contingent on the acceptance and implementation of the Committee's good governance reforms recommended in the first governance report as well as the recommendations contained in this report.

As usual, there will be a vocal, self-interested minority that will criticise or misrepresent the Committee's efforts and attempt to stifle considered debate on our recommendations. Those opposed to necessary reform on the Island will, undoubtedly, endeavour to stymie any attempts at reform. There will be those who seek to ensure this report joins the long list of other reports by Federal and Norfolk Island inquiries that have never been implemented and which now gather dust. If they succeed, the Committee will have wasted its time and that of the Island community, the cause of genuine reform on Norfolk Island will be set back irrevocably and the future of the Island community seriously undermined.

My Committee colleagues and I will continue to take a keen and active interest in the responses to this report and in ensuring equality and a sustainable future for the Norfolk Island community.

The Committee is grateful to all those who participated in this very important inquiry. We are especially grateful to those on the Island who assisted the Committee and for the hospitality shown to the Committee by residents of the Island during our many visits.

Senator Ross Lightfoot  
Chairman

# 40th Parliament

## Membership of the Committee

Chairman     Senator Ross Lightfoot

Deputy Chair     Senator Trish Crossin

Members     The Hon Ian Causley MP     Senator John Hogg  
                 Ms Annette Ellis MP     Senator Kate Lundy  
                 Mr Michael Johnson MP (discharged on 19/02/2004)     Senator Nigel Scullion  
                 Mr Paul Neville MP     Senator Natasha Stott Despoja  
                 The Hon Warren Snowdon MP  
                 Mr Cameron Thompson MP  
                 Dr Mal Washer (appointed on 19/02/2004)

## Committee Secretariat

Secretary     Mrs Margaret Swieringa

Inquiry Secretary     Mr Quinton Clements

Senior Research Officer     Mr Justin Baker

Administrative Officers     Mr Daniel Miletic

                 Mrs Donna Quintus-Bosz





## **Terms of reference**

That, in respect of its review of the Annual Reports of the Department of Transport and Regional Services 2002-2003 and the Department of Environment and Heritage 2002-2003, which stand referred to the Joint Standing Committee on the National Capital and External Territories by the House of Representatives, it monitor the External Territories in order to review the development of services and the implementation of programs to a standard commensurate with equivalent mainland communities. In particular, the review should consider:

### **Norfolk Island:**

- Heritage protection and management of the Kingston and Arthur's Vale Historic Area (KAVHA) on Norfolk Island;
- Land management and planning for Norfolk Island;
- Land use and land transfer by the Commonwealth Government; and
- Legal aid Contribution to Norfolk Island.



## List of abbreviations

<b>ACF</b>	Australian Conservation Foundation
<b>AHC</b>	Australian Heritage Commission
<b>AFP</b>	Australian Federal Police
<b>ANTA</b>	Australian National Training Authority
<b>BoM</b>	Commonwealth Bureau of Meteorology
<b>CGC</b>	Commonwealth Grants Commission
<b>Cth</b>	Commonwealth
<b>EIS</b>	Environmental Impact Statement
<b>EPBC Act</b>	<i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth)
<b>KAVHA</b>	Kingston and Arthur's Vale Historic Area
<b>MLA</b>	Member of the Norfolk Island Legislative Assembly
<b>MOU</b>	Memorandum of Understanding
<b>NHT</b>	National Heritage Trust
<b>NI</b>	Norfolk Island
<b>PER</b>	Public Environment Report
<b>RNE</b>	Register of the National Estate
<b>VET</b>	Vocational Education and Training



# List of recommendations

## 1 Introduction

### Recommendation 1

That the recommendations of this report be conditional on the acceptance and implementation of the recommendations in the Committee's report *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*.

## 2 Managing a Unique Natural Environment

### Recommendation 2

That the Federal Government make no decision or commitment in respect of the transfer to freehold title of other types of Crown leasehold or licences until after a suitable period has passed to enable an assessment of the effectiveness of the new land management and planning regime, especially in respect of residential Crown leases that will have been transferred to freehold title.

### Recommendation 3

That, before any land transfers take place, the Federal Government ensure that the new land package is appropriately resourced and will continue to be in the future and that, prior to any transfer, the Federal Minister report to Parliament on steps taken to ensure the latter.

### Recommendation 4

That the Federal Government extend its reassessment of its current policies with respect to Norfolk Island and the basis for the Territory's exclusion from Commonwealth programmes and services to include planning and environmental management on Norfolk Island.

**Recommendation 5**

That the *Norfolk Island Act 1979* (Cth), together with the relevant Norfolk Island laws, be amended to provide for an effective, ongoing role for the Federal Government in the making and amendment of the Territory's statutory planning and land use regime.

**Recommendation 6**

That the appropriate financial and human resources be provided to the Commonwealth Department of the Environment and Heritage to monitor and enforce compliance with Crown lease covenants and conservation and related agreements on Norfolk Island.

**Recommendation 7**

That the Federal Government act immediately to ensure that Island residents and community organisations, as well as the Norfolk Island Government, be made aware of and eligible to apply for financial and other assistance provided under federal programmes, services and grant schemes that may be relevant to planning, environmental, heritage and land management.

**Recommendation 8**

That net revenue received by the Federal Government in respect of any freeholding of Crown land on Norfolk Island be set aside to assist leasehold and freehold landholders on Norfolk Island who enter into conservation agreements, covenants or access agreements or similar undertakings with the Federal Government concerning the protection and conservation of the environment or heritage on their land or the Island more generally.

**Recommendation 9**

That Recommendation Eight be implemented by the Federal Government establishing a Norfolk Island Trust Fund administered by the Federal Minister for the Environment and Heritage.

**Recommendation 10**

That the Department of Transport and Regional Services and the Department of the Environment and Heritage, as the responsible Commonwealth agencies, specifically detail in future annual reports the human, financial and other resources allocated by each Department to administer the Federal Government's statutory and other responsibilities with respect to the environment and heritage of Norfolk Island.

**Recommendation 11**

That the Commonwealth retain both ownership and responsibility for the management of the Norfolk Island National Park.

**Recommendation 12**

That the Federal Government assist the Norfolk Island Government in upgrading existing sewage services and, where necessary, developing new sewage disposal facilities that protect the health of the community, visitors, the environment and adjacent coastal areas of Norfolk Island.

**Recommendation 13**

That the Federal Government ensure that the Norfolk Island Government take immediate and appropriate measures, in accordance with national standards, for the removal and disposal of asbestos on Norfolk Island.

### **3 Heritage Protection**

**Recommendation 14**

That the Federal Government review the management arrangements of the Kingston and Arthur's Vale Historic Area, with particular emphasis on the following:

- future funding arrangements for the management and preservation of KAVHA;
- the structure, role and powers of the KAVHA Management Board and its incorporation; and
- the management of national estate sites situated outside KAVHA.

**Recommendation 15**

That the Joint Standing Committee on the National Capital and External Territories conduct the review of the management arrangements of the Kingston and Arthur's Vale Historic Area and report to the Federal Parliament.

**Recommendation 16**

That the Federal Government take immediate steps to ensure that Norfolk Island residents and community organisations, as well as the Norfolk Island Government, be made aware of and become eligible to apply for Federal Government grant schemes on the same basis as other communities in regional and remote areas of Australia.

## 4 The Adequacy of Services

### Recommendation 17

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.

### Recommendation 18

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.

### Recommendation 19

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

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.

### Recommendation 21

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**

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.

**Recommendation 23**

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.





## Introduction

### The Purpose of the Inquiry

- 1.1 In accordance with its parliamentary role and responsibilities (outlined below), the Committee resolved in March 2002 that general reviews of each of the external territories be conducted as part of an annual monitoring of the territories by the Committee.<sup>1</sup> The basis for this would be a review of the annual reports of the two Federal Government departments with direct responsibility for the external territories - the Department of Transport and Regional Services and the Department of the Environment and Heritage. Section 2 of the Resolution of Appointment, passed by both Houses of Parliament on 14 February 2002, establishing the Committee for the 40<sup>th</sup> Parliament provides that:

Annual reports of government departments and authorities tabled in the House shall stand referred to the committee for any inquiry the committee may wish to make. Reports shall stand referred to the committee in accordance with a schedule tabled by the Speaker to record the areas of responsibility of each committee, provided that:

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1 The Committee's Resolution of Appointment enables the Committee to inquire into and report on matters relating to the Territory of Cocos (Keeling) Islands; the Territory of Christmas Island; the Coral Sea Islands Territory; the Territory of Ashmore and Cartier Islands; the Australian Antarctic Territory, and the Territory of Heard Island and McDonald Islands, and Norfolk Island.

- (a) any question concerning responsibility for a report or a part of a report shall be determined by the Speaker; and
  - (b) the period during which an inquiry concerning an annual report may be commenced by a committee shall end on the day on which the next annual report of that department or authority is presented to the House.
- 1.2 As part of its monitoring of the external territories, the Committee would review the development of services and the implementation of programmes to a standard commensurate with equivalent mainland communities. On 26 June 2002, the Committee resolved that the review of the Annual Reports of the Department of Transport and Regional Services 2000-01 and the Department of the Environment and Heritage 2000-01 specifically include reference to land use and land transfer in the external territories by the Commonwealth Government.
- 1.3 Norfolk Island was the first Territory that the Committee examined as part of this process. The Committee intended to focus primarily on the following four issues in relation to Norfolk Island:
  - land planning and management;
  - land use and land transfer by the Federal Government;
  - heritage protection and management of the Kingston and Arthur's Vale Historic Area (KAVHA); and
  - the legal aid contribution.
- 1.4 However, four additional issues were brought to the Committee's attention in the evidence received from Island residents. Three of these issues were then examined as part of this inquiry. The four issues were:
  - the adequacy of health services and facilities;
  - vocational education and training;
  - waste management; and
  - the quality of governance.<sup>2</sup>

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2 The quality of governance on Norfolk Island was subsequently examined and reported on as part of a separate inquiry. The Committee tabled the first of two reports for that inquiry, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, on 3 December 2003.

## The Role of the Committee

- 1.5 It is the function of the Federal Parliament to participate in developing law and policy, to scrutinise government action and public administration and to inquire into matters of public interest on behalf of all Australians. A system of Federal parliamentary committees facilitates the work of the Parliament. A Resolution of Appointment, passed by the House of Representatives on 14 February 2002 and by the Senate on 15 February 2002, is the source of authority for the establishment and operations of the Joint Standing Committee on the National Capital and External Territories.<sup>3</sup> The Committee is appointed to inquire into and report to both Houses of Parliament, in an advisory role, on a range of matters.
- 1.6 The Committee was established in 1993. Prior to 1993, inquiries relating to the external territories were dealt with by other committees - for example, the House of Representatives Standing Committee on Legal and Constitutional Affairs reported on legal regimes in the external territories in 1991. A Joint Standing Committee on the Australian Capital Territory has been appointed in each Parliament since 1956. In 1992, the Joint Standing Committee on the Australian Capital Territory changed its name to the Joint Standing Committee on the National Capital, to emphasise the significant change in the focus of the Committee's work which occurred following the introduction of self-government in the ACT in 1989. At the start of the 37th Parliament in 1993, a committee specifically to cover Australia's external territories was established for the first time.
- 1.7 The Committee has produced six reports in relation to the external territories so far, of which only three have focused exclusively on Norfolk Island:<sup>4</sup>
- *Delivering the Goods*, February 1995;
  - *Island to Islands: Communications with Australia's External Territories*, March 1999;
  - *In the Pink or in the Red: Health Services on Norfolk Island*, July 2001;
- 

3 By convention, where the Resolution of Appointment is silent joint committees follow Senate committee procedures to the extent that such procedures differ from those of the House.

4 Some Island residents have complained of "endless Parliamentary Committee Inquiries". 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. 5.

- *Risky Business: Inquiry into the tender process followed in the sale of the Christmas Island Casino and Resort*, September 2001;
- *Norfolk Island Electoral Matters*, June 2002; and
- *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, December 2003.

## Conduct of the inquiry

- 1.8 The inquiry was advertised in *The Australian* on 3 July 2002 and in *The Norfolk Islander* on 6 July 2002. Thirty written submissions were received. These are listed in Appendix A. Eleven submissions are confidential. Evidence was received on the four specific issues identified by the Committee, and, on a number of other issues relating to the delivery of services. Ten exhibits were received. These are listed at Appendix B. Five of the exhibits are confidential.
- 1.9 The Committee continues to be disturbed by the number of witnesses whose participation was made contingent on written submissions being kept confidential and oral evidence taken in-camera.<sup>5</sup> A common theme in these requests was that Norfolk Island residents feared being ostracised or believed they were at risk of reprisal if they spoke out. By way of comparison, during the Committee's examination of the Indian Ocean Territories as part of this same inquiry, there was only one request for a submission to be treated as confidential, on commercial-in-confidence grounds. There were no requests by witnesses on either Christmas or Cocos (Keeling) islands to provide oral evidence in-camera during the hearings held there.
- 1.10 Initially the Committee was to review the departments' 2000-2001 annual reports. However, the period during which an inquiry concerning an annual report may be commenced by the committee shall end on the day on which the next annual report of that department or authority is presented to the House. Therefore, as the Committee's visit to Norfolk Island was delayed until February 2003, the Committee resolved that the annual reports for 2001-2002 which were tabled in the House of Representatives on 16 October 2002 should also be reviewed.

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5 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. 10-15.

- 1.11 The completion of this report was further delayed when the Committee commenced the first part of its inquiry into governance on Norfolk Island in March 2003. Accordingly, the Committee extended this review to include the annual reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage for 2002-2003 tabled in the House of Representatives on 8 October and 4 November 2003 respectively. Submissions and exhibits received in relation to all three years were considered in evidence.
- 1.12 The Committee visited Norfolk Island for inspections, private meetings and public hearings from 15 to 19 February 2003. Facilities and sites identified as being relevant to the review were inspected on 16 and 17 February 2003. These included the Kingston and Arthur's Vale Historic Area (KAVHA), the Kingston pier, the Cascade Cliff Safety Project, the airport runway resealing project, the new Bureau of Meteorology station, the upgrading of the Mt Pitt road in the National Park, the new waste management facility, the police station and the hospital.<sup>6</sup>
- 1.13 On 17 February 2003, the Committee met with all nine members of the Norfolk Island Legislative Assembly and with the then Administrator of Norfolk Island, The Hon. Tony Messner. The Committee held public and in-camera hearings on Norfolk Island on 18 and 19 February 2003 and in Canberra on 28 March, 12 May and 19 June 2003. Witnesses who appeared at public hearings on Norfolk Island and in Canberra are listed in Appendix C. Other witnesses gave in-camera evidence at both on-island and mainland venues.

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6 The Australian Federal Police provides the policing service on Norfolk Island. Subsection 8 (1C) of the *Australian Federal Police Act 1979* (Cth) allows the Minister and the Administrator of an External Territory to enter into arrangements for the provision of policing services and regulatory services in relation to that Territory, and, where the arrangements are made, those services are provided in accordance with the arrangements. On 2 February 1993, the then Minister for Justice, Senator the Hon. Michael Tate, entered into such an arrangement on behalf of the Commonwealth with the then Norfolk Island Administrator, the Hon. Alan Kerr. The Arrangement sets out the police and ancillary services to be performed by the AFP and the reporting relationships and obligations of the principal parties. The AFP Commissioner retains control over operational matters. The Norfolk Island Government, through the designated Executive Member (now known as the Minister), has input into policing issues through discussions on the ambit of the Schedules to the Arrangement (that is, the nature of the police and ancillary services to be provided and the goals, objectives and priorities to be pursued in relation to Territory policing services). The Officer in Charge of the Norfolk Island Police is also responsive to ad hoc requests from the Norfolk Island Minister responsible for policing and the Administrator on day-to-day policing issues.

## Context of the Inquiry

### Norfolk Island's status and administrative arrangements

- 1.14 Norfolk Island's constitutional status and its administrative arrangements have been described in detail in previous reports of the Committee, most recently in the report *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, presented to the Parliament on 3 December 2003. Details of the Territory's status and legal position, the enabling legislation – the *Norfolk Island Act 1979* (Cth) – and the Federal Government and Parliament's responsibility with respect to Norfolk Island may be found in chapters Two and Three of the governance inquiry report.<sup>7</sup>
- 1.15 In short, Norfolk Island is a self-governing Australian Territory and an integral part of the Australian Commonwealth or Federation, being similar in status to Australia's other self-governing Territories – the Australian Capital Territory and the Northern Territory. The Island's population numbers approximately 2000 people.<sup>8</sup>
- 1.16 The *Norfolk Island Act 1979* (Cth) – an Act passed by the Federal Parliament – provides the basis of the Territory's legislative, administrative and judicial system. The Act constitutes the Territory Government as a separate body politic with its own institutions. The Act established a nine member Legislative Assembly with wide powers, subject to certain restrictions, to make laws for the peace, order and good government of the Territory; a Territory Ministry or Executive Council drawn from the Legislative Assembly; a Supreme Court, and the power to create other courts of lessor jurisdiction.
- 1.17 An Administrator, appointed by the Governor-General, is nominally responsible for the administration of the government of Norfolk Island.<sup>9</sup> The Administrator relies on the advice of the Norfolk Island Ministers when exercising his or her powers and functions.<sup>10</sup> Federal oversight of certain matters is retained by: (a) the requirement that

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7 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. 28-40, 43-48. See also Appendix A of the governance inquiry report.

8 See Administration of Norfolk Island, 2001, *Norfolk Island: Census of Population and Housing, 7 August 2001*. According to the 2001 census, on 7 August 2001, the total population of Norfolk Island, including the residents and visitors, was 2601.

9 Section 5 (1), *Norfolk Island Act 1979* (Cth).

10 Sections 7 and 11, *Norfolk Island Act 1979* (Cth).

proposed laws passed by the Legislative Assembly on certain prescribed matters must be referred to Federal Ministers or to the Governor-General for advice; and (b) the requirement for the Administrator, when exercising decision-making functions conferred on him or her under Territory laws, to abide by any instructions that may be issued by the Federal Minister on a limited range of subjects.<sup>11</sup> The Governor-General also retains a restricted residual legislative power in respect of matters that are not dealt with in either Schedule 2 or Schedule 3.<sup>12</sup> Federal oversight, through these mechanisms ensures that Federal Government laws, policies or programmes applicable to Norfolk Island do not conflict with Territory laws and that proposed Norfolk Island laws do not conflict with national obligations under international law.

- 1.18 Through the Norfolk Island Act, legislative and executive power over a wide range of local, State and federal type responsibilities were devolved to the local Assembly and Executive Council. The Island's Legislative Assembly has the power to legislate for all things except coinage, the raising of defence forces, the acquisition of property on other than just terms, and euthanasia. This means that the Assembly can enact laws on virtually any topic that it chooses, including on matters that are the preserve of the Federal Government elsewhere such as customs and immigration. Once the Assembly enacts a law, the Norfolk Island Government is equipped with broad executive powers and responsibilities to administer, fund and enforce that law. The intention of the Act was to recognise the fact that the Territory Government is responsible for the delivery of government services and programmes on Norfolk Island and for the funding of such services and programmes (see below). To this end, the Act confers plenary legislative powers on the Territory Legislature and confers executive authority on Territory Ministers in respect of all laws passed by that Legislature.<sup>13</sup> However, as an Australian Territory and part of the Australian Federation, Norfolk Island remains subject to the legislative power of the Federal Parliament and the Federal Government retains its constitutional powers to enact Federal laws in respect of the Island.<sup>14</sup>

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11 See sections 7, 21 and Schedule 3 of the *Norfolk Island Act 1979* (Cth). The Committee understands that only a relatively limited number of responsibilities or decision-making functions are conferred on the Administrator by Norfolk Island laws.

12 Sections 27-28A, *Norfolk Island Act 1979* (Cth). It is understood that this legislative power has not been used to date.

13 Item 42, Schedule 2, *Norfolk Island Act 1979* (Cth).

14 See section 122 of the Constitution.

- 1.19 Most Federal Government programmes and services do not extend to the Island. This reflects the continuing choice of the small Norfolk Island community to retain primary responsibility for the funding and delivery of nearly all government services on the Island. It is apparent that the Norfolk Island and Federal Governments expectation to date has been that the Island community shall be self sufficient and shall raise its own funds for the Territory's public sector services from on-island sources using the 'federal' customs, postal and other powers devolved to the Territory's Administration for this specific purpose. This is the reason put forward as to why most federal services and programmes do not extend to Norfolk Island. It is also why the Island has generally been exempted from federal income tax and outside the usual federal financial arrangements since 1914.<sup>15</sup> Federal agencies did have a greater role on-island prior to self-government in 1979.<sup>16</sup> However, in the 24 years since then, the Norfolk Island Government has (at its request) assumed

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- 15 The original justification for Norfolk Island's exclusion from federal taxation appears to have been the Island's lack of a cash economy in 1914 with most in the community relying on barter as a means of exchange. See Hunt, Atlee 1914 *Memorandum by Secretary, Department of External Affairs, relating to Norfolk Island*, Parliament of the Commonwealth of Australia. Notwithstanding Norfolk Island's exclusion from federal taxation and services, the Federal Government provided annual grants to the Island (as well as special grants and capital loans) prior to self-government in 1979. These annual federal grants constituted 40% of Norfolk Island total public revenue in 1960, falling to 6.3% in 1979 as the Island economy and public sector finances improved with the considerable growth in tourism on Norfolk Island. See Treadgold, M. L. 1988 *Bounteous bestowal: The economic history of Norfolk Island*, Pacific Research Monograph No. 18, National Centre for Development Studies, Research School of Pacific Studies, Australian National University.
- 16 Reports indicate long standing local resistance to revenue measures designed to ensure provision of appropriate services and infrastructure which existed even before self-government. See, for example, Butland, G. J. 1974 *Population Study of Norfolk Island*, University of New England NSW. Professor Butland cited the local advisory council's "consistent unwillingness to recommend the imposition of sufficient taxation on the resident population" and "the use by mainland immigrants of the Island as a financial tax haven without consideration of the long term interests of the Island" as key reasons for the Island's lack of sufficient public finances at that time. See also Hoare, M. 1999, *Norfolk Island: A Revised and Enlarged History 1774-1998* (5<sup>th</sup> Ed), Central Queensland University Press, St. Lucia, Queensland, notably pp. 141, 174-5. Some within the Island community still appear to oppose attempts at additional revenue raising by the Territory Government – see Joint Standing Committee on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, at paragraphs 2.18 to 2.20 and footnote 40). See also the findings of the Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra; and Treadgold, M. L. 1988 *Bounteous bestowal: The economic history of Norfolk Island*, Pacific Research Monograph No. 18, National Centre for Development Studies, Research School of Pacific Studies, Australian National University.



responsibility for nearly all government services on-island and public infrastructure on the Island.<sup>17</sup>

## Inquiry into Governance on Norfolk Island

- 1.20 In the course of this inquiry into departmental annual reports, Island residents approached the Committee seeking to raise concerns with respect to governance on Norfolk Island. They included those who had lived on Norfolk Island for many years, those who came from old Island families, residents of Pitcairn descent, serving and former members of the Norfolk Island Administration and the Norfolk Island Legislative Assembly. A majority were only prepared to participate on the basis that the Committee would keep their identity and/or some or all of their evidence confidential, principally because of their conviction that they would suffer some form of reprisal for speaking out.
- 1.21 Their evidence highlighted the fact that the Island's 2000 strong community face growing problems in funding and delivering government services on the Island. Such problems have also been identified by the Territory Government itself and by earlier inquiries and reports, including the 1997 report on Norfolk Island by the Commonwealth Grants Commission.<sup>18</sup> Key problems identified by the Grants Commission, for example, included the Territory Government's lack of administrative capacity and an urgent need for reform of local finances and taxation. Concerns exist over the increasingly pressing need to raise the additional funds required to maintain, run and update important public infrastructure and government programmes in areas for which the Territory Government has responsibility, like health, education, communications, the Island's airport, piers, roads, and electricity. Without financial and taxation reform, these things will deteriorate,

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17 It is apparent that the Norfolk Island Government has continued to pursue greater responsibilities notwithstanding the findings of various reports that it cannot appropriately manage and pay for its current responsibilities. See the Commonwealth Grants Commission report. For details on the process by which responsibilities and powers have been 'transferred' or devolved: see [www.dotars.gov.au/terr/norfolk/index.htm](http://www.dotars.gov.au/terr/norfolk/index.htm)

18 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra. See also *Focus 2002 – Sustainable Norfolk Island*, 10<sup>th</sup> Legislative Assembly, Norfolk Island; and Joint Standing Committee on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra and the reports listed at footnote 31 on page 16 of that report.

leaving an even bigger problem for future generations of Island residents. Yet at the same time, it was argued that the lack of administrative capacity identified by the Grants Commission and others, the close knit nature of the Island community and relatively frequent changes within the make up of the Island's Legislative Assembly and Government can all make it difficult for hard decisions to be taken and implemented locally.

1.22 Witnesses also raised significant concerns with respect to the accountability and transparency of decision-making within the Government. Evidence was received from Island residents to the effect that some within the Island community were able to exploit the current governance system, with its lack of effective checks and balances, for their own ends. Once these concerns were raised with the Committee, it soon became apparent that Island residents lacked the same avenues and statutory rights and protections of appeal and complaint that exist in other Australian communities.

1.23 The above explains why, in March 2003, the Committee was asked by the then Minister for Regional Services, Territories and Local Government, the Hon. Wilson Tuckey MP, to examine:

measures to improve the operations and organisation of the Territory Ministry and Legislature on Norfolk Island, with particular emphasis on the need for a financially sustainable and accountable system of representative self-government in the Territory".<sup>19</sup>

The Terms of Reference directed that the governance arrangements for Norfolk Island "should be considered in the context of the financial sustainability" of the Territory in light of the findings of relevant government and parliamentary reports. In particular, the Committee was asked to consider the findings of the Commonwealth Grants Commission documented in its 1997 report on Norfolk Island on the Territory's capacity to administer and fund obligations associated with:

- ⇒ current and future government functions and responsibilities;
- ⇒ the Island's current and foreseeable infrastructure requirements; and
- ⇒ the provision of government services on Norfolk Island at an appropriate level.

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19 Inquiry into Governance on Norfolk Island Terms of Reference.

In considering and making recommendations in respect of the above, the Committee was required to have regard to the role of the Federal Government and its responsibilities for Norfolk Island as part of remote and regional Australia. The Committee resolved to conduct this particular inquiry on 28 March 2003.

- 1.24 In the first of two reports for the above inquiry, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, the Committee focused on evidence from residents and others on the inadequacies of existing political arrangements and legal infrastructure, and on the ways to improve and strengthen the governance arrangements for Norfolk Island.<sup>20</sup> This confirmed that significant problems do exist in funding and delivering government services on the island. As mention above, these problems had also been identified by earlier inquiries and by the Commonwealth Grants Commission. The Committee recommended reform of Norfolk Island's political system to address problems identified by residents and others. Such reforms included:
- ⇒ Election of the Chief Minister by the Assembly;
  - ⇒ Appointment of Ministers by the Chief Minister;
  - ⇒ Appointment of an independent Speaker from outside the Assembly;
  - ⇒ Four year terms for the Assembly; and
  - ⇒ The establishment of an Assembly Committee to review public finances.
- 1.25 A central tenet of the Committee's report was that Island residents should have the same opportunities, rights and protections that other Australians enjoy in respect of government. To this end, the Committee recommended:
- ⇒ Oversight of Norfolk Island governmental conduct by the Commonwealth Ombudsman;
  - ⇒ Financial and performance audits by the Commonwealth Auditor-General;
  - ⇒ The Australian Electoral Commission to oversee Island elections;
  - ⇒ Extending the jurisdiction of the NSW Independent Commission Against Corruption to Norfolk Island; and
  - ⇒ Freedom of information and whistleblower legislation for Norfolk Island.

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20 Presented to the Parliament on 3 December 2003.

- 1.26 The Committee's report argued strongly that the financial and administrative burden of implementing its 32 recommendations fall primarily on the Federal Government, and not the Norfolk Island government and community. Under both the Federal Constitution and the *Norfolk Island Act 1979*, the Federal Parliament retains ultimate responsibility for ensuring good governance on Norfolk Island. This involves the competent management of the Island's resources in a manner that is open, transparent, accountable, equitable and responsive in both the short and long-term.
- 1.27 The Committee also recommended that the Federal Government must establish a clearly understood and coherent set of policy goals and framework for Norfolk Island, based in part on an analysis of how the Island's services can be properly financed, both now and into the future. The island community's exclusion from federal programmes and services, it is argued, must also be reviewed and an assessment undertaken of the need for federal funding to meet the costs of the island's current and future infrastructure requirements. Also recommended was resumption by the Federal Government of responsibility for immigration and social security and the extension of Medicare and the Pharmaceutical Benefits Scheme to Norfolk Island.
- 1.28 The above-mentioned inquiry into governance on Norfolk Island was conducted in conjunction with this review of the annual reports of the departments of Transport and Regional Services and the Environment and Heritage. The recommendations in this report are, therefore, conditional on acceptance and implementation of the recommendations in the Committee's report *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*.

### Recommendation 1

- 1.29 **That the recommendations of this report be conditional on the acceptance and implementation of the recommendations in the Committee's report *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*.**

### Implementation of the Recommendations

- 1.30 The Committee has commenced the second part of the governance inquiry, on the financial sustainability of the Territory. As part of this

process, the Committee will consider the Government's Response to the first report of the governance inquiry as well as the annual report review and the implementation of its recommendations. In light of the problems the Norfolk Island community is confronting, the Committee expects a rapid and comprehensive response from the Federal Government to these reports.

- 1.31 It has been suggested to the Committee that many of the governance issues raised by the first report cannot be considered in isolation and that consideration of that report's recommendations involving major reform are inextricably linked to the question of Norfolk Island's financial sustainability. However, many of the recommendations contained in the Committee's unanimous first report have absolutely no relation to - and need not await - consideration of the Territory's financial sustainability or the tabling of any further report concerning the same.<sup>21</sup>
- 1.32 The above-mentioned recommendations seek to ensure that an Australian community is afforded the same democratic rights and protections of appeal and complaint that all other Australians enjoy. It is clear that Norfolk Island residents lack equivalent rights, protections and avenues of appeal and complaint that exist in other Australian communities. It is also apparent that the standards of accountability and transparency that apply to elected representatives and governments elsewhere in Australia do not apply on Norfolk Island. The Committee is unaware of any plausible argument as to why Island residents should not be afforded these rights and protections.
- 1.33 Nor can there be any objection to these measures being put in place as a matter of some urgency; namely, by accepting and acting on the recommendations listed above. Doing so is consistent with stated Federal Government policy towards Norfolk Island, in particular the Department of Transport and Regional Services' strategic objective of "Territories which provide for their residents the same opportunities and responsibilities as other Australians enjoy in comparable communities".<sup>22</sup> For its part, the Norfolk Island Government has

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21 See in this regard recommendations 3 to 7 and 13 to 29 of Joint Standing Committee on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra. It is acknowledged that consideration of the other recommendations in the first report of the governance inquiry – such as recommendations 8 to 12 and 30 to 32 – can await the second part of the inquiry into Norfolk Island's financial sustainability.

22 Department of Transport and Regional Services, *Annual Report 2002-03*, pp. 8, 107.

already stated that it has no difficulty in principle with these mechanisms being put in place.<sup>23</sup>

- 1.34 The Australian Government has a responsibility to ensure that its citizens and residents, no matter where they may live, are not unduly disadvantaged by systemic weaknesses in the existing governance arrangements. Action is required to ensure that the processes of government on Norfolk Island are made more responsible and effective. In addition, action is required to ensure that Island residents enjoy the same representation in the Federal Parliament as other Australians do. If any further justification was required, regard could be had to the fact that, in its efforts to promote good governance throughout the Pacific region and to assist many Pacific Island countries to rebuild and reform their institutions of government, Australia cannot afford to allow Norfolk Island – as an integral part of Australia in the Pacific - to languish behind.
- 1.35 The Committee has been greatly encouraged by the response it has received from current and former Island residents, most of whom have not previously contacted the Committee, wishing to congratulate the Committee on the first report of the Inquiry into Governance on Norfolk Island and for making the recommendations the Committee has. The Committee also greatly welcomed statements by Norfolk Island Government representatives during the inquiry that they had no difficulty in principle with the normal expert and independent mechanisms being put in place to properly address issues that may be raised by Island residents.

## Structure of the Report

- 1.36 This report is divided into four chapters. Chapter Two examines issues in relation to the management of Norfolk Island's natural environment, and the planned transfer of Crown Land to freehold title under the Norfolk Island Land Initiative. Chapter Three examines the provisions for heritage protection on Norfolk Island. Chapter Four looks at a range of services on Norfolk Island that require more comprehensive and coordinated Federal Government

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23 See Response of the Norfolk Island Government to Joint Standing Committee on the National Capital and External Territories, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*; located at: <http://www.ni.net.nf/> See also Norfolk Island Legislative Assembly, *Hansard*, 11 February 2004.

assistance. These include health services, vocational education and training and legal aid.

1.37 The Committee has examined the work of two Federal Government agencies on Norfolk Island and made recommendations in relation to the provision of Commonwealth services to Norfolk Island. However, a number of issues and recommendations in this report need to be specifically considered by the Norfolk Island Government. These include:

- amending Norfolk Island's planning and land use laws;
- the treatment of sewage;
- the removal and disposal of asbestos;
- the construction and equipping of a new health facility; and
- reform of a range of Territory laws.<sup>24</sup>

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24 These issues are examined in greater detail in the following chapters.





## Managing a Unique Natural Environment

*Norfolk Island is a special place. Special for its environment and the wild species it supports; special for its human history and culture. The conservation of our natural environment and cultural heritage is of paramount importance to the island's future and the way of life of all who live on Norfolk. Without sound and effective management of our environment, we can expect a decline in biological diversity, degradation of habitats and loss of cultural and heritage values. This would be accompanied by a decline in tourism and thus in economic activity.*<sup>1</sup>

*Norfolk Island provides a text book example, in microcosm, of the broad and complex problem of conservation, which includes more than the preservation of wildlife. It means concern for buildings old and new, for the effects of such things as roads, vehicle numbers, power lines, water supply and sewerage development on the quality of the landscape and the environment. In other words, it calls for the recognition of something beyond short term material values.*<sup>2</sup>

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- 1 Extract from the Norfolk Island Government's submission to the 1999 Senate Environment, Recreation, Communications and Arts Legislation Committee's Inquiry into the Environment Protection and Biodiversity Conservation Bill.
  - 2 Sir Garfield Barwick, 1968, *The Conservation of Norfolk Island* (Foreword), Australian Conservation Foundation, Victoria, p. 2.

## An Island Environment

- 2.1 Any assessment of land use, planning and management on Norfolk Island requires at the outset an assessment of the importance of Norfolk Island's environment and its preservation. It is the environment and its protection that provides the primary context and justification for land use planning and management. Moreover, an aim of the Federal Government – as stated in the annual reports currently under examination – is to ensure that the 'environment', especially those aspects that are matters of national environmental significance, are protected. In this context, environment extends beyond flora and fauna to include cultural and heritage aspects and values.<sup>3</sup>
- 2.2 There can be no doubt that Norfolk Island's environment is important locally, nationally and internationally. Norfolk Island has significant national and international cultural heritage and archaeological value due to its four periods of human settlement – that is, Polynesian, two convict settlements and the relocation of the Pitcairn Islanders in 1856, its close association with the establishment of Sydney and the relative lack of large scale development on the Island.
- 2.3 Islands such as Norfolk are also biologically significant for a range of reasons. These include their limited space; restricted habitats; limited flora and fauna as compared with continental areas; the uniqueness of island biota due to the presence of endemic, relict and specialised species; their value as refuges; and their ability to act as reservoirs for the conservation of genetic material.<sup>4</sup> The Department of the Environment and Heritage recently acknowledged that:

Remote islands [*such as Norfolk Island*] are of particular biological importance. Their plants and animals often originate by chance dispersal over vast distances of ocean and

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- 3 Section 528 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) – the main Federal environmental law – defines the 'environment' to include:
- a) ecosystems and their constituent parts, including people and communities;
  - b) natural and physical resources;
  - c) the qualities and characteristics of locations, places and areas; and
  - d) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b) or (c).
- 4 *What the Environment Protection and Biodiversity Conservation Act 1999 means for Norfolk Islanders*, Consultation Draft, Department of the Environment and Heritage, November 2003. Available:  
<http://www.deh.gov.au/biodiversity/publications/norfolk-island/overview.html>

in isolation from other populations; are subject to different evolutionary pressures; and may evolve into unique, or endemic, island forms.<sup>5</sup>

- 2.4 The Territory has 51 endemic plant species or subspecies recorded, with 47 species found only in the Norfolk Island group. 58 per cent of the Island's bird species are endemic.<sup>6</sup> Plants and animals that have evolved in an island ecosystem are often quite vulnerable to extinction. A high proportion of native or endemic vertebrates have become extinct since European settlement.<sup>7</sup> A significant number of Norfolk Island's species of native plants are considered rare or vulnerable.<sup>8</sup>
- 2.5 Norfolk Island is at the southern biogeographical limit of many tropical marine organisms, including coral. As such, the Island's waters, including the Kingston reef and lagoon, form a unique and important environment in terms of world conservation and scientific research.<sup>9</sup> Around 220 species of fish and corals have been identified in these waters to date. Two are endemic to Norfolk Island. 95 species have been identified in the Kingston lagoon – the Island's main

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5 *What the Environment Protection and Biodiversity Conservation Act 1999 means for Norfolk Islanders*, Consultation Draft, Department of the Environment and Heritage, November 2003. Available:

<http://www.deh.gov.au/biodiversity/publications/norfolk-island/overview.html>

6 Norfolk Island Planning Report Norfolk Island Plan Planning Subdivision Code, NCA, 1996. DEH website and Plan of Management for NI National Park – available at <http://www.deh.gov.au/parks/publications/norfolk-pom.html>

7 Jurd (ed), *The Norfolk Island Environment Book*. Published by Australian National Parks and Wildlife Service, Commonwealth of Australia, 1989. See also *Rare and Endangered Plants of Norfolk Island*, Sykes and Atkinson, DSIR, NZ, 1988; Commonwealth Grants Commission, *Report on Norfolk Island*, 1997; Australian Conservation Foundation, *Conservation of Norfolk Island*, 1968; Butland, G. J. 1974, *Report to the Department of the Capital Territory of the Australian Government on a Long Term Population Study of Norfolk Island*; and Hoare, M. 1999, *Norfolk Island: A Revised and Enlarged History 1774-1998* (5<sup>th</sup> Ed), Central Queensland University Press, St. Lucia, Queensland.

8 Of the 178 species of plants native to Norfolk Island, at least 46 are thought to be in danger of extinction. 11 of these species have fewer than 50 individuals remaining. Threats to these species include invasive weeds and predation by rats. One species, the Mountain Procris, grows in only seven sites on the island, with a total of just 76 mature plants. Another species, known locally as the "Kurrajong", numbers only 155 mature plants and the population is severely fragmented. See Media Release, Federal Minister for the Environment and Heritage, The Hon. Dr David Kemp, 13 November 2003, "Added Protection for Norfolk Island's Unique Plants" See also *What the Environment Protection and Biodiversity Conservation Act 1999 means for Norfolk Islanders – Consultation Draft*, Department of the Environment and Heritage, November 2003. Available:

<http://www.deh.gov.au/biodiversity/publications/norfolk-island/overview.html>

9 Jurd (ed), *The Norfolk Island Environment Book*. Published by Australian National Parks and Wildlife Service, Commonwealth of Australia, 1989.

recreation area – which supports a fish and coral community found nowhere else on the coastline. It is considered likely that more undiscovered species occur there.<sup>10</sup>

- 2.6 The Island's economic future currently depends largely on its environment. The Island's natural beauty and cultural heritage are the major drawcard for the Island's principal industry and source of revenue, tourism. The self-identity of the Island community arguably also depends crucially on a healthy land and marine environment and a commitment to sustainable development.
- 2.7 The above point to the fact that the current and future arrangements for Crown land on Norfolk Island assume considerable importance from an environmental management perspective, particularly given the Island's small size. Crown land constitutes one third of the Island.<sup>11</sup> It contains pockets of remnant natural vegetation, comprises much of the Island's coastline or coastal zone, comprises most of the land adjacent to the National Park, and includes the last significant area of land on the Island with a rural aspect that has not been broken up into small land holdings or extensively developed for residential and commercial purposes. What happens to and on that land is clearly important to the Island as a whole.
- 2.8 The above also explains why Federal Parliament concluded in 1999 that there are matters of national environmental significance on Norfolk Island. On that basis, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act) was extended to Norfolk Island.<sup>12</sup> In agreeing to extend the Act, Federal Parliament rejected arguments by the then Norfolk Island Government that application of the Act to Norfolk Island was unnecessary as there was a range of Norfolk Island conservation legislation in place; and that extension of the Act would be contrary to the advancement of the Territory's self-government and the Territory Government's

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10 Jurd (ed), *The Norfolk Island Environment Book*. Published by Australian National Parks and Wildlife Service, Commonwealth of Australia, 1989. See also Peter Davidson, 1997, Norfolk Island Kingston and Arthur's Vale Historic Area, Water Quality Management Plan.

11 The total area of Norfolk Island is 3327 hectares of which, as at the end of September 2003, 1697 was freehold, 860 was Crown land and 770 hectares were Crown leasehold.

12 Senate Standing Committee on the Environment, Communications, Information Technology and the Arts, *Report on the Environment Protection and Biodiversity Conservation Bill 1998 & Environmental Reform (Consequential Provisions) Bill 1998*, April 1999, para 5.53.

ambitions for control of Crown land and the National Park.<sup>13</sup> The responsible Senate Committee noted that the aim of the Act is “to provide a national environmental scheme, which produces an effective and efficient national approach to environmental management” and that it would be inappropriate to exclude Norfolk Island, an Australian Territory, from that scheme.<sup>14</sup> In its view, “to do so would result in an undesirable gap in environment protection and biodiversity conservation in Australia”.<sup>15</sup>

## Potential Pressures and Threats

2.9 Threats to the Island’s environment do exist and need to be managed. This has been acknowledged by both the Norfolk Island and Federal Governments. In 1995, for example, a joint Federal-Norfolk Island Land Task Force highlighted the fact that Norfolk Island’s limited natural resources (that is, its environment, its fresh water supplies, visual amenity, character and even the Island’s cultural identity) can be threatened by inappropriate development and by population and commercial pressures, yet must be protected to provide livelihoods for present and future generations of Island residents.<sup>16</sup> The Task Force had been established by the Federal and Norfolk Island Governments in 1994 to address longstanding problems with land management and planning on Norfolk Island, including:

- no statutory land use or development zoning and zoning controls;
- no effective environmental assessment and controls; and

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13 See Norfolk Island Government, Submission to the Senate Standing Committee on the Environment, Recreation, Communications and the Arts Inquiry into the Environment Protection and Biodiversity Conservation Bill 1998.

14 Senate Standing Committee on the Environment, Communications, Information Technology and the Arts, *Report on the Environment Protection and Biodiversity Conservation Bill 1998 & Environmental Reform (Consequential Provisions) Bill 1998*, April 1999, para 5.53.

15 Senate Standing Committee on the Environment, Communications, Information Technology and the Arts, *Report on the Environment Protection and Biodiversity Conservation Bill 1998 & Environmental Reform (Consequential Provisions) Bill 1998*, April 1999, para 5.53.

16 Report of the Norfolk Island Land Review Working Group, May 1995. An example of the wide range of risks that must be managed is the outbreak of viral illnesses on-island in 1991-92 said to be caused by sewerage polluting water supplies. The publicity generated had an adverse effect on the Island’s tourism industry. Following this episode, the Commonwealth provided over \$2 million to assist in implementing a Water Assurance scheme for Norfolk Island. See Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, p. 111. Hoare M, *The Winds of Change. Norfolk Island 1950-1982*, Institute of Pacific Studies, Suva 1983, pp 77-78. See also [www.dotars.gov.au/terr/norfolk/fed\\_assistance.htm](http://www.dotars.gov.au/terr/norfolk/fed_assistance.htm).

- no administrative review of land use and management decision-making.<sup>17</sup>
- 2.10 The 1994-95 Task Force recommended the introduction of a new comprehensive land administration scheme. The Task Force's report was endorsed by both Federal and Norfolk Island Governments. It led to a new land administration package being enacted by the Norfolk Island Legislative Assembly in 1996 and 1997, following a considerable investment of financial and human resources by both Governments.<sup>18</sup> Administration and enforcement of the new regime was and is a Norfolk Island responsibility. As such, the efficacy of the new land management and planning scheme depended on the Territory Government allocating adequate financial and administrative resources to ensure the scheme's effective operation. It also depended on the Territory Government developing and then enacting subordinate legislation (for example, codes and plans of management) and establishing the mechanisms such as boards and registers on which the successful operation of the new scheme depended.<sup>19</sup> The latter did not occur.<sup>20</sup> The findings of various independent inquiries indicate that an explanation for this failure may be the significant responsibilities devolved onto the Norfolk Island Government (at its request) coupled with that Government's lack of administrative and financial capacity to meet those responsibilities.<sup>21</sup>
- 2.11 In 1997, a review by the Commonwealth Grants Commission concluded that the standard of general conservation and environmental services provided by the Norfolk Island Government

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17 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, pp. 135-136..

18 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, pp. 135-136. The Grants Commission noted that over \$500,000 had been spent on developing and implementing the 1994-5 land review process, with the Federal Government covering two thirds of all costs.

19 For example, building, roads, public health codes and plans of management of reserves. It is relevant to note that the 1994-95 Federal-Norfolk Island Task Force also considered that a precondition for consideration of the transfer of land management to the Norfolk Island Government should be the satisfactory completion by the Administration of all remaining components of the new land management regime; and evidence of the provision of a satisfactory level of human and other resources for their ongoing effective discharge.

20 Department of Transport and Regional Services, Submissions, p. 27.

21 These difficulties have been identified by various inquiries. See, for example, Joint Standing Committee on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra, and the inquiries and reports cited therein.

was below mainland standards.<sup>22</sup> It did so after receiving submissions which argued that the Norfolk Island Government “had neglected the environment for many years and that it had no conservation strategy, no policy on strategic planning and no management plans”.<sup>23</sup> The Commission noted that equivalent communities on the mainland “are covered by comprehensive building, planning and environment protection legislation”.<sup>24</sup> It also noted that sites listed on the Register of the National Estate (RNE) and outside of KAVHA lacked comprehensive management.<sup>25</sup>

- 2.12 Notwithstanding these findings, the Commission refrained from making any specific recommendations in this regard, noting that a new land package had recently been enacted and had not been in place for sufficient time to enable an assessment to be made of its effectiveness.<sup>26</sup> However, the Commission did stress that appropriate administrative resources and arrangements had to be provided and put in place by the Norfolk Island Government before any transfer of land management responsibilities occurred. Importantly, the Commission also stated that the Federal Government had an obligation to ensure that minimum standards are met in respect of services provided to Island residents.<sup>27</sup> This includes environmental and planning services.
- 2.13 The above may explain in part why, in June 2000, the then Minister for Regional Services, Territories and Local Government, Senator the Hon. Ian Macdonald, announced the establishment of a further joint Commonwealth – Norfolk Island Task Force to assist the Norfolk

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22 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, p. 135.

23 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, p. 133.

24 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, p. 134.

25 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, p. 133. See also pp 134-138.

26 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, p. 136. The Commission also concluded that certain government services on Norfolk Island were not being provided by the Territory Government at equivalent mainland services. It found that the Norfolk Island Government had the capacity to fund the provision of these services at that standard, but was failing to do so. For this reason, the Commission apparently concluded that there were no financial constraints to the transfer of land management to the Norfolk Island Government (see p. 175, 215). See also its findings and recommendations in respect of KAVHA, the National Park, and administrative and financial capacity. See pp. 212-218.

27 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, pp. 216-218.

Island Government to undertake the review of the Norfolk Island Plan and to finalise the outstanding components of the land administration package enacted in 1996 -1997.<sup>28</sup> These included:

- implementation of the requirements of the *Heritage Act 1996* (NI);
- preparation of a Plan of Management for the reserves - as required by the *Public Reserves Act 1997* (NI); and
- preparation of the codes required in order for the *Roads Act 1996* (NI), *Public Health Act 1996* (NI), and *Building Act 1996* (NI) to operate.<sup>29</sup>

2.14 Federal financial and other assistance was provided to finalise this. As noted above, it was originally envisaged that these crucial aspects of the land management regime would have been undertaken by the Norfolk Island Government alone. The Committee understands that the review of the Norfolk Island Plan and finalisation of the outstanding components of the land package is now nearing completion.<sup>30</sup>

## **Proposed Freeholding of Crown Land on Norfolk Island**

2.15 In making the above announcement, the Federal Minister also stated that the Federal Government would consider withdrawing from ownership of certain areas or types of Crown land in Norfolk Island. The announcement was significant in that, as explained above, Crown land on Norfolk Island comprises approximately one third of the Island and is important from an environmental management perspective. This may explain why the Federal Minister also made it clear that any withdrawal by the Commonwealth from land ownership was conditional on the satisfactory completion of the outstanding components of the land package. As mentioned above, it is expected that the latter are to be finalised shortly and that the Federal Minister for Local Government, Territories and Roads will be

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28 The Norfolk Island Plan is a statutory Development Plan made under Norfolk Island planning laws and is the Territory's Government's principal land management and planning tool.

29 Department of the Environment and Heritage, Submissions, pp. 236-237.

30 Mr Ivens Buffett, Transcript, 18 February 2003, p. 3.



able to consider the possible transfer of selected Crown leases shortly thereafter.<sup>31</sup>

## Management Arrangements for Crown Land

- 2.16 Crown land on Norfolk Island remains vested in the Crown in right of the Commonwealth. This is reflected in section 62 of the *Norfolk Island Act 1979* (Cth), which vests responsibility for disposing of Crown land on Norfolk Island – other than by a lease or licence – in the Federal Minister for Territories.
- 2.17 The fact that the Crown land is vested in or ‘owned’ by the Commonwealth does not automatically mean that the Federal Government is responsible for the day to day administration of that land or for regulating activities on it. Rather, this remains the responsibility of the Norfolk Island Government – as intended by the *Norfolk Island Act 1979* (Cth).<sup>32</sup> As explained, the intent of that Act is that the Norfolk Island Government shall be primarily responsible for the delivery of government services on the Island. To that end, the Territory Government has been provided with broad legislative and executive powers under that Act to enact and then administer and fund laws on a wide range of subjects.<sup>33</sup> This extends to planning and land management, which is carried out on Norfolk Island by Territory Ministers and officials under a range of laws enacted by the Norfolk Island Legislative Assembly.

## Leased or Licensed Crown Land

- 2.18 One such Norfolk Island law is the *Crown Lands Act 1996* (NI), which provides for the lease or licensing of Crown land.<sup>34</sup> It provides that the Administrator may issue licences or leases in respect of vacant

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31 The Department of Transport and Regional Services has advised that the last of the land initiative prerequisites were expected to be in place by early March 2004. The Committee is advised by the Department that, as of 3 May 2004, no titles have been transferred.

32 See Chapter One for a description of the *Norfolk Island Act 1979* (Cth).

33 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. 35-39.

34 There are 135 Crown leases subject to the transfer proposal of the Federal and Norfolk Island Governments comprising 26 rural leases, 51 residential leases and 58 rural/residential leases. Not subject to the possible offer of freehold title as part of the current joint land initiative are: 27 licences to occupy, commercial and special purpose leases; 52 portions classified as vacant Crown land; 8 rural and residential leases within Kingston and Arthur's Vale Historic Area; and 8 rural and residential leases that straddle the Kingston and Arthur's Vale Historic Area boundary.

Crown land. In doing so, the Administrator acts as part of the Territory Executive and relies on the advice of the Norfolk Island Government subject to any contrary instructions that may be issued by the Federal Territories Minister.<sup>35</sup> The Federal and Norfolk Island Governments have agreed on a set of standing instructions governing the leasing of vacant Crown land. Once agreed, these were then issued by the Federal Territories Minister to the Administrator under the *Norfolk Island Act 1979* (Cth). As such, the Administrator must abide by them when exercising powers under the *Crown Lands Act 1996* (NI).

- 2.19 Subject to the above, the Administrator also acts on the advice of the Norfolk Island Government in respect of applications to use Crown land for industrial or commercial activities. This recognises the fact that the regulation and administration of industry and manufacturing on the Island is primarily a Norfolk Island Government responsibility and is carried out by Territory Ministers and officials. The Territory's planning laws also extend to and govern certain activities on Crown land. All proceeds arising from the use of Crown land on Norfolk Island – for example, leasehold rents, licence fees, timber royalties - are paid to the Norfolk Island Government or Administration.

## Public Reserves

- 2.20 Approximately 234 hectares of Crown land outside the National Park has been proclaimed as public reserves under the *Public Reserves Act 1997* (NI).<sup>36</sup> That Act vests the care and control of public reserves in the Administrator. As in the case of the *Crown Lands Act 1996* (NI), the Administrator relies on the advice of the Norfolk Island Government when exercising powers under the *Public Reserves Act 1997* (NI).
- 2.21 Day to day management of the Island's public reserves is undertaken by the Conservator of Public Reserves. The Conservator is the senior Norfolk Island public servant and an officer of the Norfolk Island

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35 Section 7, *Norfolk Island Act 1979* (Cth). See also *Island Industries Pty Ltd v The Administrator of Norfolk Island* [2003] NFSC1.

36 The following are reserves under the *Public Reserves Act 1997* (NI): Anson Bay Reserve: 5.45 ha; Ball Ball Reserve: 28.72 ha; Bumbora Reserve: 5.5 ha; Cascade Reserve: 32.45 ha; Headstone Reserve: 11.372 ha; Hundred Acres Reserve: 22.34 ha; Middleridge Reserve: 0.2 ha; Nepean Island Reserve: 10 ha (approx); Point Ross Reserve: 7.952 ha; Selwyn Reserve: 21.21 ha; Two Chimneys Reserve: 14.04 ha; Cemetery Reserve: 2.18 ha; Government House Grounds Reserve: 7.35 ha; Kingston Common Reserve: 29.57 ha; Kingston Recreation Reserve: 4.57 ha; Point Hunter Reserve: 30.91 ha; and War Memorial Reserve: 0.0008 ha.

Parks and Forestry Service. The Forestry Service implements plans of management for public reserves, undertakes forestry operations in the Forestry Zone of the Park and in public reserves, and is responsible for noxious weed control, stock inspection on public lands, and Crown lease inspections.<sup>37</sup> Many of the Island's public reserves were originally established under Norfolk Island legislation for purposes other than conservation. However, their importance today is recognised by the fact a majority of the public reserves are also listed on the Registrar of the National Estate under federal environmental laws.

## Federal Environmental Laws

2.22 While Norfolk Island laws apply to and govern activities affecting the Island environment, federal environment laws can also apply in some circumstances. As mentioned above, the EPBC Act has been extended to the Island. On Norfolk Island, the Act protects:

- threatened species, ecological communities, migratory species and marine species which are listed under the EPBC Act;
- the marine environment (including the sea around Norfolk Island out to 200 nautical miles)
- the environment of any land owned by or leased to or from the Federal Government (that is, Crown Land, including the Norfolk Island National Park);
- the Norfolk Island environment (from actions by Federal Government agencies); and
- places of national heritage listed under the EPBC Act.<sup>38</sup>

2.23 In short, the EPBC Act provides that nobody can take an 'action' that may have a significant impact on any of these things unless they have the prior approval of the Federal Minister for the Environment and Heritage. This means, for example, that approval is required under the Act for any action that is likely to have a significant impact on the Island's marine environment or Crown land on Norfolk Island.

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37 Department of the Environment and Heritage, *Norfolk Island National Park and Norfolk Island Botanic Garden Plans of Management*, p. 11. Available: [http://www.deh.gov.au/parks/publications/pubs/norfolk\\_plan.pdf](http://www.deh.gov.au/parks/publications/pubs/norfolk_plan.pdf)

38 *What the Environment Protection and Biodiversity Conservation Act 1999 means for Norfolk Islanders*, Consultation Draft, Department of the Environment and Heritage, November 2003. Available: <http://www.deh.gov.au/biodiversity/publications/norfolk-island/overview.html>

Administrative Guidelines issued under the Act provide guidance on determining whether an action has, will have, or is likely to have a significant impact on a matter of national environmental significance.<sup>39</sup>

- 2.24 Importantly, the term 'environment' is defined by the Act to mean all natural, social and cultural aspects of the area or land in question. This includes all animal and plant life, the soil, water and air, and even things like buildings and access for recreation may qualify for protection. In respect of the marine environment, for example, the Act may apply to any proposed new ventures that could cause major pollution, destroy undersea habitats for marine life or kill sea creatures. This may include new wharfs, offshore installations or even a new project on the Island itself that results in significant environmental impact.<sup>40</sup>
- 2.25 All actions that require approval under the EPBC Act must undergo environmental impact assessment before they can take place. This involves gathering and analysing information about the project and its impacts, consulting widely and considering ways to minimise any significant impacts. This ensures the Minister has enough information to make an informed decision about whether to approve a proposed action. Assessment is also designed to allow the public to comment on a proposal.<sup>41</sup>
- 2.26 Different assessment approaches will be appropriate in different circumstances. The Minister must choose one of the following assessment options:
- assessment on preliminary documentation;
  - a Public Environment Report (PER);
  - an Environmental Impact Statement (EIS);
  - a Public Inquiry; or
  - an accredited process (that is, on a project by project basis).

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39 See <http://www.deh.gov.au/epbc/assessmentsapprovals/guidelines/index.html>.

40 *What the Environment Protection and Biodiversity Conservation Act 1999 means for Norfolk Islanders*, Consultation Draft, Department of the Environment and Heritage, November 2003. Available:

<http://www.deh.gov.au/biodiversity/publications/norfolk-island/overview.html>

41 *What the Environment Protection and Biodiversity Conservation Act 1999 means for Norfolk Islanders*, Consultation Draft, Department of the Environment and Heritage, November 2003. Available:

<http://www.deh.gov.au/biodiversity/publications/norfolk-island/overview.html>

- 2.27 Once the environmental assessment process is complete, the Minister must decide whether to approve the action within 30 business days. In deciding whether to approve an action and what conditions to impose, the Minister must consider relevant environmental impacts and economic and social matters. In considering these matters, the Minister must also take into account:
- the principles of ecologically sustainable development;
  - the assessment report on the impacts of the action (or the report of a commission of inquiry);
  - the documentation provided by the person proposing the project (for example, an environmental impact statement);
  - any other information available to the Minister on the relevant impacts of the action; and
  - relevant comments from other Federal Government Ministers (such as information on social and economic factors).<sup>42</sup>
- 2.28 An approval issued by the Minister is a legal document saying that the project can proceed. Most approvals have conditions that must be complied with. Anyone working directly for, or as a contractor to, the holder or owner of an EPBC Act approval is also bound by that approval. It is the owner's responsibility to ensure the approval and its conditions are followed.<sup>43</sup>
- 2.29 Importantly, the EPBC Act allows the Federal Environment Minister to require proposed actions to be referred to him or her for a preliminary assessment as to whether they may be likely to have a significant impact on the matters of environmental significance outlined above and, therefore, require approval and detailed assessment under the Act as described above. Apart from requiring approval of actions, the Act also establishes systems for issuing permits to take, catch, interfere with or kill listed species and

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42 *What the Environment Protection and Biodiversity Conservation Act 1999 means for Norfolk Islanders*, Consultation Draft, Department of the Environment and Heritage, November 2003. Available:

<http://www.deh.gov.au/biodiversity/publications/norfolk-island/overview.html>

43 *What the Environment Protection and Biodiversity Conservation Act 1999 means for Norfolk Islanders*, Consultation Draft, Department of the Environment and Heritage, November 2003. Available:

<http://www.deh.gov.au/biodiversity/publications/norfolk-island/overview.html>

ecological communities on Commonwealth (Crown) land or in the marine area.<sup>44</sup>

- 2.30 The EPBC Act requires recovery and threat abatement plans to be prepared and implemented for those species listed under it. Importantly, the Act also expressly allows for the provision of federal financial and other assistance to State and Territory Governments and to individuals to help with the implementation of such plans.<sup>45</sup> The Act also allows for the Federal Government to enter into conservation agreements with State and Territory Governments and with individuals to provide for the protection and conservation of biodiversity. This would extend to biodiversity on Norfolk Island.<sup>46</sup>

## A Dual System of Environmental Protection

- 2.31 Notwithstanding the above, the Norfolk Island Government may still have to approve the project or issue permits, licences or authorisations under any applicable Norfolk Island laws – such as Norfolk Island planning laws – before the action in question can occur.<sup>47</sup> There is then a dual system of environmental laws and protection. Activities on the Island are governed by a range of Norfolk Island planning and land management laws, administered and enforced by Norfolk Island Ministers and officials. In some circumstances, however, federal environmental laws may apply. The Committee understands that, in such cases, a two stage approval process would apply - that is, approval by Norfolk Island authorities under Norfolk Island laws and then by federal authorities under federal environmental laws. This situation also applies in the Australian States and other self-governing Territories.

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44 *What the Environment Protection and Biodiversity Conservation Act 1999 means for Norfolk Islanders*, Consultation Draft, Department of the Environment and Heritage, November 2003. Available:

<http://www.deh.gov.au/biodiversity/publications/norfolk-island/overview.html>

45 See sections 281 & 286, *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

46 See section 304, *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

47 *What the Environment Protection and Biodiversity Conservation Act 1999 means for Norfolk Islanders*, Consultation Draft, Department of the Environment and Heritage, November 2003. Available:

<http://www.deh.gov.au/biodiversity/publications/norfolk-island/overview.html>

See also paras 3.22-3.26 of this report for an example where a development on the Island was subjected to the new Environment Protection and Biodiversity Conservation laws.

## Rationale for and Reaction to the Federal Freeholding Proposal

- 2.32 In announcing the freeholding proposal, the then Federal Territories Minister stated that the premise for the proposal was that Norfolk Island residents, like other Australians, should be able to own the land on which they live or operate their businesses. Reference was also made to the Commonwealth Property Principles – a set of Principles which had been established by the Federal Government in 1996 as the basis for the continued ownership and development of Commonwealth property.<sup>48</sup> In essence, the Principles stated that land owned by the Federal Government should generally only be retained if it was in the public interest. A key consideration was whether the land had some national significance (for example, land having symbolic significance, heritage and environmental significance, significant public usage or continued ownership would be cost effective for Government).
- 2.33 The freeholding proposal was limited to certain types of leased Crown land: namely Crown land leased for residential purposes. As such, some 135 leaseholders and their properties were potentially affected. The Committee understands that Federal Government representatives subsequently advised Island residents that, once the current land transfer process had been finalised, consideration would then be given to the possibility of freeholding of other types of licensed or leased Crown land (mainly Crown land used for commercial purposes). Crown land that was obviously of national significance - such as Crown land falling in the Kingston and Arthur's Vale Historic Area (KAVHA) and in the National Park and Botanic Gardens - was expressly excluded from the freeholding proposal.
- 2.34 The proposed terms of the transfer (which were outlined to leaseholders in March 2002) were based on a payment to the Federal Government of 10 percent of the 1996 Unimproved Capital Value of the lease to be freeholded plus an instrument fee of \$200 per transfer. It is understood that flexible arrangements for payment of this 'price' would be offered to relevant lessees to ensure that they were not unfairly disadvantaged. To avoid any speculative activity, there was to be a moratorium on the issue or transfer of Crown leases until the land transfer process was finalised.

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48 See Commonwealth Property Principles, Department of Finance & Administration website. Available: [http://www.finance.gov.au/budgetgroup/Other\\_Guidance\\_Notes/commonwealth\\_property\\_principl.html](http://www.finance.gov.au/budgetgroup/Other_Guidance_Notes/commonwealth_property_principl.html)

- 2.35 In the interim, an environmental survey of the land to be transferred was to be undertaken by Federal Government consultants. The aim was to identify and assess any features of national environmental significance on the Crown land in question so as to assist in the protection of the environment post transfer. A survey report was also required to assist the relevant federal agencies comply with the requirements of the EPBC Act. In August 2002, the Department of Transport and Regional Services advised the Committee that the survey had been undertaken and a report prepared, which was under discussion with the Department of the Environment and Heritage and relevant landholders.<sup>49</sup> According to the Department of Transport and Regional Services, the survey had not identified any matters that would of themselves preclude the freeholding of Crown land.<sup>50</sup>
- 2.36 The Federal Government decided that freehold titles would be offered directly to the leaseholders concerned. Any leaseholders choosing not to convert their titles to freehold would remain Crown leaseholders. This land would not be offered for private sale or transferred to the Norfolk Island Government to manage. The Committee understands that one reason for this was the representations made by affected leaseholders expressing concern at the prospect of the Norfolk Island Government gaining control over their properties.<sup>51</sup>
- 2.37 Although the land initiative is said to enjoy widespread support within the community (notably among lessees), the Committee received written submissions and oral evidence from some individuals and interest groups opposed to the Crown land transfers. The Australian Conservation Foundation (ACF), for example, opposed the transfer of the control and ownership of the Crown leasehold on the grounds of protecting the national environmental interest.<sup>52</sup> The ACF submitted that the land transfer, in conjunction with the development of the new Norfolk Island Plan (which the ACF saw as flawed), would:

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49 See Department of Transport and Regional Services, Submissions, p. 38.

50 This finding by the Department of Transport and Regional Services (DoTaRS) predated the announcement by the Federal Environment Minister that 46 plant species on Norfolk Island will be listed as threatened species under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Media Release, Federal Minister for the Environment and Heritage, The Hon. Dr David Kemp, *Added Protection for Norfolk Island's Unique Plants*, 13 November 2003. DoTaRS has since advised that it is to refer the issue of land transfers to the Federal Environment Minister for assessment under the EPBC Act.

51 That is, as opposed to the current system whereby the Federal Government is involved through the ability to issue instructions to the Administrator. See paragraph 2.18.

52 Australian Conservation Foundation, Submissions, p. 118.



seriously reduce protection for the four main features of national and international significance on Norfolk Island; namely: the indigenous flora and fauna; the Norfolk Island coastline; the authentic remains of the convict settlements centred on Kingston; and the characteristic beauty of the associative rural landscape.<sup>53</sup>

- 2.38 The ACF urged the Committee to recommend against the freeholding of crown leases and to recommend against the granting of assent to the proposed Norfolk Island Plan. It also urged the Committee to recommend that the Federal Government work to gain agreement on the retention in the Plan of planning restrictions and processes governing development on the Island's cliff tops and coastline as well as in the 'viewshed' of KAVHA.<sup>54</sup> It also argued that there was a need to carry out the long-overdue assessment of a number of nominations to list properties on Norfolk Island on the RNE.<sup>55</sup>
- 2.39 These matters having been brought to its attention, the Committee wrote to the Minister for Regional Services, Territories and Local Government on 26 August 2002, requesting deferral of the proposed transfer of Crown leasehold land to freehold title until it had had the opportunity to conduct hearings on Norfolk Island and seek community input. The Minister responded in October 2002, stating that he was not prepared to defer the land transfers given the wide-ranging support it had among residents of Norfolk Island and the Norfolk Island Government.

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53 Australian Conservation Foundation, Submissions, p. 124.

54 The KAVHA viewshed was a zone established under the Territory's statutory planning scheme. It comprised the area adjacent to the boundary of the historic area in which a development could be seen from five designated viewing points within KAVHA. The aim was to ensure that KAVHA's setting and character was preserved through sympathetic development on the surrounding hills and slopes. Therefore, certain types of development had to be referred to the KAVHA Management Board for its consideration and advice to the Norfolk Island Planning Minister. This advice was not binding on the Norfolk Island Minister. The Committee understands that the 'viewshed' concept was abandoned in the development of the new statutory Norfolk Island Plan. Instead a set of planning principles was to be developed. The Committee is unaware of whether these planning principles have been developed and implemented.

55 Dr Geoff Mosley, Transcript, 28 March 2003, p. 156. The Committee understands that a large number of nominations for properties on the Island to be listed on the Register of the National Estate were made in the 1990s. These were not progressed by the Australian Heritage Commission as it wishes to develop and implement a joint assessment process in conjunction with the Norfolk Island Government and with Island residents. This led to the development of the new heritage laws for the Territory. See paragraphs 3.9 – 3.13.

- 2.40 Of particular concern to the ACF is the provision in the new Plan for the subdivision of the Crown land properties which were to be freeholded. The ACF argued that removal of subdivision restriction on this area of land would have adverse environmental effects.<sup>56</sup> A Norfolk Island Government official disputed this in evidence given to the Committee, stating that, on pieces of land that the Commonwealth judges are of (environmental) concern and interest, the transfer will be subject to various covenants.<sup>57</sup> That is, the EPBC Act allowed the Federal Environment Minister, when transferring or freeholding Crown land considered to have heritage or environmental significance or features, to impose covenants on that land which were designed to protect those features after the land is transferred.
- 2.41 The Committee has some reservations about reliance on such covenants alone. One can reasonably question whether and how such covenants might effectively bind all successors in title to the land and, perhaps more importantly, who will be responsible for monitoring compliance with that covenant on an ongoing basis and who shall undertake and pay for any enforcement action, if required. Enforcement action would presumably require commencement of civil proceedings in the courts and, therefore, involve cost and delay. Gaining access to land for monitoring may be difficult once land has been freeholded.
- 2.42 Some witnesses also sought to link the question of the Commonwealth ownership of land to the future use and protection of Crown land. However, this view was not shared by the Commonwealth. In a letter to Norfolk Island householders in 2001, the then Minister, Senator the Hon. Ian Macdonald, noted that:

It has been suggested that rural leases should remain leasehold because the current Crown leasehold system offers some protection from subdivision and development of rural land. However, it is intended that the revised Norfolk Island Plan will be the primary means through which future subdivision and development on Norfolk Island should be controlled. Modern planning approaches across Australia mean that it is planning schemes, not who owns the land,

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56 The current Crown land management arrangements generally prohibit the subdivision of Crown land.

57 Mr Peter Davidson, Transcript, 18 February 2003, p. 8.

which determines what may be done with particular pieces of land.<sup>58</sup>

- 2.43 Mr Gerard Early of the Department of the Environment and Heritage stated that he did “not think that it would make much difference” whether land was freehold or Commonwealth leasehold for the purposes of federal environmental laws.<sup>59</sup> That is, the EPBC Act applies equally to Crown land and private land on Norfolk Island:

The threshold for the application of that legislation is having a significant impact on one of the matters of national environmental significance, or the environment, on Commonwealth land, and those matters of national significance apply equally to both private and crown land.<sup>60</sup>

- 2.44 This view is open to question. As stated earlier, Crown leasehold on Norfolk Island is important from an environmental and land management perspective. The EPBC Act currently protects the latter as it extends to actions having a significant impact on the environment on Commonwealth (Crown) land on Norfolk Island as well as the other matters of national environmental significance outlined earlier in the chapter. As explained above, the Act’s protection of Crown land’s ‘environment’ currently extends to an affected area’s ecosystems and their constituent parts (including people and communities), natural and physical resources, the qualities and characteristics of locations, places and areas, and to social, economic and cultural aspects.<sup>61</sup>

- 2.45 However, once Crown land is free-held, that land is no longer ‘Commonwealth land’ for the purposes of the EPBC Act. Therefore, the Act would only extend to the environment on that land if the action concerned could be characterised as having a significant impact on one of the listed matters of national environmental significance (for example, a listed species or ecological community). Determining whether an action may have such an impact on one of a narrow range of matters is also ambiguous and can be open to argument. This was evident from the Department of the Environment and Heritage’s comment that “it is a matter of judgment as to whether you think what you are going to do will have a significant impact”.<sup>62</sup> There is

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58 Department of Transport and Regional Services, Submissions, p. 106.

59 Mr Gerard Early, Transcript 28 March 2003, p. 171.

60 Mr G Early, Transcript, 28 March 2003, p. 171.

61 See paragraph 2.1.

62 Mr G Early, Transcript, 28 March 2003, p. 173. See also *Booth v Bosworth* [2001] FCA 1453.

then arguably a lesser degree of protection afforded by the Act to the environment once the relevant areas of Crown land – covering a significant proportion of the Island – have been freeholded.

2.46 On the above view, there is a *potential* for the land transfer to compromise environmental matters which are of national significance. However, after careful consideration, the Committee is satisfied that this potential risk is appropriately addressed by the following considerations and measures:

- Implementation of the new Norfolk Island land package;
- Staged implementation of the Land Transfer Process;
- Appropriate resourcing of the new Norfolk Island land package;
- Implementation by the Federal Government of the Committee's recommended good governance reforms;
- Federal Government scrutiny in the development of planning laws;
- Application of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- Federal assistance for Norfolk Island landholders; and
- Ongoing Federal parliamentary monitoring.

### **Implementation of the new Norfolk Island Land Package**

2.47 The Federal and Norfolk Island Governments are jointly implementing a revised Norfolk Island planning and land management regime. In view of the importance of Crown land on Norfolk Island and the insistence to date on finalisation of an appropriate land package, the Federal Government has a responsibility to satisfy itself as to the appropriateness and effectiveness of the new regime before agreeing to freehold the residential Crown leases in question. Some new laws have only recently been enacted. Others are still being implemented. As such, time is required in order to allow the effectiveness of the new regime to be assessed.

### **Staged Implementation of the Land Transfer Process**

2.48 It is apparent that the Federal Government has adopted a staged approach to the land transfer process. As noted above, the current land transfer process is limited to residential Crown leases. Crown

land comprising public reserves, KAVHA and the National Park is not included in the Land Transfer Initiative. The Committee understands that the Federal Government has yet to make any decision or binding commitment in respect of other types of licensed or leased Crown land (such as Crown land used for commercial purposes). The Committee also agrees that no such decision or commitment be made until after a suitable period has passed to enable an assessment of the effectiveness of the new land management and planning regime, especially in respect of residential Crown leases, once freeholded.

## Recommendation 2

- 2.49 That the Federal Government make no decision or commitment in respect of the transfer to freehold title of other types of Crown leasehold or licences until after a suitable period has passed to enable an assessment of the effectiveness of the new land management and planning regime, especially in respect of residential Crown leases that will have been transferred to freehold title.**

### Appropriate Resourcing of the new Norfolk Island Land Package

- 2.50 The effectiveness of the Territory's new planning, environmental and land management laws depend upon their implementation, operation and enforcement being appropriately resourced on an ongoing basis. However, the attention to date of both Governments in respect of the Land Initiative appears to have focussed largely on completion of the legislative prerequisites.<sup>63</sup> The Committee is concerned that little, if any, attention appears to have been given to the question of ongoing budgetary provision and administrative resourcing to support the new legislative regime once it is in place. At the same time, it is evident from the findings of the Committee's report on Norfolk Island governance and the other reports and inquiries listed in it that the Norfolk Island Government is grappling with financial difficulties and administrative shortcomings.<sup>64</sup> As such, before any land transfers

63 See paragraph 2.13.

64 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. Other reports include: Butland, G. J. 1974, *Report to the Department of the Capital Territory of the Australian Government on a Long Term Population Study of Norfolk Island*;

take place, including transfer of residential Crown leasehold, both governments ought to be satisfied that it has been demonstrated that the new land package is appropriately resourced and will continue to be in the future.

- 2.51 The Federal Government has the option of extending federal financial and other assistance to the Territory Government in respect of planning, environmental and land management. There are an array of different mechanisms by which this may be done (such as an annual federal 'environmental' grant to the Norfolk Island Government, through specific grants to landholders or through the secondment of federal officials to the Territory Government or through the provision of expert advice to Territory officials and residents via on-island federal representatives). As stated in the Committee's report on Norfolk Island governance, there is a need for the Federal Government to reassess its current policies with respect to Norfolk Island and its exclusion from federal programmes and services on the basis that residents are exempted from federal income tax.<sup>65</sup> This need extends to planning and environmental management on Norfolk Island. If further justification were required, regard could also be had

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Nimmo, J. 1976, *Report of the Royal Commission into Matters relating to Norfolk Island*, Australian Government Publishing Service, Canberra; House of Representatives Standing Committee on Legal and Constitutional Affairs, 1991, *Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, Australian Government Publishing Service, Canberra; Australian Law Reform Commission, 1994, Report No. 69, *Equality before the Law: Women's Equality* (Chapter 14: *Women in Remote Communities: Norfolk Island – a case study*); Joint Standing Committee on the National Capital and External Territories, 1995, *Delivering the Goods*, Australian Government Publishing Service, Canberra; Australian Law Reform Commission, 1995, Report No. 77, *Open Government: a review of the federal Freedom of Information Act 1982* (Chapter 11); Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra; Access Economics, 1997, *Norfolk Island: Recent Economic Performance, Present Situation, and Future Economic Viability. Is there a Case for Change?*; John Howard and Associates, 1998, *Norfolk Island Administration, Strategic Review*, Sydney; Human Rights and Equal Opportunity Commission, 1999, *Territorial Limits: Norfolk Island's Immigration Act and Human Rights*, J. S. McMillan Printing Group, Sydney; Joint Standing Committee on the National Capital and External Territories, 1999, *Island to Islands: Communications with Australia's External Territories*; 2001, *In the Pink or in the Red?: Health Services on Norfolk Island*; and 2002, *Norfolk Island Electoral Matters*, Canprint, Canberra; and *Focus 2002 – Sustainable Norfolk Island*, 10<sup>th</sup> Legislative Assembly, Norfolk Island.

<sup>65</sup> Recommendation Two, 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. 48-49.

to the local, national and international importance of the Island's environment described above.

### **Recommendation 3**

- 2.52 That, before any land transfers take place, the Federal Government ensure that the new land package is appropriately resourced and will continue to be in the future and that, prior to any transfer, the Federal Minister report to Parliament on steps taken to ensure the latter.**

### **Recommendation 4**

- 2.53 That the Federal Government extend its reassessment of its current policies with respect to Norfolk Island and the basis for the Territory's exclusion from Commonwealth programmes and services to include planning and environmental management on Norfolk Island.**

### **Implementation by the Federal Government of the Committee's recommended good governance reforms**

- 2.54** As mentioned earlier, the Committee's position and recommendations in this report are conditional on acceptance and implementation of the Committee's recommendations in the earlier good governance inquiry. As explained in Chapter One, the Committee has recommended a range of reforms designed to ensure accountability and transparency in decision-making within the Territory Government and to provide Island residents with the opportunities, rights and protections that other Australians enjoy in respect of government. In recommending these measures, it was intended that they would apply to the Territory's land management and planning regime.
- 2.55** The Committee is aware that an Administrative Review Tribunal has been established on Norfolk Island – with federal assistance and input – to allow for decisions made by Territory Ministers and officials,

including certain decisions on land and planning matters.<sup>66</sup> At present the laws enacted by the Norfolk Island Assembly confer a relatively limited jurisdiction on the Tribunal. The Committee is aware that consideration is being given to widening the jurisdiction of that Tribunal. However, it must be recognised that an administrative review tribunal is only one small part of the total reform package required. The current Tribunal is not an independent, investigatory body equipped with an appropriate statutory mandate and powers – and the resources required – to respond to and investigate residents’ concerns and complaints about government. Tribunal members can only address themselves to the merits of the impugned decision in question and only after the matter has been brought before them. The Tribunal relies on persons who may be adversely affected by a Norfolk Island Government decision having sufficient financial and other resources available to first obtain all the relevant information and evidence themselves and then to bring the case before the Tribunal and then to argue it. That is, assuming they can do so within the relevant timeframes and in accordance with the procedural and legal prerequisites governing who, when and how a matter can be brought before the Tribunal for review.

### **Federal Government Scrutiny in Development of Planning Laws**

- 2.56 The Land Initiative is premised on federal endorsement of the new laws and delegated legislation – especially the Norfolk Island Plan – before any land transfer will be contemplated. However, there appears no guarantee that the Norfolk Island Plan or any of the subordinate legislation that the Federal Government has insisted upon, helped develop and then endorsed, will remain in place once Crown land is freeholded. The ability to make or amend the subordinate legislation – such as the Norfolk Island Plan – rests with the Norfolk Island Legislative Assembly alone. Federal authorities appear to have no formal or legal role in this process.<sup>67</sup>

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66 An Administrative Review Tribunal (ART) for Norfolk Island was established in 1996, through the *Administrative Review Tribunal Act 1996* (NI). The Tribunal can review (on merits) decisions made under the following Norfolk Island laws: *Crown Lands Act 1996*; *Land Administration Fees Act 1996*; *Land Titles Act 1996*; *Planning Act 1996*, *Billboard Act 1996*, *Public Health Act 1996*, *Public Reserves Act 1997*, *Trees Act 1997* and *Norfolk Island Broadcasting Authority Act 2000*. The Chief Magistrate of the Australian Capital Territory is appointed as the President of the Tribunal.

67 The Committee understands that the only opportunity federal authorities have under the Territory planning laws to comment on the draft Plan is during the public consultation phase. In this sense, the Federal Government stands in the same position as the general public and its comments are free to be adopted or rejected by Territory authorities. In



- 2.57 The situation on Norfolk Island stands in stark contrast to that in other Australian States and the Northern Territory where amendments to statutory planning instruments are subject to the checks and balances of being proposed at one government level (that is, at the local government level) and then endorsed, amended or rejected by another (that is, at the state government level). However, in Norfolk Island's case, the Members of the Legislative Assembly are responsible both for proposing and endorsing the Plan and any amendments thereto. The Committee has some reservation with this situation given findings of earlier inquiries and reports concerning the governance of Norfolk Island.<sup>68</sup>
- 2.58 There appear good grounds to argue that the Federal Government should have a role in scrutinising the making and amendment of Territory subordinate planning and land use laws. As mentioned above, the ability to rely on Territory planning laws, particularly the Norfolk Island Plan, to protect the environment has been cited as one reason for the Federal Government to withdraw from ownership of Crown land and thereby relinquish any rights it may have to management of that land. Yet, it is apparent that the efficacy of these planning laws depends to a large extent on subordinate legislation. Consideration could be given to amending the *Norfolk Island Act 1979* (Cth) or the relevant Norfolk Island laws to provide for a formal federal role or input in the development and amendment of the statutory planning and land use regime.<sup>69</sup>

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contrast, provision has been made for a federal role and scrutiny in the making of Plans of Management for the Island's public reserves by the requirement that the Administrator make the Plans and through the application of section 7 of the *Norfolk Island Act 1979* (Cth).

68 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. See also the reports listed at footnote 31 on page 16 of that report.

69 One approach would be to include 'land use and management' and 'environment protection and conservation (including parks, reserves and gardens, and preservation of historical objects and areas)' in Schedule 3 of the *Norfolk Island Act 1979* (Cth) and to then confer powers on the Administrator with respect to the development and amendment of the statutory planning and land use regime, including subordinate legislation. The Norfolk Island Act requires the Administrator, when exercising such powers to act in accordance with advice of the Norfolk Island Government or Executive Council in respect of Schedule 3 matters. The Federal Government – acting through the Federal Territories Minister – would therefore have the option of issuing instructions to the Administrator in respect of such matters (as happens with the current Crown Land Instructions).

- 2.59 Planning and land management are also matters in which the Federal Government has a legitimate interest given its role and responsibilities for the Norfolk Island. As highlighted by the 1994-1995 Joint Federal-Territory Land Working Group, if the Island has limited natural resources (for example, its environment, its fresh water supplies, visual amenity, character and even the Island's cultural identity) and if these are lost through natural disaster, mismanagement or overdevelopment, federal assistance and funding may be required. The Federal Government therefore retains an interest in ensuring the Territory remains as resilient as possible by ensuring the enactment, administration and enforcement of an effective planning and land use regime. Also relevant is the Federal Government's residual interest in and responsibility for 'good governance' in the Territory. Reciprocal obligations arise out of the fact that the Federal Parliament has devolved legislative and executive power to Norfolk Island, to elect its own government, to have its own Administration and be responsible for raising its own revenue. The Federal Government therefore retains residual responsibilities for the Territory's good governance and proper financial management. That is, to ensure that efficient and honest government is delivered locally and to facilitate economic and social development.<sup>70</sup>
- 2.60 Federal involvement and oversight would also reflect the fact that the heritage, flora and fauna of Norfolk Island is unique and of national and international significance. It would also reflect the longstanding federal interest, and relatively significant investment in financial and human terms by the Federal Government, in Norfolk Island land and environmental matters to date.<sup>71</sup> As was stated by the Commonwealth Grants Commission in 1997, federal oversight (and advice and assistance) would still allow the Norfolk Island Government to provide the government services in question, but would also provide a means of monitoring proposed legislative developments to ensure minimum standards are met and to provide any advice or assistance as may be required in that regard.<sup>72</sup>
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70 See Joint Standing on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra, pp. 39-40.

71 See, for example, Hoare M, *The Winds of Change. Norfolk Island 1950-1982*, Institute of Pacific Studies, Suva 1983, pp 71 – 79.

72 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, p. 217.

## Recommendation 5

- 2.61 **That the *Norfolk Island Act 1979* (Cth), together with the relevant Norfolk Island laws, be amended to provide for an effective, ongoing role for the Federal Government in the making and amendment of the Territory's statutory planning and land use regime.**

### Application of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

- 2.62 As explained above, the EPBC Act applies to Norfolk Island and seeks to protect specified matters of national environmental significance. In the event of any inconsistency between Territory laws and the EPBC Act, the Act prevails. The Act has been amended to now include the protection of national heritage. The Committee understands that, in light of the environmental and social importance of Crown land on Norfolk Island outlined above, the Department of Transport and Regional Services and the Federal Minister for Territories are to adopt a precautionary approach to Crown land transfers and will refer the matter to the Federal Minister for Environment and Heritage for a determination whether any or all freeholding or transfer of Crown land constitutes a 'controlled action' for the purposes of the EPBC Act.<sup>73</sup> As explained above, the EPBC Act requires that 'controlled actions' undergo an environmental impact assessment and obtain approval under the EPBC Act before they can take place. Regard would presumably be had to the findings and recommendations of this report in any such determination or subsequent assessment or when considering what conditions ought to be imposed. As such, notwithstanding that concerns have been raised with the Committee with respect to the Land Initiative, the Committee has no qualms in recommending that the land transfer process continue subject to the Committee's recommendations in this report.

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73 The EPBC Act provides that any person proposing to undertake an action that may be a controlled action must propose the matter to the Federal Environment Minister for assessment as to whether it is a controlled action. The Environment Minister may also require persons – including Commonwealth agencies – who he or she believes are proposing to take a controlled action to refer the proposal to the Minister for assessment as to whether it is a controlled action. See sections 67 to 71 of the EPBC Act. The EPBC Act provides for public notification and comment on such assessments. Notice of all referrals are placed on the internet.

- 2.63 Protection of Norfolk Island's environment will also be dependent on the Federal Government and landholders agreeing to enter into appropriate conservation agreements and covenants when required prior to any transfer or freeholding of Crown land. It is important that these agreements and covenants provide, among other things, an enduring right of access for both Federal and Norfolk Island officers and agents for the purpose of environmental monitoring. The Committee believes it is important that the Department of the Environment and Heritage is provided with adequate resources on an ongoing basis, both to administer the overarching EPBC Act on the Island and to monitor and enforce compliance with any agreements, covenants or undertakings given or entered into by Crown leaseholders prior to freeholding.

#### **Recommendation 6**

- 2.64 **That the appropriate financial and human resources be provided to the Commonwealth Department of the Environment and Heritage to monitor and enforce compliance with Crown lease covenants and conservation and related agreements on Norfolk Island.**

#### **Federal Assistance for Norfolk Island Landholders**

- 2.65 Due regard and recognition must be given to the efforts and desire of many landholders on Norfolk Island to preserve the Island's natural environment. The Committee is aware of the strong and abiding connections that Island residents have to their family land, including leasehold land that has been held within one family for many years. It is also aware that there are Island leaseholders who, out of a commendable sense of stewardship for the land, have sought to preserve native species and habitat on their leases. It is appreciated that, in so doing, some would have relinquished the use of part of their leases and, therefore, part of their income as many would rely on their leases to supplement their incomes or pensions. Preservation of native species and habitat would not have always been and may not be an easy task for individual landholders. Natural areas will not always be self-maintaining on an island plagued with aggressive introduced weeds and feral cats and other pests. Personal, family and

community pressures to develop land on the Island for residential or commercial purposes do exist and must also be faced and resolved.<sup>74</sup>

- 2.66 The Committee notes that a relatively large sum of money will be generated by the land transfer process. It is the Committee's view that these funds should be reinvested into Norfolk Island. In particular, these funds could be used by the Federal Government to establish a Trust Fund to assist those landholders with covenants placed over their land as a result of the land transfer process. For example, assistance could extend to weed control, cat trapping to protect seabird rookeries and fencing to exclude grazing animals, and preservation of structures or sites of historical significance. Historical values also often need outside intervention to maintain the integrity of the fabric of structures, based upon advice from professional conservators. An ongoing programme of inspections by on-island federal officials could be introduced to monitor all freeholded properties once each year and to identify and agree on ways to assist landholders as appropriate.

### Recommendation 7

- 2.67 **That the Federal Government act immediately to ensure that Island residents and community organisations, as well as the Norfolk Island Government, be made aware of and eligible to apply for financial and other assistance provided under federal programmes, services and grant schemes that may be relevant to planning, environmental, heritage and land management.**

### Recommendation 8

- 2.68 **That net revenue received by the Federal Government in respect of any freeholding of Crown land on Norfolk Island be set aside to assist leasehold and freehold landholders on Norfolk Island who enter into conservation agreements, covenants or access agreements or similar undertakings with the Federal Government concerning the protection**

74 The Committee is aware that the Territory Government recently initiated an inquiry into land speculation on Norfolk Island. See *The Norfolk Islander*, 1 November 2003. It is understood that the Territory Government also had to reverse its earlier decision to remove restrictions on tourist accommodation on the Island due to rapid growth in tourist accommodation and associated development on the Island's limited freehold land. See *The Norfolk Islander*, 3 March 2003.

**and conservation of the environment or heritage on their land or the Island more generally.**

### **Recommendation 9**

- 2.69 That Recommendation Eight be implemented by the Federal Government establishing a Norfolk Island Trust Fund administered by the Federal Minister for the Environment and Heritage.**

### **Ongoing Federal Parliamentary Monitoring**

- 2.70** As already stated, the Committee's support of the Land Transfer Initiative is conditional on those concerns raised throughout this chapter being adequately addressed. Given fears raised during the inquiry that the initiative threatens to compromise significant environmental features on the Island, the Committee believes that an appropriate system of checks and balances must be in place for the transfer to proceed. The Committee wishes to reinforce its view that there is a need for ongoing budgetary provision and administrative resourcing to support Norfolk Island's new planning, environmental and land management regime. The Committee will continue to monitor the situation regarding the land transfer, to ensure effective application of the EPBC Act is taking place and to satisfy the Committee that the considerations and measures outlined throughout this chapter have been implemented appropriately. The Committee intends to report to the Parliament on this matter in future inquiries concerning Norfolk Island.

### **Recommendation 10**

- 2.71 That the Department of Transport and Regional Services and the Department of the Environment and Heritage, as the responsible Commonwealth agencies, specifically detail in future annual reports the human, financial and other resources allocated by each Department to administer the Federal Government's statutory and other responsibilities with respect to the environment and heritage of Norfolk Island.**

## The Committee's View

- 2.72 The Committee believes it is still too early to assess the operation of the new land management and planning legislation on Norfolk Island. However, the Committee is satisfied that, if the Federal and Norfolk Island Governments accede to the implementation of both the recommendations in this report and those from the Committee's first report on Norfolk Island governance, there can be no reasonable justification for the current Land Initiative not proceeding.

## National Park

- 2.73 As mentioned earlier, the Department of the Environment and Heritage, through Parks Australia is responsible for Norfolk Island's National Park and Botanic Gardens. Both are of national and international significance for their conservation values and are also significant locally as tourist attractions and places of recreation and relaxation.
- 2.74 The National Park covers 650 ha in two sections. The Mt Pitt section on Norfolk Island covers 450 ha and includes a Forestry Zone, which is managed in part for forestry. The other section comprises 190 ha on neighbouring Phillip Island. The Norfolk Island Botanic Garden comprises 5.5 ha of remnant rainforest.<sup>75</sup> Land comprising the Park is currently owned by the Commonwealth.
- 2.75 The EPBC Act imposes a range of controls and restrictions on activities in Commonwealth reserves such as the Norfolk Island National Park. Management of the National Park and Botanic Garden by the Director of Parks is guided by the Norfolk Island National Park Advisory Committee. The Committee is comprised of representatives from Parks Australia and the Norfolk Island Legislative Assembly.<sup>76</sup> The EPBC Act provides a range of regulatory mechanisms for controlling activities in Commonwealth reserves, in particular through the making and implementation of management plans.
- 2.76 Parks Australia's six staff on Norfolk Island perform several key functions including:

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75 Department of the Environment and Heritage, Submissions, p. 220.

76 Department of the Environment and Heritage, Submissions, p. 221.

- preparing and implementing the Norfolk Island National Park and the Norfolk Island Botanic Garden management plans;
- community liaison and education on environmental protection and conservation;
- provision of environmental advice to the Norfolk Island Administrator;
- liaison with the Norfolk Island Government and private landholders on conservation issues in the Territory; and
- undertaking various rehabilitation, maintenance and threatened species management programmes.

2.77 Each year the Federal Government provides funding of approximately \$100,000 for capital works for improving the facilities associated with the National Park and its recovery programmes. The Department of the Environment and Heritage reported that “since 1998 this has focussed on the repair of Mt Pitt Road, which collapsed in several sections after severe storms”.<sup>77</sup> However, the Committee understands that the Federal Government provided \$3 million in additional funding to repair the road over and above normal annual funding. Some might also argue that the reconstruction of a much wider and improved road has more importance from a tourism perspective than purely an environmental one. It is evident that such annual and special funding has had important spin offs for the Island economy and community. It is clear from the evidence gathered during this inquiry and the Committee’s inquiry into governance on Norfolk Island that the Territory Government and community would not have been able to raise this money itself were the Territory Government responsible for the National Park.

2.78 In its submission to the 1999 Senate Environment, Recreation, Communication and the Arts Legislation Committee’s Inquiry into the Environment Protection and Biodiversity Conservation Bill 1998, the Norfolk Island Government suggested that “the Norfolk Island National Park is managed by Parks Australia on behalf of the Norfolk Island Government” and that in the future “ownership of the park and primary management responsibility for the park will be vested in

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77 Department of the Environment and Heritage, Submissions, p. 222. On 6 August 2003, the Federal Minister for the Environment and Heritage, the Hon. Dr David Kemp MP, officially declared the successful reconstruction of the Mt Pitt Road. See *The Norfolk Islander*, 6 August 2003.



the Administration of Norfolk Island”.<sup>78</sup> The Committee does not share this view. The Park is of local, national and international significance and is managed by the Federal Government for and on behalf of all Australians, including the Norfolk Island community. Nor have any valid reasons been put forward to date to justify any change in the Park’s current ownership or management arrangements. In light of the findings of a range of inquiries which have identified among other things the “general lack of administrative and financial capacity of the Norfolk Island Government to manage the broad range of responsibilities it has been given”, the Committee would also have serious reservations at any proposal whereby the Norfolk Island Government assume management responsibility for or control over the National Park.<sup>79</sup>

### Recommendation 11

- 2.79 **That the Commonwealth retain both ownership and responsibility for the management of the Norfolk Island National Park.**

## Waste and refuse management

- 2.80 As could be expected on a small island with a tourist based economy and over 40,000 visitors a year, waste management is a major issue. On Norfolk Island the problem is exacerbated by a fragile aquifer, so that disposal in land fill is not an option. The great majority of waste is therefore dumped in the sea. The treatment of sewage and the removal of asbestos were also raised in evidence.
- 2.81 There are two tips at Headstone Point that are administered by the Norfolk Island Government. The Committee inspected the site on 17 February 2003 and observed a good deal of rubbish floating in the sea and a dark brown stain in the water, extending for several hectares. According to the Department of the Environment and Heritage, the current incinerator does not burn waste effectively and partially

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78 Norfolk Island Government, Submission to the 1999 Senate Environment, Recreation, Communication and the Arts Legislation Committee’s Inquiry into the Environment Protection and Biodiversity Conservation Bill 1998, p. 6.

79 For a full list of reports see Joint Standing on the National Capital and External Territories, December 2003, *Quis custodiet ipsos custodes?: Inquiry into Governance on Norfolk Island*, Canprint, Canberra.

unburnt material and other waste is deposited into the sea, threatening marine life, human health and the coastline.<sup>80</sup>

- 2.82 The Committee also observed that the construction of a new waste management facility had commenced. At the time of the visit, concrete foundations had been laid and a shed wall had been erected. The new facility was subsequently opened on 1 October 2003.<sup>81</sup> The Waste Management Centre was funded by both the Norfolk Island Government, which to June 2003 had contributed more than \$240,000,<sup>82</sup> and the Federal Government, which contributed a total of \$250,000 under the Coast and Clean Seas component of the Natural Heritage Trust to assist the Norfolk Island Government implement an Island wide waste management strategy.<sup>83</sup>

### Treatment of Sewage

- 2.83 Primary treated sewage is also deposited at sea. The Conservator of Public Reserves, and Land Use and Environment Manager in the Norfolk Island Administration, Mr Peter Davidson, stated that the Administration was not aware of any major problems with sewage disposal.<sup>84</sup> He observed, however, that it was important to determine what effects the system is having on the inshore marine environment.<sup>85</sup> If it were found that there were significant adverse effects, he suggested that it might be necessary to extend the pipeline further out. However, the Administration was not currently in a position to know whether this is necessary.
- 2.84 The Committee welcomes the implementation of the Norfolk Island Waste Management and Disposal Strategy and fully supports the

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80 National Heritage Trust Website, *Implementation of the Norfolk Island Waste Management and Disposal Strategy*. Available:

<http://www.nht.gov.au/nht1/programs/ccs/index.html>

81 See *The Norfolk Islander*, 4 October 2003. In *The Norfolk Islander*, 9 August 2003, Island residents were advised that with the opening of the centre, public access to the Headstone tip would cease. Residents were informed that the relevant Territory Government minister and the Legislative Assembly were considering options for funding the Island's waste management operations, but that "at this stage it is not intended to charge 'gate fees' for sorted domestic wastes". The Government would, however, "monitor the need to charge fees for unsorted waste and intractable or hazardous wastes". See also Mr Peter Davidson, Transcript, 18 February 2003, p. 4.

82 Information provided by the Norfolk Island Government.

83 Department of Transport and Regional Services, *Federal Assistance Provided to Norfolk Island*. Available: [http://www.dotars.gov.au/terr/norfolk/fed\\_assistance.htm](http://www.dotars.gov.au/terr/norfolk/fed_assistance.htm)

84 Mr Peter Davidson, Transcript, 18 February 2003, p. 9.

85 Mr Peter Davidson, Transcript, 18 February 2003, p. 9.

Federal Government's grant to the Norfolk Island Government under the Clean Seas Program.<sup>86</sup> It remains concerned, however, with the possible environmental damage that might be caused by in-shore sewage disposal. As the EPBC Act applies to the marine areas around Norfolk Island, the Federal Government arguably has a management and regulatory role to play in this.

- 2.85 The Committee is also concerned that Norfolk Island's current, inadequate, wastewater disposal system could, potentially, have an adverse impact on the health and well-being of Island residents and visitors. The Federal Government should, therefore, assist the Norfolk Island Government in providing a reliable and safe sewage disposal system that protects the Island community, visitors and the environment.<sup>87</sup> The Committee, therefore, recommends:

## Recommendation 12

- 2.86 **That the Federal Government assist the Norfolk Island Government in upgrading existing sewage services and, where necessary, developing new sewage disposal facilities that protect the health of the community, visitors, the environment and adjacent coastal areas of Norfolk Island.**

## Asbestos removal

- 2.87 Allegations were made in confidential evidence that asbestos was not being removed according to the proper practices.<sup>88</sup> It was claimed that this had led to the dissemination of asbestos dust, workers wearing contaminated clothing and insufficient knowledge as to where the collected asbestos is deposited (with the assumption that it is buried).
- 2.88 Asbestos removal, including asbestos removal in KAVHA, is a matter for the Norfolk Island Government. Under the intergovernmental agreement establishing the KAVHA Management Board, the Territory

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86 Department of the Environment and Heritage, Submission, p. 225. See <http://www.nht.gov.au/nht1/programs/csp/external/index.html#implementation>

87 The Queensland Government's *Smaller Communities Assistance Program*, an initiative designed to assist local governments in Queensland "to provide reliable water supply and sewerage services of an acceptable standard and cost in smaller communities" is a useful model. See <http://www.dlqp.qld.gov.au/Default.aspx?ID=106>

88 See also *The Norfolk Islander*, Saturday 10 January 2004, in which the supervisor at the new Waste Management Centre warns against the unsafe removal and disposal of asbestos material and the danger to the community of this practice.

Administration is entirely responsible for the maintenance of the government buildings within KAVHA.

- 2.89 The Department of Transport and Regional Services noted that the Territory Administration is progressively replacing roof tiles containing asbestos on some buildings within KAVHA and that the work will continue over a 6-7 year period at an annual cost of \$50,000.<sup>89</sup> The Department has been assured by the Territory Administration that it will comply with mainland standards when removing asbestos. The KAVHA project manager has also advised the KAVHA Board that the works will be carried out by the Territory Administration in accordance with all relevant guidelines.<sup>90</sup>
- 2.90 No evidence was presented to the Committee as to whether buildings on land outside KAVHA also contain asbestos. Removal and disposal of asbestos from any such buildings is subject to Norfolk Island building, planning, employment and other laws administered and enforced by the Norfolk Island Administration. At the same time, the Committee is aware of concerns recently raised by Territory officials over the removal, handling and disposal of asbestos by residents and builders on the Island and the implications for public health and safety.<sup>91</sup> However, the Committee is unaware of any request to date by the Norfolk Island Government for federal financial or technical assistance in respect of the removal and disposal of asbestos on Norfolk Island. The Committee therefore recommends:

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### **Recommendation 13**

- 2.91 **That the Federal Government ensure that the Norfolk Island Government take immediate and appropriate measures, in accordance with national standards, for the removal and disposal of asbestos on Norfolk Island.**

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89 Department of Transport and Regional Services, Submissions, p. 550.

90 Department of Transport and Regional Services, Submissions, p. 550.

91 See *The Norfolk Islander*, Saturday 10 January 2004 - warnings in relation to the unsafe removal and disposal of asbestos material from the supervisor at the new Waste Management Centre.

## Heritage Protection

### Federal Heritage Responsibilities on Norfolk Island

- 3.1 The Department of the Environment and Heritage and the Department of Transport and Regional Services play important roles in administering the Federal Government's responsibilities in relation to national environmental and heritage protection on Norfolk Island.<sup>1</sup> The Federal Government has an obligation to ensure that appropriate laws are enacted and effectively enforced to complement the federal regime and ensure that the Island's environment and flora and fauna are protected.<sup>2</sup> In 2001-02, the Australian Heritage Commission provided "50 pieces of formal advice" (as obligated under Section 30 of the *Australian Heritage Commission Act 1975*) on Norfolk Island matters.<sup>3</sup> The majority of this advice was provided to the KAVHA Management Board, the Norfolk Island Government (through the Office of the Administrator) and the Department of Transport and

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1 One of the three major outcomes the Department of the Environment and Heritage is tasked with achieving is to protect and conserve the environment," especially those aspects that are of national environmental significance". Department of the Environment and Heritage, *Annual Report 2002-2003*, p. 12

2 Department of Transport and Regional Services, *Federal Government's Role*. Available: [http://www.dotars.gov.au/terr/norfolk/fed\\_govt\\_role.htm](http://www.dotars.gov.au/terr/norfolk/fed_govt_role.htm)

3 Department of the Environment and Heritage, *Submissions*, p. 233. The bulk of this advice concerned matters in the Kingston and Arthur's Vale Historic Area, "others related to proposals for RNE sites outside KAVHA, wider Commonwealth land management and public reserve plans of management".

Regional Services.<sup>4</sup> Expenditure by the Department of the Environment and Heritage on Norfolk Island is through Parks Australia, the Heritage Division of the Department and the Bureau of Meteorology.<sup>5</sup>

- 3.2 Some Federal Government funding for conservation is also available under the Historic Shipwrecks Program which is also administered by the Department of the Environment and Heritage. Norfolk Island received \$29,558 in 2000-2001 for the project, *Sirius - a flagship for Norfolk Island* and \$8,295 for the project, *Developing of storage facilities for Sirius artefacts*.<sup>6</sup> It is understood that the Norfolk Island Government Museums contain several nationally important exhibits or collections owned by the Federal Government. These are in the custody and care of the Norfolk Island Government under a memorandum of understanding between the two Governments.
- 3.3 In 2002-03, the Department of Transport and Regional Services contributed \$520,000 to the KAVHA Norfolk Island Trust Fund for the “conservation, stabilisation, maintenance and interpretation of heritage buildings, and other heritage values, located within the Kingston and Arthur’s Vale Historic Area”.<sup>7</sup> The Department is also funding a five year restoration programme of Norfolk Island Government House (which is within KAVHA).<sup>8</sup>

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4 Department of the Environment and Heritage, Submissions, p. 233.

5 Expenditure by the Department of the Environment and Heritage on Norfolk Island in 2002-2003:

Parks Australia - net operating costs on Norfolk Island were \$910,000, with full expenditure of \$1.02m; and

Bureau of Meteorology - total expenditure was \$2,689,032.20. The Bureau’s figure does not include staff salaries on the island. It consists of: \$2,584,019.97 for construction of new meteorological office; \$16,575.33 for building outgoings; and \$88,437, being other amounts paid to Norfolk Island businesses.

6 Information provided by the Department of the Environment and Heritage.

7 Department of Transport and Regional Services, *Annual Report 2002-2003*, p. 113.

8 Department of Transport and Regional Services, *Annual Report 2002-2003*, p. 113.

## Legal Framework for heritage protection on Norfolk Island

### Federal Laws

- 3.4 As mentioned previously, the EPBC Act applies to Norfolk Island and to Crown land within KAVHA. The Act has been amended to implement a new national scheme for the identification, conservation and protection of Australia's unique heritage places, including KAVHA and other places on Norfolk Island.<sup>9</sup> Listed places will be protected under the EPBC Act with a range of enforcement options for any reported breach.
- 3.5 The Department of the Environment and Heritage informed the Committee that the new heritage regime within the EPBC Act will give rise to important changes in heritage protection in the territories.<sup>10</sup> Key features of the new regime include:
- the creation of a National Heritage List;
  - the creation of a Commonwealth Heritage List;
  - the creation of a new expert advisory body, the Australian Heritage Council, to advise the Federal Environment Minister on the listing and protection of heritage places on the National and Commonwealth Heritage Lists;<sup>11</sup>
  - the retention of the Register of National Estate;<sup>12</sup>
  - increased protection for places on the register; and

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9 On 23 September 2003 the *Environment and Heritage Legislation Amendment Act (No 1) 2003*, *Australian Heritage Council Act 2003* and *Australian Heritage Council (Consequential and Transitional Provisions) Act 2003* received Royal Assent. The new heritage regime came into effect on 1 January 2004. Further information can be found at: <http://www.ea.gov.au/heritage/whatsnew/index.html>

10 Department of the Environment and Heritage, Submissions, p. 214.

11 The Council replaces the Australian Heritage Commission, whose responsibilities on Norfolk Island included assessing natural and cultural heritage places, providing advice on the protection of heritage places listed on the Commission's Register of the National Estate (RNE).

12 The Register of National Estate includes over 13,000 places of natural, historic and indigenous significance to Australia. It can be viewed online at: <http://www.ahc.gov.au/register/index.html>

- the introduction of a four-year funding package for listed heritage places (\$52.6 million over four years as announced in the 2003-2004 budget).<sup>13</sup>
- 3.6 The amendments will also allow the Federal Minister for the Environment and Heritage to include on the Commonwealth Heritage List those places that are in Commonwealth areas and which are currently listed on the RNE. Listing will oblige federal agencies to properly manage heritage listed places for which they are responsible.<sup>14</sup> This will extend to the development of heritage strategies to identify and protect heritage places. As indicated above, there may be additional and significant funding opportunities arising out of any listing.

## Norfolk Island Laws

- 3.7 As part of the joint Norfolk Island – Federal Government Land Initiative, the Norfolk Island Legislative Assembly has recently enacted, in the context of other land management and planning legislation, new laws to address environmental protection and heritage conservation. These laws include the *Planning Act 2002* (NI), the *Planning and Environment Board Act 2002* (NI) and the *Heritage Act 2002* (NI).
- 3.8 The *Heritage Act 2002* (NI) provides, among other things, for the establishment of a Heritage Register, for the criteria for making or amending the register, and for public consultation on and public inquiries into heritage matters. The draft Heritage Register established under the Act lists several sites of significance, all of which have been previously listed on the RNE. The Act also requires that heritage impact statements and conservation management plans be prepared for applications under the *Planning Act 2002* (NI) that would impact or likely impact on a heritage item. It also allows for the making of regulations to establish and operate a Heritage Conservation Fund for the purpose of providing financial assistance towards the conservation of a heritage item.

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13 Media Release, Minister for the Environment & Heritage, The Hon. Dr David Kemp, *Quantum Leap for National Heritage*, 21 August 2003. Available online at: <http://www.deh.gov.au/minister/env/2003/mr21aug303.html>

14 Media Release, Minister for the Environment & Heritage, The Hon. Dr David Kemp, *Quantum Leap for National Heritage*, 21 August 2003. Available online at: <http://www.deh.gov.au/minister/env/2003/mr21aug303.html>



3.9 The *Planning and Environment Board Act 2002* (NI), provides that a Planning Board established under that Act is to give advice and make recommendations on, among other things:

- (v) all heritage proposals; and
- (vi) on any matters referred to the Board by resolution of the Legislative Assembly related to planning and environment of Norfolk Island ...

3.10 In relation to subparagraph (vi) above, the Act specifies seven matters that may be included in matters referred to the Board by the Assembly, including:

- (a) conservation of the natural environment, landscape beauty and cultural and built heritage of Norfolk Island; and
- (b) whether physical works and other activities are or will be in harmony with the natural environment.

As elsewhere in Australia, these new Norfolk Island heritage laws will be subject to the operation of the EPBC Act.

## Importance and Value of KAVHA

3.11 It is beyond doubt that the Kingston and Arthur's Vale Historic Area is "a place of local, national and international significance".<sup>15</sup> As well as being the main heritage area on Norfolk Island, KAVHA is also the Island's major tourist attraction and therefore has an important place in the Island economy. The area is:

one of the foremost examples in Australia of a cultural landscape, with exceptional heritage values. These include the pre-European Polynesian settlement, the penal settlements between 1788-1856 and a place of living heritage for Pitcairn Islander descendants from 1856, in an outstanding natural setting: with coral reef, lagoon, distinctive Norfolk pines, green rolling hills and valleys.<sup>16</sup>

3.12 As acknowledged both by the Department of the Environment and Heritage and by Island residents, there are a number of other historic,

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15 Department of the Environment and Heritage, Submissions, p. 235.

16 Department of Transport and Regional Services, Submissions, p. 69 (KAVHA Business Plan for 2000-2001).

archaeological, aesthetic, social and scientific values which contribute to the heritage importance of KAVHA, not only to the local community, but also on a national – and international – scale.<sup>17</sup>

- 3.13 The Register of the National Estate describes the various areas, buildings and other elements of outstanding individual cultural significance that comprise KAVHA. These include a number of buildings that are still in use, for example, the Old Military Barracks dating from 1829 that now house the Legislative Assembly and Norfolk Island Court and the Kingston Pier, and other more-or-less still wholly intact structures such as the Quality Row Houses. There are also perimeter walls and archaeological remains from the prisoners' barracks, civil hospital and surgeon's quarters, the crankmill, and cemetery.<sup>18</sup>

## Management of activities within KAVHA

- 3.14 KAVHA covers 250 hectares of which 78 hectares is public reserve and the balance is either leasehold or freehold.<sup>19</sup> Leasehold land and the public reserves are vested in the Crown in right of the Commonwealth and are managed in accordance with the arrangements outlined above.<sup>20</sup> As KAVHA is listed on the RNE, it is also subject to the EPBC Act. As explained, within this framework, the Norfolk Island Government remains primarily responsible for land use management and planning on Norfolk Island in accordance with a range of applicable Territory laws.
- 3.15 In carrying out these activities, the Norfolk Island Government is assisted by the KAVHA Management Board. The Management Board is an advisory body comprised of representatives of the Norfolk Island Government, the Department of Transport and Regional Services and the Australian Heritage Council. It was established in 1989 under a memorandum of understanding (MOU) between the Federal and the Norfolk Island Governments. The Committee

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17 Department of the Environment and Heritage, Submissions, p 235. See also Mr G.E. Anderson, Transcript, 19 February 2003, pp. 39-48.

18 See Australian Heritage Commission website, Register of the National Database, available at: <http://www.ahc.gov.au/register/>

19 Mosley, J.G., *Island on the Brink: A Conservation Strategy for Norfolk Island*, January 2001, p. 98.

20 See paragraphs 2.18 – 2.21.

understands from the MOU that the Management Board's role is essentially twofold:

- to provide a source of heritage advice to both Governments in respect of the management and development of KAVHA as well as heritage places elsewhere on the Island; and
- to prepare an annual programme and budget for conservation works within KAVHA in accordance with a set formula and to present this to the Norfolk Island and Federal Governments for endorsement. Once endorsed by Government, the Board is generally responsible for oversight of the annual works programme and the expenditure of allocated funds.<sup>21</sup>

3.16 The funding formula set out in the MOU provides that the Federal Government is responsible for funding all repairs and maintenance of restored buildings and structures, for 50 percent of new stabilisation works and Board costs and for 33 percent of interpretative works. The Norfolk Island Government is responsible for meeting the balance of these costs and the cost of all day-to-day maintenance of the area of the interpretative works and tourist facilities.<sup>22</sup> In 2002-2003 the Federal Government contributed \$520,000 and the Norfolk Island Government contributed \$176,000 to the management of KAVHA.<sup>23</sup> The works funded by the KAVHA Board are carried out by Norfolk Island Government employees or contractors in accordance with the Territory and Federal laws outlined above.

3.17 The KAVHA Management Board is an advisory body only. Being established by an MOU, it has no legal capacity, powers or functions. This means its decisions are not binding. Under the current arrangements, all it can do is to advise Government, which is free to accept or reject that advice.<sup>24</sup> It cannot prevent a development or commercial activity from proceeding within KAVHA. This power rests with the Norfolk Island Government under its planning and land use laws or with the Federal Environment Minister in those cases where the EPBC Act applies.

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21 Commonwealth of Australia – Norfolk Island: Memorandum of Understanding relating to the establishment of the Norfolk Island Kingston and Arthur's Vale Historic Area Management Board. Department of Transport and Regional Services, Submissions, p. 14.

22 Department of Transport and Regional Services, Submissions, pp. 31-32.

23 Department of Transport and Regional Services, Kingston and Arthur's Vale Historic Area. Available: <http://www.dotars.gov.au/terr/norfolk/kavha.htm>

24 Subject only to the constraints of administrative law.

- 3.18 Two Norfolk Island Administration employees who worked on KAVHA matters, Mr George Anderson and Mrs Jan Christian, and who gave evidence in a private capacity, informed the Committee that KAVHA is well managed under its present joint management and funding agreement between the Federal and Norfolk Island Governments.<sup>25</sup> The Committee's inspection of the site confirmed that KAVHA is well maintained. However, the Department of the Environment and Heritage informed the Committee that the current MOU is now outdated and needs to consider the new heritage regimes if KAVHA and its setting are to be protected holistically.<sup>26</sup>
- 3.19 Five matters of concern relating to the management of KAVHA were identified in the evidence received:
- the visual setting;
  - funding;
  - Board membership and meetings;
  - limited responsibilities for heritage management; and
  - World Heritage listing.

## Visual Setting

- 3.20 As mentioned elsewhere in this report, some witnesses submitted that the conservation of KAVHA could not be assured under Norfolk Island's new land management, heritage and conservation regime. It was suggested that application of the draft Norfolk Island Plan 2002 would lessen the protection available for the conservation of KAVHA, especially in relation to its visual setting.
- 3.21 The Department of the Environment and Heritage noted that, unlike the earlier Norfolk Island Plan, the new Plan does not require applications for development on lands surrounding KAVHA that might affect its heritage values to be referred to the Management Board for comment.<sup>27</sup> The Australian Conservation Foundation (ACF) was concerned that the new land use arrangements and the new Plan would significantly reduce the standard of environmental

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25 Mr G. E. Anderson and Ms J. Christian, Submissions, p. 207.

26 Department of the Environment and Heritage, Submissions, p. 236.

27 Department of the Environment and Heritage, Submissions, p. 235.

protection for the territory.<sup>28</sup> The ACF nominated, among its other areas of concern, the visual setting of the KAVHA.<sup>29</sup>

- 3.22 The ACF provided photographs of two planned residential developments (one of which was subsequently burnt down in an alleged arson attack) that had been approved by the Norfolk Island Government that can be seen from KAVHA. The Norfolk Island Government approved these developments on the basis that, among other things, it was satisfied that the development would have no impact on the national environmental significance of the historic area. The ACF concluded that, “it is clear already from events such as the approval of permits in the KAVHA visual setting that the outcome will be a great loss of Norfolk Island’s distinctive assets which are the very life blood of its tourist industry”.<sup>30</sup>
- 3.23 For the reasons outlined elsewhere in this report the Committee is satisfied that the operation of the new Norfolk Island land package in conjunction with the application of the EPBC Act will adequately protect Norfolk Island’s heritage – including KAVHA – if the recommendations of this report are implemented.
- 3.24 In reaching this conclusion, the Committee noted advice from the Department of the Environment and Heritage that the abovementioned proposed residential development that had not been destroyed by fire had been referred to the Minister for the Environment and Heritage for assessment under the Act. The Federal Minister had determined that the proposal was a ‘controlled action’ under that Act. That is, in stark contrast to the position taken by the Norfolk Island Government, federal authorities considered that the development was capable of having a significant impact on the national environmental significance of KAVHA and that further assessment was required. As such, the proposal must undergo a formal assessment and approval process, and cannot proceed unless approval is granted under the Act.<sup>31</sup>

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28 Dr Geoff Mosley, Australian Conservation Foundation, Transcript, 28 March 2003, p. 151.

29 Dr Geoff Mosley, Australian Conservation Foundation, Transcript, 28 March 2003, p. 152.

30 Dr Geoff Mosley, Australian Conservation Foundation, Transcript, 28 March 2003, p. 156.

31 Mr Gerard Early, Transcript, 28 March 2003, p. 186. See also Department of the Environment and Heritage, Fact Sheet 1: Actions covered by the Environment Protection and Biodiversity Conservation Act. Available online at:

<http://www.deh.gov.au/epbc/publications/factsheets/actions.html>

The Federal Minister for the Environment and Heritage declared the proposal to construct a house on Portion 81f, Middlegate Road, Kingston a controlled action under the Environment Protection and Biodiversity Conservation Act. The applicants were

- 3.25 The Committee notes that referral and consideration by federal authorities under the Act does not automatically mean rejection of the proposal. It is understood that one aim of the assessment process to determine whether and what steps might be taken to mitigate any adverse impacts so as to allow heritage values to be preserved and protected and proposals to proceed.
- 3.26 This case illustrates the merits of the dual environmental and heritage regime on Norfolk Island and confirms that it can be effective in providing checks and balances. It also adds weight to the Committee's view that freeholding of a limited category of Crown leasehold should continue to proceed subject to the conditions and recommendations set out elsewhere in this report.

## Funding

- 3.27 Mr Anderson and Mrs Christian expressed concern with future funding for KAVHA and emphasised the importance of ongoing federal involvement on the Board and Federal funding for KAVHA's continued successful preservation.<sup>32</sup> They argued that the area is not just of local heritage significance, but also of immense national heritage value.<sup>33</sup> The Department of the Environment and Heritage considers that, "given the joint government responsibilities for the area, joint management arrangements would continue to be needed to appropriately manage the heritage values of KAVHA as a whole".<sup>34</sup> The Committee agrees, and considers that continued Federal Government involvement is essential for the preservation of this important site, a view also shared by Dr Geoff Mosley of the ACF:

Much of what has been achieved to date has resulted from Commonwealth funds and expertise. If the Federal Government was to hand over ownership and control to the

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advised of this decision and, in accordance with the Act, they invited submissions in relation to their proposal, in the context of the proposal undergoing environmental assessment under the EPBC Act. On the basis of an environmental assessment report and taking into account other relevant considerations, the Minister refused the application to build a house within KAVHA. This decision was conveyed to the applicants on 22 March 2004, who were also advised that the Federal Minister for Transport and Regional Services had agreed to offer a land swap. The Committee understands the applicants are still considering this offer. Advice provided by the Department of the Environment and Heritage.

32 Mr G.E. Anderson and Ms J Christian, Transcript 19 February 2003, pp. 40-41.

33 Mr G.E. Anderson and Ms J Christian, Submissions, p. 207.

34 Department of the Environment and Heritage, Submissions, p. 236.

Norfolk Island government as recently requested a lower standard of management would be likely.<sup>35</sup>

- 3.28 Increasing costs and budget constraints require consideration to be given to the expansion of KAVHA's funding base to ensure that appropriate work programmes can be maintained. As indicated above, the KAVHA Management Board has sought to develop a Business Plan containing various initiatives designed to raise additional funds for restoration and conservation work within KAVHA. The Plan defines the business of the Board and identifies the goals, strategies and actions it proposes to employ to achieve its vision for KAVHA.<sup>36</sup> It also identifies revenue raising opportunities including, in the longer term, an admission charge.<sup>37</sup>
- 3.29 One impediment to implementation of the Business Plan, however, as already discussed, is the KAVHA Management Board's status as an advisory body only under the MOU. The Department of Transport and Regional Services highlighted the restrictions imposed by the MOU:
- A major deficiency of the Business Plan proposal is the KAVHA Board's lack of legal identity (it is not incorporated) and the absence of any statutory power for the Board to employ, sign contracts or impose fees and charges. While the Board can continue to develop guidelines and strategies it lacks the legal capacity to implement many of the actions identified as essential to the future of KAVHA.<sup>38</sup>
- 3.30 There is also a question over the efficacy of proposals listed in the Business Plan and the returns that they can be expected to generate. KAVHA is an open access public area already used by residents and others for recreational purposes and by private and Territory government business enterprises for a plethora of income generating purposes. The ability to implement new revenue raising measures

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35 Mosley J.G. *Island on the Brink: A Conversation Strategy for Norfolk Island*, January 2001, p. 102.

36 Department of Transport and Regional Services, Submissions, p. 33.

37 Department of Transport and Regional Services, Submissions, p. 75.

38 Department of Transport and Regional Services, Submissions, p. 33. The fact that the MOU – which is effectively the Board's constitution – states that the Board shall be an advisory body only and does not confer on the Board any express revenue raising powers and functions suggests that Board members may have exceeded their authority in developing the Business Plan. However, the Committee understands that the Plan has subsequently been endorsed by both the Federal and Norfolk Island Governments, who both have representatives on the Board.

and the ability of such measures to be cost effective without a significant change in the arrangements for KAVHA's access and use is open to question. The measures listed in the Business Plan, if implemented and if cost effective, would also appear unlikely to be capable of generating sufficient funds for KAVHA so as to allow the Federal and Norfolk Island Governments to forgo subsidisation of KAVHA, as has been the case to date.

- 3.31 The option of a statutory imposed admission charge to KAVHA is a case in point. Mr Anderson claimed that there would be strong community opposition to any proposal to charge locals for admission. He also stated that tourists are already charged for visiting KAVHA by way of the \$30 airport departure tax.<sup>39</sup> Mr Anderson noted, however, that any revenue earnings from KAVHA "will fall far short of the maintenance costs of keeping KAVHA up and running".<sup>40</sup>
- 3.32 Consideration could be given to imposing a dedicated 'KAVHA' levy on tourist arrivals or departures to the Island. Approximately 40,000 people visit the Island annually. Therefore, assuming that most, if not all, visit KAVHA, simple arithmetic suggests that a one-off charge of \$7 per head would raise sufficient funds from visitors to meet the Norfolk Island Government's annual contribution to its management. However, the potential adverse impact of any additional charge on the Territory's tourist industry must be carefully considered and weighed.
- 3.33 In view of the above, the Committee is concerned that there appears no standing guarantee from either Government that either will provide sufficient funding for KAVHA in the future. The funding formula in the MOU appears more a statement of intent than a binding commitment on the part of either Government. The funding process itself also appears to be more one of a proposed budget being submitted to both Governments for endorsement, with endorsement being largely dependent on the outcome of internal budgetary allocation processes undertaken by the Territory Administration and the Department of Transport and Regional Services.
- 3.34 The Committee, therefore, feels that there is a need for a binding commitment by both Governments to the future funding of KAVHA. In view of the financial and other difficulties facing the Norfolk Island
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39 Mr G.E. Anderson, Transcript, 19 February 2003, p. 45. This assumes that some of the funds generated by this charge and collected by the Norfolk Island Government are directed towards KAVHA.

40 Mr G.E. Anderson, Transcript, 19 February 2003, p. 41.



Government and community, the Committee considers that the onus is particularly on the Federal Government to commit to providing funding over a fixed period to facilitate effective forward planning and budgeting processes within KAVHA.

- 3.35 A review of KAVHA's funding arrangements would also appear timely in that the focus for KAVHA now appears to be more on the interpretation of the site and the management of its various uses and less on the restoration of historic structures and their maintenance and upkeep.<sup>41</sup> As such, the Committee considers that any review of the KAVHA management arrangements must include the latter as well as the responsibilities of the Federal Government in this regard.<sup>42</sup>
- 3.36 The Committee also considers that, as was agreed by both the Federal and Norfolk Island Governments in 1989, the KAVHA Management Board should be incorporated with a clearly defined management structure and legal role and powers (including the powers to employ staff, sign contracts and impose fees and charges where appropriate).<sup>43</sup> Incorporation could be achieved via an Ordinance drafted by the Federal Government and introduced into the Legislative Assembly through section 26 of the *Norfolk Island Act 1979* (Cth) or its equivalent following any amendment of that Act arising out of implementation of the Committee's recommendations in its report on Norfolk Island Governance. Alternatively, consideration could be given as to whether it might be possible to implement some or all of the new joint management arrangements under the auspices of the EPBC Act.

## Board Membership and Meetings

- 3.37 Some witnesses were concerned that the management of the KAVHA Board may have been adversely affected by the high turnover of its Federal Government members. Mr Anderson stated that during the past three years there had been four or five different federal representatives which made for difficulties, especially as the members are on the Island for three or four days and are absent for four or five

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41 The funding arrangements for KAVHA have previously been reviewed and amended as the focus of heritage and management activities and priorities have changed. The last such review was in 1988-89. See Appendix D.

42 See paragraphs 3.1 – 3.5.

43 See Commonwealth of Australia – Norfolk Island Memorandum of Understanding relating to the establishment of the Norfolk Island Kingston and Arthur's Vale Historic Area, provided courtesy of Department of Transport and Regional Services.

months.<sup>44</sup> The Committee notes that there have also been frequent changes in the Norfolk Island Government representatives on the Board due to changes in the membership of the Norfolk Island Legislative Assembly and of the Norfolk Island Executive Council. Such changes can give rise to problems associated with a lack of corporate knowledge and a lack of continuity and momentum in decision-making.

- 3.38 The Committee for its part also questions whether the three Management Board meetings per year mandated in the MOU are sufficient for the Board to function efficiently. The Committee also understands that occasions have arisen where there have been long delays between Board meetings.
- 3.39 There is a clear need to review how the Management Board operates as a decision-making and management entity. This could be undertaken as part of the recommended review of KAVHA's management arrangements. In doing so, consideration could be given to how meetings are conducted and when. In addition, the review should consider how the Federal and Norfolk Island Governments might best be represented on the Board and avoid the frequent changes in representatives. Also relevant is which administrative matters are or ought to be referred to the Management Board for decision and how the Board might best interact with its managers who implement its decisions and report back to it. Similarly, KAVHA's management and staffing structure should be examined to determine if the current arrangements might be improved and, if so, how.<sup>45</sup> Regard can be had to management arrangements for significant heritage sites elsewhere in Australia such as the Sydney Rocks Authority or the Port Arthur Historic Site Authority. Regard will also need to be had to the obligations placed on federal agencies by the new heritage provisions of the EPBC Act.

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#### **Recommendation 14**

- 3.40 That the Federal Government review the management arrangements of the Kingston and Arthur's Vale Historic Area, with particular emphasis**
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44 Mr G.E. Anderson, Transcript, 19 February 2003, p. 41.

45 The current arrangements provide for a KAVHA project manager and a conservation services coordinator who report to the Board on implementation of Board decisions. The Committee understands that the Norfolk Island and Federal governments agreed to a Board proposal to engage a KAVHA Board Secretary to assist the Board.

on the following:

- future funding arrangements for the management and preservation of KAVHA;
- the structure, role and powers of the KAVHA Management Board and its incorporation; and
- the management of national estate sites situated outside KAVHA.

### Recommendation 15

- 3.41 **That the Joint Standing Committee on the National Capital and External Territories conduct the review of the management arrangements of the Kingston and Arthur's Vale Historic Area and report to the Federal Parliament.**

## Limited Responsibilities for Heritage Management

- 3.42 Witnesses raised concerns about heritage sites outside KAVHA for which there is no local management authority. The Longridge and Cascade Agricultural Settlements that are listed on the RNE, for example, were said to be in urgent need of conservation.<sup>46</sup> Although these sites and several other sites and structures on the RNE are listed in the draft Norfolk Island Heritage Register, witnesses pointed out that the Island does not have the financial ability to preserve them.<sup>47</sup> Mr Anderson and Ms Christian also noted that:

there are limited funding opportunities available through the National Estate Grant Commission, but that Norfolk Island had only been successful in gaining one grant of \$20,000 over a four year period, for stabilisation work at the Longridge Agricultural Outstation".<sup>48</sup>

Mr Anderson suggested that these sites could be conserved if the KAVHA Management Board's role (and funding arrangements) were

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46 Mr G.E. Anderson and Ms J Christian, Submissions, pp. 207-208.

47 Mr G.E. Anderson and Ms J Christian, Submissions, p. 207.

48 Mr G.E. Anderson and Ms J Christian, Submissions, p. 207.

to be expanded to include the management of national estate sites situated outside KAVHA.<sup>49</sup>

- 3.43 The Committee is convinced that the Norfolk Island Government could not fund the restoration and conservation of these sites alone.<sup>50</sup> The Territory's new Heritage Act does make provision for the establishment of a Heritage Conservation Fund that could attract private donations and other funding. However, the Island's heritage legislation has only recently been introduced and the Heritage Conservation Fund is yet to be established. It remains unclear whether the Heritage Fund will attract sufficient private sector support to have an impact. It is also apparent that the KAVHA works team is the only team of craftsman on-island having the experience, qualifications and resources (including access to expert advice) necessary to undertake conservation work on these important properties.
- 3.44 Given the above and the national importance of such sites, consideration could be given to federal funding under the new national heritage arrangements outlined above. This matter should be addressed during the recommended review of KAVHA's management and funding arrangement.

## World Heritage Listing

- 3.45 KAVHA is on the indicative list for World Heritage listing and has in the past been identified for listing. However, in a Norfolk Island Government initiated referendum held in 1998, a relatively slim majority of Norfolk Island voters rejected a Federal Government proposal to nominate KAVHA for World Heritage listing. The Department of Transport and Regional Services informed the Committee that the Norfolk Island Government had therefore declined to be included in the nomination and the Federal Government had not pursued the matter further.<sup>51</sup>
- 3.46 The KAVHA Business Plan identifies, as one of its long-term strategies, reconsideration of the business opportunities presented by

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49 Mr G.E. Anderson, Transcript, 19 February 2003, p. 41.

50 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. 16, which identifies the "general lack of administrative and financial capacity of the (Norfolk Island) Government to manage the broad range of responsibilities it has been given". See earlier reports cited therein.

51 Department of Transport and Regional Services, Submissions, p. 32.

World Heritage listing. It can thus be assumed that the Management Board, and the Federal and Norfolk Island Government representatives on that Board, consider that the matter should be revisited. Witnesses also suggested that KAVHA should be nominated for World Heritage listing and that, while the 1998 nomination for World Heritage listing was not supported, this matter should again be considered. Mr Anderson commented that the [1998] vote against World Heritage listing was not so much against World Heritage listing as against perceived Federal intervention.<sup>52</sup>

- 3.47 The new federal heritage legislation provides for the listing of places of national heritage significance. The Department of the Environment and Heritage informed the Committee that the Federal Government's policy was that the future World Heritage List would be drawn from the National Heritage List.<sup>53</sup> Mr Leaver, Executive Director, Australian Heritage Commission, stated:

... the new legislation ... will give us a chance to work through in a very public way recognition of at least national heritage value of those sites and possible national listing as a first step to World Heritage listing.<sup>54</sup>

Mr Leaver also informed the Committee that a national heritage listing process would allow for public nomination and public comment and for settling of the often difficult issues such as management arrangements, management assistance and boundaries.<sup>55</sup>

- 3.48 KAVHA is of great significance to the nation, including Norfolk Island. It is also arguably Norfolk Island's main tourist attraction, forming a key part of the Island's current marketing strategies. To the extent that national heritage listing and possible subsequent world heritage listing would raise the Island's profile nationally and internationally, it would be likely to be of great benefit to the Island and, in particular, would benefit the tourism industry and those on Norfolk Island whose livelihoods depend upon it.

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52 Mr G. E. Anderson, Transcript, 19 February 2003, p. 48.

53 Mr B Leaver, Transcript, 28 March 2003, p. 187.

54 Mr B Leaver, Transcript, 28 March 2003, p. 187.

55 Mr B Leaver, Transcript, 28 March 2003, p. 187.

## Federal Grant Programmes

- 3.49 During the course of this and other inquiries, the Committee became aware of the difficulties faced by Norfolk Island residents and organisations in accessing federal grant schemes, particularly environmental grants schemes. Evidence from the Department of the Environment and Heritage confirmed these difficulties, citing requirements that applicants for federal grants be incorporated and the lack of incorporation provisions for community groups and associations on Norfolk Island.<sup>56</sup> Another barrier is that State and Territory Government and their agencies are often precluded from applying for federal grants. In contrast, local governments are often eligible to apply. The Norfolk Island Government currently undertakes both state and local government functions. Yet there have been occasions where for the purposes of federal grants schemes the Norfolk Island Government has been deemed to be a State Government and therefore deemed to be ineligible for grant funding for which it has applied.<sup>57</sup> It is understood that, on other occasions, emphasis has been placed on the Territory Government's local government functions and grant funding made available.
- 3.50 The Committee believes it is imperative that federal grant programmes make an exemption for the Norfolk Island Government. It must be recognised that the Territory Government currently undertakes both state and local government functions. Moreover, the circumstances of the Island are such that the Territory Government is often the only body on Norfolk Island that is equipped and qualified to initiate and then undertake the project in question. This is especially true of heritage conservation (see above).

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### Recommendation 16

- 3.51 **That the Federal Government take immediate steps to ensure that Norfolk Island residents and community organisations, as well as the Norfolk Island Government, be made aware of and become eligible to apply for Federal Government grant schemes on the same basis as other communities in regional and remote areas of Australia.**

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56 Department of the Environment and Heritage, Submissions, pp. 233-234.

57 Department of the Environment and Heritage, Submissions, p. 233.

## Natural Heritage Trust

- 3.52 The \$2.7 billion Natural Heritage Trust (NHT) was set up by the Federal Government in 1997 to help restore and conserve Australia's environment and natural resources. Since then, thousands of communities throughout Australia – including Norfolk Island - have received funding for environmental and natural resource management projects. The NHT has provided a vital source of funding for Norfolk Island, as evidenced by previous NHT grants to the Island such as the \$250,000 grant received under the NHT's Coast and Clean Seas program to assist with waste management reform.
- 3.53 At the October 2002 Natural Resource Management Ministerial Council, State/Territory and Federal Ministers endorsed a new framework for the NHT. It is intended that Natural Resource Management Plans would be developed for each designated region in consultation with the public and affected communities. Once a plan is accredited by the Natural Resource Management Ministerial Council, a regional investment strategy will be developed detailing funding priorities and levels required to achieve those objectives. These investment strategies will be used for the purposes of investment under the NHT and the allocation of grant funding.<sup>58</sup> The Committee understands that NHT funding is also available to support the development of a regional plan and for regions to address urgent environmental issues through large-scale activities, prior to the accreditation of a plan, as well as to engage support and assistance in delivering these activities.
- 3.54 The new NHT framework may provide an important opportunity for Norfolk Island. Norfolk Island's circumstances are such that it could reasonably be designated as a separate 'region' and have its own Natural Resource Management Plan. Development of a regional plan and an accompanying strategy for the Island could underpin and inform the new Territory planning laws developed by the joint Land Task Force.<sup>59</sup> A Natural Resource Management Plan - supplemented by NHT funding - might also assist the Norfolk Island Government, community organisations and individual residents with conservation and public infrastructure issues.

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58 National Heritage Trust website, *Extension of the National Heritage Trust*. Available: <http://www.nht.gov.au/extension/index.html>

59 See Australian Conservation Foundation, *Submissions*, pp. 117-128.

- 3.55 While the Department of the Environment and Heritage states that arrangements for regional boundaries and regional bodies will be different around Australia, depending on local geography and existing State or Territory arrangements, the Committee believes it is important that the Federal Government in developing and implementing the new NHT framework has due regard to the unique situation of Norfolk Island as a remote regional community and its particular needs.

## Kingston Pier

- 3.56 Kingston Pier – one of two small jetties on the island that handle all sea freight – falls within the boundaries of KAVHA as identified in the MOU between the Federal and Norfolk Island Governments relating to the establishment of the KAVHA Management Board. Norfolk Island relies on sea transport for the importation of foodstuffs and all gas, fuel and general cargoes, but lacks a harbour. All general cargo ships (and any visiting passenger liners) anchor up to one kilometre off the island. Lighters are then used to transport the goods (or people) from the ships to one of the small jetties at Kingston or Cascade Bay. Weather and sea conditions determine which is used. Ball Bay is utilised to land fuel and gas.<sup>60</sup>
- 3.57 On 16 February 2003, the Committee inspected the pier, which, despite its age and its heritage value, is still in use. The Committee observed that the pier had subsided in part, and was informed that part of it is unsafe and in need of repair.
- 3.58 The Committee presented a comprehensive report on freight arrangements in the external territories in February 1995.<sup>61</sup> The Committee's findings and recommendations in that report had a much wider scope than the repair of Kingston Pier, as important as that may be. In relation to Kingston Pier, the Committee recommended that, in view of its heritage values, Kingston be

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60 Commonwealth Grants Commission, 1997, *Report on Norfolk Island*, Australian Government Publishing Service, Canberra, p. 123.

61 Joint Standing Committee on the National Capital and External Territories, 1995, *Delivering the Goods*, Australian Government Publishing Service, Canberra.



excluded from consideration as a potential site for any new harbour or freight handling infrastructure on Norfolk Island.<sup>62</sup>

- 3.59 As the Norfolk Island Government administers the pier, its repair would appear to be a matter for that government. However, the pier also has significant national heritage value, and it is not altogether clear, therefore, who should carry responsibility for its repair. The KAVHA Management Board appears to consider it as a matter for KAVHA, as is evident from its Business Plan for 2000-2001:

No estimates of engineering inspection or repair costs have been included in relation to Kingston Pier – as the extent of potential repair work will not be known until after an engineering investigation, the scope of which is yet to be defined. The Board will need to make allowance for potential significant expenditure on this item.<sup>63</sup>

- 3.60 The MOU provides that the Norfolk Island Government has complete responsibility for the “day-to-day maintenance” of the pier.<sup>64</sup> However, the cost sharing arrangements also stipulate that the Federal Government is responsible for “repairs and maintenance of

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62 The House of Representatives Transport and Regional Services, in its recent report entitled *Regional Aviation and Island Transport Services: Making Ends Meet*, recommended that Norfolk Island receive Commonwealth assistance in upgrading or renewing its shipping infrastructure facilities. House of Representatives Transport and Regional Services, December 2003, *Regional Aviation and Island Transport Services: Making Ends Meet*, Canprint, Canberra, p. 126. Various proposals for new harbour facilities on Norfolk Island have been put forward over the last 100 years. No action has been taken to date. This Committee understands that the Norfolk Island Government has yet to determine its position with respect to the establishment of a new harbour on the Island, having referred the matter to the Territory’s Chamber of Commerce to develop a proposal that has community support. Some in the Island community oppose change to the Island’s current harbour and lighterage arrangements. See also Recommendation 22 of the Committee’s 1995 report, *Delivering the Goods*, which stated that no financial assistance be provided by the Federal Government for transport infrastructure or shipping to the Norfolk Island Government until an examination of the financial relationship between the Federal and Norfolk Island Governments was undertaken. Joint Standing Committee on the National Capital and External Territories, 1995, *Delivering the Goods*, Australian Government Publishing Service, Canberra, p. 8. This Committee has recommended that the Federal Government undertake a review of its policy towards Norfolk Island, including its financial relationship with the Norfolk Island Government. 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. 48-9

63 Department of Transport and Regional Services, Submissions, p. 72.

64 Commonwealth of Australia – Norfolk Island Memorandum of Understanding relating to the establishment of the Norfolk Island Kingston and Arthur’s Vale Historic Area, provided courtesy of Department of Transport and Regional Services.

restored buildings and structures” (that is, buildings and structures restored between 1973 and 1988 as part of the Commonwealth Restoration Program), while the costs of new stabilisation works are to be borne equally by both governments.<sup>65</sup> Some may argue that the repairs could therefore be described as ‘new stabilisation works’ under the MOU which would suggest that the cost of repairs should be shared.

- 3.61 However, the Kingston pier was not included in the 1973-1988 Commonwealth Restoration Program or, if it was, was not intended to be included in the pre-agreed cyclical maintenance programs. Nor has the Federal Government 'assumed' responsibility for restoration of the pier by previously funding or undertaking works on the pier outside the terms of the MOU. To date, the Norfolk Island Government has been responsible for the works on the pier – consistent with the intention of the Norfolk Island Act that the Government be responsible for the delivery and funding of government services on Norfolk Island (including public infrastructure).
- 3.62 However, evidence received during the Committee’s inquiry into governance raised significant concerns over the capacity of the Territory Government to be able to contribute sufficient funding to manage its responsibilities appropriately in the near to medium term. Therefore, given there are other urgent infrastructure needs on the Island and that the pier has undoubted heritage values, the Committee considers that the Federal Government should meet at least part of the cost of repairing the Kingston Pier by way of a one-off grant.
- 3.63 On a visit to the Island in March 2004, the Minister, Senator the Hon. Ian Campbell, announced that the Federal Government would fund the restoration of Kingston Pier with a \$2.6m grant.<sup>66</sup> The restoration work is expected to be complete by mid-2005. The Committee welcomes this announcement.

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65 That is, “all works necessary to prevent further deterioration of a structure”. Commonwealth of Australia – Norfolk Island Memorandum of Understanding relating to the establishment of the Norfolk Island Kingston and Arthur’s Vale Historic Area, provided courtesy of Department of Transport and Regional Services.

66 See *The Norfolk Islander*, Saturday 27 March 2004.

## 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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47 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.







## **Appendix A – List of submissions**

2. Commonwealth Department of Transport and Regional Services
3. CONFIDENTIAL
4. Australian Conservation Foundation
5. CONFIDENTIAL
7. Mr George Anderson and Mrs Jan Christian
8. Mr Richard Cottle
9. Commonwealth Department of the Environment and Heritage
23. CONFIDENTIAL
25. Mr Graeme Woolley
26. Mrs Helen Pedel and Mrs Patricia Magri
27. Mr Ken Nobbs
28. CONFIDENTIAL
29. Mrs Sheila Grimshaw
30. Mr John Forrester
31. CONFIDENTIAL
36. CONFIDENTIAL
37. CONFIDENTIAL
40. The Government of Norfolk Island

41. Australian Conservation Foundation (supplementary)
42. CONFIDENTIAL
43. CONFIDENTIAL
45. Mrs Margaret Connell
46. Commonwealth Department of Transport and Regional Services (supplementary)
47. Australian Heritage Commission
48. Mrs Helen Pedel and Mrs Patricia Magri
49. Dr. Geoff Mosley (supplementary)
55. Mr David McCowan
60. Commonwealth Department of the Environment and Heritage (supplementary)
61. CONFIDENTIAL
64. Commonwealth Department of Health and Ageing



## **Appendix B – List of exhibits**

1. CONFIDENTIAL
2. CONFIDENTIAL
3. CONFIDENTIAL
12. CONFIDENTIAL
13. Dr Geoff Mosley, Australian Conservation Foundation, 'The Conservation of Norfolk Island' Booklet
14. Dr Geoff Mosley, Australian Conservation Foundation, Map of Norfolk Island
15. Dr Geoff Mosley, Australian Conservation Foundation, Photographs – Norfolk Island
16. Hon. Ivens Buffett, MLA (Minister for Land and Environment), Norfolk Island Government, Final report to Australian Fisheries Management Authority and Norfolk Island Government, *The Fisheries and Marine Environment of Norfolk Island: Baseline Studies, Issues and Options for Management.*
17. CONFIDENTIAL
18. Mrs Sheila Grimshaw, copy of submission to Norfolk Island Hospital Enterprise Inquiry





## **Appendix C – Witnesses appearing at public hearings**

**Norfolk Island, Tuesday 18 February 2003**

**Government of Norfolk Island**

The Hon. Ivens Buffett, Minister for Land and the Environment

Mr Peter Davidson, Conservator of Public Reserves; Land Use and Environmental Manager

**Norfolk Island Block Factory**

Mr Richard Cottle, Proprietor

**Norfolk Island Hospital Enterprise**

Mr David McCowan, Acting Director

**Private Capacity**

Mrs Helen Pedel

Mrs Patricia Magri

## **Norfolk Island, Wednesday 19 February 2003**

### **Private Capacity**

Mr George (Puss) Edwin Anderson

Ms Jan Christian

Mr John Brown MLA

Mrs Sheila Grimshaw

## **Canberra, Friday 28 March 2003**

### **Private Capacity**

Ms Denise Quintal

### **Australian Conservation Foundation**

Dr Geoff Mosley, Councillor

### **Commonwealth Department of Environment and Heritage**

Mr Gerard Early, First Assistant Secretary, Approvals and Wildlife Division

Mr Bruce Leaver, Executive Director, Australian Heritage Commission

Dr Ken Heffernan, Acting Director, Historic Heritage Management Division,  
Australian Heritage Commission

Mr John Hicks, Assistant Secretary, Parks Australia South

### **Commonwealth Department of Transport and Regional Services**

Mr Adrian Beresford-Wylie, Assistant Secretary, Self-Governing Territories,  
Local Government and Natural Disaster Management Branch

Mr Mike Mrdak, First Assistant Secretary, Territories and Local Government  
Division

## **Canberra, Monday 12 May 2003**

### **Commonwealth Department of Health and Ageing**

Mr Mark Burness, Medicare Eligibility Section, Medicare Benefits Branch,  
Medical and Pharmaceutical Services Division

Ms Tanya Taylor, Advisor, Medicare Eligibility Section, Medicare Benefits  
Branch, Medical and Pharmaceutical Services Division

### **Commonwealth Department of Transport and Regional Services**

Mr Adrian Beresford-Wylie, Assistant Secretary, Self-Governing Territories,  
Local Government and Natural Disaster Management Branch

Mr Mike Mrdak, First Assistant Secretary, Territories and Local Government  
Division

### **Commonwealth Department of Education, Science and Training**

Mr Anthony Greer, Group Manager, Schools Group







## **Appendix D - Chronological overview of the arrangements for Kingston and Arthur's Vale Historic Area (KAVHA)<sup>1</sup>**

The Federal Government's and Norfolk Island community's joint interest in the recording and preservation of the historic structures of Norfolk Island has been apparent since the early 1950s. Their interest has almost solely focused on the Kingston and Arthur's Vale Historic Area (KAVHA), which is located on the south side of Norfolk Island, between Bumboras Rocks and Ball Bay. The area covers 250 hectares of which 78 hectares are public reserves. The balance is either freehold land or leased Crown land.

Apart from the benefits to Norfolk Island tourism and conservation, the Federal and Norfolk Island Government's investment in KAVHA has had spin-offs for the Island's economy and employment through the use of Norfolk Island employees, contractors, or service providers and reliance on local businesses and enterprises. All fees or licences generated from within KAVHA are currently paid to the Norfolk Island Government. The Federal Government takes no revenue or receives no financial return from KAVHA notwithstanding its multi million dollar investment in the area to date.

This reflects that the fact that KAVHA is one of the foremost national examples of a cultural landscape, with exceptional heritage and social values. One of the most significant aspects of KAVHA is the continued presence on a daily basis of the Island Government and community carrying on the tasks of living and working within the area. As such, KAVHA possesses heritage

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1 Provided by the Office of the Administrator

values of great significance that provide opportunities for education, conservation, interpretation and recreation for the Norfolk Island community and visitors alike. These values include:

- Significant national heritage, scientific and archaeological values based on the site's association with four distinct settlement periods in one place - pre European Polynesian occupation, two European settlements and a mixed British/European and Polynesian settlement. The substantial ruins and standing structures, archaeological sub-surface remains, landform, and cultural landscape elements are significant as an outstanding example of the development of global convict transportation. KAVHA is significant for its close association with [as the place of] the wreck of the Sirius on the adjacent reef in 1790 and first home of the Pitcairn Islanders who occupied Norfolk Island as a distinct and separate community.
- The traditional focal point of the NI community. A diverse site that contains the seat of Government and administration, essential services and community facilities, as well as historic and commemorative sites, making it a living asset with huge visitor attraction. Norfolk Island residents have a deep emotional and historical attachment to KAVHA because it has been continually and actively used as a place of residence, of work of recreation and of worship, since the arrival at Kingston Pier in 1856 of the Pitcairn Islanders, from whom nearly a half of the Island's population is descended.
- KAVHA remains important for its aesthetic qualities which are valued by the community and tourists alike. The combination of cultural expression, natural forces and their patterns enable a perception and interpretation of the place as a 'picturesque' and 'romantic' landscape. The drama of its landform, sea and panoramic views creates a picturesque setting enhanced by visual links integral to the functioning of the First and Second penal settlements, while the subsequently undeveloped character and part ruinous configuration contribute to the romantic landscape, as does the strong streetscape quality of the built elements in 'Quality Row'. KAVHA also contains important wetland habitat and remnant vegetation, which are particularly valuable as a resting-place for migratory birds and in supporting a population of rare crustaceans found only on Norfolk Island.
- The existence of an experienced on-island works team responsible for the KAVHA site and drawn from a wider Island community. The KAVHA Conservation Team consists of 9 artisans, supported by 5 Ground

Maintenance Staff, supervised by a Project Manager. All members of the Team are Norfolk Island residents.<sup>2</sup>

## The Early Years to 1973 - Growing Recognition of KAVHA's importance to the island

- 1927 A New Zealand based company applied for leases over much of Quality Row and surrounding areas to build a Hotel, offices, general store and recreational facilities. It also sought the right to use parts of Kingston and Watermill Valley as an aerodrome. The Norfolk Island Administration refused the request.
- 1940 Areas of Kingston were divided into a number of public reserves under the Norfolk Island Commons and Public Reserves Ordinance 1936. These consisted of two Recreation Reserves, the Government House Ground Reserve and the Kingston Common Reserve for pasturage.
- Early 1950's The Norfolk Island Administration decided that the historic remains of the Kingston settlement needed to be preserved.
- 1952 Following a visit to Norfolk Island by the then Minister for Territories, the Federal Government adopted a policy of restoring and preserving historic buildings on Crown land within Kingston. The Minister commissioned a report to ascertain the necessary steps to preserve the Kingston site in a coordinated manner. The report was prepared by Marshall Clifton, an architect with the then Department of Works and Housing, following a detailed study of the buildings. His report set out a plan of work to be carried out by the Administration over a number of years. It stated that:
- ... the remains of this group of structures in themselves are sufficiently striking to the casual visiting observer to warrant, even for his sake, proper care taking. Add to this their value historically, their value in the capacity to provide much needed useful accommodation and their preservation or restoration as far as possible would be a matter of great urgency.

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2 The above is taken from the draft 2001 Business Plan developed jointly by Norfolk Island and Federal Government representatives.

Clifton's recommendations included: the establishment of a museum and art gallery in Kingston; that all stone buildings, whether ruin or not, should be retained; roofs should be replaced with corrugated asbestos cement; fretted stone work should be repaired and cattle should be prevented from grazing in the area of the buildings. However, funding of the restoration programme occurred on an ad-hoc basis until 1961.

- May 1953      The S.W. Lucas Report - 15 sheets of drawings with photographs - was completed.
- 1953            A works program was begun to make the old Customs House usable. Some early restoration work was undertaken by architects engaged by private citizens leasing buildings at Kingston.
- 1959            DE Limburg prepared a 'Report on Historical Buildings and Structures at Norfolk Island with Estimates of Cost of Repairs' for the Federal Department of Works. This was an extensive review and survey of the structures then remaining at Kingston. Limburg recommended that a thorough overhaul of the structures would modify the need for continued maintenance. He also suggested that the area inside the compounds should be levelled and selective repair work should be carried out on the rest of the structures. The attractive setting of Kingston was to be improved by the extensive planting of flowering trees and shrubs.
- 1961            The Federal Government undertook to provide \$40,000 (in 1961 dollars) for the restoration of a selected group of historic structures. A further \$10,000 was paid annually, in subsequent years, to the Norfolk Island Administration for the maintenance of those structures.
- 1962 - 1969    Over the next four years, several of Limburg's recommendations were acted upon, including the levelling of one colonial prison compound and an attempt to level one of the others. To provide local employment following the demise of Norfolk Island's whaling industry, the Administrator of the day commenced a program of preserving stone walls and buildings to stabilise them. The work was supervised by the Federal Department of Works. (This was the precursor to the KAVHA Restoration team that currently looks after KAVHA.)

Island residents became concerned about Limburg's proposal to level the Prisoner's Barracks and other ruins. They commenced a campaign to preserve the buildings. Letters were written to authorities and non-government organisations on Norfolk Island and on the Australian mainland, including the National Trust of Australia. Permission was granted for trial archaeological surveys to be carried out in the compounds, which led to the discovery of foundations of cells within the compounds.

1968

A report prepared on behalf of the Australian Conservation Foundation by Professor Turner (Melbourne University) Mr CN Smithers (Deputy Director of the Australian Museum) and Dr RD Hoogland (Principal Research Scientist, CSIRO) recommended that the National Trust be requested to provide advice on the preservation and restoration of the historic buildings in Kingston and Longridge and on the preservation of the Kingston landscape setting which surrounded the historic buildings. Their report - which was prepared in collaboration with the Federal Department responsible for Territories and the Norfolk Island Administration - considered the Kingston landscape setting to be of equal importance to the historic buildings themselves. The report noted the area's tourist potential, the need to manage commercial and residential development in and around the area and the need for a planning authority.

Similar comments were contained in a report prepared in the same year by the National Capital Development Commission (the Westerman report) that sought to set out planning principles that could be adopted for Norfolk Island. Measures suggested for the Kingston area included: planting of the slopes to prevent further erosion and to frame the area; prevention of further building unless consistent with the area's historic character and the removal of non-conforming buildings; and the declaration of historic zones at Kingston and Longridge.

1969

The Australian Council of National Trusts decided to form an expert committee to prepare a report on the historic structures. The committee - from The National Trust of Australia (New South Wales) - visited the Island in order to

investigate the buildings and to prepare estimates for their restoration.

- 1970 The Federal Government reaffirmed its annual maintenance payment to the Administration for restoration works. It was recognised that the historic structures should continue to also be regarded as a national, not just a Norfolk Island asset. The cost of restoration would continue to be met separately by the Federal Government and not from the Norfolk Island Budget.
- 1970 Howard and Frame, students at the Sydney University School of Architecture, prepared a 16 page paper with photographs on the houses of Quality Row.
- 1971 The Federal Government agreed to contribute up to \$100,000 (1971 dollars) towards the restoration of the "Officers' Mess" which was destroyed by fire in 1970. Restoration was completed in 1973. It was the largest single federal payment towards restoration on Norfolk Island at that time. Other restoration work had been small-scale because most of the federal-funds were required by the Administration for maintenance.
- 1971 The National Trust of Australia (N.S.W.) produced its report on Norfolk Island's historic structures, titled - "The Historic Buildings of Norfolk Island - their restoration, preservation and maintenance." It noted that "one of the finest collections of Georgian buildings in the Commonwealth is to be found on Norfolk Island". The Trust also regarded "... the colonial relics on Norfolk island as being of the utmost value far transcending a state or regional importance. In the case of Kingston the remaining buildings ruins and relics of the colonial settlement form a group of the highest historical and architectural interest". The National Trust Council recommended that a five year restoration programme and that no new buildings be erected in the Kingston area.
- The Norfolk Island Council considered the Trust's report in 1972 and endorsed the proposal for a federally financed restoration program for the historic buildings.

## 1973 - Restoration - The rebuilding programme

- 1973 (May)      The Federal Government accepted that the restoration of historic buildings on Crown Land in Norfolk Island was a federal responsibility and agreed to fund an ongoing programme of restoration. In particular, it agreed that:
- (a) the National Trust Report would generally be implemented;
  - (b) restoration work would cease to be the responsibility of the Norfolk Island Administration;
  - (c) restored buildings would continue to be used by the Administration without charge as proposed by the National Trust;
  - (d) the federal restoration program would relate only to the historic area at Kingston;
  - (e) parts of the Trust Report which related to the old Pitcairner Homes in areas other than Kingston were to be regarded as matters for local funding;
  - (d) an Interdepartmental Committee (IDC) was to be established to examine the proposals and be responsible for determining the annual programme and the appropriation to be sought;
  - (e) funding was to be provided through the then Department of the Capital Territory. The total cost was seen as about \$1,250,000 - which was to cover the restoration costs; the provision of a water supply for the protection of the restored structures against fire; and included \$250,000 for the provision of a new Administration Works Depot;
  - (f) subsequent maintenance of the restored buildings was to be a Norfolk Island Administration responsibility.

That decision was based on acceptance of the following principles:

- the Federal Government's national responsibility to preserve national heritage;
- the benefits to Norfolk Island's economy - in particular, its tourism industry upon which the Island economy relies;
- creating on-island employment opportunities including the opportunity for residents to obtain training and skills in restoration, construction and heritage conservation.

This decision formed the basis for all federally funded restoration and maintenance on Norfolk Island from 1973 to 1986. In that period, the Federal Government contributed some \$3.5M in direct payments to the IDC's restoration program. (Other financial assistance was also provided through grants etc for other related Norfolk projects.) Restoration was programmed for completion by 1988 when Norfolk Island Bicentenary coincided with the national bicentenary celebrations.

The IDC comprised officials from the Department responsible for Norfolk Island matters, the Department of Finance, the Australian Heritage Commission and the Department of Housing and Construction had primary responsibility for on-island supervision of the conservation works. The IDC Chair and Secretariat services were provided by the Federal Department then responsible for Territories matters. Norfolk Island Government representatives also attended IDC meetings from 1979.

1974

Community concerns over a rising residential and tourist population on Norfolk Island led to Professor GJ Butland (University of New England) being asked by the Federal Government to prepare a report for the Norfolk Island Council on the impact of that increasing population on Norfolk Island's economy, the preservation of the Island's historic assets, rural character and culture and to identify the Island's optimum population levels. His 1974 report entitled "A population study of Norfolk Island" - noted that 'Norfolk Island was almost solely dependent on tourism for its livelihood' and concluded that the Kingston area 'ranks as one of the most important attractions motivating tourists to



visit Norfolk Island'. Butland's finding was based on extensive surveys of tourists to the Island between 1973 and 1974. His report argued that the area between Bloody Bridge and Watermill Dam could become a model site attracting international recognition for the Island and that more needed to be done to conserve the area. Butland endorsed the National Trust's earlier argument that:

If commercial and other development [within KAVHA] is allowed to go unchecked and unplanned and if no conscious effort is made to preserve and restore what is there, then not only will people cease to be interested in Norfolk Island, but Australia as a whole would have lost a vital link with its past'.

The 7th Norfolk Island Council (1974-1976) adopted a policy of discouraging commercial or residential development within the Kingston area. (Cited in Hansard, Norfolk Island Legislative Assembly, 4 February 1982). The policy was adopted by subsequent Norfolk Island Councils.

1975           The Federal Government paid \$370,700 to Travelodge Australia Ltd in compensation for the resumption of the Crown lease - and related tenants-rights-in-improvements - over the site of the Paradise Hotel in Kingston. Travelodge Australia was then granted an interim five year lease after which the Hotel building was to be dismantled as it was in need of repair and not in keeping with rest of the historic area. The building was dismantled in 1987. The original lease had been granted in the 1930s and subsequently acquired by Travelodge Australia which had proposed in 1972 to replace the old Hotel with a two storey 100 bed hotel. The proposal had been opposed by the Australian Council of National Trusts and other organizations such as the Royal Institute of Architects.

1979           New arrangements for the Government of Norfolk Island came into force following the passage of the *Norfolk Island Act 1979* (Cth). The Norfolk Island Legislative Assembly and the Norfolk Island Government, replacing the former Norfolk Island Council and having legislative and executive

- authority over a wide range of matters, were inaugurated on 10 August 1979.
- 1980 An Archeological Survey of KAVHA was published. The Survey was funded by the Australian Construction Services and undertaken by two independent archeologists with on-island surveys, research on Norfolk Island and elsewhere as well as assistance and advice from Island residents. The report noted the need for archeological remains within KAVHA to be preserved, conserved and stabilized for future generations and further research.
- 1980 KAVHA was listed on the Register of the National Estate established under the *Australian Heritage Commission Act 1975* (Cth).
- 1980 A KAVHA Management Plan was published in April. The Plan had been prepared by a planning group consisting of Norfolk Island and Federal Government representatives who had been asked in 1979 by the IDC to prepare a management plan for KAVHA. The former Norfolk Island Council and the Norfolk Island Legislative Assembly after 1979 were consulted during preparation of the Plan. Options Papers and Reports were prepared to assist in the development of the Plan. These included reports on: a Landscape Management Policy; an Interpretative Plan; and the options for provision of Museum Facilities on Norfolk Island. Once published, the Plan was used by the IDC as a guideline for future work programs subject to annual appropriation by Federal Parliament. The Plan's objectives were: (i) to conserve KAVHA; (ii) provide for the continued use of the area by Islanders; (iii) encourage visitors to the area and to understand its historic significance; and (iv) manage the area in an efficient and economic manner.
- 1981-2 The Norfolk Island Government and Legislative Assembly enacted laws to restrict residential development and building within KAVHA and to provide an approval process for such developments. (Norfolk Island's Building Act had imposed restrictions on commercial development - including commercial development within KAVHA - since 1967.)
- 1985-6 The Federal Government initiated a review of the options for the future management of the area including the Federal Governments' ongoing involvement and funding of the

restoration program after 1988. Regard was had to the Norfolk Island Government's responsibilities under the *Norfolk Island Act 1979* (Cth), its separate financial arrangements following internal self-government in 1979, and to the Federal Government's earlier undertaking to continue to maintain Norfolk Island as a viable community.

Following discussions with the Norfolk Island Government, the Federal Government agreed that both Governments had a continuing interest in the restoration, management and maintenance of KAVHA. It also agreed there was a need to develop new on-site management arrangements and the possible restoration of sites outside the historic Kingston area.

Key considerations in that decision were: (a) KAVHA's heritage and cultural significance; (b) the need to maintain restoration work undertaken to date; and (c) the preservation of KAVHA as a major tourist attraction given that the Island economy's and financial self sufficiency was dependent on tourism.

Parallels were also drawn with a recent decision of the Federal Government to contribute towards a seven year restoration program at Port Arthur in Tasmania. That decision had been justified on the basis of:

- the significant contribution of tourism to the local economy;
- the significant growth in tourism in previous decade;
- indications that tourism could expand further and could have an increasing economic benefit;
- the national significance of that site;
- the critical nature of development and conservation because of increasing visitor numbers and the need to stabilize and preserve buildings etc before any major deterioration occurred;

- the need to ensure that restoration and maintenance works was carried out to international accepted principles;
- a view that the long term nature of the project required substantial outlays beyond Tasmania's financial ability to fund alone; and
- the proposal required resources beyond the normal level of assistance provided under usual arrangements.

Intergovernmental discussions then commenced on the new joint management arrangements for KAVHA.

At that time, the total federal contribution towards restoration reached \$3.5M.

1987

A working group of Federal and Norfolk Island officials was formed to develop new financial and management arrangements for KAVHA after 1988 (ie, after the Restoration program had been completed). It was recognized that, in addition to its oversight of the restoration program, the IDC had assumed a policy and management role for the historic area in the absence of any other body and that there was a need for a new joint body to effectively coordinate and manage Federal and Norfolk Island Government interests and activities in KAVHA. The Norfolk Island Government recommended that the new body be established by a Norfolk Island statute. Executive control over KAVHA was seen as highly fragmented and confusing with the division of responsibilities being far too complex. It favored a rationalized system of direct control over KAVHA through a new statutory authority with executive responsibilities. As an interim measure, it was agreed that the Board would be established administratively under a Memorandum of Understanding (MOU) between the two Governments and the Board's operation would be reviewed after three years to consider its establishment by statute. A new funding formula for future works within KAVHA was also agreed, with the Norfolk Island Government now contributing towards the conservation and management of the area (see below). The Federal Government had previously been primarily responsible for KAVHA funding.

The KAVHA Conservation Management Plan was also revised to reflect changes in conservation management techniques and to establish clear fully justified conservation management policies for the area. A revised draft Conservation Management Plan was circulated on-island in 1988 and endorsed by the Norfolk Island Government.

1988

Total federal expenditure under the KAVHA Restoration program reached \$5M.

The Australian Bicentennial Authority also provided an additional \$309,987 for interpretation and other works in the Kingston area. Works funded included the establishment of a visitor information centre, the establishment of Norfolk Island's four museums including a display of material from HMS Sirius; creation of walking paths, sign posting and landscaping. The Norfolk Island Government had applied in 1986 for funding from the Australian Bicentennial Authority (ABA) to pay for the above.

These works were completed in 1988. The Pier Store Museum was opened by the Governor General in 1988. The Maritime Museum in the former Protestant Chapel and housing the relics from HMS Sirius and HMS Bounty was formally opened by the Governor General in 1990. These two Museums, together with the Archaeological Museum and the Number 10 House Museum today form the Norfolk Island Museums. After their establishment, the Museums were funded and operated by the Norfolk Island Government.

Australian Bicentennial Projects on Norfolk Island and funded in 1988 included grants under the:

- Commonwealth Bicentennial Program for the above-mentioned interpretative program;
- National Local Government Initiative Grants Scheme to assist with the establishment of a Bicentennial Centre on Norfolk Island;
- National Local and Regional Heritage Program for conservation works on All Saints Church (\$120,000);

- National Sport and Recreation Program for activities with the 1988 Foundation Day celebrations; and
- Environmental Program for the establishment of a Bucks Point and Ball Bay Scenic walking trail.

In addition, an Australian Bicentennial funded Project saw the raising of relics in 1988 from the wreck site of HMS Sirius, the flag ship of the First Fleet which was wrecked off Slaughter Bay in 1790. The Australian Bicentennial Authority had allocated \$100,000 under the National Heritage Program for the excavations of the wreck site, with earlier expeditions occurring in 1983, 1985 and 1987. The Federal and Norfolk Island Governments agreed that the Norfolk Island Government would have custody of relics from the *Sirius*. Also agreed was a plan of management for the wreck site (which is protected under *Historic Shipwrecks Act 1976* (Cth)) and for relics recovered from the wreck, with the option of artefacts being loaned to mainland institutions.

It was also agreed in 1988 that artefacts recovered from Crown land in KAVHA should remain on Norfolk Island and in the custody of the Norfolk Island Government. A formal agreement was signed by both Governments in 1990 to give effect to this arrangement.

1988 Federal and Norfolk Island Governments agreed in principle to establishment of a KAVHA Management Board to guide ongoing maintenance of restored buildings and structures; the physical enhancement of the KAVHA area; interpretation work, stabilisation work and development of KAVHA's tourist potential. A new funding formula was also agreed.

### **1989 to date - Conservation, management and interpretation - The KAVHA Management Board**

1989 The Federal and Norfolk Island Governments signed a Memorandum of Understanding (MOU) on 11 August 1989 to establish the KAVHA Management Board. The MOU stated that the Board's objectives were to:

- (a) coordinate the interests of the two Governments with respect to KAVHA and other places on Norfolk Island of national significance;

- (b) administer, conserve and enhance the heritage quality of KAVHA and
- (c) ensure the efficient management of the use of heritage assets and compatible activities within KAVHA.

The Board's functions were to:

- (a) provide advice on the management of KAVHA in accordance with the Conservation Management Plan, both Governments having agreed that the Board would adopt the policies contained in the Conservation Management Plan as the basis of the Board's work;
- (b) review and make recommendations to both Governments on proposals for the use of KAVHA;
- (c) identify and determine work priorities and administer annual programs;
- (d) make recommendation to both Governments for necessary Government action concerning KAVHA; and
- (e) commission studies as appropriate to assist the management of KAVHA and, as agreed, such other places of national interest on Norfolk

The Board - which meets on Norfolk Island - initially comprised three representatives from each Government. Federal representatives included representatives from the Australian Heritage Commission and the Commonwealth Construction Authority. The Administrator was also a member of the Board, but in a nonvoting capacity. Decisions were taken by consensus and are implemented through Federal and/or Norfolk Island departments and agencies as appropriate.

The Board currently funds and is assisted by:

- a Board Secretary based on the Island;

- a Professional Services Coordinator responsible for advising on professional and consultancy services required by the Board and implementation of the Conservation Management Plan;
- an on-island Project Manager responsible for day to day implementation, management and supervision of programs and projects approved by the Board; and
- an on-island works team employed by the Norfolk Island Administration and responsible for conservation, infrastructure and ground maintenance work within KAVHA.

Funds to support the Board's operations and programs were provided by both Governments - subject to budget consideration - in accordance with a funding formula laid down in the MOU. The Federal Government continued to fund: cyclic maintenance - 100%; non-cyclic maintenance - 100%; archaeological stabilisation and costs of the Board - 50%; and interpretative works - 33%. The Norfolk Island Government would fund archaeological stabilisation and costs of the Management Board - 50% and interpretative works 66%.

Apart from its annual contribution under the KAVHA MOU, the Norfolk Island Government remained responsible under the *Norfolk Island Act 1979* (Cth) for the maintenance of the Kingston foreshores, jetties, roadways, beaches and visitor facilities (such as benches, BBQs and toilets), cemetery grounds and general day to day maintenance of public reserves and utilities within KAVHA. The inaugural meeting of the Board occurred on November 1989.

1992-3

The KAVHA Land Degradation Study and Management Plan was published. The Study and Plan had been funded by the Board following concerns that drought and overgrazing of the hills around Kingston were contributing to loss of pasturage, erosion, land slips and weed infestations in the area. The study - carried out by the New South Wales Department of Land and Environment - undertook an assessment of whether the present land use patterns were sustainable and developed a set of recommendations on how



best to prevent further soil erosion and also to reclaim degraded areas.

1993 The KAVHA Management Board published the first volume of a two part Interpretative Plan for KAVHA. The Plan contained a set of policies and strategies to provide for the interpretation of KAVHA and the history or significance of the area, structures and artefacts and, thereby, enhance its appeal to tourists. The Plan also provides a basis for strategic programming of works, activities and facilities needed for that purpose. The Plan was prepared under supervision of a steering committee including Norfolk Island representatives and in consultation with Norfolk Island Government agencies, community organisations and residents. The historical consultant was Dr Raymond Nobbs of Macquarie University. The second Volume of the Plan was published in 1995.

1994 A revised KAVHA MOU was signed on 27 April 1994 by the Norfolk Island and Federal Governments. The major change from the previous MOU was a reduction in the size of the Board from six to four, with there now being two representatives from each Government. The Administrator had a right to attend Board meetings, but was no longer a member of the Board. It was also agreed that the current arrangements would be reflected in Norfolk Island legislation establishing the Board established as statutory body as soon as practicable. The Board continued to operate and make decisions by consensus.

The Norfolk Island representatives have generally been Norfolk Island Ministers or Members of the Norfolk Island Legislative Assembly. The two Federal representatives have generally been an official from the Federal Department responsible for Territories and a member of the Australian Heritage Commission.

The KAVHA Landscape Management and Conservation Plan was published in May 1994, following consultation with Federal and Norfolk Island Government representatives, community organisations and the local community. The Plan was drafted by Tropman & Tropman Architects in association with Mr Trevor Ernie Friend, a Norfolk Island

environment consultant. The Landscape Management and Conservation Plan differed from the 1988 Conservation Plan in that it also took account of natural values as well as cultural heritage. It also drew on the findings and recommendations of the 1993 Land Degradation Study and Management Plan and 1993 Interpretation Plan (Policy Study) - see above.

1995 Commonwealth payments towards KAVHA totalled \$7M (not including grants or other special purpose payments provided for works within KAVHA).

A KAVHA Recreation Management Plan was published. The Plan was initiated by the Norfolk Island Government, funded by the KAVHA Management Board and prepared by Southern Cross University in consultation with the community. The Plan provided a set of recommendations to balance recognition of KAVHA's heritage and natural values with the contemporary needs of the Norfolk Island community.

1996 The Norfolk Island Government and Legislative Assembly enacted the Norfolk Island Planning Act 1996 and made the *Norfolk Island Plan* under that Act. Consistent with the prior decisions of the Norfolk Island and Federal Governments, the Norfolk Island Plan provides, among other things, provided that further developments within KAVHA were "ordinarily prohibited" unless: (a) they are consistent with the KAVHA Conservation Management Plan, its revisions and other plans endorsed by the KAVHA Management Board, and (b) have the agreement of the KAVHA Management Board.

To protect the visual setting of KAVHA, the Norfolk Plan also provided that proposed developments within the vicinity of KAVHA, and which could be seen from designated public vantage points within KAVHA, were subject to special considerations concerning siting and landscaping. The intention of a viewshed in the Norfolk Island plan was to manage development in the area to

enhance it both from within KAVHA and from the hills around it. Heritage and tourist appeal.

The KAVHA Management Board funded the development of a Water Quality Management Plan to prevent pollution of the Kingston catchment area and, therefore, the marine environment of Emily and Slaughter Bays.

Restoration of Number 9 Quality Row commenced. In 1968 a Crown lease was granted over Number 9 Quality Row to a private company for a period of 28 years at an annual rental of \$100. The lessee constructed a new building over the ruins on the property, which was then used for as a residence and an office. Following unsuccessful attempts to sell the lease, the lessee sublet the house to the Norfolk Island Administration for use as the residence of officer-in-charge of the Norfolk Island Police. Federal and Norfolk Island representatives agreed in 1993 not to renew the lease when it expired in 1996. The tenant was paid \$180,000 for tenant rights in improvements, with this cost being split three ways between the Federal Government, the Norfolk Island Government and the KAVHA Management Board. The Board's share was funded from the Federal and Norfolk Island Government's annual contributions to KAVHA. Number 9 was then restored at a cost of \$320,000, with the Federal and Norfolk Island Governments paying half each.

The KAVHA Board subsequently agreed in 2000 that Number 9 - once restored - would be used as heritage tourist accommodation, but was unable to proceed due to the introduction of Norfolk Island laws restricting new tourism accommodation on the Island.

In November 1996, a review of KAVHA's Conservation Management Plan was commenced to include confirmation of the Polynesian Settlements at Emily Bay, the Pitcairn history and Pitcairn social values associated with Kingston. A series of archaeological investigations had been carried out at Emily Bay by Professor Athol Anderson (Professor of Prehistory at the Australian National University) and Dr Peter White (Professor and Reader in Prehistoric

Archaeology at the University of Sydney) that confirmed the Island had been settled by East Polynesian voyagers at some stage between 12th to 15th centuries.

1996 - 1998 The Federal Government began to investigate nomination of Australian convict sites for inscription on the United Nation's list of World Heritage sites. An independent consultant study funded by the Federal Government assessed a number of sites - including KAVHA - during 1995 and 1996. The study was steered by a Working Group of Government representatives from Norfolk Island, NSW, Tasmania and Western Australia as well as officials from relevant federal agencies. The assessment concluded that KAVHA was eligible for World Heritage listing either in its own right or as part of serial nomination with other sites in Tasmania, New South Wales and Western Australia.

To help the Norfolk Island Government and community decide its attitude to possible inclusion of KAVHA in a World Heritage Nomination, a community consultation process was carried out including the preparation and circulation by the Federal Government in 1998 of Community Consultation Paper setting out the possible consequences of listing. At a referendum held in 1998, 56% of the Island's registered voters opposed KAVHA's World Heritage nomination. KAVHA's nomination has not been raised to date.

1997 The Commonwealth Grants Commission Report on Norfolk Island was released. The report concluded that 'all parties agree that the current management of KAVHA is working well, and that the buildings at the site are up to standard for World Heritage assessment' and 'compares well with important historic sites on the mainland (Port Arthur, Hyde Park Barracks and Freemantle Prison)'. The Commission concluded that the area was of national and international as well as local importance and that the Federal Government should continue to be involved in its management and conservation.

1999 The Federal Government provided \$20,000 under the National Estate Grant Program to conserve and stabilise historic remains and structures at Longridge - an area outside of KAVHA. The grant application was lodged with

the support of the KAVHA Management Board and the conservation work was undertaken by and under the supervision of the KAVHA Restoration team.

The Federal Government committed \$560,000 towards the restoration and conservation of Government House over a five year period. This work was to be undertaken by the KAVHA restoration team and by local contractors and tradesman.

- 2000 A workshop held on Norfolk Island, and attended by Federal and Norfolk Island representatives, led to the development of a draft Business Plan for KAVHA. The draft Plan sought to define the business of the Board, identify its goals strategies and actions, including a financial and marketing plan for the Board. The stated objective of the Plan was 'a well managed, conserved and interpreted KAVHA which is available for the sustainable use and enjoyment of the community and provides social, cultural and economic benefits'. The KAVHA Management Board agreed to fund and employ a resident as a full time KAVHA Secretariat to help coordinate Board meetings and deliberations and to act as point of contact for the Island community.
- 2000 At the Inter-governmental Meeting in June 2000, the Federal Territories Minister sought the Norfolk Island Government's views on moving to establish the KAVHA Management Board as a Norfolk Island statutory authority - as envisaged by the KAVHA MOU between the Federal and Norfolk Island Governments.
- 2001 A Joint Federal and Norfolk Island Government Task Force commenced a review of Norfolk Island's planning laws.
- During the review, the KAVHA Management Board and the Federal and Norfolk Island Governments agreed to remove the 'KAVHA viewshed' from the Norfolk Island Plan. It was to be replaced with a set of 'KAVHA Setting Development Guidelines' to be developed by the KAVHA Management Board for use by the Norfolk Island Planning Board in determining planning applications for developments in KAVHA's vicinity.

- 2002 Further surveys of HMS Sirius wreck site were carried out and relics recovered. The work was funded by a grant of \$29,558 from the Federal Government's Historic Shipwrecks Program. The survey team included members from the Norfolk Island Museums, Western Australian Maritime Museum, the Museum of Tropical Queensland, the Great Barrier Reef Marine Park Authority and James Cook University.
- 2002 A preliminary engineering survey of the Kingston Pier revealed that the Pier had suffered serious structural damage (caused by waves undermining the core of the pier and erosion of the reef on which the pier is built) and is in danger of collapse. The report estimated that repair of the pier would cost \$3.9M. Geotechnical Investigations were commenced in order to estimate the extent of the required work and cost.
- 2002 The KAVHA Management Board funded a series of on-island workshops on heritage conservation and management techniques and materials for residents and local tradesman and building contractors.

### **Commonwealth contribution towards KAVHA under the IDC / KAVHA program**

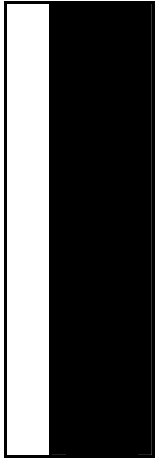
The following does not include funding provided to Norfolk Island under grant programs (such as the Australian Bicentennial Program) or under special funding arrangements. The Federal Government takes no revenue or receives no financial return from KAVHA notwithstanding its significant investment in it to date.

<b>Financial Year</b>	<b>Amount \$</b>
1973/74	47,750
1974/75	158,999
1975/76	264,999
1976/77	288,214
1977/78	249,999
1978/79	401,557
1979/80	289,300
1980/81	286,000
1981/82	286,000
1982/83	286,000

1983/84	304,436
1984/85	314,000
1985/86	382,000
1986/87	408,000
1987/88	408,000
1988/89	337,000
1989/90	384,000
1990/91	334,000
1991/92	350,000
1992/93	362,000
1993/94	370,000
1994/95	378,000
1995/96	384,000
1996/97	392,000
1997/98	392,000
1998/99	392,000
1999/00	392,000
2000/01	469,000
2001/02	496,000
2002/03	520,000
<b>TOTAL</b>	<b>10,327,254</b>







# **Dissenting Report**

## **Labor and Democrat Members**

### **Introduction**

- 1.1 The dissenting Members believe that the heritage values of Norfolk Island are of national and international significance and that in consequence the Commonwealth has an unescapable obligation to ensure that the arrangements for their long term protection and day to day management are of an appropriate standard.
- 1.2 The Chair's report is premised on the view (2.46 and 3.23) that while it is still too early to assess the effectiveness of the proposed new land management and planning arrangements on the Island if the recommendations of the report and those of the Governance report are acceded to there can be no reasonable justification for the proposed land initiative not proceeding.
- 1.3 The dissenting Members disagree with this approach because, on the evidence placed before the Committee by the Australian Conservation Foundation and others, implementation of the land initiative would immediately weaken the Island's environment protection system and pave the way for the national heritage values to be adversely impacted.
- 1.4 The proposed land initiative involves placing a greater level of discretion and responsibility for national heritage protection on the shoulders of one of the smaller communities of Australia.
- 1.5 To properly understand the protection needs of the Norfolk Island environment we believe it is essential to recognise the distinctive and closely linked nature of the heritage. The Island heritage has four main

components: the largely natural areas of the Norfolk Island National Park and some of the public reserves; the modified rural areas; the coastline and the Kingston Arthurs Vale Heritage Area (KAVHA). Their interconnectedness stems from history, the small size of the Island and relationships between their values.

- 1.6 The rural landscapes of the Norfolk Island countryside created by clearing most of the rainforest still contain remnants of the original rainforest and these contribute to the distinctive character as well as complementing the role of the National Park. Rural areas adjacent to the Park also have value either as buffers or in providing a bank of land suitable for future park extension. The coastal zone is closely linked to the adjoining rural areas and throughout Norfolk Island's history has been regarded as being of importance to the community in providing shelter and public access. It also provides valuable habitat for Norfolk Island's important seabird colonies. At the other end of the spectrum both the rural and coastal areas have high associative values with the buildings and landscapes of the second settlement at Kingston, Longridge and Cascade.
- 1.7 All of these four components of the nationally significant heritage of Norfolk Island are threatened in one way or another by the proposed land initiative. The linch pin is the Crown leasehold now threatened by the proposed land initiative.
- 1.8 The Commonwealth has for many decades successfully protected the heritage values of the rural and coastal areas which are Crown leasehold by means of a policy of not allowing subdivision. The policy had the specific purpose of protecting visual amenity. The very fact of this success was used as justification for closer subdivision of the half of the Island which is freehold with a consequent loss of heritage values in those parts of the Island. This has made the Crown leasehold areas even more important for conservation. The proposed revisions to the Norfolk Island Plan which are a part of the land initiative would change the subdivision regime from one of 'no subdivision' to a minimum lot size of 4 hectares allowing for over 50 new lots. It would also make much more difficult the extension of the National Park to include vital areas already identified as being important for inclusion.
- 1.9 In addition the revision of the Norfolk Island Plan would remove as part of the land initiative the 'Environmental Protection Area (Coastal Protection)' which has prohibited building within 50 metres of the top of the erosion prone cliffs. This would impact adversely on visual amenity, public access and seabird habitat.

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- 1.10 In addition the statutory plan revision would remove the development control provisions of the existing plan for the protection of KAVHA's visual setting.
- 1.11 The Chair's report makes no reference to the proposed plan revisions relating to the subdivision limit for the rural zone, the removal of the coastal protection zone and the removal of the protection for the visual setting of KAVHA even though all three have the potential to seriously weaken heritage protection on Norfolk Island.
- 1.12 We believe that future generations of Australians, including Norfolk Islanders deserve better than a formula that says, in effect, let us see how things work out. Rather than taking risks the emphasis, we feel, should be on making sure that the Commonwealth has a role which is appropriate to the high value of the heritage resource at stake.
- 1.13 We also reject the motion that the existing protections for the national heritage values can be replaced by the proposed covenants, agreements and undertakings voluntarily entered into by land holders. This again is a 'hope for the best' approach involving unacceptable risk for national assets. We believe the protection regime for Norfolk Island needs to be strengthened not weakened.
- 1.14 The main vehicle for the Commonwealth to exercise its conservation responsibilities appropriately is by utilising the provisions of the EPBC Act more actively and through greater involvement in planning wherever national heritage values are involved.
- 1.15 The assessment of what features are of Australia-wide significance is not complete. Cultural landscape values have not been subject to recent consideration and were outside the brief for the unpublished report referred to by the Department of Transport and Regional Services. The nominations for the Commonwealth Heritage List have yet to be exhibited for public comment.
- 1.16 The Commonwealth Property Principles (clause 3.9) state that "there will not be divestment of Commonwealth property where there are overriding public interest considerations concerning such matters as ... heritage or environmental issues". If the Crown leasehold was converted to freehold the nominated areas would no longer be eligible for consideration for the Commonwealth Heritage List. In our view such an action would constitute a serious environmental injustice. On the evidence presented to the Committee we believe that there is a strong *prima facie* case for the Commonwealth to retain the Crown leasehold properties to protect their heritage values.

- 1.17 Similarly, the Island's world heritage values should not be prejudiced by changes in land tenure and administration. The proposed revised Norfolk Island Plan would change the KAVHA Board's role in planning to a purely advisory one. It is worth noting that Crown lease lots in KAVHA and the KAVHA visual setting could be included in a future round of lease conversions to freehold.
- 1.18 While rejecting the main thrust of the Chair's report concerning acceptance of the proposed land initiative the dissenting Members agree with the recommendations of the Chair's report except the following:

### **Recommendation 2**

- 1.19 We disagree with this to the extent that it implies that the current lease transfer proposal is acceptable.

### **Recommendations 8 and 9**

- 1.20 We disagree with this to the extent that it implies that the entering into agreements, covenants or other undertakings should be voluntary and that these are an adequate substitute for the current protective regime associated with Commonwealth ownership, particularly the ban on subdivision.



**Senator Trish Crossin**  
**Deputy Chair**

**Senator John Hogg**

**Senator Kate Lundy**

**Ms Annette Ellis, MP**

**Hon Warren Snowdon, MP**

**Senator Natasha Stott-Despoja**

