

NORFOLK ISLAND / AUSTRALIA

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The Kreddha Autonomy Mapping Project commissioned case studies from experts and academics throughout the Asia-Pacific region (or experts on the region). Each case study gives information about the specific arrangements and the formative processes that define the governance relationships between autonomous regions and the states within which they exist. The information is presented online in the project database in a number of formats. This paper represents the original case study drafted for this research project by the author named above.

The purpose of the project is to provide comprehensive information about the many options for and models of autonomy arrangements that satisfy the needs of specific population groups for protection and respect of their distinct identities, as well as their desire to govern themselves – while equally satisfying the states' interests, including the preservation of territorial integrity. The division and sharing of powers and responsibilities at different levels and through various governmental structures is at the core of these autonomy arrangements.

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CURRENT STATUS

Norfolk Island is an Australian Territory with a self-governing status and part of the Commonwealth of Australia. While Norfolk Island is similar to the other mainland territories, Australian Capital Territory and Northern Territory, the Norfolk Island Government and Legislative Assembly have greater legislative and executive powers and more responsibilities (e.g. customs, quarantine and immigration) than the mainland territories. Norfolk Island is 'vested with legislative and executive capacity by the Federal Parliament under Section 122 of the Constitution' (JSC 2003, 32). It is governed under the Norfolk Island Act 1979, the successor to the *Norfolk Island Act 1957* and the *Norfolk Island Act 1913*. The Australian Government commenced a review of the governance arrangements for Norfolk Island in February 2006 and signalled its intention to make changes following several commissioned reports. However, on 20 December 2006, the Minister for Local Government, Territories and Roads announced 'that the Australian Government has decided not proceed with changes to the governance of Norfolk Island' (DOTARS 2006).

BASIC GEOGRAPHIC AND DEMOGRAPHIC FACTS

Norfolk Island is a volcanic island in the South Pacific between Australia and New Zealand, 900 kilometres from Brisbane and 600 kilometres from Auckland. The 2006 census for Norfolk Island shows a permanent population of 1,576, virtually static over the 5 years since the 2001 census when the permanent population was 1,574. However, the distribution of population among age groups has changed with a 14 percent reduction in the 15-35 years age group and an increase of 10 percent in the numbers of persons over 50 years of age. According to the 2006 census, the majority (62.9 percent) of Norfolk Island's permanent population were not born there but come especially from Australia and New Zealand. Furthermore, if the population on 'Temporary Entry Permits' is added to the permanent population then the 'ordinarily resident population' of Norfolk Island rises by 287 to 1,863 in 2006.



Map of Norfolk Island

Norfolk Island's population makes up a minute proportion of the total Australian population which was estimated at 21,145,204 in November 2007. The populations of the mainland territories are also considerably greater than Norfolk Island. The Australian Capital Territory had a population of 325,200 in 2005 while the Northern Territory's population was 202,800.

In line with its extremely small population, Norfolk Island occupies a very small area. There are three islands (Norfolk, Nepean and Phillip) with the main Norfolk Island accounting for most of the 34.6 square kilometres of total land area. By contrast, the mainland territories occupy large areas: Australian Capital Territory 58,588 square kilometres and Northern Territory 1,346,200 square kilometres.

The settlement of Norfolk Island is significant for understanding aspects of its politics and governance. It was an uninhabited island when first settled as a penal colony by Britain in 1788. This 'hell in the Pacific' was abandoned 26 years later only to be re-established as a penal colony in 1825 and vacated again in 1855. In 1856, the 193 descendents of the Bounty mutineers were moved from Pitcairn Island to Norfolk Island as Pitcairn Island could no longer support this size of population. Pitcairn surnames are still prominent among the island's population and 'Norfolk', a combination of 18th century English and Tahitian, is recognised as one of the island's

languages. English is the other language and is the official language. A Society of Pitcairn Descendents has peacefully promoted the idea that Norfolk Island was illegally obtained by Australia from Britain and that it is a 'dependent territory' rather than being part of the Australian Federation. While this does not presently have widespread support, the Government of Norfolk Island has vigorously opposed moves 'to effectively remove self-government from Norfolk Island' (GNI 2007). The Government of Norfolk Island does appear to have considerable support from the island population in defending its current self-governing status.

The Territory's status has been the subject of various legal actions and judgements. It was first annexed to Van Dieman's Land (later Tasmania) but on 24 June 1856, was 'made a distinct and separate settlement under the control and administration of the Governor of the Colony of New South Wales' (JSC 2003, 30). This corresponded with the settlement of the Pitcairn Islanders. In 1914, it was brought into the Commonwealth of Australia as a Territory. This status was considered in *Newberry v The Queen* in 1965 and found to be 'constitutionally valid'. Then, in 1976, in the case of *Berwick Limited v RR Gray* it was agreed that it was 'abundantly clear that Norfolk Island forms part of the Commonwealth of Australia'. In the same year the Nimmo (1976) Royal Commission into 'matters relating to Norfolk Island' concluded that 'there was no evidence to support the proposition that Norfolk Island was ceded to the Pitcairn Island inhabitants' (Nimmo as quoted by JSC 2003, 31). An Advisory Committee to the 1987 Constitutional Commission once again confirmed Norfolk Island's status within the Commonwealth of Australia while a parliamentary Joint Standing Committee inquiring into governance on Norfolk Island in 2003 could see no reason for further inquiry into the matter of Norfolk Island's constitutional status. That report did however call for reform in Norfolk Island's governance arrangements.

The economic viability of Norfolk Island was questioned by the Joint Standing Committee on the National Capital and External Territories (JSC 2005). While acknowledging prior studies asserting that Norfolk Island's could be economically and financially self-supporting, the 2005 Joint Standing Committee claimed that the island's economic management had been 'flawed', that the size of the economy had been overstated and that there were inadequate revenue resources to cover increasing expenditure costs. Since the 1980s the economy has become heavily dependent on the tourism industry. In a Government of Norfolk Island set of 'Facts about Norfolk Island' it was asserted that 90 percent of the workforce was involved in tourism and 10 percent in agriculture. An Australian Bureau of Statistics survey for 2004-2005 identified 71 percent of business income deriving from tourism. About 30,000 tourists visit Norfolk Island each year.

It should be noted that the Federal Government's concerted campaign to reform governance and finance on Norfolk Island as set out in the Joint Standing Committee reports mentioned above was abruptly stopped in 2007. A press release of February 2006 by the Minister for Local Government Territories and Roads stated that the Australian Government had the responsibility for ensuring 'a sustainable form of government on Norfolk Island' and set out the possible options. But on 20 December 2006 the Minister announced that 'The Australian Government has decided it will not proceed with changes to the governance of Norfolk Island'. He cited the potential for 'significant disruption to the fragile economy of the island' and his perception that the Norfolk Island Government was taking appropriate actions to reinvigorate the Norfolk Island economy, to restructure the public service and revenue base, and to engage in constructive dialogue with Federal Government organizations and officials. These were commitments first laid out in a press release from the Norfolk Island Government in April 2006. The Federal Minister was obviously pleased with implementation progress.

The Commonwealth of Australia was formed in 1901 when six independent British colonies joined together in a federation. The six states retain powers to make their own laws over matters not controlled by the Commonwealth Government under Section 51 of the Constitution.

Territories are areas not claimed by the states and are outside the borders of the states. There are ten territories, seven of which are governed through Commonwealth law and usually through a Commonwealth-appointed administrator. The three self-governing territories are the Australian Capital Territory, Northern Territory and Norfolk Island. Norfolk Island is the only offshore self-governing territory. Other offshore territories either have lower populations than Norfolk Island or are uninhabited.

DOCUMENTS THAT DEFINE THE AUTONOMY ARRANGEMENTS

Norfolk Island's model of self-government was defined in the Commonwealth's *Norfolk Island Act 1979*. This established Norfolk Island 'as a separate body politic with its own institutions of government' (JSC 2003, 35). It derived from the 1976 Nimmo Royal Commission although the Act did not incorporate all of the Commission's recommendations. The Act explicitly recognised the special relationship of the descendants of the Pitcairn Islanders with Norfolk Island and their desire to preserve their traditions and culture. It was also indicated that 'the model of self-government enshrined in the *Norfolk Island Act 1979* (Cth) was an experiment subject to review' (JSC 2003, 36).

The Act devolved considerable legislative and executive power. The island's elected assembly can 'enact laws on virtually any topic that it chooses, including on matters that are the preserve of Federal Government elsewhere' (JSC 2003, 37). The Norfolk Island Government has the broad executive authority to 'administer, fund and enforce' the laws enacted by the assembly. Among the key elements of the Act are provision for:

- An Administrator to act as the nominal head of the Norfolk Island Government;
- A Norfolk Island Legislative Assembly able to make laws for the peace, order and good governance of the Territory including laws to raise taxes and impose charges;
- An Executive Council or Ministry drawn from the Legislative Assembly and appointed by the Administrator on the recommendation of the Assembly;
- The Administrator to act on ministerial advice
- A Norfolk Island public service (DOTARS 2006)

The Federal Minister for Local Government Territories and Roads has 'ultimate responsibility for governance of Norfolk Island' (JSC 2003, 39). This is because Section 122 of the Constitution gives the Commonwealth the power to make laws for the Territory. Also, the Federal Government recognises obligations to its citizens and non-Australian residents. Furthermore, the Federal Government has international law and treaty obligations for all constituent parts of the country.

It should be emphasized that there has never been any armed struggle or peace agreement relating to Norfolk Island. The governance arrangements for the island since its original annexation as part of Van Dieman's Land (Tasmania) have been determined through proper legal means. In the lead up to the current *Norfolk Island Act 1979* there was extensive consultation with the island's population about governance arrangements, a practice that has been continued. However, there have been considerable tensions and disagreements between the Federal Government and Government of Norfolk Island relating to the 2005-2006 proposals to reconfigure Norfolk Island's governance arrangements. These proposals were shelved in December 2007.

IMPLEMENTATION AND ENTRENCHMENT OF THE AUTONOMY ARRANGEMENT

The autonomy arrangement is entrenched in Section 112 of the Constitution and the *Norfolk Island Act 1979*.

DIVISION OF COMPETENCIES BETWEEN NATIONAL AND AUTONOMOUS GOVERNMENTS

The basic principle for the division of competencies is the primacy of the Federal Government as stated in Section 112 of the Constitution:

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Thus, if the Federal Government wishes to extend any of its legislation to Norfolk Island it can do.

Section 19 states that the Norfolk Island Legislative Assembly's law-making powers do not include:

- (a) authorizing the acquisition of property otherwise than on just terms; or
- (b) authorizing the raising or maintaining of any naval, military or air force; or
- (c) authorizing the coining of money; or
- (d) which permit or have the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life.

Schedule 2 of the *Norfolk Island Act 1979* lists 93 functions for which the Norfolk Island Government has full executive authority. Schedule 3 of the *Norfolk Island Act* lists those matters which must be referred to the Federal Minister. Items not appearing on either list are 'referred by the Administrator for the Governor-General's pleasure' (JSC 2003, 98). All these arrangements involve the processes of assent set out in Sections 21 and 22 of the *Norfolk Island Act 1979*.

Schedule 2

Sections 4, 7, 12, 21, 27, 47 and 67

1. The raising of revenues for purposes of matters specified in this Schedule.
2. Public moneys of the Territory (other than the raising of revenues).
3. Surface transport (including road safety, traffic control, carriers, vehicle registration and the licensing of drivers).
4. Roads, footpaths and bridges.
5. Street lighting.
6. Water supply.
7. Electricity supply.
8. Drainage and sewerage.
9. Garbage and trade waste.
10. Primary production.

11. The slaughtering of livestock.
12. Domestic animals (including birds).
13. Public pounds.
14. Pests and noxious weeds.
15. Recreation areas.
16. Cemeteries.
18. Fire prevention and control.
19. Quarrying.
20. Building control (including the repair or demolition of dangerous buildings).
21. Advertising hoardings.
22. The prevention and suppression of nuisances.
23. Noxious trades.
24. Gases and hydrocarbon fuels.
25. Firearms.
26. Explosives and dangerous substances.
27. Tourism.
28. Places of public entertainment.
29. Boarding houses and hotels.
30. Museums, memorials and libraries.
31. Foodstuffs and beverages (including alcoholic liquor).
32. Trading hours.
33. Markets and street stalls.
34. Hawkers.
35. Radio and television.
36. Postal services.
37. Coastlines, foreshores, wharves and jetties.
38. The transporting of passengers or goods to and from ships.
39. The maintenance of rolls of residents of the Territory.
41. The registration of births, deaths and marriages.
42. Matters in respect of which duties, powers, functions or authorities are expressly imposed or conferred on executive members by or under laws in force in the Territory other than a matter that relates to immigration or the operation of the Immigration Act 1980 of the Territory.
43. Public Service of the Territory.
44. Public works.
45. Lotteries, betting and gaming.
46. Civil defence and emergency services.
47. Territory archives.
48. The provision of telecommunications services (within the meaning of the Telecommunications Act 1989) and the prescribing of rates of charge for those services.
49. Branding and marking of live-stock.
50. Pasturage and enclosure of animals.
51. Registration of bulls.
52. Bees and apiaries.
53. Exportation of fish and fish products from the Territory.
54. Live-stock diseases (other than quarantine).

55. Plant and fruit diseases (other than quarantine).
56. Water resources.
57. Energy planning and regulation.
58. Fences.
59. Business names.
60. Navigation, including boating.
61. Price and cost indexes.
62. Fund-raising from the public for non-commercial purposes, and associations registered for fund-raising of that type.
63. Administration of estates and trusts.
64. Census and statistics.
65. Inquiries and administrative reviews.
66. Registration of medical practitioners and dentists.
67. Public health (other than: dangerous drugs, within the meaning of the Dangerous Drugs Ordinance 1927 of the Territory; psychotropic substances; quarantine).
68. Mercantile law (including sale or lease of goods; charges and liens on goods or crops; supply of services).
69. Law relating to the interpretation of enactments.
70. Civil legal proceedings by and against the Administration of the Territory.
71. Official flag and emblem, and public seal, of the Territory.
72. Fees or taxes imposed by the following enactments of the Territory: Absentee Landowners Levy Ordinance 1976; Cheques (Duty) Act 1983; Departure Fee Act 1980; Financial Institutions Levy Act 1985; Fuel Levy Act 1987; Public Works Levy Ordinance 1976.
73. Protection of birds.
74. Matters incidental to or consequential on the execution of executive authority.
75. Remuneration, allowances and other entitlements in respect of services of members of the Legislative Assembly, members of the Executive Council and other offices in or in connection with the Legislative Assembly that can be held only by members of the Assembly.
76. Prices and rent control.
77. Printing and publishing.
78. Public utilities.
79. Housing.
80. Community and cultural affairs.
81. Industry (including forestry and timber, pastoral, agricultural, building and manufacturing).
82. Mining and minerals, (excluding uranium or other prescribed substances within the meaning of the Atomic Energy Act 1953 and regulations under that Act as in force from time to time), within all the land of the Territory above the low-water mark.
83. Provision of rural, industrial and home finance credit and assistance.
84. Scientific research.
85. Legal aid.
86. Corporate affairs.
87. Censorship.
88. Child, family and social welfare.
89. Regulation of business and professions.
90. The legal profession.

91. Maintenance of law and order and the administration of justice.
92. Correctional services.
93. Private law.

Schedule 3

Sections 4, 7, 12, 21, 27 and 67

1. Fishing.
2. Customs (including the imposition of duties).
3. Immigration.
4. Education.
5. Human quarantine.
6. Animal quarantine.
7. Plant quarantine.
8. Labour and industrial relations, employees' compensation and occupational health and safety.
9. Moveable cultural heritage objects.
10. Social Security.

Section 20 of the *Norfolk Island Act 1979* also grants the Legislative Assembly the power to make laws:

- (a) declaring the powers (other than legislative powers), privileges and immunities of the Legislative Assembly and of its members and committees, but so that the powers, privileges and immunities so declared do not exceed the powers, privileges and immunities for the time being of the House of representatives, or of the members of committees of that House, respectively, and;
- (b) providing for the manner in which powers, privileges and immunities so declared may be exercised or upheld

No competencies are explicitly shared although individual Federal agencies have cooperative working arrangements with the Norfolk Island Government.

Competencies are set out in the *Norfolk Island Act 1979* and amendments to it. The list of competencies under Schedule 2 has grown considerably since 1979.

BASIC POLITICAL STRUCTURES OF THE AUTONOMOUS GOVERNMENT

Legislative structures. The *Norfolk Island Act 1979* gives the Norfolk Island Legislative Assembly the power to make laws 'for the peace, good order and good government of the Territory (19 (1)). Specifically excluded are coinage, the raising of defence forces, the acquisition of property on other than just terms and euthanasia. 'This means that the Assembly can enact laws on virtually any topic that it chooses, including on matters that are the preserve of the Federal Government elsewhere (such as customs and immigration)' (DOTARS 2006). For laws on some subjects there is a requirement for consultation between Federal and Territory governments. However, Norfolk Island is a Territory of the Australian Federation and is subject to the legislative power of the Federal Parliament. Also, the Federal Government has the constitutional powers to extend Federal laws to Norfolk Island.

The Legislative Assembly is comprised of nine members who are elected for a maximum term of 3 years although the average duration of an Assembly is 2.5 years (JSC 2003, 100). The turnover of members of the Legislative Assembly in elections has been judged as low (JSC

2003). Four members of the Legislative Assembly, normally those with most votes in the general election, are chosen by the Assembly for Executive positions; that is, to be appointed as Ministers by the Administrator. The number of Ministers has varied since 1979 from 2 to 6 but has settled at 4. There have been frequent changes of Ministers (JSC 2003). One is appointed as Chief Minister, customarily the person with the most votes. This position has no specified powers and receives the same remuneration as other ministers but the incumbent 'is expected to represent the Norfolk Island Government and take responsibility for inter-governmental relations' (JSC 2003, 104).

At the first meeting of a Legislative Assembly, the newly elected members choose a Speaker and Deputy Speaker to preside over meetings of the Assembly. Whoever assumes the Speaker's role does not have a casting vote but can vote. However, if the Speaker wishes to participate in the debate s/he must vacate the chair. 'The Speaker is usually also an Executive Member with ministerial responsibilities' (JSC 2003, 101).

All proposed laws passed by the Legislative Assembly must be presented to the Administrator for assent. The Administrator may assent, withhold assent or 'reserve the proposed law for the Governor-General's pleasure' (21 (2)). S/he may also return a proposed law to the Assembly with recommendations for amendment. Where a proposed law has been referred to the Governor-General the same options apply. The Governor-General may also disallow a law within 6 months after the Administrator's assent. The reasons for disallowance or withholding assent for a law by the Governor-General or Administrator must be passed on to the Speaker within 21 days.

While Norfolk Island legislative arrangements are sometimes likened to a Westminster model there are counter-claims of considerable divergence from such a model. For example, a review of Norfolk Island Administration in 1997 made the following observations (John Howard & Associates 1998, 42):

- The Executive consisting of four Executive Members, does not have a majority in the Assembly – policy directions and strategic directions are easily over-turned;
- The Executive does not constitute a 'Cabinet' – it does not conform to the conventions of collective responsibility
- Non Executive Members act to hold the Executive to account – but at the same time wish to be involved in policy making;
- Non Executive Members can, and do, initiate policies and propose expenditure which, by implication, bind the 'Government' (under a Westminster system, only the 'Crown' can initiate a spending proposal – in the form of a message from the Governor/Governor-General); and
- Non Executive Members establish and maintain lines of communication into the public service.

This review believed that the principles of corporate governance were more appropriate for a small community of only 2000 people and that the corporate-style operation of the Legislative Assembly should be 'legitimized and strengthened'. Not only did the Westminster model not operate but also such a model was inappropriate.

Executive structures. The Governor-General appoints an Administrator who 'shall administer the government of the Territory as a Territory under the authority of the Commonwealth' (5 (1)). The Administrator fulfils three roles. The first role is similar to that of a state governor in Australia whereby the officeholder acts as representative of the Crown. This places the Administrator in the Executive arm of government. In this state governor-type role, the Administrator of Norfolk Island performs ceremonial and social duties; gives assent to proposed laws from the Legislative Assembly; chairs Executive Council meetings; makes executive and judicial appointments; and exercises powers associated with elections and referendums.

The second role of the Administrator is as the Federal Government's representative on Norfolk Island. This involves providing advice and information to officials and residents on Federal Government policy, programmes and laws. The Administrator also acts as a channel of communication between Federal and Norfolk Island governments and between Norfolk Island residents and Federal Ministers and agencies. S/he liaises with the Australian Defence Force on behalf of Norfolk Island residents; for example, when an emergency medical evacuation to the mainland is needed. The Administrator also participates in various community and governmental committees on a range of issues and projects. The Administrator is supported in this role of Federal Government representative by an Official Secretary and office staff. The Official Secretary deputises for the Administrator in the absence of the latter. The costs of the Office of the Administrator are covered by the Federal Government's Department of Territories and Regional Services.

The third role of the Administrator is to exercise statutory functions of the Office as set out in the *Norfolk Island Act 1979* and by other federal laws (eg immigration, citizenship). Norfolk Island laws give the Administrator powers in various activities such as immigration, quarantine, social services and the management of Crown land.

The Executive Council advises the Administrator 'on all matters relating to the government of the Territory' (11 (1)). The Council is comprised of four ministers from the Legislative Assembly:

- Chief Minister
- Minister for Finance
- Minister for Community Services
- Minister for the Environment

This does not mean that an exclusive minority government prevails. All Assembly members appear to be appointed to some office of authority (e.g. statutory bodies), all are involved in policy-making and all are entitled to attend Executive Council meetings. A 'collegiate' approach is encouraged.

The Norfolk Island public service 'provides a diverse and full range of government and public utility services spanning all three tiers of government responsibility – those of Commonwealth, State and Local government' (NIG 2007). The Norfolk Island public service is led by a Chief Executive Officer and comprises three Business/Service Streams, each headed by an Executive Director:

- Corporate Support and Business Development Unit
- Environment and Infrastructure Unit
- Community Services and Tourism Unit

There is also a Corporate Management Group which claims to provide 'the leadership to create any necessary change, meet new challenges and continuously improve service delivery and standards' (NIG 2007). As of 30 June 2004, there were 173 persons in the Norfolk Island public service: 136 full-time, 14 contract, 23 part-time. Eleven positions were vacant and 20 positions were in a recruitment process. The government also employs staff at the Norfolk Hospital Enterprise, the Norfolk Island Central School and Norfolk Island Government Tourist Bureau. Appointments to the Norfolk Island public service are made by the Chief Executive Officer.

Judicial structures. The judicial system of Norfolk Island is based on that of Australia and is comprised of a Supreme Court and a Court of Petty Sessions. The Supreme Court can sit in Norfolk Island, the Australian states New South Wales and Victoria, and the Australian Capital Territory. The Supreme Court consists of a Chief Justice and other judges appointed as required by the Governor-General on the advice of the Chief Minister and Executive Council of Norfolk Island. Judges in the Supreme Court of Norfolk Island may be judges in other courts in

Australia. The Supreme Court of Norfolk Island attends to serious criminal matters and civil cases where the damages sought amount to more than A\$10,000. The Supreme Court is the court of appeal from the Court of Petty Sessions while the Federal Court of Australia is the court of appeal from the Supreme Court of Norfolk Island.

The Court of Petty Sessions ‘hears criminal matters punishable by fine or summary conviction and may hear minor civil matters’ (NITW 2007). Three magistrates sit on the bench during a hearing. They are appointed from the Australian Capital Territory courts and from Norfolk Island. The courts of Norfolk Island also have jurisdiction over Australia’s Coral Sea Islands Territory.

Also operating for specific matters are a Coroner’s Court and an Employment Tribunal.

Electoral structures. Elections are held every three years for a nine member Legislative Assembly. There is only one electorate—the entire island. There are no political parties by choice not legislation. Thus, candidates stand as independents. The electorate apparently prefers this absence of party politics and when any sort of political bloc has emerged in an election, those candidates have generally suffered in the ballot. The Legislative Assembly is ‘a chamber of independents’ (JSC 2003, 104).

Prior to 1979 a ‘first past the post’ system operated in elections. Because it was felt that this might disadvantage minority groups, the system was changed to ‘the Illinois system’, a weighted first-past-the post arrangement. Each elector has as many votes as there are vacancies—nine in a general election—and a maximum of four votes can be given to any one candidate.

Qualifications to be a candidate in an election for the Legislative Assembly include:

- Age 18 years or over
- Entitled to vote at elections
- Has been resident on Norfolk Island for 5 years (or whatever period is enacted by the Legislative Assembly)

An outstanding feature of Norfolk Island politics rarely evident elsewhere in Australia is the use of referenda to inform or influence government decision-making especially where controversial matters are concerned. Between 1979 and 2003, there were fifteen referenda—initiated by the Government/Legislative Assembly and four by residents. Opinion is divided on their utility. Some celebrate them as models of direct democracy and a reflection of the island’s tradition of consensual decision-making. Others argue that frequent recourse to referenda indicates a lack of leadership, tyranny of the majority over minority interests, the possibility of manipulation by money and influence, divergence from the principles of representative democracy, and that they are expensive.

While voting is compulsory for qualified voters, it has been alleged that a substantial number of residents—as many as 500—can be excluded even though the subject of the referenda may be significant for them (JSC 2003, 110). The results of referenda are not legally binding and so have been likened to ‘compulsory opinion polling’. However, the practice has been that the Legislative Assembly will accept and act according to referenda results.

‘A relatively high use of petitions’ has also been reported (JSC 2003, 113). These are addressed to the Legislative Assembly and can be on any matter. When there are high numbers of signatures, this may push the Assembly into calling a referendum.

Norfolk Island has no representative in the Federal Parliament although Australian citizens over the age of 18 years living on Norfolk Island can enrol to vote in federal elections. Enrolment is not compulsory but if a person is enrolled then they must vote. The Australian Electoral Commission advises that voters from Norfolk Island may vote for an electoral division in a state:

- For which you were last entitled to be enrolled

- For which one of your next of kin is currently enrolled; or
- In which you were born if neither of the above apply; or
- For which you have the closest connection; or
- The Division of Canberra in the Australian Capital Territory or the Division of Solomon in the Northern Territory.

FINANCIAL AND ECONOMIC STRUCTURES AND INSTITUTIONS OF THE AUTONOMOUS GOVERNMENT

In addition to the resources mentioned so far, there is also Federal Government funding:

- For assistance provided through the Administrator's Office. The costs of the Administrator's Office are paid by the Federal Government
- From federal agencies operating on Norfolk Island. Annual budget allocations for Federal Government agencies include amounts for their work on Norfolk Island. This can be as much as \$3-\$ million per year for the Bureau of Meteorology, the Civil Aviation Safety Authority, Environment Australia and the Department of Transport and Regional Services. There may be capital works in some budgets while approximately \$500,000 is invested each year in the Kingston and Arthur's Vale Historic Area
- Under national grant programs. As an Australian Territory, the Norfolk Island Government and community can apply for funding under various national grant schemes eg Regional Assistance Program, Regional Tourism Grants Program.
- As part of the Federal Government's responsibilities to the Australian community. In common with other States and Territories, the Norfolk Island Government may apply to the Federal Government for loans for infrastructure and other projects on Norfolk Island. For example, a \$5.8 million interest-free loan was given to fund an airport upgrade.

Norfolk Islanders do not pay any Federal taxes, including goods and services tax (GST), income or company tax. The Norfolk Island Government imposes a range of taxes to pay for services and infrastructure. The Commonwealth Grants Committee found that these taxes were 'regressive [and] generally did not tax wealth or income and, fell disproportionately on tourists' (JSC 2005, 26). It was also reported that 'where Norfolk Island imposed taxes, they were paid at a rate more than double the equivalent taxes in the rest of Australia (JSC 2005, 26).

Government business enterprises which operate as monopolies provide more than half the Norfolk Island Government's revenue. Dividends from the government business enterprises are paid into the Revenue Fund. Government business enterprises include the Electricity Service, Norfolk Telecom, Norfolk Island Airport, Liquor Supply Service and Postal Service.

There has been debate about the financial self-sufficiency of Norfolk Island. Some have argued that the Norfolk Island Government 'does not raise enough revenue to sustain the Island' (A former CEO of the Norfolk Island Administration as quoted in JSC 2005, 27) or that 'under current policies the NIG's [Norfolk Island Government's] revenue raising capacity has more than likely reached its limits' (DOTARS 2005, 39). Such views are opposed by the Norfolk Island Government which has questioned figures and the interpretation of them in Federal Government-sponsored reports. The Norfolk Island Government argues that the Island has consistently paid its own way and has the capacity to continue doing so.

There are no external sources of income for Norfolk Island. Most income is locally raised, with additional resources coming from the Federal Government.

The Norfolk Island Government is responsible for the allocation of funds for all services on Norfolk Island. Schedule 2 of the Norfolk Island Act lists 93 functions for which the Norfolk Island Government has full executive authority. These are functions provided by the Norfolk Island Government. There are 10 additional functions listed under Schedule 3 for which the Norfolk Island Government has responsibility. The aim of the Norfolk Island Government has always been to produce a balanced budget.

The *Norfolk Island Act 1979* specifically excludes the Norfolk Island Government from producing 'coinage'. Australian currency is used on Norfolk Island as it is in all territories and states of Australia.

SOCIAL AND CULTURAL STRUCTURES

Citizenship. Australia's *Migration Act 1958* does not apply to Norfolk Island. Thus, flights between Australia and Norfolk Island are classified as international flights with all passengers undergoing immigration clearance when arriving in or departing from Australia. The Norfolk Island Immigration Act 1980 requires Australian and New Zealand citizens to present their passports for entry to Norfolk Island. Other travellers must have an Australian visa for 30 days longer than the time the person intends to stay on Norfolk Island.

The *Norfolk Island Immigration Act 1980* identifies four categories of permit holders:

- Visitor
- Temporary entry permit holder (for work, normally granted up to 12 months)
- General entry permit holders (for more permanent status, normally valid up to 5.5 years; the number of general entry permits granted annually is controlled by a quota)
- Residents (permanent residency)

The purchase of property on Norfolk Island gives no right to live there. Indeed, the *Absentee Landowners Act* enforces a levy on persons who own property and are non-residents of Norfolk Island.

Permanent residents of Norfolk Island who are not Australian citizens must apply for a Permanent Resident of Norfolk Island Visa (PRNIV) on arrival at an Australian airport by presenting their current passport endorsed as a permanent resident of Norfolk Island, and a completed passenger card. The PRNIV allows these non-Australian citizens to enter Australia and remain indefinitely. The PRNIV expires on departure and a new visa must be obtained for each subsequent entry. Australian permanent resident visa holders are not covered by the *Migration Act 1958* while residents of Norfolk Island are considered to be living outside of Australia.

Australian citizens resident on Norfolk Island must apply for Australian passports if they wish to travel overseas. Residents who hold citizenship in countries other than Australia, and do not hold Australian citizenship, must travel overseas on passports from their country of citizenship.

Education. Education is funded by the Norfolk Island Government and is provided free to residents. It accounts for about 10 percent of the Government Budget and was \$2,400,000 in 2007 according to the Norfolk Island Government website. There is only one school, the Norfolk Island Central School, which teaches children from kindergarten to Grade 12. There are more than 20 teachers plus ancillary staff and approximately 300 students, although numbers fluctuate due to attendance by children of itinerant workers. School attendance is compulsory to age 15 years but most continue up to Grade 12. The Norfolk Island Central School uses the New South Wales curriculum and contracts the New South Wales Department of Education to supply teachers under Memoranda of Understanding with the Federal Government and with the State Government of New South Wales. Education has a long history on Norfolk Island dating back

to the Pitcairn settlers in 1856. The legal instrument for Norfolk Island Education is the *Norfolk Island Education Act 1951*.

While English is the official language of Norfolk Island, recognition has also been given to 'Norf'k', a mixture of 18th Century English and Tahitian, brought to the island by the Pitcairners. The *Norfolk Island Language (Norf'k) Act 2004* not only recognised Norf'k but affirmed 'the right of the people to speak and write it freely and without interference or prejudice from government or other persons'. The Act also allows for Norf'k to be taught in school. UNESCO has recognised the language following a submission by the Norfolk Island Government. The significance of the language policy is that it identifies and recognises a unique cultural element, provides identity and emphasizes the island's 'special cultural values'.

Culture. Both government and society celebrate the uniqueness of the Norfolk Island culture which has derived from its original inhabitants from Pitcairn Island. This is reflected in the Norfolk language, Tahitian-influenced culinary specialities, the land tenure system, burial practices and other community activities, arts and crafts. The tourist industry makes much use of the history of Norfolk Island. There are cultural presentations, museums and buildings dating back to the second penal settlement. There are also special public holidays on Bounty Day to commemorate the arrival of the Pitcairn Islanders, Thanksgiving Day which refers back to an earlier association with American whaling ships, and Foundation Day which is the anniversary of the first European settlement from the Australian mainland on 6 March 1788.

The meaning attached to culture can be the basis of conflict. Thus, some Norfolk Islanders have used the uniqueness of their culture as a basis for disputing the autonomy relationship with Australia and for advancing an argument in favour of self-government. Thus, the website of the Society of Pitcairn Descendants has presented the political history of the Pitcairn people on Norfolk Island as 'bloodless genocide'. Their basic contention is that 'the Pitcairners are a separate and distinct People indigenous to Norfolk Island'. They go on to say it is self-determination and not independence that they are seeking for their 'homeland'. The Society seeks a United Nations-supervised referendum to determine the Islanders' 'political and social destiny'.

These arguments have not been accepted by the Federal Government and efforts to attract the attention of the United Nations have not been successful. For example, the Joint Standing Committee on the National Capital and External Territories (2003) stated that the claims for self-determination were 'not borne out by the historical record' and by the findings of Nimmo Royal Commission 1976 and the High Court Decision on the Berwick case 1976.

Healthcare. The Federal Government's health insurance scheme, Medicare, established under the *Health Insurance Act 1973* and which operates Australia-wide does not apply to Norfolk Island. Therefore, residents of Norfolk Island and Australian visitors are not covered by Medicare. The latter are strongly advised to take out adequate travel insurance. But residents sign up for Norfolk Island's own health insurance scheme, Healthcare, established under the *Healthcare Act 1989*. Healthcare will cover 'a nuclear family's approved medical costs in excess of A\$2,500 in a financial year (1 July to 30 June)' (GNI 2007). This includes:

- Hospital, medical and outpatient treatment in Norfolk Island
- Diagnostic, laboratory and specialist services in Norfolk Island
- Hospital accommodation and medical treatment in Australia or New Zealand when a patient is Healthcare-referred there for treatment
- Prescribed medicines and medical appliances

There are financial limits on some services and on transportation. Healthcare will not cover accidents or illnesses that occurred or started overseas, and dental services. New members are not covered for pre-existing illnesses or injuries for 5 years. Healthcare membership is open to all persons who intend to reside on Norfolk Island for more than 120 days. The *Healthcare Act 1989*

requires members to claim from any private medical insurance before claiming from Healthcare. The Healthcare levy is currently A\$1,000 per nuclear family, a price the Norfolk Island Government claim is considerably below private insurance costs.

There is one general hospital (the Hospital) on Norfolk Island. It is a 'business enterprise' which is subsidised by the Norfolk Island Legislative Assembly from taxes raised in the Island. The Hospital normally has two general practitioners, a dentist, nursing staff, an X-ray department, pathology facilities, age care facility, an operating theatre, a pharmacy, and public and private wards.

Environment. Norfolk Island National Park and Norfolk Island Botanic Garden were established under the *Norfolk Island National Park and Norfolk Island Botanic Garden Act 1984* although both areas had been public reserves under the *Commons and Public Reserves Ordinance 1984*. These areas were also proclaimed as Commonwealth reserves in 1986 under the *National Parks and Wildlife Conservation Act 1975* on the request of the Norfolk Island Legislative Assembly. Phillip Island was also included in the Norfolk Island National Park on 24 January 1986 under this legislation. Phillip Island is uninhabited and is 258 hectares in area.

The Norfolk Island Legislative Assembly can make laws on environmental matters and there is a Norfolk Island Parks and Forestry Service which has cooperative working arrangements with the Federal Government organization, Parks Australia. Enforcement of environmental regulations as enacted by the Legislative Assembly is the responsibility of particular sections of the Norfolk Island public service. The Norfolk Island Government is acutely aware of the importance of the environment as it is the major attraction of its tourist industry. Thus, it is at great pains to preserve the unique island environment including the 178 species of native plants, 40 of which are only found on the island, and the scenery. Federal Government assistance has sometimes been requested and granted for environmental conservation and development initiatives.

The Kingston and Arthur's Vale Historic Area (KAVHA) is described as 'one of the foremost national examples of a cultural landscape with exceptional heritage and social values and is listed on the Register of National Estate' (DOTARS 2007). KAVHA is jointly managed by the Federal and Norfolk Island governments.

Symbols. The Norfolk Island Government has its own flag, adopted in January 1980. The flag has two green stripes flanking a white stripe. On the latter is a green silhouette of the distinctive Norfolk Island pine (*araucaria heterophylla*). The green stripes are intended to symbolize the abundant vegetation of Norfolk Island.

INTERNATIONAL RELATIONS

Norfolk Island is a territory of Australia and as such does not have any diplomatic relations with any foreign governments. The Norfolk Island Government cannot be a member of international organizations involving governments eg UN, ILO, Asian Development Bank, International Monetary Fund. The Norfolk Island Government may attend and/or participate in international events, such as conferences, as part of the Australian national delegation. There are consultative mechanisms between the Federal and Norfolk Island governments so that Norfolk Island interests can be reflected in Australia's contributions to international fora.



Flag of the Norfolk Island government

Norfolk Island representatives can participate in international non-government organizations such as sports or cultural bodies. Such memberships are undertaken according to the rules of the international organization.

The Norfolk Island Government is not a member of any international organizations. Neither does it have external representatives. There are no special trading relationships, and exports are minimal. The Federal Government even holds jurisdiction over Norfolk Island's 200 nautical miles Exclusive Economic Zone.

SECURITY ARRANGEMENTS AND STRUCTURES

The police service on Norfolk Island is provided in accordance with arrangements between the Norfolk Island Administration and the Australian Federal Police (AFP). Three AFP officers and locally employed special members provide policing and ancillary services as follows:

- The protection of persons and property
- Crime prevention and investigation
- Investigation of offences or suspected offences against the laws of the Commonwealth
- Maintenance of peace and good order
- Enforcement of enactments
- Development and maintenance of community needs in the provision of police services
- Motor vehicle driver licence testing
- Service and execution of civil process as the Bailiff of the Court of Petty Sessions or the Sheriff of the Supreme Court
- Traffic coordination
- Inspection of firearms and issuing of gun licences
- Verification of applicants and supervision of liquor licence holders and licensed premises
- Operation of the Periodic Detention Centre
- Dog control
- Assistance to National Park Rangers NIG (2007)

Defence is a Federal Function. The Norfolk Island Government has no, authority, role or competencies in Defence. The *Norfolk Island Act 1979* clearly states that the Legislative Assembly's power 'does not extend to the making of laws authorizing the raising or maintaining of any naval, military or air force' (19(2b)). Defence is the exclusive preserve of the Commonwealth Government. There are no military installations of defence personnel on Norfolk Island. The Administrator liaises with the Australian Defence Force on behalf of Norfolk Island. This can assume importance in relation to emergencies.

INTERGOVERNMENTAL RELATIONS AND POWER SHARING AT THE NATIONAL LEVEL

Federal Government laws do not generally cover Norfolk Island unless specifically stated. For example, the *Health Insurance Act 1973* does not apply to Norfolk Island. As benefits, services and entitlements enjoyed by Australians usually have their origins in Commonwealth laws, these benefits, services and entitlements are not available to the residents of Norfolk Island. There is no comprehensive list of Federal laws which do apply to Norfolk Island. Advice on the applicability of particular items of legislation to Norfolk Island can be provided by the relevant Federal Government agencies. It should be noted that the general lack of application of Commonwealth laws on Norfolk Island does not grant the latter any special constitutional status.

There are interrelationships between the Federal Government and Norfolk Island Government. Federal Government can intervene where it feels Norfolk Island legislation has national interest or impact e.g. quarantine, immigration. Also, the Federal Government is responsible for ensuring that Norfolk Island legislation complies with Australia's obligations under international law and agreements. Consultative arrangements are in place to deal with such instances. It should be remembered that Norfolk Island legislation requires the assent of the Administrator and/or Governor-General before it is enacted.

In the other direction, the Federal Government's *Legislation Handbook* recognises that Federal legislation may have unintended or undesirable consequences for External Territories such as Norfolk Island. Therefore, there are provisions for consultation with the Norfolk Island Government. According to the *Legislation Handbook*:

- Consultation is required with the Department of Transport and Regional Services if the legislation would apply to or have a significant indirect effect on any of the following external territories: Christmas Island, the Cocos (Keeling) Islands, Ashmore and Cartier Islands, Norfolk Island or the Coral Sea Islands.
- In addition, the Federal Government is committed to consulting the Norfolk Island Government on all legislative proposals affecting that territory
- Consultation should occur at an early stage for all proposals that have the potential to affect the Territory either directly or indirectly

The Joint Standing Committee on the National Capital and External Territories is comprised of members of both the Federal House of Representatives and Senate. Its role is to enquire into matters relating to External Territories. The Committee has taken an active interest in Norfolk Island including enquiries into communications (1999), health services (2001), electoral matters (2002), governance (2003), financial sustainability (2005), and the report of a Committee visit from 2-6 August 2006.

The Norfolk Island Government can have its point of view considered by participating in national ministerial councils. The Norfolk Island Government currently attends:

- The Standing Committee of Attorneys-General (comprised of Federal, State and Territory Attorneys-General)
- Tourism Ministers' Council
- Ministerial Council on Immigration and Multicultural Affairs
- Ministerial Council for Education, Employment, Training and Youth Affairs

There is also consultation and cooperation between Federal Government agencies and the Norfolk Island Government on matters of mutual concern. The Administrator is a major conduit of advice and information between Federal Government and Norfolk Island Government.

Section 112 of the Constitution clearly states the primacy of the Federal Government in the matter of law-making. There is no special dispute resolution structure.

ADDITIONAL INFORMATION RESOURCES

Commonwealth Grants Commission (2006) *Norfolk Island Inquiry Document – Preliminary Report*, June, Canberra. Available at <http://www.cgc.gov.au/>
Department of Transport and regional Services. Norfolk Island.

The Federal Government's Department of Transport and Regional Services website has useful summaries of various aspects of Norfolk Island's governance, economy and other matters - http://www.infrastructure.gov.au/territories/norfolk_island/index.aspx.
Various important documents can be accessed including:

- *Norfolk Island Act 1979*
- Joint Standing Committee on the National Capital and External Territories (2003) *Quis custodiet ipsos custodiet? Inquiry into Governance on Norfolk Island*. Canberra
- Joint Standing Committee on the National Capital and External Territories (2005) *Norfolk Island Financial Sustainability: The Challenge – Sink of Swim*. Canberra

The Norfolk Island Government maintains a website at <http://www.norfolk.gov.nf/>

The Society of the Descendants of Pitcairn Islanders runs a website at <http://www.pitcairners.org/>

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