

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.¹ 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.² 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.³ 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

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

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.⁴ 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.⁵

- 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*.⁶ 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”.⁷ The Department is also funding a five year restoration programme of Norfolk Island Government House (which is within KAVHA).⁸

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.⁹ 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.¹⁰ 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;¹¹
 - the retention of the Register of National Estate;¹²
 - increased protection for places on the register; and

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).¹³
- 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.¹⁴ 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.

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".¹⁵ 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.¹⁶

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

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.¹⁷

- 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.¹⁸

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.¹⁹ 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.²⁰ 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

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.²¹

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.²² In 2002-2003 the Federal Government contributed \$520,000 and the Norfolk Island Government contributed \$176,000 to the management of KAVHA.²³ 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.²⁴ 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.

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.²⁵ 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.²⁶
- 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.²⁷ The Australian Conservation Foundation (ACF) was concerned that the new land use arrangements and the new Plan would significantly reduce the standard of environmental

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.²⁸ The ACF nominated, among its other areas of concern, the visual setting of the KAVHA.²⁹

- 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”.³⁰
- 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.³¹

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.³² They argued that the area is not just of local heritage significance, but also of immense national heritage value.³³ 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".³⁴ 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

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.³⁵

- 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.³⁶ It also identifies revenue raising opportunities including, in the longer term, an admission charge.³⁷
- 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.³⁸
- 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

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.³⁹ Mr Anderson noted, however, that any revenue earnings from KAVHA "will fall far short of the maintenance costs of keeping KAVHA up and running".⁴⁰
- 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

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.⁴¹ 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.⁴²
- 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).⁴³ 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

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.⁴⁴ 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.⁴⁵ 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.

Recommendation 14

- 3.40 That the Federal Government review the management arrangements of the Kingston and Arthur's Vale Historic Area, with particular emphasis**
-

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.⁴⁶ 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.⁴⁷ 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".⁴⁸

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

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.⁴⁹

- 3.43 The Committee is convinced that the Norfolk Island Government could not fund the restoration and conservation of these sites alone.⁵⁰ 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.⁵¹
- 3.46 The KAVHA Business Plan identifies, as one of its long-term strategies, reconsideration of the business opportunities presented by

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.⁵²

- 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.⁵³ 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.⁵⁴

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.⁵⁵

- 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.

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.⁵⁶ 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.⁵⁷ 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).

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.**

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.⁵⁸ 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.⁵⁹ 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.

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.⁶⁰
- 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 1995.⁶¹ 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

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.⁶²

- 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.⁶³

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

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.⁶⁵ 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.⁶⁶ The restoration work is expected to be complete by mid-2005. The Committee welcomes this announcement.

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.