

IMMIGRATION ACT 1980

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NORFOLK



ISLAND

Immigration Act 1980

Act No. 2 of 1984

AN ACT

Relating to immigration and residency.

[Reserved for assent 4 November 1983]

[Assented to 1 March 1984]

BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows -

PART 1. PRELIMINARY

1. - Short title

This Act may be cited as the *Immigration Act 1980*.

2. - Commencement

This Act shall come into operation on a date fixed by the Administrator by notice published in the *Gazette*.

3. - Repeal

The following laws are repealed -

Immigration Ordinance 1968;

Immigration Ordinance 1969;

Immigration Ordinance 1974;

Immigration (Amendment) Act 1981.

4. - Interpretation

(1) In this Act, unless the contrary intention appears -

“authorized person” means a person for the time being appointed by the executive member to be an authorized person for the purposes of this Act;

“child” includes step-child and adopted child;

*Notified in *Norfolk Island Government Gazette* of 8 March 1984. No commencement date fixed as at 14 March 1984.

"Committee" means the Immigration Committee established under Part II;

"deportee" means a person the subject of a deportation order;

"deportation order" means an order, whether made under or having effect under this Act, that the deportation of a person from Norfolk Island is authorized;

"false document" means a permit, certificate, passport, visa, identification card or other document that -

- (a) was not issued to or in respect of the person to or in respect of whom it purports to have been issued;
- (b) was forged;
- (c) was obtained by a false or misleading representation; or
- (d) contains a statement that is false or misleading in a particular relevant to the purpose for which the document is used;

"general entry permit" means a general entry permit granted under any provision of this Act or referred to in paragraph 75(1)(a) and in force for the time being;

"magistrate" means a person holding office as Magistrate under the *Court of Petty Sessions Ordinance 1960*;

"master", in relation to a vessel, means the person for the time being in charge or command of the vessel;

"member of the crew", in relation to a vessel, includes the master;

"officer" means -

- (a) the executive member;
- (b) an authorized person;
- (c) the Collector of Customs and any person authorized for any purpose under the *Customs Ordinance 1913*;
- (d) a member of the Police Force of Norfolk Island;

"parent" includes step-parent and adoptive parent;

"permit" means a general entry permit, a temporary entry permit or a visitors permit;

"permit holder" means a person to whom a permit has been granted or a person who is to be deemed to be a person to whom a permit has been granted, but does not include a person whose permit has ceased to be in force;

"port" includes an airport;

"prohibited immigrant" means a person who is, or has been declared to be, a prohibited immigrant by reason of the operation of, or under any provision of, this Act;

"repealed Ordinances" means the laws repealed by this Act;

"resident" means a person -

(a) who is a resident of Norfolk Island by reason of the operation of section 28 or 75; or

(b) in respect of whom a declaration under section 33 is in force, but does not include a person who has ceased to be a resident;

"temporary entry permit" means a temporary entry permit granted under any provision of this Act or referred to in paragraph 75(1)(b) and in force for the time being;

"vessel" includes an aircraft;

"visitors permit" means a visitors permit granted under any provision of this Act or referred to in paragraph 75(1)(c) and in force for the time being.

(2) For the purposes of this Act, a person -

(a) enters Norfolk Island when he disembarks from the vessel in which arrived at Norfolk Island, whether or not he intends to return to the vessel; and

(b) leaves Norfolk Island when he goes outside the territorial limits of Norfolk Island.

5. - Powers of authorized persons

(1) The powers of the executive member under this Act in relation to visitors permits and temporary entry permits may be exercised by an authorized person and references in this Act to the executive member shall, where appropriate having regard to the foregoing provisions of this sub-section, be read as including references to an authorized person.

(2) Where the exercise of a power referred to in sub-section (1) is dependent upon the opinion, belief or state of mind of the executive member in relation to a matter, an authorized person may exercise that power upon the opinion, belief or state of mind of the authorized person in relation to the matter.

(3) Sub-section (1) does not prevent the exercise of any power by the executive member.

PART II. THE IMMIGRATION COMMITTEE

6. - Establishment of Immigration Committee

(1) There is established a committee to be known as the Immigration Committee.

(2) The Committee shall consist of not less than 3 nor more than 5 members, at least 1 but not more than 2 of whom shall be members of the Legislative Assembly and all of whom shall be residents.

(3) The executive member shall not be a member of the Committee.

(4) Members of the Committee shall be appointed by the executive member in accordance with a recommendation of the Legislative Assembly.

(5) A member of the Committee holds office for 2 years but is eligible for re-appointment.

(6) If the office of a member of the Committee becomes vacant before the expiration of his term of office the executive member may, in accordance with the recommendation of the Legislative Assembly, appoint a person to that office for the remainder of the term.

(7) The performance of a function or the exercise of a power by the Committee is not affected by reason of a vacancy in the membership of the Committee.

(8) A member of the Committee shall not be paid remuneration in respect of his membership.

7. - Meetings of Immigration Committee

(1) The Committee shall have a chairman and the members of the Committee shall, at its first meeting and whenever there is a vacancy in the office of chairman, elect one of their number to be chairman.

(2) The chairman of the Committee may, by writing under his hand given to the executive member, resign his office as chairman.

(3) The Committee shall meet at such times and places as -

- (a) the chairman determines; or
- (b) the executive member directs.

(4) The chairman shall preside at all meetings of the Committee at which he is present but, if he is absent from a meeting of the Committee or there is a vacancy in the office of chairman, the members present shall elect one of their number to preside at the meeting.

(5) At a meeting of the Committee, a majority of the number of members, whether present or not, constitutes a quorum.

(6) A question arising at a meeting of the Committee shall be decided by a majority of the votes of the members present and voting.

(7) The member of the Committee presiding at a meeting of the Committee has a deliberative vote only.

(8) Subject to this section, the Committee shall determine its own procedure.

8. - Removal, etc. of members of the Immigration Committee

(1) The executive member may, on the recommendation of the Legislative Assembly, remove from office a member of the Committee for misbehaviour or incapacity.

(2) A member of the Committee may resign his office as a member by writing under his hand given to the executive member.

(3) If a member of the Committee who is a member of the Legislative Assembly becomes the executive member or ceases to be a member of the Legislative Assembly, he ceases to be a member of the Committee.

(4) If a member of the Committee becomes a member of the Legislative Assembly so that thereby more than 2 members of the Legislative Assembly would be members of the Committee, that member ceases to be a member of the Committee.

(5) If a member of the Committee ceases to be a resident, he ceases to be a member of the Committee.

(6) The office of a member of the Committee becomes vacant if, without the approval of the executive member, the member fails to attend 3 consecutive meetings of the Committee.

9. - Functions of Immigration Committee

(1) The functions of the Committee are to furnish reports to the executive member -

- (a) as provided by section 19, with respect to applications for the grant of general entry permits;
- (b) as provided by section 32, with respect to applications for persons to be declared to be residents of Norfolk Island;
- (c) with respect to any other matter which the executive member refers to the Committee concerning his powers or functions under this Act or that otherwise relates to operation of this Act.

(2) The Committee may offer advice to the executive member with respect to any matter which, in its opinion, relates to -

- (a) the granting of permits;
- (b) immigration to Norfolk Island; or
- (c) the declaration of persons to be residents of Norfolk Island, or otherwise relates to the operation of this Act.

10. - Secrecy

(1) A member of the Committee shall not, directly or indirectly -

- (a) except in the exercise of his powers or the performance of his functions as a member of the Committee or as otherwise authorized by law; and

(b) while he is, or after he ceases to be, a member of the Committee, make a record of, or divulge to or communicate to a person other than the executive member, any information with respect to the affairs of another person acquired by him as a member of the Committee.

Penalty: 10 penalty units.

(2) Sub-section (1) does not apply to anything said or done by a member of the Legislative Assembly at a meeting of the Assembly.

PART III. ENTRY PERMITS

11. - Permits not required by residents

This Act does not require a resident to be a permit holder at any time and a permit shall not be granted to a resident.

12. - Permits of residents to cease to have effect

If a permit holder becomes a resident his permit ceases to have effect.

13. - Application for permits-

(1) A person who intends to enter or has entered Norfolk Island may make an application for a visitors permit, a temporary entry permit or a general entry permit.

(2) The application shall be in writing and in accordance with the prescribed form.

(3) The application for a permit of any kind may include the name of the spouse of the applicant and of any child of the applicant who has not attained the age of 18 years and, in such a case, an application shall be deemed to have been made for a permit of that kind to be granted not only to the applicant but also to each person whose name was included in the application.

(4) Each such person shall, for the purposes of this Act, be regarded as having made an application for a permit of the kind sought and this Act applies to and in relation to the application and to and in relation to the person as though the person had made a separate application.

(5) Where a permit is granted to a person whose name is included in an application as mentioned in sub-section (3), until the permit holder has attained the age of 18 years -

- (a) any action required by this Act to be taken by the permit holder may be taken -
 - (i) by the permit holder;

- (ii) on behalf of the permit holder, by the person in whose application the name of the permit holder was included; or
 - (iii) on behalf of the permit holder, by a parent of the permit holder or by some other person whom the executive member considers to be appropriate in the circumstances; and
- (b) any notice required by this Act to be given to the permit holder may be given -
- (i) to the permit holder;
 - (ii) to the person in whose application the name of the permit holder was included; or
 - (iii) to a parent of the permit holder or to some other person whom the executive member considers to be appropriate in the circumstances.

14. - Entry permits

Upon application in accordance with section 13, the executive member may, in his discretion but subject to this Act, grant a permit of the kind sought or refuse the application.

15. - Visitors permits

(1) Subject to this section, a visitors permit remains in force for such period, not exceeding 30 days, as is specified in the permit.

(2) Where a person enters Norfolk Island -

- (a) this Act applies to the person during the period of 30 days commencing on the day on which the person entered Norfolk Island as if a visitors permit expressed to expire at the expiration of that period of 30 days had been granted to the person; and
- (b) a reference in this Act, other than a reference in this section, to a person to whom a visitors permit has been granted shall be read, in respect of that period, as including a reference to the person.

(3) Sub-section (2) does not apply to -

- (a) a resident or a permit holder;
- (b) a person whose application for a permit, including an application for a permit under the repealed Ordinances, has been refused within the preceding period of 1 year; or
- (c) a person who is a prohibited immigrant otherwise than by reason of his not being the holder of a visitors permit.

(4) Where an application is made for a visitors permit by or with respect to a person referred to in sub-section (2) during the period of 30 days referred to in that sub-section, a permit granted on the application may be expressed to come into force at any time during, or immediately upon the expiration of, that period of 30 days.

(5) Notwithstanding sub-section (1), the executive member may, on application by the holder of a visitors permit, extend the period during

which the permit is in force but so that the period is not extended beyond the period of 120 days commencing on the day on which the permit holder entered Norfolk Island.

(6) Where the holder of a visitors permit, or a person referred to in sub-section (2), undertakes employment, or commences to carry on or participate in a business or profession, in Norfolk Island -

- (a) in the case of the holder of a visitors permit - the permit ceases to be in force; and
- (b) in the case of a person referred to in sub-section (2) - that sub-section ceases to have effect with respect to that person.

(7) Sub-section (6) does not have effect with respect to employment or to the carrying on of or participation in a business or profession that does not extend -

- (a) beyond the period of 7 days after the person concerned entered Norfolk Island; or
- (b) beyond such further period as the executive member, on application made by the person concerned before or after the expiration of that period of 7 days, allows.

16. - Temporary entry permits

(1) A temporary entry permit -

- (a) subject to this Act, remains in force for such period, not exceeding 1 year, as is specified in the permit; and
- (b) may be granted subject to such conditions as are specified in the permit.

(2) The executive member may, on application by the permit holder, from time to time extend, by a period not exceeding 1 year on each occasion, the period during which the permit remains in force.

17. - Conditions

(1) The conditions that may be specified in a temporary entry permit may relate to any 1 or more of the following:

- (a) the permit holder entering into employment with a particular employer in Norfolk Island;
- (b) the permit holder, in Norfolk Island, entering into any employment included in a specified class of employment;
- (c) the permit holder, in Norfolk Island, carrying on or participating in a business or profession;
- (d) the permit holder, in Norfolk Island, undertaking scientific, historical or cultural research or activities;
- (e) any matter that the executive member considers to be beneficial to Norfolk Island.

(2) Before determining an application for a temporary entry permit, the executive member shall have regard to such matters as he considers to be relevant and, in particular, to the following, so far as they are relevant:

- (a) whether a person in Norfolk Island is available to enter into employment specified in the application and whether the proposed employer is prepared to engage that person;
- (b) the qualifications of the applicant to carry on or to participate in a business or profession specified in the application or to engage in employment so specified;
- (c) whether a business or profession specified in the application is already sufficiently provided for in Norfolk Island;
- (d) the character of the applicant;
- (e) whether, if the applicant entered or remained in Norfolk Island, any facility available in Norfolk Island would be likely to be subject to an undue burden;
- (f) the health of the applicant; and
- (g) whether the applicant holds a ticket for travel from Norfolk Island.

(3) The executive member may, at any time, upon the application of the permit holder or of his own motion, vary or revoke a condition specified in a temporary entry permit or add a condition to such a permit.

18. - Grant of general entry permits to certain persons

(1) Where an applicant for a general entry permit satisfies the executive member that the applicant has a special relationship with Norfolk Island, the executive member may grant the permit sought if, in his discretion, he considers that the relationship is such as to justify his doing so.

(2) Where -

- (a) an application for a general entry permit is made by the spouse or a child of a permit holder under a permit granted under sub-section (1); or
- (b) a person, being the spouse or a child of a person making an application for a general entry permit, is, by reason of sub-section 13(4), to be regarded as having made an application for a general entry permit and the second-mentioned person is granted a permit under sub-section (1),

the executive member shall grant the permit sought.

(3) In sub-section (2), a reference to a child is a reference to a child who, at the time when the relevant application was made, had not attained the age of 18 years.

(4) The executive member may, in his discretion and notwithstanding the existence of a relationship as mentioned in sub-section (1), refuse to grant a permit under this section -

- (a) if the applicant has been convicted, in a place outside Norfolk Island, of an offence punishable by imprisonment for 6 months or longer; or

- (b) if a general entry permit previously granted to the applicant under this section has been cancelled, is to be deemed to have been cancelled or has expired.

(5) Sub-section 21(2) does not apply to or in relation to a permit applied for or granted under this section.

(6) Except as otherwise provided by this section, the provisions of this Act relating to general entry permits apply to and in relation to permits applied for or granted under this section.

19. - General entry permits

(1) Where an application is made for a general entry permit, including an application in relation to which sub-section 18(1) applies but not including an application in relation to which sub-section 18(2) applies, the executive member shall, within 30 days, refer the application to the Immigration Committee.

(2) The Committee shall consider the application and shall have regard to such matters as it considers to be relevant and, in particular, to the following:

- (a) the applicant's reasons for wishing to live in Norfolk Island;
- (b) the applicant's intentions with respect to his livelihood in Norfolk Island and whether they are likely to be realised;
- (c) the character of the applicant;
- (d) the health of the applicant; and
- (e) the financial position of the applicant.

(3) In the case of an application in relation to which sub-section 18(1) applies, the Committee shall also consider the special relationship asserted by the applicant to exist between himself and Norfolk Island.

(4) The Committee shall, within 30 days after receiving the application, or within such longer period as the executive member, whether before or after the expiration of that period of 30 days, allows, report to the executive member whether, in its opinion, the application should be granted or refused and shall set out the reasons for its report.

(5) The report may set out any conditions to which the Committee considers that a permit, if granted, should be subject.

(6) If the Committee has not reported to the executive member as mentioned in sub-section (4), the executive member may deal with the application without the report of the Committee.

20. - Period etc. of general entry permits

(1) A general entry permit remains in force, subject to this Act, for a period of 5 years and 6 months but this sub-section does not prevent a further general entry permit being granted to have effect as from the expiration of that period.

(2) A general entry permit may be granted subject to such conditions as are specified in the permit.

(3) The executive member may at any time, on application by the permit holder, vary or revoke a condition specified in a general entry permit or add a condition to such a permit.

21. - Executive member may fix quota

(1) The executive member may, in accordance with a recommendation of the Legislative Assembly, determine the number of general entry permits that may be granted during a year.

(2) The executive member shall, in a year, refuse to grant a general entry permit if the granting of the permit would result in the number of general entry permits granted during that year exceeding the number fixed in respect of that year under sub-section (1).

(3) Where the executive member refuses to grant a general entry permit solely on the ground specified in sub-section (2), the applicant may request in writing that his application for the permit subsist and, in that case, the executive member shall consider the application in the following year in priority to applications received in that year.

22. - Lapsing of certain permits upon departure from Norfolk Island

(1) Where a permit holder under a temporary entry permit or a general entry permit, without the permission in writing of the executive member or of an authorized person, leaves Norfolk Island and remains out of Norfolk Island for the prescribed period, then, unless the executive member otherwise determines, the permit has no force or effect with respect to the re-entry of the person into Norfolk Island.

(2) For the purposes of sub-section (1), the prescribed period is -

(a) in the case of a temporary entry permit - 3 months; and

(b) in the case of a general entry permit - 183 days in any period of 1 year.

(3) Sub-section (1) does not apply if the permit holder, in the course of his absence from Norfolk Island, did not enter or land at a place outside Norfolk Island.

23. - Breaches of conditions of certain permits

(1) Where a permit holder under a temporary entry permit or a general entry permit is in breach of a condition to which the permit is subject and a period of 14 days has elapsed since the breach occurred, the permit shall, subject to sub-section (2), be deemed to have been cancelled.

(2) If -

(a) within the period of 14 days referred to in sub-section (1), the permit holder notifies the executive member, in writing, of the breach; and

(b) the permit holder furnishes to the executive member any further information that the executive member requires,

the executive member may, in his discretion, give to the permit holder a certificate that the permit is not to be deemed to have been cancelled by reason of the breach and, in that case, the permit shall not be deemed to have been cancelled.

24. - Certain persons not permitted to remain in Norfolk Island

Where -

- (a) a permit holder under a temporary entry permit fails to comply with a condition specified in the permit; or
- (b) it has become impossible for such a permit holder to comply with such a condition,

the permit holder, if he is in Norfolk Island, becomes a prohibited immigrant.

25. - Persons whose permits have ceased to have effect become prohibited immigrants

Where -

- (a) a permit granted to a person is cancelled or otherwise ceases to have effect or to be in force, or the period, or extended period, during which the permit is to remain in force elapses; and
- (b) there is no other permit in force in respect of the person and the person is not a resident,

the person, if he is in Norfolk Island, becomes a prohibited immigrant.

26. - Cancellation of certain permits

The executive member may, in his discretion, cancel a visitors permit or a temporary entry permit and thereupon the permit holder, if he is in Norfolk Island, becomes a prohibited immigrant.

(2) Where -

- (a) a permit holder under a visitors permit becomes the holder of a temporary entry permit or a general entry permit, the visitors permit shall be deemed to have been cancelled; or
- (b) a permit holder under a temporary entry permit becomes the holder of a general entry permit, the temporary entry permit shall be deemed to have been cancelled,

but the permit holder does not thereby become a prohibited immigrant.

(3) The executive member may, in his discretion, but after giving a permit holder under a general entry permit a reasonable opportunity of being heard, cancel the permit if the executive member considers it to be in the interests of the community of Norfolk Island to do so and thereupon the permit holder, if he is in Norfolk Island, becomes a prohibited immigrant.

27. - Employment, etc. of permit holder to be notified

If a permit holder under a temporary entry permit, while in Norfolk Island -

- (a) undertakes employment, changes his employment or ceases to be employed; or
- (b) commences to carry on or to participate in a business or profession, changes his business or profession or ceases to carry on or to participate in a business or profession,

he shall -

- (c) within 30 days after so doing, give notice in writing to the executive member accordingly; and
- (d) give to the executive member, within such period as the executive member specifies, such information with respect to his employment, business or profession as the executive member requires.

(2) If a person proposes to employ a permit holder under a temporary entry permit, he shall -

- (a) before commencing to employ the permit holder, inform the executive member accordingly; and
- (b) give to the executive member, within such a period as the executive member specifies, such information with respect to the employment of that person as the executive member requires.

Penalty: 5 penalty units.

PART IV. RESIDENCY

28. - Certain persons to be residents

(1) A person -

- (a) who, at any time, whether before or after the commencement of this Act, was born in Norfolk Island; and
- (b) one of whose parents was, at that time, a resident,

is, subject to this Part, a resident of Norfolk Island.

(2) If a person who would, under sub-section (1), have been or become a resident if born on Norfolk Island was, for medical reasons connected with his birth or for some other reason connected with his birth that the executive member considers to be sufficient, born elsewhere, he shall be deemed to have been born in Norfolk Island.

(3) Subject to this Part, if a parent of a person who was born in Norfolk Island becomes a resident under section 33 before that person attains the age of 18 years, and if that person is then ordinarily a member of the household of his parent, that person becomes a resident at the same time as his parent.

(4) The executive member may, from time to time, publish in the *Gazette* a list of persons whom he believes to be residents by virtue of this section.

29. - Residency by declaration**(1) A person who -**

- (a) is a permit holder under a general entry permit;
- (b) is, or has the status of, a British subject;
- (c) is ordinarily resident in Norfolk Island and has been so resident for a period of at least 5 years during the period of 7 years immediately preceding the making of the application;
- (d) has not during the period of 5 years immediately preceding the making of the application been ordinarily resident elsewhere; and
- (e) intends, if declared to be a resident, to continue to reside ordinarily in Norfolk Island,

may make an application to be declared to be a resident of Norfolk Island.

(2) For the purposes of paragraph (1)(c), a period of residence during which the applicant was a permit holder under a visitors permit or a temporary entry permit shall be disregarded.

(3) Sub-section (2) does not apply in relation to a period of residence -

- (a) under a temporary entry permit granted under the repealed Ordinances or referred to in paragraph 75(1)(b); or
- (b) of a person whose name was specified in such a permit.

(4) An application under this section shall be in writing and in accordance with the prescribed form.

30. - Applications may include name of spouse etc.

An application under section 29 may include name of the spouse of the applicant and of any child of the applicant who has not attained the age of 18 years and, in that case, the application shall be deemed to have been made with respect not only to the applicant but also with respect to each person whose name is included in the application.

(2) Each such person shall, for the purposes of this Act, be regarded as having made an application for a declaration that he is a resident of Norfolk Island and this Act applies to and in relation to the applicant as though the applicant had made a separate application.

(3) In the case of a declaration granted to a person whose name was included in an application as mentioned in sub-section (1), until the person has attained the age of 18 years -

- (a) any action required by this Act to be taken by the person subject of the declaration may be taken -
 - (i) by that person;
 - (ii) on behalf of that person, by the person in whose application that person's name was included; or

- (iii) on behalf of that person, by a parent of that person or by some other person whom the executive member considers to be appropriate in the circumstances; and
- (b) any notice required by this Act to be given to the person the subject of the declaration may be given -
 - (i) to that person;
 - (ii) to the person in whose application that person's name was included; or
 - (iii) to a parent of the person or to some other person whom the executive member considers to be appropriate in the circumstances.

31. - Procedure on application

The executive member shall consider whether an application under section 29 or 30 complies with the requirements of sub-section 29(1) and shall -

- (a) if he is satisfied that the application does comply with those requirements - refer the application to the Immigration Committee; or
- (b) if he is not so satisfied - refuse the application.

32. - Consideration of application by Committee

The Committee shall, in its consideration of an application referred to it under section 31, take into account such matters as it considers to be relevant and, in particular, shall take into account -

- (a) the extent to which the applicant has been assimilated into the community of Norfolk Island;
- (b) whether the applicant -
 - (i) is of good character; and
 - (ii) is in good health.
- (2) The Committee shall report to the executive member -
 - (a) whether, in its opinion, the application should be granted or refused; and
 - (b) the reasons for its opinion.
- (3) Subject to sub-section (4), the executive member shall not determine an application for a declaration referred to the Committee under section 31 until he has -
 - (a) received and considered the report of the Committee; and
 - (b) considered any other matters that, in his opinion, are relevant.
- (4) If the executive member has not received the report of the Committee within 30 days after the executive member referred the application to the Committee, or within such longer period as the executive member, whether before or after the expiration of the period of 30 days, allows, the executive member may deal with the application without the report of the Committee.

33. - Grant of declaration

(1) The executive member shall, in accordance with this Part, grant the declaration sought or refuse to grant the declaration.

(2) The refusal under sub-section (1) of the grant of a declaration with respect to a person who is a permit holder does not affect the operation of the applicant's permit.

34. - Notification of declarations

(1) The executive member shall publish in the *Gazette* notice of -

- (a) an application for a grant of a declaration under section 29 or 30; and
- (b) the grant of a declaration under section 33.

(2) The executive member shall -

- (a) cause to be kept a record of the declarations granted under section 33; and
- (b) not later than each 31 March, report to the Legislative Assembly the number of such declarations granted by him during the year ended on the previous 31 December.

(3) The executive member shall make available for public inspection, at reasonable hours, the record referred to in paragraph (2)(a).

35. - Cessation of residency

(1) If a resident-

- (a) by some voluntary and formal act, other than marriage, ceases to be, or to have the status of, a British subject; or
- (b) not being a person who is a resident by virtue of section 28, is, without the approval of the executive member, absent from Norfolk Island for a continuous period of more than 3 years and has not satisfied the executive member that he intends to resume ordinary residence in Norfolk Island,

the executive member may declare that the person has ceased to be a resident.

(2) The executive member shall not make a declaration under sub-section (1) unless he has served on the person notice of his intention to make the declaration and a period of at least 30 days has elapsed since the notice was given.

(3) The person may, within that period, furnish to the executive member particulars of any matters that he wishes the executive member to consider.

(4) A notice under sub-section (2) may be given to the person as prescribed and shall be deemed to have been given on a date as prescribed.

36. - Disclaimer of residency

If a resident serves a notice in writing on the executive member that he no longer wishes to be a resident, he ceases to be a resident.

37. - Certificate of residency

(1) Subject to sub-section (2), the executive member shall grant to a resident who requests him to do so a certificate in accordance with the prescribed form that the person is a resident.

(2) The executive member shall not grant the certificate unless he has satisfied himself that the applicant is a resident and has not ceased to be a resident.

38. -Offences in respect of residency

(1) A person shall not, for the purpose of claiming to be a resident by virtue of section 28 or in an application under section 29 -

- (a) make to the executive member a statement or declaration that is false or misleading in a material particular; or
- (b) produce to the executive member a false document.

(2) A person shall not transfer or part with possession of a document so that it can be used to assist a person, not being a person entitled to use it, to claim to be a resident under section 28 or to obtain a declaration as mentioned in section 29.

Penalty: 5 penalty units.

PART V. PROHIBITED IMMIGRANTS*Division 1. General***39. - Application of Part**

This Part applies to and in relation to a person who is a prohibited immigrant under any provision of this Act.

40. -Prohibited immigrants

(1) If a person is in Norfolk Island and is not a resident or a permit holder he is a prohibited immigrant.

(2) The executive member or an authorized officer may serve on a prohibited immigrant a notice requiring him to leave Norfolk Island within a period, not exceeding 30 days, specified in the notice.

(3) A person shall not fail to comply with a notice served on him in accordance with sub-section (2).

Penalty: 5 penalty units.

(4) If a prohibited immigrant becomes a resident or a permit holder he ceases to be a prohibited immigrant but this sub-section does not prevent a person from again becoming a prohibited immigrant.

(5) A permit holder shall be deemed not to have been a prohibited immigrant during any period during which he was not a permit holder.

41. - Persons obtaining permits in certain circumstances to be prohibited immigrants

(1) Where, after the commencement of this Act or before the commencement of this Act but after the commencement of the *Immigration (Temporary Provisions) Ordinance 1967*, a person who obtains or obtained a permit authorizing him to enter Norfolk Island or to remain in Norfolk Island, either indefinitely or for a specified period, or both to enter Norfolk Island and so to remain in Norfolk Island -

(a) produced to an officer, for the purpose of securing the granting of a permit, a false document; or

(b) made to an officer, for the like purpose, a statement or declaration that was false or misleading in a material particular,

that person is a prohibited immigrant.

(2) Sub-section (1) has effect notwithstanding that the person has become a resident or a permit holder, but, where an order is made for the deportation of a person under, or by reference to, that sub-section, if the person is a resident, he shall be deemed to have ceased to be a resident and, if he is a permit holder, the permit shall be deemed to have been cancelled.

42. - Certain convicted persons to be prohibited immigrants

(1) Subject to this section, where a person, not being a resident -

(a) has, whether before or after the commencement of this Act, been convicted in Norfolk Island or elsewhere of an offence punishable by imprisonment for 6 months or longer; or

(b) has, whether before or after the commencement of this Act, been convicted in Norfolk Island or elsewhere of an offence by reason of being a prostitute or having lived on, or receiving part of, the earnings of prostitution or of having procured persons for the purpose of prostitution,

the executive member may, by order, declare that the person is a prohibited immigrant.

(2) The executive member shall not make an order under sub-section (1) with respect to a person where the conviction, or the termination of any sentence of imprisonment imposed under the conviction, whichever last occurred, took place more than 5 years before the date of the proposed order.

(3) Where the executive member, in the exercise of his discretion under sub-section 18 (4), granted a permit notwithstanding that the applicant had

been convicted of an offence as mentioned in that sub-section, paragraph (1) (a) does not apply with respect to that offence.

43. - Persons entering Norfolk Island in certain circumstances to be prohibited immigrants

(1) Where, after the commencement of this Act, or before the commencement of this Act but after the commencement of the *Immigration Restriction Ordinance 1922*, a person who enters or entered Norfolk Island as an immigrant -

- (a) evades or evaded an officer for the purpose of entering Norfolk Island;
- (b) for the purpose of securing entry into Norfolk Island, produces or produced to an officer a false document;
- (c) not being a resident, is or was at the time of entry a person suffering from a prescribed disease; or
- (d) is or was, at the time of entry -
 - (i) a person who had been convicted of an offence punishable by imprisonment for 6 months or longer; or
 - (ii) a person who had been deported from Norfolk Island or some other country,

that person is a prohibited immigrant unless he is the holder of a permit endorsed with a statement that the executive member or an authorized person recognises him to be a person referred to in this sub-section.

(2) Sub-section (1) has effect notwithstanding that the person has become a permit holder or a resident but, where an order is made for the deportation of a person under or by reference to that sub-section, the permit of which the person is the holder shall be deemed to have been cancelled or, if the person is a resident, he shall be deemed to have ceased to be a resident.

(3) Where the executive member in the exercise of his discretion under sub-section 18(4), granted a permit notwithstanding that the applicant had been convicted of an offence as mentioned in that sub-section, sub-paragraph (1)(d)(i) does not apply with respect to that offence.

(4) For the purposes of this section, if a person -

- (a) while he was a member of the crew of, or a person included in the complement of, a vessel, entered Norfolk Island before the commencement of this Act and, at the time of entering Norfolk Island or at some later time, deserted or deserts the vessel or became or becomes absent without leave; or
- (b) entered or enters Norfolk Island (whether before or after the commencement of this Act) at a place where no officer was or is stationed,

the person shall be deemed to have evaded an officer for the purpose of entering Norfolk Island.

(5) For the purposes of this section, where the master of a vessel has reported to an officer that a person included in the complement of the vessel or a member of the crew of the vessel was at any time absent without leave, that person or member shall, unless the contrary is proved, be deemed to have been at that time absent without leave.

(6) In this section, "officer" includes a person who was an officer for the purposes of the *Immigration Restriction Ordinance 1922* or the *Immigration (Temporary Provisions) Ordinance 1967*.

44. - Certain persons to be prohibited immigrants

(1) Where the executive member is satisfied that a person, not being a resident, who entered Norfolk Island (whether before or after the commencement of this Act) not more than 5 years previously is a person who -

- (a) advocates the overthrow by force or violence of the established administration of Norfolk Island or the established government of the Commonwealth, of a Territory, of a State or of some other country or all forms of law;
- (b) advocates the abolition of organized government or the assassination of public officials;
- (c) advocates the unlawful destruction of property; or
- (d) is a member of an organization that entertains and teaches any of the doctrines and practices specified in paragraph (a), (b) or (c),

the executive member shall, by order, declare the person to be a prohibited immigrant.

(2) Sub-section (1) has effect notwithstanding that the person has become a permit holder but, where an order is made for the deportation of a person under or by reference to that sub-section, the permit of which the person is the holder shall be deemed to be cancelled.

Division 2. Deportation

45. - Deportation of prohibited immigrants

(1) The executive member may, by order, declare that the deportation from Norfolk Island of a prohibited immigrant is authorized by this Act and the person shall, unless the order is revoked, be deported accordingly.

(2) Where the executive member makes, or has made, an order that the deportation of a person from Norfolk Island is authorized by this Act, the executive member may, in his discretion, at the request of the spouse of the person, by order, declare that the deportation from Norfolk Island of the spouse, or the spouse and a dependant child or children of that person, is authorized by this Act, and the person or persons named in the order shall, unless the order is revoked, be deported accordingly.

(3) A dependant child who has been deported as provided by sub-section (2) shall not, by reason only of having been so deported, be regarded for the purposes of this Act as a prohibited immigrant.

46. - Minister to be informed of deportation orders

(1) The executive member shall furnish to the Administrator a copy of each deportation order made by him and the Administrator shall inform the Minister of the making of the order.

(2) A deportation order shall not be enforced against a person unless the Minister has informed the Administrator that the deportee will be received into the country to which it is proposed to deport him.

(3) If the Minister informs the Administrator that a deportee will not be received into the country to which it is proposed to deport him, the deportation order ceases to have effect so far as that person is concerned but this sub-section does not prevent the making of a further deportation order in respect of the person.

(4) The preceding provisions of this section do not have effect with respect to the deportation of an Australian citizen to Australia or a New Zealand citizen to New Zealand.

47. - Arrest of prohibited immigrants

(1) An officer may, without warrant, arrest a person whom he believes, on reasonable grounds, to be a prohibited immigrant and a person so arrested may, subject to this section, be kept in the custody of the officer or of another officer.

(2) Where an officer arrests a person under this section, he shall forthwith inform the person arrested of the reason for the arrest, and the officer or another officer having the custody of that person shall take the person before a magistrate within 48 hours after his arrest.

(3) If the person is not brought before a magistrate in accordance with sub-section (2), he shall forthwith be released.

(4) Where a person is brought before a magistrate under this section, the magistrate shall inquire into the question whether there are reasonable grounds for supposing that that person is a prohibited immigrant and, if the magistrate is satisfied that there are such reasonable grounds, he may, by writing under his hand, authorize the detention of that person in the custody of an officer for such period, not exceeding 7 days from the date of the authorization, as the magistrate is satisfied is reasonably required in order to enable the executive member to consider whether a deportation order should be made in respect of the person but otherwise the magistrate shall order that the person be released.

(5) At the expiration of the period of detention of a person under this section, that person shall be released.

(6) If, while a person is in custody under this section, an officer informs the person (whether before or after he has been brought before a magistrate) that a deportation order is in force in relation to him, the preceding provisions of this section cease to apply in relation to the person and he shall be deemed to have been arrested under section 66 by the officer having his custody.

(7) An officer may at any time order the release of a person who is in custody under this section.

(8) Nothing contained in, or done under, this section prevents the Supreme Court from ordering the release from custody of a person who is held in custody under this section where the Supreme Court finds that the person is not a prohibited immigrant.

48. - Powers of entry and search

(1) An officer may at any time go on board and search a vessel in which he suspects, on reasonable grounds, that there may be found a person seeking to enter Norfolk Island in such circumstances that he would become a prohibited immigrant.

(2) The master of a vessel shall do all things reasonably required by an officer to facilitate the boarding and searching of the vessel by the officer.
Penalty: 5 penalty units.

49. - Search Warrants

(1) A magistrate may, upon application by the executive member or an authorized person, grant to an officer a search warrant in accordance with the prescribed form.

(2) The warrant shall be expressed to remain in force for a period, not exceeding 3 months, specified in it and ceases to be in force at the expiration of that period.

(3) An officer having with him a search warrant granted to him under this section and remaining in force may, at any time of the day or night, enter and search any vessel, building, premises, vehicle or place in which he believes, on reasonable grounds, that there may be found -

- (a) a prohibited immigrant or a deportee;
- (b) a person who has not complied with a condition to which his permit was subject; or
- (c) documents, books or papers relating to the immigration or proposed immigration of a person in such circumstances that he would have become, or would become, a prohibited immigrant,

and may seize any such documents, books or papers and retain them for such time as is reasonably necessary.

(4) For the purposes of the exercise of his powers under this section, an officer -

- (a) may stop a vessel or vehicle; and
- (b) may use such reasonable force as is necessary.

50. - Duty of master, etc. of vessel which brought deportee to Norfolk Island to provide passage

(1) Where the deportation of a person from Norfolk Island is authorized by a provision of this Act, an officer may, by notice in writing, require the master, owner, agent or charterer of the vessel in which the deportee arrived in Norfolk Island to remove him from Norfolk Island, without charge to the Administration.

(2) An officer may make a requirement under sub-section (1) notwithstanding that such a requirement has previously been made by that officer or by another officer with respect to that deportee, if the time for compliance with the previous requirement has expired and the deportee is still in Norfolk Island.

(3) Subject to sub-section (5), where the deportation of a person from Norfolk Island is authorized by or under a provision of this Act, an officer may by notice in writing, require the master, owner, agent or charterer of the vessel in which the deportee arrived in Norfolk Island to provide, without cost to the Administration, a passage for the deportee to the place at which he boarded the vessel when he came to Norfolk Island.

(4) A person on whom a requirement has been made under sub-section (1) or (3) shall comply with the requirement within 30 days after receipt of notice of the requirement or within such further time as the executive member, whether before or after the expiration of that period, allows, whether or not the deportee is able or willing to pay, or agrees to pay, a charge in respect of his passage.

Penalty: 10 penalty units.

(5) Where sub-section (3) applies in relation to a deportee but the executive member is satisfied, on reasonable grounds, that the deportee will not or may not be permitted to re-enter the place referred to in that sub-section, the executive member shall exempt the persons on whom a requirement under that sub-section has been or could be made from liability under the preceding provisions of this section in respect of the deportee if arrangements to the satisfaction of the executive member are made by all or any of those persons for payment to the Administration of such sum as the executive member thinks reasonable in the circumstances in respect of the cost or part of the cost of a passage for the deportee to some other place outside Norfolk Island.

(6) Where a deportee in respect of whom a requirement has been made under this section is being maintained at the expense of the Administration, the person on whom the requirement has been made is liable to pay to the Administration such sum as the executive member considers to be reasonable in respect of the cost of maintaining the deportee from the time when

the requirement was made until the deportee is placed on board the vessel or until an exemption is granted to that person under sub-section (5).

(7) The master, owner, agent or charterer of a vessel shall not be required, under this section, to remove a deportee from Norfolk Island or to provide a passage for a deportee if -

- (a) the passage money paid in respect of the conveyance of the deportee to Norfolk Island was paid, in whole or in part, by or on behalf of the Commonwealth or the Administration;
- (b) the deportee, when he came to Norfolk Island, was a resident or a permit holder;
- (c) the deportee, when he came to Norfolk Island, was the spouse of, and in the company of, a resident or a permit holder; or
- (d) the deportee, when he came to Norfolk Island, was under the age of 18 years and was in the company of a resident or a permit holder.

(8) In this section, a reference to the owner or charterer of the vessel in which a deportee arrived in Norfolk Island shall be read as a reference to the person who was the owner or charterer of the vessel at the time when that deportee arrived in Norfolk Island (whether or not he continues to be the owner or charterer of the vessel) and a reference to the agent of such a vessel shall be read as a reference to the agent for the time being of the person who, in accordance with the preceding provisions of this sub-section, is referred to as the owner or charterer of the vessel.

(9) In this section, a reference to the master of the vessel in which a deportee arrived in Norfolk Island shall, in relation to making of a requirement on the master under this section, be read as a reference to the person who is the master of the vessel at the time when the requirement is made but such a requirement shall not be made on the master unless, at that time, the vessel is still owned or chartered by the person who was the owner or charterer of the vessel at the time when the deportee arrived in Norfolk Island.

51. - Deportee to be received on board vessels

(1) The master, owner, agent or charterer of a vessel shall, on being required by an officer by notice in writing so to do, receive a deportee on board for conveyance to a place specified in the notice, being a place to which the vessel is bound, and shall also receive on board, for such time as the officer requires, a person charged with the custody of the deportee.

Penalty: 10 penalty units.

(2) The Administration is liable to pay such reasonable passage money and other charges as are demanded by the master, owner, agent or charterer, as the case may be, of a vessel for the services specified in a requirement made under sub-section (1).

52. - Defence to prosecutions

It is a defence to a prosecution in respect of a failure to comply with a requirement made under sub-section 50(1) or (3) or sub-section 51(1) if the defendant proves that -

- (a) after receipt of the notice making the requirement, he gave reasonable notice to an officer of his willingness to receive the deportee on board a specified vessel at a specified place on a specified date for removal from Norfolk Island; and
- (b) the deportee was not made available at that place on that date in the custody of an officer for placing on board that vessel.

Division 3. Duties of Masters in relation to Crews

53. - Production of identification cards and mustering of crew

The master of a vessel, other than a vessel of the regular armed forces of a government recognised by the Commonwealth, which has entered Norfolk Island from outside Norfolk Island -

- (a) shall, upon arrival of the vessel at Norfolk Island, have in his possession an identification card in respect of each member of the crew who is on board the vessel;
- (b) shall, upon the arrival of the vessel at Norfolk Island, if an officer so requires, produce to the officer the identification cards referred to in paragraph (a);
- (c) shall, before the departure of the vessel from Norfolk Island, if an officer so requires, muster the crew in the presence of the officer and produce to the officer the identification cards referred to in paragraph (a); and
- (d) shall not, where an officer has made a requirement as provided by paragraph (c), depart with the vessel from Norfolk Island unless the requirement has been complied with.

Penalty: 10 penalty units.

54. - Master to report absences

The master of a vessel, other than a vessel of the regular armed forces of a government recognised by the Commonwealth, that has entered Norfolk Island from outside Norfolk Island, shall, immediately before the departure of the vessel from Norfolk Island, report in writing to an officer the name of any member of the crew of the vessel who was on board the vessel at the time of its arrival at Norfolk Island and has deserted or is absent, and shall, if an officer so requires, deliver to the officer the identification card in respect of that member.

Penalty: 10 penalty units.

55. - Transitional provisions

The provisions of this Division that apply in connection with the departure of a vessel from Norfolk Island extend to a vessel that arrived at

Norfolk Island before the date of commencement of this Act and was in Norfolk Island on that date.

56. - Exemptions

(1) Where the executive member is satisfied that it is unnecessary for the purposes of this Act that a provision of this Division should apply or should continue to apply in relation to a vessel, he shall, by writing under his hand, exempt the master of that vessel from liability to comply with that provision, either in whole or in part.

(2) An officer may, by writing under his hand, exempt the master of a vessel in whole or in part from liability to comply with any of the provisions of section 53.

Division 4. Offences in relation to Entry

57. - Irregular entry

(1) A person who -

- (a) is a prohibited immigrant by reason of the operation of section 43;
- (b) is an immigrant to whom paragraph 72(3)(a) or (c) applies;
- (c) evades or has evaded an officer for the purpose of entering Norfolk Island; or
- (d) enters Norfolk Island after having produced to an officer, for the purposes of securing entry into Norfolk Island, a false document.

is guilty of an offence punishable, upon conviction, by imprisonment for a period not exceeding 6 months.

(2) A person who -

- (a) for the purpose of securing the grant of a permit, produced to an officer a false document; or
- (b) made to an officer, for the like purpose, a statement or declaration that was false or misleading in a material particular.

is guilty of an offence punishable, upon conviction, by imprisonment for a period not exceeding 6 months.

(3) A deportee who has been placed on board a vessel for deportation and leaves the vessel in Norfolk Island otherwise than in lawful custody is guilty of an offence punishable, upon conviction, by imprisonment for a period not exceeding 6 months.

(4) The conviction of a person of an offence under this section does not prevent the making of an order for the deportation of that person or the further execution of a deportation order and imprisonment in respect of such a conviction shall cease for the purpose of deportation.

(5) Where a person is convicted of an offence under this section and appeals against his conviction, he shall not be released on bail unless he finds two sureties, each in the sum of \$1,000 and each approved by the executive member, for his appearance at the hearing of the appeal.

58. - Penalty on master, etc. of vessel in certain cases

Where a deportee who has been placed on board a vessel for deportation leaves the vessel in Norfolk Island otherwise than in lawful custody, the master, owner, agent and charterer of the vessel are each guilty of an offence punishable, upon conviction, by a fine not exceeding 10 penalty units.

59. - Stowaways

(1) Subject to sub-sections (2) and (3), if a vessel having on board 1 or more stowaways enters Norfolk Island from a place outside Norfolk Island, the master, owner, agent and charterer of the vessel are each guilty of an offence punishable, upon conviction, by a fine not exceeding 10 penalty units in respect of each stowaway.

(2) If the master of the vessel has, within 1 year preceding his conviction for an offence under sub-section (1), been convicted of a previous offence under that sub-section or under the corresponding provisions of the repealed Ordinances, the penalty in respect of the first-mentioned offence is a fine not exceeding 20 penalty units in respect of each stowaway.

(3) Sub-section (1) does not apply in relation to a stowaway if the master of the vessel, forthwith after the arrival of the vessel at Norfolk Island, gives notice to an officer that the stowaway is on board and prevents the stowaway from landing before an officer has had an opportunity of interrogating him.

Division 5. Examination, Search and Detention

60. - Appointment of boarding stations

The executive member may, for the purposes of this Act, by notice published in the *Gazette* -

- (a) establish ports and fix their limits; and
- (b) appoint a place within the limits of a port to be a boarding station for that port.

61. - Vessels to enter ports and be brought to boarding stations

(1) The master of a vessel which has entered Norfolk Island from outside Norfolk Island shall not suffer his vessel to enter a place other than a port.

Penalty: 50 penalty units.

(2) The master of a ship from outside Norfolk Island bound to or calling at a port -

- (a) shall, if an officer so requires, bring his vessel to for boarding under this Act at a boarding station appointed for that port; and
- (b) shall not move his vessel from that boarding station, except for the purpose of leaving that port, until an officer permits him to do so.

Penalty: 50 penalty units.

(3) The master of an aircraft which is engaged on an air service or a flight to Norfolk Island from a place outside Norfolk Island -

- (a) shall not suffer the aircraft to land at a place other than an airport.
- (b) shall, as soon as practicable after the aircraft lands at an airport, bring the aircraft for boarding to a boarding station appointed for that airport; and
- (c) shall not move his aircraft from that boarding station until an officer permits him to do so.

Penalty: 50 penalty units.

(4) It is a defence to a prosecution for an offence under sub-section (1) or (3) if the person charged proves that he was prevented from complying with the sub-section by stress of weather or other reasonable cause.

(5) While a vessel is at a boarding station, an officer may go and remain on board the vessel for the purposes of this Act.

(6) The master of a vessel shall do all things that an officer reasonably requires to facilitate the boarding of the vessel under this section and the performance by the officer of his duties for the purposes of this Act.

Penalty: 10 penalty units.

(7) Where the executive member or an authorized person is satisfied that it is unnecessary for the purposes of this Act that a provision of this section should apply or should continue to apply in relation to a vessel, he shall, by writing under his hand, exempt the master of that vessel from further compliance.

62. - Custody of prohibited immigrant during stay of vessel in port

(1) A person who is on board a vessel at the time the vessel enters Norfolk Island and from a place outside Norfolk Island, being a stowaway or a person whom an officer believes, on reasonable grounds, to be seeking to enter Norfolk Island in circumstances in which he would become a prohibited immigrant (in this section referred to as "the prohibited immigrant"), may, if -

- (a) an officer so directs; or
- (b) the master of the vessel so requests and officer approves,

be taken from the vessel by an officer and kept in the custody of the officer or of another officer until the departure of the vessel from Norfolk Island or until such earlier time as an officer determines.

(2) A person in custody under sub-section (1) may be returned to the vessel or, with consent of the master of another vessel, be placed on board that other vessel, by an officer at any time.

(3) The master, owner, agent and charterer of a vessel referred to in sub-section (1) are jointly and severally liable to pay to the Administration such sum as the executive member considers to be reasonable in respect of the cost of keeping and maintaining the prohibited immigrant while he is kept in custody in pursuance of that sub-section and the cost of transporting

the prohibited immigrant, and a custodian of the prohibited immigrant, from the vessel to the place of custody and, if the prohibited immigrant is returned to the vessel or another vessel, from the place of custody to the vessel or that other vessel.

(4) A person shall not, for the purposes of the Act, be deemed to have entered Norfolk Island by reason only of his having been taken from the vessel under sub-section (1).

Division 6. Miscellaneous

63. - Prohibited immigrants or deportees may be prevented from landing

(1) An officer may -

- (a) prevent a person from entering Norfolk Island where that person would, if he entered, be a prohibited immigrant; or
- (b) prevent a deportee from leaving a vessel on which he has been placed,

and may take such action and use such force as are reasonably necessary for that purpose.

(2) The master of a vessel may, in relation to a person on board the vessel, do all things which an officer is authorized to do under sub-section (1).

64. - Persons concerned in bringing immigrants secretly into Norfolk Island or harbouring prohibited immigrants

(1) A person shall not take any part in -

- (a) the bringing or coming to Norfolk Island of an immigrant under such circumstances that it might have been inferred, on reasonable grounds, that the immigrant intended to enter Norfolk Island secretly or without the knowledge of an officer;
- (b) the concealing of an immigrant with intent to enable him to enter Norfolk Island secretly or without the knowledge of an officer; or
- (c) the concealing of a prohibited immigrant or a deportee with intent to prevent his discovery by an officer.

(2) A person shall not -

- (a) aid or incite a person to enter or remain in Norfolk Island in such circumstances that he would become a prohibited immigrant; or
- (b) knowingly harbour a prohibited immigrant or a deportee.

Penalty: 10 penalty units or imprisonment for 6 months.

65. - False papers

(1) A person shall not, in connection with the entry, or proposed entry, of an immigrant (including that person himself) into Norfolk Island -

- (a) present to an officer a false document; or

- (b) falsely represent to an officer that he or another person is the person named in a document;
 - (c) produce a document to an officer with intent to deceive or mislead him in a material particular; or
 - (d) deliver to an officer, or otherwise furnish for official purposes of the Administration, a document containing a statement or information that is false or misleading in a material particular.
- (2) A person shall not transfer or part with possession of a document -
- (a) with intent that the document be used to assist a person, being a person not entitled to use it, to gain entry to, or to remain in, Norfolk Island; or
 - (b) where he has reason to suspect that the document may be so used.

Penalty: 10 penalty units or imprisonment for 6 months.

66. - Arrest of deportee

(1) Where an order for the deportation of a person is in force, an officer may, without warrant, arrest a person whom he supposes, on reasonable grounds, to be that person and a person so arrested may, subject to this section, be kept in the custody of an officer or of another officer.

(2) Where an officer arrests a person under this section, or is to be deemed to have arrested a person under this section, the officer shall forthwith inform the person arrested of the reason for the arrest and shall, if that person so requests, furnish to him, as soon as practicable, particulars of the deportation order.

(3) Where an officer arrests a person under this section, or is to be deemed to have arrested a person under this section, the officer shall forthwith take the person before a magistrate, who shall inquire into the question whether it would be reasonable to release the person from custody pending deportation and shall, after that inquiry, order that the person -

- (a) be kept in such custody as the magistrate directs -
 - (i) pending deportation, until he is placed on board a vessel for deportation;
 - (ii) at any place in Norfolk Island at which the vessel calls after he has been placed on board; or
 - (iii) on board the vessel until her departure from her last place of call in Norfolk Island; or
- (b) be released from custody pending deportation upon furnishing such security (either with or without sureties) as the magistrate thinks fit.

(4) If a person who is arrested or is to be deemed to have been arrested under this section claims that he is not the person in respect of whom the deportation order is in force, the officer having his custody shall ask him to make a statutory declaration to that effect and, if the person arrested makes such a declaration before the completion of the inquiry by a magistrate in

accordance with sub-section (3), the magistrate shall also inquire into the question whether there are reasonable grounds for supposing that that person is a deportee and, if the magistrate is satisfied that there are such reasonable grounds, he shall, by writing under his hand, declare accordingly.

(5) Where the magistrate is not satisfied that there are reasonable grounds for supposing that the arrested person is a deportee, the magistrate shall direct the release of that person and he shall be released accordingly.

(6) If a person arrested under this section is not brought before a magistrate in accordance with this section, he shall be released.

(7) Notwithstanding anything in this section, an officer may at any time order the release of a person who is in custody under this section.

(8) Nothing contained in, or done under, this section prevents the Supreme Court from ordering the release from custody of a person held in custody under this section where the court finds that there is no valid deportation order in force in relation to that person.

67. - Persons in custody to have access to legal advice

Where a person is in custody under this Act, the person having his custody shall, at the request of the person in custody, afford to him all reasonable facilities for making a statutory declaration for the purposes of this Act or for obtaining legal advice or taking legal proceedings in relation to his custody.

68. - Person may be required to answer questions

(1) For the purpose of determining whether a person who has been arrested and is in custody under this Act is a prohibited immigrant or a deportee, an officer may put to that person such questions as are reasonably necessary for that purpose and may move that person from place to place.

(2) Where an officer puts a question to a person in accordance with sub-section (1) after having informed the person that he is required to answer the question, the person shall not -

- (a) refuse or fail to answer the question; or
- (b) in answer to the question, make a statement that is false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment for 6 months.

(3) Where sub-section (2) is applicable in relation to a question put to a person, that person is not excused from answering the question on the ground that the answer might tend to incriminate him but the answer to the question shall not be used as evidence against that person in any proceedings other than proceedings under that sub-section.

69. - Identification of persons in custody

Where a person is in custody under this Act, an officer may do all such things as are reasonably necessary for photographing, fingerprinting or measuring that person or otherwise recording matters in order to facilitate his present or future identification.

70. - Detention of vessel for purpose of search

(1) An officer may, by notice in writing served on the master of a vessel which has entered Norfolk Island from a place outside Norfolk Island not more than 1 month before the date of the notice, order that the vessel remain at a place for a reasonable time specified in the notice for the purpose of enabling a search of the vessel to be made in order to ascertain whether there is on the vessel any stowaway or person seeking to enter Norfolk Island in such circumstances that he would become a prohibited immigrant.

(2) The master of a vessel in respect of which an order is in force under this section shall not, during the time specified in the order, move the vessel without the consent of an officer.

Penalty: 5 penalty units.

71. - Detention of vessel pending recovery of penalty

(1) The executive member or an authorized person may, by writing under his hand, direct an officer to detain a vessel where the executive member or authorized person believes on reasonable grounds that the master, owner, agent or charterer of the vessel has been guilty of an offence against this Act or against the repealed Ordinances.

(2) Where a direction is given under sub-section (1) -

- (a) the officer specified in the direction or another officer may detain the vessel at the place where it is found or cause it to be brought to another place specified by the officer and detain it at that place; and
- (b) the officer shall forthwith give notice in writing of the detention to the owner, agent or charterer of the vessel.

(3) The detention of a vessel under this section shall cease if a bond with 2 sufficient sureties to the satisfaction of an officer is given by the master, owner, agent or charterer of the vessel for the payment of any penalty that may be imposed in respect of the alleged offence.

(4) If, while a vessel is detained under this section, default is made in payment of a penalty imposed in respect of an offence against this Act or against the repealed Ordinances by the master, owner, agent or charterer of the vessel, an authorized person may seize and sell the vessel.

(5) The proceeds of a sale under sub-section (4) shall be applied, first, in payment of the penalty referred to in that sub-section and of all costs awarded in connection with the proceedings in which the penalty was imposed or incurred in and about the sale and the proceedings leading to the sale, and any balance is payable to the owner and other persons having interests in the vessel before the seizure.

PART VI. GENERAL**72. - Exemptions**

(1) This Act does not require any of the following persons to be a permit holder at any time:

- (a) a member of the armed forces of the Crown who enters Norfolk Island in the course of his duty;
- (b) a diplomatic or consular representative or official trade commissioner of a country or a member of the staff of such a representative or commissioner who was sent to Norfolk Island by the government of that country, or the spouse or a dependant relative of such a representative, commissioner or member;
- (c) a person included in the complement of a vessel of the regular armed forces of a government recognised by the Commonwealth who enters Norfolk Island on leave from that vessel during the vessel's stay in Norfolk Island, not being a person in respect of whom a declaration is in force under sub-section (2); or
- (d) a member of the crew of a vessel, not being a person in respect of whom a declaration is in force under sub-section (2), who enters Norfolk Island on leave from that vessel during the vessel's stay in Norfolk Island, where the master of the vessel has duly complied with the provisions of this Act that are applicable upon the arrival of the vessel at Norfolk Island.

(2) The executive member may, by instrument in writing, declare in relation to a person referred to in paragraph (1)(c) or (d), that it is undesirable that he be permitted to enter or remain in Norfolk Island.

(3) If a person to whom sub-section (1) applies has entered Norfolk Island and a permit has not been granted to that person since that entry, he becomes a prohibited immigrant -

- (a) in the case of a person referred to in paragraph (1)(a) - if he becomes absent without leave or ceases to be a member of the armed forces of the Crown;
- (b) in the case of a person referred to in paragraph (1)(b) - if he ceases to be such a person; and
- (c) in the case of a person referred to in paragraph (1)(c) or (d) -
 - (i) if he remains in Norfolk Island after the vessel has left Norfolk Island; or
 - (ii) if, before the vessel has so left, he becomes absent without leave or a declaration in relation to him is made under sub-section (2).

(4) For the purposes of this section, if the master of a vessel has reported to an officer that a person included in the complement of the vessel is, or has at any time been, absent without leave, that person or member shall, unless the contrary is proved, be deemed to be, or to have been at that time, absent without leave.

73. - Powers not to be unreasonably exercised and notice of decisions to be given

If the executive member or an authorized person -

- (a) refuses to grant a permit or to grant a permit as sought;

- (b) revokes or varies a condition subject to which a permit was granted or is for the time being subject or adds a condition to a permit;
 - (c) refuses to extend the period during which a permit is in force or extends a permit for a shorter period than that sought by the permit holder;
 - (d) cancels a permit; or
 - (e) takes any other action under this Act in relation to a permit,
- he shall give notice to the applicant or to the permit holder, as the case may be, accordingly and shall furnish with the notice the reasons for his decision.

74. - Racial discrimination prohibited

The Minister, the Administrator or an officer shall not exercise any power under this Act in such a way as to constitute racial discrimination within the meaning of the International Convention on the Elimination of All Forms of Racial Discrimination.

75. - Transitional provisions

(1) A person who, immediately before the date of commencement of this Act -

- (a) was the holder of a permit under, or a person whose name was specified in, an entry permit granted under the repealed Ordinances, not being a temporary entry permit, shall, from and including that date, be deemed to be the holder of a general entry permit under this Act;
- (b) was the holder of a permit under, or a person whose name was specified in, a temporary entry permit granted under the repealed Ordinances, shall, from and including that date be deemed to be the holder of a temporary entry permit under this Act;
- (c) was a visitor, as defined by sub-section 13(1) of the *Immigration Ordinance* 1968, shall, from and including that date, be deemed to be the holder of a visitors permit under this Act and expressed to be in force for a period of 30 days;
- (d) not being a person to whom paragraph (e) applies, was a resident within the meaning of the *Immigration Ordinance* 1968 shall, from and including that date, be deemed to be a resident of Norfolk Island by virtue of section 28 of this Act;
- (e) was a resident of Norfolk Island by virtue of a declaration made under sub-section 17(2) of the *Immigration Ordinance* 1968 shall, from and including that date, be deemed to be a resident by virtue of a declaration under section 33 of this Act; or
- (f) was, or was to be deemed to be, a prohibited immigrant under the repealed Ordinances is a prohibited immigrant under this Act.

(2) A deportation order made under the repealed Ordinances and in force immediately before the commencement of this Act has effect, if the person to whom the order applies is still in Norfolk Island, as if it had been made under section 45 of this Act.

(3) Paragraph 1(b) does not apply in relation to a temporary entry permit that, under section 13 of the *Immigration Ordinance* 1968, is to be deemed to have been granted to a person.

(4) A permit of which a person is to be deemed to be the holder by virtue of paragraph (1)(a) or (b) is subject to the same conditions (if any) as those to which the permit under the repealed Ordinances was subject and has effect for the remainder of the period (if any) for which that permit was granted.

76. - Certain permits may be granted

(1) Where, by reason of section 75, a person is to be deemed to be the holder of a permit under this Act, the executive member may, on application in writing by or on behalf of the person concerned, grant to that person a permit under this Act of such a kind, and containing such terms and conditions (if any) and expressed to be in force for such period (if any), as are appropriate having regard to the provisions of this Act and, in particular, to the provisions of sub-section 75(4).

(2) Section 21 does not apply to or in relation to a general entry permit granted under sub-section (1).

77. - Pending applications, etc.

(1) An application or request made under the repealed Ordinances and not finally dealt with shall be dealt with or further dealt with as if they had not been repealed and the repealed Ordinances, notwithstanding their repeal, continue to apply to and in relation to the application or request.

(2) Sections 75 and 76 apply in relation to a permit granted under sub-section (1) as they apply in relation to permits granted before the date of commencement of this Act under the repealed Ordinances.

78. - Applications on behalf of children

(1) A form of application under this Act by a person who has not attained the age of 18 years may be signed on behalf of the applicant by a parent of the applicant or by some other person whom the executive member or an authorized person considers to be appropriate in the circumstances.

(2) In such a case, until the applicant has attained the age of 18 years, any action required by this Act to be taken by the applicant may be taken by, and any notice required by this Act to be given to the applicant may be given to -

- (a) the person who signed the application;
- (b) a parent of the applicant; or
- (c) some other person whom the executive member or an authorized person considers to be appropriate in the circumstances.

79. - Proof of certain matters

(1) In proceedings in respect of an offence under this Act, the production of a relevant notice served under sub-section 40(2), or of a document certified under the hand of the executive member to be a copy of such a notice, is, if it contains a statement in relation to the person on whom the notice was served as to any matter in relation to which this section applies and in the absence of proof to the contrary, proof of the matter set out in the statement.

(2) In proceedings in which the validity or application of a deportation order is in issue, the production of the deportation order, or of a document certified under the hand of the executive member to be a copy of a deportation order, is, if the order contains a statement in relation to the person to whom the order relates as to any matter in relation to which this section applies, and in the absence of proof to the contrary, proof of the matter set out in the statement.

(3) The matters in relation to which this section applies are the following:

- (a) that a person, on a specified date, was not a resident;
- (b) that a person entered Norfolk Island before, on or after a specified date;
- (c) that a person was not, at the time when he entered Norfolk Island or at any other specified time, a permit holder;
- (d) that, on a specified date, a person was a permit holder under a permit that had expired or had been cancelled or was otherwise not in force;
- (e) that, within the meaning of a provision of this Act, on a specified date a person evaded an officer for the purpose of entering Norfolk Island;
- (f) that, on a specified date, a person, for the purpose of securing the entry of himself or of some other person into Norfolk Island, produced to an officer a false document;
- (g) that, on a specified date, a person, for the purpose referred to in paragraph (f), made to an officer a statement or declaration that was false or misleading in a material particular.

(4) Proof to the contrary for the purposes of sub-section (1) or (2) must be by the personal evidence of the defendant, with or without other evidence.

(5) Proof to the contrary by the personal evidence of a person in respect of a matter referred to in paragraph (3)(b), (c), (e) or (f) shall not (unless it is proved that that person was born in Norfolk Island) be deemed to have been given unless that person in his personal evidence states truly the name of the vessel, or if the vessel was an aircraft, the name of the owner or operator of the aircraft, by which he travelled to Norfolk Island and the date of his arrival in Norfolk Island.

(6) In proceedings in which a person gives personal evidence by way of proof to the contrary in relation to a matter for the purposes of this section, that person is not excused from answering a question put to him on the ground that the answer may tend to incriminate him or make him liable to a penalty, but his answer is not admissible in evidence against him in any other proceedings, other than a prosecution for perjury.

(7) Where a party to proceedings under this Act applies to the court for an adjournment of the proceedings for the purpose of enabling him to obtain evidence in rebuttal of evidence tendered as proof to the contrary for the purposes of this section, the court shall grant an adjournment for such reasonable time as is necessary for that purpose.

(8) This section does not place on a person the burden of proving a matter of which evidence may be given under this section by production of a deportation order or a copy of a deportation order.

80. - Averments, etc.

(1) In a prosecution in respect of an offence against this Act, an averment of the prosecutor contained in the information or complaint stating, in relation to the defendant, a matter specified in sub-section 79(3) shall, in the absence of proof to the contrary by the personal evidence of the defendant, whether with or without other evidence, be deemed to be proved.

(2) Sub-sections 79(4), (5), (6) and (7) apply to and in relation to proceedings in which an averment is made in accordance with this section in the same manner as they apply to and in relation to proceedings in which a deportation order, or a copy of a deportation order, is admitted in evidence in accordance with section 79.

81. - Proof of certain other matters

(1) This section has effect in respect of proceedings in a court under this Act or in relation to a deportation order.

(2) Official documents of the Administration or of the Commonwealth or of a State or a Territory and letter and telegrams, or copies of letters and telegrams, and affidavits produced out of official custody and purporting to have been sent or made by an officer within the meaning of this Act or of the repealed Ordinances, or within the meaning of the *Migration Act* 1958, are, if they contain information or statements upon matters relevant to the proceedings, admissible as evidence of that information or of the matters stated in them.

(3) For the purpose of proving that a person was a member of the crew of a vessel, a document produced out of official custody and purporting to be an identification card signed by the master of that vessel and relating to a member of the crew of that vessel having the same name as the name of that person and purporting to bear a personal description and photograph of the person to whom the document relates is admissible in evidence and production of the document shall, if the personal description and photograph appear to be, or to be capable of being, those of that first-mentioned person, be deemed to be proof that he was a member of the crew of that vessel, unless the contrary is proved.

(4) Evidence of a report by the master of a vessel to an officer that a person included in the complement of the vessel or a member of the crew of the vessel is, or has at any time been, absent without leave may be given by production out of official custody of a document purporting to be such a report.

(5) For the purpose of proving that a person entered Norfolk Island from a vessel, a list of passengers in that vessel, or a passenger card relating to a passenger in that vessel, is admissible in evidence and production of such a list or passenger card bearing a name that is the same as the name of that person shall be deemed to be proof that that person entered Norfolk Island from that vessel on the voyage in respect of which the list or passenger card was furnished, unless the contrary is proved.

(6) For the purpose of proving that a person has, in a place outside Norfolk Island, been convicted of an offence (including an attempt to commit an offence) and has been sentenced to a particular sentence in respect of the conviction, fingerprint records, photographs and documents or copies thereof, and certificates in relation to fingerprint records, photographs or documents or copies thereof, are admissible in evidence if they -

- (a) are produced out of the custody of an officer; and
- (b) purporting to be certified or given under the hand of a police or prison officer, or similar authority, of a place outside Norfolk Island,

and such a certificate is evidence of the matters stated in the certificate, unless the contrary is proved.

82. - Maintenance guarantees

(1) For the purpose of this section, the maintenance of a person includes -

- (a) the accommodation of that person;
- (b) the medical, surgical or dental treatment of that person; and
- (c) any money expended in payment of the fare of that person from Norfolk Island to a place outside Norfolk Island.

(2) Where maintenance consists of the provision of accommodation, goods or services for which a charge is payable, the value of the maintenance shall, for the purpose of this section, be deemed to be equal to the charge so payable.

(3) The executive member may, in such circumstances as he thinks fit, require a maintenance guarantee to be given in relation to a person seeking to enter or remain in Norfolk Island for such amount, in such form and in respect of such period as the executive member determines.

(4) Where, in respect of the whole or a part of the period for which a maintenance guarantee has been given in respect of a person, maintenance of that person has been provided by the Administration or moneys of the Administration have been otherwise expended, either directly or indirectly, in respect of the maintenance of that person, an amount equal to the value of the maintenance provided or the moneys so expended (less any amount paid

in respect of the maintenance by or on behalf of that person) is, subject to sub-section (5), a debt due and payable to the Administration by the person who gave the maintenance guarantee.

(5) A person who has given a maintenance guarantee under this section is not liable to pay to the Administration under the guarantee or under this section a sum exceeding, or sums amounting in the aggregate to a sum exceeding, the amount for which the guarantee was given.

(6) The Administration may, in a court of competent jurisdiction, sue for and recover a debt due and payable under sub-section (4).

83. - Medical examinations

(1) Where an officer, on reasonable grounds, suspects that a person (other than a resident) who is seeking to enter Norfolk Island or is an applicant for a permit is suffering from an illness that may be a danger to persons in Norfolk Island, the officer may direct the person to submit himself to examination by a medical practitioner specified by the officer at a place specified by the officer.

(2) The person shall submit himself for medical examination in accordance with the direction.

Penalty: 10 penalty units or imprisonment for 6 months.

(3) If the medical officer certifies that it is undesirable that the person should enter or remain in Norfolk Island, the person shall not enter Norfolk Island or the permit sought shall not be granted.

84. - Review of decisions by Minister

(1) A person aggrieved by a decision of the executive member or of an authorized person under this Act (not being a decision in relation to which section 85 applies or a decision by the executive member to institute a prosecution) may, within 14 days after notice in writing of the decision is given to him, by writing under his hand lodged with or sent by post to the Administrator, request that the Minister review the decision.

(2) The request shall set out, or be accompanied by, particulars of the matters that the person wishes the Minister to consider.

(3) The Minister may direct that no further proceedings be taken with respect to the matter the subject of the request for review and, in that case, no further proceedings shall be taken until the Minister has made his decision or has revoked his direction.

(4) The Minister shall consider the request and, subject to this Act, may confirm, vary or annul the decision under review or may make such other decision in substitution for the decision under review as the Minister considers to be appropriate.

(5) The Minister shall not annul a decision not to grant a general entry permit (not being a general entry permit in relation to which section 18 applies) if the granting of the permit would result in the number of holders of general entry permits exceeding the number fixed in respect of the relevant year under section 21.

(6) The executive member shall, if the Minister so requests, furnish to the Minister a report or information of which he has knowledge, or both, concerning any matter relating to the request.

(7) The decision of the Minister has the same effect as a decision of the executive member and the executive member shall take such action as is necessary to give effect to the decision.

(8) The Minister shall furnish to the executive member and to the aggrieved person a statement of the reasons for his decision.

85. - Review of decisions by Administrator - visitors permits

(1) A person aggrieved by a decision of the executive member or of an authorized person refusing to grant the person a visitors permit or to extend the period during which a visitors permit is in force may, within 7 days after notice in writing of the decision is given to him, by writing under his hand lodged with or sent by post to the Administrator, request that the Administrator review the decision.

(2) Sub-sections 84(2), (3), (4), (6), (7) and (8) apply in relation to the request as though the reference in each of those sub-sections to the Minister were a reference to the Administrator.

86. - Arrival and departure forms

(1) A person who arrives at or is about to leave Norfolk Island shall forthwith furnish to an officer the prescribed arrival form, or the prescribed departure form, respectively, duly and correctly completed.

Penalty: 1 penalty unit.

(2) Sub-section (1) does not apply to a member of the crew of a vessel.

87. - Passenger lists

The master of a vessel entering Norfolk Island from a place outside Norfolk Island shall forthwith furnish to an officer a list setting out the full name of each person on board the vessel who intends to disembark in Norfolk Island and does not intend to depart with the vessel.

Penalty: 2 penalty units.

88. - Institution of prosecutions

A prosecution for an offence under this Act shall not be instituted except by the executive member.

89. - Fees

Where a fee is payable in respect of an application or other matter, or the grant of a permit or other instrument, under this Act, the application or matter shall not be dealt with, or the permit or instrument shall not be granted, until the fee has been paid.

90. - Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, rescribing all matters that this Act requires or permits to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations -

(a) may provide for the payment of fees in respect of applications or other matters, or the grant of a permit or other instrument, under this Act; and

(b) may provide for penalties, not exceeding a fine of 5 penalty units, in respect of offences against the regulations.

(3) The regulations may prescribe different fees in respect of different applications, matters, permits or instruments.
