

REPORT OF THE  
ROYAL COMMISSION  
INTO MATTERS RELATING TO  
NORFOLK ISLAND

October 1976

Australian Government Publishing Service

Canberra 1976

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ISBN 0 642 02234 8

Printed by F.D Atkinson. Government Printer of Australia

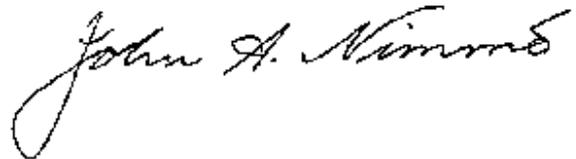
P.O. Box 965  
CIVIC SQUARE, A.C.T. 2608  
15 October 1976

Your Excellency,

In accordance with Letters Patent dated 15 May 1975, I have the honour to present to you the Report of the Royal Commission into matters relating to the future of Norfolk Island.

The Letters Patent issued to your Commissioner are returned herewith.

Yours sincerely,

A handwritten signature in black ink, reading "John A. Nimmoo". The signature is written in a cursive style with a large, looping initial 'J'.

John A. Nimmoo

His Excellency the Honourable Sir John Kerr  
A.K., G.C.M.G., K.St.J., Q.C.  
Government House  
Yarralumla  
Australian Capital Territory

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Chapter 1  
LETTERS PATENT APPOINTING ROYAL COMMISSIONER AND  
SETTING OUT THE TERMS OF REFERENCE

AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO -

The Honourable Sir John Angus Nimmo, C.B.E., O.St.J.

GREETING:

WE DO BY these Our Letters Patent issued in Our name by Our Administrator on the advice of the Executive Council and pursuant to the Constitution of Australia, the Royal Commissions Act 1902—1973, the Royal Commissions Ordinance 19281964 in force under section 15 of the Norfolk Island Act 1957—1973 and other enabling powers appoint you to be a Commissioner to make inquiry into and to report and make recommendations on:

(1) The future status of Norfolk Island and its constitutional relationship to Australia;

and

(2) The most appropriate form of administration for Norfolk Island if its constitutional position were changed.

The inquiry and recommendations are to extend to and take into account;

- (a) The interests of Norfolk Island residents;
- (b) The historical rights of the descendants of the Pitcairn settlers, arising from their settlement in 1856;
- (c) Norfolk Island's legal position as a Territory of Australia;
- (d) The present and probable development of the economy of Norfolk Island;
- (e) Whether social security, health, educational, compensation and other benefits should be provided at levels similar to those which other Australian citizens enjoy;
- (f) The capacity and willingness of the Island to pay through taxation or other imposts for the provision of those benefits;
- (g) The extent to which Norfolk Island has been and is now being used to provide a base for activities (e.g. income tax, gift duty and death duty avoidance or evasion) which are harmful to the interests of Australia or of other countries;

- (h) Conditions for permanent entry into the Island community;
- (i) The need for adequate communications between the Island and Australia, and the rest of the world; and
- (j) The need for adequate law enforcement and judicial machinery.

AND WE require you as expeditiously as possible to make your inquiries and to report the results of your inquiries and your recommendations to our Governor-General of Australia.

WITNESS His Excellency Sir Arthur Roden Cutler, upon whom has been conferred the decoration of the Victoria Cross, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Royal Victorian Order, Commander of the Most Excellent Order of the British Empire, Knight of the Most venerable Order of the Hospital of Saint John of Jerusalem, Administrator of the Government of Australia, this fifteenth day of May 1975.

A.R. CUTLER

Administrator

By His Excellency's Command,

LIONEL BOWEN

Special Minister of State

GORDON M. BRYANT

Minister for the Capital Territory

ENTERED ON RECORD by me, in the Register of Patents No. 10, Page 27, this sixteenth day of May one thousand nine hundred and seventy-five.

N.F. WICKS  
Secretary to the Executive Council

Chapter 2  
RECOMMENDATIONS OF THE COMMISSION IN SUMMARY FORM

1. In relation to the first principal matter (Chapter 17)

‘The future status of Norfolk Island and its constitutional relationship to Australia’

1. That the Commonwealth Government decide as soon as practicable and announce its decision on whether it proposes to abandon Norfolk Island completely or to continue to accept responsibility for maintaining it as a viable community.
2. That if the Commonwealth Government decides not to abandon Norfolk Island completely then for at least five years the status of the Island and its constitutional relationship to Australia remain that of a Territory of the Commonwealth of Australia.

2. In relation to the second principal matter (Chapter 17)

‘The most appropriate form of administration for Norfolk Island if its constitutional position were changed’

3. That residents of Norfolk Island be included in the electorate of Canberra in the Australian Capital Territory for the purpose of giving them representation in the Commonwealth Parliament.
4. That the present Norfolk Island Council be abolished and replaced by an incorporated body to be known as the Norfolk Island Territory Assembly.
  - (a) That the Assembly consist of nine elected members holding office for three years.
  - (b) That a President and Deputy President be elected by the Assembly from among its members.
  - (c) That each Assembly member exercise a deliberative vote and that the President or Deputy President exercise a casting vote when necessary.
  - (d) That a quorum for a meeting of the Assembly be five members.
  - (e) That the Assembly’s Chief Executive Officer be its Secretary and head of the Assembly’s staff and be appointed by the Assembly from outside its members.
  - (f) That members of the Assembly be paid such remuneration for their services as the Assembly determines.
5. That there be no wards for electoral purposes in the Island and that no seats be reserved on the Assembly for any particular group of the Island residents based on blood ties or country of origin or otherwise.

6. That voting be compulsory and by secret ballot.
7. That legislative and executive powers be granted to the Assembly in respect of the following matters:

roads, footpaths and bridges;  
drainage;  
sewerage and sanitation;  
disposal of garbage and trade waste;  
recreation areas;  
pasturage on commons;  
livestock;  
pounds;  
pests and noxious weeds;  
cemeteries;  
guesthouses;  
electricity supply;  
water supply;  
lighterage;  
places of public entertainment;  
promotion of tourism;  
omnibuses and taxis;  
sale and distribution of foodstuffs and beverages;  
repair or demolition of dangerous buildings;  
new buildings and the alteration of buildings;  
advertising hoardings;  
fires and the prevention of fires;  
road traffic;  
street lighting;  
prevention and suppression of nuisances;  
trading hours;  
street stalls;  
raising revenue for the assembly's budget;  
coastlines, foreshores, wharves and jetties;  
fishing;  
slaughtering of stock;  
domestic animals and birds;  
storage of petroleum products;  
firearms;  
museums, memorials and libraries;  
motor vehicles and road traffic;  
forestry and related activities;  
radio and television;  
noxious trades;  
markets and weighbridges;  
carters and hawkers  
quarrying  
maintenance of rolls;

telephone services;  
postal services;  
customs services;  
philatelic activities;  
immigration, with a right of appeal to the minister by any person  
aggrieved;  
registrations (births, deaths, marriages, companies, motor vehicles, dogs,  
etc.), which are at present handled by the administration;  
internal audit;  
the undertaking of business activities and contracts with respect to any of  
the matters specified above.

8. That for the Purpose of raising moneys for its budget the Assembly take over those operations at present yielding revenue to the Administration other than those relating to hospital and medical services.
9. That the Assembly not be given the power to borrow money but be given the right to apply to the Commonwealth Grants Commission for financial assistance.
10. That the Administrator possesses no power of veto over the Assembly's legislative and executive responsibilities nor hold any membership or office of the Assembly.
11. That the Commonwealth continue to exercise all governmental powers not shown above as being specifically conferred upon the Assembly and, in particular, retain all powers over all land in the Island.
12. That the exercise of the legislative and executive powers of the Assembly be allied with power in the Assembly to advise the Administrator on any matter relating to Norfolk Island over which the Commonwealth Government has power.
13. That at all times the Assembly and the Administration maintain close liaison and keep each other thoroughly informed of each other's work.
14. That the performance of the Assembly be reviewed by the Commonwealth after five years and consideration be then given to the question of increasing the powers of the Assembly.
15. That the Commonwealth Government in the light of this Report lay down a clear set of policies to be followed in the administration of Norfolk Island particularly in respect of the following:
  - (a) land development and ownership
  - (b) the airport
  - (c) taxation
  - (d) health services
  - (e) law
  - (f) social security
  - (g) education
  - (h) transport to and from the mainland
  - (i) government buildings and historical sites
  - (j) tourism generally

16. That the Commonwealth at its own expense provide and maintain an Administrator and his staff in the Island to represent the Government and conduct the business of the Commonwealth in the Island.
17. That the division of the present Administration's existing by the Secretary of the Department of Administrative Services in consultation with the Secretary of the Assembly.
18. That Commonwealth assets in the Island be divided as outlined in this Report.
19. That the Commonwealth consult the Assembly on all matters which hold particular relevance to Norfolk Island and where practicable give the Island opportunity of sending representatives to meetings of international bodies whose deliberations may specifically affect the Island.
20. That when the supply of legal draftsmen permits, a particular draftsman in the Legislative Drafting Division of the Attorney—General's Department be appointed and instructed to give priority to the drafting of ordinances relating to the Island.
21. That the Commonwealth sight the annual estimates of the Assembly and that external auditing of the Assembly's annual accounts be carried out by the Commonwealth Auditor—General who should deliver copies of his report to the Secretary of the Department of Administrative Services, the President of the Assembly and the Administrator.
22. That Australian manufactures destined for sale in Norfolk Island continue to be exempt from sales tax.

3. In relation to Guideline (b) (Chapter 9)

'The historical rights of descendants of the Pitcairn Settlers arising from their settlement in 1856'

23. That commons grazing be prohibited on steep slopes in Norfolk Island and that other commons grazing areas be fenced and grazed in rotation.
24. That the Commonwealth Government complete the reservation of a coastal strip (not less than 100 metres from the edge of any cliff or 150 metres from the high water mark of the shore, whichever is the greater) around the entire Island.
25. That some section within the Norfolk Island Public Service be made responsible for the preservation of the Islanders' traditional interests and culture.

4. In relation to Guideline (d) (Chapter 11)

'The present and probable development of the economy of Norfolk Island'

26. That the number of tourists visiting the Island should not exceed 20 000 in any one year.
27. That the plan for the restoration and maintenance of historic building sites be maintained.
28. That the practice of fouling the coastline by emptying untreated garbage into the sea be terminated and replaced by a proper garbage disposal system.

29. That cattle grazing in Government-owned pine-forested areas be prohibited and that such areas be reafforested.
30. That constant care be exercised in the setting of customs duties in the Island to ensure that low-duty shopping remains available.
31. That higher standards of town planning and building control be introduced and implemented.

5. In relation to Guidelines (e) and (f) (Chapter 12)

‘Whether social security, health, educational, compensation and other benefits should be provided at levels similar to those which other Australian citizens enjoy: and the capacity and willingness of the Island to pay through taxation or other imposts for the provision of those benefits’

32. That control of importation of therapeutic substances not meeting standards required in Australia be introduced to safeguard the public.
33. That all social security, all pension and all medical, hospital and other health benefits dispensed by the Commonwealth Government be extended to residents of Norfolk Island.
34. That the present Lunacy Ordinance 1932—1964 be amended to accord with current certification practices in the Australian Capital Territory, and that the Pharmacy Ordinance 1956—1964 be brought up to date.
35. That advantage be taken in the Island of the opportunity to receive Commonwealth assistance under the Aged Persons Homes Act 1954—1974 for the purpose of constructing a home for elderly citizens.
36. That with respect to education the onus be on the Commonwealth Government to ensure that the educational facilities available in Norfolk Island are of the same standard as those obtaining in mainland Territories, and that the present close and developed association with the New South Wales Department of Education be allowed to continue.
37. That Commonwealth legislation with regard to workers compensation be extended immediately to Norfolk Island.
38. That where failure to date by Australia to extend International Labour Organisation Conventions to Norfolk Island has resulted in disadvantaging workers in the Island, such Conventions be made applicable to Norfolk Island immediately.
39. That citizens in Norfolk Island be made liable to the same levels of taxation and other imposts as apply in the Australian Capital Territory.
40. That recommendations put forward by the Australian Department of Health and by the New South Wales Red Cross Blood Transfusion Service not already adopted be implemented as soon as possible.

6. In relation to Guideline (h) (Chapter 14)

‘Conditions for permanent entry into the Island community’

41. That the figures approved by the Council for the permanent population and tourist intake be adhered to with one proviso, viz, that the population limit of 2000 (set by the Council to be reached by 1980) be not regarded as a base upon which natural increases may be loaded, but as the absolute upper limit to be maintained unless clear evidence justifying a change is adduced; i.e. for population increases other than natural increases to be adjusted to maintain this upper limit of 2000.
42. That the principle of selectivity in immigration matters be retained.
43. That steps be taken immediately to expedite the making of the amendments to the Immigration Ordinance which were approved by the Norfolk Island Council and the Minister in 1974.
44. That, in connection with land sales to persons not resident in the Island:
  - (a) If it can be established that the intending purchaser is a bona fide prospective settler in the Island;
  - (b) If no person in the Island is ready willing and able to purchase the property at the sale price;
  - (c) If the intending vendor renounces his residency after the sale; and
  - (d) If the number of people entering the Island as a result of the sale will not exceed the number leaving; then such land sales should be permitted.
45. That the notion that formal priority should be granted to Pitcairn descendants and their spouses, when considering residency applications, be abandoned as being incompatible with the Racial Discrimination Act 1975,

7. In relation to Guideline (i) (Chapter 15)

‘The need for adequate communications between the Island and Australia, and the rest of the world’

46. That Qantas be relieved of responsibility for the Sydney— Norfolk Island route as soon as practicable.
47. That only one airline operator take over from Qantas; that operator to be in a position to ensure continuity of service by having available suitable numbers of aircraft and be able to integrate the Norfolk Island route with other routes so that tariffs can be kept to a minimum and high standards of service be maintained, without subsidisation by the Commonwealth Government.
48. That the airport be upgraded by Commonwealth Army and Air Force engineers to enable it to cater for both the immediate and foreseeable future demands, and to yield maximum flexibility in the use of both passenger and freight—carrying aircraft, i.e. to enable heavier jet aircraft to be employed if and when necessary.

49. That, if it is necessary to move buildings or residents as a result of upgrading the air service, those affected be compensated.
50. That all possible care be taken to safeguard the environment in executing airport improvements.
51. That the Commonwealth Government finance and control the Island airport and related activities.
52. That upgrading work on the airport be commenced as soon as practicable in view of the age and obsolescence of the DC4 aircraft.
53. That there remain scope for other relatively minor air services, which at present operate to and from the Island, to continue.
54. That the construction of a small boat harbour facility receive careful investigation.
55. That the Government arrange for one shipping line to be assured of the Sydney—Norfolk Island business subject to freight rates being carefully controlled.
56. That tariffs in respect of Overseas Telecommunications Commission (Australia) services bear a closer relationship to the costs involved and, if practicable, those tariffs be such as to defray those costs over a reasonable time.
57. That steps be taken to examine and if possible eliminate the present interference to radio reception in the Island
58. That the Assembly invite newsagents in the Island to enter into an arrangement which will ensure the regular supply of mainland papers to the public.
8. In relation to Guideline (j) Chapter 16)  
 ‘The need for adequate law enforcement and judicial machinery’
59. That non—law—enforcement activities of the Police Force be severed and handed over to Administration personnel.
60. That a permanent police station complex be constructed at Burnt Pine, and include the following:
  - two lock—up cells with toilet facilities;
  - office accommodation;
  - provision for reception and identification of offenders;
  - space for stores, exhibits, equipment (including breath-alyser testing equipment) and amenities for staff;

- sergeant's residence;
  - residence for lock-up keeper (i.e. one constable);
  - garage accommodation;
  - radio communication facilities.
61. That a course be established for training special constables and probation officers in the rudiments of their tasks.
  62. That in relation to punishment, and as an alternative to imprisonment, both the Supreme Court and the Court of Petty Sessions be empowered to impose a sentence on an offender whereby he may be obliged:
    - (a) To pay a fine;
    - (b) To compensate, to whatever extent and in whatever manner the Court sees fit, the victim or victims of his unlawful conduct;
    - (c) To suffer deprivation of liberty by performing community service when and as directed by a controlling body representative of the community.
  63. That legislation to enable parole to be granted in the Island be introduced immediately, along with power in the Courts to fix a non—parole period in respect of a sentence of imprisonment.
  64. That laws of the Island be updated and consolidated as soon as possible, and be reviewed as part of any review entrusted to the Law Reform Commission of the laws of all Australian Territories.
  65. That those recommendations of the Weir Report not covered by this Report be considered in conjunction with the recommendations contained in this Report.
  66. That Island magistrates, in addition to Supreme Court judges, be empowered to grant bail.
  67. That jurisdiction of Island magistrates in civil matters be enlarged to the same level as that exercised by magistrates of the Court of Petty Sessions of the Australian Capital Territory.
  68. That the law library in the Island be supplemented by the addition of more works of reference.
  69. That adequate Court staffing arrangements be provided.
  70. That the Removal of Prisoners (Territories) Act 1923—1973 be amended to allow the Minister for Administrative Services, instead of the 'Minister of State for External Territories', to advise the Governor-General on the removal of prisoners from Norfolk Island.
  71. That in order to give effect to the implications of the decision in the Berwick Case s.14 of the Norfolk Island Act 1957—1963 be amended to provide for all Commonwealth legislation, past or future, affecting Australia generally to be henceforth applicable to Norfolk Island unless the

contrary is expressly stated.

72. That the Commonwealth be responsible for law enforcement in Norfolk Island.
73. That the Commonwealth Government make provision for the hearing of matrimonial causes instituted by residents of the Island under the Family Law Act.
74. That the Commonwealth Government make provision for granting legal aid to residents of Norfolk Island.

Chapter 3  
PROCEEDINGS OF THE COMMISSION

1. Counsel assisting and the secretariat

Mr C.E.K. Hampson, Q.C., of the Bar of Queensland and Mr J.F. Gallop (later Q.C.) of the Bar of the Australian Capital Territory were appointed to assist the Commission. Mr B.F.L. Crommelin of the Deputy Commonwealth Crown Solicitor's Office Brisbane, was appointed to instruct them. The Commission wishes to acknowledge the assistance it received from these gentlemen throughout the proceedings.

Mr L.R. Dudley of the then Department of the Special Minister of State was appointed Secretary of the Commission. The Commission wishes to acknowledge the help received from him prior to and throughout the proceedings and in the preparation of this Report.

2. Invitation to interested parties

Soon after the issue of the letters patent, the commission issued invitations via the press throughout Australia, New Zealand and the Pacific Islands to those persons and organisations interested in the subject—matter of the inquiry to give evidence to the Commission.

3. Witnesses and exhibits

In response to the advertisements and further appeals over the Norfolk Island radio 144 witnesses appeared before the Commission to give evidence and 46 organisations and persons made written submissions to the Commission. In addition 291 exhibits were tendered, 281 public and 10 confidential. Identities of those who gave evidence are shown in Appendixes (I) and (II) and the list of exhibits in Appendix (III).

4. Hearings and inspections

The Commission held public hearings in Norfolk Island, Canberra and Brisbane. The Norfolk Island hearings and inspections occupied nine weeks, and continued until no further witnesses or submissions were presented. Inspections were made throughout Norfolk Island and included the school, the hospital, forestry and lighterage operations, the power station, the airport, the radio station, the library, the youth centre, the garbage disposal site, the quarry sites, the timber mills and tanalith plant and the erosion on Philip Island. Visits were also made to social welfare centres. Every opportunity was afforded individuals in Norfolk Island to express their point of view on the Terms of Reference.

5. Libraries and archives

The Commission made searches in the Mitchell Library, Sydney, in the Victorian Parliamentary Library and the Federal Archives, Melbourne, and in the National Library, Canberra. The Archives in Wellington, New Zealand, were examined and the Public Records Archives, the British Museum

Library, the British Admiralty Records and the Royal Archives in the United Kingdom were also searched

6. Final submissions

After the public hearings had been completed the Commission requested Counsel assisting to compile a written final address. This was made available to the public in the Island and written comments were invited. The comments received were examined along with the evidence.

7. Overseas discussions and inspections

The Commission travelled to Wellington and Auckland in New Zealand and held informative and valuable discussions there with government officials. Matters discussed and related to the Terms of Reference included Pacific Island administration and constitutional development, law enforcement, defence, transport, social security, taxation, immigration, weather forecasting, communications and tourism. Detention centres in Auckland were inspected.

Chapter 4  
INTRODUCTION

The Terms of Reference of this Royal Commission call for a report and recommendations on two matters, namely:

1. The future status of Norfolk Island and its constitutional relationship to Australia;
2. The most appropriate form of administration for Norfolk Island if its constitutional position were changed.

In reaching conclusions on these matters, the Terms of Reference also require that ten subsidiary matters, which were referred to at the hearings of the Royal Commission as ‘guidelines’, be taken into consideration. Before proceeding to an examination first of the guidelines and then of the -two principal matters, it appears desirable:

1. To give by way of background, a short history of the Island from its discovery to the present time including an account of the people who have inhabited it over that period and the legislative and administrative provisions made for their government (Chapter 5);
2. To draw attention to the important and far—reaching consequences to the residents of Norfolk Island of the unanimous decision of the High Court of Australia, delivered on 30 March 1976, by a bench of five justices, in the case of Berwick Limited v. R.R. Gray, Deputy Commissioner of Taxation 6 A.T.R. 28; 76 A.T.C. 4015; 8 A.L.R. 580 (Chapter 6).

Chapter 5  
HISTORICAL OUTLINE AND CHRONOLOGICAL SUMMARY<sup>1</sup>

In order for one to have a proper understanding of the whole field which is to be the subject of this Report, it is necessary to traverse, in a non—contentious fashion, at least the general outlines of certain historical material<sup>2</sup> relating to:

1. The origin of those people known as the ‘Pitcairners’;
2. Their transference to Norfolk Island;
3. The history of Norfolk Island itself;
4. Various administrative arrangements and legislation affecting government of the Island

1. The origin of the Pitcairners

A convenient beginning can be made with the mutiny that occurred on H.M.S. Bounty on 29 April 1789. The actual details of that mutiny and the subsequent epic voyage by Captain Bligh need not concern us. The twenty-five mutineers first spent several months virtually wandering around the South Pacific Islands in both the Tahiti group and the Austral group some 480 kilometres (300 miles) to the south of Tahiti. They returned to Tahiti for a period and then nine of them decided to try to find a permanent settling place, safe from British vengeance. Those nine were:

Fletcher Christian (Acting Lieutenant)	
Edward Young (Midshipman)	
John Mills (Quartermaster)	
William Brown (Assistant Botanist)	
William Mickoy (or McCoy)	Seaman
Matthew Quintal	Seaman
Alexander Smith (alias John Adams)	Seaman
John Williams	Seaman
Isaac Martin	Seaman

They sailed at dawn from Tahiti on 23 September 1789, and took with them six Tahitian men, nineteen Tahitian women and a baby girl, the daughter of McCoy from a Tahitian. It is probable that some at least of the Polynesian women were abducted by the nine European men. One woman leapt overboard and swam ashore. Six others, who upon closer inspection in stronger light appeared somewhat aged, were put aboard a native canoe that was sighted within the next forty-eight hours. The remaining twelve women were to be the maternal forebears of the Pitcairners who landed sixty-seven years later at Norfolk Island.

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<sup>1</sup> For maps showing Norfolk, Nepean and Phillip Islands see Appendix (VIII).

<sup>2</sup> A number of published works deal with these and related topics, and some of these works were tendered in evidence as exhibits. A schedule of them is provided, for possible future reference, in appendix (IV)

Fletcher Christian sailed the *Bounty* some 1932 kilometres (1200 miles) to the south-east of Tahiti to the uninhabited Pitcairn's Island and, after removing everything in the ship of value to them, the mutineers destroyed her by fire on 23 January 1790 in an effort to eliminate evidence of their presence in the area

From 1790 to 1793 the Europeans and their Polynesian servants and consorts managed to co—exist on Pitcairn's Island in tolerable harmony There then ensued a series of murders by both males and females following disagreements over rights to the favours of the females. The first murder was that arranged by Fletcher Christian, of the Tahitian husband of one of the women. This woman had been demanded by Williams when his own de facto Tahitian wife had died The murder was in part self— protection springing from the strong suspicion that the Tahitian men were plotting the deaths of the whites This suspicion was shortly vindicated by the Tahitian men murdering five of the white men, including Christian and Williams. The bereaved Tahitian women and remaining white men then murdered all the Tahitian men, and a celebration was duly held at Quintal's house to mark the event. Some time thereafter, disillusionment apparently gripped the Tahitian women and they made two attempts to murder all the white men once in their sleep and again in an open attack The men however, on each occasion exhibited an interesting indication of their needs and priorities by not killing the women they merely cautioned and pardoned them

By 1798, the only adult males surviving these five years of homicide were Young, McCoy, Quintal and Adams (who had abandoned his earlier name of Smith). McCoy proceeded to distil a brew from ti-tree roots and committed suicide by throwing himself over a cliff during an onset of delirium tremens. Quintal became obnoxious to Young and Adams who together axed him to death. In 1800, Young died from asthma and Adams was left as the leader of a community of himself, ten women and twenty children, the products of the preceding years of co-habitation in both Tahiti and Pitcairn's Island itself.

Adams, sole adult male survivor of some eleven years of mutiny, piracy, attempted murder, murder, arson, suicide, theft, assault, battery, abduction and probably carnal knowledge and rape, then became a devout student of the Bible and the Book of Common Prayer, each of which had been salvaged from the *Bounty*. He proceeded to instruct his little community in strict Christian ways and a deep abiding loyalty to the British Crown. His pastoral care, which continued for some twenty—eight years, became a singularly influential factor in the subsequent history of the Pitcairners.

In 1808, an American vessel, the *Topaz*, called at Pitcairn's Island and the secret of the disappearance of the *Bounty* reached the British Admiralty in 1809. No action was taken against Adams, who, because of his age and fervent protestations of non—involvement in the mutiny, was allowed to remain in the Island. The other mutineers who had remained on Tahiti had not been so fortunate. They were caught in March 1791 and sent in chains to England for court martial. Some drowned in a shipwreck en route, some were acquitted, others pardoned and three were hanged from the yard-arm of H.M.S. *Brunswick* in Portsmouth harbour on 26 October 1792.

In September 1814, two British ships H M S *Briton* and H M S *Tagus*, called at Pitcairn's Island and from then on a succession of British naval vessels patrolling from their base at Valparaiso, called at the Island. From these visiting ships came three further Englishmen who settled in the Island and became part of the Pitcairn community; they were John Buffett and John Evans who joined the Pitcairners in 1823 and George Hunn Nobbs who joined them in 1828. In 1829, when

Adams died (aged 65) Nobbs (with Adams' pre-mortem approval) succeeded him as teacher, preacher, and medical adviser to the Pitcairners.

The visits by British ships led to reports to England upon the Islanders and their devoutly Christian way of life. The little God-fearing community in Pitcairn's, so intensely loyal to the Queen, became something of a sensation in Victorian England and the darlings of that country's religious groups. They became widely known as perhaps the most exemplary and model Christian community the world has known. Their high standards of piety, morality, loyalty and good manners were frequently commented on by the masters of vessels which called at the Island.

A Commander Elliott of H.M.S. Fly reported, from a visit in 1838, that he 'found this interesting community preserving their deservedly high character for exemplary morality, innocence and integrity' Captain Worth of H M S Calypso in 1848 stated 'They are the most interesting, contented, moral and happy people that can be conceived'. Admiral Moresby, who landed on the Island on 8 August 1852, stated 'To do justice to the spirit of order and decency that animates the whole community, whose number amounts to 170, strictly brought up on the Protestant faith according to the Established Church of England, by My Nobbs, their pastor and surgeon, who has, for twenty-four years, zealously and successfully, by precept and example, raised them to a state of the highest moral conduct and feeling. They are guileless and unsophisticated beyond description'.

An interesting contrast is afforded between the above descriptions of the inhabitants of Pitcairn's in the early and mid 19th century and the description of them as Norfolk Islanders in 1885 (some thirty years after their transfer to Norfolk) by one Henry Wilkinson, a Sydney magistrate, when reporting to the Governor of New South Wales, Lord Augustus Loftus. He said:

One thing is most certain, that is, that the present form of government by an elected Magistrate will never do, and MUST be stopped at once, for there is neither justice nor order. Everybody is so closely related, and everybody lives in a 'glass house', and is afraid to throw a stone, so that the Chief Magistrate dare not administer even justice, or he would be pounced upon at once, and is in a constant fear of how a decision will be regarded by others, who may, and would retaliate, if they do not approve.

Here, the whole system, and everything arising from it is rotten. The whole thing is a great falsehood from John Adams' time till now. And unless an immediate stop is put to this kind of thing, the consequences will be most disastrous. It really appears to me wonderful that a small community like this should have succeeded in so completely gulling the whole world into the belief that they are an isle of saints. I believe there is more immorality of all kinds here, according to population, than in any other civilized part of the world.

## 2. The transference of the Pitcairners to Norfolk Island

Over the years in Pitcairn's Island, the number of the inhabitants increased to the point where difficulties were encountered in sustaining the population from the small Island's limited natural resources. Its total perimeter was only about 4½ miles, its terrain rocky and ruggedly broken, and its water supply indifferent. The plight of the Pitcairners, in these crowded and relatively harsh conditions, was drawn to the attention of the religious organisations in England and moves were made to transfer the Pitcairn population to Tahiti, the home of their mothers where, it was thought, they would have more land and better natural resources for survival. These moves appear to have been made without the full knowledge of the Pitcairners themselves, but when advised of what purported to be the wishes transfer more from their deep-seated loyalty to the Crown than from any desire of their own.

All eighty-seven of them left Pitcairn's and on 29 March 1831 reached their new Island home in Tahiti for what was to prove disastrous and tragic few months' stay. The strictly religious group were repelled by what they considered to be the licentiousness of Tahitian life and the intemperance which developed within their own family circles. Twelve died on Tahiti from illnesses and after repeated requests to be returned to Pitcairn's the survivors were shipped home in September 1831.

From 1831 to 1841, they appear to have lived contentedly in their Island but thereafter a succession of difficulties assailed them. Their health suffered a distinct deterioration, and, although mortality was not abnormal (it was less than 2%), sickness - mainly influenza and fever, was so general and severe that they were greatly incapacitated and prevented from performing the few hours of labour in the fields which were necessary for the production of their food supplies. Weeds began to overrun the Island and worms infested their potatoes. In 1845 a violent storm tore away a large part of the Island and swept it into the ocean and destroyed some of their fishing boats and vegetable patches. Food shortages were suffered. By 1850 information was reaching England indicating that although the Pitcairners admitted the probable immediate need to emigrate they dreaded the inevitable separation from their Island. Norfolk Island was mentioned as a suitable home for them by one Walter Brodie in his book Pitcairn's Island and the Islanders published in London in 1851 following a visit by him to the Island in 1850. In 1852 a fund was raised in England by a Committee formed to assist the Islanders. On 30 November of that year their pastor was ordained in England as an Anglican clergyman and 'chaplain of Pitcairn's Island'. By 1853 drought and illness in the Island were such that a public meeting was convened there on 18 May to consider the suggestion of a removal. The Islanders unanimously solicited 'the aid of the British Government in transferring them to Norfolk Island or some other appropriate place'.

On 5 July 1854, they were advised that Norfolk Island would be available. In 1855, at a general meeting of the community, 153 out of the population of 187 indicated their readiness to emigrate to Norfolk. However, when they did embark in the *Morayshire* on 3 May 1856, under the supervision of Lieutenant Gregorie, all 193 (by then) went aboard as one man, and Pitcairn's Island became a deserted isle.

The voyage to Norfolk Island of about 4830 kilometres (3000 miles) was protracted by bad weather and took five weeks. A child was born en route so that eventually 194 Pitcairners were landed on Norfolk on Sunday, 8 June 1856. It was reported that despite fatigue, 'amounting with many almost to exhaustion', the usual Sabbath Day evening service was held, 'an exemplary manifestation of habitual piety'.

Awaiting the new arrivals was Captain Denham of H.M.S. Herald who had gone to Norfolk with a party of sappers to survey the Island with a view to facilitating the granting of blocks of land. A little later, on 26 June 1856, Captain Fremantle arrived in H.M.S. Juno and, in a statement to the Pitcairners, set out the broad terms of their occupancy of the Island. The text, according to historian Mrs Merval Hoare, is contained in papers collected by Bishop George Selwyn and held in the Auckland Institute in New Zealand. It reads as follows:

To the Chief Magistrate of the Pitcairn Islanders now resident on Norfolk Island. All arrangements made by the community of Pitcairn Islanders as to the distribution of the land on Norfolk Island are to be subject to the approval of H.E. Sir W.T. Denison, Governor—General of N.S.W. The whole of the coast line including the jetties; and the roads now made thro'out the Island are to be reserved as public property. The following buildings are also to be retained as belonging to H.M. Government.

The Gaol  
The Government House  
The Chaplain's House

Also 200 acres of cleared land at Longridge for a glebe and 500 acres elsewhere.

The Islanders however are not debarred from making any temporary use of the above mentioned grounds and buildings. They are to understand that they are not allotted as property to any individual.

This is communicated by direction of H.E. the Governor— General.

Stephen G. Fremantle  
Captain of H.M.S. Juno,  
Senior Officer in Australia.

Norfolk Island  
25 June 1856

Some idea of the impressions of the Pitcairners upon arrival in their new home is conveyed by the following quotation from Mrs Hoare's book Norfolk Island;

The Norfolk of 1856 must indeed have seemed strange, even luxurious, compared with Pitcairn's. There, living conditions had been rugged and housing primitive though adequate. The precipitous slopes of Pitcairn's had needed arduous cultivation. Norfolk Island, on the other hand, was a going concern; its buildings, roads, bridges, and cultivated areas were in first class order, as might be expected from a system under which the prisoners, subjected to tight discipline had yielded their utmost exertions. The great stone buildings, some three stories high, no doubt loomed large and formidable to the newcomers. Clearly more to their liking were the weatherboard cottages, and huts and the one—storied dwellings some with six rooms others with three or four, and with kitchens detached. There were also carpenters' and blacksmiths' shops, barns and stables, two large boat-sheds, a windmill, and a watermill; and also artisans' tools and agricultural implements. 'A bounteous bestowal indeed' commented Captain Denham. In June 1856 he summed up the situation:

I leave this community of 194 persons — provided with 45 500 lbs of biscuit, flour, maize and rice, with groceries in proportion and abundance of milk at their hand. Their live stock and fodder consists of 1300 sheep, 430 cattle, 22 horses, 10 Swine in sties, 16 domestic fowls, 16 000 lbs of hay, 5000 lbs of straw and a quantity of wild pigs and fowls. Lest however, the first crop should be retarded or fall short, I have submitted a list of supplies which the Governor—General will forward to these Islanders as an extent—in—aid.

Despite the undoubted advantages of Norfolk over Pitcairn's, homesickness caused two defections, In December 1858, some seventeen people returned to Pitcairn's and in 1863 another party of twenty-seven followed them. Fifty-eight of their descendants (and seven outsiders) continue to occupy Pitcairn's Island to this day.

### 3. The History of Norfolk Island

Having thus briefly described the origin of the Pitcairners and their transfer to Norfolk, one should direct attention now to Norfolk Island itself a completely different history.

The Island and the two adjacent, much smaller Islands, Nepean and Philip, were discovered by Captain Cook on 10 October 1774. The group is situated 1676 kilometres (1042 miles) east—

north—east of Sydney at latitude 29°02' south<sup>3</sup> and longitude 167°57' east. Norfolk is about 8 kilometres (5 miles) long and 5 kilometres (3 miles) wide and has a total area of 3455 hectares (8528 acres). It is a remnant of past volcanic activity jutting out of the sea from a submarine ridge which stretches in an arc from New Caledonia to New Zealand. The average elevation of the Island is about 110 metres (350 feet) and two peaks (Mt Pitt and Mt Bates) rise to slightly over 305 metres (1000 feet). The coastline of some 32 kilometres (20 miles) is mainly one of precipitous cliffs, except for a small section on the south side.

Nepean is a coral sandstone islet approximately 4 hectares (10 acres) in extent and rising to 32 metres (105 feet) lying about 0.8 kilometres (½ mile) to the south of Norfolk. Philip is a volcanic Island approximately 258 hectares (640 acres) in area and reaching 280 metres (920 feet) in height. It is about 5.6 kilometres (3 ½ miles) south of Norfolk. Both Islands are on the continental shelf of Norfolk Island; they lack water and are uninhabited.

When discovered Norfolk was also uninhabited although evidence of earlier occupation probably by Polynesians was subsequently unearthed. The Island was densely wooded, chiefly by the native Norfolk Island pine and white oak, cabbage palm and flax. Cook reported that the pine and flax (New Zealand hemp) might provide spars, masts and canvas for the navy. In addition, the British Government thought it desirable to occupy the Island (as an associated convict settlement with that in New South Wales) to prevent the French from acquiring it. This is evidenced by the initial instruction of King George III dated 25 April 1787, to Captain Arthur Phillip:

Norfolk Island ... being represented as a spot which may hereafter become useful, you are, as soon as circumstances will admit of it, to send a small establishment thither to secure the same to us, and prevent it being occupied by the subjects of any other European power

Accordingly, on 6 March 1788, Lieutenant Philip Gidley King and twenty-two others landed at Kingston on the south side and took possession of the Island in the name of King George III. The twenty-two comprised seven free persons and fifteen convicts made up of nine men and six women.

The small settlement was beset with difficulties. Clearing of the rain forest by hand was heavy, laborious work. Rats and parrots ate seed and nipped off young shoots of crops. Worms and caterpillars riddled their cabbage patches and hawks carried off their chickens. Torrential rain and gale force winds flattened their corn and unroofed their shacks. One vessel H M S Sirius bringing much needed supplies was wrecked on 19 March 1790 on the Kingston reef, a victim of the absence of a safe harbour in the Island. At one stage the survival of the settlement depended upon occasional hauls of fish and catching seabirds and collecting their eggs. In spite of these troubles, by 1804 the population consisting of both free settlers and convicts, had reached 1100. However, the Island's disadvantages were receiving prominence; its very small exports (chiefly grain and salt pork), its lack of a safe anchorage and harbour and the difficulties in maintaining communication with it, all tended to make its continued administrative expenses unjustifiable, and, from 1806 onwards, the population was steadily withdrawn and transferred to Van Diemen's Land (Tasmania). It is recorded that although by 1810 over a quarter of the Island had been cleared, withdrawal of the population was still continuing and by 1814 had been completed by the brig Kangaroo removing the last settlers; Norfolk was abandoned.

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<sup>3</sup> to assist one in placing this latitude it is pointed out that 29°02' south is approximately halfway between Lismore and Grafton in NSW. Norfolk Island, contrary to popular opinion, is not a tropical isle

In 1824, instructions were issued to reoccupy the Island so that the worst of convicts in New South Wales and Van Diemen's Land could be sent to it. Norfolk became, in consequence, a convict settlement for the second time when Captain Turton with a party of fifty-one convicts and soldiers, and six women and six children, landed there on 6 June 1825. Governor Arthur wrote:<sup>4</sup>

When prisoners are sent to Norfolk Island, they should on no account be permitted to return. Transportation thither should be considered as the ultimate limit and a punishment short only of death.

The subsequent barbarity of that 'ocean hell' over the ensuing thirty years has been well chronicled elsewhere and, apart from two quotations by way of illustration need not be developed here. One Commandant, Major J. Anderson, is reported to have dealt out 1500 lashes to five men in one day;<sup>5</sup> again, a passage from Atlee Hunt's Report of March 1914 reads:

the beauty, fertility and charm of the Island served but to sharpen the contrast with the characters of its human occupants, oppressors, and Oppressed, and the name of Norfolk Island ... became associated in men's minds with all that was vilest, with cruel torture, brutal methods, debased criminals suffering humanity

During this period, however the Island was significantly developed; roads, buildings and wharf facilities were constructed, crops of various kinds were planted and farm stock built up

Up to 1844 control of the Island had been vested in the Colony of New South Wales, but in that year control passed to Van Diemen's Land and remained there until the abandonment of the second convict settlement In 1847 the British Government decided to close the Norfolk prison because of its unsavoury character but it was not until May 1855 that the Island's days as a convict settlement actually ceased. Only a small party was left as caretakers.

So much for the two separate threads of the histories of the Pitcairners and Norfolk Island up to 1855. They became interwoven with the arrival in Norfolk in 1856 of the Pitcairners The caretakers left immediately and the third settlement of the Island commenced

The Pitcairner occupation of Norfolk Island was destined to suffer several dilutions In spite of the clear original intent that the Island be reserved as a home for the former Pitcairn's population,<sup>6</sup> this policy was departed from first by the Pitcairners themselves and then by officialdom and in fact with the passage of time, was allowed to lapse altogether

On Governor Denison's second visit to the Island in 1859 he discovered (to his great displeasure) that some Pitcairners had already sold land to non—Pitcairners and he immediately issued regulations in an attempt to stop this practice His effort failed for by 1885 land in the Island had been acquired by grant or purchase by twenty—five new settlers who with few exceptions, appear to have been admitted by the Pitcairners themselves contrary to their own original desire.<sup>7</sup>

The official departure consisted of granting permission for the establishment in the Island of the

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<sup>4</sup> An outline of the story of Norfolk Island and the Pitcairn's Island 1788-1857, by C.H Currey M.A LL.D Royal Australian Society Journal and Proceedings, Vol. 44, 1958, Part 6

<sup>5</sup> Government House, Norfolk Island, Published by the Norfolk Island Historical Society, 1972

<sup>6</sup> See letter (quoted later) dated 5 July 1854 to Pitcairn Islanders from B. Toup Nicholas, the then British Consul of the Society Islands, and Governor Denison's early instructions to lieutenant Gregorie (also quoted later)

<sup>7</sup> History of Norfolk Island, by Claude Dillon, 1957

Melanesian Mission Station in 1866. This proposal was originally rejected by Governor Denison and the Pitcairners alike. The Rev. G.H. Nobbs, the Island's pastor, with a fine disregard for the undisputedly Polynesian antecedents of his own flock, wrote to Admiral Moresby and said:

I trust yourself and our other influential friends will countenance my opposing so very undesirable an addition to our social circle as a hundred or two of heathens strong with the odour of unmitigated depravity.<sup>8</sup>

However, in 1866, the then Governor of New South Wales (and of Norfolk Island), Sir John Young, withdrew his own earlier objections and, under instructions from the Secretary of State for the Colonies, granted the Mission sufficient land to establish a training school and headquarters for the Bishop of Melanesia. The Mission was given a free grant of 99 acres, plus 933 acres, paid for at the rate of £2 an acre. By 1899, the Mission had 210 Melanesian scholars, its own church (St Barnabas' Chapel still considered an architectural gem and one of the most beautiful little churches south of the equator), homes for the missionaries and pupils, workshops, a printing house and a store. As a matter of incidental interest, the quality of farming carried out by the Mission was far superior to the agricultural efforts of the Pitcairners.

Although the Mission Station was wound up after World War I (their last church services were held in 1920), its entry to Norfolk really was the wedge which split apart and into fragments the original policy of reserving Norfolk for the Pitcairners.

Thereafter, no genuine attempt to refashion such a policy could be said to have been made. Migrants came and went under ordinances such as the 1922 Immigration Restrictions Ordinance, in which no reference whatever was made to the original intention of preserving Norfolk for the Pitcairners and their descendants.

However before too harsh a condemnation is made of what Rev C H Nobbs described as a breach of faith it should be borne in mind that ill effects from too close inbreeding amongst the Pitcairners had been a subject for comment over the years. The admission of new blood to the Island was very probably considered a badly needed change, and, indeed, could well have been the motivating factor behind the decision to drop quietly the original intent. Nonetheless in spite of this very necessary modification of policy one cannot escape the background implications of the original promises — Norfolk Island basically was to be a new homeland for the Pitcairners.

Notwithstanding these dilutions the Island's population remained predominantly comprised of Pitcairners until the early 1960's when what has sometimes been referred to as the fourth settlement of Norfolk Island began.

The period between the establishment of the Melanesian Mission and the early 1960's was notable for the fluctuations in numbers of the population. They broadly coincided with the varying fortunes of business ventures chiefly based on agricultural and fishing products.

Two clearly significant factors in the fourth settlement were first the construction of an airfield in the Island during the war years of 1942—43 which improved its accessibility tremendously and paved the way for tourism the Island's only viable industry and second the upsurge of interest around the world from the early 1960's in the Island's tax—free status and in its potential for tax

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<sup>8</sup> Settlement of the Pitcairn Islanders on Norfolk Island by F.M Bladen. Australian Historical Society, Vol. II, Part I 1906

avoidance schemes

Principally, as a result of the influx of new settlers, the proportion of Pitcairners in the Island has greatly diminished. Of a total of 859 persons on the electoral roll at 30 June 1976, Pitcairn descendants number only 323. Their non—Pitcairner spouses number 130, the remainder (406) are not related to them in any way.

It deserves emphasising at this stage of the Report, in order to facilitate a full understanding of the subject, that complete integration of the Pitcairner and non—Pitcairner elements in the population cannot be said to have been achieved, Likewise, whole hearted acceptance by the Island population of either its present status as part of the Commonwealth of Australia or the manner in which Australia administers the Island cannot be said to exist.

#### 4. The historical outline of the various administrative and legislative arrangements relating to Norfolk Island

In 1856, Norfolk Island was (by an Imperial Order in Council of 24 June 1856, made pursuant to s. 5 of the Australian Waste Lands Act 1855, an Imperial Statute) separated from the Colony of Van Diemen's Land and created a distinct and separate settlement from the date of the proclamation in New South Wales (31 October 1856) of the Order in Council. It was placed under the jurisdiction of a Governor. The Queen appointed the person of the then Governor of New South Wales as Governor of Norfolk Island.

In a dispatch dated 27 February 1856<sup>9</sup> to the Right Hon. Sir George Grey, Bart, Governor Denison expressed clearly his view on the undesirability of linking Norfolk Island with any adjoining colony. He wrote:

12. In a former Dispatch from Van Diemen's Land, in December 1854, I suggested that the Island should be retransferred to New South Wales. I wish now to modify this recommendation, and to suggest that Norfolk Island should not form part of any of the adjacent Colonies, but should be kept altogether distinct from and independent of them. The effect of making it a part of any of these Colonies would be to confer upon the legislatures the right of dealing with the people and the land according to their will and pleasure; and thus an opportunity would be afforded for interfering with the experiment which is now about to be made. Such interference could not be useful, and would, probably, be injurious. I would, therefore, press most earnestly upon your notice the propriety of withdrawing the Island from the jurisdiction of the adjoining Colonies.

In view of the misunderstanding which clearly developed amongst the Pitcairners in Norfolk concerning their alleged 'ownership' of the entire Island it should be pointed out early in this Report that no evidence was produced to support this claim, and much was discovered to rebut it completely. The aspect which it is desired to stress here is that even prior to leaving Pitcairn's for Norfolk, the Pitcairners were expressly informed by the then British Consul of the Society Islands, one B Toup Nicolas in a letter dated 5 July 1854 that:

I am at the same time to acquaint you that you will be pleased to understand that Norfolk Island cannot be 'ceded' to the Pitcairn Islanders, but that grants will be made for allotments of land to the different families; and I am desired further to make known to you that it is not at present intended to allow any other class of settlers to reside or occupy land on the Island

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<sup>9</sup> British parliamentary paper, vol. 22, session 1857, I.U.P

In 1856, Governor Denison received instructions from the British Government as to the manner in which his governorship of Norfolk Island was to be conducted and land grants made. They were as follows;

Whereas by an Order made by us in Council bearing even date with these Presents, we did order that, from and after the date of the proclamation of that Order as therein directed, the said Island called Norfolk Island should be and the same was thereby separated from the said Colony of Van Diemen's Land, now called Tasmania, and erected into a distinct and separate Colony, the affairs of which shall, until further Order is made in that behalf by Us, be administered by a Governor to be for that purpose appointed by Us with the advice and consent of our Privy Council: And whereas by the said Order in Council is further provided that from the date afore said, the said Governor of the said Colony of Norfolk Island shall have 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 we at any time by instruction or instructions, with the advice of our Privy Council, under our Sign Manual and Signet, may think fit to prescribe in that behalf:

Now we do hereby declare the following to be the Rules and Regulations so mentioned and referred to in the said Order in Council. In framing such laws as aforesaid you are to observe, as nearly as the circumstances will admit, the rules laid down by our Instructions under our Sign Manual and Signet addressed to you from time to time as Governor of New South Wales; And whereas the inhabitants of the said Island are chiefly emigrants from Pitcairn's Island in the Pacific Ocean, who have been established in Norfolk Island under our authority, and who have been accustomed in the territory from which they have removed to govern themselves by laws and usages adapted to their own state of society, you are, as far as practicable, and as far as may be consistent with the regulation next preceding, to preserve such laws and usages, and to adapt the authority vested in you by the said recited Order in Council to their preservation and maintenance.

And whereas you are further authorised by the said Order in Council to make grants of Waste Lands in the said Island in our name and in our behalf, subject nevertheless to such Rules and Regulations as aforesaid: Now we do hereby further enjoin you to exercise the authority so vested in you, as far as you may find it practicable, in conformity with such laws and usages as aforesaid which you may find established among the inhabitants in question, in relation to the possession, use, and enjoyment of land.

And we do further direct that in all matters within your competency in relation to the government of Norfolk Island, and not specially provided for in these our present Instructions, you do govern yourself by our Instructions addressed to you as Governor of New South Wales, as far as the same may be applicable to the subject.

Following occupation of the Island by the Pitcairn community, the belief persisted that the Crown had granted the entire Island to the Pitcairners. It is still a key point in the current assertion by some Islanders that they should be allowed to govern themselves. The true facts, however, are amply evidenced, not only by the above-quoted instructions and the Nicolas and Fremantle letters, but conclusively by the terms of the 1856 Order in Council, viz:

And is hereby further ordered and declared that from the date aforesaid the said Governor for the time being of the said Island called Norfolk Island, shall have full power and authority in Her Majesty's name and in Her behalf but subject nevertheless to the Rules and Regulations which may be prescribed by any such instructions as aforesaid to make grants of waste lands to Her Majesty belonging within the said Island to private persons on their own behalf or to any persons, bodies politic or corporate in trust for the public use of Her subjects there resident or any of them.

It is thus quite clear that the Island was not given to anyone and that the allocation of land in the Island was reserved to the Governor of New South Wales Sir William Denison who was also the Governor of Norfolk Island.

The orders issued to Lieutenant Gregorie by Governor Denison were 'to divide among the different

families the land on Norfolk Island which having been already cleared will probably be easier brought into cultivation than the bush land'<sup>10</sup>.

Reserves of cleared land were to be made for church and school purposes also for public purposes at the landing places F and 500 acres of the uncleared land was also to be reserved The remainder was to be divided amongst the different heads of families according to agreement with the magistrate 'the object being to check as much as possible any attempt on the part of the inhabitants of the adjoining colonies to settle on Norfolk Island'

This part of Governor Denison's instructions was not acted upon the heads of the families declaring that they did not desire it and would prefer to cultivate the land in common In 1857 Governor Denison visited the Island for the first time and was so disgusted with the deterioration of the convict buildings which the Pitcairners had been permitted to occupy and also the farms which they had taken over in the main. He put an end to the communal occupation of the Island by insisting on individual ownership of blocks of land. He believed such proprietorship of the land would produce better results. He ordered that the heads of families should each select an allotment not exceeding in any case fifty acres. The grants were not unconditional. The grantee was not allowed to sell to persons unconnected with the Island. If he wished to leave the Island he could sell to one of the inhabitants; failing that, the community could purchase it at valuation. Thus 'strangers' were barred.<sup>11</sup>

In a letter dated 30 October 1857, to the Right Hon. Henry Labouchere, M.P., the Governor stated my principal object is to get rid of that species of community of property which now exists'. A copy of his full instructions and advice to the Chief Magistrate of Norfolk Island on these matters is contained in Appendix (V). The first allocations of land were made on 14 September 1859.

During his visit to Norfolk, at a meeting at Government House, Governor Denison also obtained the Islanders' approval of a set of thirty—nine simple rules for their governance, based on those found acceptable at Pitcairn's and which he, as supreme legislator, had compiled in conjunction with the Islanders' pastor, Rev. G.H. Nobbs, and the Chief Magistrate, Frederick Young. Subsequently, in August 1858, in an interesting reflection of the moral and religious attitude to life, which they had developed in Pitcairn, two further laws were requested by the Islanders and approved by the Governor. They were as follows:

No. 40 All persons accused of fornication will, upon conviction thereof, be sentenced to pay a fine of £10.

No. 41 All persons convicted of racing or furious driving through the streets or upon any of the public roads of the settlement will be fined £1.<sup>12</sup>

The contrast in penalties vividly illustrates the relative importance placed upon such misdemeanors by the Pitcairners, and their priorities in turpitude

Under these laws, which remained practically unchanged for some forty years, the Islanders enjoyed a form of self—government, until 1896. They had the right to alter or amend laws subject

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<sup>10</sup> Vol. II, Part I, 1906 Journal and proceedings of the Australian Historical Society, Settlement of the Pitcairn Islanders on Norfolk Island' by F. M Bladen

<sup>11</sup> History of Norfolk Island by Claude Dillon, 1957. Also House of Commons paper 29.4.1863.

<sup>12</sup> For full list of these forty-one laws see appendix (VI).

to the approval of the Governor for this forty-year period they were in effect an almost self—governing, self—sufficient community The public business of the Island was conducted by ‘the House’, a meeting of all adult members of the community where decision was by majority rule. There was little direct intervention in Island affairs by the Governor The charge on the New South Wales Treasury for expenditure on Island affairs was remarkably low It was confined to occasional visits by the Governor and appointments of Commissions of Inquiry.

There was no taxation, nor were local rates levied. Public works were carried out by adult males who were required to give three and a half days a month for half a year (This system has now been replaced by a payment being made in lieu of the work.) The Island remained a separate and distinct settlement, the Governor of which was the Governor for the time being of New South Wales The only disruptive event began in 1903 It related to the buildings in the Kingston area which had remained Government property They had been occupied by the Pitcairners who allowed them to fall into a state of disrepair Some of the Pitcairners refused to accept occupation licences which would have required them to repair and maintain their rent—free buildings and they were evicted in 1908 There is still a residue of resentment in the Island against the evictions which were carried out by military personnel.

By 1895 the existing arrangements in the Island were considered unsatisfactory and at the urging of the then Governor of New South Wales, Viscount Hampden, the New South Wales Government agreed in principle to the United Kingdom request for New South Wales to take over the control of Norfolk Island. New Zealand raised objections to this change of control on the grounds, first, that New Zealand would be linked to Norfolk Island by cable and objected to the cable junction being in a territory controlled by another colony; second, that the Norfolk Islanders themselves, whilst protesting at any change, would prefer to come under the control of New Zealand; third, New Zealand had ecclesiastical ties with Norfolk Island (being in the same diocese of Melanesia); fourth, New Zealand had greater experience in dealing with Island administration in the Pacific; and finally, New Zealand was closer to Norfolk Island than was New South Wales. The New Zealand claims received no support in London.

In transferring Norfolk Island to New South Wales the prevailing view of Viscount Hampden was that this should be done without total incorporation of the Island in New South Wales. He thought, and so did the New South Wales Government Ministers, that some New South Wales legislation would not be appropriate to the Island. The concept was to annex Norfolk Island to New South Wales, but at the same time declare the Island to be exempt from laws of New South Wales, and give to the Governor power of legislation until the Legislature of New South Wales provided otherwise. A telegram from Viscount Hampden in these terms was received in London on 14 October 1896. It reads as follows:

With reference to your telegrams of 20 September, Ministers propose that administration only should be transferred, legislative powers remaining as before. Order in Council will probably be sufficient. Complete annexation to N.S.W. or future Federal body be postponed until Colonial Government think it desirable. Meanwhile, Government of N.S.W. will bear expenses of administration.

Also in a letter dated 9 March 1896 to Viscount Hampden enclosing his report on the Island, the Honourable J.H. Carruthers (New South Wales Secretary for Lands) made reference to the possibility of transfer to the proposed Federal body in Australia as under:

I think also that the N.S.W. Government should be prepared, F on the consummation of Federation, to hand

over its jurisdiction over Norfolk Island and Lord Howe Island to the Federal Government. A verbal understanding on this point would no doubt be easily obtainable.

It is particularly worth noting that this first move for control of Norfolk Island to be shifted came from the British Government and not from the Island itself from the Colony of New South Wales. There was of course no Commonwealth Government then in existence.

On 14 November 1896 all laws in force were repealed and a fresh set of twenty—three new laws and regulations for the administration of Norfolk Island was proclaimed as a preliminary step to the assumption of control by New South Wales. The office of Chief Magistrate (hitherto elective) became a Government office and was not again filled by an Islander. A Council of Elders of twelve members elected annually was constituted with the responsibility for the maintenance of roads and public reserves. The Council could with the approval of the Chief Magistrate make by—laws

The Islanders vigorously opposed the change of administration and in 1896 sent a delegation to Sydney to present a protest pointing out that ‘the House’ had resolved in 1888 that Norfolk Island should remain a Crown Colony. A Memorial on similar lines was presented to the Queen but without effect.

An Order in Council of 15 January 1897, made pursuant to the Australian Waste Lands Act of 1855 revoked the Order in Council of June 1856, and all powers of government were transferred from the Governor of Norfolk Island to the Governor of the Colony of New South Wales, whose powers were subject to instructions by Her Majesty. The Order also provided for the annexation of Norfolk Island to any Federal body to which New South Wales might later belong. The main practical effect of the Order was to enable the Governor of New South Wales to legislate in his capacity as Governor of New South Wales, and not in his capacity as Governor of Norfolk Island.

By an Order in Council dated 18 October 1900, made under the Australian Waste Lands Act of 1855, the Governor of the State of New South Wales and its dependencies was to administer the affairs of Norfolk Island in lieu of the Governor of the former Colony of New South Wales administering those affairs, and the Order in Council of 15 January 1897 was revoked. The Governor could ‘make laws for the peace, order and good government of Norfolk Island, subject nevertheless to any instructions that may be given to him by Her Majesty under Her Sign Manual and Signet or through one of Her Principal Secretaries of State’. It is also important to note that the Order in Council expressly provided for the Governor to make grants or other dispositions of any lands within the Island which might be lawfully granted or disposed of by Her Majesty.

Meanwhile in the United Kingdom the Commonwealth of Australia Constitution Act 1900 (Imp.) was passed and took effect on 1 January 1901 to bring the Commonwealth of Australia into being.

In 1903, the Council of Elders in the Island was replaced by an Executive Council consisting of two elected and four members appointed by the Governor, who also appointed the President.

In 1903, also, the then Governor of New South Wales and of Norfolk Island, Sir Harry Rawson, visited the Island to discuss a number of matters with the Islanders. A petition with eighty—three signatures had been presented protesting against the possible annexation by the Commonwealth. He pointed out that the Federal Parliament had the power to make laws for different communities but the constitution of New South Wales had no such provision.

A dependency of New South Wales would be subject to the laws of New South Wales

In 1913 the Norfolk Island Act 1913 (No 15 of 1913 which came into effect on 1 July 1914) provided for the acceptance of the Island as a territory under the authority of the Commonwealth of Australia and for the government thereof. The Act also enlarged the Executive Council to twelve members, six being elected annually and six being nominated by the Administrator and Chief Magistrate.

Section 5 of the Act provided that the Acts of the Commonwealth Parliament (except the Norfolk Island Act 1913 itself) should not be in force in Norfolk Island unless expressed to extend thereto, and it was provided that subject to the Act the Governor—General was empowered to make ordinances for the peace, order and good government of the Island.

An order in Council dated 30 March 1914 revoked the 1900 Order in Council and placed Norfolk Island under the authority of the Commonwealth of Australia

This action flowed directly from the intent expressed in the 1897 order in Council that the Island be annexed to any Federal body to which New South Wales might later belong, which Order itself had been prefaced in 1896 by the British Government initiating action to shift control of Norfolk from itself to New South Wales and the Commonwealth of Australia

This 1914 order in Council was expressed to be done ‘by virtue and in exercise of the power in this behalf by the Australian Waste Lands Act 1855 (Imp.) or otherwise in His Majesty vested’ The Order in Council was printed in the Commonwealth of Australia Gazette of 17 June 1914

The Norfolk Island Act 1935 was passed to amend the 1913 Act. The Executive Council in the Island was replaced by an advisory Council consisting of eight members elected annually. The office of Administrator was separated from that of Chief Magistrate. The Administrator was made responsible for all public works, but as far as possible was to consult with the Council on these matters. Ordinances (with some exceptions, e.g. in the case of urgency) were to be submitted to the Council before being made.

The Norfolk Island Act 1957 repealed the Norfolk Island Acts of 1913 and 1935 but re—enacted the provision for a Council of eight members to be known as the Norfolk Island Council. This Council took over the powers of the previous Advisory Council. The Act also provided for the possible grant to it of some executive powers in the future. It should be noted that although the 1957 Act repealed the 1913 Act, such repeal did not affect the effectiveness of the declaration of acceptance of Norfolk Island by the Commonwealth. See the Acts Interpretation Act 1901—1957, s.8.(b).

In 1960, it was decided to confer on the Council a wide range of local government powers. Accordingly, the Norfolk Island Council Ordinance 1960, which gave the Council normal powers with regard to local functions, was passed. The powers were to be exercised by a fully elected Council with an elected president. It was also proposed that the Council should maintain the electoral roll. Immediately after being elected in July 1960 the Council resolved that it could not accept the proposed powers because, first, the Administrator was given a power to veto by—laws passed by the Council and second, the Council would have to raise its own revenue, the then Administrator having stated that the traditional sources of revenue would be denied it.

In 1961, a draft set of proposals was submitted by the administering department to the Council. These proposals would have transformed the Council into an Administrator’s Council, and would have given Council power to direct the Administrator in regard to those functions listed in s .63 of the Ordinance (i.e normal powers with regard to local government functions) The Council would also have been able to determine how local revenue was to be expended and would have had the power to make by—laws subject to the approval of Parliament However in 1962 Island elections substantially reduced the number of Councilors generally belonging to ‘the bloc’ who favoured taking over executive functions and nothing more was done in the matter.

In October 1963 another Norfolk Island Act was passed and came into effect on 27 April 1964. It amended earlier Acts to provide for the wish of the Island people not to participate in executive government of the Island and for the 1960 Ordinance to be repealed. It also provided for a large measure of consultancy between the Council and the Administrator.

The principal provisions of the Norfolk Island Council Ordinance 1964 were:

1. The Administrator was to be ex officio Chairman of the Council.
2. The Council was to have eight elected members with an elected President of Committees.
3. The Administrator was to be responsible for maintaining the electoral roll.

In 1965 in the case of Newbery v. The Queen 7, F L R, 34 Eggleston J held that the Commonwealth Parliament had power, under s.122 of the Constitution to make laws for the Government of Norfolk Island

In 1968, the Norfolk Island Council Ordinance was amended to vary the provisions in relation to eligibility to vote for, and to stand for election to, the Council

In 1970, a proposal was made that the Chairman of the Council should be elected and the Council should exercise some executive powers. It received little support at the July 1970 Council elections.

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It is against the above historical background that the Australian Government in 1975 sought, through this Royal Commission, to obtain well—informed recommendations relating to the Island’s future status, its constitutional relationship to Australia and the most appropriate form of administration for it.

### Chronological Summary

- 1774 - Norfolk Island was discovered by Captain James Cook.
- 1788 - Lieutenant Philip Gidley King and twenty-two others landed at Kingston to establish the first convict settlement.
- 1804 - Population, consisting of both free settlers and convicts had reached 1100.
- 1810 - Over one—quarter of the Island had been cleared.
- 1814 - Population was withdrawn from Norfolk Island and transferred to van Diemen's Land (Tasmania).
- 1825 - The second and barbarous convict settlement was established in the Island.
- 1844 - Norfolk Island was annexed to Van Diemen's Land on 29 September 1844.
- 1846 - Norfolk Island was reported as having 5228 sheep: some wool was exported to New South Wales.
- 1847 - British Government decided to commence closure of Norfolk Island as a convict settlement.
- 1855 - Island was unoccupied except for a small party of caretakers.
- 1856 - The entire population (194 persons) of Pitcairn's Island was transferred to Norfolk Island. Norfolk Island was severed from Van Diemen's Land and made a separate and distinct settlement under the jurisdiction of a Governor. The Governor of New South Wales was appointed Governor of Norfolk Island.
- 1857 - Governor Sir William Denison visited Norfolk Island and the first laws and regulations for the Island were gazetted.
- 1859 - First freehold grants (of approximately fifty acres each) were made to the head of each family.
- 1866 - The Melanesian Mission was established in Norfolk Island.
- 1897 - The administration of Norfolk Island was placed under the Governor of the Colony of New South Wales.
- 1900 - The Commonwealth of Australia Constitution Act was passed to take effect on 1 January 1901. By an Order in Council the Governor of the State of New South Wales was appointed to administer the affairs of Norfolk Island in lieu of the Governor of the former Colony of New South Wales.
- 1903 - The Council of Elders in the Island was replaced by an Executive Council consisting of two elected members and four members appointed by the Governor, who also

appointed the President.

- 1913 - The Norfolk Island Act 1913 was passed. It provided for the acceptance of the Island as a territory under the authority of the Commonwealth of Australia. The Executive Council was enlarged to twelve members, six elected annually, six nominated by the Administrator and Chief Magistrate.
- 1914 - An Order in Council dated 30 March 1914 revoked the 1900 Order in Council and placed Norfolk Island under the authority of the Commonwealth of Australia.
- 1920 - The Melanesian Mission held its last church service in the Island.
- 1935 - The Norfolk Island Act 1935 was passed to amend the 1913 Act. The Executive Council was replaced by an Advisory Council of eight members elected annually.
- 1957 - The Norfolk Island Acts of 1913 and 1935 were repealed and replaced by the Norfolk Island Act 1957, but the advisory role of the Island Council of eight elected members was retained and provision was made for the possible grant of some executive powers to the Council in the future.
- 1960 - The Norfolk Island Council Ordinance 1960 was passed.
- 1963 - An amendment to the Norfolk Island Act repealed the 1960 Ordinance and withdrew the provision for possible executive powers.
- 1965 - In the case of *Newbery v. The Queen* 7 F.L.R. 34 it was held that the Commonwealth Parliament had power to make laws for the government of Norfolk Island.
- 1974 - Queen Elizabeth II, the first monarch to do so, visited the Island. Bicentenary celebrations were held to mark the discovery of the Island by Captain Cook.
- 1975 - A Royal Commission was appointed by Letters Patent dated 15 May 1975 to inquire into and to report and make recommendations on the future of Norfolk Island.
- 1976 - In the case of *Berwick Limited v. R.R. Gray*, Deputy Commissioner of Taxation 6 A.T.R. 28; 76 A.T.C. 4015; 8 A.L.R. 580 the High Court of Australia held that Norfolk Island is part of the Commonwealth of Australia.

Chapter 6  
THE BERWICK CASE

The decision in this case was given after the Royal Commission had completed its task of gathering evidence and information. It resolves the doubt which existed in many minds throughout the hearing on what is the present status, and relationship to Australia, of Norfolk Island. It establishes that:

1. Norfolk Island is part of the Commonwealth of Australia,
2. The law—making power conferred upon the Commonwealth Parliament in respect of Norfolk Island by ss. 51 and 122 of the Constitution is plenary, that is, unrestricted in any sense.
3. The power conferred by s. 122 is, on the one hand, sufficiently wide to enable the Commonwealth Parliament to pass laws which provide for the direct administration of Norfolk Island by the Commonwealth Government without separate territorial institutions or a separate fiscus; yet, on the other hand, wide enough to enable Parliament to endow the Island with separate political, representative and administrative institutions, having control of its own fiscus.
4. If the Commonwealth Parliament imposes taxation on the residents of Norfolk Island, the Commonwealth Government is not obliged to spend any of the revenue so derived for the benefit of Norfolk Island as opposed to Australia

These findings of the Court which are of course binding on this Commission and the residents of Norfolk Island alike have had, of necessity a great influence on many of the conclusions reached in this Report. The first finding, that Norfolk Island is part of the Commonwealth, puts beyond doubt application of the Australian Citizenship Act 1948—1973 to the Island. Consequently in respect of residents of the Island a person born in the Island or one whether born there or not who was a British subject and resided in the Island (or in any other part of the Commonwealth) for the five years immediately before 26 January 1949 automatically possesses Australian citizenship. Similarly a person born off the Island and outside Australia before 26 January 1949 who was a British subject on that date and whose father was born or naturalised in Australia, automatically possesses Australian citizenship. A person born off the Island and outside Australia after 26 January 1949 of an Australian citizen parent is an Australian citizen only if the birth has been registered for citizenship purposes. Any other person now residing in the Island is not an Australian citizen but may qualify for citizenship on the same basis as if he were living in the mainland.

Australian citizenship has the effect of conferring numerous rights and benefits on those who possess it and also of imposing numerous obligations and burdens upon them. This in itself has compelled a change in the Commission's approach to the rights of residents in the Island to pensions, Medibank and other social service benefits and to the obligation of residents of the Island to contribute to the cost of them. Early in the Commission hearings it was not thought that any recommendations in relation to payment of taxes would be necessary but in the light of the decision on this case it is impossible to avoid treatment of this aspect in reporting adequately upon the

## Terms of Reference

The second finding that the powers of the Commonwealth under ss 51 and 122 and other sections of the Constitution which confer legislative power are plenary, means that once a law in relation to Norfolk Island is found to be a law on a particular subject—matter and once the subject—matter is found to be one of Commonwealth power no other nexus or relationship between the law and the subject—matter of power needs to be established. The Parliament is sovereign alike in what it directs and what it forbids.

The third finding that the power conferred on the Commonwealth Parliament by s 122 of the Constitution is wide enough to enable the Parliament to provide for direct administration of the Island by the Commonwealth Government or for administration of the Island by separate political representative and administrative institutions in the Island, means that the Commonwealth Parliament may provide whatever form of government for the Island it sees fit and to this end may have regard to the size of the Island, its importance and the stages of its political and economic development.

The fourth finding that if the Commonwealth exercises its power to impose taxation on residents of the Island, the revenue which it derives need not be expended for the benefit of Norfolk Island means that the revenue it derives may be paid into Consolidated Revenue and be used as the Commonwealth Government sees fit.

Chapter 7  
GENERAL OBSERVATIONS AND IMPRESSIONS

1. On witnesses

In examining and assessing the value to be placed on the evidence given at the hearings of the Commission one has had to reflect on a prodigious variety of witnesses Broadly they fall into three categories namely

1. Those who impressed as being both honest and accurate in respect of all the evidence they gave.
2. Those who appeared to be honest but inaccurate in respect of parts of their evidence because of ignorance prejudice partisanship an inclination to believe what they wished a tendency to exaggerate or some other human failing by way of illustration there were witnesses in this category who glibly claimed 'Australia has never done anything for Norfolk Island'.
3. Those who in respect of some of the evidence they gave F left no doubt in one's mind that they were neither honest nor accurate indeed some of them had to be cautioned They displayed a readiness to say anything which they considered would serve their own interests or the interests of those they represented regardless of whether it was true or accurate.
4. In general the evidence given by the Pitcairn descendants was more acceptable than that of newcomers to the Island, part of whose evidence was so coloured that little reliance could be placed upon it

2. On evidence

- (a) The post—war development of the Island particularly its development over the last decade, has so changed life in the Island that its inhabitants can be accurately F described as a modern society with a relatively high standard of living.
- (b) In so far as the Pitcairn descendants are concerned, it is a far cry indeed from the simple communal subsistence style of living to which they had been previously accustomed Speaking generally, they have come to appreciate thoroughly the comforts of twentieth—century living which are now available in the Island
- (c) A feature of this modern society is the number of factions which exist. Pitcairn descendants, traders, operators of tax avoidance schemes, retired people and new farmers all constitute divergent groups. A superficial friendliness and conviviality masks a deal of resentment and dislike among some of the groups.
- (d) Many Pitcairn descendants bitterly resent what they regard as the misuse of their Island by many newcomers whose predominant reason for being in the Island is to amass or retain wealth by avoiding revenue imposts and in some cases to help others to do likewise.

They equally resent the presence of commercialism arising from the growth of tourism notwithstanding their ready acceptance of the benefits which flow from it. These two factors have caused them to feel that they have become the economically deprived inhabitants of their homeland and to fear that before long they will lose control over their own destiny and that of their Island.

Hereunder are illustrations of Pitcairn resentment at becoming economically deprived:

- (i) 'I hope to combat the possibility of my children scrubbing or washing millionaires' floors'
- (ii) 'A person of Pitcairn descent or his spouse should be given first preference for any jobs that are available on the Island if that person has all the necessary qualifications'

Their fear of loss of control of their own destiny and control of the Island was demonstrated again and again by proposals to the effect that Pitcairn descendants should be guaranteed at least half the membership of the Norfolk Island Council or any substitute for it.

- (e) As a result of the factions in the Island it has not been possible as revealed later in this Report to obtain a consensus view on most of the matters covered by the Terms of Reference. Indeed there exist amongst the Pitcairn descendants who together with their spouses now constitute a little over half of the adult population sharp differences of opinion.
- (f) It was obvious that the groups who were most critical of Australia's government of the Island and who were most clamorous in urging complete or near independence from Australia, were those who had moved to the Island in recent years predominantly to amass or retain wealth by avoiding revenue imposts, and by exploiting the Island's commercial opportunities to the full. They went to considerable lengths, including the use of small numbers of Pitcairn descendants as willing accomplices, to propound their points of view.

One gathered from the evidence of some of the Pitcairn descendants that they had been moved to support these groups because of exploitation of their fear of what the Commonwealth Government might do in the spheres of taxation and land control if it continued to govern the Island. Their evidence followed a clearly identifiable pattern.

Members of these groups made it abundantly clear that they not only wished to be independent of Australia and to be free from revenue imposts, but that they expected Australia to continue to provide existing benefits and to make even greater monetary grants without cost to them.

One was not impressed by the repeated assertions of some of them that the predominant reason for their remaining in the Island was its natural charms.

- (g) It would be exceedingly difficult for this small faction—riddled and confined community to evolve for the Island policies that are likely to receive general acceptance in respect of major matters.

Chapter 8  
GUIDELINE (a) -  
‘The interests of Norfolk Island residents’

Guideline (a)

Before one can take into account the ‘interests of Norfolk Island residents’, it is necessary to find out, as far as possible, what those interests are. To do this, it is essential, in the first place, to have regard to what the residents expressed those interests to be and then, from the views expressed, determine the measure of consensus amongst them. Many factors undoubtedly influenced the views expressed. They caused many witnesses to claim that things which were really their own personal interests were the interests of Norfolk Island residents as a whole. These factors included:

1. the identity of residents – whether or not they were of Pitcairn descent;
2. period of residency on the Island;
3. period of residency – if immigrants, what brought them to the island;
4. occupations or businesses of residents;
5. the allegiance of residence;
6. land interests of residents.

1. The identity of residents

The Norfolk Island electoral roll records the adults who are entitled to vote at a Norfolk Island Council election. At 30 June 1975 there were 859 persons on the roll. Of these, 323 are of Pitcairn lineage; the remainder is made up of two categories:

- (a) Persons born in Norfolk who are not of Pitcairn descent; and
- (b) Persons who are not of Pitcairn descent born elsewhere.

Details of the number of residents who are not of Pitcairn descent and their countries of origin are as follows:

<u>Country of origin</u> <sup>13</sup>	<u>Number of non—Pitcairn Descent adult residents as at 30 June 1976</u>
Argentina	1
Australia	199
Canada	6
China	2
England	82
Fiji	1
France	3
Germany (West)	1

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<sup>13</sup> Source – Exhibit No. 121 updated to 30.6.1976

Holland	4
Hungary	1
India	2
Italy	1
Japan	1
Lithuania	1
Malta	1
Mauritius	1
New Hebrides	2
New Zealand	196
Norfolk Island	9
Northern Ireland	2
Norway	1
Scotland •	9
South Africa	3
Sri Lanka	1
Sweden	1
Switzerland	2
U.S.A.	2
Wales	<u>1</u>
<u>Total</u>	<u>536</u>

## 2. Period of residency

Most of the people of Pitcairn lineage have resided in the Island for the whole or the greater part of their lives. Some of them have left the Island for varying periods and then returned to settle down permanently. Others (number unknown) have departed from Norfolk, some apparently forever. At 30 June 1971<sup>14</sup>, 397 were residing in Australia and 159 in New Zealand. In so far as persons of non—Pitcairn descent are concerned, the following table classifies them into categories of terms of residency up to 30 June 1976.

<u>Length of residence<sup>15</sup></u> <u>in Norfolk Island</u>	<u>Number of non—Pitcairn</u> <u>descent residents</u>
1 – 5 years inc.	147
6—10 “ “	200
11 — 15 “ “	64
16 — 20 “ “	6
21 and over	<u>119</u>
	<u>536</u>

## 3. Purpose of residency

For Pitcairn descendants there is the obvious reason of Norfolk Island being their birthplace and homeland. For the non—Pitcairn element, various reasons were given as having motivated people to take up residency in the Island.

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<sup>14</sup> Date of last census

<sup>15</sup> Source- Exhibit No 121.

Undoubtedly, the beauty, serenity and equable climate in the Island was a factor in the minds of many Norfolk Island immigrants. Another, and in many instances the predominant, factor was the business opportunities available in the Island; a very significant group was attracted to the Island primarily by the absence of income tax and death duties.

It is fair to say that residents of non—Pitcairn lineage (with a few notable exceptions who are in the Island for its intrinsic charms) are there predominantly for the monetary advantages which the business opportunities and taxation status of the Island afford them. To this group the manifest disadvantages stemming from the Island's isolation and its reduced amenities and services are outweighed by the financial gain to themselves and the successors to their estates.

#### 4. Occupations or businesses of residents

The two main areas providing employment in the Island are first, the tourist industry and its subsidiary industries (hotels guest houses, apartments, low—duty shops, suppliers of foodstuffs, the hire of cars and horses and conducted tours etc ) and second, the Island's internal administration and its public operations including law enforcement, lighterage, roads, communications, philately, forestry and power reticulation. Most of the working population gain a livelihood from these two fields. The former offers considerable work to itinerants principally from Australia and New Zealand, who tend to stay for periods ranging from six months to one year and whose services constitute a vital supply to the Island's pool of labour.

The school and activities connected with education, up to fourth form secondary standard, engage full time a principal twelve teachers and a clerical assistant plus four part—time helpers. In addition, there are a number of small farms (producing limited supplies of meat, fruits vegetables and milk) several small builders, three small sawmills (operating mainly on local pine logs) and a scattering of professional people such as lawyers and accountants and their staffs who are chiefly engaged in providing services to revenue—avoiding clients and to local traders.

Commercial fishing operations are limited to sporadic forays by a few Islanders equipped with motorised small boats, but this activity can only be described as a marginal or fringe industry at best engaging no more than half a dozen individuals as a part—time occupation. Other industries—cum—occupations include a small pottery a screen printer, two (one weekly and one monthly) newspapers the Overseas Telecommunications Commission (Australia) service meteorological and airport operations conduct of the hospital and its related services real estate agents' work and general contracting in connection with roadwork's and transport.

A feature of the occupations and businesses of people in the Island is that many individuals are engaged in more than one pursuit. For instance it is not uncommon for a man to be an employee of the local Administration except when a ship has to be loaded or unloaded, when he takes leave without pay from his Administration work to play a role in the lighterage operations. The same person may also be a grower and supplier of primary produce to the tourist industry, a digger of graves, a disposer of garbage, a commission agent, a builders labourer—cum—assistant, and a night waiter at a guest house, hotel or club, from all of which activities, except grave digging, he may receive money for his services.

This state of affairs is a direct result of the small size of the population and the Island's precarious economy, based as it is largely on one industry, namely tourism.

A significant sector of the population may be classified as being in the 'retired' category. However, here again misleading impressions could be gained from such a lone description. Several of these 'retired' individuals have a number of active occupations such as being directors and secretaries of revenue—avoiding companies, pursuers of future projects involving the Island, managers (from a considerable distance) of business interests in the Australian mainland or overseas, and lenders of money in the Island, the mainland or elsewhere. The term 'retired' when applied to a number of these persons is therefore not entirely accurate.

An important aspect of all occupations is the 'bonus' on any remuneration received as a result of the non—applicability of income tax to income earned in the Island by residents. This is a significant factor in the net overall income of most residents and dependent on the size of the income of an individual it can be a very large bonus indeed vis-à-vis mainland levels of net remuneration. Recognition of this is partly allowed for in some directions for example wage rates in the Island generally are only 90%, approximately, of mainland rates.

#### 5. The allegiance of residents

Most residents are content to give their allegiance to Australia. The remainder, who reside in the Island predominantly for the monetary advantages the Island affords them, deny allegiance to Australia and some claimed that the Island is still either a British colony or a separate and distinct nation completely independent of Australia. Alternatively others claimed that if the Australian Government has any power over the Island its lawful exercise is limited to making laws only for the internal government of the Island.

Reasoning from this premise some members of this last—mentioned group argued, for instance, that Australian taxation legislation designed to prevent the avoidance of income tax by Australian citizens was invalid in so far as the Island was concerned in that the Australian Government had no power to make it applicable. Australian taxation laws to Norfolk Island.

The Berwick Case has of course, now removed all doubt regarding Australia's ownership and powers of government over the Island but the above attitudes have been briefly traversed to highlight the nature of the allegiances held by residents. The F spectrum is a broad one and hence is very divisive in such a small community. It is safe to say however that the majority of residents would assert loyalty to the Crown either in right of Australia or in right of Britain, even including those who took the extreme view of the Island being a completely independent nation. The bulk of Norfolk's population clearly wish this strong tie to the Crown to continue as a very basic and integral part of their way of life.

#### 6. Land interests of residents

Some three years after the Pitcairners were settled in Norfolk Island grants of land in freehold commenced to be made of areas of up to fifty acres to the head of each family for its F basic subsistence. Such allotments continued to be made for some time after the Pitcairners' arrival and all land so alienated belonged to the grantees and their descendants. That situation changed over the years with the arrival of non—Pitcairn immigrants to whom some of the descendants of the original settlers disposed of varying portions of their inherited holdings. By 1934 only one of the original fifty acre grants remained intact.

Such land sales by Pitcairn descendants have had the effect of fragmenting land ownership in the Island and this has tended to increase over the past fifteen years to the point where now less than half of the original earlier grants of land are still in the hands of Pitcairn descendants.

While freedom to dispose of one's property is the right of descendants of the original settlers as well as of any other citizens and while such right is recognised it was nonetheless contradictory to hear on the one hand in evidence expressions of intense attachment to land possession by Pitcairn descendants and the need for such land holdings in their way of life yet to be faced on the other hand by obvious evidence of willingness to sell what was allegedly such a highly regarded and traditional possession provided the price was attractive enough. These sales do detract from the weight which one would otherwise give to arguments urging action to ensure preservation of the alleged traditional right of the Pitcairn descendants to freehold land in Norfolk Island.

The present Situation is that most adult residents in the Island, both of Pitcairn descent and others hold some interest direct or indirect (some through possible future inheritance) in freehold or leasehold land in the Island. Farm holdings, private house blocks, commercial use blocks and sites of social clubs are all so widely dispersed among all sections of the population that it would be impracticable even to consider reversion to a situation where such land interests were confined to Pitcairn descendants. By sales over many years, which were executed in good faith by both parties a very substantial portion of Norfolk Island has been divested from its original owners and their descendants and this, which some may regard as regrettable in certain respects is something which cannot be reversed. Many of the sales have resulted in nearly 1000 acres, valued at over \$2.5m being owned at present by absentee land—holders.

However the sales of what some have alleged was their birthright to speculators and developers have caused the price of land to rise to what are extremely high levels for Norfolk Island (e.g. \$20 000 an acre). This has produced a position where some Pitcairn descendants and their children may find it beyond their capacity to finance the purchase of any land in the Island.

It is therefore desirable in order to preserve aspects of a way of life that has a role to play in a tourist—based economy to encourage Pitcairn descendants to greater efforts to protect that way of life by retaining as much of their remaining land—holdings as possible.

One other particular aspect of the land interests of residents deserves special mention and that is the real value to the Island of agricultural holdings. It appeared from the evidence that less than half of the meat and inadequate quantities of vegetables and fruit are produced in the Island for consumption there. With the advent of refrigerated transport and bulk processing and merchandising of food stuffs it is apparently cheaper, far more convenient (in spite of somewhat irregular shipping schedules) and in some cases, more hygienic, to use the imported products. Thus the need for land—holdings for food production has diminished remarkably, and what was once a subsistence economy (to which agricultural land was a first essential) is now no longer so, but is an economy dependent upon tertiary service industries, whose supply of most needs comes from outside the Island.

Nonetheless, one must give deeper consideration to the role in the overall economy of the Island to be played by persons' interests in land—holdings. Without its essentially rural style environment, Norfolk Island would lose a great deal of its attractiveness to tourists and would suffer accordingly. The history of some other Pacific Islands affords ample evidence of this danger. It seems wise on

balance, therefore, to encourage the retention of existing blocks suitable for agricultural pursuits, even though these may well be inefficiently utilised in the immediate future. Provided they are not used for non—primary industry purposes, such encouragement would assist in the preservation of an environment which has a major role to play in sustaining the economy. Overall policy with respect to land use should recognise the importance of these aspects to the well—being of the Island.

## 7. Residents' Organisations

The following voluntary organisations in the Island were represented before the Commission at its hearings. One may interpret the activities of these organisations as reflecting the interests of their members. In addition to speaking of their activities they addressed the Commission in relation to its Terms of Reference.

All Uckland Society (purporting to represent all people in the Island)  
Chamber of Commerce  
Country Women's Association of N.S.W. (Norfolk Island Branch) Flora and Fauna  
Association  
Freedom Movement C seekers of complete independence for the Island  
Hospital Board  
Lions Club  
Norfolk Island Citizens' Association  
Professional Officers' Association  
Red Cross  
Rotary Club  
Royal Far West Children's Health Scheme  
Sunshine Club (voluntary helpers of older citizens)  
Wives and Mothers' Club  
Young Residents' Association  
Youth Council

In considering the points of view advanced on behalf of the above groups several features emerge, namely:

- (a) There is no overall unanimity amongst them in so far as the future of the Island is concerned
- (b) The views of some individual members of a group clearly dominated the views expressed on behalf of that group. In Some cases it was very doubtful if the view put forward represented a true consensus of opinion within the group In some of the groups it was apparent that at least some of the few Pitcairn descendants in the group were being used as a front to mask the motives of the dominant members
- (c) Not all members of a particular group participated in the preparation of the submission by that group
- (d) One group was hastily formed after the announcement of the Royal Commission with the sole object of advocating complete independence
- (e) There was a marked inability by several groups to take a long—term, broad, balanced

approach to the future of the Island, and to consider the interest of all rather than their own sectional or selfish interests.

- (f) Some persons subscribed to more than one group submission in spite of differences between the submissions.

That such a policy has not been evolved and vigorously pursued to date and that the Island's obvious problems have been allowed to grow over many decades is an indictment of the administration of those successive mainland authorities which have been responsible for the Island's well-being over the years. A not untypical example of the relatively minor involvement of Pitcairn descendants in the commercial Sector in the Island is provided by certain aspects of the preparation of the submission presented to the Commission by the Chamber of Commerce — one of the more vocal of the Island organisations. Of the total financial membership of fifty-three, only twelve participated in the actual preparation of the submission. None of those twelve was a Pitcairn descendant; of the twenty-five who approved the submission, only three were Pitcairn descendants.

The overall impression conveyed by these groups was that of a community deeply divided into several factions and largely unable to find sufficient common ground upon which basis a program could be evolved to yield the greatest benefit for the greatest number. The divisiveness left one with a strong feeling that the most urgent need for this small community is the early determination for it of a lucid set of progressive policies for the long-term common good. These policies should seek to surmount the present factionalism and be implemented by local authority regardless of opposition from time to time by various minority interests.

Having said all the above, it should also be pointed out that the submissions of many individuals, and of sections of the submissions of some groups, contained clear and sound concepts regarding single aspects of the Commission's Terms of Reference. These were most helpful and have been noted and weighed in arriving at the official recommendations in this Report. The overwhelming need, however, is for the all-embracing long-term policy previously mentioned, without which the Island will remain a faction-riddled community devoid of a clear sense of direction and at the mercy of interests which have only their own personal aggrandisement at heart, to the detriment of the Island and its way of life.

Most of the matters treated in this Report as requiring attention could and should have received that attention a decade ago at least and probably earlier. That they were not attended to and that a Royal Commission was necessary in order to focus attention upon them is a regrettable commentary on the failure of successive Australian governments to lay down clear policies for the Island.

The main blame for the Island's problems does not rest in the Island. Most of the long-standing ones have had their genesis and perpetuation in slothful and inept mainland administration which has proved itself unable to activate the seemingly clogged processes of government and to achieve successful solutions to the Island's obvious difficulties. It deserves to be stated that in spite of the sterling and most conscientious work by some individual Administrators in the Island, Australia's administration of Norfolk Island has been singularly unimpressive at the policy level.

#### 8. The main interests highlighted by residents in their evidence

In considering these certain caveats should be recorded

First some items in the list of interests which follows possess different priorities for different residents some items are of greater interest to some residents than are other items; second the list has been compiled generally by noting those matters upon which residents appeared to place the greatest emphasis when giving evidence before the Commission; third when one is ascribing interests to different classes of residents, a clear correlation can be seen to exist between the nature of a resident and his type of interest. For example, usually Pitcairn descendants placed greater emphasis upon the quality and way of life, the need for land-holdings, and some certainly not all wanted freedom from Australian taxation; traders stressed their interest in the tourist industry and exemption from company and personal income tax; retired people were concerned with avoiding both income tax and death duties, while those people connected with tax avoidance companies favoured independence for the Island to the end that there would be no taxation of those companies.

One felt it to be helpful when outlining the interests to keep in the forefront of one's mind the words of Sir Garfield Barwick:

It is to be hoped that the inhabitants of Norfolk Island, especially those who have lived there long enough to have a real stake in its future, will be allowed a say in its shaping. In this connection it is well to remember that Australians and New Zealanders having an interest in Norfolk Island tend to fall into two groups, those who would like to see its 8000 acres preserved as an ideal setting for a restful and interesting holiday, and those who see it primarily as a place out of which they can make money. The latter are likely to have the more influential voice.<sup>16</sup>

Those items which were finally isolated as genuine interests (and which are now listed below) stretch across all types of residents but are essentially matters which were expressed by individuals or groups as holding importance in their view. They could, therefore, be described as the Island's interests looked at from a subjective point of view. They are as follows:

- (a) Retention of freedom from both personal income tax and death duty and the restoration of the non—applicability of Australian company tax laws to Norfolk Island.
- (b) Preservation of the way of life of the Pitcairners and their remaining 'historic rights'.
- (c) As large a degree of self—government for the Island as is possible.
- (d) Continuation of relative freedom from air and noise pollution.
- (e) Maintenance of the natural beauty, tranquillity and rustic charms of the Island.
- (f) Retention of the present close ties with the Crown.
- (g) An improvement in social services and a clarification of entitlement thereto.
- (h) Assurance of effective air transport communication with Australia and New Zealand and related facilities (e.g. airport).
- (i) Provision by Australia of service in the fields of foreign affairs, the judiciary, the local police force, defence, currency, the airport, mercy flights, educational services and extensions, a higher standard of hospital treatment and restoration of historic buildings and

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<sup>16</sup> Preface to the Australian Conservation Foundation Report. Special publication number 1, 1968

sites.

- (j) Opportunity to protect land—holdings against death duties and other imposts.
- (k) More employment opportunities in the Island and higher education assistance for the Island.
- (l) Continuation of the relative absence of serious crime.
- (m) Maintenance and control of the tourist industry as the basis of the Island's economy.
- (n) Retention of the local 'Norfolkese' dialect
- (o) Conservation of the indigenous flora and fauna and arrest of the present soil erosion.
- (p) A controlled immigration program to prevent excessive crowding and over—utilisation of the Island's natural resources and developed facilities.
- (q) Preservation of historic relics, memorials and artefacts in a museum in the Island.

#### 9. The need for an objective approach

While bearing in mind the above interests, it was essential in preparing this Report and weighing its associated recommendations to take an objective stance in assessing the extent to which those interests should influence one's final thinking. That is to say, in coming to an objective position, not only the expressed interests were borne in mind, but also those factors discussed under this guideline which are related to them.

With this objective approach, it is possible to say that in general the most important overriding interest of Norfolk Island residents is the preservation and development of the entire Island as a healthy, prosperous and happy home for all its inhabitants and their descendants.

Such an aim, however, cannot be pursued in disregard of the need to consider fairly and responsibly the financial and related interests of others who will be contributing to the costs involved. Thus it must be accepted that two sets of interests are inextricably intertwined in arriving at balanced decisions upon Norfolk Island and its future; the Island's interests must be viewed in the context of those other interests and responsibilities of the larger entity Australia of which, it is now clear, Norfolk Island is a part.

To adopt any other than this totally objective approach would be an injustice to either Australia or Norfolk Island and could only lead to inequitable treatment being accorded parties within the one nation this is something which, of course should not be tolerated

As an illustration of the partisan thinking which has failed to recognise the fairness of this approach several witnesses revealed a base ingratitude to Australia for help given by making the nonsensical statement that Australia had never done anything for Norfolk Island

Emphasising the need for objectivity is not to deny the desirability of what may appear to residents of the Island to be ideal solutions to some of the Island's problems It merely assists to explain why at times some of those ideal solutions cannot be achieved in full or as soon as some would prefer

It is hoped that the need for this objective approach — developed as it has been in some detail in this Chapter — is understood and will be kept in mind as the reader progresses through this Report

Chapter 9  
GUIDELINE (b)  
‘The historical rights of the descendants  
Of the Pitcairn settlers arising from their Settlement in 1856’

GUIDELINE (b)

1. Identification of the Pitcairn descendants

For the purpose of this Report, Pitcairn descendants are regarded as the people descended by blood ties from the Pitcairners transferred to Norfolk Island in 1856.

Evidence from these people revealed a widespread firmly and honestly held belief that Queen Victoria gave Norfolk Island to their ancestors in 1856 for the purpose of enabling them to continue the way of life they had thitherto enjoyed in Pitcairn Island.

It is virtually on that basic belief that the claim to the so—called historical rights rests for they are inextricably linked to the Pitcairn way of life itself.

Putting aside for a moment the question of the validity of the claim advanced by the Pitcairn descendants, and turning to the rights themselves, although opinion regarding their composition varied, it became evident that they certainly included the following:

- (a) A right to live in Norfolk Island which ‘belonged to’ the Pitcairners and their descendants.
- (b) A right to govern themselves as their ancestors did in Pitcairn’s, subject to and in accordance with British law. (No Pitcairn descendants at any stage contended that they are not British subjects, On the contrary they proudly claimed that they are).
- (c) A right to maintain their ancestors’ way of life which included:
  - (i) communal grave digging and free burials;
  - (ii) enough land to be held by families to permit them to sustain themselves in basic necessities;
  - (iii) grazing on commons land to be available to all;
  - (iv) maintenance and development of the Pitcairn dialect;
  - (v) non—interference with a life style involving such things as self—help, family picnics, special festive days<sup>17</sup> and observance of the Christian religion;

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<sup>17</sup> Foundation Day – 6<sup>th</sup> March  
Anniversary (Bounty) Day – 8<sup>th</sup> June  
Thanksgiving Day – Last Wednesday in November.

- (vi) obligation to provide labour for public works.
- (d) A right to freedom from taxes — and certainly freedom from taxes imposed upon Norfolk Island by other countries, colonies or territories for the partial benefit, at least, of those other areas.

## 2. The claims relating to ownership and self—government

Turning now to the question of the validity of the first two claims, it needs to be said at the outset that there is no legal foundation for them whatever. Neither from evidence given mainland Australia and in Norfolk Island, nor from examination archival records in Australia, New Zealand and England, has any proof been revealed that Queen Victoria in Council or the Imperial Parliament, the only authorities with power to do so, did, in fact, formally grant these or any other rights to the Pitcairners. No letter, no declaration, no order in Council and no Imperial Act was produced in evidence or discovered by the Commission, in Australia, Norfolk Island, New Zealand or England, which could in any way support these claims. Further, not only are the claims unsupported by any legal authority but they are inconsistent with the orders of the Queen in Council and the instructions issued by servants of the Crown.

It is clearly demonstrable in respect of the claims that the entire Island ‘belonged to’ the Pitcairners that the opposite is the truth and that Norfolk Island was never ceded to them.

Five documents (all of which have been quoted in Chapter 5, Historical Outline and Chronological Summary) clearly attest this truth. They are:

- (a) The B. Toup Nicolas letter dated 5 July 1854;
- (b) The 1856 Order in Council;
- (c) The instructions to Governor Denison from the British Government in 1856;
- (d) Governor Denison’s instructions to Lieutenant Gregorie in 1856;
- (e) The Fremantle letter dated 25 June 1856.

In support of the above documentary evidence, it is historical fact that:

- (a) Governor Denison’s instructions regarding land apportionment were finally executed after initial rejection;
- (b) Land sales were made before 1859 to non—Pitcairners by the Pitcairners themselves;
- (c) Land was officially granted to a non—Pitcairn group, to wit the Melanesian Mission, in 1866.

Both the documentary material and the historical facts evidence beyond all doubt that the Island was never given or ceded to the Pitcairners, but that at all times the Crown retained full control over all the Island’s land and all original disposals of it.

Again, in respect of the present claim that the Pitcairners were given in 1856 the right to self—government, it should be pointed out that they did accept in 1857 the simple set of thirty—nine laws drawn up by Governor Denison and the two added at their request in 1858, and that they lived under those laws for many years. Acceptance in this manner of laws devised by a non—Pitcairn authority does imply a departure from the assertion by the Pitcairners of their 1856 understanding that they would govern themselves. At the same time, however, it should be conceded that, in so far as the internal operations in the Island of those laws was concerned, the Pitcairners did in fact conduct this aspect of government entirely by themselves under a Chief Magistrate and a House of Elders, elected by them. It was not until 1896 that a Chief Magistrate from New South Wales was sent to administer the Island.

It may well be that the belief that the Island was given to them for them to govern arose from the statement by B. Toup Nicolas that at that time it was not intended to allow others in the Island, a policy which Governor Denison attempted to maintain. Be that as it may, the belief has persisted in spite of the fact that whenever such a claim has been advanced between 1856 and the present, it has been refuted. An example of the manner in which the question has raised itself again and again is provided by the following comment by Atlee Hunt in his Report<sup>18</sup>:

Much controversy has been raised concerning the understanding as to the terms on which the Pitcairners were to occupy their new land. They seem to have acquired the idea that the whole of Norfolk was to be given to them as their exclusive property, but it is beyond doubt that the arrangement was not that Norfolk was to be ceded to them, but only that grants of land would be made to the different families, though the decision was expressed that it was ‘not at present intended to allow any other class of settlers to reside or occupy land on the Island’.

The role, if any, to be allotted to Pitcairn descendants in any new form of government to be established for the Island is difficult to decide. It is obvious that to preserve their way of life and the present character of the Island, the influence of the Pitcairn descendants must have opportunity for expression. yet to divide any small community into two basic and distinct classes at government level, with one class possessed of greater Powers than the other, is to invite dissension and internecine strife. Where one group dominates, other groups tend to wither or be totally ineffectual, knowing effort on their part is useless. The inter-group feelings in the Island have already been referred to in Chapter 7 (Observations and Impressions) of this Report. Any step in the near future which did not strive to coalesce the different Elements into a community with a sense of purpose, self—reliance and pride in the Island would be a most retrograde and unfortunate move.

The importance to the community and its tourist industry (upon which its economy rests) of the beauty and tranquillity of the Island, its unhurried rustic charm and its historical interest must be evident to all. The part played and to be played by the Pitcairn descendants in achieving and maintaining that status must be equally evident.

However, to guard against too dramatic a cleavage between Pitcairn descendants and others, it is felt that emphasis should be placed on length of residence and acceptance of the Pitcairn life style as the basis of political power in the Island rather than on Pitcairn descent. The fundamental schisms in the present society are clearly between some of the short—term and some of the long—term residents and their respective approaches to life. An almost anthropological xenophobia can be detected in this. It lessens as the ‘foreigners’ stay increases. Adaptation on both sides occurs,

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<sup>18</sup> Atlee Hunt Report, March 1914

greater understandings develop, and a mellowness softens attitudes towards once stark differences. Hence, time should be invoked as an ally in devising any new form of local government, with power being given not to Pitcairn descendants as such but to Norfolk Islanders as such; and Norfolk Islanders proven by such factors as a genuine appreciation of the Island's natural attractions and a bona fide wish to perpetuate a way of life that has so much to commend it and not merely by the accident of birth or marriage into a Pitcairn family, nor by a predominant desire to take advantage of the peculiar tax status of the Island or the business opportunities it affords or both.

While the Pitcairn heritage should remain a clear feature of Norfolk's history and way of life, the Island should consciously strive towards a Norfolk Island identity and image in the future. It should place the Pitcairn component in a secure, but nonetheless non-dominant, niche in that future. The Pitcairn heritage is, After all, now the proud possession of under one-half of the adult community and its value may lessen over time as Pitcairn descendants continue to marry outsiders. It seems wise, too, that newcomers to the Island be made to realise that it is a community in which they should serve, as it were, a probationary period before becoming entitled to a voice in the Island's destiny. Persons knowing this, and not caring for it, may, of course, not bother to enter the community and become a potential disruptive force.

Of influence also in arriving at a sensible approach to this question of local government and the role to be played in it by different sections of the Island community is the need to ensure that new blood and new abilities are given a chance to contribute to the Island's advancement. Seldom does one sector in any society possess all the talents and to allow, for instance, the Pitcairn descendants to dominate for the foreseeable future to the exclusion of the skills of others who may move in good faith to the Island would be to hinder its progress. Such new blood should have its opportunity to play a role in government and it will be to the community's advantage for this to be encouraged.

While recognising, therefore, the importance of the Pitcairn descendants in the community, it is felt that the basic requirement in both entitlement to a vote and to eligibility to stand as a candidate for local government should be a certain minimum length of stay in the Island rather than a particular ancestry. Such a criterion and assimilation to the Island's life style will be much less divisive to the community and much more conducive to the development of a pure 'Norfolk Islander' outlook on community affairs.

The above views are fortified by the Racial Discrimination Act 1975 which is expressed to extend to Norfolk Island. Among Other things it forbids discrimination on the basis of descent.

### 3. The right to the Pitcairn way of life

Containing much of the very essence of the alleged historical Rights is the 'way of life' of the Pitcairn descendants. There should be no difficulty and few administrative problems in preserving and maintaining its features. There is nothing to stop them from continuing to show their respect for the dead; maintaining their tradition of free burials and communal grave digging; preserving their dialect 'Norfolkese'; helping one another in ways epitomised by the words of their own Anthem (Appendix VII); holding their family gatherings, picnics, special holidays and festive days and practising their forms of the Christian religion. Nothing has altered sufficiently in 120 years to cause anyone to question their freedoms in regard to these desirable customs. Indeed, they add colour and character to the Island and should be preserved at all costs.

Regarding the obligation to give one's labour to public works, this was removed (in deference to an International Labour Organisation Convention against forced labour) by the Public Works Ordinance 1974 (No 7) which requires a payment to be made in lieu of the labour.

#### 4. Rights open to question

Turning now to matters such as freedom from taxation, freedom to graze cattle indiscriminately, and the right to preferential treatment in the acquisition of either freehold or leasehold land, when one considers these purported rights in the present twentieth century setting of the Norfolk community, one is forced to conclude that the circumstances in which the beliefs in such rights originated have changed so radically as to have entirely altered the very basis of living which once may have justified those belief

##### (a) The aspect of taxation freedom

For instance, the Pitcairners, prior to their move to Norfolk, were a self—contained and self—sufficient community. They needed and demanded little from the outside world and, indeed, received little. Their life style was simple and it was fundamentally a subsistence economy. Contrast that with the present community in Norfolk. Not only is it many times larger, but it is no longer a community based on a subsistence economy; it is utterly dependant for its survival upon a complex economy, relying almost entirely upon assistance in the form of tourism from the outside world. In Pitcairn's the community had no developed hospital facilities, no pharmacy, no airport, no electricity generators, no jetty cranes, no telephones, no overseas radio communications, nor any formal administrative structure. It even lacked money itself. 11 of these the people in Norfolk Island today would regard as necessities of modern day life.

In other words, while the original Pitcairners on their departure from Pitcairn's wished to preserve their way of life, their descendants voluntarily departed radically over the years from that way of life in favour of a life which gave them greater protection against illness and disease, better schooling for their children, more amenities and higher standards of living. They willingly adopted and used Australian currency as money, Australian passports, Australian technical advice on agricultural, forestry and other matters, Australian (and New Zealand) mercy flights, Australian assistance in restoring and preserving historic buildings and sites and Australian monetary aid toward the administration of the Island in an orderly manner.

Evidence has revealed that Australian assistance, direct and indirect, to Norfolk Island was about 2½ million dollars for the year ended 30 June 1975. Over the years, it has amounted to a very considerable payment by Australian taxpayers, --in return for which Australia has received little, other than some basic meteorological information.

If one accepts the benefits flowing from a taxation system, it is only equitable that one should be prepared to accept the burdens, and in fairness to many residents in the Island, both of Pitcairn and non—Pitcairn descent, it should be mentioned that there was a majority view expressed in evidence to acceptance of either the Australian taxation system or preferably subjection of themselves to a local system of taxation at a level sufficient to pay for the services they need.

One can see, therefore, from this brief examination of this item, an acceptance by many of the need to depart from what once was regarded as a historical right.

(b) Grazing rights

On the question of the right to commons grazing, here again a totally different set of circumstances has arisen over the years since the Pitcairners came to Norfolk. At that time, there was no motor traffic in Norfolk Island, cattle grazing up till then had produced no serious erosion problems, the subsistence needs of the new settlement for meat and dairy products could be easily satisfied by virtually uncontrolled breeding of the appropriate animals; open range type grazing and the denudation of the steep slopes of their pines and other cover had not produced soil slumping, nor was the exotic kikuyu grass then a problem in preventing regeneration of young pines. Again, whereas in 1856 and the immediate subsequent years, probably every family grazed its own animals, now only approximately fifty people in the Island graze cattle or horses<sup>19</sup> and over half of the Island's meat and dairy products requirements are imported.

The importance, therefore, to the Island and its economy of cattle grazing has diminished greatly, while problems associated with free grazing by cattle and horses have grown considerably. It is a curious anomaly that in spite of the evidence provided by the man-made moonscape desert of Philip Island 5.6 kilometres south of Norfolk being virtually before their eyes every day of their lives, many Norfolk residents seem relatively unconcerned over the obvious and widespread signs of both incipient and advanced erosion in Norfolk itself. While the deplorable denudation of Philip Island was wrought by over-grazing chiefly by rabbits, goats and pigs, the hazards to Norfolk by uncontrolled grazing by cattle could cause similar difficulties in certain areas of Norfolk

Expert evidence given to the Commission left one in no doubt that porous volcanic soil on steep slopes in a rainfall belt of an average of 1345 mm (53 inches) per annum, if denuded of the forest cover and associated sponges of vegetation litter and soil humus which once covered it, will first begin to slump and then to erode and wash into the sea. Philip Island stands as mute testimony to the truth of this statement.

Slumping on such steep slopes is widespread throughout Norfolk Island. Other stages of erosion have progressed still further to bare rock. In some localities, reforestation and the exclusion of cattle have successfully reclothed gullies and slopes, and it is obvious that the sooner the remaining steep slopes are re-covered in forest the better. Such slopes are simply not suitable for grazing in those environmental conditions.

Furthermore, the trampling and compaction of the forest floor by cattle has been identified as a prime factor in the deterioration through 'die-back' of some areas of pine forest in the Island.

On the other hand, any balanced appraisal of commons grazing in Norfolk Island must acknowledge that it keeps the grass of areas affected neatly trimmed, reduces the fire hazard which would otherwise exist in the presence of ungrazed dead and dry kikuyu grass, and enables those persons not possessed of private grazing land to produce some beef. Also it must be conceded that the kikuyu grass itself does fulfill a valuable role as a soil binder in the absence of the former forest cover; the same can be said of the scrub lantana and tobacco weed — all three are at least better than nothing as 'soil caretakers'.

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<sup>19</sup> The number of cattle approved for commons grazing in 1975-76 was 466 and approvals ranged from two head per person to thirty-eight. About fifteen persons grazed cattle for commercial production of beef

Nonetheless, uncontrolled grazing, while allegedly a historical right, must be viewed in the context of the present overall situation of the Island. When obviously the continued exercise of such a right will imperil the very existence of the Island and ultimately the community itself, that right must be subordinated to broader interests.

Cattle and horses not only wander at will over the Island's grassed areas but also amongst the shopping areas and around the Kingston administration centre and an incidental feature of this commons grazing is the aspect of sheer filth in locations frequented by humans.

Animal droppings at the entrances of shops and public buildings may be considered by some people to be quaintly colourful and odorous reminders of an interesting earlier society. To others the spectacle may disgust and repel.

From another aspect also, it is only a matter of time before free—straying cattle on Norfolk's roads cause a serious accident, involving death or severe injury to people.

In these changed circumstances, therefore, it is felt that this alleged historical right to graze cattle indiscriminately should be subjected to greater controls (not only on roads and commons but on private property occupying steep slopes) and that the Island's greater needs of soil and land conservation and human health and safety should be given clear priority in the administration of the Island.

While the Pasturage and Enclosure Ordinance 1949—1964 modified the original right of commons grazing by making it necessary to obtain from the Administrator a right of pasturage upon payment of a prescribed fee, it certainly does not go far enough to preserve the Island's soil.

If it is desired to maintain at least a vestige of communal grazing of cattle it should not be difficult to set aside suitable land, fenced and worked on a rotation system, for that purpose. At all times, however, the need to protect the Island and its inhabitants should be paramount.

On grazing, therefore, the Commission recommends that commons grazing be prohibited on steep slopes in Norfolk Island and that other commons grazing areas be fenced and grazed in rotation

(c) Land rights

On the question of the right of Pitcairn descendants to hold land, here again one must view the subject in the very much Changed context of the Island's economy as it exists at present. As stated earlier, the Island is no longer a type of commune surviving by subsistence farming and barter. The need for land has greatly diminished and, in addition, a structure of land ownership amongst non—Pitcairn descendants has evolved over many years with the consent of the Pitcairners and their descendants. This cannot be reversed. A land transfer system, albeit primitive, has operated for decades. The old practice of granting land to Pitcairners and their descendants has long vanished, the last grants having been made in 1890. To contemplate, therefore, restoring in some way the former right for Pitcairn descended families exclusively to hold land is impracticable, unreal and anachronistic. At most the Pitcairners were only given the right to live in Norfolk Island. Nonetheless, it is equally true that to contemplate a situation where not a single freehold in Norfolk Island is held by a Pitcairn descendant would be to view an Island stripped of a vital part of its character. Norfolk Island and Pitcairn's Island together occupy a special place in history, and it

would be a loss to the world not to encourage the preservation of the genuine and unique character of Norfolk.

It is important that agricultural blocks of land be retained in large numbers in Norfolk, and it is felt that Pitcairn descendants should be encouraged to retain their holdings within their families. Necessity or cupidity may cause them to diminish further their holdings but if this happens, it should be in the face of government encouragement to the contrary and not due in part to government apathy.

In the past, approximately 1700 acres have been set aside as reserves in the Island (excluding Philip and Nepean Islands which are wholly reserves). This makes a significant contribution to ensuring the Island retains an essentially rural character. However, it is regrettable that a reserve around the entire Island to protect the foreshore has not been established. This situation should be corrected and the Commission recommends that the Commonwealth Government complete the reservation of a coastal strip (not less than one hundred metres from the edge of any cliff or 150 metres from the high water mark of the shore, whichever is the greater) around the entire Island.

## 5. Conclusions and recommendations

Any discussion of the historical rights of the Pitcairn descendants will always have an amorphous and unsatisfactory about it. However, it must be realised that the very origin of the alleged rights themselves is clouded. Their precise terms are far from clear. Changes in their form and in their importance have occurred over the years. Current approaches to them can only be on the basis of current conditions and likely developments in the future, and the past cannot be allowed to turn back obvious advances and needs. Consistent with that approach, though, is the desirability of retaining wherever practicable those characteristics of the way of life of a people who have been a remarkable feature of the South Pacific for two centuries. To this end it is recommended that some section within the Norfolk Island Public Service be made responsible for the preservation of the Island's traditions and culture.

Chapter 10  
GUIDELINE (c)  
'Norfolk Island's Legal Position As A Territory Of Australia'

This guideline asserts that Norfolk Island is a Territory of Australia. However, during the Commission's hearings it was repeatedly claimed that Norfolk Island was not an Australian Territory but was either a British Crown Colony or a separate and independent state. With respect to the former claim it was further alleged that the only power which had been conferred on Australia in relation to the Island was power to make laws for its internal government. The claims were made principally by some of those persons who had settled in the Island in recent years predominantly for the purpose of avoiding income tax, gift duty and death duty, and who had for some years conducted successful businesses or who had exploited the Island as a tax haven.

In support of their claims they not only relied on the interpretation they and their legal advisers placed on the relevant Imperial Acts and orders in Council, but also sought to establish that when the Pitcairners had been transferred to Norfolk Island in 1856 Queen Victoria gave Norfolk to them for themselves and their descendants to govern as they saw fit. They argued from this premise that the British Government acted unlawfully in committing the government of the Island first to the Governor of New South Wales in 1896 and second to the Commonwealth Parliament in 1914.

After losing many millions of dollars in revenue through the use of the Island as an income tax haven the Commonwealth Government in 1973 by an amendment to its Income Tax Assessment Act 1936—1973 severely curtailed the use of the Island for that purpose. The validity of this legislation was challenged in the Berwick Case.

As stated earlier in this Report, the High Court of Australia held in that case that Norfolk Island is a Territory of Australia and went on to state its legal position as such a Territory, viz. that the Commonwealth Parliament has plenary law—making power in respect of it.

Chapter 11  
GUIDELINE (d)  
'The present and probable development of the economy of Norfolk Island'

1. Historical background

To understand why the Island's economy has evolved to its current state it may be helpful to consider its historical background.

In the very early days following the first convict occupation of the Island in 1788, great hardships were endured. At one stage, survival depended upon hunting sea-birds and collecting their eggs. No immediately arable land was available and the forest cover had to be removed laboriously by hand before any crops could be planted. As clearing proceeded, production of grains and other foodstuffs improved and the Island gradually became self-supporting in so far as those products were concerned. From time to time local pests, particularly caterpillars, blight, fly and the army grass worm, seriously interfered with progress in this direction. In spite of these difficulties, sugar cane, maize, fruits, vegetables, coffee plants and occasionally wheat were grown in quantity, maize being particularly effective in sustaining thousands of swine, the threat of which became Norfolk's first export (to New South Wales). Although it had been intended to grow flax, that crop never prospered. This first settlement was, however, very successful in establishing roads and drains, dispersing the population of about 1000 throughout the Island, erecting some public buildings and houses, constructing the jetties at Kingston and Cascade and opening up sufficient arable land for self-sustaining agriculture. By 1796, 1528 acres had been cleared.

After that first convict settlement was abandoned in 1814, and all buildings completely destroyed, the Island remained unoccupied until 1825. It was during this interval that the encroachment of weeds upon the cultivated fields first began and the effects of this remain an agricultural factor of distinct significance.

In 1825, convicts were again sent to Norfolk and although there then ensued one of the worst and most brutal periods of penology in British history, it was accompanied by further significant advances in so far as the development of the Island and its economy was concerned. Additional land was cleared, weed-infested fields were cleaned up, huge public buildings were built to house convicts, gaolers, soldiers and administration personnel and homes were constructed for private citizens, roads were further extended and improved, and settlement expanded from the Kingston region into the upper tableland areas.

The two jetties of half-breakwater and half-wharf type construction, however, continued to remain unaltered and are of the same kind today.

During this second convict settlement, further animals were introduced to the Island including cattle, horses, sheep, pigs and goats. In 1846, it was reported that the Island held 5228 sheep and some wool was exported to New South Wales. Philip Island received its sentence of protracted death by the introduction during this period of rabbits, in addition to pigs and goats.

In 1855, the last shipload of convicts and their guards and accompanying settlers were evacuated from Norfolk, leaving only a small caretaker force in occupation to assist the Pitcairners on their arrival. Considerable stock, however, remained in the Island.

Therefore, when the 194 Pitcairn Islanders arrived at Norfolk on 8 June 1856, they came not as pioneers but as new tenants of an Island with valuable and significant developments in the form of roads, bridges, buildings, wharves of sorts and cleared arable land. They even took over a store of foodstuffs, numerous tools, agricultural equipment and the considerable stock left behind by the former convict community. They were thus most favorably situated to establish an agricultural economy and it was the pursuit of agriculture, plus fishing, that occupied them and their descendants for many years.

The Island remained basically dependent upon subsistence farming and fishing, plus imports of non-locally-grown materials, until well into the twentieth century. Crops raised were chiefly maize, kumeras (sweet potatoes) and yams. A little coffee was grown. Bananas, guavas, passion fruit, oranges, strawberries and vegetables of all kinds were cultivated. Pigs, poultry (particularly turkeys) plus cattle and a few sheep were the main livestock. Horses provided the means of both transport and agricultural powers

Trade with the Island was in a state of critical imbalance from the beginning. At the turn of the century exports were exclusively agricultural and only a fraction of the value of imports. The trade figures in respect of the year 1900 were as follows:

Exports and imports for the year 1900<sup>20</sup>

Imports into Norfolk Island		Exports from Norfolk Island	
From N.S.W.	£3829	To N.S.W.	£1380
From N.Z.	1525	To N.Z.	140
Total Value £5354		£1520	

Some idea of the items traded around that time is to be gained from the following details in respect of the quarter ended 31 March 1901.

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<sup>20</sup> Source — Copies of papers and correspondence relative to the imposition of duties upon products imported into New South Wales. No.8 Report from Printing Committee of N.S.W. Legislative Assembly, 14<sup>th</sup> August 1902, p 990.

Imports into Norfolk Island for the quarter ending 31 March 1901

Articles	From whence Imported	Quantity	Value
			£ s d
Alkali	New South Wales	1 pkg	1 0 0
Axe -handles	"	1 pkg	1 5 0
Ammunition	.....	.....	.....
Bags	.....	.....	.....
Biscuits	New South Wales	362 lb	6 5 0
Boots	"	4 pkg	32 10 0
Bath bricks	"	1 pkg	0 10 0
Buckets	"	3 pkg	3 10 0
Candles	"	110 lb	3 10 0
Chemicals	"	2 pkg	5 0 0
Cigars and Cigarettes	"	1500 No.	1 5 0
Confectionery	"	150 lb	3 0 0
Clocks	"	1 pkg	1 5 0
Cordage	"	1 pkg	0 10 0
Coffee	.....	.....	.....
Cutlery	New South Wales	2 pkg	2 10 0
Cricket tools	"	1 pkg	3 0 0
Drapery	"	29 pkg	261 10 0
Earthenware	"	6 pkg	28 0 0
Flour	"	22,200 lb	105 0 0
Fruits, dried	"	420 lb	15 0 0
Furniture	"	19 pkg	30 15 0
Fish	.....	.....	.....
Glassware	New South Wales	17 pkg	29 10 0
Groceries	"	9 pkg	10 10 0
Hardware	"	15 pkg	71 10 0
Ironmongery	"	12 pkg	21 10 0
Intoxicants – Beer	.....	.....	.....
Whisky	New South Wales	2½ galls	3 5 0
Wine	"	3 galls	2 5 0
Iron, galvanized	"	4 pkg	13 0 0
Jams	"	78 lb	1 10 0
Molasses	"	3 cwt	4 10 0
Meats, preserved	"	1 pkg	2 5 0
Musical instruments	"	1 pkg	6 0 0
Oils, kerosene	"	128 galls	6 10 0
Oils, paint	"	15 galls	3 10 0
Oilmen's stores	"	9 pkg	3 10 0
Millinery	"	2 pkg	4 0 0
Paints	"	90 lb	1 10 0
Rice	"	46½ cwt	36 10 0
Sugar	"	58½ cwt	59 0 0
Salt	"	4½ cwt	8 0 0
Soap	"	13½ cwt	13 5 0
Saddlery	"	4 pkg	15 10 0
Stationery	"	3 pkg	5 0 0
Sundries	"	17 pkg	40 0 0
Store	"	1 No	3 5 0
Seeds	"	1 pkg	2 0 0
Tea	"	410 lb	24 15 0
Tobacco	"	187 lb	19 10 0

Articles	From whence Imported	Quantity	Value
Wire	“	16 cwt	13 10 0
Whiting	“	1 cwt	1 0 0
Tinware	“	1 pkg	0 10 0
Tennis goods	“	1 pkg	2 0 0
Vestes	“	1 pkg	2 0 0
Paper bags	“	1 pkg	10 0 0
			<u>£9445 0</u>

Exports from Norfolk Island fro the quarter ending 31 March 1901

Articles	where Exported	Quantity	Value
			£ s d
Bones	New South Wales	10 Tons	20 0 0
Coffee	.....	.....	.....
Fungus	New South Wales	7 pkg	3 0 0
Hides	“	46 No.	15 0 0
Hair	“	20 lb	0 5 0
Fruit	“	13 pkg	2 0 0
Onions	“	27 cwt	6 10 0
Poultry	“	13 prs	1 10 0
Potatoes	“	7 cwt	1 15 0
Plants	“	2 pkg	0 15 0
Eggs	“	21 doz	1 0 0
Beef	New Caledonia and South Sea Islands	580 lb	7 10 0
Eggs	“	71 doz	3 10 0
Potatoes	“	10 cwt	3 10 0
Poultry	“	18 prs	2 0 0
Onions	.....	.....	.....
Vegetables	New South Wales	2pkg	0 10 0
	New Zealand	Nil	
			<u>£78 5 0</u>

Norfolk Island  
5 April 1901

F.M Nobbs,  
Collector of Customs

Although attempts at commercial export of agricultural products were repeatedly failing, other minor changes were occurring. The establishment of the Melanesian Mission in Norfolk Island in the year 1866 was responsible for perceptible changes in both the trade and agriculture of the Island. The Mission became a large importer of a wide variety of goods for which it paid cash. In addition, it set about farming its relatively large land—holding of 1000 acres with a keenness and skill hitherto absent from the Island. In particular, the eradication of weeds on its lands was in marked contrast to other Island properties. Although this Mission had agricultural interests, it became in fact the first significant non—primary industry in the Island, namely the training of missionaries.

In 1902, there was established in the Island the Overseas Cable Station base which introduced a further non—agricultural element into the community.

Whaling had been carried on intermittently from the Island from 1863 and was a small but notably colourful industry. Up to shortly before World War II teams of men in two or three whale—boats,

and using hand—flung harpoons and lances, would pit their seamanship and hunting skills against the ocean's greatest leviathans in personal and mortal combat~ they would then tow their huge catches miles across high seas back to the Island, singing hymns of thanksgiving as they pulled on their oars. Though conducted with crude equipment (up to the late 1940s when powered harpoons and launches commenced to be used) and accompanied by great danger, whaling remained an industry because of the obligation to discharge indebtedness to storekeepers. However, the price of whale oil gradually sank to levels which made it not worth the dangerous risks involved and the whales themselves became increasingly scarce around the Island, so the industry was abandoned in 1962—63. Other commercial fishing was attempted from time to time, but lack of adequate refrigeration storage banes bedeviling attempts at most commercial ventures based on agriculture and fishing. They still are today.

The growing of bananas flourished temporarily during the 1930s when a disease affected the Australian mainland crops, but this trade petered out with the elimination of the disease. Trade in lemons (also their seeds and juice), passion fruit, coffee, bean seeds, tung—oil, butter and cut flowers were all tried and all failed commercially. Sawmilling continued to produce timber which was consumed in the Island. Some palm seed, avocado seed and pine seed was, and still is, collected and sold on the export market but the trade is small.

Interest by tourists in Norfolk Island seems to have commenced shortly after World War I. Three boarding houses accommodating some forty visitors were in operation in 1921 and an annual flow of some 250 tourists persisted in the early 1920s. By 1929, this intake had increased to some 800 and in the 1950s cruise ships brought several thousand tourists.

The Island's chronic inability to become self-supporting in an economic sense was masked to a large degree by substantial contributions from outside, e.g. government subsidies in the form of outright grants and salaries, expenditure in the form of supplies, for the Mission and wages etc. paid by that institution, supplies for and salaries of the employees of the Cable Station, pensions and remittances to residents, drafts sent home by young men who had gone abroad to better themselves, expenditure by shipping companies and visitors etc.

## 2. The transition to the present situation

It was not until World War II that any fundamental change in Norfolk's economy took place and this change was wrought by the construction in the Island of an air strip on land acquired and owned by the Commonwealth Government Overnight, the difficulties of access and the isolation of Norfolk commenced to lessen and as the standard of both airport and aircraft improved so the ability of people to enter and leave the Island without excessive inconvenience increased. As this fact became known in Australia and New Zealand, along with greater knowledge of the Island's well—recognised attractions, the number of visitors gradually built up and with this growth in numbers of tourists came a concomitant growth in all those services related to tourism. Hotel, apartment and guest house accommodation burgeoned, imports to supply low—duty shops rose steadily, numbers of road vehicles and road standards were lifted to meet increasing demands, and administration requirements and public services expanded to satisfy the developing needs of a growth industry and its satellite or support industries such as horticulture, fishing, souvenir production, meat and milk production.

Concurrently with the above changes, another less obvious but, nonetheless, equally basic change

was occurring. As Norfolk's tertiary industry of tourism grew, there also developed more efficient banking facilities and those services associated with the transmission of funds to and from the Island. Greater knowledge was disseminated of Norfolk's peculiar tax status vis—à—vis Australia and by the early 1960s there had evolved in Norfolk Island those essential prerequisites for a twentieth—century tax haven, viz.

1. A stable currency;
2. Freedom and ease of currency movements;
3. Banking facilities;
4. An infrastructure of solicitors, accountants and residents willing to provide services and domiciles
5. Adequate communication facilities;
6. Political and administrative stability.

Norfolk Island lay ready to be exploited by the revenue avoider.

### 3. The present economy and the dominance of tourism

It is against the above background of subsistence agriculture and fishing, plus the failed attempts at commercial ventures into the export of primary industry products and the uncontrolled changes of the transitional period, that we now turn to the present. Up until 1947<sup>21</sup> when the tourist industry, with the aid of regular and reliable air transport, began to develop, the Island was virtually stumbling along in an economic sense, lurching from one minor primary industry boom/collapse to another. There was no stability nor firm base upon which to rest a balanced economy which could sustain this remote community in its genuine needs. The emergence and growth of tourism provided this stability.

By 1952, there were nine guest houses capable of accommodating 120 visitors to the Island and tourist arrivals had increased to 1500 in that year. For a whole decade, however, this was a maximum figure and it was not until the 1960s that the tourist numbers began to increase perceptibly as the following table reveals:

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<sup>21</sup> Qantas first commenced operations to Norfolk Island in 1947, when the Island's population was 870

<u>Year</u>	<u>Air passenger arrivals</u>
1960—61	1,958
1961—62	2,679
1962—63	3,855
1963—64	4,275
1964—65	5,761
1965—66	7,116
1966—67	8,999
1967—68	9,933
1968—69	10,473
1969—70	12,178
1970—71	12,438
1971—72	12,853
1972—73	13,472

In addition to those Island factors already mentioned, other factors external to the Island were also operating as stimuli to tourism in Norfolk Island. Affluence in Australia and New Zealand had increased in the post—war years and facilities for overseas travel had improved, both on the accommodation and transport sides. People possessed more money for travel, there were better facilities for comfort while travelling and there was the natural reaction to years of depression and war when such travel was a financial or physical impossibility. Norfolk Island became a small beneficiary of all these factors during the 1960s.

Clear recognition of these causal factors has a certain merit, for it enables one to realise that a downturn in tourism in Norfolk Island can result from a reversal of these factors, especially those impinging on the affluence of people in Australia and New Zealand. A diminution in that factor of affluence due to unemployment and falling incomes would undoubtedly bring a reduction by such people in spending on non—essentials, and Norfolk's economy would be adversely affected in consequence. Such a reversal could, moreover, occur with startling rapidity. At the risk of repetition it cannot be over-emphasised that the very basis of Norfolk's present economy is somewhat fragile and very vulnerable to forces which may tend to repel tourist spending.

Several indicators of the nature of the present economy are available.

First, the latest table<sup>22</sup> of imports and exports is set out in the following five pages.

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<sup>22</sup> Annual report on territory of Norfolk Island for 1974-75

Commerce and Trade

1. Imports for year ended 30 June 1975 (listed in accordance with the Schedule to the Customs Ordinance 1913-1973)

Item	From Australia and Pacific Islands \$	From New Zealand \$	From Asia \$	From Europe and other countries \$	Total \$
Beer, stout and cider	172 211	-	-	-	172 211
Spirits and liquor	109 724	-	-	-	109 724
Wines	64 319	-	-	-	64 319
Tobacco	2 120	-	-	1 968	4 088
Cigars and cigarettes	26 138	-	-	19 674	45 8122
Tea	7 654	266	-	-	7 920
Coffee	9 069	461	-	182	9 712
Benzine – Motor	112 577	-	-	-	112 577
- aviation	168 500	-	-	-	168 500
Kerosene - power	3 960	-	-	-	3 960
- lighting	5 832	-	-	-	5 832
Oils - fuel	107 092	-	-	-	107 092
- lubricating	11 853	-	-	-	11 853
Other petroleum products	627	-	-	-	627
Gas – other	56 436	-	-	-	56 436
Confectionery	35 334	2 978	-	-	38 312
Jams	3 688	232	-	-	3 920
Preserved fruit	11 284	8 603	-	-	19 887
Cement	2 839	34 156	-	-	36 995
Electrical goods	71 322	3 344	-	-	74 666
Glassware	2 840	192	-	-	3 032
Hardware	76 187	8 023	299	37	84 546
Iron – Galvanised	2 020	13 604	-	-	15 624
Paint and varnish	26 250	4 963	-	-	31 213
Asbestos sheeting	14 414	1 320	-	-	15 734
Hardboard	38 066	9 528	-	-	47 594
Gas in cylinders (welding)	1 720	-	-	-	1 720
Building material	260 135	114 972	978	2 788	378 873
Clocks	3 178	-	15 056	8 838	27 072
Watches	2 641	-	55 253	48 626	106 520
Machinery	48 643	11 963	5 488	2 439	68 506
Tools	11 661	3 569	-	709	15 939
Implements	7 920	7 209	4 696	-	19 825
Drapery and Piece goods	136 691	17 518	101 773	225 020	480 002
Fabric	11 428	16 451	5 035	29 486	62 400
Textile	569	250	-	205	1 024

Item	From Australia and Pacific Islands \$	From New Zealand \$	From Asia \$	From Europe and other countries \$	Total \$
Footwear	13 993	21 225	7 390	145 200	187 808
Coins	4 800	-	-	-	4 800
Poison	10 841	1 266	-	-	12 107
Dental	4 984	178	-	-	5 162
Medical	25 283	7 379	-	-	32 662
Drugs	984	3 957	-	-	4 941
Gas in Cylinders – medical	1 012	-	-	-	1 012
Bacon and hams	22 504	-	-	-	22 504
Biscuits	14 315	6 566	-	-	20 881
Butter	6 607	12 440	-	-	19 047
Cereal	2 902	-	-	-	2 902
Cheese	8 275	4 134	-	-	12 409
Flour	21 538	-	-	-	21 538
Fruit – dried	2 317	-	-	-	2 317
Fruit juice	8 916	2 875	-	-	11 791
Groceries	229 314	40 193	-	-	269 507
Mutton – lamb	9 538	12 309	-	-	21 847
Margarine	6 807	-	-	-	6 807
Meat – canned	5 409	-	-	-	5 409
– fresh	46 507	47 066	-	-	93 573
- Other	13 975	3 749	-	-	17 724
Milk – condensed	6 446	778	-	-	7 224
- Powder	3 291	394	-	-	3 685
Onions	2 006	824	-	-	2 830
Potatoes	10 426	-	-	-	10 426
Sugar	10 658	263	-	-	10 921
Household effects	86 730	53 805	33 744	86 761	261 040
Furniture	58 224	20 624	4 994	6 837	90 679
Earthenware	12 083	2 287	26 993	17 029	58 392
Electrical goods	27 676	6 885	6 431	8 812	49 804
Glassware	6 736	165	2 557	3 579	13 037
Refrigerators	9 120	13 855	-	-	22 975
Fodder	43 678	-	-	-	43 678
Harness and saddlery	3 933	1 018	-	-	4 951
Livestock	4 619	3 196	-	-	7 815
Fertilisers	3 757	819	-	-	4 576
Cleaners	16 260	3 027	-	-	19 287
Soaps – Toilet	3 663	-	-	-	3 663
- Household	10 228	120	-	-	10 348
Stationery and books	92 676	19 846	1 687	2 189	116 398
Personal effects	21 720	17 084	-	-	38 804

Item	From Australia and Pacific Islands \$	From New Zealand \$	From Asia \$	From Europe and other countries \$	Total \$
Photographic goods	42 030	2 477	172 910	14 428	231 845
Photographic films	24 740	1 523	4 079	7 757	38 099
Films – theatre	7 666	20 139	-	-	27 805
Radio accessories	9 464	1 738	421 822	69 524	502 548
Musical accessories	8 880	59 960	113 005	40 732	222 577
Plants and seeds	3 954	3 148	-	-	7 102
Wire and wire netting	15 132	30	-	-	15 162
Motor vehicles	59 390	276	145 058	83 142	287 866
Motor cycles	2 120	-	10 526	2 917	15 563
Motor accessories	59 752	10 778	18 140	558	89 228
Binoculars	3 079	-	10 286	470	13 835
Cosmetics	21 741	5 754	-	36 780	64 275
Explosives	2 351	-	-	-	2 351
Fancy goods	39 952	7 071	47 383	91 094	185 500
Jewellery	43 905	21 364	63 314	56 609	185 192
Mineral waters	53 627	153	-	-	53 780
Sports goods	24 754	1 393	8 045	47 322	81 514
Stationary engines	14 547	-	-	21 166	35 713
Typewriters	4 171	-	-	-	4 171
Ships and boats	7 998	-	-	1 446	9 444
Methylated spirits	148	37	-	-	185
Goods n.e.i	76 440	7 164	13 742	29 725	127 071
Total	3 047 534	710 907	1 300 684	1 113 049	6 172 174

## 2. Exports for year ended 30 June 1975

Item	To Australia and Pacific Islands \$	To New Zealand \$	To Asia \$	To Europe and other countries \$	Total \$
Agricultural tools and implements	-	670	-	-	670
Apparel and drapery	3 888	2 130	-	-	6 018
Fruit – avocado	153	142	-	-	295
Building material	3 593	1 795	-	-	5 388
Binoculars	-	-	-	-	-
Empty cylinders (returned)	24 024	140	-	-	24 164
Earthenware and crockery	-	-	-	-	-
Empty containers	10 373	60	-	-	10 433
Empty drums	4 450	-	--	-	4 450

Item	To Australia and Pacific Islands \$	To New Zealand \$	To Asia \$	To Europe and other countries \$	Total \$
(returned)					
Fancy goods	1 531	1 239	-	-	2 770
Films – theatre (returned)	50	25 070	-	-	25 120
Hardware	1 518	654	-	-	2 172
Groceries	110	-	-	-	110
Household goods	44 375	14 701	-	320	59 396
Jewellery	62 736	320	23 334	23 033	109 423
Machinery – non electric	15 985	745	-	-	16 730
Motor – accessories	6 230	501	-	-	6 731
- Cycles	4 450	1 000	-	-	5 450
- Vehicles	26 000	55 100	-	-	81 000
Miscellaneous	32 431	270	700	14 500	47 901
Musical accessories	3 816	493	-	-	4 309
Personal effects	62 994	25 900	-	-	88 894
Pine seeds	25	-	-	-	25
Palm seeds	76 074	-	-	-	76 074
Photographic accessories	6 595	554	400	100	7 649
Radio accessories	5 989	5 927	-	361	12 322
Sports goods	1 465	179	-	-	1 644
Boats	1 200	-	-	-	1 200
Stationery and books	2 200	1 000	-	-	3 200
Typewriters	690	1 100	-	-	1 790
Watches and clocks	5 730	130	4 740	4 989	621 017
<b>Total</b>	<b>408 675</b>	<b>139 865</b>	<b>29 174</b>	<b>43 303</b>	<b>621 017</b>

The predominance of gifts, jewellery, household goods, personal effects and other returned articles in the figure for exports and the overwhelming imbalance in the trade figures in favour of imports are the most significant features. For the year ended 30 June 1975 imports totalled \$6 172 174, while exports grossed \$621 017. The huge gap between the two figures is largely taken up by tourist spending and this serves to highlight the fundamental role which tourism plays in the present economy. The actual figures of tourists for the year 1974-75 are given here under:

Tourists from Australia	10 685
From New Zealand	5 919
From Elsewhere	2 203
<b>Total</b>	<b><u>18 807</u></b>

This represented an increase of 1739 (10.2%) over the previous year in which 17 068 tourists visited the Island.

Second, an examination of the following public finance figures for 1974-75<sup>23</sup> provides a broad picture of those aspects of the economy connected with the Island's administration.

### Public Finance

#### 1. Revenue for year ended 30 June 1975

Australian Government grant	126,000
Customs duty	409,735
Crown lease rentals	5,089
Conveyance fees	3,684
Profit from liquor sales	149,453
Public works	7,235
Motor registration fees and licences	42,955
Court fees and fines	5,425
Company fees	197,961
Agriculture inspections, pasturage and dog registration fees	787
Miscellaneous	8,111
Sale of stamps	347,713
Post office miscellaneous	1,883
Revenue from telephone undertaking	10,019
Timber royalty	514
Sale of stores	142
Revenue from electricity undertaking	21,663
Rental administration residencies	4,817
Sale of vehicles and plant	1,933
Sale of forest produce	6,855
Tanalith plant charges	5,401
Liquor licence fees	8,557
Revenue from lighterage undertaking	3,443
Interests on investments	35,917
Appropriations from former year	106
Dental fees	2,656
Total	1,408,054

#### 2. Expenditure for the year ending 30 June 1975

Administration	239,717
Government house	8,569
Police, courts and prisons	33,033
Norfolk Island council	5,142
Printing, stationery and incidentals	21,202
Education	145,819
Health	81,234
Forestry and agriculture	32,243
Tourist bureau subsidy	5,000

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<sup>23</sup> Annual Report on Territory of Norfolk Island for 1974—75.

Special subsistence allowances	16,376
Maintenance of buildings, roads and minor works	210,761
Post office	150,388
Capital works Buildings	35,251
Roads, public places etc	19,223
Electricity undertaking extensions	11,639
Vehicles	27,212
Liquor store working capital	30,000
Miscellaneous	4,944
<b>Total</b>	<b>1,077,753</b>

Occupations and businesses of the population serve to illustrate further the nature of the Island's economy. They are shown in the following table taken at the last census.

**POPULATION BY INDUSTRY**  
Census – 30 June 1971

Industry (major group)	Census – 30 June 1971			Proportion to total workforce
	Males	Females	persons	
Primary production	48	4	52	6.05
Mining and quarrying	4	-	4	0.47
Manufacturing	32	10	42	4.88
Electricity, water, gas and sanitary services (production supply and maintenance)	-	-	-	-
Building and construction	90	1	91	10.58
Transport and storage	26	8	34	3.95
Communication	12	4	16	1.86
Finance and property	18	6	24	2.79
Commerce	89	93	182	21.16
Public authority (n.e.i) and defence services	93	25	118	13.72
Community and business services (incl. Professional)	35	73	108	12.56
Amusements, hotels and other accommodation, cafes, personal services etc	38	98	136	15.81
Other industries	-	-	-	-
Industry inadequately described or not stated	31	22	53	6.00
<b>Total in workforce</b>	<b>516</b>	<b>344</b>	<b>860</b>	<b>100.00</b>

Source: Commonwealth Bureau of Census and Statistics.

If one links the classifications within the above table of commerce, hotels and other accommodation, plus community and business services — all three of which are tied to varying degrees with tourism — one sees that approximately 49.53% of the workforce is engaged wholly or largely in the tourist industry.

A fourth significant statistic to which attention should be drawn when trying to assess the vital importance of tourism to the present economy of Norfolk Island is the correlation between growth of tourist numbers and the increase in public

	<u>Increase In Tourists</u>	<u>Public Revenue</u> <sup>24</sup>
1961—62	2,679	£108 466
1965—66	7,116	\$406,167
1969—70	12,178	\$598,653
1970—71	12,438	\$671,009
1971—72	12,887	\$748,923
1972—73	13,472	\$873,988
1973—74	17,068	\$1,036,942
1974—75	18,807	\$1,408,054

A significant component in the above figures, and one which bears a negligible relationship to tourism, is that in respect of company fees which, for instance, in 1974-75 contributed \$197 961 of the total public revenue. In spite of discounting that company fee figure, the parallel growth over the years between tourism and revenue emphasises still further the fundamental importance of the tourist industry to the economy of Norfolk Island.

It has been indicated, however, that there are limits to the continued growth of this tourist industry. Evidence points to an upper limit of around 20 000 tourists per annum as being desirable if Norfolk's ecological balances, way of life and uncrowded rural atmosphere are to be preserved. Concurrently with this upper limit on the growth of tourists, there will also be a distinct upper limit on the growth of public revenue, and both these facts require to be borne in mind in respect of future planning of expenditure in Norfolk Island. One is looking at an area to which the usual cliché of unlimited growth opportunities simply does not apply. There are clear limits to the growth of Norfolk Islands economy.

At present the growth of the tourist industry is intended to be effectively controlled through a system of licensing of beds in accommodation centres. At 30 June 1976 the total number of authorised beds was 998 spread over a range of variously priced accommodation, most of which is of good quality. A further fifty-four beds have been approved but are not yet available.

In addition to controlling the numbers of beds for tourists, there is a clear need to control the licensing of beds in those boarding houses which are ostensibly used to accommodate itinerant

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<sup>24</sup> Includes interest charges and work done by the Administration for the electrical undertaking, telephone undertaking and lighterage operations (and whose revenue is accounted for separately in their own accounts) and also includes liquor sales net profit only.

workers in the Island but which may be open to tourists if not checked, so lessening the effectiveness of tourist controls.

A suggestion was made in evidence that the limit of 20 000 tourists per annum as recommended by Professor Butland in his March 1974 report<sup>25</sup> be varied should average length of stay in the Island decline from its present eleven days to a lower figure. There is a clear trap here and this suggestion needs to be carefully considered.

One of the objects of limiting the numbers of tourists is to keep in reasonable check the wear on and compaction of the Island's roads, paths, beach areas, cliff edges, historical sites and the like. Each tourist probably visits the main trails, roads and points of historic interest at least once per visit, be that visit of five days' or eleven days' duration. Any increase in the absolute numbers of tourists is inevitably destined to increase wear and tear on the Island's environment and it is that point which Professor Butland stressed, viz. the degree of usage of the Island's resources.

Understandably, traders and accommodation proprietors want as many free—spending tourists per annum as can possibly be brought to the Island, but on the other hand the Island itself needs a firm limit placed on the pounding its environment is expected to suffer. In Professor Butland's view that should not exceed 20 000 visitors in any one year. While the Commission agrees with Professor Butland's approach it appreciates that one cannot be too dogmatic on such an upper limit. However no departure from such expert advice should be made unless very good reasons exist to justify the change.

#### 4. Possibilities and problems in the development of other industries

As mentioned earlier the two basic factors of high inward and outward freight costs and the absence of developed refrigerated storage facilities for commodity products in the Island will always operate to the advantage of Norfolk in respect of agricultural trade.

Possible industries looked at to overcome these problems such as the simple assembly of high—priced items possessing low unit cost freight components (for example spectacle frames) appear superficially attractive but when weighed against the obvious advantages of mainland mass production plants such possibilities assume their true form of idle dreams Likewise the idea of a gem cutting centre would be unlikely to succeed because of the difficulties in attracting from already established centres the specialised technical skills required The Island does however have obvious potential as the producer of any high security agricultural products which may be needed as the raw material for high-priced but low unit freight cost items such as drugs and other pharmaceutical products and more especially those not requiring large and expensive refrigerated storage facilities in the Island The freight component in the final price of such products would be marginal and the advantages of growing such crops in an isolated Island with high security are obvious There would also be a benefit in developing any secondary industry necessary to process such materials in the Island itself and thus help to diversify the economy to that extent.

A few years ago attempts were made to locate an Australian Government high security animal quarantine station in the Island but a referendum in November 1972 quashed the plan in spite of the Norfolk Island Council's near unanimous support (one member opposed the plan). It appears that

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<sup>25</sup> A long term population study of Norfolk Island, by professor Gilbert J. Butland, March 1974.

there are doubts concerning the accuracy of some of the arguments advanced during the campaign, and also in so far as entitlement to vote was concerned. In addition, a number of people in the Island appear to have now swung around to favour the plan in the light of greater knowledge about its advantages and the lessening of their fears concerning possible hazards flowing from such a station. Whether the subject should be reactivated is a question for the local governing body to decide and is not a matter on which this Commission is called upon to make a recommendation.

The absence of an Island harbour which could enable ocean going vessels to tie in to a safe wharf has frequently been referred to as a major liability in the development of the Island's economy. However, while the natural presence of such a safe anchorage in the Island would undoubtedly be an asset, the real need of such a harbour in so far as the economy is concerned is questionable. The skill of the teams engaging in lighterage operations is such that costs of this form of cargo handling are actually less than the current rates per tonne of normal cargo handling at one of the world's bigger and safer harbours, namely Sydney. The existence on Norfolk Island's coast of a harbour for ocean—going vessels would also attract passenger liners and other ships and would bring serious problems to the Island, straining its natural resources, its tourist industry, its victualling powers, its present ecological balances and, in particular, its freedom from serious diseases.

Norfolk's relative difficulty of access is, in a real sense, a protection to Norfolk. To construct a harbour for ocean—going vessels would be a most expensive exercise, the amortisation of which would become a further burden on top of the already high freight charges to and from the Island. While Norfolk can maintain the superb seamanship of the lighterage crews, it does not require such a harbour to be built. In the unlikely event of the Island assuming a defence significance of any magnitude, then this may place a different complexion on the subject, but in so far as its economy is concerned, the Island cannot be truly said to be handicapped by the absence of harbour and wharfage facilities for ocean—going vessels.

When one considers the development of facilities for small boats such as may provide the basis for a commercial fishing industry, one is faced with a different proposition. Norfolk is surrounded by some of the best fishing grounds in the world, and while the present freight and refrigeration disabilities handicap the development of a large-scale fishing industry based in Norfolk and supplying say Australia and New Zealand, these fishing grounds do provide the prospect, if minor harbour facilities were provided, of a steady supply of fish food for the local market and a limited supply for export. In addition, they would be a definite tourist lure for lovers of big game and other fishing. The greatest bar to the establishment of a small commercial fishing operation in Norfolk is the absence of a small boat harbour giving ready access to the ocean in most weathers and eliminating the necessity of moving fair—sized craft to and from the water by cranes. With present facilities, fishing opportunities are severely restricted and the supply of fish to the Island is, in consequence, irregular and unreliable. The construction of a relatively inexpensive small boat harbour does deserve serious consideration by the administering authorities. If feasible, its development would further expand the Island's basic resources.

While considering aspects of Norfolk's primary industries based on the sea, it is appropriate to refer again briefly to whaling, once a sizeable industry in the Island. There seems no real chance of re-establishing a whaling industry based in Norfolk. Not only are whale catches now severely restricted but the economics of that industry are such that large—scale operations are imperative to its commercial viability and its methods demand mobile fleets centered around highly specialised mother factory ships providing direct access to mass markets of the raw materials yielded. Further it

would appear that the migration routes of whales have changed, and no longer do large numbers of whales pass close to Norfolk Island. Whaling from Norfolk, and even provendering whaling vessels from Norfolk, must be reckoned as a colourful feature of the past, likely never to return.

The possibilities of the Island developing an airline or registering ships as an independent nation for purposes of raising revenue were mentioned in evidence, but major technical and administrative difficulties would render both possibilities undesirable and probably impracticable; apart from these aspects, independent nationhood would first have to be conceded to the Island.

In any consideration of the Island's economy, the cost of living deserves mention. With respect to foodstuffs, while some items are dearer in Australia than in Norfolk Island, the opposite is true in relation to others. However, other items which are related to the cost of living, e.g. clothing, footwear, durable consumer goods, rent and land prices, all have a significantly lower price level than in the mainland, and there are no land rates. Wages in the Island are generally about 90% of mainland unities rates. Hence, although some food items are undeniably higher is, than in the mainland, the absence of taxation, the somewhat lower wage level and the lower levels of import duties (especially on clothing, footwear and durables) combine to arrive at a cost of living which overall is less than in the mainland.

In considering the Island's economy, one must make reference to two further limiting factors, viz, supplies of fresh water and sources of power.

1. Water - as can be readily understood, these supplies on such but a small Island are not boundless. The annual rainfall of some 1346 mm (53") is the source of supply to household tanks and subterranean lenses which are tapped by bores. The latter could, through undisciplined usages or bad sewerage practices, become polluted or diluted by ingress of seawater. The soil structure prevents any large—scale surface storage of water in the Island and occasional dry periods cause tank storages to drop significantly. While the Island has never suffered a crisis in supply of fresh water, it, nonetheless, has limits to the volume it can provide on an assured basis. It could not sustain industries requiring large volumes of fresh water for either steam or other processing requirements nor could it provide the needs of a population running into several thousands.
2. Power – Apart altogether from the heavy disabilities of it high freight charges and the absence of adequate bulk refrigeration facilities and a limited water supply a major disadvantage, in so far as establishing any significant industry in the Island is concerned, is the absence of any natural source of power. The Island lacks any fossil fuels by way of coal or oil, it has no hydroelectric potential and harnessing of its winds or tides is not yet a practical possibility. Large quantities of cooling water for condensers used in the generation of electricity would a only be available from the sea. In our present state of knowledge, the Island can be said to be virtually devoid of power resources and this is a serious disability in any consideration of its industrial potential. Power at present comes from imported petroleum products. The generating sources have been primarily installed to service the requirements of the airport; satisfaction of some of the needs of domestic requirements, commercial interests and the Administration has followed. Restrictions still apply upon the use of electricity for certain domestic appliances. For instance, approval is required before the following appliances can be used or connected:

Electric motors for pumps or machines;

- water heaters;
- washing machines fitted with water heaters;
- electric clothes dryers;
- dishwashers sports area lighting;
- domestic appliances rated at higher than 2 kw.

Appliances that cannot be approved, except for limited Commercial use or in exceptional circumstances, are radiators and cooking ranges or ovens. The near total absence of street lighting is not due to insufficient power resources but the result of a deliberate social choice.

To improve this situation or to cater for any large—sized secondary industry or major defence base would require much more powerful generators. The importation of the necessary capital equipment and fuels to do this would be a heavy cost item.

#### 5. The role of companies in the economy

The effect upon Norfolk's economy of its tax status, especially over the last decade, has been significant. This feature of the Island has attracted both persons and money. Retired people and others seeking to lessen the weight of income tax, death, gift and other duties have drifted to the Island, along with a variety of professional people who have provided services in respect of the company structures and trusts established in the Island to that end. These activities have meant a flow of money (largely in the form of book entries) through the Island's banks of many thousands of millions of dollars over the last decade negligible proportions of which money have stayed in the Island. In that sense, the Island has merely been a base for paper transactions involving funds of massive dimensions

However, as a relatively minute spin—off from these transactions, the Island has received benefits in the form of employment for about two dozen Island residents, some relatively small company donations to Islands causes and most important company registration fees paid to the public revenue. It was also contended that these company activities brought tourists to Norfolk who would otherwise never have condescended to grace the Island with their presence. This last alleged benefit is held to be doubtful as had these people not been visiting the Island, it is probable that ordinary tourists would have occupied their plane seats and accommodation anyway.

It is appropriate to look closely at the history of this company activity in the context of this section of the Report on the economy because of the effect which companies have had on the Island's revenue. Other aspects of the activity will be examined in Chapter 13.

The first company registration in the Island occurred in 1932 and was a foreign company incorporated in Fiji. For the thirty years between 1932 and 1962 only a further seven companies all told were incorporated in Norfolk Island and these were mainly for local trading companies set up and operated more along the lines of co—operative societies. There was practically no mainland influence in company activities in Norfolk Island until 1963. From then on, the picture changed radically and is best illustrated by the following table:

<u>Year</u>	<u>Company registrations in the Island in that year</u>	<u>Comments on the nature of the registration</u>
1964	16	15 were mainland based
1965	23	approx. 21 were mainland based
1966	70	nearly all were mainland based

Thereafter, the registrations and the total number of companies registered in the Island at the close of each year were as follows:

<u>Year</u>	<u>No. of companies incorporated in Norfolk Island in each year</u>	<u>No. Remaining on register as at December of each year</u>
1967	188	294
1968	480	774
1969	296	972
1970	382	1354
1971	296	1571
1972	166	1452

<u>Year</u>	<u>No. of companies incorporated in Norfolk Island in each year</u>	<u>No. Remaining on register as at December of each year</u>
1973	118	1328
1974	102	1294
1975	39	998
1976	81 (to 30.6.76)	1025 (at 30.6.76)

The statistical picture of the benefit to the Island's revenue from company registrations and annual fees paid by companies is seen from the following table:

Company revenue figures from 1968 to 1976

<u>Year</u>	<u>\$</u>
1968—69	22,455
1969—70	43,401
1970—71	51,403
1971—72	88,653 <sup>26</sup>
1972—73	163,814
1973—74	145,491
1974—75	197,000
1975—76	177,914

N.B. 1974—75 Receipts included \$109,675 owing from earlier years.

<sup>26</sup>\$250 annual return filing fee requirement introduced 12<sup>th</sup> July 1971.

These contributions from companies registered in the Island were undoubtedly significant and, viewed in the context of the Island's economy, must be regarded as constituting an important source of revenue. It is, however, misleading to view revenue from companies in such a narrow context. When looked at from the overall point of view of both Norfolk Island and the rest of the country which bears the burden of administering Norfolk, namely Australia, there is seen to be a clear and enormous net loss by way of revenue forgone through the revenue avoidance schemes which used the Island as a base. This taxation loss aspect is treated fully in Chapter 13. In this chapter on the economy it is sufficient to point out that even though company fees have contributed significantly to revenue raised in Norfolk Island over the last decade, it would have been better for Australia to have paid such a contribution direct to that revenue had it been needed rather than to allow the revenue loopholes to continue to exist.

Viewed from the aspect of the Island's economy, and in the light of the steps taken recently (plus the possibility of further steps) to close the revenue loopholes, future company fees cannot really be regarded as anything other than an unpredictable ancillary activity or industry. Once Australia decided to close off the income tax loopholes, it was only a question of which methods of the several available were to be used, and when these methods were to be implemented. That decision was taken in 1972 and partly implemented by an enactment in 1973. It is highly probable that further steps will be taken to close other loopholes relating to death, gift and stamp duties. In addition (following the Berwick decision) there is now no bar to the Taxation Office sending its investigators to Norfolk Island fully armed with powers to demand complete details of the financial activities of all companies, trusts and banks, and the backgrounds of all incomes of entities in the Island.

Hence, when looking at Norfolk's economy it is wise to discount largely company activities as being likely to make a substantial contribution to revenue in the future.

## 6. Aspects of the Island's public finance

Excluding the Commonwealth Government's annual grant of \$126 000 the major revenue items are those of customs duties, profits from liquor sales, vehicle registration fees, licence fees, company fees, stamp sales, revenue from lighterage, electricity and telephone undertakings and forest products. On the expenditure side, activities related to administration, education, the maintenance of buildings and roads, health, subsistence allowances and the maintenance of law loom as the heaviest items.

The figure for customs duty reflects again the dominant feature of the Island's economy, namely tourism. The Island imports a wide range of items for disposal to tourists at figures somewhat lower than mainland prices (because of lower duty charges) and it is undeniable that this feature of low—duty hopping in Norfolk forms part of the Island's attraction for tourists. Public revenue does well out of such imports, but is always likely to be a matter of fine judgment as to how much duty can be levied on imports, without detracting from the lure of relatively low—priced goods being available in the Island. Excessive duty imposts could remove that lure and it is very important that they not be imposed.

Liquor sales fall into much the same category. Very few visitors to Norfolk would fail to take away with them the ant maximum allowed in the way of liquor, which is significantly cheaper in the Island over a range of items than in the mainland. In addition, consumption of liquor in the Island

by tourists and residents alike also contributes to public revenue. All liquor is sold in the first instance from the Government Bond Store and this activity provides a substantial profit.

The history of vehicle registrations in the Island over the last decade evidences a remarkable development which is shown in the following table:

June 1965	Cars, trucks utilities	388
	Buses and tractors	14
	Cycles, scooters, trailers	82
	Administration vehicles	20
		<u>504</u>
June 1970	Cars, trucks, utilities	844
	Buses and tractors	54
	Motor cycles, scooters and trailers	266
	Administration vehicles	30
		<u>1194</u>
June 24th 1975	Cars, trucks and utilities	1297
	Buses and tractors	49
	Motor cycles, scooters and trailers	251
	Administration vehicles	36
		<u>1633</u>
30 June 1976 figure (Total figure only)		<u>1645</u>

While yielding essential transport services and revenue to the public purse, one cannot help wondering whether this proliferation of vehicles should be allowed to continue. There are more vehicles in the Island than there are permanent residents and this proportion must be amongst the highest in the world, but it has a clear debit side. Roads must be maintained to higher standards, air pollution from exhausts is increased and disposal of useless vehicle components and oils is a problem in such a small Island; abandoned cars and trucks are an increasing and ugly spectacle littering parts of the Island. The import bill for fuels, oils and motor accessories is a heavy load. It was in fact the second highest item after building materials in 1974-75, namely \$624,806. Some curb on the number of vehicles seems essential, along with other development planning controls.

Stamp sales constitute a very interesting and lucrative activity. From 1947 the Island has issued its own stamps featuring Island scenes, buildings, flora, fauna and aspects of its history and these stamps have found ready sales around the world. The revenue (most of which stems from sales abroad) yielded by this activity has increased remarkably over the last twenty years as is shown by the following table:

Norfolk Island Post Office  
Postage stamp issues,  
Revenue from sale of stamps

1955—56	£8,248	1966—67	\$135,770
1956—57	£8,537	1967—68	\$120,404
1957—58	£4,752	1968—69	\$254,958
1958—59	£7,618	1969—70	\$218,984
1959—60	£16,388	1970—71	\$233,758
1960—61	£43,357	1971—72	\$226,076
1961—62	£37,843	1972—73	8106,683
1962—63	£23,577	1973—74	\$175,212
1963—64	£26,866	1974—75	\$347,713 <sup>27</sup>
1964—65	£26,806	1975—76	\$297,139
1965—66	\$172,233		

Forest products and the Tanalith Plant (which impregnates timber with chemicals resistant to fungi and insects) together make up a significant industry, furnishing a variety of agriculture and building materials, chiefly from the indigenous pine and exotic eucalypt hardwood species grown in plantations in the Island. These activities partly satisfy an important need and, to the extent they are used, obviate having to buy high cost imports to meet Island requirements. Approximately two-thirds the Island's timber needs have to be imported.

Turning to the main expenditure items, administration and education are the heaviest and second heaviest respectively and employed 141 people at 30 June 1976. Other large public activities essential to the Island which affect its economy, being major expenditure items, lie in the area of roads, health, post office and the maintenance of law and order. In the event of a local government authority taking over some Commonwealth assets in the Island, there will be a clear need for insurance cover to be taken out on those assets. Such cover, if introduced, will further increase expenditure by an appreciable figure.

Additional sources of revenue which have been introduced since the Commission completed its hearings are first a tax on absentee land—holders, which should encourage a greater proportion of local ownership of land in the Island, and second a visitor's departure tax. These new taxes should raise significant sums for the Island.

The main source of revenue raised in the Island and the chief stimulant to economic activity generally will continue to be tourism – the only major industry in all of Norfolk's chequered industrial history which has shown over many years a steady and consistent growth pattern.

## 7. Factors affecting the future

Mineral and oil exploration - It is a fact that while geological examination of the volcanic peak constituted by Norfolk Island has revealed no mineral wealth to date, exploration of its surrounding sea—bed has not been attempted to any worthwhile degree. It is believed that some very preliminary work has been done, but continuation lapsed for various reasons. However, with

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<sup>27</sup> Abnormally high sales due largely to an entirely new type of stamp being issued in a special philatelic period - the Universal Postal Union Centenary.

technological developments in mineral and oil exploration proceeding apace in other parts of the world, and particularly with respect to sea—bed exploration, one should not lose sight of the possibility that Norfolk’s very position and isolation in the middle of a vast expanse of ocean could one day prove to be of high commercial/industrial value in providing a convenient, land base for exploitation of that ocean. The submarine ridge, which stretches from New Caledonia to New Zealand in a wide arc and of which the Islands of Norfolk, Nepean and Philip form outcropping portions, may possibly hold minerals of great wealth. On the other hand it may hold nothing of value.

It should also be mentioned that at the time of writing, the latest conference on the law of the sea is taking place, attended by most nations of the world including several with no coastline. Under consideration by that conference is the proposal that an economic zone, 320 kilometres (200 miles) in width, be attached to the existing territorial sea boundaries of those nations possessed of sea borders. Should that proposal be adopted (and many informed people believe it will be) Norfolk Island would become the centre of a circle of 323 750 square kilometres (125 000 square miles) of sea and sea-bed which would be then an economic zone of Australia. That region, of course, may also contain large volumes of vegetable, animal and mineral resources, or again it may contain nothing. To prove what it does contain, however, would take a very long time.

The other point to note in this connection is the effect which any such extension of economic rights, via the law of the sea, would have upon the area between Australia, Lord Howe Island and Norfolk Island. The result could be a significant addition to Australia’s economic rights of some 647 500 square kilometres (250 000 square miles) of near contiguous sea and sea—bed areas stretching out into the Pacific from Australia’s eastern coast.

These points are recorded so they will not be lost or ignored when consideration is being given to matters relating to Norfolk Island and its economy – particularly the future of that economy – particularly the future of that of the mainland of Australia

Population -Because of its small size, Norfolk has clear limits to the number of people it can carry. This in turn affects the numbers it could provide as a labour force to any industry being contemplated to strengthen or vary the Island’s economy. There is, quite simply, no possibility of the Island sustaining a large pool of labour of varying skills such as would be required in a very mixed industrialised society without destroying the essential ecological balance and attractiveness of the Island. Opportunities for trade apprenticeships in the Island are limited to a few building and automotive engineering trades. This absence of a worthwhile pool of trained labour and the difficulties in developing any such pool operate still furthermore against the Island ever being able to set up a truly well—balanced type of economy - with primary, secondary and tertiary industries neatly dovetailed.

The following table taken from the 1974 Butland Report provides the most up-to-date summary of the population fluctuations which have occurred since 1914.

<u>Period</u>	<u>Inter—census summary</u>	
	<u>Original total</u>	<u>Subsequent total</u>
1914—21	710	717
1921—33	717	1198
1933—47	1198	938

1947—54	938	942
1954—61	942	844
1961—66	844	1152
1966—71	1152	1683
1971—73	1683	1846

Professor Butland has recommended a maximum permanent population of 2000 by 1983, with a growth rate of 2% per annum thereafter, on the assumption of reaching the desirable maximum of 20 000 tourists per annum, also in 1983. It is felt, however that the growth rate suggested should be revised to zero and every effort be made to maintain a local resident population at whatever maximum is deemed to be the optimum in the future.

Any growth rate permitted will, in time, lift the population to a point where a total reversal of policy will have to be adopted if the ecology of the Island is not to be imperiled. The Island simply cannot cater for continued growth. Reversals of policy could cause far more difficult problems than mere maintenance of zero growth.

It must be recognised that Norfolk Island is a very small the land mass and of very meagre resources. Such areas require a sensible limit to growth rather than a rate of growth; immigration and related policies should be based on this approach.

Industrial relations — Here the very smallness and remoteness of the Island hold certain distinct advantages. There is present in Norfolk a wide versatility of skills on the part of many individuals and much application of those different talents. The close-knit labour force is possessed of a significant number of Pitcairn descendants with clear blood ties and fierce loyalty to the Crown; their sturdy self-reliance and deep love of the Island and its history make for a distinctly healthy industrial climate. The result is a small economy with virtually no so industrial problems. One cannot help but comment upon the very favourable impression this creates.

Aesthetics — It is impossible to consider Norfolk's economy, dependent as it is upon tourism, without also considering the effects upon that tourist industry which any industrialisation might have. unquestionably some of the Island's main charms if not the greatest are its relative peacefulness its unhurried way of life and the beauty of its land— and seascapes Even if freight rates and other problems did not exist as barriers to the establishment of further secondary and tertiary industries, one feels it would detract enormously and perhaps fatally from the attractiveness of the Island as a tourist resort if the landscape were blemished with factories, mills, smoke—stacks, high fences, multistoried structures, car parks, expanses of asphalt or concrete and the many other unlovely features of an industrialised society. This has happened in other Pacific elands and to tragic proportions. The Island's economy may gain, but its charms would be seriously diminished.

Garbage disposal — Related to the aspect of aesthetics is the need for a more efficient and hygienic system of garbage disposal in the Island. At present, in spite of requests by authorities that combustible material not be thrown into the sea most industrial and domestic garbage is emptied (via a chute) over a cliff into the sea and large sections of an otherwise lovely coastline at Headstone Point are littered with plastic containers plastic fabrics tins, bottles broken glass and other non—degradable refuse Such a practice is deplorable as it scars what was once a beautiful seascape. To say the least of it, it is certainly inconsistent with a professed love for the Island At worst the ecology of the Island's coastline could be seriously affected and its marine life exposed to

unnecessary danger. It is to be hoped that the local governing body will soon set aside funds to finance a proper garbage disposal system and that public-spirited groups will collect and remove the accumulated refuse, which is at present fouling the coastline, in the same way as they have from time to time removed litter from the landscape.

Erosion, tree deaths and weed infestation — Also related to the aesthetics of Norfolk are the problems posed by erosion and grazing following the removal of forest cover on steep slopes. This has been referred to in Chapter 9 of this Report. In addition there is a further basic problem seriously affecting the aesthetic appeal of Norfolk, namely the deterioration of hundreds of acres of old pine forest on both private and government-held lands. Clearly if Norfolk is not to lose what is perhaps its most famous feature known throughout the world, namely its rolling and acres of dense stands of Norfolk Island pine, then an immediate and concerted attack upon this problem by replanting needs to be made. Concurrently, the many hundreds of hectares of both former forest and farmlands which have degenerated into thickets of lantana scrub and tobacco weed should be cleared of these and noxious plants and either put to productive agricultural use in or reafforested. These matters of aesthetics should not be regarded flippantly, for they underpin to a marked degree the very basis of the Island's economy.

Low-duty shopping — Although some surveys point to the attractiveness of the low-duty shopping as possessing only marginal appeal to tourists (e.g. Professor Butland's Report) it is felt that such surveys should be treated with caution. Human nature being what it is, one should not accept too readily Aus assertions that opportunities to save money do not weigh significantly in the thoughts of high-minded tourists purporting to be **its** but mere seekers of rustic charms. The authority responsible for setting customs duties should always take care to maintain opportunity for these seekers of simple pleasures to indulge their acquisitive instincts by the purchase of goods at prices up to 33½% less than mainland prices. The loss in customs revenue will not be large and will be outweighed by the benefits to the Island's economy. It is frequently commented that the airfare of a tourist to Norfolk can be virtually recouped by the savings effected on purchases made in the Island. That, combined with the relative cheapness of accommodation in Norfolk, enables many to have a holiday they could not otherwise afford. It is an important component of the entire tourist industry.

Town and building planning — It deserves to be stated that by the layout (and most of the buildings) of both the main township of Burnt pine and the much smaller commercial centre of Middlegate are to some, aesthetically displeasing unimaginative and as environmentally discordant in their design and constituent elements. The ribbon development of Burnt Pine and the standards of many of its buildings and pavements indicate an absence of thoughtful and appropriate planning. To rectify these deficiencies, which detract so markedly from a harmonious blending with the rest of the Island will take time and money, but basic standards and a basic plan should be laid down as soon as practicable. These should be steadily implemented to achieve town planning and building standards more attuned to the picturesque setting in which they are placed and which is so fundamentally important to the economic well being of the entire Island. Hideously jarring manifestations of commercialism are not necessary for successful trade to be conducted and indeed must inevitably displease some tourists. The present situation may in the long term prove counter-productive.

The Norfolk Island weather station — This station has been established in the Island by Australia and is maintained at Australia's expense completely. It is not a forecasting station but an

information—gathering station. Norfolk Island receives its weather forecasts from Sydney.

The Norfolk Island station gathers information primarily on the upper air and the ionosphere, but also on the lower atmosphere and the seas. These data are fed back to Australia daily and are available from there to be used anywhere in the world. In return, Australia and Norfolk Island benefit from weather information made available to them from other weather stations in the world. It should be pointed out that this free exchange of information is an international custom, traditional over many years.

The Norfolk Island station has an importance altogether unrelated to its size, and this importance can only be appreciated by making further reference to the geographical isolation of the Island and the use which is made of both the sea and the air space over and around the Island and in its vicinity.

Norfolk Island may be thought of as the only land in the south—west Pacific ocean having a radius of some 800 metres. In that huge circle there is a constant movement of many vessels, and the air space over it is traversed by the flights of numerous airlines. Many of the vessels carry Australians and Australian cargoes. It is an area which produces cyclones from time to time and its weather has, occasions, caused flights to Norfolk Island from both New Zealand and Australia to be aborted near or over the Island. Further it is not uncommon, because of adverse weather, also to be unable for days to take on and discharge cargo or for them to by—pass the Island altogether.

Knowledge of the weather in that circle, therefore, is of a vital importance to sea—going vessels and aircraft in the region, and the absence of such knowledge would undoubtedly risks for people moving within that area.

In addition to this importance for commercial and civilian uses, the weather station provides what is probably the significant, if not the only, contribution made by the Island toward the defence requirements of both Australia and New Zealand. From discussions held in New Zealand it is obvious weather information gathered in Norfolk Island plays a part in the forecasts provided by that country to shipping aircraft operating to the west and north—west of New Zealand and in addition, because of the nature of the world weather pattern, that information is of particular significance to the weather in New Zealand itself. The importance of information to New Zealand is such that meteorological authorities there rate it as vital, and it most certainly meets need in the defence of both countries. If Norfolk were not in existence, it is reasonable to believe a weather ship would need to be stationed somewhere in that location to gather the same basic data which are now collected by the Island's weather researchers.

## 8. Conclusions and recommendations

Including tourists, Norfolk's future population on present planning criteria, is probably going to lie between 1800 and 2200 people at any particular time. The Island is a minute speck of some 3455 hectares in the centre of a circle of ocean of some 800 kilometres radius which isolates it utterly. It is many more kilometres distant from any significant markets. Freight to and from the Island are such as to make successful commodity trading a very unlikely proposition. The Island lacks a natural source of power in the way of fossil fuels or hydroelectric potential, and its tides or winds are not at present worth considering in so far as generation of power is concerned. Its own population and fresh water supplies are not large enough to provide a market or labour supply

which would justify the establishment of any large-scale industry in the Island. Its defence significance is confined to the gathering of weather information, it lacks natural harbours, its coastline is forbidding and its back—up natural resources are minimal. Costs of establishing and maintaining a defence outpost in such isolation would be high and the protection of such a post would pose further problems. Its climate demands refrigeration for bulk storage of many food commodities, but the cost of setting up and maintaining such facilities, particularly because of the power position, would not make it a feasible proposition for the time being.

It would be completely unrealistic in the light of the history of earlier commercial ventures to predict any future for commercial large—scale primary or secondary industry in or off the Island, always reserving, of course, the possibility of mineral or oil discoveries off its coast which could change the industrial scenario dramatically if they eventuated. There will always remain the possibilities inherent in high security agricultural crops, the equally high security (but industrially minor) activity of an animal quarantine station, a base for communication relays, the very small activities of pine, palm and avocado seed production and the maintenance of an information] gathering weather station.

The Island does, however, possess proved ability to attract tourists. Its main charms are the scenic beauty of its land— and seascapes, the rustic tranquillity of its environment, the historical interest of its past, its superb fishing grounds and the low-duty shopping opportunities available over a wide range of goods. Clearly, for the Island to have any economic future it must be based on this tourist industry. No other viable alternative is at present predictable. If any circumstances caused the cessation or serious reduction of the tourist industry hundreds of residents would have to leave the Island or face a near subsistence type of living. The Island would be unable to pay for its imported necessities and a large part of its essential services.

In such a precarious situation, it behoves policy makers and administrators alike to do nothing which may place the tourist industry in jeopardy or even cause its downturn. It has an obvious limit to growth and it is only necessary to provide sufficient stimulation to attain that limited capacity. The vital thing is not to take any action which may threaten that industry's essential components mentioned above. In particular it is recommended that:

1. The plan for the restoration and maintenance of historic building sites be maintained. The five - year program of restoring the Kingston Penal Settlement buildings, which commenced in 1974, is to involve the Commonwealth in an expenditure of 1.25 million dollars.
  2. The practice of fouling the coastline by emptying untreated garbage into the sea be terminated and replaced by a proper garbage disposal system.
  3. Cattle grazing in Government—owned pine—forested areas and on steep slopes cease, and that such areas and slopes be reafforested.
  4. Constant care be exercised in the setting of customs duties in the Island to ensure that low -duty shopping remains available.
  5. Higher standards of town planning and building control be introduced and implemented.
9. Relationship to the Australian economy

While the above sections have described the salient features a of the economy of Norfolk Island as background to those recommendations of this Report which are related to that economy, they do not treat the economic relationship between Norfolk Island and the mainland of Australia. It would be

remiss to ignore that relationship for it is very relevant to final decisions which are required to be taken by the Commonwealth.

As it has now been established that Australia has complete responsibility for Norfolk Island, it is only proper that costs of such responsibility be weighed by Australia before irrevocably committing her other citizens to a burden which may be held by many in the absence of an outline of the factors involved -to be an unnecessary and unjustifiable load to carry.

From the comments in the earlier part of this section, it will be obvious that Norfolk Island's future and sole hope of achieving any economic balance lies in the tourist industry. That industry, however, is itself completely dependent upon a transport system which requires a certain essential infrastructure - namely an airport and related facilities - to be upgraded, and the cost of which upgrading is beyond the capacity of the Island to provide and which, therefore, would be sought from Australia. Depending upon the class of aircraft to be used, that cost of upgrading could be up to 4.5 million dollars.

The capital expenditure by Australia to date, on the airport and related facilities, is approximately \$892,513. To these capital expenses there must be added the annual outgoings by Australia to the Island which were assessed in July 1975 by the Department of the Capital Territory as being around 2.5 million dollars per annum. That figure can be expected to rise considerably with anticipated increases in costs of existing services alone and it would not be unreasonable, therefore, to think in terms of Australia incurring costs in excess of \$3 million dollars per annum to Norfolk Island in the immediate future.

Because of the absence of necessary statistical data and records it is not practicable to make estimates in this area with precise accuracy, but the Commonwealth Treasury has attempted reasonable projections, and in its view, the receipts to Australia from Norfolk Island in the form of income taxation, death and gift duties, if these were introduced, are likely to be around \$1,020,000 per annum. Australia, therefore, would face an annual deficit of the order of \$1,980,000 to support Norfolk Island as part of the Commonwealth, plus the provision of money from new capital works in the near future of up to \$4.5 million dollars.

However, this admittedly approximate calculation of the possible deficit must be set in the context of this Report's recommendations. If these recommendations are adopted then amendments to the above calculations must be made. The revenue estimate, for example, will be lower if some high income earners leave the Island as is likely because it will no longer be a tax-free region; of equal importance are the expenditure estimates, which will rise if the Commonwealth assumes total financial responsibility for education, health and social security expenses hitherto partially borne by the Administration. These factors are imponderables in the sense that they are impossible to assess precisely, but that they will exert a profound effect upon the final factual figures cannot be doubted. Weighing them up as best one can, it is the view of this Commission that the real deficit is likely to be of the order of at least three million dollars per annum, over and above further capital expenditure of approximately \$4.5 million dollars.

Naturally enough, the question of whether Australia is justified in subsidising 1600 of its citizens to this extent cannot be avoided. What does mainland Australia receive in return for its outlay and can such high deficit expenditure be justified?

The Island's only defence value for Australia lies in the gathering of weather information. It holds relics and buildings of historical interest, but it must be conceded that the history is as much British history as Australian history, even admitting that a link between the two exists. The Island offers a pleasant holiday venue for Australians and New Zealanders, but if it sank in the Pacific following an earthquake, intending holiday makers would soon find an alternative. Several suitable substitute venues for holidays exist. It is possible that the Island may attain value in the future as a base for exploitation of oil and mineral wealth in the surrounding ocean bed, but present indications point to such discoveries as being unlikely. Even if its entire 3455 hectares were restored to pine forest as a source of timber, it is doubtful if the resultant costs of the logs delivered to a worthwhile market would make such a venture profitable. In so far as tax losses are concerned, once Australia closes revenue loopholes, the presence of Norfolk Island, 1676 kilometres off shore, even as an independent nation, would pose no problems to Australia. Australian passports and currency need not be made available to an independent Norfolk Island, Reserve Bank restrictions applicable to the movement of funds externally to Australia would apply, communication facilities could be withdrawn and the tax avoidance opportunities in the Island as they affect Australia would largely vanish.

In short, the Island's only genuine immediate value to Australia lies in its present weather research station, and at the figures mentioned above, this must be rated as expensive.

If Australia were to relinquish responsibility for the Island, and no other nation shouldered it, there is no doubt a human problem of significance would emerge. Without subsidisation by Australia or some other nation, Norfolk's economy would collapse. Large numbers of its population would have to emigrate to live at any reasonable standard and the remainder would revert to a relatively primitive subsistence type of survival. Australia, or some other nation, could offer to accept the Norfolk Islanders as immigrants and it would be a far better economic proposition for Australia to do this than to continue to subsidise the Island in its present fashion.

This purely economic approach to the problem of Norfolk Island will no doubt be condemned by many, especially those who, for various reasons, are deeply attached emotionally to the Island. However, it is only fair that the attention of those in the position of having to make final decisions on behalf of the Australian taxpayer is drawn to the factual economic situation.

Summarised, that factual situation may be stated as follows:

To maintain the 1600 residents of Norfolk Island in the comfortable and splendid isolation to which they feel entitled, the Australian taxpayer is being asked to pay out what is probably a far greater per capita contribution than most Australian citizens the mainland receive by way of Government assistance. One suspects that if mainland Australians were asked the question do they approve of such expenditure? The answer would be an emphatic negative.

A good case, therefore, can be said to exist on coldly dispassionate economic grounds for the physical abandonment of Norfolk Island by Australia (as Britain did on two occasions and for the same reason), with provision being made to offer to accept its inhabitants as mainland immigrants. If, however, Australia is to continue overall responsibility for the Island, then such a course can only be justified on Non –economic grounds. Whether such grounds equate is a purely arbitrary value judgment which, naturally enough will vary with individuals. These grounds will be stated and the Commission will express its own judgment in chapter 17.

Chapter 12  
GUIDELINES (e) AND (f)

- (e) ‘Whether social security, health, educational, compensation and other benefits should be provided at levels similar to those which Australian Citizens enjoy’
- (f) ‘The capacity and willingness of the Island to pay through taxation or other imposts for the provision of those benefits’

1. The present situation

(a) Social services

In the Island at the present time, social services are in the main provided by voluntary organisations, the organisations fulfill an important role and are in fact a notable and very praiseworthy feature of the social environment. In the absence of more formal provisions, they meet a very real need. Set out hereunder is a brief summary of the bodies concerned and their chief interests:

- Country Women’s Association of N.S.W, (Norfolk Island Branch)
  - General assistance to groups and individuals,
- Hospital Board (Statutory)
  - All activities of the hospital and related facilities,
- Lion’s Club
  - Community welfare.
- Red Cross
  - Relief of suffering, emergency aid etc.
- Rotary Club
  - Community welfare,
- Royal Far West Children’s Health Scheme
  - Child care and health generally but especially aid relating to specialist medical attention,
- Sunshine Club
  - Assistance to elderly citizens,
- Young Wives and Mothers Club
  - Baby health, pre-school education and play, antenatal classes.
- Youth Council
  - Fostering the physical and intellectual development of youth,

To finance their activities, all these groups raise money in the Island in a variety of ways ranging from the sale of goods and services to the acceptance of donations Their existence therefore facilitates a type of voluntary redistribution of income which is directed to group and individual needs

In addition the Norfolk Island Council dispenses a type of ‘grace and favour’ allowance of up to \$10 per week from Administration funds to selected cases brought to its attention Thirty—one such

payments were being made at 30 June 1976 and of these thirty were being made to Pitcairn descendants. The trend is a declining one—forty—one such payments having been made at 30 June 1973. The maximum amount payable was lifted from \$6 a week in 1966 to \$7 in 1967 and to \$10 in July 1970.

From time to time old people who are receiving these special allowances are hospitalised (some permanently) because there are no other facilities available for their care. Two such cases existed at 30 June 1976. The Administration pays for all their medical and hospital expenses and at present the hospital expense alone exceeds \$18,000 per annum per patient. To date all people who have been hospitalised in this way have been of Pitcairn descent. This situation indicates a pressing need for the construction of a suitable home for elderly citizens, a facility which is at the present time inhibited by financial considerations.

(b) Pensions

There are no statutory old age invalid or other pension systems in Norfolk Island. For the purposes of the Australian Social Services Act 1947-1975 Norfolk Island is not regarded as part of Australia and differs in this respect from the Northern Territory and the Australian Capital Territory. Under the Social Services Act No 2 of 1975 which came into force in September 1975 Norfolk Island was expressly excluded from its operation. The Prime Minister stated in his Second Reading Speech of 20 August 1975 when introducing the Social Services Bill No 2 of 1975 'Residence in Norfolk Island is excluded from the ambit of the Bill in view of the recent appointment of a Royal Commission into matters including social security relating to Norfolk Island'.

Former residents of the Australian mainland now residing Norfolk Island continue to receive Australian pensions. The kinds of pensions and the numbers who receive them are as follows:

Age pensions	22
Widows' pensions	<u>1</u>
Total	<u>23</u>

The estimated cost of these social service pensions for 1975—76 is as follows:

	\$
Pensions	50,000
Postage	110
Miscellaneous (envelopes, stationery, administration etc. estimated)	500
	<u>50 610</u>

Repatriation benefits: A returned serviceman (or woman) may receive or claim most repatriation benefits irrespective of domicile in Australia, its territories or elsewhere overseas, hence an ex-serviceman from the Australian forces resident in Norfolk and his dependants are eligible to receive a war pension and associated benefits, including medical treatment, in a manner no different from that applying to an ex-serviceman and his dependants living in Australia.

(c) Medical benefits

Persons permanently resident in Norfolk Island are not Australian residents for the purposes of the Australian Health Insurance Act 1973-1975, and therefore are not eligible for Medibank medical benefits in respect of treatment received in Norfolk Island. However, if they are insured with a

private medical insurance organisation, they are eligible for payment of that organisation's benefits (both medical and ancillary) to the extent of their cover. They are not entitled to the Commonwealth Government's contribution to such benefits normally paid to Australian resident members of those organisations.

For some years representations were made to the Commonwealth Government to provide financial assistance to the Norfolk Island Administration to enable it to provide free hospital and medical treatment and free medicine and drugs to Australian Pensioner Medical Services pensioners residing permanently in the Island thus placing those pensioners in the same situation they would be in if they resided in Australia. An additional amount of \$6000 was as a result included in the general assistance subsidy for 1974-75 and 1975-76 and is included in the Budget for 1976-77.

Residents of Norfolk Island who incur expenses for medical services and optometrical consultations while visiting Australia are regarded as 'eligible persons' and are therefore entitled to Medibank medical benefits with respect to those services.

Cases of Australian residents who receive treatment whilst visiting Norfolk Island are considered according to individual circumstances and treated in the same way they would be treated in any other country outside Australia. If these people are regarded as temporarily absent from Australia they are eligible for Medibank medical benefits to the extent they would be eligible if the medical expenses were incurred in Australia. However, an Australian who has taken up permanent residence in Norfolk Island is regarded as not meeting the requirement for payment of benefits from the Australian Government's funds.

If an Australian temporarily absent from the mainland is hospitalised in the Island, Medibank hospital arrangements still cover him.

The position of Norfolk Islanders who are hospitalised during visits to Australia is as follows:

With respect to public hospitals - Medibank shares with the state Governments on a 50/50 basis the costs of hospitalization. Free accommodation and treatment are generally made available to visitors - the decision to make free treatment available to non-residents rests with the State Government. If free treatment is not available then the patient is accommodated in either an intermediate or a private ward for which the hospital makes its customary charges. Contributors to private health insurance organisations are eligible for hospital benefits from the private organisations which, with the Commonwealth Government hospital benefits for privately insured patients, cover these charges. Patients who do not contribute to private hospital benefits organisations are eligible for Commonwealth Government hospital benefits of 80c a day. Intermediate and private ward patients are treated by private doctors of their choice, whose fees attract Medibank medical benefits.

With respect to private hospitals - Patients have their hospital accounts reduced by Medibank hospital benefits of \$16 a day. Private health insurance organisations offer cover against the balance of the hospital charge, and contributors to these organisations are also eligible for Commonwealth Government hospital benefits of \$2 a day. Patients who are not members of private insurance organisations are eligible for Commonwealth Government hospital benefits of 80c a day. Doctors' fees incurred during hospitalisation attract Medibank medical benefits.

(d) Health

(i) Medical services

A general practitioner type medical service is provided to residents of the Island and visitors by a government medical officer who is appointed from Australia by the Minister for Administrative Services on the recommendation of the Australian Department of Health, and who is under contract to the Administration for a period of two years. His salary and expenses are met by the Island's Administration. The doctor acts as medical superintendent of the hospital and is responsible for public health, hygiene and quarantine.

Medical consultations are carried out on the hospital premises (patients being classed as 'out-patients') and home visits are undertaken as necessary.

Procedures exist for obtaining outside assistance in situations that cannot, in the opinion of the medical officer, be dealt with safely and adequately within the Island. The patient may be transferred to Australia or New Zealand by regular air services or, in the case of an emergency, by Australia or New Zealand generally using the Air Forces of those countries free of cost. Routine referral for specialist opinion is made to these countries.

An ambulance vehicle, garaged at the hospital, is available for transporting patients~

(ii) Specialist medical services

These are provided in the Island on an occasional basis in the specialties of gynaecology, otorhinolaryngology and ophthalmology (with optometry) under the auspice of community service organisations or through private initiatives. A dermatologist, resident in the Island, provides services in her specialty on a part-time basis. With the exception of those funded by service organisations, all consultations are on a fee—for— service basis.

Referrals for specialist or second opinion present difficulties. This situation is, however, inevitable owing to the isolation of the Island.

New Zealand, through Islanders visiting that country for health services, makes a significant contribution. Many New Zealand nationals live in the Island and, of course, an air flight to their native land is shorter than a flight to Australia. As a ready source of specialist opinion and treatment, New Zealand is very important to the Island.

(iii) Dental services

These are provided by a government dental officer appointed for two years by the Minister for Administrative Services with the salary and expenses being met from Administration funds. Free dental services are available for expectant mothers and all student children. There is a twice yearly dental inspection of all school children. Other residents are treated on a fee-for-service basis.

(iv) Hospital services

The Island has a hospital with a nominal capacity of sixteen beds in eight wards, but with two more

beds readily available. It has a lounge, corridor and other space which could be used for emergency accommodation and treatment in the event of a disaster. It is administered under the appropriate ordinance which provides for a hospital board of five members and which sets out the powers and functions of the board. The hospital provides the focus for health services in the Island, Although a considerable number of improvements have been effected during the 1975-76 year, the main building and its related facilities require still further upgrading, along with all aspects of medical services in the Island, especially staff training opportunities.

(v) In-patient services

General medical, surgical and midwifery patients are admitted. During the financial year 1975-76 the average daily bed occupancy was 6.5 against a break—even point of nine (in so far as costs are concerned) The current staff establishment is a matron four nursing sisters four nurse aides and appropriate domestic and administrative staff all of whom are under the administrative control of a hospital secretary/manager The present secretary/manager is a qualified pharmacist who combines dispensing activity with his other duties.

(vi) Out-patient services

For the six months November 1975 to April 1976 the out—patient attendance was 3489. In the absence of separate statistics it is estimated that no more than 25% of all patients treated would be non-residents Adequate x-ray facilities are provided to support out—patient services and the unit is mobile for in—patient use A simple comparator method of pathology testing (ames) is used for such tests as blood urea.

(vii) Pharmacy services

Pharmacy services are available at the hospital for in—patients and out-patients An adopted pricing structure based on that recommended by the Pharmacy Guild of Australia is used the minimum charge at the time of taking evidence being 50 cents per prescription item The majority of the drugs are imported from New Zealand (because of price advantage) although many are manufactured in Australia

As mentioned earlier the present hospital secretary/ manager is a qualified pharmacist. It is the intention of the hospital board to provide a full retail pharmacy service at the hospital. This will produce additional revenue and, as the hospital is located some distance from the retail pharmacy in the Burnt Pine shopping area, it should also provide a wider service.

The Poisons and Dangerous Drugs Ordinance 1957—1973 does not appear to prohibit importation of therapeutic substances not meeting standards required in Australia, It is recommended that controls on their entry into the Island be introduced to safeguard the public.

In addition to the entry of drugs into the Island, actual sales of drugs remain a source of concern, At the present moment the limited list set out in the Pharmacy Ordinance is very much out of date and a wide range of modern drugs may be sold without any control or prescription, Problems emerge therefore in the controlled treatment of patients. It is recommended that the Pharmacy Ordinance 1956-1964 be brought up to date as a matter of some urgency.

(viii) Public health services

Drinking water is obtained from roof catchment, while additional water supply for other purposes is obtained from bores. The water supply to the larger establishments is monitored for contamination at half—yearly inspections by a senior health inspector of the Australian Capital Territory Health Commission, who also arranges for samples to be tested.

Additionally, a locally appointed part-time health inspector arranges further testing at his discretion.

Some delays have been experienced in the transport (using commercial portable ice—boxes) of water specimens for testing. While naturally such delays are undesirable the Health Commission does not feel it warrants any lack of confidence in observed results.

Sewerage and septic tank installations in all premises are subject to approval by the local health inspector and effluent from sewerage installations is tested at appropriate intervals. While it is desirable that a reticulated water supply and full treatment of sewage collected by a suitable system be provided, the spread of population, the absence of an effective catchment and the cost involved do not at this juncture permit this provision.

Butchers are licensed to slaughter in premises that are subject to inspection. Premises where food is prepared commercially are licensed and inspected. These arrangements appear to be satisfactory.

Milk pasteurisation facilities are not available in the Island However local herds have been tested and found to be free of bovine tuberculosis and brucellosis. A system whereby milk is delivered within three hours of milking has been instituted and this also appears to be satisfactory.

A limited private garbage collection service exists. Garbage disposal is effected by private incineration or dumping into the sea at Headstone Point.

(ix) Maternal and child health

On the initiative of the Norfolk Island Young Wives and Mothers Club, and with its financial support, a part-time infant welfare sister conducts ante natal and post-natal classes and performs duties of the kind usually carried out in baby health centres, A regular fortnightly clinic is held.

(x) Domiciliary nursing

General nursing and other supportive services are provided by a district nursing service that is partly funded by the Administration and partly by a private donation known as the 'Emily Channer Trust', Much of this service is directed towards care of geriatric patients in their home environment.

(xi) Family planning, mental health, alcoholism and drug dependency services

Subject to later comments regarding health education these services at general practitioner level (with referral to Australia and New Zealand) are adequate medically and appropriate for the social climate provided a satisfactory funding mechanism can be arranged.

(xii) School medical services

Medical examination of school children is carried out intermittently.

(xiii) Health education

The voluntary efforts of community service organisations, with assistance from the government medical officer and other health and education personnel, have no formal basis.

(xiv) Immunisation services

Efforts are made to complete immunisation in respect of triple antigen and poliomyelitis for all school children, but there is no formal program. Immunisation for other diseases is deficient.

(xv) Quarantine services

The vaccination status of persons arriving from places other than Australia and New Zealand is checked on arrival, Precautionary measures are applied to prevent the introduction of animal and plant diseases,

Concern has been expressed because Australia, although permitting entry of dogs and other animals from New Zealand, will not permit their entry from Norfolk Island, Basically, this is because there is no government—approved veterinary surgeon permanently in the Island who could supervise the arrival of animals on international flights and, consequently, no acceptable certification can be given that the animals are free of disease, Relaxation of this rule would present an unacceptable risk to Australia.

(xvi) Physiotherapy

This is available on a private fee—for—service basis from a physiotherapist resident in the Island This service is adequate and if it were lost could be replaced by the government medical officer assisted by nursing staff who would receive special training if necessary.

(xvii) Emergency blood supply

At the time of the hearings the situation regarding blood transfusion treatment in Norfolk Island was not satisfactory in spite of the existence there of a blood donor panel of about eighty people. Subsequent investigation however has revealed that this situation has now been corrected.

(xviii) Certification procedures

The existing process through which it is necessary to pass before a mentally ill person in the Island can be certified for removal for treatment is cumbersome time consuming and in a small community needlessly embarrassing The relevant Lunacy Ordinance require amendment to bring it into line with present practice in the Australian Capital Territory which is much more enlightened and effective

(e) Education

The educational services in the Island provide for children up to and including fourth form in secondary education. Minor assistance provided by the Administration caters for some of the expenses of children wishing to further their education in Australia. Children who qualify for such assistance go to the mainland each year for higher education and in 1975 the assistance being given was as follows:

Bursaries	7
Traineeships	10
Tertiary scholarships	1

The school is staffed by a principal and twelve other teachers currently recruited from the New South Wales Department of Education, their salaries and expenses are met by the Administration. However, under the Commonwealth Government's Administrative Arrangements Orders of December 1972 the Australian Department of Education has responsibility for education in the Island and that Department is in a position to provide the necessary servicing, but as yet has elected not to do so.

The school, which of course is co-educational, consists of three main blocks of buildings, one of which is the original school built seventy years ago. There were 305 students at three levels - infants, primary and secondary, at 30 June 1976, School buses carry children to and from school daily from most parts of the Island, The bus runs are subsidised by the Administration to the extent of \$7,500 per annum. Because of the small size of the school, the range of subjects offered at secondary level is necessarily limited. Access to correspondence courses from New South Wales is also provided.

In the past, the Administration's levels of recurrent expenditure on education have compared favourably with mainland levels. The Australian Department of Education, however, is concerned that, while the Administration has met basic standards in the past, it may find it increasingly difficult to afford the additional expense required to meet rising standards in the future. (This view is vigorously denied by some private sources in the Island.) Recent reports indicate to the Department that in the supply of equipment, library stocks, duplicating facilities and ancillary staff the school may be falling behind mainland standards, but this again is denied by some sources in the Island. The School relies heavily on the Parents and Citizens Association for new apparatus such as videotape equipment, overhead projectors and cassette recorders,

The school library is well stocked with 6000 books but is oriented mainly towards the primary students' requirements.

Ancillary staff consist of a clerical assistant and in addition the following part-time workers namely an economics lecturer a French tutor a librarian and a pianist Further part-time assistance could be profitably employed.

The Australian Department felt that current expenditure on capital items is not sufficient to maintain standards at the school Four years ago plans for a new toilet and ablution bloc were drawn up for the school and the block has now been built An inspection revealed that present arrangements although not first—class are in fact quite within tolerable standards in the circumstances. Staff facilities at the school are now adequate. Minor maintenance work such as

repairing leaking roofs and blocked sinks at the school occasionally lags due not to financial impediments in the Island but to shortages of skilled manpower. Save for the audio—visual room the buildings are considered to be satisfactory within their limits.

Educationally the Island is at a clear cultural disadvantage in the eyes of the Australian Department. The Department alleges that because of geographical isolation the Island has limited access to cultural facilities such as theatres, libraries, radio and newspapers. The Island has no satisfactory access to program television (Some freak reception is occasionally obtained from Australia and New Zealand). Opportunities for increasing the range of learning experiences available to the children are therefore limited. Evidence to the Department indicated that the effects of this cultural disadvantage have been noticed. Some parents and teachers report that the children's academic attainments are lower than might be expected; also Island children who continue their education in the mainland have difficulty competing successfully with mainland children who have a wider range of experiences.

All the above allegations by the Department were contested and denied by many Island residents who in fact feel their children's situation in the Island affords them distinct advantages culturally, socially and educationally - at least up to the level to which local schooling takes them. The residents clearly do not want the present arrangements with the New South Wales Department of Education disturbed but it was conceded that the situation with respect to post—Island education could be improved.

There is no formal pre-school system. A voluntary group operates a facility for the very young but it is more in the nature of a play centre than an educational institution. It was alleged by the Australian Department that the absence of a genuine pre-school educational system is a source of the disadvantages influencing children in the Island.

Similarly, there is no form of organised adult education system available in the Island, but the school buildings are used for community meetings of an evening.

(f) Compensation and other benefits

(e.g. terms and conditions of employment)

In treating this area it should be recorded that Australia is a Member of the International Labour Organisation (I.L.O.), the United Nations specialised agency concerned with Labour and related matters. The I.L.O. adopts international instruments on labour standards which take the form of Conventions and Recommendations. I.L.O. Conventions are international treaties open to ratification by Member States of the I.L.O. On the other hand Recommendations, which are advisory in character, are not open to ratification and are meant to provide guidelines for national practice.

I.L.O. Conventions which Australia has ratified and which have relevance to the Terms of Reference of this Commission are in the following fields:

- (i) Workers compensation;
- (ii) Employment and employment services;

(iii) Wages and wage-fixing machinery;

(iv) Freedom of association;

(v) Labour inspection,

Now that the decision in the Berwick Case has made it clear that Norfolk Island is part of the Commonwealth the I L O Conventions which Australia has ratified should apply to the Island unless peculiarly local circumstances justify their being declared inapplicable To date full application of these Conventions has not been extended to the Island in the case of every Convention and the current situation is as under:

(i) Re Workers Compensation

With respect to these Conventions Australia has reserved its decision in so far as applying them to Norfolk Island is concerned There is no general workers compensation cover extended to people employed in Norfolk Island Leaving aside Commonwealth Government employees who are covered by the Compensation (Australian Government Employees) Act 1971-1974 such cover as exists for others in the Island is confined to ex gratia payments for members of the staff of the Administration and private arrangements for specific groups of employees. The Island Council and the Administrator have endorsed the introduction of a compulsory accident compensation scheme conditions of which have been drawn up to apply exclusively to the Island circumstance, The basic scope of this scheme in the areas of personal accident compensation medical and hospital benefits and personal injury involving motor accidents may be augmented by taking extra units. The scheme is as yet not implemented.

The Department of the Capital Territory advised the Department of Employment and Industrial Relations early in 1973 that its then Minister was giving consideration to the adoption of legislation designed to extend workers compensation protection to all employees in Norfolk Island The legislation is yet to be introduced and every step should be taken to do this without further delay.

(ii) Employment and employment services

Of the four Conventions in this area which have been ratified by Australia, two were declared to be inapplicable to Norfolk Island because of its small size and population These two relate to an employment service to assist in alleviating unemployment along with measures to administer unemployment benefits. A third Convention (No. 122 Promotion of Full, productive and freely Chosen Employment) has been declared applicable to the Island without modification. The fourth Convention (No. 111 Discrimination (Employment and Occupation) 1958) is one of the I.L.O. human rights instruments, and consultations are proceeding between the Department of Employment and Industrial Relations and the Department of Administrative Services with a view to finalizing the manner in which the provisions of the Convention will be implemented in Norfolk Island. This mainly involves determining how a policy to eliminate discrimination in employment and occupation will be declared and pursued. It should be stressed, however, that this exercise is largely a formality, as no evidence of discrimination in the Island was brought to the attention of the Commission.

(iii) Wages and wage-fixing machinery

Australia has ratified four Conventions dealing with various aspects of wages and wage fixing machinery. Two of these have been declared inapplicable to Norfolk Island because of the limited extent and composition of the working population. No declarations have yet been made regarding the other two, Equal Remuneration for Men and Women Workers for Work of Equal Value (Convention No. 100), and Minimum Wage Fixing (Convention No. 131). In practice the principle of equal remuneration has been implemented in the area of Administration employment and it is understood that this will be formalised by the proposed public Service Ordinance.

(iv) Freedom of association and the right to organise

Australia has ratified three conventions in this area, and all three have been declared applicable without modification to the Island.

(v) Labour inspection

Australia has ratified two Conventions dealing with various aspects of labour inspection One (No 85 Labour Inspectorate~ (Non-Metropolitan Territories) 1947) was declared inapplicable to Norfolk Island in 1954 on the grounds that there were no secondary industries there and primary production was confined largely to small holdings worked by farmers on their own account The absence of minimum—wage fixing machinery in the private sector has been considered as a further reason against the establishment of a labour inspection service However with the introduction of secondary industries (e g timber processing and rock crushing) the need for a labour inspectorate has increase although it is still doubtful whether the size of industry in the Island and the Island's way of life warrants the cost of setting up such a service.

The Administration introduced in 1972 for its staff a wage and salary formula comprising a basic proportion of the then equivalent Commonwealth levels and full adjustment in accordance with changes in the Commonwealth structure. This has a tendency to be the pace setter for the rest of the Island.

The second Convention (No 81) requires the establishment of an entire system of labour inspection in industrial and commercial work places A declaration in respect of this Convention has yet to be made in relation to Norfolk Island and it is doubtful if the Island's circumstances require such a declaration

(vi) Labour Standards

(The situation regarding Non-Metropolitan Territories - Convention No, 83)

Convention No. 83, which only applies to non-metropolitan territories, contains a schedule consisting of the substantive provisions of thirteen earlier Conventions, A country which ratifies the Convention is required to make declarations for its non—metropolitan territories in respect of each instrument in the schedule whether or not it has ratified that instrument in other words Australia which has ratified Convention No 83 has entered into an international obligation to apply, as far as possible, the provisions of all the instruments in the schedule, both ratified and unratified.

Australia has ratified only five (Nos 15, 16, 19, 27 and 45) of the thirteen Conventions concerned. Of the eight unratified instruments, three (Nos 6(90), 41(89) and 45) are inapplicable to Norfolk Island owing to local conditions, and a decision has been reserved as regards two others, Nos 17 and 3. The remaining three Conventions are Nos 14, 59 and 77. Although Nos 14 (Weekly Rest in Industry), 59 (Minimum Age for Employment in Industry) and 77 (Medical Examination of Young Persons Employed in Industry) have been declared inapplicable to Norfolk Island, the Department of Employment and Industrial Relations, in conjunction with the Department of Administrative Services, has these declarations under consideration with a view to reviewing the question of their application as necessary. As there are some activities carried on in the Island (e.g. quarrying, electricity generation, telephone installation and road maintenance and construction), which come within the scope of the Conventions, it seems timely that this question now be reviewed,

(vii) Superannuation

The Norfolk Island Public Service has a contributory provident fund scheme which is governed by legislation and theoretically covers only the permanent officers of the Public Service but in practice also covers all permanent employees. The only other superannuation type schemes which may exist in the Island would be solely private ones. The private sector operates generally in freedom from any legislative restraint in respect of working conditions relating to compensation, sick leave, recreation leave and long service pay.

(viii) Wage Structure

There are no statutory requirements in regard to minimum wages, margins or the engagement or termination of employment, except in relation to the Norfolk Island Administration, However some employers do adhere to Australian standards in these areas.

2. Attitudes to the above, both Island and mainland

(a) The Norfolk Island Council view

This broadly was that social security, education, health compensation and other benefits (to be determined by Council) should be provided for by Island public funds at levels adequate to meet the assessed Norfolk Island requirements, The Council felt that, whilst it would wish to provide for the Island local levels of these services similar to those provided for Australia] citizens within Australia it considered that the local benefits should be related to local requirements which in some cases the Council felt, may even need to be higher than those enjoyed by mainland Australians

In so far as the capacity of the Island to pay for these benefits is concerned, the Council thought this would be governed by the economic viability of the Island, In this connection, Council would require authority to raise finance to pay for the benefits its. Council believed that there were resources in the Island, as yet untapped, capable of yielding sufficient revenue to finance the benefits envisaged.

(b) Individual views of Island residents

These showed wide variation ranging from complete willingness to pay Australian levels of taxation in return for Australian levels of benefits to deep distaste toward paying any taxation

whatever to finance any change in the present arrangements. Somewhere in the middle of this wide spectrum a not inconsiderable body of opinion seemed willing to suffer self—imposed taxation (i.e. imposed by the Island) in order to lift benefits to higher levels than obtain at present. Education is an area which quite clearly the Island wishes to control in the same manner as at present, regardless of the nature of the originating finance.

(c) Department of social security

The Department considered that on grounds of equity entitlement to Australian benefits should carry with it an obligation to contribute to the cost of those benefits, on the same basis and at the same rates as mainland beneficiaries contribute.

(d) Department of health

This Department considered that residents of the Island who enjoy full Australian citizenship should carry all rights, privileges and obligations of such citizenship.

If the Island were to assume independence and become self-governing then the Department envisaged all Australian financial support being terminated. In this event a heavy burden would immediately fall upon residents.

Prior to the Berwick decision the Department felt that in the event of a degree of independence being granted an investigation should be made of a scheme which involved an enrolled population contracting on a pre—payment basis for a specified range of services with a managing organisation (preferably elected by the community) which accepted responsibility for a financial plan for providing a reasonably comprehensive range of health services. Such a scheme would be in the pattern of the Health Maintenance Organisations as established in North America.

The Department recognised, however, that such a scheme would require almost universal participation as well as substantial reserve financial support and managerial expertise from an appropriate source.

(e) Department of education

This Department declined to concern itself with the question whether or not Norfolk Islanders should pay taxes at mainland rates in order to participate in benefits at Australian levels. It hoped that whatever financial arrangements are made for the Island funds would be available to ensure that the standard of education services in the Island would match those in the mainland. It believed that it would be unfortunate if the children and their prospects for the future were adversely affected by prolonged discussions between their parents and the Commonwealth Government in relation to taxation and other financial matters.

(f) The Department of the Capital Territory

(Which was administering the Island at the time of taking evidence)

This Department took the view that Australian funding should not be the only source of financing Island benefits but that much more could be done by increasing local revenues and by judicious borrowing - envisaging a community which had responsibility for decisions and with authority to

act It felt that the residents themselves should determine the level of benefits they wished to have and the manner in which they should meet the costs involved The Department stated that because the Census and Statistics Act 1905-1973 does not extend to Norfolk Island, it was difficult to assess the revenue production potential of the Island in the absence of basic relevant data, On the question of whether the Island should finance Australian levels of benefits by paying Australian rates of taxation, the Department preferred not to commit itself and felt that the options should be tested in the Island.

(g) The Australian Treasury

The Treasury took the view that while Norfolk Island people are not subjected to Australian taxation, it could be regarded as anomalous and inequitable to pay welfare benefits to them out of Australian taxation revenue Without any contribution to that revenue coming from the Norfolk Island community, That would, in the view of the Treasury, put the Island community in a privileged position vis-à-vis the people of mainland Australia in this regard. The Treasury considered that until Norfolk Islanders are liable to Australian tax on their Island source income, they should remain ineligible for welfare benefits,

(h) The Department of Employment and Industrial Relations

This Department considered that adequate workers compensation protection should be available to all employees in Norfolk Island and that any scheme introduced to the Island should be consistent with the requirements of the relevant I.L.O. Conventions, which have been ratified by Australia, in so far as local conditions allow.

It further considered that, should the need for an employment service and unemployment benefits arise in the Island, they be introduced, and that any measures adopted by Australia with respect to an employment policy be consistent with the declaration by Australia in respect of Convention No. 122. The Department also felt that Convention No. 111 (relating to Discrimination) should be formally declared 'applicable without modification' to the Island.

In so far as wages and wage-fixing machinery is concerned, the Department considered that, if a need for this can be seen in the Island, then the requirements of Conventions Nos 26, 99 and 131 should be observed and be consistent with any recommendations by this Commission in this area. Further, the principle of equal remuneration for males and females for the same work should be implemented as part of any wage fixing policy.

Regarding freedom of association, the Department felt that no recommendation by this Commission in this area should conflict with the provisions of the three Conventions already declared applicable, without modification, to the Island.

The Department considered that should any moves be made to establish labour inspections in the Island, or to set labour standards, these should conform as far as possible to Conventions Nos 81, 83 and 85, bearing in mind the local conditions obtaining.

(i) The Department of Administrative Services

(Before responsibility for Norfolk Island was transferred to this Departments it expressed a view

independently of the Department of the Capital Territory,)

The Department of Administrative Services, which is also charged with the administration of Christmas Island and Cocos (Keeling) Islands, favoured a consistent approach being taken for all Island territories. In general the Department aims to secure the provision of social security, health, education, wages (rates, working conditions, compensation and other benefits at levels which are related to and consistent with those enjoyed by Australian citizens in the mainland. These policies embrace, in the Department's view, the probable consequential need to introduce taxation provisions which are also consistent with mainland levels. The Department, however, realises that local conditions frequently differ from those generally applying in the mainland and that it would not always be appropriate to apply mainland provisions directly. The Department's overall philosophy is that mainland provisions and standards should apply, subject to adjustment in the light of local circumstances.

(j) The aspect of hardship

Naturally enough, the aspect of hardship in the Island in relation to existing health, social services, education and labour conditions was explored. Hardship, of course, is a relative term and in the eyes of most Island residents there is little or no hardship in respect of these matters. The strongly developed family ties amongst Pitcairn descendants have fostered an attitude of mutual help and this characteristic is the source of a deal of pride. However, while this is a feature of the Island, it is still true to say that there is scope for the standards of care and maintenance of the retired and aged in Norfolk Island to be improved. It was the Commission's impression that, if these standards were lifted to those obtaining in Australia, then the people affected would undoubtedly be less dependent on charity (however well intentioned) and be happier in consequence.

With respect to health and education, again, while the existing circumstances cannot be said to result in hardship or need nonetheless if the measures recommended in this Report are adopted it is believed that services will improve and standards will be raised. When one turns to a matter such as workers compensation the question is more easily answered for the risks involved in working without proper workers compensation cover are very real. Although no serious industrial accidents were referred to in evidence no one can deny that there is always the possibility that they will occur and lead to grave physical and economic disabilities. With regard to matters such as need for labour inspectorates, freedom of association and discrimination in employment, there appears to be no real urgency for measures to be introduced to secure these. To do so would merely place the stamp of formality upon what has obtained for many years.

The question, therefore, in the absence of widespread and serious hardship, comes back to the issue of paying for the admittedly significant improvements which could be effected in these areas, and the Commission's views on this aspect are set out hereunder.

### 3. Conclusions and recommendations

The witnesses concerned with these areas presented, once again, much the same pattern of evidence as emerged from other areas, viz, a whole gamut of opinions of wide—ranging extremes. It was possible, however, to conclude that the adoption of some of the suggestions would result in necessary improvements for the Island and would be broadly acceptable to the Island itself and to the administering authorities in Australia. In particular, most of the suggestions advanced by the

witnesses from the Australian Department of Health and from the New South Wales Red Cross Blood Transfusion Service appeared both necessary and constructive and those supported by this Commission are set out in Addenda A and B respectively at the end of this chapter. Most of the Red Cross recommendations have been adopted since the hearing closed.

With regard to areas other than the two just mentioned, it is proposed to treat these by first stating this Commission's recommendations. The Commission will later discuss the related aspects of how all measures recommended should be financed, why the Commission chooses a particular approach and certain matter which must flow from the recommendations if adopted.

It is necessary before proceeding further to restate that the recent decision in the Berwick Case removes any doubt that Norfolk Island is part of Australia. From that fact it clearly follows that residents of Norfolk Island should prima facie be entitled as of right to the same benefits from the Commonwealth Government as other Australian residents receive. Thus the Commission recommends that all social security, all pension and all medical hospital and other health benefits dispensed by the Commonwealth Government be extended to residents of Norfolk Island.

The Commission recommends that the present ~ 1932-1964 be amended to accord with current certification practice in the Australian Capital Territory and that the Ordinance 1956-1964 be brought up to date.

As a matter of some urgency the Commission recommends that advantage be taken in the Island of the opportunity to receive Commonwealth assistance under the Aged Persons Homes Act 1954—1974 for the purpose of constructing a home for elderly citizens.

Similarly, with respect to education it is recommended that the onus be on the Commonwealth Government to ensure that the educational facilities available in Norfolk Island are of the same standard as those obtaining in mainland Territories. However in recommending that this approach be adopted it is the Commission's further view that Norfolk Island is sufficiently isolated to justify the retention of as large a measure of local control in the field of Island education as is possible and that the present close and developed association with the New South Wales Department of Education be allowed to continue. The Commission thus recommends that the Australian Department of Education ensure that supplies of funds and equipment (including buildings) to the Norfolk Island educational system equal in every respect those of mainland Territories, and that the present Norfolk Island South Wales association on the teaching and curriculum side be allowed to continue as long as both parties involved consent to such an association. The reasons for advocating this dichotomous approach are that some Island children who wish to pursue their studies in the mainland in any field pass into the New South Wales system do so and there is merit in fostering this affinity; also there has been undoubted success in the examination standards achieved by the children at the Norfolk Island school under teachers from New South Wales. In the last four years, all candidates presented for the New South Wales School Certificate examination were successful.

In so far as workers compensation is concerned, the Commission recommends that Commonwealth legislation in this area be extended immediately to include Norfolk Island, thus making it mandatory for all employers to take out sufficient insurance cover on their employees in order to provide the same compensation benefits as those which are afforded employees in mainland Territories. Likewise, where it is apparent that failure to date by Australia to extend I.L.O. Conventions to Norfolk Island has resulted in disadvantaging workers in the Island, the

Commission recommends that such Conventions be made applicable to the Island immediately.

Island wage rates and other working conditions are matters for determination upon the Island itself and nothing in the evidence brought before the Commission on this subject calls for comment.

Turning now to the aspect of financing the social security and other benefits mentioned above, it is the Commission's firm view that receipt of these benefits must carry with it a reciprocal obligation to contribute toward the cost incurred by the Commonwealth, by payment of the same taxes and other imposts as are paid by other Australians in comparable circumstances. It is recommended accordingly.

The Commission has not been impressed by either the reason advanced in evidence which urged that different attitudes to the above be adopted or by the motives of some of the protagonists of such attitudes. There is no justification for Australia to regard Norfolk Island as an underdeveloped or disadvantaged part of Australia to which large sums should be directed with nothing being expected in return.

It is obvious that there are residents of Norfolk Island who are conducting successful enterprises there and who can afford to contribute to the cost Australia will bear in making proper provision for the Island's less fortunate citizens.

Although the Commission has been unable to measure precisely the capacity of the Island to pay for the benefits it will receive, there is no doubt in the Commission's mind that Norfolk Island will receive far more from the mainland of Australia than it will ever return to the Commonwealth coffers. In pointing this out one should also point out that other regions of Australia are in exactly the same situation of being net beneficiaries of the Commonwealth Treasury though probably not to the same high degree. The Government's obligation to care for its relatively less well-endowed areas is one which is widely adopted throughout civilised nations and there is nothing exceptional in principle in Australia looking after Norfolk Island in this fashion if it deems the cost to be justified. Nonetheless it is proper that the point should be made in any discussion of the subject for mainland Australia will be the financial loser in its relationship with Norfolk Island, Mainland Australia will certainly make nothing out of Norfolk Island.

It is necessary also in this connection to distinguish Norfolk Island from the other external Territories of Australia viz Cocos (Keeling) Islands and Christmas Island. These Indian Ocean Islands are markedly different in many ways from Norfolk Island. Cocos (Keeling) Islands could certainly not be said to be at the same stage of development as Norfolk Island and its political, social and economic situation is not remotely comparable with Norfolk Island. Similarly, Christmas Island, very different again from Cocos (Keeling) Islands, has marked dissimilarities from Norfolk Island, being predominantly an Island which has been occupied for the sole purpose of extracting phosphate rock, and its future, once the rock supplies are exhausted, must be regarded as very unclear. Justification exists for special treatment to be applied to both these Indian Ocean localities, but the Commission can see no justification whatever to single out Norfolk Island for extraordinary tax concessions, the more so as it is unquestionably to be a net beneficiary of tax revenue.

Another aspect deserves mention, viz, the argument that Island residents could finance their social security and related needs by paying taxation to their own Island Administration which would then operate an Island social service scheme, Quite apart from the obvious anomaly which such a system

would create by establishing two very different social service schemes for Australian residents, two other serious complications would emerge. First, such a plan would presuppose Norfolk Islanders paying into two taxation systems — to an Island system to finance social welfare in the Island and to a federal system in order to make their just contribution to all the other needs and overheads of government administration in their nation, such as defence, foreign affairs, the public service, the judiciary, the banking structure, the currency, the education system, etc. Such a split taxation system would be an administrative nightmare and would pose endless problems including assessment of fair apportionments. Second, permission to establish such a separate taxing scheme in respect of social services would have the effect of creating a precedent and pressure for the device to be extended to cover areas in Norfolk Island other than social services could be brought. The precedent could also be used legitimately in attempts by other parts of Australia to sever sections of taxing powers.

It needs also to be pointed out that in recommending that Norfolk Island be brought into the Commonwealth taxation system in order for the Island to contribute toward its federal benefits one is at the same time recommending in Chapter 17 that the Island be freed from considerable burdens which it now carries and finances from local sources. If the recommendations are accepted the Island administration (whatever the form it finally assumes) will no longer be paying out the special allowances of up to \$10 per week nor will it be carrying the hospital and other costs of the geriatric cases (\$18,000 per year per patient for hospital costs alone) nor the costs of the educational system in the Island and some judicial costs. It is envisaged that these and other net savings to the local administration will be available to them to be spent on other Island needs for example an efficient municipal incinerator better roads improved town planning and development better wharves and wharfside facilities larger electricity generators the fencing of those areas to be protected from grazing and a number of other local desirable needs including the ever-increasing maintenance costs of many services.

It is important to stress that in advancing these recommendations the Commission has borne in mind the need to consider all facets of taxation and public finance in conjunction. To postulate the introduction of Federal taxation and benefits without at the same time giving thought to associated matters would be to tackle only half the problem and it is now desired to turn to those associated matters.

If the Commission's recommendations in this area are adopted attention must also be given to the finance needs of the Territory local government and here it is proposed that these be provided in the same manner as has been done in the past, that in lieu of introducing a system of property rating such as is adopted by most local governments to finance their activities on that level, Norfolk Island continue to be free to raise money from its traditional sources for its domestic needs, viz, by stamp sales, liquor sales customs duties and the like all these activities are colourful characteristics of the Island and constitute an important part of its tourist appeal and hence the health of its economy. Thus, the Commission recommends that the Territorial government of Norfolk Island be empowered to takeover from the present Administration those revenue-raising sources and activities which yield the Administration its current income. This subject is discussed further in Chapter 17.

The actual area of such responsibilities will also be treated later in the Report but at this stage it can be said that the Commission envisages a Territorial government in Norfolk Island carrying out much the same functions as the Administrator has performed with the advice of the Norfolk Island

Council in the past. As with a municipal government, the Norfolk Island Territory government should also be eligible to receive additional moneys via the Commonwealth Grants Commission over and above the sums it raises within its own area provided that it can justify such grants being made. It is this Commission's view that wherever possible the governmental and public finance structure pertaining to Norfolk Island should recognise the need to maintain those peculiar features of the Island which lie so close to the very heart of its economic viability — tourism.

Having said all the above, it is desired to point out further that although Norfolk Island is a part of Australia, no one can deny that it is a very isolated and very remote part and that its citizens do suffer certain disadvantages when one compares life in the Island with life in many mainland areas. For instance, there is separation from expert medical and higher educational centres; there is no reticulated water supply nor an electricity supply sufficient to meet all demands, there are no television facilities, no satisfactory ports, and travel to and from the mainland is expensive yet often essential. The Commission, in recognising these aspects of life in Norfolk Island and in regarding them as not dissimilar to aspects of life in some other areas of Australia, points out that similar taxation treatment will be accorded Norfolk Island citizens as is given to those mainland Australians who are similarly situated, viz, that the remote zone income tax concession will have application to residents of the Island.

Finally, since the Commission's recommendations include taxation of Island residents, it is appropriate to draw attention to the need for citizens of Norfolk Island to be given representation in the Commonwealth Parliament just as residents in mainland Territories are represented. Norfolk Island residents are entitled to such representation and the need for this to be introduced will be even stronger should this Report's recommendations on taxation be adopted. It has long been an accepted principle in civilised societies that there be no taxation without representation.

Considering means open to achieve this representation, several alternatives are available but some rule themselves out almost immediately. For instance it would be Gilbertian to contemplate the Commonwealth granting Norfolk Island the status of a new State. Due regard must be had to the population of the Island viz about 1600 and such a small number effectively rules out any degree of representation equivalent to that of a State.

The Commission also dislikes the concept of attaching Norfolk Island to an electorate within an Australian State chiefly because Norfolk Island (unlike Lord Howe Island) is not and probably never will be part of a State in the mainland of Australia. The Island is a Commonwealth Territory not a State territory and it is appropriate that it be accorded the same representation as residents in mainland Commonwealth Territories. Moreover attachment of Norfolk Island to an electorate within a State would immediately attach one representative and ten senators to the Island. It is possible to have too much of a good thing and one should strive to bring a sense of proportion to this problem.

A helpful analogy may be seen in the case of Jervis Bay (another small Commonwealth Territory) which constitutes part of the electorate of Fraser the larger of the two electorates within the Australian Capital Territory. Jervis Bay has a population which is estimated to reach approximately 800 by December 1976 and the Commission feels that it would be proper to include Norfolk Island in the other (smaller) electorate within the Australian Capital Territory viz Canberra. Norfolk Island representation in the Commonwealth Parliament would then consist of one member of the House of Representatives for the electorate of Canberra and two senators who at present represent the Australian Capital Territory in the Senate. In addition the Island would continue to have Ministerial

representation in the Commonwealth Parliament because the Minister for Administrative Services is responsible for the administration of Norfolk Island The Commission therefore recommends that Norfolk Island be made part of the electorate of Canberra in the Australian Capital Territory for electoral purposes

To assist residents of the Island to gauge the effect upon them of the introduction of social service benefits income tax and death duties, details of their main features and appropriate examples are set out in Addenda C, D and E respectively.

To highlight just one facet of the benefits likely to flow to the Island if these recommendations are adopted the Commission points out that assuming there are 200 two-children families in the Island covered by the provisions of the Social Services Act 1947-1976 which relate to child endowment the mothers of those children will receive approximately \$88,400 annually in respect of child endowment alone.

Addendum A  
Recommendations from Australian Department of Health

(Training of Health Personnel)

1. It is recommended that persons with suitable potential for health personnel should have access on a scholarship basis to courses provided by recognised institutions in the Australian mainland and elsewhere.
2. It is recommended that the hospital board should determine what appropriate steps are required in undertaking any new or major renovatory work so as to ensure that there is no interruption to the essential services provided by the hospital - for example with minor modifications temporary facilities within the maternity block could be provided by use of the delivery room as a temporary operating theatre to allow renovation and construction work in the theatre complex to be carried out

The possibility of constructing a separate building adjacent to the front of the hospital which could accommodate the outpatients' department has been canvassed informally with some members of the hospital board This would include the pharmacy., the doctor's consulting room, a treatment room and the dentist's surgery, together with a work—room and office. Such a proposal would alleviate the present problem associated with the patient flow patterns within the existing outpatients x-ray and operating theatre areas and is therefore commended

3. It is recommended that live-in quarters be not provided at the hospital and that suitable residential accommodation for staff be found off the hospital site for rent by staff with or without subsidy.
4. It is recommended that services now provided from the hospital should continue from that location.
5. It is recommended that:
  - (i) Legislation be introduced to restrict importation of therapeutic substances to those which may be prescribed or sold in Australia.
  - (ii) The function of hospital manager be combined with other duties of an appropriate staff member: the present arrangement whereby the pharmacist combines his duties with those of hospital manager indicates the value of this.
6. It is recommended that means for early implementation of health legislation be devised.
7. It is recommended that:
  - (i) The use of a 'Millipore' or similar method of testing in the Island be further investigated and instituted, if found practicable, as the primary

water test for bacterial contamination.

- (ii) A suitable routine of equipment and transport be established so that check tests of water could be carried out at Canberra by the Capital Territory Health Commission Laboratories.
8. It is recommended that in new subdivisions and other suitable areas the installation of small sewage treatment plants of the forced aeration or other suitable type with tertiary treatment be considered. These could serve several establishments and so reduce the number of septic tanks. Increased load on the electricity supply would be a consideration.
9. It is recommended that during the first school term of year the government medical officer medically examine children entering the school for the first time and any other children referred by the teaching staff. Mantoux testing and vaccination, where appropriate, should be arranged concurrently
10. It is recommended that the Australian Department of Health in liaison with the Capital Territory Health Commission, foster health education in the Island as an important part of preventive medicine
11. It is recommended that the government medical officer supervise the institution and maintenance of records for organised immunisation program for infants and children a service for adults Because of health implications for Australia, a vaccine should be provided by the Australian Government at no cost to the Island and be used in accord with immunisation programs recommended by the National Health and Medical Research Council for Australia
12. It is recommended that:
  - (i) The Minister for Administrative Services continue to make health staff appointments on the advice of the Australian Department of Health
  - (ii) Appropriate representation nominated by the Council participate in the selection interview

Addendum B  
Recommendations from New South Wales Red Cross  
Blood Transfusion Service

1. Acquisition of a blood bank refrigerator conforming to the recommendations of the National Blood Transfusion Committee (Medical Journal of Australia 1971 2 1081)
2. Regular monthly dispatch of four units of 0 Rh-negative and two units of 0 Rh—positive blood
3. Streamline dispatch of blood and blood products from New South Wales Red Cross Blood Transfusion Service to Norfolk Island using Commonwealth transport facilities
4. Hold at Norfolk Island twelve units of SPPS and albumin solution.
5. Train nursing staff, cross matching and blood collection.
6. Update donor panel.

Addendum C  
SOCIAL SERVICES PENSIONS AND BENEFITS-  
RATES TO APPLY FROM NOVEMBER 1976

		Present Rate
Age pension (men 65 years, women 60 years - income tested unless 70 years or permanently blind)	Single - \$43.50pw Married - \$36.25pw	(41.25) (34.25)
Invalid pension (at least 16 years of age and 85% permanently incapacitated for work or permanently blind)	Single - \$43.50pw Married - \$36.25pw	(41.25) (34.25)
Wife's pension (wife of an age or invalid pensioner with whom living)	\$36.25pw	(34.25)
Widow's pension (widow, deserted wife, etc)	\$43.50pw	(41.25)
Supporting mother's benefit (single mother etc)	\$43.50pw	(41.25)
<u>Extra payments for Pensioners</u>		
Additional pension for children; each	\$7.50pw	
Guardians/mothers allowance (single pensioner with at least one dependant child), Or	\$4.00pw	
Guardians/mothers allowance (child under 6 or invalid)	\$6.00pw	
Supplementary assistance (limited to amount of rent or lodging or board and lodging – income tested)	\$5.00pw	
Unemployment, sickness and special benefits:		
single under 18 years	\$36.00pw	
over 18 years	\$43.50pw	(41.25)
married	\$72.50pw	(68.50)
additional benefit for children each	\$7.50pw	
Maternity allowance:		
no other children in care	\$30.00	
one or two other children	\$32.00	
more than two other children	\$35.00	
in respect of each additional child, multiple birth	\$10.00	

Family allowance (child under 16 or student child 16-25 years not employed):		
1st child	\$3.50pw	
2nd child	\$5.00pw	
3rd child	\$6.00pw	
4th child	\$6.00pw	
5th child and subsequent(each)	\$7.00pw	
child in an endowed institution, each	\$5.00pw	
Double orphans pension	\$11.00pw	
Handicapped child's allowance	\$15.00pw	(10.00)
Sheltered employment allowance – as for invalid pension but must be employed in a sheltered workshop		
incentive allowance	\$5.00pw	
Rehabilitation training allowance (rate determined by Director-General)		
Funeral benefit		
(funeral amount paid by non-pensioner)	\$20.00	
(where funeral account paid by eligible pensioner)	\$40.00	

Addendum D  
INCOME TAX AND HEALTH INSURANCE LEVY IN AUSTRALIA

This addendum explains briefly the main features of the income tax system in Australia so far as it might concern most Islanders especially those earning salary or wages so they can work out approximately what it would mean if income tax and health insurance levy were payable on the same basis as applies to people in comparable circumstances in Australia. The figures are for the income year ending 30 June 1977. Changes proposed in the latest Budget are taken into account on the assumption that they will become law. It needs to be emphasised that these notes do not cover every aspect of each person's circumstance and that some of the detail of the law has been omitted in the interest of brevity.

Summary of the System

2. The standard tax year ends on 30 June. If Norfolk Island residents become fully subject to Australian income tax law they will be required to lodge returns of income for the 12 months ending on 30 June with the Australian Taxation Office by 31 August each year (unless approval is obtained to lodge later). The return of each person would show his or her income of all types e.g. wages, salary, commission, dividends, interest and rent.
3. From this assessable income various allowable deductions (if any - see paragraph 11) would be subtracted to get the taxable income. This taxable income is multiplied by the tax rate on that income (see Appendix A) to get the gross tax. The fourth step would be to subtract certain rebates (listed in paragraph 12) from the gross tax to arrive at the income tax payable. Finally the health insurance levy would be calculated (see paragraph 14) and added on to get the total amount due.
4. It should be noted that persons without dependants with less than \$3,646 taxable income in 1977 would not have to pay any income tax and no health insurance levy if the taxable income were less than \$2,605. A married man with a dependent spouse for whom he is allowed the full tax rebate, and two school children, could not pay any tax if his taxable income were less than \$6,213, he would not be liable for the health insurance levy unless his income was over \$4,299.
5. To avoid people having to find a lump sum each year, tax and levy are collected by instalments from wages. Each week (or other pay period) employers would deduct a specified tax instalment from the paypacket and send the amount deducted to the Taxation Office. At the end of the year (or earlier if employment finishes with that employer) the employee would get a form showing how much was earned and how much tax was deducted.
6. After the return is lodged the Taxation Office would check the figures and post an assessment notice showing the person's taxable income and the amounts of tax and health insurance levy less the total tax instalments deducted during the year by the employer. If as mostly happens the instalments exceed the tax and levy due a refund cheque would be included. If the instalments were not quite enough, the balance would have to be paid to the Taxation Office.

How much would be payable?

7. The table in Appendix B gives an idea of how much tax and levy would be payable by a

Norfolk Island resident It shows that as taxable income rises the amount due rises It also depends on how many dependants are maintained and how much is spent on items listed in paragraph 13 Examples showing how to calculate tax and levy are shown in Appendixes C to F.

What is taxable income?

8. This is assessable income (see paragraphs 9-10) less allowable deductions (paragraph 11)
9. Assessable income includes wages, the value of board or lodging, and most other allowances or benefits provided by an employer, tips, commissions, bonuses, and most pensions, interest, dividends, rents and business income.
10. It does not include family allowances, legacies and gifts (unless for services rendered), lottery prizes, capital gains, invalid pensions paid to people below age pension age and repatriation disability pensions (including war widows' pension, but not service pensions),
11. Allowable deductions are expenses of gaining assessable income except private or domestic costs and capital outgoing~ Wage earners generally do not have many allowable deductions, j they include the cost of replacing and repairing tools of trade the cost of technical journals, some housing loan interest, and gifts to specified public charities and institutions, Deductions are not allowed for the cost of travelling to and from home and work, food for a person and his family, and other domestic expenses such as rent.

What are rebates?

12. Rebates are tax concessions. The amount of rebates that each person may be entitled to would be subtracted from the tax otherwise payable.
13. There are three main types of rebates:
  - (a) General concessional rebate (GCR) everyone would automatically get a GCR of at least \$610. This rebate would be higher if the amounts spent on items listed below total more than \$1,525
    - Medical, dental, chemist, optical expenses, etc. (no limit, but net of any reimbursements),
    - Funeral, burial and cremation expenses (\$100 maximum)
    - Education expenses (\$250 maximum per student)
    - Self—education expenses (\$250 maximum),
    - Life insurance and superannuation (\$1 200 maximum)
    - Child adoption expenses,
    - Rates and land taxes on principal home (\$300 maximum)
    - One—third of calls on afforestation shares.

The rebate would be 40% of the total qualifying amounts spent under these headings e.g. if the total spent and allowable were \$2 000, the rebate would be \$800 (40% of \$2 000) instead of only the GCR of \$610.

- (b) A zone rebate for everyone resident in certain areas, including Norfolk Island. This is a

minimum of \$216. If the person has dependants or is entitled to the sole parent or housekeeper rebates, the rebate would be increased. Examples are:

- with a dependent spouse, the zone rebate would be \$341;
- with a dependent spouse and school child, the zone rebate would be \$397.50;
- with a dependent spouse and two school children, the zone rebate would be \$454.

The rebate is \$216 plus 25% of the sum of the items listed in (c) below for which the person qualifies, plus 25% of the following amounts for dependent children:

- each student under 25 years, \$226
- one child under 16 years not a student, \$226
- other children under 16 years and not students, \$170.

(c) Dependant, sole parent, or housekeeper rebates as follows:

- |                                |       |
|--------------------------------|-------|
| - Spouse                       | \$500 |
| - Daughter-housekeeper         | \$500 |
| - Parent of taxpayer or spouse | \$452 |
| - Invalid relative             | \$226 |
| - Sole parent                  | \$350 |
| - Housekeeper                  | \$500 |

For example, if a person wholly maintained a spouse and an invalid relative (who did not have separate net income exceeding \$170) his rebate under this heading would be \$726 (in addition to the GCR and zone rebates).

#### What is the health insurance levy?

14. This is basically 2.5% of taxable income, although because it only starts on 1 October 1976 the rate for the 1977 year is three-quarters of the basic rate i.e 1.875% The levy for 1977 cannot exceed \$112.50 (\$150 in a full year) for a person without dependants or \$225 (\$300 in a full year) for someone with dependants. Where a husband and wife are each taxpayers, the levy payable the couple would not exceed \$225 (\$300 in a full year).
15. People on low incomes would be exempt from the levy Some examples are:
  - Person with no tax rebates for dependants — no levy if taxable income is less than \$2 605
  - Person with a \$500 spouse rebate — no levy if taxable it is less than \$4 300
  - person with a sole parent rebate of \$350 — no levy if taxable income is less than \$3 791.
16. Only part of the levy would be payable on incomes in a range just above those exempt levels. The amount payable is gradually increased until the full levy of 1.875% for 1976-77 would be payable on taxable incomes of \$2 846 \$4 142 and \$4 698 and above respectively in the three types of case referred to in paragraph 15.
17. No levy would be payable by people who take out their own appropriate private insurance for both hospital and medical benefit including Medibank Private cover.

Appendix A  
INCOME TAX RATES IN AUSTRALIA  
FOR INCOME YEAR 1.7.76 to 30.6.77

<u>Taxable income \$</u>	<u>Amount of tax payable (before rebates)\$</u>
1 – 2,260	20 cents per dollar
2,261 – 5,650	452 + 27 cents for each dollar in excess of \$2,260 dollars
5,561 – 11,300	1 367.30 + 35 cents for each dollar in excess of \$5,650 dollars
11,301 – 16,950 dollars	3.344.80 + 45 cents for each dollar in excess of \$11,300
16,951 – 22,600 dollars	5 887.30 + 55 cents for each dollar in excess of \$16,950
22,601 – 28,250 dollars	8 994.80 + 60 cents for each dollar in excess of \$22,600
28,251 and above	12 384.80 + 65 cents for each dollar in excess of \$28,250 dollars

Appendix B  
**INCOME TAX AND HEALTH INSURANCE LEVY (h.i.l.) AT 1976—77 RATES**  
**IF THEY WERE PAYABLE BY NORFOLK ISLAND RESIDENTS**

Table income	Single – no dependants			Wholly dependant spouse			Wholly dependant spouse and one student child			Wholly dependant spouse and two student children			Wholly dependant spouse and three student children		
	(1) \$2605		(2) \$3646	(1) \$4300		(2) \$5,890	(1) \$4300		(2) \$6052	(1) \$4300		(2) \$6213	(1) \$4300		(2) \$6374
	Tax	H.I.L.	TOTAL	Tax	H.I.L.	TOTAL	Tax	H.I.L.	TOTAL	Tax	H.I.L.	TOTAL	Tax	H.I.L.	TOTAL
3,000	Nil	56.25	56.25	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
3,500	Nil	65.62	65.62	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
4,000	95.80	75.00	170.80	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
4,500	230.80	84.37	315.17	Nil	44.47	44.47	Nil	44.47	44.47	Nil	44.47	44.47	Nil	44.47	44.47
5,000	365.80	93.75	459.55	Nil	93.75	93.75	Nil	93.75	93.75	Nil	93.75	93.75	Nil	93.75	93.75
5,500	500.80	103.12	603.92	Nil	103.12	103.12	Nil	103.12	103.12	Nil	103.12	103.12	Nil	103.12	103.12
6,000	663.80	112.50	776.30	38.80	112.50	151.30	Nil	112.50	112.50	Nil	112.50	112.50	Nil	112.50	112.50
6,500	838.80	112.50	951.30	213.80	121.87	335.67	157.30	121.87	279.17	100.80	121.87	222.67	44.30	121.87	166.17
7,000	1013.80	112.50	1126.30	388.80	131.25	520.05	332.30	131.25	463.55	275.80	131.25	407.05	219.30	131.25	350.55
7,500	1188.80	112.50	1301.30	563.80	140.62	704.42	507.30	140.62	647.92	450.80	140.62	591.42	394.30	140.62	534.92
8,000	1363.80	112.50	1476.30	738.80	150.00	888.80	682.30	150.00	832.30	625.80	15.00	775.80	569.30	150.00	719.30
8,500	1538.80	112.50	1651.30	913.80	159.37	1073.17	857.30	159.37	1016.67	900.80	159.37	860.17	744.30	159.37	903.67
9,000	1713.80	112.50	1826.30	1088.80	168.75	1257.55	1032.30	168.75	1201.05	975.80	168.75	1144.55	919.30	168.75	1088.05
9,500	1888.80	112.50	2001.30	1263.80	178.12	1441.92	1207.30	178.12	1385.42	1150.80	178.12	1328.92	1094.30	178.12	1272.42
10,000	2063.80	112.50	2176.30	1438.80	187.50	1626.30	1382.30	187.50	1569.80	1325.80	187.50	1513.30	1269.30	187.50	1456.80

(1) taxable income below which no levy or income tax is payable

(2) Taxable income below which no income tax is payable

This table allows for the zone rebate, a general confessional rebate of \$610, and full rebate for the dependant spouse specified at the had of the last four categories.

Appendix C  
NORFOLK ISLAND RESIDENT – WITH DEPENDANT SPOUSE

Assessable income		\$	\$
- wages	5,868		
- leave bonus	82		
- interest	<u>50</u>		6,000
Less allowable income			
- replacement of tools	30		
- gifts to the red cross	<u>5</u>		<u>35</u>
= Taxable Income			5,965
Taxable Income x tax rate on that 5,965 (from appendix a above)			
i.e 2,260 x 20 cents per dollar	452.00		
3,390 x 27 cents per dollar	915.30		
315 x 35 cents per dollar	<u>110.25</u>		
= Gross tax			1,477.55
Less rebates			
(i) G.C.R610.00			
(ii) Spouse rebate	500.00		
(iii) Zone rebate	<u>341.00</u>		<u>1,451.00</u>
= Net income tax			26.55
+ Health insurance levy (assuming not appropriately insured privately)			
i.e taxable income \$5,965 x 1.875% =			<u>111.84</u>
Total tax and levy due			138.39
Less tax instalments deducted by employer each week from			
wages : assumed for the purpose of illustration to be			<u>158.60</u>
Refund due from Taxation Office			\$20.21

Appendix D  
 NORFOLK ISLAND RESIDENT – WITH DEPENDANT SPOUSE AND TWO STUDENT  
CHILDREN

Assessable income		
	\$	\$
- wages	6,371	
- leave bonus	89	
- interest	<u>40</u>	6,500
Less allowable deducitons		
- replacement of tools	15	
- gifts to the red cross	<u>3</u>	<u>18</u>
= Taxable Income		6,482
 Taxable Income x tax rate on that \$6,482 (from appendix a above)		
i.e 2 260 x 20 cents per dollar	452.00	
3 390 x 27 cents per dollar	915.30	
832 x 35 cents per dollar	<u>291.20</u>	
= Gross tax		1,658.50
 Less rebates		
(i) G.C.R610.00		
(ii) Spouse rebate	500.00	
(iii) Zone rebate	<u>454.00</u>	<u>1,564.00</u>
= Net income tax		94.50
 + Health insurance levy (assuming not appropriately insured privately)		
i.e taxable income \$6,482 x 1.875% =		<u>121.53</u>
 Total tax and levy due		216.03
Less tax instalments deducted by employer each week from wages : assumed fro the purpose of illustration to be		<u>241.15</u>
Refund due from Taxation Office		\$25.12

Appendix E  
 NORFOLK ISLAND RESIDENT – WITH DEPENDANT SPOUSE AND FOUR STUDENT  
CHILDREN

Assessable income		\$	\$
- wages	9,793		
- leave bonus	137		
- interest	<u>70</u>		10,000
Less allowable deductions			
- gifts to the red cross	30		30
= Taxable Income			9,970
Taxable Income x tax rate on that \$9,970 (from appendix A above)			
i.e 2 260 x 20 cents per dollar	452.00		
3 390 x 27 cents per dollar	915.30		
320 x 35 cents per dollar	<u>1,512.30</u>		
= gross tax			2,879.30
Less rebates			
(i) Assume the following expenditures			
- medical, dental, chemist, optical expenses (net of reimbursements)	700.00		
- education expenses, e.g. fees books, transport expenses to school, uniforms (net of reimbursements)	620.00		
- life insurance	<u>280.00</u>		
	<u>1,600.00</u>		
As the sum of these expenditures is greater than \$1,525, a rebate of 40% of \$1,600 i.e. \$640 is allowed.	640.00		
(ii) Spouse rebate	500.00		
(iii) Zone rebate	<u>567.00</u>		<u>1,707.00</u>
= Net income tax			1,172.30
+ Health insurance levy (assuming not appropriately insured privately) i.e taxable income \$9,970 x 1.875% =			<u>186.93</u>
Total tax and levy due			1,359.23
Less tax instalments deducted by employer each week from wages : assumed for the purpose of illustration to be			<u>1,412.45</u>
Refund due from Taxation Office			\$53.22

Appendix F  
NORFOLK ISLAND RESIDENT – SINGLE NO DEPENDANTS

Assessable income		
	\$	\$
- wages	4,882	
- leave bonus	68	
- interest	<u>50</u>	5,000
Less allowable deductions		
- replacement of tools	40	
- gifts to the red cross	<u>10</u>	<u>50</u>
= Taxable Income		4,950
Taxable Income x tax rate on that 4,950 (from appendix A above)		
i.e 2 260 x 20 cents per dollar	452.00	
2,690 x 27 cents per dollar	726.30	
= Gross tax		1,178.30
Less rebates		
(i) G.C.R610.00		
(ii) Zone rebate	<u>216.00</u>	<u>826.00</u>
= Net income tax		352.30
+ Health insurance levy (assuming not appropriately insured privately)		
i.e taxable income \$4,950 x 1.875% =		<u>92.81</u>
Total tax and levy due		
		445.11
Less tax instalments deducted by employer each week from		
wages : assumed for the purpose of illustration to be		468.65
Refund due from Taxation Office		
		\$23.54

Addendum E  
AUSTRALIAN ESTATE DUTY AND GIFT DUTY

Estate Duty

If Australian duty were extended to Norfolk Island the estates of Islanders that were of a value in excess of the exemption levels would be dutiable on a similar basis to the estates of persons who are domiciled in Australia at the time of death

2. Subject to certain exemptions and deductions estate duty on the estates of persons who had an Australian domicile at the time of death is levied on all property included in their estates except real property situated outside Australia. In addition to property owned absolutely by the deceased person certain property known as 'notional estate' is also deemed to be part of the estate. Included under this heading are gifts by the deceased within the three years prior to death the value of any interest that the deceased had at the time of death in a joint tenancy or joint ownership and the proceeds of assurance policies on the life of the deceased where the premiums had been paid by or on behalf of the deceased and the proceeds are payable to the widow, widower, children, grandchildren, parents, brothers, sisters, nephews or nieces of the deceased. If gift duty has been paid on any property which is included in the estate as 'notional property' a rebate of duty is allowable.
3. Debts due and owing by the deceased at the time of death are allowable deductions from the value of the estate in calculating the value on which duty is payable. Australian income taxes assessed on income derived by the deceased before death are also allowable deductions.
4. Further deductions which vary according to the relationship of the beneficiaries to the deceased are allowable:
  - (a) On the assumption that the proposed Budget changes will become law, a special deduction will be allowable where the whole or part of the estate passes to the widow or widower of the deceased person. The amount of the deduction is \$50,000 or the value of the interest in the estate that passes to the surviving spouse, whichever is the lesser.
  - (b) Where the whole of the estate passes to the widow, widower, children or grandchildren of the deceased person, a further deduction is allowable. This deduction which varies according to the value of the estate commences at \$40,000. If the value of the estate, after taking into account any deduction allowable under (a), does not exceed \$40,000 the estate is exempt from duty. If that value exceeds \$40,000, the deduction decreases by \$2 for every \$8 by which that value exceeds \$40,000. For eligible primary producer estates (see paragraph 5) an increased deduction commencing at \$48,000 is allowable. It decreases by \$2 for every \$8 by which the value of the estate exceeds \$48,000.
  - (c) Where the whole of the estate passes to persons other than the close relatives specified in (b), a deduction on a lesser scale is allowable. It commences at \$20 000 for estates not exceeding that value and decreases by \$2 for every \$8 by which the value of the estate exceeds \$20 000. The deduction commences at \$24 000 for eligible primary producer estates. Where the estate passes partly to the close relatives specified in (b) and partly to other persons, the deduction is

calculated on an apportionment basis.

5. If the deceased was domiciled in Australia (including Norfolk Island if the duty is extended to it) and his estate includes assets used in a primary production business in Australia increased deductions (see paragraph 4) and a rebate of duty may be allowable. An eligible primary producer estate is one where the value of primary production assets (including a dwelling on land used for primary production) exceeded the value of other assets in the estate and the income derived by the deceased from primary production during the five years preceding death exceeded his income from other sources. Where the value of the estate after allowing all deductions is \$140 000 or less the rebate is 50/a of the duty otherwise payable on primary production assets. The rate of rebate reduces as the value exceeds \$140 000 and ceases where the value is \$250 000 or more, Primary production include forestry but not fishing.
6. An estate duty return would need to be lodged at the Australian Taxation Office unless the value of the estate does not exceed the following limits:
  - (a) \$90 000 if the whole of the estate passes to the widow or widower of the deceased
  - (b) \$40 000 if the whole of the estate passes to the children and/or grandchildren of the deceased or to those relatives and the widow or widower or
  - (c) \$20 000 in any other case

These figures take into account the proposed Budget changes. The Australian Taxation Office can dispense with the requirement for an estate duty return if otherwise satisfied that no duty would be payable.

7. Duty is calculated on the dutiable value of the estate, i.e the net value after deducting all allowable deductions. The rates of estate duty (and gift duty which are the same) are:

<u>Dutiable value of estate or value of all gifts in aggregation period</u>	<u>Rate of duty</u>
\$20,000 and under	3%
\$20,001 up to \$40,000	3% to 6% (i.e 3% plus .03% for each \$200 in excess of \$20,000)
\$40,001 up to \$240,000	6% to 26% (i.e 6% plus .02% for each \$200 in excess of \$40,000)
\$240,001 up to \$1,000,000	26% to 27.9% (i.e 26% plus .005% for each \$2,000 in excess of \$240,000)
Over \$1,000,000	27.9%

#### Gift Duty

8. Subject to the statutory exemption (see paragraph 9), gifts by a donor domiciled in Australia or by a company incorporated under the law of a State or Territory, which is part of the Commonwealth, are subject to Australian gift duty regardless of where the gifted property is situated. Gifts by other persons or companies are subject to duty only where the gifts are of

property which is situated in Australia at the time when the gift is made.

9. A gift is subject to duty if it exceeds \$10 000 in value or if the value of the gift together with the value of all other gifts made by the donor to the same or any other donor in the aggregation period totals in excess of \$10 000. The aggregation period in relation to any gift is the period commencing eighteen months prior to the date of that gift and ending eighteen months after that date. The rate of duty on a gift is determined by reference to the total value of all gifts made by the donor in the aggregation period for that debt. If the rate of duty as assessed on a gift is increased because of a subsequent gift within eighteen months an amended gift duty assessment is issued.
10. A gift duty return is to be lodged for any gift in excess of \$7,500 or if the total value of the gifts by the same donor exceeds \$7,500 in any period of eighteen months.
11. The rates of gift duty are the same as those for estate duty (see paragraph 7) but immediately above the exemption level of \$10,000 there is a shading in so that the full rate of gift duty does not apply until the value of \$10,638 is reached.

NORFOLK ISLANDERS – ESTATE DUTY ON ESTATES OF SELECTED VALUES

NON-PRIMARY PRODUCER ESTATES

Value of Estate	Estate Duty Payable			
	Estate passes wholly to widow or widower	Estate passes wholly to widow, widower, children and grandchildren (where estate exceeds \$50,000 at least \$50,000 passes to widow or widower	Estate passes wholly to children and grandchildren	Estate passes wholly to persons other than widow, widower, children or grandchildren
\$	\$	\$	\$	\$
20,000	Nil	Nil	Nil	Nil
40,000	Nil	Nil	Nil	937.50
70,000	Nil	Nil	2,103.75	5,150
90,000	Nil	375	5,150	9,397.50
100,000	375	375	7,125	12,000
150,000	7,125	7,125	21,642.50	25,500

NORFOLK ISLANDERS – ESTATE DUTY ON ESTATES OF SELECTED VALUES

PRIMARY PRODUCER ESTATES

Value of Estate	Estate Duty Payable			
	Estate passes wholly to widow or widower	Estate passes wholly to widow, widower, children and grandchildren (where estate exceeds \$50,000 at least \$50,000 passes to widow or widower	Estate passes wholly to children and grandchildren	Estate passes wholly to persons other than widow, widower, children or grandchildren
\$	\$	\$	\$	\$
20,000	Nil	Nil	Nil	Nil
40,000	Nil	Nil	Nil	375
70,000	Nil	Nil	706.40	2,781.50
90,000	Nil	Nil	2,375.60	5,280
100,000	46.88	46.88	3,453.10	6,828.10
150,000	3,453.13	3,453.13	12,380.22	16,798.13

Note: The figures are based on the assumption that three-quarters of the assets are primary production assets.

Chapter 13  
Guideline (g)

“The extent to which Norfolk Island has been and is now being used to provide a base for activities (e.g. income tax, gift duty and death duty avoidance or evasion) which are harmful to the interests of Australia or other countries”

GUIDELINE (g)

1. Introduction

(a) Form of this chapter

In order for one to understand thoroughly the nature of the activities by which Norfolk Island became a base for tax avoidance, and the extent of those activities, it is necessary to set out in some detail the history behind them, the various forms they took, the factors essential for their successful operation, the types of taxation affected by them, the uses made of them by different groups, and the scale of operations which were being conducted.

(b) Need for definitions

As much of this chapter is concerned with forms of schemes designed primarily to lessen or eliminate taxation burdens, it is desirable to be clear on terminology which will be used in this connection; three terms in particular deserve defining at the outset, so the reader is in no doubt as to their meaning in the context of this Report. These terms are ‘tax evasion’, ‘tax avoidance’ and ‘tax haven’.

(c) ‘Tax evasion’

Is the term used to cover the commission or omission of an act knowingly, with the intent to deceive, so that the tax paid or to be paid by the taxpayer is less than the tax payable under the law as interpreted by the administering authorities and the Courts. Examples of tax evasion occur when one deliberately omits income, or fraudulently claims deductions or deliberately misrepresents, conceals or withholds material from those authorities who are responsible for levying the tax. The deliberate failure to pay tax due and payable is also regarded as tax evasion. Unlike tax avoidance, tax evasion includes the displeasure of the law and carries penalties.

(d) ‘Tax avoidance’

Is the term used to cover those cases where the intention of the law is circumvented, in circumstances that do not amount to evasion by the use of a scheme, arrangement or device, often of a complex nature, the main or sole purpose of which is to defer, reduce or completely escape the tax that could be payable but for the scheme. Usually a series of transactions is involved which do not truly reflect the real substance of what is actually happening, and sometimes avoidance is accomplished by shifting liability for tax to other entities not at arm’s length, in whose hands the tax payable is reduced or limited.

(e) 'Tax haven'

Is the term used to describe a readily definable geographical locality which is a necessary base for the employment of various forms of tax avoidance,

2. The emergence of Norfolk Island as a tax haven

(a) Prerequisites of a tax haven

In order for any area to be used successfully in the practical sense as a tax haven it is desirable that certain prerequisites should obtain and these are stated at the outset to facilitate a better understanding of how Norfolk Island came to be one They are:

- (i) A basic tax structure capable of being stretched to accommodate tax avoidance schemes;
- (ii) A stable currency and freedom and ease of currency movements;
- (iii) An efficient banking service;
- (iv) Satisfactory communication facilities (transport, telephone, telex and mail);
- (v) Cooperative local residents; (vi) political and administrative stability,

Although not a prerequisite of a tax haven Norfolk Island has the desirable attribute of being reasonably close to the Australian mainland,

(b) Development of the prerequisites

At all material times the Island has used Australian currency. The Island is, in so far as exchange controls are concerned, a part of Australia and money can be remitted to and from mainland of Australia as easily as between any two States of Australia. The Commonwealth Trading Bank established in the Island in November 1964, and the Bank of New South Wales set up a branch there in April 1969. The construction strip during the war years and its subsequent improvement the post—war years have enabled regular and reliable air to and from the Island to be developed. The Island is c kilometres (approximately) from Sydney, and possesses adequate telex and mail services with the mainland. Many of its were only too happy to supplement their incomes by acting as locally resident company directors and trustees and provide facilities in the Island, Legal and accountancy services gradually built up in the Island and expanded as commercial activities themselves expanded. The Island therefore, has over a period of years come to acquire all the essentials necessities for its use as a tax haven It is an irony worth noting Australia itself had contributed significantly to this state affairs It is also worth noting the converse at this stage, viz, that, although there were evidently quite considerable practical and legal difficulties, Australia might well have action earlier to curb tax avoidance,

(c) Distinction between Norfolk Island and Australia

The peculiar tax—free status of Norfolk Island vis-à-vis the Commonwealth of Australia had existed from the beginning of Commonwealth income tax. The meaning of 'Australia' for income tax purposes was governed by the Acts interpretation Act 1901-1973 as a consequence of which Norfolk Island was not part of 'Australia' for income tax purposes Income with a source in Norfolk I did not have a source in Australia and a resident of the Island was not as such, for the purposes of taxation under the Income Tax Assessment Act 1936-1974 a resident of Australia

(d) Effect of the distinction

Subject to specific exemptions and rebates, and provision for the relief of double taxation a resident of Australia is taxable in Australia on all income derived from all sources whether inside or outside of Australia; it follows that the geographical source of the income is, in principle, of no significance. On the other hand, a person who is not a resident of Australia is taxable in Australia only on income derived from a source in Australia. These basic principles, when applied in the Norfolk Island context, meant that:

- (i) A resident of the Island (whether a company or an individual) was taxable in Australia only on income derived from an Australian source; and
  - (ii) A person resident neither in Australia nor the Island was exempt from Australian tax on income with a source in the Island.
- (e) Extension by special provisions

In 1932, by a predecessor of the present Act, the above basic principles were supplemented by special provisions which expressly declared that residents of the Island were exempt from Australian tax on income from a source in the Island and that, as to income from Australian sources, such people were to be treated in the same way as Australian residents. The first part of these special provisions was, with respect to persons solely resident in the Island, only declaratory of something already provided by the general income tax law. The second part had the added effect of permitting deduction against the Australian income of an individual resident solely in the Island of the concessional deductions for maintenance of dependants, medical expenses etc. which were otherwise available only to Australian residents. When, in 1939, the rebate of tax allowed under s.46 of the Income Tax Assessment Act in respect of inter—corporate dividends was withdrawn from non—resident companies, the second part of the 1932 provision also had the effect—important in the tax avoidance context of retaining for companies resident solely in the Island the same tax freedom which the rebate confers on Australian resident companies with respect to Australian income tax on dividends received. A further effect of the 1932 provisions, coupled with some 1941 amendments, was to make some private companies resident solely in the Island subject to the tax on undistributed profits in relation to income from an Australian source

(f) Background to the special provisions

All the circumstances leading to the enactment of the special provisions of 1932 are naturally enough difficult to establish more than forty years later. There is evidence that they were designed to assist people living in Norfolk Island and deriving property income from Australia who had before this legislation, been treated as absentees for Australian income tax purposes. However the measures seem to have gone further than was necessary for this purpose alone and it has been suggested that they were to an extent related to recruitment of Australians to serve in the administration of the Island in days when the Island was more isolated and probably less attractive as a place of residents than it is today. For technical reasons many of these people retained their Australian residency for tax purposes even though they also acquired an Island residential status and in the absence of special provision would have been taxed in Australia on their official salaries derived in Norfolk Island also had they lost their Australian residency they would in consequence have lost concessional allowances against Australian income from investments etc. The special provisions were also enacted in context in which indigenous residents of the Island did not show to the same extent as Australian residents in the benefits provided by the Australian Government from

its tax revenue

(g) Effects on withholding tax interest and dividends

To complete the broad legal and historical picture there two further features of the income tax law that should be mentioned First under the law as it stood prior to the 1973 amending Act residents of Norfolk Island were not subject to Australian withholding tax on interest and dividends derived from an Australia source Instead they were taxed on those amounts by assessment tax on dividends being rebateable in the hands of an Island-run company This was consistent with the general approach of treating Island residents as Australian residents as regards Australian source income. Second interest and dividends paid from an Island source to foreign residents were not subject to Australian withholding tax. This was consistent with treating Island source income as not having a source in Australia.

(h) Summary of situation which had evolved

Thus, summary the situation emerged that in effect residents of Norfolk Island were sometimes treated as residents of Australia for tax purposes (normally when this was of benefit to them) but otherwise the Island was, for Australian tax purposes, treated as a foreign country. As it was a 'foreign country' with income taxes of its own, and was within the Australian monetary system this situation was tailor—made for tax avoidance by Australians, not to speak of others.

3. Elaboration of some of the more important essentials of a tax haven in the Norfolk Island context

(a) Communications

Appropriate transport telex and telephone links and mail services are needed to allow persons concerned in tax schemes to maintain regular contact with each other so that the person for whose benefit the scheme is implemented retains effective control over it and thus over the assets involved Although Norfolk Island did not have a telephone link with Australia until 15 July 1972 its proximity to Australia the availability of regular air services to both Australia and New Zealand and a reliable cable service with Australia provided sufficiently good communications to sustain tax haven operations Set out hereunder are details of the growth of communications traffic between Norfolk Island and Sydney over the period 1965 to 1974.

Communications traffic between Norfolk Island and Sydney  
1965-66 to 1973-74

Year	Telegrams (Inward and Outward)	Telephone (Minutes of outgoing calls)
1965 - 66	29,082	-
1966 - 67	35,797	-
1967 - 68	42,607	-
1968 - 69	44,010	-
1969 - 70	53,809	-
1970 - 71	62,754	-
1971 - 72	66,442	-
1972 - 73	58,139	31 989
1973 - 74	65 479	40 702

Notes: (a) For years 1965-66 to 1968-69 the only link was by Morse code radio circuit with Sydney.

(b) For years 1969-70 to 1971-72 this link was replaced by a radio teleprinter circuit.

(c) On 15 July 1972 the OTC radio telephone link came into operation.

(b) Freedom of currency movements

The ability to shift money freely into and out of a country is another requirement valued by those wishing to resort to tax avoidance or evasion schemes. Norfolk Island is within the Australian currency area and there was no restriction at all the movement of funds between Australia and the Island prior to 1974. However, persons who sought to take advantage of the tax-free status in relation to dealings beyond both Australia and Norfolk Island had first to obtain exchange control approval from the Reserve Bank of Australia. Although the position has now changed to some extent as a consequence of the tax screening certain exchange control applications implemented by legislation enacted in 1974, the exchange control mechanism did not operate as a bar to implementation through Norfolk Island of tax-saving schemes having an international element.

(c) Availability of professional and financial services

To be viable, a tax haven needs to be able to provide expert legal and accounting services to prospective clients, and to provide a safe, efficient banking system. Also the relevant system of commercial law must provide an adequate framework within which to operate.

As to legal and financial advice, in addition to a small number of lawyers and accountants who soon after 1966 opened practices and lived in the Island, the Island's proximity to Australia made it possible for mainland advisers to travel there to set up Island-based avoidance schemes. There were people living in the Island prepared to act as company shareholders and directors and trustees on behalf of the people for whom the schemes were devised. The system of law in Norfolk Island was, for practical purposes, the same as that in Australia, and while the company law dated back for many years and did not contain the secrecy rules commonly found in the company law of highly sophisticated tax havens sponsored by governmental policy, it was adequate for the setting up of a variety of company structures.

As mentioned earlier, the Commonwealth Trading Bank opened a branch in the Island in 1964 and the Bank of New South Wales did likewise in 1969.

(d) Political and administrative stability

Taxpayers have no wish to implement possibly expensive tax haven schemes only to lose their money or the tax benefits they had planned to obtain. They would hesitate long before they would use as a haven a politically unstable country where the danger of confiscation of one's assets is high, or where fraud would be condoned. There was never any possibility of the above elements being present in Norfolk Island. To those considering resort to the Island as a tax haven, action to thwart their plans by the Australian Government or the Island Administration would have had to be reckoned as a possibility, but as the Island's tax-free status had dated back to 1932, people viewing the scene in 1964 (the significance of which date will become apparent later) concluded that major difficulties lay in the way of changing the tax status of the Island. At all events it seems likely that many taxpayers and their advisers in effect gambled that either nothing would be done or that action would be delayed long enough for schemes to at least yield some worthwhile benefit - if only temporary in character.

(e) The proliferation and diminution of tax avoidance

Until about 1964 the tax-free status of Norfolk Island had not been exploited there were for example only ten companies incorporated in the Island by the end of 1963. In 1964 following the report of the Ligertwood Committee on Taxation of June 1964 an extensive range of measures was taken against income tax avoidance occurring within Australia and many taxpayers wishing to escape Australian tax found it profitable to move their base to the Island. In other words the tax haven attributes that Norfolk Island possessed lay unexplored until a tightening of the Australian income tax law induced taxpayers to take advantage of them. Conversely once it was seen in later years (more after the Income Tax Assessment Act (No 4) of 1973 became law) that Norfolk Island's days as a tax haven appeared to be numbered, avoidance schemes were moved - to a limited extent to Papua New Guinea and to other havens beyond Australian jurisdiction.

4. The uses made of Norfolk Island as a tax haven

(a) Means employed in tax avoidance schemes

(i) Basis of arrangements

Arrangements for avoidance by Australian residents of tax on Australian income were based on the legal position already outlined that a resident of the Island was not subject to Australian tax on income that had an Island source. The broad object of the arrangements was to establish a technical 'source' in Norfolk Island for income in circumstances in which it would be derived by a company that had its technical taxation 'residents in the Island, by a trust established in the Island or sometimes, by an individual resident there.

(ii) Steps to secure 'residency' of companies

Because technical residence in the Island of the companies involved was an essential element in avoidance schemes, elaborate steps were generally taken to ensure that companies were 'resident' in the Island. The following is an illustration of steps taken by taxation consultants to achieve Norfolk Island residency for a company:

1. A company was incorporated in Norfolk Island with its registered office there;
2. The shares in that company were held by individuals or companies or trustees resident in the Island;
3. Shareholders' meetings were always held in the Island;
4. All Directors' meetings were held regularly in the Island, and the directors, or at least a majority of them, resided in the Island;
5. Meetings of directors dealt with matters of substance and not mere formalities;
6. The Memorandum and Articles of Association of the company made it clear that it was the board of directors who were required to manage the affairs of the company;
7. If it was required that an Australian should be party to decisions of the board of directors, he attended meetings in Norfolk Island and did not forward instructions or 'advice' or 'guidance' from Australia;
8. All decisions as to the application of profits, appointment of directors and matters of policy or finance were taken in the Island;
9. The following were all kept in Norfolk Island:
  - Corporate seal
  - Minute books of both shareholders and directors
  - Register of members share transfer forms
  - Share certificates
  - Other statutory registers
10. The main bank account was located in Norfolk Island;
11. The accounts of the company were prepared in the Island and if an audit was required it was carried out there.

(iii) The creation of a legal fiction

Such steps were taken in the overwhelming majority of cases for the purpose of creating a legal fiction. The artificiality in substance if not in law of the technical residence of these companies emerged when it was established in most cases upon investigation by the Taxation Office that in fact the real control over company affairs remained in the hands of mainland principals or their advisers. The great majority of Island residents who acted as company directors had little idea of the details of the transactions in which they were engaged, although of course they were probably aware of the broad purpose, viz, tax avoidance.

The means of control used included signed blank share transfers, declarations of trust in favour of mainland persons, options over shares in the company granted to mainland persons and proxies in respect of voting shares either in blank or in favour of such persons.

(iv) Examples of practices adopted

As mentioned earlier achievement of a Norfolk Island source for income was also a most important objective. While, on general principles, the territorial source income has been held judicially to be a 'practical, h matter of fact' the application of that principle seen often to be heavily influenced by matters of form. The place where contracts are concluded, accounts kept, registered and payments of money made (all of which can readily be effected in one place rather than another) are of great importance in establishing the source of income. Accordingly, it was not difficult for arrangements to be made so that income had a technical legal source in Norfolk Island. Some examples of practices designed to achieve this object are set out below:

1. The purpose of a common type of scheme based on the payment of interest was to enable an Australian company group to get part of its income tax—free in the guise of a tax-deductible expense by way of a tax—free interest payment. Shareholders in an Australian company (A) withdrew an amount they had on interest—free loan to it and made an interest—free loan of the same amount to a Norfolk Island company (N1) set up for the exercise. N1 on—lent the same amount at interest to a second Island company (N2), also set up for the same exercise, and N2 in turn lent back the same amount to A at the same rate of interest.

The desired results were:

First that A received a tax deduction in respect of the interest it paid N2.

Second N2 paid no Australian tax because it was entitled to a deduction of an amount equal to that paid by way of interest to N1 on the loan N2 had received.

Third N1 paid no tax to Australia being not subject to Australian tax because:

- It was a resident of Norfolk Island; and
- The interest, being paid to it on a loan made in Norfolk Island, had a source in the Island.

The overall result was a deduction for interest paid on intra—group loans without anyone in the group being taxed on receipt of the interest a result which could not be achieved if the recipient of the interest were a resident in Australia

2. Probably the most common form of this arrangement also involved the interest received by the from Norfolk Island company being returned through second Norfolk company as additional loans to Australian company This gave a snowballing effect to the arrangement and meant that the interest well as the principal completed a full circle actual cash resources of the parties remaining unaffected by the chain of transactions In non—disturbance of the cash resources of the pa was very often an absolute necessity where some them had no real cash funds to implement the arrangements. They relied on exchanges of cheque with each party being dependent for its credit backing on the deposit of another

(v) Avoidance schemes relating to dividends

1. The broad purpose here was to store up family company profits either from investments or from trading operations, in such a way that the comp avoided undistributed profits tax (at the rate c 50%) and because dividends were not paid the

shareholders were not liable to personal income tax at progressive rates at least for the time being. Indeed, if the 'right' arrangements, e.g a dividend stripping operation, could in the long run be made, the shareholders would not be taxed at all and the relevant income would have been subject to a tax rate as low as 32.5%.

2. These schemes were put into effect by large and wealthy family groups. Instead of allowing dividend distributions to follow the paths within Australia they would ordinarily take, the dividends were paid to a specially created Island company which in turn passed them on to another company established in the Island to receive them. As explained earlier, Norfolk Island companies were entitled to the same rebate of tax on dividends received as were Australian companies, so that the companies employing these schemes envisaged that the first Norfolk Island company would receive the dividends free of Australian tax and the second company, being a Norfolk Island company receiving dividends from a technical 'source' in Norfolk Island, would not only be free from Australian company tax but also, because of the way the undistributed profits tax law is framed, be able to retain them tax-free for as long as it liked.
3. At one time some groups, anticipating that the Commissioner might successfully employ a discretionary power in s.46 of the Act to deny one-half of the rebate on dividends, organised things so that dividends derived from Australia by the Norfolk Island company were wholly offset by interest (with a technical source in the Island) paid to another Island company. There then being no taxable income, unless the Commissioner could deny a deduction for the interest payments, the possibility of only a half-rebate on dividends received became of no consequence.

- (vi) The significance of the Esquire Nominees Case Esquire Nominees Ltd (Trustee of Manolas Trust) v. Federal Commissioner of Taxation (1973) 129 C.L.R. 177

Concerned dividends that originated in income earned in a pharmacy located in Australia. With a view to avoidance of the undistributed profits tax imposed on private companies (or personal tax if distributed to individual shareholders) the dividends were passed through a chain of companies some resident in the Island, to the trustee of an accumulative trust set up in the Island for the Australian family who 'owned' the pharmacy. The dividends paid to the trustee were paid out of profits represented by dividends received on shares (in an Island company) located in an Island register. Gibbs J of the High Court of Australia upheld the Commissioner's assessment of the dividends received by the trustee. While he accepted that the trustee was resident in Norfolk Island he held that precedent authorities did not require a decision that the geographical source of the profits was the place where those shares were located. Rather he followed the rule that 'source' is a 'practical hard matter of fact' and decided on a review of the 'realities of the situation', and notwithstanding 'the devices adopted to give the facts a specious appearance' that the only 'source' of the dividends was Australia. However the Full High Court of Australia on 24 September 1973 reversed His Honour's decision and held that the source of the trustee's income was Norfolk Island on the basis that the fund and the business from which the dividends came were located there,

The case served to highlight the difficulties involved and emphasised the need for amending legislation which was, by that date, before the Commonwealth Parliament,

(vii) Examples of avoidance schemes other than interest and dividend schemes

1. Rents - The principals of an Australian company (A) lent money interest-free to a Norfolk Island company (N1) which then lent the funds at interest to a second Island company (N2), N2 used the funds to purchase an Australian property which it then rented to A which used the property in its business in Australia. The rents derived by N2 from Australia were largely offset by the interest payments made by it to N1, so that N2 had only a small taxable income on which Australian tax could be levied. A obtained a deduction for the rent it paid, while N1 claimed to be exempt from Australian tax on income it derived. All companies involved were beneficially owned by the same Australian principals.
2. Commission — An Australian manufacturer that sold its products overseas arranged for a Norfolk Island company (N1) to act as its selling agent in respect of all overseas sales and agreed to pay it a commission on those sales. N1 then appointed N2 (another Island company) as its selling agent and agreed to pay it a similar commission. The results sought by this arrangement were:
  - A reduction in the assessable income of the Australian company equal to the amount of commission paid to Ni;
  - N1 to have little or no income which would be subject to tax; and
  - N2 to accumulate tax-free the commissions paid to it.

Again, the ultimate ownership of all the companies rested with the same group of Australians.

3. Share trading profits - Australian principals, instead of purchasing speculative mining shares directly, arranged for an Island company (N1) to purchase the shares. N1 then granted an option to purchase the shares to N2, a second Island company. The option fee paid by N2 was only a small fraction of the value of the shares. Subsequently, N1 sold the shares to an arm's length purchaser for a profit in excess of \$460 000. However, as a preliminary to the sale of the shares N1 paid to N2 an cancellation fee of approximately \$440,000, thus reducing its taxable profit to about \$20 000 tax involved amounted to over \$180 000.
4. Franchise fees — A franchise for the sale of a certain product in Australia, previously grants direct from a foreign company to an Australian company (A) was replaced by arrangements under the foreign company granted a franchise to a Norfolk Island company (N1) N1 granted to N2 another Island company, the right to exploit the franchise and it in turn granted rights to A Amounts paid by A to N2 were claimed as deduction in Australia but the receipts by N2 were nearly offset by payments to N1, leaving N2 with a mm taxable income. N1 was not taxable on the amount it received and these found their way, by a cir route, to the principals of A.
5. Other examples included the shifting to Norfolk Island in similar ways of profits

derived from the sale of Australian land and the sub—underwriting new share issues

(viii) Use of trusts

Whatever was the nature of the income diverted from Australia it was sometimes the case that it was ultimately directed to a trust established in the Island for the benefit of the Australian family group concerned. Income derived from a Norfolk Island source by a trust created and formally managed in the Island by a trustee resident there was not in the trustee's hands subject to Australian tax. The great flexibility offered by trust law for the operation of trusts was in Norfolk Island as in other tax havens of great advantage in tax avoidance schemes. There was of course no public record of their existence or of their terms, and facts about them were, and are, hard for the Australian taxation authorities to ascertain.

(ix) Avoidance by Australians of Australian tax on foreign income

The fact that Australian companies have virtual freedom from company tax on dividends from abroad (due to the s.46 rebate), and are exempt in respect of most other income from overseas if it is taxed in the country of source (s.23q), meant that the scope for exploitation of Norfolk Island's tax status to avoid Australian tax on foreign income was somewhat limited. Nevertheless, there were avenues open for avoidance. Undistributed profits tax could be avoided on dividends from abroad that would otherwise be received in Australia by a private company and, if non—dividend income was derived in a foreign country that did not levy tax on the income, tax savings were possible by having the income sent to an Island company or trust, rather than to the Australian resident concerned.

In one case, it appears that an Australian private company with a profitable wholly owned subsidiary in the United Kingdom arranged to receive part of the profits of the subsidiary as loans rather than as dividends. If the moneys were received as dividends the Australian company would have either had to redistribute them as dividends, on which tax would be paid by the shareholders in the parent company, or retain the funds and pay undistributed profits tax. Instead, the United Kingdom company issued a preference share to a Norfolk Island company (N1). This share changed hands and came into the possession of a Singapore company (S1) which received a large dividend on that share. The dividend received by S1 passed to a related Norfolk Island company (N2) in the form of a loan. N2 then lent the funds at a higher rate of interest to another Norfolk Island company (N3) which on-lent the funds, at the same rate of interest to the Australian company group. Accordingly not only was the Australian company to be enabled to avoid tax on the dividend from its United Kingdom subsidiary which it now received in the form of a loan but it also was to be enabled to reduce its primary tax to the extent of the deduction obtained in respect of the interest paid on the loan.

As a relatively minor example of tax avoidance but deserving of mention nonetheless to illustrate the spread of such activities it is recorded that a case was observed where payments from overseas for the right to use Australian produced films and other associated payments have been received by a group of Norfolk Island resident companies

(x) Avoidance of Australian tax by Foreigners

Australia has two withholding taxes payable by non— residents on income from Australia — one on gross dividends (30% reduced to 15% for countries with which Australia has comprehensive double taxation agreements) and one c gross interest (10%). Both are final taxes on income derived by foreign residents from Australia. The amount of tax is deducted (withheld) by the Australian payer of the dividend or interest before remitting the balance to the foreign resident and the tax is then forwarded to the Commissioner of Taxation. As already explained, withholding tax was not payable on income remitted from Australia to Norfolk Island or on income remitted over-seas from the Island

This situation led some companies in Australia to set up Island schemes for the purpose of avoiding Australian withholding tax. An overseas loan of \$50m was involved in one case Funds borrowed from an overseas lender were borrowed in the first instance by a Norfolk Island company (N1) which on-lent them at interest to a second Island company (N2) which then on—lent, at the same rate of interest, to the Australian borrower. Australian tax was avoided because N2, being a ‘cost company’, derived no taxable income. Also, the interest earned by Ni was exempt in its hands on the grounds that the interest was derived by a Norfolk Island resident from a source in the Island. It was able to remit the interest, free of withholding tax, to the overseas lender.

Dividend withholding tax could also be avoided, A foreign company - particularly a public company - had only to set up a subsidiary in Norfolk Island to hold its Australian portfolio in order to avoid dividend withholding tax, no other Australian tax being payable by the Island subsidiary. There were avenues for dividends paid by the Island subsidiary to reach the foreign company free of all Australian tax. One case of this kind is known to have occurred and interest in the state of affairs had been evinced by foreign enterprises.

Australian tax on royalties payable to foreign residents could also be avoided by the same ‘cost’ company device as was used to avoid interest withholding tax.

(xi) Avoidance of foreign tax by foreigners

The investigations conducted by the Australian Taxation Office into Norfolk Island schemes were directed to discovering avoidance or evasion of Australian tax, and evidence of resort to Norfolk Island for the purpose of avoidance by foreigners of foreign tax was not of immediate importance.

The Island did, however, receive wide prominence in books and articles as a tax haven and its complete freedom from tax was a noted feature, which sooner or later would have attracted foreigners to resort the to avoid tax of their home country Avenues existence for income from Australia or from other countries that matter to be accumulated tax—free in companies trusts set up in the Island The tax—free status of Norfolk Island was the subject of concern to the other countries involved in double tax agreement negotiation with Australia that took place during the period prior to 1973 Agreements drafted in that period were so framed that they would not in relation to Norfolk Island contain loopholes capable of being used for tax avoidance.

(b) The extent of past avoidance and evasion

(i) Effective virtual commencement date

This is highlighted by the fact that from 1926 when Island's Companies Ordinance was first promulgated until the end of 1962 a period of thirty—seven years only seven companies were registered. In the next ten years however i.e to the end of 1972 as many as 1920 companies were registered in the Island The following table shows the year-by-year figures

Norfolk Island Company Statistics

	New Registrations	Deregistered (in liquidation or struck off)	Balance at 31 December
1962	7	-	7
1963	3		Details
1964	16		Not
1965	23	13	Known
1966	70		
1967	188		294
1968	480	—	774
1969	296	98	972
1970	382		1354
1971	296	79	1571
1972	166	285	1452
1973	118	242	1328
1974	102	136	1294
1975	39	335	998

(a) During the period 1.1.63 to 31.12.71 there were 1754 new companies registered and only 190 companies deregistered

(b) From 1.1.72 to 1.12.75 only 425 new companies were registered while 998 were deregistered.

Some of these companies undoubtedly engaged in genuine business activity in the Island. It is not possible to state precisely the number of such companies without a very detailed investigation, but from information available to the Taxation Office it is believed that it would not approach three figures. It is obvious that the overwhelming majority of the companies established in the Island since 1962 had tax avoidance or evasion as the sole or major reason for their existence. No other explanation was advanced for the existence of so many companies to serve a population of some 1600 people.

(ii) The indicator provided by banking activity

The very establishment of the bank branches in the Island and the rise in the volume of money passing through their company accounts provides perhaps the most dramatic illustration of the extent of the activities by tax avoidance or evasion companies. Set out below are figures which give some indication of the number of accounts and the volume of transactions handled by the two bank branches in the Island on behalf of tax-avoiding or

evasion companies over the years specified.

COMPANY ACCOUNTS AND VOLUME OF MONEY TRANSACTIONS FOR NORFOLK ISLAND

Commonwealth Trading Bank

Year ended 30 June	Total No. of accounts 30 June	Total volume of funds in transactions up to \$10,000	Total volume of funds in transactions between \$10,000 & \$ 100,000	Total volume of funds in transactions over \$100,000	Total funds involved per year
1964	-	-	-	-	-
1965	5	184	-	-	-
1966	32	14 500	667 900	160 000	842 400
1967	79	128 900	766 700	3 378 300	4 273 900
1968	417	1 449 300	7 911 200	62 004 900	71 365 400
1969	624	2 271 300	12 247 500	62 741 300	77 260 100
1970	661	1 630 300	11 020 300	44 755 200	57 405 800
1971	646	2 181 000	10 161 300	45 637 300	57 979 600
1972	619	1 878 000	11 939 600	109 158 100	122 975 700
1973	573	1 749 700	9 855 000	115 957 900	127 562 600
1974	503	689 500	10 340 900	67 375 000	78 405 400
1975	409	638 200	3 445 500	11 497 700	15 581 400
				Total	613 652 300

Bank of New South Wales

Year ended 30 September	Total No. of accounts 30 September	Total volume of funds in transactions up to \$10,000	Total volume of funds in transactions between \$10,000 & \$ 100,000	Total volume of funds in transactions over \$100,000	Total funds involved per year
1969	102	122 000	1 413 000	5 988 000	7 523 000
1970	232	129 000	2 172 000	20 795 000	23 096 000
1971	403	201 000	3 369 000	201 295 000	204 865 000
1972	553	305 000	4 434 000	142 012 000	146 751 000
1973	391	275 000	4 967 000	86 687 000	91 929 000
1974	332	174 000	2 280 000	101 595 000	104 049 000
1975	203	192 000	2 433 000	62 934 000	65 559 000
				Total	643 772 000

It can be seen that in the case of the Bank of New South Wales branch alone, over 204 million dollars passed through its books in the peak year of 1970-71 and over the seven years of its operations an aggregate of \$643,772,000 was involved,

(iii) Estimations of tax lost to Australia

There is no doubt according to evidence given on behalf of the Australian Taxation Office that the total amount of Australian income tax lost through the tax haven status of Norfolk Island runs into many millions of dollars. In eleven particular dividend cases, tax avoided amounted to over \$1.5m for one year, the amounts in each case ranging from \$349,000 to \$16,500, and that sample of eleven was not atypical. Amounts involved in individual interest schemes varied considerably. For example in four particular cases, tax avoided over the five-year period 1968 to 1972 amounted to over \$165,000, the individual amounts ranging from \$57,000 to \$16,000. In another twenty-one cases the income that was, over the same period, diverted to Norfolk Island as interest amounted to some \$3.1m. The tax avoided on that amount was in excess of \$1m. For another family the amount put through the Island in loan/trust arrangements was over \$12m.

While it is not possible to be precise in any estimates of tax lost, nonetheless a broad appreciation of the order of magnitude can be given. If for instance it is assumed that there were 900 tax avoidance schemes and that the average tax saving was \$1000 per annum, the tax cost each year would be \$900 000. If the tax saving averaged \$10 000, the tax lost would amount to \$9m per annum. At an average of \$50 000 avoided in each case, the total becomes \$45m. As indicated, the tax avoided in some individual cases was well over \$50 000. However, this is a theoretical approach and, as stated earlier, the evidence does not establish a basis for making any precise estimation of the income tax avoided.

(iv) Indicator from numbers of service industries

It may be inferred from the number of accountants and solicitors who established practices or resided in the Island when taken into account with other evidence that Norfolk was being used extensively for tax avoidance. At the height of the boom there were several such practices in Norfolk Island an unusually large number to serve a population of some 1600 people and bearing in mind the Island's type of economy Much of the work was of course done by mainland firms

(v) The element of publicity

The tax haven status of Norfolk Island was given wide publicity both in Australia and abroad. This wide publicity is yet another indication of the use which was being made of the Island for tax avoidance

(vi) The potential loss from tax avoidance

It is important that this be noted During Norfolk Island's existence as a tax haven there have always been clouds over the scene the technical situation regarding source and residence was not entirely clear and action to take away the Island's tax advantages was always a possibility Had the Island

been given an ‘all clear’ as a tax haven it would be no exaggeration to say that tax avoidance would have escalated to mammoth proportions

#### 5. Additional harmful effects

Apart from the obvious losses to the Australian tax revenue it seems worthwhile to refer to the less obvious results which flowed from the tax avoidance activities in Norfolk Island

To the extent that such activities succeed they effectively increase, to quote Viscount Simon<sup>28</sup>, pro-tanto the load of tax on the shoulders of the great body of good citizens who do not desire, or do not know how, to adopt these maneuvers’.

Successful and unchecked legal tax avoidance strikes at the very heart of the tax system, and weakens the system of voluntary compliance on which a tax system is crucially based.

Another not insignificant cost to Australia is represented the manpower (and other) resources which have had to be employed.

The Australian Taxation Office in combating the development of Norfolk Island as a tax haven. For several years a team of skilled investigation officers had to be used full time on this work instead of other tasks and the team was supplemented from time to time.

Other harmful effects for Australia arise when foreigners, who do not invest in Australia are able to avoid or evade Australian tax. One is that it increases the cost to Australia of the foreign investment in this country. Another is that foreign interests may be placed in a more favourable competitive position as compared with Australians or for that matter with other overseas interests thus distorting the conditions of competition.

The continued existence of a tax haven under Australian jurisdiction could be damaging to Australia’s relations with other countries having regard particularly to the legislative action taken by Australia itself to counter tax haven resort to places outside Australian jurisdiction. As mentioned earlier, during negotiations for double tax agreements, representatives of several countries expressed their concern at Norfolk Island’s emergence as a tax haven and sought to ensure that the Island could not be used, together with the double tax agreements, to avoid their homeland’s taxes. Although there was no direct evidence that any country other than Australia lost revenue as a result of the tax avoidance schemes based in Norfolk Island, it is nonetheless possible to infer that losses to New Zealand’s revenue also occurred.

#### 6. Alleged benefits of using the Island as a tax haven

Most of the companies incorporated in Norfolk Island were ‘paper’ companies which did not conduct economic activity there and so did not add value to the economy in this sense Nor was it usual for the companies to invest directly in the economy of the Island or make capital available to those who did. However the tax haven business did have some impact on the economy of the Island.

The Island’s revenue did receive a significant boost from the registration fees paid by the large

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<sup>28</sup> Latilla v. Inland Revenue Commissioners (1943) A.C. 377 at p. 382.

number of companies incorporated in the Island This fact has been referred to earlier Also there was probably increased postal and telephone revenue flowing directly from tax avoidance activities.

Income was earned by Island—based practitioners and people residing there who acted as either shareholders or directors of tax haven companies or provided registered offices or other facilities for the companies From a random examination of cases it appears that the income accruing to a practitioner's office each year in respect of each company it acted for would in the normal type of case of an active company be of the order of \$500 to \$700 The remuneration received by an Islander for act as a shareholder or providing a registered office was usually a standard amount of some \$10 in each case and small amounts of dividends could have been received Since each company had to have a minimum of seven shareholders who were usually all Islanders, each company registered in the Island could be expected to distribute income including that accruing to practitioners of approximately \$600 to \$800 per year in the Island In addition practitioners could derive substantial fees for setting up a scheme or for legal advice The total amount which would have accrued yearly to those relatively few persons resident in the Island who participated immediately in revenue from these tax haven 'activities' would have been several hundreds of thousands of dollars, and may have exceeded the total public revenue available for the administration of the Island.

Other direct beneficiaries from visits made to the Island by mainlanders for the express purpose of arranging tax avoidance/ evasion schemes (and who did not displace regular tourists) would have included various businesses, such as airlines, hotels and stores. Indirect benefits may also have accrued to various individuals as a consequence of extra employment that may have been created solely because of tax haven activity — such as typists or bank officers - from local spending of the extra income.

In summary it can be said, therefore, that a few individuals in Norfolk Island derived many hundreds of thousands of dollars arising out of the use of the Island for tax avoidance/evasion. A slightly larger number of people received smaller sums for lending their names to transactions, and some received employment which would otherwise not have been available. Some businesses would have gained extra revenue from taxpayers and advisers visiting the Island solely to set up or maintain schemes. The majority of the population received no direct benefits.

The price, however, of putting this money into the pockets of a few people in Norfolk Island was the loss to the Australian people of millions of dollars of what could otherwise have been tax revenue. The bulk of that money went, of course, into the pockets of those who instigated the schemes. To the extent that it went to the direct or indirect benefit of Norfolk Island (or even affected the amount of Australian expenditure in the administration of the Island) it did so in a haphazard, uncertain and inefficient way. There is no reason to support a contention that any benefit - realised or potential - to Australia or the Island from the tax haven activities could balance the detriments to the Australian tax system.

## 7. Efforts to counter the tax avoidance schemes

- (i) Although there is no doubt that had remedial action la taken earlier than **it** was much of the tax loss over the years would have been avoided this is not to say that Australian authorities involved were up to that point inactive in trying t counter the tax avoidance schemes In spite of truly effective

legislation being absent the Australian Taxation Office did resist these schemes

- (ii) Sometimes a flaw in the arrangements — a failure on ti part of the sponsors to go through all the steps necessary to create the requisite legal effects — enabled the Commissioner of Taxation to treat the arrangements as an ineffective sham In other cases a deduction was denied for interest payments either under general provisions of the Australian income tax law or s of the Income Tax Assessment Act without the taxpayer challenging the Commissioner’s view But after the decision of the Full Hic Court in the Esquire Nominees Case (referred to earlier) by which time remedial legislation had been announced, and before which avoidance techniques had been honed and refined, it was decided by the Commissioner that he did not have sufficient legal support to upset carefully planned and executed interest schemes under the law as it existed before the 1973 amendments.

When the apparent use of Norfolk Island as a tax haven fir& came to notice the Taxation Office took action on a case—by—case basis Taxation officers first visited the Island for this purpose in 1967. Further visits were made by investigation officers in February 1968 July 1969 October 1969 October 1973 and November 1973 The July 1969 visit led to the raising of the assessments that were the subject of the Esquire Nominees Case. Many of the efforts by the Taxation Office were hindered and frustrated by the difficulties in securing information of genuine value. People declined to co—operate and on some occasions deliberately used delaying tactics Constitutional and other legal objections were raised in the path of the investigating officers. This state of affairs persisted through the late 1960s and early 1970s and it was not until the decision of Barwick C.J. of the High Court of Australia in Southwestern Indemnities Ltd v. Bank of N.S.W and the Commissioner of Taxation (1973) 129 C.L.R. 512 that those in possession in Norfolk Island of information sought by the Taxation office were confronted with a judicial ruling that the Commissioner Taxation had power to obtain it. It should not be thought, however, that this decision brought an end to the difficulties.

- (iii) Soon after the decision the Income Tax Assessment Act ~ 1973 became law and had retrospective effect in relation to inc ome derived on or after 20 July 1972 in accordance with a Ministerial announcement made on that date The tax liabilities created by this measure did not extend to income with a ‘genuine’ source in the Island derived by people living there or by companies wholly owned by such people This and the legal implications of the decision on appeal in the Esquire Nominees case in relation to pre-20 July 1972 income, had an important bearing on the administrative courses thereafter pursued by the Taxation Office.
- (iv) The routine lodgment of annual income tax returns required pursuant to s,161 of the Income Tax Assessment Act did not apply for the year ended 30 June 1973 and prior income years to Norfolk Island residents deriving only Island source income. For the 1973—74 and subsequent years a return was not required as a routine matter from a Norfolk Island person whose income is, under the new law, free of Australian tax. That was thought to be a proper way of ensuring that genuine residents of the Island were not

subjected to unnecessary compliance with Australian tax requirements.

- (v) For other cases several different approaches were adopted, consistent with the general need to deploy scarce staff resources to best advantage over a wide field. One approach was to look at required 1973—74 returns as they came in and, on a basis of an examination of them, to call (under s.162) for lodgment of returns for earlier years, as found appropriate. It is a sufficient commentary on the success of this approach to observe that relatively few returns for 1973—74 were, as a result of it, received from companies incorporated in Norfolk Island.
- (vi) Another approach was to make a formal request for information or returns from particular companies That met with only limited success When infrequently the information or returns came in it was after protracted delays and they were commonly incomplete, thus necessitating further requests It still asserted by some that the Taxation Commissioner's legal power to get information and collect tax was not established that was used as an argument to refuse or delay compliance 0 some occasions it was even put that administrative processes should be held in abeyance pending the Report of this Royal Commission.
- (vii) Following the widespread failure to comply with forma demands for lodgment of returns in August 1974 forty—nine prosecutions were instituted in Sydney against various companies incorporated in Norfolk Island for failure to lodge returns a. and when required. On 10 October 1974, following several adjournments, sixteen of the cases were heard and each company was fined \$40 plus costs Other cases were further adjourned ~ the request of the companies' representatives. On 28 February 1975, following a hearing on 23 January 1975, Mr G. Smythe, SM, delivered his judgment in one of these cases, that of Berwick I. The magistrate dismissed arguments centered on the proposition t the 1973 amendments were beyond Australia's constitutional power and convicted the company of the offence of failing to furnish a return of inc ome in respect of the year ended 30 June 1973, a and when required. His Worship imposed a fine of \$20 plus \$6 court costs and \$75 professional costs,
- (viii) The company then appealed to the High Court of Australia from the decision The appeal was dismissed for the reasons already given in Chapter 6 Shortly thereafter the companies in the adjourned cases were each fined a small amount and the required returns were lodged.

## 8. The position after the 1973 amendments

- (a) As mentioned earlier, the heart of the problem, so far as avoidance of Australian tax by Australians was concerned, was that the exemption for Island source income of Island residents could be exploited by:
  - (i) Arranging for income to have the technical character of Island source income; and

- (ii) Arranging that companies in substance owned and controlled from Australia were technically resident in Norfolk Island.
- (b) To be successful, remedial legislation had to be directed towards overcoming these devices. This could have been achieved most simply by amending the income tax law to treat Norfolk Island as part of Australia and leaving it at that. However, such legislation would have meant imposing tax on the Island or other ex-Australian income of genuine residents of the Island who had long been free from tax on such income and who did not fully share in Australian social welfare benefits and other tax-financed facilities. In these circumstances the Government of the day decided in June 1972 on more complex measures adopted in toto by its successor, by which Australian income tax law was extended to Norfolk Island, but on the basis that people living in the Island (and companies which were wholly and beneficially owned by them) were to remain exempted from tax on income that genuinely and in substance arose from sources outside Australia.
- (c) The announcement of the decision to amend the Australian income tax law was made by the then Treasurer (the Rt Hon. B.M. Snedden) in a comprehensive press statement released on 19 July 1972. The announcement said that the proposed law would have effect in relation to income derived after the date of the announcement. The change of government later in 1972 led to a delay in the submission to Parliament of the detailed legislation but, when it was introduced late in 1973 and passed in the same form, it was exactly the legislation that would have been put to the previous Government for submission to Parliament. It gave exact effect to what was said in Mr Snedden's statement
- (d) The fundamental basis of the new legislation was repeal of existing provisions relating to Norfolk Island commission with new provisions by which the income tax law was expressed apply as if Norfolk Island were a part of Australia. The broad basic result was that the derivation of any income that had a technical source in Norfolk Island gave rise to the same tax consequences as if the income had its source in Australia. Equally, the derivation of income from any source by a person whose technical residence was in Norfolk Island gave rise to the same tax consequences as if the person were a resident of Australia,
- (e) The balance of the new law — contained in Division 1A of Part III of the Income Tax Assessment Act 1936-1973 - was concerned with providing an exemption for Island and other ex Australian income of people living in the Island and of companies wholly owned by such people. Against the background of the kinds of devices that had been employed to exploit the previous law, it was necessary to surround the exempting provisions with safe guarding measures to ensure that only income that has a genuine source in the Island or elsewhere outside Australia is exempted, and then only where the real entitlement to that income rests with Island people.
- (f) This legislation appears to have closed off the avenues for income tax avoidance resort to Norfolk Island. There is no evidence to the contrary. There are some indications that a few companies are being set up in Norfolk Island as part of particular income tax avoidance schemes also involving companies in Australia. It is thought that the motive of having companies in the Island may be to make it more difficult to investigate the scheme if not to contribute to outright evasion plans

9. Avoidance of estate and gift duty

- (a) Under the Estate Duty Assessment Act 1914—1973, duty is imposed on estates of deceased persons, and under the Gift Duty Assessment Act 1941-1973 duty is imposed on gifts.
- (b) In the case of a person dying domiciled in Australia duty is levied (subject to certain exemptions) on the net estate listing of real property situated within Australia and personal property wherever situated. A person dying domiciled outside 'Australia is subject to duty only in respect of property situated Australia.
- (c) To a very limited extent, it might be open to a person contemplating death to establish a domicile in Norfolk Island and transfer his property either to the Island or to other places outside Australia to avoid the incidence of Australian estate duty. However, there are many other countries in which this could be done and presumably it must be accepted as having been within the contemplation of the legislation.
- (d) A person who remains domiciled in Australia up to the of death could, theoretically, purchase real property in Norfolk Island so as to place that part of his estate outside the scope of the Act. However, there is very little property of that kind available in the Island and the possibility does not appear to have been exploited to any great extent or to amount to a serious threat to the Australian revenue.
- (e) Where Norfolk Island has been used for the purpose of estate duty minimisation, this has been done by using the Island as a place in which there is no gift duty and which may be used by a person wishing to diminish his potential estate by making gifts of property to the persons who will ultimately be his beneficiaries. The device which has been used for this purpose known as the 'Gorton scheme' after the name of the case in which its validity was tested before the High Court can also be used to make gifts free of duty when death is not in contemplation.

There is evidence that the Island has been used extensively for that purpose

- (f) Australian gift duty is payable on gifts made
  - (i) By a person (not being a body corporate) who is domiciled in Australia or by a body corporate which is incorporated under the law of any State or Territory which is part of the Commonwealth of any property wherever situated or;
  - (ii) By any other person — of any property which is situated in Australia at the time when the gift is made.

This is subject to an exemption for gifts not exceeding \$10,000 in the aggregate made within a period of three years (i.e eighteen months before and eighteen months after the particular gift).

- (g) The term 'Australia' is not defined in the gift duty legislation but Norfolk Island is now clearly (in the light of the Berwick Case) part of Australia However prior to the doubt being resolved by the High Court in that case Norfolk Island was not regarded as part of Australia A gift by a person domiciled in Norfolk Island or by a company which was incorporated in

Norfolk Island would not therefore be subject to Australian gift duty unless it was a gift of property which was situated in Australia when the gift was made. Under the gift duty avoidance schemes that have come under notice the arrangements provided for the gift to be made by a company incorporated in Norfolk Island and for the property that was the subject of the gift to be situated in Norfolk Island at the time the gift was made.

- (h) The schemes usually involve arrangements of the type considered by the High Court in Gorton v. Federal Commissioner of Taxation (1965) 113 C.L.R. 604 and in Ord Forrest v. Federal Commissioner of Taxation (1973—1974) 130 C.L.R. 124. They involve the incorporation of a private company with the shares beneficially owned by one person A who makes a loan to the company or sells investments to the company for full value, A takes up ordinary shares in the company at a substantial premium (e.g. \$1 shares at a premium of \$9 or \$99 each, the total Amount payable for the shares being equal to the amount owing by company to A for the loan or purchase of the investments. debt due to A is set off against the amount due by A for the shares As the next step the ordinary shares are by special resolution converted to cumulative preference shares carrying a right to a low rate of dividend and the return of paid up capital only upon winding up. A small number of ordinary shares is then allotted to B, the person (or persons) that A seeks to benefit. In consequence of the limited rights of the preference shareholders, the ordinary shares held by B then carry all but a minute part of the worth of the company. It is conceded, of course, that this arrangement does reduce the net assets of A. But the contention was made that there was no point in the arrangement at which anything was done which amounted to a gift within the meaning of the Gift Duty Assessment Act.
- (i) In the Gorton Case, gift duty had been assessed on the footing that the arrangement, although not involving any gift in the normal sense of the expression, fell within paragraph (f) of the definition of ‘disposition of property’, which relates to:

Any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own property and to increase the value of the property of any other person.

If this contention had been accepted, it would have followed that there was a disposition of property for inadequate consideration which could be treated as a gift.

- (j) When the assessment was challenged before the High Court, it was upheld at first instance by McTiernan J. but this decision was reversed by the Full High Court (Barwick C.J. and Taylor J., with Windeyer J. dissenting). The majority view was based on the technical point that paragraph (f) did not apply because, although the issue of shares to the intended beneficiaries for a fraction of their true worth obviously conferred a benefit upon them there was no point of time at which any unit of Property held by the beneficiaries increased in value. The shares had their high value at the moment of issue The fact that the deal gave the beneficiaries new property of substantial value was in the majority view sufficient to create a situation in which within the meaning of paragraph (f) the value of the Property of the beneficiaries was increased.
- (k) The Gorton arrangement became a model that was copied in many other cases until the Commissioner sought to levy gift duty on a different basis – i.e. on the assumption that the company used in the transaction had made a gift to the beneficiaries when it issued to them

at par shares worth far more than their face value and the company would therefore be liable to bear gift duty. A gift duty assessment claiming a gift by a company Ord Forrest Pty Ltd, which had been the vehicle for such an arrangement eventually came before the High Court. Duty was assessed on the basis that there had been a disposition of property by the company for inadequate consideration. Reliance was placed on paragraph (a) of the definition of 'disposition of property' which declares that that expression includes the allotment of shares in a company. The High Court upheld the assessment in the Ord Forrest Case referred to above.

- (l) When it became known that the Commissioner was seeking to challenge the Gorton-type arrangements by raising assessments on the assumption that there was a gift by the company involved estate planners saw a means of avoiding the Commissioner's action by setting up the company outside Australia. This put the gift by the company outside the scope of the Gift Duty Assessment Act because it was not a gift by a company incorporated in Australia or a gift of property situated in Australia. As the arrangements took the transactions outside the ambit of Australian gift duty law, specific action has not as yet been taken to identify all of the schemes of this type carried out by means of Norfolk Island companies. Nevertheless, forty-one schemes which appear to be designed to take advantage of the Gorton precedent have come under notice mainly as a result of information obtained or furnished in connection with other tax matters. These cases have not been fully investigated but the indications are that gift duty of about \$5 million would have been payable on the authority of the decision in the Ord Forrest Case if the transactions had been carried out wholly in Australia
- (m) While it could be said in one sense that a very large amount of Australian revenue has been avoided by this means, it is necessary to keep in mind that the transactions would never have been entered into if the persons responsible had not been advised by their professional representatives that the transactions would be free from duty. Strictly speaking, therefore, the loss of duty is purely notional. Australia does not suffer any real loss from the implementation of a Gorton scheme in Norfolk Island unless and until the person who carried out the scheme dies and the value of his net estate proves to be less as a result of the divesting of assets in Norfolk Island than it would otherwise have been had there not been an opportunity to carry out a Gorton scheme in Norfolk Island or in some other overseas area.
- (n) Even then, the amount of the loss of duty is a matter for conjecture because the deceased would in all probability have used other means — perhaps means within the contemplation of the estate duty law — to pass assets to the intended beneficiaries if the device associated with Norfolk Island had not been there. For example, there might have been a planned series of gifts over a period of years; only gifts made within three years of the date of death would have been brought into the estate for estate duty purposes and, depending on the size of the installments, there may have been little or no liability to gift duty. Or the taxpayer might have carried on business in the name of his intended beneficiaries, allowing them to earn in their own right the fruits of his income-producing activities during his lifetime. If the donor lives long enough, it may well emerge, with the benefit of hindsight, that the same result could have been achieved without resorting to any artificial device contrary to the presumed intentions of the legislature.
- (o) The situation needs to be viewed therefore against the background that it is within the

contemplation of the Australian gift duty and estate duty law that any citizen will have limited ability to dispose of his assets during his lifetime without incurring either liability to estate duty or liability to gift duty. The harm which is done to the intentions of the legislature by the implementation of off-shore Gorton schemes was that the taxpayer was able to make his own terms, and perhaps give very large amounts away at a time when death appeared to be imminent and there was not time left for an orderly reduction of assets in the kind of estate planning that the law clearly permits. Depending on subsequent events this may or may not reduce revenue collections in a particular case. Overall of course the reasonable assumption is that the implementation of Gorton schemes would tend to have this effect although the true cost to the revenue cannot be quantified. The arrangements may also have advantages for estate planners seeking to avoid or reduce the incidence of State death duties.

- (p) On 21 August 1974, the then Treasurer, the Hon. Frank Crean, made a public announcement that Parliament would be asked to amend the law to reverse the effect of the Gorton decision, and that the proposed amendment would be expressed to apply to arrangements put into effect after that date. Because a gift duty assessment raised under paragraph (f) on the basis that was rejected by the High Court in the Gorton Case operates against the donor in Australia and not against the company used for the carrying out of the scheme, the fact that the company was incorporated in Norfolk Island and carried out its part of the arrangement outside Australia would not, under the law as proposed prevent a liability to gift duty from arising. The Commissioner of Taxation is not aware of any arrangement of this kind that has been put into operation since 21 August 1974 although there may be such cases which have not come to notice. If Parliament in due course approves legislation of the kind envisaged in the Treasurer's announcement, schemes put into operation since that date would no doubt be dealt with by raising assessments relying on paragraph (f) of the definition of 'disposition of property' — or the new equivalent of that provision - to levy duty against the person in Australia who is the effective donor of property.
- (q) In the period of six months ending 30 June 1976 the registration of companies in Norfolk Island has risen by twenty-seven from 998 to 1025. Such companies as are now being registered may of course, be designed to modify property—holding arrangements already established in Norfolk Island in consequence of an earlier Gorton scheme, to minimise State duties even if a liability to Federal duty is introduced or perhaps to gamble on the possibility that a change in the law, when announced, will not cover a particular kind of scheme.
- (r) In one important respect the use of Norfolk Island for estate planning differs from the use made of the Island for income tax avoidance. There are no Australian laws relating to estate duty or gift duty which directly facilitate the use of Norfolk Island in schemes to avoid the incidence of duty. The schemes which make use of Norfolk Island would be equally effective if the arrangements were implemented in any other overseas country or territory provided, of course, that the overseas country or territory does not levy substantial charges by way of gift duty, stamp duty etc. The special advantages of Norfolk Island for Australian estate planners were largely involved with convenience. Norfolk Island was reasonably close to Australia, it is within the Australian currency region, it is served by Australian banks and its courts are integrated into the Australian judicial system.
- (s) With the introduction of the legislation designed to deny exchange control approval for

international transactions entered into for tax and duty avoidance, it is no longer a simple matter for a person based in Australia to implement an off—shore Gorton scheme in an overseas country: cf. Part III of the Banking Act 1959-1974 and section 14C of the Taxation Administration Act 1953-1974. However the Minister's announcement envisages an approach to remedial legislation which would be aimed at Gorton type schemes wherever implemented if the consequence is to divest a person of Australian property in circumstances which would defeat the intended operation of the gift duty laws.

10. The anomaly in the taxation treatment of competing companies

- (a) As a result of the 1973 amendments to the Income Tax Assessment Act a situation has arisen in which a company the shareholders of which are resident in the Island may be competing in the Island with another company whose shareholders are not Island residents. In the case of the former company, income tax is not levied whereas the latter company is liable to taxation. Naturally enough this impost of income tax affects not only financial profits but of course costs and hence competitiveness between companies in the same industry.
- (b) Such discrimination is undesirable and Particularly so in a small and confined community. Now that the Berwick Case has established that the Island is a part of the Commonwealth, its taxation treatment should conform with that accorded other isolated parts of Australia. At the same time one must consider certain wider issues and these are referred to in the conclusion to this section.

11. Other activity related to taxation avoidance

Evidence from the Department of the Treasury disclosed that prior to the extension of the Life Insurance Act 1945-1973 to Norfolk Island by proclamation on 26 November 1974, certain companies which may have lacked the required degree of financial soundness were contemplating incorporation in the Island for the purpose of undertaking life insurance business. This was understood to be for tax avoidance purposes.

12. Argument in favour of retaining the tax haven status of Norfolk Island

- (a) Assertions were made to the Commission that Australia would benefit economically by retaining the Island's tax haven status; the argument contended that investment within Australia (via Norfolk Island) would be stimulated as a result of income earned from such investment being non-taxable through being channelled through the Island.
- (b) Little time need be wasted on this assertion. Its basic premise is extremely doubtful and no account is taken of the obvious harmful effects of a tax haven which would certainly counter any such alleged benefits.

13. State duties – death and stamp

The effect of the Norfolk Island tax avoidance activities upon these duties levied by Australian States is difficult to assess. No State government or department gave any evidence to the Commission and it would be logical to infer from this that the States feel either that there is no

problem here or that it is so small in size that it is of no concern to them. On the other hand, it is undeniable that the known activities in Norfolk Island involved the allotment and transfer of many shares on which transactions stamp duty would certainly have been paid had they been conducted in a State. Against this, however, is the point that some of the transactions would never have been conducted in a State anyhow but in some other tax avoidance place, so no State has in fact lost any stamp duty. State death duties must, however, be affected adversely to whatever extent property is transferred from a State to Norfolk Island. Again, no real loss to a State accrues until the party concerned dies and certainly no evidence was given the Commission on the effect upon any State's revenue of past deaths of persons who had shifted assets to Norfolk Island. It is possible that the Australian States take the view that such transfers of assets away from a State would be possible even if Norfolk Island did not exist and that there is nothing they can do about it which would not to some extent be could be productive.

#### 14. Criticism against the retrospective character of the amending legislation of 1973

The Income Tax Assessment Act 1973 received Royal Assent on 11 December 1973 but it was given retrospective application to income derived on or after 20 July 1972. In principle retroactive legislation is Prima-Facie bad legislation as citizens should be able to conduct their affairs in the light of the law as it stands. However, although the law itself was not operative until December 1973 it cannot be said that ample notice of the proposed change was not given well in advance. On 19 July 1972 the decision to amend the law was announced by the then Treasurer including the fact that the change would have effect in relation to income derived after the date of the announcement. That this point received wide publicity and was acted upon cannot be doubted for the effects were immediately noticeable in the fall—off in tax avoidance activities. The criticism, therefore, against retrospectivity is hollow and it is impossible to accept that the vast majority of persons engaged in the activities under question were not well aware on or about 19 July 1972 of the looming change. Little weight, in consequence need be given the charge of unfairness usually associated with retroactive legislation

#### 15. Conclusions

- (a) It has been necessary to set out in some detail the many facets of Norfolk Island tax avoidance in order for the re to understand fully the complexities of the subject and the human characteristics involved and thus be able to place in some perspective the measures which have been taken to date in counter them and the further recommendations in this Report.
- (b) In so far as income tax avoidance is concerned the Overwhelming body of abuses has now been stopped. Those that remain, namely abuses in the areas of Federal estate duty and state death and stamp duties, are on a relatively smaller scale, but to an unascertainable extent, are detrimental to the Federal and State revenues concerned. It is significant that for the year ended 30 June 1975 over fifteen and a half million dollars passed through the books of the Norfolk Island branch of the commonwealth Trading Bank and for the year ended 30 September 1975 over sixty-five and a half million dollars passed through the books of the Island's branch of the Bank of New South Wales by way of 'paper' transactions. Following the Berwick Case, Taxation Office investigators will be able to demand from Island entities full and complete disclosure of all details of their financial dealings, and to take any

necessary steps to curb or eliminate whatever tax avoidance activities remain.

- (c) In looking at this entire picture of tax avoidance one cannot dissociate it from the unique nature of Norfolk Island's earlier constitutional positions and its history. If taxation abuses based in the Island are to be totally eliminated in so far as Australia is concerned (and while Australia is expected to assist the Island in diverse ways, this is a wholly reasonable aim), then there must be a conscious and quite deliberate adoption of measures to bring the Island wholly within the Australian taxation system. The Commission recommends accordingly.
- (d) To this end, and as part of such measures, legislation should be passed providing for death and stamp duties to be levied in the Island of the same kind as those now obtaining in the Australian Capital Territory.
- (e) With regard to income tax of both companies and individuals resident in the Island, one must recognise the essential log fairness of the doctrine that benefits must be paid for and inequities in treatment of residents in the same country must be abolished. Norfolk Island is part of the Commonwealth and its residents should be subjected to the same system of taxation is applied to other Australian citizens. The Island is already in Zone A within the meaning of s 79A of the Income Tax Asses Act so that its residents who come within the scope of the section are entitled to the benefits allowed to residents of the Commonwealth who live in isolated areas. The benefit is available to a person who spends more than one—half of the year of income in the Island. At present it is a tax rebate equal \$216 plus one-fourth of the total rebates available to the taxpayer for maintenance of dependants. It is to be noted that although rebates for maintenance of children have generally been abolished they remain notionally in existence for the purpose of calculating zone rebates.

Chapter 14  
GUIDELINE (H) - 'CONDITIONS FOR PERMANENT ENTRY INTO THE ISLAND COMMUNITY'

1. Background

The first reference to restrictions upon entry into Norfolk Island was contained in the letter written by Mr B. Toup Nicolas British Consul in the Society Islands, to the Pitcairners, and dated 5 July 1854, in which he mentioned that 'it was not then intended to allow any other class of settlers to reside on or occupy land on the Island'.

Governor Denison's conditions regarding land sales were likewise aimed at restricting entry of non-Pitcairn people, in addition to encouraging the existing Pitcairn immigrants to perform more industriously and efficiently on the land.

As mentioned in Chapter 5 of this Report, this original policy of retaining Norfolk Island for the descendants of the Pitcairners was departed from both officially and unofficially. Pitcairners themselves sold land to non-Pitcairners who then settled in the Island, and in 1866 government permission was granted for the establishment of the Melanesian Mission, which introduced further non-Pitcairners as settlers.

Thereafter until 1922 there was no firm policy with respect to entry into the Island and people came and went virtually unhindered, In 1922, the Immigration Restriction Ordinance 1922 (No. 4) codified entry into Norfolk Island by public law, and prohibited entry into the Island of persons in prescribed categories. For instance:

- (a) Those suffering from serious transmissible disease;
- (b) Those suffering from tuberculosis;
- (c) Those of unsound mind;
- (d) Those convicted of crime in specified categories;
- (e) Those who were prostitutes or lived on prostitution of others;
- (f) Those who advocated overthrow by force or violence of the established government of Norfolk Island;
- (g) those without current passports; and
- (h) those who had been deported in pursuance of any Act of Australia or Ordinance of Norfolk Island.

It also prohibited entry of persons who failed to pass a dictation test in any language approved by the Minister.

Provision existed for exemptions of certain specified persons and these categories are set out below:

- (a) Members of the King's regular land and sea forces;
- (b) Master and crew of any public vessel of any government;
- (c) Master and crew of any other vessel during its stay at Norfolk Island;
- (d) Persons accredited to the Government of Australia or sent by any government on any special mission; and
- (e) Persons who held a certificate of exemption (specified in the Ordinance) signed by the Administrator.

The Ordinance provided legal machinery for the removal from the Island of those persons who breached its provisions.

There were distinct inadequacies in this Ordinance. On the one hand, it did not offer control by the authorities over those whose conduct warranted it. Control could not be exercised over persons not specified in the categories mentioned above, except in some cases by the somewhat unsatisfactory method of prescribing a dictation test.

On the other hand, it did not offer security of tenure to those who were suitable for entry into the community, in that the dictation test could be applied at any time during an entrant's first three years in Norfolk Island. No provision was made to exempt persons born in Norfolk Island and, presumably, they also could be subjected to a dictation test on their return to the Island and if necessary classified as prohibited immigrants.

Although these inadequacies existed the number of persons who went to live in Norfolk Island from 1922 to the mid 1960s was not significant and except for minor instances immigration problems were not experienced.

In the early 1960s both visitors and settlers started to increase The Norfolk Island Council unanimously resolved in September 1965 that there was an urgent need to amend extensively the 1922 Ordinance in order to introduce more stringent control on immigration and to abolish the unsatisfactory dictation test

Some two years later, legislation was passed the immigration (Temporary Provisions) ordinance 1967 (No 5) to bridge the gap pending the making of a completely new Ordinance relating to immigration and deportation This temporary measure commenced operation on 5 October 1967 and provided that all persons who entered Norfolk Island and wished to stay in excess of thirty days needed to have a permit.

There were exceptions (similar to those in the 1922 Ordinan, in the following cases:

- (a) Members of the Queen's regular land or sea forces;
- (b) Master and crew of public vessels or government vessel

- (c) Master and crew of any other vessel during its stay in Norfolk Island;
- (d) Persons accredited to the Australian Government, or sent by any government on a special mission;
- (e) Persons who held a current certificate exempting them from a dictation test on re-entry into Norfolk Island under the Immigration Restriction Ordinance 1922—1964; and
- (f) Persons who held a current certificate of exemption under that Ordinance.

The issuing of permits was a matter for the Administrator (or his authorised officer) who held authority to grant or refuse permits. Permits could be granted for specific or indefinite periods and the former could be cancelled by the Administrator in his discretion. Permits became invalid on a person's leaving the Island if a validating notation was not endorsed on the permit.

Persons who did not obtain permits, as required by the ordinance, became prohibited immigrants and provision was made for their deportation from the Island. Persons aggrieved by a decision of the Administrator could appeal to the Minister.

These temporary measures, whilst still permitting unrestricted tourist movement with a maximum stay of thirty days, provided the necessary control over the considerable increase in new settlers. Figures extracted when the Ordinance was made in September 1967 in respect of those who entered Norfolk Island during the previous three years and remained were:

September	1964-65	-	37
	1965—66	-	66
	1966—67	-	184

However, some shortcomings were apparent. The most outstanding was that an Island-born person who re-entered the Island was also subject to the inconvenience of applying for a permit and the risk of refusal at the Administrator's discretion.

Eventually a new ordinance, the Immigration Ordinance 1968 (No. 7), was promulgated and commenced to operate on 1 November 1968. It ended a period in which much doubt and worry had existed over the final form of immigration controls.

A subsequent referendum held in the Island showed a substantial majority in favour of a policy of restricted immigration into Norfolk Island and supported the Council's unanimous resolution of 1 October 1968 to accept the 1968 Immigration Ordinance.

### Current situation

The Immigration Ordinance 1968 (No 7) still governs both immigration and deportation. With its introduction the earlier ordinances (No 4 of 1922 and No 5 of 1967) were repealed. The Ordinance provides that persons who wish to enter Norfolk Island for a period in excess of thirty days must make application to the Administrator, or his authorised officer for permission to do so.

Policy to supplement this legislation received Ministerial consent on 23 January 1969, after the Norfolk Island Council by resolution approved 'the criteria, policy principles, administer practices and guidelines to be applied to the 1968' at its meetings of 15 and 17 October 1968.

Three categories of permits may be granted pursuant to the Ordinance. They are:

- (a) Temporary entry permits;
- (b) Entry permits not being temporary entry permits (commonly known as enter and remain permits);
- (c) certificates of declaration of residential status.

An elaboration of these three categories follows:

(a) Temporary entry permits

These are basically granted in three categories:

- (i) those deemed to be granted to visitors for a period of thirty days;
- (ii) those granted to persons to enter and take a term of duty or temporary employment in the Island;
- (iii) those granted to persons with the intention of settling in Norfolk Island and initially serving a probationary and exploratory period before being considered for a long-term permit.

Temporary entry permits cannot be granted for periods in excess of six months but no statutory limit applies in respect of the number of them that can be granted. Policy dictates that temporary entry permits be issued for temporary purposes and holders must have a return or onward ticket from Norfolk Island and be in sound health; they may have their permits endorsed with conditions appropriate to the circumstances.

At 30 June 1976, the number of current temporary entry permits totalled 289 and covered 205 men, 211 women and 96 children, a total of 512 persons. During the twelve-month period to 30 June 1976, 655 temporary entry permits were granted. The Ordinance provides for one permit to be granted in respect of a husband, wife and children 16 years and under.

Comparative figures in the years from the date of the introduction of the Ordinance to the present are set out below:

1 July to 30 June	Granted during 12-month period	<u>Permits current at</u>	
		<u>30 June</u> Total adults	Total permits
1.11.1968 to 1969	129	*	*
1969 to 1970	211	*	*
1970 to 1971	374	153	116
1971 to 1972	433	231	177

1972 to 1973	471	270	211
1973 to 1974	564	333	243
1974 to 1975	598	364	266
<u>1975 to 1976</u>	<u>655</u>	<u>416</u>	<u>289</u>

\* Figures not available

(b) Entry permit not being a temporary entry permit

(i.e. an enter and remain permit)

These are granted to persons who have the intention of settling in Norfolk Island indefinitely. In its initial application these permits were also granted to persons who entered the Island on a tour of duty for two to three years, e.g. bank managers, school teachers and the like. The issue of enter and remain permits was on Ministerial instruction discontinued on 3 May 1974.

This class of permit is not limited by specific dates validity, but may be endorsed with conditions appropriate circumstances. Policy dictates that the granting of enter and remain permits should be determined on the following criteria

- (i) Character;
- (ii) Health;
- (iii) Capacity for self—support;
- (iv) Value to the Norfolk Island community
- (v) Inclusion within an annual quota — initially fixed at ninety persons per annum but amended with Ministerial consent to fifteen permits per annum as from 30 November 1971 and
- (vi) Special conditions such as special affinity or business entry.

Enter and remain permit holders are not required to hold return or onward tickets from Norfolk Island, As mentioned earlier and for reasons explained later the issue of enter and remain permits was suspended on 3 May 1974.

At 30 June 1976 the number of current enter and remain permits totalled twenty-seven and covered twenty-two men and twenty-three women plus twenty-one children – sixty-six in all.

Figures showing the number of enter and remain permits granted to date since the introduction of the 1968 Ordinance are as follows:

Period	12-month period	
Permits issued in		
1 July to 30 June		
On introduction to bring some		
persons within the new Ordinance	110	
1.11.1968 to 1969	45	(quota of 90)
1969 to 1970	32	(quota of 90)
1970 to 1971	33	(quota of 90)

1971 to 1972	52	(quota of 90)
1972 to 1973	15	(quota of 15 permits introduced)
1973 to 1974	7	(issue of enter and remain permits suspended on 3 May 1974)

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(c) Certification of declaration of residential status

Persons born in Norfolk Island and those who have a special relationship with residents of Norfolk Island are entitled to be declared residents of the Island without the necessity of any authority exercising discretionary power over their application. That is, it is mandatory for the Administrator to declare these persons residents when they apply. The special relationships to residents are specified in s. 17(1) of the Ordinance.

On introduction of the 1968 Ordinance, letters were dispatched in early December 1968 to those persons who were born in Norfolk Island, or who otherwise appeared to meet the provisions of the abovementioned section, advising them of the opportunity to seek a certificate of declaration such certificate embracing one's spouse and children. A similar letter was sent to those who appeared entitled to apply for residential status under the new Ordinance by a discretionary decision of the Administrator.

In response to those letters 347 certificates, covering approximately 400 people, were issued.

Those not mentioned in s.17(1) and not covered by transitional provisions need to progress through a temporary entry permit, an enter and remain permit and then, after five years of ordinary living in Norfolk Island out of the past seven years, may apply to be declared a resident. Applications are considered subject to s.17(2) of the ordinance which reads,

...the administrator may, in his discretion, declare the applicant to be a resident

- (a) If the applicant has been ordinarily resident in Norfolk Island for not less than five years during the seven years immediately preceding the date of the application;
- (b) If the applicant is ordinarily resident in Norfolk Island at the time when he makes the application;
- (c) If the applicant is of good character;
- (d) If the applicant has an adequate knowledge of the English language;
- (e) If the applicant intends if declared to be a resident, to continue to reside ordinarily in Norfolk Island; and
- (f) If the applicant has been assimilated into the Norfolk Island community,

Policy ordains that names of applicants for resident status (other than those specified in s.17(1)) must be published in the Norfolk Island Government Gazette and no determination is to be made on applications until after a period of thirty days following publication. This period affords councilors and members of the public an opportunity to raise objections to the applications. The names of persons granted resident status are to be promulgated in the Norfolk Island Government Gazette.

Figures showing the number of certificates of residential status issued pursuant to s.17(2) granted since the introduction of the Ordinance are as under:

Period	Certificates issued in
1 July to 30 June	12-month period

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On introduction of ordinance	347 (granted under both s.17(1) and s.17(2))
1.11.1968 to 1969	-
1969 to 1970	3
1970 to 1971	10
1971 to 1972	14
1972 to 1973	15
1973 to 1974	39(quota of 15 certificates p.a. ceased; see later)
1974 to 1975	13
1975 to 1976	7

Persons aggrieved by the decision of an Administrator may appeal to the Court of Petty Sessions in some instances and to the Minister in others. Where an appeal is lodged against refusal to grant residential status, the Minister appoints a Commissioner to investigate and report on the matter. The Minister on receiving the Commissioner's report then exercises his discretion by upholding or reversing the Administrator's decision.

In summary, the Immigration Ordinance 1968 provides control over all persons who enter the community, whether as visitors, temporary employees, tour of duty employees or intending settlers. It provides an official and secure status for those, born in the Island and, after a preliminary period, offers security of tenure to those in the new settler category.

## 2. Immigration procedures

All persons on entry into Norfolk Island, whether by sea or air, complete an 'Entry form' which provides details for immigration and other purposes. On departing from Norfolk Island completion of a 'Departure form' is necessary. These records form the basis for immigration administration. The Ordinance provides for action against those who provide misleading or untrue information.

'Entry forms' are collected at point of entry, checked against the manifest, then delivered to the Immigration Section of the Administration at Kingston.

In the Immigration Section the forms are given a preliminary examination to identify any person who on an earlier entry to the Island may have caused difficulties. It is then numbered, registered and filed. Persons indicating a stay in excess of thirty days — unless they be residents or holders of current permits — are contacted by mail, drawing their attention to the provisions of the Ordinance in respect of a stay over thirty days. In response to this letter they call at the Administration Office, complete the appropriate application form, submit the requisite medical certificate and provide whatever other relevant information is considered necessary.

If successful in gaining a permit, their conditions of stay are determined and a permit prepared and issued. Successful applicants, on collecting their permit, sign for it and acknowledge the conditions endorsed thereon. If unsuccessful, a time is set for their departure. Persons who come to the Island to purchase a home, land or business and wish to enter the Island to pursue their business, or to retire, are in most cases direct to the Immigration Section by the Island's land agents or the prospective vendors. It is to be noted that persons who signify on entry that they do not intend to stay for thirty days are not sent any official letter indicating restricted entry.

The purchase of land or property in Norfolk Island does not confer any right of entry on an applicant for entry, and notices to this effect are periodically published in the Norfolk Island Government Gazette.

All applicants for permits, whether permanent or temporary, are personally interviewed in the first instance, Applicants for renewal of permits are not necessarily interviewed, As a matter of immigration administration all applications for entry are initially lodged and processed by the Administrative Officer as an authorised officer under the Ordinance Those applications for a temporary stay, provided they are within the current policies, are dealt with and finalised at that level. They constitute the major portion of applications.

Applications for temporary permits of a contentious nature or those that may be border-line cases and all cases for long-term entry are referred to the Administrator Those matters on which the Administrator requires further advice he refers to the Immigration Review Board. All applications for long-term entry are referred to that Board.

The Board is a non-statutory body established in December 1972 by the then Administrator to advise him on immigration matters where there was a need for him to exercise discretionary authority he saw the value of having the opinion of well-informed people who could meet and offer advice when required. The Board has no executive authority but merely offers advice. To date, the Administrator has invariably followed the advice tendered by the Board.

Initially the Board was termed the Immigration Committee. Its first meeting was held on 13 December 1972 and its members consisted of:

- (a) The Administrator;
- (b) The President of Committees of the Norfolk Island Council;
- (c) Those Councillors who were members of the Immigration Committee of the Norfolk Island Council; and
- (d) The Administrative Officer of the Norfolk Island Administration.

The name, but not the composition, of this body was changed in March 1973 to the Immigration Review Board, and the Norfolk Island Council was advised accordingly at its meeting on 13 March 1973.

### 3. Amendments and proposed amendments to legislation and policy

Discussion by the Norfolk Island Council on amendments to the Immigration Ordinance of 1968, and its accompanying policy, commenced in May 1970, principally in the area of granting certificates of residential status (qualifying time, financial criteria, annual quota) and 'work permits'. Various resolutions were made by Council on these matters and on 15 September 1970 a comprehensive report was furnished to the administering Department. Further to this, discussions on these matters between the Administrator and the Department were held in October 1970 and February 1971. Council discussion and exchange of views with the Department continued through 1971 without resulting in any amending legislation.

In April 1972 the Minister endorsed two of the Norfolk Island Council resolutions one recommending an annual quota of fifteen in respect of certificates of residential status and the other the formation of an Immigration Committee of the Council under s 57 of the Norfolk Island

Council Ordinance Both recommendations were implemented.

Immigration matters were again raised by the Norfolk Island Council in June 1972 but without following action Nothing further occurred until July 1973 when a resolution was passed with a view to obviating the need for Island—born persons to be declared residents by the Administrator before actually becoming legal residents within the meaning of the Immigration Ordinance. The text of this resolution was forwarded to the Department approved by the Minister and on 1 March 1974 was sent to the Legislative Drafting Division of the Attorney-General's Department. A draft ordinance was prepared and sent to the Department of the Capital Territory on 13 May 1974. At that point of time it was decided not to proceed with this ordinance in isolation but to incorporate its provisions in a later ordinance to be introduced after a complete review of the machinery governing permits and the granting of resident status. Following that review instructions to prepare a new ordinance were as mentioned later in this chapter forwarded to the Legislative Drafting Division of the Attorney— General's Department on 13 August 1975.

In September 1973, the administering Department initiated the thought of engaging a consultant to advise on the future population capacity of Norfolk Island, It was felt that such a study would provide a base on which to plan those matters of immigration policy which had been raised as early as May 1970 and had not been resolved. A firm proposal for an immigration and population study, with suggested terms of reference, was communicated by the Department to the Administrator on 3 October 1973 and accepted by resolution of the Norfolk Island Council on 20 November 1973. xx

The study was undertaken by Professor Gilbert J Butland pro-Vice-Chancellor of the University of New England Armidale N.S.W., who visited the Island from 19 January to 4 February 1974. Professor Butland's Report entitled 'A Long Term Population Study of Norfolk Island' was submitted to the administering Department in March 1974. The Report, as it directly affects immigration, recommended:

1. Policies should be devised to limit residential population to a maximum of 2000 by 1983.
2. Once the maximum tourist intake of 20 000 is reached in 1983 it would be preferable to contain residential population growth to an annual rate of 2%. Natural increase on present indication will stabilise at about 0.75% per annum allowing continued migration post 1983 at the rate of 1.25%, or twenty-five to thirty persons each year.

Professor Butland's principles concerning immigration control were accepted, save that 1980 was substituted for 1983, together with other development planning measures at a meeting of Council on 17 October 1974. The relevant Minute of the Council reads:

Council also recommends a resident population of 2000 by the year 1980 and a tourist figure of 20 000 per annum or 1200 beds by the year 1980.

Legislation and policy to effect these recommendations are awaited.

On 30 January 1974, emergency legislation was passed with the endorsement of the Administrator and the approval of the Council to delete s,17(l)(b)(v) of the Ordinance which states...

17 - (1) where application is made to the Administrator under the last preceding section:

(b) By a person who is ordinarily resident in Norfolk Island at the time when he makes the application and intends, if declared to be a resident, to continue to reside ordinarily in Norfolk Island, being a person ...

v. Who has been informed by the Administrator that he is entitled to remain in Norfolk Island indefinitely, the Administrator shall declare the person to be a resident.

Three applicants attempted to achieve residential status by virtue of this section and, therefore, secure a mandatory declaration of residential status in lieu of making application pursuant to s 17(2) where specified criteria are applied and the Administrator's discretion could be exercised. Their application were refused by the Administrator, and on appeal by one to the Minister, a Commissioner was appointed (pursuant to s.18) to investigate the appeal. His recommendation resulted in the Minister. Upholding the Administrator's decision to refuse the grant of residential status.

At the Norfolk Island Council meeting of 5 February 1974, the Administrator raised the issue of a backlog of applicants for residential status caused by the current quota of fifteen per annum in respect of the issue of the certificate of declaration of residential status. The waiting list at that time stood at twenty—one applications with a possibility of an additional seventy-five prospective applicants over the following three and a half years. This meant a perpetual wait for each applicant of three years over and above the statutory five years' qualifying period. The Administrator under the Minister's direction of 3 May 1974, put aside the quota system in respect of the processing of applicants for residential status, and exercised his authority in accord with the Ordinance and remaining ministerial approval criteria. The applications of those on the waiting list were finalised and since then current applications are being processed as soon as received. The Minister also confirmed that the matter of immigration legislation and policy was under review, and on 3 May 1974 instructed that no further enter and remain permits be issued until the review had been concluded. This embargo on the issue of enter and remain permits is still current.

Upon review of the Ordinance in 1974 the Council (at an informal meeting) and the Minister approved amendments to provide for:

- (a) Conditional entry permits to be issued for periods of up to one year at a time
- (b) Applications for resident status by persons who have held conditional entry permits for five years;
- (c) Criteria for regulating the granting of conditional entry permits and resident status;
- (d) A limit to the maximum permanent population of the Island along the lines suggested by Professor Butland;
- (e) A committee to consider and advise on applications for entry and resident status;
- (f) Persons having temporary entry permits to have them converted into conditional entry permits for the unexpired period of the temporary entry permit;
- (g) Children to have an automatic right to be declared a resident only if born to persons holding resident status; and
- (h) Saving and transitional clauses to protect those persons having some claim or legitimate expectation under the present scheme.

Instructions regarding the drafting of these amendments were sent to the Attorney General's Department on 13 August 1975.

#### 4. Present situation of population and holders of permits

At 30 June 1976, Norfolk Island's population totaled 1885, made up as under:

Persons covered by temporary entry permits	-	512
Persons covered by enter and remain permits	-	66
Persons of resident status	-	<u>1014</u>
	-	<u>1592</u>
Tourists or visitors	-	293
Total	-	<u>1885</u>

#### 5. Recommendations

It should be accepted by all with an interest in Norfolk Island that there are obvious limits to the capacity of the Island to absorb people. When the limits set for both residents and tourists are reached clearly this will affect such matters as the ready disposal of land, properties and businesses. It will not be easy for outsiders to enter and those likely to be affected by such circumstances should look ahead and act accord It is therefore recommended that:

- (a) The figures approved by the Council for the Permanent population and tourist intake be adhered to with one proviso viz that the population limit of 2000 (set by the Council to be reached by 1980) be not regarded as a base upon which natural increases may be loaded but as the absolute upper limit to be maintained unless clear evidence justifying a change is adduced i.e, population increases other than natural increases to be adjusted to maintain this upper limit of 2000.
- (b) The principle of selectivity in immigration matters be retained.
- (c) Because of the need to remove the present ambiguity with respect to immigration matters steps be taken immediately to expedite the changes referred to above through the drafting and legislative stages. Once this has been accomplished the difficulties experienced by persons in the past with respect to immigration and residency matters and items related thereto such as the acquisition of businesses and real estate should be overcome In particular, the past difficulty which occurred in respect of a resident's child who was born off the Island and who through failure to apply within a specified period for resident status could not be regarded as a reside would no longer occur.

In considering the cases of existing residents who wish to leave the Island and who experience difficulty in disposing of their property due to the fact that purchase of land in the island by an outsider is no guarantee of a right to live in the Island, two facts need to be stressed. First, such residents either knew or must be regarded as having had the opportunity to know of this difficulty at the time they purchased their Island property. Hence, they in effect gambled on the chances of purchasers from them obtaining permission to reside in the Island. Second, if the law were altered to grant priority in residency applications to purchasers of land, trafficking in land sales could become a problem in itself. While it is difficult to hold any sympathy for gamblers when they knowingly enter into a hazardous situation and fortune does not favour them, nonetheless circumstances completely out of anybody's control can evoke genuine sympathy and a desire to lessen such hazards. There seems no justification in restricting the ability of people to dispose of their land when, for sound personal or business reasons, such disposal is warranted, provided that:

- (i) It can be established that the intending purchaser is a bona fide prospective settler in the Island;
- (ii) No person in the Island is ready willing and able to purchase the property at the sale price;
- (iii) The intending vendor renounces his residency after the sale; and
- (iv) The number of people entering the Island as a result of the sale will not exceed the number leaving.

Provisions of this kind are necessary in order to protect the rights of people who may be waiting to become residents of the Island and whose applications would otherwise be deferred.

- (d) The Commission recommends accordingly.
- (e) The Commission recommends that the notion that formal priority should be granted to Pitcairn descendants and their spouses, when considering residency applications, be abandoned as being incompatible with the Racial Discrimination Act 1975.

The Commission recognises the importance to Norfolk of the retention of Pitcairn descendants' traditional ways of life and in no sense either underestimates this factor or disparages it. However, in addition to recognising it, and assigning importance to it, one must, at the same time, be realistic and keep it in perspective.

The Pitcairn influence is already strong in Norfolk Island and recommendations in this Report, particularly those relating to taxation and immigration, if adopted, are likely to keep that influence at a strong level. The need to increase the rights to residency of Pitcairn descendants will tend to wither as there will not be the same desire by non—Islanders to become Islanders.

Further, it should be realised that most Pitcairn descendants have that status through one parent only and the present trend will tend to emphasise this, so that in another two or three generations the Pitcairn strain will be diluted even further. Island children will become even less oriented toward a Pitcairner outlook. Besides, the intended amendments to the Ordinance providing for mandatory residence to be granted children of existing residents will itself be quite sufficient protection for Pitcairn descendants without additional weighting.

It should be noted again that the readiness with which some Pitcairn descendants sold their land (and alleged birthright) cannot but cause one to doubt the sincerity of their protestations that Norfolk Island should be reserved for the Pitcairn descendants because of their claim that it had been given to their ancestors by Queen Victoria. This Report has earlier stated the reasons why no such reservation ever existed in any constitutional and legal sense and hence it is highly desirable that nothing be done via immigration or any other policy which may tend to foster and perpetuate that baseless belief. There is already a deplorable level of divisiveness in the Island and unwarranted favours to the Pitcairn element will only exacerbate it.

Citizens living in Norfolk Island whoever they may be should be encouraged to take a mature and modern outlook and to develop a sense of being primarily Norfolk Islanders rather than clinging to the notion of being members of a special group within the Island. The latter concept will never bring satisfactory development and happiness to the Island. It is stressed again that no one group of people possesses either all the virtues or all the vices and the Island is overdue for some genuine tolerance to be practiced consciously by all groups. A start should be made in trying to think of

themselves as Norfolkiens - one and all - and to keep in proper perspective the sheer accident of one's ancestry.

Chapter 15  
GUIDELINE (I)  
'THE NEED FOR ADEQUATE COMMUNICATIONS BETWEEN THE ISLAND AND AUSTRALIA, AND THE REST OF THE WORLD'.

GUIDELINE (I)

1. Introduction

Norfolk Island cannot but be regarded as an isolated and remote habitation. It is 1676 kilometres from Sydney and 1063 kilometres from Auckland. Its nearest neighbours are Lord Howe Island 850 kilometres away and Noumea which is 750 kilometres distant. Its coastline is rocky precipitous and totally devoid of effective natural harbours for shipping. It is not on any shipping route of great importance, nor do major air routes pass directly over it. In the Island there live some 1600 permanent residents and, at any one time, approximately 300 to 600 tourists, two-thirds of whom come from Australia and one-third from New Zealand. The needs of all those people compel contact with the outside world and this communication is provided by air, sea and radio services.

2. Present situation

A mixture of government and private enterprise organisations furnish the communication services.

(a) Radio telephone and telegram services

The Overseas Telecommunications Commission (Australia) (OTC) provides an overseas telegram service and a radio telephone service to Sydney. In emergencies the latter can be opened outside its official hours. In addition, also in emergencies, there is a radio-teleprinter link between the airport and Australia operated by the Department of Transport. Weather conditions can affect all these links, but generally the OTC service is regarded in the Island as being of a high standard.

The radio link is with OTC receiving and transmitting stations near Sydney and through the International Terminals in Sydney telephone calls can be connected and telegrams forwarded to destinations throughout Australia and overseas. OTC also provides communications with ships in the Norfolk Island area. Its Norfolk Island switchboard is manned by Administration personnel.

The total capital investment by OTC in providing these for Norfolk Island is \$958,524, Both the telephone and telegram services are operated at a loss in spite of adjustments in structures having been made from time to time. The telegram from Norfolk Island to anywhere in Australia is less than the Australian domestic rate for telegrams.

While a reasonably effective radio service is provided Norfolk Island, high frequency radio can sometimes pose problems of reliability and quality, as it is susceptible to ionospheric disturbances. Technically, such problems would be entirely eliminated if the service could be carried by satellite or submarine cable. However:

- (i) In that the annual operating costs of an INTELSAT satellite earth station are approximately \$1 m per year, INTELSAT-type satellite communication is not a viable medium for such a small traffic load, and;
- (ii) Current international submarine cable plans do not include Norfolk Island as a landfall. A special cable service to the Island would again require level of traffic well in excess of any forecasts to make such a proposition economically viable.

A major international telecommunications service that is not yet widely available between Norfolk Island and Australia, but is likely to be offered in the future, is telex. At the moment only Qantas has telex facilities in the Island but a study is being conducted by OTC to examine the technical, financial and Operational aspects of introducing such a service.

It would also be possible for Norfolk Island to be included in a future Australian domestic satellite network in which simplified, less costly satellite earth stations would be feasible. Any such development would be dependent on whether an Australian domestic system could be justified on other grounds and even so any decision on superseding the current Norfolk Island installation would need to take account of all of the economic factors involved. This would place such an arrangement well into the future.

(b) Local radio broadcasting

The Administration is licensed to broadcast 119 hours a week and operates a radio transmitter for such local broadcasts for seventy-seven hours weekly. The program is at present under review. News broadcasts from outside the Island are mainly heard from New Zealand as the time difference (1½ hours) and atmospheric conditions sometimes make it difficult to pick up news broadcasts from Australia on medium frequency. Radio Australia which can be clearly received, carries world news but little Australian content. There are no television facilities in the Island to receive regular television broadcasts from either Australia or New Zealand. Some freak reception is occasionally viewed. Reception of radio is distorted in certain areas by the electric generators at the airport.

(c) Local telephone services

Telephone outlets in the Island have been recently increased to 400, and these are interconnected by an automatic exchange, provided and maintained by the Administration.

(d) Newspapers

One weekly newspaper and one monthly newspaper are printed in Norfolk Island with little Australian and overseas news content except items which directly concern the Island. Australian newspapers mainly arrive by air from Brisbane; they are costly and sometimes late in their delivery.

(e) Mail deliveries

Mail is received and dispatched via both Australia and New Zealand. Bad weather can affect these deliveries. Most letter mail and small parcels are carried by air and large parcels by sea transport. The external postal rates are the same as those charged in Australia. The internal letter rate is one cent, but there is no postal delivery in the Island as mail is either delivered into post office boxes or

handed over the counter at the post office.

(f) Air services

Air transport services in Australia and on the Australia - Norfolk Island run are regulated in accordance with the provisions of the Air Navigation Act 1920-1973 and are subject to the in respect of licences and operational standards imposed by that Act. The New Zealand-Norfolk Island traffic is subject to the regulatory controls of Australia and New Zealand.

Two Qantas DC 4 Skymaster aircraft are available to carry passengers from Sydney to Norfolk Island and return, on schedule which vary over the year to accommodate the peaks and troughs of tourist traffic. Each plane can carry up to sixty-two passengers. The hard core of the service provides for flights every Sunday, Wednesday and Saturday, and additional flights are conducted during holiday periods. The return air fare from Sydney to Norfolk Island was at 30 June 1976 \$225 for an adult and \$112.50 for a child.

Air freight tends to build up and periods occur when Qantas must ban further acceptance of cargo. Freight charges at 30 June 1976 from Sydney to Norfolk Island were 58c/kg with a minimum of \$3.20 and over 45 kg, 44c/kg.

In addition to the above under a pooling arrangement with Qantas Air New Zealand now operates the Norfolk—Auckland sector on four days a week using Fokker F27 Friendship aircraft, and a private service owned by Norfolk Island Airlines Limited operates a Beechcraft plane from Brisbane (via Lord Howe Island if required). The 30 June 1976 return fare from Auckland was A\$151, children half price and the return fare from Brisbane was \$275 children under 15 half price. Due to the limited cargo capacity of the F27 aircraft, the present services between Auckland and Norfolk Island are supplemented by a monthly freighter flight with an Argosy aircraft.

In medical emergencies, royal Australian Air Force 'mercy flights' from Richmond, New South Wales, using Hercules aircraft, may be made available without charge upon request by the administrator. Likewise, Royal New Zealand Air Force planes call for New Zealand tourists in medical emergencies. There are no major overseas air routes which cover Norfolk Island, hence Island residents wishing to travel abroad must first move to Sydney or Auckland and then transfer.

In addition to the above air services, there are itinerant aircraft movements to, from and through Norfolk Island. These range from light aircraft traffic calling at the Island on flights through the south-west Pacific area to commercial charter flights carrying passengers and cargo. In the last year there have been a number of passenger charters to and from Brisbane, and cargo charters, handling larger cargo items in freighter aircraft, to and from Sydney. These have supplemented the regular air services on an 'as required' basis.

These international non-scheduled operations at Norfolk Island can be expected to increase. They will consist of private flights and charter operations utilising primarily twin-engined light aircraft. Such flights will be to and from other islands in the south-west Pacific, as well as from Australia and New Zealand, and will be a consequence of the increasing sophistication range and navigational aids of light aircraft.

(g) Shipping services

Vessels carrying cargo or passengers between Australia and Norfolk Island would, in the normal course of events, be required to be licensed under the Navigation Act 1912-1973 and to comply with Australian manning, wage and accommodation requirements. However, an Order in Council, promulgated in 1923 and still in force, exempts Norfolk Island from the coasting trade and has the effect of allowing unlicensed vessels to trade between the Island and Mainland Australia.

Such vessels supply the bulk of the Island's foodstuffs, fuel and general cargo. Regular shipping services were operated by the Karlander Line from Sydney (they ceased June 1976) and by a French line that operates a Sydney-Auckland route via Noumea and Norfolk Island under charter to an Australian company. There is also less regular service by a New Zealand line, mainly foodstuffs from Auckland. The low volume of cargo between the Island and New Zealand cannot sustain a regular service.

Fuel is carried from Noumea by a tanker which anchors off shore and discharges into bulk storage tanks at Ball Bay. There being no harbour in the Island, general freight is crane loaded into lighters off shore and towed by powered launches to the wharf side. (Earlier investigations of possibilities of constructing a harbour for large vessels have revealed the project to be uneconomic because of the costs involved.)

This 'lightering' operation is a major source of part-time work for Island labour and is extremely hazardous operation demanding the qualities of skills in boat handling and seamanship. In itself, however, as a means of handling cargo, it is, as stated earlier in this Report, less expensive than normal handling cost at many established harbours, including Sydney. Present volume of cargo handled is about 12 000 tonnes a year.

Costs of freight to the Island are very high They are of the order of \$50 per tonne from Sydney for dry bulk cargo Some cargo boats also carry a few passengers to and from the Island.

The shipping services to the Island are unsatisfactory due to the small quantities of cargoes offering and the unbalanced nature of the trade. It would appear to be in the public interest for one line only to be assured of the Sydney-Norfolk Island traffic provided freight rates were carefully controlled.

(h) Meteorological services

A meteorological station maintains a 24 hour a day communication with Sydney and can be used for other purposes in cases of emergency.

(i) Ingress and egress

Persons entering and leaving the Island are relatively impeded by official formalities. Tourists from Australia and New Zealand do not require either passports or visas to enter. Once in the Island they become automatically subject to the provisions laid down by the Immigration Ordinance relating to temporary visitors including the constraints pertaining to length of stay.

It can be seen from the above that certain deficiencies exist in the communication network servicing the Island. At the same time, however, viewed against the background of the Island's established life

style, and the ineradicable fact of its geographical situation, it could not be said that the present services are either inadequate or over—expensive with the exception shipping which has deteriorated over the last year.

This communications network is such a basic factor in the lands continued existence as a habitation for people, however, at those aspects of it relating to the air services in particular merit further examination.

### 3. Air services to and from Norfolk Island

#### (a) The problem merging

As has been pointed out earlier in this Report the entire economy of Norfolk Island is virtually dependent upon tourism, and this, in turn, is utterly dependent upon adequate air services the Island from both Australia and New Zealand - the sources nearly all Norfolk's tourists.

The present air link between Australia and the Island is provided by two ageing DC4 aircraft introduced in 1949. This service is currently being subsidised by Qantas to a figure of the order of \$750 000 per annum. The cost of spare parts for these obsolescent piston-engined aircraft is increasing rapidly and they also require special flight and maintenance crews. In addition , obtaining the spare parts is, itself, becoming more and more difficult. Almost every flight to Norfolk is fully booked and waiting lists are common. However, to overcome the problem leads one into a complex set of circumstances.

#### (b) Main factors involved

Several factors lie in the path of introducing new aircraft to replace the DC 4; the chief amongst these factors are the following:

- (i) The standard of Norfolk Island air strips and related airport facilities would require expensive upgrading (of the order of four to five million dollars) if it were desired to introduce heavy jet aircraft capable of carrying greater loads of passengers and the cargo.
- (ii) Ecological considerations in Norfolk Island itself relating to noise, smoke pollution and vibration effects from jets.
- (iii) The present international air navigational rule requiring that a two-engined aircraft flying over an ocean must always be within ninety minutes of a landing field.
- (iv) The need to retain the economic attractiveness to Australians of a Norfolk Island vacation. It would vanish were Australians compelled to pay a much higher fare by having to travel to the Island via New Zealand, instead of by a direct flight from Australia.
- (v) The desirability of retaining Sydney as the Australian terminal of the route.
- (vi) The necessity of balancing the present planned permitted maximum of tourists to the Island per annum (viz. 20 000) with reasonably profitable payloads on that and other

routes to enable the airline to operate without subsidy.

- (vii) The probable need to integrate the Sydney to Norfolk Island service with internal Australian air routes, in order to achieve reasonable utilisation of aircraft.
- (viii) The virtual impracticability of permitting two airlines to compete on the same run.
- (ix) The desirability of retaining Norfolk Island as a terminus and not as a throughport on an international route.
- (x) The economic desirability of ensuring that any upgrading of the air strips and airport cover long-term foreseeable needs rather than short-term immediate satisfactions.
- (xi) The future potential of the Island as not merely a tourist resort, but a possible base for mineral exploration and exploitation of surrounding sea-beds. Demands upon air services would then change dramatically.
- (xii) The need for a minimum frequency of air services, spaced reasonably throughout the week, consistent with demands from passengers and movers of freight, to service an island with an intended present planned maximum permanent population of 2000 and an annual intake of 20,000 tourists.
- (xiii) The incidental factor of a safety emergency air field for international flights on Australia-pacific routes.
- (xiv) The need to consider the freight imbalance between the Island and the mainland. While imports into Norfolk Island are high, exports are relatively low. Utilisation factors of aircraft are lowered as a result of freight backloading deficiencies, and affect profitability adversely.
- (xv) The need for an aircraft on the Sydney-Norfolk Island run to have capacity to at least divert to Noumea in the event of a Norfolk Island landing being aborted.
- (xvi) The strong possibility that in future, as a result of industrial and other problems associated with sea transportation, and the ever-increasing costs of sea freight relative to air freight, the usage of air transport to Norfolk Island for supply purposes is very likely to increase, especially in relation to frozen cargoes.

(c) The Norfolk Island airport

Norfolk Island airport was constructed in 1942 on land acquired by the Commonwealth to support the allied troops operating in the South Pacific during World War II, and it was taken over in 1948 by the (then) Department of Civil Aviation (now the Department of Transport), which maintains ground staff, fire service and flight service at the airport.

It is situated near the south-west corner of the Island and its two intersecting runways straddle two intersecting ridges. A plan of the airport is in Appendix (viii). The primary runway. (11/29) has a length of 5600 ft (1707 m), is set in a 500 ft (152 m) wide strip and has a grass surface. Its deficiencies are that as an unpaved runway it has structural strength limitations, and a grass-

surfaced runway it has braking and directional control problems when wet. It is equipped with a modern T-VASIS landing aid at the north-western end.

Because of the nature of this runway it is suitable only for low-pressure tyre, low speed aircraft (such as the DC 4 Skymaster aircraft which Qantas currently operates). It is the preferred runway for Qantas operations due to its length and orientation in relation to prevailing winds.

The secondary runway (04/22) has a length of 5100 ft (1554 m), is 100 ft (30 m) wide, and is set in a 300 ft (91 m) wide strip. It comprises a thin coralline gravel pavement with a light bituminous coating. It serves as a wet weather alternative for the DC 4, and is used only when the grass runway is unserviceable due to heavy rainfall or when strong cross-winds preclude the use of that grass strip. The coralline gravel pavement has progressively eroded over time and is now only a thin layer. This surface has recently been given a light bituminous coating to prevent further erosion. Its length, width, and weak pavement, together with its out-of-wind orientation, preclude regular public transport aircraft types which are heavier than the DC 4 from using it. It will soon require resurfacing at an estimated cost of \$0.5 million and this work will be necessary whatever aircraft is finally chosen for the airline service.

An adequate sealed taxiway and apron, of high strength construction, was built in 1950 for the terminal, with aircraft parking facilities suitable for two DC 4 type aircraft.

The terminal building, at the airport is of timber-framed weatherboard, and was built in 1953. A septic sewerage system exists. Road access to the terminal area is good but the terminal car park is cramped and it can fairly be said that the terminal building and its facilities are barely adequate for the arrival and departure traffic. The extent to which the terminal facilities will have to be upgraded will be determined by the type of aircraft finally chosen to replace the DC 4.

The Commonwealth Government now has under investigation the proposed construction of a sealed 6500 ft (1981 m) runway on the Site of runway 11/29. This, if completed, would enable commercial payloads to be carried on the Norfolk Island service by the three jet aircraft types now in service in Australia, i.e. DC 9-30, B 727-100 (provided they were equipped for over-water operations) and the B 707-338. Depending upon the particular model of these aircraft types it is proposed should operate the Sydney-Norfolk land Service, the order of cost of the required aerodrome improvements at Norfolk Island ranges from. \$3.5 million to \$4.5 million.

(d) Alternative air service proposals

Such considerations necessarily embrace both airport and aircraft. Depending upon the nature of the upgrading to the airport (that is strips, terminal building and related facilities) various aircraft become practical physical possibilities for the run. Their financial viability, however, is another matter and both of these factors must dovetail.

As has been mentioned, to upgrade the airport to handle jet aircraft presently operating in the mainland such as the DC 9 and B 727 will cost from \$3.5m to \$4.5m. The former Administering Department (Capital Territory) proposed (after consultation with the Department of Transport) that this upgrading be done. The two aircraft mentioned are both suitable for the route and they have assured continued availability. It was felt that Norfolk Island operations would provide useful additional utilisation for these aircraft and profitable operations at mainland fares and freight rates

would be assured to the airline operator. That view, however, was put forward in evidence on the basis that tariffs for the Sydney-Norfolk Island service, having been held approximately at the level of Australian domestic rates in the past, despite the losses being incurred by Qantas, would continue to be so held. This may not necessarily prove to be the case

Alternatives to the above proposals, which require less demanding improvements to the airport, involve consideration of three other aircraft, namely the Fokker Friendship Turbo-prop, F27-500, the DC Havilland Turbo-prop, DHC-7 and the Fokker Fellowship Jet F28 models.

The F27-500 was examined closely by the Department of Transport, but its speed proved incapable of enabling the aircraft to comply with the long-held operational standard applying to lengthy over-water flights, namely that twin-engined aircraft on such sectors should be within ninety minutes' flying time of a suitable airport at all stages of the flight. While this rule appears to be an arbitrary standard, it is, nonetheless, common to other countries and the Department of Transport does not consider that the rule should be departed from in the case of the Australia-Norfolk Island run for a regular scheduled flight. It deserves mentioning that the present operation by Air New Zealand of the F27 between: Auckland and Norfolk Island does comply with the standard, because of the shorter distance of that sector.

The DHC-7, although in production in Canada, is not yet in airline service anywhere in the world and will not be available until 1977-78. It requires only 2550 ft (777 m) for take-off and thus would require but minimal work on the air strip at Norfolk. Having four turbo-prop engines and a capability of using the short air strip at Lord Howe Island (approximately half-way between Sydney and Norfolk) this plane would not be subject to en route operational limitations. As with the F27, only minimal work would be required at the Norfolk Island airport to accommodate his aircraft. However, even assuming its physical suitability was proved, it does appear that the DHC-7 would suffer significant payload penalties on the Sydney-Norfolk Island route, because of the need for maximum fuel uplifts, and this could jeopardise viable operations with this aircraft. It would also require specially qualified flight crews and maintenance teams within any airline not operating it extensively. The factors of possible integration in a mainland fleet, and hence percentage of utilisation, are vital elements in reducing the component of depreciation charges in the use of aircraft to acceptable proportions, in so far as the setting tariffs is concerned, for both passengers and freight.

Use of the F28 models would require significant airport upgrading. Runway 11/29, immediately after ten points of rain within a 24-hour period, becomes of doubtful serviceability in far as braking for this aircraft is concerned, and hence the existing length of runway cum payload considerations move adversely. With some airport upgrading, however, it was alleged by Fokker — International b.v. that this aircraft holds attractive features relating to frequencies of service and subsequent Percentage of utilisation of the airport's facilities. It will be noted later that Qantas studies on the key point of economic payload capacities of the F28 were not favourable.

Requirements for runway strength and width and for terminal building facilities would be much lower for this aircraft than for the other pure jet types considered. Fokker regards a strip 6500 ft (1981 m) in length and 100 ft (30 in) wide as amply sufficient for this plane as it can operate from 4000 ft (1219 m) unpaved runways. Landing noise levels of the F28 would also be less severe than those of the larger pure jets. In March 1969 an F28 visited the Island on a demonstration flight and gave rise to no adverse press comment. There are already five F28 aircraft in operation in Australia

with Ansett Transport Industries Limited. A further three are on order for the Australian Department of Transport.

The remaining alternative to the types of aircraft discussed above is to allow charter operators to cater for the traffic between Australia and Norfolk Island on an 'as required' basis, with no regular direct airline Service operating, as the two are incompatible. It would envisage maintaining the present regular service from New Zealand, however, with minimal work being required at the Norfolk Island aerodrome. Such an alternative must be rejected on grounds of safety, convenience, costs to passengers and freight movers, and the wholly erratic effects it would inevitably have on the Island's economy. Some regular scheduled air service of high safety standards, and capable of operations at as low a cost as is practicable, is imperative for the successful economic future of Norfolk Island.

Summing up, it can be said that with minor work on the coralline runway of the order of \$0.5 million existing DC 4 and F27 Services could continue, and the DHC-7 could be accommodated. Some terminal building upgrading, costing approximately \$0.25m (to improve the building itself, the car park and the sewerage and water supply service), would also be necessary. For economic operations with DC 9 and B 727 aircraft, the 11/29 grass runway would have to be upgraded, along with terminal building facilities, to a degree involving between \$3.5m and \$4.5m; if operations were confined to the F28, the range of these figures would be considerably lower. Whatever services are provided they must be reasonably spaced and cater for both the Island's projected demands and economic profitability for the airline involved.

(e) The Qantas position

Qantas began scheduled air services to Norfolk Island on 14 October 1947 using Lancastrian aircraft. The Island's population was then 870 people. In June 1949, the DC 4 Skymaster plane was introduced and still provides the Service (twenty—seven years later). 1960 marked the beginning of a period of rapid traffic growth on the route and this rose to the point where the service carried 21,913 passengers and 106,665 kilograms of freight during the year ending 31 March 1975, in servicing both Australia and New Zealand.

The service is, however, uneconomic due to the obsolescence of the aircraft used and the inability of the Norfolk air strip to take present and future types of aircraft capable of flying the Sydney-Norfolk route without infringing the existing air navigational provisions. Losses by Qantas on this run over the last five years have totalled \$4.6m and the company considers that these losses are likely to increase year by year until the airfield is upgraded.

Following a review of Qantas/Norfolk island services in July 1974 the Department of Transport was asked to consider relieving Qantas of the responsibility for their operation.

Subsequent communications between the Department and Qantas have indicated:

- (i) A proposal by the Department to upgrade the airfield at Norfolk Island to B 707 capability within three years
- (ii) a desire on the part of the Department for Qantas to continue DC 4 operations between Sydney and Norfolk Island pending these airport improvements

- (iii) an application by Qantas for government subsidy over this interim period;
- (iv) A willingness by the Department to support an application for government subsidy. Such subsidy to be paid from the Department funds of the administering department (then Capital Territory, now Administrative Services) and/or Department of Tourism and Recreation (now abolished). Accordingly, in February 1975 Qantas lodged a formal application for a subsidy of A\$760 000 per annum with the Department of Transport. This subsidy, it is claimed by Qantas, is required to cover actual losses incurred by operating the Norfolk Island service, after deducting continuing overheads. The application for the subsidy was based on current fares and budgeted cost levels applicable in the 1975-76 financial year. The application is still in abeyance.

Over the last ten years, Qantas has made a number of technical evaluations of alternative aircraft types likely to be suitable as replacements for the DC 4 aircraft. The evaluations included examining the possibility of modern jet aircraft such as the DC9-30, B 737 and the BAC111-475 operating from the existing runway. To further these studies a B 737-200 aircraft was demonstrated to the Department of Transport officers at Norfolk Island on the existing facilities in 1972.

It became clear that a unique aircraft, dedicated only to the Norfolk service, would not acquire sufficient utilisation to become economically viable. A successful aircraft candidate would need, on current fare structures, to be capable of being integrated with existing mainland fleets and this point is a key factor.

Investigations of a low-pressure tyre, grass-certified DC 9 configuration were pursued with a view to operations from existing Norfolk runways by Qantas, but the grass performance penalties were found to be quite severe, and under wet conditions the short runway would have to be used, which also penalises the payload capability. Similarly, Qantas dropped interest in the F28 when they ascertained that the payload capacity on the Norfolk-Sydney sector was considerably below that which a DC 4 could offer in one flight and was, in fact, about forty-three passengers.

Consideration by Qantas of the possibility of using B 707 planes for the Norfolk run (assuming the air strip was upgraded to permit their use) revealed deficiencies flowing from the fact that the B 707 is demonstrably less economic to operate on long hauls than the B 747, which latter plane is replacing the B 707 in the Qantas fleet. Thus, the B 707 plane does not really offer sound long-term integration possibilities for Qantas.

In summary, the evidence showed that Qantas desires to be relieved of its involvement in the Norfolk Island run as soon as practicable. Essentially, the operations of a long-haul international carrier do not lend themselves to economic absorption of what is a relatively short-haul and isolated type of service, requiring the use of an airport which is well below world standards, and likely to remain so. It should also be pointed out that the Commonwealth Government, in establishing Qantas, expected that organisation to operate as a profitable concern. It would appear, therefore that some alternative to a Qantas-conducted air service to Norfolk Island must be found.

(f) The position of other airlines

- (i) East—West Airlines Limited

This company favours the ultimate use of F28-6000 (Fellowship) jet aircraft with the object of achieving near daily frequency of service, and pending the full use of this plane proposes that the service be provided by the F27-500 turbo-prop Friendship aircraft.

The company pointed out that the F27 is already operating on Australian intra- and interstate runs.

East-West anticipates annual passenger volumes of about 28,000 and 40,000 with the higher figure being achieved somewhere between 1976 and 1982, depending upon the time of the introduction of pure jets to the service.

The company has evaluated the following aircraft types, all of which will require to be fitted with extra fuel tankage capacity (such extra tanks are not on the aircraft as they are at present operated on Australian airlines):

F27-500  
DHC-7  
F28-6000  
DC9-30  
B737-200

The company rejected for various reasons (chiefly on the grounds of size) the B 727, B 707 and B 747, and it anticipated that the Department of Transport would grant a concession to permit a departure from the ninety—minute rule in order to enable it to operate the F27-500 on the Norfolk Island route, pending availability of the F28—6000.

It considers the F28—6000 to be much quieter than the DC 9, B 737, B 727 or the B 707, and indeed to be quieter than the F28-1000 which is now in use in Western Australia. The F28-6000 uses speed brakes instead of reverse thrust to reduce the runway length required after touchdown and this lessens noise. The company contends also that the F28—6000 will require much lower levels of runway strengthening and will, therefore, reduce the capital and operational costs.

It is permissible for the F28 to use 100 ft (30 in) wide runways, against the 150 ft (45 m) width required for the DC 9 and larger aircraft. East—West places considerable weight upon the frequency factor, contending that frequencies of two or fewer per week will alienate some of the existing market. Although favouring the F28—6000 as being, on its evaluation, the only jet aircraft that achieves their nominated optimum frequency, it admits that the DC 9 could operate more frequencies at lower load factor because that larger aircraft offers fractionally lower seat—mile costs during peak periods. Against using the larger aircraft, however, East-West points to heavier additional airport construction costs and higher noise levels.

As an illustration of the escalation of air fares flowing from increased capital costs of airports, it asserted that for every \$1m extra of capital costs of an airports between \$6 and \$12 would need to be added to each passenger's round trip fares on the Sydney-Norfolk route (assuming an interest and depreciation cost of 12% and a passenger volume range of 20 000 — 40 000 per annum). The actual capital differential in airport expenditures necessary to enable different aircraft to be used, is likely to be several millions.

East-West Airlines' present activities and future plans are such that it feels the Australia-Norfolk run could be readily taken over by it and, if this were done, such run would contribute a clear 10%

of its total gross revenue. It has lodged with the Department of Transport an application for a Sydney-Norfolk Island air route licence.

(ii) Ansett Airlines of Australia (Ansett Transport Industries Limited)

This company is interested in the Sydney-Norfolk Island service and believes that the only practical economic means of providing this service is by the use of a plane such as the DHC—7, should that aircraft meet or exceed its design goals. It believes this plane provides the solution to problems of servicing, with regular public transport, the Barrier Reef Island, Lord Howe Island and Norfolk Island, and further, that the plane would have minimal impact upon the environment and would make minimum demands upon airport improvements. It also believes the plane would be capable of one—way interchangeability with F27 aircraft which are, at present, in the Ansett fleet.

It should be mentioned, however, that other evidence has pointed to possible refueling difficulties at Lord Howe Island, due to the need to import all fuel in drums to that island.

(iii) Norfolk Island Airlines Limited

This company currently flies a Beechcraft King Air Super 200 from Brisbane to Lord Howe and Norfolk Island and return, four times per week, carrying a maximum of twelve passengers per flight. A further service from Norfolk Island to Noumea and return is being negotiated.

The company favours use of a F28—3000 model aircraft for the service between Sydney and Norfolk Island. It regards this plane as having more efficient engines and as being more silent particularly during take—off and landing. The model, however, will not go into production until January—February 1977. It sacrifices seating capacity in order to increase its fuel-carrying capacity and thus lengthen its range. Whereas the F28-6000 and 4000 models carry 75—85 passengers, the 3000 model carries 60-65 passengers. However, this company considers that it would be profitable to operate the run carrying forty-eight passengers and approximately 3000 kg of freight. It calculates that break-even point with this aircraft is twenty-eight passengers without freight. Normal frequencies of flight would be four per week, with two additional flights per week catering for peak traffic.

This company doubts the capacity of the F27-500 to fly the route economically and safely, even if it were fitted with long-range tanks. The company pointed out that the F27-500 cannot land at Lord Howe Island and also that it would violate the ninety-minute rule.

A major disadvantage, however, of this company's plans is its intention to set up its service with only one aircraft, and that not integrated with any mainland operations. It proposes to conduct its administration and crew staffing from the Island, and also to carry out as much of the aircraft maintenance in the Island as is possible, but stated that the bulk of the important maintenance work would require to be carried out in the mainland.

(g) The environmental considerations involved in upgrading the airport

In May 1975, the Department of the Capital Territory prepared an environmental impact statement after consultation with the Department of Transport. This statement entitled 'Upgrading of Norfolk Island Airport to Jet Standard' was furnished to the Commission as an exhibit.

The environmental effects flowing from any major proposed upgrading would seem to fall into several main categories as follows:

(i) Effects of the actual construction work

The civil engineering work involved would necessitate acquiring, transporting and placing significant quantities of soil, crushed stone and bitumen and/or concrete. Most of the haul routes inside and outside the airport boundaries could be restored upon completion of these aspects of the work. An existing quarry could supply the crushed stone. The noise, dust and traffic hazards associated with these activities of construction would be only temporary and would cease with the cessation of construction. The quarry itself would have to be extended but this would occur in any case, with normal development of roads in the Island. Alternatively, a fresh quarry could be opened up in a relatively inconspicuous valley. Soil borrow pits can be filled with decomposable garbage and revegetated over time. The construction work does not, therefore, pose a major environmental problem.

(ii) Development effects

Water run-off from larger areas of sealed air strips would be increased, but this could be met with improved Stormwater drainage to prevent erosion problems. Fears of petroleum contamination in such run-off could be removed by taking steps to ensure separation of the contaminants before the run-off is dispersed, Approximately fifty more pine trees would be required to be either lopped or removed to cater for the safe use of larger aircraft on the expanded air strips, and while this is to be regretted the advantages gained would warrant the loss.

It should also be borne in mind that there are literally hundreds of acres available in the Island on which thousands of pines could be planted to compensate for the loss of fifty trees at an extended airport.

(iii) Noise pollution from jet aircraft

The likely magnitude of this must be kept in perspective. One take-off and one landing per day; three times per week, with some increase to possibly five times per week, is the probable extent of the noise pollution. The duration of noise on each occasion of take-off or landing is about two to five minutes. The Department of Transport considers that use of the F27-500 would not substantially alter present noise levels, and that indications regarding the DHC-7 aircraft point to its noise levels being less than those at present experienced with the DC 4. Even with larger aircraft such as the DC 9 and the B 727, their admittedly higher noise levels are of relatively short duration, and the frequency of movements by these aircraft would be significantly less because of the larger numbers of passengers they carry. The Department feels that with the exception of two dwellings near the airport, subsonic jet aircraft noise would not be a major problem.

(iv) Effects upon fauna and flora of noise and fume pollution from jet aircraft

Again, one must view this subject with a sense of balance and perspective, and bearing in mind the frequencies and duration of such pollution, as well as its intensity. Experience has indicated that bird life adapts quickly to new noise conditions. It is a well-known fact that most birds are not

repelled by the noises of busy airports, and indeed their numbers at some airports constitute distinct flying hazards. The Department of Transport considered that no bird species would be endangered by introducing subsonic jet aircraft to Norfolk Island. It is probable also that exhaust pollution would not be so concentrated as to endanger any fauna or flora, as the dispersal of fumes by winds over vast expanses of ocean would result in very minor quantities being deposited on the Island.

(v) Vibration effects upon buildings

While it is not doubted that buildings near the flight paths of jet aircraft over Norfolk Island would suffer some vibration effects, the actual extent of such effects is a subject of genuine doubt. The building which is causing the most concern is the chapel of St Barnabas, a small structure of great charm and beauty and which has very considerable architectural, historical and ecclesiastical value. It is located near the north-western end of runway 11/29. No one would wish to see that building imperilled. That it will suffer a degree of vibration is undoubted, but that such vibration will cause it severe damage is questionable. and by its very nature the point is unlikely to be resolved short of subjecting the building to detailed examination over a period of jet aircraft induced vibration.

(vi) Conclusions

Much emotion was displayed by some Island interests over these environmental aspects of the proposed development of the airport and the advent of pure jets on the Australia-Norfolk Island service. On the evidence submitted, it is obvious that a large proportion of the emotional concern is exaggerated and is wrongly based. The pollution and scars associated with the construction work will be but temporary. The noise, fumes and vibration pollution from subsonic jet aircraft will likewise be well within tolerable limits of frequency, duration and intensity levels for human beings, fauna and flora. If the chapel of St Barnabas is found to be suffering damage, it can be moved and or rebuilt elsewhere in the Island. Residents, likewise, can be moved and compensated. The airport, however, on which the entire Island depends for its very existence, can neither be moved nor can it continue to be a practical basic link in the communication chain without being upgraded to take jet aircraft.

The suggestion made in evidence that virtually all air traffic from Australia pass through New Zealand to reach Norfolk, in order to avoid any major work being done on the airport at Norfolk, is unacceptable on economic grounds.

The Island, therefore, is virtually faced with no choice at all if it wishes to survive. The blunt fact of the situation that technology has finally caught up with Norfolk Island and there is no alternative to the Island reconciling itself to acceptance of the upgrading of both the airport and the type of aircraft which service the Australia-Norfolk Island route - that is if residents of the Island wish to maintain their present standards of living.

(h) The costs involved and responsibility for them

Low priority, stemming from the policy of Commonwealth Governments of years past that the costs of providing the ground network of airport and airways facilities should be recoverable, has to date caused upgrading work on Norfolk Island's airport to be put aside. Busier centres of activity have had higher priorities. Nonetheless, it is inevitable if Norfolk Island is to have any economic future that one day this work must be undertaken and it raises yet again the basic issues concerning

who is to finance Island development.

The capital costs involved are very significant, and the amortisation charges of a Norfolk Island airport, upgraded to the point of being able to take jet aircraft of the capacities of the DC 9 and B 727 planes, must also be high to the individual users of the service because of the relatively low utilisation factor of the airport.

Because of the very nature of airport operations and their control, it is inconceivable that such should not devolve upon the Commonwealth Government. The complexities that could arise were a private group to attempt to raise the finance and undertake the work of upgrading the airport, together with the amortisation of costs into freight and passenger tariffs, are such that the proposal becomes impracticable.

If, therefore, the Commonwealth Government is to accept responsibility for financing and operating the upgraded airport, then it is only equitable that the Government should consider the questions of capital costs, the passenger and freight tariffs, the construction priorities and the operating subsidies in the context of the overall needs of the totality of its citizens and its commitments.

The situation provides yet another compelling reason why, if the Commonwealth is to be expected to pay the costs of the capital development in Norfolk Island and to bear the responsibility of building and operating its airport, then the inhabitants of Norfolk Island should contribute in the same manner as other citizens of Australia to such capital and operating costs. Also its airport should be operated on the same basis as comparable airports within Australia, i.e. by the Department of Transport, subject to such local authority being exercised as that Department deems acceptable.

Furthermore, on the aspect of possible subsidisation of Passenger fares and freight rates, the merits of any assistance of this nature can only be assessed when the actual costs involved are known and can be weighed against the alternatives of not subsidising. If, for example, the unsubsidised cost of a Sydney-Norfolk Island air fare rose to a level where it inhibited a minimum number of tourists from visiting the Island, the cost of alleviating the economic distress so caused may be greater than the cost of an effective subsidy of the air fare. It is quite impossible, in the absence of clear cost pictures, to be definite on the likely arithmetical conclusions. The situation would require assessment on the basis of known costs and calculations at the time.

One can say with certainty, however, that unit costs in operating the airline services will be lowered if capital I utilisation is lifted to the maximum. The chief means of achieving this is for the aircraft which are used on the Australia-Norfolk Island run to be integrated thoroughly into existing intra- and interstate services in the mainland. Without such complete integration, the costs, to government and users alike, will certainly steepen.

(i) Attitude of the former administering department (Capital Territory)

This Department supported the airport being upgraded to a standard which would permit the use of jet aircraft of the same types as are used in the Australian domestic fleets.

(j) Decisions to be taken and recommendations in relation thereto

In so far as the choice of aircraft is concerned, this is a highly technical subject and can safely be left to the aviation experts in the Department of Transport to decide. Clearly, any one of a number of aircraft could provide the service but it is not a function of this Commission to intrude upon the tasks of efficient and very skilled departmental experts by attempting to evaluate, as a lay person, the most effective aircraft for this particular route.

It is felt, however, that the Terms of Reference do permit in this Report recommendations on policy with respect to matters involved in air communication generally.

In making these recommendations it was felt that one should take the long-term view. A myopic approach, dominated only by resent and particular considerations, should be avoided. If, for example, in future it becomes more economic to transport bulk cargoes by air than by sea, then a fully upgraded airport could be necessary. Similarly, a need for heavy equipment and materials on urgent call by mining companies interested in the surrounding sea-bed could well require an airport significantly above the standard of a mere tourist airport. From the point of view of defence, a low standard airport could prove a serious handicap. Although the Island airport is apparently of little consequence at the moment, in a changing world that position could change rapidly.

It would be false and short-lived economy to spend money in upgrading the airport to what some may feel need be but a satisfactory minimum standard, only to find a few years later that such a risk has to be virtually undone and be wasted because of compelling needs which have then arisen. Also, deferred construction costs are undoubtedly destined to be even higher than present costs. The greater flexibility in catering for technological change given by a jet standard airport, and the incidental benefit of an emergency airport to international flights across the Pacific, also tend to influence one in the direction of favouring a standard upgrading which, long term, should prove more effective and actually cheaper.

At the same time it should be stressed that even if the airport is upgraded to full jet standards that does not necessarily imply that the heaviest, biggest and noisiest aircraft will be regularly servicing the Island. It may well be that in the short term no aircraft other than the F28 need be employed on the Australia-Norfolk Island run.

A significant point in the area of costs is that very appreciable savings to the Commonwealth can be achieved by employing the Army and Air Force engineers to build the air strips as an exercise. New Zealand chose this alternative in respect of several airports it constructed for its Pacific Island dependencies and achieved worth—while economies in consequence. Also it should be pointed out that Australian Army engineers built the airport at Lord Howe Island.

In accordance with the above approach the following recommendations are advanced:

- (i) That Qantas be relieved of responsibility for the Sydney-Norfolk Island route as soon as practicable,
- (ii) That only one airline operator replace Qantas; that operator to be in a position to ensure continuity of service by having available suitable numbers of aircraft and be able to integrate the Norfolk Island route with other routes so that tariffs can be kept to the

minimum and high standards of service be maintained, without subsidisation by the Commonwealth Government.

- (iii) That the airport be upgraded by Commonwealth Army and Air Force engineers to enable it to cater for both the immediate and foreseeable future demands, and to yield maximum flexibility in the use of both passenger and freight-carrying aircraft, i.e. to enable heavier jet aircraft to be employed if and when necessary.
- (iv) That, if it is necessary to move buildings or residents as a result of upgrading the air service, that those affected be compensated.
- (v) That all possible care be taken to safeguard the environment in executing airport improvements.
- (vi) That the Commonwealth Government finance and control the Island airport and related activities.
- (vii) That upgrading work on the airport be commenced as soon as practicable in view of the age and if obsolescence of the DC 4 aircraft.
- (viii) That there remain scope for other relatively minor air services, which at present operate to and from the Island, to continue.

#### 4. Other recommendations relating to communications

Apart from the more urgently needed improvements associated with the air services, a number of other communication aspects deserve comment.

##### (a) Seaport possibilities

If plans for upgrading the airport are proceeded with, the need for a harbour facility, capable of taking large freight-carrying vessels, diminishes even further. With larger planes and perhaps more frequent services ferrying larger quantities of freight into the Island, there will tend to be less use made of sea freighting in the future, not more. The present lightering facilities, although exacting in their demands on seafaring skills, are adequately catering for the present levels of sea freight. The physical difficulties which would be encountered in constructing a worth-while harbour at Norfolk Island would be enormous, and the cost of undertaking such construction would be prohibitive, both in absolute terms and also when weighed against a benefits received. The idea, therefore, of such a facility should be abandoned. However, in saying this, one should take care to distinguish between such a seaport on the one hand and a small boat harbour on the other hand. The Commission recommends that the latter facility receive careful investigation.

##### (b) Shipping services

There being not enough business to justify two shipping lines operating the Sydney-Norfolk Island run, the Commission recommends that the Government arrange for one line to be assured of the business subject to freight rates being carefully controlled.

(c) OTC services

The Commission recommends that tariffs in respect of these OTC services bear a closer relationship to the costs involved and, if practicable, those tariffs be such as to defray those costs over a reasonable time. Hidden subsidies of this nature only distort the true economics of life in the Island and prevent residents from obtaining a clear realisation of the costs involved were they obliged to undertake the task themselves.

(d) Local radio reception

It is recommended that steps be taken to examine and if possible eliminate the present interference to radio reception in the Island caused by power generators at the airport. The interference is an irritant which accords ill with the concept of a quiet peaceful tourist resort.

(e) Delivery of mail and newspapers

This will improve with an improved air service, and it should then be possible to arrange for speedy, regular and adequate supplies of mainland newspapers to reach the Island. To many, the relative absence of mainland and world news may seem a blessing, but it is felt that to most people, and particularly to visitors, the isolation from information provided by the press looms somewhat as a minor deficiency in life in the Island. In any case, people should be able to exercise a choice as to whether they sever relations with the press whilst in Norfolk Island or continue to be kept up to date on happenings elsewhere.

The Commission recommends that the local government invite newsagents in the Island to enter into an arrangement which will ensure the regular supply of mainland papers to the public.

Chapter 16  
GUIDELINE (j)  
‘The need for adequate law enforcement and judicial machinery’

1. Present situation

(a) The law applicable to Norfolk Island

In general (and save for qualifications referred to later) there is no separate basic civil and criminal law peculiar to Norfolk Island. The basic law operating in the Island is that which obtains in the Australian mainland Territories. Special ordinances provide for that basic structure, with appropriate amendments, to be applied in the Island.

Prior to Norfolk Island becoming a Territory of the commonwealth on 1 July 1914, the affairs of the Island had been administered by the Governor, for the time being, of the State of New South Wales and its Dependencies in accordance with the terms of an Imperial Order in council dated 18 October 1900. Pursuant to the powers vested in him by that Imperial Order, a Proclamation was issued by the Governor of the State of New South Wales on 23 December 1913 declaring all laws theretofore in force in Norfolk Island to be repealed and outlining the laws which were thenceforth to be applied in the Island. This Proclamation took effect on 24 December 1913.

Section 4 of the Norfolk Island Act 1913, by which the Island was accepted as a Territory of the Commonwealth, provided for all laws, rules and regulations in force in the Island at the commencement of that Act to continue in force, subject to alteration or repeal by ordinances made pursuant to the Act. Section 8 of the Act conferred on the Governor-General the power to make ordinances for the peace, order and good government of the Island. A similar provision is contained in the Norfolk Island Act 1957, which repealed and replaced the 1913 Act.

The 1957 Act has been amended by the Norfolk Island Act 1963, the Statute Law Revision (Decimal currency) Act 1966—1967, the Judges’ Remuneration Act 1969, and the Statute Law Revision Act 1973—1974.

The law applicable to Norfolk Island may, therefore, be said to consist of:

- (i) The laws proclaimed by the Governor of the State of New South Wales which were in force on 23 December 1913, and are still in force;
- (ii) Commonwealth Acts expressed to extend to Norfolk Island and the Statutory Rules made there under;
- (iii) Ordinances made by the Governor—General over the period 1 July 1914 to the present, pursuant to s.8 of the Norfolk Island Act 1913, as amended, and s.15 of the Norfolk Island Act 1957, as amended, and still in force;
- (iv) regulations, rules, by—laws, proclamations, declarations and notices made or issued under the laws and ordinances referred to in (i) and (iii).

(b) The Courts

(i) Supreme Court

The Supreme Court is the highest judicial authority in Norfolk Island and is a superior court of record with original, civil and criminal jurisdiction. The jurisdiction of this Court is exercised by one judge sitting in Court or, in the cases provided by or under ordinance, sitting in chambers.

The Supreme Court may also sit in the States of New South Wales and Victoria or in the Australian capital Territory to hear and determine a matter otherwise than in the exercise of its criminal jurisdiction, if the Senior judge is satisfied that the hearing of the matter outside Norfolk Island is not contrary to the interests of justice.

The High court of Australia has jurisdiction, with such exceptions and subject to such conditions as are provided by ordinance, to hear and determine appeals from all judgments, decrees, orders and sentences of the Supreme Court of Norfolk Island.

Two judges are at present appointed to the Supreme Court of Norfolk Island.

The costs of the Supreme Court are presently borne by the Norfolk Island Administration, excluding only the basic salaries of the judges and their staff. Normally, the Court sits twice a year at approximately six-monthly intervals.

(ii) Court of Petty Sessions

The Court of Petty Sessions Ordinance 1960-1966 provides that the jurisdiction of this Court, which is made a court of record by the Ordinance, may be exercised by the chief Magistrate or by any three magistrates other than the Chief Magistrate. The criminal jurisdiction of the court is set out in s.36 which reads as follows:

36. (1) Where, by law in force in the Territory —

- (a) An offence is punishable on summary conviction;
- (b) 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 the person committing the offence; or
- (c) Jurisdiction is conferred upon —
  - (i) A Court of Petty Sessions, a court of summary jurisdiction, a Children's Court or a court constituted by a Magistrate, a Police Magistrate, a Stipendiary Magistrate, a Special Magistrate or a Justice or Justices; or
  - (ii) A Magistrate, a Police Magistrate, a Stipendiary Magistrate, a Special Magistrate or a Justice or Justices,

The Court has jurisdiction to hear and determine in a summary manner under the provisions of this Ordinance all matters arising under that law.

2. Without limiting the generality of the provisions of the last preceding sub—section, the jurisdiction of the

Court includes jurisdiction

- (a) To deal with and impose punishments in respect of contempt of the Court;
- (b) To impose punishments and penalties as provided by any law; and
- (c) To award costs in all matters brought before the Court, including matters dismissed for want of jurisdiction.

This Court can also hear and determine civil claims in respect of a sum or matter at issue that does not exceed, or the value of which does not exceed, \$400 (s. 107). The Norfolk Island Council, at its August 1975 meeting, endorsed a proposed amendment to the Court of Petty Sessions Ordinance to raise the ceiling of the Court's jurisdiction from \$400 to \$2000.

An obstacle in the way of early implementation of the proposed amendment is that the rules and regulations governing issues before the Norfolk Island Court of Petty Sessions are those, which apply to issues before the court of Petty Sessions of the Australian Capital Territory and the ceiling in relation to those issues in the latter court is only \$1000. This situation arises out of the provision in s.248 (2) of the Norfolk Island Court of Petty Sessions Ordinance that the rules or regulations made under the Court of Petty Sessions Ordinance 1930—1958 of the Australian Capital Territory in relation to civil matters shall, so far as applicable and mutatis mutandis, be deemed to be rules or regulations made under the Norfolk Island Ordinance.

There is an appeal as of right to the Supreme Court from the Court of Petty Sessions (s. 229) in 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 at least \$100. There is also an appeal by leave of the Supreme Court where the Court is of the opinion that the granting of leave to appeal would be in the public interest (s. 230).

The present arrangements for servicing the court are that the five magistrates who are appointed under the Australian Capital Territory Court of Petty Sessions Ordinance have also been appointed as, magistrates under the Norfolk Island Ordinance. Of these, the chief Magistrate of the Australian Capital Territory Court has been appointed Chief Magistrate for Norfolk Island.

In addition, six persons resident in the Island have been appointed as magistrates. The intention is that any three of these local appointees will constitute the court for urgent or routine matters. The Chief Magistrate, travels to Norfolk Island as required, but if he is unavailable in a situation which warrants his attendance, the Administrator is empowered under the Ordinance to appoint another magistrate to exercise all the powers and functions of the Chief Magistrate. It is envisaged that such appointments will be from the pool of Australian Capital Territory magistrates. These arrangements are dictated to some extent by the increasing complexity of Court hearings.

A serious deficiency exists with respect to the power of magistrates in the Island to grant bail. Although Supreme Court judges can grant bail, Magistrates cannot

There is a law library for the use of the judges and magistrates but it needs more reference material to make it adequate.

(c) The criminal law

The basic criminal law is the New South Wales Crimes Act, 1900, as existing in 1913. The Criminal Law Ordinances have made few changes of substance to the original Act. Most changes have been in nomenclature to cover officials in the Norfolk Island administration and courts.

A variety of petty offences is contained in the Police offences Ordinance 1933—1964. Section 35(1) of this Ordinance makes provision for the removal of non-Norfolk Islanders from the Territory, in addition to any other penalty, for ‘rogues and vagabonds’ and ‘incorrigible rogues’. Section 35(2) allows the Administrator to forbid the re-entry of such persons after completing any sentence.

Section 11 of the Child Welfare Ordinance 1937-1964 requires the Administrator to be advised if a child under 18 years of age is sentenced to imprisonment or an institution. With the approval of the Minister, the Administrator may order the removal of the offender from the Territory. Under this system, the Court may ‘also recommend an institution of a particular type.

Both the Supreme court and the Court of Petty Sessions can, under certain circumstances, commit a child to an institution. Under an agreement between the Commonwealth and New South Wales, children committed to an institution by the Courts of Norfolk Island can be removed and detained in institutions in New South Wales.

The Child Welfare Agreement Ordinance 1941—1958 is a ratification of an agreement between the Commonwealth and the New South Wales Governments for the custody in New South Wales institutions of juvenile offenders from Norfolk Island. The Commonwealth Government is required to contribute to the cost of detention and, whilst in custody, the offender is to be treated in a similar manner as if he had been committed to an institution by an appropriate court in New South Wales.

Adults may be transferred to a State prison under the Removal of Prisoners (Territories) Act 1923-1973 of the Commonwealth parliament. Provision is made, however, under s. 8(1) of the Administration Ordinance 1936-1964 for the establishment of prisons, gaols and houses of correction and for the appointment of appropriate custodial and correctional staff in the Island. At present there are in the Island prison cells of antiquated construction which can be used, but one would be reluctant to order that prisoners be confined overnight in them. Further there are no facilities available for persons appointed to guard prisoners. Because of the unsuitability of the cells and the absence of other correctional facilities it is usual practice for the Administrator in pursuance of his powers under the Removal of Prisoners (Territories) Act 1923-1973 to recommend to the Governor-General that a person sentenced in Norfolk Island to a term of imprisonment be transferred to New South Wales to serve his sentence. As an alternative to this, a recent amendment to the Administration Ordinance now provides that a building or any other place in the Island may be declared a gaol, prison or house of detention.

(d) Criminal law administration

(i) Parole

There is no parole legislation in force in Norfolk Island and there is no power under existing legislation for a Norfolk Island Court to fix a non-parole period in respect of a sentence of

imprisonment.

(ii) Release on licence

Prisoners removed from Norfolk Island under the Removal of Prisoners (Territories) Act 1923-1973 may be released on licence granted by the Governor-General under s. 8A of that Act. However, it should be noted that the Act requires the Governor-General, in exercising this powers to act on the advice of the Minister of State for external Territories. Presumably, following the closure of the Department for External Territories, the Minister administering the Island should issue the advice. The Act should be amended to remove any doubt.

(iii) Revision of the criminal law

On 5 June 1975, the Attorney-General tabled in Parliament the Report of the Working Party on Territorial Criminal Law. This Report contains draft proposals for the revision of the substantive criminal law of the Australian capital Territory. The principles enunciated in the Report could, however, also form the basis for reform of the laws of other Territories.

The substantive criminal law applicable in Norfolk Island, like that of the Australian Capital Territory, comprises the laws of New South Wales which were in force some sixty years ago, together with the amendments subsequently made by ordinance. It would appear, therefore, that there is a need for reform of the Island law to much the same extent as there is in the Australian Capital Territory. Rape, for instance, is still a capital offence in Norfolk Island, and fines for traffic offences, having remained unchanged for decades, are now ludicrously small.

(e) Police Force

The present Norfolk Island Police Force consists of three full-time officers - a sergeant and two constables - seconded from mainland Commonwealth Police Forces. In addition, Special constables are appointed from local people as the need arises. The police Station is located at Burnt Pine in temporary quarters. It is planned to build a permanent station in the same area.

Over the years there has evolved a situation in the Island in which the police fulfill a variety of roles in addition to their police work. These include Gaoler, Inspector of Brands and Marks, Stock Inspector, Pound Keeper, Slaughtering Inspector, Registrar of Bulls, Bailiff, Sheriff, Truant and School Reporting Officer, Inspector of Weights and Registrar of Dogs. All of these duties are time consuming, none is related to law enforcement, and some erode police-public relations.

In addition to the above extracurricular tasks, the Police Force has in the past been caught up with rendering assistance in court proceedings in a variety of roles often to the point of the ridiculous. On occasions, the Police Sergeant has had to act as Prosecutor, Court officer opening and closing the Court, finder and caller of witnesses, conveyor of exhibits, and, generally, perform as a Court factotum. In addition, he has had to give evidence, including evidence in contested cases, in which he was also Prosecutor. Such a state of affairs is highly unsatisfactory.

The substantial deficiencies in correctional facilities seriously hamper community policing. There is really no satisfactory institution in the Island for the detention of prisoners for significant periods. Such sentences must be served in New South Wales prisons and this gives the impression that the

offenders are, in fact, 'deported'. Not unnaturally, this gives rise to genuine concern in the Island amongst persons affected.

Two factors seriously affect police work in Norfolk Island, viz, first the close—knit nature of the essentially small and interrelated community in which a marked reluctance exists toward accepting the attitudes toward crime and punishment of a larger and more diverse society; second, the lack of training facilities for the special constables assisting the permanent force. Both factors mitigate against efficient police work in respect of petty thieving, drug abuse (including the use of alcohol), willful damage to property and traffic offences. It is true to say, however, that there is a marked absence of serious crime in the Island.

(f) Copyright and patents

The Patents Act 1952—1969, the Patents Trade Marks, Designs and Copyright Act 1939-1953 and the Copyright Act 1968 all extend to Norfolk Island. Their application to the Island is necessary to enable Australia to fulfill its international obligations under the various Conventions relating to their subject-matters.

Rights granted in Australia under these Acts extend to Norfolk Island. Since no formal steps are necessary to obtain protection of copyright under the Copyright Act, there is no need for any consideration of separate administrative machinery in Norfolk Island in that respect. No problems arising under legislation covering these forms of property (i.e. copyrights, trade marks, designs and patents) in relation to Norfolk Island were brought to the attention of the Commission.

(g) Commercial law

No decision has yet been reached on the question of applying the proposed National Companies legislation to Norfolk Island. The Corporations and Securities Bill, which is, in a sense, comparable legislation, is not presently drafted so as to apply to Norfolk Island.

(h) Family law

The Family Law Act 1975 extends to Norfolk Island (s. 7). The jurisdiction of the Supreme Court of the Island in matrimonial cases has been superseded by the Family Court of Australia as a result of a Proclamation by the Governor—General made under s.40 of the Act on 27 May 1976. The Proclamation was published in the Australian Government Gazette of the same date and became operative as from 1 June 1976. It follows that action must now be taken by the Commonwealth Government to make provision for the hearing of proceedings brought by residents of Norfolk Island under the Act. The following three courses appear to be open to the Government:

- (i) Appoint judges of the Supreme Court of Norfolk Island to be judges of the Family Court, assuming that appropriate amendments to the relevant Acts are made;
- (ii) Arrange for Family Court judges to visit the Island as needed;
- (iii) Arrange for the parties to proceedings under the Act to be brought to the mainland at Government expense for their cases to be heard by a mainland Family court.

It is pointed out that at the present time regulations are being prepared to enable undefended

applications for dissolution of marriage where no children under the age of eighteen years are involved to be heard and determined in the absence of the parties and their legal representatives. It is also to be noted that the Court of Petty Sessions of Norfolk Island is invested with federal jurisdiction to hear and determine matrimonial causes not being proceedings for principal relief (s.39 (6)).

(i) The Law Reform Commission

The Law Reform Commission Act 1973 extends to Norfolk Island and hence it would be in order for the Law Reform Commission, with its expert staff and facilities, to undertake any review of the basic structure of law in the Island, should such a review be deemed desirable. For the sake of tidiness alone, a review would have advantages.

(j) The Australian Legal Aid Office

The Australian Legal Aid Office was established in July 1973 by administrative act to ensure that legal aid is readily and equally available to all persons in need — particularly disadvantaged persons — throughout Australia. A Bill (The Legal Aid Bill 1975) to establish the Australian Legal Aid Office as a statutory body was passed by the House of Representatives but was not debated by the Senate before the dissolution of Parliament on 11 November 1975. The Attorney-General in the new Parliament announced on 15 January 1976 that he had begun a review of Legal Aid in Australia and had in mind the establishment of Legal Commissions in each State and mainland Territory, such Commissions to operate as independent bodies. In his announcement the Attorney-General made no reference to the provision of legal aid for Norfolk Island or other external Territories, but as the Island is part of Australia such aid should be provided.

(k) The preparation of legislation

The Attorney-General's Department took over the drafting of Regulations and Ordinances, including Norfolk Island Ordinances, from the Office of Parliamentary Counsel in 1973.

This step was designed to provide a means for attracting government lawyers to the work of legislative drafting. The move has been successful to a large extent, but, at the same time, the work of drafting Acts, Regulations and Ordinances has increased very substantially and the Legislative Drafting Division has found it very difficult to keep pace with all the requests made to it, including those relating to drafts for Norfolk Island Ordinances. Steps are being taken to improve this performance.

(l) The Weir Report

In 1974, Mr Harold G. Weir, Assistant Director (Training and Information) of the Australian Institute of Criminology, was asked by the then Minister for the Capital Territory to report on the possibility of developing a locally based correctional service in Norfolk Island. His Report was delivered on 5 December 1974 and contained many helpful recommendations. It is not proposed to examine the Report in detail, as it is already receiving attention by the Norfolk Island Council and the administering department. Certain aspects of the subject-matter of the Report, however, were referred to in evidence and it seems proper to comment on them.

First, there is a clear need for some form of punishment cum deprivation-of-liberty system of an appropriate standard to be established in the Island to overcome the 'deportation' problem at present existing. Such a system should be fused with a community-based correctional service. One could spend a deal of time debating the types and merits of community-based correctional services, but it does appear that such a concept is desirable having regard to the unique circumstances existing in the Island. The Commission has been most impressed with the implementation of these forms of punishment services as established in New Zealand and scope exists for a suitably modified and inexpensive version to be introduced in the Island.

Second, there is the question of cost and the aspect of priorities. The cost involved in establishing a suitable prison with its necessary facilities, equipment and staff in Norfolk Island for long-term offenders is not justified while the New South Wales facilities are available. Similarly, to establish the full structure envisaged by the Weir Report would appear, at this stage of the Island's development, to be an equally unjustifiable expense. One can readily think of more urgently needed facilities for the Island to which the Island's admittedly limited funds could be directed to greater advantage; e.g. an efficient garbage disposal plant, improved wharfage facilities, better roading, fencing and sewerage, or more intensive youth development work.

(m) Some Australian costs associated with law enforcement in Norfolk Island

For illustrative purposes, the costs for 1974-75 were:

Provision of Judges	\$7,500
Assistance from Deputy Crown Solicitor's Office	\$1,600
Provision of Magistrates	\$1,700
Legislative drafting	\$17,250
Advisings	\$1,700

The Police Force in the Island is responsible to, and funded by, the Norfolk Island Administration. Both costs and responsibility should lie with the Commonwealth Government which bears the same burden in respect of other Commonwealth Territories. There is no Justification for distinguishing Norfolk Island in this regard.

2. Recommendations

There are obvious shortcomings in the area of law enforcement in Norfolk Island, and, putting aside for the moment the question of financing improvements, the following measures are recommended:

1. That non-law-enforcement activities of the Police Force be severed and handed over to Administration personnel.
2. That a permanent police station complex be constructed at Burnt Pine, and include the following:
  - Two lock-up cells with toilet facilities;
  - Office accommodation;
  - Provision for reception and identification of offenders;
  - Space for stores, exhibits, equipment (including breathalyser testing equipment) and

- amenities for staff;
  - Sergeant's residence;
  - Residence for lock—up keeper (i.e. One constable);
  - garage accommodation;
  - Radio communication facilities.
3. That a course be established for training special constables and probation officers in the rudiments of their tasks -
  4. That in relation to punishment, and as an alternative to imprisonment, both the Supreme Court and the Court of Petty Sessions be empowered to impose a sentence on an offender whereby he may be obliged:
    - (a) To pay a fine;
    - (b) To compensate, to whatever extent and in whatever manner the court sees fit, the victim or victims of his unlawful conduct;
    - (c) To suffer deprivation of liberty by performing community service when, and as, directed by a controlling body representative of the community.

The expense of establishing, maintaining and staffing a living-in institution such as those of the kind associated with some periodic detention centres is not justified in Norfolk Island. However, the concepts of deprivation of liberty, compensation to the victim and restitution to the community are well worth applying in the Island and would, it is thought, be sympathetically received by the residents especially as an alternative to 'deportation'.

5. That legislation to enable parole to be granted in the Island be introduced immediately, along with power in the Courts to fix a non-parole period in respect of a sentence of imprisonment.
6. That laws of the Island be updated and consolidated as soon as possible, and be reviewed as part of any review entrusted to the Law Reform Commission of the laws of all Australian Territories.
7. That those recommendations of the Weir Report not covered by this Report be considered in conjunction with the recommendations contained in this Report,
8. That Island magistrates, in addition to Supreme Court judges, be empowered to grant bail.
9. That the jurisdiction of Island magistrates in civil matters be enlarged to the same level as that exercised by magistrates of the Court of Petty Sessions of the Australian Capital Territory.
10. That the law library in the Island be supplemented by the addition of more works of reference.
11. That adequate Court staffing arrangements be provided.
12. That the Removal of Prisoners (Territories) Act 1923-1973 be amended to allow the Minister for Administrative Services instead of the 'Minister of State for External Territories' to advise the Governor-General on the removal of prisoners from Norfolk Island

13. That in order to give effect to the implications of the decision in the Berwick Case that s. 14 of the Norfolk Island Act 1957—1963 be amended to provide for all Commonwealth legislation past or future affecting Australia generally to be henceforth applicable to Norfolk Island unless the contrary is expressly stated.
14. That the Commonwealth be responsible for law enforcement in Norfolk Island.
15. That the commonwealth Government make provision for the hearing of matrimonial causes instituted by residents of the Island under the Family Law Act.
16. That the Commonwealth Government make provision for granting legal aid to residents of Norfolk Island.

Chapter 17  
PRINCIPAL MATTERS (1) AND (2)

1. 'The future status of Norfolk Island and its constitutional relationship to Australia'
2. 'The most appropriate form of administration for Norfolk Island if its constitutional position were changed'

Principal Matters (1) and (2)

The ten guidelines having been considered, the stage has been reached to report and make recommendations on the two principal matters, viz.

1. The future status of Norfolk Island and its constitutional relationship to Australia.
2. The most appropriate form of administration for Norfolk Island if its constitutional position were changed.

1. The first matter

(a) The Berwick Case

As already indicated, prior to the decision in the Berwick Case, a doubt existed regarding the present status of the Island. That doubt in turn raised another doubt as to whether the Commonwealth Parliament had power to alter the status of the Island. It could, of course, (as Newbery's Case determined)<sup>29</sup> have made laws for the government of the Island but governmental powers beyond that point were unclear. The High Court of Australia in the Berwick Case, by holding that the Island is part of the Commonwealth and that the Commonwealth Parliament has plenary legislative power in respect of it, has clarified the hitherto unclear and laid these doubts to rest.

The Court has specifically stated that by virtue of s.122 of the Commonwealth Constitution, the Commonwealth can on the one hand pass laws providing for the direct administration of Norfolk Island by the Commonwealth Government 'without separate territorial administrative institutions or a separate fiscus' and on the other hand can endow the Island 'with separate political, representative and administrative institutions, having control of its own fiscus'. It is, therefore, open to the Commonwealth to lay down any form of government and administration for the Island under Australia that it chooses.

It is equally open to the Commonwealth, if it so chooses, to shed all responsibility for the Island by granting it complete independence.

In reporting and making a recommendation on this crucial question of the future status of Norfolk Island one must be objective and endeavour to be just as fair to Australia as to the Island.

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<sup>29</sup> Newbery v. The Queen (1965) 7 F.L.R. 34.

It will be apparent to any dispassionate reader of the transcript of the evidence given before the Commission that Norfolk Island is, as stated in Chapter 11, an economic liability to Australia and a costly one at that. It is easy to understand why Britain, who took the initiative in the matter, wished to unload it upon Australia and why Australia is justified in now weighing the pros and cons of retaining that burden, especially at a time when every effort is being made by the Australian Government to economise.

To say Britain wished to unload Norfolk Island upon New South Wales and subsequently Australia is no exaggeration as the following extracts from the British Archives evidence.

In the British Parliamentary Accounts and Papers (Nos 1 and 2) Vol. 10 1897 relating to colonies and British possessions, there is contained in No. 5 of those papers an admission by Viscount Hampden as follows:

I requested my Ministers to consider a suggestion which I made to them that Norfolk Island should be transferred to New South Wales...  
(the underlining from the above quotation is the Commission's)

It is thus clear that the initial concept of transferring Norfolk Island to New South Wales was floated by Viscount Rampden and he reported this as Governor Designate of New South Wales in a letter dated 21 August 1895 to the Colonial Office. A Mr John Bramston of the Colonial Office replied on 18 September 1895 to Viscount Hampden as follows:

Her Majesty's government would regard with much satisfaction the taking over of the administration of Norfolk Island by the government of New South Wales...

In papers entitled 'CO 201 Vol. 1 1896, 619' there is an original letter from Viscount Hampden dated 21 March 1896 to Mr Chamberlain in which the following paragraph occurs:

You will be well quit of the trouble (i.e. maintaining Norfolk Island) at the price (£3000) for it is doubtful whether the Island can be made to pay its way.

A further paragraph reads as follows:

The islanders are strongly opposed to transfer to New Zealand. Their wishes apart, I should say that you will do well to let New Zealand have this Island if she wants it and will give better terms (than New South Wales).

Still further in Dispatch 545 referring to a note from a government official in the United Kingdom upon advice that New South Wales was willing to accept transfer of Norfolk Island upon the granting of £1000 by the United Kingdom government toward repairing buildings in the Island, Viscount Hampden said 'If we get off with a grant of £1000 instead of £3000 we shall do well'.

Yet again in Dispatch 548 Viscount Hampden stated 'We had better, if possible, make the Island part of the colony (of New South Wales) so as to get it off our hands'.

In Dispatch 561 of the same reference, it is recorded that New Zealand was asked by the United Kingdom government to give an assurance that if New Zealand took over Norfolk Island, New Zealand would be prepared to accept the financial liability involved. No satisfactory assurance from New Zealand was received in the United Kingdom and it would appear that this lack of an assurance from New Zealand was the reason why the United Kingdom did not proceed with the

New Zealand proposal.

In yet a further private letter from Viscount Hampden to Chamberlain dated 8 August 1896, the following paragraph occurs:

I am well pleased with the result (i.e. the transference of Norfolk Island to New South Wales) and I feel sure that the colonial office will be thankful to be rid of a troublesome and unprofitable business.

The above evidence makes it very obvious that Britain was most eager to unload Norfolk Island upon either New South Wales or New Zealand in order to rid itself of both a social and an economic burden. Law and order had broken down in Norfolk Island and it was around that time that a murder and an alleged murder had taken place. Magisterial supervision in the Island had proved a failure and Britain was being asked to provide further money in order to try and correct the situation. Britain did not want this financial burden to continue and was prepared to make a relatively small contribution toward the cost of restoring buildings in the Island if some other body, ie. either New South Wales or New Zealand, would take the Island over. Britain finally succeeded in inducing New South Wales to take on the burden.

At the hearings of the Commission a determined effort was made to ascertain the wishes of the residents of the Island in relation to its future. Save that they agreed that there should be at least some sort of domestic autonomy they were hopelessly divided.

There is no doubt that the great majority of Pitcairn descendants do not want the status of the Island as a Territory of Australia to be changed. Likewise, there is no doubt that the majority of the settlers of recent years wish the Island to be independent of Australia, some of them completely so and others near enough to completely so that the difference is immaterial. There is also the related question of whether it is in Australia's own interests to continue to support the Island.

In considering what the future status of Norfolk Island should be, it appears to the Commission that three possibilities should be examined by Australia in making a choice at this stage.

First, to maintain the present situation, viz, to continue to govern the Island as it does at the moment through an Administrator aided by an advisory Council.

Second, to grant independence to the Island and abandon it completely as Britain did.

Third, to take an intermediate position by granting a measure of self-government to the Island and continuing to sustain it in all other respects for at least another five years and then review the situation.

Each option has its merits and demerits. The first, viz. or Australia to continue to govern the Island, would disappoint some people in the Island, but it would gratify others who seriously doubt whether the Island could effectively conduct even a limited amount of executive self-government. If the Island failed in self-government, existing problems would probably worsen, hence the continuation of the existing form of government from Australia has certain merit. Against that view, however, is the thought that unless the residents of the Island are encouraged to make a start in managing their own affairs, they will never learn to do so and gain experience.

The second option, viz, complete independence being granted the Island, offers considerable

attractions to Australia. Australia would instantly rid itself of a prospective annual deficit in respect of the Island of at least \$3 million plus the Prospect of having to find capital expenditure of a further \$4.5 million or more in the near future, in addition to the overall responsibility for governing the Island. If complete independence were granted Norfolk Island, it would please a section of the island's population but it would also certainly plunge the Island into a major economic depression. Those who remained in the island to attempt to govern and finance what would be the latest and possibly the smallest independent nation in the world would face a Herculean task. A very heavy responsibility to revive the Island's economy would fall upon the shoulders of those residents who have persistently clamoured for independence. The Commission doubts the ability of those people to succeed in such a venture and, if they did succeed, the Commission feels it would be at the cost of destroying Norfolk Island as it is at present and has come to be appreciated.

The third course open to Australia is to grant the Island a measure of local self-government and test the residents' capacity in such an endeavour over a trial period of at least five years before reviewing the situation. Such a course would involve Australia in considerable costs and deepen still further her commitment to the Island but it would at the same time give the Island a chance to acquire knowledge and experience in self-government and it would shore up the economy of the Island for a period which may prove to be a transition to ultimate independence. Any choice, however, which compels Australia to incur the very high costs in retaining responsibility for Norfolk Island, as would be the case in courses one and three above, must be justified. Those costs can never in the foreseeable future be justified on economic grounds. If Australia is to continue to regard Norfolk Island as worth maintaining as a part of Australia, then non economic countervailing benefits must be perceptible to those who will have to make the choice on behalf of Australia. The only countervailing benefits which are apparent to this Commission are as follows:

- (i) Recognition of the 1856 humanitarian intention of Britain to provide a homeland for the Pitcairners and their descendants.
  - (ii) The desirability of maintaining historical links including the preservation for posterity of the island's unique beauty and its relics, buildings and sites.
  - (iii) Collection of weather data of vital importance to Australian and New Zealand commerce and defence.
  - (iv) Provision of an emergency landing ground for Australian and other international aircraft in difficulties on pacific routes, e.g. Sydney to Nadi (Fiji).
  - (v) Ownership of a foothold in the centre of a large expanse of ocean which one day may yield materials or advantages to the commonwealth as a whole.
  - (vi) An insurance against any other power attempting to exercise dominion over the island.
  - (vii) A potential link in any future defence chain.
- (b) The issue of independence

The Pitcairn descendants, in the main, recognise what Australia has done for Norfolk Island since it became a Territory of Australia in 1914. The older Pitcairn descendants, particularly, are still a somewhat shy and reserved people and, with few exceptions, are not commercially minded. All Pitcairn descendants in the Island view it as both their home and their homeland and as a place in which they have been able to pursue a particular life style. Although admitting that life style has been damaged in recent times, particularly over the last ten to fifteen years, they, nonetheless, wish to be put in a position where they can pick up the threads as best they can and resume that way of

living.

In contrast, most of the recent arrivals to the Island have a different approach. They have not only benefited from the absence of revenue imposts but most of them have prospered from the commercial ventures in which they have become involved. The Pitcairn descendants made it clear to the Commission that the influx of the commercially minded, while adding to the amenities of the Island, had made serious inroads into their way of life and had introduced a kind of divisiveness that had never been experienced previously. They feel that they are now the economically less fortunate members of the Island community and fear that if independence were granted the Island they would soon be politically powerless as well. Their fears were clearly expressed by one of their senior members, Mr R.H.H. Nobbs, as follows:

I would not like to see the Island depart from its present position as a Territory of the Commonwealth. My reasons for not wanting independence are:

1. It would virtually be the end of the descendants of the Pitcairn community.
2. The Island would be taken over and exploited by large financial interests.

The evidence in relation to the historic rights of the Pitcairn descendants reveals the difference in approach of the two groups.

Witnesses of Pitcairn descent made reference to their so—called rights for the purpose of preserving the ecological balance of the Island and their life style. Witnesses who were more recent settlers attempted to capitalise on those rights to achieve their aim, viz, independence for the Island with freedom to exploit and dominate it. This was apparent, of course, to some of the Pitcairn descendants themselves, one of whom, Miss Rosemary Quintal, said:

(There is) concern by Pitcairners for perpetuation of their unique way of life — which is not catching in so far as mainlanders are concerned.

After mature consideration of the issue, which is so vital to the future of the Island and having particular regard to the non-economic countervailing points mentioned earlier, the Commission is against granting independence for the time being and is in favour of retention of the status quo. The approach of the majority of the Pitcairn descendants, viz that Norfolk Island remain a part of the Commonwealth commends itself for the following reasons

- (i) As has been mentioned earlier the Island is not only the home, but is also the homeland of the Pitcairn descendants and their wish as to its future status and constitutional relationship to Australia should be preferred to that of newcomers to the Island
- (ii) The Commission considers that the motives of the Pitcairn descendants have more to commend them than have the motives of those who desire independence. The Pitcairn descendants are moved in this matter by their desire to prevent any further inroads being made into the rural character of their Island and their own simple and unsophisticated way of life; whereas the majority of the new settlers are motivated very largely by a desire to develop and use the Island for material gain. The Pitcairn descendants consider, and the Commission agrees, that if independence were granted Norfolk Island, they would be further subjugated and there would be a real danger of the Island being turned into a tax haven and centre of commercial tourism of the Honolulu style. This is a prospect the Pitcairn descendants dread and the Commission rejects.

- (iii) The size and population of the Island, its lack of resources and its geographical isolation demand the support of a larger and stronger country in the Pacific region.
- (iv) The Island's economy, which is dependent almost solely upon the fragile tourist industry, could not be maintained without the goodwill and financial support of Australia except at the cost mentioned in (ii) above. The majority of the Pitcairn descendants desire and need the support and protection of Australia if they and their Island are not to be subordinated to monied interests.
- (v) An unattached, independent, isolated and defenseless island would be vulnerable should its region ever become of strategic or economic importance.

It is realised that an element in the Island favours putting the question of independence to a referendum but the Commission does not recommend that course. It considers that the last ten to fifteen years have been so upsetting a period for the Island that it is doubtful whether, in the immediate future, the real issues involved in independence could be appreciated fully and calmly assessed. It would be preferable to consider a referendum, if one is to be considered at all, in say five years, after the Island has had a fair opportunity to test itself out under the revised arrangements recommended in this Report if they are implemented. Furthermore, it is the Commission's view that the majority in the Island wants neither independence nor a referendum on the subject, hence to hold one now would be pandering to the wishes of a minority.

It was very noticeable that those clamouring for independence attempted to cast Australia in the role of an oppressor trying to advance its own interests by imposing unwanted controls upon the islanders. Such unwarranted and emotional assertions brush aside patent truths such as the fact (now well documented) that the Island was never given to the Pitcairners in the first place, that Australia never sought responsibility for Norfolk Island but was induced by Britain to take it of her hands, that the Australian Government has never gained financially from the Island, but, on the contrary, has contributed many millions of dollars over the years toward sustaining the Island. The only people who have ever sought to dominate Norfolk are the commercial and tax-avoiding interests. Similarly, charges against Australia of exploitation of the Island are equally untrue. Australian administration of the Island has indeed been at fault in certain respects, but Australia has done nothing to exploit the Island for its own ends. The evidence establishes the contrary. However, exploitation of the Island by commercial interests and the intrusion by such elements into the former life style of the Island is not only a stark but in many respects an ugly fact.

It was suggested in evidence that the Commission recommend Norfolk Island be granted 'independent government in association' with Australia along the lines of similar forms of government adopted by New Zealand with respect to certain of her former Pacific Island possessions. After examining these forms of government and discussing their operations with New Zealand officials, the Commission concluded that such 'government in association' is not free from problems and is inappropriate in the present context. Further it would be tantamount to granting independence to Norfolk Island but with Australia still being obliged to shoulder the major financial responsibilities of the Island. For the reasons already given the Commission is opposed to independence for the Island at this stage of its history and there is no obligation upon Australia to support financially a territory not its own.

Should, however, the Commission's view that independence not be granted be rejected by the Commonwealth Government, and the decision be made to follow Britain's example and abandon an obvious economic liability, then it would be wise for the Government to plan immediately for a

smooth phasing out of the control of the Island. In that event every assistance and opportunity should be given those residents of the Island who wish to migrate to the Australian mainland to do so. Those who choose to remain in the Island would then, with complete independence given them, be able to gratify in full measure their expressed desire to be quit of the oppression they allege has characterised Australian rule.

The Commission recommends therefore that the Commonwealth Government decide as soon as practicable and announce its decision on whether it proposes to abandon Norfolk Island completely or to, continue to accept responsibility for maintaining it as a viable community. Chapter 11 and this chapter contain the pros and cons of the case for and against abandonment. If the Government chooses to stay in the Island, it should set out clearly the conditions and policies under which it will continue to treat the Island as part of Australia. As the net overall financial burden is clearly being borne by mainland Australia and no one else, it is proper that the Commonwealth Government should have this choice. If Norfolk Island residents were meeting this cost then they would have a case for exercising the choice themselves via a referendum. It would be nonsensical for a minuscule group of 1600 people, who have never contributed anything to Australia by way of taxes and from whom Australia can be expected to receive minimal or no economic benefit, to claim the right to demand that Australia continue to support them on their own terms. It is Australia's choice, not theirs, and it is for Australia to set down the terms under which it may be willing to continue to pay for the sustenance of Norfolk Island. Equally it is unthinkable that a part of the Commonwealth should continue to be used for the purpose of depriving the Commonwealth Government of revenue which it normally would have received, thus imposing additional tax burdens on other Australian citizens. It is time that some of the irrational outlooks (at times outrightly offensive to Australia) of some Island residents were placed in correct perspective; if Australia does choose to abandon Norfolk Island, people with such outlooks will have only themselves to blame for the hardship which will inevitably descend upon those who elect to remain in the Island. To illustrate the kinds of irrational beliefs which were expressed in evidence the Commission now refers to a few of them.

First there was the assertion by some residents that the present revenue of the Island was 'our revenue' as though it were produced exclusively by the efforts of the people in Norfolk Island. This reveals a regrettable inability to understand some basic economic truths. Excluding philatelic activities the main source of revenue gathered in Norfolk Island flows from the tourist industry. That industry could not have developed without the underpinning support of the Commonwealth Government. If the Commonwealth withdrew its financial and physical assistance from the Island, the Island's economy would collapse overnight. No one would want to fly regular scheduled services into an unmanned and unmaintained airport or into an airport not maintained by properly trained operators. The Commonwealth owns, staffs and operates Norfolk's airport, and the Qantas airline which provides the bulk of services to the Island has for years suffered heavy losses in order to maintain those services. It is incorrect to speak of the Island as generating its own revenue. Revenue is certainly raised in the Island but most of it is directly attributable to tourism which the Commonwealth has made possible and to duties and charges which it has imposed and permitted its Administrators to use for the benefit of the Island. One witness, Mr J.B. Huckstep, placed the matter in its correct perspective when he said:

Australia has been like a mother country to this Island and no sufficient reason has been advanced to break away from it.

It was also contended that Norfolk Island 'pays for what it gets' from Australia. Again one can

perceive a lamentable lack of understanding of the Island's true economic position. Philatelic activities apart, not only is the tourist industry (heavily underpinned through subsidy of the airport and airline by Australian capital) the only significant earner of currency for Norfolk Island to buy its needs, but even that is insufficient and has to be supplemented by Australian grants and cash flows in the form of pensions, salaries and sustenance of works programs such as the restoration of historic buildings and sites. Were it not for tourist spending, Norfolk Island's 'balance of payments' would be very adverse and unbalanced. Nor does the present situation indicate any sign of improvement in the foreseeable future.

Some witnesses asserted that Australia benefits from sales tax upon goods made in Australia and sold in Norfolk Island, thus implying that Australia was profiting from its connection with the Island. The fact is that Australian goods sold in the Island are exempt from sales tax and their prices in the Island are lower in consequence. Assertions such as these, which could easily have been checked, cause doubt to be thrown on the credibility and motives of those who make them. It deserves repeating that Australia never sought the responsibility of Norfolk Island and has derived no net financial benefits from the Island. The main advantage Australia has received from Norfolk Island has been weather information. On the other side of the coin, however, is the capital expenditure made by Australia and the losses it has incurred on the Island's development which now amount to many millions of dollars.

While on the subject of sales tax, the Commission feels that in the interests of preserving the low cost levels in the Island the present exemption of Norfolk Island from sales tax should continue.

Having rejected the option of granting independence the Commission points out that the remaining two options are both based on the Island remaining part of the Commonwealth. As already stated a majority in the Island appears to be in favour of some sort of domestic autonomy; the Commission is sympathetic to this view and for this reason feels that some change should be made in the present form of government of the Island. The nature of the changes will be discussed when dealing with the second principal matter

(c) Recommendation

To conclude this section on the first principal matter the Commission's recommendation is:

2. The second matter

We turn now to the second principal matter in the Commission's Terms of Reference, viz. 'The most appropriate form of administration for Norfolk Island if its constitutional position were changed'.

(d) The need for recommendations concerning the future administration

It should first be pointed out that although the constitutional position of Norfolk Island in relation to Australia has not in fact changed since it became a Territory of Australia in 1914 and that for at least five years the status of Norfolk Island and its constitutional relationship to Australia remain that of a Territory of the Commonwealth of Australia that no immediate change is being recommended in this Report, it is correct to say, following the decision in the Berwick Case, that in the minds of many people the constitutional position of the Island has changed. All people with

views on the status of Norfolk Island must now adapt their approach to related matters to accord with the decision of the High Court. It is appropriate, therefore, that at the time of this final resolution of the legal question the future administration of the Island be considered and recommendations be made, for to do so is of vital importance to the Island and its people.

(e) The present attitudes in the Island and their relationship to the Commission's approach

In addressing itself to this question of the most desirable form for the future administration of the Island the Commission faced yet again an area of very conflicting interests and wishes. Although it set out to find the wishes of the people and to arrive at a consensus, this proved just as impossible as in other areas it was directed to examine. The wishes of the people, viewed as a whole, ranged from maintenance of the status quo through varying degrees of association with Australia to complete independence. There were two main groups of witnesses; the first of these consisted principally of Pitcairn descendants and their spouses and settlers who had been in the Island for many years, while the second group embraced chiefly the commercial interests along with a small number of Pitcairn descendants, some of whom had been moved to join those interests by fears of taxation and disadvantageous controls over land. Between these two main groups and other smaller groupings a very wide spectrum of views was presented in evidence; a few Pitcairn descendants even resented the holding of positions by some of their own people in the Island Administration on the ground that those people thought they were 'a bit superior to their brothers and sisters'.

In this predicament of being unable to isolate a reasonable consensus of Island opinion, let alone a clear and unanimous expression of the Island's wishes, the Commission chose to adopt an objective approach to the subject. This necessarily involved appraising both needs and capabilities in the Island itself and taking into consideration the paramount fact that the Island is a part of the Commonwealth of Australia. What is applicable to the rest of Australia should be, at least, *prima facie*, applicable also to Norfolk Island. Therefore, if in devising any form of administration for the Island a departure from commonly accepted forms of administration in comparable situations elsewhere in Australia is to be made, then reasonable justification for that departure should exist.

(f) The main items requiring attention

With that approach as a basis, it is possible to delineate a number of items in respect of which, although no consensus exists, quite clearly a great deal of discussion and thought has occurred in the Island itself. These items may be listed as follows:

- (i) The degree of self-government if any form of it should be granted 'to the Island.
- (ii) The term of office of any local governing body, the number of its members and their voting powers.
- (iii) The executive powers to be allotted such body and those to be retained by the Commonwealth.
- (iv) Whether the Administrator should sit on that local body and whether he should exercise a power of veto over its decisions.

- (v) The sources of finance to enable the local body to perform its executive functions.
  - (vi) Eligibility for
    - a. Voting for the local body
    - b. Candidature for membership of it.
  - (vii) Whether the Island should be split into wards or be simply one area for local government electoral purposes.
  - (viii) The period in respect of which local executive government should be given a fair trial before its success is reviewed and any change contemplated.
  - (ix) Whether any proportion of seats on the local governing body should be reserved for Pitcairn descendants.
  - (x) The allocation of staff to carry out local government functions and Commonwealth functions respectively.
  - (xi) Parliamentary representation and the people's rights of redress against the local body's decisions.
  - (xii) The need for consultation with the local body in respect of representation at meetings of the South Pacific Commission and similar bodies.
  - (xiii) The pressing need to expedite legislation relating to new ordinances and amendments to existing ones.
- (g) Two aspects providing necessary background

Before examining these key items, it is desirable to introduce for consideration some prefatory material which is of close relevance to decisions which must be made in respect of them.

(i) Past administration by Australia

The first prefatory point concerns past administration of the Island by Australia. Two basic and damaging defects in this administration became obvious during the hearing, viz.

- The lamentable lack of efficient communication between Canberra and the Island's representatives. There have been many occasions when the Island was either not consulted or inadequately consulted regarding legislation and other matters affecting the Island, e.g. presentation of the Island's views at meetings of the South Pacific Commission.
- The complete absence of any written, agreed, long-term policies for the Island, to which successive Governments and Administrations alike could have adhered and progressed over the years. Norfolk Island has been allowed to stumble along since 1914 without any clear idea of government intentions

in vital areas. Year by year ad hoc decisions have resulted in forces other than government gradually usurping the influence and lead which Australia itself 'should have provided. One example will suffice, to wit the absence of a far-sighted immigration policy for the Island which has resulted in the descendants of the original inhabitants becoming a minority in their own land. Of 859 people shown on the most recent electoral roll, only 323 are of Pitcairn descent and only 130 are married to those descendants. The original concept of preserving Norfolk Island for the Pitcairners and their descendants has been allowed to lapse. This, and Australia's failure for so long to terminate the use of the Island as a tax haven, caused the Island to lose much of its character of a homeland for a displaced people and to become instead a highly organised tax haven and a centre for commercial enterprises.

(ii) The present form of administration in the Island

The second prefatory point requiring brief mention is an outline of the present form of administration of the Island so that the reader may be able to understand fully the changes which will be recommended in relation to it.

In any discussion of the administration of the Island by Australia and those who are being administered it needs to be said first that the people of the Island have no representation in either House of the Parliament of the Commonwealth.

On the authority of an Administrative Arrangements Order dated 22 December 1975, Ministerial responsibility for Norfolk Island is exercised by the Minister for Administrative Services. The Department of Administrative Services administers the Territory under the Norfolk Island Act 1957-1973 and an Administrator resident in the Island is responsible for the day to day administration on behalf of the Commonwealth Government. Prior to the above Administrative Arrangements Order, the Island had been administered from 20 December 1972 by the Department of the Capital Territory which had taken over the task from the Department for External Territories on the abolition of that Department.

The Minister has responsibility for the peace, order and good government of Norfolk Island. The Arrangements Order places responsibility on the Departments of Health and Education for services provided by those Departments. At least in theory, other Australian Government Departments can pursue independent approaches to the Administrator.

Under the Act, the Administrator is required to exercise all powers and perform all functions that belong to his office in accordance with the tenor of his commission and in accordance with such instructions as are given him by the Minister.

Beneath the Administrator there is a Norfolk Island Administration, officers of which, other than certain seconded staff, are members of the Norfolk Island Public Service. The Official Secretary of that Service has been, as a matter of practice, the Deputy Administrator. The work of the Administration is financed by revenue raised in the Island and by Commonwealth grants.

The Norfolk Island Council Ordinance provides for a Norfolk Island Council but gives it no executive power it acts only in an advisory capacity. It advises the Administrator on all matters

affecting policy for the Island and all administrative arrangements and actions, and may analyse and criticise. If the Administrator does not accept Council's advice, he is bound to place the Council's view before the Minister, along with his own reasons for rejecting the Council's advice. The Council meets at least once a month and consists of eight elected members and the Administrator who is made its Chairman by the Ordinance. The Council elects one of its Councillors to be President of Committees. Voting for the Council is by secret ballot and compulsory.

In the Department of Administrative Services, a section known as the 'Smaller Territories Branch' provide liaison between the Island and the Minister, formulates proposals, co-ordinates the implementation of policy decisions, reviews legislative proposals and prepares instructions to the Legislative Drafting Division of the Attorney-General's Department.

Over and above its annual grant towards the cost of the administration of the Island, the Commonwealth Government provides money for restoration of historic buildings and the operations of the airport and the meteorological station. Statements for Revenue and Expenditure for the year ended 30 June 1975 have been set out in Chapter 11 of this Report which deals with the economy of the Island.

It will be recalled from Chapter 5 of this Report that the Island people were offered in 1960 a large area of executive powers over what can be described as local government operations. Most municipal governments in Australia possess similar powers. The Norfolk Island Council declined to accept the offer because the relevant ordinance gave to the Administrator a power of veto and because the Council had been told that it would have to raise its own finance from new sources of revenue.

In summary, there is at present a situation where the residents have no vote in the Commonwealth Parliament and have only advisory cum consultative rights in respect of their own local government; revenue raised in the Island provides a significant sum toward the current expenditure by the Administration in the Island but it does not cover the total cost.

(h) Discussion of items meriting recommendations

The main items agitating the residents in relation to local Government have now been identified and attention has been drawn to areas essential for a thorough understanding of the matters under consideration. It is, therefore, now appropriate to consider those items which seem to merit recommendations.

(i) Parliamentary representation

It is wholly anomalous that any Australian citizen should not possess a vote in respect of his national parliament and this should be rectified as soon as practicable. It has been recommended in Chapter 12 of this Report that Norfolk Island be made part of the Federal electorate of Canberra and thus be entitled to vote in elections for both the Senate and the House of Representatives. Persons in Norfolk Island eligible to vote for the Commonwealth Parliament would then have the same representation as similar voters in the electorate of Canberra.

(ii) The form of local government desirable

Since Norfolk Island is a part of the commonwealth, it should be treated, with respect to executive powers, at least in a manner similar to that of other comparable areas of Australia. Bearing in mind its history, its distance from the mainland and above all the desire of its people to have domestic autonomy, it appears to the Commission that the most appropriate form of local government for it is one which will enable a body of its own choice to exercise most of the executive powers of the kind which are at present being exercised by the Administrator.

It should be stressed in considering this subject that one is contemplating the grant of executive power to a group which has never exercised authority and borne the responsibility of any form of self-government, a somewhat complex task which even experienced groups find difficult and beset with problems. Members of the Norfolk Island Council have not been trained to meet the demands of progressive self-government, having in the past acted only in an advisory capacity. It is wise in these circumstances that the people assuming power for the first time learn to walk before they attempt to run, and that the pace of change match the Island's ability to handle it. If, after a suitable period of successful performance in the exercise of the powers conferred upon it, the situation in the Island appears to warrant an extension of those powers, there is no reason why an extension of those powers should not be considered.

(iii) The two earlier objections to the assumption of executive powers by the Island, and the name of the local body

The Commission is conscious of the Norfolk Island Council's two main objections to the 1960 proposals, viz, the power of veto in the Administrator and the fear of having to raise its own finance from new sources of revenue. The Commission considers that the former can be removed and the latter overcome with beneficial results to the Island. It further considers that, in keeping with the now established Territorial status of Norfolk Island, the local government body should be an incorporated entity to be known as the Norfolk Island Territory Assembly. Its Chief Executive Officer should be its Secretary, who should be appointed by the Assembly from outside its members.

(iv) Voting for the local Assembly

Until a recent amendment (No. 6 of 1976) to the Norfolk Island Council Ordinance 1960-1972, itinerant workers in the Island and other persons who had been ordinarily resident in the Island for the previous twelve months could exercise a vote in elections for the Island's Council. The Commission agrees with the policy behind the amendment which restricts eligibility to vote largely to bonafide long-term residents or those intending to be such; e.g. holders of certificates of residency or enter and remain permits. Itinerants are excluded.

(v) The possibility of electoral wards in the Island

The size of the Island and the uneven distribution of potential candidates make a division of the Island into wards for electoral purposes undesirable. Its population locations are easy of access and good communication facilities are available.

(vi) Number of members for the Assembly and voting rights

The number of members should be nine and naturally, in an exercise of self-government such as this, no representative of the Australian Government should be a member of the Assembly let alone chair its meetings. Each member should exercise a deliberative vote with an additional casting vote being available to the President of the Assembly, or the person acting in his stead. The quorum should be five in number.

(vii) Term of office of Assembly members and their remuneration

To provide reasonable continuity in office and thus give time for Assembly members to carry out programs which may extend over many months, the Commission feels that the term of office of a member of the Assembly should be for a period of three years. Members of the Assembly should be adequately remunerated for their work.

(viii) The concept of the reservation of seats for special groups

Many witnesses suggested in evidence that a proportion of seats on the local body should be reserved for Pitcairn descendants. Other witnesses, including Pitcairn descendants, rejected the notion. The Commission, not only because of the Racial Discrimination Act 1975, but also because of the undesirability of worsening factionalism in the Island, also rejects it. At the risk of being repetitious, the Commission states again that the people of Norfolk Island should seek to develop an identity as 'Norfolkians' and work together for the good of the Island. Cliques of any kind within the Assembly could prove disastrous. If the recommendations contained in this Report are adopted, it is believed that the fears which gave rise to the notion will disappear.

(ix) The powers which are not allotted to the Assembly

If the recommended allotment of executive powers is granted to the Assembly, there will, of course, remain with the Commonwealth a residue of powers unallotted. The Commission recommends that the Assembly have, in respect of those residuary powers, an advisory role of the kind the Norfolk Island Council now exercises.

(x) Representation of the island at gatherings of special importance to it

Should become the right of the Assembly to consider submissions to meetings of the South Pacific Commission and similar bodies and to have its point of view included in any representations made to such bodies by Australia.

(xi) The delays experienced in introducing our new amending legislation

Delays of two years and upwards have occurred before a recommendation by the Norfolk Island Council for a new ordinance or an amendment to an existing one has been implemented. Such delays have occurred even when the recommendations had the endorsement of the Administrator and the approval of the Minister. There appear to be two main reasons for the delay. First, there is a long-standing shortage of trained legislative draftsmen to cope with the enormous volume of work the Legislative Drafting Division of the Attorney-General's Department is called upon to perform. Second, there are procedures which must be followed by the administering department. They

include examination of the proposal for new legislation, consultation with other interested departments, preparation of a submission for the legislative draftsman, consultation with the draftsman, examination of the draft ordinance, if necessary, further consultations with the draftsman, examination of the ordinance in its final form, submission of same to the Norfolk Island Council pursuant to s.8 of the Norfolk Island Act and presentation of the ordinance to the Executive Council.

The problem will be alleviated to a considerable extent if recommendations in this Report are adopted, as most local matters will fall under the control of the Assembly and hence be administered through by-laws prepared and issued by the Assembly which will not require to pass through Canberra processes.

To assist however with respect to those matters which the Commonwealth will still control, the Commission feels it would be an improvement if one particular person in the office of the Legislative Drafting Division were appointed and instructed to make Norfolk Island legislation his number one priority.

(xii) Desirability of maintaining the advisory role of local government

In advocating the allocation to a Territory Assembly of a bloc of executive powers the Commission, as already stated, does not envisage the complete cessation of an advisory role of the kind now exercised by the Norfolk Island Council; on the contrary, the Commission considers that it is of the highest importance that the Assembly continue to bend its collective mind to the entire administration of the Island, particularly with the view to possible expansion of its own executive powers in the years ahead and to providing a constant liaison between the Administrator representing the Commonwealth Government and the Assembly. It is essential that the two governing bodies achieve, as far as possible, an informed and harmonious rapport with each other, realising their mutual interdependence, in so far as total government of the Island is concerned. In this type of administrative arrangement it is vital that the Assembly render intelligent, balanced advice to the Administrator whenever it sees fit. Conversely, the functions of the Administrator must include keeping the Assembly informed and being at all times willing to consider, on their merits, views expressed by it. Both parties need to display understanding and tolerance in carrying out their complementary roles.

(xiii) The Administrator's present dual role

One of the more prominent dissatisfactions upon the Island is caused by the present dual functions of the Administrator; he is the Minister's representative and at the same time Chairman of the Advisory Council. This dichotomy puts the Administrator in an unenviable position and is a potential source of difficulty and conflict. It should be eliminated; the Administrator should not be a Member of the Assembly which should elect its own President/Chairman.

(xiv) The power of veto by the Administrator

The Commission has given considerable thought to the concept of a veto being exercised by the Administrator over the Assembly's decisions. Such a power was part of the rejected 1960 proposals. Variants of it (along with associated appeal systems from the veto) were put forward in

evidence. It appears to the Commission that if the Island is to be encouraged along the path of self-government the first steps in this direction should be calculated to develop both a sense of complete responsibility and a sense of certainty in decision taking by the Assembly. Neither of these can mature when the decisions of the Assembly can be thwarted by the veto of an Administrator. Admittedly, if decisions by the Assembly prove unwise then some means of redress must exist. It is felt that sufficient and adequate powers of redress will exist through the power of the people to express disapproval at the next election if they consider a decision of the Assembly is a bad one, or through the overall power of the Commonwealth Government to deal with such a decision if, in its view, it is against the interests of the Island or the Commonwealth. The Commission, however, does not believe that there will be many decisions requiring censure of the Assembly. It considers that it is of the utmost importance that the Assembly develop confidence and self-respect in its formative years and that fettering it with a veto, exercisable by an Administrator, would certainly not assist it to acquire these qualities.

(xv) Finance for the Assembly to exercise its powers

We turn now to the aspect of finance for the Assembly to deploy its executive powers and conduct its business. The question of finance, it will be recalled, was the other of the obstacles to acceptance of the 1960 proposals, for the then Advisory Council felt that it would be constrained to finance its new responsibilities by drawing on fresh sources of revenue of which there were few.

1. The main method

It is an accepted maxim in public finance that responsibility for raising revenue should accompany the right to expend it. The latter, if unaccompanied by the former, tends to irresponsibility, if not outright profligacy. In the case of most local governments most of the necessary finance is raised by levying rates on properties within the municipality. The Commission does not think such a course would be appropriate for Norfolk Island. The quantity of private property in the Island and its income-producing value are inadequate for the purpose of raising by rates sufficient finance for the Assembly to perform its functions. Put simply, there is not sufficient privately owned land in the Island to yield from a reasonable level of rates anything approaching the volume of revenue required to meet the cost of local government.

Nor in the peculiar case of Norfolk Island is there a real need to invoke such a system. The principal source by far of the Island's wealth is tourism, not property nor activities based on property. For years now the tourist-based economy of the Island has been able to sustain a flow of revenue sufficient to defray most of the current expenses incurred in conducting the affairs of the Island. If the recommendations of this Commission are adopted and the Island is brought into line with mainland Territories in such fields as social security, education, health (including responsibility for the hospital and the care of geriatrics) and law enforcement, very significant financial loads will become the responsibility of the Commonwealth. In passing, it is emphasised that while the provision of finance for education in the Island should be a Commonwealth matter, the actual control of education should remain the responsibility of the New South Wales Education Department and the Island.

The Commission envisages the transfer to the Assembly of most of the present sources of revenue in the Island. It is admittedly a unique method of providing revenue for a local government body, but the Island's unique and individualistic character warrants it. There is no sense in disturbing a

revenue-raising system that is efficient and effective and a colourful feature of the history of one of Australia's territories by dividing the sources of revenue between the Assembly and the Commonwealth.

Major revenue earners such as customs duties, liquor sales and stamp sales should continue to be the mainstay of the Island's revenue, but, in future, they should be managed and, controlled by the Assembly. In this way the Assembly will be guaranteed certainty of funds in respect of which it can budget and if, in the Assembly's wisdom, customs duties or stamp and liquor sales prices should be varied, this again should be its responsibility. The Commission has adopted this approach not only because of the sound principle that the body which spends money should have the responsibility of raising it, but also because it is what the majority of the people in the Island desire, and because it is essential for the Assembly to gain experience in the control of finance.

By adopting this form of financing the Assembly and by abolishing the veto of the Administrator over the Assembly's rulings, the two objections to the 1960 proposals will be removed and the way cleared to permit the residents to enter upon self-government in local matters.

In addition to the above sources of revenue the Assembly, while it should not be given the power to borrow money, should be given the right to make application to the Commonwealth Grants Commission for financial assistance. Merely making such an application, of course, does not assure the applicant of success, but requests from the Norfolk Island Territory Assembly would, it is assumed, be treated on their merits in the manner as similar applications from other Commonwealth Territories.

Naturally, the Commonwealth Government should arrange to pay for the expenses of its own Administrator and any Commonwealth staff should also sight the annual estimates and the auditing of the Assembly's accounts.

## 2. Matters relating to existing assets of the Commonwealth in the Island

Consequent upon any division of powers between the Assembly and the Commonwealth there will be necessary a division of certain assets in the Island, notably land, buildings, plant and equipment, all of which at this moment belong to the Commonwealth.

The Commission considers that with one exception all plant and equipment in the Island at present owned by the Commonwealth should be given to the Assembly once that body becomes a legal entity capable of accepting title to goods and property. Responsibility for insurance and maintenance will likewise pass across with title.

The exception is that plant and equipment which is necessary for the operation/maintenance in the Island of activities which are to remain under the control of the Commonwealth such as the airport, the meteorological station and Government House.

In so far as buildings and their contents generally are concerned, these should be divided between the Assembly and the Commonwealth by agreement to be reached between the Secretary of the Department of Administrative Services in consultation with the Secretary of the Assembly. Those buildings taken over by the Assembly and the land on which they are placed should be the subject of ninety-nine-year Crown Leases at, a purely nominal rental.

Once so leased the lessee (i.e. the Assembly) should be responsible for all insurance and maintenance of such assets and should also be entitled to receive all revenue from such assets.

All powers over all land in the Island should be retained by the Commonwealth. However, the Assembly in its advisory capacity would have the opportunity to make recommendations in relation to the exercise of those powers.

(i) Recommendations

Having discussed its approach to matters relating to the question of what would be the most appropriate form of administration for Norfolk Island for the future, the Commission makes the following recommendations on this subject:

- 1 That residents of Norfolk Island be included in the electorate of Canberra in the Australian Capital Territory for the purpose of giving them representation in the Commonwealth Parliament.
- 2 That the present Norfolk Island Council be abolished and replaced by an incorporated body to be known as the Norfolk Island Territory Assembly.
  - (a) That the Assembly consist of nine elected members holding office for three years.
  - (b) That a President and Deputy President be elected by the Assembly from among its members.
  - (c) That each Assembly member exercise a deliberative vote and that the President or Deputy President exercise a casting vote when necessary.
  - (d) That a quorum for a meeting of the Assembly be five members.
  - (e) That the Assembly's Chief Executive Officer be its Secretary and head of the Assembly's staff and be appointed by the Assembly from outside its members.
  - (f) That members of the Assembly be paid such remuneration for their services as the Assembly determines.
- 3 That there be no wards for electoral purposes in the Island and that no seats be reserved on the Assembly for any particular group of the Island residents based on blood ties or country of origin or otherwise.
- 4 That voting be compulsory and by secret ballot.
- 5 That legislative and executive powers be the Assembly in respect of the following
  - roads, footpaths and bridges;
  - drainage;
  - sewerage and sanitation;
  - disposal of garbage and trade waste;
  - recreation areas;
  - pasturage on commons;
  - livestock;
  - pounds;
  - pests and noxious weeds;
  - cemeteries;

guest houses;  
 electricity supply;  
 water supply;  
 lighterage;  
 places of public entertainment;  
 promotion of tourism;  
 omnibuses and taxis;  
 sale and distribution of foodstuffs and beverages;  
 repair or demolition of dangerous buildings;  
 new buildings and the alteration of buildings;  
 advertising hoardings;  
 fires and the prevention of fires;  
 road traffic;  
 street lighting;  
 prevention and suppression of nuisances;  
 trading hours;  
 street stalls;  
 raising revenue for the assembly's budget;  
 coastlines, foreshores, wharves and jetties;  
 fishing;  
 slaughtering of stock;  
 domestic animals and birds;  
 storage of petroleum products;  
 firearms;  
 museums, memorials and libraries;  
 motor vehicles and road traffic;  
 forestry and related activities;  
 radio and television;  
 noxious trades;  
 markets and weighbridges  
 carters and hawkers;  
 quarrying;  
 maintenance of rolls;  
 telephone services;  
 postal services;  
 customs services;  
 philatelic activities;  
 immigration, with a right of appeal to the minister by any person  
 aggrieved;  
 registrations (births, deaths, marriages, companies, motor vehicles, dogs,  
 etc.) which are at present handled by the administration;  
 internal audit;  
 the undertaking of business activities and contracts with respect to any of  
 the matters specified above.

- 6 That for the purpose of raising moneys for its budget the Assembly take over those operations at present yielding revenue to the Administration other than those relating to hospital and medical services.

- 7 That the Assembly not be given the power to borrow money but be given the right to apply to the Commonwealth Grants Commission for financial assistance.
- 8 That the Administrator possess no power of veto over the Assembly's legislative and executive responsibilities nor hold any membership or office of the Assembly.
- 9 That the Commonwealth continue to exercise all governmental powers not shown above as being specifically conferred upon the Assembly and, in particular, retain all powers over all land in the Island.
- 10 That the exercise of the legislative and executive powers of the Assembly be allied with power in the Assembly to advise the Administrator on any matter relating to Norfolk Island over which the Commonwealth Government has power.
- 11 That at all times the Assembly and the Administration maintain close liaison and keep each other thoroughly informed of each other's work.
- 12 That the performance of the Assembly be reviewed by the Commonwealth after five years and consideration be then given to the question of increasing the powers of the Assembly.
- 13 That the Commonwealth Government in the light of this Report lay down a clear set of policies to be followed in the administration of Norfolk Island particularly in respect of the following;
  - (a) land development and ownership
  - (b) the airport
  - (c) taxation
  - (d) health services
  - (e) law
  - (f) social security
  - (g) education
  - (h) transport to and from the mainland
  - (i) government buildings and historical sites
  - (j) tourism generally
- 14 That the Commonwealth at its own expense provide and maintain an Administrator and his staff in the Island to represent the Government and conduct the business of the Commonwealth in the Island.
- 15 That the division of the present Administration's existing staff between the Assembly and the Commonwealth be determined by the Secretary of the Department of Administrative Services in consultation with the Secretary of the Assembly.
- 16 That Commonwealth assets in the Island be divided as outlined in this Report.
- 17 That the Commonwealth consult the Assembly on all matters which hold particular relevance to Norfolk Island and where practicable give the Island opportunity of sending representatives to meetings of international bodies whose deliberations may

specifically affect the Island.

- 18 That when the supply of legal draftsmen permits, a particular draftsman in the Legislative Drafting Division of the Attorney-General's Department be appointed and instructed to give priority to the drafting of ordinances relating to the Island.
- 19 That the Commonwealth sight the annual estimates of the Assembly and that external auditing of the Assembly's annual accounts be carried out by the Commonwealth Auditor-General who should deliver copies of his report to the Secretary of the Department of Administrative Services, the President of the Assembly, and the Administrator.
- 20 That Australian manufactures destined for sale in Norfolk Island continue to be exempt from sales tax.

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Appendix I  
LIST OF WITNESSES WHO APPEARED BEFORE THE NORFOLK ISLAND ROYAL  
COMMISSION

- 1 Adams, C.L.
- 2 Adams, D.D.
- 3 Adams, H.E.
- 4 Allen, D.M.
- 5 Anderson, G.E.
- 6 Anderson, J.G.
- 7 Anderson, L.R.
- 8 Ansett Airlines of Australia (J.G. Bibo)
- 9 Australian Conservation Foundation (D.G. Hill)
- 10 Australian Taxation Office (W.J. O'Reilly & P.J. Lanigan)
  
- 11 Bank of New South Wales (A.J. Veney)
- 12 Bataille, R.A.
- 13 Bates, B.G.
- 14 Bathie, A.S.
- 15 Bigg, B.F.
- 16 Bigg, K.C.
- 17 Boniface, I.B.
- 18 Brook, G.E.
- 19 Brown, J.
- 20 Buffett, A.C.
- 21 Buffett, A.F.
- 22 Buffett, A.I.
- 23 Buffett, D.C.D.
- 24 Burns Philp Ltd (H.L. Thomas)
- 25 Butland, G.J.
  
- 26 Christian-Bailey, B.E.
- 27 Christian, B.N,
- 28 Christian, F.
- 29 Commonwealth Trading Bank of Australia (D.M. Mccarthy)
- 30 Custance, P.C.N.
- 31 Cuylenborg, R.V.
- 32 CSIRO (M.L. Benson)
  
- 33 Dalkin, Air Commodore R.N.

- 34 Davidson, J.A.  
35 Department of the Capital Territory (L.W.B. Engledow)  
36 Department of the Capital Territory (B.H. Pratt)  
37 Department of Defence (R.N. Hamilton)  
38 Department of Education (D.W. Hood)  
39 Department of Environment (D.F. McMichael)  
40 Department of Foreign Affairs (K.H. Rodgers)  
41 Department of Health (C.A. Nettle)  
42 Department of Mineral Resources (R.S. Abell)  
43 Department of Services and Property (J.w. Sleep)  
44 Department of Social Security (A.C. Sellwood)  
45 Department of the Special Minister of State (B.E. Hinchcliffe)  
46 Department of Tourism and Recreation (L.G. Stroud)  
47 Department of Transport (A.W. Doublebay)  
48 Department of Transport (M.D. Dunn)  
49 Department of the Treasury (J.B. Stokes)  
50 Dickson, A.  
51 Douran, N.M.
- 52 East-West Airlines Ltd. (J.G. Riley)
- 53 Fokker—VFW International b.v. (R.W. Walesby, R.J. Groos)  
54 Hawker de Havilland (Australia) Pty Ltd Aviation (D. Price)  
55 Hitch, G.  
56 Hoare, M.H.  
57 Hooper, K.P.  
58 Huckstep, J.B.
- 59 Inglis, M.
- 60 Jarvis, ICE.
- 61 Kienhuize-Blok, M.  
62 Lackey, W.J.  
63 Lloyd, T.L.  
64 Lupton. I.  
65 Lusk, D.L.B.
- 66 Magri, P.A.  
67 Martin, M.P.E.  
68 Maskill—Smith, G.

69	Menzies, C.J.
70	Middleton, E.P.
71	Mitchell, N.J.
72	McCowan, I.H.
73	McCoy, A.L.
74	McIntyre, J.D.
75	McIntyre. N.H.
76	Nicholson, R.B.
77	Nicolai, B.W.
78	Nobbs, K.J.
79	Nobbs, R.H.
80	Nobbs, Stephen B.
81	Nobbs, Sylvia E.
82	Nunn, B.K.
83	Norfolk Island Accommodation Proprietors' Association (M. Inglis)
84	Norfolk Island Accommodation proprietors (W.G. hitchins)
85	Norfolk Island Action Group (All Ucklund) (W.G. Hitchins)
86	Norfolk Island Administration (C.I. Buffett)
87	Norfolk Island Administration (D.E. Buffett)
88	Norfolk Island Administration (I.F. Buffett)
89	Norfolk Island Administration (J.F. Campbell)
90	Norfolk Island Administration (G. Hitch)
91	Norfolk Island Administration (D.J. Rodgers)
92	Norfolk Island Administration (B. Silburn)
93	Norfolk Island Airlines Ltd. (W.G. Hitchins)
94	Norfolk Island Chamber of Commerce (G.C. Duvall)
95	Norfolk Island Chamber of Commerce (R.C.H. Irvine)
96	Norfolk Island Chamber of Commerce (R. Newman)
97	Norfolk Island Citizens' Association (W.G. Hitchins)
98	Norfolk Island Council (R.A. Bataille)
99	Norfolk Island Flora & Fauna Society ( J.H. Glover)
100	Norfolk Island Flora & Fauna Society (W.G. Hitchins)
101	Norfolk Island Hospital Board (G.H. Aafjes)
102	Norfolk Island Post office (B.G. McCoy)
103	Norfolk Island Tourist Bureau (P.A. Page)
104	Norfolk Island Wives' & Mothers' Club (J. Christian)
105	Norfolk Island Younger Residents' Movement (A.V.A. Bataille)
106	O'Sullivan, L.P.

107	Page, P.A
108	Park, G.W.E
109	Paterson, J.D.
110	Payne, H.A
111	Pickerd, Air Commodore E.T.
112	Qantas Airways Ltd (L.A. Ollson)
113	Quintal, A.E.
114	Quintal, G.F
115	Quintal, H.J
116	Quintal, K.R.
117	Quintal, R.G.
118	Randall, W.M.
119	Red Cross Blood Transfusion Service (Dr V.A. Lovric)
120	Reeves, R.G.
121	Reilly, W.A.
122	Richards, G.D.
123	Rodgers, D.J.
124	Ryves, J.H.
125	Sanders, W.W.
126	Sanson, A.D.
127	Selby, J.A.
128	Semple, E.R
129	Skinner, R.G.B.
130	Smith, H.B.
131	Smith M.
132	Smith, R.A.
133	South, D.S.
134	South Pacific Hotel/Motel Ltd (T.R.K. Holden)
135	Startin-Field, E.A.
136	Summerscales, H.
137	Taverner, A.D.
138	Taverner, N.A.
139	Travelodge Australia Ltd (L.H.R. Laurent)
140	Turton, K.

141 Wallace, A.G.  
142 Ward, J.W.  
143 Welsh, K.J.  
  
144 Yager, E.M.C.

Appendix II  
ORGANISATIONS AND PERSONS WHO MADE SUBMISSIONS  
BUT DID NOT APPEAR BEFORE THE COMMISSION

- 1 Adams, D.G.
- 2 Adams, T.
- 3 Anderson, P.M.
- 4 Australian Bureau of Statistics
- 5 Australian High Commission, Wellington, New Zealand
  
- 6 Bailey, M.A.
- 7 Bergagnin, G.H.
- 8 Buffett, H.E.
  
- 9 Christian, E.S.
- 10 Christian, G.E.
- 11 Clarkson, E.F.
  
- 12 Department of Agriculture
- 13 Department — Attorney—General's
- 14 Department of Housing and Construction
- 15 Department of Labor and Immigration
- 16 Department of Police and Customs
- 17 Department of Repatriation and Compensation
- 18 Department of Science and Consumer Affairs
  
- 19 Edward, A.D.
- 20 Evans, B.P.
- 21 Evans, O.R.
  
- 22 Forester, N.
  
- 23 Holm, J.F.
  
- 24 Jackson, T.
  
- 25 Lang, F.I.
- 26 Lions Club, Norfolk Island (T.E. Yager)
  
- 27 Mallett, M.

- 28 Methodist Church of Australia
- 29 McCoy, M.J.
- 30 McGuinness, D.
- 31 McLeod, A.
  
- 32 Nobbs, V.L
- 33 Norfolk Island Country Women's Association (M. Underwood)
- 34 Norfolk Island Far West Children's Health Scheme Branch
- 35 Norfolk Island Hospital Auxiliary (Mrs E. Hickey)
- 36 Norman, A.L.
  
- 37 Overseas Telecommunications Commission (Australia)
  
- 38 Phipps, J.N.
- 39 Plant, E.
- 40 Premier's Department of New South Wales
- 41 Pryor, C.G.
  
- 42 Roach, H.E.
- 43 Royal Australian Institute of Architects
  
- 44 Selby-Newbald, W.N.
  
- 45 Venning, D.
  
- 46 Yeaman, C.

Appendix III  
EXHIBITS TENDERED TO ROYAL COMMISSION

Exhibit No.

- 1 Letters Patent and Terms of Reference dated 15 May 1975-photocopy.
- 2 Notice of hearing and publications dated 17 June 1975.
- 3 Australian Waste Lands Act 1855 (Imp.).
- 4 Imperial Order in Council of 24 June 1856, declaring Norfolk Island a separate British Settlement.
- 5 Supplement to New South Wales Government Gazette No. 166, dated 31 October 1856, containing Proclamation by His Excellency Sir William Thomas Denison.
- 6 Supplement to New South Wales Government Gazette No. 160, dated 30 October 1857, containing Laws and Regulations for Norfolk Island.
- 7 British Settlements Act 1887 (Imp.).
- 8 Proclamation by His Excellency the Rt Hon. Henry Robert Viscount Hampden, dated 14 November 1896.
- 9 Imperial Order in Council of 15 January 1897 providing for the Government of Norfolk Island.
- 10 Direction for publication and dispatch dated 27 January 1897 from Joseph Chamberlain.
- 11 Imperial Order in Council of 18 October 1900 providing for administration of the affairs of Norfolk Island.
- 12 Norfolk Island Act 1913 providing for acceptance of Norfolk Island as a Territory under the authority of the Commonwealth.
- 13 Imperial Order in Council of 30 March 1914 placing Norfolk Island under the authority of the Commonwealth of Australia.
- 14 Norfolk Island Act 1935 amending the Norfolk Island Act 1913.
- 15 Norfolk Island Ordinances Act 1957 (No. 28).
- 16 Norfolk Island Act 1957 (No. 29), an Act providing for the government of Norfolk Island.
- 17 Atlee Hunt Report of March 1914.

- 18 Map of Norfolk Island marked by R.H. Nobbs showing his father's 300 acres of land.
- 19 Constitution of the Norfolk Island Citizens' Association.
- 20 Submission with amendments to the Royal Commission by the Norfolk Island Citizens' Association.
- 21 Memorandum to Council from Administrator dated 1 July 1975, ref. Australian Government Acts extending to Norfolk Island.
- 22 Two documents, the Case for Yes Vote and the Case for No Vote relating to Quarantine Station referendum.
- 23 Health and Social Security in Australia booklet (No. 33, August 1974).
- 24 Letter of 25 June 1975 from McIntyres enclosing list of people wishing to give evidence to Royal Commission.
- 25 Submission attached to Exhibit 24.
- 26 Report of Commissioner Alexander Oliver and Supplementary Report of William Houston and John Leo Watkins 1906.
- 27 Schedule of holders of Crown land in Norfolk Island.
- 28 Copies of three old leases.
- 29 Copies of a lease with new covenants.
- 30 Copy of new form of residential lease.
- 31 Copy of new form of rural lease.
- 32 Copy of new form of lease with condition for improvement.
- 33 Copy of new form of lease for special purposes.
- 34 Schedule of Crown land vacant as at 18 July 1975.
- 35 List of absentee landowners as at 14 July 1975.
- 36 List of companies owning/holding land as at 14 July 1975.
- 37 Coldham Report, June 1972.
- 38
- 39 Lists showing Crownland reserves in Norfolk Island.
- 40 Weir Report on a visit to Norfolk Island October - November 1974 (re correctional services).

- 41 Questionnaire and list of responding signatories.
- 42 Sunday Mirror (one page) dated 6 April 1975 re Norfolk Island prisoner.
- 43 Norfolk Island Parents' and Citizens' Association. Statement of receipts and payments re school, period ended 19 March 1975.
- 44 List of visiting firms of accountants and solicitors, dated 15 July 1975.
- 45 A Soil and Land use Study of Norfolk Island by G.C. Stephens and J.T. Hutton, 1954.
- 46 The Conservation of Norfolk Island by J.S. Turner and others, 1968.
- 47 Norfolk Island Planning Report by H.L. Westerman, April 1968.
- 48 Report to Norfolk Island Council August 1973 by Development Planning Steering Committee on Coldham Plan.
- 49 A Long-term Population Study of Norfolk Island by G.J. Butland, March 1974.
- 50 Land Subdivision and Use Report by P. Funda, July 1974.
- 51 Report on Affairs of Norfolk Island by J.R. Carruthers and Charles Oliver 1896.
- 52 Report on Norfolk Island Affairs by Francis Whysall 1926.
- 53 Immigration Restriction Ordinance 1922-1964.
- 54 Immigration (Temporary Provisions) Ordinance 1967 (No. 5).
- 55 Amendment No. 3 of 1968 to Immigration (Temporary Provisions) ordinance 1967.
- 56 Immigration Ordinance 1968 (No. 7).
- 57 Amendment No. 7 of 1969 to Immigration Ordinance 1968.
- 58 Amendment No. 1 of 1974 to Immigration Ordinance 1968-1969.
- 59 Letter of 23 January 1969 from Department of External Territories to Norfolk Island Administrator together with immigration policy.
- 60 Letter dated 14 May 1975 from the Minister for the Capital Territory to E.R. Semple.
- 61 Norfolk Island by Merval Hoare, 1969.
- 62 Norfolk Island Population: Aspects of Demographic Projection (Annexure to K.P. Hooper submission).
- 63 Environmental impact statement: Upgrading of Norfolk Island Airport to jet standard, by Department of the Capital Territory, May 1975.

- 64 Correspondence between W. Sanders and Administrator, Air Commodore E.T. Pickerd, 1973.
- 65 Statement by the Treasurer (Rt Hon. B.M. Snedden), July 1972.
- 66 Letter of 5 August 1975 from Gordon Duvall, Secretary Norfolk Island Chamber of Commerce, to the Royal Commission.
- 67 Copy of submission to the Royal Commission by Norfolk Island Chamber of Commerce.
- 68 Letter from N.J. Nobbs and R. Newman to the Royal Commission dated 5 August 1975.
- 69 Second Reading Speech on Income Tax Assessment Bill (No. 4) 1973 by the Treasurer, the Hon. Frank Crean.
- 70 Income Tax Assessment Act No.4 1973.
- 71 Constitution of Norfolk Island Flora and Fauna Society.
- 72 An Environmental impact statement on upgrading of Norfolk Island Airport to jet standard by Norfolk Island Flora and Fauna Society, June 1975.
- 73 Residents' submission with list of signatures tendered by A.S. Bathie.
- 74 List of youths away from Norfolk Island for trade training, 1975.
- 75 The Norfolk Islander of 8 December 1973 containing letter from A.S. Bathie.
- 76 Schedule of grants of probate and letters of administration from 1960 to 1975.
- 77 Copy of judgment of High Court of Australia in Permanent Trustee Company (Canberra) Ltd v. Finlayson and others 1968.
- 78 Company File No. 290 of 1970- Cook Holdings Ltd.
- 79 Company File No. 2 of 1965 -Hargreen (Norfolk) Ltd.
- 80 Probate File No. P13 of 1973 - Harold Stuart Greenwell.
- 81 Company File No. 34 of 1966 - Acceptance Holdings Ltd.
- 81.A Administration and Probate Ordinance 1929-1953.
- 82 Plan of Norfolk Island Crown lands.
- 83 Report of visit to Norfolk Island, July 1973, by D.W. Shoobridge, Director, City Parks Administration, Department of the Interior.
- 84 Conservation Report, August 1973, by J.J. Huston, Conservation and Agriculture Branch, Department of the Capital Territory.

- 85 Report, September 1974, by G.A. O'Meara, Conservation and Agriculture Branch, Department of the Capital Territory.
- 86 Report, May 1973, by A.G. McArthur and M.L. Benson, Forestry and Timber Bureau, Canberra.
- 87 The Historic Buildings of Norfolk Island published by Australian Council of National Trusts, 1971.
- 88 A Proposal for a Museum for Norfolk Island by H.H.G. McKern, April 1975.
- 89 Paper on the Settlement of the Pitcairn Islanders on Norfolk Island by F.M. Bladen, 27 March 1906.
- 90 An Outline of Story of Norfolk Island and Pitcairn's I Island 1788-1857 by C.H. Currey, 1958.
- 91 Report, November 1973, by Dr R. Wells on Norfolk Island Health Services.
- 92 The Discovery of Norfolk Island by Merval Hoare, 1974.
- 93 Annual Reports of Norfolk Island for years from 1953 to 1974.
- 94 List of alienation of land by persons of Pitcairn lineage.
- 95 Extract from South Pacific Conference proceedings on National Parks and Reserves, February 1975.
- 96 Comments on Upgrading of Norfolk Island Airport to jet standards by Australian Conservation Foundation, July 1975.
- 97 Acoustical Factors Analysis of Norfolk Island Airport by Louis A. Challis and Associates Pty Ltd, June 1975.
- 98 Letter of July 1975 from Louis A. Challis and Associates Pty Ltd re Public Review of Environmental Impact Statement.
- 99 May 1975, Comments on Proposal to Upgrade Norfolk Island Airport by J.L. Goldberg, CSIRO, May 1975.
- 100 Conservation of Norfolk Island, Report No. 2 by J.S. Turner and Associates, 10 July 1970.
- 101 Report No. 714-72 entitled Investigation and Analysis of Aircraft Noise during visit of Boeing 737 at Norfolk Island - by Louis A. Challis and Associates Pty Ltd, 8 March 1972.
- 102 Transcript from a talk on tourism on ABC program 'Lateline' between R. Neville and N. Kent and Waden Nasi.
- 103 Company Files — (a) No. 141 of 1967 — O'Keefe Holdings Ltd.

(b) No. 31 of 1967 - Press Holdings Ltd.

- 104 Company File No. 142 of 1971 - Greenlan Ltd.
- 105 Paper on off—shore high security animal quarantine station by Younger Residents' Movement.
- 106 JA. Davidson's list of addresses of solicitors and accountants.
- 107 Company File No. 5 - Arceecce Ltd.
- 108 Company File No. 6 - Ngongotaha Ltd.
- 109 Company File No. 7 - Papatoetoe Ltd.
- 110 Company Files Nos 143/71, 144/71, 145/71, 146/71, 147/71, 148/71. 149/71.
- 111 Duplication of Exhibit 103.
- 112 Company File No. 62 of 1968 - Fitzwilliam Ltd.
- 113 Company File No. 89 of 1970 - Kurraba Investments Ltd.
- 114 Company File No. 252 of 1969 - Atters Ltd.
- 115 Company File No. 51 of 1968 - Fitzpatrick Ltd.
- 116 Company File No. 142 of 1969 - South Western Indemnities Ltd.
- 117 Company File No. 141 of 1969 - Julius Holdings Ltd.
- 118 Company File No. 137 of 1969 - Jason Investments Ltd.
- 119 Norfolk Island Flora and Fauna Society's submission on the Coldham Plan, 1972.
- 120 Copy of cables of 25 July 1975 supplied by Bank of New South Wales.
- 121 Norfolk Island electoral roll
- 122 Public Finance, Statements of Revenue and Expenditure, 1974-75.
- 123 Memorandum to Council from the Administration re Medical Benefits and Special Allowances. Two confidential schedules attached.
- 124 Lighterage undertaking charges, Memoranda to Council from Administrator, 1973 and 1975.
- 125 Port Facilities — Memorandum to Council from Administrator, February 1975.
- 126 (a) Company File No. 28 of 1970 - Brisbane Enterprises Ltd.

- 126 (b) Company File No. 214 of 1970 — Montrose Ltd.
- 126 (c) Company File No. 65 of 1971 — Pacific Mortgage Corporation Ltd.
- 126 (d) Company File No. 126 of 1967— Mapel Holdings Ltd.
- 126 (e) Company File No. 215 of 1969 — Kooyong Park Ltd.
- 126 (f) Company File No. 183 of 1970 — J.D. (Enterprises) Ltd.
- 127 (a) Company File No. 114 of 1972 — Westcna Ltd.
- 127 (b) Company File No. 376 of 1970 — Edgar Ltd.
- 127 (c) Company File No. 153 of 1972 — L.M. Coughlan Investments Ltd.
- 127 (d) Company File No. 152 of 1972 - Brays Plain Ltd.
- 127 (e) Company File No. 59 of 1972 — Yukon Ltd.
- 127 (f) Company File No. 92 of 1973 — Chisholm Ltd.
- 128 Company File No. 101 of 1969 — Utopia Ltd.
- 129 Annual report and accounts of Commonwealth Development Finance Company Ltd. 1971.
- 130 List of Comroy Ltd Agreements in force from 31 March 1972.
- 131 List of directorships held by G.W.E. Park.
- 132 List of companies which have not lodged 1974 or prior returns.
- 133 Schedule of accountants and solicitors with whom O’Sullivan, Davies and Lee and C.E. O’Sullivan Associates have had association since 19 October 1970.
- 134 File on Comroy Ltd.
- 135 Memorandum of incorporation in Victoria of Island Exploration Co. Pty Ltd and Australasian Petroleum Co. Pty Ltd.
- 136 The Norfolk Islander issues:  
 Vol. 6 No. 6, 5 December 1970; No. 27, 8 May 1971 No. 29, 22 May 1971; No. 31, 5 June 1971; No. 33, 19 June 1971; No. 45, 11 September 1971; Vol. 7 No. 14, 12 February 1972; No. 19, 18 March 1972; No. 45, 16 September 1972 vol. 10 No. 8, 15 February 1975; No. 9, 22 February 1975 No. 26, 21 June 1975.
- 137 List of responding signatories to submission of Flora and Fauna Society, August 1975.
- 138 Report to electors by candidates for election to Norfolk Island Council 1960

- 139 Memorial signed by Byron Adams and other inhabitants of Norfolk Island dated 27 March 1896
- 140 Proclamation of 6 March 1896 by His Excellency the Rt Hon Henry Robert Viscount Hampden
- 141 Copies of three petitions by Norfolk Islanders to the Governor of New South Wales, 1898
- 142 Joint Opinion of R J Ellicott Q C and M H McLelland Q.C.
- 143 Opinion of M H McLelland Q C
- 144 Letter dated 7 July 1975 from N F McIntyre to the Administrator and reply
- 145 Correspondence between N H McIntyre and government ministers and officials 1968-75
- 145 (a) Correspondence between N H McIntyre and government officials 1966
- 146 The Norfolk Islander, Vol 10 No 29 12 July 1975 containing advertisement by Norfolk Island Freedom Movement
- 147 Correspondence from Burns Philp & Co Ltd to government departments re taxation legislation, Norfolk Island, dated 24 October 1973
- 148 Letter from Australian Taxation Office to Burns Philip (Norfolk Island) Ltd dated 18 November 1974 and letter from Offner Hadley & Co dated 7 January 1975 to Australian Taxation Office
- 149 Notes of a Cruise in H.M.S. Fawn in the Western Pacific in 1862 by T.H. Hood.
- 150 Chapter XVIII of The Pitcairners, by R.B. Nicholson, 1965.
- 151 Publication - Stamps of the Australian Territories, Norfolk Island, by F. Collas.
- 152 Copies of Customs Ordinances in relation to Norfolk Island.
- 153 Letter of 15 August 1975 from South Pacific Hotel/Motel Ltd to the Royal Commission re wages of employees in Norfolk Island.
- 154 List of sales of land supplied by G.G.F. Quintal, August 1975.
- 155 List showing value of trusts held by Permanent Trustee Co. as at August 1975.
- 156 Executive Council By-laws 1925-29.
- 157 Information on improvements made to his land over the years, supplied by P.J. Summerscales, July 1975.
- 158 A comparison of Norfolk Island and mainland prices.

- 159 Norfolk Island Government Gazette of 12 June 1975 containing Terms of Reference, Royal Commission.
- 160 Cable of 19 June 1975 to T. Lloyd, relating to Royal Commission.
- 161 Letter of 22 August 1975 and annexures from Burns Philp (Norfolk Island) Ltd to the Royal Commission
- 162 Letter of 21 August 1975 from Burns Philp (Norfolk Island) Ltd to the Royal Commission
- 163 Annexures of maps and cycles to Report by R S Abell re Water Resources of Norfolk Island
- 164 Appendixes (A to G) to submission by Department of Police and Customs
- 165 Environmental impact statement re Fokker F28, July 1975
- 166 Booklet - Fokker F28 (black cover)
- 167 Booklet - Fokker F28 - The quietest twin-jet airliner
- 168 Appendix to Exhibit No 165
- 169 Qantas Airways Ltd letter of 20 February 1975 to Department of Transport
- 170 Correspondence from A McLeod to the Royal Commission 1975
- 171 Plan of Norfolk Island Airport
- 172 Copy of Air Navigation Regulations
- 173 Paper by P M Davidson Department of Transport entitled Effect of jet aircraft noise on birds of Norfolk Island
- 174 Paper by P M Davidson Department of Transport entitled Effect of turbulence from jet aircraft on birds of Norfolk Island
- 175 Working arrangements for the operation and maintenance of the Norfolk Is and Power Station by the Department of Transport July 1973
- 176 Letter of 17 September 1975 from A.W. Doubleday to Officer-in-charge, Airport, Norfolk Island.
- 177 Report: Comparison of noise levels for various aircraft at selected points on Norfolk Island by M.D. Dunn.
- 178 Copies of five documents submitted by A.G. Wallace, concerning land subdivision.
- 179 Copy of document marked (b)l, Petition made by Arthur Quintal and others on 11 June 1901 to King Edward VII.

- 180 Copy of grant of Allotment 33A to G.W. Quintal.
- 181 Letter of 25 June 1856 from Stephen Fremantle to Chief Magistrate, Norfolk Island.
- 182 Paper by M. Wryell on social 'security, August 1974.
- 183 Brochure -De Havilland Dash 7.
- 184 Copy of submission by Hawker de Havilland Australia Pty Ltd on Dash 7 Aircraft.
- 185 Booklet on noise (disc inside), de Havilland Aircraft of Canada.
- 186 Submission by East-West Airlines Ltd.
- 187 Letter of 12 October 1973 from East-West Airlines Ltd to Minister for Transport and Civil Aviation of 1 November 1974.
- 188 Letter of 1 November 1974 from Department of Transport to East-West Airlines Ltd.
- 189 Letter of 16 January 1975 from East-West Airlines Ltd to Department of Transport.
- 190 Letter of 30 June 1975 from East-West Airlines Ltd to Department of the Capital Territory.
- 191 Letter of 30 June 1975 from East-West Airlines Ltd to Department of the Environment.
- 192 Letter of 4 September 1975 from East-West Airlines Ltd to Department of Transport.
- 193 Paper disclosing why DC 9-30 cannot operate between Sydney and Norfolk Island, submitted by East-West Airlines Ltd.
- 194 Legal Aid Bill 1975 and Second Reading Speech thereon.
- 195 Report of the Working Party on Territorial Criminal Law, 1975.
- 196 Letter of 23 September 1975 from Department of the Capital Territory to the Royal Commission.
- 197 Opinion of 13 October 1975 by C.W. Harders, Secretary of Attorney-General's Departments and annexure.
- 198 National Parks and Wildlife Conservation Act 1975.
- 199 Environment Protection (Impact of Proposals) 1974 and 1975 with Statutory Rules and procedures there under.
- 200 Two annexures to Dr B.H. Pratt's submission on soil, 1972.
- 201 Submission by M.L. Benson and map.
- 202 Appendix A of submission by Department of Tourism and Recreation.

- 203 Attachments A to E relating to Cocos—Keeling Islands which accompanied Department of the Special Minister of State’s submission.
- 204 Attachments F to I relating to Christmas Island which accompanied Department of the Special Minister of State’s submission.
- 205 General attachment J which accompanied submission by Department of the Special Minister of State to Senate Standing Committee, March 1975.
- 206 Tax case study No. 1 with appendix B, by D.M. Allen & Co.
- 207 Tax case studies No. 2 and No. 3, by D.M. Allen & Co.
- 208 Correspondence between B.F.L. Crommelin to Ure Lynam and Co. - five letters, August 1975.
- 209 Attachment B to submission by Australian Taxation Office.
- 210 Income Tax Assessment Act 1932 (No. 76).
- 211 Income Tax Assessment Act 1939 (No. 30)
- 212 Extracts from Income Tax Act 1941 (No. 58).
- 213 Legislation re exchange and banking control.
- 214 Extracts from Hansard re Taxation in Norfolk Island.
- 215 Extracts from an article by W.H. Bratby, entitled dividend Stripping.
- 216 Income Tax (International Agreements) Act 1974 (No. 129).
- 217 Income Tax (International Agreements) Act 1953-1973.
- 218 Judgment, Esquire Nominees Ltd v. Commissioner of Taxation, 1973
- 219 Australian Government Gazette, No. 81 of 5 July 1973 (Income Tax Assessment)
- 220 Australian Government Gazette No. 54 of 2 July 1974 (Income Tax Assessment)
- 221 Australian Government Gazette No. G25 of 1 July 1975 (Income Tax Assessment)
- 222 Letter of 9 October 1975 from Offner, Hadley and Co. to the Royal Commission.
- 223 Judgment. by G. Smythe, S.M., in the Berwick Case.
- 224 Explanatory memorandum by Treasurer re Income Tax Bill No. 4 of 1973
- 225 Report by Royal Australian Institute of Architects on environmental impact statement on Upgrading of Airport to jet standard, May 1975

- 226 Report - Wild Life Conservation, October 1972.
- 227 Letter of 4 August 1975 from Air Commodore E.T. Pickerd re archival records of Norfolk Island.
- 228 Letter of 28 August 1975 from Air Commodore Pickerd re public account figures for fiscal year 1974-75.
- 229 Letter of 3 October 1975 from R.A. Bataille to the Royal Commission
- 230 Letter of 29 August 1975 from Comroy Ltd to the Royal Commission.
- 231 Letter of 23 July 1975 from Department of Agriculture to the Royal Commission on forestry industry in Norfolk Island.
- 232 Photocopy of old notes by G.M.F. Young.
- 233 Deed constituting the Benevolent Society of Norfolk Island, dated November 1974.
- 234 Niue Constitution, 2nd schedule, 1974.
- 235 Cook Islands Constitution schedule.
- 236 Copy of Norfolk Island Chamber of Commerce wages and salaries survey, June 1973 and October 1975.
- 237 Tourist guide booklet, Norfolk Island.
- 238 Norfolk Island Chamber of Commerce, details of support by members to supplementary submission.
- 239 Brochure, Norfolk Paradise Isle.
- 240 Brochures tendered by Tourist Board.
- 241 Appendixes 1-6 to Tourist Board submission.
- 242 Memorandum to Council dated 31 August 1973 from Air Commodore E.T. Pickerd re Norfolk Island Public Service-rates of pay.
- 243 List of additional members of Norfolk Island Citizens Association 1975-76 submitted by W.G. Hitchins.
- 244 Letter from Norfolk Island Airlines Ltd, November 1975, re F28 aircraft.
- 245 Copies of legislation relating to Australian exchange control regulations.
- 246 Extracts from the House of Representatives Hansard re income tax in Norfolk Island.
- 247 Appendixes A,B,C,D,E to Mr J. Stokes' papers. Department of the Treasury.

- 248 Submission of Norfolk Island Freedom Movement dated 20 November 1975, submitted by Colonel R.G. Reeves.
- 249 Issue of Norfolk Islander 10 January 1975 attached to Mr Engledow's letter of 6 November 1975.
- 250 Index of Banking and Taxation material; Income Tax Acts 18/60, 85/59, 85/67 and The Attractions of Luxembourg, 1967.
- 251 Article, The Tragedy of the Commons by G. Hardin, 1973.
- 252 Memorandum to Council of 15 May 1970, by Air Commodore R.N. Dalkin, Development of Jetty/Harbour Facilities.
- 253 Memorandum to Council, Port Facilities, 4 February 1975, by Air Commodore E.T. Pickerd,
- 254 Report on the Fisheries of Norfolk Island by H. Van Pel, South Pacific Commission.
- 255 Report, Development of Harbour Facilities, April 1970, by Wilton and Bell, Debbie and Partners.
- 256 Correspondence of 1975 between Norfolk Island Council and Commonwealth departments.
- 257 Petition dated 26 January 1955 to Queen from Norfolk Island people, and reply dated 13 March 1955 from Governor-General
- 258 Text of radio announcement on Norfolk Island by Secretary, Royal Commission, 12 November 1975.
- 259 Inspection schedule of Royal Commission.
- 260 Colour print, Philip Island.
- 261 The constitutional history of Norfolk Island by J.N. Phipps.
- 262 Material from Fokker—VFW International b.v. re F28 aircraft.
- 263 Extracts from Air Navigation Regulations.
- 264 Opinion dated 10 December 1975 by M.H. Byers, Q.C., Solicitor-General of Australia.
- 265 Two opinions by K.A. Aickin, Q.C., May 1973 and November 1975.
- 266 Opinion by A.R. Castan, July 1972.
- 267 Opinion by Genevra Caws, November 1972.
- 268 Ordinance No. 4 of 1960, Norfolk Island.
- 269 Copy of 1897 print of correspondence re transfer of Norfolk Island to New South Wales

Government, 1897

CONFIDENTIAL EXHIBITS TENDERED TO ROYAL COMMISSION

- Exhibit A: Statement of income from companies by Mr J.A. Davidson.
- Exhibit B: List of recipients of special allowances granted by the Administration as at 15 August 1974.
- Exhibit C: Statement of income from companies by Mr G.W.E. Park.
- Exhibit D: Statement of income from companies by Mr W.A. Reilly.
- Exhibit E: Statement of income from companies by Mr J.H. Ryves.
- Exhibit F: Statement of salaries of Burns Philp (Norfolk Island) Limited employees.
- Exhibit G: Taxation correspondence in relation to Mr A.F. Ure.
- Exhibit H: Chamber of Commerce figures in relation to duty paid by tourist shops, 1974-1975.
- Exhibit J: Information relating to companies incorporated in Norfolk Island by ure, Lynam & Co.
- Exhibit K: Statement of estimated cost of operating Fokker F28 Fellowship submitted by Norfolk Island Airlines Limited.

NOTE: Letter 'I' was not used as a number in these exhibits. 395

Appendix IV  
SCHEDULE OF RELEVANT PUBLICATIONS

Copy of 1897 print of correspondence re transfer of Norfolk Island to New South Wales Government, 1897.	Ex. 269
Report on Affairs of Norfolk Island by J.H. Carruthers and Charles Oliver (1896).	Ex. 51
The Conservation of Norfolk Island by J.S. Turner and others, 1968.	Ex. 46
Conservation of Norfolk Island Report No. 2 by J.S. Turner and Associates - 10 July 1970.	Ex. 100
Norfolk Island Planning Report by H.L. Westerman, April 1968.	Ex. 47
Coldham Report, June 1972.	Ex. 37
A Long-term Population Study of Norfolk Island by G.J. Butland, March 1974.	Ex. 49
Land Subdivision and Use Report by P. Funda, July 1974.	Ex. 50
Weir Report on a visit to Norfolk Island, October-November 1974(re correctional services).	Ex. 40
Report of visit to Norfolk Island, July 1973, by D.W. Shoobridge, Director, City Parks Administration, Department of the Interior.	Ex. 83
Conservation Report August 1973 by J.J. Huston, Conservation and Agriculture Branch, Department of the Capital Territory.	Ex. 84
Report May 1973 by A.G. McArthur and M.L. Benson, Forestry and Timber Bureau, Canberra.	Ex. 86
A Soil and Land use Study of Norfolk Island by G.C. Stephens and J.T. Hutton, 1954.	Ex. 45
Report to Norfolk Island Council August 1973 by Development Planning Steering Committee on Coldham Plan.	Ex. 48
Report, September 1974 by G.A. O'Meara, Conservation and Agriculture Branch, Department of the Capital Territory.	Ex. 85
<u>The Historic Buildings of Norfolk Island</u> , published by Australian Council of National Trusts, 1971.	Ex. 87
A Proposal for a Museum for Norfolk Island by H.H.G. McKern, April 1975.	Ex. 88
Report November 1973 by Dr R. Wells on Norfolk Island Health Services.	Ex. 91

- Report on the Fisheries of Norfolk Island by H. Van PeI, South Pacific Commission. Ex. 254
- Report: Development of Harbour Facilities, April 1970, by Wilton and Bell, Debbie and Partners. Ex. 255
- Norfolk Island by Merval Hoare, 1969. Ex. 61
- Mutiny of the Bounty and Story of Pitcairn Island 1790-1894, Rosalind Amelia Young. published by Pastor David Nield Dawson Printing Company, Auckland, NewZealand, 1924.
- The Pitcairnese Language, Alan S.C. Ross & A.W. Moverby. Andre Deutsch (E.H. Flint 'The Language of Norfolk Island', chapter IV).
- Descendants of the Mutineers of the Bounty (Memoirs of the Bernice P. Bishop Museum, vol. XI, no. 1. Honolulu, 1929) by Harry L. Shapiro.
- Chapter XVIII, of The Pitcairners, by R.B. Nicholson, 1965 Ex. 153
- Paper on the Settlement of the Pitcairn Islanders on Norfolk Island by F.M. Bladen, 27 March 1906. Ex. 89
- Pitcairn: The Island the People and the Pastor, Thomas Boyles Murray. Reprint of 1860 ed. by Haskell House Publishers Ltd. N.Y.
- Varieties of Vice-Regal Life, Sir William Denison, London, 1870.
- The Melanesian Mission, E.S. Armstrong. Isbister & Co. Ltd, Covent Garden, 1900.
- Notes of a Cruise in H.M.S. Fawn in the Western Pacific in 1862 by T.H. Hood. Ex. 149
- An Outline of Story of Norfolk Island and Pitcairn's Island, 1788-1857, by C.H. Currey, 1958. Ex. 90

Appendix V  
INSTRUCTIONS AND ADVICE ADDRESSED TO THE CHIEF MAGISTRATE OF  
NORFOLK ISLAND

The objects of Her Majesty's Government, in transferring the Pitcairn islanders to their present residence were, first, to put them in a position to maintain their increasing numbers by their own industry, and second, to enable them to keep up, so far as the change of circumstances may permit, the peculiar form of polity under which they have hitherto existed as a community.

It will therefore be the duty of the chief magistrate, while administering the affairs of the Colony, during the absence of the Governor, to keep these two objects steadily in view; to see that the labour of the islanders is properly applied to the cultivation of the ground, that a sufficient area is brought under cultivation to supply all the probable wants of the community, so that it may not be necessary to purchase flour or biscuit from the adjacent Colonies, and while doing this, to be careful not to sanction any deviation from the principles which, by maintaining a sort of family feeling among the whole of the community, have enabled them to live together in peace and harmony up to the present time.

The rules and regulations which have been submitted by me for the consideration of the community, and have now been issued under the authority vested in me by Her Majesty, have been framed in strict accordance with those under which your affairs have hitherto been administered. Some few rules have been abrogated, as having no relation to the state of things now existing, and one or two have been added to provide for circumstances contingent upon the position of Norfolk Island, in the immediate vicinity of the Colonies of Australia and New Zealand.

I allude specially to the rule which prohibits the introduction upon the island of spirituous or fermented liquors, except for purposes purely medicinal. The evils which are forced daily upon my notice as originating from the use, and consequent abuse of these stimulants, are too great not to make me most anxious to guarantee, if possible, the inhabitants of Norfolk Island from them; and as none among you have ever been accustomed to the use of these stimulants, it can be no possible hardship that you should be prevented by legal enactment from indulging a taste which experience shows does too often lead to crime and to sin.

It must, however, be obvious to every one, that the very altered position in which you are now placed, must eventually render obligatory many additions to these regulations. Nothing has been said as yet with relation to the alienation of land by the Crown, and its transference to individual proprietors. Nothing to regulate the admission upon the island of settlers who may wish to become members of your community. Nothing to indicate the mode in which the descent of property from parents to children is to be hereafter regulated, &c. &c. These, with several others, are matters which you have hitherto had little occasion to consider. They are questions, however, which will soon be forced upon your attention. They ought not, however, to be hastily dealt with, or be subjected to the operation of any arbitrary rule, the object of which you might be incapable of comprehending. I have therefore left them untouched for the present, in order that they might be submitted hereafter to the deliberate consideration of the people themselves, guided only by such advice as the Governor, from his position, and from the more extended means of information at his

disposal, may be qualified to give.

Some advice upon matters of special interest to the community, I shall now give, and I shall accompany this with such positive instructions to the chief magistrate as may tend to facilitate several of the arrangements which must very shortly be made.

The present state of matters on Norfolk Island is, I believe, altogether incompatible with its prosperity, or with the comfort and happiness of the people. You appear to be living, not on the produce of your own labour, but upon your capital, or rather upon that capital which was handed over to you by the Government for the purpose of being employed reproductively for your own benefit and that of your posterity. The scabby state of the sheep and the impossibility of dressing them properly may be a sufficient reason for killing them off gradually but unless steps are soon taken to introduce more of this stock, and for allowing the cattle to increase, the supply of animal food will soon fall short of the wants of the people

The habit which you are acquiring of depending for a large portion of your food upon a source which is entirely independent of any exertion of your own, must manifestly lead to the introduction of improvident and idle habits which cannot be too carefully guarded against The first thing therefore to be done, is to make a positive and marked distinction between public and private property to give to each head of a family an absolute right of property in a certain amount of land and to make him a present of a sufficient number of cattle &c. to enable him to cultivate that land with advantage supposing him to exercise the ordinary amount of forethought and industry

When this has been done an end should be put at once and for ever to any gratuitous distributions of food, clothing & from public funds except, perhaps to those who, from age infirmity and mental or bodily incapacity are unable to maintain themselves

In order to pave the way for this important change the chief magistrate will arrange with the heads of families and with those unmarried persons who may wish to acquire property of their own for the selection by each of such an amount of land not in any case exceeding 50 acres in such a position as may seem to them most advantageous A rough approximation to the area of a piece of land may be made by stepping round it and the following table will give the number of paces each pace being taken at 30 inches, which it will take to include certain areas:

Area in acres	No. of paces in circumference	No of paces in each side square
10 acres	1 026	256
20 “	1 450	368
30 “	1 780	445
40 “	2053	513
50 “	2 296	569

Marks should be placed at the corner of these allotments, and I will send properly qualified persons to make the necessary surveys and plans of the different properties from which the formal grants will be drawn up and issued by me in pursuance of the powers vested in me by Her Majesty.

Looking, however, to the object which, as I have before stated, the Government had in view in removing the present occupants from Pitcairn to Norfolk Island, I do not think that the grant in fee simple to the settler should be altogether unconditional. I do not think that it would be desirable to allow the settler to sell the land to persons unconnected with the island. Should any one wish to leave the island, his property should be first offered to individual inhabitants, and should none be

willing to purchase it, the community might be empowered to do so at a valuation.

When the allotments of land have been selected, the following articles may be handed over to each occupant:

1st. A certain number of cattle, sheep, pigs, poultry, &c.

2nd. Such tools and implements as may be necessary to enable him to cultivate the land.

3rd. Such an amount of corn, potatoes, &c., &c., as may be necessary to enable him to plant a sufficient area to maintain his family.

The amount of stock should not be too great; a cow or an ox to every ten acres, will, I think, be ample.

Each proprietor will put a mark upon his own stock to enable him to distinguish it from that of his neighbours, and from that of the public, and these marks should be notified the chief magistrate, and recorded by him, and when once established, should not be allowed to be modified or altered.

The stock of individual proprietors may be allowed to run upon the unallotted parts of the island for the present; but as it is evident that this unallotted portion will rapidly diminish as fresh families take up grants of land, it will be necessary that each proprietor should take early steps to fence in his own land, and to divide it off in such a manner as will enable him to keep his own stock on his own ground.

It is the more necessary that this should be done, as the manure made by the stock will ultimately be required for the proper cultivation of the soil. At present, this is very rich; but each proprietor will act wisely in looking forward to the period when, in order to obtain proper crops, it will be necessary to apply manure, and in commencing to collect manure for that purpose at once.

When the land and a proper amount of stock has been handed over to different individuals, it must be distinctly understood that nothing is to be drawn by any one from the public store for his private use, without payment for the same at its full market price.

As no individual settler is in a position to establish a store, it is necessary that a public store should be maintained, at which clothing, stores, tools &c., should be kept for sale, a fixed price being placed upon each article, so that every person may know what he will have to pay.

The establishment of a store will entail the appointment of a storekeeper, to whom the charge of all public stores of every kind will be handed over, and who will be held accountable for them. He will have to keep an account against each individual settler, crediting him with any payments, either in money, stock, or produce, and debiting him with the cost of any article which he may have purchased from the store.

The storekeeper may also be the schoolmaster; the salary which he will receive for the performance of these duties, together with the contingent advantages, will probably be sufficient to enable the community to secure the services of a competent person.

I have said that the chief magistrate should see that the labour of the islanders is properly applied to

the cultivation of the ground.

It appears to me that in order to place the community in a position to feed themselves without reference to the adjacent colonies, at least 80 acres of maize should be planted; and, looking to the calls which may be made upon this crop for other purposes, it would be better to plant 100 acres of maize, irrespective of the land appropriated to the growth of potatoes, yams, bananas, and other vegetable products. If then such an amount of land has to be brought under cultivation, the labour of every member of the community should be rendered available toward it, and some check should be imposed upon the prolonged absence of those, who by going away from the island for a time during the preparation of the ground for a crop, do, in point of fact, compel others to do their work. When once the land is given over to individuals, then any check of this kind will be unnecessary, but till then it should be imposed.

The present mode of working the ground with the hoe is both dilatory and unsatisfactory; it would be as well, as soon as possible, to introduce the use of the plough; until this is done, the labour of a large portion of the adult inhabitants will be expended in the production of food, leaving but little available for the cultivation of articles which will be useful to exchange for the products of other countries.

I am not aware, however, that there is any person on the island who knows how to use a plough. In the same way the islanders are now placed in possession of buildings constructed of stone and plastered within and without, yet they are not in a position to carry out any repairs of these houses, as they know not how to burn lime, to make mortar, to plaster walls and ceilings, &c. in fact there are several trades which ought, for the comfort and convenience of the inhabitants, to be practised on the island, but of which the present settlers are ignorant.

They have water and windmills, yet for want of a competent millwright and smith, they must grind their corn in hand mills; how then can those immediate and prospective wants be adequately supplied?

With regard to the millwright and smith, I do not think it at all improbable that a competent person might be induced to settle upon the island by the grant of the water and windmill, subject to a condition that he would grind all the corn of the community at a fixed rate, that is, as in Canada, at a fixed proportion of the quantity brought to the mill, say one—twelfth the same person would be qualified to act as smith, for the repair of tools, &c. , &c. , and as wheelwright were a circular saw attached to the mill-wheel, all the timber required for the use of the community might be cut up at a cheap rate.

For the repair of the houses a mason and plasterer will be required, and a shoemaker is very much wanted it may be possible to induce a few persons of this stamp to settle on the island; but beyond those whose services may be said to be actually indispensable to the comfort and welfare of the inhabitants, I should not be disposed to admit of the introduction of any strangers.

Pending then the establishment of some rule as regards this, the chief magistrate will understand that he is not to permit strangers to remain on the island, or to occupy, except for a short visit, any of the public buildings. There is one point which it is advisable to bring at once under the notice of the people, not with a view to any immediate action, but for the purpose of carefully considering the course which it may hereafter be desirable to adopt.

Hitherto the public funds have been adequate to supply the wants of the community; the sale of wool, tallow, live stock, &c., has produced a sum sufficient to cover the expense of purchasing flour, clothing, &c., but this source of revenue will very soon be dried up, and it will be necessary to devise some mode in which these expenses, which are properly chargeable upon the general fund of the community (which expenses must annually increase) may be adequately provided for, I mean such expenses as payment to the chaplain, to the storekeeper, the maintenance of roads and public buildings, the salary of the chief magistrate &c., &c. There are several modes in which this may be done, but I am disposed to think, looking to the peculiar constitution of the society, that the best mode would be to tithe the produce of every kind, and thus to create one fund upon which all these payments would be chargeable.

These are the principal suggestions which I have to make at present, and I do not think that any positive instructions, save those embodied in this paper, will be required by the chief magistrate; I will conclude then by assuring the islanders of the affectionate interest I take in their welfare, and by praying them to remember that all the blessings which they have received are God's gift, and are to be employed in His service, not necessarily by any special dedication of them, but by striving in everything to do His will and to walk in His way.

(signed) W. Denison

Since the above was written I have ascertained from the reports of the gentlemen whom I requested to inspect the land under cultivation, that the amount is far less than I had anticipated, that it does not exceed 20 acres, a quantity which, even under favourable circumstances, would not be sufficient to provide vegetable food for the population of the island; it would therefore be very desirable to plant as much more land as could be prepared while the weather will admit of this being done, but it would be of much more importance that you should take warning by this, and be prepared in forthcoming years to meet the wants of the community which can only be done by substituting the plough for the hoe under these circumstances it would be desirable that I should in addition to the mechanics and others before specified try to induce a well-qualified agriculturist to settle among you.

(signed) W D

Source — Dispatches from the Governor of Norfolk Island House of Commons Papers 29 May 1863 contained in British parliamentary Papers Colonies, Australia Vol 24 Sessions 1862-63 I.U.P.

Appendix VI  
SUPPLEMENT TO THE NEW SOUTH WALES GOVERNMENT GAZETTE  
OF FRIDAY 30 OCTOBER 1857

Laws and Regulations for Norfolk Island

Whereas by an Order of the Queen in Council, dated 24th day of June, 1856, power was given to the Governor of Norfolk Island, to make Laws for the order, peace and good government of the said Island: And whereas it was further ordered by Her Majesty, in Council, that until annulled by competent authority, all Laws, Ordinances, and Regulations, - Civil and Ecclesiastical,.. which may be in force within the said Island, at the time of the Proclamation of the aforesaid Order in Council, shall continue in force, subject only to such changes as shall be necessarily consequent on the changes of Government: Now, therefore, I, WILLIAM THOMAS DENISON, Knight Commander of the Most Honourable Order of the Bath, Governor General of Her Majesty's Australian Colonies, Captain General and Governor-in-Chief of New South Wales and its Dependencies, and Governor of Norfolk Island, do, in pursuance of the power vested in me, declare and enact as follows:

1. All Laws, Ordinances, and Regulations, which have been and are in force within the Island called Norfolk Island, are hereby repealed and annulled.
2. The Executive Government of Norfolk Island, during the absence of the Governor, shall be vested in a Chief Magistrate and two Assistants or Councillors, to be elected annually by the community as hereinafter directed.
3. The Chief Magistrate must be a resident on the Island; he must be in possession of a landed Estate therein; and he must have attained the age of twenty-eight years.
4. The Councillors must be resident on the Island, and must have attained the age of twenty-five years.
5. The election of the Chief Magistrate and Councillors shall take place on the day after Christmas Day in each year, unless that day should fall on a Sunday, in which case the election will take place on the Monday following.
6. Every person who may have resided upon the Island for six months, who has attained the age of twenty years, and who can read and write, shall be entitled to vote at the election of the Chief Magistrate and Councillors.
7. The Chaplain shall preside at the election, and shall open the proceedings with prayer; in case of an equality of votes for two Candidates, he shall be entitled to give a casting vote; he shall not himself be eligible for the office of Chief Magistrate or Councillor.
8. The election of the Chief Magistrate and Councillors will be notified to the Governor with the least possible delay, and Commissions under the Great Seal of the Colony, will be issued to them, authorising them to act as Magistrates in carrying out all Laws and Ordinances. It is,

however, to be understood, that the Chief Magistrate and Councillors, when duly elected, will be fully authorised to act as Magistrates, pending the receipt of their Commissions.

9. The Chief Magistrate and the Councillors will enter upon the duties of their office on the first day of the year, on which day the Chaplain will administer to each of them, in the presence of the people, the Oath of Allegiance and of Office, as hereinafter specified ‘
10. The Chief Magistrate will see that all the Laws and Regulations of the Island are properly carried out; - he will carry into effect all the Instructions he may receive from the Governor:- he will convene and preside at all public meetings, with the exception of that for the election of Magistrates; - he will receive and account for all fines that are imposed; he will superintend the execution of all public works; - he will correspond with the Governor during the absence of the latter from the Island; - and he will be the medium through which all the public business of the Colony will be conducted. All purchases on account of the public will be made by him; and he will keep an accurate account of the receipts and expenditure of the public Funds.
11. The Councillors will assist the Chief Magistrate with their advice, when called upon to do so; they will attend at all public meetings and will take notes of the proceedings, the record of which, when entered in a book provided for the purpose, will be verified by their signatures and that of the Officer presiding.
12. Should the Chief Magistrate die, or otherwise become incapable of performing the duties of his office, the Senior Councillor will act as Chief Magistrate till the next election, even although he should not be of sufficient age to offer himself as a candidate for the office.
13. The Governor, or in his absence the Chief Magistrate, will, in cases where he may conceive the public good to be involved, have a right to summon to his assistance any or all of the inhabitants of the Colony; this summons must be immediately obeyed, under penalty of a fine, the amount of which will be determined by the Chief Magistrate and his Councillors, or, should their decision be appealed against, by a Jury.‘
14. Should it appear to the Chief Magistrate that any change in, or addition to the Laws or Regulations of the Island are required, he will first consult with his Councillors, and should it appear to the three, or to a majority of the three, that such a change or addition is advisable, notice will be given to the community of the intention of the Chief Magistrate to submit such change or such new rule for their consideration at a public meeting to be held within fourteen days of the date of the ‘Notice.
15. At such public meeting, the nature of the proposed change or addition, and the reasons for it, will be explained to the meeting by the Magistrate and Councillors, and the people present will be invited to express their opinion upon it. After the explanation and discussion, the persons present will be called upon to vote for or against the proposition, and a list of the number in favour of or against the measure will be recorded on the minutes of the proceedings.
16. No repeal of any Law or Regulation will be valid until confirmed by the Governor; but a new Law or Regulation may be acted on, when it has been approved of by a public meeting without such confirmation, should it refer to a subject of immediate importance. In all cases the record of the proceedings of public meetings, whether for the repeal of old laws or the enactment of

new, will be forwarded to the Governor, with as little delay as possible, for his confirmation or approval.

17. The Chief Magistrate will have primary jurisdiction in all matters of dispute whether between the Inhabitants of the Island themselves, or between them and such persons as may visit the Island, and whether such dispute should have reference to offences against the person, or to questions of property, he will adjudicate between the parties to the best of his judgment, and strive to induce them to come to an understanding.
18. Should his efforts be unavailing, he will call for the assistance of his Councillors, and the whole case will be gone into before the three Magistrates, a record of their proceedings being kept. The decision of the Magistrates shall be final, in all cases where the property at issue does not exceed fifty shillings in value, or in cases of common assault, when they are empowered to inflict a fine not exceeding ten shillings.
19. Should the case be of a more serious character, and should the parties be unwilling to submit to the adjudication of the Magistrates, a Jury consisting of seven Elders will be summoned, and the whole case having been submitted to them, their decision will be final.
20. The power of the Jury will extend to the decision of all questions of disputed property, of all cases of theft, and of aggravated assault, if not accompanied with danger to life or limb; but all offences of a more serious character will be reserved for the consideration of the Courts of Justice, in Sydney, a full statement of such cases, as investigated by the Magistrates, will be forwarded to the Governor, with as little delay as possible, who will give the necessary directions with reference to them.
21. The Jury will be entitled to receive an allowance for the number of hours during which they may have to sit, the hour being considered equivalent to one—eighth of a day's work.
22. The expenses of the witnesses whom it may be necessary to summon will be paid at the same rate.
23. The punishment which a Jury is competent to award will be limited to a fine, the amount of which will not in any case exceed ten pounds. The offender will have the amount of the fine recorded against him, and will be called upon to liquidate it, either by a direct payment in money or produce, or by so many days labour upon any public work.
24. In all cases of dispute between individuals, the Jury will decide which party is to pay costs.
25. When the offence committed is of a public character, the guilty party shall pay all costs, in addition to any punishment which the Jury may award; should, however, the party accused be declared innocent, the expenses shall be paid out of the public Funds.
26. In case of any wilful damage done to property, it will rest with the Jury to decide whether, in addition to payment for the damage done, a fine should not be imposed; - the amount of such fine will not exceed forty shillings, and the whole amount will be paid into the Public Chest.
27. In cases of assault, or more generally of offences against the person, it will be competent to

the Jury in awarding the punishment, to appropriate a certain proportion of the fine, not in any case exceeding one-half, to the aggrieved person.

28. The Chief Magistrate will keep a list of all males who shall have arrived at the age of 25 years; these persons shall be termed elders, and from these juries shall be selected as hereinafter directed.
29. When a Jury has to be selected, tickets containing all the names of the Elders will be placed in a bag, from which seven tickets will be drawn by the Chief Magistrate in the presence of the Councillors and the parties in the case. The seven Elders whose names have been thus drawn will form the Jury. Should any objection be raised by either of the parties to the name of any of the Jury, the reasonableness of such objection will be decided by the Chief Magistrate and Councillors, and, if affirmed, other names will be drawn from the bag to complete the number of the Jury
30. Any person refusing to serve on a Jury, without reasonable cause shewn, shall be fined Ten Shillings,
31. It will be competent to the Governor, and to him only, to remit such portions of the fines imposed as may be payable to the Public Chest.
32. All persons will send their children to school when they have attained the age of six years, and from that time will cause them to attend regularly till they have reached the age of fourteen years. The hours of attendance being from Nine a.m. to Two p.m. every day, except Saturdays and Sundays; no excuse for non-attendance will be admitted, except sickness or family bereavement; and with regard to sickness, if it should be alleged as an excuse for more than two consecutive days. The Chaplain must certify to the fact. A fine of sixpence per diem will be imposed upon every child whose absence from school is unauthorised.
33. A payment of Ten Shillings per annum shall be made by parents or guardians for every child who is of age to attend school; this amount shall be collected by the Chief Magistrate, and paid without deduction to the Schoolmaster, to whom, also, all the fines for non-attendance shall be paid.
34. Care will be taken to secure the services of a properly qualified Schoolmaster, who will be placed under the general superintendence of the Chaplain.
35. No beer, wine, or spirituous liquor of any kind shall be landed upon the Island except such as may be wanted for medical purposes, and this will be placed among the other medical stores in charge of the Chaplain, to be issued by him at his discretion, all issues to be noted in the register.
36. Should any beer, wine, or spirits be landed, or found in possession of any person on the Island, (whether such person be an inhabitant of the Island or a visitor,) the vessels containing the same will be immediately destroyed, and the contents thrown away; the person in whose possession these articles are found will be liable to a fine of forty shillings.
37. Any person convicted before a Magistrate of using obscene or profane language shall pay a

fine not exceeding forty shillings or less than five shillings.

38. Any person convicted before a Magistrate of bearing false witness, or slandering another, shall pay a fine not exceeding forty shillings, or less than five shillings.
39. In all cases where the Magistrates or a Jury have sentenced an offender to pay a fine, the parents or guardians of such offender, should his age not exceed fifteen years, shall be liable for the amount of the fine.

FORM OF OATH to be taken by the Chief Magistrate and Councillors before admission to Office. I, A B do swear that I will bear true allegiance to Her Majesty Queen Victoria, and that I will to the best of my ability perform the duties of (Chief Magistrate. or of Councillor and Magistrate, as the case may be,) of Norfolk Island. So help me God.

W DENISON

Norfolk Island  
14 October 1857

Copy of a DESPATCH from Governor Sir W Denison K C B to the Right Honourable Sir E Bulwer Lytton Bart M P

Government House, Sydney,  
8 October 1858.  
Answered, No. 3.-24 January 1859  
page 54

Sir,

I have the honour to forward copies of two additional laws enacted by the inhabitants of Norfolk Island, and forwarded to me for my approval I send also herewith a copy of the letter addressed by me to the chief magistrate with reference to these enactments.

I have, &c.  
(signed) W Denison

Enclosure in No. 3

Laws and Regulations of Norfolk Island

No. 40 All persons accused of fornication will, upon conviction thereof, be sentenced to pay a fine of £10.

No. 41 All persons convicted of racing or furious driving through the streets or upon any of the public roads of the settlement will be fined £1.

(signed) W. Denison

Appendix VII  
PITCAIRN ANTHEM

COME YE BLESSED

Then shall the King say unto them  
On his right hand:

Come ye blessed of my Father,  
Inherit the Kingdom prepared for you  
From the foundation of the world.

For I was hunger'd and ye gave me meat,  
I was thirsty and ye gave me drink  
I was a stranger and ye took me in,  
Naked and ye clothed me,  
I was sick and ye visited me,  
I was in prison and ye came unto me;

In as much as ye have done it unto one  
of the least of these my brethren,  
Ye have done it unto me,  
Ye have done it unto me.

Appendix VIII  
MAPS OF NORFOLK, NEPEAN AND PHILIP ISLANDS AND THE AIRPORT



