A FEDERATION IN THESE SEAS*

An account of the acquisition by Australia of its external territories, with selected documents

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ALAN KERR

**Mr Edmund Barton, Prime Minister and Minister for External Affairs, Federal Parliament, 12 November, 1901 (Hansard p 7080)*

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For my family

FOREWORD

Federation in These Seas is a significant work which outlines for the first time in detail, the history of the Commonwealth's acquisition of its external territories over more than the last century.

It sets out the reasons why control over each of them was sought against the background of Australia's growing international status. It draws on contemporary political and official material and reproduces copies of the British and Australian legal instruments involved, never before published in one work. The book is an important research tool for all those interested in the history of Australia's external territories and for those involved in the development of policy for their administration and will be a valuable tool for students, academics and officials.

The book also tells of Australia's interests in its wider Pacific and Indian Ocean neighbourhood and provides a useful backdrop to Australia's continuing and growing relationships with its close neighbours.

I congratulate Alan Kerr and Christine Goode in drawing together this important work which combines many of the documents of the period and gives them an historical context.

The Hon Bob Debus MP
Minister for Home Affairs
5 June 2009

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PREFACE

My interest in compiling this account of Australia's acquisition of its external territories stems from my good fortune in spending a large part of my later years as a Commonwealth public servant involved in territories' administration. I have lived and worked in Papua New Guinea and Norfolk Island, visited Cocos (Keeling) Islands and Christmas Island, and had a close involvement with the establishment of the Coral Sea Islands Territory.

This account deals with the history of the acquisition of Australia's external territories in chronological order by chapters, except that the chapter on New Guinea is placed after the one on Papua, and the account then includes a chapter on their merger, as their acquisition histories are closely intertwined. Norfolk Island and Nauru would otherwise follow Papua.

In gathering the material for this account, I found gaps in the official record that, regrettably, I could not fill. Whether this is because records from the older periods were destroyed or have been misfiled or otherwise lost is unclear. Nevertheless, I think that enough has been found to outline an extraordinary story of an important part of Australia's development.

Between 1906 and 1969, Australia acquired ten external territories—six by transfer from the United Kingdom, two under mandate from the United Nations to the United Kingdom, and two by direct annexation, one of which followed the United Kingdom's recognition of the transfer of sovereignty to Australia. The territories, six of which were inhabited, ranged from just south of the equator to the South Pole, and from the western Pacific Ocean to the mid-eastern Indian Ocean—a vast area that almost doubled Australia's political and economic 'footprint'. During the twentieth century, Australia kept an eye on (and from time to time a presence in) its four uninhabited territories, and presided over the constitutional development of the six inhabited territories, seeing three of those become two independent nations.

I do not think that any other part of the British Empire (other than the United Kingdom itself) had so many external territories, and I have tried to develop a contemporary outline of the reasons Australia sought so many. The account also deals with the means by which Australia became responsible for its territories, and this in turn unfolds a story of the development of Australia itself as an emerging independent nation freeing itself from the Imperial Government's apron strings.

My account sets out the constitutional steps leading to acquisition and the formal instruments used, and I attempt to explain the historical reasons for their use. I do not deal with whether the territories were legally acquired, or whether those territories that remain are legally part of the Commonwealth of Australia. For the purposes of this story, I have taken as a fact that the territories were acquired as territories by the Commonwealth and remained or remain so. Similarly, I do not deal with the question of the applicable law in each territory on acquisition, with whether the Commonwealth has plenary power over its territories, or with the degree, if any, to which the breadth of that power is limited generally or by Australia's Constitution. Those questions have occupied the minds of legislators, judges, academics and officials ever since 1906, when Papua became a territory, and are dealt with elsewhere in great detail.

I have relied almost exclusively on federal departmental papers and state and federal Hansard records so as to reflect the expressed official, political and public sentiments of the times as closely as possible. This is not a story about the territories themselves, and so I only deal, in a very brief way, with their governmental, social or economic development after acquisition, as much has been written elsewhere about their history under Australian administration. I also canvass issues affecting a particular territory if its boundary or status has been altered since acquisition.

By using contemporary material, I have tried to illustrate some of the political, economic and social thinking that led to Australia seeking to gain control of certain places. Although it is easy from a twenty-first century vantage point to be critical of comments and aspirations expressed over a century ago, those comments and aspirations help to explain Australia's acquisitions. In some cases, the importance of the islands in Australia's scheme of things has diminished; in others, they have taken on new and perhaps greater significance.

This is a tale of ten territories from an Australian perspective. I hope that those who read this account gain from it a better understanding of an extraordinary period in Australia's history, the aftermath of which is continuing to unfold before our eyes.

Alan Kerr
Canberra,
June 2009

ACKNOWLEDGMENTS

Many people have helped me in the preparation of this book. I am indebted to my former Department of External Territories colleague and long-time friend Christine Goode, whose encouragement, advice and help in research and recording material and in developing the narrative for this account have been invaluable.

I also acknowledge the positive encouragement and assistance of friends or former colleagues Jan and Chris Creswell, Geoffrey Dabb, Peter Dowling, John Greenwell, John Hunt, Peter Kennedy, Drew McDonald, Chris Nobbs and Owen Walsh.

Family and relatives, my children Elizabeth, who was so helpful in her proof reading, Simon and Matthew, and Colin Bubb, Peter Davies and Heather Kennedy all gave much support and useful comment.

Carolyn Connor of the National Archives of Australia (NAA) has been of immense help and assistance, and I have been helped also by other officers of the NAA, in particular Kerry Jeffrey and Margarita Santos. Helen Tsogas, Martin Woods and Lynn Flower at the National Library of Australia and Rosemary Laing at the Parliament of Australia were also helpful in enabling me to research material held by the library and by the parliament. Ewan Maidment from the Pacific Manuscripts Bureau of the Research School of Pacific and Asian Studies helped also with my research. I thank officers of the Australian Public Service Commission and the Attorney-General's Department, in particular Victor Rodziewicz and Ros Dawson, for allowing me access to their libraries. Andrew Jackson of the Antarctic Division of the Department of the Environment, Water, Heritage and the Arts helped in the chapters dealing with Antarctica and Heard Island and McDonald Islands. David Lee, Director of the Historical Publications and Information Section in the Department of Foreign Affairs and Trade provided useful advice on publication issues.

I should like to acknowledge the assistance and support of officers of the former Department of Transport and Regional Services, which Department, among other things, met most of the costs of obtaining material from the NAA and made available funds for publication. On the transfer of the territories function in 2007, the Attorney-General's Department continued the funding commitment and its officers, particularly Marion Low, Mary O'Brien and Julian Yates provided consistent help and encouragement.

Thanks are also due to James Dixon, editor, Philippa Lawrence, designer, Karina Pelling, map maker, Sherrey Quinn, indexer, and Bucky Toller, photographer who were all invaluable in bringing the book to publication.

I also acknowledge the understanding offered by the British High Commission in Canberra towards the reproduction of the United Kingdom sourced material in this book.

While this book has been published under the auspices of the Attorney-General's Department, the analyses, arguments, opinions and conclusions presented throughout are those of the author and should not be attributed to the Department or its ministers.

My children have watched me develop this account with a fair degree of indulgent forbearance and mild amusement. I hope that the final result is something about which they can feel some pride and also relief—'at last Dad has finished his book!'

Indeed, I have finished, and notwithstanding all the help and advice I have received the product is, of course, mine. I take full responsibility for any errors, omissions and shortcomings. I hope that those who read this story might correct the mistakes, fill in the gaps and proffer advice to make the story more complete.

The Territories Power: Section 122 of the Constitution

120. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision. — Custody of offenders against laws of the Commonwealth.

CHAPTER VI.

Chap. VI. New States.

NEW STATES.

121. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit. — New States may be admitted or established.

122. 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. — Government of territories.

123. The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminisb, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected. — Alteration of limits of States.

124. A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected. — Formation of new States.

CHAPTER VII.

Chap. VII. Miscellaneous.

MISCELLANEOUS.

125. The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney. — Seat of Government.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

Commonwealth of Australia Constitution Act 1900 (UK).
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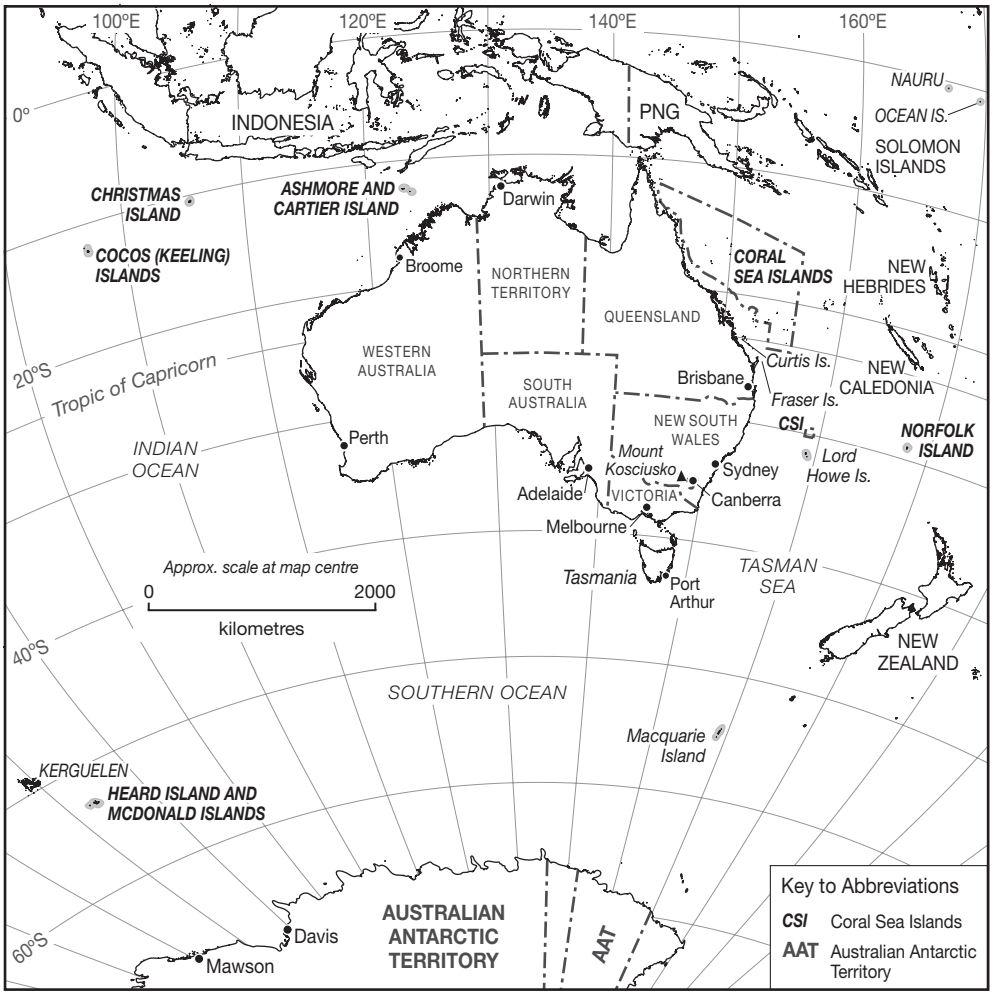


Australia's External Territories. *Map drawn by Karina Pelling.*

CHAPTER ONE

Australia's nearest neighbours

> In the opinion of this House, it is imperatively necessary in the interests of humanity and civilisation, and as the most effectual way of stopping the slave trade in the South Pacific, that the British Government should take immediate possession of all the islands in the Pacific Ocean, not already occupied by or under the protectorate of any civilised power.
>
> —Motion in the Victorian Parliament 12 December 1872, p. 2364

Before their Federation in 1901, the Australian colonies were uneasy about their isolated place in the Southern Hemisphere. To the north lay a rim of islands, none of which was controlled by their mother country, Britain.

That unease increased as Northern Hemisphere countries began to take an interest in the area, exert local influence, or both. The Australian colonies viewed the intentions and actions of the Netherlands, France, Germany and Japan very suspiciously.

In the last quarter of the nineteenth century, repeated calls were made for the United Kingdom to bring its influence to bear in the region. Britain was asked to take control of all the islands from Fiji to the Dutch-controlled western portion of the main island of New Guinea, in order to provide some sort of shield behind which the colonies could shelter. Concerns were also expressed about the welfare of the native populations of the islands, and a not-too-quiet eye was resting on the economic potential of their natural resources.

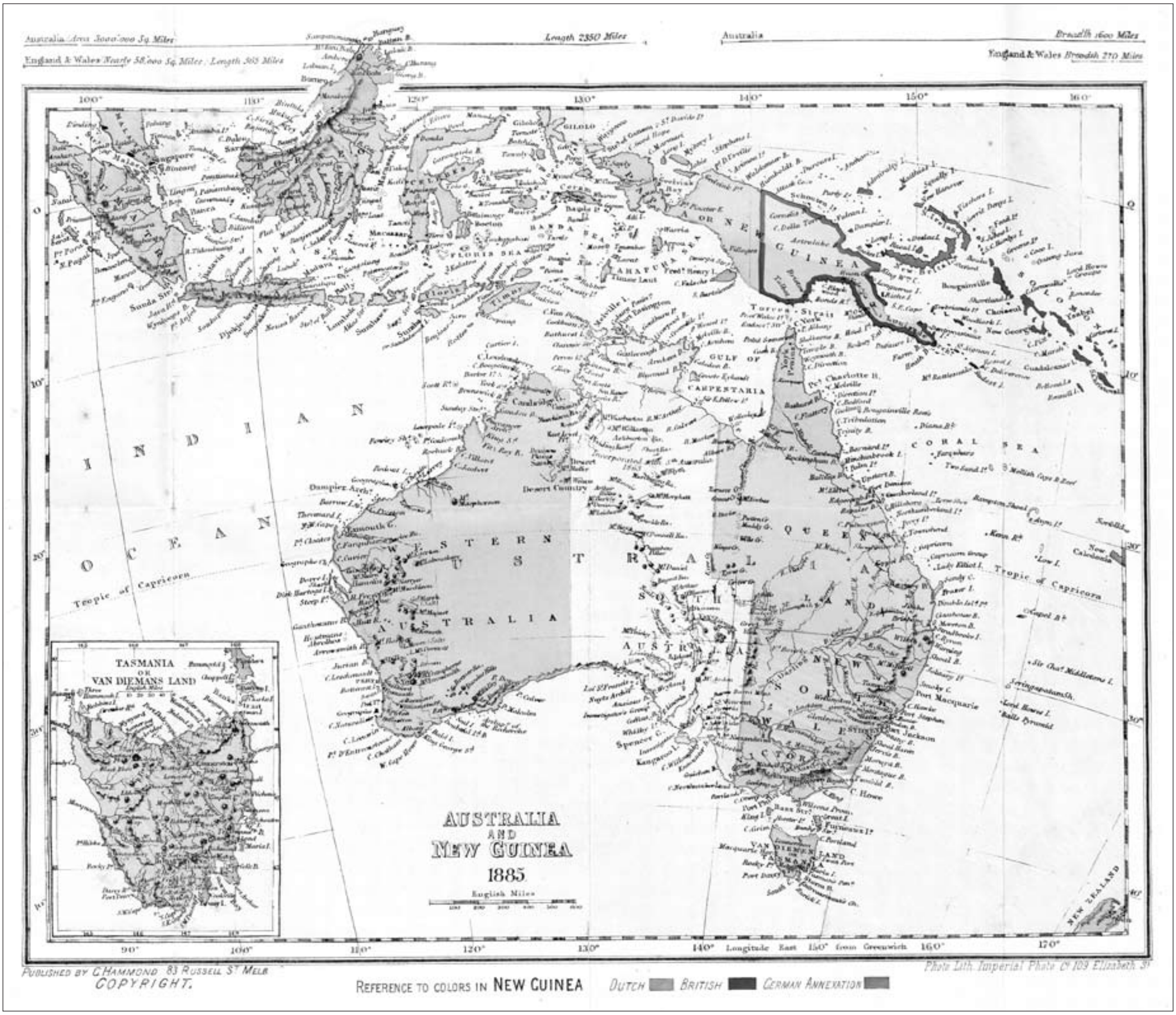
Queensland attempted unilaterally to proclaim sovereignty over the eastern portion of New Guinea in the name of the British Empire. This backfired because the United Kingdom disowned the action, and in so doing created a greater interest in the area by other European powers. The United Kingdom finally took action, but on the clear understanding that the Australian colonies would have to foot the bill for the extension of its governmental influence into New Guinea.

Following the transfer to Australian control of British New Guinea (Papua) in 1906, Australia acquired, or claimed authority over, Norfolk Island, Nauru (in a de facto

sense), former German New Guinea, Ashmore and Cartier Islands, Antarctica, Heard Island and McDonald Islands, Cocos (Keeling) Islands, Christmas Island, and the Coral Sea Islands. Its reasons for assuming control of these places were wide-ranging: defence, security, trade routes, communications, resources, scientific research and meteorology being the main ones. With the exception of the Coral Sea Islands, however, none was acquired with the realisation that its sea and seabed resources would also, in time, become important to Australia's interests.

Australia developed three of these territories to become two independent nations: Papua New Guinea and Nauru. Norfolk Island is a proudly self-governing territory and Antarctica is subject to an international treaty. The remainder are completely integrated into Australia's legislative and political framework.

This story of their acquisition begins with the stirring of Australian territorial concerns, aspirations and ambitions.



G. Hammond, Australia and New Guinea 1885. Pl: NLA. Map – F916.
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CHAPTER TWO
Towards acquisition

Ay, many flowering islands lie
In the waters of wide Agony

—Percy Bysshe Shelley, *Lines written among the Euganean Hills*

ALTRUISM AND SELF-INTEREST

There was indeed agony in the breasts of the Australasian colonists in the second half of the nineteenth century as they contemplated the unclaimed 'flowering islands' lying to their north and north-east. This general concern was reflected in calls for wholesale United Kingdom involvement in the area, and in the development of intercolonial legislative machinery to enable limited action to be taken if necessary.

We will see in Chapter Three on Papua, in particular, that those calls and the action taken to try to stir Britain to move eventually brought results, albeit not at the rate that Australia might have liked.

Although Australia at this stage was a collection of colonies, she was beginning to speak, at least on her eastern seaboard, with more or less one voice. The need for Britain to take charge of the islands' future was of as much concern to Victoria as it was to Queensland or to New South Wales. New Zealand, also a colony and then a possible partner in a federation of Australasia, stood by disinterestedly, although it too was to share in the territorial division of the islands.

In the later part of the nineteenth century, the Australian and New Zealand colonial legislatures, the colonial press and missionaries working in the South Pacific were expressing increasing concern about the traffic in labourers in the south seas (including 'blackbirding'—the kidnapping, by force or deception, of islanders to work elsewhere). The Victorian Parliament was told in December 1872 that, as a result of an intercolonial conference in Melbourne in the late 1860s, each colony had made

representations to the United Kingdom to take steps to stop such activities and to protect the islands. Those representations were largely ignored.

For example, one British Government response to Victoria was described as 'in effect a distinct refusal to undertake either the annexation of Fiji or a protectorate of the islands.[1] Despite this refusal, the Victorian Parliament was told in December 1872 that 'some years ago the Imperial Government offered to annex Fiji to New South Wales, but, unfortunately for Australia, Sir James Martin, then Premier in that Colony, did not see his way to accept the offer.'[2]

Nevertheless, in June 1872, in recognition of the growing 'slave trade' concern, the British Parliament enacted the *Pacific Islanders Protection Act 1872* (the Kidnapping Act). It was intended to prevent and punish criminal outrages upon natives of the islands of the Pacific Ocean. Among other things, the Act made it unlawful for British vessels, unless licensed, to carry native labourers. The legislation apparently did little to stop the 'trade'.[3]

In December 1872, the Victorian Parliament debated the following motion:

> That in the opinion of this House, it is imperatively necessary in the interests of humanity and civilisation, and as the most effectual way of stopping the slave trade in the South Pacific, that the British Government should take immediate possession of all the islands in the Pacific Ocean, not already occupied or under the protectorate of any civilized power; and in the event of the Imperial Government declining to do so, that their sanction be sought to enable the Australian colonies and New Zealand, jointly or any of them separately, to take possession of such Islands as dependencies.[4]

Speakers in the debate pointed out that the missionaries were worried about the trade in natives in the South Pacific. A suggested way to fix this was to make 'the South Pacific between California on the one side and Australia on the other … an Anglo-Saxon sea'. It was also seen as important 'in the interests of civilisation and Christianity' for the United Kingdom to take action. However, some speakers noted that 'the islands ought to be a magnificent field for the future enterprise and energy of the Australian colonies', so the underlying reasons for calls for annexation were not solely altruistic. Some questioned the proposed wholesale approach, but the overwhelming parliamentary mood was for annexation (as colonies) or protection (as 'protected territories')*.[5]

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* The difference between a colony and a protected territory is that, in the case of the former, the Crown obtains title to the territory, which thus becomes part of Her Majesty's dominions, while a protected territory never becomes part of the dominions. 'The Crown obtains authority but no territorial title.' (See Sir Kenneth Roberts-Wray, *Commonwealth and colonial law,* Stevens and Sons, London, 1966, pp. 98–99.) The extent of the Crown's authority varies greatly. The only common factor is that the Crown will be responsible for the external relations of the territory, which has no separate international personality.

Other reasons for acquisition surfaced later. For example, two petitions sought to add New Guinea and its adjacent islands to the colony of Victoria to more or less equalise Victoria with the land area and population of other Australasian colonies.[6] However, some expressed the view that such an acquisition by Victoria would be of very doubtful value.[7] This question was still being raised in 1884.[8]

As time passed without Britain taking action, concern also grew in the colonies at the increasing interest being shown in the Pacific by other European powers, particularly France and Germany. There was also an awareness of the Dutch claims to West New Guinea (now Indonesia's Papua Province), the Netherlands having annexed the western portion of the island in 1828. The colonists did not want another Europe—'a variety of nationalities … armed to the teeth'—established in Australasia.[9]

From quite early on, British authorities realised that the United Kingdom's Australasian colonies might wish to gain some control of the Pacific islands. For example, HTL Corry, First Lord of the Admiralty, was quoted in the Victorian debate as saying at an Australian dinner given in London in 1868:

> Victoria will want a navy, should it ever be her destiny, as I believe it will, to conquer and utilize … the isles of the Pacific, dependencies which may be worth more to her than India has been to us, and which no other nation can hold.[10]

In 1874 the British Government agreed to a request by King Thakombau of Fiji to annex Fiji.[11] This action gave the Australian colonists hope that the United Kingdom would eventually act in the way they wished. The United Kingdom sought financial contributions from the Australian colonial governments, pointing out that it had annexed Fiji partly because of their requests. The United Kingdom was also adamant that the costs of any new annexations would have to be borne by the Australian colonies.

In August 1875, the 1872 Kidnapping Act was extended to provide for Her Majesty to exercise jurisdiction over British subjects in islands of the Pacific Ocean. The amending Act included provision for the establishment of a court of justice and the vesting in the High Commissioner for the Western Pacific of the powers of a consular officer (the High Commissioner was the Governor of Fiji, established by the Western Pacific order-in-council of 13 August 1877[12]). Fiji was added to the list of Australasian colonies defined in the principal Act (that is, the six Australian colonies and New Zealand).

These kidnapping enactments by the United Kingdom did not solve the problems of the colonists, who were now focusing more on the question of French and German influence, actions and territorial claims in the Pacific.

Furthermore, the scope and usefulness of the enactments were proving ineffective in practice. The High Commissioner could not be everywhere at once, and 'In order to maintain law and order in the Western Pacific it was necessary to control not only

Britons, but other interlopers from Europe as well, together with some of the more uninhibited practices of the Pacific Islanders themselves.'[13]

Of the adjacent Pacific islands, New Caledonia had been colonised by France in the 1850s, and the New Hebrides (now Vanuatu) were administered jointly by Britain and France. Allegations that the French Government had been sending convicts to New Caledonia and the New Hebrides were fuelling the desire of the Australian colonists that Britain should gain control of the islands and 'draw a cordon around our boundaries'.[14] There was also a worry that the islands might be controlled by 'a hostile nation' with which England was engaged in war.[15]

Decisive action was necessary.

THE ENABLING FORCE OF FEDERATION

In June 1883, Queensland tried to annex east New Guinea, but the attempt failed because Britain did not support it.

Strength lay in unity, and in November and December 1883 representatives of the colonies gathered in Sydney. The main purpose of the meeting was 'to discuss common action in the face of French and German colonisation and acquisition in the south seas'.†

A Federal Council of Australasia was agreed to, and the United Kingdom passed the *Federal Council of Australasia Act 1885*. The purpose of the Act was set out in its preamble:

> Whereas it is expedient to constitute a Federal Council of Australasia, for the purpose of dealing with such matters of common Australasian interest, in respect to which united action is desirable, as can be dealt with without unduly interfering with the management of the internal affairs of the several colonies by their respective legislatures.

In the meantime, in August 1884, Germany had established a protectorate over north-eastern New Guinea.

Among other things, the Federal Council was given legislative authority over the relations of Australasia with the islands of the Pacific, the prevention of the influx of criminals, and fishing beyond Australasia's territorial limits.

Each colony was to send two representatives to the council. The colonies were described in the Act as being 'the Colonies (including their respective dependencies) of Fiji, New Zealand, New South Wales, Queensland, Tasmania, Victoria and Western Australia and the province of South Australia, and any other colonies that may hereafter be created in Australasia …'

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† So described in Geoffrey Sawyer, *The Australian Constitution*, 3rd edition, Aitken and Orr, 2002.

New South Wales did not join the council. Its Premier, Sir Henry Parkes, wanted a stronger union, and he was able to prevail upon the other Australian colonies to come together in a series of constitutional conventions in the 1890s.

New Zealand did not join the council either, but it sent delegates to the conventions. At the Sydney sittings of the conventions in March and April 1891, one New Zealand delegate, Captain Russell, had some wise and thought-provoking words for the Australian delegates:

> If New Guinea is ever to become a part of Australasian federation, there, at any rate, is a people that will require to be dealt with most carefully. Yet I have heard no member … speak on that subject. There is nothing in these resolutions contemplating the possibility that there will be a foreign race to deal with. But consider this difficulty, which I merely outline to you. The great and all pervading question that occupies men's minds in all parts of the world at the present moment … is the great social question—what is termed the social upheaval … Therefore, what we want is not the unification of Australasia, but a federation into which all portions of Australasia may be drawn. Bear this in mind: That in the plenitude of your power, feeling yourselves now the masters of the whole Pacific, it should be your duty to attract, as it were, by centripetal force, the whole of Australasia to yourselves. The day is coming when the countless islands throughout the Pacific will be colonised, and though your power is great, and though you have an enormous start in colonisation, there will be an enormous power in those southern seas that must be either part of Australasia, or more or less inimical to our interests …[16]

Captain Russell's suggested Australasian federation was, in his view, necessary to provide a counterbalance to the growing power of the United States in the Pacific region.

In a much later (1897) convention debate on strategic measures that a federation might take, another delegate (Mr Walker) reminded participants that:

> unfortunately we are not the owners of New Guinea. Had we obtained by cession or otherwise the portion belonging to the Dutch, who do little colonisation, and the portion belonging to Germany, New Guinea would have been an appendage of Australia.[17]

Earlier in the debates, JH Carruthers had also bemoaned the loss to 'foreign powers' of two-thirds of New Guinea:

> As foreign powers obtain a footing upon the threshold of our doors … it will be necessary to provide more money for the defence of our country … I have seen it stated that it might be possible for us to obtain Dutch New Guinea for £1,000,000. It will, indeed, be a nice Christmas box for the Premiers [who were shortly to visit the United Kingdom] to bring back with them: to inform us that, as a result of their

> representations, the Government will take steps to bring back again the whole of New Guinea to the British Empire, and of conceding to the Australasian Federation an island which will tend to increase our strength and remove a source of weakness which is threatened in the future.[18]

No such Christmas box was forthcoming, however, and the constitutional conventions led to Australia's federation without the inclusion of New Guinea (Dutch or otherwise) or, for that matter, Fiji or New Zealand. The Federal Council of Australasia Act was repealed by the British *Commonwealth of Australia Constitution Act 1900*, which provided for Australia's Constitution.

The Federal Council's authority for relations with the islands of the Pacific was re-enacted in the Constitution, giving the newly formed Commonwealth of Australia the same power. The Commonwealth was also given conditional power under Chapter VI of the Constitution to admit to the Commonwealth, or to establish, new states or to alter state boundaries.

Chapter VI also included the following section, which, with one possible exception, was the head of power under which the Commonwealth acquired all its territories:

> 122. 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.‡

Section 122 is central to any account of Australia's territories. Its words have been dissected and examined in numerous learned articles and court proceedings, and this book does not comment on, or try to add to, those many considerations. It is the section upon which rests all of Australia's legislative and administrative authority in the conduct of the government of its external territories. 'It has sometimes been remarked that the placing of s. 122 in a late and not altogether appropriate position in the Constitution does less than justice to the far-reaching importance of the subject with which it deals.'[19]

In his opening speech at the first sitting of the first Commonwealth Parliament on 10 May 1901, the first Governor-General, the Earl of Hopetoun, made it clear that the federal government intended to keep its eye on the Pacific:

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‡ The draft Commonwealth Constitution Bill of 1891 included the words 'in the Pacific' before the words 'placed by the Queen' in a similar clause, but those words were removed in the Adelaide session of the convention in 1897. Quick and Garran, *Annotated Constitution of the Australian Commonwealth 1901*, Angus & Robertson, p. 971.

> The relations of the Commonwealth with the Islands of the Pacific have been occupying the earnest attention of Ministers, who have taken such steps as seem to them prudent for the protection of Australian interests in this regard, without in any sense embarrassing the international relations of His Majesty's Government.[20]

So, while the colonies had clamoured for and set the scene for the possible acquisition of Papua and other places, the government of the newly federated Commonwealth of Australia was showing that it, too, had the will to do so. As well, it was equipped with the necessary legislative mechanism to receive whatever territory might come its way, and to make laws for the government of that territory. Over a period of nearly 70 years, ten territories were acquired. The first was British New Guinea (Papua).

NOTES

1 Victorian Legislative Assembly Hansard (VLA), 12 December 1872, p. 2362.
2 Victorian Legislative Assembly Hansard, 12 December 1872, p. 2368.
3 See, for instance, Victorian Legislative Council Hansard, 6 October 1874, pp. 1544–45.
4 VLA, 12 December 1872, p. 2364.
5 ibid., pp. 2368/9/70.
6 VLA, 25 September 1878, pp. 1145–46 and 11 July 1883, p. 144.
7 VLA, 3 October 1878, pp. 1276–77.
8 VLA, 12 November 1884, p. 2114.
9 VLA, 11 July 1883, pp. 138, 143, and 145.
10 VLA, 12 December 1872, p. 2369.
11 VLA,11 July 1883, p. 143.
12 Whittaker, Gash, Hookey and Lacey, *Documents and readings in New Guinea history*, The Jacaranda Press, 1975, pp. 499–501.
13 Whittaker et al., op. cit., p. 441.
14 VLA, 19 September 1883, pp. 1078–79 and 1082.
15 13 ibid., 11 July 1883, p. 131.
16 Official Report of the National Australasian Convention Debates—Sydney, 2 March to 9 April 1891, pp. 66–67.
17 Official Report of the National Australasian Convention Debates—Melbourne, 30 March 1897, p. 315.
18 ibid., 25 March 1897, pp. 86–88.
19 Per Kitto J. in *Lamshed and Lake* (1958) 99 CLR 132 @ 153.
20 CPD, Senate, Vol. I, 10 May 1901, pp. 28–29.

CHAPTER THREE

Papua

A pearl in the Pacific Ocean.

—William Morris (Billy) Hughes, Member for West Sydney[1]

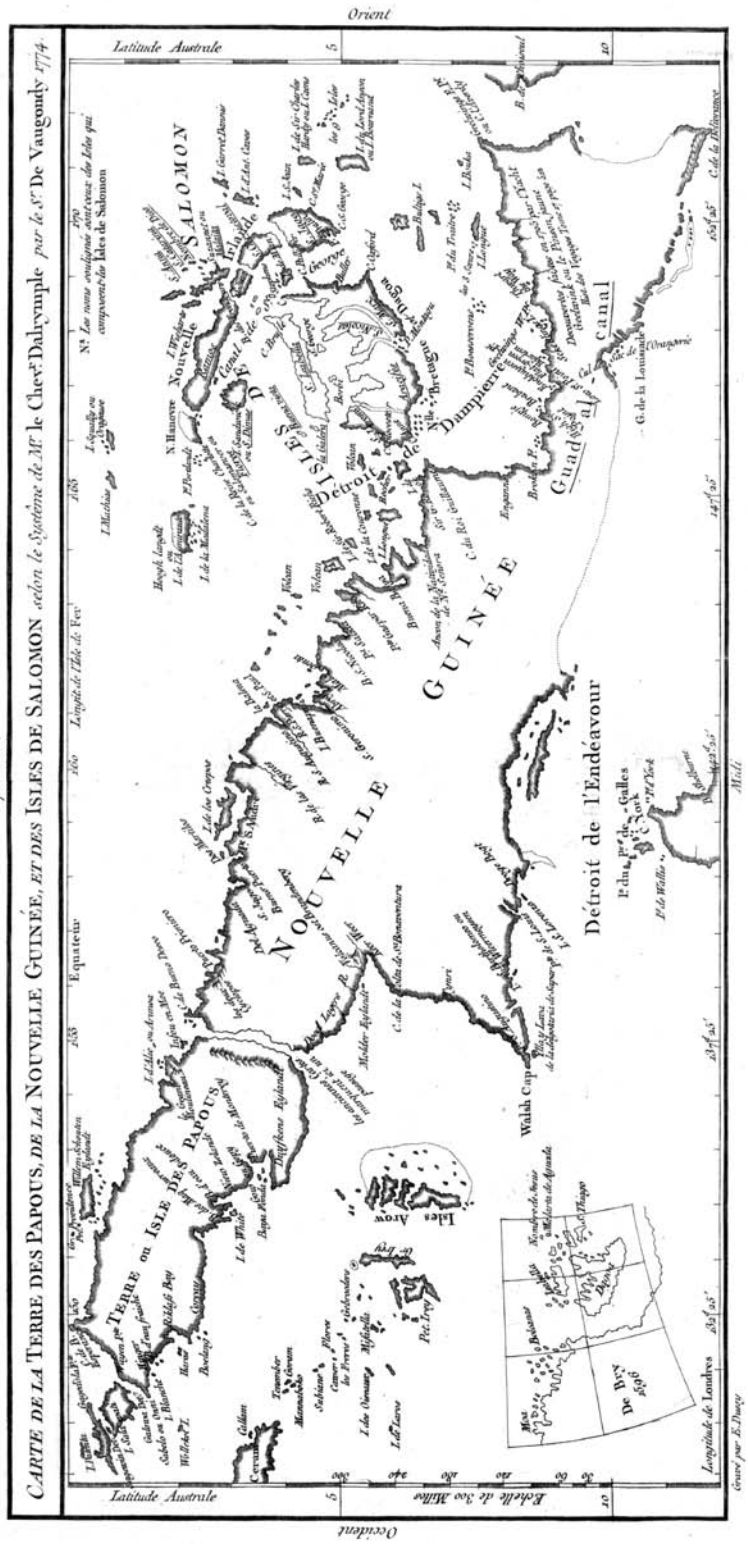
PRELUDE

The large island immediately to the north of Australia, from early on commonly known as New Guinea, was first sighted by Europeans in the early part of the sixteenth century. The names 'Papua' and 'New Guinea', which were applied to parts of it, stem from that time. Portuguese and Spanish navigators sailed the seas around the island. 'Papua' was possibly the local name for frizzled hair. 'New Guinea' was a reference to a fancied resemblance of its inhabitants to those of the African Guinea Coast.[2]

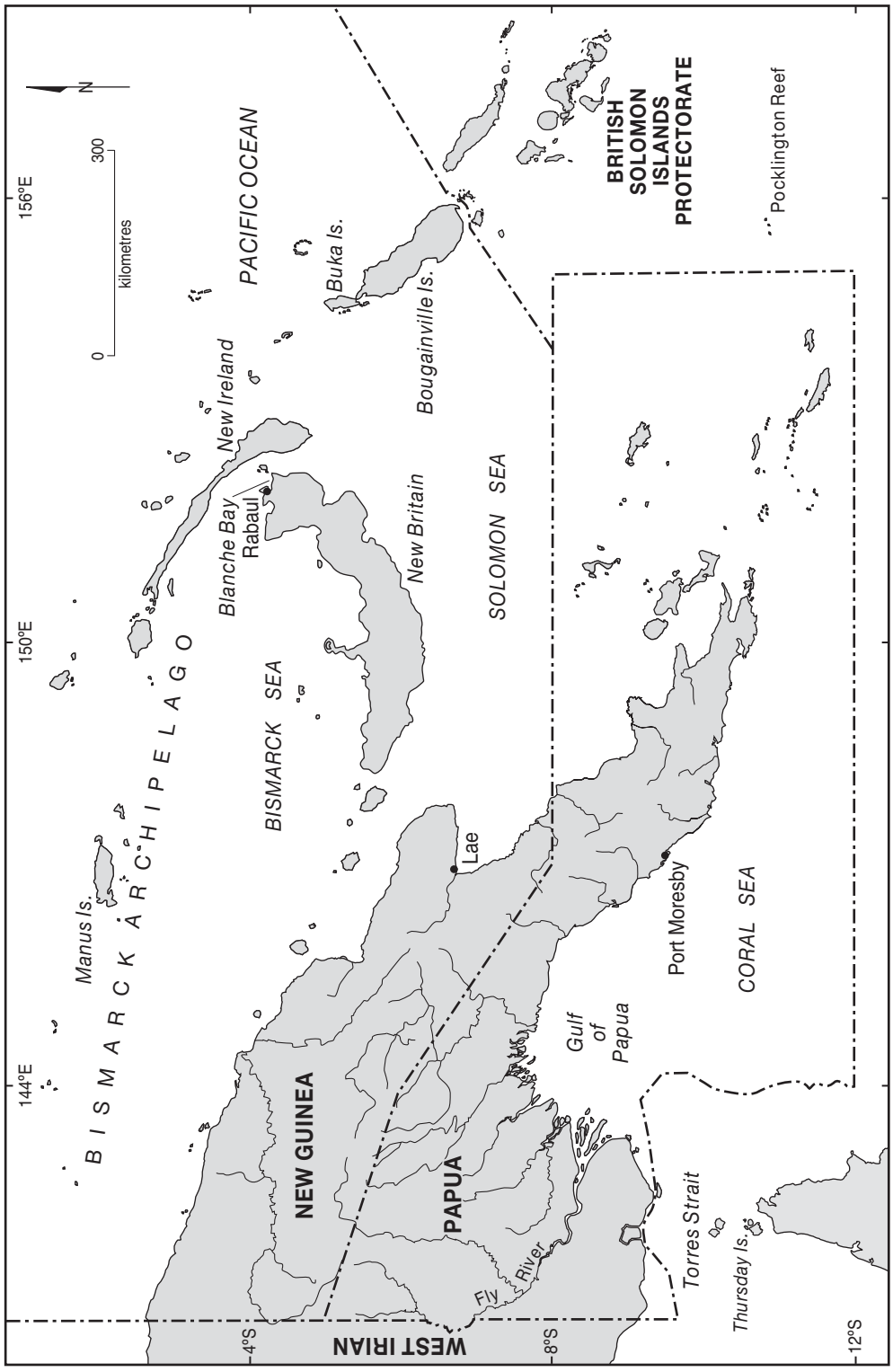
Sporadic coastal visits by Europeans continued over three centuries, but little of the hinterland and adjacent islands was explored. It was only in the latter half of the nineteenth century, when European industry needed the islands' natural products, that European interests in them grew.[3]

On 24 April 1873, John Moresby, captain of the Royal Navy ship HMS *Basilisk*, took it upon himself to take 'possession' of three islands off the east coast of New Guinea. This action needed to be ratified by the Crown in order to constitute legal possession, but the British Government was unmoved and nothing was done. 'It is likely, however, that the publication of Moresby's *Discoveries and Surveys in New Guinea* in 1876 did much to stimulate interest in the area.'[4]

There were mixed feelings at this time about the annexation of New Guinea. In the 1870s and early eighties, however, various forms of representation to the British Government for the annexation of New Guinea became more demanding.[5]



Carte De La Terre Des Papous … 1774. NLA. Map. RM 3199. Reproduced with the kind permission of the National Library of Australia.



Former Territory of Papua.

Map drawn by Karina Pelling.

SLAVE TRADING AND THE THREAT FROM EUROPE

The United Kingdom's eventual annexation of British New Guinea was the culmination of more than two decades of pressure from the Australasian colonies, which wanted Whitehall to annex South Pacific islands to Australia's immediate north and north-east.

Britain had been reluctant to take action in the islands beyond trying to control criminal activity involving the native labour trade, but increased interest in the islands by France and Germany, and a resulting rise in pressure from the Australian colonies, made it almost impossible for the British Government to continue to sit on its hands. In 1882, a German newspaper published an article 'eyeing off' New Guinea. This frightened the colonists but had little effect in the United Kingdom—Lord Derby, Secretary of State for the Colonies, continued to oppose British annexation.

Although there had been some signs in the 1870s that the United Kingdom was prepared to take action (such as the 1874 annexation of Fiji), it would only do so if the colonies were prepared to pay for the administration of any annexed territory. Gradually, the colonists came to accept the need to assist in defraying costs. They were encouraged, too, by the knowledge that public and official feeling in England was becoming more favourable to the establishment of a British protectorate over New Guinea.

In the light of these developments, the Victorian Parliament in July 1883 agreed to a motion which, while reiterating its opinion that the British Crown should annex or protect 'New Guinea and the Pacific Islands lying between New Guinea and Fiji', recognised that concerted action on the part of the Australasian colonies was desirable in order to accomplish that result. The motion also provided that 'this colony is willing to contribute its proportion of the expense entailed by any such annexation or protectorate.'[6]

Britain was not hurrying, however.

UNILATERAL ACTION BY QUEENSLAND

Queensland could not contain its frustration. Unilaterally, the Premier, Sir Thomas McIlwraith, instructed Henry Chester, the resident magistrate at Thursday Island in Torres Strait, to annex all of New Guinea east of the Dutch border in the name of the Crown. Chester did so on 4 April 1883.

In opening the Queensland Parliament on 26 June 1883, the Queensland Administrator, Sir Arthur Palmer, made the following statement:

> For some time past the imminent danger of annexation by a foreign power of the adjacent island of New Guinea has caused my Government much concern and uneasiness. Ultimately it was determined by a formal act of annexation to establish permanently British claims to the possession of that country. Accordingly that portion

> of New Guinea east of the one hundred and forty-first meridian and the adjoining islands up to the one hundred and fifty-fifth meridian were annexed on the fourth of April last. This action has not yet received the sanction of Her Majesty; but there can be no question that, however distasteful to some of our countrymen at home further extensions of territory may be, New Guinea and the adjacent groups of Pacific Islands must form part of the future Australian Nation. The course taken by my Government has, in my opinion, furnished the best possible security against future embarrassments, and I am happy to state has received the hearty endorsement of the several Australian Colonies. I may add that at the instance of the Victorian Government concerted action has been taken with the object of inducing Her Majesty's Government to annex those Islands in the Pacific whose interests are deemed in many respects identical with those of Australia.[7]

Queensland's attempt at annexation failed, as it was unconstitutional and needed, at the least, ratification by the British Government. Ratification was not forthcoming. Premier McIlwraith reported to the Queensland Parliament on 4 July 1883 that he had received a telegram from its Agent-General in London. The same day, the *Courier Mail* reported:

> The Right Hon. W.E. Gladstone, replying in the House of Commons this afternoon [2 July] to a question … as to the intentions of the Government in reference to New Guinea, said that the action of the Queensland Government in annexing that island was null in point of law, and unwarranted in point of policy, and the Imperial Government would not confirm it. If such a measure as the annexation of New Guinea were necessary, Imperial action would be requisite. In the House of Lords the Earl of Derby, Secretary of State for the Colonies, stated that the refusal of the Government to sanction the annexation of New Guinea was owing to the expense it would entail, the enormous extent of territory involved, the unknown character of the interior of the country, and the hostility of the natives. The Government intended to increase the powers of the Pacific Commission for the better security of British interests in the South Seas. If the Australian colonies desired an extension of their territory, it would be better for them to become federated, as they were unable singly to accomplish the task. Lord Derby added that England would regard it as an unfriendly action should any foreigners settle in New Guinea.[8]

Lord Derby's remarks in the House of Lords were also reported in the Victorian Parliament:

> Derby had little hope that Cabinet would assent to the proposed annexation of the New Hebrides as desired by the colonial governments. He suggested that a federation of the colonies should precede any steps for the annexation of the islands in question.[9]

The Queensland Premier took heart from Derby's warning to foreigners, thinking it meant that Britain would exercise a protectorate over the island, and not allow any foreign country to interfere with it. He thought that federal (that is, intercolonial) action to work out a remedy could achieve a great deal.[10]

ANNEXATION BY BRITAIN

In July 1883, the potential commercial value of New Guinea to Britain and Australia was raised in the Victorian Legislative Council, which noted the benefits that had flowed from the annexation of Fiji.[11]

Although there were still some voices expressing concern that annexation might not be economically viable for the colonies or that it would be not in the best interests of the native inhabitants, the popular political view was for annexation.

In December 1883, the Australasian Convention meeting in Sydney resolved, among other things:

> That further acquisition of dominion in the Pacific, south of the equator, by any foreign power would be highly detrimental to the safety and well-being of the British possessions in Australasia, and injurious to the interests of the Empire.
>
> That this Convention refrains from suggesting the action by which effect can best be given to the foregoing resolution, in the confident belief that the Imperial Government will promptly adopt the wisest and most effectual measures for securing the safety and contentment of this portion of Her Majesty's dominions.
>
> That, having regard to the geographical position of the island of New Guinea, the rapid extension of British trade and enterprise in Torres Strait, the certainty that the island will shortly be the resort of many adventurous subjects of Great Britain and other nations, and the absence or inadequacy of any existing laws for regulating their relations with the native tribes, this Convention, while fully recognising that the responsibility of extending the boundaries of the empire belongs to the Imperial Government, is emphatically of opinion that such steps should be immediately taken as will most conveniently and effectively secure the incorporation with the British Empire of so much of New Guinea and the small islands adjacent thereto as is not claimed by the Government of the Netherlands.[12]

The governments represented at the convention also undertook to seek approval from their respective legislatures that each provide permanently a share of the costs of administering the territory. The convention was also concerned about the activities of France in the region, particularly France's establishment of penal colonies.[13]

Lord Derby wrote to all the colonial governments on 9 May 1884. While noting the December 1883 resolution, he emphasised the need for joint colonial action in providing funding to support British intervention in the Pacific. Among other

things, he proposed the establishment of a High Commissioner with 'large powers of independent action' at a cost of '(say) £15,000'.[14]

The colonies were quick to react. On 2 July 1884, the Victorian Parliament was told that 'with the exception of New Zealand' (which had apparently acted separately)[15] each colony had stated that it was prepared to pay its proportion of the amount.[16]

However, the period was marked by constant rumours that annexation would or would not occur, and about agreements between the British, French and German governments about power sharing in the South Pacific.[17] There was even a suggestion that the Falkland Islands in the South Atlantic were to be exchanged for New Caledonia.[18] Because of the continued confusion, as late as September 1884 the New South Wales Premier was reported as querying the intentions of the Imperial Government.[19]

In August 1884, the Queensland Government passed the *New Guinea and Pacific Jurisdiction Contribution Act 1884* to support its proposed financial contribution to the 'maintenance of a naval force and the exercise of Her Majesty's jurisdiction in the waters of New Guinea' (Clause 1 of the Act). Soon afterwards, the Victorian Parliament began to debate Victoria's contribution towards the expenses of the protectorate.[20]

On 11 August, William Gladstone, British Prime Minister and First Lord of the Treasury, rose in the House of Commons to answer a question about the extent of the intended jurisdiction of the British Government over New Guinea. He said that he was not clear about the geographical extent of the protection (it was apparently intended to include the northern coastline up to 145° East)[21], but the jurisdiction would be 'sufficient to afford protection to the natives against lawless action, by whomsoever taken, whether by British subjects or foreigners.'[22]

Gladstone's comments did not clear up the confusion. Over what area was the protection to extend? Wasn't the northern portion of the island also in need of protection?[23] Rumours of a British–German deal with regard to the Pacific islands began to circulate in the colonies. Were the worst fears of some of the concerned commentators to be realised? Was Prince Otto von Bismarck, Chancellor of the German Empire, dictating the terms?[24]

On 19 August 1884, Bismarck ordered that a German protectorate be established in the New Britain archipelago and north-east New Guinea. Those instructions were not made public at that time, but Germany began negotiations with Britain in August and September to divide the eastern portion of New Guinea and the adjacent islands. While a conference in Berlin to arrive at a 'friendly understanding' of German and British interests in the South Pacific proceeded under the chairmanship of the German Chancellor:

> a German ship was speeding full steam to Papua and had annexed the north part and several of the adjacent islands before the British Foreign Secretary knew that anything definite had been determined upon. Under-Secretary Granville protested

> in his most gentlemanly manner 'her Majesty's Government were quite unprepared for such an announcement.' Bismarck knew that, but his deep bass chuckle could not be heard in London.[25]

The confusion in the colonies continued. No-one in the colonies seemed to know what Britain was doing[26]; nor, apparently, did Britain.

On 23 October 1884, Hugh Hastings Romilly—a Deputy High Commissioner serving under the High Commissioner for the Western Pacific (established under the Kidnapping Acts of 1872 and 1875) and posted to eastern New Guinea—hoisted the flag and proclaimed the Queen's protection in Port Moresby. On 6 November, Commodore James Elphinstone Erskine—commander of the Australian station of the Royal Navy—'did it all over again' (Romilly's comment). Later, the D'Entrecasteaux Islands were added to the proclamation by Lieutenant Commander Ross, who was asked in December 1884 to hoist the flag to the 'extreme limit of the German boundary', which had also been proclaimed that month by Germany hoisting the flag at various points.[27]

The partition of New Guinea and its adjacent islands east of the Dutch border into two protectorates had been substantially completed. 'The scramble to partition eastern New Guinea caused some ill feeling between the German and British governments, but in April 1885 they reached substantial agreement as to the boundaries of their respective protectorates, and in the Anglo-German Declarations of 1886 the boundaries were described and delineated with some precision.'[28] The boundary agreement established that neither party would interfere with the other's protectorate.

On 20 November 1884, Major General Peter Henry Scratchley was appointed by the British Government as resident (in Port Moresby) Special Commissioner and Deputy Commissioner of the Western Pacific High Commission.

If there was some ill feeling between Britain and Germany over the partition, there was fury in the Australian press and parliaments. Their worst fears had been realised. Foreign powers now had a substantial presence in the South Pacific. Towards the end of 1884, while the British Assistant Under-Secretary of State was discussing the matter with Bismarck, the Premier of Victoria, James Service, had telegraphed the Victorian Agent-General in London:

> At last the end has come. Information received—reliable source—that Germany has hoisted flag on New Britain, New Ireland and north coast New Guinea. The exasperation here is boundless. We protest in the name of the present and the future of Australia. If England does not save us from the danger and disgrace, as far at least as New Guinea is concerned, the bitterness of feeling towards her will not die out with this generation.[29]

Contempt was also expressed about the British endeavours—what did a mere 'protectorate' mean? Annexation was what was wanted.[30]

Gladstone's August 1884 remarks in the House of Commons about the extent of protection to be afforded to the natives also gave rise to some problems. Legal advice in December 1884 from the United Kingdom's Attorney-General and Solicitor-General was to the effect that if New Guinea 'did not become British soil [that is, was not annexed] … legal jurisdiction over persons other than British subjects cannot be acquired.'[31]

> It became apparent by the start of 1885, that if an effective administration was to be established in British New Guinea, then … the territory [must be] annexed … Nevertheless, the Colonial Office, which remained consistently reluctant to burden itself with the administration of New Guinea on a long term basis, was unwilling to take the decisive step of annexation before the Australians had committed themselves to permanently underwrite the costs of the administration of the new Possession[32]

On 23 January 1885, the British Government advised the Agent-General for New South Wales of its intention to declare that the protectorate would be subject to the Queen's sovereignty and part of her dominions. Annexation was to take place.[33]

Things were looking up for Australia, but of course there was a price to pay.

And the mood in Australia was changing. If Australia was to contribute to the cost of the administration of British New Guinea, it wanted a say in the management of the territory's affairs.[34]

Individual colonies or combinations of them had no external constitutional authority and so could not administer a territory. The British Government would have to administer British New Guinea at least until Australia federated. In 1887, the British Parliament passed the *British New Guinea (Queensland) Act 1887*, under which the Queensland Government indemnified the British Government against the expenses of the government of territory. The first schedule to the Act provided that New South Wales and Victoria would share the costs with Queensland. Other colonies could also contribute if they wished.

The second schedule to the Act (the terms of which represented the agreement reached at the 1887 London Colonial Conference attended by all the Australasian governments except Fiji) required 'The Administrator in the exercise of his legislative and administrative functions, to be guided by the instructions of the Governor of Queensland (subject to Her Majesty's power of disallowance of proposed laws).'[35]

Pressure from the Australian colonies and their eventual preparedness to contribute to the cost of administration had cleared away all hurdles. Letters Patent dated 8 June 1888 provided for the establishment of the Government of British New Guinea when it became British territory on annexation, and provided for the erection of the territory into a separate possession by the name of 'British New Guinea'. However, the Letters Patent did not make clear when the territory was to be brought within Her Majesty's dominions. It seems that this was intended to occur on proclamation. It was provided

that 'an appeal should lie from any court of the possession to the Supreme Court of Queensland'.[36]

A day later, Dr (later Sir) William MacGregor was appointed Administrator. His commission, as specified in the British New Guinea (Queensland) Act, required him to follow the instructions of the Governor of Queensland. However, the United Kingdom's law officers considered that such a requirement was beyond Her Majesty's statutory powers under the *British Settlements Act 1887*. MacGregor's commission was therefore amended to remove the requirement. The Administrator had been separately required by the Queen and the British authorities to correspond with and make reports to the Queensland Governor. The law officers were not asked for their opinion on the validity of those requirements.[37]

On 4 September 1888, the British Government formally annexed the south-eastern portion of the main island of New Guinea, to the east of Dutch New Guinea, south of German New Guinea and immediately to the north of Australia. The area was proclaimed as part of the Queen's dominions* and became a separate possession and government as 'British New Guinea'. The same day, Administrator MacGregor declared the territory to be a British possession.

From the earliest interests expressed by the Australasian colonies until 1884, the area had been described generally as 'New Guinea'. After British–German partition of the area into two protectorates in 1884, the British portion was described as 'British New Guinea'. In time, British New Guinea began to be described as 'Papua', and it was given that name on acquisition by Australia in 1906.

In 1888, the vast majority of Papuans (and New Guineans) were completely oblivious to the annexation actions.

At this point, after decades of exercise and concern about New Guinea, the Australian colonies turned their attention to question of federation.

In the New South Wales Parliament on 29 July 1897, the Colonial Secretary was asked whether the New South Wales Government exercised any control in the administration of the law in British New Guinea. The response was that it did not.[38] In 1899, the Colonial Treasurer for New South Wales was asked whether he would approach the other Australian governments to seek action whereby the whole of New Guinea might become British territory. The Treasurer concurred in the suggested course, but felt it unwise at that juncture to press the Imperial Government on its relations with Germany.[39]

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* The *Papua Act 1905* referred to the territory as having been brought within Her Majesty's Dominions 'on or about 4 September 1888'. See Robin S O'Regan, *The common law in Papua and New Guinea*, The Law Book Company, 1971, p. 9; and Sir Kenneth Roberts-Wray, *Commonwealth and colonial law*, Stevens, London, 1966, p. 132.

ENTER THE COMMONWEALTH

After Federation in 1901, the Commonwealth Government and Parliament began almost immediately to take an interest in the Pacific islands and in British New Guinea in particular. The new nation's first Prime Minister was Edmund (from 1902, Sir Edmund) Barton, member for Hunter in New South Wales and former Speaker of the New South Wales Legislative Assembly. He had worked tirelessly for Federation. Two of his private secretaries were Robert Garran and Atlee Hunt. All three men were to play key parts in the acquisition of Australia's first territories. Barton resigned in September 1903 and became a judge of the High Court on its establishment.

The cost contribution agreement by the colonies under the *British New Guinea (Queensland) Act 1887* had expired in 1898, and continued contributions were being made on an ad hoc basis. On 7 August 1901, Barton was asked in the House of Representatives what steps, if any, had been taken to vest the administration of New Guinea in the Commonwealth. He replied that he could not say that any definite steps had been taken, but the matter had been the subject of communication with the Government of Queensland and of consideration among ministers.

He went on to say that, from discussions with the Administrator (George Ruthven Le Hunte, who had taken over from MacGregor in March 1899) and from papers transmitted to him, he believed that 'there will be considerable difficulty with regard to the administration of British New Guinea, unless the Commonwealth shortly takes the matter in hand.' Barton touched on financial problems besetting the territory but said that 'the main question of policy for this Parliament to decide will be, whether it is right to cause to be handed over to us, if possible, the administration of British territory in New Guinea.'

The Prime Minister also expressed his view about the desirability of Australia acquiring control of the Solomon Islands, 'so far as they are in British hands, either as an adjunct to New Guinea and part of the same territory, or as another territory of the Commonwealth.'[40]

Later in August 1901, the Commonwealth Parliament was advised about the pressing need for the approval of finance to repair the British New Guinea Administrator's flagship, the *Merrie England*. Queensland had asked the Commonwealth whether it would approve the necessary expenditure. The Commonwealth responded that, as the proposed transfer of New Guinea administration to the Commonwealth had not yet been decided upon, it could not assume that responsibility. Victoria said that it would pay its percentage of the costs; Queensland and New South Wales saw it as a matter for the Commonwealth.[41]

Barton informed parliament that a message had been sent to the British Government asking whether, in the light of the attitude of the states, it would approve of the Administrator taking directions from the Commonwealth. The subject of funding had also been raised, with a query whether, if the Commonwealth guaranteed the

necessary funds, the United Kingdom would contribute towards costs for five years. If so, Barton said he had advised the British Government that ministers would be prepared to bring the matter before parliament for proper authority.[42]

The British Government responded:

> His Majesty's Government quite prepared to approve British New Guinea being placed under Commonwealth Government, but much regret impossible to ask Imperial Parliament for Imperial contribution towards expenses of administration.[43]

Australia continued to press for a British financial contribution, but Whitehall was adamant. There could be none.[44]

Having foreshadowed his intention to the Secretary of State for the Colonies,[45] Prime Minister Barton (as the Minister for External Affairs) moved in the Commonwealth Parliament on 12 November 1901:

> (1) That this house authorizes the Government to accept British New Guinea as a Territory of the Commonwealth, if His Majesty's Government are willing to place it under Federal Control.
>
> (2) That towards the expense of the administration this House is willing, when called upon, to vote a sum not exceeding £20,000 per annum, subject to revision at the end of five years, as from 1 July, 1901.[46]

The debate about British New Guinea in both houses of the parliament ran over two days and was intense, covering some 113 pages of Hansard.[47]

In moving his motion, Barton noted that s. 122 of the Australian Constitution provided that 'The Parliament may make laws for the government … of any territory placed by the Queen under the authority of, and accepted by, the Commonwealth or otherwise acquired by the Commonwealth'. It would be under the authority of this section that action would be taken.

Echoing the sentiments of Captain Russell at the Constitutional Convention a decade earlier, Barton went on to say that:

> There are parts of the Empire in the seas surrounding us which may well become, as time goes on, subject to the legislative control of the Commonwealth, and this, I think, formed part of the hopes and aspirations of those who look forward to the creation of a federation in these seas.[48]

Barton felt that the policy of the Commonwealth could best be accomplished by acquiring, as the opportunity arose and without disturbing the relations of the Empire to foreign powers, 'parts of the surroundings of the Commonwealth in these seas.'[49]

Barton's interest in the Solomon Islands surfaced again in debate. He maintained that, if the circumstances were satisfactory, he might later make a proposal regarding them.[50] The debate also considered the issue of costs: while the initial costs were high,

the development and expansion of the country under white possession would largely tend to the country generating its own revenue, possibly from land.[51]

Some speakers yearned for more territory. Why not other islands and German New Guinea as well?[52] It was a matter of pity that 'any portion of [New Guinea] should have ever become foreign territory; that the Imperial authorities failed to act on the advice tendered to them … and take over the whole island when there was a chance to do so'.[53] The United Kingdom should have taken Queensland's advice.[54]

Defence and trade interests were seen as being served.[55] Speakers noted that if New Guinea were acquired Australia would have land borders with the territories of Germany and the Netherlands and there could be the possibility of future international conflict.[56] Some speakers were hesitant about so many unknowns. What was Australia taking on?[57] Would the United Kingdom abandon New Guinea if Australia did not take over the administration?[58] Alfred Deakin (Member for Ballarat and, from September 1903, second Prime Minister of Australia) felt that, if British New Guinea were made a territory, the parliament would settle all those questions. Resources were also kept in mind. 'But if the auriferous, or if the tropical resources of British New Guinea prove to be what we expect they will be, we may look forward to a steady increase of revenue.'[59] Supreme legislative control was necessary.[60] Would the territory eventually become a state?[61] Would Germany move in if Australia did not take over?[62] Others might step in.[63] The Monroe Doctrine should be extended to the islands within the sphere of Australian influence.[64] Land should not be alienated.[65]

In answering those who had doubts about defence, particularly in the absence of an Australian Navy, Barton reflected the contemporary perspective that both the Commonwealth of Australia and any new territories would be subsumed in the British Empire and protected by it:

> The responsibility of the Empire does not vary, whatever takes place. Whatever the devolution of control may be, the same responsibility rests upon the Empire as an Empire. There is no difference as to the Imperial protection, whether New Guinea is a territory of the Commonwealth or a Crown colony, or a second Australia; whether its form of Government becomes in later years that of an important self-governing possession, or whether it becomes, as it may become, a State of the Commonwealth or otherwise.[66]

Barton also set out the constitutional steps he felt were necessary to effect transfer of responsibility:

> I believe that the investiture in the Commonwealth, provided the Commonwealth is ready to accept, can be done by an order of the King in Council … The acceptance by the Commonwealth, however, may be a different thing. It may be necessary for us—I

> will not bind myself to it—to pass an Act of Parliament before we can even accept British New Guinea. It may be that the Commonwealth would have to take a somewhat unconstitutional course in the meantime.'[67]

> [W]hile New Guinea would become a territory rather than a state, Australia could not continue constitutionally to administer New Guinea unless it became part of the Commonwealth … it would become part of an indissoluble Commonwealth. Nevertheless Australia would continue its White Australia policy and no step would be taken which could in the least degree affect the freedom of the people of New Guinea to carry out work wherever it may be offered to them as the right of the resident, and the native of the country.

The proposed acquisition would mean that Australia was simply assuming its proper position in the southern seas if it took over the country as a territory.[68]

Barton also saw the economic potential of the possible acquisition: 'It is a rich land with very great possibilities.'[69]

William Morris Hughes (at that time, Member for West Sydney) joined the debate by confessing to be unsure of the authority of the Commonwealth to take action. Nevertheless, he was sure that it should:

> How any man can conceive it possible that British New Guinea, lying adjacent to our shores—within a stone's throw, so to speak—being to all intents and purposes part of Australia, can be permitted, as it were, to lie, a pearl in the Pacific Ocean, waiting for some marauder to pick it up, I cannot understand. We must take it.[70]

King O'Malley (Member for Tasmania) expressed strong anti-foreign sentiments and saw Australia's responsibility as a sacred trust. He called for a declaration by the Commonwealth that the spread (in the South Pacific) by any foreign power of its anti-British system or any further foreign annexation would be regarded as hostile and dangerous to the peace, happiness and safety of the Commonwealth. In return, he said that the Commonwealth for its part would not interfere in existing foreign dependencies, but he thought that 'unquestionably by natural geographical conditions the controlling destiny of the islands of the Southern Seas is sacredly vested in the Australian people.'[71]

Barton amended his motion to make clear that parliament had a role. The amendment provided that the House was prepared to join in measures for the acceptance of British New Guinea as a territory of the Commonwealth, if His Majesty were pleased to place it under federal control. The second part of the motion, regarding the costs of administration, remained substantially the same as in the original proposal. The motion was adopted.[72]

Senators expressed views similar to those of members of the House of Representatives:

- If Australia took over and controlled New Guinea, that territory would in time be entitled to become a state of the Commonwealth.
- The policy being propounded was analogous to the United States' Monroe Doctrine: 'we are saying that the other nations of the world shall not obtain territory contiguous to the coast of Australia; but we are going further because we are proposing to take over these territories ourselves.'[73]
- Australia was being practically committed to a foreign policy by adopting the motion.[74]
- If there was a concern that in the future certain disputes might arise between the Commonwealth, the Netherlands and Germany, the Prime Minister ought to try to arrange a treaty under which all disputes as to the development, progress, and occupation of that 'vast tract of territory' should be referred to a tribunal for arbitration.[75]

The Senate, too, adopted the resolution.[76] Australia stood ready to acquire British New Guinea by appropriate legislation.

On 20 November 1901, the British Government advised that it had learned with satisfaction of the Australian Government's decision to move a resolution in the Commonwealth Parliament to accept control over New Guinea. The British Government would take the steps necessary to place British New Guinea under the authority of the Commonwealth as soon as the resolution passed the Commonwealth Parliament.[77]

Both parties were eager to move. A flurry of cables reveals that a British order-in-council dated 18 March 1902 approved Letters Patent placing British New Guinea under the authority of the Commonwealth and substituting the Governor-General for the Governor of Queensland.† The Letters Patent were passed under the Great Seal on 18 March 1902, and the substitution took effect at once.[78] But the transfer of sovereignty could not occur until Australia had enacted an 'acceptance' Act and the Governor-General had proclaimed its commencement.

Barton announced to the House on 20 March 1902 that the government, through the Governor-General, would assume the interim administration of New Guinea, but that other documents would have to be created and an Act of the Commonwealth Parliament passed before New Guinea would finally fall under the government's administration as a territory of the Commonwealth.[79]

More than three years were to elapse before the *Papua Act 1905* was enacted.

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† This is curious, as there is no reference in the 8 June 1888 Letters Patent to the Governor of Queensland. The reference to the Governor of Queensland in the 18 March 1902 Letters Patent may have been inserted to avoid doubt. This was because the role of the Governor of Queensland in providing instructions had been agreed at the Colonial Conference in 1887 and was set out in the British New Guinea (Queensland) Act and also in 1888 in Royal (later removed) and United Kingdom officer-level instructions to MacGregor. Whittaker et al., p. 522.

PROLONGED DEBATE: LIQUOR AND LAND

On 23 April 1902, Prime Minister Barton was asked in the House of Representatives whether the Commonwealth Government had yet taken over the full control of New Guinea, and whether it was within the power of the Commonwealth to legislate on behalf of New Guinea. Barton reminded the questioner of the transfer of authority to the Governor-General and reiterated the steps necessary to bring about exclusive Commonwealth power. He also indicated that until those steps had been taken it would not be feasible to make any radical or drastic alterations in the administration of the possession. In the meantime, the government of New Guinea was, he said, 'in a large measure, tentative and temporary, but [was] no less important and complete than when it was under the control of the State of Queensland'. In a further answer, Barton pointed out that the powers of the Commonwealth in relation to the government of New Guinea, being yet only such powers as were in the possession of Queensland, were somewhat limited, but in the Bill to be introduced would be made far more extensive.[80]

The annual report on British New Guinea for the period from July 1900 to June 1901 was transmitted to the Governor-General on 21 April 1902 and tabled in the Commonwealth Parliament. Money was being expended, the mining industry was expanding, government visits and inspections were taking place, and the 'growing influence and value of missionary christianising and educational effort' was noted.[81]

The affairs of New Guinea's administration appeared to be unremarkable, and public interest took a back seat for a while. The federal government, among its myriad other duties and priorities, pressed on with its intention to legislate. On 3 February 1903, instructions were issued to the Parliamentary Draftsman for the preparation of a Bill to provide for the administration of British New Guinea as a territory of the Commonwealth.

The draftsman's attention was drawn to the 1901 resolution of the parliament, and to the British order-in-council and Letters Patent. He was also asked to include in the draft Bill the offer by the British Government of the possession, and its acceptance by the parliament. The boundaries of the territory were to be as set out in the Letters Patent of 8 June 1888. The office of Administrator was to be constituted, and provision was to be made for a Lieutenant Administrator. The powers and authorities of the former were to be such as communicated by the Commonwealth Minister for External Affairs. An Executive Council and a Legislative Council as well as a Public Seal were to be provided for.

In the spirit of the enlightened colonialism of the time, there was to be no purchase of land allowed other than officially, and trading with the natives in firearms, ammunition, explosives, intoxicating liquors or opium was to be prohibited. All laws passed by the Legislative Council were to be reserved for the assent of the Governor-General. Provision was also to be made for maintaining the laws in force, including

'local laws, customs and usages of natives in so far as they were not repugnant to general principles of humanity or to the laws in force'. Provisions for customs duties and the raising and expenditure of public monies were also to be made. The Act was to come into operation on a date to be proclaimed.[82]

The Commonwealth Government, through the Governor-General, advised the Administrator of British New Guinea in April 1903 that the proposed Bill, to be introduced in the coming session of the Commonwealth Parliament, would probably take effect on 1 January 1904.[83]

The 1901–02 annual report for British New Guinea, tabled in the Commonwealth Parliament in May 1903, noted that the transfer of authority from the Governor of Queensland to the Governor-General had taken place during the year. The report described government and missionary activities, and noted that mining was continuing and public revenues were growing slowly. Only one Ordinance had been passed in what had apparently been a fairly uneventful year, although one item about stolen property and deaths was the subject of a parliamentary question.[84]

On 12 June 1903, the hoary old question of the presence of foreign powers in the Pacific region raised its head again. In the House of Representatives, JW Kirwan (Member for Kalgoorlie), moved:

> That, as the Commonwealth is undertaking the control of territory in New Guinea, with an exposed frontier of about 900 miles to German and Dutch territory, the Government should, in the opinion of this House, intimate to the Imperial authorities that it would be gratifying to the people of the Commonwealth if the Imperial Government availed themselves of any opportunity that might arise to secure, by exchange of territory or other peaceful means, Dutch and German New Guinea, or either, so as to lessen the danger to the peace of Australia through foreign powers controlling countries adjoining Commonwealth territory.[85]

In speaking to his motion, Kirwan pointed out that, in his view, had Great Britain acted in relation to New Guinea when first asked to do so by the colonies, it might have had control over the whole of the part of the island that was not then under the control of a foreign power (that is, all except the western part, which had been under Dutch control since 1828). In responding, Minister for External Affairs Barton (now Sir Edmund) agreed that if that had happened the 'question now under discussion would never have arisen.'[86] But Barton went on to say that, if Australia urged Britain to acquire further territory in the Pacific, it would be to a certain extent accepting a heavy monetary responsibility for itself.[87] He concluded:

> I rose specially for the purpose of suggesting to the honorable member … that, the matter having been brought fully before the House, it is desirable, even in the interests of the view that he holds and the purpose he favours, that nothing should be put on record in regard to it as the deliberate determination of this Parliament. The

> position in respect of these affairs should be allowed to remain as at present, upon the assurance of the Government that so far from being neglected, they are being dealt with in the best interests of the Commonwealth.[88]

In the light of these comments, Kirwan withdrew his motion.[89]

The first draft of the Bill to give effect to Australian Commonwealth administration of British New Guinea was produced in July 1903. It provided, among all the matters on which instructions had been given, that the short title of the Act was to be the 'Papua Act 1903' and that the transferred possession of British New Guinea was to be known as the Territory of Papua.

On 16 July 1903, a Bill (referred to in Hansard as the British New Guinea Administration Bill) was presented in parliament by Barton and read a first time.[90] On 23 July, the Bill—now referred to as the Papua (British New Guinea) Bill—was read a second time.[91]

In his second reading speech, Barton announced that the government proposed to change the name of the possession:

> We do not consider that 'British New Guinea' conveys any clear idea in regard to it, or that there is any abundant reason for that name. The name under which the island was formerly known is Papua. The British portion of the island embraces the Gulf of Papua and we think that 'Papua' will be a shorter and better name for the territory that forms part of the British Empire. We therefore propose to make that alteration.[92]

In answer to a question as to why that name should not apply to the whole island, Barton pointed out that the Germans and the Dutch had given their own distinctive names to their possessions.[93]

Barton canvassed the history of transfer and the legal authority and rationale for the various provisions of the Bill. He was at pains to point out that 'it must always be remembered that there is in this Parliament a reserve power to legislate for New Guinea at any time it pleases, and upon any subject. No such power is forfeited or frittered away by this Bill. The local authority will be enabled to pass ordinances for the internal government of the possession, subject always to the veto of the Governor-General, exercised on the advice of his Ministers who thus become responsible for everything.'[94]

The debate on the Papua Bill dominated proceedings in the House of Representatives in late July and early August 1903. To a large extent, it concerned itself with land and liquor, but there were of course other issues. In regard to the role of revenue raising, tariffs and finance generally in furthering development, Barton opined that the management of the German territory had not been as successful as that of the British territory.[95] The encouragement of the settlement of white people was seen as important, but with a constant regard for the promotion of the welfare of the natives and the avoidance of oppression and tyranny towards them. And, 'Whatever

our policy may be in regard to the exclusion of aliens from Australia, their right to the means of existence in New Guinea must be recognised by our sense of humanity.'[96]

The Bill continued the requirement that only the Administrator could purchase native land and then only in the public interest. The Administrator could not sell or transfer land to aliens.

In entering the debate, Sir William McMillan (Member for Wentworth) reminded the House that it was being 'asked to deal with the first dependency that has been established under our Constitution'. He sought assurances 'that there will be full power of control, to prevent the Legislative Council and the Administrator of the Government of Papua from doing anything that might be inimical to the general interests.' Barton quickly assured him that that would be the case.[97]

On resumption of debate on 29 July 1903, Henry Willis (Member for Robertson) saw it as personally gratifying that the Commonwealth Government was enlarging its sphere of influence in the Pacific by a measure such as the Bill before the House. He continued the theme of further Australian expansion in the Pacific, looking forward to the time 'when we shall in all probability confer a Constitution on other islands of the Pacific, just as we are doing in the case of British New Guinea'.[98]

One member, noting that it was too late to consider the advantage or otherwise of including the territory within the Commonwealth, saw it as parliament's duty to devise the best means of managing the territory's affairs, so that it might encourage settlement and secure the territory's development. He also felt that the parliament should be able to look forward with hopefulness to the time when the Commonwealth would be relieved of the current expenditure on its administration of the territory. His comment was met with the interjected view that such was a 'vain expectation'.[99]

The member rejected this pessimistic view. He also saw it as important that the 'horrible' mistakes made during Australia's colonisation in its relation to Aboriginals would not be repeated in the territory. He supported the proposed amendment to the Bill that there be no grant of Crown land for any freehold estate.

Once again, the problem of territorial juxtaposition with foreign powers was raised.

WBSC Sawers (Member for New England), who was the author of the 'vain expectation' interjection, was not much impressed by the entire matter. His object in speaking to the Bill was:

> to raise a final word of protest against the policy which it ratifies. The Commonwealth had scarcely been inaugurated, before it started upon a career of annexation. I fancy that the Prime Minister and his colleagues are very much imbued with the idea of extending our territory, and annexing more of the Pacific Islands … It appears to me that there is no benefit to be derived from this Possession … Any student of history knows that where there are land frontiers only between different Powers friction must inevitably arise. Had the Government asked Parliament to acquire the whole of New

> Guinea I think that a much more satisfactory arrangement might have been made … I believe that the people of Australia are scarcely conscious that we have acquired British New Guinea. A spirit of jingoism has been manifest in this House, together with a desire for still further annexation in the South Sea Islands.

CC Salmon (Member for Laanecoorie) believed that:

> We have allowed a portion of New Guinea to be occupied by other powers, and the legislation we are now desirous of enacting will probably bring us into conflict with the present and future foreign residents upon territory adjoining our own.[100]

Prime Minister Barton moved an amendment to the Bill to provide for the government of the territory by the Administrator in the interval that would elapse between the passing of the Bill and its proclamation, in the same way as provision had been made for the appointment of the Governor-General before the creation of the Commonwealth.[101]

A speaker queried the use of the term 'Lieutenant Governor' in the Bill. Barton responded. He felt that the use of the term made some distinction between the governors of the states and the Governor of the territory. But, he noted, 'of course, when the Territory becomes a State, he will obtain the title of 'Governor' as a matter of course.'[102] Another speaker felt that, while Australia had much to gain by taking over British New Guinea, the territory would be a white elephant for many years to come.

The debate turned to the question of land. How should it be dealt with? One view was that the alienation of land should be prohibited.[103] Others felt that land dealings should be allowed, but only under the strict authority of the Lieutenant Governor. All agreed, however, that the law should be such that land speculation and exploitation would not be allowed. Barton pointed out that, in the moves to obtain authority over the territory and in the debate on the motion to do so:

> It was put forward that by reason of its geographical position British New Guinea was fit to be held with Australia. But apart from that matter, and from the influence which, as the debate shows, was very small, that the question of defence exercised, there was nothing that distinguished in the minds of honourable members the question of the acquisition of the Territory from the considerations ordinarily involved in such an acquisition, namely the development and settlement of the Possession by our own race so far as that could be done without injustice to the original owners of the land.[104]

Nevertheless, Barton undertook ' … if honourable members consent to hold their hands in the meanwhile … to give instructions that no alienation of land shall take place until I can procure full information from those who alone know the conditions obtaining in the Territory.'[105] Notwithstanding this undertaking, the House agreed to an amendment to the Bill that no grant of land should be made for any freehold estate.[106]

The House now turned its main attention to intoxicating liquor. An amendment was moved to prohibit the import, manufacture and sale of liquor except for medicinal purposes.[107] Debate ensued and the amendment was agreed. The Bill was reported with amendments and the report was adopted on 4 August 1903.[108]

In the normal course of parliamentary procedure, the Bill would then have received its third reading and been introduced into the Senate. However, it did not reach the Senate.

HIATUS

Within a month of the movement of the Papua Bill through the House of Representatives committee stages and the committee's report to the House, it became clear that there was a hold-up in the acquisition process for the possession. In parliament on 1 September 1903, Prime Minister Barton was asked in question time whether 'there was any truth in the report that the government intend to abandon the Papua Bill because of certain amendments made in Committee?' Barton responded that he had 'now under consideration the course to be pursued in regard to that Bill, and before proceeding further with it I may have certain inquiries made in New Guinea.'[109] What was the problem?

The plot thickened. In the Senate on 9 September 1903, the Minister for Defence, Senator JG Drake (Queensland), answered the following question on notice:

> 1. Is it the intention of the Ministry not to proceed this session with the Papuan bill which has been read a first and second time, and passed through its Committee stages in the House of Representatives?
>
> 2. If so, has the decision not to proceed further with the Bill been come to owing to the prohibition of liquor clause that was inserted by the House of Representatives?

The minister responded that 'It is not the intention to proceed with this Bill until certain enquiries have been made in British New Guinea. The matter to which the honourable senator refers will be one of the subjects of inquiry, but not the only one.'[110]

In any event, airing the government's intentions for its possession, as set out in the Bill, was proving to be of use. Suggestions about amendments came from from several quarters. A suggestion from the British Government of the possible desirability of a power being conferred upon the Governor-General to initiate legislation for the territory was not adopted in the revised Bill.[111]

The government continued to be criticised for its decision not to proceed with the Bill. For example, on 21 October 1903 in the adjournment debate, Charles McDonald (Member for Kennedy) queried whether the Bill had been dropped because of the land and liquor amendments, and expressed concern that the government might:

> alienate any lands in New Guinea during the recess, or before Parliament has an opportunity to legislate for that territory. In view of the amendment which was carried in this house, and which declared that no land in New Guinea should be alienated, I claim that the Prime Minister should make a statement upon the subject.[112]

In April 1904, the 1902–03 annual report for British New Guinea was presented to the Commonwealth Parliament and on 21 April was ordered to be printed. The annual reports were becoming more detailed. The 1902–03 report again provided details of official and mission patrols and work, and mining and revenue matters. The report also noted that the instructions originally issued to the Administrator were to provide, to the utmost of his power, religion and education among the native inhabitants.[113]

On 9 June 1904, Atlee Hunt,‡ Secretary of the Department of External Affairs, wrote to his minister, Billy Hughes, enclosing a copy and some notes on the 'dropped' Papua Bill, saying that he was:

> extremely anxious that the Commonwealth should not take any step now which might make it difficult if not impossible to initiate a successful administration of our first territory … For the last three years I have lost no opportunity of studying New Guinea problems as well as a man can do without going there and feel strongly that there ought to be no legislation except to establish the mere machinery of government without the fullest possible enquiry. Surely Parliament should be satisfied if when they are asked to accept this measure as merely formal they are promised that an exhaustive report from a competent commission will be obtained and then if necessary further legislation will be submitted … I hold the view firmly that a wrong beginning will be fatal to our chances of success.[114]

However, the government moved to place the matter before parliament again. On 29 June 1904, the Speaker reported the receipt of a message from the Governor-General, Baron Northcote, recommending that an appropriation be made from consolidated revenue for the purposes of the Papua (British New Guinea) Bill.[115] On 13 July, Minister Hughes moved that it was expedient that such an appropriation be made. The House adopted that resolution and he presented the Bill, which was read a first time.[116] The second reading of the Bill was moved by Australia's fourth Prime Minister, George Houstoun Reid (Member for East Sydney), on 14 September 1904.[117]

The Bill was in the same form as that which had been passed in committee and reported to the House a year earlier.

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‡ AA Hunt CMG was Secretary of the Department of External Affairs from 1901 to 1916, and then Secretary of the Department of Home and Territories from 1916 to 1921. Before his appointment to External Affairs, he had been Prime Minister Barton's private secretary.

FINAL STAGES

More than a year after the Papua Bill was first considered by the House, Prime Minister Reid, moving in September 1904 that the Papua Bill be read a second time, was quick to indicate to members that they were being asked to reconsider the Bill in the form in which it had earlier been reported to the House.

> This measure has been before the present Parliament and the late Parliament for a very long time and I shall be very glad if we can dispose of it as soon as possible. On 12 November 1901, the late Parliament resolved to accept the control of this Territory, and the measure which is now under consideration was introduced in consequence of the approval then declared by the House. Its provisions were discussed upon a former occasion. It passed through Committee and was reported to the House. Its clauses are therefore thoroughly familiar to honourable members, and I shall consequently content myself with submitting the motion in favour of its second reading.[118]

The question was agreed. The Bill was read a second time and then considered in committee.

Despite members' assumed familiarity with the Bill's clauses, and Reid's hope that it could be disposed of as soon as possible, it was not until November 1905 that the parliament was able, among all its other business, to feel satisfied with the Bill and see its passage into the *Papua Act 1905*.

As in the Commonwealth Parliament's earlier considerations, land and liquor again dominated the agenda and took up days of debate. Of the 320 or so Hansard pages devoted to the Bill, some 230 were either in part or wholly devoted to liquor. Amendments were sent back and forth between the two chambers, and speeches were often emotional and paternalistic. The Act was passed with a prohibition against the supply of intoxicating liquor to natives and a provision making it an offence to possess any intoxicating liquor, unless for medicinal purposes (clause 21).

Land received less attention but, like the concerns and amendments concerning liquor, the arguments and amendments made earlier won through. The Act provided that the Lieutenant Governor might make dispositions of any Crown land in the territory, provided that no freehold estate in any such land could be granted (clause 20).

Other matters were raised in the debates. The power of the Lieutenant Governor was seen as too wide: 'He is to constitute practically the whole Administration.'[119] The role and usefulness of the proposed appointed Executive Council was questioned, the council being seen by one member as a 'blot on the Administration of New Guinea'.[120] Another speaker felt that 'the white people in New Guinea constitute practically a white aristocracy, and my feeling is that it would not be wise to give them too much power over the immense black population.'[121] The Prime Minister indicated that the theory of the ministry was that 'the interests of the black people in this Territory shall

be safeguarded by a paternal Government'.[122] He reinforced his advice by stating that 'The spirit exhibited by the Government has always been a benevolent, paternal and protecting one.'[123]

Sir John Forrest (Member for Swan) held the view that:

> The interests of the natives will be quite as secure in the hands of a Council, consisting of members nominated by the Governor-General, and with the Commonwealth Parliament ready at any time to step in to remedy any defects, as they would be if representatives of the few white inhabitants of the Territory were elected to it.[124]

In response to persistent questioning about why there should not be some form of white franchise for elections to the Executive Council, the Prime Minister submitted that 'we have a far higher duty to the 500,000 blacks in Papua than to the 500 whites.' He went on to give his 'assurance that the anxiety of the Government will be to appoint men who shall be just what we all desire them to be—independent, good men, who will faithfully reflect the opinions of the independent members of the community.'[125]

In between the sessions devoted to debate on the Bill, on 4 November 1904, Senator William Higgs (Queensland) asked whether the government intended to appoint a government officer charged with the welfare of the natives of British New Guinea. The response was that it was the duty of the New Guinea Executive to look after native welfare, and that there was no need to appoint a special officer for the purpose. Higgs also asked whether the government had any objection to the appointment of a Royal Commission to inquire into and report upon matters affecting the peace, order, and good government of British New Guinea. The response was that the government did not propose to appoint a Royal Commission.[126]

Senator Higgs raised the matter of a special welfare officer again a week later, this time citing a Melbourne *Age* report of 24 October 1904 that spoke of the Prime Minister dealing with the issue at the request of the London Missionary Society. He asked whether this was the case. 'Yes' was the response, and the Prime Minister was seeking advice from the Administrator.[127]

Debate on the Bill resumed on 23 November 1904. The members again focused predominantly on liquor. At one point, the proximity of Queensland to the territory and the ease with which the natives might obtain liquor from that source were raised. It was pointed out that, although there were many miles of sea between Thursday Island and New Guinea, Queensland took in some islands that lay very close to the mainland of New Guinea.[128]

One speaker felt that the ban would not work:

> Some honourable members seem to think that Papua is a small island under the sole control of Great Britain. It is nothing of the kind. The Germans control a portion of it, and the Dutch another portion. Adjacent to it are other islands, whose people will

> undoubtedly come into frequent contact with it in the near future. Consequently, I claim that British New Guinea is not a country which lends itself to the application of the principle of prohibition.[129]

On 29 November, in the House of Representatives, the Papua Bill's preamble and title were agreed to, the Bill was reported with amendments, the report was adopted and the Bill was read a third time.[130] The next day, the Bill was introduced into the Senate for the first time.

The Attorney-General, Senator Sir Josiah Symon (South Australia), was moved by the occasion. He had:

> no doubt that we have in the portion of New Guinea which is a British Possession, a very grave responsibility … It is therefore, very important that we should see that every effort is made to do the best we can to advance the interests and promote the prosperity of the first Dependency, I think I may call it, of which the Commonwealth of Australia has become possessed.[131]

The Attorney-General also noted that the two issues of policy, other than those to do with the construction of a system of government, were land alienation and liquor.[132]

Senator Smith (Western Australia) noted on 2 December 1904 that transfer of authority for British New Guinea to Australia was:

> The first time in the history of the British Empire that a self-governing Colony has had handed over to its control a large tropical territory, occupied by a numerous and virile people, whom we are called upon to govern as a purely subject race. Whether it was advisable or not for us to undertake that great responsibility does not now concern us. That matter was settled on the 20th February 1902, when we carried joint resolutions that we were prepared to accept British New Guinea as a Territory of the Commonwealth.[133]

Smith, who saw the annexation of British New Guinea as primarily a defence measure, as 'annexation by a foreign power would be a continual menace to Australia'[134], congratulated the federal government: 'If we compare the state of affairs in British New Guinea with that in Dutch or German New Guinea, the comparison will be found to be infinitely to our credit.'[135] He saw a great future for the territory. 'We should endeavour to develop our new Possession. A definition of good government is "order and progress". In British New Guinea we have established order, and it rests with the Commonwealth to say whether we shall adopt a policy which will make for progress in the Territory.'[136]

In speaking about British New Guinea's natural resources, Smith proffered a sweeping statement that has a particular resonance with today's concerns about climate change: 'it has been calculated that if all the fresh water of the world suddenly

disappeared with the exception of that in the Fly, that river would supply 120 gallons of water per day to every man, woman, and child in the world.'[137]

Smith also noted that:

> there has been a long unfulfilled promise by the Government of Queensland to adjust the boundary difference between that State and the Territory. The Queensland boundary extends right up to the coast of British New Guinea and takes in all the islands. What the Queensland Government promised to do was to fix the boundary at about the centre of Torres Straits—the tenth parallel of south latitude.[138§]

There were some sceptics. Senator Higgs noted, 'I must express my regret once more that we have ever had anything to do with New Guinea.' He went on to say that the policy was not one of defence but a 'simple grab'.[139]

A motion to amend the Bill to alter the territory's name to Australian New Guinea was lost. Another speaker queried the name 'Papua'—the other parts were German New Guinea and Dutch New Guinea; why not Australian New Guinea? The Attorney-General felt that 'Papua' was 'an exceedingly euphonious word, which runs trippingly from the tongue.'[140]

Having disposed of clauses dealing with the structure and powers of the proposed administration and its public service, the debate soon turned again to liquor. Although the mood for the most part was serious and concerned, every now and then some speakers attempted light-hearted comments to leaven the debate, such as 'I may say that I fancy I detected a flavour of sherry in some very nice turtle soup which I had at Government House, Port Moresby …'[141]

The marathon debate on liquor having concluded, on 14 December 1904 the Bill was reported with suggested amendments, read a third time and returned to the House. Unsurprisingly, one amendment was about the prohibition of liquor. Debate on that amendment in the House took 17 pages of Hansard to record. The Senate amendment was defeated, and progress was reported on 15 December.[142] Parliament was prorogued on the same day.

Like someone recovering from the effects of overindulgence in alcohol (rather than a mere debate about it), the parliament took some time to return to its consideration of the Papua Bill. When it did so more than six months later on 28 July 1905, like a hung-over person it could not quite remember what it had done to the Bill:

> I wish to know whether the amendment which I moved in this Bill … will be taken into consideration …
>
> I think that amendment was disposed of.

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§ Interestingly, the Australia – Papua New Guinea boundary in the Torres Strait remained an issue until independence in 1975, when it was left untouched.

No; I talked the Bill out.
That was later.[143]

The debate was adjourned.

In the meantime, another annual report on British New Guinea—this time for the year ending 30 June 1904—was tabled on 29 June 1905.The report noted succinctly in its first paragraph that 'The year 1903–4 expired without any special legislation by the Commonwealth Parliament in respect of this Possession.'[144]

Debate on the Papua Bill resumed on 2 August 1905, but was adjourned again after consideration of parliamentary procedural issues.

The London press commented unfavourably on the Commonwealth Parliament's obsession with the matter of liquor and its insistence that only leasehold land should be granted:

> Since 18 March 1902, this great territory has been under the control of the Commonwealth—and has been waiting patiently till Parliament found time to consider its needs. Unfortunately, whenever Parliament has found the time, it has been promptly wasted by two sets of faddists, both fretting because their fads are not allowed free play in the Commonwealth itself, and both pouncing eagerly on the chance of inflicting them on a possession which cannot speak for itself through its own elected members.[145]

While the Papua Bill languished in the parliament, Atlee Hunt had been dispatched to British New Guinea to compile a report on the possession. On 12 September 1905, Prime Minister Alfred Deakin, in answer to a question without notice, advised that Hunt was preparing a report and that there would be no objection to making available to honourable members so much of it as might relate to business before parliament.[146]

From 24 October, when debate on the Bill was resumed in the House, until 7 November, debates on amendments to the liquor and land provisions again went backwards and forwards between the two houses of parliament before the House finally agreed to the Bill as amended.[147]

No doubt after such a marathon debate they all retired for drinks!

On 8 November, the Senate was advised of the agreement of the House to the amended Bill. Apart from s. 13, which took effect on the passing of the Act to continue in office the Administrator of the territory, the Bill as finally agreed was to commence on proclamation. The Governor-General's assent to Bill, which took place on 16 November, was notified to the parliament on 17 November 1905.

Almost a year was to pass before the Act was proclaimed on 1 September 1906, and Australia became fully constitutionally responsible for its first external territory.

THE PATH TO PROCLAMATION

In the meantime, Atlee Hunt's report had been finished, presented to Parliament and ordered to be printed on 31 October 1905. His task had been to 'report what was best to be done to promote settlement, consistent with preserving the interests of the natives.' He noted that 'although New Guinea questions include many matters of public policy it is not apparent that any of them have yet assumed a party complexion.' He also noted that, so far as he was aware:

> no definite policy for the Government of New Guinea has ever been laid down … in the past different Administrators have been appointed to control the government of the possession, and have carried on their work under the supervision, more or less loosely exercised, of Queensland, New South Wales and Victoria. These officers have greatly extended the influence and power of the Government, but beyond the preservation of peace among the natives and the promotion of their welfare generally, it is not apparent that they have been working in furtherance of any well defined object.

He pointed out that the possession was now at a standstill and the reason generally assigned for this was the suspense created by the delay in passing the Papua Bill. He saw no reason why the possession should not progress, slowly perhaps but constantly, towards a solid and substantial prosperity. There were, he felt, four essentials in order to achieve that progress—time, patience, energy and money.[148]

In response to a query from the United Kingdom about the proposed date of proclamation of the Papua Act, Prime Minister Deakin wrote on 25 November 1905 that he was consulting the New Guinea authorities as to the most convenient date for proclamation. He felt it probable that action would not be taken for some months. On the same day, the notification of the Governor-General's assent to the *Papua Act (No. 9 of 1905)* was notified in the Commonwealth of Australia Gazette.[149]

On 4 December, Deakin wrote to the Administrator of British New Guinea, sending him copies of the Act, and sought his advice on whether in view of the Act's provisions any changes were required in current instructions and Ordinances. In seeking the Administrator's advice as to a suitable date for proclamation, Deakin said that the end of the current financial year had been suggested. He also pointed out that 'It is the desire of this Government that the promotion and preservation of the interests of the native population shall be the first aim of the administration, but that subject to these no effort shall be spared to make the Territory profitable and useful to the Commonwealth.'[150]

On 25 November 1905, the Governor-General wrote to the Secretary of State for the Colonies, transmitting copies of the Act, enclosing a copy of the Crown Law Officer's opinion regarding assent, and trusting that it would not be found necessary to advise His Majesty to exercise his power of disallowance. On 12 January 1906, the Governor-General was assured that His Majesty would not be advised to do so.[151]

In the Governor-General's speech opening the Commonwealth Parliament on 7 June 1906, he said:

> The future of Papua has engaged earnest attention during the recess, and proposals for a new administration will be laid before you. Meanwhile the issue of the proclamation bringing the Papua Act into force and creating British New Guinea a territory of the Commonwealth, has been deferred until new ordinances are ready for enactment.[152]

On 5 July, in response to criticism raised in the parliament about delays in the proclamation of the Act, Prime Minister Deakin indicated that the establishment of the Papuan Constitution would have taken little time if it had not been necessary to carry out the will of parliament as expressed in the Act. That required the revision of the whole of the existing laws of the possession, but an announcement about proclamation was not far off.[153]

In the meantime, calls had been made for a Royal Commission into Papua.

In early August 1906, the Commonwealth Government took some decisive steps. On 9 August, the Administrator of British New Guinea (and Acting Lieutenant Governor since 1904), Captain FR Barton, was appointed Administrator of the Territory of Papua in accordance with s. 13 of the Papua Act (which had come into effect on assent). On 23 August, a Royal Commission was established to 'enquire into and report upon the present conditions, including the methods of Government, of the territory now known as British New Guinea, and the best means for their improvement.'[154]

In response to a question in the parliament on 14 August 1906, on whether the Constitution of Papua was to be 'hung up' pending the report of the Royal Commission, Deakin said 'No—it will come into force on 1 September 1906.' On the same day (14 August), a memorandum dealing with the proclamation and the appointment of the Royal Commission was tabled in the parliament.[155]

On 1 September 1906, in Commonwealth of Australia Gazette No. 47 of 1906, the Governor-General proclaimed the commencement from that day of the *Papua Act 1905*.[156]

Australia had acquired its first external territory. In the space of 63 years, nine more were to follow.

POSTSCRIPT

Papua was developed socially, economically and politically by Australia following acquisition. A system of district administration was established, and an Executive Council and a Legislative Council were constituted under the *Papua Act 1905*.

Papua was administered by a Lieutenant Governor who was the chief executive officer. The title 'Administrator' was initially used in British New Guinea, but the term 'Lieutenant Governor' was adopted by the United Kingdom in 1895, when the Governor of Queensland exercised administrative authority in Papua on behalf of the

British Government and the contributing Australian colonies. The title of Lieutenant Governor remained in use until 1940 when the title of Administrator was adopted and used from then on. This was partly because of the length of the term in office of the first Lieutenant Governor, Sir Hubert Murray (1907 to 1940). Murray's successor, HL Murray (who was Sir Hubert's nephew, and who had been Official Secretary since 1916), was appointed Administrator in 1940. The Lieutenant Governor / Administrator reported to the Australian minister and department responsible for the external territories.

Papua was administered as a separate territory until World War II, during and after which it was administered jointly with the United Nations Trust Territory of New Guinea as the Territory of Papua and New Guinea (see Chapter Five). A unified judicial, administrative, public service and local government structure was created. A combined Legislative Council was established in 1951, and in 1964 the first House of Assembly was constituted with a majority of elected members. Constitutional change was initiated through each successive assembly, leading to internal self-government on 1 December 1973, when the name 'Papua New Guinea' was adopted, and a flag and crest were created. The title of Administrator was changed to High Commissioner.

The Australian Department of External Territories was abolished on 1 December 1973, and external territories matters were dispersed among a number of Commonwealth departments and agencies.

Although both territories were administered jointly from World War II, they remained separate constitutional entities until 16 September 1975, when Papua New Guinea became an independent nation.

NOTES

1 Commonwealth Parliamentary Debates (CPD), House of Representatives (HR), Vol. VI, 19 November 1901, p. 7446.

2 *Report on the Administration of Papua New Guinea 1 July 1972 – 30 June 1973 to the General Assembly of the United Nations*, Australian Government Publishing Service, p. 4.

3 ibid

4 Whittaker, Gash, Hookey and Lacey, *Documents and readings in New Guinea history*, The Jacaranda Press 1975 (Whittaker), p. 439.

5 ibid., p. 438. Also debates in the Victorian Legislative Assembly Hansard (VLA), 26 May 1875, p. 34; 12 January 1876, pp. 1835–36 and 25 September 1878, pp. 1145–46.

6 Victorian Legislative Council Hansard (VLC), 11 July 1883, p. 130.

7 Queensland Legislative Assembly Hansard (QLA), 26 June 1883 1883, p. 2.

8 QLA, 4 July 1883, p. 89–91.

9 Victorian Legislative Assembly Hansard, 3 July 1883, p. 41.

10 ibid.

11 VLC, 11 July 1883, pp. 132,137, 141.

12 See VLA, 19 June 1884, p. 196.

13 ibid.

14 Whittaker et al., op. cit., pp. 455–456.
15 QLA, 3 July 1883, p. 42.
16 VLA, 2 July 1884, p. 345.
17 See VLA, 10 July 1884, p. 528.
18 VLA, 17 July 1884, p. 592.
19 VLA, 1 October 1884, p. 1588.
20 VLA, 26 November 1884, p. 2268.
21 Whittaker et al., op. cit., p. 457.
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Copied from NAA: A1, 1906/451

BRITISH NEW GUINEA.

LETTERS PATENT passed under the Great Seal of the United Kingdom for placing British New Guinea under the authority of the Commonwealth of Australia.

Dated 18*th March* 1902.

Edward the Seventh, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India : To all to whom these Presents shall come, Greeting.

WHEREAS by certain Letters Patent of Her late Majesty Queen Victoria, bearing date the Eighth day of June 1888, the territories and islands therein described were constituted and erected into a separate possession and Government by the name of British New Guinea :

And whereas by the Commonwealth of Australia Constitution Act, 1900, it is provided that the Parliament of the Commonwealth of Australia may make laws for the Government of any territory placed by Us under the authority of and accepted by the Commonwealth :

And whereas the Senate and the House of Representatives of the Commonwealth of Australia have respectively passed Resolutions authorising the acceptance of British New Guinea as a territory of the Commonwealth :

And whereas We are minded to place Our possession of British New Guinea, as defined and delimited in the aforesaid Letters Patent of the Eighth day of June 1888 under the authority of the Commonwealth of Australia :

Now, therefore, We do by these Our Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland ordain and declare as follows : -

I. We do hereby place Our possession of British New Guinea under the authority of the Commonwealth of Australia.

II. The Governor-General of Our Commonwealth of Australia shall, so soon as the Parliament of the Commonwealth has made laws for the Government of Our possession of British New Guinea, issue a Proclamation signifying and declaring that the Parliament of the Commonwealth of Australia has made laws for the Government of that possession, and from and after the date of such Proclamation (hereinafter referred to as the appointed day) the aforesaid Letters Patent of the Eighth day of June 1888, and any instructions which may from time to time have been given to any Officer Administering the Government of British New Guinea, either under the Royal Sign Manual and Signet of Her late Majesty Queen Victoria or by the Order of Her

pp46–47 United Kingdom British New Guinea Letters Patent, 18 March, 1902. (copytype) NAA: A1, 1906/451

late Majesty Queen Victoria in Her Privy Council or by Her through one of Her Principal Secretaries of State with respect to the execution of any things that belong to the said Office of Administrator of British New Guinea, shall cease to have effect and shall be revoked without prejudice to anything lawfully done thereunder.

III. The powers and authorities conferred by the said Letters Patent of the Eighth day of June 1888, and any instructions as aforesaid shall, until the appointed day, be read and construed as though any powers, authorities, and duties thereby conferred or imposed upon the Governor of Queensland were conferred and imposed upon the Governor-General of Our Commonwealth of Australia, and the said Letters Patent and Instructions shall be construed and take effect with the substitution of the Governor-General of Our Commonwealth of Australia for the Governor of Queensland.

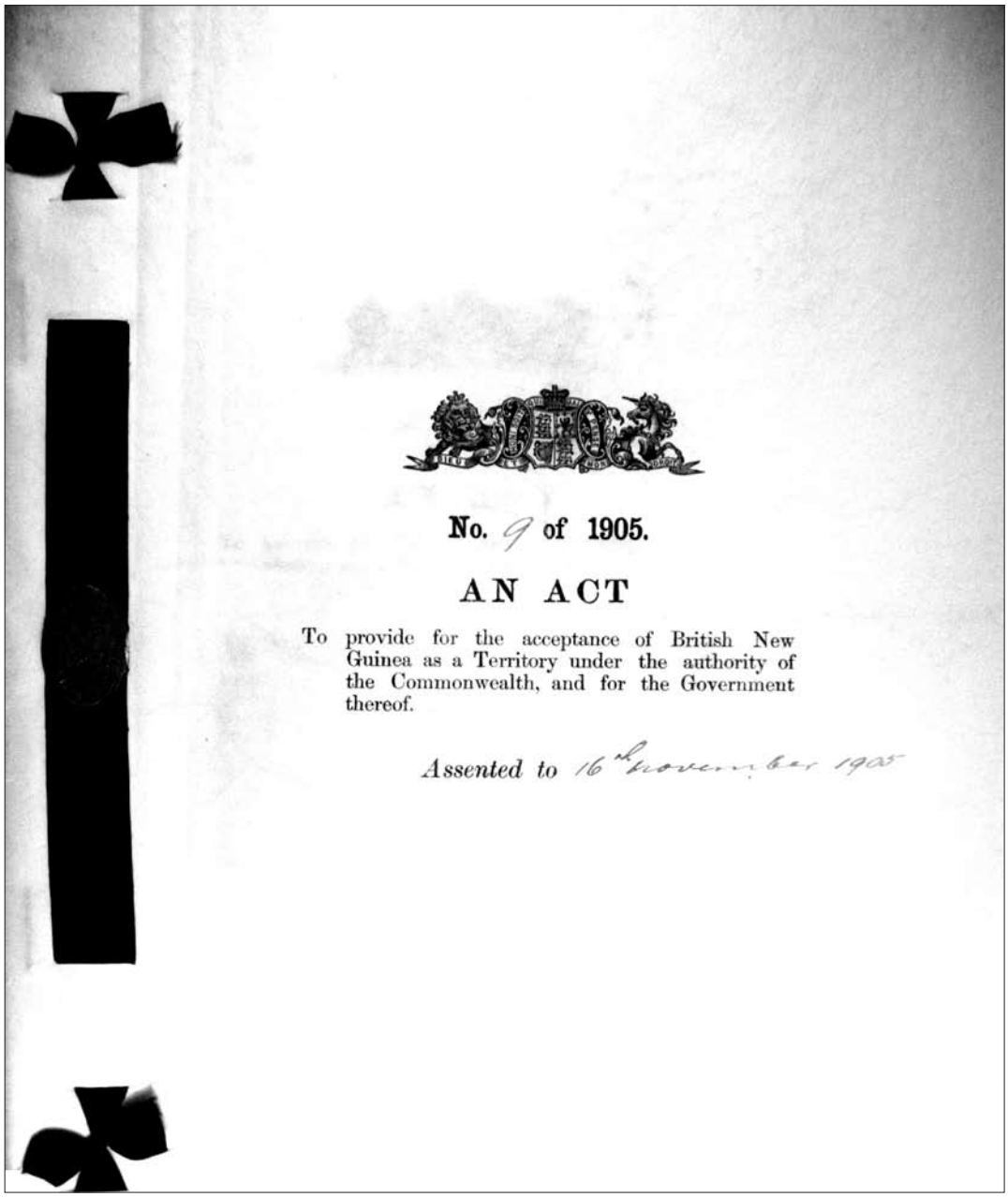
IV. And whereas it is expedient that the provisions hereinbefore contained with respect to the substitution of the Governor-General of the Commonwealth of Australia for the Governor of Queensland in the said recited Letters Patent and Instructions should come into operation without delay.

Now, therefore, We do ordain and declare that these Our Letters Patent shall come into force forthwith.

In witness whereof We have caused these our Letters to be made Patent. Witness Ourself at Westminster, the Eighteenth day of March, in the Second year of Our reign.

By Warrant under the King's Sign Manual.

MUIR MACKENZIE.



No. 9 of 1905.

AN ACT

To provide for the acceptance of British New Guinea as a Territory under the authority of the Commonwealth, and for the Government thereof.

Assented to 16th November 1905

pp48–60 Papua Act No. 9 of 1905.
NAA: A1559, 1905/9

1905. 5 EDWARDI VII. No.

No 9 of 1905.

AN ACT

To provide for the acceptance of British New Guinea as a Territory under the authority of the Commonwealth, and for the Government thereof.

(Assented to 16th November, 1905.)

WHEREAS by Letters Patent of Her late Majesty Queen Victoria bearing date the eighth day of June, One thousand eight hundred and eighty-eight, the Territories and Islands therein and herein described were, as and when the same should become part of Her Majesty's Dominions, constituted and erected into a separate Possession and Government by the name of British New Guinea; that is to say, the southern and south-eastern shores of New Guinea from the one hundred and forty-first meridian of east longitude eastward as far as East Cape, and thence north-westward as far as the eighth parallel of south latitude in the neighbourhood of Mitre Rock, together with the territory lying south of a line from Mitre Rock, proceeding along the said eighth parallel to the one hundred and forty-seventh degree of east longitude, then in a straight line in a north-westerly direction to the point of intersection of the sixth parallel of south latitude and of the one hundred and forty-fourth degree of east longitude, and continuing in a west-north-westerly direction to the point of intersection of the fifth parallel of south latitude and of the one hundred and forty-first degree of east longitude, together with the Trobriand, Woodlark, D'Entrecasteaux, and Louisiade Groups of Islands and all other Islands lying between the eighth and the twelfth parallels of south latitude and between the one hundred and forty-first and the one hundred and fifty-fifth degrees of east longitude and not forming part of the Colony of Queensland, and furthermore including all Islands and Reefs lying in the Gulf of Papua to the northward of the eighth parallel of south latitude: And

Letters Patent, 8th June, 1888

Annexation of British New Guinea, 4th September, 1888.

And whereas on or about the fourth day of September, One thousand eight hundred and eighty-eight, the said territory and islands became part of Her Majesty's Dominions:

Order in Council, 17th May, 1888.

And whereas by an Order of Her late Majesty Queen Victoria in Council, bearing date the seventeenth day of May, One thousand eight hundred and eighty-eight, made under the provisions of the *British Settlements Act* 1887, it was provided that an appeal should lie from any court of the Possession of British New Guinea to the Supreme Court of Queensland at Brisbane in the matters and in the manner therein set out:

Order in Council, 24th November, 1891.

And whereas by a further Order of Her late Majesty in Council, bearing date the twenty-fourth day of November, One thousand eight hundred and ninety-one, made under the provisions of the *British Settlements Act* 1887, it was provided that in all Admiralty matters an appeal should lie from the Colonial Court of Admiralty of the Possession of British New Guinea to the Supreme Court of Queensland at Brisbane:

Order in Council, 8th February, 1896.

And whereas by a further Order of Her late Majesty in Council, bearing date the eighth day of February, One thousand eight hundred and ninety-six, made under the *British Settlements Act* 1887 in pursuance of a convention made between Her Majesty and Her Majesty the Queen of the Netherlands and signed at the Hague on the sixteenth day of May, One thousand eight hundred and ninety-five, it was provided that the western boundary of the Possession of British New Guinea should be a line starting from the southern coast of the Island of New Guinea at the middle of the mouth of the Bensbach River, situated at about one hundred and forty-one degrees one minute forty-seven and nine-tenths seconds of east longitude, thence proceeding to the north, following the meridian which passes through the said mouth up to the point where that meridian meets the Fly River, thence along the waterway ("Thalweg") of the Fly River up to the one hundred and forty-first degree of east longitude, thence along the one hundred and forty-first degree of east longitude up to the point of intersection of the boundaries of the British, Netherland, and German possessions, and that the laws of the Possession of British New Guinea should extend to and be in force up to that boundary:

Constitution, sec. 122.

And whereas by the Constitution it is provided that the Parliament may make laws for the government of any territory placed by the King under the authority of and accepted by the Commonwealth:

Resolutions of Senate and House of Representatives, 19th and 20th November, 1901.

And whereas the Senate and the House of Representatives have respectively passed resolutions affirming that they are prepared to join in measures for the acceptance of British New Guinea as a territory of the Commonwealth if His Majesty is pleased to place it under Federal control:

Letters Patent, 13th March, 1902.

And whereas by Letters Patent of His Majesty the King bearing date the eighteenth day of March, One thousand nine hundred and two, the Possession of British New Guinea was placed under the authority of the Commonwealth, and it was thereby provided that the Governor-General should, so soon as the Parliament had made laws for the government of the Possession, issue a Proclamation signifying and

and declaring that the Parliament has made laws for the government of the Possession and that from and after the date of such Proclamation (thereinafter referred to as the appointed day) the said Letters Patent of the eighth day of June, One thousand eight hundred and eighty-eight, and any instructions which might from time to time have been given to any officer administering the government of British New Guinea with respect to the execution of any things that belong to the said office of Administrator should cease to have effect and should be revoked without prejudice to anything lawfully done thereunder; and it was thereby further provided that the powers and authorities conferred by the said Letters Patent of the eighth day of June, One thousand eight hundred and eighty-eight, and any instructions as aforesaid should, until the appointed day, be read and construed as though any powers authorities and duties thereby conferred or imposed upon the Governor of Queensland were conferred and imposed upon the Governor-General, and that the said Letters Patent and Instructions should be construed and take effect with the substitution of the Governor-General for the Governor of Queensland; and it was thereby further provided that the now recited Letters Patent should come into force forthwith:

Order in Council, 6th March, 1902.

And whereas by an Order of His Majesty in Council bearing date the sixth day of March, One thousand nine hundred and two, it was provided that the Governor-General, so soon as the Parliament had made laws providing for the hearing of appeals from the courts of the Possession of British New Guinea, should issue a Proclamation signifying and declaring that the Parliament has made such laws accordingly, and that thereupon the aforesaid Orders in Council of the seventeenth day of May, One thousand eight hundred and eighty-eight, and the twenty-fourth day of November, One thousand eight hundred and ninety-one, should be revoked and should cease to have effect without prejudice to anything lawfully done thereunder, provided that any appeals from any court of the said Possession to the Supreme Court of Queensland at Brisbane under the provisions of the said Orders in Council which should be pending at the date of such Proclamation should be heard and determined by the Supreme Court of Queensland at Brisbane in the same manner and in all respects as though the said Orders in Council had not been revoked:

Be it therefore enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—INTRODUCTORY.

Short title.

1. This Act may be cited as the *Papua Act* 1905.

Commencement.

2. This Act, except section thirteen thereof, shall commence on the day on which a Proclamation is issued by the Governor-General in pursuance of the hereinbefore recited Letters Patent of the eighteenth day of March, One thousand nine hundred and two, but section thirteen shall take effect on and from the passing of this Act.

3. This

Parts of Act.

3. This Act is divided into parts as follows : —

PART I.—Introductory.
PART II.—Acceptance of the Territory.
PART III.—The Government of the Territory.
Division 1.—The Executive Government.
Division 2.—The Legislative Council.
Division 3.—The Judiciary.
Division 4.—Finance.

Definitions.

4. In this Act, unless the contrary intention appears—

"The Territory" means the Territory of Papua.
"The Lieutenant-Governor" means the Lieutenant-Governor of the Territory, and includes any person for the time being administering the government of the Territory.
"The Executive Council" means the Executive Council for the Territory.
"The Legislative Council" means the Legislative Council for the Territory.
"Ordinance" means an Ordinance of the Legislative Council.
"The Minister" means the Minister for External Affairs.

PART II.—ACCEPTANCE OF THE TERRITORY.

Acceptance of the Territory.

5. The Possession of British New Guinea is hereby declared to be accepted by the Commonwealth as a Territory under the authority of the Commonwealth, by the name of the Territory of Papua.

Continuance of laws. N.Z. 1901, No. 44.

6.—(1.) Subject to this Act, the laws in force in the Possession of British New Guinea at the commencement of this Act shall continue in force in the Territory until other provision is made.

(2.) Every Ordinance of the said Possession, or Act or Statute of the State of Queensland adopted as an Ordinance of the Possession, relating to any of the matters enumerated in section forty-one of this Act, shall be forthwith submitted to the Governor-General, who may disallow any such Ordinance within three months from such submission, and such disallowance on being made known by the Lieutenant-Governor by Proclamation or by notification in the *Gazette* of the Territory shall annul the Ordinance from the day when the disallowance is so made known.

Commonwealth laws not to be in force.

7. Except as provided in this or any Act, the Acts of the Parliament of the Commonwealth shall not be in force in the Territory unless expressed to extend thereto.

Continuance of Courts. Cf. N.Z. 1901, No. 44, s. 4.

8. Subject to this Act, the Courts of Justice in existence in the Possession of British New Guinea at the commencement of this Act, and the jurisdiction, practice, and procedure thereof, shall continue in the Territory until other provision is made.

Continuance of Officers. Cf. N.Z. 1901, No. 44, s. 5 (5).

9. All judges, magistrates, and other officers in the public service of the Possession of British New Guinea at the commencement of this Act shall continue in office as if appointed under this Act.

PART

PART III.—THE GOVERNMENT OF THE TERRITORY.

DIVISION 1.—THE EXECUTIVE GOVERNMENT.

The Lieutenant-Governor.

Office of Lieutenant-Governor.

10. There shall be a Lieutenant-Governor of the Territory, who shall be charged with the duty of administering the government thereof on behalf of the Commonwealth.

Appointment of Lieutenant-Governor.

11. The Lieutenant-Governor shall be appointed by the Governor-General by Commission under the Seal of the Commonwealth, and shall hold office during the pleasure of the Governor-General.

Powers and functions of Lieutenant-Governor.

12. The Lieutenant-Governor shall exercise and perform all powers and functions that belong to his office according to the tenor of his Commission and according to such instructions as are given to him by the Governor-General.

Administrator.

13.—(1.) The Governor-General may, by Commission under the Seal of the Commonwealth, appoint an Administrator, who during any vacancy in the office of Lieutenant-Governor, or when the Lieutenant-Governor is absent from the Territory or unable by reason of illness to perform his duties, shall administer the Government of the Territory, and while so administering shall have and may exercise and perform all the powers and functions of the Lieutenant-Governor.

(2.) In default of such appointment, or in the event of the absence or inability of the person so appointed, the senior member of the Executive Council present in the Territory shall have and may exercise and perform during such first-mentioned vacancy, absence, or inability, all the powers and functions of the Lieutenant-Governor.

Power to authorize Lieutenant-Governor to appoint deputies.

14.—(1.) The Governor-General may authorize the Lieutenant-Governor to appoint any person, or any persons jointly or severally, to be the deputy or deputies of the Lieutenant-Governor within any part of the Territory, and in that capacity to exercise during the pleasure of the Lieutenant-Governor such powers and functions of the Lieutenant-Governor as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Governor-General.

(2.) The appointment of a deputy shall not affect the exercise or performance by the Lieutenant-Governor himself of any power or function.

Oaths to be taken by Lieutenant-Governor.

15. The Lieutenant-Governor shall, before entering on the duties of his office, take an oath or affirmation of allegiance in the form in the Schedule to the Constitution, and also an oath or affirmation for the due execution of his office and for the due and impartial administration of justice in the form in the Schedule to this Act.

Public seal.

16.—(1.) There shall be a Public Seal of the Territory, which shall be kept and used by the Lieutenant-Governor for sealing all things that pass the Public Seal.

(2.) Until

(2.) Until a Public Seal of the Territory is provided, the Public Seal of the Possession of British New Guinea in use before the commencement of this Act shall be used as the Public Seal of the Territory.

Appointment of officers.

17.—(1.) The Lieutenant-Governor may in the name of the Governor-General appoint all necessary judges, magistrates, and other officers of the Territory, who shall, unless otherwise provided by law, hold their offices during the pleasure of the Governor-General.

(2.) Every such appointment shall be temporary until approved by the Governor-General.

Suspension of officers.

18.—(1.) The Lieutenant-Governor may, upon sufficient cause to him appearing, suspend from office any officer of the Territory.

(2.) The Lieutenant-Governor shall forthwith report every such suspension to the Governor-General, and the suspension shall continue only until the Governor-General's pleasure therein is signified to the Lieutenant-Governor.

Transfer of officers to Public Service of the Commonwealth.

19. Notwithstanding anything contained in the *Commonwealth Public Service Act* 1902 the Governor-General may, on the recommendation of the Public Service Commissioner, and on his certificate that it is desirable in the interests of the Commonwealth that the appointment be made, appoint any officer of the Territory (other than an officer whose appointment is temporary) to any office in the Clerical Division of the Public Service of the Commonwealth, and may on the like recommendation require the officer to effect and continue such an assurance on his life as the Governor-General thinks fit.

Power to grant land.

20. The Lieutenant-Governor may make and execute under the Public Seal of the Territory, in the name and on behalf of the King, grants and dispositions of any land within the Territory which may be lawfully granted or disposed of in the name of the King, but so that—

(*a*) no freehold estate in any such land shall be granted or disposed of; and

(*b*) the rental of all such land granted or disposed of by way of lease shall be assessed on the unimproved value of the land, and shall be subject to re-assessment at such periods and in such modes as are fixed by Ordinance. The periods and modes may be different for different classes of land and for different classes of lease.

Regulation of sale of intoxicating liquor in the Territory.

21.—(1.) After the commencement of this Act, licences shall not be granted in the Territory in excess of the number of licences in existence at the commencement of this Act.

(2.) The number of licences in the Territory may be reduced or licences may be abolished in the Territory in accordance with this section, but so that no compensation shall be payable in respect of the loss or abolition of any licence hereunder.

(3.) A poll

(3.) A poll may be taken in the whole Territory or in any Division thereof, once in each year, for the purpose of obtaining the vote of the people on the question whether the number of licences for the sale of intoxicating liquors shall be reduced by any and what number.

(4.) Subject to sub-section (3), a poll under this section shall be taken in the Territory or a Division thereof when requested by petition to the Lieutenant-Governor, signed by one-fourth of the people in the Territory or Division. Provided that the first poll under this section shall be taken at a period not later than nine months from the proclamation of this Act.

(5.) The adult white people shall for the purposes of this section be deemed to be the people of the Territory or Division, as the case requires.

(6.) The times and manner of taking a poll and the manner of giving effect to the decision arrived at by the poll taken shall be as directed by Ordinance.

Prohibition against supply of intoxicating liquor to natives.

(7.) No person shall supply to any native by sale gift or in any other way either directly or indirectly any intoxicating liquor and any person offending against the provisions of this sub-section shall be liable on conviction in a summary manner to a fine of not less than Twenty pounds and not exceeding Two hundred pounds and to imprisonment for any term not less than one month and not exceeding two years.

Provided that it shall not be an offence under this sub-section for any person, for any urgent cause or necessity (the burden of proof whereof shall rest upon him) to administer intoxicating liquor to a native for purely medical purposes and without recompense or remuneration.

Intoxicating liquor in possession of natives.

(8.) It shall not be lawful for any native to have in his possession any intoxicating liquor in any Division in which licences have been abolished or (except for the sole purpose of carriage the burden of proof whereof for the purpose only of confiscation shall rest upon the owner of the liquor) in any Division in which a licence exists. If this sub-section is contravened the liquor may be seized by any officer exercising judicial functions, who shall in a summary manner direct that it be confiscated, and that it be disposed of according to his discretion, and the native shall be liable on conviction in a summary manner to imprisonment for any term not exceeding three months.

(9.) In this section—

(*a*) "licence" means a licence for the sale of intoxicating liquor;

(*b*) "intoxicating liquor" means any spirituous or fermented liquor of an intoxicating nature used or intended to be used as a beverage;

(*c*) "native" means any person in the Territory not of European descent.

The

The Executive Council.

Executive Council.

22.—(1.) There shall be an Executive Council for the Territory, to advise and assist the Lieutenant-Governor.

(2.) The members of the Executive Council shall be officers of the Territory, and shall not exceed six in number. They shall be appointed by the Governor-General, and shall hold their places in the Executive Council during his pleasure.

Seniority of members of Executive Council.

23. The members of the Executive Council shall have seniority as the Governor-General specially assigns, and in default of assignment according to the priority of their appointment, or, if appointed by the same instrument, according to the order in which they are named therein.

Meetings of Executive Council.

24.—(1.) The Executive Council shall not proceed to the despatch of business unless summoned by authority of the Lieutenant-Governor.

(2.) The presence of at least two members (exclusive of the Lieutenant-Governor or the member presiding) shall be necessary to constitute a meeting of the Executive Council for the despatch of business.

President at meetings.

25.—(1.) The Lieutenant-Governor shall preside at all meetings of the Executive Council at which he is present.

(2.) In his absence, such member as he appoints, or, in default of such appointment or in the absence of that member, the senior member of the Council who is present, shall preside.

Minutes of Executive Council Meetings.

26. Minutes of the proceedings of all meetings of the Executive Council shall be kept, and copies of the minutes shall be transmitted quarterly by the Lieutenant-Governor to the Minister.

Submission of questions to Council.

27. The Lieutenant-Governor only shall be entitled to submit questions to the Executive Council for advice or decision; but if the Lieutenant-Governor declines to submit any question to the Council when requested in writing by any member so to do, that member may require that his written request, together with the answer of the Lieutenant-Governor thereto, be recorded on the minutes.

Lieutenant-Governor may act in opposition to advice.

28.—(1.) The Lieutenant-Governor may in any case, if he thinks fit, act in opposition to the advice or decision of the Executive Council; but in that case he shall forthwith fully report the matter to the Minister with his reasons for his action.

(2.) In any case any member of the Executive Council may require that the grounds of advice or opinion which he gives upon any question be recorded at length.

DIVISION 2.—THE LEGISLATIVE COUNCIL.

Legislative Council.

29.—(1.) There shall be a Legislative Council for the Territory.

(2.) The Legislative Council shall consist of the Lieutenant-Governor and of the members of the Executive Council, together with such non-official members as the Governor-General appoints under the

Seal

Seal of the Commonwealth, or as the Lieutenant-Governor, in pursuance of instructions from the Governor-General, appoints under the Public Seal of the Territory.

(3.) So long as the white resident population is less than two thousand the number of non-official members shall be three; but when the white resident population is two thousand or more an additional non-official member shall be appointed for each one thousand of such population in excess of one thousand.

Provided that the total number of non-official members shall not exceed twelve.

(4.) Every non-official member may be removed at any time by the Governor-General, and shall vacate his seat at the end of six years from the date of his appointment, but may be re-appointed.

Quorum.

30. The presence of at least one-third of the members of the Legislative Council (including the Lieutenant-Governor or the member presiding) shall be necessary to constitute a meeting of the Council for the exercise of its powers.

Seniority of members of Legislative Council.

31. The members of the Legislative Council shall have seniority as the Governor-General specially assigns, and in default of assignment according to the priority of their appointment, or if appointed by the same instrument according to the order in which they are named therein.

Presidency of Legislative Council.

32.—(1.) The Lieutenant-Governor shall preside at all meetings of the Legislative Council at which he is present.

(2.) In his absence the senior member of the Legislative Council who is present shall preside.

Voting in Legislative Council.

33.—(1.) Questions arising in the Legislative Council shall be determined by a majority of votes.

(2.) The Lieutenant-Governor or member presiding shall in all cases be entitled to vote, and shall also if the numbers are equal have a casting vote.

Standing rules and orders.

34. The Legislative Council may make standing rules and orders with respect to the order and conduct of its business and proceedings.

Provided that such rules and orders are not repugnant to any instructions from the Governor-General.

Proposal of money votes.

35. An Ordinance, vote, resolution, or question, the object or effect of which is to dispose of or charge any part of the revenue of the Territory, shall not be proposed in the Legislative Council except by the Lieutenant-Governor, unless its proposal has been expressly allowed or directed by him.

Legislative power.

36. Subject to this Act, the Legislative Council shall have power to make Ordinances for the peace, order, and good government of the Territory.

37. The

Prohibition of import duties discriminating against the Commonwealth.

37. The Legislative Council shall not by any Ordinance impose higher duties upon the importation into the Territory of any goods produced or manufactured in or imported from Australia than are imposed on the importation into the Territory of the like goods produced or manufactured in or imported from other countries.

Assent to Ordinances.

38.—(1.) An Ordinance passed by the Legislative Council shall not have any force until it has been assented to as hereinafter provided.

(2.) Every Ordinance passed by the Legislative Council shall be presented to the Lieutenant-Governor for assent.

(3.) The Lieutenant-Governor shall thereupon declare, according to his discretion, but subject to this Act, and to the instructions of the Governor-General, that he assents thereto, or that he withholds assent, or that he reserves the Ordinance for the Governor-General's pleasure.

Disallowance of Ordinances assented to.

39. Within six months from the Lieutenant-Governor's assent to any Ordinance the Governor-General may disallow the Ordinance, and the disallowance on being published by the Lieutenant-Governor within the Territory shall annul the Ordinance from the date of such publication.

Signification of pleasure on Ordinance reserved.

40. An Ordinance reserved for the Governor-General's pleasure shall not have any force unless and until within one year from the day on which it was presented to the Lieutenant-Governor for the Governor-General's assent, the Lieutenant-Governor publishes within the Territory a notification that it has received the Governor-General's assent.

Assent to certain Ordinances.

41. The Lieutenant-Governor shall not assent to any Ordinance of any of the following classes, unless the Ordinance contains a clause suspending its operation until the signification of the Governor-General's pleasure thereon :—

(1) Any Ordinance for divorce.

(2) Any Ordinance dealing with the granting or disposal of Crown lands.

(3) Any Ordinance whereby any lease or grant of land or money or any donation or gratuity is made to himself.

(4) Any Ordinance which appears inconsistent with the treaty obligations of the United Kingdom or of the Commonwealth.

(5) Any Ordinance interfering with the discipline or control of the naval or military forces of the King.

(6) Any Ordinance of an extraordinary nature or importance, whereby the King's prerogative, or the rights or property of subjects of the King not residing in the Territory, or the trade or shipping of any part of the King's Dominions, may be prejudiced.

(7) Any

(7) Any Ordinance relating to the sale or disposition of or dealing with lands by aboriginal natives of the Territory.

(8) Any Ordinance relating to native labour, or providing for the deportation of aboriginal natives from the Territory, or from one part of the Territory to another.

(9) Any Ordinance relating to the supply of arms, ammunition, explosives, intoxicants, or opium to natives.

(10) Any Ordinance relating to the introduction or immigration of aboriginal natives of Australia, Asia, Africa, or any island of the Pacific.

(11) Any Ordinance containing provisions from which the assent of the Sovereign or of the Governor-General has once been withheld, or which the Sovereign or the Governor-General has disallowed.

Ordinances to be laid before Parliament.

42. Every Ordinance assented to by the Lieutenant-Governor or by the Governor-General shall, as soon as may be after being assented to, be laid before both Houses of the Parliament.

DIVISION 3.—THE JUDICIARY.

Appeal to High Court.

43.—(1.) The High Court shall have jurisdiction, with such exceptions and subject to such regulations as are prescribed by Ordinance, to hear and determine appeals from all judgments, decrees, orders, and sentences of the Central Court of the Territory, and the judgment of the High Court shall be final and conclusive.

N.Z. 1901, No. 44, s. 4.

(2.) Regulations under this section may provide, *inter alia*, that appeals to the High Court may be by case stated, with the legal argument, if any, attached thereto in writing, and that it shall not be necessary in any such case for the parties to appear either personally or by counsel.

Grant of pardon to accomplice.

44. When any offence has been committed within the Territory, or for which the offender may be tried therein, the Lieutenant-Governor may, in the name of the King, grant a pardon to any accomplice who gives information which leads to the conviction of the principal offender, or any of the principal offenders.

Grant of pardon or remission or respite of sentence to offenders.

45. The Lieutenant-Governor may, in the name of the King, grant to any offender convicted in any Court or before any Judge or Magistrate in the Territory, a pardon, either free or conditional, or any remission of sentence, or any respite, for such period as he thinks fit, of the execution of sentence, and may remit any fines, penalties, and forfeitures, due or accrued to the Crown within the Territory.

Provided that the Lieutenant-Governor shall not, except in the case of a political offence unaccompanied by any other grave crime, make it a condition of any pardon or remission of sentence that the offender shall be banished from, or shall absent himself or be removed from, the Territory.

DIVISION 4.—FINANCE.

Public revenues and moneys.

Cf. N.Z. 1901, No. 44, s. 14.

46. The revenues of the Territory shall be available for defraying the expenditure thereof, and the Governor-General may make such regulations as he deems necessary for the receipt, expenditure, control, and audit of revenues and moneys of the Territory.

Issue and expenditure of public moneys.

47. No revenues or moneys of the Territory shall be issued or expended except under appropriation made by law, and except by warrant under the hand of the Lieutenant-Governor.

48.—(1.) A sum

Appropriation for infirm or destitute aboriginal natives.

48.—(1.) A sum equal to ten per centum of the territorial revenue arising out of the lease of Crown lands shall in each year be appropriated for the maintenance and welfare of infirm or destitute aboriginal natives (including half castes) of the Territory.

(2.) The sum so obtained shall be vested in three trustees appointed by the Governor-General, who shall hold office during His Excellency's pleasure and furnish a report of their proceedings annually for presentation to Parliament.

(3.) If in any year the whole of the sum so obtained is not expended, the unexpended balance thereof shall be retained by the trustees and expended for the purpose aforesaid in any subsequent year.

Civil list.

49. There shall be payable in every year out of the revenues of the Territory, which to that extent are hereby appropriated accordingly, the sum of One thousand two hundred and fifty pounds for the salary of the Lieutenant-Governor, and the sum of One thousand pounds for the salary of the Chief Judicial Officer of the Territory.

Grant from the Consolidated Revenue Fund.

50. There shall be paid out of the Consolidated Revenue Fund of the Commonwealth towards the revenues of the Territory the sum of Twenty thousand pounds in each financial year up to and including the financial year ending the thirtieth day of June, One thousand nine hundred and six, and thereafter such sums, if any, as the Parliament appropriates for that purpose.

THE SCHEDULE.

FORM OF OATH OR AFFIRMATION.

I, *A. B.*, do swear that I will well and truly serve our Sovereign Lord the King in the office of Lieutenant-Governor of the Territory of Papua, and I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God.

Or

I, *A. B.*, do solemnly and sincerely promise and declare that I will well and truly serve our Sovereign Lord the King in the office of Lieutenant-Governor of the Territory of Papua, and I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to provide for the acceptance of British New Guinea as a Territory under the authority of the Commonwealth, and for the Government thereof," which has been passed by the Senate and the House of Representatives, and that the said Bill originated in the House of Representatives.

C. Gavan Duffy

Clerk of the House of Representatives.

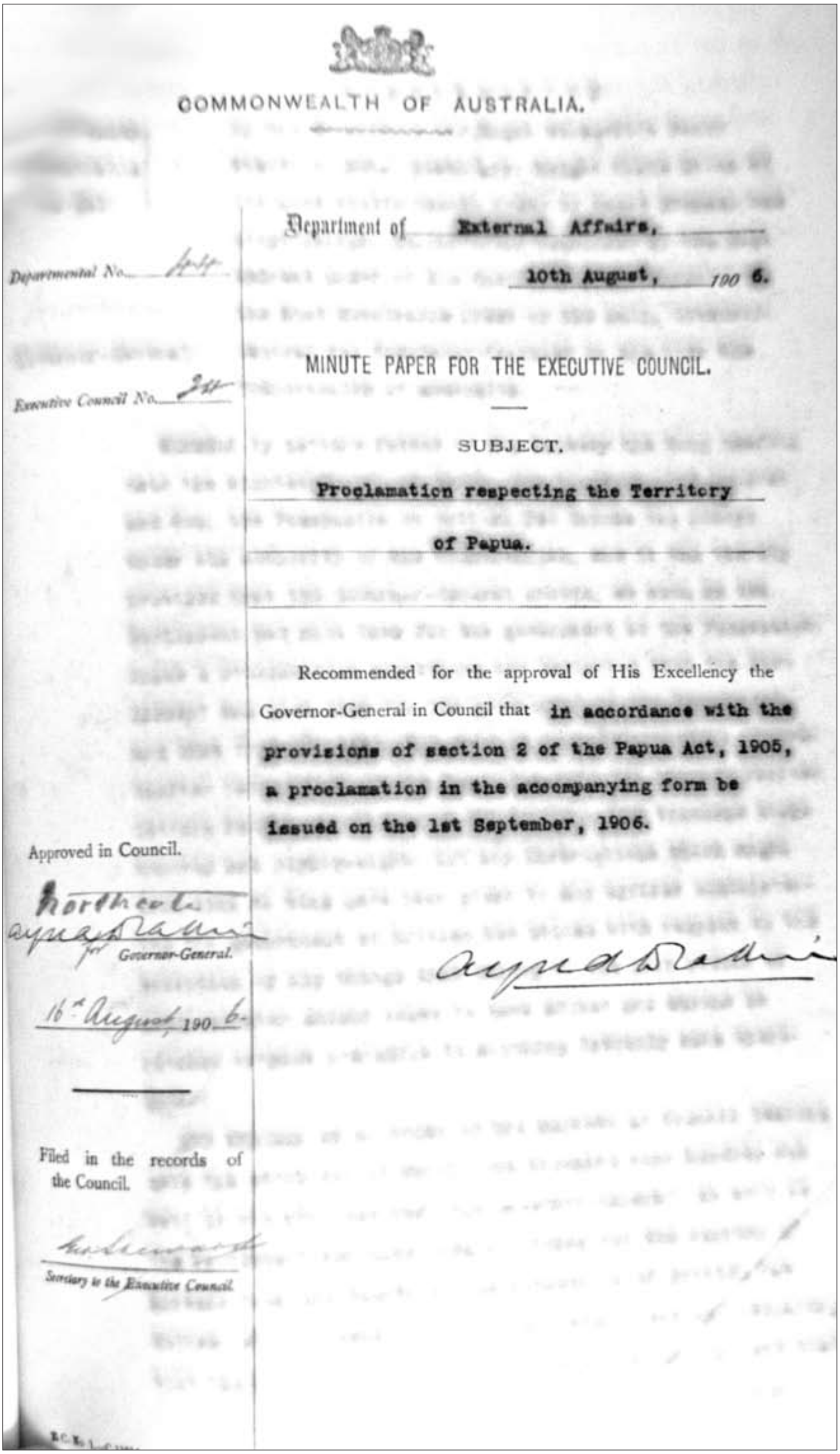
In the name and on behalf of His Majesty, I assent to this Act.

Northcote

Governor-General.

16th November 19

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by ROBT. S. BRAIN, Government Printer for the State of Victoria.



COMMONWEALTH OF AUSTRALIA.

Department of **External Affairs,**

Departmental No.

10th August, 190**6.**

MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

Executive Council No.

SUBJECT.

Proclamation respecting the Territory of Papua.

Recommended for the approval of His Excellency the Governor-General in Council that **in accordance with the provisions of section 2 of the Papua Act, 1905, a proclamation in the accompanying form be issued on the 1st September, 1906.**

Approved in Council.

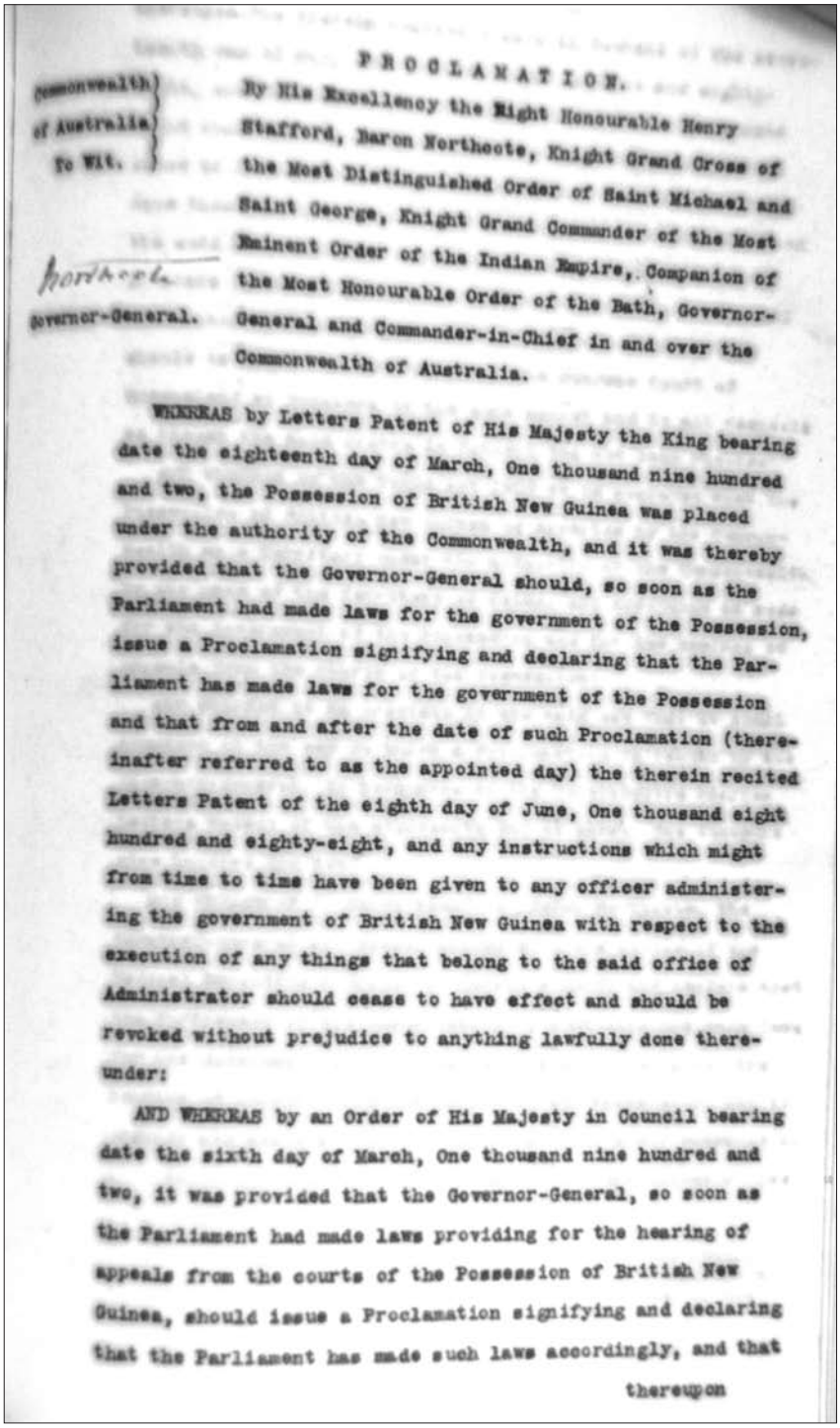
for Governor-General.

190

Filed in the records of the Council.

Secretary to the Executive Council.

Executive Council Minute No. 24, 10 August, 1906.
NAA: A1573, 1906/1



PROCLAMATION.

Commonwealth of Australia } to Wit.

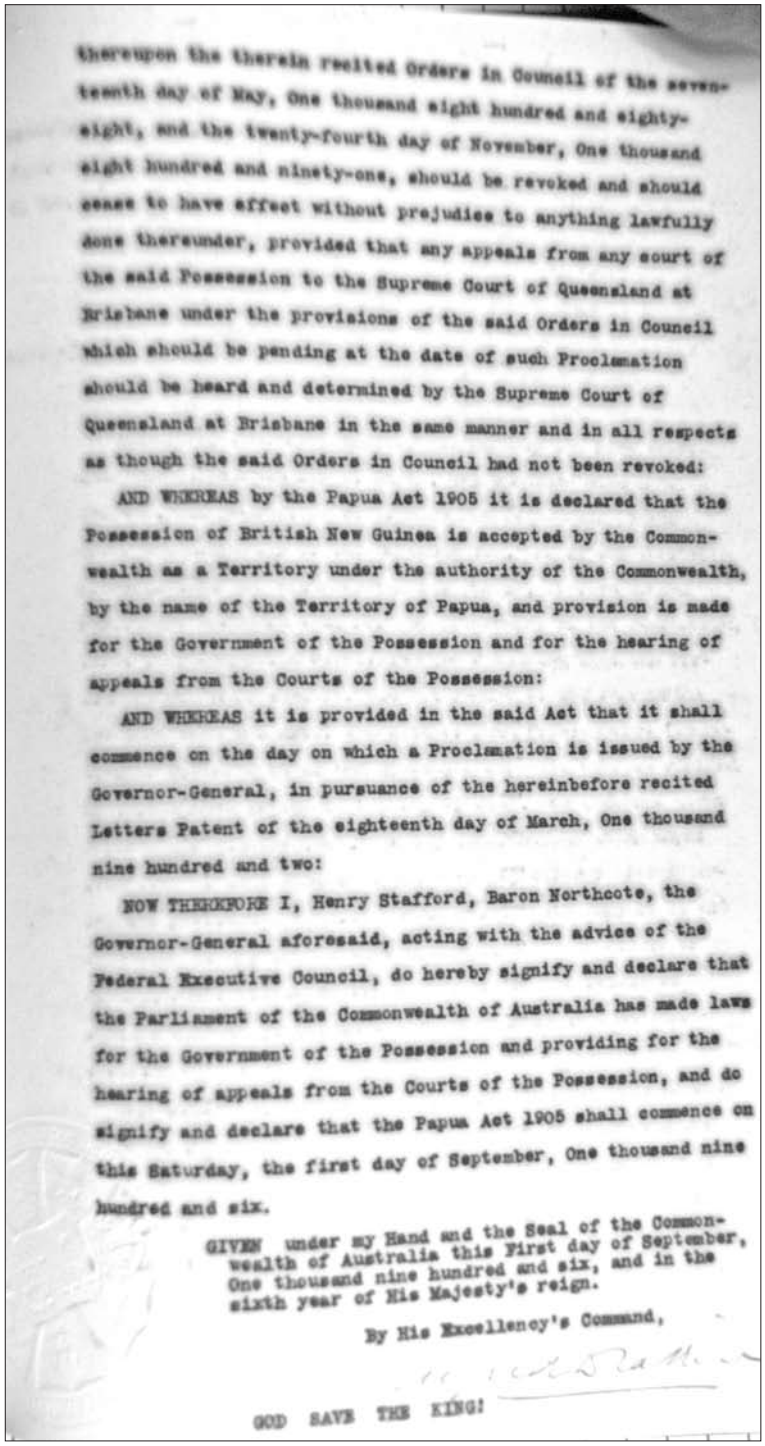
By His Excellency the Right Honourable Henry Stafford, Baron Northcote, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Grand Commander of the Most Eminent Order of the Indian Empire, Companion of the Most Honourable Order of the Bath, Governor-General and Commander-in-Chief in and over the Commonwealth of Australia.

Governor-General.

WHEREAS by Letters Patent of His Majesty the King bearing date the eighteenth day of March, One thousand nine hundred and two, the Possession of British New Guinea was placed under the authority of the Commonwealth, and it was thereby provided that the Governor-General should, so soon as the Parliament had made laws for the government of the Possession, issue a Proclamation signifying and declaring that the Parliament has made laws for the government of the Possession and that from and after the date of such Proclamation (thereinafter referred to as the appointed day) the therein recited Letters Patent of the eighth day of June, One thousand eight hundred and eighty-eight, and any instructions which might from time to time have been given to any officer administering the government of British New Guinea with respect to the execution of any things that belong to the said office of Administrator should cease to have effect and should be revoked without prejudice to anything lawfully done thereunder:

AND WHEREAS by an Order of His Majesty in Council bearing date the sixth day of March, One thousand nine hundred and two, it was provided that the Governor-General, so soon as the Parliament had made laws providing for the hearing of appeals from the courts of the Possession of British New Guinea, should issue a Proclamation signifying and declaring that the Parliament has made such laws accordingly, and that thereupon

pp62–63 Papua Act 1906 Proclamation, 1 September, 1906.
NAA: A1573, 1906/1



thereupon the therein recited Orders in Council of the seventeenth day of May, One thousand eight hundred and eighty-eight, and the twenty-fourth day of November, One thousand eight hundred and ninety-one, should be revoked and should cease to have effect without prejudice to anything lawfully done thereunder, provided that any appeals from any court of the said Possession to the Supreme Court of Queensland at Brisbane under the provisions of the said Orders in Council which should be pending at the date of such Proclamation should be heard and determined by the Supreme Court of Queensland at Brisbane in the same manner and in all respects as though the said Orders in Council had not been revoked:

AND WHEREAS by the Papua Act 1905 it is declared that the Possession of British New Guinea is accepted by the Commonwealth as a Territory under the authority of the Commonwealth, by the name of the Territory of Papua, and provision is made for the Government of the Possession and for the hearing of appeals from the Courts of the Possession:

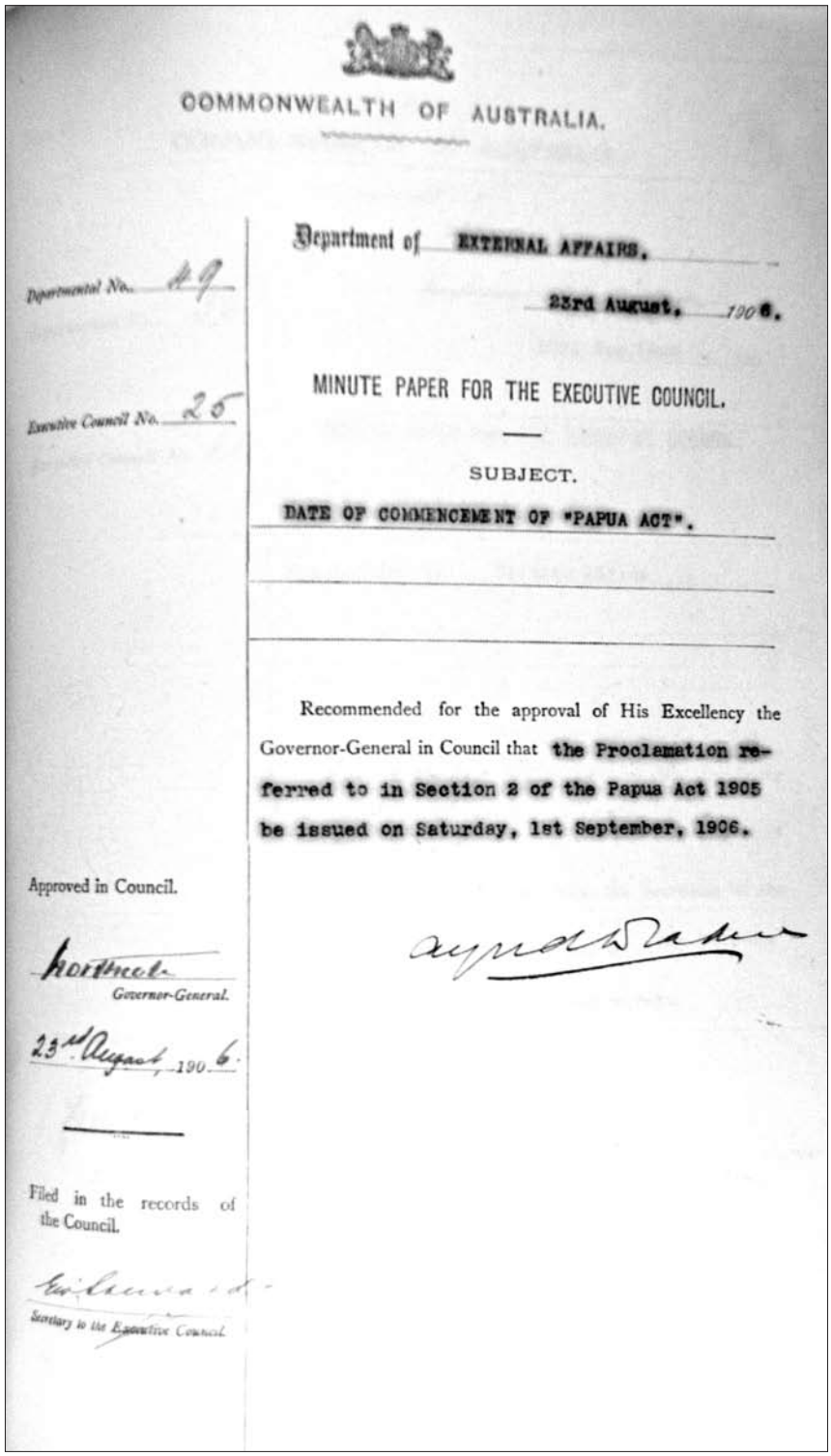
AND WHEREAS it is provided in the said Act that it shall commence on the day on which a Proclamation is issued by the Governor-General, in pursuance of the hereinbefore recited Letters Patent of the eighteenth day of March, One thousand nine hundred and two:

NOW THEREFORE I, Henry Stafford, Baron Northcote, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, do hereby signify and declare that the Parliament of the Commonwealth of Australia has made laws for the Government of the Possession and providing for the hearing of appeals from the Courts of the Possession, and do signify and declare that the Papua Act 1905 shall commence on this Saturday, the first day of September, One thousand nine hundred and six.

GIVEN under my Hand and the Seal of the Commonwealth of Australia this First day of September, One thousand nine hundred and six, and in the sixth year of His Majesty's reign.

By His Excellency's Command,

GOD SAVE THE KING!



COMMONWEALTH OF AUSTRALIA.

Department of EXTERNAL AFFAIRS.

Departmental No. 49

23rd August, 1906.

Executive Council No. 25

MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

SUBJECT.

DATE OF COMMENCEMENT OF "PAPUA ACT".

Recommended for the approval of His Excellency the Governor-General in Council that the Proclamation referred to in Section 2 of the Papua Act 1905 be issued on Saturday, 1st September, 1906.

Approved in Council.

Northcote
Governor-General.

23rd August, 1906.

Filed in the records of the Council.

Secretary to the Executive Council.

Executive Council Minute No. 25, 23 August, 1906.
NAA: A1573, 1906/1

BEYOND PAPUA

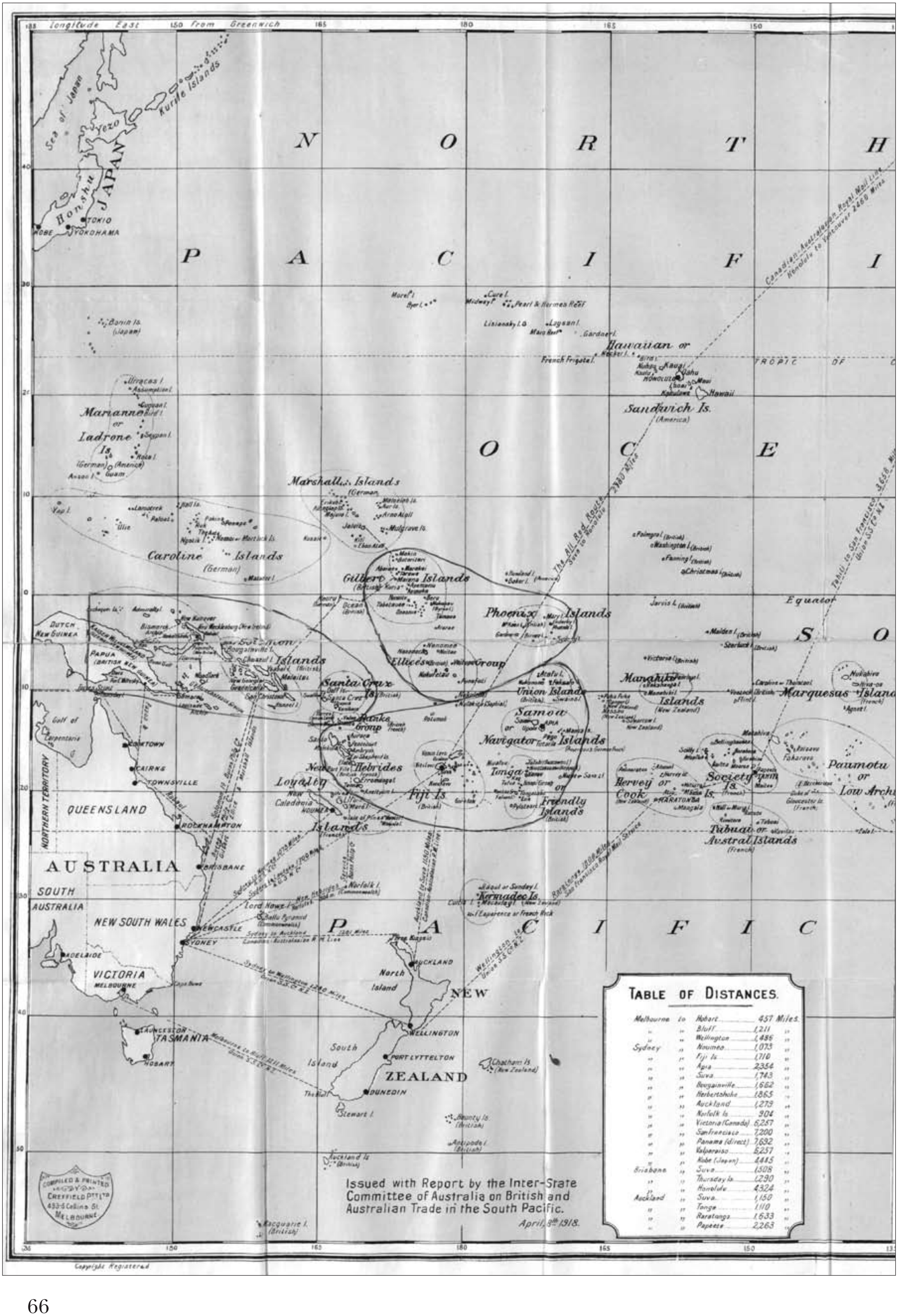
Notwithstanding its acquisition of Papua, Australia continued to have a keen eye for the Pacific, and its interest in and concern about German New Guinea had not waned.

A yearning for the New Hebrides featured in parliamentary debates from time to time. Those islands, lying to the north-east of Australia, had been of interest since the 1860s when 'blackbirding' had bought labour to the sugar industry of Queensland. Britain and France agreed in 1906 to form a condominium to govern the New Hebrides jointly, and Australia was worried lest France's interests might prevail. Concern about French intentions in relation to New Caledonia (also to Australia's north-east) surfaced occasionally.

Although some wanted Australia to tend to its own backyard before looking further afield, the possible control of islands of the Pacific remained a political preoccupation in the early 1900s. As well as the New Hebrides and New Caledonia, control over the British Protectorate of the Solomon Islands, Fiji and even Tahiti were also mentioned as important to Australia's interests. Australia was concerned about its isolation, security, defence, trade, communications and economic development.

Despite French and German interests before the outbreak of World War I in 1914, the Pacific was seen as the place for the future of British, and therefore Australian, prosperity. A 'Pacific Policy' was called for.

War with Germany changed the picture completely. Australia suddenly found that the international border that Papua shared with German New Guinea had become a front line with a new and powerful enemy.


Longitude East
from Greenwich
N O R T H
P A C I F I
O C E
S O
P A C I F I C
Sea of Japan
Yezo
Kurile Islands
JAPAN
Honshu
TOKIO
YOKOHAMA
KOBE
Bonin Is. (Japan)
Marianne or Ladrone Is.
Guam
Marshall Islands
Caroline Islands (German)
Gilbert Islands
Phoenix Islands
Ellices Group
Hawaiian or Sandwich Is. (America)
HONOLULU
Hawaii
Midway
Pearl & Hermes Reef
Laysan I.
Gardner I.
French Frigate I.
Equator
TROPIC OF
Canadian-Australasian Royal Mail Line
The All Red Route
Solomon Islands
Santa Cruz Is.
Banks Group
New Hebrides
Loyalty Islands
New Caledonia
NOUMEA
Fiji Is.
SUVA
Samoa or Navigator Islands
APIA
Union Islands
Tonga or Friendly Islands
Manahiki Islands
Hervey or Cook
Society Is.
Tubuai or Austral Islands
Marquesas Islands
Paumotu or Low Archi
Kermadec Is.
Norfolk I.
Lord Howe I.
DUTCH NEW GUINEA
PAPUA (BRITISH NEW GUINEA)
Gulf of Carpentaria
NORTHERN TERRITORY
QUEENSLAND
COOKTOWN
CAIRNS
TOWNSVILLE
ROCKHAMPTON
BRISBANE
AUSTRALIA
SOUTH AUSTRALIA
NEW SOUTH WALES
NEWCASTLE
SYDNEY
ADELAIDE
VICTORIA
MELBOURNE
TASMANIA
LAUNCESTON
HOBART
NEW ZEALAND
North Island
South Island
AUCKLAND
WELLINGTON
PORT LYTTELTON
DUNEDIN
The Bluff
Stewart I.
Chatham Is. (New Zealand)
Bounty Is. (British)
Antipodes I. (British)
Auckland Is. (British)
Macquarie I. (British)
COMPILED & PRINTED BY CREFFIELD PTY LTD 453-5 Collins St. MELBOURNE
Issued with Report by the Inter-State Committee of Australia on British and Australian Trade in the South Pacific.
April, 8th 1918.
TABLE OF DISTANCES.
Melbourne to Hobart 457 Miles.
" " Bluff 1,211 "
" " Wellington 1,486 "
Sydney " Noumea 1,073 "
" " Fiji Is. 1,710 "
" " Apia 2,354 "
" " Suva 1,743 "
" " Bougainville 1,662 "
" " Herbertshohe 1865 "
" " Auckland 1,279 "
" " Norfolk Is. 904 "
" " Victoria (Canada) 6,257 "
" " San Francisco 7,200 "
" " Panama (direct) 7,692 "
" " Valparaiso 6,257 "
" " Kobe (Japan) 4,485 "
Brisbane " Suva 1,508 "
" " Thursday Is. 1,290 "
" " Honolulu 4,324 "
Auckland " Suva 1,150 "
" " Tonga 1,110 "
" " Raratonga 1,633 "
" " Papeete 2,263 "
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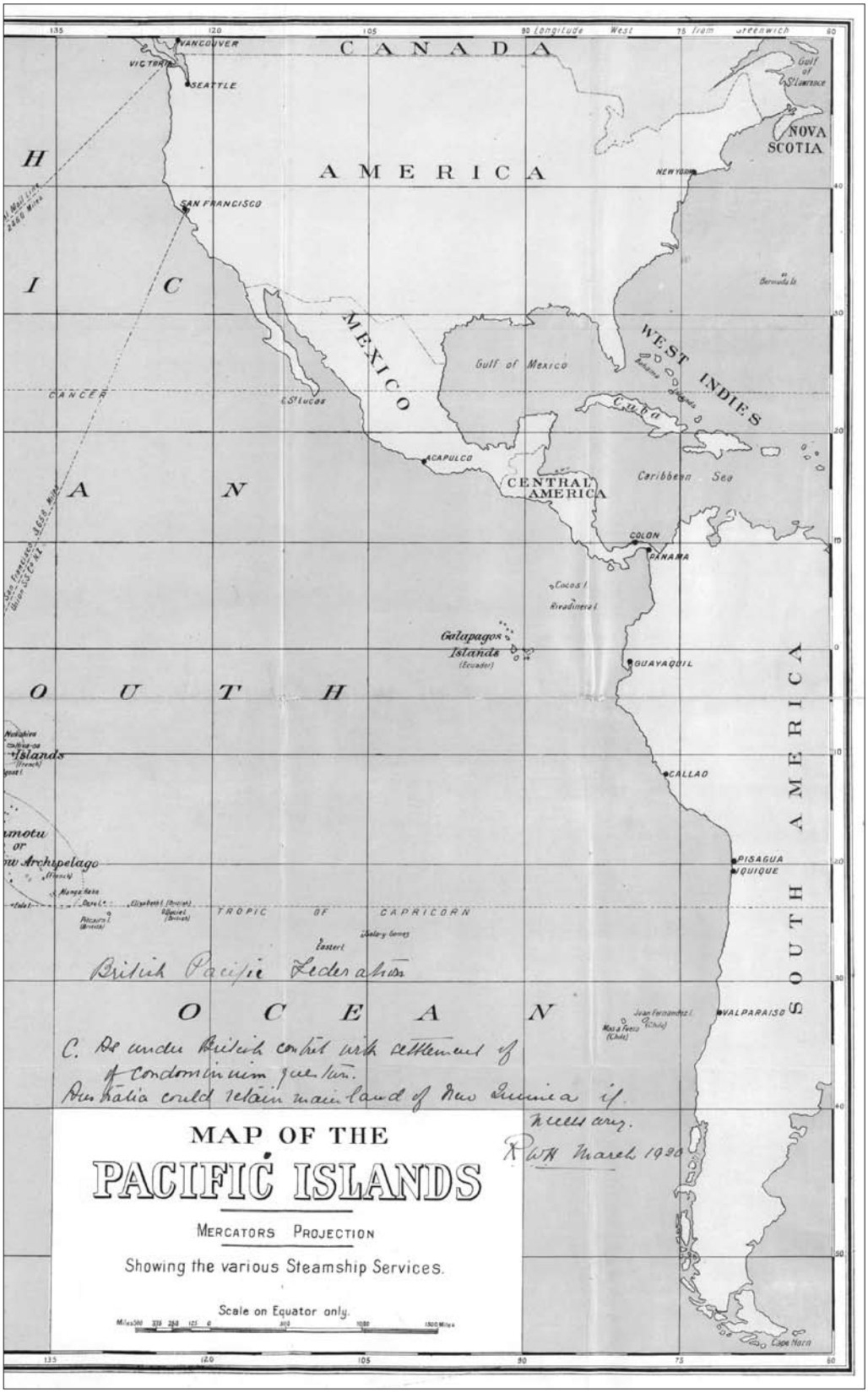

Hughes' annotation reads:
"British Pacific Federation.
C. as under British control with settlement of condominium question. Australia could retain mainland of New Guinea if necessary.
R.W.H. March 1920."

Map of Pacific Islands annotated by W.M.Hughes c.1919. NLA. MS 1538 / Series 50 / Box 231. Reproduced with the kind permission of the National Library of Australia.

CHAPTER FOUR
New Guinea

Island of Gold (Isla del Oro)

—Name given to New Guinea by Spanish explorer Alvaro de Saavedra in 1528[1]

PRELUDE

As detailed in Chapters Two and Three, the main island of New Guinea was partitioned in the nineteenth century by the Netherlands, Britain and Germany. The Dutch claimed the western portion, Britain the south-eastern portion, and Germany the north-eastern portion and adjacent islands. The nearby Solomon Islands were also split between Britain and Germany, which took control of the two northern islands in the chain.

Following the outbreak of World War I in 1914, the British Government cabled the Governor-General of Australia:

> If your Ministers desire and feel themselves able to seize the German wireless stations at New Guinea … we should feel this was a great and urgent imperial service. You will realise, however, that any territory now occupied must at the conclusion of the war be at the disposal of the Imperial Government for the purposes of an ultimate settlement.[2]

MILITARY OCCUPATION AND AUSTRALIAN AMBITIONS

A party of 27 men from the Australian Naval Reserve, among other troops, was put ashore on 11 September 1914 at Blanche Bay on the north-eastern tip of New Britain, an island in the Bismarck Archipelago, in German New Guinea. Their instructions were to locate and seize the wireless station. That evening the station surrendered to the party, thus ending Germany's 30-year control over and administration of its portion of New Guinea.

The British Government had advised that all territories successfully occupied should have the British flag hoisted but that no proclamation formally annexing any such territory should be made. Therefore, the officer commanding His Majesty's Australian Naval and Military Expeditionary Force merely issued a proclamation of occupation of German New Guinea on 12 September 1914 on behalf of, and in the name of, the King. Terms of capitulation were signed on 17 September.

For the duration of World War I and until 1920, the former German possession remained under the occupation of Australian defence forces working under the authority of the British.

Within barely a month or so of the New Britain surrender, the Australian authorities were contemplating another territorial acquisition. On 21 October 1914, Atlee Hunt, Secretary of the Department of External Affairs, cabled the Lieutenant Governor of Papua, Sir Hubert Murray:

> In view of likely transfer at end of war of German New Guinea to control of Commonwealth would be glad if you would consider question of merging administration with that of Papua. Am writing fully.[3]

In amplifying his cable, Hunt advised that:

> One of the conditions to which our Government agreed before undertaking the expedition, was that any German colonies which might be seized were to be held merely, and that the decision regarding their future was to be arrived at after the termination of the war … So that when the time comes, it will be for the British people to say what is to be done with these islands … Then I think that, seeing that the expedition of conquest was Australian, and that the territories have so much in common with our Territory of Papua, there is very little doubt but that our Government will urge strongly that the control of such of the German Territories as we desire should be handed over to us.

In his letter, Hunt also contemplated the prospect of Australian control over other former German territories, but 'For the present I am limiting my considerations to German New Guinea in which I include the Bismarck Archipelago and the Northern Solomons.'[4]

On 27 November 1914, in answer to a question in parliament about the administration of the former German New Guinea, the Assistant Minister for External Affairs stated:

> The administration of possessions taken from Germany cannot be provided for by this Government until those possessions have been put under our control. My impression is that at the present time they are administered by officers of our Defence Department, acting under Admiralty instructions.[5]

Lieutenant Governor Murray reported to the Minister for External Affairs, Hugh Mahon (Member for Coolgardie), on 16 December 1914 that he:

> had no hesitation in advising that there are not many serious difficulties in the way of an administrative amalgamation of the territories, while the advantages—in economy, for instance, and uniformity—over any system of separate administration, are obvious.[6]

He therefore recommended that the mainland of German New Guinea (Kaiser-Wilhelmsland) and the Bismarck Archipelago be combined with Papua as one territory under one administration, with the chief centre of administration somewhere in the territory. He felt also that the German Solomons (Buka and Bougainville) should not form part of the combined territory unless it were thought desirable that they should, for 'reasons of policy'.[7]

In the Senate on 16 July 1915, Senator George Pearce (Western Australia), the Minister for Defence, indicated in debate that he did not think that German New Guinea or the whole of the islands could be successfully administered from one centre:

> We have not annexed German New Guinea, nor could we do so until the end of the war. It will have to be determined between the Allies at the end of the war to whom that country shall belong. Great Britain has given her word that the disposition of territory shall be left for settlement amongst the Allies afterwards. German New Guinea is only under military occupation. Papua, on the other hand, belongs to us. It is carried on … under an entirely different system of government … and … it would not be advisable, while the difference in the systems of Government continues, to have the one Administrator administering the two territories.[8]

However, a note dated 3 November 1915, from the Secretary of the Prime Minister's Department to the Acting Secretary for External Affairs, records that former Prime Minister Andrew Fisher (Member for Wide Bay), who had resigned the prime ministership and from parliament on 27 October, thought the proposed policy as set out in Murray's report on merger 'should minimise difficulties and lead to economical Government of both'.[9]

So, while it might have been sensible, economical and logical to administer both territories as one, the status of German New Guinea in Australian (British) hands during the war and the uncertainty about its ultimate disposition at the conclusion of hostilities ruled out any immediate changes from the status quo.

On 9 May 1916, parliament was told in the 1915–16 Budget debate that the German New Guinea islands were being occupied on behalf of His Majesty's Government, 'the ultimate disposal of the same being, of course, a matter for future settlement—at the termination of the war. The cost of administration and all other expenses are at

present being paid by this Government, any necessary adjustment being left until the conclusion of the war.'[10]

Andrew Fisher's successor as Prime Minister was William Morris (Billy) Hughes.* On 13 December 1916, JA Boyd (Member for Henty) asked Hughes an interesting question in parliament:

> In view of the proposals for peace proclaimed by Germany, which contained the condition that all her former colonies must be handed back, will the Prime Minister say whether this Government has formulated any policy in regard to the handing back of Rabaul to that power?

Hughes replied:

> The question has been asked, I assume, because of a speech of the Imperial Chancellor reported to have been made in the Reichstag recently. I think it would be prudent for me to refrain from expressing any opinion on the matter.[11]

There was a continuing, nagging unease that Germany might have its former possessions returned to it after the war.

In debate in the Senate on 19 July 1917, Senator TJK Bakhap (Tasmania) moved that the Senate express its 'unqualified appreciation and approval' of a statement in the House of Commons by the British Colonial Secretary that no German possession would be returned and that any proposal to return captured German territories in the vicinity of Australia would be 'particularly distasteful to the people of the Commonwealth, and prejudicial to their interests, as well as to the future peace of the world'.[12]

In speaking to his motion, Senator Bakhap said:

> … we shall not be claiming too much for Australia if we say that under the democratic rule of the Commonwealth the native populations of these Possessions previously held by Germany, will be more uprightly, more sensibly, and more humanely governed than they were by their German rulers. We must regard our continent as our fortress. These possessions to the north-east are, so to speak, the outworks of our citadel.[13]

Senator WJR Maughan (Queensland) expressed the view that 'We do not want any frowning enemy fortresses, such as we have had previously, in the vicinity of

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* Born in 1862, Hughes was a colourful, uncompromising politician from his election to the first Commonwealth Parliament until he died in office in 1952. He shifted his political allegiance during his long period in parliament, initially because the move was forced on him by his expulsion from the Labor Party for his support of conscription during World War I. He was Labor Prime Minister in 1915–1916, and then formed the Nationalist Party, continuing his prime ministership until early 1923. Hughes was a brilliant but somewhat erratic advocate for Australia's interests at the Versailles Peace Conference in Paris, calling for an application of the Monroe Doctrine to exclude Japanese expansion into the Pacific. He also sought outright Australian control over the former German territories of New Guinea and Nauru, but had to be satisfied with League of Nations mandates.

Australia.'[14] Senator PJ Lynch (Western Australia) believed that the motion indicated '… the tone and temper of Australia, that, so far as lies in our power, those German possessions, which are within a dangerous radius of Australia shall never again have floating over them the German flag, but that the British flag shall fly there as long as British power lives.'[15]

However, others were not so sure. Senator MA Ferricks (Queensland) said:

> It appears to me that the whole question of annexations and indemnities can be dealt with in a peace settlement. I hold that the passing of this motion would not be wise or diplomatic. It would be a grave mistake on our part, when America and other allied nations are declaring against annexations, to send forth the dictum that under no circumstances will Australia agree to the restoration of these islands to Germany.[16]

Senator Bakhap saw the matter as something other than a 'territorial question' but, as put by the *Westminster Gazette*, 'It is necessary not to allow the Empire to be divided by a German fleet and submarine bases.'[17]

The motion was agreed to on 16 August 1917 and referred to the House of Representatives.

Speaking to the motion in the House, James (Jim) Matthews (Member for Melbourne Ports) said:

> The captured German colonies near Australia are not worth fighting about. They are not worth considering … we already have Papua, and are not putting it to any use except as a buffer to Australia. It is of no use to the Commonwealth so far as its occupation by white men is concerned … The time may come when we shall be glad to have on the islands near our shores white instead of coloured men. The friends of today are the enemies of tomorrow and *vice versa*.[18]

On 13 September, Prime Minister Hughes was asked whether the government had informed the British authorities that any territory in the Pacific not under the control of the Commonwealth before the outbreak of war should be added to the Commonwealth territories. Hughes responded that his Nationalist government had made no representations, but that the previous Labor government, in which he had been Prime Minister, had.[19] The next day, answering a further question on this matter, Hughes said he had raised the question with the British authorities in 1916 on a visit to England.[20]

Some six months later, the fate of former German territories was still occupying the thoughts of the politicians. On 4 April 1918, in debate in the parliament on the war, William Higgs (Member for Capricornia) cited a circular issued by the Queensland Recruiting Company, but questioned its sentiments:

> Australia has taken from the Germans Rabaul, her Papuan possessions, and her Pacific Island stations. The mere suggestion that Britain might hand them back without Australia's consent, for Germany to re-establish her Military system and her Naval bases in Australian waters, has already raised violent protest from Labour and Nationalist alike. In short, Australia does not want Germany again on the steps of her back door … If that be our attitude towards the German colonies, what becomes of the statement made by Lloyd George on 15 March that the war must be maintained as a holy war? The annexation of German colonies seems to me to be quite inconsistent with our claim that we are waging a holy war … I say quite frankly … that we ought now to affirm that we are willing to return captured colonies to Germany the moment peace is declared.[21]

But the Australian Government viewed 'the holding of these islands as vital to the [defence] interests of Australia'.[22] This view was explained a little more fully in the following question on notice and answer in the House on 7 June 1918, when FG Tudor (Member for Yarra) asked the Acting Prime Minister, William Alexander Watt (Member for Balaclava):

> In view of the declaration of the Government that the war aims of the Government include the retention of German New Guinea, what is the explanation of the statement made by the Prime Minister in New York: 'Australia does not want more territory. She is perfectly content that the islands adjacent to Australia shall be held by friendly Powers?'

Watt replied:

> The Government thoroughly indorse the statement by the Prime Minister. Australia is not seeking territorial reward or extension, but strongly desires that former German Possessions in the South Seas shall not revert to Germany, but shall be retained in the control of Britain or a friendly Power.[23]

As this exchange was taking place, Prime Minister Hughes was on his way to London and Versailles to fight for Australia's interests.

PACIFIC CARVE-UP

In October 1918, the Senate was told that:

> Australians should be under a very great debt of gratitude to the Prime Minister for bringing within the region of practical politics the Monroe doctrine of the South Pacific. The Senate unanimously affirmed, I think last year that it is highly desirable that the enemy should not again secure a jumping-off place in the Pacific to threaten our safety … One of the things which the Prime Minister may achieve in

> the forthcoming peace negotiations may be that he will arrange that the Germans shall be ousted from the Pacific, and that alone would be a triumph for him on this visit to the Old Country.'[24]

On 14 November 1918, the Senate debated a motion put forward by the Minister for Repatriation, Senator ED Millen (New South Wales):

> That the Senate of the Commonwealth of Australia declares that it is essential to the future safety and welfare of Australia that the captured German Possessions in the Pacific, which are now occupied by the Australian and New Zealand troops, should not, in any circumstances, be restored to Germany; and that in the consideration and determination of proposals affecting the destination of these islands Australia should be consulted.[25]

Speaking to his motion, Millen noted that:

> with the signing of the armistice, we are brought within appreciable distance of the gathering of the Peace Conference, at which the disposition of these islands … will be decided … The passing of this motion will, as the Government desire it should, strengthen the hands of the Prime Minister in the attitude he has taken upon this all-important matter … [W]e may urge, I think, with much reason, that if [the possessions] are left with us, at any rate for a generation or two, they will represent not an asset, but a liability. We are not, therefore, moved by any selfish or grasping spirit … The one thing we have in mind is not added territory, but greater security and increased protection.[26]

He felt that Australia needed to act:

> It may also be said that we need not be greatly perturbed in this matter, because we can safely leave our interests in the keeping of the yet-to-be-created League of Nations. My answer is that the League of Nations is not yet created, and even when it is, it will take some years of experience before any community will feel that they can entirely and safely leave their interests in its keeping … For that reason Australia, in this matter, has largely to rely upon itself, and its first duty is to inform the Imperial authorities, and the nations with whom they are associated, of its desires and interests.[27]

Some speakers urged caution against pressing Australia's claims too strongly:

> It is possible, in fact, that we may find ourselves being rather carried away by passion than controlled by reason … what may be our position a few months hence if Great Britain, at the Peace Conference, finds itself unable to give us that which we claim in this motion?[28]

> I would rather that we had been left free to accept the fruits of that Conference without the fear of experiencing any heartburning by reason of the fact that we have not been able to secure all that we have a right to expect.[29]

However, it seemed clear that the United Kingdom and the United States of America believed that the fate of the former German colonies should be decided internationally. One speaker quoted the Prime Minister of the United Kingdom:

> The German colonies should be held at the disposition of a conference, whose decisions must have primary regard to the wishes and interests of the native inhabitants.

and the President of the United States:

> The free, open-minded, and absolutely impartial adjustment of colonial claims. The interests of the populations having equal weight with the claims of the Governments.[30]

In late 1918, the Australian Parliament and conferences of the British Labour Party and the Australian Labor Party heard calls for some sort of international control over the former German possessions in the event of disputes over their future.[31] However, the parliament was very concerned about defence and security, and some speakers saw these as overriding concerns to be pressed on the United Kingdom as strongly as possible.[32]

Senator Millen's motion against the restoration of captured possessions to Germany was unanimously affirmed.[33]

Acting Prime Minister Watt moved the same motion in the House of Representatives on the same day. Speakers were at pains to point out that Australia was not interested in a grab for more territory; it merely wanted what it had expended time, money and energy on, and its territorial ambitions, from the beginning of its interests in the whole New Guinea island group, had been driven mainly by defence concerns.[34] The motion was affirmed. Prime Minister Hughes thus had a clear message from the Commonwealth Parliament that he should press Australia's interests with the British authorities. He had already taken it upon himself to do so in any forum he could find.

Following advice from the Chief Law Officer of the British Administration of German New Guinea, a cable was sent to Hughes at the Peace Conference in Versailles, saying that it was considered essential for the purposes of practical administration, as well as to avoid a possible cause for future contention, that the mandate should contain an express covenant authorising the substitution of English law in place of German law at the discretion of the mandatory state.[35]

MANDATE

In January 1918, United States President Woodrow Wilson had announced fourteen points as a basis for peace. The fifth of these affirmed that colonial claims were to be adjusted in the light of the principle of self-determination and that there was to be no simple annexation of enemy colonies. This caused views in the Commonwealth Parliament to coalesce, so that when Hughes left for London for the Peace Conference, he was given a brief to do what he could to secure annexation of the German colonies.

The mandate system was devised in order to reconcile the demands of countries such as Australia and the principle of self-determination. It was embodied in Article 22 of the Covenant of the League of Nations:

> To those colonies and territories which as a consequence of the Late War ceased to be under the sovereignty of states which formerly governed them, and which are inhabited by Peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.
>
> … [Therefore] the tutelage of such Peoples should be entrusted to advanced nations [to be] exercised by them as mandatories on behalf of the League.

The character of the mandate could differ according to the stage of development of the people, the geographical situation and economic conditions. Some territories, because of their remoteness or their small size, could be administered as integral portions of the territory of the mandatory power.[36]

In anticipation of a mandate being granted, papers were prepared in Papua and Melbourne proposing amendments to the Papua Act and putting forward a draft proclamation accepting the control and administration of the territory and islands formerly under the possession and control of Germany.[37]

On 15 March 1919, a cable to Prime Minister Hughes was drafted, advising him of the preparatory work and the desire that:

> … when peace is proclaimed at Rabaul, notification should be issued announcing immediate installation of interim Civil Government, and that settled form of Government as territory of Commonwealth will be adopted at specified time. Assuming your efforts to secure complete annexation not successful, it is important we should know conditions of mandate as soon as they are settled, so that due regard may be paid to them in scheme of amalgamation … General idea is to be ready immediately on peace with form of civil Government that can be easily transformed into permanent organisation, and so make transition period as brief as possible.

> Can you ascertain now intentions of British Government with regard to transfer of British Solomons? It would be most convenient for us to create machinery to amalgamate at same time as we arrange for transfer of German Colonies.[38]

All but a portion of the cable was sent to the Prime Minister. The reason for the deletion was that a cable from Hughes, dated 12 March but delayed by ciphering and deciphering, had stated:

> … but there are indications that preliminary peace terms will be ready to submit to Germany in, say, a fortnight or even less. As these will be severe, she will not accept them immediately or in globo or without much protest, discussion, or even perhaps something more. All this will take time—say at least one or two months. This means that date Peace will be signed will probably not be before middle May or beginning June.
>
> Of course, things may go much better, but I am pessimistic.[39]

In the meantime, more work at departmental level continued, with the development of papers on the suggested system of government for the former German colonies, whether amalgamated with Papua or not.[40]

In June 1919, Hughes was preparing to return home by ship. Acting Prime Minister Watt was anxious to be advised on how matters stood concerning the scheme of government for German New Guinea and the Solomons. Watt wanted to know how to deal with whatever might arise during Hughes' voyage.[41]

Hughes cabled back: 'This must await my arrival …'[42]

On his return from Europe after Versailles, Hughes made a statement in parliament in September 1919 in which he outlined the views and attitudes that had shaped his presentations at the Peace Conference. Noting that Australia had separate representation in the League of Nations,† Hughes informed Parliament that:

> … the League of Nations is truly a charter of liberty—a charter of civilisation of not less value to the world than was Magna Charta to the men of our race; not less great then the setting up of the rule of law for the rule of force among our own ancestors in the old days of tribal struggle and barbaric strife.

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† Lloyd George had put it this way: 'In recognition of their services and achievements in the war the British Dominions have now been accepted fully into the comity of nations by the whole world. They are signatories of the Treaty of Versailles … they are members of the Assembly of the League of Nations … in other words, they have achieved full national status, and they now stand beside the United Kingdom as equal partners in the dignities and responsibilities of the British Commonwealth.' Summary of Proceedings and Documents, Conference of Prime Ministers, CMD 1474 of 1921, p. 14, quoted by JG Starke in an essay, 'Commonwealth in international affairs', in Hon Mr Justice Else-Mitchell (ed.), *Essays on the Australian Constitution*, Law Book Company of Australasia, 1961, chapter XIII p. 348.

Notwithstanding his high-flown rhetoric, Hughes, in talking of the application of a type of Monroe Doctrine for Australia, took a far less enthusiastic view of the importance and role of the League:

> While the Monroe doctrine exempts the whole of the two Americas from the jurisdiction of the League of Nations, we will not allow anything relating to our sphere in the Pacific to be regarded as a proper subject for submission to that tribunal.

At Versailles, Hughes had raised Australia's security concerns as strongly as he could as the reason it required full and unfettered control over islands close to its shores. However, all that was granted was a mandate, which the League of Nations was yet to formalise.

Hughes told Parliament that:

> In order that Australia shall be safe, it is necessary that the great rampart of islands stretching around the north-east of Australia should be held by us or by some Power in whom we have absolute confidence … It was difficult to make the Council of Ten realise how utterly the safety of Australia depended upon the possession of these islands … We sought to obtain direct control of them, but President Wilson's fourteen points forbade it; and after a long fight, the principle of the mandate was accepted …[S]ince the mandate principle was forced upon us, we had to see that the form of the mandate was consistent, not only with our national safety, but with our economic, industrial, and general welfare … We have the same rights to make laws over the islands as over the mainland; indeed, the Commonwealth has wider powers there to make laws, because its jurisdiction on the mainland is limited … [W]e may make over the islands exactly the same kind of laws as a State could make before Federation in Australia, subject only to five reservations. There can be no sale of firearms to the natives; we cannot raise native armies except for the mere defence of that territory; we cannot sell alcohol to the natives; we cannot raise fortifications; and there cannot be any slave trade. Those, of course, were conditions so entirely acceptable to us that they were not limitations at all on the sovereign power which was necessary for our salvation … The next point we had to deal with was the White Australia policy.[43]

In the Senate on 26 September 1919, in a debate on the Treaty of Peace between the Allied and Associated Powers and Germany (the Treaty of Versailles), Senator Matthew Reid (Queensland) said:

> Honourable Senators opposite know that Australia did not go to war to annex the islands of the Pacific. They must realise, however, that it would have been suicidal to permit any other Power to gain a footing in those waters, and that it would have been particularly dangerous, and, in fact, tragic, if we had allowed Germany to get her island territories back. Who would have taken over German New Guinea if Australia had not done so? Who among the nations is so capable of administering those Pacific territories

> as is the Commonwealth? We have any amount of room in this continent, but we owe a duty to the helpless inhabitants of the islands lying near our northern coasts. From the view-point of defence alone, wisdom dictates that Australia should accept the mandate. We have to thank Mr Hughes that he laid it down so energetically and unequivocally that our mandatory powers should be clear and full and not merely farcical. He made a big fight for that objective, despite the peculiar views held by President Wilson. The result of his efforts is that Australia has been given what may be termed the free-hold of those island territories. The mandate grants us, in effect, full possession; but on one condition, namely, that we do not misuse our powers. Appreciating the democratic spirit of Australia as I do, the possible misuse of our powers does not trouble me. We should look upon the mandate as a sacred trust … We owe something, also, to the native peoples of those islands. They are totally unfitted to govern themselves. It is our responsibility to act towards them as though they were grown-up children.[44]

On 26 February 1920, opening the parliament, Governor-General Sir Ronald Munro-Ferguson said:

> The mandate to the Commonwealth to administer the territories in the Pacific, south of the equator, captured by Australian naval and military forces, has been delayed by the postponement of the ratification of the treaty with Germany, but its early issue is expected, and my Ministers will introduce legislation providing for the adoption and operation of the mandate.[45]

In the meantime, on 12 August 1919, Sir Ronald had established a Royal Commission, one of the tasks of which was to visit 'late German New Guinea and report on the organisation of a system of Government in accordance with the terms of the mandate'.[46] However, the mandate was not yet in force. It had been held up by Japanese objections to the conditions attaching to the mandates given to Japan, Australia and New Zealand, which were 'Class C' mandates.[47] (see p. 81)

Parliament did not learn officially of the Royal Commission's establishment until 13 October 1919. The Minister for External Affairs, Patrick McMahon Glynn (Member for Angas), told the House that the matter could not be submitted to parliament at that time. As soon as a Bill was ready, parliament would be consulted by the submission of that Bill.[48]

A majority of the Royal Commission recommended that a separate government be established for the mandated territory and that, if the British Solomons were transferred to Australia, a separate government be established for that territory. The chairman, Sir Hubert Murray, recommended amalgamation, noting that the inclusion of the British Solomons would create no difficulties.[49]

As the mandate for German New Guinea was not yet settled, the military occupation continued into 1920.

Meanwhile, questions arose about what name might be given to Australia's expected new territorial acquisition. Suggestions included 'Australnesia', the 'Austral Islands', 'Australian Islands', 'Eastern New Guinea', 'Papuasia', 'Cartaret's Land', 'Austral Indies' and 'Austral Guinea'. A contemporary press comment suggested that 'if an attempt be made to find a name giving expression to the fact that the islands are held under a mandate it will be difficult to avoid making it long and cumbersome.'[50]

ADMINISTRATION

The Australian Government, possibly mindful of the press warning, chose the simplest name. On 13 August 1920, in anticipation of the mandate being conferred, Prime Minister Hughes moved in the parliament that leave be given to bring in the New Guinea Bill—'a Bill for an Act to make provision for the acceptance of a mandate for the government of certain territories and islands in the Pacific Ocean, and to make immediate provision for the civil government of the said territories and islands, and for other purposes.'[51] Leave was granted, but only after a proposed amendment to insert the words' 'in accordance with the principles of the White Australia policy' was defeated.[52]

The New Guinea Bill was presented on 19 August 1920[53], and the second reading commenced in the House on 14 September. The Prime Minister indicated that 'This is a measure to make provision for the acceptance of the mandate for and to establish civil administration in those islands which were once comprised under the generic term of New Guinea.'[54]

The Prime Minister pointed out that on 7 May 1919, the Council of Four of the Allied and Associated Powers had decided that a mandate for the islands in question should be given to Australia. He said that the delay in issuing the mandate had been a matter of some embarrassment and it was thought desirable to establish a civil government at once, on a provisional basis, in lieu of the military government which then exercised authority. Military government was no longer appropriate, because Australia was no longer holding the islands by force of arms against an enemy. Hughes said that the Bill:

> is an exercise of the powers of the Commonwealth under our Constitution. Apart from the Treaty and the agreement to confer a mandate, we have also section 122 of the Constitution, which empowers the Parliament of the Commonwealth to make laws for the government of any territory placed by the King under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth. This Territory is *de facto* and *de jure* under the authority of the Commonwealth; and under the Constitution we have power to make laws for its government. This government must be regarded as provisional, and the proposals for the civil government are of the simplest character.[55]

The Prime Minister reminded members that they must not forget that, '… while we are legislating in regard to these islands, we have not sovereign power over them, as we have over Papua. Ours is a position of trust, and we are responsible to the League of Nations … who will look to us to carry out our trust faithfully …'[56]

The Bill made provision for the acceptance of the mandate when issued; provided for a provisional government; and accepted the obligations laid down in the Covenant of the League of Nations for a mandate of the Pacific Islands class, or 'Class C'. Class C mandates were for territories that could best be administered under the laws of the mandatory power (the 'mandatory') as integral portions of its territory, subject to safeguards relating to prohibition of slavery, forced labour (except for essential public works) and the control of the traffic in arms and ammunition.[57] The Bill also prohibited the supply of intoxicating liquor to the native people of the territory.

Hughes noted that:

> At the Versailles Conference it was pointed out with some force not only what Australia had done, but also how vitally her future, and even her present, would be affected by whatever policy was adopted in regard to these islands. As a result we have the mandate in its present form, and Australia, therefore, will be in a position to administer these islands, to the extent she thinks fit, as integral portions of her territory.[58]

The debate in the House and the Senate centred around six main issues: land appropriation and possible compensation; the White Australia policy and forced labour; the League of Nations responsibilities; government by Ordinance rather than by direct law-making from Australia; the need for an Australian Administrator to be appointed; and the need for joint administration with Papua rather than a separate arrangement.

Senator HE Pratten (New South Wales) felt that the mandate and the Bill to accept it were positive steps but not necessarily a permanent solution of the problem: 'I am hopeful that, in the not-distant future, some attempt will be made to link up the whole of the islands under the British flag in the Pacific into one government.'[59]

The *New Guinea Act 1920* gained assent on 30 September 1920, some six years to the month after military rule was imposed in New Guinea.

On 17 December 1920, the Council of the League of Nations defined the terms of the mandate for the 'German Possessions in the Pacific Ocean situated south of the Equator other than German Samoa and Nauru, conferred upon His Britannic Majesty, to be exercised on his behalf by the Government of the Commonwealth of Australia'. New Zealand was to administer Samoa under mandate.

A certified true copy of the mandate was sent to the Australian Government by the League of Nations Secretary-General on 16 February 1921.

On 7 April 1921, the Governor-General proclaimed 9 May 1921 as the date of commencement of the *New Guinea Act 1920*. Australia had acquired its fourth external

territory (after Papua, Norfolk Island and Nauru). The proclamation was notified in Commonwealth of Australia Gazette No. 32 of 7 April 1921.

POSTSCRIPT

Under the League of Nations mandate, Australia developed New Guinea socially, economically and politically under a separate administration from Papua until World War II. It was administered by an Administrator (the first was Brigadier-General EA Wisdom), and the Governor-General had power to make ordinances having the force of law in the territory under the *New Guinea Act 1920*. Later, an Executive Council and a Legislative Council were established.

In March 1944, Manus Island (part of the mandated territory) was occupied by the United States Air Force and used extensively as a base for wartime operations against retreating Japanese forces. Immediately after the war, the question arose whether the United States should continue to exercise control over the island under long-term rights. The Australian Government decided that a reciprocal use of the base was the best approach.[60] The United States withdrew the last of its forces during 1947–48, and Australia re-established civil administration in June 1948.[61]

During and following World War II, New Guinea was administered jointly with the Territory of Papua. In 1949, with the establishment of the United Nations trusteeship system, Australia was made the sole administering authority for the trust territory of New Guinea. With United Nations approval, both Papua and New Guinea were administered jointly until independence in 1975.

NOTES

1 *The New Guinea Handbook*, Commonwealth Government Printer, 1943 Reprint, p. 15.
2 Cable to Governor-General of 6 August 1914; see Report by Minister of Defence on the Military Occupation of German Possessions, 1921, Senate Papers.
3 Cable, Hunt to Murray, 21 October 1914, NAA: A518, A800/1/1/PART 1A.
4 Letter, Hunt to Murray, 22 October 1914, NAA: A518, A800/1/1/PART 1A.
5 CPD, HR, Vol. LXXV, 27 November 1914, p. 1163.
6 Letter of 16 December 1914—Murray Report p. 26, NAA: A518, A800/1/1/PART 1A.
7 ibid., p. 28.
8 CPD, Senate, Vol. LXXVII, 16 July 1915, p. 5018.
9 Prime Minister's Department memo to Secretary, External Affairs Department, 3 November 1915, NAA: A518, A800/1/1/ PART 1A.
10 CPD, HR, Vol. LXXIX, 9 May 1916, pp. 7705–06.
11 CPD, HR, Vol. LXXX, 13 December 1916, p. 9710.
12 CPD, Senate, Vol. LXXXII, 19 July 1917, p. 292.
13 ibid., p. 294.
14 ibid., p. 296.
15 ibid., p. 299.
16 ibid., 9 August 1917, p. 919.

17 ibid., 16 August 1917, pp. 1130.
18 CPD, HR, Vol. LXXXII, 16 August 1917, p. 1176.
19 CPD, HR, Vol. LXXXIII, 13 September 1917, p. 2034.
20 ibid., 18 September 1917, p. 2171.
21 CPD, HR, Vol. 84, 4 April 1918, p. 3608.
22 CPD, HR, Vol. LXXXV, 22 May 1918, 4928.
23 ibid., 7 June 1918, p. 5661.
24 CPD, Senate, Vol. LXXXVI, 16 October 1918, p. 6890.
25 ibid., 14 November 1918, p. 7784.
26 ibid., pp. 7784–85.
27 ibid., pp. 7786–87.
28 ibid., p. 7791.
29 ibid., p. 7793.
30 ibid., p. 7795.
31 ibid.
32 ibid., pp. 7799, 7801.
33 ibid., p. 7801.
34 CPD, HR, Vol. LXXXVI, 14 November 1918, p. 7833, and 15 November 1918, p. 7947.
35 Cable from Acting Prime Minister to Prime Minister, 14 March 1919, NAA: A518, M826/1/3.
36 Holder and Brennan, *The international legal system,* Butterworths, Sydney, 1972, p. 223, quoting Bentwich, *The mandates system*, 1930, pp. 1–2.
37 Draft Proclamation, March 1919, NAA: A518, M826/1/3.
38 Cable from Acting Prime Minister to Prime Minister, 15 March 1919, NAA: A518, M826/1/3.
39 Memorandum from Prime Minister's Department to Department of Home and Territories, 19 March 1919, NAA: A518, M826/1/3.
40 Letter (and attachment) from Minister for Home and Territories to Acting Prime Minister, 28 April 1919, NAA: A518, M826/1/3.
41 Cable from Acting Prime Minister to Prime Minister, 20 June 1919, NAA: A518, M826/1/3.
42 Cable from Prime Minister to Acting Prime Minister, 25 June 1919, NAA: A518, M826/1/3.
43 CPD, HR, Vol. LXXIX, 10 September 1919, pp. 12173–74.
44 CPD, Senate, Vol. LXXXIX, 26 September 1919, p. 12733.
45 CPD, Senate, Vol. XCI, 26 February 1920, p. 6.
46 Letters Patent, 12 August 1919.
47 CPD, Senate, Vol. XCIV, 13 April 1921, pp. 7352–53, and Melbourne *Argus*, 22 April 1920.
48 CPD, HR, Vol. LXXXIX, 13 October 1919, p. 11532.
49 Royal Commission Report, 8 December 1919, NAA: A518, M826/1/3.
50 Melbourne *Argus*, 22 April 1920.
51 CPD, HR, Vol. XCII, 13 August 1920, p. 3549.
52 ibid., 18 August 1920, p. 3578.
53 ibid., 19 August 1920, p. 3644.
54 CPD,HR, Vol. XCIII, 14 September 1920, p. 4452.

55 ibid., p. 4453.
56 ibid.
57 ibid., p. 4454.
58 ibid., p. 4454–55.
59 CPD, Senate, Vol. XCIII, 23 September 1920, p. 4848.
60 CPD, Senate, Vol. 189, 14 November 1946 p. 205.
61 CPD, HR, Vol. 15, 16/17 May 1957 pp. 1556–57.

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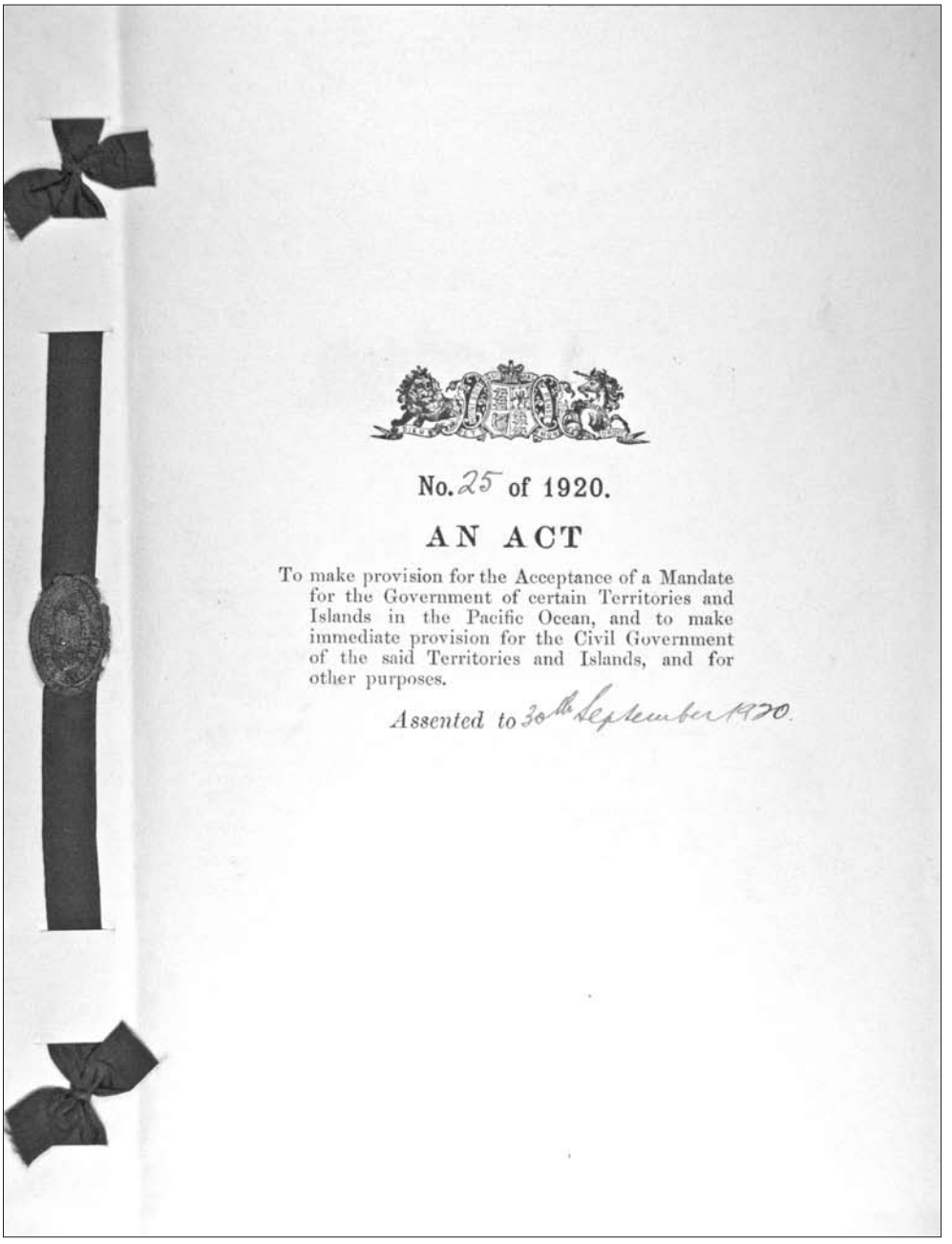


No. 25 of 1920.

AN ACT

To make provision for the Acceptance of a Mandate for the Government of certain Territories and Islands in the Pacific Ocean, and to make immediate provision for the Civil Government of the said Territories and Islands, and for other purposes.

Assented to 30th September 1920.

pp. 85– 89 New Guinea Act No. 25 of 1920.
NAA: A1559, 1920/25

1920 No.

AN ACT

To make provision for the Acceptance of a Mandate for the Government of certain Territories and Islands in the Pacific Ocean, and to make immediate provision for the Civil Government of the said Territories and Islands, and for other purposes.

Preamble.

WHEREAS on the seventeenth day of September, 1914, the Territories and Islands hereinafter mentioned (then being possessions of the German Empire) were conquered by and surrendered to the Naval and Military Forces of the Commonwealth :

And whereas by the Treaty of Peace with Germany signed at Versailles on the twenty-eighth day of June, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights and titles over the said Territories and Islands :

And whereas the said Territories and Islands are now occupied by the Commonwealth :

And whereas it has been agreed by the representatives of the Principal Allied and Associated Powers that a Mandate for the Government of the said Territories and Islands should be conferred on the Commonwealth of Australia :

And whereas under the Covenant of the League of Nations contained in the said Treaty a Mandate is to be issued to the Commonwealth of Australia for the Government of the Territories and Islands formerly constituting German New Guinea (in which expression are included Kaiser Wilhelm's Land, the Bismarck Archipelago

Archipelago, the German Solomon Islands, the Admiralty Group, and all other German Pacific Possessions south of the Equator other than the German Samoan Islands and the Island of Nauru), with full power to administer the same, subject to the terms of the Mandate, as an integral part of the Territory of the Commonwealth:

And whereas it is expedient to make provision for the acceptance of the Mandate so to be issued:

And whereas it is also expedient to make immediate provision for the Civil Government of the said Territories and Islands:

Be it therefore enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PRELIMINARY.

Short title.

1. This Act may be cited as the *New Guinea Act* 1920.

Commencement.

2. This Act shall commence on a date to be fixed by Proclamation.

Definitions.

3. In this Act, unless the contrary intention appears—

"The Territory" means the Territory of New Guinea;

"The Administrator" means the Administrator of the Territory; and

"The Minister" means the Minister administering this Act.

THE TERRITORY.

The Territory of New Guinea.

4. The Territories and Islands formerly constituting German New Guinea, as specified in the Preamble to this Act, are hereby declared to be a Territory under the authority of the Commonwealth, by the name of the Territory of New Guinea.

Authority to accept mandate.

5. The Governor-General is hereby authorized to accept the Mandate for the Government of the Territory when issued to the Commonwealth under the Covenant of the League of Nations.

THE ADMINISTRATOR.

Office of Administrator.

6. There shall be an Administrator of the Territory, who shall be charged with the duty of administering the Government thereof on behalf of the Commonwealth.

Appointment of Administrator.

7. The Administrator shall be appointed by the Governor-General under the seal of the Commonwealth, and shall until the Parliament otherwise provides hold office during the pleasure of the Governor-General.

Functions of Administrator.

8. The Administrator shall exercise and perform all powers and functions that belong to his office according to the tenor of his Commission and according to such instructions as are given to him by the Governor-General.

Acting Administrator.

9.—(1.) The Governor-General may, by Commission under the seal of the Commonwealth, appoint a person to act in the office of Administrator, and to administer the Government of the Territory, during

during any vacancy in the office of Administrator, or when the Administrator is absent from the Territory or unable by reasons of illness or incapacity to perform his duties; and such person who so administers shall have and may exercise and perform all the powers and functions of the Administrator.

(2.) In default of such appointment, or in the event of the absence or inability of the person so appointed the senior officer of the Territory present in the Territory shall have and may exercise and perform all the powers and functions of the Administrator.

Deputies of Administrator.

10.—(1.) The Governor-General may authorize the Administrator to appoint any person, or any persons jointly or severally, to be the deputy or deputies of the Administrator within any part of the Territory, and in that capacity to exercise during the pleasure of the Administrator such powers and functions of the Administrator as he thinks fit to assign to such deputy or deputies subject to any limitations expressed or directions given by the Governor-General.

(2.) The appointment of a deputy shall not affect the exercise or performance by the Administrator himself of any power or function.

Oaths to be taken by Administrator.

11. The Administrator shall, before entering on the duties of his office, take an oath or affirmation of allegiance in the form in the Schedule to the Constitution, and also an oath or affirmation in the form in the Schedule to this Act.

OFFICERS.

Appointment of officers.

12. The Governor-General may appoint, or may delegate to the Minister or to the Administrator power to appoint such officers as are necessary for the administration of this Act or for the proper government of the Territory.

LAWS AND ORDINANCES.

Application of Commonwealth laws.

13. Except as provided in this or any Act, the Acts of the Parliament of the Commonwealth shall not be in force in the Territory unless expressed to extend thereto, or unless applied to the Territory by Ordinance made by the Governor-General under this Act.

Ordinances.

14.—(1.) Until the Parliament makes other provision for the Government of the Territory, the Governor-General may make Ordinances having the force of law in the Territory.

(2.) Every such Ordinance shall—

(*a*) be notified in the *Gazette*;

(*b*) take effect from the date of notification, or from a later date to be specified in the Ordinance; and

(*c*) be laid before both Houses of the Parliament within fourteen days of the making thereof, or, if the Parliament is not then sitting, within fourteen days after the next meeting of the Parliament.

(3.) If either House of the Parliament passes a resolution, of which notice has been given at any time within fifteen sitting days after any such Ordinance has been laid before the House, disallowing the Ordinance, the Ordinance shall thereupon cease to have effect.

GUARANTEES.

GUARANTEES.

Guarantees.

15.—(1.) The slave trade is prohibited in the Territory.

(2.) No forced labour shall be permitted in the Territory.

(3.) The traffic in arms and ammunition shall be controlled in the Territory in accordance with the principles contained in the Convention signed at Brussels on the second day of July, 1890, and known as the General Act of the Brussels Conference, or any Convention amending the same.

(4.) The supply of intoxicating spirits and beverages to the natives of the Territory is prohibited.

(5.) The military training of the natives of the Territory, otherwise than for purposes of internal police and the local defence of the Territory, is prohibited.

(6.) No military or naval base shall be established or fortifications erected in the Territory.

(7.) Freedom of conscience, and subject to the provisions of any Ordinance for the maintenance of public order and morals, the free exercise of all forms of worship, shall be allowed in the Territory.

REPORT TO LEAGUE OF NATIONS.

Report to Council of League.

16. The Governor-General shall make an annual report to the Council of the League of Nations containing full information as to the measures taken to carry out the requirements of the last preceding section, and as to the well-being and progress of the native inhabitants of the Territory.

THE SCHEDULE.

FORM OF OATH OR AFFIRMATION.

I, *A.B.*, do swear that I will well and truly serve our Sovereign Lord the King in the office of Administrator of the Territory of New Guinea, and I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God.

Or,

I, *A.B.*, do solemnly and sincerely promise and declare that I will well and truly serve our Sovereign Lord the King in the office of Administrator of the Territory of New Guinea, and I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to make provision for the Acceptance of a Mandate for the Government of certain Territories and Islands in the Pacific Ocean, and to make immediate provision for the Civil Government of the said Territories and Islands, and for other purposes," which has been passed by the Senate and the House of Representatives, and that the said Bill originated in the House of Representatives.

Walter A. Gale,

Clerk of the House of Representatives.

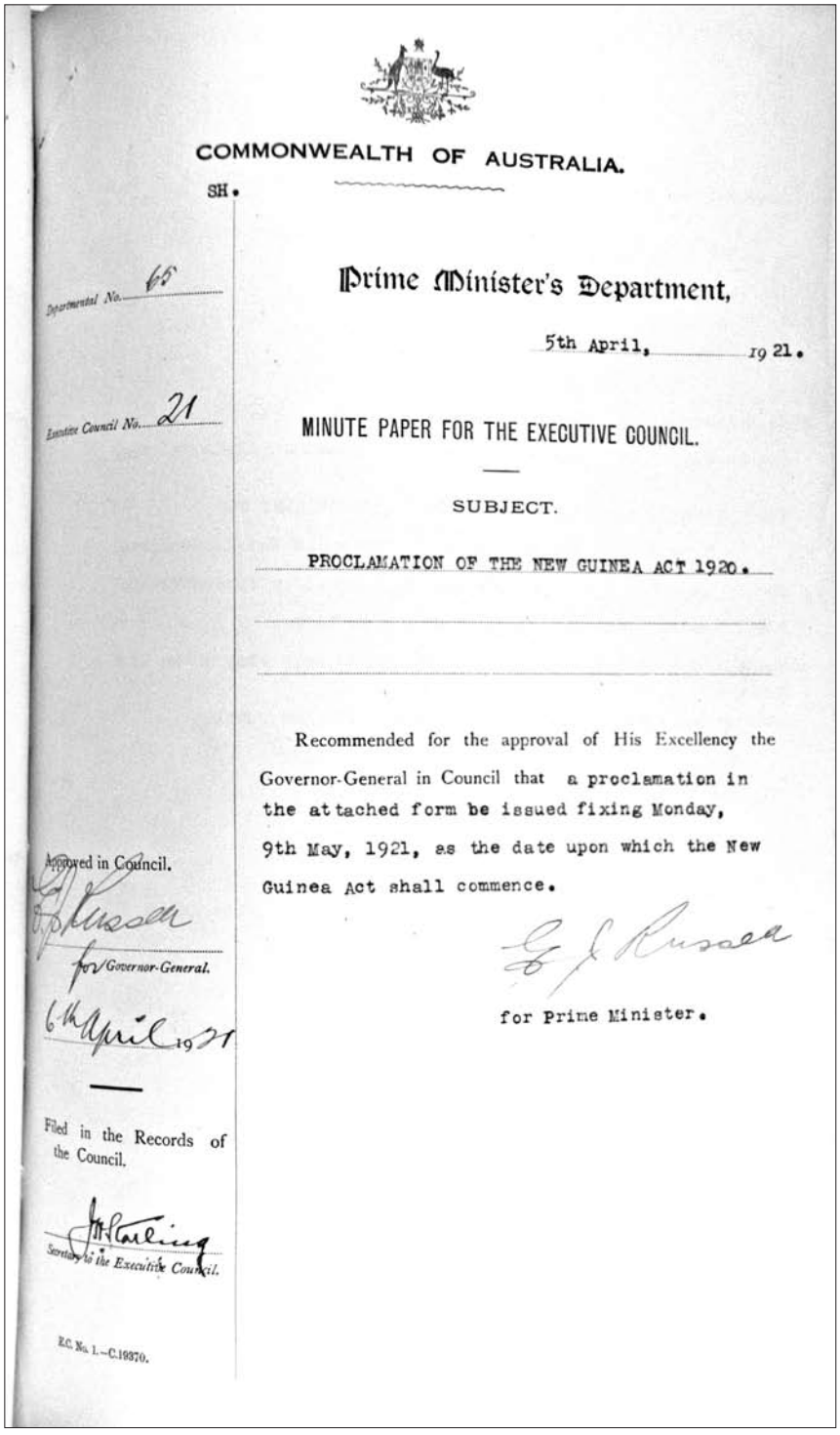
In the name and on behalf of His Majesty, I assent to this Act.

W. R. Ironside

Deputy of the Governor-General.

30th September 1920

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by ALBERT J. MULLETT, Government Printer for the State of Victoria.



COMMONWEALTH OF AUSTRALIA.

SH.

Departmental No. 65

Executive Council No. 21

Prime Minister's Department,

5th April, 1921.

MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

SUBJECT.

PROCLAMATION OF THE NEW GUINEA ACT 1920.

Recommended for the approval of His Excellency the Governor-General in Council that a proclamation in the attached form be issued fixing Monday, 9th May, 1921, as the date upon which the New Guinea Act shall commence.

for Prime Minister.

Approved in Council.

for Governor-General.

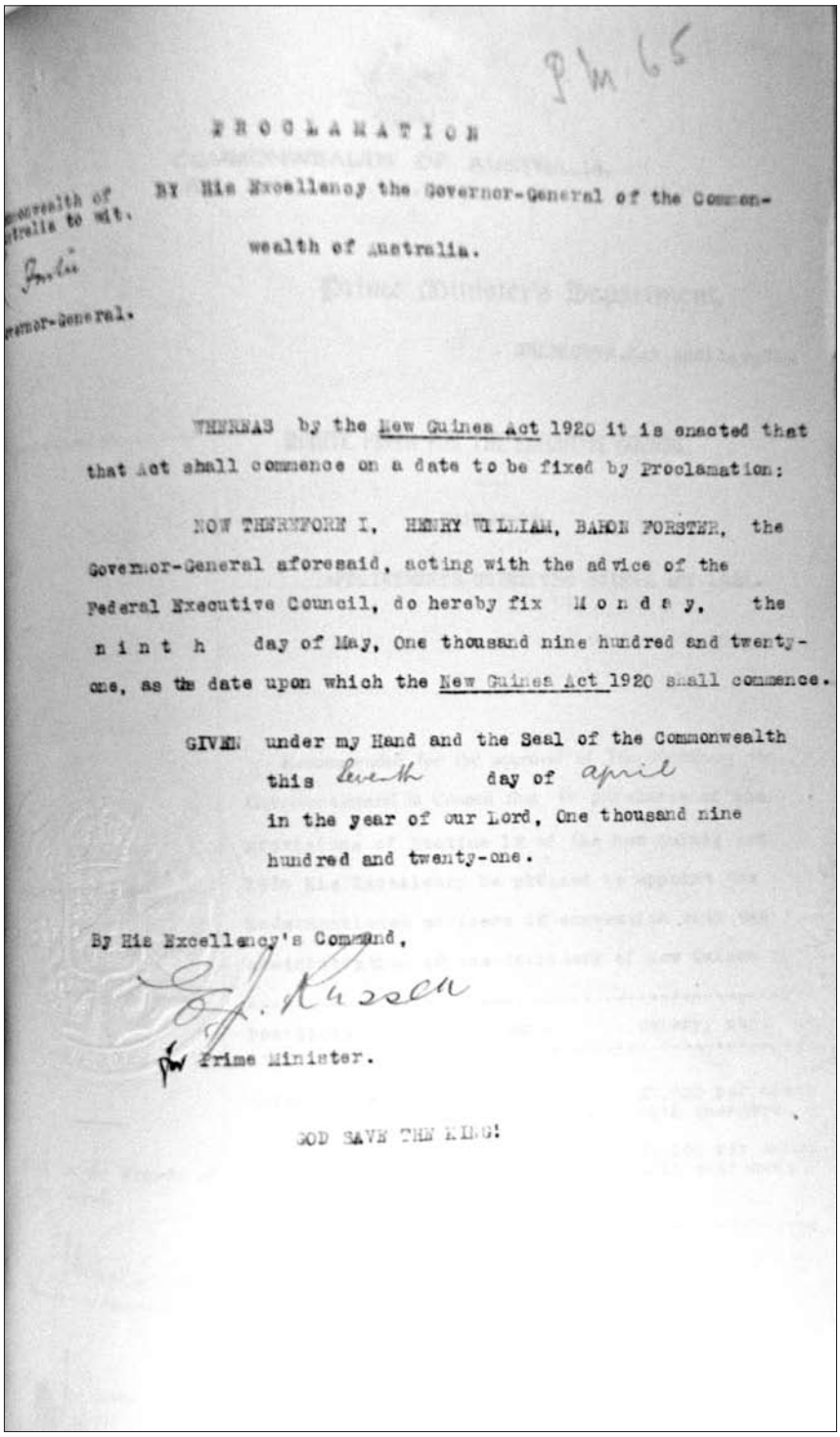
6th April 1921

Filed in the Records of the Council.

Secretary to the Executive Council.

E.C. No. 1.—C.19370.

Executive Council Minute No. 21, 5 April, 1921.
NAA: A1573, 1921/16



PROCLAMATION

BY His Excellency the Governor-General of the Commonwealth of Australia.

WHEREAS by the New Guinea Act 1920 it is enacted that that Act shall commence on a date to be fixed by Proclamation:

NOW THEREFORE I, HENRY WILLIAM, BARON FORSTER, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, do hereby fix Monday, the ninth day of May, One thousand nine hundred and twenty-one, as the date upon which the New Guinea Act 1920 shall commence.

GIVEN under my Hand and the Seal of the Commonwealth this seventh day of april in the year of our Lord, One thousand nine hundred and twenty-one.

By His Excellency's Command,

Prime Minister.

GOD SAVE THE KING!

New Guinea Act 1920 Proclamation, 7 April, 1921.
NAA: A1573, 1921/16

Copy of Commonwealth Parliamentary Paper **No. 101**. 1920 – 21.
Presented by Command, 7th April; ordered to be printed, 22nd April, 1921.

LEAGUE OF NATIONS.

MANDATE FOR THE GERMAN POSSESSIONS IN THE PACIFIC OCEAN SITUATED SOUTH OF THE EQUATOR OTHER THAN GERMAN SAMOA AND NAURU.

THE COUNCIL OF THE LEAGUE OF NATIONS:

Whereas, by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28th, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her oversea possessions, including therein German New Guinea and the groups of islands in the Pacific Ocean lying south of the Equator other than German Samoa and Nauru; and

Whereas the Principal Allied and Associated Powers agreed that in accordance with Article 22, Part I. (Covenant of the League of Nations) of the said Treaty, a mandate should be conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Commonwealth of Australia to administer New Guinea and the said islands, and have proposed that the mandate should be formulated in the following terms; and

Whereas His Britannic Majesty, for and on behalf of the Government of the Commonwealth of Australia, has agreed to accept the Mandate in respect of the said territory and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions; and

Whereas, by the afore-mentioned Article 22, paragraph 8, it is provided that the degree of authority, control or administration to be exercised by the Mandatory not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations,

Confirming the said Mandate, defines its terms as follows:-

ARTICLE 1.

The territory over which a mandate is conferred upon His Britannic Majesty for and on behalf of the Government of the Commonwealth of Australia (hereinafter called the Mandatory) comprises the former German Colony of New Guinea and the former German islands situated in the Pacific Ocean and lying south of the Equator, other than the islands of the Samoan group and the island of Nauru.

ARTICLE 2.

The Mandatory shall have full power of administration and legislation over the territory subject to the present mandate as an integral portion of the Commonwealth of Australia, and may apply the laws of the Commonwealth of Australia to the territory, subject to such local modifications as circumstances may require.

pp. 92–93 League of Nations Mandate for New Guinea, 17 December, 1920. (copytype)
Commonwealth Parliamentary Paper
No.101, 22 April,1921

The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present mandate.

ARTICLE 3.

The Mandatory shall see that the slave trade is prohibited, and that no forced labour is permitted, except for essential public works and services, and then only for adequate remuneration.

The Mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the Convention relating to the control of the arms traffic, signed on September 10th, 1919, or in any convention amending the same.

The supply of intoxicating spirits and beverages to the natives shall be prohibited.

ARTICLE 4.

The military training of the natives, otherwise than for the purposes of internal police and the local defence of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory.

ARTICLE 5.

Subject to the provisions of any local law for the maintenance of public order and public morals, the Mandatory shall ensure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any State Member of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling.

ARTICLE 6.

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under Articles 2, 3, 4, and 5.

ARTICLE 7.

The consent of the Council of the League of Nations is required for any modification of the terms of the present mandate.

The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

The present Declaration shall be deposited in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Powers Signatories of the Treaty of Peace with Germany.

Made at Geneva the 17th day of December, 1920.

GETTING TOGETHER

Australia's successful assumption of the mandate for former German New Guinea raised questions about the amalgamation of the mandated territory with the Territory of Papua.

However, amalgamation would not occur for some 20 years, and only then as a result of external events.

CHAPTER FIVE

Papua and New Guinea—delineation and amalgamation

> Facies non omnibus una Nec diversa tamen, qualem decet esse sororum.—Let us then remain as sisters; do not force us into any closer union against our will.
>
> —Sir Hubert Murray, Lieutenant Governor of Papua*[1]

On 16 September 1975, Papua New Guinea became an independent nation, a member of the Commonwealth and, within a week, a member of the United Nations. Since the end of World War II, Papua and New Guinea had been administered as a unified entity, although Australia had reported separately to the United Nations on its trusteeship responsibilities for New Guinea.

BOUNDARIES

When Australia acquired British New Guinea under the Papua Act in 1906, the boundary of the territory was still in question.

The border between British New Guinea and German New Guinea had been established in April 1886 when both countries defined their spheres of influence and claimed their possessions. It was that border that Australia inherited when it acquired Papua.

On 7 May 1908, Prime Minister Alfred Deakin was asked in the Commonwealth Parliament whether he was aware that 'efforts [were] apparently being made by the German Government to vary the boundary between German New Guinea and Papua' and whether the government had 'taken steps to preserve the interests of our own territory'. Deakin replied that the determination of the boundary had been before his government from time to time and that it had taken steps to see whether the local German government could be given authority to confer with the Government of Papua

* Sir Hubert was quoting Ovid's *Metamorphoses*: 'They have not all the same appearance, nor are they altogether different; as it should be with sisters.'

about the making of the boundary. However, no proposals had been submitted thus far.[2] On 22 May 1908, it was revealed in parliament that the boundary dispute involved British gold miners working on the borderland of Papua. According to the Prime Minister, the miners knew that the area they were working in belonged to Germany. He reiterated that Australia was trying to get the local German authorities to meet with the Australian representatives and arrange for the definite marking of the line of territorial division.[3]

The boundary issue involved a river system at the 8° South parallel of latitude, the mouth of which lay in German territory but which flowed for the most part through British territory. In 1898, Administrator MacGregor had suggested a middle-of-the-river boundary change for much of the system's length or, in response to a suggestion by the German side, agreement to free navigation by the merchant flags of both powers. However, negotiations were never completed and the matter remained in abeyance. The issue of gold dredging rights in the early 1900s brought the question into focus again.

The reopening of the river boundary matter gave rise to some interesting new developments. The British Government (which at that time conducted Australia's international affairs on its behalf) pointed out that a number of other rivers ran from British territory into German territory or vice versa. Perhaps an agreement should be reached whereby there would be mutually free navigation of all such rivers, or at least of those whose navigable courses extended into both territories. This latter alternative neatly limited the problem to the two rivers making up the system in dispute.

The German Government's view was that a mixed boundary expedition should be established to look at the boundary along the 8° South parallel (which was the international boundary) and west to longitude 147° East. Britain and Australia agreed to this proposal in August 1908; the details of the arrangements to be made were to be left to the governments of Papua and German New Guinea.

The Anglo-German Boundary Commission started work in early 1909. At the conclusion of its work, the boundary at 8° South was retained. There was little further gold mining in that area, as more profitable fields were discovered elsewhere.

The island's other international boundary, between Dutch New Guinea and the rest of the island, became an issue in the 1930s. It was first negotiated for Papua between the Netherlands and the United Kingdom in 1896, but was surveyed for exactitude in the 1930s at the request of the Netherlands. Minor discrepancies were settled and demarcated accordingly at the earlier agreed 141° East meridian. An exchange of notes between Australia and the Netherlands, signed in London on 14 September 1936, constituted agreement between both countries on the boundaries of their territories.

AMALGAMATION

The question of the amalgamation of the administration of Papua with that of a possible Australian territory of New Guinea was raised by Atlee Hunt, Secretary of the Department of External Affairs, almost immediately after the German surrender in New Britain in September 1914. The territories were contiguous and Australia felt that it was likely eventually to be given responsibility for New Guinea, in some form or other, assuming a satisfactory outcome to the war. The idea of a possible merger continued to surface from time to time at both administrative and political levels during the military occupation of German New Guinea, which lasted until 1921, and beyond.

During the war, the prevailing view was that a merger could not occur while New Guinea was under military occupation and Papua under civil administration. The idea of merger was still alive as the war drew to an end, the need for settlement of former German territories began to take international prominence, and the outline of a League of Nations took shape.

On 24 February 1919, Sir Hubert Murray, Lieutenant Governor of Papua, restated his earlier view about amalgamation of Papua and the former German territories, saying that on the conclusion of peace such amalgamation should take place immediately, even pending the issue of a mandate, if a mandate were to be adopted for German New Guinea. The Lieutenant Governor also said that if the territories were to be combined he should be appointed to administer both, and that if German New Guinea were to be administered separately he should be offered his choice of the two.[4]

However, external events shaped domestic considerations. Whether Australia would have wished to amalgamate the administrations or not, the League of Nations mandate for New Guinea meant that Australia had been given very specific responsibilities for its new territory, and those responsibilities were different from those for Papua. Although they were both territories, they had separate statuses, and the eyes of the world would be on Australia's performance under the terms of the mandate. Thus, at least initially, it was simpler (and probably necessary) to establish a separate civil administration for New Guinea to enable more clearly defined management of Australia's responsibilities, and this was done under the *New Guinea Act 1920*. It was early days. Perhaps when Australia had developed confidence in the discharge of its mandatory requirements, and the League of Nations was at ease with Australia's track record, an administrative merger could be reconsidered.

In the 1930s the matter of amalgamation again came to the forefront. Discussions and considerations about the possible amalgamation of some or all of the administrative machinery would take up most of the decade, but by that time both administrations were settled and thriving and there appeared to be little incentive to amalgamate.[5] However, 'consideration' was being given to the matter.[6] While some were in favour,

a number of vested interests in both territories were against altering the current position.[7]

At the same time, there was talk of an Australian Territorial Corps for service in all Australian territories.[8] The government was also considering this matter. The Secretary of the Prime Minister's Department, John Gilbert McLaren, wrote to Lieutenant Governor Murray on 29 June 1932 indicating that the Prime Minister was looking to secure a greater measure of cooperation and coordination between the administrations of the territories of the Commonwealth. He pointed out that no scheme for the amalgamation of Papua and New Guinea was then in contemplation. The letter sought Murray's views on a 'Territorial Staff, somewhat on the lines of the British Colonial Service'. Murray was not impressed.[9]

Press comments about merger were not favourable. Under headlines such as 'New Guinea and Papua display panic at the thought of becoming bedfellows' and 'The twin sisters spit at each other', comments were made that amalgamation of the administrations was 'palpably absurd' and 'quite impracticable'.[10]

Murray wrote in October 1932, offering his 'final opinion' on the questions of federation or amalgamation of Papua and New Guinea and a common service. In short, amalgamation, which offered the advantages of economy and eventually increased efficiency, would probably be opposed by the Mandate Commission. Federation did not offer any advantages, and a common service was impracticable. In any event, no action should be taken 'unless with the consent of the European residents of both territories', the majority of whom would quite possibly 'object very strongly to anything of the kind'.[11]

In 1933, a correspondent to the *Pacific Islands Monthly* suggested that the form of the mandate under which Australia was assigned responsibility for the former German New Guinea appeared to consider administrative union as a distinct possibility. He wrote that territories covered by a 'Class C' mandate (as was New Guinea):

> were to be administered under the laws of the Mandatory as an integral part of its territory. These conditions seem indistinguishable from annexation. So far nothing has appeared which would prevent Australia uniting for administrative purposes former German New Guinea with one of her own territories. As a matter of fact our Mandate appears to consider union as a distinct possibility. Article 2 of the Mandate given to Australia reads, 'The Mandatory shall have full power of administration and legislation over the territory, subject to the present Mandate, as an integral portion of the Commonwealth of Australia, and may apply the laws of the Commonwealth of Australia to the territory, subject to such local modifications as circumstances may require'.

The correspondent further pointed out that 'Papua, although not strictly an integral part of the Commonwealth, is one of our territories and is contiguous to the

Territory of New Guinea. It is well to note that contiguity was specially considered when the Mandates were classified.'[12]

On 19 February 1934, the Administrator of New Guinea, Brigadier-General Thomas Griffiths, sent the text of motions agreed to in the Legislative Council on 13 February, one of which stated that amalgamation or federation was not in the best interests of the territory.[13]

Again, as the grant of the mandate had shaped the early administrative arrangements for New Guinea, an external event influenced the policy. In May 1937, serious volcanic activity in Rabaul, the administrative capital of New Guinea, forced the government's hand; it would have to relocate its administration.[14] But where should a new capital be situated? As well, there were growing defence concerns.

On 25 November 1938, the Minister for External Territories, Eric John Harrison (Member for Wentworth), was asked in Parliament whether Australia could annex New Guinea. He replied that:

> … the mandatory has full power of administration and legislation over the territory as an integral portion of the Commonwealth. The consent of the Council of the League is a condition precedent to any modification of the terms of the mandate. The annexation by any mandatory power of mandated territory by unilateral action would, however, be regarded as a breach of trust and of the conditions under which the mandate is held.[15]

In December 1938, serious moves to consider amalgamation were reported, along with speculation as to the likely site for a new combined administrative capital—possibly inland to meet defence needs.[16] The federal government established a committee to examine all the issues involved in these matters. Papua and New Guinea at both the business and administrative levels were generally still not happy about possible amalgamation, and a press report from Germany described the move as 'swindling with [*sic*] former German protectorate'.[17]

On 9 May 1939, the Minister without Portfolio administering External Territories, John Arthur Perkins (Member for Eden-Monaro), in response to a question on notice in the House of Representatives, answered that the committee set up to inquire into the possibilities of the administrative amalgamation had also been asked to investigate the possibility of having one chief administrative centre. If the committee were to recommend no change in administration, it was nevertheless asked to recommend a new site for the administrative headquarters of New Guinea.[18]

The committee's report was tabled in the parliament on 12 September 1939.[19] The report rejected amalgamation because of different laws, methods and conditions of administration, financial conditions, and the impossibility of reconciling the mandate conditions with those governing Papua. The committee felt that the town of Lae had the strongest claims as the site for a new administrative headquarters.[20]

Again, however, an external event had intervened, this time to put the matter off the immediate agenda and, eventually, beyond argument. World War II had begun on 3 September 1939, when the United Kingdom, and therefore Australia, declared war on Germany.†

New Guinea continued to be administered under the League of Nations mandate, until its invasion by Japan in December 1941 led to a state of war between Australia and Japan and the suspension of civil administration in the mandated territory. The Australian New Guinea Administrative Unit (ANGAU), with headquarters in Port Moresby, was established on 10 April 1942 to maintain whatever degree of administrative control was possible in New Guinea in the circumstances. Papua continued to be administered under the provisions of the Papua Act until that territory was invaded by Japan later in 1942. Its previously separate civil administration was then also suspended and combined with that of New Guinea's under ANGAU control.

Towards the end of World War II, a combined civil administration throughout both territories was gradually established under the *Papua-New Guinea Provisional Administration Act 1945*, passed and proclaimed shortly before the partial resumption of civil government in October 1945.[21] Full combined civil administration for the joint territory occurred from 24 June 1946.

Australia entered the postwar period with a settled, clearly delineated, unified territory to its north. It was thus in a good position to put its case to the newly formed United Nations that a customs, fiscal or administrative union or federation with other dependent territories under its jurisdiction or control, with common services, was appropriate for its mandated territory.

On 13 December 1946, the General Assembly of the United Nations approved a trusteeship agreement for New Guinea under Article 75 of its 26 June 1945 Charter. The agreement removed the United Kingdom from any responsibility for New Guinea. Australia was made the sole administering authority for what was now the trust territory. By Article 4, Australia 'had the same powers of legislation, administration and jurisdiction in and over the territory as if it were an integral portion of Australia'. Article 5 permitted 'a customs, fiscal or administrative union with other dependent territories'.[22]

Despite a call for a referendum about separate or combined administration[23], in November 1947 Australia sought to exercise its power in regard to Papua by transforming the provisional administration of the two territories into a permanent one. The proposal was carefully reviewed in the Trusteeship Council and treated with some hostility. The council said that such a union as proposed 'must remain

† While Australia still considered itself an indissoluble part of the British Empire in the declaration of war with Germany, two years later it declared war on Japan separately from the United Kingdom's declaration of war.

strictly administrative in scope, and that its operation must not obstruct the separate development of the Trust Territory'.

The Papua and New Guinea Bill 1948, designed to give effect to the union, had been introduced into the Australian Parliament. Following concerns expressed by the Trusteeship Council after scutiny of the Bill, the Australian representative gave definite assurances that any action to implement an administrative union under Article 5 would not involve the loss by New Guinea of its identity as a separate territory administered under the provisions of the international trusteeship system.[24] The Bill was then amended and passed.

The *Papua and New Guinea Act 1949* set out that 'the identity and status of the Territory of Papua as a Possession of the Crown and the identity and status of the Territory of New Guinea as a Trust Territory shall continue to be maintained'. The Act, which was proclaimed to come into operation on 1 July 1949, thus recognised the trusteeship and confirmed the government of New Guinea in an administrative union with Papua. The proclamation was notified in Commonwealth of Australia Gazette No. 48 of 30 June 1949.

From then until independence in 1975, both territories continued to be administered by Australia from Port Moresby as one entity.

NOTES

1 Letter to Minister for Territories, 2 December 1938, A5187 A800/1/1 Part 1A.
2 CPD, HR, Vol. XLVI, 7 May 1908, p. 10965.
3 ibid., 22 May 1908, p. 11385.
4 Letter from Murray to Minister for External Affairs, 24 February 1919, NAA: A518, M826/1/3.
5 See *Pacific Islands Monthly*, 22 June 1934, p. 48.
6 CPD, HR, Vol. 134, 28 April 1932, p. 73.
7 See, for example, Returned Sailors and Soldiers' Imperial League of Australia (RSSILA), motion of 20 May 1932 in letter of 16 June 1932, NAA: A518, A800/1/1/ PART 1A.
8 Press reports, April–May 1932: *Argus*; *Rabaul Times*; *Sydney Morning Herald*; *Pacific Islands Monthly*; *Papuan Courier*.
9 Letters from Secretary, Prime Minister's Department, to Lt. Governor of Papua, 29 June 1932, and Murray's responses on 4 and 11 July 1932, NAA: A518, A800/1/1 PART 1A.
10 *Pacific Islands Monthly*, 23 June 1932, p. 4, and 16 March 1934, NAA: A518, A800/1/1/ PART 1A.
11 Letter from Murray to the Prime Minister, 3 October 1932, NAA: A518, A800/1/1 PART 1A.
12 *Pacific Islands Monthly*, 24 April 1933, p. 17.
13 Letter from Administrator of New Guinea to Prime Minister's Department, 19 February 1934, NAA: A518, A800/1/1 PART 1A.
14 Governor-General's Opening Speech, CPD, Senate, Vol. 155, 30 November 1937, p. 8.
15 CPD, HR, Vol. 158, 25 November 1938, p. 2162.

16 *Pacific Islands Monthly*, 15 December 1938, p. 9.

17 *Pacific Islands Monthly*, 15 February 1936, pp. 6–7, and 15 August 1939, p. 4; Letter from Prime Minister's Department to Public Service Association of Papua, 20 February 1939, NAA: A518, A800/1/1 PART 1A.

18 CPD, HR, Vol. 159, 9 May 1939 p. 245.

19 CPD, HR, Vol. 161, 12 September 1939 p. 388.

20 *Pacific Islands Monthly*, 15 September 1939, p. 5.

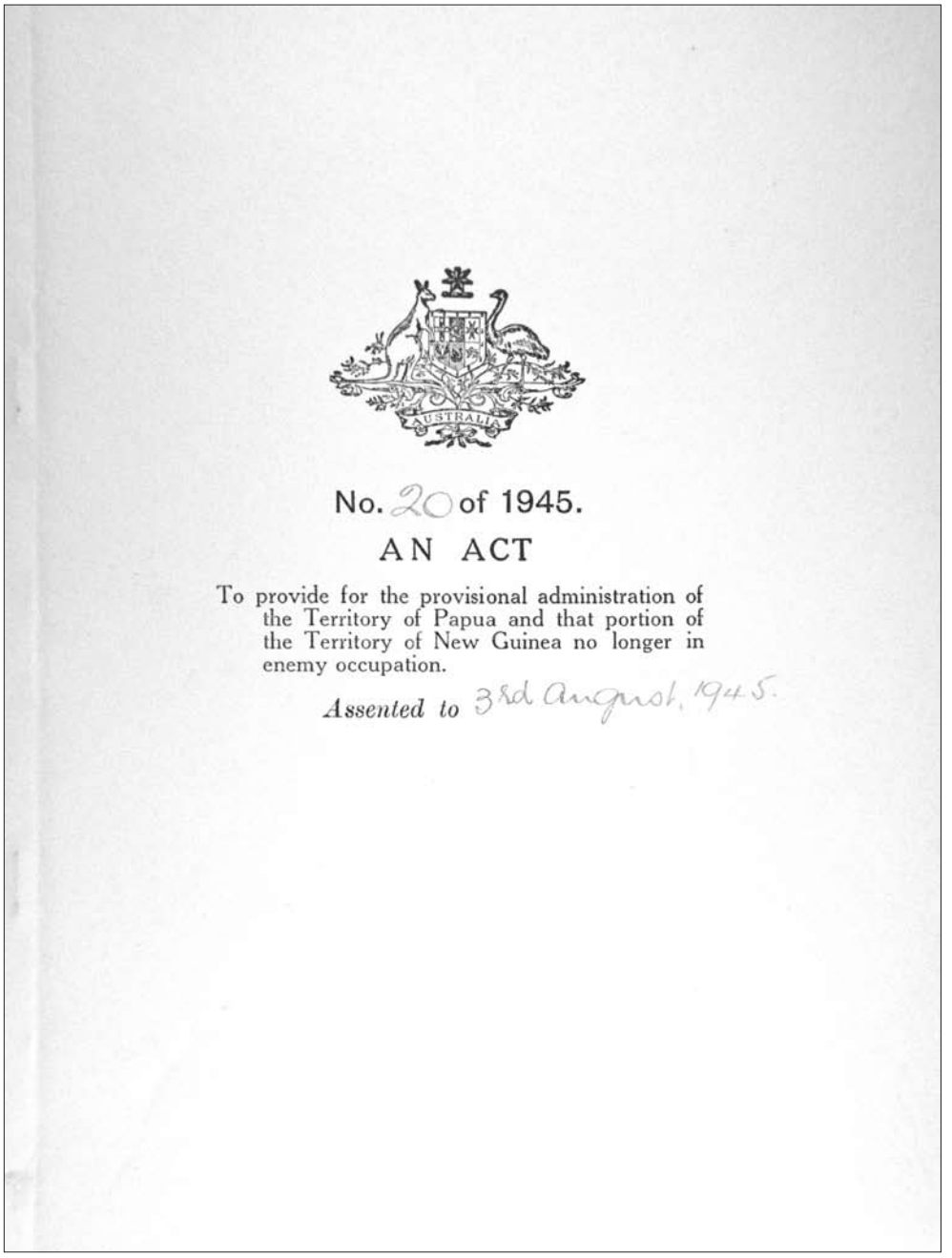
21 Commonwealth of Australia Gazette No. 207, 25 October 1945.

22 United Nations Trusteeship Agreement for New Guinea.

23 Public Service Association of Papua and RSSILA concerns—letter to Prime Minister, 1 October 1946. NAA: A518, AF800/1/3.

24 WJ Hudson, *Australia and the colonial question*, East West Center Press, Honolulu, 1970, pp. 85–88.

END PAPERS



No. 20 of 1945.

AN ACT

To provide for the provisional administration of the Territory of Papua and that portion of the Territory of New Guinea no longer in enemy occupation.

Assented to 3rd August, 1945.

pp. 103–106 Papua – New Guinea Provisional Administration Act No. 20 of 1945. (extract)
NAA: A1559, 1945/20

1945. No.

AN ACT

To provide for the provisional administration of the Territory of Papua and that portion of the Territory of New Guinea no longer in enemy occupation.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

1. This Act may be cited as the *Papua-New Guinea Provisional Administration Act* 1945. Short title.

2. This Act shall commence on a date to be fixed by proclamation. Commencement.

3. This Act shall apply to and in relation to the Territory of Papua and such portions of the Territory of New Guinea as from time to time cease to be areas to which the National Security (Emergency Control) Regulations apply, and the whole of the area to and in relation to which this Act from time to time applies shall be called the Territory of Papua-New Guinea. Application.

4. In this Act, unless the contrary intention appears— Definitions.

" officer " means officer appointed under this Act ;

" Ordinance " means Ordinance made under this Act ;

" the

"the Acting Administrator" means the person having, for the time being, under section twelve of this Act, all the powers and functions of the Administrator;

"the Administrator" means the Administrator appointed under this Act and includes the Acting Administrator;

"the *Gazette*" means the *Government Gazette* of the Territory and, during any period specified by the Minister by notice published in the *Commonwealth of Australia Gazette*, includes the *Commonwealth of Australia Gazette*;

"the Territory" means the Territory of Papua-New Guinea.

Suspension of certain provisions of the *Papua Act* 1905–1940 and the *New Guinea Act* 1920–1935.

5. The operation of sections ten to fifteen, sections seventeen and eighteen, sections twenty-two to forty-three, sections forty-six and forty-seven and section fifty of the *Papua Act* 1905–1940, and sections six to thirty-four of the *New Guinea Act* 1920–1935, is suspended, but nothing in this section shall affect the operation of any laws under any of those sections.

Amendment of Ordinances.

6. Subject to this Act, any Ordinance under the *Papua Act* 1905, or under that Act as subsequently amended, and any Ordinance under the *New Guinea Act* 1920, or under that Act, as subsequently amended, in force immediately prior to the date of commencement of this Act, may be amended or repealed by Ordinance under this Act.

Administrative powers under laws continued in force.

7.—(1.) Where, by or under any law in force in any part of the Territory at the date of commencement of this Act, any powers, functions or duties are conferred on, vested in, or required to be performed by, the Administrator or any authority (other than a court) or officer of the Territory of Papua or of the Territory of New Guinea, those powers, functions and duties shall, until otherwise provided by Ordinance, be deemed to be conferred on, vested in, or required to be performed by, the Administrator appointed under this Act or the authority or officer appointed in pursuance of section fifteen of this Act to have and exercise those powers or functions or to perform those duties, as the case requires.

(2.) Any reference, in any law in force in any part of the Territory at the date of commencement of this Act, to the Administrator or an authority (other than a court) or officer of the Territory of Papua or of the Territory of New Guinea shall, in relation to anything done or to be done after the commencement of this Act and until otherwise provided by Ordinance, be read as a reference to the Administrator appointed under this Act or the authority or officer appointed in pursuance of section fifteen of this Act to have and exercise the powers or functions, or to perform the duties, in relation to which the reference occurs.

Legislative power.

8.—(1.) Subject to this Act, the Governor-General shall have power to make Ordinances for the peace, order and good government of the Territory.

(2.) Every

(10.) It may be provided by Ordinance that an appeal to the High Court may be by case stated with the legal argument, if any, attached to the case in writing, and that it shall not be necessary in any such case for the parties to appear either personally or by counsel.

(11.) Nothing in this section shall affect any right of appeal existing immediately before the commencement of this Act from any judgment, decree, order or sentence of any Court or Judge or create any right of appeal which would not exist apart from this section.

(12.) Every barrister and solicitor of the Supreme Court of the Territory of Papua or of the Territory of New Guinea shall be deemed to be a barrister and solicitor of the Supreme Court of the Territory of Papua-New Guinea.

17. This Act shall continue in operation until a date to be fixed by proclamation, and no longer, but in any event not longer than six months after His Majesty ceases to be engaged in war. Duration of Act.

THE SCHEDULE.

Section 14.

OATH.

I, A.B., do swear that I will well and truly serve our Sovereign Lord the King in the office of Administrator (*or* Acting *or* Deputy Administrator) of the Territory of Papua-New Guinea, and 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 well and truly serve our Sovereign Lord the King in the office of Administrator (*or* Acting *or* Deputy Administrator) of the Territory of Papua-New Guinea, and I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to provide for the provisional administration of the Territory of Papua and that portion of the Territory of New Guinea no longer in enemy occupation", which has been passed by the Senate and the House of Representatives, and that the said Bill originated in the House of Representatives.

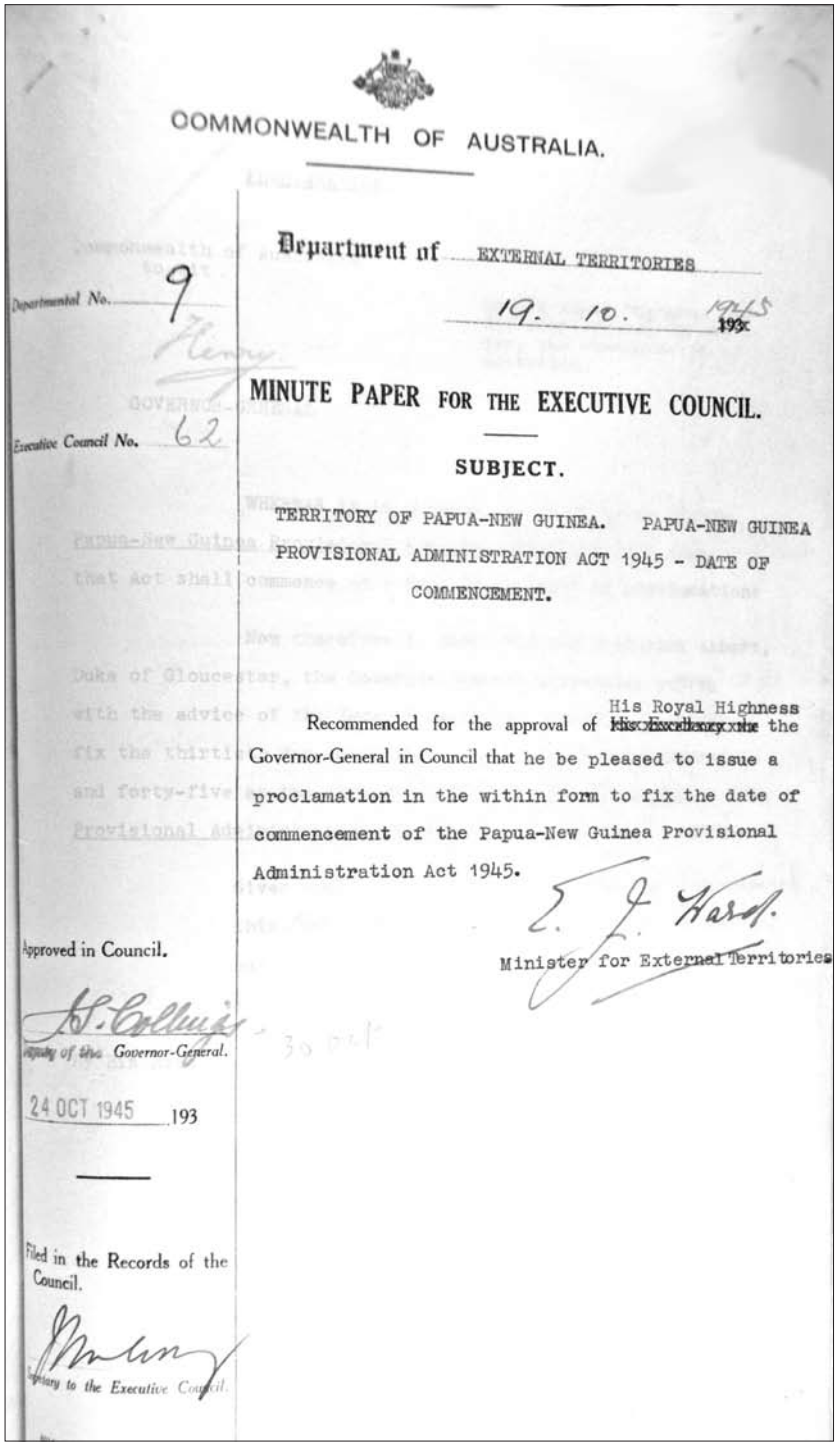
Clerk of the House of Representatives.

In the name and on behalf of His Majesty, I assent to this Act.

Governor-General.

3rd August, 1945.

By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.



COMMONWEALTH OF AUSTRALIA.

Department of EXTERNAL TERRITORIES

Departmental No. 9

19. 10. 1945 ~~193~~

MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

Executive Council No. 62

SUBJECT.

TERRITORY OF PAPUA-NEW GUINEA. PAPUA-NEW GUINEA PROVISIONAL ADMINISTRATION ACT 1945 - DATE OF COMMENCEMENT.

Recommended for the approval of ~~His Excellency~~ His Royal Highness the Governor-General in Council that he be pleased to issue a proclamation in the within form to fix the date of commencement of the Papua-New Guinea Provisional Administration Act 1945.

E. J. Ward.

Minister for External Territories

Approved in Council.

A. S. Collins

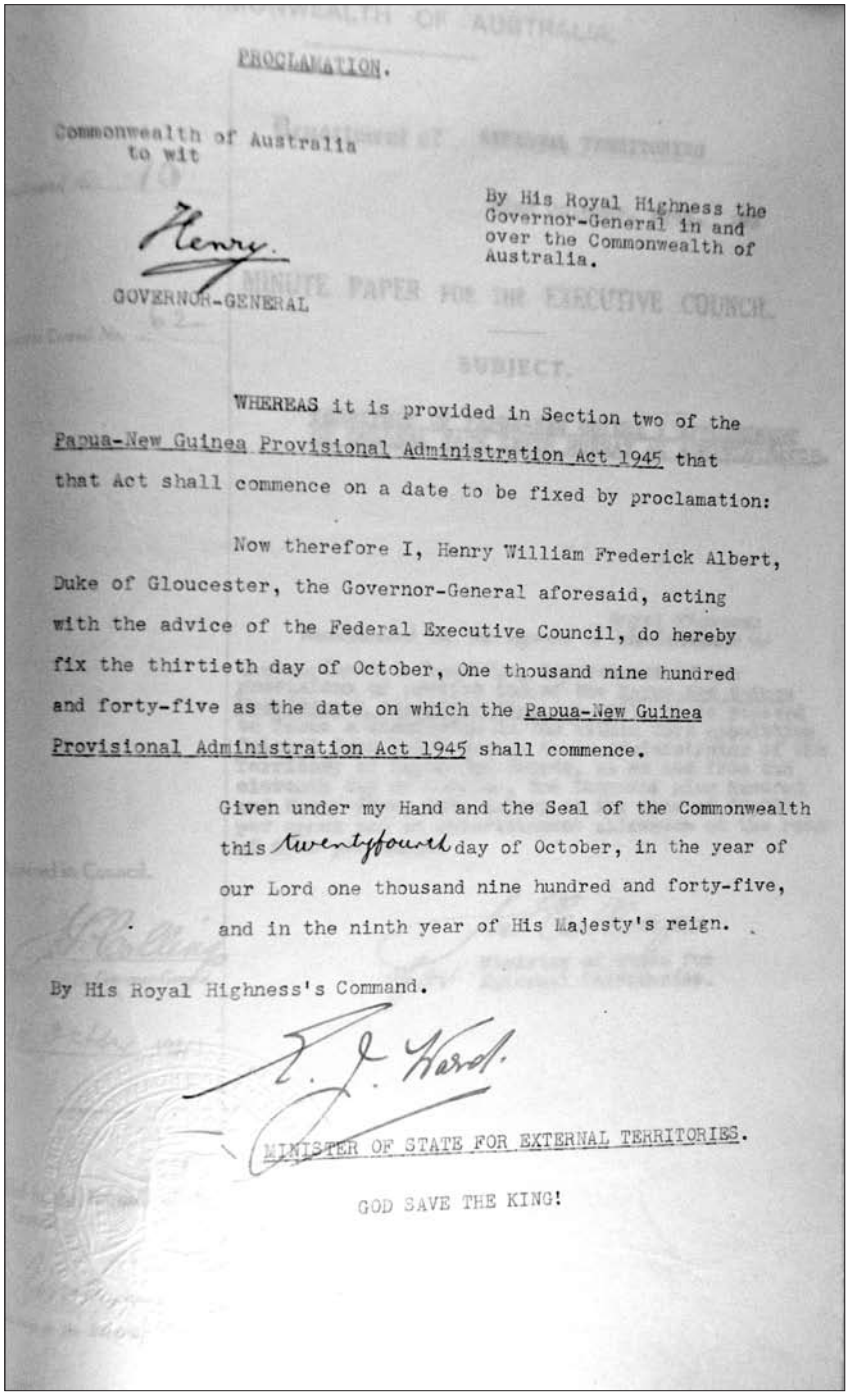
Deputy of the Governor-General.

24 OCT 1945 193

Filed in the Records of the Council.

Secretary to the Executive Council.

Executive Council Minute No. 62, 19 October, 1945.
NAA: A1573, 1945/11



PROCLAMATION.

Commonwealth of Australia
to wit

Henry.

GOVERNOR-GENERAL

By His Royal Highness the Governor-General in and over the Commonwealth of Australia.

WHEREAS it is provided in Section two of the Papua-New Guinea Provisional Administration Act 1945 that that Act shall commence on a date to be fixed by proclamation:

Now therefore I, Henry William Frederick Albert, Duke of Gloucester, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, do hereby fix the thirtieth day of October, One thousand nine hundred and forty-five as the date on which the Papua-New Guinea Provisional Administration Act 1945 shall commence.

Given under my Hand and the Seal of the Commonwealth this twenty-fourth day of October, in the year of our Lord one thousand nine hundred and forty-five, and in the ninth year of His Majesty's reign.

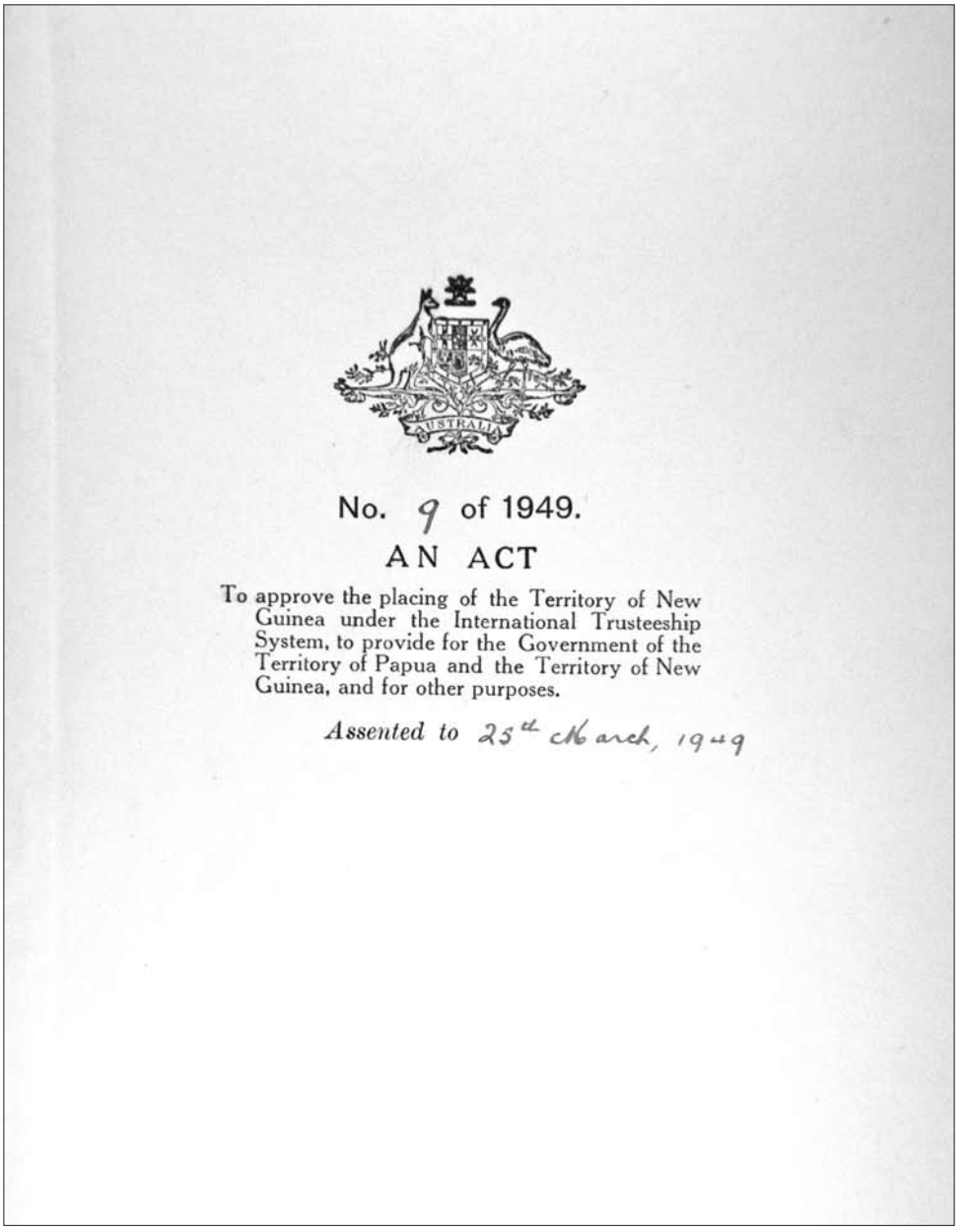
By His Royal Highness's Command.

L. J. Ward.

MINISTER OF STATE FOR EXTERNAL TERRITORIES.

GOD SAVE THE KING!

Papua – New Guinea Provisional Administration Act 1945 Proclamation, 24 October, 1945. NAA: A1573, 1945/11



No. 9 of 1949.

AN ACT

To approve the placing of the Territory of New Guinea under the International Trusteeship System, to provide for the Government of the Territory of Papua and the Territory of New Guinea, and for other purposes.

Assented to 25th March, 1949

pp. 109– 115 Papua and New Guinea Act No. 9 of 1949. (extract)
NAA: A1559, 1949/9

AN ACT

To approve the placing of the Territory of New Guinea under the International Trusteeship System, to provide for the Government of the Territory of Papua and the Territory of New Guinea, and for other purposes.

WHEREAS in accordance with the Covenant of the League of Nations a Mandate, in the terms of an instrument made on the seventeenth day of December, One thousand nine hundred and twenty, was conferred upon His Britannic Majesty for and on behalf of Australia under which Australia was empowered to administer certain territories and islands, being former German possessions, situated in the South Pacific Ocean: Preamble.

AND WHEREAS those territories and islands have, in accordance with that Mandate, been administered by Australia as a Territory under the authority of the Commonwealth, by the name of the Territory of New Guinea, and in accordance with the *New Guinea Act* 1920–1935:

AND WHEREAS the Territory of Papua has been administered by Australia in accordance with the *Papua Act* 1905–1940 as a Territory placed by His Majesty the King under the authority of the Commonwealth:

AND

AND WHEREAS, since the twelfth day of February, One thousand nine hundred and forty-two, the provisions for the administration of the Territory of Papua and the Territory of New Guinea have been temporarily affected by regulations under the *National Security Act* 1939–1946 and the *Defence (Transitional Provisions) Act* 1946–1948 and by the *Papua-New Guinea Provisional Administration Act* 1945–1946 :

AND WHEREAS, before the commencement of this Act, the Territory of Papua and the Territory of New Guinea were, for the time being, administered jointly in accordance with the *Papua-New Guinea Provisional Administration Act* 1945–1946 :

AND WHEREAS the League of Nations ceased to exist (except for the purpose of certain measures of liquidation) from the nineteenth day of April, One thousand nine hundred and forty-six :

AND WHEREAS Australia is a member of the United Nations and the Charter of the United Nations was approved by the *Charter of the United Nations Act* 1945 :

AND WHEREAS Chapter XI. of the Charter of the United Nations is applicable to Australia's administration of the Territory of Papua :

AND WHEREAS, in accordance with the provisions of Chapter XII. of the Charter of the United Nations, the General Assembly of the United Nations, on the thirteenth day of December, One thousand nine hundred and forty-six, approved the terms of a Trusteeship Agreement for the Territory of New Guinea, submitted to it by the Government of Australia for approval, in substitution for the terms of the Mandate, which agreement designates the Government of Australia as the sole authority to exercise the administration of the Territory of New Guinea :

AND WHEREAS Australia has undertaken to administer the Territory of New Guinea in accordance with the terms of the Trusteeship Agreement :

AND WHEREAS it is desirable that the Parliament should approve the placing of the Territory of New Guinea under the International Trusteeship System by means of, and upon the terms of trusteeship embodied in, the Trusteeship Agreement and should provide for the government of that Territory in accordance with the terms of the Trusteeship Agreement :

AND WHEREAS the Trusteeship Agreement recognizes that Australia has the same powers of legislation, administration and jurisdiction in and over the Territory of New Guinea as it would have if that Territory were an integral part of Australia, including power to bring that Territory into an administrative union with other dependent territories under its jurisdiction or control, if, in its opinion, it would be in the interests of that Territory and not inconsistent with the basic objectives of the trusteeship system to do so :

AND WHEREAS the Government of Australia is of opinion that it would be in the interests of the Territory of New Guinea, and not inconsistent with the basic objectives of the International Trusteeship System, to provide for the government of the Territory of Papua and

the

the Territory of New Guinea in an administrative union, whilst maintaining the identity and status of the Territory of New Guinea as a Trust Territory and the identity and status of the Territory of Papua as a Possession of the Crown:

BE it therefore enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Papua and New Guinea Act* 1949. **Short title.**

2. This Act shall, except to the extent to which a contrary intention appears, come into operation on a date to be fixed by Proclamation (which date shall, for the purposes of any provision of this Act referring to the commencement of this Act, be deemed to be the date of commencement of this Act). **Commencement.**

3. The Acts specified in the First Schedule to this Act are repealed. **Repeal.**

4. This Act is divided into Parts, as follows:— **Parts.**

Part I.—Preliminary (Sections 1–5).
Part II.—The Trusteeship Agreement for the Territory of New Guinea (Sections 6–7).
Part III.—Administrative Union of the Territory of Papua and the Territory of New Guinea (Sections 8–12).
Part IV.—Administration.
Division 1.—The Administrator (Sections 13–18).
Division 2.—The Executive Council (Sections 19–24).
Division 3.—Advisory Councils for Native Matters, and Native Village Councils (Sections 25–29).
Division 4.—The Public Service (Sections 30–31).
Part V.—Legislation.
Division 1.—Laws (Sections 32–34).
Division 2.—The Legislative Council (Sections 35–53).
Division 3.—Interim Legislative Powers of the Governor-General (Sections 54–57).
Part VI.—The Judicial System (Sections 58–64).
Part VII.—Welfare and Development (Section 65).
Part VIII.—The Australian School of Pacific Administration (Sections 66–70).
Part IX.—Miscellaneous (Sections 71–78).

5. In this Act, unless the contrary intention appears— **Definitions.**

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

"elector" means a person qualified and enrolled as an elector of the Territory in accordance with Ordinance;

"judge" means a judge of the Supreme Court and includes the Chief Judge and an acting judge;

"native"

"native" means an aboriginal inhabitant of the Territory, and includes a person who follows, adheres to or adopts the customs, or who lives after the manner, of the aboriginal inhabitants of the Territory;

"officer" or "officer of the Territory" means a person appointed to the Public Service under sub-section (2.) of section thirty of this Act;

"Ordinance" means an Ordinance made under, or continued in force by, this Act;

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

"the Administrator" means the Administrator of the Territory appointed under this Act and includes an Acting Administrator;

"the Executive Council" means the Executive Council for the Territory;

"the *Government Gazette*" means the *Territory of Papua and New Guinea Government Gazette*;

"the Legislative Council" means the Legislative Council for the Territory;

"the Public Service" means the Public Service of the Territory;

"the Supreme Court" means the Supreme Court of the Territory of Papua and New Guinea established by this Act;

"the Territory of New Guinea" means the Territory of New Guinea as described in the Second Schedule to this Act;

"the Territory of Papua" means the Territory of Papua as described in the Third Schedule to this Act;

"the Territory" means the Territory of Papua and New Guinea (being the Territory of Papua and the Territory of New Guinea together called by that name by virtue of section ten of this Act);

"the Trusteeship Agreement" means the Trusteeship Agreement for the Territory of New Guinea approved by the General Assembly of the United Nations on the thirteenth day of December, One thousand nine hundred and forty-six (a copy of which Agreement is set out in the Fourth Schedule to this Act).

PART II.—THE TRUSTEESHIP AGREEMENT FOR THE TERRITORY OF NEW GUINEA.

Approval of placing of New Guinea under International Trusteeship System.

6. Approval is given to the placing of the Territory of New Guinea under the International Trusteeship System by means of, and upon the terms of trusteeship embodied in, the Trusteeship Agreement.

Report to the General Assembly of the United Nations.

7. The Minister shall make to the General Assembly of the United Nations the annual report required by the Charter of the United Nations on the political, economic, social and educational advancement of the inhabitants of the Territory of New Guinea.

PART

PART III.—ADMINISTRATIVE UNION OF THE TERRITORY OF PAPUA AND THE TERRITORY OF NEW GUINEA.

Declaration respecting the Territory of Papua and the Territory of New Guinea.

8. It is hereby declared to be the intention of the Parliament that the Territory of Papua and the Territory of New Guinea shall continue to be Territories under the authority of the Commonwealth and the identity and status of the Territory of Papua as a Possession of the Crown and the identity and status of the Territory of New Guinea as a Trust Territory shall continue to be maintained.

Administrative union of the two Territories.

9. The Territory of Papua and the Territory of New Guinea shall be governed in an administrative union to the extent and in the manner provided by or in pursuance of this Act.

Name of Territories governed in administrative union.

10. For the purposes of this Act the Territory of Papua and the Territory of New Guinea shall be together called the Territory of Papua and New Guinea.

Amount to be expended in respect of the Territory of New Guinea.

11. There shall be expended in each year, upon the administration, welfare and development of the Territory of New Guinea, an amount which is not less than the total amount of public revenue raised in that year in respect of the Territory of New Guinea.

References to Territories in other laws.

12. A reference in any other law of the Commonwealth (whether made before or after the commencement of this Act) to a Territory of the Commonwealth, a Territory under the control of the Commonwealth or a Territory under the authority of the Commonwealth shall, unless the contrary intention appears, be deemed to include a reference to—

(*a*) the Territory of New Guinea;
(*b*) the Territory of Papua; and
(*c*) the Territory of Papua and New Guinea as administered under this Act.

PART IV.—ADMINISTRATION.

Division 1.—*The Administrator.*

Office of Administrator.

13. There shall be an Administrator of the Territory, who shall be charged with the duty of administering the government of the Territory on behalf of the Commonwealth.

Appointment of Administrator.

14. The Administrator shall be appointed by the Governor-General by Commission under the Seal of the Commonwealth and shall hold office during the pleasure of the Governor-General.

Functions of Administrator.

15. The Administrator shall exercise and perform all powers and functions that belong to his office in accordance with the tenor of his Commission and in accordance with such instructions as are given to him by the Governor-General.

16.—(1.) The

THE SCHEDULES—*continued.*

SIXTH SCHEDULE. Section 56.

OATH.

I, A.B., do swear that I will render true and faithful service as a member of the Legislative Council of the Territory of Papua and New Guinea. 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 Council of the Territory of Papua and New Guinea.

SEVENTH SCHEDULE. Section 59.

OATH.

I, A.B., do swear that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His heirs and successors according to law, that I will well and truly serve Him in the office of Chief Judge (*or* Judge *as the case may be*) of the Supreme Court of the Territory of Papua and New Guinea 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 His Majesty King George the Sixth, His heirs and successors according to law, that I will well and truly serve Him in the office of Chief Judge (*or* Judge *as the case may be*) of the Supreme Court of the Territory of Papua and New Guinea and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to approve the placing of the Territory of New Guinea under the International Trusteeship System, to provide for the Government of the Territory of Papua and the Territory of New Guinea, and for other purposes", which has been passed by the Senate and the House of Representatives, and that the said Bill originated in the House of Representatives.

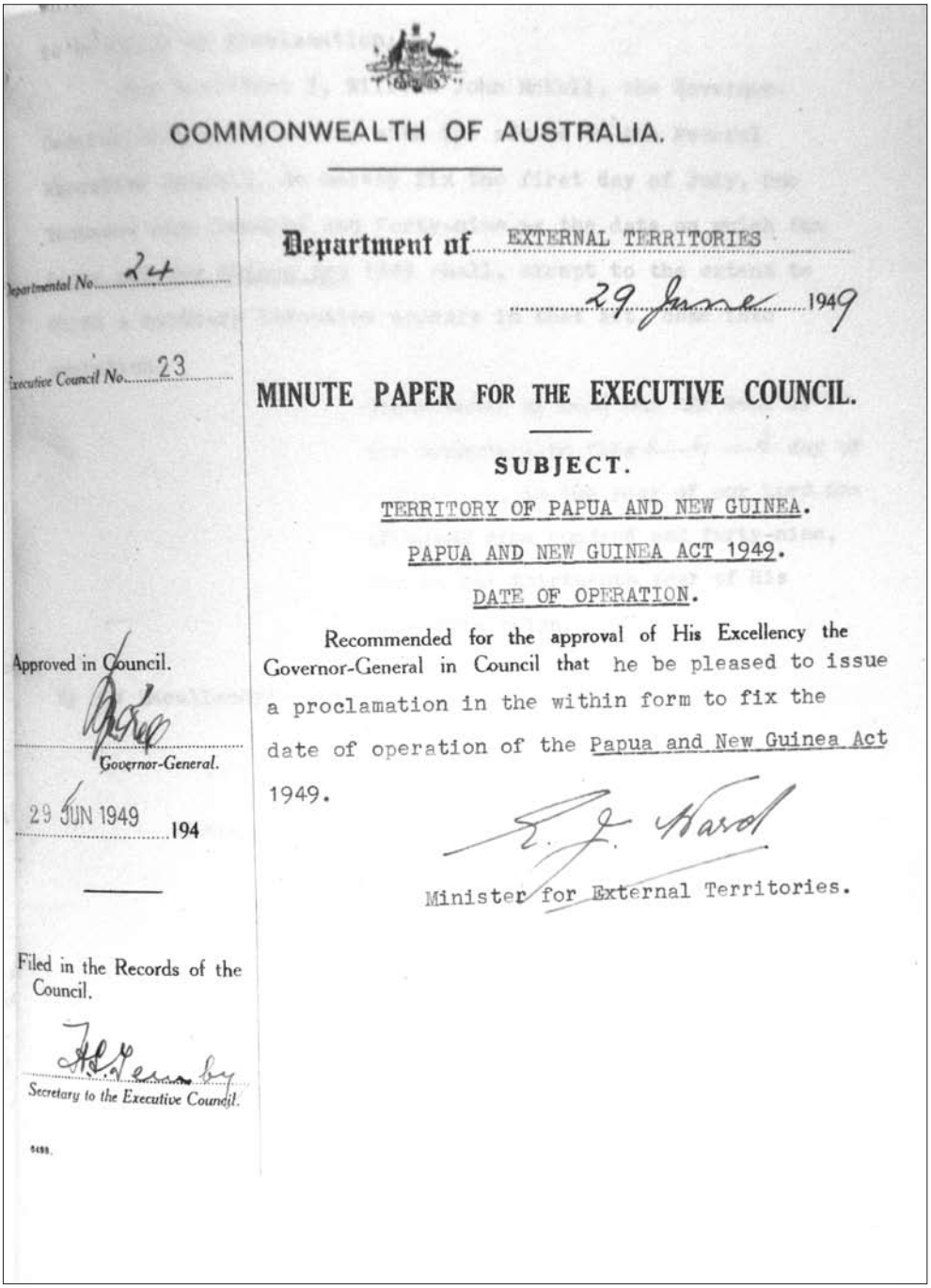
Clerk of the House of Representatives.

In the name and on behalf of His Majesty, I assent to this Act.

Governor-General.

25th March, 1949.

By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.



COMMONWEALTH OF AUSTRALIA.

Departmental No. 24

Executive Council No. 23

Department of EXTERNAL TERRITORIES

29 June 1949

MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

SUBJECT.

TERRITORY OF PAPUA AND NEW GUINEA.

PAPUA AND NEW GUINEA ACT 1949.

DATE OF OPERATION.

Recommended for the approval of His Excellency the Governor-General in Council that he be pleased to issue a proclamation in the within form to fix the date of operation of the Papua and New Guinea Act 1949.

E. J. Ward

Minister for External Territories.

Approved in Council.

Governor-General.

29 JUN 1949 194

Filed in the Records of the Council.

Secretary to the Executive Council.

Executive Council Minute No. 23, 29 June, 1949.
NAA: A1573, 1949/8

PROCLAMATION

Commonwealth of Australia to wit

By His Excellency the Governor-General in and over the Commonwealth of Australia.

Governor-General

WHEREAS it is provided in section two of the Papua and New Guinea Act 1949 that that Act shall, except to the extent to which a contrary intention appears, come into operation on a date to be fixed by Proclamation:

Now therefore I, William John McKell, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, do hereby fix the first day of July, One thousand nine hundred and forty-nine as the date on which the Papua and New Guinea Act 1949 shall, except to the extent to which a contrary intention appears in that Act, come into operation.

Given under my Hand and the Seal of the Commonwealth this twenty-ninth day of June, in the year of our Lord One thousand nine hundred and forty-nine, and in the thirteenth year of His Majesty's reign.

By His Excellency's Command.

Minister of State for External Territories.

GOD SAVE THE KING.

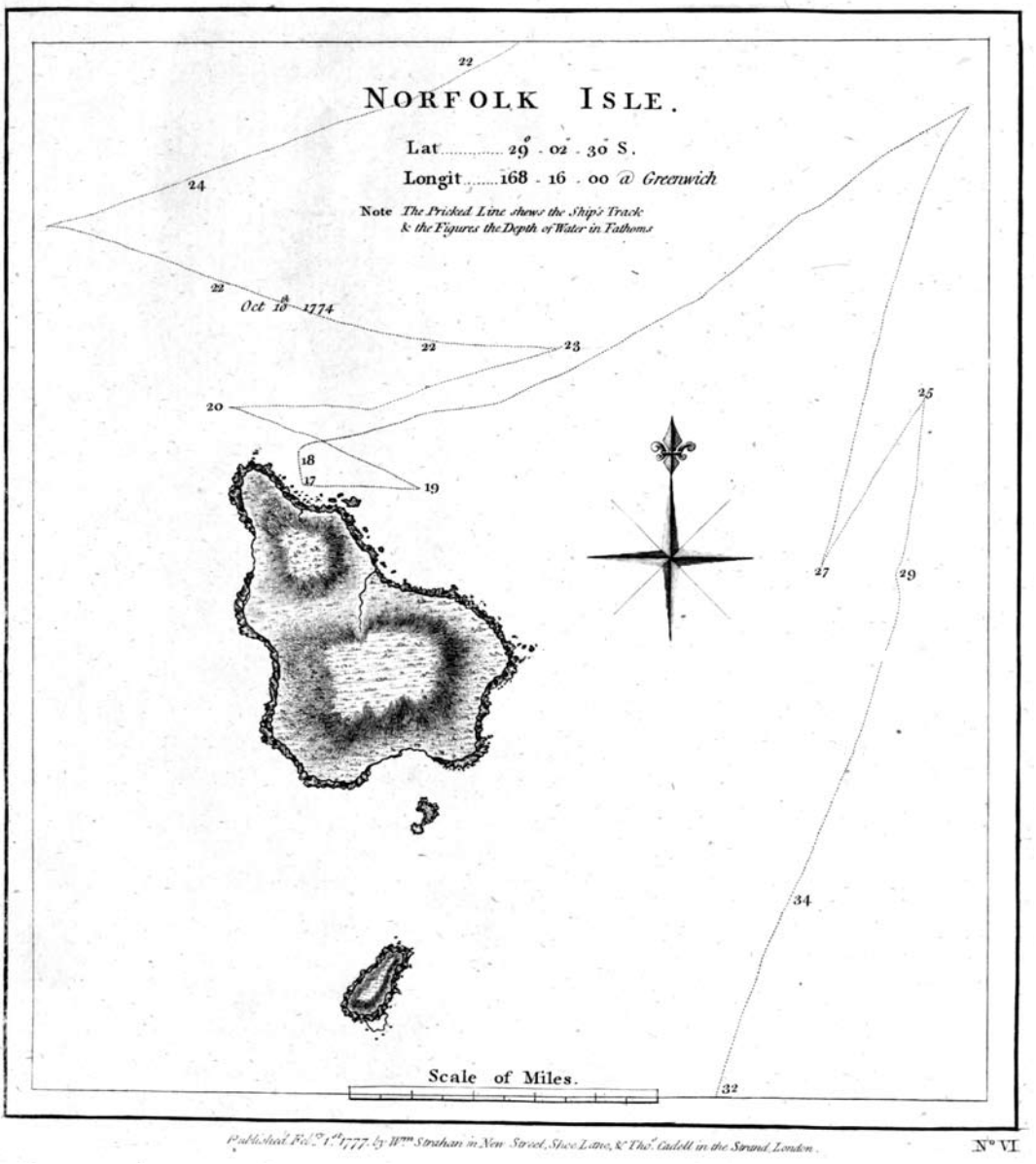
Papua and New Guinea Act 1949 Proclamation, 29 June, 1949.
NAA: A1573, 1949/8

OUT TO THE EAST

Australia's involvement in World War I caused it to focus on Europe and the German protectorates of New Guinea and Nauru in the Pacific.

However, some three months before the outbreak of hostilities, Australia had acquired its second external territory.

This was an island in the Pacific. Norfolk Island was a former British convict settlement and now home to people who had resettled from Pitcairn Island several thousand kilometres to the east—descendants of the *Bounty* mutineers.



Norfolk Isle. Pl: NLA. Map. – NK 2456/48. Reproduced with the kind permission of the National Library of Australia.

Norfolk Island. *Map drawn by Karina Pelling.*