

## CHAPTER 7

### TERRITORY OF NORFOLK ISLAND

*...(Norfolk Island) is a finite, minute mote in the Pacific's gigantic eye<sup>1</sup>*

#### **7.1 Description**

**7.1.1** The Territory of Norfolk Island comprises Norfolk Island and the nearby uninhabited Nepean and Phillip Islands.

**7.1.2** Norfolk Island, discovered by Captain Cook in 1774, is situated in latitude 29°04'S, longitude 167°57'E. The Island is about eight kilometres long and five kilometres wide. It is 1,676 kilometres east-north-east of Sydney.

**7.1.3** The coastline consists of almost inaccessible cliffs rising from the water's edge, except at Kingston in the south and the landing place at Cascade on the northern side.

**7.1.4** The Island has a population of some 2000 people - the majority of whom are permanent residents. Approximately 550 are temporary residents. Forty-six percent of the permanently resident population are of Pitcairn Island descent. Australians and New Zealanders make up the bulk of the balance of population. Tourism, the major economic activity of the island, attracts an estimated 26,000 tourists each year.<sup>2</sup>

#### **7.2 Historical Outline**

**7.2.1** Norfolk Island has variously been a penal colony, whaling station and free

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<sup>1</sup> Evidence, p.S297.

<sup>2</sup> Evidence, p.S1794.

settlement during its formative years. It is the most historic of Australia's external territories and as such, is integral to our national heritage.

**7.2.2** Previously uninhabited, European settlement has been attempted on the Island since 1788 when Lieutenant P.G.King was despatched by Captain Phillip to secure the Island for the Crown. The Island was occupied and cultivated by convicts and settlers until 1814 when the settlement was abandoned, largely because of the absence of a suitable harbour but also because all available soldiers and convicts were required to aid in the establishment of new penal stations in Van Diemen's Land (Tasmania).

**7.2.3** For some years the Island was virtually deserted, used as a place of call for British warships.

**7.2.4** From 1825 to 1855 the Island again served as a penal station. During this time considerable public works - buildings, bridges and roads - were carried out by the convicts under an oppressive regime.

**7.2.5** Early in 1856 the last of the convicts were removed to make way for the relocation of the descendants of the 'Bounty' mutineers who were transferred from Pitcairn Island. The 194 settlers arrived on Norfolk Island in June 1856. These people and their descendants have since been the principal inhabitants of the Island.

### **7.3 Legislative Framework**

**7.3.1** The Territory of Norfolk Island was the first external territory to be acquired by the Commonwealth. It has a complex constitutional history and legal structure.

**7.3.2** Until 1844 Norfolk Island was either attached to, or part of, New South Wales. From 1844 to 1855 the Island was controlled by Van Diemen's Land authorities.

**7.3.3** The transfer of settlers from Pitcairn Island in 1856 required some revision of Norfolk Island's status and government. Pursuant to the Australian Waste Lands Act 1855 an Order in Council was proclaimed on 31 October 1856 creating Norfolk Island 'a distinct and separate settlement'. The Governor, who was also the Governor of the Colony of New South Wales, was given 'full power and authority to make laws for the order, peace, and good government of the said island, subject nevertheless to such rules and regulations as Her Majesty at any time by any instruction or instructions .... may think fit to prescribe.'<sup>3</sup>

**7.3.4** In 1857, the then Governor of New South Wales and Norfolk Island, Sir William Denison, issued by Proclamation a set of 39 simple laws referred to as 'Laws and Regulations for Norfolk Island'. This Proclamation marks the commencement of the modern legal history of Norfolk Island. No present legal rights are traceable to the convict era.<sup>4</sup>

**7.3.5** Though in law a separate Crown Colony for a period of forty years, Norfolk Island was intimately related to New South Wales, drawing heavily on the administrative advice of New South Wales ministers. This relationship was consolidated in 1897 when Norfolk Island was made a dependency under the Governor of the Colony of New South Wales.

**7.3.6** In 1900, in anticipation of the consequences of the establishment of the Commonwealth of Australia, administrative powers were shifted to the Governor of the State of New South Wales.

**7.3.7** Finally, by the passage of the Commonwealth Parliament's Norfolk Island Act 1913, Norfolk Island became a Territory of Australia. The Act was assented to on 19 December 1913 and came into operation on 1 July 1914. Under the Act, Norfolk Island was accepted as 'a Territory under the authority of the Commonwealth'. Section 4 of the Act provided that:

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<sup>3</sup> H Renfree, The Federal Judicial System of Australia, Sydney, 1984, p.754-755.

<sup>4</sup> *ibid*, p.755.

Subject to this Act, the laws, rules and regulations in force in Norfolk Island at the commencement of this Act shall continue in force, but may be altered or repealed by Ordinance made in pursuance of this Act...<sup>5</sup>

**7.3.8** Power was given to the Governor-General, by s. 8, to make Ordinances for the Territory.

**7.3.9** Apparently in anticipation of the transfer of the island to the Commonwealth, the Governor of New South Wales, Sir Gerald Strickland, by a Proclamation dated 23 December 1913 and published in the New South Wales Government Gazette the following day, declared that all laws theretofore in force in Norfolk Island were repealed. A new set of laws set out in the Proclamation were to come into force in the island.

**7.3.10** Sir Gerald Strickland's Proclamation also provided:

Subject to the laws hereby enacted and to any Order of His Majesty in Council, all laws and statutes in force in the realm of England on the 25th day of July, 1828, ... shall be applied in the administration of justice in Norfolk Island, as far as the same can be applied within the said island.<sup>6</sup>

**7.3.11** The 1913 Act, as amended later, was repealed by the Norfolk Island Act 1957. By s. 12 of the Act, all laws in force immediately before the commencement of the Act or in relation to the Territory were to continue in force.

**7.3.12** The Norfolk Island Ordinances Act 1957 was passed to make certain the dates on which Ordinances of the Territory, made before the commencement of the Act, were regarded as having come into operation.

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<sup>5</sup> *ibid*, p.756.

<sup>6</sup> *ibid*, p.757.

**7.3.13** When the Norfolk Island Judicature Ordinance 1960 was passed, the opportunity was taken to resolve any doubts as to the laws in force in Norfolk Island. It provided that English statutes in force in 1828, and all principles and rules of common law and equity, are, so far as they are applicable, in force in the Territory as laws of the Territory, unless they have been subsequently altered or replaced by legislation made for Norfolk Island. The phrase 'so far as they are applicable' has been explained to mean 'so far as they are applicable at the date of the Ordinance', that is 14 April 1960.<sup>7</sup>

**7.3.14** Under Amendments made by the Norfolk Island Act 1963, the Territory's Administrator, responsible to the Commonwealth Government for the island's administration, was made ex officio Chairman of an eight-member elected Norfolk Island Council.<sup>8</sup> The Commonwealth Government continued to hold all legislative and executive power, the Council being advisory only.

**7.3.15** In 1976, the Commonwealth Government received the Report of the Nimmo Royal Commission. The Government response to the Report led to the enactment of the Norfolk Island Act 1979. The Act provided for an elected Legislative Assembly of nine members with the power to make laws for the peace, order and good government of the Territory. Under the terms of the Act the Commonwealth can extend its legislation to the Territory, and the Governor-General can introduce proposed laws into the Legislative Assembly, and disallow or recommend amendments to all Assembly laws.

**7.3.16** The Norfolk Island Act 1979 therefore grants a degree of self-government to Norfolk Islanders and is a key constitutional document of Norfolk Island. The Committee is supportive of self-government for Norfolk Island and acknowledges that the constitutional arrangements established by the Act should be maintained.

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<sup>7</sup> *ibid*, p.759.

<sup>8</sup> *ibid*, p.759.

## 7.4 Applicable Law

7.4.1 The Norfolk Island Act 1979 provides a starting point for the determination of what laws apply in the Territory. The following information as to the ascertainability of Norfolk Island Law is derived from the submission by the Centre for Comparative Constitutional Studies:

Section 18 of the 1979 Act provides that Commonwealth Acts or provisions thereof are not, except as otherwise provided, in force as such in Norfolk Island, unless expressed to extend to the Territory. Where a Commonwealth Act does extend, however, its application may not be affected by any Ordinance of the Governor-General or enactment of the Norfolk Island Legislative Assembly.

Legislative power is conferred on the Norfolk Island Legislative Assembly by section 19 of the Norfolk Island Act, although this power is not exclusive, since the Governor-General is also empowered to make Ordinances for Norfolk Island, in certain circumstances, under section 27. Where an enactment of the Legislative Assembly is inconsistent with an Ordinance made by the Governor-General, the latter prevails and the former is invalid to the extent of the inconsistency (section 29).

By section 16 of the Norfolk Island Act, all Ordinances, subordinate legislation and other laws continued in force by the Norfolk Island Act 1957 are to remain in force in the Territory, but, under section 17, these may be amended or repealed either directly by, or under the authority of, enactments of the Norfolk Island Legislative Assembly.

Section 12 of the Norfolk Island Act 1957 provided that all laws in force immediately before the commencement of that Act in or in relation to the Territory, including Ordinances made under and laws continued in force by the Norfolk Island Act 1913, should continue in force, but were subject to repeal or amendment by Ordinance (section 13) made by the Governor-General (section 15). The Norfolk Island Act 1913, in turn, provided that the laws, rules, and regulations in force in Norfolk Island at the commencement of that Act should continue in force but might be altered or repealed by Ordinance (sub-section 4 (1)). The laws and regulations made for Norfolk Island by the Governors of New South Wales under the Orders in Council of 1856, 1897 and 1900

had been repealed and re-enacted in consolidated form just prior to Norfolk Island's transfer to the Commonwealth.<sup>9</sup>

7.4.2 In summary, therefore, the present law of Norfolk Island, in probable order of precedence, consists of the following:

- (a) Acts of the Commonwealth Parliament extending to Norfolk Island;
- (b) Ordinances of the Governor-General made under the Norfolk Island Act 1979;
- (c) Enactments of the Norfolk Island Legislative Assembly, authorised by the Norfolk Island Act 1979;
- (d) Ordinances of the Governor-General made under the Norfolk Island Act 1957 or the Norfolk Island Act 1913;
- (e) the consolidated laws of the Island, which repealed all pre-existing laws, and were published in the New South Wales Government Gazette on 24 December 1913.<sup>10</sup>

A number of additional considerations such as laws and statutes of the United Kingdom (Imperial) Parliament, particularly those relating to 'Dominions', also contribute to the legislative framework of Norfolk Island. These include:

- (f) Paramount Acts of the United Kingdom Parliament and Orders in Council made under them;

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<sup>9</sup> Evidence, p.S245.

<sup>10</sup> Renfree, op.cit, p.760 and Evidence p.S245.

- (g) English statutes in force in 1828, received in Norfolk Island (i.e. applicable to Norfolk Island in 1960);
- (h) Principles of common law and equity.<sup>11</sup>

## **7.5 Identification and Accessibility of Laws**

### **Pre-existing Laws**

**7.5.1** In their submission of March 1989, the Norfolk Island Legislative Assembly acknowledges that 'the biggest problem of identification (of laws) is with respect to Imperial enactments.'<sup>12</sup> However, as local legislative activity has increased, this matter 'has largely ceased to be a practical problem'<sup>13</sup> as 'inherited Imperial law ... is being phased out.'<sup>14</sup>

### **Commonwealth Laws**

**7.5.2** The Centre for Comparative Constitutional Studies has indicated that, in addition to this possible element of anachronistic English law mentioned above, minor problems may arise in determining which Commonwealth Acts extend to Norfolk Island<sup>15</sup>.

**7.5.3** The Norfolk Island Legislative Assembly argues that this is 'not a practical problem' although cases exist where a statute is not directly expressed to extend but may nevertheless arguably extend to the Territory. (The example of Jolley v Mainka (1933) 49 CLR 242 - whether the Commonwealth Bank Act 1911 extended to the Territory of New Guinea was cited)<sup>16</sup>.

**7.5.4** The publication of lists or tables showing exactly which Commonwealth Acts extend to Norfolk Island would greatly facilitate the identification of

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<sup>10</sup> Evidence, p.S248.

<sup>12</sup> Evidence, p.S580.

<sup>13</sup> Evidence, p.S580.

<sup>14</sup> Evidence, p.S581.

<sup>15</sup> Evidence, p.S248.

<sup>16</sup> Evidence, p.S581.



Commonwealth laws to the advantage of administrators, litigants and judges charged with enforcing Territory law. These lists should be made generally available through normal Commonwealth Government outlets.

### **Norfolk Island Laws**

**7.5.5** The problem of identifying Island statutory law only exists where the Island law adopts by reference to another law which is not readily available in its adopted form. The Norfolk Island Government is currently addressing this problem by phasing out legislation by reference<sup>17</sup>.

### **Accessibility of Laws**

**7.5.6** The Centre for Comparative Constitutional Studies also indicated that minor problems also arise in gaining access to Norfolk Island enactments and Ordinances<sup>18</sup>. The Norfolk Island Government refutes this suggestion, indicating that 'Norfolk Island law is no more difficult to find than is Commonwealth law. It is printed, re-printed in consolidated form and indexed annually and quarterly.'<sup>19</sup>

**7.5.7** The Assembly informed the Committee that:

Since 1985, a pamphlet reprint series of laws in force has been progressively published on a 'short title' basis. Over 70 titles have been published, and the programme is continuing. Current enactments and regulations are also published as they are made, in an annual series. An annual Legislation Tables is published, and this is kept up-to-date with quarterly noters-up. A weekly Government Gazette gives details of legislative changes between issues of the noter-up. All of these publications are available for purchase, and mail order services are provided.<sup>20</sup>

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<sup>17</sup> Evidence, p.S581.

<sup>18</sup> Evidence, p.S248.

<sup>19</sup> Evidence, p.S872.

<sup>20</sup> Evidence, p.S581.

## **Conclusion**

**7.5.8** The Committee is satisfied that the steps currently being taken by the Norfolk Island Government represent a realistic and practical approach to the identification of legislation applicable to Norfolk Island and the accessibility of Norfolk Island enactments and Ordinances.

**7.5.9** As mentioned in paragraphs 7.5.1 and 7.5.2 above, clarification of the applicability of Commonwealth Acts extending to the Territory and of Imperial statutes which have or have not been received in Norfolk Island remain the major outstanding areas for action.

## **RECOMMENDATION 38**

**7.5.10** The Committee recommends that lists or tables showing exactly which Commonwealth Acts extend to Norfolk Island and which Imperial statutes have been received, be compiled and published and made generally available.

## **7.6 Courts**

**7.6.1** The Courts exercising jurisdiction in the Territory are the Supreme Court of Norfolk Island and the Norfolk Island Court of Petty Sessions.

### **Supreme Court**

**7.6.2** The Supreme Court of Norfolk Island was set up under the Norfolk Island Act 1957. It was continued in existence by the Norfolk Island Act 1979 as the superior court of record of Norfolk Island.

**7.6.3** The jurisdiction, practice and procedure of the Supreme Court is as provided by the Supreme Court Ordinance 1960. Essentially, the Supreme Court has the same jurisdiction in, and in relation to, Norfolk Island as the Supreme Court of the Australian Capital Territory has in, and in relation to, the Australian Capital Territory.<sup>21</sup>

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<sup>21</sup> Norfolk Island Annual Report, 1986-87; and Evidence, p.S435.

**7.6.4** In accordance with the 1979 Norfolk Island (Sittings of the Supreme Court) Regulations, the Supreme Court may sit in civil cases in New South Wales, Victoria or the Australian Capital Territory as well as the Territory, but in criminal cases only in the Territory.<sup>22</sup>

**7.6.5** Under the Federal Court of Australia Act 1976, there is a provision for appeals from the Island's Supreme Court to the Federal Court and on to the High Court.

### **Court of Petty Sessions**

**7.6.6** A Court of Petty Sessions for the Territory was established by the Court of Petty Sessions Ordinance 1960. The jurisdiction of the Court may be exercised by the Chief Magistrate, or by any three Magistrates. The Court has both a criminal and civil jurisdiction. The Court has jurisdiction to hear and determine, in a summary manner, all criminal matters arising under a law in force in Norfolk Island where, under such a law:

- . an offence is punishable on summary conviction;
- . a person is made liable to a penalty or punishment or to pay a sum of money for any offence, act or omission and no other provision is made for the trial of a person committing the offence;<sup>23</sup> or
- . by consent, an indictable offence can be disposed of summarily.

**7.6.7** The Court also has jurisdiction to hear and determine civil claims in respect of a sum or matter at issue which does not exceed \$10,000.<sup>24</sup>

**7.6.8** There is a right of appeal from the Court of Petty Sessions to the Supreme Court in certain cases. The right applies to criminal proceedings where a

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<sup>22</sup> Evidence, p.S435.

<sup>23</sup> Norfolk Island Annual Report, 1986-87, p.6 and Evidence, p.S435.

<sup>24</sup> Evidence, p.S557.

person has been fined not less than \$10 or sentenced to imprisonment for any term, and in civil proceedings in respect of a sum or matter at issue amounting to not less than \$100.<sup>25</sup> The Supreme Court may also grant leave to appeal in cases where an appeal does not otherwise lie.

### **Family Court of Australia**

**7.6.9** The Sydney Registry of the Family Court of Australia is the principal registry for Family Law matters in Norfolk Island other than those matters which may be dealt with by the Court of Petty Sessions.<sup>26</sup>

### **7.7 Administrative Arrangements**

**7.7.1** As described above, Norfolk Island was either attached to, or part of, New South Wales until 1844. From 1844 to 1855 the Island was controlled by Van Diemen's Land authorities. It was not until 1856, with the arrival of the Pitcairn settlers, that the Island was removed from Van Diemen's Land control and created a 'distinct and separate settlement'. Those arrangements prevailed for more than 40 years, until increased powers of control were given to New South Wales in 1897. From 1914, when the Island became a Territory, until 1979 the Island was governed directly by the Commonwealth.

**7.7.2** In addition to providing the basis of the Island's legislative and judicial systems, the Norfolk Island Act 1979, is the basis of Norfolk Island's administrative system. The Act provides for an Administrator of the Territory, appointed by the Governor-General, and an elected nine member Legislative Assembly.

**7.7.3** An Executive Council, drawn from the members of the Assembly and appointed by the Administrator upon the advice of the Assembly, has executive power over the matters set out in Schedules 2 and 3 of the Act. Executive members of the Assembly have ministerial-type responsibilities for these matters.

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<sup>25</sup> Norfolk Island Annual Report 1986-87, p.6 and Evidence, p.S435.

<sup>26</sup> Norfolk Island Annual Report, 1986-87, p.6.

**7.7.4** In addition, there are many matters for which the Commonwealth retains formal responsibility but which in practice are locally administered and locally funded.<sup>27</sup>

**7.7.5** The Legislative Assembly has plenary power to make laws for the peace, order and good government of the Territory as well as the power to raise revenue for this purpose.

**7.7.6** There are three exceptions to the plenary power of the Assembly: the Assembly may not pass laws -

- (1) authorising the acquisition of property except on just terms;
- (2) authorising the raising or maintaining of defence forces; or
- (3) authorising the coining of money.<sup>28</sup>

**7.7.7** Every law proposed by the Assembly must be presented to the Administrator for assent. If the proposed law relates to only Schedule 2 of the Act, the Administrator may either assent or withhold assent, but s/he must act in accordance with the advice of the Assembly's Executive Council. Should the proposed law provide for Schedule 3 matters, or a combination of Schedules 2 and 3 matters, the Administrator is required to refer the proposed law to the Minister for instructions. Should the proposed law provide for matters not specified in either Schedule 2 or 3, the Administrator must reserve the proposed law for the Governor-General's pleasure.

**7.7.8** The Office of the Administrator is financed from Commonwealth expenditure, with additional funds for specific purposes such as the restoration and maintenance of historic structures, also being supplied by the Commonwealth. The Administrator reports to the Commonwealth Minister. Under current administrative

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<sup>27</sup> Evidence, p.S1722.

<sup>27</sup> Evidence, p.S1722.

arrangements, the Minister for the Arts, Tourism and Territories is the responsible Minister.

## **7.8 Consultation with Residents**

**7.8.1** The Committee in the 35th Parliament visited Norfolk Island on 18 April 1989. During the visit, the Committee made an inspection of the Island and heard evidence from eleven witnesses, including residents and representatives of a number of different groups. A significant number of submissions were also received from a range of people and organisations concerned with the administration of the Island.

**7.8.2** In the 36th Parliament, the Committee prepared and circulated a Discussion Paper to the residents outlining the range of views which had been put to the Committee of the previous Parliament during this consultative process. The Discussion Paper, entitled 'Certain Options for the Reform of the Legal Regime of Norfolk Island' sought responses to a broad spectrum of issues.

**7.8.3** The Discussion Paper is included at Appendix D.

**7.8.4** Consultations with Territory residents in this regard were held in October 1990 with the Committee taking evidence from 31 witnesses during the two days of public hearings held on 24 and 25 October 1990.

**7.8.5** The Norfolk Island Legislative Assembly had an opportunity to comment on the Committee's emerging conclusions in February 1991. The matters identified in the Norfolk Island Government's response, so far as applicable, have been taken up by the Committee. Special prominence has been attached to the responses from the legislators of Norfolk Island by their inclusion in an Appendix to this Report.

**7.8.6** It is to be noted that figures in relation to Commonwealth expenditure in respect of Norfolk Island, as calculated by the Commonwealth, are detailed in paragraph 7.16.2 of this Report. The Norfolk Island Government's calculation of Commonwealth expenditure in relation to Norfolk Island is detailed in paragraph

7.16.3. The Committee emphasises that, in recording the evidence from both sources, it has drawn no conclusions from the information provided, accepting that the different parties have used alternative approaches to their calculations.

7.8.7 Almost half of the total of 130 submissions received by the Committee during the entire course of this inquiry have been received from individuals and organisations interested in the Norfolk Island aspect of the inquiry.

7.8.8 It should be noted that the Committee encountered some hostility in the conduct of aspects of its inquiry, with a number of witnesses questioning the need for the inquiry and indicating that 'unsolicited interference' from 'outside forces' is neither welcome nor productive.

7.8.9 Others, like Mr Ric Robinson, stressed that while the future of the Territory was essentially a matter for the Islanders, the Commonwealth did have a role:

Norfolk Island has serious problems which must be overcome. But I contend that they are best solved by Norfolk Island, with the sympathy and active help of the Commonwealth of Australia.<sup>29</sup>

7.8.10 Yet other elements of the Norfolk Island population indicated that:

Despite moves towards independence by a certain section of the community, the welfare of the majority of Norfolk Island citizens depends on the maintenance of the island's traditional close links with Australia.<sup>30</sup>

7.8.11 The differing views were each expressed firmly by their various advocates.

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<sup>29</sup> Evidence, p.S301.

<sup>30</sup> Evidence, p.S100.

## **7.9 Adequacy of the Current Regime**

**7.9.1** The Committee is mindful of the significant weight of evidence it has received to the effect that the laws of Norfolk Island are generally appropriate to the needs of the Territory. Norfolk Island has achieved a high degree of self-government and is developing a range of laws designed to meet the expressed desire of Territory residents. The Commonwealth retains, of course, an overriding responsibility and duty in ensuring that the residents of Norfolk Island enjoy the same basic benefits, rights and protection under the law as other Australians.

### **Conclusion**

**7.9.2** The Committee accepts that Norfolk Island has achieved a substantial degree of self-government and acknowledges that the Norfolk Island Government is acting with goodwill in safeguarding the interests of Norfolk Island residents. However, the Committee believes that, whilst no wholesale reform is necessary, some review and, where appropriate, revision, is required in relation to some aspects of the legal and administrative regime.

**7.9.3** Nevertheless, the Committee endorses the continuance of the provisions of the Norfolk Island Act 1979 which should remain the basis for the governance of Norfolk Island.

## **7.10 Commonwealth Parliamentary Representation**

**7.10.1** Australian citizens resident in Norfolk Island remain the only resident Australians not entitled, as of right, to representation in the Commonwealth Parliament. The Committee received evidence which indicated that the people of Norfolk Island had mixed views on this issue. Some, like Mr Lisle Snell of the Norfolk Island Government Tourist Bureau, indicated that 'I personally have no desires at all ... to be involved in the election process of the Australian system'.<sup>31</sup>

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<sup>31</sup> Evidence, p.1486.



**7.10.2** The view of the Society of Pitcairn Descendants is even stronger:  
... we do not want to be a part of Australia ... we are not  
Australians.<sup>32</sup>

**7.10.3** Views opposing the involvement of Norfolk Island in Commonwealth parliamentary representation were also expressed by the Norfolk Island Government, amongst others.

**7.10.4** The alternative view was put by others, who, like Mr Barry Christian, indicated that 'I think we would probably have a fairer representation if we had a vote in the Australian Parliament'.<sup>33</sup> In her submission, Ms Merval Hoare also supported the proposal for Norfolk Island to be attached to an electorate within an Australian state for the purposes of federal representation<sup>34</sup>. These views were shared by other witnesses who appeared before the Committee or made submissions to the inquiry.

### **Conclusion**

**7.10.5** The Committee is of the view that the right to vote is an absolute right which should not be denied to those people of Norfolk Island who wish to exercise their right. However, the Committee recognises that the constitutional history of the Territory is complex and that Norfolk Island warrants special consideration in this regard. In addition, the Committee is cognisant of the strongly held views of elements of the Norfolk Island population, most likely a majority, for whom Commonwealth parliamentary representation is an anathema.

**7.10.6** The Committee is aware that provision exists within the Commonwealth Electoral Act 1918 for optional voting for the following categories: an Antarctic elector; an eligible overseas elector; or an itinerant elector. The Committee is mindful of the strongly held views and the historical reasons which make Norfolk

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<sup>32</sup> Evidence, pp.1522-1523.

<sup>33</sup> Evidence p.1497.

<sup>34</sup> Evidence, p.S1646 and p.1652.

Island a unique case. The Committee is therefore prepared to accept, contrary to the important principles which apply anywhere else in Australia, that the residents of Norfolk Island who are Australian citizens should have the right of optional enrolment. Once a citizen exercises this right, voting would be compulsory and normal provisions under the Commonwealth Electoral Act would apply.

## **RECOMMENDATION 39**

**7.10.7** The Committee recommends that the Commonwealth Parliament amend the Commonwealth Electoral Act 1918 to give optional enrolment rights to the people of Norfolk Island; the electorate to which the voters would be attached to be determined on the advice of the Australian Electoral Commission.

## **7.11 Norfolk Island Legislation**

**7.11.1** Delays in assent to reserved legislation and consultation breakdowns in connection with the extension to the Island of Commonwealth legislation<sup>35</sup> have been brought to the Committee's attention by the Norfolk Island Government. The Office of Parliamentary Counsel confirms that delays and inadequate consultation have been occurring.<sup>36</sup>

## **Conclusion**

**7.11.2** The Committee regards this as a matter of great concern and suggests that such delays are unacceptable. DASETT will need to play a major coordinating role in facilitating the passage of Norfolk Island legislation.

## **RECOMMENDATION 40**

**7.11.3** The Committee recommends that the Department of the Arts, Sport, the Environment, Tourism and Territories exercise a coordinating role to overcome delays in assent to legislation. The Committee also recommends that the Commonwealth Government consider adopting a policy to require responses within a fixed period of receipt of notification from the Norfolk Island Administrator of legislation requiring assent.

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<sup>35</sup> Evidence, p.S563ff and p.S864.

<sup>36</sup> Evidence, pp.S892-S896.

## **7.12 Citizenship**

**7.12.1** Under the Australian Citizenship Act 1948 a person born on Norfolk Island is an Australian citizen by birth if one of the person's parents was an Australian citizen. Persons who are declared residents under the Norfolk Island Immigration Act 1980 may apply for Australian citizenship in accordance with the terms of the Commonwealth Act. (See Appendix D for details about the Norfolk Island Immigration Act.)

**7.12.2** Citizenship carries with it certain rights and duties, amongst which is the right to vote. In fact, few societies permit those who are not citizens the right to vote.

**7.12.3** The right to vote in elections for the Norfolk Island Legislative Assembly and in referendums is currently available to persons resident in the Island for a period of 3 years (or 2 years and 6 months in the preceding 3 years) who satisfy the Administrator that they intend to reside permanently on the Island.

### **Conclusion**

**7.12.4** The Committee is satisfied that the current residency provision should remain unchanged.

**7.12.5** However, the Committee believes that the residency provision should be coupled with a citizenship requirement so that only Australian citizens be eligible to stand, or vote, in Legislative Assembly elections. This is consistent with the recent Commonwealth resolution to require Australian citizenship for voters in elections for the Christmas Island Assembly, and the Committee's recommendation with respect to both Christmas Island and the Cocos (Keeling) Islands.

**7.12.6** To achieve this result, the Committee favours gradual change to facilitate the phasing-in of this proposal - the citizenship requirement would only apply to all

new enrollees registering on the Norfolk Island electoral roll on or after a commencement date to be determined during 1991. Existing enrollees would not be affected by this proposal and could continue to exercise all of their present rights.

**7.12.7** The Committee notes that, under these provisions, all current residents will be able to vote, together with Pitcairners and their descendants and residents of Norfolk Island who take out Australian citizenship. Only those of foreign nationality, unless they take out Australian citizenship, will be excluded.

#### **RECOMMENDATION 41**

**7.12.8** The Committee recommends that Australian citizenship be a requirement for eligibility to stand for election or to vote in Norfolk Island Legislative Assembly elections, for all new enrollees registering on the Norfolk Island electoral roll on or after a commencement date to be determined before the end of 1991.

#### **7.13 Administrative Appeals**

**7.13.1** A considerable amount of evidence has been received by the Committee as to the adequacy of appeal mechanisms currently available to Norfolk Islanders seeking reviews of administrative decisions.

**7.13.2** Norfolk Island residents have access to Commonwealth administrative review processes in respect of decisions made under Commonwealth laws:

Decisions under an Ordinance of a Territory or an instrument made under such an Ordinance are subject to the Administrative Decisions (Judicial Review) Act 1977. (Although it is unclear whether the Act applies to decisions by executive members of the Legislative Assembly, or in fact decisions of the Commonwealth Minister, taken on the Island).

The Freedom of Information Act 1982 provides access to most documents in the possession of Departments or authorities established under Commonwealth enactments. (The Legislative

Assembly of Norfolk Island is not a prescribed authority under the Act).

The Ombudsman Act 1976 empowers the Commonwealth Ombudsman to investigate complaints relating to administrative actions by Departments or prescribed authorities - with the exception of action taken by Ministers, judges etc and action relating to Public Service employment or statutory appointments. (Actions taken under the Norfolk Island Act 1979 or a Norfolk Island enactment are not covered).

**7.13.3** Residents of Norfolk Island and others affected by decisions or actions taken under Norfolk Island laws have some avenues of appeal, for example, to the Minister (Immigration Act 1980) or the Court of Petty Sessions (Land Subdivision Ordinance).

**7.13.4** The Administrative Appeals Tribunal does not have jurisdiction to review administrative decisions under the laws of Norfolk Island.

**7.13.5** Recourse to Commonwealth administrative law is not generally available in respect of decisions taken under Norfolk Island legislation. The most common form of review available under Island law is by recourse to the Supreme Court or the Court of Petty Sessions, but only in respect of a narrow range of specific laws.

### **Conclusion**

**7.13.6** The Committee commends the initiative of the Norfolk Island Government in addressing this important issue by the proposed development of an independent Administrative Review Tribunal. Details of the scheme under discussion are contained in a further supplementary submission of the Norfolk Island Government in October 1990.

**7.13.7** Although the proposed Administrative Review Tribunal would seem to overcome inadequacies in the current arrangements, the Committee is concerned to ensure that the residents of Norfolk Island have increased access to review processes as a matter of priority.

## **RECOMMENDATION 42**

**7.13.8** The Committee recommends extending the operation of the Administrative Appeals Tribunal, Ombudsman Act and the Freedom of Information Act to an appropriate range of decisions, but only as an interim measure, pending the development by the Norfolk Island Government of an independent Administrative Review Tribunal.

## **7.14 Immigration**

**7.14.1** The Committee has received trenchant criticisms on the operation of the Norfolk Island Immigration Act, particularly in so far as it may affect the ability of a Norfolk Island resident to dispose of real estate in the Territory. Much of the criticism appears to relate to the objectivity of the decision making process and delays in the appeal process. It is expected that the interim measures proposed as well as the ultimate establishment of an independent Administrative Review Tribunal will allay such concerns.

**7.14.2** The Compensating Departure Scheme, introduced in April 1990, is also designed to overcome problems of disposition of property. The scheme is aimed at 'preventing the phenomenon of residents who wish to move away, being "locked in" by reason of inability to dispose of their property'<sup>37</sup>. The scheme follows a recommendation by the Legislative Assembly's Select Committee on Population (1987) and several years of negotiation with Federal authorities. Since its introduction, the scheme has been used by 4 outgoing families (10 outgoing individuals).<sup>38</sup>

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<sup>37</sup> Evidence, pp.S1699-S1700.

<sup>38</sup> Evidence, p.S1700.

## **7.15 Industrial Relations**

**7.15.1** The Committee received evidence from a number of concerned people at the lack of appropriate industrial relations legislation which provided for minimum wages, anti-discrimination measures, sickness benefits and workers' compensation. There is evidence to suggest that a degree of exploitation of the workforce, particularly the itinerant workforce, has been occurring and that the workforce has been unable and unwilling to jeopardise their employment or immigration status by forming an association which can negotiate with employers for better conditions and wages.

**7.15.2** The Committee notes that the itinerant workforce, recruited from mainland Australia and New Zealand to fill temporary vacancies on the Island, constitutes almost half of the total workforce on Norfolk Island.<sup>39</sup> In the opinion of the Committee it is unacceptable that Australian citizens recruited in this way should be denied the level of protection under the law which is available to the Norfolk Island permanent residents.

**7.15.3** Public Sector employees, the only sector of the Norfolk Island workforce covered by industrial relations and workers' compensation legislation, have also expressed concerns relevant to their working conditions. In December 1984 the Norfolk Island Public Service Association complained to the International Labour Organisation (ILO - see para 7.15.5 below) that declarations had not been lodged with respect to a number (7) of Conventions and that the Convention relating to the Forty Hour Week was not being complied with, despite having been declared applicable to Norfolk Island.<sup>40</sup>

**7.15.4** The Committee is concerned about the previous inadequacies of Norfolk Island industrial relations legislation, not only for the consequences to the workforce but also because international standards are not being met.

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<sup>39</sup> Evidence, p.S1819. Itinerant workforce estimated to be 412 out of a total of 1170.

<sup>40</sup> Evidence, pp.S1568-S1570.

**7.15.5** Australia's obligations under Article 35 of the the International Labour Organisation (ILO) Constitution in respect of non-metropolitan territories is currently being reviewed by the Department of Industrial Relations in the light of issues raised during this inquiry.<sup>41</sup> Australia, as a Member State, is obliged to make declarations for each territory in relation to the 46 ILO Conventions which they have ratified.

**7.15.6** Although some declarations have been made with respect to Norfolk Island, there remain a number of ratified Conventions in respect of which declarations are outstanding.

**7.15.7** The Norfolk Island Employment Act 1988 is expected to enable compliance with Conventions relating to equal remuneration and minimum wage fixing. Compliance with Convention 47, Forty Hour Week, is also expected to be ensured by Regulation under the Employment Act 1988.

### **Conclusion**

**7.15.8** The Committee acknowledges the efforts being made by the Norfolk Island Government in the development of this long overdue legislation and notes that it covers many of the issues raised during the course of the Committee's inquiry - minimum terms and conditions of employment, including a minimum wage; an enforcement machinery for employment agreements providing for more than the minimum standards; occupational health and safety; and workers' compensation.<sup>42</sup>

**7.15.9** The impact of the Employment Act 1988 will be viewed with interest although, at the time of reporting, the Act had not been brought into force.

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<sup>41</sup> Evidence, p.S1566.

<sup>42</sup> Evidence, p.S558.



## RECOMMENDATION 43

**7.15.10** The Committee recommends that the Commonwealth continue to work closely with the Norfolk Island Legislative Assembly to ensure that all the industrial relations legislation of Norfolk Island be developed to the point where Australia's obligations under International Labour Organisation Conventions are met.

### **7.16 Cost Recovery on Commonwealth Government Expenditure**

**7.16.1** During the course of the inquiry the Department of the Arts, Sport, the Environment, Tourism and Territories (DASETT) provided the Committee, in consultation with other Departments, details of expenditure incurred in relation to Norfolk Island, and of the costs recovered.

**7.16.2** The raw figures provided to the Committee indicate that in 1988/89 estimated total Commonwealth expenditure was \$4,893,973 and the total of costs recovered was \$121,270.<sup>43</sup>

**7.16.3** The Norfolk Island Government believes the net cost to the Commonwealth of providing services and benefits to the Norfolk Island community is only about \$1.3 million<sup>44</sup>. They favour a reduction in the level of services and expenditure by the Commonwealth, a view not shared by all residents of the Island. In her submission, Ms Merval Hoare questions which Commonwealth services and expenditure the Island could do without:

Certainly not the airport and mercy flights, the Administrator and Administrator's office, a communication channel between the island and Canberra, the Australian National Parks and Wildlife Service, which conserve our environmental assets, or the many Australian age pensions, veterans pensions and superannuation payments received by residents. The withdrawal of any one of these would seriously affect the economy.<sup>45</sup>

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<sup>43</sup> Evidence, pp.S1092-S1098.

<sup>44</sup> Evidence, pp.S1706-S1711.

<sup>45</sup> Evidence, p.S1654.

**7.16.4** Another resident expressed his concern that if Commonwealth funding for the historical restoration project ceased, he and nine other colleagues would be out of work and would probably have to leave the Island.<sup>46</sup>

### **Conclusion**

**7.16.5** The Committee is cognisant of the benefits which Australia and Australians enjoy from Norfolk Island. However it believes that the Commonwealth should not reduce the level of services or expenditure to the Island, but rather that the Commonwealth adhere to its undertaking to ensure that Norfolk Islanders receive equivalent benefits, rights and protection under the law as other citizens of the Commonwealth of Australia. This can be achieved by continuing with the current level of funding. In principle, this approach should aim at an increased cost recovery approach.

### **RECOMMENDATION 44**

**7.16.6** The Committee recommends that the Commonwealth adopt, in principle, an increasing cost recovery approach.

**7.16.7** In making this recommendation, the Committee is also cognisant of the concerns expressed by some residents about the ways in which the Norfolk Island Government is raising revenue on the Island. The existence of the Public Works levy has been criticised and fears have been expressed about the sale of income earning resources. The Committee has now been advised that the Public Works levy was abolished on 1 July 1990 and that the Norfolk Island Government has established a Revenue Review Working Group to review and report on the appropriateness of existing revenue-raising measures, examine alternative options and recommend changes to revenue-raising in the Territory.

**7.16.8** The Working Group, established in August 1990, was due to report to the Government before the end of 1990. However, at the time of reporting, the

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<sup>46</sup> Evidence, p.1498.

Committee had not received any information about the Working Group's recommendations.

## **7.17 Consumer Protection**

**7.17.1** There is no specific legislation covering consumer protection matters, and only very limited legislation dealing with control of public nuisance issues, in force in Norfolk Island.

**7.17.2** There are laws with consumer protection potential in force which for practical purposes are difficult to administer. For example, until recently the Trade Marks Act 1955, which extends to Norfolk Island, was not being enforced because the Customs Act 1901, which empowers the Controller-General of Customs to seize goods, does not extend to the Territory. Regulations have been made to overcome this difficulty.

**7.17.3** Under Schedule 2 of the Norfolk Island Act 1979, the Norfolk Island Legislative Assembly has the power to legislate in a number of areas including:

- . the prevention and suppression of nuisances;
- . garbage and trade waste;
- . domestic animals (including birds);
- . foodstuffs and beverages (including alcoholic liquor)

which could serve the purposes of consumer protection and control of public nuisance.

**7.17.4** The Norfolk Island Environment Bill 1988, should remedy a number of these legislative deficiencies.

**7.17.5** The Committee also received considerable evidence outlining dissatisfaction with the lack of a retail price index (which seems to have been in abeyance since June 1988)<sup>47</sup> and other 'shoddy' trading and merchant practices.

### **Conclusion**

**7.17.6** The Committee is reluctant to recommend the extension of Commonwealth Trade Practices legislation to the Territory, although this option is currently being considered by DASETT<sup>48</sup>, but regards this as a matter for the Norfolk Island Government to address as a matter of priority. The proposal by the Norfolk Island Government to enact legislation dealing with 'misleading and deceptive conduct' before the end of 1991<sup>49</sup> is welcomed by the Committee.

### **7.18 Healthcare**

**7.18.1** Since the Committee's initial visit to Norfolk Island the Norfolk Island Government has implemented the Norfolk Island Healthcare Scheme. The Healthcare Scheme responds in part to the fact that Medicare, since 1 July 1989, is no longer available to residents of Norfolk Island.

**7.18.2** The Committee is concerned at the evidence of the Norfolk Island Government that discussions relating to the provision of Medicare cover for Norfolk Island residents broke down because the Department of Finance could not provide a costing for such cover. The Committee is also concerned that Commonwealth Officers and their dependants may not be eligible to claim against Medicare for medical services rendered in Norfolk Island.

**7.18.3** The removal of Medicare has been viewed with alarm by some residents and confusion exists as to whether tourists are covered by Medicare. The Norfolk Island Government Medical Officer, Dr Martin Panter, told the Committee:

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<sup>47</sup> Evidence, p.S823.

<sup>48</sup> Evidence, p.S1248.

<sup>49</sup> Evidence, p.S1704.

We certainly advise all tourists who come to the island to take out private medical insurance when they come.<sup>50</sup>

**7.18.4** Although some concerns exist over the current method of referrals to mainland specialists and hospitals, the scheme is still in its infancy and is therefore difficult to assess. Dr Panter believes the scheme to be 'very sound' and 'working well' and reminds the community that they can 'continue to have a say as to how they believe the scheme should be implemented and operated'.<sup>51</sup>

### **Conclusion**

**7.18.5** As the scheme is only in its infancy at the time of writing this Report, the Committee believes that it would be useful for the scheme to be evaluated by the Commonwealth in a year or two to ensure the adequacy of healthcare provisions on Norfolk Island.

### **7.19 Social Security**

**7.19.1** Since 1979, the provision of social services has been the responsibility of the Norfolk Island Government. The Norfolk Island Social Services Act 1980, which operates in place of the Commonwealth Social Security Act provides pension entitlements as of right to eligible aged, invalid and widowed residents or to residents who have the care, custody and control of orphaned or handicapped children. The rate of benefit currently paid amounts to about 80% of equivalent Commonwealth benefits.<sup>52</sup>

**7.19.2** The Committee commends the intention of the Norfolk Island Government to review the present legislation governing child welfare and mentally ill persons<sup>53</sup> as these were some of the matters of concern which were drawn to the Committee's attention.

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<sup>50</sup> Evidence, p.1566.

<sup>51</sup> Evidence, pp.1560-1561.

<sup>52</sup> Evidence, p.S560.

<sup>53</sup> Evidence, p.S561.

**7.19.3** The existence of unemployment on the Island has also been drawn to the Committee's attention, with some residents expressing a desire for appropriate legislation in this area. In their submission of March 1989, the Norfolk Island Government briefly indicated that unemployment benefits are available under a special benefits category of the Social Services Act 1980 but gave no details as to what constituted the 'special benefits category'.<sup>54</sup>

**7.19.4** The Committee notes that Norfolk Islanders who are unable to find work on the Island have the option of returning to the mainland where opportunities for employment are significantly increased. The need for unemployment benefits on Norfolk Island is therefore minimal, although the Commonwealth bears the cost if such people are unable to find work on the mainland.

### **Conclusion**

**7.19.5** The Committee accepts that the level of social services provided to the residents of Norfolk Island is generally adequate. However, in the interests of ensuring equity for all residents of the Island, the Committee believes that the Commonwealth should continue to monitor the situation.

### **RECOMMENDATION 45**

**7.19.6** The Committee recommends that the Department of Social Security establish a formal review mechanism to monitor the adequacy of social security provisions on Norfolk Island.

## **7.20 Income Tax**

**7.20.1** In the Discussion Paper circulated prior to the Committee's second visit to the Island considerable attention was given to the question of income tax, in particular whether Commonwealth rates of income tax should be levied, coupled with Commonwealth Social Security legislation. (see Appendix D)

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<sup>54</sup> Evidence, p.S560.

**7.20.2** The Committee has heard evidence reflecting a range of views - from those who support the proposal to those who are opposed to it.

### **Conclusion**

**7.20.3** The Committee is of the view that so long as an adequate level of social services is provided by the Norfolk Island Government, which has the capacity to raise revenue to fund its own community services, and that minimum standards are met, the application of Commonwealth income tax should not apply.

**7.20.4** Whilst the Committee acknowledges that the Norfolk Island Government is generally acting with goodwill in safeguarding the interests of Norfolk Island residents in terms of revenue raising and the provision of social services, the Committee is anxious to ensure that adequate benefits and services are provided to the people of Norfolk Island.

### **RECOMMENDATION 46**

**7.20.5** The Committee recommends that the Commonwealth Grants Commission undertake a review of the living standards, social security provisions and economic base of Norfolk Island.

### **7.21 Additional Issues**

**7.21.1** The Committee also notes that additional issues have also been raised, either by residents, the Norfolk Island Government, and others interested in the legal regime of the Territory. These issues include:

- . the adequacy of criminal and other laws especially those relating to bankruptcy and compulsory third party insurance;
- . environment protection, including registration of land titles;
- . policing; and

education.

**7.21.2** The Committee generally believes that these matters are for the Norfolk Island Legislative Assembly alone to consider, provided that the Commonwealth can be satisfied that Norfolk Island citizens are not being deprived of the same benefits, rights and protection under the law as other Australian citizens.

**7.21.3** The Committee notes that the Norfolk Island Government is already taking steps to address these issues and is doing so in an appropriate manner.

**7.21.4** The Committee also notes the advice of the Legislative Assembly that reform of the criminal laws now in force in the Territory is already under way<sup>55</sup>. The Assembly has also indicated its awareness of the need for both bankruptcy legislation and compulsory third party motor vehicle insurance<sup>56</sup>. The Committee considers that the provision of compulsory third party insurance is a matter requiring the urgent attention of the Legislative Assembly.

**7.21.5** The recently introduced Environment Act may well allay fears about the perceived lack of environmental protection and reduce unsound practices in the registration of land titles.

**7.21.6** The Committee also notes the intent of the Assembly to repeal and replace existing police and education ordinances<sup>57</sup> and urges the Commonwealth to monitor developments in these areas. In particular, the Committee is concerned that access to secondary and tertiary education is not satisfactory, particularly for families with low incomes, and suggests that the Commonwealth Minister for Employment, Education and Training examine ways to assist in the provision of proper access to educational opportunities for this group when studying in Australia.

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<sup>55</sup> Evidence, p.S557.

<sup>56</sup> Evidence, p.S562.

<sup>57</sup> Evidence, p.S561.



## **7.22 Conclusion**

**7.22.1** Norfolk Island has a complex constitutional history and legislative framework. Despite this, the Committee is now satisfied that, subject to the refinement of the identification of laws referred to in paragraph 7.5.4, the laws of the Territory have been identified and that they are, in general, applicable to the circumstances of the Territory and are administered.

**7.22.2** Laws in force in Norfolk Island are made to suit both local circumstances and, since partial self-government in 1979, the expressed desire of the local residents.

**7.22.3** The Committee is concerned, however, that whilst the citizens of Norfolk Island enjoy similar benefits, rights and protection under the the law as other citizens of the Commonwealth of Australia, there are areas in which improvement could be achieved. The Committee's recommendations detail the areas where reforms are required.

**7.22.4** The Committee believes that the maintenance of close links between the Commonwealth and the Territory of Norfolk Island continues to be both inevitable and desirable.

**MICHAEL LAVARCH, MP**  
Chair

March 1991



## APPENDIX A

### SUBMISSIONS

1. Australian Electoral Commission  
Canberra, ACT 6/12/88
2. Dr L Crehan  
Medical Superintendent  
Hospital  
Christmas Island, Indian Ocean 16/12/88
3. Commonwealth Director of Public Prosecutions  
Canberra, ACT 5/1/89
4. Legal Aid Commission of Western Australia,  
Perth, WA 13/1/89
5. Mr K Moore  
Stipendiary Magistrate  
Central Law Courts  
Perth, WA 24/1/89
6. Cocos Club  
Cocos (Keeling) Islands, Indian Ocean 10/1/89
7. Inspector R Wheeler  
Christmas Island Police  
Christmas Island, Indian Ocean 9/2/89
8. Mr M A Zande  
Zande and Associates  
Norfolk Island, South Pacific 6/2/89
9. Ms M Hoare  
Norfolk Island, South Pacific 10/2/89
10. Christmas Island Consultative Group  
Christmas Island, Indian Ocean 15/2/89
11. Department of Veterans' Affairs  
Canberra, ACT 13/2/89

12.	Mr J E Stewart Floreat, WA	13/2/89
13.	Confidential submission	6/2/89
14.	Confidential submission	10/2/89
15.	Mr A D Taylor Administrator Christmas Island, Indian Ocean	16/2/89
16.	Confidential submission	13/2/89
17.	Mr G J Collins Christmas Island, Indian Ocean	14/2/89
18.	Confidential submission	14/2/89
19.	Mrs J Yorkston Christmas Island, Indian Ocean	16/2/89
20.	Department of Community Services & Health Canberra, ACT	17/2/89
21.	Centre for Comparative Constitutional Studies University of Melbourne Parkville, VIC	16/2/89
22.	Hon. B L Howe, MP Minister for Social Security Parliament House Canberra, ACT	21/2/89
23.	Mr J Q Ewens, CMG CBE Forrest, ACT	20/2/89
24.	Mr R Robinson Norfolk Island, South Pacific	24/2/89
25.	Confidential submission	11/2/89
26.	Department of Administrative Services Canberra, ACT	28/2/89
27.	BHP Petroleum Melbourne, VIC	28/2/89

28.	Cocos (Keeling) Islands Council Cocos (Keeling) Islands, Indian Ocean	22/2/89
29.	Australian Federal Police Canberra, ACT	3/3/89
30.	Mr P Clarke Norfolk Island, South Pacific	21/2/89
31.	The Treasury Canberra, ACT	6/3/89
32.	Department of the Arts, Sport, the Environment, Tourism & Territories Canberra, ACT	6/3/89
33.	Mr M A Bains, JP Norfolk Island, South Pacific	5/3/89
34.	Australian Customs Service Canberra, ACT	7/3/89
35.	Attorney-General's Department Canberra, ACT	15/3/89
36.	Senator the Hon. Robert Ray Minister for Immigration, Local Government and Ethnic Affairs Parliament House Canberra, ACT	3/3/89
37.	Ms C Stuart Turner, ACT	11/3/89
38.	NSW Teachers' Federation Sydney, NSW	13/3/89
39.	Department of Aboriginal Affairs Canberra, ACT	8/3/89
40.	Norfolk Island Government Norfolk Island, South Pacific	23/3/89
41.	Department of Industrial Relations Canberra, ACT	23/3/89
42.	Norfolk Island Chamber of Commerce Norfolk Island, South Pacific	30/3/89

43.	Heath Fielding Australia Pty Ltd South Yarra, VIC	30/3/89
44.	Australian National Parks and Wildlife Service Canberra, ACT	4/4/89
45.	Hon. John Kerin, MP Minister for Primary Industries and Energy Parliament House Canberra, ACT	22/3/89
46.	Mr R Coupe Liaison Officer, Coastwatch Cairns, QLD	28/3/89
47.	Cocos Islands Co-operative Society Ltd Cocos (Keeling) Islands, Indian Ocean	6/3/89
48.	Dr C L Nobbs Hawthorn, VIC	12/4/89
49.	Ms M Hoare Norfolk Island, South Pacific	17/4/89
50.	Confidential submission	18/4/89
51.	The Society of Descendants of Pitcairn Settlers Norfolk Island, South Pacific	14/4/89
52.	Mrs K Ropati Norfolk Island, South Pacific	18/4/89
53.	Norfolk Island Government Norfolk Island, South Pacific	19/4/89
54.	Confidential Submission	19/4/89
55.	Department of Social Security Canberra, ACT	21/4/89
56.	Office of Parliamentary Counsel Canberra, ACT	12/4/89
57.	Claudio Russo Shaw Perth, WA	27/4/89

58.	Mr M A Zande Zande & Associates Norfolk Island, South Pacific	28/4/89
59.	Department of the Arts, Sport, the Environment, Tourism & Territories Canberra, ACT	10/5/89
60.	Department of Community Services & Health Canberra, ACT	15/5/89
61.	The Treasury Canberra, ACT	26/5/89
62.	Office of Parliamentary Counsel Canberra, ACT	26/5/89
63.	Department of Administrative Services Canberra, ACT	8/6/89
64.	Department of the Arts, Sport, the Environment, Tourism & Territories Canberra, ACT	6/6/89
65.	Northern Territory Government	15/6/89
66.	Centre for Comparative Constitutional Studies University of Melbourne Parkville, VIC	20/6/89
67.	Mr E Howard Norfolk Island, South Pacific	15/6/89
68.	The Treasury Canberra, ACT	4/7/89
69.	Australian Electoral Commission Canberra, ACT	12/7/89
70.	Norfolk Island Government Norfolk Island, South Pacific	10/7/89
71.	Department of the Arts, Sport, the Environment, Tourism & Territories Canberra, ACT	10/7/89

72.	Human Rights & Equal Opportunity Commission Sydney, NSW	19/7/89
73.	Vandenberg, Reid, Pappas & MacDonald Barristers and Solicitors Canberra, ACT	28/7/89
74.	Shoalhaven City Council Nowra, NSW	1/8/89
75.	Department of Community Services & Health Canberra, ACT	1/8/89
76.	Mr D C Pearce Commonwealth & Defence Force Ombudsman Canberra, ACT	1/8/89
77.	Commonwealth Director of Public Prosecutions Canberra, ACT	27/7/89
78.	Department of Social Security Canberra, ACT	1/8/89
79.	Mr F W Howe Jervis Bay Territory	4/8/89
80.	Australian National Parks & Wildlife Service Canberra, ACT	4/8/89
81.	Department of Aboriginal Affairs Canberra, ACT	3/8/89
82.	Bureau of Meteorology Melbourne, VIC	28/7/89
83.	Christmas Island Police Christmas Island, Indian Ocean	18/7/89
84.	Shareholders of Synvestec Group Ltd Perth, WA	19/7/89
85.	Ms D Lawrie Administrator Cocos (Keeling) Islands, Indian Ocean	26/7/89
86.	Cocos Islands Co-operative Society Ltd Cocos (Keeling) Islands, Indian Ocean	24/7/89



87.	Australian Federal Police Canberra, ACT	8/8/89
88.	Department of the Prime Minister & Cabinet Canberra, ACT	9/8/89
89.	South Coast Aboriginal Legal Service Nowra, NSW	11/8/89
90.	Department of Veterans' Affairs Canberra, ACT	11/8/89
91.	Department of Industrial Relations Canberra, ACT	18/8/89
92.	Department of the Arts, Sport, the Environment, Tourism & Territories Canberra, ACT	16/8/89
93.	Department of Administrative Services Canberra, ACT	24/8/89
94.	Department of Foreign Affairs & Trade Canberra, ACT	24/8/89
95.	Hon J S Dawkins, MP Minister for Employment, Education & Training Parliament House Canberra, ACT	28/8/89
96.	Attorney-General's Department Barton, ACT	18/9/89
97.	Norfolk Island Government Norfolk Island, South Pacific	9/10/89
98.	The Treasury Canberra, ACT	19/10/89
99.	Department of Defence Canberra, ACT	26/10/89
100.	Department of the Arts, Sport, the Environment, Tourism & Territories Canberra, ACT	7/12/89

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|------|---|----------|
| 101. | Department of Primary Industries & Energy<br>Canberra, ACT  | 14/12/89 |
| 102. | Department of the Arts, Sport, the<br>Environment, Tourism & Territories<br>Canberra, ACT                                     | 1/1/90   |
| 103. | Attorney-General's Department<br>Canberra, ACT  | 22/12/89 |
| 104. | Department of Industrial Relations<br>Canberra, ACT   | 7/2/90   |
| 105. | The Treasury<br>Canberra, ACT   | 17/4/90  |
| 106. | Northern Territory Government   | 9/8/90   |
| 107. | Mr J Clunies-Ross<br>Home Island<br>Cocos (Keeling) Islands, Indian Ocean   | 9/8/90   |
| 108. | Ms D Lawrie<br>Administrator<br>Cocos (Keeling) Islands, Indian Ocean   | 15/8/90  |
| 109. | Mr T Threlfall<br>Community Development Officer<br>Australian Defence Families Information<br>and Liaison Staff<br>Nowra, NSW | 15/8/90  |
| 110. | Australian Conservation Foundation<br>(Shoalhaven Branch)<br>Nowra, NSW   | 13/8/90  |
| 111. | ACT Parks & Conservation Service<br>Canberra, ACT   | 31/8/90  |
| 112. | Mr R Robinson<br>Norfolk Island, South Pacific  | 21/9/90  |
| 113. | Norfolk Island Public Service Association<br>Norfolk Island, South Pacific  | 30/11/90 |

114.	Mr M A Zande Zande & Associates Norfolk Island, South Pacific	14/11/90
115.	Mr I Anderson President Norfolk Island Chamber of Commerce Norfolk Island, South Pacific	12/11/90
116.	Mr R Robinson Norfolk Island, South Pacific	15/11/90
117.	Mr E Howard Norfolk Island, South Pacific	25/10/90
118.	Ms M Hoare Norfolk Island, South Pacific	25/10/90
119.	Ms R Graham Norfolk Island, South Pacific	22/10/90
120.	The Society of Pitcairn Descendants Norfolk Island, South Pacific	25/10/90
121.	Mr P K Christian Norfolk Island, South Pacific	25/10/90
122.	Australian Customs Service Canberra, ACT	16/10/90
123.	Norfolk Island Government Norfolk Island, South Pacific	25/10/90
124.	Mr R Fitzgibbons Norfolk Island, South Pacific	23/10/90
125.	Mr R Fitzgibbons Norfolk Island, South Pacific	5/12/90
126.	Northern Territory Government	24/11/90
127.	Confidential submission	11/11/89
128.	Ms A Buffett Member Norfolk Island Legislative Assembly Norfolk Island, South Pacific	19/2/91

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|------|---|---------|
| 129. | Mr D Buffett<br>President<br>Norfolk Island Legislative Assembly<br>Norfolk Island, South Pacific | 19/2/91 |
| 130. | Mr D Lewis<br>Ipswich, QLD  | 19/2/91 |

## APPENDIX B

### EXHIBITS

No.

- |   |  |   |
|---|--|---|
| 1 | Ms D Lawrie<br>Her Honour the Administrator<br>Cocos (Keeling) Islands<br>Indian Ocean                   | Letter Re: 'Inquiry into the legal regimes of Australia's external territories' dated 3 January 1989.   |
| 2 | Dr R Babbage<br>Australian National University<br>Canberra   | Paper: Should Australia plan to defend Christmas and Cocos Islands? 1988  |
| 3 | The Hon. Mr Justice R<br>Else-Mitchell, CMG<br>Chairman<br>Commonwealth Grants<br>Commission<br>Canberra | (i) Letter dated 13 March 1989<br><br>(ii) Commonwealth Grants Commission, first Report on Cocos (Keeling) Islands Inquiry, 1986<br><br>(iii) Commonwealth Grants Commission, Fifty-fifth Report, 1988  |
| 4 | Professor J D Ovington<br>Director<br>Australian National Parks and<br>Wildlife Service<br>Canberra      | (i) Report on a preliminary survey of the Lihou Reef and Coringa-Herald National Nature Reserves by A M Ayling and A L Ayling, 1984<br><br>(ii) Report on Fauna and Flora of the Islands of the Coral Sea Islands Territory by H Heatwole, 1979<br><br>(iii) The Fishes of the Coral Sea, Final Technical Report submitted to the Australian National Parks and Wildlife Service by G R Allen |

- (iv) Lihou Reef National Nature Reserve Plan of Management, 1989
  - (v) Coringa-Herald National Nature Reserve Plan of Management, 1989
  - (vi) Comments on the representations on the Plan of Management for Coringa-Herald National Nature Reserve, May 1989
- 5      Mr J T Brown  
 President  
 Norfolk Island Legislative Assembly  
 Norfolk Island  
 South Pacific
- (i) Report on the 1987 Comparative Remuneration Survey for the Legislative Assembly, Norfolk Island by O McCarthy, 1987
  - (ii) Norfolk Island Census of Population and Housing, 30 June 1986
  - (iii) Norfolk Island 85-86 Report, 1986
  - (iv) Norfolk Island 86-87 Report, 1987
  - (v) The Administration of Norfolk Island, Financial Statements, Year ended 30 June 1988
- 6      Hansard notes
- (i) Summary of informal meeting of Committee with Mrs K Ropati and Mr G Aapjes, Norfolk Island, 19 April 1989
  - (ii) Summary of informal meeting of Committee with Society of Descendants of Pitcairn Settlers, Norfolk Island, 19 April 1989
  - (iii) Summary of informal meeting of Committee with Mrs K Friend, Norfolk Island, 19 April 1989

- (iv) Summary of informal meeting of Committee with Mr P Anderson, Norfolk Island, 19 April 1989
- 7 Department of the Arts, Sport, the Environment, Tourism and Territories
- (i) Copy of letter re: 'Legislation - Cocos (Keeling) Islands' from Freehill, Hollingdale and Page, dated 19 April 1989
- (ii) Copy of Department's reply, dated 12 May 1989
- 8 Judgement
- Re: Clunies-Ross;  
Ex parte Totterdell  
and Another 82 ALR 475
- 9 Judgement
- Chong Wooi Sing v. The Queen  
WA G62 of 1988
- Toh Yuh Teng v. The Queen  
WA G63 of 1988
- 10 Judgement
- John Clunies-Ross v. Carolyn Stuart  
No. S.C.1 of 1987
- 11 Judgement
- Biorn Kristin Thomasson v. The Vessel "Foxy Lady II" of Hamburg  
No. S.C.1 of 1988
- 12 Extract -  
The Laws of the Colony of Singapore, 1955 Edition
- Chapter 119 - Penal Code
- 13 Hansard Notes
- (i) Summary of informal meeting of Committee with representatives of Chinese Literary Association, Christmas Island, 23 July 1989

- (ii) Summary of informal meeting of Committee with representatives of Islamic Council, Christmas Island, 23 July 1989
- 14 Hon A D Taylor  
His Honour the Administrator  
Christmas Island      Review of Operations - Christmas Island Assembly and Christmas Island Services Corporation, 25 May 1987
- 15 Mr G Bennett  
Union of Christmas Island  
Workers      Notes regarding Christmas Island
- 16 Cocos Islands Co-operative  
Society Limited      Employers Liability Policy
- 17 Commonwealth Grants  
Commission      Second Report on Cocos (Keeling)  
Islands Inquiry, 1989
- 18 Mr G R Dempster  
Department of the Arts,  
Sport, the Environment,  
Tourism and Territories      Report from the Norfolk Island  
Government Auditor to the Legislative  
Assembly, Norfolk Island,  
7 November 1988
- 19 Mr R Grant  
General Manager  
Cocos Islands Co-operative  
Society      Correspondence re: Housing Allocation,  
West Island, Cocos (Keeling) Islands
- 20 Mr D E Buffett  
President  
Norfolk Island Legislative  
Assembly  
Norfolk Island  
South Pacific      Norfolk Island 87-88 Report
- 21 RAN Hydrographic Service      Annual Australian Notices to Mariners  
in force on 1 January 1989



- 22 Department of the Arts, Sport, the Environment, Tourism and Territories Explanatory Notes 1989-90, Explanation of Actual Outlays 1988-89 and Estimated Outlays 1989-90. Budget Related Paper No. 8.2
- 23 Haji Wahin Bin Bynie, OAM  
Chairman  
Cocos (Keeling) Islands Council  
Cocos (Keeling) Islands  
Indian Ocean (i) Comments on draft Memorandum of Understanding, 29 November 1990  
(ii) Draft Memorandum of Understanding Relating to the Achievement of Mainland Equivalent Living Standards and Levels of Services on the Cocos (Keeling) Islands
- 24 Mr M Perron, MLA  
Chief Minister of the Northern Territory (i) Department of Mines and Energy Petroleum Tenement Map, August 1990  
(ii) Booklet "Full Self-Government: The Further Transfer of Power to the Northern Territory - A Submission to the Commonwealth", June 1989
- 25 Mr G Fraser  
Director  
ACT Parks and Conservation Service (i) Jervis Bay Nature Reserve Draft Development and Management Plan, February 1979  
(ii) Draft Management Plan, Bowen Island, Jervis Bay Nature Reserve, July 1988
- 26 Wreck Bay Community Council Wreck Bay Koori Newsletter, August 1990
- 27 Ms M Hoare  
Norfolk Island The Norfolk Island News, 20 November 1990
- 28 Minister for the Arts, Sport, the Environment, Tourism and Territories Jervis Bay Territory Draft Management Strategy Plan, January 1991

## APPENDIX C

### 1. PUBLIC HEARINGS

Public hearings were held in the Territories as follows:

#### **Christmas Island**

24 July 1989

14 August 1990

#### **Cocos (Keeling) Islands**

26 July 1989

16 August 1990

#### **Jervis Bay**

17 July 1990

18 July 1990

#### **Norfolk Island**

18 April 1989

24 October 1990

25 October 1990

Other public hearings were held as follows:

#### **Canberra**

16 March 1989

20 June 1989

21 June 1989

24 November 1989

#### **Darwin**

13 August 1990

#### **Perth**

20 July 1989

## APPENDIX C

### 2. WITNESSES

CANBERRA: 16 MARCH 1989

- . *Department of the Arts, Sport, the Environment, Tourism and Territories*
  - Mr Stephen John Arnaudon, Assistant Secretary, Indian Ocean Territories Branch
  - Mr Edward Raymond Dale, Director, Mainland Territories Section
  - Mr Graham Robert Dempster, First Assistant Secretary, Corporate Management and External Territories Division
  - Mr John Francis Nicholson, Director, Norfolk Island Section
  - Mr Michael Kelvyn Rollinson, Administrative Services Officer, Legal Section
  
- . *Attorney General's Department*
  - Ms Maureen Rosemary Kelleher, Acting Senior Assistant Secretary, Criminal Law Branch
  
- . *Department of Community Services and Health*
  - Mr Colin John Bailey, Assistant Secretary, Medicare Benefits Branch
  - Mr Brian John Candler, Assistant Secretary, Legal Services Branch
  
- . *Department of Social Security*
  - Mr Michael John Sassella, Assistant Secretary, Legal Services
  
- . *Department of the Treasury*
  - Mr Alexander Guy Warwick Dolan, Chief Finance Officer, Indirect Taxation Section
  - Mr Alan Gilbert Henderson, Assistant Secretary, State and Local Government Finances Branch
  - Mrs Angela Mary Ryan, State and Local Government Finances Branch
  
- . *Department of Administrative Services*
  - Mr John Manning, Manager, Special Services Unit, Australian Surveying and Land Information Group
  - Mr David James Sheaves, Assistant General Manager, Operations and Resource Management, Australian Surveying and Land Information Group

## NORFOLK ISLAND: 18 APRIL 1989

### *Norfolk Island Government*

- Mr John Terence Brown, President, Legislative Assembly of Norfolk Island
- Mr Wayne Daniels Richards, Immigration Officer, Administration of Norfolk Island
- Mr Richard Andrew Stevens, Chief Administrative Officer, Administration of Norfolk Island
- Mr Donald Rae Wright, Crown Solicitor, Administration of Norfolk Island

### *New South Wales Teachers Federation*

- Mr John Morris Hennessy, Assistant General Secretary

### *Norfolk Island Chamber of Commerce*

- Mr Peter Julian Beaumont, President
- Mr Robert Goldsworthy, First Vice President

### *Private Citizens*

- Mr Malcolm Arnold Bains, Norfolk Island
- Ms Merval Hannah Hoare, Norfolk Island
- Mr Michael Angelo Zande, Norfolk Island
- Mr Cedric Newton Ion-Robinson, Norfolk Island

## CANBERRA: 20 JUNE 1989

### *Department of the Arts, Sport, the Environment, Tourism and Territories*

- Mr Stephen John Arnaudon, Assistant Secretary, Territories Branch
- Mr Graham Robert Dempster, First Assistant Secretary, Corporate Management, Information and Territories Division
- Mr Vivan Hubert Mawhinney, Director, Cocos (Keeling) Islands Section
- Mr John Francis Nicholson, Director, Norfolk Island Section
- Mr Michael Kelyvn Rollinson, Administrative Services Officer, Legal Section

### *Centre for Comparative Constitutional Studies, Law Faculty, University of Melbourne*

- Ms Rosemary Claire Hunter, Research Fellow
- Dr Cheryl Saunders, Director

### *Commonwealth Director of Public Prosecutions*

- Mr Grant Chrysostom Lalor, Assistant Director, Canberra Office
- Mr Justin William McCarthy, Senior Assistant Director, Head Office

*Department of the Treasury*

- Mr Alexander Guy Warwick Dolan, Chief Finance Officer, Indirect Tax Section
- Mr Alan Gilbert Henderson, Assistant Secretary, State and Local Government Finances Branch
- Mrs Angela Mary Ryan, Administrative Services Officer, State and Local Government Finances Branch

**CANBERRA: 21 JUNE 1989**

*Australian Federal Police*

- Assistant Commissioner Brian Charles Bates, Officer-in-Charge, ACT Region
- Mr John Ireland, Assistant Secretary
- Superintendent Russell Euan Goold Walker, Training Division

*Australian National Parks and Wildlife Service*

- Mr Michael Andrew Hill, Acting Director
- Dr David Graham Kay, Assistant Director
- Dr Gwennyth Lillian Shaughnessy, Special Project Officer

*Private Citizen*

- Ms Carolyn Stuart, Turner, ACT

*Department of Social Security*

- Mr Ian Gregory Carnell, Assistant Secretary, Pensions
- Mr Christopher Corbett, Deputy Director, Perth
- Mr Michael John Sassella, Assistant Secretary, Legal Services

*Department of Primary Industries and Energy*

- Miss Joanne Blackburn, Assistant Secretary
- Mr Geoffrey John Furnell, Principal Executive Officer, Petroleum Division
- Dr Robert Ikin, Acting Principal Science Administrator, Plant Quarantine and Inspection Branch, Australian Quarantine and Inspection Service
- Mr Edward John Riesz, Executive Officer, Policy and Legislation Section, Exploration and Development Branch
- Mr John Edward Stewart, Manager, North East Fisheries, Australian Fisheries Service
- Mr John Thompson, Assistant Director, Offshore Minerals Section
- Mr Douglas Walker, Manager, Legal Services, Australian Fisheries Service
- Mr David William Wilson, Principal Veterinary Officer, Australian Quarantine and Inspection Service

## PERTH: 20 JULY 1989

- . *Federal Court of Australia*
  - Mr Justice Robert Shenton French, Judge,  
Supreme Court of Cocos (Keeling) Islands Territory,  
Supreme Court of Christmas Island
- . *Legal Aid Commission*
  - Mr Michael John Lees, Director of Legal Aid
- . *Australian Government Solicitor*
  - Ms Carol Aisha Bahemia, Acting Director of Legal Services, Perth
- . *Central Law Courts, Perth*
  - Mr Ken Moore, Stipendiary Magistrate and Special Magistrate for  
Christmas and Cocos (Keeling) Islands
- . *Claudio Russo Shaw, Barristers and Solicitors*
  - Mr Jack Courtis, Partner
- . *Private Citizen*
  - Mr James Edgar Stewart, Floreat, Western Australia

## CHRISTMAS ISLAND: 24 JULY 1989

- . *Administration of Christmas Island*
  - Hon Alexander Donald Taylor, Administrator
- . *Christmas Island Police Force*
  - Senior Constable Andrew Gordon Phillips
- . *Christmas Island Community Consultative Group*
  - Mrs Jacqueline Gwenneth Kerr, Member
  - Mr Kerry Alwyn Walker, Member
- . *Christmas Island Services Corporation*
  - Mr Douglas Gordon McCutcheon, Director
- . *Private Citizens*
  - Mrs Penelope Jane Yorkston, Christmas Island
  - Mr Graham John Collins, Christmas Island
- . *Union of Christmas Island Workers*
  - Mr Gordon Michael Bennett, Secretary

## COCOS (KEELING) ISLANDS: 26 JULY 1989

- . *Cocos (Keeling) Islands Council*
  - Mr Olbio Bin Capstan, Deputy Chairman
  - Mr Parson Bin Yapat OAM, Chairman
  - Mr Rabuhu Bin Anthoney, Secretary
- . *Cocos Islands Co-operative Society Limited*
  - Mr Cree Bin Haig OAM, Chairman
  - Mr Ronald James Grant, General Manager
  - Mr Signa Bin Knight, Deputy Chairman
- . *Administration of Cocos (Keeling) Islands*
  - Ms Alline Dawn Lawrie, Administrator
- . *Cocos Club*
  - Mr Richard Anthony Ledger, President
  - Dr Richard John Tomlins, Member

## CANBERRA: 24 NOVEMBER 1989

- . *Attorney-General's Department*
  - Mrs Maggie Jackson, Senior Assistant Secretary, Criminal Law Branch
  - Mr Norman Reaburn, Deputy Secretary
  - Ms Joan Sheedy, Acting Senior Assistant Secretary, Freedom of Information and Human Rights Branch
- . *Department of Foreign Affairs and Trade*
  - Dr Dominique Francois Jean Joseph de Stoop, Head, International and General Legal Branch
- . *Australian Capital Territory Government*
  - Mr Neil Morgan, Assistant Under-Treasurer, Australian Capital Territory Treasury
  - Mr Peter Quinton, Principal Legal Adviser, Australian Capital Territory Self-Government Unit, Australian Capital Territory Government Law Office
- . *Department of the Arts, Sport, the Environment, Tourism and Territories*
  - Mrs Margaret Helen Carlson, Assistant Director, Cocos (Keeling) Islands Section
  - Mr Edward Raymond Dale, Director, Mainland Territories Section
  - Mr Graham Robert Dempster, First Assistant Secretary, Corporate Management, Information and Territories Division
  - Mr Keith Raymond Fairbrother, Assistant Secretary, Territories Branch

- Mr Michael Kelvyn Rollinson, Administrative Services Officer,  
Legal Section

*Department of Industrial Relations*

- Mr Ross David Copeland, SES Officer,  
Australian Government Employment, Remuneration and Conditions  
Division
- Mr William Anthony DeJong, Director, International Relations Section

**JERVIS BAY: 17 JULY 1990**

*Wreck Bay Community Council*

- Miss Tanya Ardler, Secretary
- Miss Annette Brown, Coordinator
- Mrs Julia Freeman, Executive
- Mr James Robert McKenzie, Chairperson

*Department of the Arts, Sport, the Environment, Tourism and Territories*

- Mr Ian David Collins, Regional Director

*Private Citizens*

- Mrs Lurline Jean Ardler, Wreck Bay via Jervis Bay
- Mrs Amy Williams, Jervis Bay

*Australian Federal Police*

- Commander Allan John Dau, Operations Division,  
Australian Capital Territory Region, Canberra
- Sergeant Peter Laurence Lindsay, Officer-in-Charge,  
Jervis Bay Police Station

*Private Citizens*

- Mr Peter Neilsen Ellmoos, 'Christians Minde', Sussex Inlet North, New  
South Wales
- Mr Fredrick William Howe, Jervis Bay

*Jervis Bay Residents Group*

- Mr Ian David Collins, Chairman
- Mr William Richards, Member
- Lieutenant-Commander Stefan Stangret, Member

*Private Citizens*

- Reverend David Michael Hill, HMAS Creswell, Jervis Bay
- Mr Jimmy Williams, Jervis Bay



## JERVIS BAY: 18 JULY 1990

- . *Shoalhaven City Council*
  - Mr Paul Bland, Alderman
  - Mr Christopher Churchill Crakanthorp, Deputy Town Clerk
- . *Australian Conservation Foundation*
  - Mrs Laura Eringa, Member

## DARWIN: 13 AUGUST 1990

- . *Northern Territory Government*
  - Mr Kenneth Clarke, Deputy Under-Treasurer, Finance, Northern Territory Treasury
  - Mr Peter Francis Conran, Secretary, Northern Territory Department of Law
  - Mr Thomas Michael Dacey, Deputy Chairman and Head, Parks and Wildlife Division, Conservation Commission of the Northern Territory
  - Ms Vivien Holmes, Departmental Officer, Northern Territory Department of Law
  - Mr Daryl Charles Impey, Legislation Officer, Northern Territory Department of Mines and Energy
  - Mr Graham Nicholson, Crown Counsel, Northern Territory Department of Law
  - Mr William Tinapple, Director of Energy, Northern Territory Department of Mines and Energy

## CHRISTMAS ISLAND: 14 AUGUST 1990

- . *Christmas Island Administration*
  - Mr Anthony Paul Mitchell, Deputy of the Administrator,
- . *Christmas Island Local Assembly*
  - Ms Tracy Su Yin Lim, Member
  - Mr Jeffrey Low Boon Hong, Member
  - Mr Fred Smolders, Member
  - Mr Stephen Tan, Member
  - Ms Cheryl Wright, Member
- . *Muslim Community*
  - Mr Zakariah Hassan, President

*Union of Christmas Island Workers*

- Ms Seet Choy Lan, Assistant Secretary

*Chinese Literary Association*

- Mr Foo Kee Heng, Vice-President, Union of Christmas Island Workers
- Mr Lean Ah Heng, Committee Member
- Mr Heng Yak Sue, President

*Private Citizen*

- Mr Kerry Alwyn Walker, Christmas Island

*Christmas Island Women's Association*

- Ms Lewi Chan, Committee Member
- Ms Lee Geik Choo, Committee Member
- Ms Nora Koh, President
- Ms Tracy Su Yin Lim, Secretary

*Christmas Island Police*

- Inspector Robin John Wheeler

## **COCOS (KEELING) ISLANDS: 16 AUGUST 1990**

*Cocos (Keeling) Islands Co-operative Society*

- Mr Woren Bin Dedian, Secretary
- Mr Ronald James Grant, General Manager
- Mr Cree Bin Haig OAM, Chairman
- Mr Haji Zaitol Bin Hallie, Deputy Chairman

*Cocos (Keeling) Islands Council*

- Mr Rabuhu Bin Anthoney, Secretary
- Mr Macrae Bin Hadlan, Deputy Chairman
- Mr Gregory Stephen Powell, Adviser
- Mr Haji Bin Bynie Wahin OAM, Chairman

*Australian National Parks and Wildlife Service*

- Mr Paul Murray Stevenson, Government Conservator,  
Cocos (Keeling) Islands

*Department of Primary Industries and Energy*

- Dr Trevor Vincent Schmidt, Officer-in-Charge,  
Cocos Islands Quarantine Section

*Private Citizen*

- Mr John George Clunies-Ross, Cocos (Keeling) Islands

- . *Administration of Cocos (Keeling) Islands*
- Ms Alline Dawn Lawrie, Administrator

## NORFOLK ISLAND: 24 OCTOBER 1990

- . *Norfolk Island Public Service Association*
  - Mr John Christian, Committee Member
  - Mr Paul Kenneth Christian, President
  - Mr Douglas Wallace Jackson, Vice-President
  - Mrs Deborah Quintal, Committee Member
  - Mr Wayne Daniel Richards, Member
- . *Norfolk Island Government Tourist Bureau*
  - Mr Kenneth Gregory Christian, Member
  - Mr Ken Nobbs, Chairman
  - Mr Lisle Denis Snell, Executive Officer
- . *Private Citizen*
  - Mr Barry Nickolas Christian, Norfolk Island
- . *Norfolk Island Chamber of Commerce*
  - Mr Ian Anderson, President
  - Mr Robert Goldsworthy, Vice-President
  - Mr Michael Angela Zande, Member
- . *Society of Descendants of Pitcairn Settlers*
  - Mrs Juliette Helen Grant, Secretary
  - Mr Gregory Gilbert Francis Quintal, Committee Member
  - Mr John Southey Robinson
- . *Norfolk Island Accomodation Proprietors Association*
  - Mr Bernard Edwin Christian Bailey, Executive Committee Member
  - Mr Rex Glencross Grant, Vice-President
  - Mrs Mera Patricia Edith Martin, Executive Committee Member

## NORFOLK ISLAND: 25 OCTOBER 1990

- . *Norfolk Island Police*
  - Sergeant Paul Campbell MacIntosh, Officer-in-Charge
- . *Norfolk Island Government Medical Service*
  - Dr Martin Ernest Andrew Panter, Government Medical Officer

*Norfolk Island Government*

- Mr William Arthur Blucher, Minister for Immigration and Commerce
- Mr David Ernest Buffett, President, Norfolk Island Legislative Assembly, and representing the Assembly and the Norfolk Island Government
- Mr Ernest Christian, Minister for Community Services
- Mr Donald Rae Wright, Secretary, Norfolk Island Executive Council

*Administration of Norfolk Island*

- Mr Richard Andrew Stevens, Chief Administrator

*Private Citizens*

- Mr Edward Howard, Norfolk Island
- Mr William Winton Sanders, Norfolk Island
- Mrs Merval Hannah Hoare, Norfolk Island
- Ms Lee Robinson, Norfolk Island
- Mr Gilbert Hitch, Norfolk Island
- Mr Paul Kenneth Christian, Norfolk Island

## APPENDIX D

1. Options Papers:
  - (i) Christmas Island
  - (ii) Cocos (Keeling) Islands
  - (iii) Norfolk Island
  
2. Territory of Norfolk Island  
Working Paper/Emerging Conclusions

# THE LEGAL REGIME OF CHRISTMAS ISLAND - OPTIONS FOR ITS REFORM

## Introduction

The House of Representatives Standing Committee on Legal and Constitutional Affairs is conducting an Inquiry into the Legal Regimes of Australia's External Territories and the Jervis Bay Territory. During the Inquiry the Committee has given detailed consideration to the efficacy of both the legal structure of the Christmas Island and the arrangements for the administration of its laws. The Committee has also considered the adequacy of the law generally as well as of individual laws.

The Committee has been presented for its consideration, a number of options for reform of both the legal basis of the territory as well as of individual laws.

In order to facilitate the preparation of its Report to the Parliament on this important issue and to ensure that the residents of the Territory have every opportunity to participate in, and are fully consulted about, the Inquiry and its outcomes, I have prepared, for presentation to the residents of the Christmas Island the attached discussion of options for reform of its laws and legal regime.

It is the Committee's wish to meet with the residents of the Christmas Island either individually or through their nominated representatives to discuss the options presented below.

While the options give some indication of my thinking in relation to these issues they do not purport to be conclusive and should not be taken to represent a final view of the Committee. The paper is presented as an aid to discussion with interested parties.

Duncan Kerr, MP  
Chairman  
(Territories Sub-committee)

August 1990

# Christmas Island

## The Options

1. Retain the Status Quo
2. Retain the Status Quo with an assurance that urgent attention and increased resources will be applied to a detailed program of law reform.
3. Repeal the existing law and apply, while retaining ultimate Commonwealth authority, the law from time to time applying in:
  - (a) Western Australia
  - (b) Australian Capital Territory; or
  - (c) Northern Territory
4. Apply the laws from time to time applying in:
  - (a) Western Australia
  - (b) the Australian Capital Territory; or
  - (c) the Northern Territory

with the proviso that any law of the Christmas Island inconsistent with an applied law is repealed to the extent of the inconsistency and that no laws will be applied without prior consultation with the residents.

5. Enhance the powers of the Christmas Island Council by giving it greater powers and responsibility for specified domestic laws.
6. Incorporate the Territory within the geographic and political boundaries of:
  - (a) Western Australia; or
  - (b) Northern Territory

## OPTION 1

### Retain the Status Quo

The Christmas Island Act 1958 of the Commonwealth of Australia declared that Christmas Island was accepted by the Commonwealth as a Territory under the authority of the Commonwealth to be known as the Territory of Christmas Island, and made provision for the future government of the Island.

The Act was proclaimed to come into operation on 1 October 1958.

Subject to the Act, the laws in force in the Colony of Christmas Island immediately before 1 October 1958 continue in force in Christmas Island by virtue of the Act. The Act also provides that such laws may be altered, amended or repealed by Ordinances or laws under Ordinances.

The Governor-General is empowered to make Ordinances for the peace, order and good government of the Territory.

Commonwealth Acts or provisions thereof are not in force in Christmas Island unless expressed to extend to the Territory. The operation of a Commonwealth Act that does extend to the Territory may not be affected by an Ordinance.

The laws in force in Christmas Island prior to 1 October 1958 may be determined primarily by reference to the Christmas Island Order in Council 1957 by which Christmas Island was detached from the Colony of Singapore and made a separate British Colony. The laws continued in force by Section 8 of that Order were:

- . all Acts of the United Kingdom Parliament and Orders in Council which extended to Christmas Island as part of the Colony of Singapore immediately prior to the date of detachment (ie paramount laws)
- . the 95 Ordinances of the Colony of Singapore set out in Schedule 2 (with necessary modifications)
- . any other laws in force in Christmas Island immediately prior to the date of detachment (ie received English law)

Section 9 of the Order empowered the Administrator to make Regulations for the peace, order and good government of the Island.

The law of Christmas Island falls, therefore, into the following hierarchy:

- Commonwealth Acts extending to Christmas Island
- Christmas Island Ordinances
- Paramount laws



Singapore Ordinances adopted by Christmas Island Ordinances

Christmas Island Regulations made by the Administrator under the Christmas Island Order in Council 1957

Singapore Ordinances preserved by that Order

English statutes received in the Colony of Singapore

Principles of Common law and equity

The Department of the Arts, Sport, the Environment, Tourism and Territories is charged with responsibility for the administration of Christmas Island, including its laws. The assessment of the Department is that the laws of Christmas Island are inadequate.

The Department notes that a law reform program initiated for the territory was not successful. Available resources have been applied to meeting urgent matters only and a major law reform project remains necessary with the most pressing need being for commercial, criminal, consumer and regulatory laws in the areas of motor traffic, marine safety, health and building standards.

The Committee has also received evidence from numerous sources including the Centre for Comparative Constitutional Studies, the Human Rights and Equal Opportunity Commission, the Director of Public Prosecution, the Christmas Island Police, and the Union of Christmas Island Workers which highlight the extent of the deficiencies in both the laws of Christmas Island and its legal structure. The evidence received by the Committee together with its own observations, paint a picture, universally accepted, of a seriously inadequate body of law for Christmas Island. The Department of the Arts, Sport, the Environment, Tourism and Territories at public hearings before the Committee summed up what is probably a generally held view of the laws of Christmas Island by concluding that they were a "national disgrace".

The Committee has not, in my opinion, received any evidence that could reasonably lead it to do other than concur.

## Conclusion

The laws of Christmas Island are outdated, anachronistic, incomplete and not readily identifiable. The prospect of the status quo, as outlined above, being perpetuated is quite untenable.

## OPTION 2

### **Retain the Status Quo with an Assurance that Urgent Attention and Increased Resources will be Applied to a Detailed Program of Law Reform**

The existing legal regime of Christmas Island, as discussed in relation to Option 1 above, suffers from a number of defects. As noted above the Committee does not believe that the past practice of piecemeal reform of the law is appropriate or satisfactory or that it can be allowed to continue. The Committee has given consideration therefore to whether a vigorous program of reform of the existing law would overcome these defects or whether the complexity and anachronistic nature of the law would negate any dedicated attempt at its overhaul.

In favour of allowing the law to develop from the existing base is the degree of familiarity which may nevertheless exist within the Territory with the current law. Combined with this is the question of the extent to which the law meets the special social or cultural needs of the residents of Christmas Island.

The weight of evidence before the Committee, including most significantly from the Department of the Arts, Sport the Environment, Tourism and Territories is, as noted above, that the laws of Christmas Island are inadequate, that past efforts at law reform have floundered and that there are swathes of matters which simply are not the subject of appropriate regulation. While a dedicated law reform process could be expected to address the more obvious deficiencies in the law, it is valid to question whether the integrity, let alone the identity, of the legal base from which the laws would grow or the level of resources required to achieve real reform would justify this approach. It has long been recognised that it is not wise to attempt to build on a base of shifting sand.

### **Conclusion**

The unsatisfactory nature of the Christmas Island legal regime is such that any proposal to provide the Territory and its residents with a legal regime commensurate with the Territory's status as a sovereign part of the Commonwealth and which catered adequately for the residents' rights as Australian citizens, which is based in the main on that less than satisfactory base, could not confidently be supported.

Any requirement that the laws of Christmas Island reflect local social conditions or culture is not dependent on the continuation of the existing laws or legal structure. Any such special consideration would, however, also be subject to added scrutiny as the normalisation process for Christmas Island proceeds.

In simple pragmatic terms the Committee remains, I believe, to be convinced that the resources required to retain a unique and individual legal regime for Christmas Island alone can be justified.

### OPTION 3

Repeal the Existing Law and Apply, while Retaining Ultimate Commonwealth Authority, the Law from Time to Time Applying in:

- (a) Western Australia
- (b) The Australian Capital Territory; or
- (c) The Northern Territory

In the face of the unsatisfactory nature of the existing legal regime of Christmas Island one solution which has been proffered is the repeal of all existing law and its simultaneous replacement with the laws of another Australian jurisdiction. This solution would, it is argued, provide a ready made and up to date regime reflecting contemporary mainstream legal norms.

It is argued that this model would, in so far as the Commonwealth would retain its plenary powers to legislate for the Territory, permit the Commonwealth to use that power to ensure that any law so applied was consistent with its policy imperatives for the Territory. The Commonwealth could, in addition, arrange for the making of Ordinances to meet particular situations unique to the Territory.

The Committee has received evidence and views to the effect that the Australian jurisdictions potentially most amenable to translation to Christmas Island are those of Western Australia, the Australian Capital Territory or the Northern Territory. The most common arguments advanced in favour of these jurisdictions are:

- . they are, generally speaking, in accord with Commonwealth legal policy
- . in the case of the Australian Capital Territory and the Northern Territory the laws already apply to other external Territories; and
- . in the case of Western Australia and the Northern Territory they are geographically proximate to Christmas Island.

Before considering, however, the relative advantage of any one of these jurisdictions for application to Christmas Island, it is appropriate to consider the arguments which have been generally advanced against this proposal.

The Human Rights and Equal Opportunity Commission in a submission to the Committee summarises best the opposition to the application to the Island of an existing mainland legal structure and body of law. The Human Rights Commission includes the following arguments against this proposal:

"The outdated Singapore laws applied in these Territories should be replaced by Territory laws, based either on appropriate laws from another Australian jurisdiction suitably modified for Territory conditions, or - if there are any subjects where this is more appropriate - on updated and consolidated Singapore law. Laws adopted or adapted from other jurisdictions should be re-enacted and reproduced as Territory ordinances, rather than being applied by reference (as is presently the case with Singapore laws, with consequent problems of accessibility and ascertainment).

The submission of the Department of the Arts, Sport, the Environment, Tourism and Territories states, with reference to Christmas Island and the Cocos (Keeling) Islands, that "The adoption, as for the uninhabited Territories, of a body of laws from a mainland jurisdiction, amended to the minimum extent necessary to meet special Territory conditions, is an option which might satisfy their needs, including the Government's objective of eventual integration of Territory conditions with the mainland."

However, the Department concedes that adoption of one of these bodies of law as at a fixed date, with any further updating to be done by the Commonwealth, would not in fact be a solution since experience indicates that such updating would in fact not be carried out sufficiently often or thoroughly to prevent the laws becoming outdated (as in the case of the inherited Singapore laws).

The Human Rights Commission does not regard adoption of the laws of the Australian Capital Territory or of Western Australia as amended by those jurisdictions from time to time as a satisfactory solution, notwithstanding that this would reduce the problem of obsolescence.

Such an approach would mean that neither the communities in these Territories nor the Commonwealth had control over the legal regimes applying.

The assertion in the submission by DASETT that Western Australian legislation is generally consistent with national legal policy is, in the Commission's view, debatable in some respects even at present: (for example, with respect to the rights of indigenous people and in the application of standards for juvenile justice). To the extent that Western Australian legislation is consistent with national legal policy, it cannot be simply assumed that it will remain so. The ultimate power of the Commonwealth Parliament to pass overriding legislation is not in the Commission's view a satisfactory answer to this problem, in view of the lack of effective legislative action to date to override outdated Singapore legislation which is clearly inconsistent with national legal policy (including basic human rights) in important respects.

The submission by DASETT refers to the possibility of Territory ordinances being made to replace unacceptable WA laws. However, similar problems of resources appear likely to apply to this approach as to that of relying on overriding Commonwealth

legislation - making it likely that unacceptable or inappropriate laws could apply by default for long periods.

The statement in the submission by DASETT that special laws in the Indian Ocean Territories are now less warranted due to current government policies of normalisation and integration oversimplifies a number of issues. The fact that the law of Singapore as it was over thirty years ago is no longer appropriate, if it ever was, is not conclusive as to whether special laws are in principle necessary.

Reference to the Government's objective of eventual integration of Territory conditions with those of mainland Australia does not avoid the need for attention to the terms on which that objective is to be pursued, and the degree of consultation and control which the local population should enjoy in this process, including in determining how economic development is to proceed. Nor could such an objective ever supercede the necessity for Australia to act consistently with its international obligations.

The continuing relevance of the right to self-determination requires, at a minimum, that there be a process of effective consultation involving local representative bodies to determine the special legal provisions necessary for these Territories.

The Commission accordingly submits that application of any laws of other jurisdictions deemed by the Commonwealth to be appropriate to be applied as Territory ordinances for Christmas Island or for the Cocos (Keeling) Islands should occur only after effective consultations with local representatives.

The Commission also submits that there is a need for a continuing body to examine which laws are appropriate for application and to undertake the necessary processes of review, consultation, and modification of laws for local conditions where required. This body should include, or work closely with, local representatives.

We reiterate that any laws of other jurisdictions applied as Territory laws should be reproduced as Territory laws in order to be accessible. Legislation by reference (as occurs at present with Singapore law) is not an acceptable option.

## Conclusion

The repeal of all existing laws of Christmas Island without regard to the extent to which they remain relevant or appropriate to the circumstances of the Territory is unnecessary and potentially antithetical to the wishes of the residents. Law reform based on wiping the slate clean and starting afresh with laws applied from outside must pose the risk that valued laws will be lost.

Any proposal for modernising the laws of Christmas Island should ensure that law relevant to the local circumstances and which is supported by the residents is retained.

## OPTION 4

Apply the laws from time to time applying in:

- (a) Western Australia
- (b) the Australian Capital Territory; or
- (c) the Northern Territory

with the proviso that any law of Christmas Island inconsistent with an applied law is repealed to the extent of the inconsistency and that no laws will be applied without prior consultation with the residents.

The application of the laws of a mainland jurisdiction to Christmas Island is obviously, in terms of resource usage and time, an attractive option.

Overriding the application of the laws would be the continued existence of the Commonwealth's plenary powers to make laws for the peace, order and good government of the Territory. As discussed in the context of Option 3, the need to ensure, however, that those aspects of the extant legal regime which serve a specific purpose are retained and that the residents of Christmas Island are fully consulted and involved in the process of change to a new regime, are issues of paramount concern.

Mechanisms for ensuring that appropriate laws are retained and that genuine consultation occurs are, however, available. These should be insisted upon and in light of their availability it may be appropriate to apply, as discussed, the laws of a mainland jurisdiction.

The following points have been advanced in respect of each of the jurisdiction nominated above.

### Sub-option 4(a)Laws of Western Australia

- this option is attractive, especially if areas of Territory Administration can be contracted to the State Government, eg education, health and police.
- it is to be noted that this option would still need an initially large input of resources to amend State laws, in their application to the Territory, as necessary.
- the legal regime would still need to be maintained once adopted. Ongoing Departmental resources would be required to monitor State laws and recommend amending Ordinances where appropriate.
- there are existing administrative links between Western Australia and Christmas Island. Many services are provided

to the Territories through WA eg education, sea and air transport.

- the law of WA is not tailored to a small landlocked, urban jurisdiction as is the ACT's; it already applies to many small, remote communities in the State itself.
- familiarity with the laws by officials in Canberra (indicating ACT law) is less important than familiarity by the persons administering and enforcing the laws (indicating WA law if WA services are obtained for the Island Administrations).
- laws in the Indian Ocean Territories would not be standardised with other Territories already under ACT law. However, standardisation between Territories is only an advantage if the standardised law serves the differing needs of the individual Territories depending on Commonwealth interests, economic development and the needs of the inhabitants; ACT law has no particular advantage in this respect.
- The residents of Christmas Island have greater familiarity and more links with Perth than any other area of Australia.
- Commonwealth legal policy may not be reflected in all WA laws. However, Territory Ordinances might be made to replace any unacceptable laws.
- some WA institutions may be too complex for small island communities. However, this problem would probably be less frequent than under ACT law (see above) or the existing Singapore law (which largely presupposes an exclusively urban community), and no more frequent than under NT law. Administrative arrangements might be made with WA for some statutory offices to be held by Administration officials and for WA institutions to carry out Territory functions where appropriate in WA, eg courts.

#### Sub-option 4(b) Laws of the ACT

- this option would provide a ready made legal regime reflecting Commonwealth policies and attitudes, but, as in sub-option 4(a), would still need an initially large surge of resources to achieve;
- adoption of this option would mean that all of Australia's Territories except the Northern Territory, Norfolk Island and Ashmore and Cartier would have basically the same legal regime, ie ACT law, which could facilitate maintenance and updating of the legal regimes from time to time (in practice this would amount to uniformity of the law of the seven Territories concerned);
- there would be gaps in the law, eg maritime law and mineral exploration needing to be filled by special legislation or

adopting the laws of another jurisdiction to Christmas Island.

### Sub-option 4(c) Laws of Northern Territory

- NT laws are applicable in Ashmore and Cartier
- greater remoteness from Territories in distance and time. There are no existing transport links with the Territories.
- because of remoteness, it would be more costly for NT officials to administer, or advise on the administration, of NT laws in their application to the Indian Ocean Territories than for WA officials to do so. The expense of sending inspectors and other officials to Cocos/Christmas via Perth - necessary without a direct NT-islands link - militates against this option.

### Conclusion

From the evidence available to the Committee the predominant view, from amongst those that agree with, or would support, the application of wanted laws to Christmas Island is that the laws of Western Australia would be most appropriate.

The implementation of this option through the application of the laws of Western Australia would seem to offer a reasonable solution to the shortcomings of the current legal regime of Christmas Island.

## OPTION 5

### Establish a Territorial Legislature with Responsibility for Specified Domestic Laws

There is currently in operation on Christmas Island the Christmas Island Local Assembly. A major function of the Assembly is to direct the operations of the Christmas Island Services Corporation which provides a range of domestic services on Christmas Island. The Christmas Island Local Assembly was elected in 1989 in place of the Acting Assembly, comprised of the then Administrator, who was appointed as Acting Assembly after the dissolution of the Christmas Island Assembly in 1987.

It is axiomatic in a democracy that, to the greatest degree possible, citizens should be empowered to participate in decision making, particularly that which affects their day to day lives.

The Christmas Island community has, as indicated above, had over a number of years experience with a number of consultative mechanisms, including with a deliberative body. The community's experience with these bodies has been mixed. The Committee has, for instance, received evidence from residents, amongst others, which illustrates the difficulties experienced by a small



community, with a narrow electoral base and which is not financially independent, in creating an operable legislative forum. The feeling gained by the Committee is nevertheless, that the local community is committed to accepting increasing responsibility for its own regulation.

The ultimate acceptance by the Committee of an option along the lines of say 4 (a) above would, as an obvious corollary necessitate the continued development of a program for the devolution of an increasing range of powers on the Christmas Island Assembly.

## **Conclusion**

The continued development of a program for increasing the level of self regulation by the Christmas Island community, and the devolution of greater powers to its elected body, is essential.

## **OPTION 6**

**Incorporate the Territory within the Geographic and Political Boundaries of:**

- (a) Western Australia; or**
- (b) the Northern Territory**

Section 122 of the Constitution gives the Parliament power to make laws for the peace, order and good government of "any Territory placed by the Queen under the authority of and accepted by the Commonwealth or otherwise acquired by the Commonwealth". There is no limitation in the Constitution which would prevent the Commonwealth Parliament, exercising its power under that section from legislating to provide that two or more Territories be amalgamated into one Territory for the purposes of the application of a common set of laws and of a common administration. It would not matter that the two Territories were not contiguous or that one of the Territories was on the mainland of Australia and the other was not.

As to the incorporation of a Territory within a State, s.123 of the Constitution provides, amongst other things that the Parliament may, with the consent of the Parliament of a State and the approval of the majority of the electors of that State, increase the limits of a State. It is therefore possible for an external Territory to be incorporated within a State.

The normal consequence of such incorporation, whether into a territory or a State, would be that the Territory would become part of the area of that other Territory or State, and that jurisdiction's laws would apply.

There does not appear, at face value at least, any cogent reasons for maintaining Christmas Island as a separate territory into perpetuity. Neither the history of the Island nor its resident population suggests the existence of any intrinsic reason for the maintenance of Christmas Island as a separate and distinct entity.

Mr Gordon Bennett, for instance, Secretary of the Union of Christmas Island Workers acknowledged the existence of significant advantages in incorporation of Christmas Island within the State of Western Australia. Mr Bennett pointed to the current community of interest between the residents of Christmas Island and Perth in relation to matters such as health, education, the law, union affairs and in the provision of other services.

The Department of Arts, Sport, the Environment, Tourism and Territories and other witnesses have acknowledged the possibility of incorporation. It is notable that the Department of Foreign Affairs and the Commonwealth Attorney-General's Department have advised the Committee that they are not aware of any foreign affairs or legislative impediment to incorporation of the Territory within either Western Australia or the Northern Territory.

## Conclusion

Planning for the future administration of Christmas Island should not exclude the possibility, following consultation with each resident of the Territory, of its inclusion within the boundaries of Western Australia.

# THE LEGAL REGIME OF COCOS (KEELING) ISLANDS - OPTIONS FOR ITS REFORM

## Introduction

The House of Representatives Standing Committee on Legal and Constitutional Affairs is conducting an Inquiry into the Legal Regimes of Australia's External Territories and the Jervis Bay Territory. During the Inquiry the Committee has given detailed consideration to the efficacy of both the legal structure of the Cocos (Keeling) Islands and the arrangements for the administration of its laws. The Committee has also considered the adequacy of the law generally as well as of individual laws.

The Committee has been presented for its consideration, a number of options for reform of both the legal basis of the territory as well as of individual laws.

In order to facilitate the preparation of its Report to the Parliament on this important issue and to ensure that the residents of the Territory have every opportunity to participate in, and are fully consulted about, the Inquiry and its outcomes, I have prepared, for presentation to the residents of the Cocos (Keeling) Islands the attached discussion of options for reform of its laws and legal regime.

It is the Committee's wish to meet with the residents of the Cocos (Keeling) Islands either individually or through their nominated representatives to discuss the options presented below.

While the options give some indication of my thinking in relation to these issues they do not purport to be conclusive and should not be taken to represent a final view of the Committee. The paper is presented as an aid to discussion with interested parties.

Duncan Kerr, MP  
Chairman  
(Territories Sub-committee)

August 1990

## Cocos (Keeling) Islands

### The Options

1. Retain the Status Quo
2. Retain the Status Quo with an assurance that urgent attention and increased resources will be applied to a detailed program of law reform.
3. Repeal the existing law and apply, while retaining ultimate Commonwealth authority, the law from time to time applying in:
  - (a) Western Australia
  - (b) Australian Capital Territory; or
  - (c) Northern Territory
4. Apply the laws from time to time applying in:
  - (a) Western Australia
  - (b) the Australian Capital Territory; or
  - (c) the Northern Territory

with the proviso that any law of the Cocos (Keeling) Islands inconsistent with an applied law is repealed to the extent of the inconsistency and that no laws will be applied without prior consultation with the residents.
5. Enhance the powers of the Cocos (Keeling) Islands Council by giving it greater powers and responsibility for specified domestic laws.
6. Incorporate the Territory within the geographic and political boundaries of:
  - (a) Western Australian; or
  - (b) Northern Territory

## OPTION 1

### Retain the Status Quo

The Cocos (Keeling) Islands Act 1955 of the Commonwealth declared that the Cocos and Keeling Islands were accepted by the Commonwealth as the Territory of Cocos (Keeling) Islands.

The Act was proclaimed to come into operation on 23 November 1955.

Under the Act all laws in force before 23 November 1955 were to continue in force subject to repeal or amendment by Ordinances under the Act, which the Governor-General is empowered to make. Commonwealth Acts apply only if expressed to extend to the Territory.

A significant feature of the Cocos (Keeling) Islands Act 1955 is that it provides for the preservation of the institutions, custom and usages of the Cocos residents.

The laws in force in the Cocos (Keeling) Islands immediately before the date of transfer to Australia consisted of Acts of the United Kingdom Parliament, Orders in Council made under them and extended to Cocos (Keeling) by paramount force; English domestic statutes received in Cocos (Keeling) and not superceded by Singapore law and Singapore law as at the date of transfer.

The continued application of these laws has been affected by the Laws Repeal Ordinance 1955, the Laws Repeal Ordinance 1973, the Singapore Ordinances Application Ordinance 1979 and Ordinances made under the Cocos (Keeling) Islands Act 1955. The Singapore Ordinances Application Ordinance 1979, in particular, made significant adjustments to the status of the laws of Singapore which were initially extended to Cocos (Keeling) by the Cocos (Keeling) Islands Act 1955.

The hierarchy of laws applying in the Cocos (Keeling) Islands is, tentatively

- . Commonwealth Acts extending to the Territory
- . Cocos (Keeling) Islands Ordinances made by the Governor-General
- . English permanent laws
- . Ordinances in force in Singapore on 31 December 1957 that are preserved by the Singapore Ordinances Application Ordinance 1979
- . English statutes received in the Cocos (Keeling) Islands and
- . principles of common law and equity.

This Cocos (Keeling) system of laws has been consistently and seriously criticised, including by senior members of the judiciary. In 1989 for instance Mr Justice French described the legal regime as a "ramshakle collection of leftover colonial ordinances and territorial laws".

The Department of the Arts, Sport, the Environment, Tourism and Territories is charged with responsibility for the administration of the Cocos (Keeling) Islands, including its laws. The assessment of the Department is that the laws of Cocos (Keeling) are inadequate.

The Department notes that a law reform program initiated for the territory was not successful. Available resources have been applied to meeting urgent matters only and a major law reform project remains necessary with the most pressing need being for commercial, criminal, consumer and regulatory laws in areas such as motor traffic, marine safety and health.

The Committee has also received evidence from numerous sources including the Centre for Comparative Constitutional Studies, the Human Rights and Equal Opportunity Commission and the Director of Public Prosecution which highlight the extent of the deficiencies in both the laws of Cocos (Keeling) Island and its legal structure. The evidence received by the Committee together with its own observations, paint a picture, universally accepted, of a seriously inadequate body of law for Cocos (Keeling). The Department of the Arts, Sport, the Environment, Tourism and Territories at public hearings before the Committee summed up what is probably a generally held view of the laws of the Territory by concluding that they were a "national disgrace".

The Committee has not, in my opinion, received any evidence that could reasonably lead it to do other than concur.

## Conclusion

The laws of the Cocos (Keeling) Islands are outdated, anachronistic, incomplete and not readily identifiable. The prospect of the status quo, as outlined above, being perpetuated is quite untenable.

## OPTION 2

### **Retain the Status Quo with an Assurance that Urgent Attention and Increased Resources will be Applied to a Detailed Program of Law Reform**

The existing legal regime of Cocos (Keeling), as discussed in relation to Option 1 above, suffers from a number of defects. As noted above the Committee does not believe that the past practice of piecemeal reform of the law is appropriate or satisfactory or that it can be allowed to continue. The Committee has given consideration therefore to whether a vigorous program of reform of the existing law would overcome these defects or whether the complexity and anachronistic nature of the law would negate any dedicated attempt at its overhaul.

In favour of allowing the law to develop from the existing base is the degree of familiarity which may nevertheless exist within the Territory with the current law. Combined with this is the question of the extent to which the law meets the special social or cultural needs of the residents of Cocos (Keeling).

The weight of evidence before the Committee, including most significantly from the Department of the Arts, Sport the Environment, Tourism and Territories is, as noted above, that the laws of Cocos (Keeling) are inadequate, that past efforts at law reform have floundered and that there are swathes of matters which simply are not the subject of appropriate regulation. While a dedicated law reform process could be expected to address the more obvious deficiencies in the law, it is valid to question whether the integrity, let alone the identity, of the legal base from which the laws would grow or the level of resources required to achieve real reform would justify this approach. It has long been recognised that it is not wise to attempt to build on a base of shifting sand.

### **Conclusion**

The unsatisfactory nature of the Cocos (Keeling) legal regime is such that any proposal to provide the Territory and its residents with a legal regime commensurate with the Territory's status as a sovereign part of the Commonwealth and which catered adequately for the residents' rights as Australian citizens, which is based in the main on that less than satisfactory base, could not confidently be supported.

Any requirement that the laws of Cocos (Keeling) reflect local social conditions or culture is not dependent on the continuation of the existing laws or legal structure.

In simple pragmatic terms the Committee remains, I believe, to be convinced that the resources required to retain a unique and individual legal regime for Cocos (Keeling) alone can be justified.

### OPTION 3

Repeal the Existing Law and Apply, while Retaining Ultimate Commonwealth Authority, the Law from Time to Time Applying in:

- (a) Western Australia
- (b) The Australian Capital Territory; or
- (c) The Northern Territory

In the face of the unsatisfactory nature of the existing legal regime of Cocos (Keeling) one solution which has been proffered is the repeal of all existing law and its simultaneous replacement with the laws of another Australian jurisdiction. This solution would, it is argued, provide a ready made and up to date regime reflecting contemporary mainstream legal norms.

It is argued that this model would, in so far as the Commonwealth would retain its plenary powers to legislate for the Territory, permit the Commonwealth to use that power to ensure that any law so applied was consistent with its policy imperatives for the Territory. The Commonwealth could, in addition, arrange for the making of Ordinances to meet particular situations unique to the Territory.

The Committee has received evidence and views to the effect that the Australian jurisdictions potentially most amenable to translation to Cocos (Keeling) are those of Western Australia, the Australian Capital Territory or the Northern Territory. The most common arguments advanced in favour of these jurisdictions are:

- . they are, generally speaking, in accord with Commonwealth legal policy
- . in the case of the Australian Capital Territory and the Northern Territory the laws already apply to other external Territories; and
- . in the case of Western Australia and the Northern Territory they are geographically proximate to Cocos (Keeling).

Before considering, however, the relative advantage of any one of these jurisdictions for application to Cocos (Keeling), it is appropriate to consider the arguments which have been generally advanced against this proposal.

The Human Rights and Equal Opportunity Commission in a submission to the Committee summarises best the opposition to the application to the Islands of an existing mainland legal structure and body of law. The Human Rights Commission includes the following arguments against this proposal:



"The outdated Singapore laws applied in these Territories should be replaced by Territory laws, based either on appropriate laws from another Australian jurisdiction suitably modified for Territory conditions, or - if there are any subjects where this is more appropriate - on updated and consolidated Singapore law. Laws adopted or adapted from other jurisdictions should be re-enacted and reproduced as Territory ordinances, rather than being applied by reference (as is presently the case with Singapore laws, with consequent problems of accessibility and ascertainment).

The submission of the Department of the Arts, Sport, the Environment, Tourism and Territories states, with reference to Christmas Island and the Cocos (Keeling) Islands, that "The adoption, as for the uninhabited Territories, of a body of laws from a mainland jurisdiction, amended to the minimum extent necessary to meet special Territory conditions, is an option which might satisfy their needs, including the Government's objective of eventual integration of Territory conditions with the mainland."

However, the Department concedes that adoption of one of these bodies of law as at a fixed date, with any further updating to be done by the Commonwealth, would not in fact be a solution since experience indicates that such updating would in fact not be carried out sufficiently often or thoroughly to prevent the laws becoming outdated (as in the case of the inherited Singapore laws).

The Human Rights Commission does not regard adoption of the laws of the Australian Capital Territory or of Western Australia as amended by those jurisdictions from time to time as a satisfactory solution, notwithstanding that this would reduce the problem of obsolescence.

Such an approach would mean that neither the communities in these Territories nor the Commonwealth had control over the legal regimes applying.

The assertion in the submission by DASETT that Western Australian legislation is generally consistent with national legal policy is, in the Commission's view, debatable in some respects even at present: (for example, with respect to the rights of indigenous people and in the application of standards for juvenile justice). To the extent that Western Australian legislation is consistent with national legal policy, it cannot be simply assumed that it will remain so. The ultimate power of the Commonwealth Parliament to pass overriding legislation is not in the Commission's view a satisfactory answer to this problem, in view of the lack of effective legislative action to date to override outdated Singapore legislation which is clearly inconsistent with national legal policy (including basic human rights) in important respects.

The submission by DASETT refers to the possibility of Territory ordinances being made to replace unacceptable WA laws. However, similar problems of resources appear likely to apply to this approach as to that of relying on overriding Commonwealth

legislation - making it likely that unacceptable or inappropriate laws could apply by default for long periods.

The statement in the submission by DASETT that special laws in the Indian Ocean Territories are now less warranted due to current government policies of normalisation and integration oversimplifies a number of issues. The fact that the law of Singapore as it was over thirty years ago is no longer appropriate, if it ever was, is not conclusive as to whether special laws are in principle necessary.

Reference to the Government's objective of eventual integration of Territory conditions with those of mainland Australia does not avoid the need for attention to the terms on which that objective is to be pursued, and the degree of consultation and control which the local population should enjoy in this process, including in determining how economic development is to proceed. Nor could such an objective ever supercede the necessity for Australia to act consistently with its international obligations.

The continuing relevance of the right to self-determination requires, at a minimum, that there be a process of effective consultation involving local representative bodies to determine the special legal provisions necessary for these Territories.

The Commission accordingly submits that application of any laws of other jurisdictions deemed by the Commonwealth to be appropriate to be applied as Territory ordinances for Christmas Island or for the Cocos (Keeling) Islands should occur only after effective consultations with local representatives.

The Commission also submits that there is a need for a continuing body to examine which laws are appropriate for application and to undertake the necessary processes of review, consultation, and modification of laws for local conditions where required. This body should include, or work closely with, local representatives.

We reiterate that any laws of other jurisdictions applied as Territory laws should be reproduced as Territory laws in order to be accessible. Legislation by reference (as occurs at present with Singapore law) is not an acceptable option.

## Conclusion

The repeal of all existing laws of Cocos (Keeling) without regard to the extent to which they remain relevant or appropriate to the circumstances of the Territory is unnecessary and potentially antithetical to the wishes of the residents. Law reform based on wiping the slate clean and starting afresh with laws applied from outside must pose the risk that valued laws will be lost.

Any proposal for modernising the laws of Cocos (Keeling) should ensure that law relevant to the local circumstances and which is supported by the residents is retained.

## OPTION 4

Apply the laws from time to time applying in:

- (a) Western Australia
- (b) the Australian Capital Territory; or
- (c) the Northern Territory

with the proviso that any law of Cocos (Keeling) inconsistent with an applied law is repealed to the extent of the inconsistency and that no laws will be applied without prior consultation with the residents.

The application of the laws of a mainland jurisdiction to Cocos (Keeling) is obviously, in terms of resource usage and time, an attractive option.

Overriding the application of the laws would be the continued existence of the Commonwealth's plenary powers to make laws for the peace, order and good government of the Territory. As discussed in the context of Option 3, the need to ensure, however, that those aspects of the extant legal regime which serve a specific purpose are retained and that the residents of Cocos (Keeling) are fully consulted and involved in the process of change to a new regime, are issues of paramount concern.

Mechanisms for ensuring that appropriate laws are retained and that genuine consultation occurs are, however, available. These should be insisted upon and in light of their availability it may be appropriate to apply, as discussed, the laws of a mainland jurisdiction.

The following points have been advanced in respect of each of the jurisdiction nominated above.

### Sub-option 4(a)Laws of Western Australia

- this option is attractive, especially if areas of Territory Administration can be contracted to the State Government, eg education, health and police.
- it is to be noted that this option would still need an initially large input of resources to amend State laws, in their application to the Territory, as necessary.
- the legal regime would still need to be maintained once adopted. Ongoing Departmental resources would be required to monitor State laws and recommend amending Ordinances where appropriate.
- there are existing administrative links between Western Australia and Cocos (Keeling). Many services are provided

to the Territories through WA eg education, sea and air transport.

- the law of WA is not tailored to a small landlocked, urban jurisdiction as is the ACT's; it already applies to many small, remote communities in the State itself.
- familiarity with the laws by officials in Canberra (indicating ACT law) is less important than familiarity by the persons administering and enforcing the laws (indicating WA law if WA services are obtained for the Island Administrations).
- laws in the Indian Ocean Territories would not be standardised with other Territories already under ACT law. However, standardisation between Territories is only an advantage if the standardised law serves the differing needs of the individual Territories depending on Commonwealth interests, economic development and the needs of the inhabitants; ACT law has no particular advantage in this respect.
- The residents of Cocos (Keeling) have greater familiarity and more links with Perth than any other area of Australia.
- Commonwealth legal policy may not be reflected in all WA laws. However, Territory Ordinances might be made to replace any unacceptable laws.
- some WA institutions may be too complex for small island communities. However, this problem would probably be less frequent than under ACT law (see above) or the existing Singapore law (which largely presupposes an exclusively urban community), and no more frequent than under NT law. Administrative arrangements might be made with WA for some statutory offices to be held by Administration officials and for WA institutions to carry out Territory functions where appropriate in WA, eg courts.

#### Sub-option 4(b) Laws of the ACT

- this option would provide a ready made legal regime reflecting Commonwealth policies and attitudes, but, as in sub-option 4(a), would still need an initially large surge of resources to achieve;
- adoption of this option would mean that all of Australia's Territories except the Northern Territory, Norfolk Island and Ashmore and Cartier would have basically the same legal regime, ie ACT law, which could facilitate maintenance and updating of the legal regimes from time to time (in practice this would amount to uniformity of the law of the seven Territories concerned);
- there would be gaps in the law, eg maritime law and mineral exploration needing to be filled by special legislation or

adopting the laws of another jurisdiction to Cocos (Keeling).

### **Sub-option 4(c) Laws of Northern Territory**

- NT laws are applicable in Ashmore and Cartier
- greater remoteness from Territories in distance and time. There are no existing transport links with the Territories.
- because of remoteness, it would be more costly for NT officials to administer, or advise on the administration, of NT laws in their application to the Indian Ocean Territories than for WA officials to do so. The expense of sending inspectors and other officials to Cocos/Christmas via Perth - necessary without a direct NT-islands link - militates against this option.

### **Conclusion**

From the evidence available to the Committee the predominant view, from amongst those that agree with, or would support, the application of existing laws to the Cocos (Keeling) Islands is that the laws of Western Australia would be most appropriate.

The implementation of this option, through the application of the laws of Western Australia, would seem to offer a reasonable solution to the shortcomings of the current legal regime of Cocos (Keeling).

### **OPTION 5**

**Enhance the powers of the Cocos (Keeling) Islands Council by giving it greater powers and full responsibility for specified domestic laws throughout the Territory.**

The Cocos (Keeling) Islands Council is formally responsible, under the Local Government Ordinance 1979 for the peace order and good government of the municipal area of the Cocos (Keeling) Islands in relation to specified domestic issues. The Council may make by-laws for carrying out or giving effect to its powers and functions, subject to disallowance by the Minister.

The Minister has the power to declare that a law of the Territory with respect to a matter falling within the powers or functions of the Council, shall cease to apply to residents of the Kampong or Islanders settlement.

The Council may also make representations, through the Administrator, to the Minister in relation to any proposed Ordinance for the Territory.

The Cocos (Keeling) Islands Council does therefore possess a degree of legislative power, and a basic consultative process exists.

The Committee has, however, received evidence of significant weight that the involvement of the residents of the Territory in determining the nature of the legal regime applying in the Territory, and their role in the consultative mechanisms are inadequate. The Human Rights Commission for instance, has submitted that the inadequate consultative mechanism in respect of the Indian Ocean Territories represents a human rights issue in itself. Similarly the Centre for Comparative Constitutional Studies notes that under present political arrangements any change to the law of the Cocos (Keeling) Islands proposed by the Federal executive "should not or could not" be brought about unilaterally yet the initiative for determining what general laws should apply in the Territory and responsibility for ensuring the coherence and adequacy of its legislative structure is with the Commonwealth administration.

As a corollary to concerns about the level and degree of effective consultation with the residents of Cocos (Keeling) is the nature of existing arrangements for consultation with the people of the Territory concerning the application of Commonwealth laws or the continued application of Singapore law.

In discussions which the Committee has held previously with the Cocos (Keeling) Council the Council gave indications of its willingness and capacity to be involved in, and accept responsibility for, a greater range of matters affecting their lives.

The Committee is conscious, however, of the intricacies involved in developing a model for further self-government on Cocos (Keeling) noting for instance both the economic climate in the Territory and the presence of a significant number of residents in addition to the Cocos Malay community.

Commensurate with the ultimate acceptance of a program for the application of an existing body of law, such as that of the State of Western Australia, will be the need to ensure that appropriate machinery exists for the involvement of all residents of the Territory in the decision making process

## Conclusion

The formal powers and functions of the Cocos (Keeling) Council should be reviewed.

### OPTION 6

Incorporate the Territory within the Geographic and Political Boundaries of:

- (a) Western Australia; or
- (b) the Northern Territory

Section 122 of the Constitution gives the Parliament power to make laws for the peace, order and good government of "any Territory placed by the Queen under the authority of and accepted by the Commonwealth or otherwise acquired by the Commonwealth". There is no limitation in the Constitution which would prevent the Commonwealth Parliament, exercising its power under that section from legislating to provide that two or more Territories be amalgamated into one Territory for the purposes of the application of a common set of laws and of a common administration. It would not matter that the two Territories were not contiguous or that one of the Territories was on the mainland of Australia and the other was not.

As to the incorporation of a Territory within a State, s.123 of the Constitution provides, amongst other things that the Parliament may, with the consent of the Parliament of a State and the approval of the majority of the electors of that State, increase the limits of a State. It is therefore possible for an external Territory to be incorporated within a State.

The normal consequence of such incorporation, whether into a territory or a State, would be that the Territory would become part of the area of that other Territory or State, and that jurisdiction's laws would apply.

There does not appear, at face value at least, any cogent reasons for maintaining Cocos (Keeling) as a separate territory into perpetuity. The history of the Island and of its resident population does demand, however, that incorporation should only be contemplated at the request of the resident population.

The classification of the Cocos (Keeling) Islands as a non-self-governing territory has imposed certain obligations on the Commonwealth which are reflected, in part, the granting of a form of representative government in the Territory. The decision of the Cocos (Keeling) Islanders in 1984, in making a formal set of self-determination under United Nation supervision, was to integrate with Australia "on the basis of complete equality".

Australia has also willingly accepted a number of continuing obligations in relation to Cocos (Keeling) which necessitate the full participation of the residents of the Territory in all decisions affecting their future.

## **Conclusion**

Planning for the future administration of Cocos (Keeling) should not exclude the possibility, following consultation with each resident of the Territory, of its inclusion within the boundaries of Western Australia.

# CERTAIN OPTIONS FOR THE REFORM OF THE LEGAL REGIME OF NORFOLK ISLAND

## INTRODUCTION

The House of Representatives Standing Committee on Legal and Constitutional Affairs is conducting an Inquiry into the Legal Regimes of Australia's External Territories and the Jervis Bay Territory.

During the Inquiry the Committee has given detailed consideration to the efficacy of both the legal structure of Norfolk Island and of arrangements for its administration and the administration of its laws.

The Committee has received a significant number of submissions and has taken evidence from a range of people and organisations concerned with the administration of Norfolk Island. It has been presented during this consultative process with a range of views on a broad spectrum of issues.

In order to facilitate the preparation of its Report to the Parliament and to assure that the residents of the Territory have every opportunity to participate in, and are fully consulted about, the Inquiry and its outcomes, I have prepared for presentation to the residents of Norfolk Island the attached discussion of options for reform of certain of its laws and aspects of its legal regime.

The Committee is mindful of the significant weight of evidence it has received to the effect that the laws of Norfolk Island are generally appropriate to the needs of the Territory. Norfolk Island has achieved a real degree of self-government and is developing a range of law's designed to meet the expressed desire of Territory residents. The Commonwealth retains, of course, an overriding responsibility and duty in ensuring the residents of Norfolk Island enjoy the same basic rights and protection as other Australians.

The legal regime applying to Norfolk Island does not suffer from the obvious deficiencies of those applying to Cocos (Keeling) Islands or Christmas Island. The Committee has not, therefore, in the attached paper presented options for its wholesale reform. Rather the Committee has detailed the options presented during the Inquiry for specific adjustments or amendments required to the laws of Norfolk Island to ensure that they are equitable and just and of a standard acceptable to the Commonwealth.

It is the Committee's wish to meet with the residents of Norfolk Island either individually or through their nominated representatives to discuss the options presented below.



The options are reflective of the range of views which have been put to the Committee and do not purport to be conclusive or to represent the views of the Committee. The paper is presented as an aid to discussion with interested parties.

DUNCAN KERR, MP  
Chairman (Territories Sub-committee)

10 October 1990

## REVIEW OF ADMINISTRATIVE DECISIONS

Norfolk Island residents have access to Commonwealth administrative review processes in respect of decisions made under Commonwealth laws:

- . Decisions under an Ordinance of a Territory or an instrument made under such an Ordinance are subject to the Administrative Decisions (Judicial Review) Act 1977. (It is unclear whether the Act applies to decisions by executive members of the Legislative Assembly or in fact decisions of the Minister taken on the Island).
- . The Freedom of Information Act 1982 provides access to most documents in the possession of Departments or authorities established under Commonwealth enactments - the Legislative Assembly of Norfolk Island is not a prescribed authority under the Act.
- . The Ombudsman Act 1976 empowers the Commonwealth Ombudsman to investigate complaints relating to administrative actions by Departments or prescribed authorities (with the exception of action taken by Ministers, judges etc and action relating to Public Service employment or statutory appointments) - actions taken under the Norfolk Island Act 1979 or a Norfolk enactment are not covered.

Residents of Norfolk Island and others affected by decisions or actions taken under Norfolk laws have some avenues of appeal eg to the Minister for Arts, Tourism and Territories (Immigration Act 1980) or the Court of Petty Sessions (Land Subdivision Ordinance).

The Administrative Appeals Tribunal does not have jurisdiction to review on administrative decisions under the laws of Norfolk Island.

Generally speaking recourse to Commonwealth administrative law is not generally available in respect of decisions taken under Norfolk Island legislation. The most common form of review available under Island law is by recourse to the Supreme Court or the Court of Petty Sessions in respect of a narrow range of specific laws.

It would be generally accepted, putting to one side the question of cost, that recourse to the courts for the purposes of administrative review on Norfolk Island is less than desirable.

### Options

There are serious questions as to the adequacy of administrative review available to residents of Norfolk Island. The options include:

- . Maintain the status quo;

- . Subsequent to the transfer of responsibility for inquiries and administrative review to Norfolk Island the urgent development of a local administrative review machinery;
- . Extend as an interim measure the operation of the Administrative Appeals Tribunal, Ombudsman Act and Freedom of Information Act to an appropriate range of decisions under Norfolk Island law.
- . Clarify the operation of the Administrative Decisions (Judicial Review) Act 1977 on and in relation to decisions taken in relation to Norfolk Island.

## COMMONWEALTH PARLIAMENTARY REPRESENTATION

Australian citizens resident in Norfolk Island remain the only Australians not entitled, as of right, to representation in the Commonwealth Parliament.

### Options

The options include:

- . Maintain the status quo;
- . Attachment, if possible, of Norfolk Island to an electorate within an Australian State for the purposes of federal representation;
- . Attachment of Norfolk Island to an electorate within an Australian Territory for the purposes of federal representation.

## NORFOLK ISLAND LEGISLATIVE ASSEMBLY

The right to vote in elections for the Legislative Assembly and in referendums is available to persons resident in the Island for a period of 3 years (or 2 years and 6 months in the preceding 3 years) who satisfy the Administrator that they intend to reside permanently on the Island. The right to vote is not related to ancestry, immigration status or citizenship.

The Commonwealth has recently resolved that eligibility to vote in elections for the Christmas Island Assembly is dependent on the voter holding Australian citizenship. It is a moot point whether a similar proviso should apply in respect of Norfolk Island.

The Committee has also received some suggestions that the period of residency required for eligibility to vote in Norfolk Island elections is too long.

## Options

The options include:

- . Retain the status quo;
- . Provide, in addition to other conditions of residency, that only Australian citizens be eligible to stand, or vote, in Legislative Assembly elections.
- . Reduce the length of the residency requirement.

## IMMIGRATION AND CITIZENSHIP

The Australian Citizenship Act 1948 extends to Norfolk Island. The Migration Act 1958 does not.

Immigration and entry to Norfolk Island are controlled by the Norfolk Island Immigration Act 1980. The Act provides for three types of entry permits:

- . Visitors Permits, which may be granted for a period of up to 120 days;
- . Temporary Entry Permits, which are issued for up to one year and which are renewable; and
- . General Entry Permits, which remain in force for a period of 5 years 6 months and which are renewable. Under s.21 of the Act a quota may be set for the number of general entry permits to be granted in any year.

After five years' residence as the holder of a General Entry Permit a person may apply to be declared a resident under the Act. A person born on Norfolk Island, one of whose parents was at that time a resident, is also a resident of the Island. Residents do not need to hold entry permits under the Immigration Act.

A person aggrieved by a decision of the Assembly executive member responsible for immigration, or an authorised officer under the Act, may apply to the Administrator to review the decision in respect of a visitors permit and to the Minister in all other cases.

Permits issued under the Immigration Act do not entitle a person to enter mainland Australia. Entry to the mainland from Norfolk Island is controlled by the Commonwealth Migration Act.

Under the Australian Citizenship Act 1948 a person born on Norfolk Island is an Australian citizen by birth if one of the persons parents was an Australian citizen or permanent resident. Persons who are declared residents under the Norfolk Island Immigration Act 1980 may apply for Australian citizenship in accordance with the terms of the Commonwealth Act.

A Memorandum of Understanding between the Commonwealth and Norfolk Island Governments requires the executive member responsible for immigration not to grant a general entry permit or certificate of residency to a non-Australian or non-New Zealand citizen without the Minister's approval. This is to ensure that Norfolk Island cannot be used as a 'backdoor' method of entry into mainland Australia inconsistent with mainland immigration policies.

Section 18 of the Immigration Act provides for the grant of general entry permits to certain persons who satisfy the executive member that they have a special relationship with Norfolk Island. The section was carefully worded to meet the desire of the Norfolk Island Government to recognise the special status of people of Pitcairn descent while avoiding the possibility of discrimination on the grounds of race or ethnic descent. Any special relationship must be based on a range of factors although descent may be one of them.

The Committee has received trenchant criticisms on the operation of the Norfolk Island Immigration Act, particularly in so far as it may affect the ability of a Norfolk Island resident to dispose of real estate in the Territory. Much of the criticism appears to relate to the objectivity of the decision making process and delays in the appeal process.

## Options

The options include:

- . Maintain the status quo;
- . Remove the decision making-process from the political arena by establishing an independent Immigration Tribunal.

## CONSUMER PROTECTION AND REGULATORY MATTERS

There is no specific legislation covering consumer protection matters, and only very limited legislation dealing with control of public nuisance issues, in force in Norfolk Island.

There are laws with consumer protection potential in force which for practical purposes are difficult to administer. For example, the Trade Marks Act 1955 which extends to Norfolk Island. Although it is in force it is not being enforced because the Customs Act 1901, which empowers the Controller-General of Customs to seize goods, does not extend to the Territory. Regulations have been made to overcome this difficulty.

Under Schedule 2 of the Norfolk Island Act 1979, the Norfolk Island Legislative Assembly has the power to legislate in a number of areas including:

The prevention and suppression of nuisances

Garbage and trade waste

Domestic animals (including birds)

Foodstuffs and beverages (including alcoholic liquor)

which could serve the purposes of consumer protection and control of public nuisance, but with the exception of the Dogs Registration Ordinance 1936, there is no legislation in force on Norfolk covering these areas. It is noted that the Norfolk Island Environment Act will, when it enters into force, permit many of these issues to be covered.

## Discussion

The need to address the lack of consumer protection legislation would appear to be a priority. It would be of assistance to the Committee to be advised of future plans to remedy the deficiency, particularly in relation to product standards and the sale of goods generally.

## INCOME TAX AND SOCIAL SECURITY

Under Division 1A of Part III of the Income Tax Assessment Act, residents on Norfolk (a prescribed Territory) are exempt from tax on income sourced from outside Australia (ie sourced from any of Australia's external Territories or from another country). Qualifying residents are:

- . persons for whom the Island is their ordinary place of residence and who are not otherwise resident in Australia (referred to as "Territory residents") (these persons are also exempt from the Medicare levy);
- . companies which are wholly owned and controlled by Territory residents; and
- . Territory trusts in which the beneficiaries are Territory residents.

The practical effect of these provisions is to subject individuals genuinely resident on Norfolk to tax only on income derived from mainland sources.

An individual who does not qualify as a Territory resident but who goes to Norfolk Island with the intention of remaining there for a continuous period of more than 6 months is exempt from income tax (and the Medicare levy) on income derived from an office or employment, the duties of which are either wholly or mainly performed there.

Employers providing non-cash fringe benefits to Island based employees or associates are not subject to the Fringe Benefits Tax (FBT), so long as those employees are taxed on their wage income.

Territory resident individuals and companies are subject to Australian income tax on any Australian sourced income. In calculating their tax liability they are entitled to claim any deductions or rebates which are available to Australian residents. Individuals are, in addition, entitled to claim the special Zone A rebate of tax available to persons who live in specified remote areas of Australia (where the factors of isolation, uncongenial climate and high cost of living are most pronounced). For the 1987-88 income year the rebate was \$938 plus 50 per cent of any relevant rebates for dependants or a housekeeper etc. For a single taxpayer with no dependants, this effectively raised the tax-free threshold to \$9,008.

Dividend and interest withholding tax applies to payments from the Islands to foreign countries in the same way as payments from Australia.

The Norfolk Island Act 1979, provides for a Commonwealth appointed Administrator to administer the Island and a locally elected Legislative Assembly. The Act is designed to equip the Territory to run its own affairs to the greatest practicable extent. The Administrator is required to act in accordance with the advice of the Executive Council (the Executive members of the Assembly who have Ministerial type functions) over matters listed in Schedule 2 of that Act. The Schedule covers the raising of revenues for the purposes of a wide range of specified services of a type typically supplied by both local and state governments, eg street lighting, electricity supply, public works and the registration of companies. These taxes and levies include:

- . company registration fees;
- . an accommodation levy (a flat fee per bed levied on boarding houses, guesthouses and hotels);
- . liquor licence fees levied on liquor merchants;
- . pasturage fees (ie fees paid to graze livestock on common land) and fees on dog owners; and
- . charges for, inter alia, Crown leases, conveyancing, electricity, postal services, car registration, court fees and timber royalties.

The Act lists in Schedule 3 matters in respect of which the Administrator must act in accordance with advice provided by the Executive Council unless he or she receives instructions to the contrary from the relevant Commonwealth Minister. These matters include fishing, customs (including the imposition of duties), immigration and education.

Taxes which are currently raised are:

- . customs duty on a broad range of imported goods;
- . departure fees;
- . a financial institutions levy (similar to the

- Financial Institutions duty applied in the States);
- . a stamp duty on cheques; and
- . an absentee landowners levy.

## **Discussion**

To assess the adequacy of existing Commonwealth taxation requires consideration of the level of services the Commonwealth provides to the Territories and whether the particular circumstances faced in a Territory represent serious administrative barriers to imposing certain Commonwealth taxes.

At present, residents of Norfolk Island are not subject to Commonwealth income taxation on their Territory-sourced income, nor do Commonwealth indirect taxes apply to them. However, Norfolk Island is responsible for raising revenue to fund its own community services - for example, it provides its own social security system - and since 1979 the Island has been largely self-funding. While it does not receive any general purpose grants from the Commonwealth, the Commonwealth contributes to the operating costs of the Island's airport, the (Commonwealth) Administrator's Office, the preservation of historical areas and management of the national park along with a range of other matters (see Submission 64).

The Norfolk Island Social Services Act 1980, which operates in the place of the Commonwealth Social Security Act provides pension entitlements as of right to eligible aged, invalid and widowed residents or to residents who have the care, custody and control of orphaned or handicapped children.

The rate of payment, originally set at 70% of their Australian equivalent was increased to 78% in 1982. In January 1985 the Social Services Act was amended to make the Norfolk Island Retail Price Index the basis of bi-annual adjustment of the rates of benefit, instead of the Commonwealth Consumer Price Index. Currently social welfare payments equate to about 80% of the mainland equivalent.

The Norfolk Island Government has, in Submission No.97 provided the Committee with a detailed summation of its view of the likely consequences of the imposition of Commonwealth taxation to Norfolk Island.

## **Options**

While the Committee notes the serious reservation of the Norfolk Island Government at the possibility of Commonwealth taxation extending to Norfolk Island, there are, nevertheless, a number of possible options concerning taxation and social security on Norfolk Island which could be listed as a basis for discussion. Broadly expressed, however, the options are:

- . Maintain the status quo;



- . Introduce mainland rates of income tax to Norfolk Island and apply the Commonwealth Social Security Act and all other "welfare" type legislation to Norfolk Island;
- . Apply the Commonwealth Social Security Act and all other 'welfare' type legislation to Norfolk Island without introducing mainland income Tax.

## **COST RECOVERY ON COMMONWEALTH GOVERNMENT EXPENDITURE ON NORFOLK ISLAND**

During the course of the Inquiry, the Department of Arts, Sport, the Environment, Tourism and Territories (DASETT) provided the Committee, in consultation with other Departments, details of expenditure incurred in relation to Norfolk island, and of costs recovered (see Submission No.64).

The raw figures provided to the Committee indicate that in 1988/89 estimated total Commonwealth expenditure was \$4,893,973 and the total of costs recovered was \$121,270.

The Treasury (see Submission No.68) has commented on the DASETT submission, and in its response appended comments from the Norfolk Island Government on the level of Commonwealth expenditure.

The Norfolk Island Government believes the net cost to the Commonwealth of providing services and benefits to the Norfolk Island community is only about \$1.3 million.

It is relevant to consider the extent to which, under current arrangements for the administration of Norfolk Island, the current level of Commonwealth expenditure should be maintained and if maintained the appropriateness of additional cost recovery measures being instituted.

### **Options**

The options include:

- . Maintain the status quo;
- . Reduce the level of services and expenditure by the Commonwealth;
- . Institute additional cost recovery measures.

## **HEALTHCARE**

Since the Committee's initial visit to Norfolk Island the Norfolk Island Government has implemented the Norfolk Island Healthcare Scheme.

The Healthcare Scheme responds in part to the fact that Medicare is no longer available to the residents of Norfolk Island.

The Committee has been advised by the Commonwealth Department of Community Services and Health that as of 1 March 1989, 980 residents of Norfolk Island held Medicare Cards.

The Healthcare Scheme provides cover for overseas and local medical costs which exceed \$2,000 (per single person or per family) in any given 12 month period.

It would be of assistance to the Committee to gain an appreciation of the efficacy of the Norfolk Island Healthcare Scheme and the effect which removal of the Medicare entitlement has had on Norfolk residents.

## TERRITORY OF NORFOLK ISLAND

### Working Paper/Emerging Conclusions

#### Description

The Territory of Norfolk Island comprises Norfolk Island and the nearby uninhabited Nepean and Phillip Islands. Norfolk Island, discovered by Captain Cook in 1774, is situated in latitude 29°04'S, longitude 167°57'E. The Island is about eight kilometres long and five kilometres wide. It is 1,676 kilometres east-north-east of Sydney. The coastline consists of almost inaccessible cliffs rising from the water's edge, except at Kingston in the south and the landing place at Cascade on the northern side. The Island has a population of some 2000 people - the majority of whom are permanent residents. Approximately 550 are temporary residents. Forty-six percent of the permanently resident population are of Pitcairn Island descent. Australians and New Zealanders make up the bulk of the balance of population. Tourism, the major economic activity of the Island, attracts an estimated 26,000 tourists each year.

#### Historical Outline

Norfolk Island has variously been a penal colony, whaling station and free settlement during its formative years. It is the most historic of Australia's external territories and as such, is integral to our national heritage. Previously uninhabited, European settlement has been attempted on the Island since 1788 when Lieutenant P.G.King was despatched by Captain Phillip to secure the Island for the Crown. The Island was occupied and cultivated by convicts and settlers until 1814 when it was abandoned, largely because of the absence of a suitable harbour but also because all available soldiers and convicts were required to aid in the establishment of new penal stations in Van Diemen's Land (Tasmania). For some years the Island was virtually deserted, used as a place of call for British warships.

From 1825 to 1855 the Island again served as a penal station. During this time considerable public works - buildings, bridges and roads - were carried out by the convicts under an oppressive regime. Early in 1856 the last of the convicts were removed to make way for the relocation of the descendants of the 'Bounty' mutineers who were transferred from Pitcairn Island. The 194 settlers arrived on Norfolk Island in June 1856. These people and their descendants have since been the principal inhabitants of the Island.

#### Legislative Framework

The Territory of Norfolk Island was the first External Territory to be acquired by the Commonwealth in 1914. It has a complex constitutional history and legal

structure. Until 1844 Norfolk Island was either attached to, or part of, New South Wales. From 1844 to 1855 the Island was controlled by Van Diemen's Land authorities. The transfer of settlers from Pitcairn Island in 1856 required some revision of Norfolk Island's status and government. Pursuant to the Australian Waste Lands Act 1855 an Order in Council was proclaimed on 31 October 1856 creating Norfolk Island 'a distinct and separate settlement'. The Governor, who was also the Governor of the Colony of New South Wales, was given 'full power and authority to make laws for the order, peace, and good government of the said island, subject nevertheless to such rules and regulations as Her Majesty at any time by any instruction or instructions.... may think fit to prescribe.'

In 1857, the then Governor of New South Wales and Norfolk Island, Sir William Denison, issued by Proclamation a set of 39 simple laws referred to as 'Laws and Regulations for Norfolk Island'. This Proclamation marks the commencement of the modern legal history of Norfolk Island. No present legal rights are traceable to the convict era. Though in law a separate Crown Colony for a period of forty years, Norfolk Island was intimately related to New South Wales, drawing heavily on the administrative advice of New South Wales ministers. This relationship was consolidated in 1897 when Norfolk Island was made a dependency under the Governor of the Colony of New South Wales.

In 1900, in anticipation of the consequences of the establishment of the Commonwealth of Australia, administrative powers were shifted to the Governor of the State of New South Wales. Finally, by the passage of the Commonwealth Parliament's Norfolk Island Act 1913, Norfolk Island became a Territory of Australia. The Act was assented to on 19 December 1913 and came into operation on 1 July 1914. Under the Act, Norfolk Island was accepted as 'a Territory under the authority of the Commonwealth'. Section 4 of the Act provided that: 'Subject to this Act, the laws, rules and regulations in force in Norfolk Island at the commencement of this Act shall continue in force, but may be altered or repealed by Ordinance made in pursuance of this Act...'

Power was given to the Governor-General, by s. 8, to make Ordinances for the Territory.

Apparently in anticipation of the transfer of the Island to the Commonwealth, the Governor of New South Wales, Sir Gerald Strickland, by a Proclamation dated 23 December 1913 and published in the New South Wales Government Gazette the following day, declared that all laws theretofore in force in Norfolk Island were repealed. A new set of laws set out in the Proclamation were to come into force in the Island. Sir Gerald Strickland's Proclamation also provided: 'Subject to the laws hereby enacted and to any Order of His Majesty in Council, all laws and statutes in force in the realm of England on the 25th day of July, 1828, ... shall be applied in the administration of justice in Norfolk Island, as far as the same can be applied within the said island.'

The 1913 Act, as amended later, was repealed by the Norfolk Island Act 1957. By

s. 12 of the Act, all laws in force immediately before the commencement of the Act or in relation to the Territory were to continue in force. The Norfolk Island Ordinances Act 1957 was passed to make certain the dates on which Ordinances of the Territory, made before the commencement of the Act, were regarded as having come into operation.

When the Norfolk Island Judicature Ordinance 1960 was passed, the opportunity was taken to resolve any doubts as to the laws in force in Norfolk Island. It provided that English statutes in force in 1828, and all principles and rules of common law and equity, are, so far as they are applicable, in force in the Territory as laws of the Territory, unless they have been subsequently altered or replaced by legislation made for Norfolk Island. The phrase 'so far as they are applicable' has been explained to mean 'so far as they are applicable at the date of the Ordinance', that is 14 April 1960.

Under Amendments made by the Norfolk Island Act 1963, the Territory's Administrator, responsible to the Commonwealth Government for the Island's administration, was made ex officio Chairman of an eight-member elected Norfolk Island Council. The Commonwealth Government continued to hold all legislative and executive power, the Council being advisory only.

In 1976, the Commonwealth Government received the Report of the Nimmo Royal Commission. The Government response to the Report led to the enactment of the Norfolk Island Act 1979. The Act provided for an elected Legislative Assembly of nine members with the power to make laws for the peace, order and good government of the Territory. Under the terms of the Act the Commonwealth can extend its legislation to the Territory, and the Governor-General can introduce proposed laws into the Legislative Assembly, and disallow or recommend amendments to all Assembly laws.

The Norfolk Island Act 1979 therefore grants a degree of self-government to Norfolk Islanders and is the chief constitutional document of Norfolk Island. Self-government for Norfolk Island is supported and it is acknowledged that the constitutional arrangements established by the Act should be maintained.

#### Applicable Law

The Norfolk Island Act 1979 provides a starting point for the determination of what laws apply in the Territory. The following information as to the ascertainability of Norfolk Island Law is derived from the submission by the Centre for Comparative Constitutional Studies:

Section 18 of the 1979 Act provides that Commonwealth Acts or provisions thereof are not, except as otherwise provided, in force as such in Norfolk Island, unless expressed to extend to the Territory. Where a Commonwealth Act does extend, however, its application may not be affected by any Ordinance of the Governor-General or enactment of the Norfolk Island Legislative Assembly.

Legislative power is conferred on the Norfolk Island Legislative Assembly by section 19 of the Norfolk Island Act, although this power is not exclusive, since the Governor-General is also empowered to make Ordinances for Norfolk Island, in certain circumstances, under section 27. Where an enactment of the Legislative Assembly is inconsistent with an Ordinance made by the Governor-General, the latter prevails and the former is invalid to the extent of the inconsistency (section 29).

By section 16 of the Norfolk Island Act, all Ordinances, subordinate legislation and other laws continued in force by the Norfolk Island Act 1957 are to remain in force in the Territory, but, under section 17, these may be amended or repealed either directly by, or under the authority of, enactments of the Norfolk Island Legislative Assembly.

Section 12 of the Norfolk Island Act 1957 provided that all laws in force immediately before the commencement of that Act in or in relation to the Territory, including Ordinances made under and laws continued in force by the Norfolk Island Act 1913, should continue in force, but were subject to repeal or amendment by Ordinance (section 13) made by the Governor-General (section 15). The Norfolk Island Act 1913, in turn, provided that the laws, rules, and regulations in force in Norfolk Island at the commencement of that Act should continue in force but might be altered or repealed by Ordinance (sub-section 4 (1)). The laws and regulations made for Norfolk Island by the Governors of New South Wales under the Orders in Council of 1856, 1897 and 1900 had been repealed and re-enacted in consolidated form just prior to Norfolk Island's transfer to the Commonwealth.

In summary, therefore, the present law of Norfolk Island, in probable order of precedence, consists of the following:

- (a) Acts of the Commonwealth Parliament extending to Norfolk Island;
- (b) Ordinances of the Governor-General made under the Norfolk Island Act 1979;
- (c) Enactments of the Norfolk Island Legislative Assembly, authorised by the Norfolk Island Act 1979;
- (d) Ordinances of the Governor-General made under the Norfolk Island Act 1957 or the Norfolk Island Act 1913;
- (e) the consolidated laws of the Island, which repealed all pre-existing laws, and were published in the New South Wales Government Gazette on 24 December 1913.

A number of additional considerations such as laws and statutes of the United Kingdom (Imperial) Parliament, particularly those relating to 'Dominions', also contribute to the legislative framework of Norfolk Island. These include:

- (f) Paramount Acts of the United Kingdom Parliament and Orders in Council made under them;
- (g) English statutes in force in 1828, received in Norfolk Island (i.e. applicable to Norfolk Island in 1960);

(h) Principles of common law and equity.

Identification and Accessibility of Laws

In their submission of March 1989, the Norfolk Island Legislative Assembly acknowledges that 'the biggest problem of identification (of laws) is with respect to Imperial enactments.' However as local legislative activity has increased this matter 'has largely ceased to be a practical problem' as 'inherited Imperial law ... is being phased out.'

The Centre for Comparative Constitutional Studies has indicated that, in addition to this possible element of anachronistic English law, minor problems may arise in determining which Commonwealth Acts extend to Norfolk Island. The Norfolk Island Legislative Assembly argues that this is 'not a practical problem' although cases exist where a statute is not directly expressed to extend but may nevertheless arguably extend to the Territory. (The example of Jolley v Mainka (1933) 49 CLR 242 - whether the Commonwealth Bank Act 1911 extended to the Territory of New Guinea was cited). The publication of lists or tables showing exactly which Commonwealth Acts extend to Norfolk Island would greatly facilitate the identification of Commonwealth laws to the advantage of administrators, litigants and judges charged with enforcing Territory law. These lists should be made generally available through normal Commonwealth Government outlets.

The problem of identifying Island statutory law only exists where the Island law adopts by reference to another law which is not readily available in its adopted form. The Norfolk Island Government is currently addressing this problem by phasing out legislation by reference.

The Centre for Comparative Constitutional Studies also indicated that minor problems also arise in gaining access to Norfolk Island enactments and Ordinances. The Norfolk Island Government refutes this suggestion, indicating that 'Norfolk Island law is no more difficult to find than is Commonwealth law. It is printed, reprinted in consolidated form and indexed annually and quarterly.' 'Since 1985, a pamphlet reprint series of laws in force has been progressively published on a 'short title' basis. Over 70 titles have been published, and the programme is continuing. Current enactments and regulations are also published as they are made, in an annual series. An annual Legislation Tables is published, and this is kept up-to-date with quarterly noters-up. A weekly Government Gazette gives details of legislative changes between issues of the noter-up. All of these publications are available for purchase, and mail order services are provided'.

Emerging Conclusion

The steps currently being taken by the Norfolk Island Government represent a realistic and practical approach to the identification of legislation applicable to Norfolk Island and the accessibility of Norfolk Island enactments and Ordinances.

As mentioned in paras xx above, clarification of the applicability of Commonwealth Acts extending to the Territory and of Imperial statutes which have or have not been received in Norfolk Island remain the major outstanding areas for action.

Possible Action - Lists or tables showing exactly which Commonwealth Acts extend to Norfolk Island and which Imperial statutes have been received, should be compiled and published and made generally available.

## Courts

The Courts exercising jurisdiction in the Territory are the Supreme Court of Norfolk Island and the Norfolk Island Court of Petty Sessions.

The Supreme Court of Norfolk Island was set up under the Norfolk Island Act 1957. It was continued in existence by the Norfolk Island Act 1979 as the superior court of record of Norfolk Island. The jurisdiction, practice and procedure of the Supreme Court is as provided by the Supreme Court Ordinance 1960. Essentially, the Supreme Court has the same jurisdiction in, and in relation to, Norfolk Island as the Supreme Court of the Australian Capital Territory has in, and in relation to, the Australian Capital Territory. In accordance with the 1979 Norfolk Island (Sittings of the Supreme Court) Regulations, the Supreme Court may sit in civil cases in New South Wales, Victoria or the Australian Capital Territory as well as the Territory, but in criminal cases only in the Territory. Under the Federal Court of Australia Act 1976, there is a provision for appeals from the Island's Supreme Court to the Federal Court and on to the High Court.

A Court of Petty Sessions for the Territory was established by the Court of Petty Sessions Ordinance 1960. The jurisdiction of the Court may be exercised by the Chief Magistrate, or by any three Magistrates other than the Chief Magistrate. The Court has both a criminal and civil jurisdiction. The Court has jurisdiction to hear and determine, in a summary manner, all criminal matters arising under a law in force in Norfolk Island where under such a law:

- . an offence is punishable on summary conviction; or
- . a person is made liable to a penalty or punishment or to pay a sum of money for any offence, act or omission and no other provision is made for the trial of a person committing the offence.

The Court also has jurisdiction to hear and determine civil claims in respect of a sum or matter at issue which does not exceed \$10,000. There is a right of appeal from the Court of Petty Sessions to the Supreme Court in certain cases. The right applies to criminal proceedings where a person has been fined not less than \$10 or sentenced to imprisonment for any term, and in civil proceedings in respect of a sum or matter at issue amounting to not less than \$100. The Supreme Court may also grant leave to appeal in cases where an appeal does not otherwise lie.

The Sydney Registry of the Family Court of Australia is the principal registry for Family Law matters in Norfolk Island other than those matters which may be dealt with by the Court of Petty Sessions.



## Administrative Arrangements

As described above, Norfolk Island was either attached to, or part of, New South Wales until 1844. From 1844 to 1855 the Island was controlled by Van Diemen's Land authorities. It was not until 1856, with the arrival of the Pitcairn settlers, that the Island was removed from Van Diemen's Land control and created a 'distinct and separate settlement'. Those arrangements prevailed for more than 40 years, until increased powers of control were given to New South Wales in 1897. From 1914, when the Island became a Territory, until 1979 the Island was governed directly by the Commonwealth.

In addition to providing the basis of the Island's legislative and judicial systems, the Norfolk Island Act 1979, is the basis of Norfolk Island's administrative system. The Act provides for an Administrator of the Territory, appointed by the Governor-General, and an elected nine member Legislative Assembly. An Executive Council drawn from the members of the Assembly and appointed by the Administrator upon the advice of the Assembly, has executive power over the matters set out in Schedules 2 and 3 of the Act. Executive members of the Assembly have ministerial-type responsibilities for these matters. In addition, there are many matters for which the Commonwealth retains formal responsibility but which in practice are locally administered and locally funded.

The Legislative Assembly has plenary power to make laws for the peace, order and good government of the Territory as well as the power to raise revenue for this purpose. There are three exceptions to the plenary power of the Assembly: the Assembly may not pass laws -

- (1) authorising the acquisition of property except on just terms;
- (2) authorising the raising or maintaining of defence forces; or
- (3) authorising the coining of money.

Every law proposed by the Assembly must be presented to the Administrator for assent. If the proposed law relates to only Schedule 2 of the Act, the Administrator may either assent or withhold assent, but s/he must act in accordance with the advice, if any, of the Assembly's Executive Council. Should the proposed law provide for Schedule 3 matters, or a combination of Schedules 2 and 3 matters, the Administrator is required to refer the proposed law to the Minister for instructions. Should the proposed law provide for matters not specified in either Schedule 2 or 3, the Administrator must reserve the proposed law for the Governor-General's pleasure.

The Office of the Administrator is financed from Commonwealth expenditure, with additional funds for specific purposes such as the restoration and maintenance of historic structures, also being supplied by the Commonwealth. The Administrator is responsible to the Commonwealth Minister for the Arts, Sport, the Environment, Tourism and Territories.

## Consultation with Residents

The Committee in the 35th Parliament visited Norfolk Island on 18 April 1989. During the visit, the Committee made an inspection of the Island and heard evidence from eleven witnesses, including residents and representatives of a number of different groups. A significant number of submissions were also received from a range of people and organisations concerned with the administration of the Island.

In the 36th Parliament, the Committee prepared and circulated a Discussion Paper to the residents outlining the range of views which had been put to the Committee of the previous Parliament during this consultative process. The Discussion Paper, entitled 'Certain Options for the Reform of the Legal Regime of Norfolk Island' sought responses to a broad spectrum of issues.

Consultations with Territory residents in this regard were held in October 1990 with the Committee taking evidence from 31 witnesses during the two days of public hearings held on 24 and 25 October 1990. Almost half of the total of 124 submissions received by the Committee during the entire course of this inquiry have been received from individuals and organisations interested in the Norfolk Island aspect of the inquiry.

It should be noted that some hostility was evident in the conduct of aspects of the inquiry, with a number of witnesses questioning the need for the inquiry and indicating that 'unsolicited interference' from 'outside forces' is neither welcome nor productive. Others, like Mr Ric Robinson, stressed that while the future of the Territory was essentially a matter for the Islanders the Commonwealth did have a role: 'Norfolk Island has serious problems which must be overcome. But I contend that they are best solved by Norfolk Island, with the sympathy and active help of the Commonwealth of Australia'.

Yet other elements of the Norfolk Island population indicated that 'Despite moves towards independence by a certain section of the community, the welfare of the majority of Norfolk Island citizens depends on the maintenance of the island's traditional close links with Australia.'

The differing views were each expressed firmly by their various advocates.

## Adequacy of the Current Regime - Emerging Conclusions

There is a significant body of evidence to the effect that the laws of Norfolk Island are generally appropriate to the needs of the Territory. Norfolk Island has achieved a high degree of self-government and is developing a range of laws designed to meet the expressed desire of Territory residents. The Commonwealth retains, of course, an overriding responsibility and duty in ensuring that the residents of Norfolk Island enjoy the same basic benefits, rights and protection under the law as other Australians. Norfolk Island has achieved a substantial degree of self-government and the Norfolk Island Government is acting with goodwill in safeguarding the

interests of Norfolk Island residents. Whilst no wholesale reform is necessary, some review and, where appropriate, revision, is required in relation to some aspects of the legal and administrative regime.

It is accepted that the provisions of the Norfolk Island Act should remain the basis for the governance of Norfolk Island.

### Commonwealth Parliamentary Representation

Australian citizens resident in Norfolk Island remain the only resident Australians not entitled, as a right, to representation in the Commonwealth Parliament. The Committee received evidence which indicated that the people of Norfolk Island had mixed views on this issue. Some, like Mr Lisle Snell of the Norfolk Island Government Tourist Bureau, indicated that 'I personally have no desires at all ... to be involved in the election process of the Australian system'.

The view of the Society of Pitcairn Descendants is even stronger: 'we do not want to be a part of Australia ... we are not Australians.' Views opposing the involvement of Norfolk Island in Commonwealth Parliamentary Representation were also expressed by the Norfolk Island Government, amongst others.

The alternative view was put by others, who, like Mr Barry Christian, indicated that 'I think we would probably have a fairer representation if we had a vote in the Australian Parliament'. In her submission, Ms Merval Hoare also supported the proposal for Norfolk Island to be attached to an electorate within an Australian state for the purposes of federal representation. These views were shared by other witnesses who appeared before the Committee or made submissions to the inquiry.

### Emerging Conclusions - General

The right to vote is an absolute right which should not be denied to those people of Norfolk Island who wish to exercise their right. However, it is recognised that the constitutional history of the Territory is complex and that Norfolk Island warrants special consideration in this regard. In addition, the strongly held views of elements of the Norfolk Island population, most likely a majority, for whom Commonwealth Parliamentary representation is an anathema, are noted.

The Committee is aware that provision exists within the Commonwealth Electoral Act 1918 for optional voting for the following categories: an Antarctic elector; an eligible overseas elector; or an itinerant elector. Strongly held views and historical reasons make Norfolk Island a unique case. It could be possible to accept, contrary to the important principles which apply anywhere else in Australia, that the residents of Norfolk Island who are Australian citizens should have the right of optional enrolment. Once a citizen exercises this right, voting would be compulsory and normal provisions under the Commonwealth Electoral Act would apply.

## Possible Action

The Commonwealth Parliament amend the Commonwealth Electoral Act 1918 to give optional enrolment rights to the people of Norfolk Island; the electorate to which the voters would be attached to be determined on the advice of the Australian Electoral Commission.

## Norfolk Island Legislation

Concern has been expressed by the Norfolk Island Government over delays in assent to reserved legislation and consultation breakdowns in connection with the extension to the Island of Commonwealth legislation. The Office of Parliamentary Counsel confirms that delays and inadequate consultation have been occurring

The measures outlined above concerning the identification of laws applicable to the Territory should assist in overcoming the problem of extension of Commonwealth law to the Island. DASETT will need to play a major coordinating role in overcoming delays in assent to legislation.

Possible Action - That DASETT exercise a coordinating role to overcome delays in assent to legislation. Also that the Commonwealth Government consider adopting a policy to require responses within a fixed period of receipt of notification from the Norfolk Island Administrator of legislation requiring assent.

## Citizenship

Under the Australian Citizenship Act 1948 a person born on Norfolk Island is an Australian citizen by birth if one of the person's parents was an Australian citizen. Persons who are declared residents under the Norfolk Island Immigration Act 1980 may apply for Australian citizenship in accordance with the terms of the Commonwealth Act. Citizenship carries with it certain rights and duties, amongst which is the right to vote. In fact, few societies permit those who are not citizens the right to vote. The right to vote in elections for the Norfolk Island Legislative Assembly and in referendums is currently available to persons resident in the Island for a period of 3 years (or 2 years and 6 months in the preceding 3 years) who satisfy the Administrator that they intend to reside permanently on the Island.

## Emerging Conclusion

The current residency provision should remain unchanged. However, the residency provision should be coupled with a citizenship requirement so that only Australian citizens be eligible to stand, or vote, in Legislative Assembly elections. This is consistent with the recent Commonwealth resolution to require Australian citizenship for voters in elections for the Christmas Island Assembly. To achieve this result, gradual change is favoured to facilitate the phasing-in of this proposal - the

citizenship requirement would only apply to all new enrollees registering on the Norfolk Island electoral roll on or after a commencement date to be determined during 1991. Existing enrollees would not be affected by this proposal and could continue to exercise all of their present rights. Under these provisions, all current residents will be able to vote together with Pitcairners and their descendants and residents of Norfolk Island who take out Australian citizenship. Only those of foreign nationality, unless they take out Australian citizenship, would be excluded.

Possible Requirement: Australian citizenship be a requirement for eligibility to stand for election or to vote in Norfolk Island Legislative Assembly elections, for all new enrollees registering on the Norfolk Island electoral roll on or after a commencement date to be determined before the end of 1991.

### Administrative Appeals

A considerable amount of evidence has been received by the Committee as to the adequacy of appeal mechanisms currently available to Norfolk Islanders seeking reviews of administrative decisions. Norfolk Island residents have access to Commonwealth administrative review processes in respect of decisions made under Commonwealth laws:

Decisions under an Ordinance of a Territory or an instrument made under such an Ordinance are subject to the Administrative Decisions (Judicial Review) Act 1977. (Although it is unclear whether the Act applies to decisions by executive members of the Legislative Assembly, or in fact decisions of the Commonwealth Minister, taken on the Island).

The Freedom of Information Act 1982 provides access to most documents in the possession of Departments or authorities established under Commonwealth enactments. (The Legislative Assembly of Norfolk Island is not a prescribed authority under the Act).

The Ombudsman Act 1976 empowers the Commonwealth Ombudsman to investigate complaints relating to administrative actions by Departments or prescribed authorities - with the exception of action taken by Ministers, judges etc and action relating to Public Service employment or statutory appointments. (Actions taken under the Norfolk Island Act 1979 or a Norfolk Island enactment are not covered).

Residents of Norfolk Island and others affected by decisions or actions taken under Norfolk Island laws have some avenues of appeal, for example, to the Minister for the Arts, Sport, the Environment, Tourism and Territories (Immigration Act 1980) or the Court of Petty Sessions (Land Subdivision Ordinance). The Administrative Appeals Tribunal does not have jurisdiction to review administrative decisions under the laws of Norfolk Island. Recourse to Commonwealth administrative law is not generally available in respect of decisions taken under Norfolk Island legislation. The most common form of review available under Island law is by recourse to the

Supreme Court or the Court of Petty Sessions, but only in respect of a narrow range of specific laws.

### Emerging Conclusions

The initiative of the Norfolk Island Government in addressing this important issue by the proposed development of an independent Administrative Review Tribunal is to be commended. Details of the scheme under discussion are contained in a further supplementary submission of the Norfolk Island Government in October 1990.

Although the proposed Administrative Review Tribunal would seem to overcome inadequacies in the current arrangements, it is necessary to ensure that the residents of Norfolk Island have increased access to review processes as a matter of priority.

Possible Action - Extend the operation of the Administrative Appeals Tribunal, Ombudsman Act and the Freedom of Information Act to an appropriate range of decisions, but only as an interim measure, pending the development by the Norfolk Island Government of an independent Administrative Review Tribunal.

### Immigration

The Committee has received trenchant criticisms on the operation of the Norfolk Island Immigration Act, particularly in so far as it may affect the ability of a Norfolk Island resident to dispose of real estate in the Territory. Much of the criticism appears to relate to the objectivity of the decision making process and delays in the appeal process. It is expected that the interim measures proposed as well as the ultimate establishment of an independent Administrative Review Tribunal will allay such concerns. The Compensating Departure Scheme, introduced in April 1990, is also designed to overcome problems of disposition of property. The scheme is aimed at 'preventing the phenomenon of residents who wish to move away, being "locked in" by reason of inability to dispose of their property'. The scheme follows a recommendation by the Legislative Assembly's Select Committee on Population (1987) and several years of negotiation with Federal authorities. Since its introduction, the scheme has been used by 4 outgoing families (10 outgoing individuals).

### Industrial Relations

The Committee received evidence from a number of concerned people at the lack of appropriate industrial relations legislation which provided for minimum wages, anti-discrimination measures, sickness benefits and workers' compensation. There is evidence to suggest that a degree of exploitation of the workforce, particularly the itinerant workforce, has been occurring and that the workforce has been unable and unwilling to jeopardise their employment or immigration status by forming an

association which can negotiate with employers for better conditions and wages. It is to be noted that the itinerant workforce, recruited from mainland Australia and New Zealand to fill temporary vacancies on the Island, constitutes almost half of the total workforce on Norfolk Island. It is unacceptable that Australian citizens recruited in this way should be denied the level of protection under the law which is available to the Norfolk Island permanent residents.

Public Sector employees, the only sector of the Norfolk Island workforce covered by industrial relations and workers' compensation legislation, have also expressed concerns relevant to their working conditions. In December 1984 the Norfolk Island Public Service Association complained to the International Labour Organisation (ILO) that declarations had not been lodged with respect to a number (7) of Conventions and that the Convention relating to the Forty Hour Week was not being complied with, despite having been declared applicable to Norfolk Island. The previous inadequacies of Norfolk Island industrial relations legislation are of concern, not only for the consequences to the workforce but also because international standards are not being met. Australia's obligations under Article 35 of the the International Labour Organisation (ILO) Constitution in respect of non-metropolitan territories is currently being reviewed by the Department of Industrial Relations in the light of issues raised during this inquiry. Australia, as a Member State, is obliged to make declarations for each territory in relation to the 46 ILO Conventions which they have ratified. Although some declarations have been made with respect to Norfolk Island, there remain a number of ratified Conventions in respect of which declarations are outstanding.

The Norfolk Island Employment Act 1988 is expected to enable compliance with Conventions relating to equal remuneration and minimum wage fixing. Compliance with Convention 47, Forty Hour Week, is also expected to be ensured by Regulation under the Employment Act 1988.

### Emerging Conclusion

The efforts being made by the Norfolk Island Government in the development of this long overdue legislation are acknowledged. It is to be noted that it covers many of the issues raised during the course of the Committee's inquiry - minimum terms and conditions of employment, including a minimum wage; an enforcement machinery for employment agreements providing for more than the minimum standards; occupational health and safety; and workers' compensation. The impact of the Employment Act 1988, due to be brought into force at the end of 1990, will be viewed with interest.

Possible Action - the Commonwealth continue to work closely with the Norfolk Island Legislative Assembly to ensure that all the industrial relations legislation of Norfolk Island be developed to the point where Australia's obligations under International Labour Organisation Conventions are met.

## Cost Recovery on Commonwealth Government Expenditure

During the course of the inquiry (DASETT) provided the Committee, in consultation with other Departments, details of expenditure incurred in relation to Norfolk Island, and of the costs recovered. The raw figures provided to the Committee indicate that in 1988/89 estimated total Commonwealth expenditure was \$4,893,973 and the total of costs recovered was \$121,270. The Norfolk Island Government believes the net cost to the Commonwealth of providing services and benefits to the Norfolk Island community is only about \$1.3 million. They favour a reduction in the level of services and expenditure by the Commonwealth, a view not shared by all residents of the Island. In her submission, Ms Merval Hoare questions which Commonwealth services and expenditure the Island could do without: 'Certainly not the airport and mercy flights, the Administrator and Administrator's office, a communication channel between the island and Canberra, the Australian National Parks and Wildlife Service, which conserve our environmental assets, or the many Australian age pensions, veterans pensions and superannuation payments received by residents. The withdrawal of any one of these would seriously affect the economy'. Another resident expressed his concern that if Commonwealth funding for the historical restoration project ceased, he and nine other colleagues would be out of work and would probably have to leave the Island.

### Emerging Conclusion

The benefits which Australia and Australians enjoy from Norfolk Island are noted. The Commonwealth should not reduce the level of services or expenditure to the Island. Rather the Commonwealth should adhere to its undertaking to ensure that Norfolk Islanders receive equivalent benefits, rights and protection under the law as other citizens of the Commonwealth of Australia. This can be achieved by continuing with the current level of funding. In principle, this approach should aim at an increased cost recovery approach.

Possible Action - The Commonwealth adopt, in principle, an increasing cost recovery approach.

Concerns have been expressed by some residents about the ways in which the Norfolk Island Government is raising revenue on the Island. The existence of the Public Works levy has been criticised and fears have been expressed about the sale of income earning resources. The Committee has now been advised that the Public Works levy was abolished on 1 July 1990 and that the Norfolk Island Government has established a Revenue Review Working Group to review and report on the appropriateness of existing revenue-raising measures, examine alternative options and recommend changes to revenue-raising in the Territory. The Working Group, established in August 1990, is due to report to the Government before the end of 1990.



## Consumer Protection

There is no specific legislation covering consumer protection matters, and only very limited legislation dealing with control of public nuisance issues, in force in Norfolk Island. There are laws with consumer protection potential in force which for practical purposes are difficult to administer. For example, the Trade Marks Act 1955, which extends to Norfolk Island, is not being enforced because the Customs Act 1901, which empowers the Controller-General of Customs to seize goods, does not extend to the Territory. Regulations have been made to overcome this difficulty. Under Schedule 2 of the Norfolk Island Act 1979, the Norfolk Island Legislative Assembly has the power to legislate in a number of areas including:

- . the prevention and suppression of nuisances;
- . garbage and trade waste;
- . domestic animals (including birds);
- . foodstuffs and beverages (including alcoholic liquor)

which could serve the purposes of consumer protection and control of public nuisance.

In developing the Norfolk Island Environment Bill 1988, also due to come into effect by the end of 1990, a number of these legislative deficiencies will be remedied. The Committee also received considerable evidence outlining dissatisfaction with the lack of a retail price index (which seems to have been in abeyance since June 1988) and other 'shoddy' trading and merchant practices.

## Emerging Conclusion

The extension of Commonwealth Trade Practices legislation to the Territory is not suggested, although this option is currently being considered by DASETT. Rather it is a matter for the Norfolk Island Government to address as a matter of priority. The proposal by the Norfolk Island Government to enact legislation dealing with 'misleading and deceptive conduct' before the end of 1991 is welcomed.

## Healthcare

Since the Committee's initial visit to Norfolk Island the Norfolk Island Government has implemented the Norfolk Island Healthcare Scheme. The Healthcare Scheme responds in part to the fact that Medicare, since 1 July 1989, is no longer available to residents of Norfolk Island.

*The evidence of the Norfolk Island Government that discussions relating to Medicare cover for Norfolk Island residents broke down because the Department of Finance could not provide a costing for such cover was noted as a concern. The removal of Medicare has been viewed with alarm by some residents and confusion exists as to whether tourists are covered by Medicare. The Norfolk Island Government Medical Officer, Dr Martin Panter, told the Committee: 'We certainly advise all tourists who come to the island to take out private medical insurance when they come'.*

## Emerging Conclusion

Although some concerns exist over the current method of referrals to mainland specialists and hospitals, the scheme is still in its infancy and is therefore difficult to assess. Dr Panter believes the scheme to be 'very sound' and 'working well' and reminds the community that they can 'continue to have a say as to how they believe the scheme should be implemented and operated'. As the scheme is only in its infancy, it would be useful for the scheme to be evaluated by the Commonwealth in a year or two to ensure the adequacy of healthcare provisions on Norfolk Island.

## Social Security

Since 1979, the provision of social services has been the responsibility of the Norfolk Island Government. The Norfolk Island Social Services Act 1980, which operates in place of the Commonwealth Social Security Act provides pension entitlements as of right to eligible aged, invalid and widowed residents or to residents who have the care, custody and control of orphaned or handicapped children. The rate of benefit currently paid amounts to about 80% of equivalent Commonwealth benefits.

The intention of the Norfolk Island Government to review the present legislation governing child welfare and mentally ill persons is to be commended as these were some of the matters of concern which were drawn to the Committee's attention.

The existence of unemployment on the Island has also been drawn to the Committee's attention, with some residents expressing a desire for appropriate legislation in this area. In their submission of March 1989, the Norfolk Island Government briefly indicated that unemployment benefits are available under a special benefits category of the Social Services Act 1980 but gave no details as to what constituted the 'special benefits category'. It is to be noted that Norfolk Islanders who are unable to find work on the Island have the option of returning to the mainland where opportunities for employment are significantly increased. The need for unemployment benefits on Norfolk Island is therefore minimal, although the Commonwealth bears the cost if such people are unable to find work on the mainland.

## Emerging Conclusion

It is accepted that the level of social services provided to the residents of Norfolk Island is generally adequate. However, in the interests of ensuring equity for all residents of the Island the Commonwealth should continue to monitor the situation.

Possible Action - The Department of Social Security should establish a formal review mechanism to monitor the adequacy of social security provisions on Norfolk Island.

## Income Tax

In the Discussion Paper circulated prior to the Committee's second visit to the Island considerable attention was given to the question of income tax, in particular whether Commonwealth rates of income tax should be levied, coupled with Commonwealth Social Security legislation. The Committee has heard evidence reflecting a range of views - from those who support the proposal to those who are opposed to it.

## Emerging Conclusion

So long as an adequate level of social services is provided by the Norfolk Island Government, which has the capacity to raise revenue to fund its own community services, and that minimum standards are met, the application of Commonwealth income tax should not apply. The Norfolk Island Government is acting with goodwill in safeguarding the interests of Norfolk Island residents in terms of revenue raising and the provision of social services. However, it is necessary to ensure that adequate benefits and services are provided to the people of Norfolk Island.

**Possible Action:** The Commonwealth Grants Commission undertake a review of the living standards, social security provisions and economic base of Norfolk Island.

## Additional Issues

Additional issues have also been raised, either by residents, the Norfolk Island Government, and others interested in the legal regime of the Territory. These issues include:

- . the adequacy of criminal and other laws especially those relating to bankruptcy and compulsory third party insurance;
- . environment protection, including registration of land titles;
- . policing; and
- . education.

*These matters are for the Norfolk Island Legislative Assembly alone to consider, provided that the Commonwealth can be satisfied that Norfolk Island citizens are not being deprived of the same benefits, rights and protection under the law as other Australian citizens.*

## Emerging Conclusions

The Norfolk Island Government is already taking steps to address these issues and is doing so in an appropriate manner. However, access to secondary and tertiary education is not satisfactory particularly for families with low incomes, and it is suggested that the Commonwealth Minister for Employment, Education and Training examine ways to assist in the provision of proper access to educational

opportunities for this group when studying in Australia.

Reform of the criminal laws now in force in the Territory is already under way and the Assembly has indicated its awareness of the need for both bankruptcy legislation and compulsory third party motor vehicle insurance. The provision of compulsory third party insurance would seem to be a matter requiring the urgent attention of the Legislative Assembly. The recently introduced Environment Act may well allay fears about the perceived lack of environmental protection and reduce unsound practices in the registration of land titles.

The intent of the Assembly to repeal and replace existing police and education ordinances is to be noted. The Commonwealth should monitor developments in these areas.

### Summary

Norfolk Island has a complex constitutional history and legislative framework. Despite this, subject to the refinement of the identification of laws referred to earlier, the laws of the Territory have been identified and are, in general, applicable to the circumstances of the Territory and are administered. Laws in force in Norfolk Island are made to suit both local circumstances and, since partial self-government in 1979, the expressed desire of the local residents.

Whilst the citizens of Norfolk Island enjoy similar benefits, rights and protection under the the law as other citizens of the Commonwealth of Australia, there are areas in which improvement could be achieved. The maintenance of close links between the Commonwealth and the Territory of Norfolk Island continues to be both inevitable and desirable.

## APPENDIX E

- (i) Submission from the Hon. David Buffett, MLA, President, Norfolk Island Legislative Assembly, Norfolk Island
- (ii) Submission from Ms Alice Buffett, MLA, Member, Norfolk Island Legislative Assembly, Norfolk Island

### Background Note - Appendix E

As noted in paragraphs 7.8.2 to 7.8.4 of the Report, consultations were held with Norfolk Island residents in October 1990 in relation to a Discussion Paper entitled 'Certain Options for the Reform of the Legal Regime of Norfolk Island'. The Discussion Paper is included at Appendix D.

The Committee, at that time, gave an undertaking to the President of the Norfolk Island Legislative Assembly to provide a further opportunity for consultations.

These further consultations, as noted in paragraph 7.8.5 of the Report, occurred in February 1991 when the Committee forwarded, for comment, a document entitled 'Territory of Norfolk Island Working Paper/Emerging Conclusions'. This document is also included at Appendix D of the Report.

The responses received from Norfolk Island legislators, as listed above, constitute this Appendix.



OLD VICTORY BUILDINGS  
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Mr Duncan Kerr MP  
Chairman  
Legal Regimes Inquiry  
House of Representatives  
Standing Committee on Legal  
and Constitutional Affairs  
Parliament House  
CANBERRA .. ACT .. 2600

19<sup>th</sup> February 1991

Dear Mr Kerr,

I refer to the Acting Secretary's letter to me of 13 February 1991, delivered to me on 14 February, in which comments were invited on a Sub-committee working paper which includes emerging conclusions in respect of Norfolk Island.

Although the Norfolk Island Government and Legislative Assembly appreciate the opportunity to comment on the working paper, we consider that 3 working days is an inadequate period to be allowed for comments to be provided, given the importance to Norfolk Island of the issues raised in the working paper.

Nevertheless, the Government and Assembly have prepared the attached Response to the working paper.

We strenuously recommend that the comments in the Response be fully considered by the Sub-committee, and that those comments be reflected in the Inquiry's Report.

Yours sincerely,

D.E. Buffett  
PRESIDENT

## RESPONSE

of the

Norfolk Island Government and Legislative Assembly

to the

"Working Paper/Emerging Conclusions"

of the

Legal Regimes Inquiry

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This Response conveys the views of all members of the Norfolk Island Government, and 8 out of 9 members of the Norfolk Island Legislative Assembly, on the paper prepared by the Legal Regimes Inquiry Sub-committee of the House of Representatives Standing Committee on Legal and Constitutional Affairs, and entitled "Working Paper/Emerging Conclusions".

2. The Government and Assembly here express their concern at the short period allowed for comment on the Working Paper. The Paper was delivered to the President of the Assembly on 14 February 1991, and the deadline given for comment was 19 February 1991. Thus, 3 full working days were available for a response to be prepared. This is inadequate. The issues raised in the Working Paper are of the most far-reaching significance to the Island. We request that our comments on this point be referred to in the Inquiry's Report, and that our similar comments in the Government's Further Supplementary Submission, about inadequate time for consideration of the Inquiry's Options Paper (paras 10-14 of that Submission), also be referred to in the Inquiry's Report.

### The effect of the Referendum of 13 February 1991

3. The representations and submissions made to the Sub-committee in 1989 and 1990 have reflected the considered views of two Norfolk Island Governments and successive Legislative Assemblies.

4. On 13 February 1991 a Referendum of the electors of Norfolk Island took place, to ascertain the opinion of the electors on the following question -

"With respect to matters discussed by the Legal Regimes Inquiry, including the question of Federal representation, should the constitutional position of Norfolk Island be changed?"

5. The Referendum was held under the provisions of the Referendum Ordinance 1964. Normal electoral machinery was employed. Voting was compulsory.

6. The result was that 91.1% of registered electors voted. Of the electors voting, 82.3% voted "NO"; 16.9% voted "YES"; 0.8% of votes were informal. Of the formal votes cast, 10.6% were cast by electors temporarily off the Island or otherwise unable to go to the polls. This level of absentee voting (which requires special effort by the elector) is considered to be an indication of the seriousness with which electors regarded this Referendum: in the previous election, only 7% of all votes were cast by absentee ballot.

7. Awareness of the agenda of the Legal Regimes Inquiry is high in Norfolk Island. The level of debate in the community about the Inquiry has been informed. The formal, and informal, material presented in the lead-up to the Referendum squarely raised the following specific matters, among others -

- \* "Stopping Norfolk residents from voting or standing for the Assembly unless they are Australian citizens or take out Australian citizenship".
- \* "Putting Norfolk Island into a federal electorate in Australia".
- \* Income taxation and social security.

8. The unequivocal result of the Referendum is that -

- \* The community does not want voting rights, or the ability to stand for the Assembly, restricted to Australian citizens.
- \* The community does not want federal representation.
- \* The community does not want federal income taxation or social security.

9. It should be made quite clear that, in the eyes of the Assembly and of the community, these are "constitutional" issues. They are issues which relate to the degree of self-government and self-determination available to the community, and to the Government's and Assembly's powers. It is no answer to the Referendum result to suggest that the issues referred to above are



not constitutional in nature, and that the "constitutional" issues are limited to the Norfolk Island Act.

10. Similarly, the notion that the Island is significantly divided on these issues has now been exploded.

11. There are passages in the Working Paper (as there have been in previous Reports and Inquiries) suggesting that there is significant community division on such issues. For example -

\* "The differing views were each expressed firmly by their various advocates" (page 8)

\* "The Committee received evidence which indicated that the people of Norfolk Island had mixed views on this issue [ie Federal representation]" (page 9).

12. Comments such as these imply, though they do not state, that community views are, in the Sub-committee's judgment, fairly evenly balanced.

13. The Report should make it clear that views consistent with those advanced by the Government are held by the overwhelming majority, and that opposing views are very much in the minority.

14. An overwhelming majority of Norfolk Island electors have now formally expressed their view that they do not wish Norfolk Island's constitutional position to be changed in ways discussed by the Inquiry. Our obligation is to use our utmost abilities to ensure that this expression of views is honoured and abided by. We will do so.

#### Commonwealth Parliamentary Representation

15. We can be quite brief on this issue. Parliamentary representation is, as has now been demonstrated, "an anathema" to the overwhelming majority of the community. The Government and Assembly reject the suggested "optional enrolment" compromise. Federal representation is rejected because the island is not, in any meaningful way, integrated into the Australian political system. We, and the majority of the community, do not wish it to be. At issue is the Island's political and juridical autonomy. We cannot accept any compromise on that issue.

16. The right to vote is a vital human right. In the Working Paper's words, it is an "absolute right". However, it is an absolute right only within one's own political unit and political culture. To extend the right to those resident in other political units or cultures is a way of declaring, by fiat, the extent of the host unit. A preliminary right is the right to determine to which

political unit one belongs. The people of the several Australian colonies exercised that right in the Federation constitutional referenda. The people of Norfolk Island did not. Any proposal to declare, by Commonwealth mechanisms and through Commonwealth politicians, the extent of the metropolitan political unit, should be preceded by a referendum of the people of the Island. Such a referendum has been held. It has specifically rejected Federal representation. The people of the Island have an absolute right to have that view honoured.

Citizenship - rights to vote, and  
stand for election

17. As the Working Paper observes, "few societies permit those who are not citizens the right to vote". The cynical may see this approach as an exercise in chauvinism. We prefer to see it as expressing the principle that the right to vote should be preceded by a demonstrable commitment to the polity in which one votes. In the Norfolk Island context, the nearest equivalent to citizenship is "Resident" status under the Immigration Act 1980.

18. The reasoning employed by the Working Paper leads to the conclusion that voting rights should be restricted to Residents (in the Immigration Act sense). Should a change be contemplated, we are therefore of the view that that should be the change. See paras 62-63 of the Further Supplementary Submission (FSS).

19. However, we do not resile from our position, expressed in paras 56-61 of the FSS, that neither Australian Citizenship nor Residency should be required for electoral eligibility, for the reasons there stated. In brief, these were -

- (1) Such a proposal would be discriminatory.
- (2) It may effectively disenfranchise a considerable part of the population.
- (3) It is illogical.
- (4) It has not presented any practical problems.

See further, pages 21-22 of the FSS.

20. There is therefore no need to deal with Minister Simmons' suggestion (echoed by the Sub-committee) as to phasing-in the changes by not making them a requirement for existing enrollees. Such a suggestion in any event appears to be contrary to the principle expressed in the Working Paper.

### Income Tax

21. The "possible action" note on this topic proposes that the Commonwealth Grants Commission undertake a review of the living standards, social security provisions and economic base of Norfolk Island.

22. The Government and Assembly consider that this would be unnecessary, undesirable and a diversion of scarce Island resources.

23. The proposal echoes the 1978 Federal Government announcement on the Island's future, which promised an economic feasibility study of the Island. The promise was broken. Since then, successive Assemblies have taken steps to procure detailed reports and White Papers on complex issues (such as accident compensation, healthcare, employment standards and other issues). We believe that our resources are better devoted to these tasks than to responding to the reviews of others. The present Inquiry has diverted resources which would otherwise have been available to progress issues dealt with in the Working Paper.

### Other issues

24. A range of other review mechanisms are proposed - for example, review by the Commonwealth of the Healthcare system (page 16), and "formal" review by the Department of Social Security of the adequacy of social security arrangements. We consider that reviews of this character might have been timely in years gone by, but are no longer so. With respect to Healthcare, we have no desire to be reviewed by a polity which made the Healthcare system necessary in the first place, and contributed nothing material to its local development as a replacement for Medicare. With respect to social security, this is now a matter within the executive authority of the Norfolk Island Government, and Commonwealth review is no longer appropriate.

25. Administrative appeals. As previously demonstrated (FSS, paras 34-41), the present recourse is not "in respect of a narrow range of specific laws". A more accurate statement would be that recourse exists in respect of a wide range of specific laws. And more specific appeal jurisdictions have been added even since the Inquiry's last visit in October 1990. The Government remains committed to the establishment, as a matter of high priority, of an Administrative Review Tribunal. The option of extending Federal legislation as an interim measure is misconceived. The administrative work necessary to enable that to happen would be greater than that involved in progressing the ART proposal.

26. Cost recovery on Commonwealth Government expenditure. The "raw figures" alluded to in the Working Paper should not be

included in the Inquiry's Report. It has been amply demonstrated that those figures are misleading. As to "Commonwealth services and expenditure the Island could [not] do without", the Inquiry will note that the Airport will be taken over by the Government as from 1 March 1991. The Commonwealth will not thereafter contribute to its upkeep or operating costs. In addition, there seems to be an inconsistency in proposing, as does the Working Paper, that the current level of Commonwealth funding be continued, but with an "increasing cost-recovery approach". The Government has said that it accepts the (staged) reduction of the level of services and expenditure provided by the Commonwealth. This is already happening - examples are Medicare and the Airport. Continuing with present levels of expenditure, but increasing the cost-recovery element, provides the Island with the requirement to pay for, but usually not the ability to control, the programmes concerned. This is undesirable. The same economic result can be achieved by reducing the level of outlays, with compensating local outlays which are subject to local political oversight and responsibility.

27. Errors. There are a number of errors in the Working Paper, as follows - (1) Court of Petty Sessions - it is incorrect to state that the jurisdiction of the Court may be exercised "by any three Magistrates other than the Chief Magistrate"; (2) Court of Petty Sessions, criminal jurisdiction - incompletely stated. The most important CPS criminal jurisdiction is not referred to; (3) assent to laws - "the Administrator ... must act in accordance with the advice, if any, of the Assembly's Executive Council". This is incorrect, and conflates the section 7 mechanism and the section 21 mechanism; (4) "The Administrator is responsible to the Commonwealth Minister ...". The Administrator is an independent statutory officer, appointed by the Governor-General in Council. The Administrator acts in accordance with the advice of the Executive Council on some matters, and in accordance with the instructions of the Federal Minister on other matters. The Administrator is in no sense "responsible to" the Federal Minister, any more than he or she is "responsible to" the Executive Council; (5) the error about the Trade Marks Act (page 15 of Working Paper) is repeated - this was dealt with in para 103 of the FSS.

### Conclusion

28. The Working Paper states that the Commonwealth retains "an overriding responsibility and duty in ensuring that the residents of Norfolk Island enjoy the same basic benefits, rights and protection under the law as other Australians" (emphasis added).

29. The Assembly and Government accept that the Island's basic benefits, rights and protections should be comparable to Australian practice. The initial submission to the Inquiry, and subsequent submissions, have accepted that position as a starting point. In our eyes, however, "same" is a word which connotes a position

inconsistent with self-government. The Island was granted self-government, and it has proceeded with goodwill to reach local solutions to local problems. "Same" is a concept antithetical to local solutions to local problems. Not only is the concept inconsistent with self-government, but it is also inconsistent with past and current Commonwealth practice, as in the areas of applicable legislation or on topics such as Medicare.

30. The Assembly and Government conclude that, consistently with the expressed desires of the overwhelming majority of the population, the present system, and degree, of self-government should be enhanced, and not impaired.

February 1991

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Submission from  
Ms A Buffett,  
Member, Norfolk Island Legislative Assembly

19/2/91

Alice Buffett, as a Member of the Norfolk Island Legislative Assembly supports the Committee's Working Paper/Emerging Conclusions and thanks the Committee for the opportunity to comment.

The comments supplied to you from the Legislative Assembly here represents the majority view of the Assembly because I do not agree with them or many of their comments.

Where they have updated information which had not appeared in your paper, I accept those technical updates.

My detailed comments are as follows:-

- pp. 8-9:     Adequacy of Current Regime  
I support "Emerging Conclusions".
- pp. 9-10:    Commonwealth Parliamentary Representation  
I support "Possible Action" of optional voting.
- p. 10:        NI Legislation: Support Possible Action.
- pp. 10-11:   Citizenship:        Support "Emerging Conclusions" and Possible requirements.
- pp. 11-12:   Administrative Appeals: Support Possible Action but think that resource implications too much for us.
- p. 12:        Immigration: Noted.
- pp. 12-13:   Industrial Relations: Support "Emerging Conclusions" and "Possible Action".
- pp. 13-14:   "Cost Recovery on Cwlth Gov Expenditure":  
Support "Emerging Conclusions" and "Possible Action" and draw your attention to NI "Draft Revenue Raising Report" tabled by Neville Christian.
- pp. 14-15:   Consumer Protection: Support "Emerging Conclusions".
- pp. 15-16:   Healthcare: Support "Emerging Conclusion" especially future evaluation by Cwlth to ensure adequacy of Healthcare on Norfolk Island.
- p. 16:        Social Security:    Support "Emerging Conclusion" and "Possible Action".

p. 17: Income Tax: Support "Emerging Conclusion" and "Possible Action".

p. 17: Additional Issues: Support "Emerging Conclusion".

p. 18: Summary: I agree and sincerely appreciate the Committee's concern for the welfare of Norfolk Island Residents and welcome the statement that "The maintenance of close links between the Commonwealth and the Territory of Norfolk Island continues to be both inevitable and desirable".

This statement will relieve anxiety among those Norfolk residents who do not favour independence and wish to receive the same benefits, rights and protection as other Australian citizens and have the opportunity of contributing towards such.

Thank you.

Yours faithfully  
Alice Buffett

(Typed version of handwritten submission)

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for consistent and reliable data collection processes to support informed decision-making.

3. The third part of the document focuses on the role of technology in modern data management. It discusses how advanced software solutions can streamline data collection, storage, and analysis, leading to more efficient and accurate results.

4. The fourth part of the document addresses the challenges associated with data management, such as data quality, security, and privacy. It provides strategies to mitigate these risks and ensure that data is used responsibly and ethically.

5. The fifth part of the document concludes by summarizing the key findings and recommendations. It stresses the importance of ongoing monitoring and evaluation to ensure that data management practices remain effective and up-to-date.

### Conclusion