

ATTACHMENT E

NORFOLK ISLAND ACT 1979

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The Territory OF Norfolk Island

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NORFOLK ISLAND ACT 1979

An Act to provide for the government of Norfolk Island

WHEREAS by an Act of the Parliament of the United Kingdom, made and passed in the sixth and seventh years of the reign of Her Majesty Queen Victoria intituled "An Act to amend so much of an Act of the last Session, for the Government of New South Wales and Van Diemen's Land, as relates to Norfolk Island," it was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to sever Norfolk Island from the Government of New South Wales and to annex it to the Government and Colony of Van Diemen's Land:

AND WHEREAS Her Majesty Queen Victoria, in exercise of the powers vested in Her by the said Act, by a Commission under the Great Seal of the United Kingdom bearing date the twenty-fourth day of October, 1843, appointed that from and after the twenty-ninth day of September, 1844, Norfolk Island should be severed from the Government of New South Wales and annexed to the Government and Colony of Van Diemen's Land:

AND WHEREAS by an Act of the Parliament of the United Kingdom, called the Australian Waste Lands Act 1855, it was, amongst other things, provided that it should be lawful for Her Majesty at any time, by Order in Council, to separate Norfolk Island from the Colony of Van Diemen's Land and to make such provision for the Government of Norfolk Island as might seem expedient:

AND WHEREAS on 8 June 1856 persons who had previously inhabited Pitcairn Island settled on Norfolk Island:

AND WHEREAS by an Order in Council dated the twenty-fourth day of June, 1856, made by Her Majesty in pursuance of the last-mentioned Act, it was ordered and declared, amongst other things, that from and after the date of the proclamation of the Order in New South Wales Norfolk Island should be thereby separated from the said Colony of Van Diemen's Land (now called Tasmania) and that from that date all power, authority, and jurisdiction of the Governor, Legislature, Courts of Justice, and Magistrates of Tasmania over Norfolk Island should cease and determine, and that from the said date Norfolk Island should be a distinct and separate Settlement, the affairs of which should until further Order in that behalf by Her Majesty be administered by a Governor to be for that purpose appointed by Her Majesty with the advice and consent of Her Privy Council: and it was thereby further ordered that the Governor and Commander-in-Chief for the time being of the Colony of New South Wales should be, and he thereby was, constituted Governor of Norfolk Island, with the powers and authorities in the said Order mentioned:

AND WHEREAS the said Order in Council was proclaimed in New South Wales on 1 November 1856:

AND WHEREAS by an Order in Council dated the fifteenth day of January, 1897, made in pursuance of the said last-mentioned Act, Her Majesty, after reciting that it was expedient that other provision should be made for the government of Norfolk Island, and that, in prospect of the future annexation of Norfolk Island to the Colony of New South Wales or to any Federal body of which that Colony might thereafter form part, in the meantime the affairs of Norfolk Island should be administered by the Governor of New South Wales as therein provided, was pleased to revoke the said Order in Council of the twenty-fourth day of June, One thousand eight hundred and fifty-six, and to order that the affairs of Norfolk Island should thenceforth, and until further Order should be made in that behalf by Her Majesty, be administered by the Governor and Commander-in-Chief for the time being of the Colony of New South Wales and its Dependencies:

AND WHEREAS the said Order in Council was published in the *New South Wales Government Gazette* on 19 March 1897, and took effect at that date:

AND WHEREAS by an Order in Council dated the eighteenth day of October, One thousand nine hundred, made in pursuance of the said last mentioned Act, Her Majesty was pleased to revoke the said Order in Council of the fifteenth day of January, One thousand eight hundred and ninety-seven, and to order that the affairs of Norfolk Island should thenceforth, and until further Order should be made in that behalf by Her Majesty, be administered by the Governor for the time being of the State of New South Wales and its Dependencies:

AND WHEREAS the said Order in Council was published in the *New South Wales Government Gazette* on 1 January 1901, and took effect at that date:

AND WHEREAS by an Order in Council dated the 30th day of March, 1914, His Majesty King George V, by virtue and in exercise of the power in that behalf by the said last-mentioned Act or otherwise in His Majesty vested, after reciting that the Parliament had passed an Act No. 15 of 1913, entitled "An Act to provide for the acceptance of Norfolk Island as a territory under the authority of the Commonwealth, and for the government thereof" and that it was expedient that the said Order in Council of 18th of October, 1900, should be revoked and that Norfolk Island should be placed under the authority of the Commonwealth of Australia, was pleased to revoke the said Order in Council of 18th of October, 1900, and to order that Norfolk Island be placed under the authority of the Commonwealth of Australia:

AND WHEREAS the said Order in Council was published in the *Gazette* on 17 June 1914, and took effect from 1 July 1914, being the date of commencement of the *Norfolk Island Act 1913*:

AND WHEREAS Norfolk Island was, by the *Norfolk Island Act 1913*, declared to be accepted by the Commonwealth as a Territory under the authority of the Commonwealth:

AND WHEREAS Norfolk Island has been governed by the Commonwealth initially under the provisions of the *Norfolk Island Act 1913*, and subsequently under the provisions of the *Norfolk Island Act 1957*:

AND WHEREAS the residents of Norfolk Island include descendants of the settlers from Pitcairn Island:

AND WHEREAS the Parliament recognises the special relationship of the said descendants with Norfolk Island and their desire to preserve their traditions and culture:

AND WHEREAS the Parliament considers it to be desirable and to be the wish of the people of Norfolk Island that Norfolk Island achieve, over a period of time, internal self-government as a Territory under the authority of the Commonwealth and, to that end, to provide, among other things, for the establishment of a representative Legislative Assembly and of other separate political and administrative institutions on Norfolk Island:

AND WHEREAS the Parliament intends that within a period of 5 years after the coming into operation of this Act consideration will be given to extending the powers conferred by or under this Act on the Legislative Assembly and the other political and administrative institutions of Norfolk Island, and that provision be made in this Act to enable the results of such consideration to be implemented:

BE IT THEREFORE ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

PART I -- PRELIMINARY

Short title

1. This Act may be cited as the *Norfolk Island Act 1979*.

Commencement

(1) Sections 1, 2, 4, 31, 38, 39, 67, 68 and 69 shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

Repeals

3. The *Norfolk Island Act 1957* and the *Norfolk Island Act 1963* are repealed.

Interpretation

4. (1) In this Act, unless the contrary intention appears:

"accounts of the Territory" means:

- (a) the accounts and records of financial transactions of the Administration and records relating to assets of, or in the custody of, the Administration; and
- (b) the accounts and records of financial transactions of a Territory authority (other than an authority whose accounts and records are required to be audited under an enactment) and records relating to assets of, or in the custody of, such an authority;

"Acting Administrator" means a person appointed under section 8 to act in the office of Administrator;

"Administration" means the Administration or government of the Territory;

"Administrator" means the Administrator of the Territory appointed under this Act and includes a person acting as the Administrator under this Act;

"Auditor" means the Norfolk Island Government Auditor appointed under section 51;

"Chief Justice" means the Chief Justice of the Supreme Court;

"Deputy Speaker" means the Deputy Speaker of the Legislative Assembly;

"enactment" means:

- (a) a law (however described or entitled) passed by the Legislative Assembly and assented to under this Act;
- (b) an Ordinance made by the Governor-General under section 27 or in pursuance of section 69; or
- (c) an Ordinance continued in force by this Act;

"Executive Council" means the Executive Council of Norfolk Island;

"executive member" means a person holding office under section 13;

"executive office" means an office referred to in section 12;

"Judge" means a Judge of the Supreme Court (including the Chief Justice);

"Legislative Assembly" means the Legislative Assembly of Norfolk Island;

"public moneys of the Territory" means revenues, loans and other moneys received by the Administration;

"Speaker" means the Speaker of the Legislative Assembly;

"Supreme Court" means the Supreme Court of Norfolk Island referred to in section 52;

"Territory" means Norfolk Island, that is to say, the Territory of Norfolk Island as described in Schedule 1.

(2) The specification of a matter in an item in Schedule 2 or 3 shall not be taken to limit the generality of any matter specified in any other item in that Schedule.

(3) A reference in this Act to a law, or to regulations, in force immediately before a particular date shall be read as including a reference to any provisions of the law, or of the regulations, that are not to come into operation until that date or a later date.

PART II -- ADMINISTRATION

Administrator and Administration

5. (1) There shall be an Administrator of the Territory, who shall administer the government of the Territory as a Territory under the authority of the Commonwealth.

(2) The Administration is a body politic with perpetual succession by the name of the Administration of Norfolk Island.

(3) Subject to this Act, the Administration of Norfolk Island is capable by that name of:

- (a) suing and being sued;
- (b) making contracts;
- (c) acquiring, holding and disposing of real and personal property; and
- (d) doing and suffering all other matters and things a body corporate may do or suffer.

Appointment of Administrator

6. The Administrator shall be appointed by the Governor-General by Commission and shall hold office during the pleasure of the Governor-General.

Exercise of Administrator's powers etc.

7. (1) The Administrator shall exercise all powers and perform all functions that belong to his office, or that are conferred on him by or under law in force in the Territory, in accordance with the tenor of his Commission and:

- (a) in relation to a matter that, in his opinion, is a matter specified in Schedule 2 - in accordance with such advice, if any, as is given to him by the Executive Council;
- (b) in relation to a matter that, in his opinion, is a matter specified in Schedule 3 - in accordance with the advice of the Executive Council;
- (c) where it is provided by this Act that he is to act on the advice of the Executive Council or the Legislative Assembly - in accordance with that advice;
- (d) in forming an opinion as provided by this Act - at his own discretion; and
- (e) in all other cases - in accordance with such instructions, if any, as are given to him by the Minister.

(2) Notwithstanding paragraph (1) (b), where the Executive Council advises the Administrator to take, or to refrain from taking, any specified action in relation to a matter to which that paragraph applies and that advice is inconsistent with instructions given to the Administrator by the Minister in accordance with subsection (3), the Administrator shall not take that action, or shall not refrain from taking that action, as the case may be.

(3) For the purposes of subsection (2), the Minister may give the Administrator instructions in respect of advice tendered to the Administrator for the purposes of paragraph (1) (b), and may give the Administrator instructions in respect of the referral to the Minister of any such advice.

Acting Administrator

8. (1) The Governor-General may, by Commission, appoint a person to act in the office of Administrator, and to administer the government of the Territory:

- (a) during a vacancy in the office of the Administrator; or
- (b) during any period, or during all periods, when the Administrator:
 - (i) is absent from duty, or from the Territory; or
 - (ii) is, for any reason, unable to perform the duties of the office.

(1A) While a person so appointed is administering the government of the Territory, he or she has all the powers and functions of the Administrator.

(2) The exercise of the powers and the performance of the functions of the Administrator, by virtue of this section, by a person during the absence of the Administrator from duty or from the Territory does not affect the exercise of any power or the performance of any function by the Administrator.

Deputy Administrator

9. (1) There shall be a Deputy Administrator of the Territory, who shall be appointed by the Governor-General by Commission and shall hold office during the pleasure of the Governor-General.

(2) Where:

(a) there is a vacancy in the office of Administrator or the Administrator is absent from duty or from the Territory or is unable for any reason to perform his or her duties; and

(b) either:

(i) an Acting Administrator has not entered on his or her duties; or

(ii) an Acting Administrator has entered on his or her duties but is absent from duty or from the Territory or is unable for any reason to perform those duties; the Deputy Administrator has and may exercise and perform all the powers and functions of the Administrator.

(3) The exercise of the powers and the performance of the functions of the Administrator, by virtue of this section, by the Deputy Administrator during the absence of the Administrator from duty or from the Territory does not affect the exercise of any power or the performance of any function by the Administrator.

Oath or affirmation of Administrator etc.

10. (1) The Administrator and an Acting Administrator shall, before entering on the duties of his office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.

(2) The Deputy Administrator shall, before exercising a power or performing a function by virtue of his office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.

(3) An oath or affirmation made by a person under this section shall be made before the Governor-General, a Judge of the Supreme Court or of another court created by the Parliament, or a person authorized by the Governor-General for the purpose, and may be made before the day on which the person's appointment takes effect.

PART III – THE EXECUTIVE COUNCIL

The Executive Council

11. (1) There shall be an Executive Council of Norfolk Island to advise the Administrator on all matters relating to the government of the Territory.

(2) The Executive Council shall consist of the persons for the time being holding executive office.

(3) The Administrator is entitled to attend all meetings of the Executive Council and shall preside at all meetings at which he is present.

(4) If the Administrator is not present at a meeting of the Executive Council, the members of the Executive Council present shall elect one of their number to preside.

(5) The Administrator may introduce into the Executive Council any matter for discussion by the Executive Council.

(6) Meetings of the Executive Council shall be convened by the Administrator and not otherwise.

(7) The Administrator may convene a meeting of the Executive Council at any time, and shall convene a meeting whenever requested to do so by 3 or more members of the Executive Council.

(8) A member of the Legislative Assembly who does not hold executive office is entitled to attend all meetings of the Executive Council.

(9) Subject to the preceding provisions of this section and to any provision made by the regulations, the procedure of the Executive Council shall be as the Executive Council determines.

Executive offices

12. (1) There shall be such number of executive offices, having such respective designations, as the Legislative Assembly from time to time determines by resolution.

(2) The matters in respect of which the executive members have executive authority are the matters specified in Schedules 2 and 3.

Appointment of executive members

13. (1) Subject to this section, the Administrator may, on the advice of the Legislative Assembly:

- (a) appoint a member of the Legislative Assembly to an executive office; or
- (b) terminate such an appointment.

(2) The Administrator may at any time terminate an appointment made under subsection (1) if, in his opinion, there are exceptional circumstances that justify his so doing.

(3) A person who is employed in the Public Service of the Territory or of the Commonwealth shall not be appointed to an executive office, and a person holding executive office vacates his office if he becomes so employed.

- (4) For the purposes of subsection (3), a person who:
- (a) is an employee, within the meaning of the *Public Service Act 1922*;
 - (b) is employed under a law relating to the Public Service of the Territory as a temporary employee; or
 - (c) is employed under a law relating to the Public Service of a Territory or of the Commonwealth as an officer or employee to whom any provisions of that law do not apply; shall be deemed to be employed in the Public Service of the Territory or of the Commonwealth, as the case requires.

Tenure of office

14. The appointment of a person to an executive office takes effect on the day specified in the instrument of appointment and terminates when:

- (a) he ceases, by reason of his resignation or by reason of the provisions of section 39, to be a member of the Legislative Assembly;
- (b) his appointment is terminated by the Administrator under section 13;
- (c) he resigns his office by writing signed by him and delivered to the Administrator; or
- (d) the Legislative Assembly first meets after a general election of the Legislative Assembly that takes place after the appointment takes effect; whichever first happens.

Oath or affirmation of member of Executive Council and executive member

15. (1) A member of the Executive Council shall, before entering on the duties of his office, make and subscribe an oath or affirmation in accordance with the form in Schedule 5.

(2) A person who is appointed to an executive office shall, before entering on the duties of his office, make and subscribe an oath or affirmation in accordance with the form in Schedule 6.

(3) A person who does not hold executive office shall not attend a meeting of the Executive Council unless he has, at any time after the last preceding general election of the Legislative Assembly, made and subscribed an oath or affirmation in accordance with the form in Schedule 7.

(4) An oath or affirmation under this section shall be made before the Administrator or a person authorized by the Administrator to administer such oaths or affirmations.

PART IV -- LEGISLATION

Division 1 -- Laws

Continuance of existing laws

16. (1) Notwithstanding the repeal of the *Norfolk Island Act 1957* and the *Norfolk Island Act 1963*, but subject to this Act, all other laws in force immediately before the date of commencement of this section in or in relation to the Territory continue in force.

(2) In this section, "**laws**" means Ordinances made under, and laws continued in force by, the *Norfolk Island Act 1957* and laws made under such an Ordinance or law.

Amendment and repeal of existing laws

17. (1) Subject to this Act, a law continued in force by section 16 may be amended or repealed by an enactment or by a law made under an enactment.

(2) A law continued in force by section 16, being an Ordinance, or being a Law made by the Governor of the State of New South Wales before the commencement of the *Norfolk*

Island Act 1913, may not be amended or repealed by a law made under an enactment unless the contrary intention appears in that enactment.

Application of Commonwealth Acts

18. (1) An Act or a provision of an Act (whether passed before or after the date of commencement of this section) is not, except as otherwise provided by that Act or by any other Act, in force as such in the Territory, unless expressed to extend to the Territory.

(2) An enactment shall not be made so as to affect the application of its own force in, or in relation to, the Territory of an Act or a provision of an Act.

Division 2 – Legislative Power of Legislative Assembly

Legislative power of Legislative Assembly

19. (1) Subject to this Act, the Legislative Assembly has power, with the assent of the Administrator or the Governor-General, as the case may be, to make laws for the peace, order and good government of the Territory.

(2) The power of the Legislative Assembly in relation to the making of laws does not extend to the making of laws:

- (a)** authorizing the acquisition of property otherwise than on just terms;
- (b)** authorizing the raising or maintaining of any naval, military or air force; or
- (c)** authorizing the coining of money.

(3) Item 1 in Schedule 2 shall not be taken to limit the power of the Legislative Assembly in relation to the making of laws providing for the raising of revenues for purposes other than purposes of matters specified in that Schedule.

Powers, privileges and immunities of Legislative Assembly

20. The power of the Legislative Assembly in relation to the making of laws extends to the making of 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 or committees of that House, respectively; and
- (b)** providing for the manner in which powers, privileges and immunities so declared may be exercised or upheld.

Presentation of proposed laws

21. (1) Every proposed law passed by the Legislative Assembly shall be presented to the Administrator for assent.

(2) Upon the presentation of a proposed law to the Administrator for assent, the Administrator shall, subject to this section, declare:

- (a) in the case of a proposed law which, in the opinion of the Administrator, makes provision only for or in relation to matters specified in Schedule 2 or 3 or both:
 - (i) that he assents to the proposed law; or
 - (ii) that he withholds assent to the proposed law; or
- (b) in any other case, that he reserves the proposed law for the Governor-General's pleasure.

(3) The Administrator may return the proposed law to the Legislative Assembly with amendments that he recommends.

(4) The Legislative Assembly shall consider the amendments recommended by the Administrator and the proposed law, with or without amendments, may be again presented to the Administrator for assent, and subsection (2) applies accordingly.

(5) In the case of a proposed law which, in the opinion of the Administrator, makes provision only for or in relation to matters specified in Schedule 2, the Administrator shall not act under paragraph (2) (a) or subsection (3) except in accordance with the advice of the Executive Council.

(6) In the case of a proposed law which, in the opinion of the Administrator, makes provision only for or in relation to matters specified in Schedule 3 or matters specified in Schedules 2 and 3, the Administrator shall not act under paragraph (2) (a) or subsection (3) except in accordance with the instructions of the Minister.

Signification of pleasure on proposed law reserved

22. (1) Where the Administrator reserves a proposed law for the Governor-General's pleasure, the Governor-General shall, subject to this section, declare:

- (a) that he assents to the proposed law;
- (b) that he withholds assent to the proposed law; or
- (c) that he withholds assent to part of the proposed law and assents to the remainder of the proposed law.

(2) The Governor-General may return the proposed law to the Administrator with amendments that he recommends.

(3) The Legislative Assembly shall consider the amendments recommended by the Governor-General and the proposed law, with or without amendments, shall be again presented to the Administrator for assent, and subsection 21 (2) applies accordingly.

(4) As soon as practicable after the Governor-General has made a declaration in respect of a proposed law in accordance with subsection (1), the Administrator shall cause to be published in the *Norfolk Island Government Gazette* a notice of the declaration.

(5) The assent of the Governor-General to a proposed law or part of a proposed law is of no effect until notification of the Governor-General's declaration in respect of the proposed law is published in the *Norfolk Island Government Gazette*.

Disallowance of laws by Governor-General

23. (1) Subject to this section, the Governor-General may, within 6 months after the Administrator's assent to a proposed law, disallow the law or part of the law.

(2) The Governor-General may, within 6 months after the Administrator's assent to a proposed law, recommend to the Administrator any amendments of the laws of the Territory that the Governor-General considers to be desirable as a result of his consideration of the law.

(3) Where, as a result of his consideration of a law, the Governor-General so recommends any amendments of the laws of the Territory, the time within which the Governor-General may disallow the law, or a part of the law, is extended until the expiration of 6 months after the date of the Governor-General's recommendation.

(4) Upon publication of notice of the disallowance of a law, or part of a law, in the *Norfolk Island Government Gazette*, the disallowance has, subject to subsection (5), the same effect as a repeal of the law or part of the law, as the case may be.

(5) If a provision of a disallowed law, or a provision of a disallowed part of a law, amended or repealed a law in force immediately before the date of commencement of that provision, the disallowance revives the previous law from the date of publication of the notice of disallowance as if the disallowed provision had not been made.

Reason for withholding assent etc. to be tabled in Legislative Assembly

24. (1) Where the Administrator withholds assent to a proposed law, or the Governor-General withholds assent to a proposed law or part of a proposed law or disallows a law or part of a law, a message of the Administrator stating the reasons for the withholding of assent, or for the disallowance, as the case may be:

- (a)** shall, within 21 days after the date on which the assent was withheld or the date of the disallowance, as the case may be, be furnished to the Speaker or, if there is no Speaker or the Speaker is absent from the Territory, the Deputy Speaker; or
- (b)** if it is not practicable for paragraph (a) to be complied with by reason that there is no Deputy Speaker or the Deputy Speaker is absent from the Territory - shall be laid before the Legislative Assembly as soon as practicable after the relevant date referred to in paragraph (a).

(2) Where a message is furnished to the Speaker or the Deputy Speaker under subsection (1), the message shall be laid before the Legislative Assembly at its next meeting thereafter.

Proposal of money votes

25. An enactment, vote, resolution or question, the object or effect of which is to dispose of or charge any public moneys of the Territory, shall not be proposed in the Legislative Assembly unless it has, at any time after the last preceding general election of the Legislative Assembly, been recommended by message of the Administrator to the Legislative Assembly.

Governor-General may introduce proposed law

26. The Governor-General may, by message of the Administrator, introduce into the Legislative Assembly a proposed law for the peace, order and good government of the Territory.

Division 3 – Legislative Powers of the Governor-General

Legislative powers of the Governor-General

27. (1) Where:

- (a) the Governor-General introduces a proposed law into the Legislative Assembly under section 26;
- (b) within 60 days thereafter, the Legislative Assembly has not passed the proposed law or has passed it with amendments that, in the opinion of the Governor-General, are unacceptable; and
- (c) the Governor-General is satisfied that the proposed law as so introduced does not make provision for or in relation to a matter specified in Schedule 2 or 3; the Governor-General may make an Ordinance in the same terms as those of the proposed law as so introduced.

(2) Where it appears to the Governor-General that, on account of urgency or for any other special reason, a law for the peace, order and good government of the Territory, other than a law making provision for or in relation to a matter specified in Schedule 2 or 3, should be made without being introduced into the Legislative Assembly, the Governor-General may make an Ordinance accordingly.

(3) Where it appears to the Governor-General that:

- (a) no provision, or insufficient provision, has been made for the expenditure of moneys out of the Public Account of Norfolk Island for the purposes of the government of the Territory during a financial year of the Territory; and
- (b) on account of urgency or for any other special reason, a law should be made, without being introduced into the Legislative Assembly, for the purpose of authorizing such expenditure; the Governor-General may make an Ordinance accordingly.

(4) An Ordinance made under subsection (3) may empower the Administrator, subject to such instructions as are given to him by the Minister, to do such things, and give such directions, as may be necessary or convenient for purposes of ensuring that expenditure authorized by the Ordinance is duly made.

(5) The Governor-General may:

- (a) in accordance with the preceding provisions of this section, make an Ordinance amending an Ordinance made by him under this section; and
- (b) at any time, make an Ordinance repealing an Ordinance made by him under this section.

(6) Where the Governor-General makes an Ordinance under this section, a copy of the Ordinance shall be transmitted to the Legislative Assembly by message of the Administrator.

(7) An Ordinance made under this section providing for the raising of revenues shall provide that revenues raised by virtue of the Ordinance are to be used for a purpose or purposes specified in the Ordinance.

Laying of certain Ordinances before the Parliament

28. (1) This section applies to Ordinances made by the Governor-General under section 27.

(2) An Ordinance shall be laid before each House of the Parliament within 15 sitting days of that House after the making of that Ordinance, and, if it is not so laid before each House of the Parliament, ceases to have effect.

(3) If either House of the Parliament, in pursuance of a motion of which notice has been given within 15 sitting days after an Ordinance has been laid before that House, passes a resolution disallowing the Ordinance or a part of the Ordinance, the Ordinance or part so disallowed thereupon ceases to have effect.

(4) If, at the expiration of 15 sitting days after notice of a motion to disallow an Ordinance or part of an Ordinance has been given in a House of the Parliament, being notice given within 15 sitting days after the Ordinance has been laid before that House:

- (a) the notice has not been withdrawn and the motion has not been called on; or
- (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of; the Ordinance or part, as the case may be, specified in the motion shall thereupon be deemed to have been disallowed.

(5) If, before the expiration of 15 sitting days after notice of a motion to disallow an Ordinance or part of an Ordinance has been given in a House of the Parliament:

- (a) the House of Representatives is dissolved or expires, or the Parliament is prorogued; and
- (b) at the time of the dissolution, expiry or prorogation, as the case may be:
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of; the Ordinance shall, for the purposes of subsections (3) and (4), be deemed to have been laid before that first-mentioned House on the first sitting day of that first-mentioned House after the dissolution, expiry or prorogation, as the case may be.

(6) Where an Ordinance is disallowed, or is deemed to have been disallowed, under this section or ceases to have effect by virtue of the operation of subsection (2), the disallowance of the Ordinance or the operation of subsection (2) in relation to the Ordinance, as the case may be, has the same effect as a repeal of the Ordinance.

(7) Where:

- (a) an Ordinance (in this subsection referred to as the "**relevant Ordinance**") is disallowed, or is deemed to have been disallowed, under this section or ceases to have effect by virtue of the operation of subsection (2); and
- (b) the relevant Ordinance repealed, in whole or in part, another Ordinance or any other law that was in force immediately before the relevant Ordinance came into operation; the disallowance of the relevant Ordinance or the operation of subsection (2) in relation to the relevant Ordinance, as the case may be, has the

effect of reviving that other Ordinance or law, as the case may be, from and including the date of the disallowance or the date on which the relevant Ordinance ceased to have effect by virtue of that operation of subsection (2), as the case may be, as if the relevant Ordinance had not been made.

(7A) A reference in subsection (6) or (7) to an Ordinance shall be read as including a reference to a part of an Ordinance, and a reference in subsection (7) to a law has a corresponding meaning.

Ordinance not to be re-made while required to be tabled

28AA. (1) Where an Ordinance (in this section called the "**original Ordinance**") has been made, no Ordinance containing a provision being the same in substance as a provision of the original Ordinance shall be made during the period defined by subsection (2) unless both Houses of the Parliament by resolution approve the making of an Ordinance containing a provision the same in substance as that provision of the original Ordinance.

(2) The period referred to in subsection (1) is the period starting on the day on which the original Ordinance was made and ending at the end of 7 days after:

- (a) if the original Ordinance has been laid, in accordance with subsection 28 (2), before both Houses of the Parliament on the same day - that day;
- (b) if the original Ordinance has been so laid before both Houses on different days - the later of those days; or
- (c) if the original Ordinance has not been so laid before both Houses - the last day on which subsection 28 (2) could have been complied with.

(3) If a provision of an Ordinance is made in contravention of this section, the provision has no effect.

Ordinance not to be re-made while subject to disallowance

28AB. (1) Where notice of a motion to disallow an Ordinance has been given in a House of the Parliament within 15 sitting days after the ordinance has been laid before that House, no Ordinance containing a provision being the same in substance as a provision of the first-mentioned Ordinance shall be made unless:

- (a) the notice has been withdrawn;
- (b) the Ordinance is deemed to have been disallowed under subsection 28 (4);
- (c) the motion has been withdrawn or otherwise disposed of; or
- (d) subsection 28 (5) has applied in relation to the Ordinance.

(2) Where:

- (a) because of subsection 28 (5), an Ordinance is deemed to have been laid before a House of the Parliament on a particular day; and
- (b) notice of a motion to disallow the Ordinance has been given in that House within 15 sitting days after that day; no Ordinance containing a provision being the same in substance as a provision of the first-mentioned Ordinance shall be made unless:
 - (c) the notice has been withdrawn;
 - (d) the Ordinance is deemed to have been disallowed under subsection 28 (4);
 - (e) the motion has been withdrawn or otherwise disposed of; or

(f) subsection 28 (5) has applied again in relation to the Ordinance.

(3) If a provision of an Ordinance is made in contravention of this section, the provision has no effect.

(4) This section does not limit the operation of section 28AA or 28AC.

(5) In this section:

"Ordinance" includes a part of an Ordinance.

Disallowed Ordinance not to be re-made unless resolution rescinded or House approves

28AC. If an Ordinance or a part of an Ordinance is disallowed, or is deemed to have been disallowed, under section 28, and an Ordinance containing a provision being the same in substance as a provision so disallowed, or deemed to have been disallowed, is made within 6 months after the date of the disallowance, that provision has no effect, unless:

(a) in the case of an Ordinance, or a part of an Ordinance, disallowed by resolution - the resolution has been rescinded by the House of the Parliament by which it was passed; or

(b) in the case of an Ordinance, or a part of an Ordinance, deemed to have been disallowed - the House of the Parliament in which notice of the motion to disallow the Ordinance or part was given has approved, by resolution, the making of a provision the same in substance as the provision deemed to have been disallowed.

Application of sections 28AA, 28AB and 28AC

28AD. Sections 28AA, 28AB and 28AC apply to Ordinances made by the Governor-General under section 27.

Laying of certain regulations before the Parliament

28A. (1) In this section, "**regulations**" means regulations made by the Minister under an enactment and includes rules and by-laws so made.

(2) All regulations shall be laid before each House of the Parliament within 15 sitting days of that House after the day on which the regulations are made and, if they are not so laid before each House of the Parliament, shall be void and of no effect.

(3) Subsections 28 (3) to (7), inclusive, and sections 28AA, 28AB and 28AC apply to and in relation to regulations laid before a House of the Parliament as if the references in those subsections to an Ordinance were references to regulations.

Division 4 -- Miscellaneous

Inconsistency of laws

29. (1) Where an enactment made under Division 2 is inconsistent with an Ordinance made by the Governor-General under section 27, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid, but an enactment and an Ordinance shall not be taken for the purposes of this subsection to be inconsistent to the extent that they are capable of operating concurrently.

(2) A reference in this section to an enactment or to an Ordinance shall be read as including a reference to a law made under an enactment or under an Ordinance, as the case may be.

Commencement of enactments

30. Notice of the making of every enactment made under this Part shall be published in the *Norfolk Island Government Gazette*, and an enactment shall, unless the contrary intention appears in the enactment, come into operation on the date of publication of the notice.

PART V – THE LEGISLATIVE ASSEMBLY

Division 1 – Constitution and Membership of Legislative Assembly

Legislative Assembly

31. (1) There shall be a Legislative Assembly of the Territory.

(2) Subject to the regulations, the Legislative Assembly shall consist of 9 members.

(3) Subject to this Act, the members of the Legislative Assembly shall be elected as provided by enactment.

Oath or affirmation

32. (1) A member of the Legislative Assembly shall, before taking his seat, make and subscribe an oath or affirmation of allegiance in accordance with the form in Schedule 8 and also an oath or affirmation of office in accordance with the form in Schedule 9.

(2) An oath or affirmation under subsection (1) shall be made before the Administrator or a person authorized by the Administrator to administer such oaths or affirmations.

Writs for elections

33. Writs for the election of members of the Legislative Assembly shall be issued by the Administrator.

Term of office of member

34. Subject to this Act, the term of office of a member of the Legislative Assembly commences on the date of his election and ends immediately before the date of the next general election of members of the Legislative Assembly.

Dates of elections

35. (1) A general election of members of the Legislative Assembly shall be held on a date determined by the Administrator.

(2) The period from the first meeting of the Legislative Assembly after a general election of members of that Assembly to the date of the next succeeding general election shall not be more than 3 years.

Resignation of members of Legislative Assembly

36. A member of the Legislative Assembly may resign his office by writing signed by him and delivered to the Speaker or, if there is no Speaker or the Speaker is absent from the Territory, to the Administrator.

Filling of casual vacancy

37. Where a casual vacancy occurs in the office of a member of the Legislative Assembly less than 2 years and 9 months after the first meeting of that Assembly following the last preceding general election, an election shall be held for the purpose of filling the vacant office for the remainder of the term of office of the member who last held that office.

Qualifications for election

38. Subject to section 39, a person is qualified to be a candidate for election as a member of the Legislative Assembly if, at the date of nomination:

- (b) he has attained the age of 18 years;
- (c) he is entitled, or qualified to become entitled, to vote at elections of members of the Legislative Assembly; and
- (d) he has such qualifications relating to residence as are prescribed by enactment for the purposes of this paragraph or, if no such enactment is in force, he has been ordinarily resident within the Territory for a period of 5 years immediately preceding the date of nomination.

Disqualifications for membership of Legislative Assembly

39. (1) A person is not qualified to be a candidate for election as a member of the Legislative Assembly if, at the date of nomination:

- (a) he is an undischarged bankrupt;
- (b) he has been convicted and is under sentence of imprisonment for one year or longer for an offence against the law of the Commonwealth or of a State or Territory;
- (c) he is a member of the Police Force of the Territory or of the Commonwealth; or
- (d) he is the holder of an office or appointment under a law of the Commonwealth or of the Territory, being an office or appointment that is prescribed for the purposes of this paragraph.

(2) A member of the Legislative Assembly vacates his office if:

- (a) he becomes a person to whom any of the paragraphs of subsection (1) applies;
- (c) he fails to attend the Legislative Assembly for 3 consecutive meetings of the Legislative Assembly without the permission of the Legislative Assembly;
- (d) he ceases to be entitled, or qualified to become entitled, to vote at elections of members of the Legislative Assembly; or

- (e) he takes or agrees to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Legislative Assembly, otherwise than in accordance with section 65.

(3) A member of the Legislative Assembly who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Commonwealth or the Administration under which goods or services are to be supplied to the Commonwealth or the Administration shall not take part in a discussion of a matter, or vote on a question, in the Legislative Assembly where the matter or question relates directly or indirectly to that contract.

(4) Any question concerning the application of subsection (3) shall be decided by the Legislative Assembly, and a contravention of that subsection does not affect the validity of anything done by the Legislative Assembly.

Division 2 – Procedure of Legislative Assembly

Meetings of Legislative Assembly

40. (1) The Legislative Assembly shall meet at least once every 2 months.

(2) The Administrator shall convene the first meeting of the Legislative Assembly after a general election of that Assembly and thereafter shall convene a meeting of that Assembly whenever requested to do so by such number of members of that Assembly as is prescribed by enactment.

(3) The Administrator may convene a meeting of the Legislative Assembly whenever, in his opinion, it is necessary to do so for the purpose of ensuring compliance with subsection (1).

(4) The Administrator shall convene a meeting under subsection (2) or (3) by notice published in the *Norfolk Island Government Gazette*.

Speaker and Deputy Speaker of Legislative Assembly

41. (1) At the first meeting of the Legislative Assembly held after a general election, the members present shall, before proceeding to the despatch of any other business, elect one of their number to be Speaker, and another of their number to be Deputy Speaker, of the Legislative Assembly.

(2) In the event of a vacancy occurring in the office of Speaker or Deputy Speaker, the members present at the next meeting of the Legislative Assembly after the vacancy occurs shall, before proceeding to the despatch of any other business, elect one of their number to be Speaker or Deputy Speaker, as the case may be.

(3) A person who is elected to the office of Speaker or Deputy Speaker holds office until:

- (a) the Legislative Assembly first meets after a general election of the Legislative Assembly that takes place after his election under this section;
- (b) he resigns his office by writing signed by him and delivered to the Administrator;
- (c) he ceases to be a member of the Legislative Assembly otherwise than by reason of the dissolution of the Legislative Assembly; or

(d) not less than 5 members of the Legislative Assembly vote in favour of his removal from office; whichever first happens.

(4) A person who ceases to hold office as Speaker or Deputy Speaker is eligible for re-election to that office.

Procedure at meetings

42. (1) Subject to subsection 39 (3) and to the standing rules and orders of the Legislative Assembly, the Speaker shall preside at all meetings of the Legislative Assembly at which he is present.

(2) Subject to subsection 39 (3) and to the standing rules and orders of the Legislative Assembly, if the Speaker is absent from a meeting of the Legislative Assembly or is unable, by reason of the operation of subsection 39 (3), to perform his functions, the Deputy Speaker shall preside.

(3) If both the Speaker and the Deputy Speaker are absent from a meeting of the Legislative Assembly or are unable, by reason of the operation of subsection 39 (3), to perform the functions of the Speaker, the members present shall elect one of their number to preside.

(4) At a meeting of the Legislative Assembly, unless otherwise provided by enactment, 5 members constitute a quorum.

(5) Questions arising at a meeting of the Legislative Assembly shall be decided by a majority of the votes of the members present and voting.

(6) The member presiding at a meeting of the Legislative Assembly has a deliberative vote only, and, in the event of an equality of votes on a question, the question shall pass in the negative.

Validation of acts of Legislative Assembly

43. Where a person who has purported to sit or vote as a member of the Legislative Assembly at a meeting of the Legislative Assembly or of a Committee of the Legislative Assembly:

- (a) was not a duly elected member by reason of his not having been qualified for election or of any other defect in his election; or
- (b) had vacated his office as a member; all things done or purporting to have been done by the Legislative Assembly or that Committee shall be deemed to be as validly done as if that person had, when so sitting or voting, been a duly elected member of the Legislative Assembly, or had not vacated his office, as the case may be.

Minutes of proceedings

44. (1) The Legislative Assembly shall cause minutes of its proceedings to be kept.

(2) A copy of any minutes so kept shall, on request made by any person, be made available for inspection by him or, on payment of such fee as is fixed by or under enactment, be supplied to him.

Standing rules and orders

45. The Legislative Assembly may make standing rules and orders, not inconsistent with a law of the Territory, with respect to the order and conduct of its business and proceedings.

PART VI -- FINANCE

Interpretation

46. In this Part, "**Territory authority**" means a body corporate established for a public purpose by or under an enactment, being an authority that is empowered by enactment to borrow moneys.

Public Account of Norfolk Island

47. (1) All public moneys of the Territory shall form a fund to be called the Public Account of Norfolk Island and shall, subject to this Part, be available for the purposes of the government of the Territory.

(2) The receipt, expenditure and control of public moneys of the Territory shall be regulated by enactment.

(3) Where an enactment, other than an enactment to which subsection (4) or (5) applies, provides for the raising of revenues, revenues raised by virtue of that enactment shall, subject to subsection (2) and section 48, be available for the purposes of the government of the Territory.

(4) Where an enactment providing for the raising of revenues provides that the revenues raised by virtue of the enactment are to be used for the general purpose of matters specified in Schedule 2, a separate account shall be kept in the Public Account of all revenues raised by virtue of that enactment and any other enactment to which this subsection applies, and, subject to subsection 27 (3), moneys standing to the credit of that account (including income derived from the investment of those moneys) shall not be issued or expended (otherwise than by way of investment) for any purposes other than purposes of any matter or matters specified in Schedule 2.

(5) Where an enactment providing for the raising of revenues provides that revenues raised by virtue of the enactment are to be used for a purpose (other than the general purpose referred to in subsection (4)) specified in the enactment, a separate account shall be kept in the Public Account of all revenues to be used for that purpose by virtue of that enactment and any other enactment to which this subsection applies, and, subject to subsection 27 (3), moneys standing to the credit of that account (including income derived from the investment of those moneys) shall not be issued or expended (otherwise than by way of investment) except for that purpose.

Withdrawals from Public Account of Norfolk Island

48. (1) The moneys of the Public Account of Norfolk Island shall not be issued or expended except as authorized by enactment.

(2) The moneys of the Public Account of Norfolk Island may be invested in such manner as is provided by enactment.

Borrowing from Commonwealth

49. The Minister for Finance may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the Administration or to a Territory authority on such terms and conditions as the Minister for Finance, in writing, determines.

Borrowings otherwise than from Commonwealth

50. (1) The Administration or a Territory authority may, with the approval of the Treasurer:

- (a) borrow money otherwise than from the Commonwealth; or
- (b) raise money otherwise than by borrowing; on terms and conditions that are specified in, or consistent with, the approval.

(2) Without limiting the generality of subsection (1), the Administration or a Territory authority may, under that subsection, borrow money, or raise money otherwise than by borrowing, by dealing with securities.

(3) A borrowing of money, or a raising of money otherwise than by borrowing, under subsection (1) may be made, in whole or in part, in a currency other than Australian currency.

(4) An approval may be given under subsection (1) in relation to a particular transaction or in relation to transactions included in a class of transactions.

(5) An approval under subsection (1) shall be given in writing.

(6) In this section, "**securities**" includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents.

(7) A reference in this section to dealing with securities includes a reference to:

- (a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities;
- (b) creating, selling, purchasing or re-selling rights or options in respect of securities; and
- (c) entering into agreements or other arrangements relating to securities.

(8) For the purposes of this section:

- (a) the issue by the Administration or a Territory authority of an instrument acknowledging a debt in consideration of:
 - (i) the payment or deposit of money; or
 - (ii) the provision of credit; otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Administration or the Territory authority shall be deemed to be a raising by the Administration or the Territory authority, otherwise than by borrowing, or an amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

- (b) the obtaining of credit by the Administration or a Territory authority otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Administration or the Territory authority shall be deemed to be a raising by the Administration or the Territory authority, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

Guarantee of borrowings

50A. (1) The Treasurer may, on behalf of the Commonwealth, enter into a contract:

- (a) guaranteeing the repayment by the Administration of money borrowed under paragraph 50 (1) (a) and the payment by the Administration of interest (including any interest on that interest) on money so borrowed; or
- (b) guaranteeing the payment by the Administration of such amounts (which may be interest) that the Administration is liable to pay with respect to money raised under paragraph 50 (1) (b) as are specified in the contract.

(2) The Treasurer may, in writing, determine:

- (a) that the repayment by the Administration of money borrowed under paragraph 50 (1) (a), and the payment by the Administration of interest (including any interest on that interest) on money so borrowed, are guaranteed by the Commonwealth; or
- (b) that the payment by the Administration of such money (which may be interest) that the Administration is liable to pay with respect to money raised under paragraph 50 (1) (b) as is specified in the determination is guaranteed by the Commonwealth; and, where the Treasurer makes such a determination, the repayment of that money and the payment of that interest are, or the payment of that money is, by force of this subsection, guaranteed by the Commonwealth.

(3) A contract may be entered into under subsection (1), and a determination may be made under subsection (2), in relation to a particular transaction or in relation to transactions included in a class of transactions.

(4) A contract entered into under subsection (1) may include either or both of the following provisions:

- (a) a provision agreeing, on behalf of the Commonwealth, that proceedings under the contract may be taken in the courts, or a specified court, of a country other than Australia;
- (b) a provision waiving, on behalf of the Commonwealth, the immunity of the Commonwealth from suit in the courts, or a specified court, of a country other than Australia in relation to any proceedings that may be taken under the contract.

Administration may give security

50B. The Administration may give security for:

- (a) the repayment by the Administration of money borrowed by the Administration under section 49 or paragraph 50 (1) (a) and the payment by the Administration of interest (including any interest on that interest) on money so borrowed;
- (b) the payment by the Administration of amounts (including any interest) that the Administration is liable to pay with respect to money raised by the Administration under paragraph 50 (1) (b); or

- (c) the payment to the Commonwealth of amounts equal to any amounts that the Commonwealth may become liable to pay under a contract entered into under subsection 50A (1) or a determination made under subsection 50A (2).

Borrowings not otherwise permitted

50C. The Administration or a Territory authority shall not borrow money, or raise money otherwise than by borrowing, except in accordance with sections 49 and 50.

Delegation by Treasurer

50D. (1) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Treasurer, delegate to a person holding or performing the duties of an office in the Department of the Treasury all or any of the powers of the Treasurer under sections 50 and 50A.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Part, be deemed to have been exercised by the Treasurer.

(3) A delegate is, in the exercise of a power so delegated, subject to the directions of the Treasurer.

(4) A delegation under subsection (1) does not prevent the exercise of a power by the Treasurer.

Appointment of Norfolk Island Government Auditor

51. Subject to section 51A, the Administrator shall, on the advice of the Legislative Assembly:

- (a) appoint a person or firm to be the Norfolk Island Government Auditor; and
- (b) determine the terms and conditions of employment (including remuneration) of the Auditor.

Restrictions on appointment of Auditor etc.

51A. (1) The Administrator shall not appoint a person or firm under section 51 to be the Auditor unless the person, or at least one member of the firm, is, or is deemed to be, registered as an auditor (in this section called a "**registered auditor**"):

- (a) under Division 2 of Part II of the Companies Act 1981; or
- (b) under Division 3 of Part III of the Companies Act 1985 of the Territory.

(2) The appointment of a firm as the Auditor shall be deemed to be an appointment of each member of the firm who, at the date of appointment, is a registered auditor.

(3) Where a firm that has been appointed as the Auditor is reconstituted because of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both:

- (a) a person who was deemed under subsection (2) to be the Auditor and who has so died or retired or withdrawn from the firm as previously constituted shall be deemed to have resigned as the Auditor as from the day of that person's death, retirement or withdrawal and, if that person was the only member of the firm who

was a registered auditor and, after that person's death, retirement or withdrawal, there is no member of the firm who is a registered auditor, the firm shall cease to hold office as the Auditor as from the day of that person's death, retirement or withdrawal;

- (b) a person who is a registered auditor and who is so admitted to the firm shall be deemed to have been appointed as the Auditor as from the day of that admission; and
 - (c) the reconstitution of the firm does not affect the appointment as Auditor of any continuing member of the firm who is a registered auditor.
- (4) Except as provided by subsection (3), upon the dissolution of a firm appointed as the Auditor:
- (a) the firm ceases to hold office as the Auditor as from the day of dissolution; and
 - (b) each member of the firm who is deemed by subsection (2) or paragraph (3) (b) to have been appointed as the Auditor ceases to hold office as the Auditor as from the day of the dissolution.

Auditor-General may accept appointment

51B. It is lawful for the Auditor-General for the Commonwealth to accept appointment as the Auditor.

Audit

51C. (1) The Auditor shall, at least once in each year, inspect and audit the accounts of the Territory and shall draw the Speaker's attention to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor, of sufficient importance to justify the Auditor so doing.

(2) The Auditor may dispense with all or a part of the detailed inspection and audit of any accounts referred to in subsection (1).

(3) The Auditor shall, at least once in each year, prepare, and give to the Speaker and the Administrator, a report on the inspection and audit carried out under subsection (1).

Tabling of report etc.

51D. (1) The Speaker shall cause a copy of the Auditor's report given to the Speaker under subsection 51C (3) to be laid before the Legislative Assembly within 65 days after the day on which the Speaker receives the report.

(2) The Administrator shall, as soon as practicable after receiving the Auditor's report under subsection 51C (3), forward the report to the Minister.

Access to documents

51E. (1) The Auditor or a person authorised in writing by the Auditor is entitled at all reasonable times to full and free access to all accounts, records, documents and papers relating directly or indirectly to the receipt or payment of money by the Administration or a prescribed authority or to the acquisition, receipt, custody or disposal of assets by the Administration or a prescribed authority.

(2) The Auditor or a person authorised in writing by the Auditor may make copies of, or take extracts from, any such accounts, records, documents or papers.

(3) The Auditor or a person authorised in writing by the Auditor may require any person to furnish the Auditor with such information in the possession of that person or to which that person has access as the Auditor or authorised person considers necessary for the purposes of the powers and functions of the Auditor under this Act, and the person shall comply with the requirement.

(4) A person who contravenes subsection (3) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

(5) In this section, "**prescribed authority**" means a Territory authority whose accounts are not required to be audited under an enactment.

Auditor not subject to direction

51F. Subject to section 51G, the Auditor is not, in the exercise of powers and the performance of functions under this Act, subject to the directions of the Minister, the Administrator, the Legislative Assembly or any member of the Legislative Assembly.

Auditing standards

51G. (1) Subject to subsections (2) and (4), the Legislative Assembly may, by resolution, set the auditing standards to be complied with by the Auditor when inspecting and auditing the accounts of the Territory.

(2) In setting the auditing standards under subsection (1) the Legislative Assembly shall have regard to:

- (a) the auditing standards set by the Auditor-General under subsection 63MB (1) of the *Audit Act 1901*; and
- (b) the auditing standards issued jointly by The Institute of Chartered Accountants in Australia and the Australian Society of Accountants.

(3) The Legislative Assembly may amend or vary the standards set under subsection (1) and subsection (2) applies accordingly in relation to such amendment or variation.

(4) Where the Auditor-General is appointed as the Auditor:

- (a) the auditing standards set under subsection (1) do not apply to the Auditor-General; and
- (b) the Auditor-General shall comply with the auditing standards set under subsection 63MB (1) of the *Audit Act 1901* when inspecting and auditing the accounts of the Territory.

PART VII – THE JUDICIAL SYSTEM

Constitution of Supreme Court

52. (1) The Supreme Court of Norfolk Island established by the *Norfolk Island Act 1957* continues in existence, notwithstanding the repeal of that Act, as the Superior Court of Record of the Territory.

(2) The Supreme Court shall consist of a Chief Justice and such other Judge as is, or such other Judges as are, appointed in accordance with this Act.

Appointment of Judges

53. (1) The Governor-General may, by Commission, appoint a person who, or persons each of whom, is a Judge of another court created by the Parliament to be a Judge or Judges of the Supreme Court.

(1A) The Governor-General may, by Commission, appoint a person who is a Judge of another court created by the Parliament to be the Chief Justice of the Supreme Court.

(2) Before tendering advice to the Governor-General for the purposes of subsection (1) or (1A), the Minister shall give the Executive Council the opportunity of furnishing comments to him and shall consider any comments so furnished.

(3) A person shall not be appointed:

- (a) as a Judge under subsection (1); or
- (b) as the Chief Justice under subsection (1A), whether or not he already holds office as a Judge; if he has attained the age of 70 years.

(4) A Judge ceases to hold office as a Judge upon his attaining the age of 70 years.

(5) A Judge ceases to hold office as a Judge if he no longer holds office as a Judge of another court created by the Parliament.

(6) A Judge may resign his office by writing under his hand delivered to the Governor-General.

Acting Chief Justice

53A. Whenever:

- (a) the Chief Justice is absent from both Australia and Norfolk Island or is absent from duty; or
- (b) there is a vacancy in the office of Chief Justice; the next senior Judge who is in Australia or Norfolk Island and is able and willing to do so shall perform the duties, and may exercise the powers, of the Chief Justice.

Seniority of Judges

54. The Chief Justice is the senior Judge of the Supreme Court and the other Judges have seniority according to the dates on which their Commissions took effect or, where the Commissions of 2 or more of them took effect on the same date, according to the precedence assigned to them by their Commissions.

Holding of other judicial offices

55. A person may be a Judge of the Supreme Court notwithstanding that he is also a Judge of another court created by the Parliament, or is also the holder of a judicial office in relation to a Territory other than Norfolk Island, by virtue of an appointment made either before or after his appointment as a Judge of the Supreme Court.

Salaries and travelling allowances

56. (1) A Judge shall be remunerated with the salary and annual allowance that he receives as a Judge of the other court, or other courts of which he is a Judge.

(2) A Judge shall be paid such travelling allowances as the Governor-General approves.

Oath or affirmation of Judge

57. A Judge appointed after the commencement of this section shall, before proceeding to discharge the duties of his office, take before the Governor-General, a Judge of the Supreme Court or of another court created by the Parliament, or a person authorized by the Governor-General for the purpose, an oath or affirmation in accordance with the form in Schedule 4.

Exercise of jurisdiction

58. (1) The jurisdiction of the Supreme Court is exercisable by one Judge, sitting in Court or, to the extent and in the cases provided by or under enactment, sitting in Chambers.

(2) The Chief Justice is responsible for ensuring the orderly and expeditious discharge of the business of the Supreme Court and accordingly may, subject to this Act and to such consultation with the Judges as is appropriate and practicable, make arrangements as to the Judge or Judges who is or are to constitute the Supreme Court in particular matters or classes of matters.

(3) The Supreme Court constituted by one Judge may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by another Judge is at the same time sitting and exercising the jurisdiction of the Court.

(4) The exercise of the jurisdiction of the Supreme Court by a Judge is not invalidated and shall not be called in question on the ground that it is not in accordance with arrangements made in pursuance of this section.

Jurisdiction of Supreme Court

59. Subject to regulations referred to in paragraph 67 (1) (a), the jurisdiction, practice and procedure of the Supreme Court shall be as provided by or under enactment.

Establishment of courts and tribunals

60. Courts and tribunals for the Territory may be established by or under enactment.

PART VIII -- MISCELLANEOUS

Officers

61. Provision may be made by enactment for and in relation to the appointment and employment of such persons as are necessary for the purposes of this Act and for the proper government of the Territory.

Grants of land

62. The Minister may, in accordance with law, make grants or other dispositions of Crown land in the Territory.

Customs duty on certain goods

64. Duties of customs are not chargeable on goods imported into Australia from the Territory if the goods:

- (a) are the produce or manufacture of the Territory;
- (b) have been shipped in the Territory for export to Australia; and
- (c) are not goods which, if manufactured or produced in Australia, would be subject to a duty of excise.

Remuneration and allowances

65. (1) A person is to be paid, in respect of the person's services in an office to which this section applies, such remuneration and allowances (if any) as are provided for under an enactment.

(2) If the remuneration or an allowance in respect of the office is not so provided for, the person is to be paid such remuneration or allowance (if any) as is specified:

- (a) in any determination of that remuneration or allowance by the Remuneration Tribunal that was in force immediately before the commencement of this subsection; or
- (b) if no such determination was then in force - in the regulations; until the remuneration or allowance (if any) is so provided for.

(4) This section applies to an office of member of the Legislative Assembly, member of the Executive Council or executive member, or any other office in or in connection with the Assembly that can be held only by a member of the Assembly.

Grant of pardon, remission etc.

66. (1) The Governor-General, acting with the advice of the Attorney-General, may, by warrant under his hand, grant to a person convicted by a court of the Territory exercising criminal jurisdiction a pardon, either free or conditional, or a remission or commutation of sentence, or a respite, for such period as he thinks fit, of the execution of sentence, and may remit any fines, penalties and forfeitures imposed or incurred under a law in force in the Territory.

(2) Without limiting the powers of the Governor-General under subsection (1), provision may be made by enactment for the remission, for good conduct, of part of the sentence of a person serving a sentence of imprisonment in the Territory.

(3) Where an offence has been committed in the Territory, or where an offence has been committed outside the Territory for which the offender may be tried in the Territory, the Governor-General, acting with the advice of the Attorney-General, may, by warrant under his hand, grant a pardon to an accomplice who gives evidence that leads to the conviction of the principal offender, or of any of the principal offenders.

Regulations

67. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular:

- (a) making provision for and in relation to sittings of the Supreme Court in a State or in a Territory other than Norfolk Island for the purpose of hearing and determining a matter, otherwise than in the exercise of its criminal jurisdiction, if a Judge is satisfied that the hearing of the matter outside the Territory is not contrary to the interests of justice; and
- (b) prescribing penalties, not exceeding a fine of \$500 or imprisonment for 3 months, for offences against the regulations.

(2) The regulations may repeal or alter any item in, or add any new item to, Schedule 2 or 3, but:

- (a) regulations repealing or altering an item in Schedule 2 shall not be made except after:
 - (i) a copy of the proposed regulations has been laid before the Legislative Assembly; and
 - (ii) the Legislative Assembly has passed a resolution approving the proposed regulations; and
- (b) regulations made by virtue of this subsection reducing the scope of the matters specified in Schedule 3 do not have the effect of reducing the scope of the matters specified in Schedules 2 and 3.

(3) A reference in subsection (2) to a Schedule shall be read as including a reference to that Schedule as varied from time to time by regulations made by virtue of that subsection.

PART IX -- TRANSITIONAL

Interpretation

68. In this Part, unless the contrary intention appears:

"**commencing date**" means the date fixed under subsection 2 (2);

"**previous Act**" means the *Norfolk Island Act 1957*.

Election of Legislative Assembly

69. (1) The powers of the Governor-General under the previous Act to make Ordinances extend to the making of an Ordinance before the commencing date for the purposes of subsection 31 (3) and with respect to matters relating to the Legislative Assembly.

(2) An election for the purposes of subsection 31 (3) shall not be held before 1 July 1979.

(3) The writ for an election for the purposes of subsection 31 (3) to be held before the commencing date shall be issued by the Administrator.

(4) In subsection (3), "**Administrator**" has the same meaning as in the previous Act.

Administrator etc. to continue in office

70. (1) Where, immediately before the commencing date, a person holds office by virtue of a provision of the previous Act as the Administrator, an Acting Administrator, the Deputy Administrator, or a Judge, he continues, subject to this Act, to hold office for the remainder of his term of office as if he had been appointed under the corresponding provision of this Act, and any instrument by which his appointment was made continues in force accordingly.

(2) Sections 10 and 57 do not apply for the purposes of the continuance in office of a person by virtue of subsection (1) of this section.

Proposed Ordinances and regulations

71. Where, before the commencing date:

- (a) a proposed Ordinance was, under section 16 of the previous Act, furnished to the Norfolk Island Council for its consideration; and
- (b) the proposed Ordinance, or the proposed Ordinance as amended, was not made under subsection (3) or (4) of that section; then, whether or not representations were made by the Council in relation to the proposed Ordinance under that section, a copy of the proposed Ordinance shall, as soon as practicable after the commencing date, be laid before the Legislative Assembly at a meeting of the Assembly, and, upon its being so laid before the Assembly, this Act has effect in relation to the proposed Ordinance as if it were a law introduced into the Legislative Assembly under section 26 of this Act.

Laying of Ordinances before the Parliament

72. In relation to an Ordinance made under the previous Act, section 17 of that Act continues to apply, by force of this section, on and after the commencing date as if that section had not been repealed and as if the reference in subsection (5) to the making of an Ordinance were a reference to the making of an enactment under this Act.

Validity of Ordinances and enactments

73. An Ordinance made under the previous Act and an enactment made in pursuance of section 71 of this Act is as valid and effectual as if it had been made, or wholly made, as the case may be, under Part IV of this Act.

Contracts and agreements

74. (1) This section applies to:

- (a) rights and liabilities of the Commonwealth subsisting immediately before the commencing date by virtue of a contract or agreement entered into on behalf of the Commonwealth by the Administrator of Norfolk Island or the Administration of Norfolk Island (however described);
- (b) rights and liabilities of the corporation referred to in subsection 17 (3) of the *Public Moneys Ordinance 1964* of Norfolk Island, being rights and liabilities subsisting immediately before the commencing date arising out of the investment of any moneys in pursuance of section 17 of that Ordinance; and

- (c) rights and liabilities (other than rights and liabilities referred to in paragraph (a) or (b)) of the Commonwealth, the Administrator of Norfolk Island or the Administration of Norfolk Island subsisting immediately before the commencing date by virtue of any contract or agreement entered into or purporting to be entered into by the Administrator of Norfolk Island or the Administration of Norfolk Island (however described).

(2) All rights and liabilities to which this section applies become, on the commencing date, rights and liabilities of the Administration of Norfolk Island.

Public Account of Norfolk Island

75. All moneys that were, immediately before the commencing date, standing to the credit of the Public Account of Norfolk Island kept in accordance with section 6 of the *Public Moneys Ordinance 1964* of Norfolk Island become, on that date, moneys standing to the credit of the Public Account of Norfolk Island established by this Act.

Audit

76. The reference in section 63 to the accounts of the Territory shall be read as including a reference to accounts prepared before the commencing date and to accounts prepared on or after the commencing date in respect of any period before the commencing date.

Regulations

77. (1) The regulations may make provision (including provision by way of modifications and adaptations of any Act) for and in relation to any matter arising from, consequential upon or otherwise connected with the establishment of the Administration of Norfolk Island as a body politic.

(2) The power to make regulations by virtue of subsection (1) extends to the making of regulations expressed to take effect on and from a date earlier than the date of the making of the regulations, not being a date earlier than the commencing date.

(3) Regulations shall not be made by virtue of this section after 30 June 1980.

SCHEDULES

SCHEDULE 1

Sub-section 4 (1)

THE TERRITORY OF NORFOLK ISLAND

Norfolk Island and all the other islands and rocks lying within the area bounded by the parallels 28 degrees 59 minutes and 29 degrees 9 minutes south latitude and the meridians 167 degrees 54 minutes and 168 degrees east longitude.

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
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.

Attachment E

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.

SCHEDULE 4

Sections 10 and 57

OATH

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law, that I will well and truly serve Her in the office of and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God]

AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law, that I will well and truly serve Her in the office of and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

SCHEDULE 5

Sub-section 15 (1)

OATH

I, A.B., do swear that, except as authorized by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my membership of the Executive Council of Norfolk Island: So help me God]

AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare that, except as authorized by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my membership of the Executive Council of Norfolk Island.

SCHEDULE 6

Sub-section 15 (2)

OATH

I, A.B., do swear that, except in the course of my duties or as authorized by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my holding executive office: So help me God]

AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare that, except in the course of my duties or as authorized by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my holding executive office.

SCHEDULE 7

Sub-section 15 (3)

OATH

I,A.B., do swear that, except as authorized by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my having attended any meeting of the Executive Council of Norfolk Island: So help me God]

AFFIRMATION

I,A.B., do solemnly and sincerely promise and declare that, except as authorised by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my having attended any meeting of the Executive Council of Norfolk Island.

SCHEDULE 8

Sub-section 32 (1)

OATH

I,A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law: So help me God]

AFFIRMATION

I,A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law.

SCHEDULE 9

Sub-section 32 (1)

OATH

I,A.B., do swear that I will render true and faithful service as a member of the Legislative Assembly of Norfolk Island: So help me God]

AFFIRMATION

I,A.B., do solemnly and sincerely promise and declare that I will render true and faithful service as a member of the Legislative Assembly of Norfolk Island.