

## CHAPTER SIX

# Norfolk Island

I took possession of this isle ... and named it Norfolk Isle in honour of that noble family

—Captain Cook's Journal, Vol. 2, HMS *Resolution*, 11 October 1774

### PRELUDE

Norfolk Island became Australia's second external territory on 1 July 1914. The island's association with the Australian continent, however, predated its acquisition by Australia by some 126 years.

It was discovered (in a European sense) on 10 October 1774 by Captain James Cook, who put ashore briefly, proclaimed it a British possession in the name of His Majesty the King, and sailed on to New Zealand. The island was uninhabited and remained so until 1788, despite a visit from French explorer La Pérouse, who sailed round the island in 1785 but was not able to land—declaring the island 'fit (only) for angels and eagles'.

On 5 March 1788, some six weeks after the British established their settlement at Sydney Cove, New South Wales, Lieutenant Governor King and a band of convicts and free settlers landed. King reproclaimed the island and unfurled the Union Jack at what is now Kingston. The island became part of the colony of New South Wales. King and his party found evidence of earlier human (probably Polynesian) habitation, now thought to have been around 1000 years earlier: bananas, which are propagated only by hand, stone *patu* (axe heads) and canoe remains.

The main purpose of the 1788 acquisition, on the recommendation of Cook (who described the island as 'a Paradise\*'), was to use the endemic Norfolk Island pine and abundant flax plants to produce masts, spars, sails and cordage for His Majesty's ships. However, large-scale exploitation of these extensive resources did not take place, because the pine timber was not suitable and transforming the flax into

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\* In his *Voyage in the Southern Hemisphere*, which was published in 1778 after his death.

fabric and ropes was too difficult. The island's potential as a possible market-garden for Sydney was explored, but a shortage of water, problems with pests and, above all, the foundering of HMS *Sirius* on the island's shore on 19 March 1790 put paid to that role.

The 'tyranny of distance' continued to dog the island's development (it is 1675 kilometres from Sydney and has no harbour). In 1814, a decision was taken to abandon it, and all the inhabitants were removed. The free settlers were compensated with offers of land grants in Tasmania (then Van Diemen's Land); those in chains, with a stint in the Port Arthur penitentiary for the remainder of their sentences. The buildings were mostly destroyed, lest the French, who had been 'eyeing off' the island before it was settled by the British, found them attractive enough to occupy.

In 1825 the British authorities decided that Norfolk Island's remoteness would make it an ideal high-security prison for re-offending convicts, and the island was resettled as a penal colony. It became a 'place worse than death' for almost 30 years, and the history of the island during that period makes grim reading. While man was being impossibly inhumane to man<sup>†</sup>, however, a collection of beautiful Georgian sandstone buildings reflecting the military nature of the settlement were built. Most survive to this day.

During the 1840s, social changes in the United Kingdom brought about a more enlightened approach to punishment, and the future of Norfolk Island as a prison was questioned. In October 1843, while Norfolk Island was being readied for its closure as a penal colony, Queen Victoria acted under the authority of the British Parliament to sever the island from New South Wales and annex it to Van Diemen's Land.<sup>1</sup>

At about the same time, the inhabitants of Pitcairn Island—who were the descendants of the *Bounty* mutineers and Tahitian women, and men who had later settled on Pitcairn—petitioned Queen Victoria seeking a new home. They were mainly concerned for the education of their children. The British Government offered the Pitcairners resettlement on Norfolk Island. With some reluctance, the entire community of 194 people landed on the island on 6 June 1856.<sup>‡</sup>

An order-in-council in the same month separated Norfolk Island from Van Diemen's Land (from 1 January 1856 called Tasmania) and made it a distinct and separate settlement. The island's affairs were to be administered by the Governor of New South Wales as Governor of Norfolk Island, a separate office. The Colonial Government of New South Wales had no role.

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† An exception to the unrelenting horror was the period from 1840 to 1844, during which Alexander Maconochie was commandant. Maconochie was a prison reformer whose innovative prison systems, treatment of offenders and building designs were well ahead of the ideas of the day.

‡ There are many accounts of the circumstances leading to the Pitcairners' transfer to and subsequent settlement on Norfolk Island. A recent one is by Raymond Nobbs, *Norfolk Island and its third settlement*, Library of Australian History, Sydney, 2006.

Most of the island's convicts had already been transferred to Port Arthur, but a caretaker, his wife and some trusted prisoners had remained to prepare the island for its new inhabitants. The caretaker and his group left shortly after their arrival, and the Pitcairners were left pretty well alone on the island, their lives being governed for the most part by the community laws they had brought with them from Pitcairn. Some families returned to Pitcairn Island after a few years, but most stayed on. Over the years, others came—to visit for the whaling season or for other reasons, or to settle and assimilate into the community.

The 1856 order-in-council provided, among other things, that the Governor had power to make laws for the order, peace and good government of the island. Various laws were applied to Norfolk Island using this mechanism for the remainder of the nineteenth century. The islanders adjusted to their new-found home and got on with their lives.

### CONCERNS ALL ROUND

On 21 August 1895, Viscount Hampden, the Governor Designate of New South Wales, wrote to the Colonial Office before leaving for Australia to obtain its 'views respecting the affairs of Norfolk Island'. After reciting the effect of the June 1856 order-in-council, Hampden wrote that since the order had been issued the governors of New South Wales 'appear to have preserved as far as possible the laws and usages by which the inhabitants of Norfolk Island had been accustomed to govern themselves when they inhabited Pitcairn Island'. However, he went on to say:

These laws and usages, which for many years were sufficient for the wants of the small community existing on the Island, have been found of recent years to be quite inapplicable to the times and to the condition of the existing population of some 900 persons.

In 1894, the British Government had appointed commissioners to inquire into matters connected with the administration of justice on Norfolk Island. Viscount Hampden cited their report, particularly in relation to the sufficiency of the island's revenue. He said that he believed that, with proper administration, adequate funds could be obtained, mainly from improved land usage and sales. He concluded his letter:

At the same time I venture to express an opinion that considerations of convenience, of local interests, of economical administration, and of the treatment of criminals, point to the desirability of persuading the Government of New South Wales to assume the charge of Norfolk Island; and it is upon this point specially that I desire to obtain your opinion before I leave for Sydney.<sup>2</sup>

The Colonial Office responded promptly on 18 September 1895:

I am to observe, in the first instance, that Her Majesty's Government would regard with much satisfaction the taking over of the administration of Norfolk Island by the Government of New South Wales, and Mr Chamberlain [Joseph Chamberlain, Secretary of State for the Colonies] is glad to find that this view appears to be shared by yourself.<sup>3</sup>

An exchange of telegrams between Hampden and Chamberlain followed in December, by which time Hampden had arrived in Sydney:

Hampden: Ministers agree in principle transfer of Norfolk Island. Can I go on with and forward agreement for your approval?

Chamberlain: No objection to course proposed, Norfolk Island. If terms proposed affect Her Majesty's Government you should telegraph them.<sup>4</sup>

Hampden's advice that the New South Wales Government agreed in principle to the transfer of administration of Norfolk Island derived from a letter from the Premier of New South Wales, George Reid, dated 31 December 1895:

If Her Majesty's Government is of opinion that Norfolk Island should be attached to this Colony, we are quite prepared to administer its affairs. Of course the transfer would be made so that the Island would become a part of New South Wales, and subject to its laws; ... I understand that there is a fund in connection with the Pitcairn Islanders; this, I presume, would be handed over to us for administration too.<sup>5</sup>

These developments in relation to the administration of Norfolk Island came to the attention of the government of the colony of New Zealand. It claimed that, as a matter of courtesy, it should have been consulted because Norfolk Island was geographically closer to New Zealand and because the island was an ecclesiastical province of New Zealand (the Melanesian Mission had been established on Norfolk Island by the Bishop of the New Zealand Anglican Church in 1866). The Colonial Office responded that agreement had been reached for the Government of New South Wales to 'annex' Norfolk Island and that the matter 'awaits Order in Council.' The office was 'unaware [that] New Zealand had any desire [to] make any claim in respect thereto'.<sup>6</sup>

Apart from New Zealand's concerns, it appeared that all was in readiness for a transfer. It was not as simple as that, however. What had seemed to be a fairly straightforward proposal became complicated. On 10 March 1896, Hampden cabled Chamberlain:

Law Officers of the Colony advise that Order in Council will make Norfolk Island subject to all laws of this Colony. Consider it undesirable. Norfolk Island should be placed under administration of the Government without incorporation. Authority of Governor of New South Wales must be established ... Ministers concur fully.<sup>7</sup>

New Zealand also raised the stakes. The Governor of New Zealand, the Earl of Glasgow, advised Chamberlain on 11 March 1896 of the geographical closeness and the ecclesiastical links and that the bishops preferred annexation to New Zealand. He felt that before cancelling existing arrangements for the government it would be desirable that the New Zealand Government be consulted.<sup>8</sup>

Chamberlain put the matter on hold, pending further advice from both colonies.

Along with colonial concerns, the islanders were also voicing their worries. In early 1896, Hampden had appointed a commission to look at the issue of land holdings on the island, in preparation for the transfer of administration. At about the same time as the commissioners returned from their visit to the island, the elected elders of the island wrote to Hampden objecting to the annexation of the island to New South Wales for 'governmental purposes'. They were concerned that such a measure would, as well as other things, 'involve the destruction of the distinctive character and race of the people' and asked that, should the proposal be proceeded with, their representations be submitted to Her Majesty the Queen.<sup>9</sup> Hampden forwarded this letter and its attached memorial to Chamberlain in March 1896.

The same month, Hampden also forwarded to Chamberlain a letter from the New South Wales Minister for Lands, Joseph Hector Carruthers. Carruthers' letter enclosed the report of the land holdings commission. Carruthers suggested that the New South Wales Government should be prepared on the consummation of Federation to hand over its jurisdiction over Norfolk Island and Lord Howe Island to the federal government. The letter also went on to touch on aspects of the proposed transfer of administration:

I am aware that doubts exist as to whether the desired change can be effected by a mere Order in Council, or whether an Act of the Imperial Parliament is necessary. Moreover if an Order in Council be sufficient to vest the control of the Island in the Governor of New South Wales and His Executive Council, may there not arise some question as to the position of Ministers who advise the Governor without their Parliament or people being parties to the concerns of the Island? ... If urgency be not thought essential, then, perhaps, all questions might be set at rest by the passage of an Act to grant a new Constitution to the Island and to legally empower New South Wales to govern the Island as a Dependency.

The commission believed that 'In regard to the contemplated permanent change, we would respectfully point out that the application of the laws and system of government in the Colony of New South Wales would not prove suitable to the Island Community.'<sup>10</sup>

Governor Hampden highlighted this conclusion in forwarding the report to Chamberlain, pointing out that it confirmed the opinion already expressed by his ministers, which he had cabled to Chamberlain on 10 March.<sup>11</sup>

On 27 March, a group of Norfolk Island inhabitants sent a detailed memorial to the Queen, concluding that ‘the proposed changes ... will prove disastrous to our nearest and dearest interests both spiritually and temporally.’ The memorialists were advised that their memorial had been received by Her Majesty and were ‘assured that their representations will receive full consideration at the hands of Her Majesty’s Government when tendering any advice to Her Majesty as to the future government of Norfolk Island.’<sup>12</sup>

Meanwhile, New Zealand was still interested in the control of Norfolk Island—particularly as the island was being seen as a possible station in a proposed Pacific cable network. In a letter to Chamberlain dated 26 May 1896, the New Zealand Governor also pointed out that:

I am advised that, as far as my Ministers can ascertain, if any change is to take place in the government of Norfolk Island, the Islanders, while protesting against any change, would prefer to come under the control of New Zealand rather than that of New South Wales.<sup>13</sup>

Chamberlain was not convinced by New Zealand’s claim and advised Governor Hampden on 31 July 1896 that ‘Her Majesty’s Government, after communicating with New Zealand, are willing to attach Norfolk Island to New South Wales if Colonial Government ready to undertake expenses of future administration.’ On 5 August, Hampden telegraphed Chamberlain that ‘New South Wales accepts offer of Norfolk Island.’<sup>14</sup>

On the same day that Hampden advised the Secretary of State for the Colonies that New South Wales had accepted the British offer, Norfolk Island was the subject of a debate in the New South Wales Legislative Assembly. The Member for Phillip, Henry Copeland, sought to discuss a matter of urgent public importance— (‘the apparent intention of the Government of accepting the responsibility of governing Norfolk Island without consulting Parliament’) and sought to have all the relevant correspondence tabled.

In debate, Copeland raised the strong objection of the inhabitants to interference in their affairs and said that they should be consulted in the matter. He referred to press reports about the proposed handover and it being seen by the Premier as an important concession because Norfolk Island would be very useful as a station for the Pacific cable. He could see ‘neither honor nor glory in its annexation ... It will be another white elephant like New Guinea ... I believe that Australia should confine her efforts entirely to Australia.’<sup>15</sup>

Premier Reid pointed out that:

we could not very well refuse to take over the island if the home Government asked us to do so. The home Government have been trying, at very great inconvenience, to look after the island at a distance of about 12,000 miles. The Governor of New South Wales has had the Island under his auspices for many years ... All the colonies agreed upon Norfolk Island as the best [cable] station to be adopted. As Norfolk Island will be one of the most important stations in connection with this cable, it struck us as a matter of great consequence that the island should be under the control of this colony, to begin with, and of the federated colonies to end with.<sup>16</sup>

Other speakers in the debate briefly canvassed the pros and cons of Australia's territorial aspirations in the South Pacific, but without resolution. The question seeking the tabling of the correspondence was resolved in the negative.<sup>17</sup>

On 25 September 1896, Chamberlain telegraphed Governor Hampden:

Norfolk Island. Propose to annex to New South Wales by Order in Council, at the same time declaring Norfolk Island to be exempt from laws of New South Wales and giving to Governor power of legislation until Legislature of New South Wales provides otherwise. Will obtain Law Officers' opinion whether Order in Council fit for the purpose; if not, whether, simultaneously with annexation, Act should be introduced New South Wales. Telegraph whether this meets views of your Ministers.<sup>18</sup>

Hampden replied on 14 October:

Ministers propose that administration should only be transferred, legislative powers remaining as before. Order in Council will probably be sufficient. Complete annexation to New South Wales or future Federal body to be postponed till Colonial Government think it desirable. Meanwhile, Government of New South Wales will bear expense of administration.<sup>19</sup>

Chamberlain responded on 23 October: 'Order in Council will be sent out as soon as possible by which Government will be administered by Governor New South Wales under advice of Executive Council.'<sup>20</sup>

Viscount Hampden expanded on his telegram of 14 October in a letter dated 16 October, to which he attached a letter from the New South Wales Premier, dated 13 October. Hampden's letter indicated:

that the Government of New South Wales desire to have the administration placed in the hands of the Governor in Council, the expenses to be defrayed out of Colonial funds by an annual vote, and they are of opinion that in the order effecting the transfer of administration there should be a recital to the effect that, upon request

being made, Her Majesty's Government will be prepared to annex the Island either to New South Wales, or, in the event of federation of the Australian Colonies, to the Australian Federal Government.

The Premier's letter said, in part:

... we foresee great difficulties in the way of legislation either by the Governor with our advice, or by the Legislature of the Colony. We propose, therefore, that the Island should not be annexed formally to New South Wales, and that our services should be administrative only, legislation being conducted as formerly, or in such a manner as may seem fit to Her Majesty's Government. It should be understood, however, that the Island is, as part of the arrangement, secured to new South Wales or the future Federal body when it is found expedient to ask for its annexation.<sup>21</sup>

On 28 December 1896, Chamberlain telegraphed the Governor:

Norfolk Island. Law Officers of the Crown advise Order in Council conferring on Governor, New South Wales, powers at present possessed by you in capacity of Governor, Norfolk Island, coming into force when published in the Colony. Proposed to submit at first Council meeting at the beginning of the year.<sup>22</sup>

Meanwhile the Governor had visited Norfolk Island, installed a resident magistrate and proclaimed on 14 November 1896 a new set of laws and regulations for the island.

On 27 January 1897, Chamberlain responded to Governor Hampden's letter of 16 October, which had forwarded the views of the New South Wales Premier that Norfolk Island should not formally be annexed to New South Wales. Secretary Chamberlain enclosed the order-in-council dated 15 January 1897. The Secretary trusted that the order would 'meet the wishes of your Government, and prove sufficient for all present purposes.' The letter went on:

I had previously consulted the Law Officers of the Crown as to the measures which would be required in order to effect a complete annexation of Norfolk Island to the Colony of New South Wales, and whether this object could be effected by Order in Council under the Act ... [*Australian Waste Lands Act 1855 (UK)*]. I am advised that, in their opinion, the Island cannot be annexed to the Colony by Order in Council, and that the statute contemplates that Norfolk Island should remain a Crown Colony, governed under the directions of the Queen in Council, not that it should be annexed to another Colony. They thought, further, that the object in view should be effected by Acts of the Imperial Legislature and of the Legislature of New South Wales. As there is no immediate intention of carrying out such annexation, there is no occasion at present to consider the form which such legislation should take, but if your Ministers should wish to make any observations upon the subject I shall be ready to give them full consideration. You will observe that the last paragraph of the Order in Council



gives you full power to bring it into operation at whatever date may be found most convenient; but I anticipate that you would not interpose much delay before bringing it into effect.<sup>23</sup>

Chamberlain's letter and the order-in-council were published on 19 March 1897.<sup>24</sup> There was no longer a separate office of Governor of Norfolk Island. The Islands' affairs were vested in the Governor of New South Wales and the New South Wales Government continued to play no role. The preamble to the order-in-council mentioned the prospect of future annexation to New South Wales 'or to any Federal body of which that Colony may hereafter form part'.

### CLOSER TIES WITH AUSTRALIA

Perhaps not surprisingly, a press report of 23 March 1897 about the January order-in-council indicated that there was some slight confusion about what had really been done. However, the article went on to assure readers that the change was 'rather the regularising of a previously existing situation than anything particularly new and startling'. The article also mentioned that 'The island is still in an interim stage as regards its administration, there being a pledge, that upon a demand being made to that effect either by New South Wales or by a federated Australia annexation to either one or the other will be rendered complete.'<sup>25</sup>

On 6 April 1897, it was announced in the New South Wales Government Gazette that the Governor with the advice of the Executive Council had 'approved of all Ministerial functions in connection with the affairs of Norfolk Island being committed to the administration of the Secretary for Lands'<sup>26</sup>; Executive Council advice being given only on the manner of the Governor's administration. On 4 August 1897, the Secretary for Lands was asked in the New South Wales Legislative Assembly whether the Government of New South Wales had assumed any responsibility for the government of Norfolk Island. He replied, 'No; the government of Norfolk Island is vested in His Excellency the Governor of New South Wales ... Any formal services rendered by ministers are purely of an administrative or advisory character.'<sup>27</sup>

In December 1898, the Premier was asked in parliament whether the government would make provision for the residents of Norfolk Island to have their names placed on the New South Wales electoral roll. He pointed out that as Norfolk Island was not part of the colony they were not entitled to be enrolled. 'The island is not incorporated with New South Wales; we simply administer its affairs.'<sup>28</sup>

On 22 August 1900, in the Legislative Assembly, the Colonial Treasurer was asked whether Norfolk Island was a portion of the colony of New South Wales and, if not, under what authority consolidated revenue appropriations were made for, or in aid of, its government. The Treasurer Sir William Lyne responded by reiterating that the island had not been formally annexed to New South Wales. He also recited the order-

in-council arrangements of January and March 1897. He felt that, in conjunction with the correspondence relating to the transfer of Norfolk Island to the Government of New South Wales, those arrangements had 'due weight with this House when voting the sums referred to'.<sup>29</sup>

On 1 January 1901, the New South Wales Government Gazette announced that the Queen in Council had made a new order-in-council on 18 October 1900.<sup>30</sup> This order merely reflected the constitutional changes that had taken place in Australia—that is, Federation and statehood (proclaimed on 17 September 1900). The order stated that henceforth the Governor of the newly formed state of New South Wales would administer the affairs of Norfolk Island until any further order might be made.

After Federation, the focus of the responsibility for the administration of Norfolk Island affairs began to move to the federal government. In the House of Representatives on 6 November 1901, William (Billy) Hughes, in raising a question about imports from Norfolk Island, was advised that the island was not part of the Commonwealth. He then asked: 'Is not Norfolk Island part of New South Wales?' The answer was, 'No'.<sup>31</sup> The next day, Hughes raised the matter again:

I am at a loss to know how it is that the right honourable gentleman classifies Norfolk Island as he does? ... I understood [him] to say that Norfolk Island was not a part of the Commonwealth. I understand that it is not a part of the State of New South Wales, but I do not understand how it is not a part of the Commonwealth?

It was pointed out to Hughes that the states were federated and, as a result, 'everything that is included in the States is in the Commonwealth, whilst that which is not included in the States is not in the Commonwealth'.<sup>32</sup>

Leading members of the Norfolk Island community continued to voice opposition to annexation either to the state of New South Wales or to the Commonwealth, but governmental moves towards this next step continued. Divided responsibilities for matters relating to Norfolk Island and the question of customs duties on the island's goods brought matters to a head—and the Commonwealth was not averse to assuming responsibility.

On 7 August 1902, the acting Governor-General (Baron Tennyson) minuted the Acting Minister for External Affairs:

The Acting Governor-General has to submit, for the consideration of The Honourable, The Acting Minister of State for External Affairs, the subjoined copy of a telegraphic despatch, which has this day been received from The Governor of the State of New South Wales, dated, Sydney, 7<sup>th</sup> August:

'I am proposing to the Secretary of State for the Colonies that Norfolk Island should be annexed to the Commonwealth and be administered by the Federal Government. The present divided authority can never answer. The Postal arrangements, Customs Tariff

and presumably The Defence, being worked by one, the administration by the other. I have ordered a Commission at once to go there and report on many outstanding questions. Would Your Excellency inform me whether the Federal Government would be willing to take over the Island should the Secretary of State for the Colonies agree.'

Alfred Deakin<sup>§</sup>, as Minister for External Affairs, annotated the minute, 'Yes—Terms to be agreed 11–8–2'.<sup>33</sup> He then replied formally on 12 August 1902:

I have the honour to inform Your Excellency that the telegram from the Governor of the State of New South Wales, dated, Sydney, 7 August 1902, transmitted by your Minute of the same date, has received consideration. I shall be pleased if you will inform His Excellency Sir Harry Rawson that the Federal Government will be willing to take over Norfolk Island should the Secretary of State for the Colonies agree, the terms of the transfer to be decided later.<sup>34</sup>

On 2 September 1902, in answer to a question in the House of Representatives, Deakin (as Acting Prime Minister) made it known to the parliament that the government was willing to accept responsibility for the control of Norfolk Island.<sup>35</sup>

Members of the Norfolk Island community continued to express concern at possible annexation<sup>36</sup>, but on 22 November 1902 the Secretary of State for the Colonies, Joseph Chamberlain, wrote to the Acting Governor-General that:

... His Majesty's Government are prepared to agree to the extension of the boundaries of the Commonwealth of Australia to include Norfolk Island.

I am advised that to effect this object, the Commonwealth Parliament should signify its assent to the proposed alteration of boundaries. If the Parliament does this by resolution, an Order in accordance with the provisions of the Colonial Boundaries Act 1895 will be drafted for submission to the King in Council, to provide for the annexation of Norfolk Island to the Commonwealth, and making such provision as your Government may desire for its administration, pending legislation for that purpose. It might, however, be more convenient if the Parliament were to pass an Act declaring the consent of the Commonwealth to the annexation of the Island and at the same time enacting provisions for its Government, the coming into operation of these provisions being deferred until annexation is completed.

Chamberlain sought the views of ministers.<sup>37</sup>

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§ Alfred Deakin later became Australia's second Prime Minister, taking office after Sir Edmund Barton moved to the High Court in September 1903. During Barton's prime ministership, Deakin had been Attorney-General. He was Prime Minister for periods during debates on the acquisition of Papua and of Norfolk Island. He held prime ministerial office for three periods: September 1903 to April 1904, July 1905 to November 1908, and June 1909 to April 1910, when the government changed. He retired from parliament in January 1913.

Despite agreement about transfer in the United Kingdom and Australia, it was to be some 12 years before the transfer was made.

Meanwhile, New South Wales Governor Harry Rawson, at the request of the Premier, had advised Chamberlain that an inquiry into the state of affairs on the island was 'highly desirable and necessary'. Chamberlain responded that, because the island might soon be annexed to the Commonwealth, it appeared advisable to leave the inquiry to the government responsible for the affairs of the island.<sup>38</sup>

On 3 February 1903, Sir Edmund Barton wrote as Minister for External Affairs to the Governor-General (Baron Tennyson, who had been confirmed in office from January 1903), asking him to:

... intimate to Mr Chamberlain that it is the opinion of this Government that before any definite arrangements on the subject of the transfer of the control of Norfolk Island to the Commonwealth can be made, further information should be obtained by an enquiry which it is proposed to institute at an early date.

In the meantime the steps suggested by the Secretary of State may safely be suspended, and the status quo continued until proposals can be made after enquiry.

It will of course be understood that on the part of this Government representations must be made to parliament before any annexation to the Commonwealth can be made. There may be some difficulty as to the form of annexation which would be preferable; but as at present advised, I am of opinion that it would be desirable to create Norfolk Island a 'Territory' of the Commonwealth.<sup>39</sup>

In a separate exchange, when questioned by Chamberlain about Australian ministers' views of the protest by Norfolk Islanders, Barton responded that the ministers wanted to defer expressing their views until after the proposed inquiry.<sup>40</sup>

On 20 March 1903, Chamberlain concurred in Barton's proposal that transfer arrangements should be suspended until further information had been obtained.<sup>41</sup>

The mills of the gods were grinding exceedingly slow.

The Commonwealth and New South Wales governments liaised about the form that any inquiry might take, and agreed that a New South Wales Royal Commission would be instituted to inquire into the island's affairs. The commission reported, the New South Wales Governor dealt with its recommendations, and the matter was recommitted to the Commonwealth for its consideration. In the meantime, New South Wales Governor Rawson continued to administer the island.

It was not until mid-1905 that a briefing paper about possible Commonwealth action was prepared by the Department of External Affairs for the Prime Minister (George Reid, who was Prime Minister for 10 months in 1904 and 1905). Reid annotated it 'For my successor.' Alfred Deakin, his successor, also annotated the memorandum:

‘Refer to the Law Dept. for advice as to the possible modes of annexation open to us and their consequences 11.7.5.’<sup>42</sup>

The referral took place and the Secretary of the Attorney-General’s Department, Sir Robert Garran,<sup>1</sup> provided advice on the methods by which the Commonwealth might acquire Norfolk Island. After reciting the constitutional steps that had brought Norfolk Island to its position as a separate settlement, for the government of which the King could provide by order-in-council, and which was administered by the Governor of New South Wales, he set out three possible ‘modes of annexing’ the island to the Commonwealth:

- (1) To make it a territory placed by the Queen under the control of and accepted by the Commonwealth or otherwise acquired by the Commonwealth (Constitution sec. 122)
- (2) To place it within the limits of a State of the Commonwealth (Const., sec.123)
- (3) To admit it as a new State of the Commonwealth subject to such terms and conditions as Parliament imposes (Const., sec. 121).

The island could apparently be made a territory under the control of the Commonwealth by the joint operation of an Imperial Order in Council and a Commonwealth Act. The effect of this would be that the Parliament could make laws for its Government, and that it would be a dependency of the Commonwealth, not a part of the Commonwealth itself, and the general laws of the Commonwealth would not be in force in the island to any further extent than the Parliament thought fit to provide—nor would it necessarily be within the Commonwealth tariff fence. In other words it would be in the same relation to the Commonwealth as British New Guinea will be if the Papua Bill is passed.

The Island could be placed within the limits of a State by the procedure provided by section 123 of the Constitution—in conjunction with an Imperial Order in Council—and the effect would be that it would become part of the State and of the Commonwealth.<sup>43</sup>

The Attorney-General agreed with the advice and asked that the minute be forwarded to Prime Minister Deakin, who annotated the minute: ‘When offered us—Bill to be prepared to accept Norfolk Id. as a Territory—31.10.05’.

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<sup>1</sup> Robert Garran, born in 1867, was a commanding figure in pre-Federation conferences and was the first Commonwealth public servant, appointed on 1 January 1901 as Secretary of the Attorney-General’s Department. He was also Parliamentary Draftsman. He co-authored with John Quick *The annotated Australian Constitution (1901)*. He guided the establishment of the federal departments and their administrative functions, and supported Prime Minister Hughes at Versailles, particularly in relation to the granting of mandates. He retired in 1932, having served 11 Attorneys-General and 16 governments.

## MOVES TO ACQUISITION

The Commonwealth Parliament was prorogued on 21 December 1905 and did not meet again until 7 June 1906.

In April 1906, press reports of a state premiers' conference carried the news that it had agreed that the Commonwealth Government should take over the administration of Norfolk Island.<sup>44</sup>

Following the conference, there was an exchange of correspondence between New South Wales and the Commonwealth. The Commonwealth, through New South Wales Governor Rawson, sought an offer of Norfolk Island from the Imperial Government. The Governor, noting that the island was ready for transfer, sought, before he approached the Secretary of State:

... an undertaking that should Norfolk Island be annexed to the Commonwealth a special Act, under clause 122 of the Commonwealth Constitution, will be passed, by which no alteration of the laws under which the Islanders are governed and which were regulated by special Act of the British Parliament for the Pitcairn Islanders when transferred to Norfolk Island, will be made, unless special necessity for further legislation can be demonstrated.

In an initial response, Deakin asked for a copy of the current laws of the island and a statement showing the financial position of its affairs.<sup>45</sup>

On 7 June 1906, in his speech opening the session of the Commonwealth Parliament, the Governor-General, Baron Northcote, said:

Subject to the passage by Parliament of the necessary Act, my Advisers have expressed their willingness to accept from the Imperial Government the control of Norfolk Island, now a Crown Colony, administered by the Governor of New South Wales.<sup>46</sup>

On 10 July, Deakin responded through the Governor-General to the New South Wales Governor's request for an undertaking:

As it is impossible even for Parliament to bind its successors, it is, as His Excellency is aware, equally impossible for a Prime Minister to bind even his successor by any assurance in the form indicated.

Still so far as this is possible effect can be given to Sir Harry Rawson's desire in another way. His Excellency wishes that, as existing laws are satisfactory, they shall not now be disturbed, nor any change made hereafter until the necessity for alteration is clearly shown.

When, in the terms of section 122 of the Constitution, Norfolk Island is placed by the King under the authority of the Commonwealth, a bill accepting the territory will be introduced. Relying on His Excellency's opinion that the present laws controlling the internal affairs of the Island are sufficient, this government is prepared to agree

that its measure will provide for the continuation of all existing laws without any other alterations than those of a purely formal character, which may be necessary for technical reasons consequent on the transfer of control.

Of course Parliament remains perfectly free to deal with its own Act whenever it thinks fit, but His Excellency may fairly assume that no subsequent law altering present conditions will be proposed unless there are strong reasons for change.<sup>47</sup>

On 14 July, Norfolk Islanders again petitioned the King to prevent the island being annexed to the Commonwealth.<sup>48</sup>

On 19 July, New South Wales Governor Rawson advised the Governor-General that he had cabled the Secretary of State for the Colonies seeking the immediate passage of a British Act. This would enable a Commonwealth Act of annexation to be passed before the impending federal elections, which might bring a change of government. He had indicated to the Secretary of State that the Prime Minister agreed that Norfolk Island would be governed by its current laws and pointed out that, because the telegraph cable was now being landed on Norfolk Island, it was necessary for its defence to be under the Commonwealth.<sup>49</sup> On 26 July, Rawson informed the Governor-General that he had received a reply to his cable which advised that an Imperial Act of Parliament was unnecessary for the transfer and that the first step was for the Commonwealth to signify assent by resolution or by Act of Parliament.<sup>50</sup>

But there was further delay. On 14 September 1906, in answer to a question in parliament, Deakin said that the government feared that because of the amount of unfinished business before parliament the introduction of a Bill to settle the condition of Norfolk Island might have to be deferred until the next session.<sup>51</sup>

There was little development over the next 18 months. On 3 January 1907, the New South Wales Governor advised the Secretary of State for the Colonies that, in compliance with the Secretary's request of 31 October 1906, the Norfolk Islander petitioners had been informed that their petition had been laid before His Majesty, but that the King had not given any directions on it.<sup>52</sup>

On 1 April 1908, Deakin advised the parliament that a Bill for Norfolk Island control was almost completed and that it was proposed to make the island a territory of the Commonwealth.<sup>53</sup>

Meanwhile, the New South Wales Governor continued his administration of the island's affairs and the Commonwealth pressed on with its territorial intentions. On 2 June 1908, Deakin sought leave in the House to introduce a Bill for an Act to provide for the acceptance of Norfolk Island as a territory under the authority of the Commonwealth, and for the territory's government. Leave was granted.<sup>54</sup>

On 5 November 1908 in the Senate, the Vice President of the Executive Council, Senator Sir Robert Best (Victoria), was asked whether it was intended to proceed with the Norfolk Island Bill in that session of parliament. The answer was 'Yes'.<sup>55</sup> However,

parliament was prorogued in 1908 and the Bill lapsed. It was re-presented on 20 July 1909 and read a second time on 3 August 1909.<sup>56</sup>

After outlining the history of Norfolk Island in his second reading speech, the Minister for External Affairs, Littleton Ernest Groom (Member for Darling Downs), spoke of the importance of the island to Australia's national considerations—giving the example of the Pacific cable station. He outlined the proposed structure of government and noted that the legislation provided that the island's goods would not be subject to customs duties on being imported into Australia.<sup>57</sup> Debate on the Bill was adjourned.

On 8 December 1909, a similar question to that asked of Groom over a year before was asked in the Senate: Was there any likelihood of the Norfolk Island Bill being proceeded with in the current session? The Vice President of the Executive Council, now Senator ED Millen (New South Wales), answered that the Bill was before another branch of the legislature. Although the government wanted the Bill's passage, he could give no information about the prospect of it reaching the Senate.<sup>58</sup>

On 13 February 1910, on a further prorogation of Parliament, the Bill lapsed again.

Three and a half years were to pass before a Norfolk Island Bill was again introduced into the Commonwealth Parliament.

#### MORE DOUBTS AND DELAYS

Perhaps because of the delay in the Commonwealth's enactment of Norfolk Island legislation, New South Wales had entered the fray again! In a letter to Prime Minister Deakin dated 10 August 1909—the timing and tone of which was rather extraordinary, since for more than a decade New South Wales had encouraged the annexation of Norfolk Island by the Commonwealth—the Premier, Charles Gregory Wade, put forward the proposition that Norfolk Island should not be transferred to the Commonwealth but remain under the administration of the Governor of New South Wales.

The Premier advanced a number of arguments for his proposition; for example, that after some initial problems and difficulties with the administration of the island's affairs the system was now working smoothly; that, if tariff barriers and freight costs were the reason the Commonwealth was taking over, they could be fixed by separate Commonwealth concessions; and that islanders were unhappy at the prospect of Commonwealth control. In particular, he also opined that:

Section 122 of the Constitution, which provides for the Commonwealth making laws for government of a territory, was not intended to apply to a case where legislative and administrative control is being satisfactorily carried out by part of the constitutional



machinery of a State, and the Executive authority of that State, moreover, has not asked to be relieved of its responsibilities.

It may be further noted that the Section referred to empowers the Parliament to make laws for the government of a territory, but I do not find any authority in the Constitution for the Governor General legislating through the medium of ordinances.

The Premier also pointed out that the preambles to the 1897 and the 1900 Norfolk Island orders-in-council were different. In 1897, the order-in-council contemplated the prospect of the future annexation of Norfolk Island to the colony of New South Wales or to any federal body of which that colony might thereafter form part; in 1900, those words were omitted.<sup>59</sup>

Deakin sought the opinion of the Commonwealth Attorney-General, Patrick McMahon Glynn, on the New South Wales Premier's view about the scope of s. 122 of the Constitution. After a recital of the constitutional history of the island, Glynn advised that:

The only sense in which it can be said that the legislative and administrative control of Norfolk I. is being 'carried out by part of the constitutional machinery of a State' is that, by Orders in Council of a provisional nature, the Governor of New South Wales for the time being is the Administrator of Norfolk Island. Under the Australian Waste Lands Act 1855, the King has power to make such provision for the Government of Norfolk I. as may seem expedient.

In my opinion, the King has power to place Norfolk I. under the authority of the Commonwealth, and the Commonwealth Parliament, by virtue of section 122 of the Constitution, has power to accept it as a territory. I cannot see how the power of the King and the Commonwealth Parliament, or the intention of section 122, can be limited in the way suggested.

As regards the second point, I am of opinion that the power of the Commonwealth Parliament to make laws for the government of a Territory is plenary, and includes the power to create a legislative authority, subordinate to itself, for the Territory.<sup>60</sup>

Armed with this succinct advice, the Prime Minister replied to Premier Wade, refuting the Premier's assertions. He also pointed out that, while both State and Commonwealth agreed that their respective laws would be unsuitable for the islanders, the Constitution of New South Wales made no provision for the special conditions of dependent territories, and that annexation to New South Wales would involve the operation of all the state and federal laws, whereas annexation as a territory of the Commonwealth would involve nothing of the kind:

As in the case of Papua, existing laws can be fully conserved and amended or altered by a simple process from time to time to meet whatever variations in local conditions may occur. The operation of Federal laws will be precluded, except where specially provided, and provision made for the creation of a special law-making authority, which may consist of one or many individuals.<sup>61</sup>

Things continued to move very slowly. The New South Wales Governor continued to administer Norfolk's affairs, and made a visit to the island. The islanders continued to express concern about transfer to the Commonwealth. They and the New South Wales authorities felt that the imposition of duties on Norfolk Island's goods was stifling the productivity of the island.

The Commonwealth Government, which had been seeking to inform itself of facts and figures about the island, continued to seek information from the Governor and the Deputy Administrator. The Prime Minister – Governor-General – New South Wales Governor – Colonial Secretary chain of communication was clearly cumbersome. Impatience with delays was manifesting itself, and attempts to cut through some of the red tape provoked a testy response to the Secretary of the Department of External Affairs from the New South Wales Governor (by this time Baron Chelmsford): 'As I think it is irregular and inconvenient to have private letters on public affairs, I have filed your letter with the official papers in the Norfolk Island Office. It will be a great thing if we can have the matter settled one way or the other.'<sup>62</sup>

Confusion was also arising within the United Kingdom and locally about Norfolk Island's 'peculiar position within the Empire'—whether, and how, the island might be affected by the accession of the United Kingdom, Australia, or both to international conventions or bilateral treaties and their consequent legislative requirements.

Chelmsford, for example, felt it necessary to proclaim that the Imperial Act flowing from the International Copyright Convention should be in force in Norfolk Island. This provoked a flurry of bureaucratic head-scratching about whether it was necessary to do so. Also, he felt that if the federal government asked him to arrange for the termination of the Anglo-Liberian Commercial Treaty with respect to Norfolk Island, it was his 'duty ... to obey, even if the reason given may appear irrelevant and likely to be distasteful to my Ministers inasmuch as it introduces an appearance of unconstitutional subordination to the Federal Government.'<sup>63</sup>

An eleventh-hour flurry of exchanges of views took place from late 1912 to mid-1913 about whether the Commonwealth would allow goods produced or manufactured on Norfolk Island duty-free entry.<sup>64</sup> The exchange included the following letter from the British Secretary of State for the Colonies, Lewis Harcourt, dated 13 June 1913:

I concur in the opinion which has been expressed throughout by Lord Chelmsford, that it is essential in the interests of the islanders that they should on transfer have free entry for their products into the Commonwealth of Australia, and unless it is

possible to arrange for this, I would not feel able to ask the Imperial Parliament to pass the legislation which will be necessary to permit either of the Islands being annexed to the Commonwealth or of the administration being vested in the Commonwealth Government.

It will be necessary, if it is decided to proceed with the negotiations for the transfer, to decide which of the two courses alluded to in the preceding paragraph of this despatch should be adopted. I am inclined to consider that it would probably be simpler that Norfolk Island should be annexed to the Commonwealth rather than that the administration should be vested in the Commonwealth Government.<sup>65</sup>

What was this? Imperial legislation was necessary? Earlier British (and Solicitor-General Garran's) advice had indicated that all that was necessary on the part of the United Kingdom to transfer authority was an order-in-council.

On 14 July 1913, the New South Wales Governor (by now Sir Gerald Strickland) replied to the Secretary of State. Among other things, his letter queried the Secretary's view that Imperial legislation was necessary to effect transfer:

... although (to use the words of Mr Chamberlain) 'in order to effect a complete annexation of Norfolk Island to the State of New South Wales' after Federation, Imperial legislation would probably be necessary, it is not clear to me that such legislation is necessary for the annexation of the Island to the Commonwealth which has certain powers, and is able to deal with External Affairs.

If reference is made to Mr Chamberlain's despatch No. 222 of the 22<sup>nd</sup> November 1902, addressed to the Officer administering the Commonwealth of Australia, it will be seen that the views Mr Chamberlain relied on in the fourth paragraph of your despatch under reply, were set aside by Mr Chamberlain himself, and that I have been following Mr Chamberlain's latter view. While legislation in the Commonwealth Parliament may be desirable for the annexation of Norfolk Island, legislation in the Imperial Parliament is unnecessary. All that is required is an Order-in-Council.

There is, however, no room for doubt that there is nothing, in law, to prevent the transfer of the administration by Order-in-Council, from myself to Lord Denman, (the Governor-General) and I recommend that this should be done without delay, and before there is a change of Ministry in New South Wales.

If Lord Denman were to consider it difficult to govern Norfolk Island from Melbourne as a Crown Colony, I would be quite prepared to do the work for him as his Deputy, pending the necessary legislation. It would be regrettable if the work done to bring to an end a complicated position were to be dropped, and it were again open to politicians and permanent officials to raise difficulties to a transfer, which is called for on account of important reasons of defence, quarantine, navigation and telegraphic communication, which have been entrusted to the Federal Government.

If the Imperial Government finally decide to stop these negotiations by making the grant of free trade imperative, then the Imperial Government should also be prepared to shoulder the legitimate consequences of this intervention, and provide funds for the proper government of Norfolk Island. New South Wales has assumed this expenditure pending negotiations for transfer to the Commonwealth, and it does not appear to be reasonable that these negotiations should be protracted indefinitely, or for political reasons which public opinion here will consider outside the present sphere of the Colonial Department.<sup>66</sup>

These were strong words! Until then, the ‘colonial’ authorities had shown the ‘home’ government considerable deference.

In the meantime, federal ministers prepared another draft Norfolk Island Bill. The draft contained a clause similar to that in the 1909 Bill concerning customs duties, which were not to be chargeable on goods, produce or manufactures of Norfolk Island that were shipped direct to Australia, provided they were not of a class subject to excise duties in the Commonwealth. The Bill was framed to come into force on a day to be named, after the King had placed the island under the authority of the Commonwealth. The Bill maintained all existing laws until they were altered by Ordinance.<sup>67</sup>

The draft Bill was acceptable to the New South Wales Governor. In advising his acceptance, the Governor asked that ‘generous treatment’ be given to any officers taken over by the Commonwealth and indicated that ‘As I am unable to meet any responsibility for the defence of the Island, the period of transition should not be prolonged ...’<sup>68</sup>

However, Governor Strickland was also concerned about the possibility that the proposed legislation might not be passed by the Commonwealth Parliament in the current session, as the government had ‘a bare majority of at most one vote’. He proposed again to the Secretary of State for the Colonies, Lord Harcourt, the idea that the Governor-General should be empowered to administer Norfolk Island as a Crown colony with him, the Governor, as his deputy and the Commonwealth paying for the administration.<sup>69</sup>

The federal government did not view this proposal ‘with favour’ but would ‘do all in its power to bring about an early transfer’, noting that ‘the question of finally completing the matter would rest with the Imperial authorities ...’<sup>70</sup>

On 13 September 1913, the *Sydney Morning Herald* reported that ‘A new era in the history of Norfolk Island was opened on Tuesday, when Mr Michael Vincent Murphy was installed as Administrator and Chief Magistrate.’<sup>71\*\*</sup> Murphy, who was appointed by the New South Wales Governor, was an officer of that state’s Lands Department

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\*\* For a very interesting account of this period of Norfolk Island’s history and of Murphy’s administration, see Maeve O’Collins, *An uneasy relationship—Norfolk Island and the Commonwealth of Australia*, Pandanus Books, Canberra, 2002.

who had carried out land surveys on the island and had worked on Norfolk Island affairs for many years. He was the first administrator to reside on the island. The Prime Minister had advised the Governor, through the Governor-General, that the federal government 'at present sees no objection to ... the permanent appointment of Mr Murphy as Administrator ...'

On 11 October 1913, Secretary of State Harcourt cabled Governor-General Denman:

... His Majesty's Government regard terms of draft Bill(s) for transfer of Norfolk Island as satisfactory and would be glad to learn that it is passed into law. I regret that when my confidential despatch of 13<sup>th</sup> June was written my attention had not been called to the advice tendered to the Secretary of State for the Colonies in 1902, and embodied in the despatch of 22<sup>nd</sup> November, No. 222, of that year, to which your attention has been called by the Governor of New South Wales. In view of this advice the question of Imperial Legislation apparently will not arise.<sup>72</sup>

In the meantime, the Norfolk Island Bill had been presented and read a first time in the House of Representatives on 11 September 1913; it received its second reading on 16 September; debate was adjourned and resumed on 24 October.

The debate canvassed the history of Norfolk Island, its penal colony status and the arrival and settlement of the Pitcairn people. It also traced the various steps by which the United Kingdom had exercised its authority over the island, leading up to the agreement for the Commonwealth of Australia to take over control of the island's affairs.

The Minister for External Affairs, Patrick Glynn, felt that 'Placed as we are [in the Pacific] the greater control we have of islands like Norfolk Island, the better it may be for the people there and here ... there is of course the consideration that there should be vested in the Commonwealth the control of all islands at present under the control of the States.' Glynn saw the government's aim as being:

... to maintain—and, as the founders of the most advanced and beneficent system of responsible and Democratic government, in some respects to better—the traditional working of British administration, which, in the main, is ever directed to the welfare, security and rational freedom of those to whom, in many places and forms, but with one spirit and efficacy, its principles extend. The system has been a success elsewhere and there is no reason why Australia should not make it an equal success in the case of Norfolk Island.<sup>73</sup>

As in the debate about the acquisition of the Territory of Papua, speakers concentrated on the issues of land alienation and prohibition. The power to make laws by Ordinance was also the subject of debate; some speakers, again as in the debate about Papua, saw this as a derogation of the right of the parliament as the

supreme law-making body. One speaker said that he 'should have liked to see [Norfolk Island] placed under the control of [New Zealand] because New Zealand will have to take, and certainly will take, her share of insuring the maintenance of Australasia's predominating influence in the South Pacific.'<sup>74</sup>

The Bill passed back and forward between the House and the Senate, which wanted two amendments to the Bill—one dealing with the make-up of the Executive Council of the island and the other with land alienation. In the end, the Senate did not insist on its amendments and the Bill passed all stages of both houses on 19 December 1913.

The *Norfolk Island Act 1913*, accepting the island as a territory, was assented to on the same day. However, it was not to come into operation until a British order-in-council was made to place Norfolk Island under the authority of the Commonwealth of Australia and the Governor-General had proclaimed a date for the Act's commencement.

Such an order was made on 30 March 1914, and on 17 June 1914 the Governor-General proclaimed 1 July 1914 as the date of the Act's commencement.

In April 1914, Norfolk Islanders had sent a further petition to the King, protesting against the placing of the island under the administration of Australia. The Secretary of State for the Colonies considered the views expressed in the petition but was 'unable to advise His Majesty to issue any commands with regard to their prayer as His Majesty's Government was satisfied that the welfare of the people of Norfolk Island will be safeguarded by the Government of the Commonwealth.'<sup>75</sup>

Although New South Wales suggested that there should be a formal agreement between it and the Commonwealth in connection with the transfer, the Commonwealth Government felt that there was no necessity for such an agreement. As in the case of Papua, a Commonwealth Act, a British order-in-council and a proclamation date were all that was necessary.<sup>76</sup> The New South Wales Governor disagreed with this and continued to press for the retention of Michael Murphy as Administrator, even if it required the Governor to act as the Governor-General's deputy—a suggestion he had raised a couple of times before.<sup>77</sup> The federal government saw no need to trouble His Excellency by adopting his suggestion. In the end, Murphy was appointed Administrator under the Commonwealth's administration. The New South Wales Governor issued his own proclamation on 23 June 1914, ceasing his administration of the island from 30 June 1914.

The Governor-General's proclamation was notified in Commonwealth of Australia Gazette No. 35 of 17 June 1914. Australia had acquired its second external territory.

#### POSTSCRIPT

Under Commonwealth legislation, Norfolk Island was administered by an Administrator, who was also the Chief Magistrate. There was a part-elected, part-

nominated Executive Council, and the Governor-General was empowered to make ordinances for the peace, order and good government of the island.

In 1935, the Executive Council was replaced by an all-elected Advisory Council, and the office of Chief Magistrate was separately constituted. Gradually, the Advisory Council was offered limited local executive authority, but because the Administrator had powers of veto that arrangement was not considered satisfactory by the islanders.

During World War II an airstrip was built and the island was garrisoned by New Zealand troops.

A Royal Commission was appointed in 1975 to report, among other things, on the future status of Norfolk Island and its constitutional relationship to Australia. Following the commission's report, the Australian Government enacted the *Norfolk Island Act 1979*, which established a Legislative Assembly with a range of federal, state and local government type powers to legislate for the government of the island. The Administrator retained some executive functions, mainly to do with land matters, and presided over the island's Executive Council.

#### NOTES

- 1 Letters Patent dated 24 October 1843.
- 2 Correspondence relating to the transfer of Norfolk Island to the Government of New South Wales—United Kingdom Parliamentary Paper, February 1897, [C.8358] Serial no. 1, in NAA: A1, 1909/9096. ('Correspondence').
- 3 *ibid.*, Serial no. 2.
- 4 *ibid.*, Serial nos. 3 and 4.
- 5 *ibid.*, Serial no. 5, Enclosure 2.
- 6 *ibid.*, Serial no. 6 and enclosure.
- 7 *ibid.*, Serial no. 7.
- 8 *ibid.*, Serial no. 8.
- 9 *ibid.*, Serial no. 13, Enclosure 1.
- 10 *ibid.*, Serial no. 14, Enclosure 1.
- 11 *ibid.*
- 12 *ibid.*, Serial nos. 17 and 21.
- 13 *ibid.*, Serial no. 20.
- 14 *ibid.*, Serial nos. 24 and 26.
- 15 NSW Legislative Assembly Hansard (NSWLA), 5 August 1896, pp. 2037–39.
- 16 *ibid.*, pp. 2039–40.
- 17 *ibid.*, pp. 2037–51.
- 18 'Correspondence', NAA: A1, 1909/9096, Serial no. 28.
- 19 *ibid.*, Serial no. 29.
- 20 *ibid.*, Serial no. 30.
- 21 *ibid.*, Serial no. 33 and Enclosure.
- 22 *ibid.*, Serial no. 34.
- 23 *ibid.*, Serial no. 38 and Enclosure.
- 24 NSW Government Gazette No. 222, 19 March 1897.

- 25 Press report (source not recorded), NAA: CP 697/41, 1897/504.
- 26 NSW Government Gazette, No. 273, 6 April 1897.
- 27 NSWLA, 4 August 1897, pp. 2575–76.
- 28 NSWLA, 22 December 1898, p. 3995.
- 29 NAA: CP 697/41, 1900/445.
- 30 NSW Government Gazette, No. 1, 1 January 1901.
- 31 CPD, HR, Vol. V, 6 November 1901 p. 6886.
- 32 CPD, HR, Vol. VI, 7 November 1901, p. 6989.
- 33 Minute from Acting Governor General to Acting Minister for External Affairs, 7 August 1902, NAA: A1, 1906/5144.
- 34 Letter from Acting Minister for External Affairs to Acting Governor General, 12 August 1902, NAA: A1, 1906/5144.
- 35 CPD, HR, Vol. XII, 2 September 1902, p. 15602.
- 36 Melbourne *Age*, 27 August and *Argus*, 10 September 1902, NAA: A1, 1909/9096.
- 37 Letter from Secretary of State for the Colonies to Governor General, 22 November 1902, NAA: A11804, 1912/120.
- 38 Letter from NSW Governor to Governor-General, 17 December 1902, NAA: A1, 1906/5144.
- 39 Letter from Minister for External Affairs to Governor-General, 3 February 1903, NAA: A1, 1906/5144.
- 40 Letter from Minister for External Affairs to Governor-General, 4 March 1903, NAA: A1, 1906/5144.
- 41 Letter from Secretary of State for the Colonies to Governor-General, 20 March 1903, NAA: A11804, 1912/120.
- 42 Memorandum from Secretary to Department of External Affairs to Prime Minister, 14 June 1905, NAA: A1, 1906/5144.
- 43 Minute from Secretary Attorney-General's Department to Attorney-General, 7 October 1905, NAA: A1, 1906/5144.
- 44 *Daily Telegraph*, 13 April 1906, NAA: A1, 1909/9267.
- 45 Letters from Prime Minister to Premier of New South Wales, 25 April 1906; from New South Wales Governor to Governor-General, 1 June 1906; from Prime Minister to Governor-General, 13 June 1906, NAA: A1, 1909/9096.
- 46 CPD, Senate, Vol. 31, 7 June 1906, p. 6.
- 47 Letter from Prime Minister to Governor-General, 10 July 1906, NAA: A11804, 1912/120.
- 48 Copy of petition, NAA: A58, 1.
- 49 Letter from New South Wales Governor to Governor-General, 19 July 1906, NAA: A11804, 1912/120.
- 50 Letter from New South Wales Governor to Governor-General, 26 July 1906, NAA: A1, 1909/9096.
- 51 CPD, HR, Vol. XXXIV, 14 September 1906, p. 4659.
- 52 Letter from New South Wales Governor to Secretary of State for the Colonies, 3 January 1907, NAA: A1, 1907/1179.
- 53 CPD, HR, Vol. XLV, 1 April 1908, p. 9957.
- 54 CPD, HR, Vol. XLVI, 2 June 1908, p. 11795.
- 55 CPD, Senate, Vol. XLVIII, 5 November 1908, p. 1989.
- 56 CPD, HR, Vol. L, 20 July and 3 August 1909, pp. 1358 and 1941.



- 57 *ibid.*, pp. 1943 and 1945.
- 58 CPD, Senate, Vol. LIV, 8 December 1909, p. 7211.
- 59 Letter from Premier of New South Wales to Prime Minister, 10 August 1909, NAA: A1, 1909/14123.
- 60 Minute from Attorney-General to Prime Minister, 19 August 1909, NAA: A1, 1909/14123.
- 61 Letter from Prime Minister to Premier of New South Wales, 22 September 1909, NAA: A1, 1909/14123.
- 62 Letter from NSW Governor to Under Secretary for Department of External Affairs, 21 May 1912, NAA: CP697/41, 1912/348.
- 63 Proclamation of Copyright Act, 1 July 1912; note from Deputy Administrator, 2 January 1913; letters from New South Wales Governor to Secretary of State for the Colonies, 28 January and 25 April 1913, NAA: CP697/41, 1913/207.
- 64 Letters from Prime Minister to Governor-General, 12 December 1912; from Governor-General to Governor NSW 6 May 1913; from NSW Governor to Governor-General, 12 May 1913; from Governor-General to NSW Governor, 26 May 1913, NAA: A11804, 1912/120, and A1, 1914/5027.
- 65 Letter from Secretary of State for the Colonies, 13 June 1913, NAA: A11804, 1912/120.
- 66 Letter from Governor New South Wales to Secretary of State for the Colonies, 14 July 1913, NAA: A1, 1914/5027.
- 67 File note, Department of External Affairs, NAA: A1, 1914/5027.
- 68 Letter from Governor New South Wales to Governor-General, 18 August 1913, NAA: A1, 1914/5027.
- 69 Letter from Governor of NSW to Secretary of State for the Colonies, 8 September 1913, NAA: A1, 1914/5027.
- 70 Letter from Prime Minister to Governor-General, 10 September 1913, NAA: A11804, 1912/120.
- 71 *Sydney Morning Herald*, 10 September 1913, copy on NAA: A1, 1914/5027.
- 72 Cable from Secretary of State for the Colonies to Governor-General, 11 October 1913, NAA: A1, 1914/5027.
- 73 CPD, HR, Vol. 71, 16 September 1913, pp. 1242, 1247.
- 74 *ibid.*, 24 October 1913, p. 2522.
- 75 Letter from Secretary of State for the Colonies to Governor-General, 16 April 1914, NAA: A11804, 1912/120.
- 76 Prime Minister's letter of 28 May 1914, CP 78/22/1 12/120.
- 77 Letter of 12 June 1914, NAA: A1, 1914/20808.

END PAPERS

(3)

22/38

DEPARTMENT OF  
EXTERNAL AFFAIRS  
A 02/59/1

COMMONWEALTH OF AUSTRALIA

02/266

GOVERNOR-GENERAL

MINUTE FOR THE HONOURABLE, THE ACTING MINISTER OF STATE  
FOR EXTERNAL AFFAIRS.

8-AUG 1902

The Acting Governor-General has to submit, for the consideration of The Honourable, The Acting Minister of State for External Affairs, the subjoined copy of a telegraphic despatch, which has this day been received from The Governor of the State of New South Wales, dated, Sydney, 7th August:-

"I am proposing to the Secretary of State for the Colonies that Norfolk Island should be annexed to the Commonwealth and be administered by the Federal Government. The present divided authority can never answer. The Postal arrangements, Customs Tariff and presumably The Defence, being worked by one, the administration by the other. I have ordered a Commission at once to go there and report on many outstanding questions. Would Your Excellency inform me whether the Federal Government would be willing to take over the Island should the Secretary of State for the Colonies agree."

*Tennyson*  
Acting Governor-General.  
7th August, 1902.

*Yes - seems to be agreed*  
*4 11.5.2*

Minute of 7 August, 1902 from the Acting Governor-General, Baron Tennyson, to the Acting Minister for External Affairs, Alfred Deakin.  
NAA: A1, 1906/5144

02/38 (4)

DEPARTMENT OF  
EXTERNAL AFFAIRS.  
A 02/59/2

COMMONWEALTH OF AUSTRALIA

DEPARTMENT OF EXTERNAL AFFAIRS.

IN REPLY  
PLEASE QUOTE  
No A.02.59.  
2.

Melbourne, 12th . August . 1902.

My Lord:-

I have the honour to inform Your Excellency that the telegram from the Governor of the State of New South Wales, dated, Sydney, 7th August 1902, transmitted by your Minute of the same date, has received consideration.

I shall be pleased if you will inform His Excellency Sir Harry Rawson that the Federal Government will be willing to take over Norfolk Island should the Secretary of State for the Colonies agree, the terms of the transfer to be decided later.

I have the honour to be,

My Lord,

Your most obedient servant,

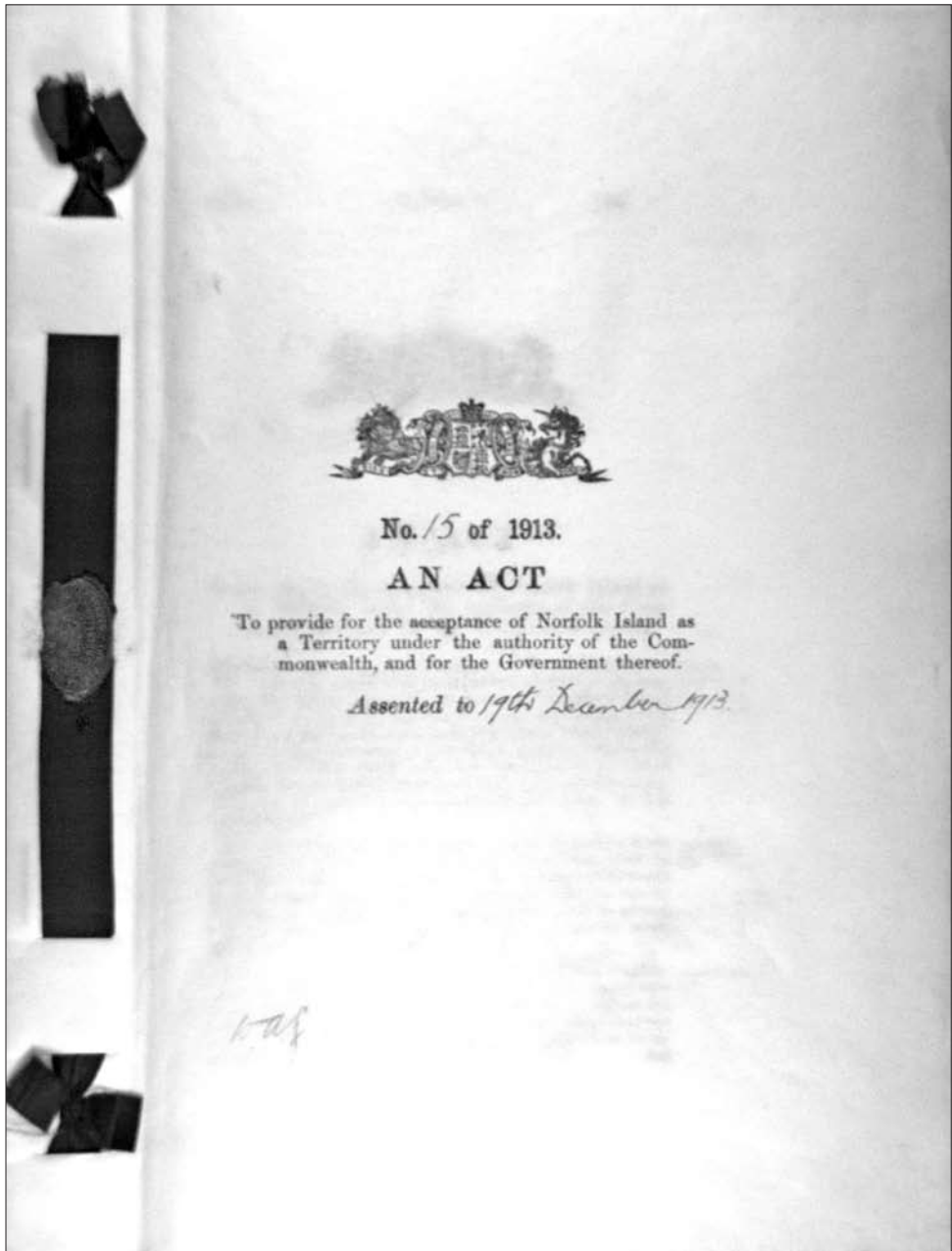
*Alfred Deakin*

His Excellency,  
The Acting Governor General  
of Australia.

Telegram and letter  
x Governor  
J. S. Wilson  
14. 8. 02

FILE  
14. 8. 02

Letter of 12 August, 1902 from Alfred Deakin, to Baron Tennyson.  
NAA: A1, 1906/5144



*pp. 148–153 Norfolk Island Act No. 15 of 1913.*  
*NAA: A1559, 1913/15*

1913.]

4 GEORGII V.

[No.



## AN ACT

To provide for the acceptance of Norfolk Island as a Territory under the authority of the Commonwealth, and for the Government thereof.

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

Preamble.  
6 and 7 Vic. c. 33.

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

Commission,  
24th October,  
1843.

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

18 and 19 Vic.  
c. 55.

*waf.*



Order in Council,  
24th June, 1856.

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

And whereas the said Order in Council was proclaimed in New South Wales on the first day of November, One thousand eight hundred and fifty-six.

Order in Council,  
15th January,  
1897.

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

And whereas the said Order in Council was published in the New South Wales *Government Gazette* on the nineteenth day of March, One thousand eight hundred and ninety-seven, and took effect at that date:

Order in Council  
18th October,  
1900.

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

And

1913.

Norfolk Island.

No.

3

And whereas the said Order in Council was published in the New South Wales *Government Gazette* on the first day of January, One thousand nine hundred and one, and took effect at that date :

And whereas the Parliament of the Commonwealth is willing that Norfolk Island should be placed under the authority of, and accepted as a Territory by, the Commonwealth :

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 :

Constitution  
s. 122.

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 :—

1. This Act may be cited as the *Norfolk Island Act* 1913.

Short title.

2.—(1.) This Act shall not come into operation until the King has been pleased to place Norfolk Island under the authority of the Commonwealth, and the Governor-General has been pleased, by proclamation, to fix a day for the commencement of this Act.

Commencement.

(2.) Subject to sub-section (1), this Act shall come into operation on the day fixed by the Governor-General for the commencement of this Act.

3. Norfolk Island is by this Act declared to be accepted by the Commonwealth as a Territory under the authority of the Commonwealth by the name of Norfolk Island.

Acceptance of  
Norfolk Island.  
Cf. 1905, No. 9,  
s. 5.

4.—(1.) Subject to this Act, the laws, rules, and regulations in force in Norfolk Island at the commencement of this Act shall continue in force, but may be altered or repealed by Ordinance made in pursuance of this Act.

Continuance  
of laws.  
Cf. 1905, No. 9,  
s. 6.

(2.) Where in any law, rule, or regulation in force in Norfolk Island at the commencement of this Act, any reference is made to the Governor, the reference shall be deemed to be made to the Governor-General.

5. The Acts of the Parliament (except this Act) shall not be in force in Norfolk Island unless expressed to extend thereto.

Commonwealth  
Acts not in  
force.  
Cf. 1905, No. 9,  
s. 6.

6. The Executive Council of Norfolk Island, as existing at the commencement of this Act, shall continue in existence, but may be altered or abolished by Ordinance made in pursuance of this Act.

Continuance of  
Executive  
Council.

7. Judges, Magistrates, and other public officers for Norfolk Island shall continue in office as if appointed under this Act.

Continuance of  
officers.  
Cf. 1905, No. 9,  
s. 9.

8.—(1.) Subject to this Act, the Governor-General may make Ordinances for the peace, order, and good government of Norfolk Island,

Laws for  
Norfolk Island.

(2.) Ordinances

(2.) Ordinances made by the Governor-General shall be published in Norfolk Island in the manner directed by the Governor-General, and shall come into force at a time to be fixed by the Governor-General, not being before the date of their publication in Norfolk Island.

(3.) Every Ordinance made by the Governor-General shall be laid before both Houses of the Parliament within thirty days after the making thereof if the Parliament is then sitting, and if not, then within thirty days after the next sitting of the Parliament.

(4.) If within thirty days after any Ordinance has been laid before it, either House of the Parliament passes a resolution disagreeing with the Ordinance or any part of it, the Ordinance or part, as the case requires, shall cease to have effect.

Appointment  
of officers.  
Cf. 1905, No. 9,  
s. 17.

9.—(1.) The Governor-General may constitute and appoint such Judges, Magistrates, and Officers as he thinks necessary for the good government of Norfolk Island.

(2.) Judges, Magistrates, and officers appointed under this section shall hold office during the pleasure of the Governor-General.

(3.) This section shall not affect any power of appointment vested in the Chief Magistrate or other person under the law for the time being in force in Norfolk Island.

Grants of land.  
Cf. 1905, No. 9,  
s. 20.

10. The Governor-General, or any person authorized by him, may, in accordance with law, make grants or other dispositions of Crown lands in Norfolk Island.

Appeals.  
Cf. 1905, No. 9,  
s. 43.

11.—(1.) The High Court shall have jurisdiction, with such exceptions, and subject to such conditions as are prescribed by Ordinance made by the Governor-General, to hear and determine appeals from all judgments, decrees, orders, and sentences of any Judge or of the Chief Magistrate acting judicially in Norfolk Island, and the judgment of the High Court shall be final and conclusive.

(2.) The Governor-General may by Ordinance provide that an appeal to the High Court, in pursuance of this section, may, *inter alia*, be by case stated with the legal argument attached thereto in writing, and that it shall not be necessary for the parties to appear either personally or by counsel.

Grant of  
pardon to  
accomplice.  
Cf. 1905, No. 9,  
s. 44.

12. Where an offence has been committed within Norfolk Island, or for which the offender may be tried therein, the Governor-General may, in the name of the King, grant a pardon to any accomplice who gives evidence that leads to the conviction of the principal offender or any of the principal offenders.

13.—The



1913.

Norfolk Island.

No.

5

13. The Governor-General may, in the name of the King, grant to any offender convicted in any Court or before any Judge or Magistrate in Norfolk Island a pardon, either free or conditional, or any remission of sentence, or any respite of the execution of the sentence, and may remit any fines, penalties, and forfeitures due or accrued to the Crown in Norfolk Island.

*Grant of  
pardon and  
remission of  
sentences and  
forfeitures.  
Cf. 1906, No. 9  
s. 45.*

14. The revenue of Norfolk Island shall be available for defraying the expenditure thereof.

*Revenue and  
expenditure.  
Cf. 1906, No. 9,  
ss. 46, 47.*

15. Duties of Customs shall not be chargeable on goods imported into Australia from Norfolk Island if the goods—

*Tariff preference  
to goods  
produced in  
Norfolk Island.*

- (a) are the produce or manufacture of Norfolk Island; and
- (b) are shipped direct from Norfolk Island to Australia; and
- (c) are not goods which if manufactured or produced in Australia would be subject to any Duty of Excise.

16. The manufacture, or, except in accordance with the provisions of the laws at present in force in Norfolk Island, the sale or supply of alcoholic liquor is prohibited.

*Alcoholic liquor.*

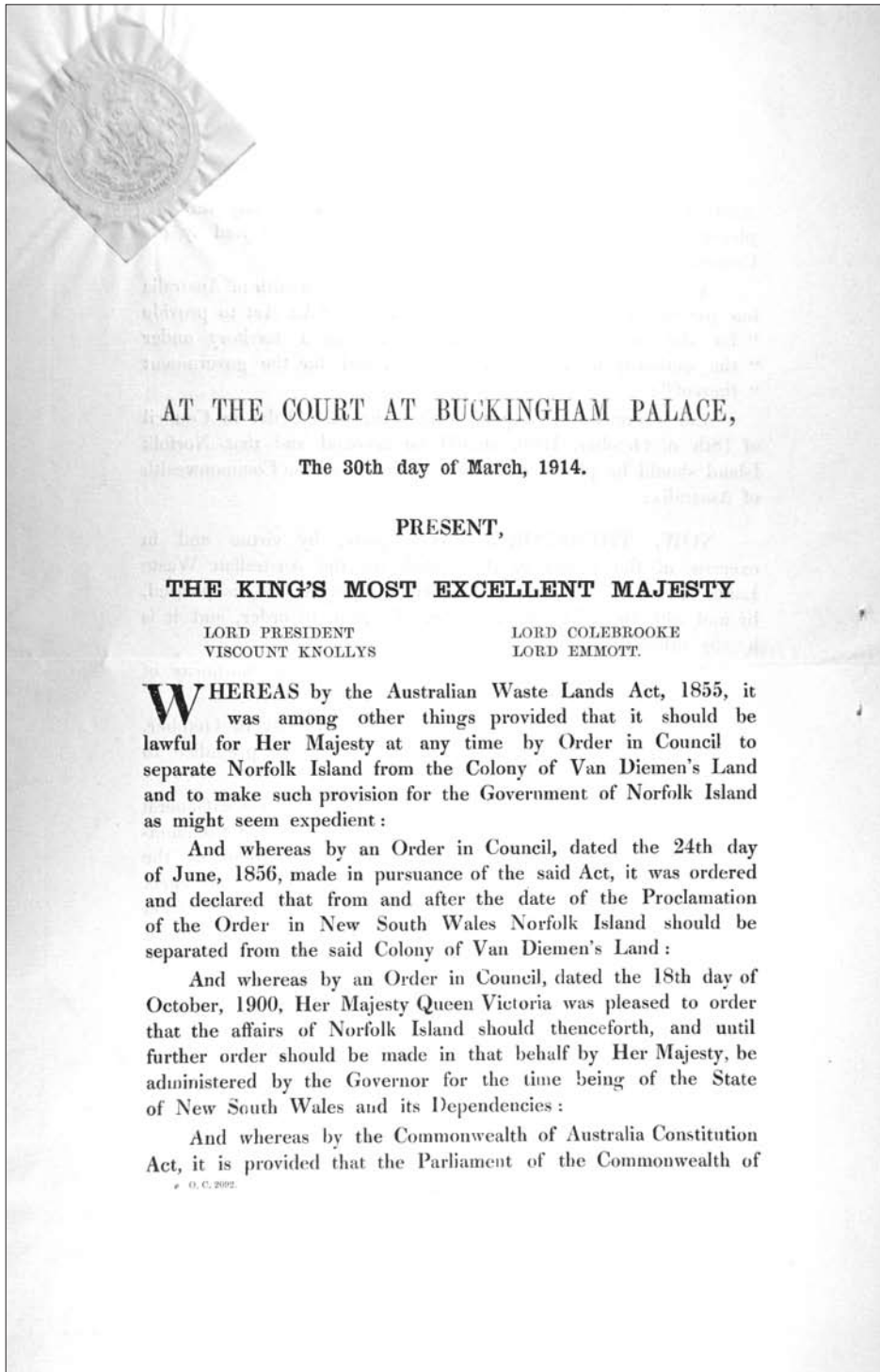
I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to provide for the acceptance of Norfolk Island as a Territory under the authority of the Commonwealth, and for the Government thereof," which has been passed by the Senate and the House of Representatives, and that the said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

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

*Sturman*  
Governor-General  
19th December 1913

*C. Savan Duffy*

*Clerk of the House of Representatives.*



*pp. 154–155 United Kingdom Order in Council, 30 March, 1914.*  
NAA: A1, 1914/20808

Australia may make laws for the government of any territory placed by the King under the authority of and accepted by the Commonwealth :

And whereas the Parliament of the Commonwealth of Australia has passed an Act No. 15 of 1913, entitled "An Act to provide for the acceptance of Norfolk Island as a territory under the authority of the Commonwealth, and for the government thereof" :

And whereas it is expedient that the said Order in Council of 18th of October, 1900, should be revoked and that Norfolk Island should be placed under the authority of the Commonwealth of Australia :


NOW, THEREFORE, His Majesty, by virtue and in exercise of the power in this behalf by the Australian Waste Lands Act, 1855, or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

- (1) Norfolk Island is hereby placed under the authority of the Commonwealth of Australia.
- (2) The said Order in Council of the 18th day of October, 1900, is hereby revoked, but without prejudice to anything lawfully done thereunder.
- (3) This Order shall be published by the Governor-General of the Commonwealth of Australia in the Commonwealth of Australia Gazette at such time as the Governor-General may think fit and shall take effect from the date which shall be fixed by Proclamation by the said Governor-General for the commencement of the Act No. 15 of 1913 of the Parliament of the Commonwealth.

*Alfred Lytton*

Printed by EYRE and SPOTTISWOODE, Ltd.,  
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For His Majesty's Stationery Office.

• G. C. 2002

  
COMMONWEALTH OF AUSTRALIA.

**Department of External Affairs,**

Departmental No. 117 17th June, 1914.

Executive Council No. 20

MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

—

SUBJECT.

PROCLAMATION FIXING DATE OF COMMENCEMENT OF  
NORFOLK ISLAND ACT 1913.

Recommended for the approval of His Excellency the  
Governor-General in Council that the attached Proclamation  
fixing the date of commencement of the Norfolk  
Island Act 1913 be issued.

Approved in Council. *W. H. Glynn*

*W. H. Glynn*  
Governor-General.

*17th June 1914*

Filed in the Records of  
the Council.

*John Howard*  
Secretary to the Executive Council.

C. No. 1.—C. 4830.

Executive Council Minute No. 20, 17 June, 1914.  
NAA: A1573, 1914/8



PROCLAMATION

Commonwealth of  
Australia to  
wit.

*R. Munro*  
Governor-General.

BY His Excellency the Right Honourable Sir Ronald Craufurd Munro Ferguson, a Member of His Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor-General and Commander-in-Chief of the Commonwealth of Australia:

WHEREAS by the Norfolk Island Act 1913 it is enacted that that Act shall not come into operation until the King has been pleased to place Norfolk Island under the authority of the Commonwealth, and the Governor-General has been pleased, by proclamation, to fix a day for the commencement of that Act:

AND WHEREAS by an Order of His Majesty in Council bearing date the thirtieth day of March One thousand nine hundred and fourteen His Majesty has been pleased to place Norfolk Island under the authority of the Commonwealth, and to order that the said Order shall take effect from the date which shall be fixed by proclamation by the said Governor-General for the commencement of the said Act:

NOW THEREFORE, I, Sir Ronald Craufurd Munro Ferguson, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, do fix Wednesday the first day of July One thousand nine hundred and fourteen as the day upon which the Norfolk Island Act 1913 shall commence.

GIVEN under my Hand and the Seal of the Commonwealth of Australia this seventeenth day of June, One thousand nine hundred and fourteen, and in the fourth year of His Majesty's reign.

By His Excellency's Command.

*M. H. Glynn*

GOD SAVE THE KING!

## PHOSPHATE

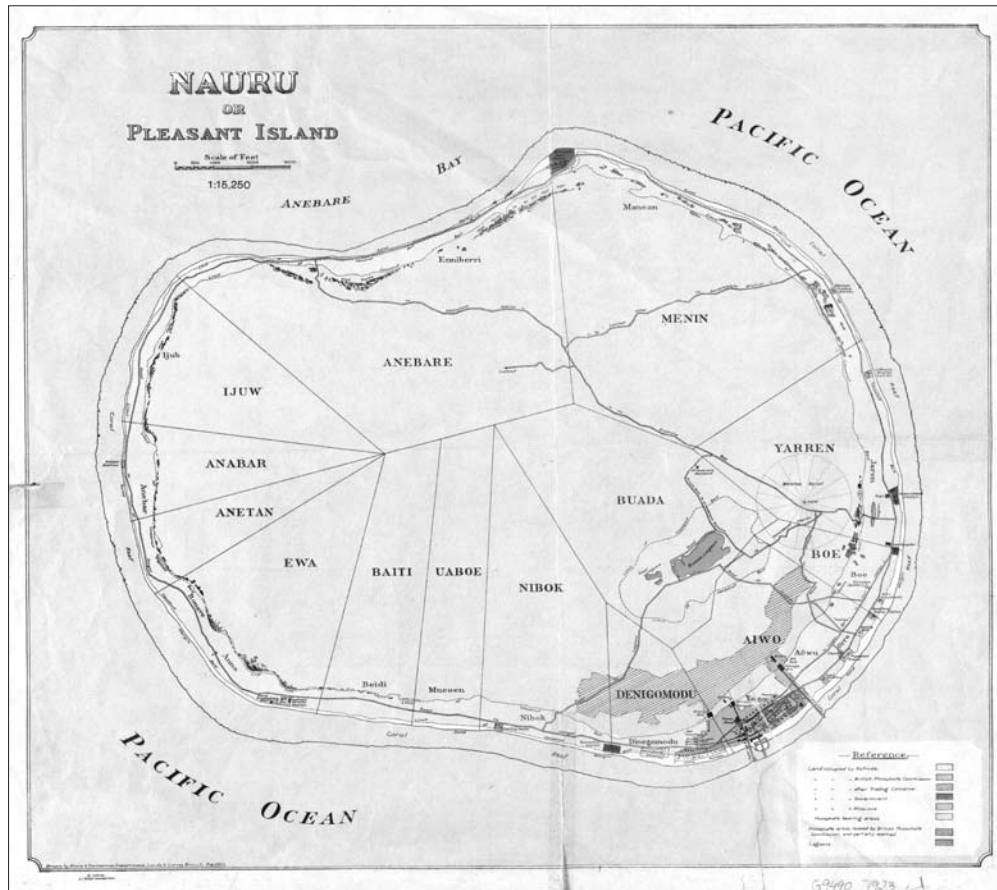
**I**mmediately after World War I, with Papua and Norfolk Island secured as external territories, Australia maintained its military occupation of German New Guinea. Soon after the outbreak of the war Australia had also occupied Nauru.

The war had brought the idea of a Pacific policy sharply into focus. Australian politicians knew that Australia's contribution to the war effort had added to its status, but also brought distinct and grave responsibilities.

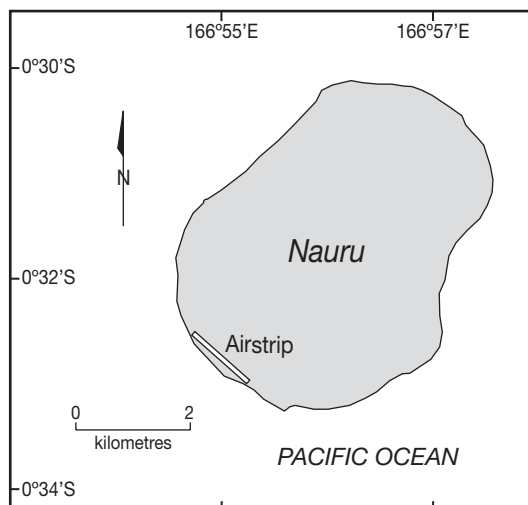
Possible control of the New Hebrides and other islands remained of interest. Some maintained that Australia should control every western Pacific island south of the equator; others, reflecting the British–Australian constitutional relationship, considered that the British flag should fly over all of them.

With the end of hostilities and the German threat in 1918, Japan now loomed in Australia's eyes as a possible threat to Pacific stability. Tokyo had been given a mandate to administer former German territories north of the equator.

The Versailles Peace Conference had resulted in Australia obtaining a mandate for the administration of former German New Guinea, but Australia sought responsibility as well for the administration of Nauru. However other powers, too, were interested in Nauru's phosphate riches.



*Nauru or Pleasant Island. Feb. 1923. NLA. Map. G9490 1923.  
Reproduced with the kind permission of the National Library of Australia.*



*Nauru.*

*Map drawn by Karina Pelling.*

## CHAPTER SEVEN

# Nauru

At sunset the extremes of the island were distant about 5 miles. No such island being laid down in my charts, I presume to name it Pleasant Island.

—Remarks of Captain John Fearn, 8 November 1798, ‘The Oriental Navigator’, 1816

To sum up, the manurial requirements of Australia are great. So are those of New Zealand. So again are those of Great Britain. There is plenty for all in Nauru.

—Departmental memo on Disposition of Nauru, 7 May 1919<sup>1</sup>

### PRELUDE

Nauru is a flat, oval-shaped island in the South Pacific at longitude 166° East and about 42 kilometres south of the equator. A mere 21 square kilometres in area, it was settled by Micronesian and Polynesian people at least 3000 years ago. The first recorded visit by a European was in 1798. The visitor, British whale hunter Captain John Fearn, named it ‘Pleasant Island’. The inhabitants called their island ‘Naoero’ and that name, over time, became known as ‘Nauru’, although the name Pleasant Island was often used in conjunction with Nauru.

In 1888, Germany annexed Nauru as part of its territorial annexations in the South Pacific—calling it ‘Onawero’ and incorporating it into Germany’s Marshall Islands Protectorate. Like the Bismarck Archipelago Protectorate (which Germany called the ‘Old Protectorate’), the Marshall Islands Protectorate was administered from Rabaul in New Guinea. At the time, some 900 Nauruans lived on the island.

In 1900, phosphate was discovered on Nauru. The Pacific Phosphate Company (PPC), a company with British interests and registered in London, began to exploit the deposits in 1906 by agreement with Germany.

Australia’s post–World War I administration of Nauru was first by and on behalf of the Tripartite Administering Authority appointed under mandate conferred by the



League of Nations, and later under a trusteeship agreement with the United Nations. The tripartite authority consisted of the governments of the United Kingdom, Australia and New Zealand. Australia exercised its powers of legislation, administration and jurisdiction in and over the territory only on their behalf.

In practice, however, Nauru was a de facto Australian mandated territory, and later trust territory, for almost 50 years from 1919 until its independence on 31 January 1968.

## OCCUPATION

At the outbreak of World War I, the British Secretary of State for the Colonies telegraphed the Governor-General:

If your Ministers desire and feel themselves able to seize the German wireless stations at ... Nauru or Pleasant Island 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.<sup>2</sup>

HMAS *Melbourne* put the Nauru wireless station out of action on 9 September 1914, and on 17 September Germany surrendered all its possessions in the Pacific to Australian forces at Rabaul. Although Nauru was included in the terms of surrender, it was not occupied or garrisoned by allied forces until 6 November 1914.<sup>3</sup>

At the same time as the island was occupied militarily, and at the request of the Governor-General, a civilian appointed by the British Government was sent to Nauru to control its civil administration. By agreement with the Australian Government, the Administrator was under the control of the British High Commissioner for the Western Pacific.

Towards the end of the war, some friction began to occur between the military occupiers, the PPC and the civilian administration. A fundamental cause of the friction was the question of future control of the phosphate resources. This issue was highlighted in a 'leaked' internal PPC letter dated 2 August 1918, which enclosed a 'leaked' official letter of 9 August 1917. The former letter advised that:

This letter [of 9 August 1917] so fully bears out the fears [expressed earlier in September 1916 correspondence] that there can be no doubt but that the Commonwealth Government intends to use all the political power it has to control the unworked phosphate deposits on this island.

That the Colonial Office will in all probability accede to the wishes of the Commonwealth Government so far as it possibly can, is I consider to be expected.

A perusal of the past history of the Pacific indicates that the Australian Colonies have been so often right in their views of the problems that have arisen and the Colonial Office so often wrong in their decisions that the latter will no doubt wish to make amends when the settlement after the war takes place.

Further the Commonwealth Govt. will make a strong point of the help rendered to the Mother Country during the war, and there is every reason to expect that the Colonial Office will endeavour to create a better feeling with the colonies in the future by acceding to the request of that Colonial Govt.<sup>4</sup>

A letter was sent to Australia's Acting Prime Minister, William Watt, on 24 August 1918, enclosing a copy of the 2 August letter and suggesting that the Governor-General, Sir Ronald Munro-Ferguson, be asked to report the matter to both the High Commissioner for the Western Pacific and the Secretary of State for the Colonies.<sup>5</sup>

In a letter dated 14 November 1918, the chairman of the PPC responded to an enquiry from the Prime Minister, William Hughes, dated 7 November 1918. Hughes had asked whether the company would be prepared to put its properties in the Pacific 'under offer to the Commonwealth Government'. The chairman advised that the PPC's tenure was based upon formal government concessions that, in the case of Nauru, gave it 'the exclusive right for a further eighty-two years of exploiting the guano phosphate deposits ...' and that '... I have to say that there is no prospect of the company being prepared to put its property under offer of sale.'

In advising Hughes of this, the letter pointed out that Australia had derived enormous benefits from certain pre-war contracts with the company, and that during the war the company had had great difficulty maintaining the supply of phosphate to Australia. The letter went on:

I hope, therefore, that the Company may have the assistance of your Government, by legislation and otherwise in continuing to fill its pre-war contracts in the conditions that must necessarily prevail for a long time after the war. I express an earnest hope that this important matter will have your sympathetic consideration.<sup>6</sup>

## PEACE AND PHOSPHATE

But the Australian authorities were not happy with the state of affairs on Nauru. On 2 December 1918, in a minute to its minister, Senator George Foster Pearce (Western Australia), the Department of Defence put forward the following points as 'worthy of earnest consideration':

- (1) The island contains very valuable phosphate deposits.
- (2) Certain persons, known as, or calling themselves the Pacific Phosphate Coy. Ltd. claim to hold a lease from the German Government or its representatives to work these or portion of these deposits.

(3) All attempts on our part to obtain a sight of this company's title to work these deposits has so far been unsuccessful.

(4) Immediately on our occupation of Nauru on the representations of the Governor General of Australia a civil administrator appointed by the British Government was sent to Nauru to control the civil administration there, this administrator was under the control of the High Commissioner for the Western Pacific ...

Defence was very concerned about the persistent attempts to have the Australian garrison withdrawn. Its concern was reinforced by PPC's anxiety to reimburse the Australian Government for its expenditure in connection with the garrisoning of the island, the company apparently being anxious to liquidate any further claims.

The minute then raised questions 'naturally suggesting themselves':

(1) Why should we have a British civil administrator for that island only?

(2) If the Pacific Phosphate Coy. is a British Coy. and has a clear title, why is the title not produced or an endeavour made to satisfy us as to the extent of its rights if any?

(3) Why should someone wish to reimburse us for our expenditure on Nauru and no other German possessions?

The minute proposed that a cable be sent to Prime Minister Hughes, who was in London, bringing the whole matter under his consideration, with a view to obtaining the removal of the British civil administrator at Nauru and the placing of the island's civil administration under the Australian Administrator at Rabaul, and the production by the PPC of the title, agreement, lease or other authority under which it claimed the right to operate the deposits. In the event of the PPC's refusal or failure to produce the documents, the company should be not allowed to work the deposits further. A cable was sent to the Prime Minister on 12 December 1918 setting out the issues as canvassed in the minute.<sup>7</sup>

Thus, at the conclusion of World War I, Australia was very keen to claim control of Nauru. It had garrisoned the island, which was rich in phosphate. It wanted sole administrative authority, but from early on it was clear that Australia was not going to get its own way.

On 18 March 1919, Acting Prime Minister William Watt was advised in a departmental minute that:

A cable has now been received from Mr Hughes intimating that the British Government propose that they should control and administer Nauru. Australia's claim has been pressed on the Secretary of State. Mr Hughes has seen Viscount Milner, who had said Britain wanted the island as it was valuable. The Mandate question was to come up on 13.3.19 at the Imperial Cabinet, and Mr Hughes proposed again to press our claim, which he said would be strengthened by showing a telegram from the Commonwealth Government.<sup>8</sup>

## CONTROL OR MANDATE?

On the same day, federal Cabinet decided to ‘Strongly impress on Prime Minister that Australia wants control or mandate for Nauru.’<sup>9</sup> This advice was cabled to Hughes on 20 March 1919.

At mandate discussions between the Commonwealth partners in London on 5 May, Nauru was noted as being among those former German colonies to be ceded under the Treaty of Peace (the Treaty of Versailles). The partners agreed on a ‘distribution’ to Australia of Nauru (the other component of the distribution being the territory constituting German New Guinea). The discussions also noted that ‘With regards the Island of Nauru, the mandate over which is claimed by Australia, the Government of New Zealand holds that the mandate should be held by the British Government.’<sup>10</sup>

A departmental memorandum of 7 May 1919, after outlining the history of Nauru from the outbreak of the war and noting, in particular, that in November 1914 Australian forces from Rabaul took possession of Nauru and had remained in occupation up to the present time, submitted that:

It would be an ungracious and unnecessary action to require Australia to vacate this island for the sake of a mere change of nominal ownership and control.

There can be no substantial or adequate reason for such a step. This island is valuable for its phosphatic deposits. Great Britain, New Zealand and ourselves equally and urgently need them. Guarantees of the most absolute kind can be arranged for a fair distribution. What possible reason remains for a dispossession which in the circumstances would be humiliating and unfair? ...

To sum up, the manurial requirements of Australia are great. So are those of New Zealand. So again are those of Great Britain. There is plenty for all in Nauru. The only question remaining is that of control. On grounds alike of contiguity and of capture as a prize of war as well as a set off against the heavy expenditure to be incurred in the other mandated territories Nauru should remain in our possession. The equities of the case would be violated if it were now taken from us.<sup>11</sup>

The *Melbourne Age* published an article on 10 May 1919 setting out the government’s view of the terms of the Treaty of Versailles. Acting Prime Minister Watt was reported as saying that the treaty was a:

colossal document ... of supreme importance to all the peoples of the world ... As to the former German islands south of the equator—our information is that we are to get control of the bulk, if not all, of them under what appears to the Government to be satisfactory mandatory conditions. Some difficulty apparently exists between Great Britain and Australia with respect to at least one of the islands, that is, Nauru. Being

desirous rather to assist rather than to intensify such a difficulty, I can only at the present stage say this, that if any distinction is made with respect to the islands in the military occupation of the Australian forces, the people of Australia can scarcely be expected to understand the reason. I believe that further discussion on this important issue may be safely entrusted to the Prime Minister, who is in cable consultation with his Cabinet in Melbourne, but I feel sure that the Australian Parliament will expect a full explanation from the British authorities concerning any attempted differentiation.<sup>12</sup>

On 4 June 1919, Hughes cabled Watt:

Nauru. After protracted negotiations, I have agreed with Milner, to whom Lloyd George entrusted full power, to an arrangement which places Nauru under United Kingdom, Australia and New Zealand. Mandate is held by British Empire. Company is to be bought out by United Kingdom, Australia and New Zealand contributing certain proportions, ours being equal to that of United Kingdom.

Working of phosphate deposits to be vested in three Commissioners, one appointed by each of three Governments interested: they to be quite free from political control ... Civil administration to be vested in administration appointed by the three Governments. Administration for first five years to be appointed by Australia. Agreement has yet to be approved by ... Imperial Cabinet.<sup>13</sup>

Watt replied: 'I submitted your telegram dated 4 June re NAURU to Cabinet, who approve of the arrangement outlined. We consider in the circumstances that you have done mighty well.'<sup>14</sup>

Contemporary press reports saw this as a failed attempt by Australia to take control of Nauru and its phosphate resources.<sup>15</sup> The mandate for Nauru, which was conferred on 'His Britannic Majesty', was in the same terms as that for New Guinea. The territory could be administered as an integral portion of the mandatory's territory, subject to certain safeguards.

The United Kingdom's acceptance of the intergovernmental agreement—within the terms of the proposed mandate—was notified to Australia by British Prime Minister Lloyd George in July 1919. As far as the administration of Nauru was concerned, the agreement indicated that:

The first Administrator [is] to be appointed for 5 years by the Australian Government; thereafter the Administrator [is] to be appointed as the three Governments decide. The Administrator [is] to have power to make ordinances for civil government (including education, police, etc.) and to establish courts and magistrates. Expenses of administration so far as they are not met from other revenue, to be defrayed out of proceeds of sales of phosphates.

The Agreement was subject to ratification by the respective Parliaments.<sup>16</sup>

On 18 September 1919, the Nauru Island Agreement Bill was presented to the Commonwealth Parliament and read a first time.<sup>17</sup> The purpose of the Bill was set out in its preamble:

An Act to approve the agreement made between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia, and His Majesty's Government of the Dominion of New Zealand, in relation to the Island of Nauru.

The agreement was a schedule to the Act and set out provisions for the exercise of the mandate and the mining of the phosphate deposits. Article 1 set out the terms of appointment and powers of the Administrator. The remaining articles dealt with expenses, appointment of the Board of Commissioners, compensation, management, share of production, and so on. The proposed legislation was essentially about the mining of phosphate.

The debate in the House of Representatives was mainly about the terms of the agreement covering the authority, responsibilities and powers of the commissioners and the value of the phosphate deposits. Members debated supply issues, costs, prices, markets and tonnage, and the overall cost and worth of Australia's share of the phosphate resources. The island's deposits of guano were seen as being invaluable to Australia, because land settlement was so important in Australia's future and ex-servicemen, particularly, needed to be attracted to the land. One member, noting the triple 'ownership' of the island, hoped that there would be only one set of officials.<sup>18</sup> The Prime Minister noted that the Administrator was not to interfere in the work of the commissioners. Some speakers chided the government for not achieving total control of the island; for example, '[W]e took the island just as we took New Guinea. There was no suggestion of a tripartite arrangement in regard to German New Guinea.'<sup>19</sup>

The Bill passed all stages in the House on 24 September 1919 and was introduced into the Senate on the same day.<sup>20</sup> Its second reading began on 2 October 1919. Senators raised issues similar to those raised in the House of Representatives, although there was some more pointed questioning about what, exactly, Australia was getting itself into. How much would it cost Australia? Would it be value for money? The question of the constitutional competence of the Commonwealth to enter into such an agreement was also raised. Was it within the trade and commerce power?<sup>21</sup> It was pointed out that Australia had not acquired Nauru as a territory under s. 122 of the Constitution.<sup>22</sup> Another speaker felt that, because Australia had accepted a mandate over the island as part of the British Empire and had thus come into possession of phosphatic rock, there was no law to prohibit the Commonwealth from disposing of such property.<sup>23</sup>

In committee, senators debated Article 1 of the schedule—the provision of an Administrator. Speakers were concerned about the likely costs of such an office and questioned why the island could not be administered from Rabaul or Port Moresby.<sup>24</sup>



It was pointed out that the agreement provided for the costs of administration to be defrayed from the proceeds of phosphate sales.<sup>25</sup> Also, because it was envisaged that the Administrator might be a British or New Zealand appointee in five years time and that he had on-island functions of administration over education, courts etc., he could not perform from off-island.<sup>26</sup>

The Bill was passed by the Senate without amendment and returned to the House on 22 October 1919.<sup>27</sup> The Australian *Nauru Island Agreement Act 1919* was assented to on 28 October 1919 and was to be brought into force on a date to be proclaimed.

In the United Kingdom, the parliamentary debate on its enabling legislation ran into problems. As the *Manchester Guardian Weekly* put it, in an article titled ‘The plunder of Nauru’:

Lord Robert Cecil has fought so many losing battles for the decencies of foreign policy in the House of Commons that it is a special pleasure to congratulate him on a victory. He persuaded the Standing Committee ... to add ten significant words to the Government Bill for disposing of the phosphates of the Island of Nauru. Under that Bill Great Britain, Australia and New Zealand buy out the German company that owned these deposits and take the deposits for their own use. In other words the term ‘mandate’ has no meaning, for these Governments act as if the deposits were to be used by them precisely as they please, without waiting for authority from the League or considering the needs of the rest of the world ... It is not surprising that this piece of plunder strikes other countries as one of the most cynical offences yet committed against the ideas of the League of Nations. Lord Robert Cecil’s addition to the Bill consists of ten words, ‘subject to the provisions of article 22 of the Covenant.’ That article stipulates, among other things, that, ‘the degree of authority, control, or administration to be exercised by the mandatory shall, if not previously agreed upon by the members of the League, be explicitly defined in each case by the Council.’ If the League sanctions this monopoly of one of the necessities of life urgently needed by several countries, it will proclaim its inability to carry out its simplest principles.<sup>28</sup>

Australian press articles a few weeks later stated that, in the second reading of the British Nauru Island Agreement Bill, the Secretary of State for the Colonies, Lord Milner, had pointed out that ‘it was a complete mistake to suppose that an agreement such as this needed to be submitted to the Council of the League of Nations.’ Article 22 of the League Covenant, he said, was never intended to be applied to Nauru. Nauru Island and South-West Africa were deliberately handed over to the mandatory with clear provisions that their sovereignty was unlimited, except regarding the protection of the natives.<sup>29</sup>

The British *Nauru Island Agreement Act 1920*, confirming the tripartite phosphate mining agreement, gained royal assent on 4 August 1920 and came into operation immediately.

On 5 August 1920, a British press report suggested that Australia had been 'taken down' in the mandate arrangements. The report quoted sources suggesting that Prime Minister Hughes would have successfully negotiated for the whole of the island in Versailles, but for the fact that Acting Prime Minister William Watt and the Cabinet 'he left behind' did not support him.<sup>30</sup> As we have seen, that was clearly not the case.

On the same day, Lord Milner wrote to Governor-General Sir Munro Ferguson, pointing out that the British Act was worded to make it subject to Article 22 of the League of Nations Covenant. The British Government regarded these words as 'superfluous' but did not wish to invite further debate. He also pointed out that the PPC had undertaken to carry on the business on behalf of the three governments, pending completion of purchase or finalised management arrangements, whichever was the earlier. Lord Milner stressed the need for the earliest appointment of the Australian Administrator, as any delay would be 'most prejudicial to the successful inauguration of the new arrangements'.<sup>31</sup>

The Australian objective of having an Australian Administrator had been achieved in the legislation (at least for the first five years), and the British wanted him to start work. Australia was keen to see local management in place, and apparently New Zealand was, too. Prime Minister Hughes cabled the Commonwealth Treasury on 26 August 1920 saying, 'Prime Minister of New Zealand advises me that his Government concurs in my opinion that business must be managed from this end of world.'<sup>32</sup>

The proclamation, bringing into force the Australian *Nauru Island Agreement Act 1919* from 28 October 1920, was issued on 27 October 1920 and gazetted in Commonwealth of Australia Gazette No. 93 of the same day. That month, Australia appointed its commissioner to the newly formed British Phosphate Commission.<sup>33</sup> From quite early in the commission's phosphate extraction operations on Nauru, phosphate from nearby Ocean Island (Banaba, now in the Republic of Kiribati) was included in the Nauru output.

The League of Nations mandate for Nauru was dated 'Geneva 17 December 1920'. Australia appointed an Administrator, Brigadier-General Thomas Griffiths, for five years from 16 February 1921.

Sir Robert Garran later described the Nauru mandate and administration arrangements as follows:

The Mandate having been given to the British Empire, its actual exercise by Australia [was] a matter of intra-Empire arrangement. The [1919] Agreement between the United Kingdom, Australia and New Zealand [did] not provide for the extension to Nauru of the laws of the administering country, but only for local Ordinances by the Administrator. The island was de facto under the authority of the Commonwealth to the extent that the Administrator ... [was] appointed by the Commonwealth; but under the Agreement and the ratifying Acts it [seemed] to be de jure under the authority of the three governments. Whether and how far the legislative power of the Constitution applies to this state of affairs is a matter of doubt ... The Administrator of Nauru was

originally during his term of office, perhaps the most absolute ruler in the world ... he [was] not to interfere with the direction, management or control of the working or selling of the phosphates, ... he was bound by the obligations under the Mandate ... but otherwise he was absolute lord and master of the island; [and until 1923] his Ordinances were not subject to disallowance by anyone, and he was not bound by any instructions.<sup>34\*</sup>

## ADMINISTRATION

Almost from the outset of the operation of the mandate, Australia's role as the administering authority created some confusion about which government was responsible for Nauru's affairs. Over the years, when it suited, Australia seemed happy to push for outright control of Nauru under the terms of the mandate, or to encourage the idea that it had or should have had such control.

On 26 January 1921, the Governor-General received a cable from the Secretary of State for the Colonies:

Your telegram 21<sup>st</sup> January: the mandate for Nauru has been given to British Empire, and Nauru therefore cannot be regarded as territory under the authority of the Commonwealth. Arrangements for Government of the island under the mandate have still to be settled by agreement among the various portions of the Empire and the fact that it has been agreed that the Commonwealth is to appoint the first Administrator does not bring the island within the 'territory governed by the Commonwealth under a mandate.' Please convey this view to your Prime Minister.<sup>35</sup>

The British view that the mandate had been given to the 'British Empire' was open to question (it had been given to 'His Britannic Majesty'). A Department of External Affairs paper dated 26 June 1937 suggests that:

The Mandate for Nauru was conferred upon 'His Britannic Majesty' but in the Agreement between the three Governments this has been taken to mean the 'British Empire'. It may be held that the King had power to signify by which of his various governments he wished the Mandate to be exercised.

However, other members of the British Empire might raise the question whether, if the Mandate was conferred on the British Empire, should not its benefits and its administration be shared by all the Empire.<sup>36</sup>

On 27 June 1921, the Secretary-General of the League of Nations advised the Prime Minister that the League's Council had resolved to seek reports on the administration

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\* It has also been argued by RD Lumb (Senior Lecturer in Law, University of Queensland) that the Commonwealth's power over Nauru derived from its external affairs power; that is, from s. 51 xxix and not from s. 122 of the Constitution. *Australian Law Journal*, vol. 37, 31 October 1963, p. 175.

of its mandated territories. Britain looked to Australia to provide the report, and suggested that the report date from the confirmation of the mandate on 17 December 1920.<sup>37</sup>

In the Senate on 9 August 1921, Senator Albert Gardiner (New South Wales) asked the Leader of the Government (Senator Millen) on notice:

1. When and under what authority did Nauru become a Territory under the authority of the Commonwealth?
2. When and in what publication has it ever been notified that Nauru so became a Territory?

Millen responded that 'Particulars in connexion with the Commonwealth's participation in the administration of Nauru are contained in the Nauru Island Agreement Act No. 8 of 1919.'<sup>38</sup>

As we have seen, the administration of Nauru was exercised under the schedule to the 1919 Act, and the position of Administrator had unfettered authority other than in relation to the work of the Phosphate Commission. A more detailed administrative structure was needed.

On 31 May 1922, the Secretary of State for the Colonies, Winston Churchill, wrote to the Governor-General, Baron Forster, concurring in the Australian Prime Minister's suggestion that the 'proposed [supplementary] Agreement relating to the administration of Nauru' might be made in a permanent form. Churchill believed that this would make it unnecessary to record in the agreement the understanding that the island had not been acquired by the Commonwealth.<sup>39</sup>

The draft agreement attached to the letter provided, among other things, that the administration of the island would be vested in an Administrator, the first to be appointed for a term of five years by Australia and thereafter be appointed in such manner as the three governments decided. The draft also reiterated the ordinance-making power of the Administrator. These provisions were a restatement of the provisions in the schedule to the 1919 Act. The draft then provided that all ordinances would be subject to confirmation or disallowance in the name of His Majesty, to be signified through the mechanism by which the particular appointing government confirmed or disallowed such laws (in the case of Australia, the Governor-General acting on the advice of the Federal Executive Council). The Administrator was to conform to such instructions as he was given from time to time by the government that appointed him. Copies of all ordinances, proclamations and regulations made by the Administrator were to be forwarded to his government for transmission to the other two governments.<sup>40</sup>

Meanwhile, the Australian High Commissioner in London, Sir Joseph Cook, represented the mandatory for Nauru before the Permanent Mandates Commission

of the League of Nations on 4 August 1922.<sup>41</sup> The commission's subsequent report was the subject of press headlines unfavourable to the administration.<sup>42</sup>

Sir Joseph reported to Prime Minister Hughes by cable on 8 August 1922, setting out an extract from the Mandates Commission report:

As far as the Commission is aware, these agreements (the effect of which is that Australian Government, though not designated as such in mandate has become in practice the mandatory responsible for the administration of the Island of Nauru) have not been made the subject of any notification to League of Nations. The Commission therefore wish to include in present report, for the information of Council, the above-mentioned facts, which have led to some uncertainty as to whether mandate for the Island of Nauru, with the responsibility which it entails, can be considered by [the] League of Nations as having been in effect transferred to Australian Government.<sup>43</sup>

Hughes replied on 10 August 1922:

Presume it was the business of British Government to inform League of Nations of agreement, but unaware whether it did so. Australian Government is merely agent for the three Governments in giving instructions to Administrator. He has complete powers of Government and other Governments concerned are consulted before any instructions on matters of major policy are given.<sup>44</sup>

In its report to the Council of the League of Nations, the Mandates Commission said that under the terms of the mandate it was bound to consider the island of Nauru as under the British Empire as a whole, to the exclusion of any one government within that empire. Furthermore, it understood that Sir Joseph Cook appeared before it as representative of the British Empire. However, it recorded that 'an examination of the report leaves the impression that the administration of the island is exercised *de facto* by the Australian Government, which now assumes responsibility for it.'<sup>45</sup>

The Australian Government wanted to avoid international criticism but also wanted to continue its administrative hold on the island. The Prime Minister sought an opinion on what it might do to strengthen its position. He received an opinion from the Professor of International Law at the University of Sydney, AH Charteris, on 29 August 1922.

Charteris submitted that, in view of the unfavourable comments from the Permanent Mandates Commission:

the Federal Parliament should take steps to make certain changes in the Tripartite Agreement ... and relevant Federal legislation for the purposes of removing matter for unfriendly criticism, and furthermore that the share of the Commonwealth Government in the administration of the Island should be placed under the control of Parliament.<sup>46</sup>

On 8 September 1922, the Prime Minister made a statement in the House of Representatives on the matter of Nauru. He canvassed the background to the establishment of the mandate and the arrangements for, and authority of, the Administrator. He stressed the fact that, while the Administrator acted under instructions from the Commonwealth Government, in all important matters the other two governments were consulted and informed. Therefore, the administration of the island was not exercised to the exclusion of the other governments. He concluded by saying, 'Since the establishment of Australian administration the Nauruans have expressed their thanks and appreciation, through the Administrator to the Commonwealth Government, for the manner in which they are being treated.'<sup>47</sup>

The Tripartite Agreement for the Administration of Nauru (as distinct from the phosphate mining agreement) had been under consideration, and was signed on 30 May 1923.<sup>48</sup> The agreement was to be ratified by legislation, and a draft Bill was prepared for that purpose. The Bill passed the Senate and was introduced into the House on 8 May 1924 but had not been considered before the prorogation of Parliament, when the Bill lapsed.

On 21 May 1924, the chiefs of Nauru appealed to King George V to be allowed to continue under Australian rule,<sup>49</sup> and the King informed them on 24 September that he was well aware of the good work of the Administrator.<sup>50</sup>

In September 1926, the Administrator (General Griffiths) sought permission to resign his position. He had been reappointed (with the concurrence of the United Kingdom and New Zealand) earlier that year for a further period of five years. His request to resign raised the issue of the method by which future administrators would be chosen and appointed. Although there had been earlier suggestions that after the first appointment the position might be rotated between the three governments, there was no formal agreement to that effect. In September 1919, the Prime Minister had said in the second reading of the Nauru Island Agreement Bill that the Administrator 'is appointed by the three Governments. They take it in turn to make an appointment.'<sup>51</sup>

In 1926, the matter was put to the Acting Prime Minister, Earle Page, who obtained Cabinet's agreement to approach the partner governments to secure an amendment to Article 1 of the Tripartite Administration Agreement, giving the Commonwealth the right to appoint future administrators.<sup>52</sup>

This proposal also canvassed again the question of the mandate for Nauru being vested in, or administered solely by, Australia. A cable was sent to the Prime Minister, Stanley Bruce, who was in London, asking him to raise the matter with the British authorities.<sup>53</sup>

Bruce responded on 14 December 1926, indicating that he had gone very fully into the matter but that there was 'no possibility' of inducing the British and New Zealand governments to agree to the suggestion for the reorganisation of control.<sup>54</sup>



In May 1927, Australia proposed William Newman as Administrator of Nauru for five years to replace General Griffiths. The British and New Zealand governments concurred in Newman's appointment, which took effect from 11 June.<sup>55</sup>

From then on, with the agreement of the United Kingdom and New Zealand governments, Australia from time to time appointed the Administrator of Nauru until the island's independence in 1968.<sup>†</sup>

In 1931, the question of the ratification of the Tripartite Administration Agreement was raised again in Australia. The Attorney-General's Department responded by indicating that the necessity for ratification was 'just as great now as it was [in] August 1923'.<sup>56</sup>

The Nauru Island Agreement Bill was prepared and introduced into the Senate on 16 August 1932. On 7 September, the Minister for Defence (Senator Sir George Pearce) in the second reading described the bill as of 'a technical and legal character'. He set out a brief history of the conferring of the mandate and the first (1919) agreement for the administration of Nauru. He then indicated that, as a result of discussions in 1921 between the three governments, it was 'considered desirable to make more explicit provision for the exercise of the powers conferred upon the Administrator ... and a supplementary agreement was completed on 30 May 1923.'

Pearce described how a bill for an Act to approve the supplementary agreement had been introduced into parliament in 1924 but had lapsed on prorogation. He then indicated that 'The need for again submitting this supplementary agreement for Parliamentary approval appears to have been inadvertently overlooked, and the object of the bill is to remedy the omission.'

After outlining the provisions of the supplementary agreement, Pearce concluded:

The agreement thus provides certain safeguards not contained in the original agreement, and gives the Government immediately responsible, for the time being, for the administration, greater powers of control over the administrator, in regard to both legislation and administration. The supplementary agreement does not affect in any way the provisions of the agreement of 1919 relating to the working of the phosphate deposits.<sup>57</sup>

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† By agreement, Newman's five-year term was extended by six months until 31 December 1932. The British and New Zealand governments were agreeable to Australia nominating a successor, but the New Zealand Government asked for advice on the qualifications of the proposed appointee, 'thus affording [it] the opportunity to offer any comments should it be thought desirable to do so'. The New Zealand Government also suggested that it would 'be of great advantage towards the maintenance of efficient and tactful administration' if the Administrator made at least two trips to Australia (perhaps one of them including a visit to New Zealand) during his five-year tenure of office. Cable, 25 October 1932, NAA: A518, F800/1/2 PART 1; and letter, 10 November 1932, NAA: A518, F800/1/2 PART 1.

In the committee stages of the bill, when dealing with a clause requiring a proclamation for the bill's commencement, the minister said, 'Since the bill was introduced, the Crown law authorities have given consideration to the question of the proclamation, and have come to the conclusion that the passing of the bill and the assent by the Governor-General constitute the only legal power that is necessary. The power of proclamation is therefore not wanted, and I ask the committee to negative this clause.'<sup>58</sup> The committee did so and the bill was agreed and read a third time.

The bill was read a second time in the House of Representatives on 22 November 1932. In debate, T Paterson (Member for Gippsland) offered no opposition to the bill but noted:

that it is rather a shock to our sense of importance as legislators to realise that everything has gone along, apparently quite well, for about thirteen years without the ratification of this agreement. It is gratifying to learn that not only the Mandates Commission, but the natives themselves, give us credit for having administered our mandate in a proper way.<sup>59</sup>

The *Nauru Island Agreement Act 1932* was passed on 23 November and received Royal Assent on 28 November 1932.<sup>‡</sup>

In April 1938, the question of the appointment of an Administrator arose again. Commander Rupert Garsia had replaced William Newman and was willing to accept a further term. The Australian Government decided not to reappoint him, thereby, as we shall see, unwittingly saving him from an awful fate. His successor was Lieutenant Colonel Frederick Chalmers.

In 1942, Japanese forces invaded and occupied Nauru. Australian forces reoccupied the island in August 1945. In a cable dated 3 October 1945, the British and New Zealand governments were informed by Australia, that:

It has been reliably established by Nauru re-occupation force that Lieutenant-Colonel Chalmers, Administrator of Nauru, together with two officers of Administration and two members of staff of British Phosphate Commissioners, who remained on island after general evacuation, were executed by Japanese on night following first American bombing of island on 26 March, 1943.<sup>60</sup>

In 1946, with the establishment of the United Nations Organisation, and in conjunction with the United Kingdom and New Zealand governments, Australia began to prepare to make a declaration to place the mandate of Nauru under the United Nations trusteeship system.

In developing the proposed trusteeship agreement for Nauru, the Australian Government asked the other two governments:

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‡ Section 5 (1) of the then Acts Interpretation Act 1901 provided that an Act should come into operation on the day on which it received Royal Assent, unless the contrary intention appeared in the Act.

whether we should take the opportunity to bring to an end the tripartite arrangement for administration ... and have a single administering authority i.e. confirm the practice followed during the period since the mandate was conferred.<sup>61</sup>

The other governments did not accept this proposal, so Australia's efforts to gain sole administrative control over Nauru were again unsuccessful. However, they agreed that Australia should continue to administer Nauru on behalf of the three governments.

Under the United Nations Trusteeship Agreement for Nauru, agreed to by the General Assembly on 1 November 1947, the 'Administering Authority' comprised the governments of Australia, the United Kingdom and New Zealand as a joint authority administering the mandate. Under Article 4 of the agreement, Australia, on behalf of the administering authority, and except and until otherwise agreed by the other governments, was authorised to 'continue to exercise full powers of legislation, administration and jurisdiction in and over the Territory'.<sup>62</sup>

## POSTSCRIPT

In June 1949, the Trusteeship Council became concerned at reports that Australia was working on a long-term plan to transfer Nauruans to another island in the Pacific once the phosphate deposits were exhausted. The Australian Government responded that it was not an expression of determined policy but rather an observation that once the deposits were exhausted (in an estimated 70 years) 'all but the coastal strip of Nauru will be worthless'.<sup>63</sup>

In 1951 the Department of Territories questioned the possible need to incorporate the United Nations Trusteeship Agreement for Nauru in Australia's domestic legislation. An earlier view had been that the administrative agreements which formed a schedule to the 1919 and the 1932 Nauru Island Agreement Acts were acknowledged in Article 4 of the trusteeship agreement and that therefore the Acts, and the agreements recognised in them, were still current. That view was endorsed, and it was felt that there did not seem to be any particular merit in embodying the trusteeship agreement in an Act of the Commonwealth. However, were it considered desirable to do so, it would not affect the existing agreements.<sup>64</sup>

These issues continued to worry the Australian authorities. On 26 May 1956, an Attorney-General's Department memorandum to the Department of Territories cited two questions: whether Commonwealth legislation could be applied directly to Nauru, and whether the trusteeship agreement should be approved by parliament. Earlier opinions had been 'No' to the first question and 'Not necessary' to the second.

The memorandum went on:

These questions have been considered very fully by senior officers and extreme difficulty has been experienced in arriving at a common view as to the constitutional basis for the government of Nauru. The problem arises from the terms of the Trusteeship Agreement of 1947 and the matter has international as well as domestic, legal aspects, and political as well as legal aspects. As the United Kingdom and New Zealand have an interest in this problem, the Solicitor-General has thought it desirable to take the opportunity of his impending visit overseas to discuss the matter with United Kingdom and New Zealand officers who will be in London for the Conference of Commonwealth Prime Ministers.<sup>65</sup>

However, constitutional matters took a back seat as the Trusteeship Council considered the possible resettlement of the Nauruans. By 1956, the prognosis for phosphate stocks was now only 40 years, and the council was turning its attention to ascertaining the wishes of the people for their future. The question of target dates for the attainment of self-government or independence was placed on the agenda.<sup>66</sup>

The Australian Government continued to advise the Trusteeship Council that all of the policies of the administering authority were aimed at the social, economic and political advancement of the Nauruans and at finding a practicable solution for resettlement. For its part, the council kept seeking advice about target dates, but the administering authority did not think that target dates for political advancement could be established.<sup>67</sup>

In July 1961, a press report on Trusteeship Council deliberations about Nauru suggested that many western delegates to the council meeting were canvassing the idea of a Pacific Island federation to include all Polynesia and Micronesia, with New Guinea joining later. The response to enquiries about the report was that nothing was known about any such proposal.<sup>68</sup>

On 27 November 1962, the Minister for Territories, Paul Hasluck, was asked in parliament whether the Nauruan people had made a request to settle on Fraser Island off the Queensland coast. He responded that no formal request had been made but that discussions were continuing on the question of a future home for the Nauruan people.<sup>69</sup> On 22 October 1963, answering a question on notice, Hasluck advised that discussions were continuing, that Curtis Island was a possibility and that, if the Nauruans were resettled in Australia, they would become Australian citizens with all the privileges and obligations of citizenship.<sup>70</sup>

By mid-1964 the question of the possible termination of the Trusteeship Agreement for Nauru began to be raised. Also, the Nauruan people began to press for local legislative authority.

In August 1964, the prospect of the termination of the trusteeship agreement, local control over their affairs in a transitional step to independence, and problems

of citizenship, taxation and customs led the islanders to announce that they no longer sought resettlement.<sup>71</sup>

Australia enacted the *Nauru Act 1965* after discussions with the Nauruan people and the partner governments in the administering authority, and with the agreement of the Trusteeship Council. The Act established a form of self-government for Nauru, including a Legislative Council, and provided that an Administrator appointed by the Governor-General would administer the territory on behalf of the Australian, British and New Zealand governments.

Under the trusteeship agreement, Australia remained beholden to its partners in the administering authority. The 1932 administrative agreement between the partners was renegotiated and set out in the second schedule to the Act. In practice, the agreement had not constrained Australia's administrative or legislative activities over the years in any way at all. This state of affairs was recognised in Article 6 of the schedule:

The Government of the Commonwealth of Australia will submit to the Commonwealth Parliament legislation to give effect to this Agreement and to make such other provisions in relation to the government of the territory as the Government of the Commonwealth of Australia deems necessary or convenient.

At last—and on the eve of Nauru's independence—Australia had, with the approval of its partners, achieved full administrative control.

On 24 October 1967, the Minister for Territories, Charles Barnes, announced in parliament that, following talks with representatives of the Nauruan people and the other partner governments, agreement had been reached for Nauru to become independent on 31 January 1968.<sup>72</sup> Australia subsequently enacted the *Nauru Independence Act 1967*, which enabled Nauru to draw up a constitution to apply from the date of independence. On that date, also, the trusteeship agreement and Australian legislation ceased to apply to Nauru.

## NOTES

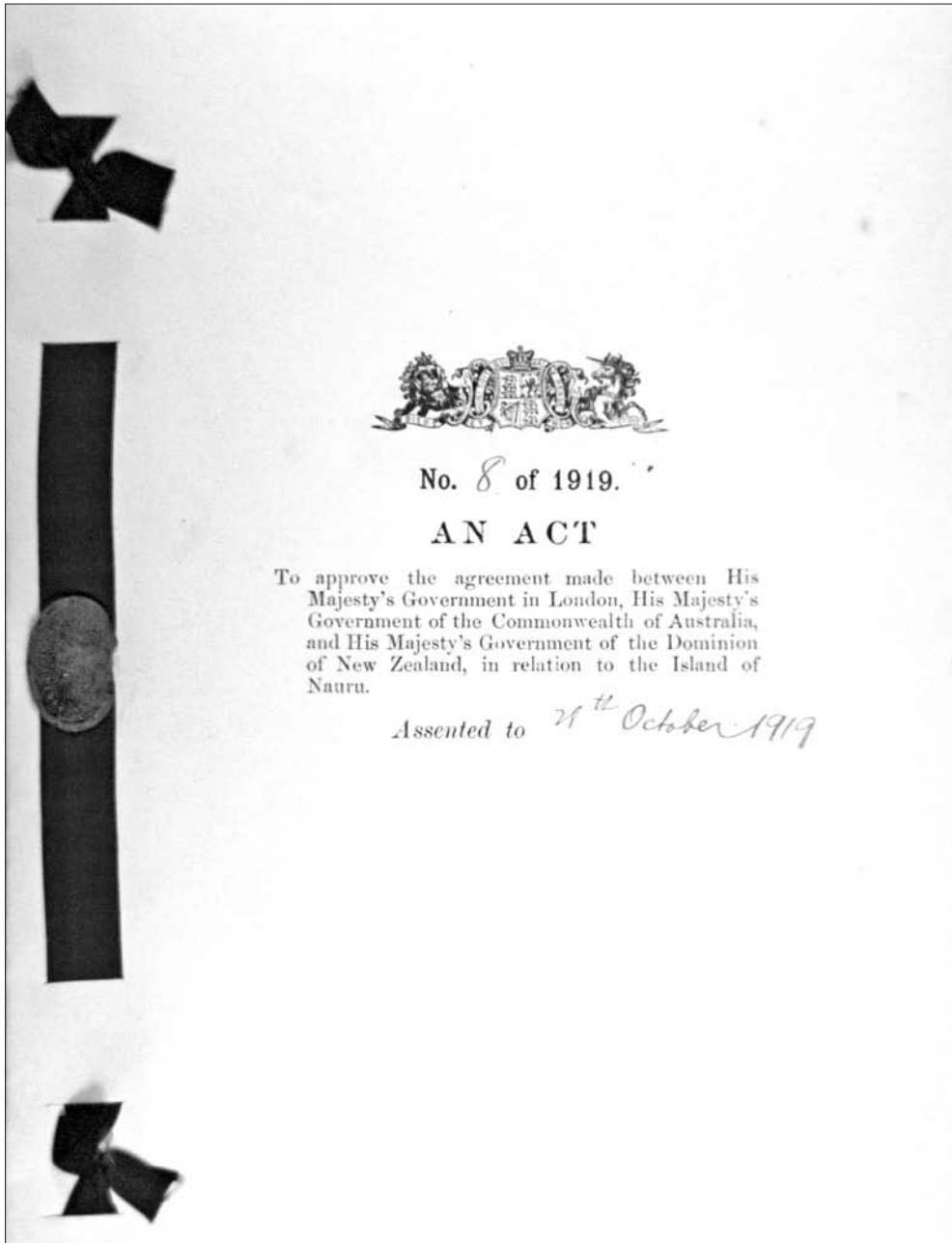
- 1 NAA: CP351/1, 6/17.
- 2 Cable to Governor-General, 6 August 1914. See Report by Minister for Defence on the Military Occupation of German Possessions, 1921, Senate Papers.
- 3 Minister of State for Defence Report on the Military Occupation of the German New Guinea Possessions, 1921 Parliamentary Papers.
- 4 Letter of 2 August 1918 from Mr Cleeve-Edwards, Manager, Pacific Phosphate Company, Nauru, to 'The Representatives, Melbourne', NAA: A518, J800/1/2 PART 1.
- 5 Letter of 24 August 1918, NAA: A518, J800/1/2 PART 1.
- 6 Letter from Chairman, British Phosphate Company, to Prime Minister Hughes (who was in London), 14 November 1918, NAA: CP351/1, 6/17.
- 7 Department of Defence minute, 2 December 1918, and cable, 12 December 1918, NAA: A518, J800/1/2 PART 1.

- 8 Prime Minister's Department, minute of 18 March 1919, NAA: A518, J800/1/2 PART 1.
- 9 Unnumbered Cabinet decision, 18 March 1919, NAA: A518, J800/1/2 PART 1.
- 10 Departmental papers, 8 May 1919, NAA: CP351/1, 6/17.
- 11 Memorandum on disposition of Nauru, 7 May 1919, NAA: CP351/1, 6/17.
- 12 Press clipping, *Melbourne Age*, 10 May 1919, NAA: A518, J800/1/2 PART 1.
- 13 Cable SC 227/112 4 June 1919, NAA: A518, J800/1/2 PART 1.
- 14 Cable SC 227/13 14 June 1919, NAA: A518, J800/1/2 PART 1.
- 15 Press clippings, NAA: A518, J800/1/2 PART 1.
- 16 NAA: CP 351/1, 6/17.
- 17 CPD, HR, Vol. LXXXIX, 18 September 1919, p. 12532.
- 18 *ibid.*, 24 September 1919, p. 12688.
- 19 *ibid.*, p. 12694.
- 20 CPD, Senate, Vol. LXXXIX, 24 September 1919, p. 12664.
- 21 CPD, Senate, Vol. XC, 2 October 1919, p. 12916.
- 22 *ibid.* p. 12918.
- 23 *ibid.* p. 12930.
- 24 *ibid.*, 3 October 1919, p. 13002.
- 25 *ibid.*, p. 13003.
- 26 *ibid.*, p. 13004.
- 27 CPD, HR, Vol. XC, 22 October 1919, p. 13666.
- 28 Press article, *Guardian Weekly*, 9 July 1920, NAA: A518, J800/1/2/ PART 2.
- 29 *Melbourne Herald*, 31 July 1920, and *Argus*, 2 August 1920, NAA: A518, J800/1/2 PART 1.
- 30 *Evening News*, 5 August 1920, NAA: A518, J800/1/2/ PART 2.
- 31 Letter from Secretary of State for the Colonies to Governor-General, 5 August 1920, NAA: CP351/1, Bundle 6/4.
- 32 Cable S.C. 227/71 from Prime Minister to Secretary of Commonwealth Treasury, 26 August 1920, NAA: A518, J800/1/2 PART 1.
- 33 'Nauru Diary', Prime Minister's Department Paper, NAA: CP103/11, 457; press reports of appointment of Australian Commissioner, 3 and 4 November 1920, NAA: A518, J800/1/2 PART 2.
- 34 Sir Robert Garran, 'The law of the territories of the Commonwealth', *Australian Law Journal*, vol. 9, supplement, 15 November 1935, pp. 25, 31, 39.
- 35 Cable from Secretary of State for the Colonies to Governor-General, 26 January 1921, NAA: A518, J800/1/2 PART 2.
- 36 Department of External Affairs note, 'Nauru terms of mandate', 26 June 1937, NAA: A518, M800/1/2.
- 37 Letter, 27 June 1921, and subsequent draft cable, NAA: A518, B849/1/2.
- 38 CPD, Senate, Vol. XCVI, 9 August 1921, p. 10780.
- 39 Letter from Secretary of State for the Colonies to Governor-General, 31 May 1922, NAA: A518, P800/1/2.
- 40 *ibid.*, Attachment, NAA: A518, P800/1/2.
- 41 Extract from *Report of Permanent Mandates Commission*, August 1922, NAA: A6661, 393.
- 42 Press reports, 9 August 1922, NAA: A518, C849/1/2.
- 43 Cable from Sir Joseph Cook to Prime Minister, 8 August 1922, NAA: A518, C849/1/2.



- 44 Cable from Prime Minister Hughes to High Commissioner for Australia, London, 10 August 1922, NAA: A518, C849/1/2.
- 45 *Report of the Permanent Mandates Commission*, August 1922, p. 4, NAA: A6661, 393.
- 46 Opinion of Professor AH Charteris, Professor of International Law, University of Sydney, undated, NAA: A518, C849/1/2.
- 47 CPD, HR, Vol. C, 8 September 1922, p. 2076/7.
- 48 Agreement between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia and His Majesty's Government of the Dominion of New Zealand, 30 May 1923, NAA: A518, P800/1/2.
- 49 Letter from chiefs of Nauru to Administrator of Nauru, 21 May 1924, NAA: A6661, 397.
- 50 Letter from Secretary of State for the Colonies to Governor-General, 24 September 1924, NAA: A6661, 397.
- 51 House of Representatives Hansard, 24 September 1919, p. 12681.
- 52 File note to Acting Prime Minister, 25 October 1926, NAA: A518, F800/1/2 PART 1.
- 53 Cable from Acting Prime Minister to Prime Minister Bruce, 30 October 1926, NAA: A518, F800/1/2 PART 1.
- 54 Cable from Prime Minister Bruce to Acting Prime Minister, 14 December 1926, NAA: A518, F800/1/2 PART 1.
- 55 See Cabinet agenda 238 of 5 April 1938, NAA: A518, F800/1/2 PART 1.
- 56 Memorandum from Attorney-General's Department to Prime Minister's Department, 25 November 1931, NAA: A518, P800/1/2.
- 57 CPD, Senate, Vol. 135, 7 September 1932, p. 215.
- 58 *ibid.*, 8 September 1932, p. 305–306.
- 59 CPD, HR, Vol. 137, 22 November 1932, p. 2622.
- 60 Cables O.25313/14 from Department of External Affairs to London and Wellington, 3 October 1945, NAA: A518, F800/1/2 PART 1.
- 61 Cable O.11266 from Department of External Affairs to Prime Minister of New Zealand, 9 July 1947, NAA: A518, 103/2/2 PART 1.
- 62 Letter (and agreement) from Secretary-General of United Nations, 19 November 1947, NAA: A518, 103/2/2 PART 1.
- 63 Trusteeship Council Report T/347 of 22 June 1949, NAA: A1838, 311/2/2/1.
- 64 File papers, 15 January, 25 July 1951, NAA: A518, 103/2/2 PART 2.
- 65 Attorney-General's memo, 26 May 1956, and External Territories minute to Minister, June 1956, NAA: A518, 103/2/2 PART 2.
- 66 Trusteeship Council Report, May–July 1957, p. 2, NAA: A452, 1963/8710.
- 67 Trusteeship Council Nauru Report, Resolutions and Recommendations 1960/1, NAA: A452, 1963/8710.
- 68 Cables O.11176 and I.18099 from Department of External Affairs to Australian Mission to UN and response, 19/20 July 1961, NAA: A452, 1963/8710 and NAA: A6364, WL1961/01S.
- 69 CPD, HR, Vol. 37, 27 November 1962, p. 2559.
- 70 CPD, HR, Vol. 40, 22 October 1963, p. 2028.
- 71 Cable O.21218 from External Affairs to All Posts, 20 August 1964, NAA: A452, 1963/8710.
- 72 CPD, HR, Vol. 57, 24 October 1967, pp. 2160–61.

END PAPERS



*pp. 180–184 Nauru Island Agreement Act No. 8 of 1919.*  
*NAA: A1559, 1919/8*

1919.

No.



## AN ACT

To approve the agreement made between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia, and His Majesty's Government of the Dominion of New Zealand, in relation to the Island of Nauru.

**B**E 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 *Nauru Island Agreement Act* Short title.  
1919.

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

3. The agreement made between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia, and His Majesty's Government of the Dominion of New Zealand, in relation to the Island of Nauru (a copy of which agreement is set forth in the Schedule to this Act) is approved. Approval of agreement.

THE

THE SCHEDULE.

AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT IN LONDON,  
HIS MAJESTY'S GOVERNMENT OF THE COMMONWEALTH OF  
AUSTRALIA, AND HIS MAJESTY'S GOVERNMENT OF THE DOMINION  
OF NEW ZEALAND.

WHEREAS a Mandate for the administration of the Island of Nauru has been conferred by the Allied and Associated Powers upon the British Empire and such Mandate will come into operation on the coming into force of the Treaty of Peace with Germany, and

WHEREAS it is necessary to make provision for the exercise of the said Mandate and for the mining of the phosphate deposits on the said Island.

Now, therefore, His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia, and His Majesty's Government of the Dominion of New Zealand do hereby agree as follows :—

ARTICLE 1.

The Administration of the Island shall be vested in an Administrator.

The first Administrator shall be appointed for a term of five years by the Australian Government ; and thereafter the Administrator shall be appointed in such manner as the three Governments decide.

The Administrator shall have power to make ordinances for the peace, order, and good government of the Island, subject to the terms of this Agreement, and particularly (but so as not to limit the generality of the foregoing provisions of this Article) to provide for the education of children on the Island, to establish and maintain the necessary police force, and to establish and appoint courts and magistrates with civil and criminal jurisdiction.

ARTICLE 2.

All the expenses of the administration (including the remuneration of the Administrator and of the Commissioners), so far as they are not met by other revenue, shall be defrayed out of the proceeds of the sales of the phosphates.

ARTICLE 3.

There shall be a Board of Commissioners, comprising three members, one to be appointed by each of the Governments who are parties to this agreement.

ARTICLE 4.

Each of the Commissioners shall hold office during the pleasure of the Government by which he is appointed.

ARTICLE 5.

The three Governments, or if they are unable to agree a majority of them, shall fix the remuneration of the Commissioners.

ARTICLE 6.

The title to the phosphate deposits on the Island of Nauru and to all land, buildings, plant, and equipment on the island used in connexion with the working of the deposits, shall be vested in the Commissioners.

ARTICLE 7.

Any right, title or interest which the Pacific Phosphate Company or any person may have in the said deposits, land, buildings, plant and equipment (so far as such right, title and interest is not dealt with by the Treaty of Peace) shall be converted into a claim for compensation at a fair valuation.

ARTICLE 8.

The amount of the said compensation shall be contributed by the Governments of the United Kingdom, the Commonwealth of Australia, and the Dominion of New Zealand in proportions to be mutually agreed upon, or in the event of their failing to agree within three months of this agreement coming into force, then in the same  
Tax



1919.

*Nauru Island Agreement.*

No.

3

THE SCHEDULE—*continued.*

proportions as the first allotment of phosphates under Article 14 of this agreement. Any other capital necessary for working expenses shall be contributed by the three Governments in the same proportions.

## ARTICLE 9.

The deposits shall be worked and sold under the direction, management, and control of the Commissioners subject to the terms of this Agreement.

It shall be the duty of the Commissioners to dispose of the phosphates for the purpose of the agricultural requirements of the United Kingdom, Australia and New Zealand, so far as those requirements extend.

## ARTICLE 10.

The Commissioners shall not, except with the unanimous consent of the three Commissioners, sell or supply any phosphates to, or for shipment to, any country or place other than the United Kingdom, Australia or New Zealand.

## ARTICLE 11.

Phosphates shall be supplied to the United Kingdom, Australia and New Zealand at the same f.o.b. price, to be fixed by the Commissioners on a basis which will cover working expenses, cost of management, contribution to Administrative expenses, interest on capital, a sinking fund for the redemption of capital and for other purposes unanimously agreed on by the Commissioners and other charges.

Any phosphates not required by the three Governments may be sold by the Commissioners at the best price obtainable.

## ARTICLE 12.

All expenses, costs, and charges shall be debited against receipts; and if by reason of sales to countries other than the United Kingdom, Australia or New Zealand, or by other means or circumstances, any surplus funds are accumulated, they shall be credited by the Commissioners to the three Governments in the proportion in which the three Governments have contributed under Article 8 of this Agreement and held by the Commissioners in trust for the three Governments to such uses as those Governments may direct, or if so directed by the Government for which they are held shall be paid over to that Government.

## ARTICLE 13.

There shall be no interference by any of the three Governments with the direction, management, or control of the business of working, shipping, or selling the phosphates, and each of the three Governments binds itself not to do or to permit any act or thing contrary to or inconsistent with the terms and purposes of this Agreement.

## ARTICLE 14.

Until the readjustment hereinafter mentioned, each of the three Governments shall be entitled to an allotment of the following proportions of the phosphates produced or estimated to be produced in each year, namely:—

United Kingdom	..	..	..	42%
Australia	..	..	..	42%
New Zealand	..	..	..	16%

Provided that such allotment shall be for home consumption for agricultural purposes in the country of allotment, and not for export.

At the expiration of the period of five years from the coming into force of this agreement, and every five years thereafter, the basis of allotment shall be readjusted in accordance with the actual requirements of each country.

If in any year any of the three Governments does not require any portion of its allotment, the other Governments shall be entitled, so far as their requirements for home consumption extend, to have that portion allotted among themselves in the proportions of the percentages to which they are entitled as above.

Where any proportion of the allotment of one of the Governments is not taken up by that Government, that Government shall, when the phosphates are sold, be credited with the amount of the cost price as fixed by the Commissioners under the first paragraph of Article 11; but if such phosphates are sold to a purchaser other than one of the Governments any profit above the said cost price shall be carried to the surplus fund mentioned in Article 12.

THE

4

No.

Nauru Island Agreement.

1919.

THE SCHEDULE—continued.

ARTICLE 15.

The agreement shall come into force on its ratification by the Parliaments of the three countries.

Dated this second day of July in the year of Our Lord one thousand nine hundred and nineteen.

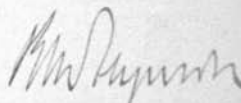
Signed by the Right Honourable David Lloyd George for and on behalf of His Majesty's Government in London, in the presence of—  
ERNEST EVANS. } (Sgd.) D. LLOYD GEORGE.

Signed by the Right Honourable William Morris Hughes for and on behalf of the Government of the Commonwealth of Australia, in the presence of  
R. R. GARRAN. } (Sgd.) W. M. HUGHES.

Signed by the Right Honourable William Ferguson Massey for and on behalf of the Government of the Dominion of New Zealand, in the presence of  
R. R. GARRAN. } (Sgd.) W. F. MASSEY.

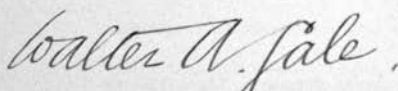
I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to approve the agreement made between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia, and His Majesty's Government of the Dominion of New Zealand, in relation to the Island of Nauru" which has been passed by the Senate and the House of Representatives, and that the said Bill originated in the House of Representatives.

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



Governor-General.


28<sup>th</sup> October 1919



Clerk of the House of Representatives.

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.

Documental No. 208  
Executive Council No. 59

Prime Minister's Department,  
Melbourne, 25th October, 1920.

MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

SUBJECT.

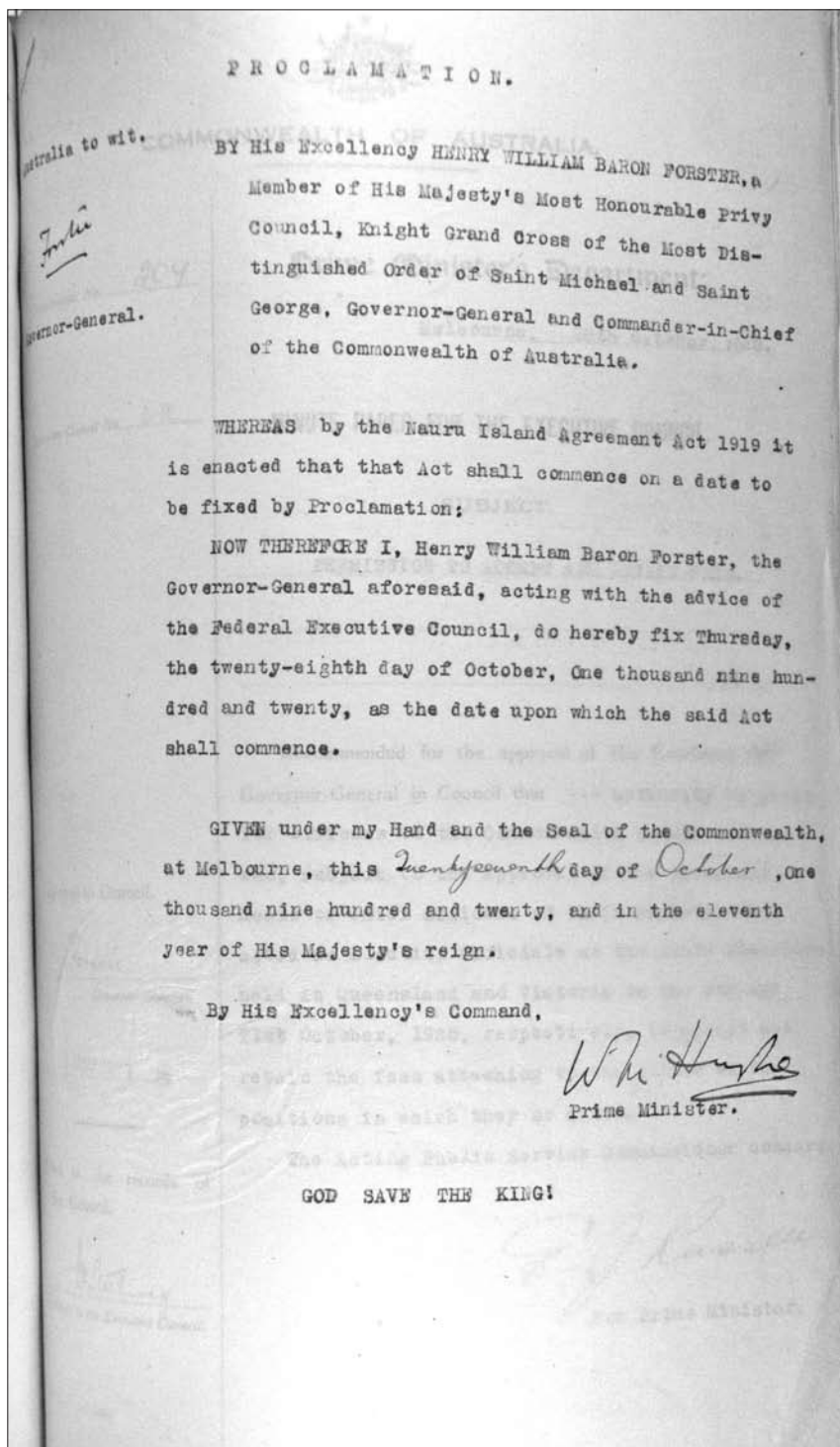
Proclamation Fixing Date of Commencement of  
Nauru Island Agreement Act 1919.

Recommended for the approval of His Excellency the Governor-General in Council that a Proclamation in the attached form be issued, fixing Thursday, 28th October, 1920, as the date on which the Nauru Island Agreement Act 1919 shall commence.

Approved in Council.  
For the  
Governor-General.  
27 OCT 1920 19  
Filed in the records of the Council.  
Submitted  
to the Executive Council.  
P. H. L. - 64186

W. M. Hughes  
Prime Minister.

Executive Council Minute No. 59, 25 October, 1920.  
NAA: A1573, 1920/13



Nauru Island Agreement Act 1919 Proclamation, 27 October, 1920.  
NAA: A1573, 1920/13

Copy of United Kingdom Parliamentary Paper Miscellaneous No. 6 (1921)  
Copied from NAA: A518, M800/1/2.

Presented to Parliament by Command of His Majesty.

### Mandate for Nauru.

---

The Council of the League of Nations:

Whereas by article 119 of the Treaty of Peace with Germany signed at Versailles on the 28th June, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her overseas possessions, including therein 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 administer Nauru, and have proposed that the mandate should be formulated in the following terms; and

Whereas His Britannic Majesty has agreed to accept a mandate in respect of Nauru and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions; and

Whereas, by the aforementioned 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 (hereinafter called the mandatory) is the former German island of Nauru (Pleasant Island, situated in about 167° longitude east and 0° 25' latitude south).

#### 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 his territory.

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 the 10th September, 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.

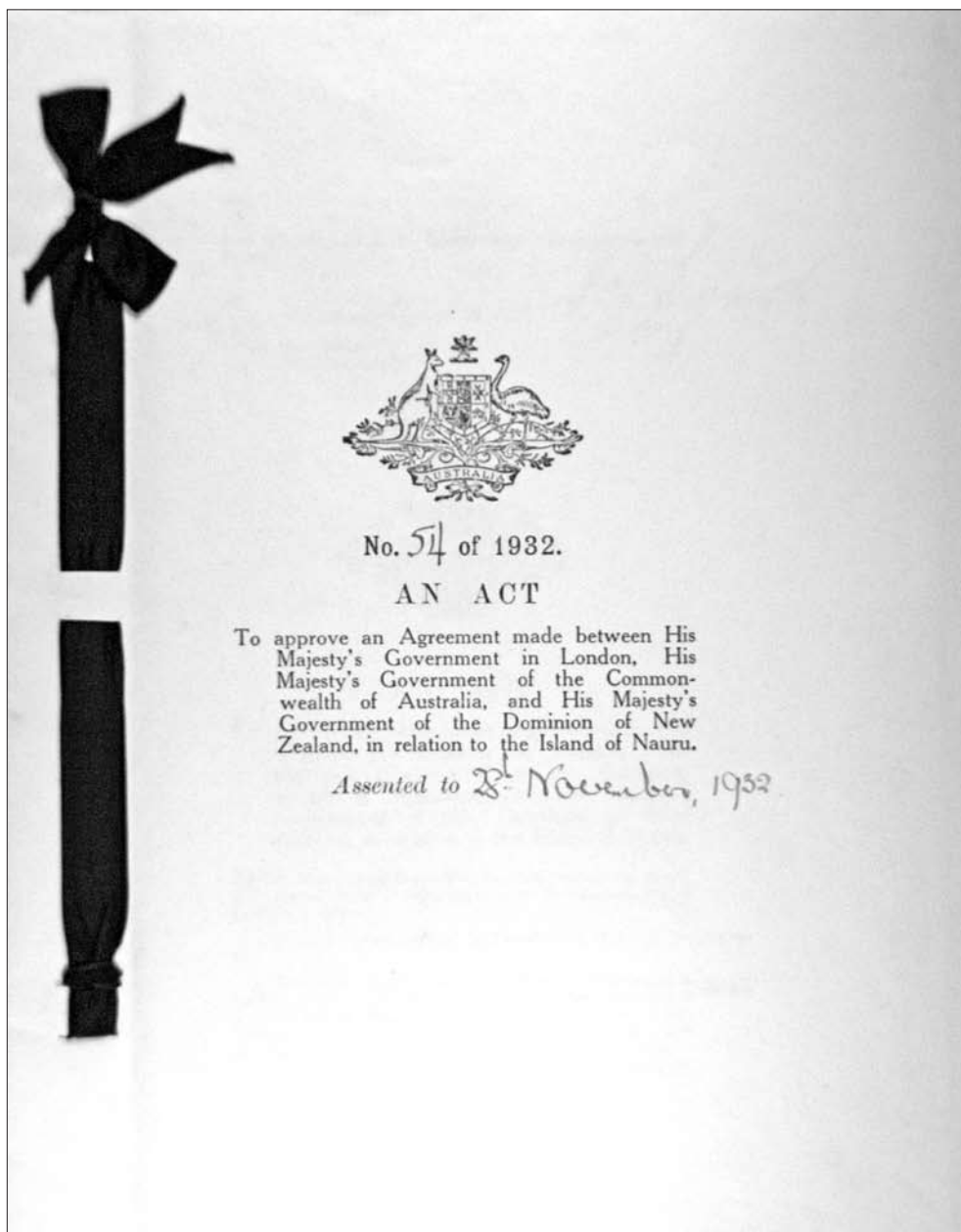
The present declaration shall be deposited in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Powers signatories of the Treaty of Peace with Germany

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

Certified true copy.

ERIC DRUMMOND,  
*Secretary-General.*

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pp. 189–192 Nauru Island Agreement Act No. 54 of 1932.  
NAA: A1559, 1932/54

1932.

No.

This Bill originated in the Senate, and has finally passed both Houses.

*Geostmonahan*  
Clerk of the Senate,  
23rd November, 1932.

*H. J. Lynch*  
President.



## AN ACT

To approve an Agreement made between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia, and His Majesty's Government of the Dominion of New Zealand, in relation to the Island of Nauru.

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 *Nauru Island Agreement Act* Short title.  
1932.

2. The Agreement made between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia, and His Majesty's Government of the Dominion of New Zealand, in relation to the Island of Nauru (a copy of which agreement is set forth in the Schedule to this Act) is approved. Approval of Agreement.

THE SCHEDULE.



## THE SCHEDULE.

AGREEMENT between His Majesty's Government in London, His Majesty's Government of the Commonwealth of Australia and His Majesty's Government of the Dominion of New Zealand.

WHEREAS a Mandate for the administration of the Island of Nauru has been conferred upon His Majesty: AND WHEREAS by an Agreement dated the Second day of July 1919 between His Majesty's Government in London the Government of the Commonwealth of Australia and the Government of the Dominion of New Zealand (hereinafter called the "Contracting Governments") it is among other things provided that—

## "ARTICLE I.

The Administration of the Island shall be vested in an Administrator.

The first Administrator shall be appointed for a term of five years by the Australian Government and thereafter the Administrator shall be appointed in such a manner as the three Governments decide.

The Administrator shall have power to make ordinances for the peace order and good government of the island subject to the terms of this Agreement and particularly (but so as not to limit the generality of the foregoing provisions of this Article) to provide for the education of children on the island to establish and maintain the necessary police force and to establish and appoint courts and magistrates with civil and criminal jurisdiction ":

AND WHEREAS the Government of the Commonwealth of Australia have appointed Brigadier-General Thomas Griffiths, C.M.G., C.B.E., D.S.O., to be the first Administrator.

AND WHEREAS it is expedient to make further provision for the good government of the Island under the terms of the Mandate and of the Treaty of Peace with Germany subject to the terms of the Agreement aforesaid:

IT IS HEREBY FURTHER AGREED between the three Governments as follows:—

1. All ordinances made by the Administrator shall be subject to confirmation or disallowance in the name of His Majesty, whose pleasure in respect of such confirmation or disallowance shall be signified by one of His Majesty's Principal Secretaries of State, or by the Governor-General of the Commonwealth of Australia acting on the advice of the Federal Executive Council of the Commonwealth, or by the Governor-General of the Dominion of New Zealand acting on the advice of the Executive Council of the Dominion, according as the Administrator shall have been appointed by His Majesty's Government in London, or by the Government of the Commonwealth of Australia, or by the Government of the Dominion of New Zealand, as the case may be.

2. The Administrator shall conform to such instructions as he shall from time to time receive from the Contracting Government by which he has been appointed.

3. Copies of all ordinances, proclamations and regulations made by the Administrator shall be forwarded by him to the Contracting Government by which he has been appointed, for confirmation or disallowance, and to the two other Contracting Governments for their information; and the Administrator shall supply through the Contracting Government by which he has been appointed such other information regarding the administration of the Island as either of the other Contracting Governments shall require.

4. All such reports as are required to be rendered to the Council of the League of Nations in virtue of Article 22 of the aforesaid Treaty of Peace or otherwise shall be transmitted by the Administrator through the Contracting Government by which he has been appointed to His Majesty's Government in London for presentation to the Council on behalf of the British Empire as Mandatory.

THE SCHEDULE.



1932.

*Nauru Island Agreement.*

No.

3

THE SCHEDULE—*continued.*

Dated this 30th day of May in the year of Our Lord One thousand nine hundred and twenty-three.

Signed by His Grace the Duke of Devonshire }  
for and on behalf of His Majesty's Govern- }  
ment in London, in the presence of :— }  
DEVONSHIRE.

W. C. HANKINSON.

Signed by the Right Honourable Sir Joseph }  
Cook for and on behalf of the Government of }  
the Commonwealth of Australia, in the }  
presence of :— }  
JOSEPH COOK.

O. C. W. FUHRMAN.

Signed by Colonel the Honourable Sir James }  
Allen for and on behalf of the Government of }  
the Dominion of New Zealand, in the }  
presence of :— }  
JAMES ALLEN.

C. KNOWLES.

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

*Isaac A. Isaacs*

Governor-General,

28<sup>th</sup> November, 1932.

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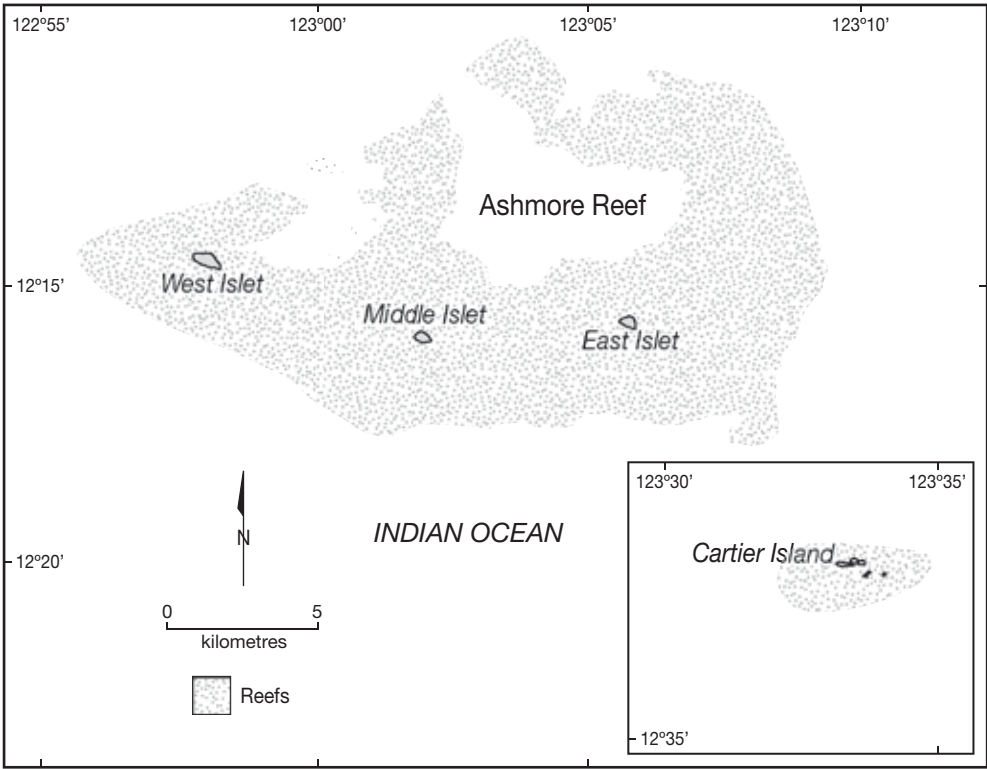
By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.

## TO THE NORTH WEST

While Papua and Norfolk Island, and the administration of New Guinea and a share in that of Nauru were being acquired, Australia kept an uneasy eye on activities in the Pacific—particularly in the New Hebrides—and maintained a watch on its interests in the Southern Ocean.

However, the next external territorial proposal came not from those parts of the world, but, in cartographical terms, from ‘left field’.

The United Kingdom asked Australia whether it wanted islands to the north-west of Western Australia—the Ashmore Islands and Cartier Island.



*Ashmore and Cartier Islands.*

*Map drawn by Karina Pelling.*

## CHAPTER EIGHT

# Ashmore and Cartier Islands

Never was isle so little, never was sea so lone  
But over the scud and the palm-trees an English Flag was flown

—Rudyard Kipling, *The English Flag*<sup>1</sup>

**O**n the outer edge of Australia's north-west continental shelf lie the Ashmore Islands and Cartier Island—a number of reefs, sand cays and flats, and small vegetated islands about 850 kilometres west of Darwin and 610 kilometres north of Broome.

### EARLY INTEREST

At noon on Saturday 15 May 1909, HMS *Fantome* arrived at Cartier Island under the command of Commander Fred Pasco. In his report of proceedings, Pasco wrote:

Owing to strong trade wind blowing landing was not possible on that day. On Sunday morning the 16<sup>th</sup> May the wind was considerably less and landing was effected at 7a.m. Flagstaff erected, and the British Flag hoisted. A copy of the Proclamation, dated 17<sup>th</sup> May, in a glass jar, was secured to the Staff stating that the British Flag had been hoisted and the Island proclaimed as a part of the British Dominions ... The Guard gave the general salute and the ship saluted with 21 guns. Three cheers were then given for the King.<sup>2</sup>

On 8 July 1909, the Secretary of State for the Colonies advised the Australian Governor-General, the Second Earl of Dudley, of the annexation of Cartier Island.<sup>3</sup>

The Ashmore–Cartier group is some 110 kilometres south of the Indonesian island of Roti, and Indonesian fishers traditionally utilised the marine and other resources of the area, using the prevailing trade winds to sail between the islands. The first recorded discovery of the islands by Europeans was early in the nineteenth century, when Captain Nash aboard the *Hibernia* discovered Cartier Island and Captain Ashmore discovered Ashmore in 1811. Dutch and Portuguese sailors may already have visited. On Ashmore, American whalers found phosphate (guano) deposits, which were mined in the mid-nineteenth century. In the 1830s and 1840s, the islands were generally referred to as the 'Ashmore Shoal'.

The United States and the United Kingdom later disputed ownership of Ashmore Island, leading to the United Kingdom taking ‘formal’ possession of it in 1878, following a visit by HMS *Barracouta* in 1876. Britain later ‘confirmed’ sovereignty over Ashmore and annexed Cartier Island in 1909.<sup>4</sup>

In a move similar to the Queensland Government’s attempt to annex Papua in 1878, but preceding it, the Western Australian Governor had in that year asked Captain Walcott of the *Airlie* to hoist the Union Jack and proclaim the islands as the property of Western Australia. The Colonial Office promptly repudiated this action, as the islands were beyond the limits of Western Australia and the Governor had no power to authorise their possession. The files suggest that no formal British possessory action took place at that stage, although a Dutch attempt to assert sovereignty in 1877–78 was withdrawn, apparently because of imminent British claims.<sup>5</sup>

#### SUGGESTED TRANSFER: STATE OR COMMONWEALTH?

Over the years, the British Government had issued fishing concessions for the waters of Ashmore and Cartier Islands. In September 1924, the British Secretary of State for the Colonies, James Henry Thomas, wrote to the Governor-General, Baron Forster. Thomas suggested that, for reasons of efficiency, it might be desirable if applications for fishing licences in the islands were dealt with by the Commonwealth Government. The letter went on:

In order to facilitate the adoption of such an arrangement His Majesty’s Government would be ready to transfer all their interests in these islands to the Commonwealth Government and I have accordingly to enquire whether your Government would be willing to take over the responsibility for dealing with applications for the grant of rights in respect of the Ashmore Islands and the Cartier Islet and for this purpose to accept a transfer of the interests of His Majesty’s Government in the Islands, and if so, what form of transfer would meet their convenience.<sup>6</sup>

Meanwhile some three months earlier, the Premier of Western Australia, Philip Collier, had written to Prime Minister Stanley Bruce\*, of his government’s concern about ‘illicit’ fishing in the islands:

---

\* Stanley Melbourne Bruce became Prime Minister in February 1923 after Billy Hughes had failed to get an absolute majority in the 1922 elections. Bruce proposed a Pacific League of Nations, but was opposed to dominion moves to define their autonomy at the 1926 Imperial Conference in London, being a strong supporter of Empire development. Bruce was the first Prime Minister to occupy the Lodge in Canberra and the first to lose his seat in a general election. RG (Baron) Casey, an important player in later territory acquisition, was Bruce’s liaison officer in London. Bruce lost the prime ministership in the October 1929 elections. Premier Collier was a significant player in the debate between the Commonwealth and Western Australia on the administration of the Ashmore and Cartier Islands. He was Labor Premier from April 1924 to April 1930, and again from April 1933 to August 1936.

[I]t is a matter of great importance that the Ashmore Island and Scotts [*sic*] Reef be brought under the jurisdiction of the State fishing laws, and I should be glad if you would make necessary representations to the Imperial Government with that object.<sup>7</sup>

The Prime Minister's Department, noting the juxtaposition of the British and Western Australian requests, wondered whether 'the British interests in these islands should be transferred to the Commonwealth Government or to the Government of Western Australia.' To consider the question properly, it decided to seek the views of the Home and Territories Department and the Defence Department, noting that the Western Australian Government did not 'explicitly state that they would be prepared to take over the administration of these islands, but that the latter should be brought under the jurisdiction of their fishing laws'.<sup>8</sup>

The Home and Territories Department saw the problem more as one about fishing, which was a state matter, rather than about prohibited immigration, of which there was 'practically no danger'. Therefore, the department believed that, while the British offer should be accepted, the administration should be under the state government.<sup>9</sup> The Defence Department advised that it had no opinion to express on the matter.<sup>10</sup>

There was some confusion both about what was being offered and what was being sought. In considering the issues, the Prime Minister's Department noted that the British offer included Cartier Islet (which the Western Australian Government had not mentioned) but that Western Australia had asked for the inclusion of Scott's Reef, which was not contained in the offer.<sup>11</sup>

On 6 February 1925, Prime Minister Bruce wrote to Premier Collier advising that the United Kingdom had offered to transfer its rights in the Ashmore and Cartier Islands and that such a transfer would enable the control of illicit fishing and the granting of fishing concessions. He enquired whether the Western Australian Government would be prepared to accept the transfer to it of the islands and thus assume full responsibility for them and, if so, what form of transfer would be most convenient. Bruce noted in conclusion:

that the British Government's offer makes no mention of Scott's Reef, but if your Government would be willing to take over this Reef with the Ashmore Islands and Cartier Islet the question of its transfer could be taken up with the British Government.<sup>12</sup>

On 14 March, the Acting Western Australian Premier, William Angwin, responded that the Western Australian Government 'was willing to undertake full responsibility for the control and administration of the Islands'. Angwin felt that the best and correct method of transfer 'would be for the Imperial Authorities to issue letters patent annexing to Western Australia the Islets reefs and islands referred to'.

He felt that there should be no doubt of the powers of the Imperial Government in this respect. In Angwin's view:

this proceeding would not, it appears to me, be an alteration of the boundaries, such as was contemplated by the Colonial Boundaries Act 1895, and Section 8 of the Commonwealth of Australia Constitution Act. There does not appear to be any necessity to hand the Islands over to the Commonwealth, in the first instance, for by annexation, they will become an integral part of this State and consequently of the Commonwealth.

It is suggested that if they were first handed over to the Commonwealth, difficulties might be experienced in annexing them to the State because of the absence of any definite provision in the Constitution Act for the taking of such action without a reference to the electors. The Commonwealth could, no doubt, if the Islands were handed over to them, without having resort to Section 123 of the Constitution Act, give the State full legislative powers over them by virtue of Section 122 of the same Act, but this would not be as satisfactory as annexation.

I desire to request your Government, therefore, to signify to the Imperial Government the willingness of this State to accept the annexation of the territory, and we are willing if necessary, to submit the matter to the Western Australian Parliament for confirmation and ratification.<sup>13</sup>

The Prime Minister's Department forwarded Angwin's letter to the Attorney-General's Department on 1 May 1925 and sought advice on the most suitable way to effect the transfer.<sup>14</sup>

Two years later, having not received a response, the Prime Minister's Department issued a gentle reminder. On 25 May 1927, a departmental memorandum asked whether the Attorney-General's Department 'would kindly advise me as to how this matter now stands'.<sup>15</sup>

On 23 July 1927, the Solicitor-General, Sir Robert Garran, provided his opinion. After canvassing the background to the matter and setting out the boundaries of Western Australia as described in Letters Patent dated 25 August 1890, he pointed out that Ashmore and Cartier Islands were outside the boundaries, whereas Scott's Reef fell within them. So it appeared that Scott's Reef was already part of Western Australia or its dependencies. Sir Robert affirmed that the *Colonial Boundaries Act 1895* was the only general statutory authority for altering the boundaries of a colony, but he pointed out that after Federation that Act only authorised the King to alter the boundaries of the Commonwealth. That action would make the islands part of the Commonwealth, not part of Western Australia. Another way to make them part of the Commonwealth would be by action under s. 122 of the Constitution. If that course were taken, the Commonwealth Parliament could, if it wished, delegate legislative power to the Parliament of Western Australia. Under s. 123 of the Constitution, a state



referendum would be needed. Sir Robert therefore considered that action under s. 122 met the needs of the situation.<sup>16</sup>

### A COMMONWEALTH TERRITORY

On 6 September 1927, the Australian Government agreed to ask the British Government whether an order-in-council could be issued 'altering the boundaries of the Commonwealth to include the Islands,<sup>†</sup> and that subsequent legislative action be taken by the Commonwealth for their acceptance, and legislative power over the Islands be then delegated to the Parliament of Western Australia.'<sup>17</sup>

On 29 September 1927, Prime Minister Bruce wrote again to Premier Collier putting the Commonwealth's suggested action. The Premier replied on 14 October, agreeing but pointing out that Western Australia's original proposal included Scott's Reef.<sup>18</sup>

In early 1928, the Commonwealth asked the British Government whether an order-in-council could issue to alter the boundaries of the Commonwealth to include Ashmore and Cartier Islands. The Commonwealth also asked, if Scott's Reef was outside the boundaries of Western Australia (although it understood otherwise), whether the reef could be transferred at the same time.<sup>19</sup>

Collier noted the Commonwealth's approach to the British Government. He also stated this time that Scott's Reef was within Western Australia.<sup>20</sup>

The United Kingdom responded that an order-in-council could be issued to extend the Commonwealth's boundaries to include the islands, but also that one could issue to place them under the authority of the Commonwealth under s. 122 of the Constitution. Which approach would Australia prefer? In either case, it would be desirable for consenting Commonwealth Parliament resolutions to precede the issue of the order. If an order placing the islands under the authority of the Commonwealth was preferred, then a transfer could not take effect until the Commonwealth Parliament had made due provision for their administration. Thus, any order-in-council for this purpose should not come into operation until a Commonwealth Act had been passed.

The British letter noted that, because the boundaries of the Commonwealth of Australia were not defined in the Constitution or another Commonwealth instrument, placing the islands under the authority of the Commonwealth might be more convenient. The letter further noted that no action was desired regarding Scott's Reef.<sup>21</sup>

This response from Britain gave rise to some muddled thinking in the Prime Minister's Department. The Solicitor-General had suggested that the simplest way to

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<sup>†</sup> This phrase appears to be a misinterpretation of the Solicitor-General's advice. Action under s. 122 of the Constitution need not involve an alteration to the boundaries of the Commonwealth; it could simply place the islands under the authority of the Commonwealth, as had occurred in the case of the other external territories (other than mandated New Guinea and Nauru) acquired by Australia.

effect a transfer was under s. 122 of the Constitution, and Britain also saw that as the simplest way. But the department sought further advice on the preferable method of transfer from the Attorney-General's Department.<sup>22</sup>

Sir Robert Garran replied emphatically:

In my opinion, the method to be preferred in transferring the Islands to the Commonwealth would be the issue of an Order in Council placing the Islands under the authority of the Commonwealth under Section 122 of the Constitution, and the passing of an Act by the Commonwealth Parliament accepting the Islands and providing for laws for their government to be made by the Parliament of Western Australia.<sup>23</sup>

In September 1929, shortly before he lost office in the 1929 federal elections, Prime Minister Bruce wrote to the Secretary of State for Dominion Affairs saying that the Commonwealth Government preferred action under s. 122 of the Constitution. Bruce sought the issue of an order-in-council to this end, worded so as not to come into operation until an acceptance Act had been passed by the Commonwealth Parliament.<sup>24</sup>

In early 1930, the Secretary of State forwarded a draft order-in-council for the preferred approach to the newly appointed Prime Minister, James Scullin. The Attorney-General's Department saw no legal objection to its terms, the Western Australian Government was informed of the developments and asked to concur, and all seemed to be on track and agreed.<sup>25</sup> Then, no doubt as a surprise to the Prime Minister and his department, the newly appointed Premier of Western Australia, Sir James Mitchell, who was uneasily sympathetic to Western Australia's secession from the Commonwealth,<sup>26</sup> objected. He felt that under the proposal the:

State would be in no better position to enforce its laws and protect its citizens against the incursion of foreign fishermen than it was prior to the proposed transfer ... The State Government objects to the terms of the proposed Order and requests that His Majesty's Government be informed that the control should be vested in the State of Western Australia and not in the Commonwealth of Australia.<sup>27</sup>

Unfortunately, more muddled thinking in the Prime Minister's Department appears to have caused this response. The letter to the Western Australian Premier seeking concurrence to the preferred procedure had omitted to indicate that, once the island territory was acquired by the Commonwealth, it was intended to delegate legislative power to the Western Australian Parliament. A letter was sent to Premier Mitchell explaining that this was the intended process and pointing out that Mitchell's predecessor, Phillip Collier, was aware of this and had agreed to it. This produced a response from the Acting Premier agreeing to the proposed action and reiterating that it was desirable that the control of the islands be vested in Western Australia to enable its laws in regard to fishing to be enforced there.<sup>28</sup>

The Secretary of State for Dominion Affairs was informed on 13 May 1931 that the Australian Government agreed that an order-in-council in the terms of the draft should be submitted to His Majesty in Council for approval. This was done, and on 23 July 1931 an order-in-council duly placed Ashmore and Cartier Islands under the authority of the Commonwealth. The order was to come into operation on such date, after the passage of an acceptance Act by the Commonwealth Parliament, as was to be fixed by Governor-General's proclamation.<sup>29</sup>

In preparing a draft Bill to accept the new territory, the Parliamentary Draftsman suggested that a more flexible approach to the application of Western Australian law to the islands would be by the making of Ordinances by the Governor of Western Australia in Council, rather than by promulgation of laws by the Western Australian Parliament. The Western Australian Government had no objection to this approach, which was included in the draft Bill.<sup>30</sup> The Ashmore and Cartier Islands Acceptance Bill was introduced into the Commonwealth Parliament on 30 November 1933, more than four years after the issue of transfer had first been raised by the British Government.

The Attorney-General, John Greig Latham (Member for Kooyong)<sup>‡</sup>, in his second reading speech on 1 December 1933 outlined the reasons for, and the history of, the steps towards the transfer of authority. Although, as he said, the islands 'are British ... and are subject to the laws of the Empire applying to British Islands ... there is no practical means of exercising any control of them' ('control' or occupation of an acquired place is a vital aspect of territorial sovereignty over that place). The territory was to be administered under s. 122 of the Constitution, which, incidentally, allowed for representation in either house of the parliament, but Latham indicated that it was not proposed to take any steps 'to enable any party in this House to receive an unexpected accession of strength from that quarter'. His comment no doubt occasioned great merriment among those members present, seeing that the islands were uninhabited.

Continuing his remarks, Latham said:

The Commonwealth, while being willing to accede to the wish of Western Australia that control should be exercised over these islands, does not consider that it would be desirable to pretend to have anything to do with them from Canberra. The Government of Western Australia ... is prepared to undertake full responsibility for their administration and control.

The Bill was read a third time and sent to the Senate on 5 December 1933.<sup>31</sup>

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<sup>‡</sup> Latham was an adviser to Prime Minister Hughes' delegation at the Versailles Conference. His contribution was instrumental in developing the formula for the definition of 'C Class' mandates, which were used in the cases of German New Guinea and Nauru. He was Attorney-General from December 1925, retiring in 1934 to take up the position of Chief Justice of the High Court in 1935.

In debate in the Senate, Senator EB Johnston (Western Australia) welcomed the acquisition of the islands:

It is possible that, in time to come, particularly with the development of aeroplane services to the various ports in the north-west of Western Australia and to Europe that the islands may have considerable strategic value.

However, he considered that:

In view of the extravagance which has characterised the administration of other federal territories, I hope that the Government will not take direct control of these islands at any future date. If these islands are to be under Australian control, they should be included in the State of Western Australia, and not given a grandiloquent title as a new territory of the Commonwealth. I should like the bill to be amended accordingly.

In conclusion Johnston said, 'If, at any future date, the Government of Western Australia asks for their inclusion within the boundaries of that State, I hope that no objection will be raised by the Commonwealth authorities.'

Senator Sir Walter Kingsmill (Western Australia) pointed out that Australia, under the proposed legislation, would acquire a territory 'which is probably the smallest in the world'.

Senator Arthur Rae (New South Wales) then raised the subject of possible Western Australian secession from the Commonwealth. A few months before, in an April 1933 referendum, the electors of Western Australia had voted to secede. However, most state Labor Party members were opposed to secession, and Labor Premier Collier was able to defuse the issue until the economy improved and the secessionist movement lost momentum.

Senator Rae said that the speeches that had been made:

suggest that there is a serious aspect of this extension of Empire. Those who believe that mere size is an advantage will agree that every acre we add to our possessions makes us a more magnificent nation. It is a matter for serious contemplation that these islands are to be handed over to the control of Western Australia which has recently voted in favour of secession from the Commonwealth. What would become of these islands if Western Australia actually seceded? Would they automatically become a part of the seceding State?

It was pointed out to Senator Rae that clause 5 of the Bill made the islands a territory of the Commonwealth. Notwithstanding this, Rae felt that a 'dangerous precedent' was being established. Why should Western Australia be allowed to add to her territory and then secede? The islands were of strategic importance; the growth of any empire was attended by increased obligations.

Senator Joseph Collings (Queensland) was concerned that the Bill represented a *fait accompli*. Governments had agreed, an order-in-council had been issued, and only now was the matter before parliament. Moreover, he said:

I protest ... that the Parliament of the Commonwealth is [expected to be] willing to accept these islands, and then hand them over to Western Australia ... Where does the Commonwealth come in? The State of Western Australia may do what it likes with a territory which, allegedly, will belong to the Commonwealth.

The earlier remarks by Senator Johnston about the strategic value of the islands had, in the senator's view:

... an unpleasant flavour. Does he suggest that they may be used as a naval base to assist the secession movement; or is our taking possession of them another inflammatory action on the part of the Commonwealth which may incite opposition by other nations ... The Government is not administering as it should the territory in which this Parliament House is situated. It cannot administer the Northern Territory or the Mandated Territories without getting into trouble. Last session it added a portion of Antarctica<sup>§</sup> to the possessions of the Commonwealth, and now it proposes to hand over the administration of a couple of islands off the north-western coast of Australia to the secessionists of Western Australia. We are reducing the proceedings of this Parliament to a farce.

One question touched on the future value, then latent to a great extent, of all of Australia's external territories:

Senator Rae.—For what distance from the mainland of Australia can control be exercised over fishing rights?

Senator Sir George Pearce.—Only within 3 miles of the coastline, but the 3-mile limit will apply to the islands also, as it does to all Commonwealth territories.<sup>32¶</sup>

The *Ashmore and Cartier Islands Acceptance Act 1933* was assented to on 15 December 1933. All that was now required, from the Commonwealth's point of view, were proclamations fixing the dates for the commencement of the Act and for the bringing into operation of the order-in-council. Proclamations were issued on 2 May and 9 May 1934, fixing 3 May and 10 May 1934, respectively, for commencement and operation.<sup>33</sup> Gazettal of these occurred on 3 May 1934 (Commonwealth of Australia Gazette No. 26) and 10 May 1934 (Commonwealth of Australia Gazette No. 28).

Australia had acquired a new external territory to add to its collection.

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§ Although the Australian Antarctic Territory Acceptance Act 1933 was passed by the Commonwealth Parliament in June 1933, the Act did not come into effect until August 1936 (see Chapter Nine).

¶ See Appendix Two for a discussion of territorial boundaries.

## POSTSCRIPT

In November 1935, Premier Collier of Western Australia was asked whether the Commonwealth could be provided with copies of any Western Australia Gazettes that contained notification of Ordinances made pursuant to the *Ashmore and Cartier Islands Acceptance Act 1933*.

This simple request plunged the Commonwealth and state back into the confusion of the previous five years or so about the best way to deal with the administration of the territory.

In May 1936 the Premier replied. There were problems! The state Solicitor-General, JL Walker, had pointed out that the islands were not part of Western Australia and therefore could not be administered by the state government as part of the state. It was no good setting up an Ordinance purporting to exercise some control over the islands if the administrative machinery within the jurisdiction of Western Australia (that is, police and courts) could not operate in the territory, as the territory itself was outside the jurisdiction of Western Australia. In Walker's view, the islands would still have to be administered separately and distinctly as a Commonwealth territory. He foresaw the need, if the matter were to proceed, for the required administrative machinery to be set up in the islands, which consisted of little more than rock and sand. This would be costly. A further Commonwealth Act (analogous to the *Northern Territory Administration Act 1910*) might be necessary.

The Premier wanted Prime Minister Joseph Lyons to understand that 'the State was not prepared to commit itself to any considerable expenditure.' The Premier felt that, if the Commonwealth Solicitor-General agreed with the need for the 'extremely complicated procedure' suggested, 'then the State would be inclined to abandon the whole project', whereas, if a simpler solution could be found, the state would like to 'complete the arrangement'.

Commonwealth Solicitor-General GS Knowles, in a letter of 5 February 1937, said that he was 'not wholly in accord with the views expressed by the State Solicitor-General with respect to the making of Ordinances under the ... Act.' As in the case of the Northern Territory, the Commonwealth had legislated 'directly', but with respect to the government of the islands, it had appointed a different authority as its instrument. The Governor of Western Australia could adequately provide for the government of the islands by Ordinance, and no independent provision for their administration was seen to be required. In an effort to help resolve the problem, and as an expression of his views on what he considered necessary, the Commonwealth Solicitor-General attached a draft Ordinance to his advice.

The state Solicitor-General, Walker, replied on 24 February 1937, noting that he 'still remained doubtful concerning the constitutionality of the proposals' made by his federal counterpart. He posited that when laws were made for the territory (by the Western Australian Governor in Council) offences against those laws would inevitably

be committed within its territorial limits and by alien subjects of foreign nations. In such a case it would be necessary, in his view, for some person to be on the spot to arrest the alien and then they would have to be brought to trial in Western Australia. He felt that the procedures he described would 'raise some very nice questions of international law ...'. In the end, the question was whether or not any practical benefit was likely to be derived and, if so, whether the value of the benefit would justify the likely financial expense.

It was all too much for Western Australia. In a letter to the Prime Minister dated 2 April 1937, the Acting Premier stated:

In view of the apparent difficulty of implementing the desire of the State to obtain control over these islands, the Government has reluctantly come to the conclusion that the proposal will have to be abandoned.<sup>34</sup>

On 11 June 1937, federal Cabinet decided to place the Territory of Ashmore and Cartier Islands under the authority of the Administrator of the Northern Territory.<sup>35</sup> A Bill amending the *Ashmore and Cartier Islands Acceptance Act 1933* to that effect was introduced into the parliament on 22 June 1938 and passed all stages in both houses within a week. The resultant Act was assented to on 1 July 1938, to commence from 19 July 1938.<sup>36</sup>

There were various naval visits to the territory during World War II, and in the 1950s the islands were used as a bombing range and surveillance visits were made. Questions about Australia's exercise of sovereignty arose from time to time, but the government drew some comfort from the views of an Australian expert on international law, Professor Waldock, as quoted by the Attorney-General's Department:

When uninhabited or very sparsely inhabited territory is taken into sovereignty, the occupying state may not necessarily be required to maintain even a single official presence on the spot. It is enough if the state displays the functions of a state in a manner corresponding to the circumstances of the territory, assumes the responsibility to exercise local administration, and does so in fact as and when occasion demands.

Waldock's views were accompanied by advice from the Attorney-General's Department that 'it would be unwise to allow to pass unnoticed the use of the Islands by foreigners as a fishing base.'<sup>37</sup>

Unmanned navigation lights, meteorological stations and signs were constructed in the 1950s and 1960s, and sporadic naval visits and aircraft surveillance continued.

In 1974, a memorandum of understanding was signed with the Indonesian Government recognising traditional use by Indonesian fishermen of the territory's fishing and water resources.

In 1978, the Act was amended with the advent of self-government in the Northern Territory. The amending Act, No. 59 of 1978, came into operation on 1 July 1978.



The Act repealed the law-making provisions in force until then and, while continuing the laws in force, provided that the Governor-General may make Ordinances for the peace, order and good government of the territory. The Act also provided that a Commonwealth law has application as if the territory were an 'internal mainland territory'.<sup>38</sup> The Territory of Ashmore and Cartier Islands is the only external territory treated this way.

In 1983, the territory was declared a nature reserve under the *National Parks and Wildlife Conservation Act 1975*. Regular visits are made by National Parks and Wildlife Service officers, with the assistance of the Royal Australian Navy and the Australian Customs and Border Protection Service.

In September 2001, Ashmore and Cartier Islands were excised from the Australian migration zone.

## NOTES

- 1 *Oxford dictionary of quotations*, Oxford University Press, London, 2nd edition, 1953, p. 296.
- 2 Report of Proceedings at the Proclamation of Cartier Island, 22 May 1909, and Proclamation 17 May 1909, NAA: F1,1938/436.
- 3 Letter dated 8 July 1909, NAA: A461, A412/1/1.
- 4 Department of the Environment and Heritage, *Management plans for Ashmore Reef National Nature Reserve and Cartier Island Marine Reserve*, Commonwealth of Australia, 2002, p. 25.
- 5 NAA: A432, 1965/3006.
- 6 Letter from United Kingdom Government to Governor-General, 30 September 1924, NAA: A461, A412/1/1.
- 7 Prime Minister's Department, note to file, 3 December 1924, NAA: A431, 1951/1290.
- 8 *ibid.*
- 9 Letter from Prime Minister's Department to Department of Home and Territories, 17 December 1924; Home and Territories file note, 29 December 1924; memorandum from Department of Home and Territories to Prime Minister's Department, 2 January 1925, NAA: F1, 1938/436.
- 10 Prime Minister's Department minute, 20 January 1925, NAA: A431, 1951/1290.
- 11 *ibid.*
- 12 Letter, Prime Minister to Western Australian Premier, 6 February 1925, NAA: A461, A412/1/1.
- 13 Letter, Acting Western Australian Premier to Prime Minister, 14 March 1925, NAA: F1, 1938/436.
- 14 Memorandum, 1 May 1925, NAA: F1, 1938/436.
- 15 Memorandum, 25 May 1927, NAA: A432, 1929/3671 PART 2.
- 16 Opinion by Solicitor-General, 23 July 1927, NAA: A431, 1951/1290.
- 17 Minute to Prime Minister, 30 August 1927, annotated 'Cabinet Recommendation approved 6.9.27 S.M. Bruce', NAA: A6006, 1927/09/06.
- 18 Letter from Prime Minister to Premier of Western Australia, 29 September 1927, and reply from Premier, 14 October 1927, NAA: F1, 1938/436.

- 19 Letter from Prime Minister to Secretary of State for Dominion Affairs, 11 January 1928, NAA: A432, 1933/745.
- 20 Letter from Premier of Western Australia to Prime Minister, 13 July 1928, NAA: A431, 1951/1290.
- 21 Letter from Secretary of State for Dominion Affairs to Prime Minister, 8 January 1929, NAA: F1, 1938/436.
- 22 Memorandum from Prime Minister's Department to Attorney-General's Department, 4 May 1929, NAA: A432, 1933/745.
- 23 Opinion by Solicitor-General, 12 June 1929, NAA: A431, 1951/1290.
- 24 Letter of 17 September 1929, NAA: A431, 1951/1290.
- 25 Letter from Secretary of State for Dominion Affairs to Prime Minister enclosing draft Order in Council, 24 January 1930, NAA: A431, 1951/1290; memorandum from Attorney-General's Department to Prime Minister's Department, 7 January 1931, NAA: F1, 1938/436; Department of External Affairs note for file, 23 January 1931; and letter from Prime Minister to Premier of Western Australia, 30 January 1931, NAA: A431, 1951/1290.
- 26 Australian dictionary of biography, <http://www.adb.online.anu.edu.au/biogs/A100520b.htm?hilite=mitchell>.
- 27 Letter from Premier of Western Australia to Prime Minister, 12 March 1931, NAA: A431, 1951/1290.
- 28 Letter from Prime Minister to Premier of Western Australia, 24 March 1931, and reply from Acting Premier, 27 April 1931, NAA: A431, 1951/1290.
- 29 Letter from Prime Minister to Secretary of State for Dominion Affairs, 13 May 1931, and letter from Secretary of State for Dominion Affairs to Prime Minister, 21 August 1931, NAA: F1, 1938/436.
- 30 External Affairs file note, 12 February 1932, NAA: A431, 1951/1290; letter from Prime Minister to Premier of Western Australia, 17 February 1932, and reply from Premier, 26 April 1933, NAA: F1, 1938/436.
- 31 CPD, HR, Vol. 143, 1 December 1933, pp. 5378/79/80; 4 December 1933, pp. 5433/34.
- 32 CPD, Senate, Vol. 143, 6 December 1933, pp. 5583/4/5/6.
- 33 Executive Council Minutes and Instruments, NAA: F1, 1938/436 and NAA: A431, 1951/1290.
- 34 Letters and opinions, 6 November 1935, 14 May 1936, 5 February 1937 and 2 April 1937; and 17 February 1936, 28 January 1937 and 24 February 1937, respectively, NAA: F1, 1938/436, and NAA: A664, 569/401/119, and NAA: A432, 1929/3671 ATTACHMENT.
- 35 Note on Prime Minister's Department file, NAA: A461, A412/1/1.
- 36 CPD, HR, Vol. 156, pp. 2323/24/25 and CPD, Senate, Vol. 156, pp. 2713–14, 22 June to 28 June 1938, and *Ashmore and Cartier Islands Acceptance Act No. 11 of 1938*.
- 37 Attorney-General's Department memorandum, 27 September 1957, NAA: A432, 1965/3006.
- 38 CPD, HR, Vol. 109, 24 May 1978, p. 2416.

## END PAPERS

Copy From United Kingdom Statutory Rules And Orders 1931, pp 1442-1443

### **1. Australia.**

#### **(i) Annexation of Ashmore Islands and Cartier Island to the Commonwealth.**

ORDER IN COUNCIL PLACING THE ASHMORE ISLANDS AND CARTIER ISLAND UNDER THE AUTHORITY OF THE COMMONWEALTH OF AUSTRALIA.

At the Court at Buckingham Palace, the 23rd day of July, 1931.

PRESENT,

The King's Most Excellent Majesty.

Lord President.  
Earl of Athlone.

Mr. Secretary Wedgwood Benn.  
Sir Maurice de Bunsen.

Whereas the islands named the Ashmore Islands and known as Middle, East, and West Islands, and also the island named Cartier Island, being islands situated in the Indian Ocean off the North-West Coast of Australia, are islands over which His Majesty has Sovereign rights:

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

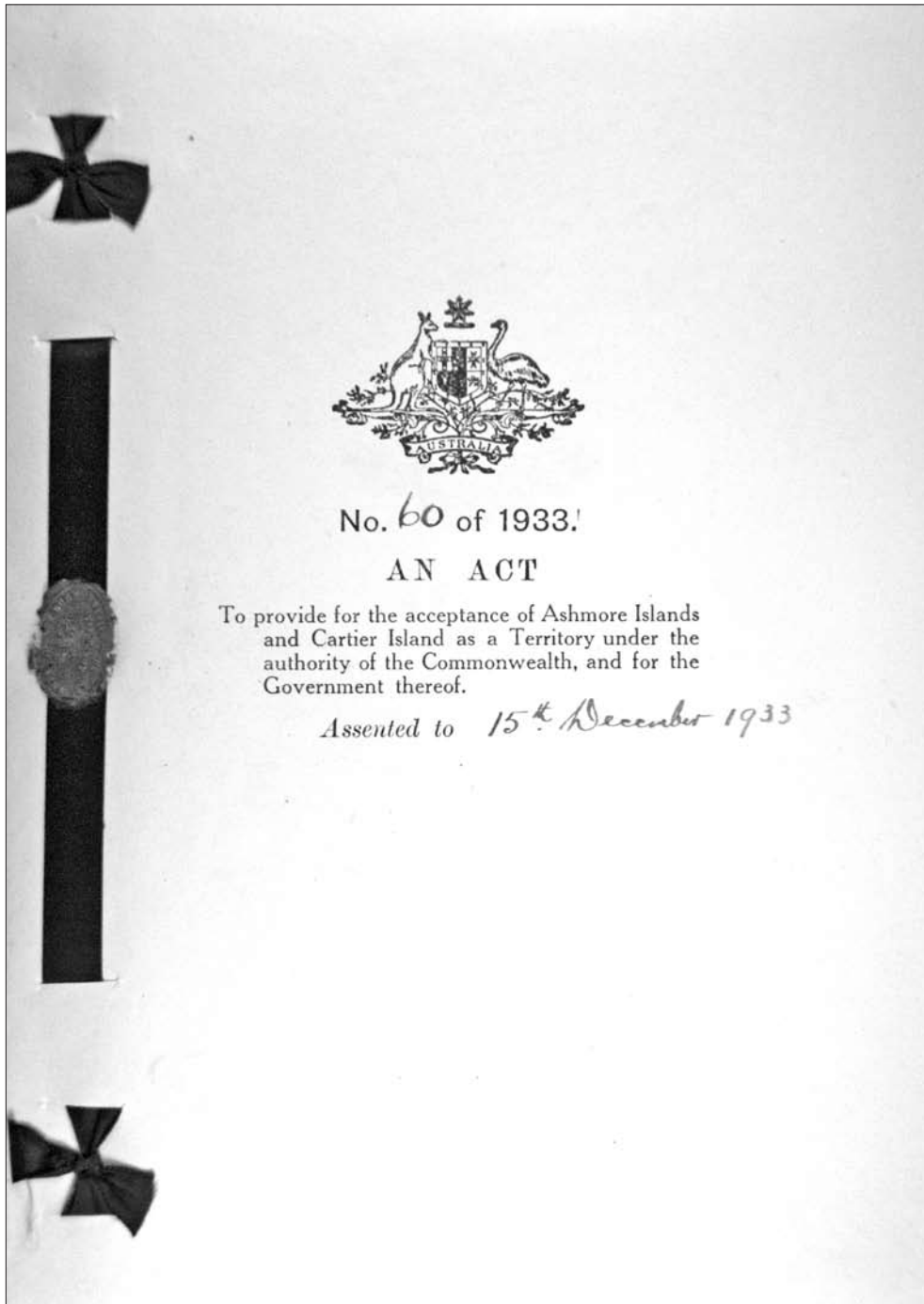
And whereas it is expedient that these islands should be placed under the authority of the Commonwealth of Australia:

Now, therefore, His Majesty, by virtue and in exercise of the power in that behalf in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows: -

- (1) The Ashmore Islands and Cartier Island are hereby placed under the authority of the Commonwealth of Australia.
- (2) This Order shall come into operation on such date, after legislation shall have been passed by the Parliament of the Commonwealth of Australia providing for the acceptance of the said islands and the government thereof, as may be fixed by Proclamation by the Governor-General of the Commonwealth of Australia.

Colin Smith

*United Kingdom Order in Council, 23 July, 1931. (copytype)*  
*United Kingdom Statutory Rules and Orders 1931, pp. 1442 – 1443.*



pp. 209–211 Ashmore and Cartier Islands Acceptance Act No. 60 of 1933.  
NAA: A1559, 1933/60

1933.

No.



## AN ACT

To provide for the acceptance of Ashmore Islands and Cartier Island as a Territory under the authority of the Commonwealth, and for the Government thereof.

**W**HEREAS the islands named the Ashmore Islands and known as Middle, East and West Islands, and also the island named Cartier Island, being islands situated in the Indian Ocean off the North-West Coast of Australia, are islands over which His Majesty the King has Sovereign rights :

**AND WHEREAS** by an Order in Council dated the twenty-third day of July, One thousand nine hundred and thirty-one made by His Majesty by virtue and in exercise of the power in that behalf in His Majesty vested, it was ordered that the said Ashmore Islands and Cartier Island should be placed under the authority of the Commonwealth of Australia and that the Order should come into operation on such date, after legislation had been passed by the Parliament providing for the acceptance of the said islands and the government thereof, as might be fixed by Proclamation by the Governor-General of the Commonwealth of Australia :

**AND WHEREAS** the Parliament of the Commonwealth is willing that the Ashmore Islands and Cartier Island should be placed under the authority of, and be accepted as a Territory by, the Commonwealth :

**AND**

2 No. *Ashmore and Cartier Islands Acceptance.* 1933.

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:—

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:—

- Short title. 1. This Act may be cited as the *Ashmore and Cartier Islands Acceptance Act 1933*.
- 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 Islands" means the Ashmore Islands and Cartier Island;  
 "the Territory" means the Territory of Ashmore and Cartier Islands.
- Proclamation by Governor-General fixing date on which Order in Council shall come into operation. 4. The Governor-General may by proclamation fix a date for the coming into operation of the above-recited Order in Council dated the twenty-third day of July One thousand nine hundred and thirty-one by which the Islands are placed under the authority of the Commonwealth of Australia.
- Acceptance of Ashmore Islands and Cartier Island. 5. The Islands are by this Act declared to be accepted by the Commonwealth as a Territory under the authority of the Commonwealth, under the name of the Territory of Ashmore and Cartier Islands.
- Continuance of laws. 6. Subject to this Act, the laws in force in the Territory at the commencement of this Act shall continue in force, but may be altered or repealed by Ordinance made in pursuance of this Act.
- Commonwealth Acts not in force. 7. The Acts of the Parliament (except this Act) shall not be in force in the Territory unless expressed to extend thereto.
- Laws for Ashmore and Cartier Islands. 8.—(1.) Subject to this Act, the Governor of the State of Western Australia, acting with the advice of the Executive Council of that State, may make Ordinances having the force of law in and in relation to the Territory.  
 (2.) Every such Ordinance shall—  
 (a) be notified in the *Gazette* of the State of Western Australia; and  
 (b) take effect from the date of notification, or from such date, whether before or after such date of notification, as is specified in the Ordinance.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to provide for the acceptance of Ashmore Islands and Cartier Island 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.

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

*E. W. Danks*

Clerk of the House of Representatives.


*Isaac A. Isaacs*

Governor-General.

15 December 1933

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



  
COMMONWEALTH OF AUSTRALIA.

*Department of External Affairs*  
~~Prime Minister's Department.~~

Departmental No. 8 30 APR 1934 ~~19~~

Executive Council No. 22

**Minute Paper for the Executive Council.**

SUBJECT.

PROCLAMATION FIXING THE DATE OF COMMENCEMENT OF THE  
ASHMORE AND CARTIER ISLANDS ACCEPTANCE ACT, 1933.

.

Recommended for the Approval of His Excellency the Governor-General in Council that a Proclamation in the within terms be issued fixing the third day of May, 1934, as the date upon which the Ashmore and Cartier Islands Acceptance Act, 1933, shall commence.

Approved in Council.

*Francis Forde*  
Governor-General.

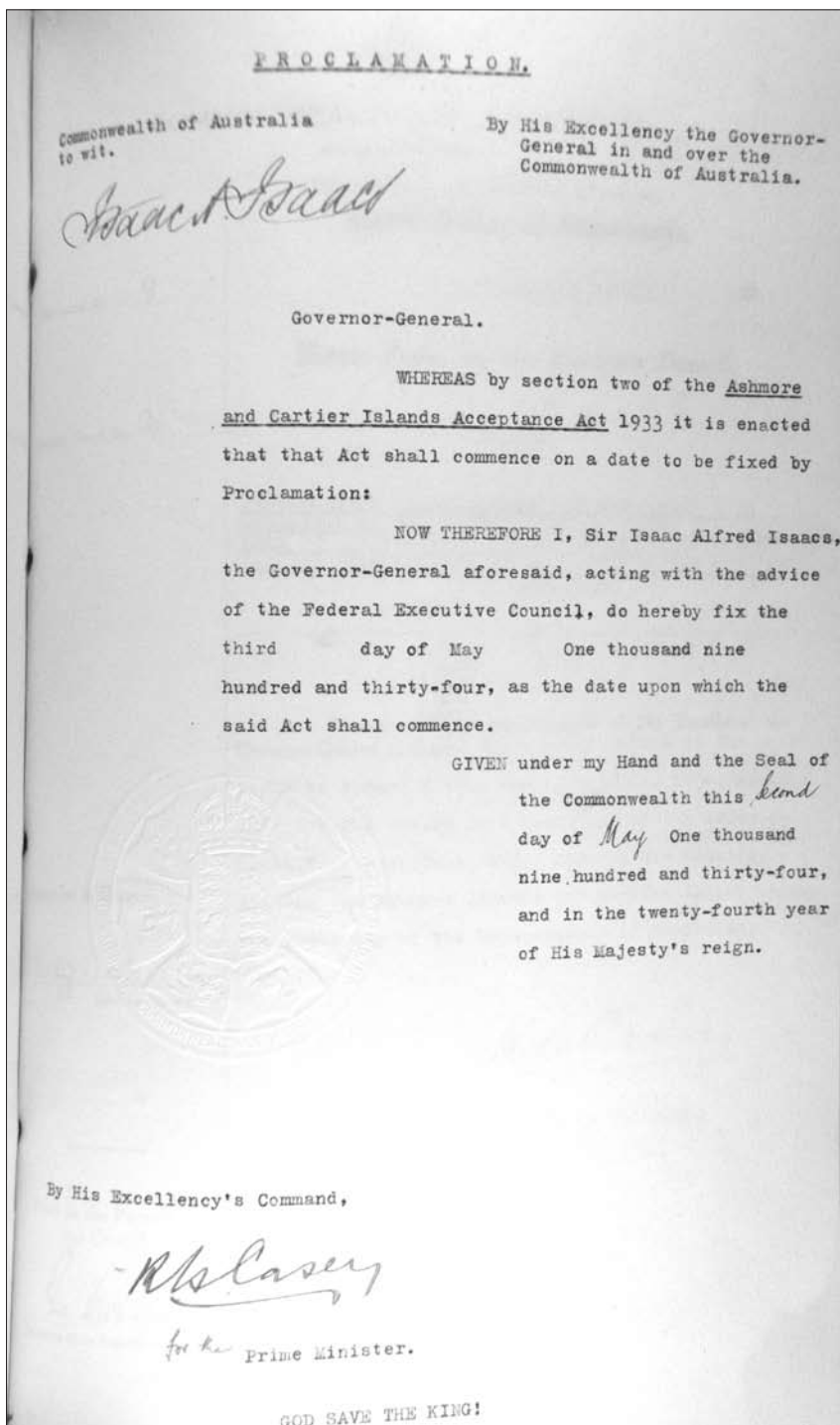
*W. L. Casey*  
for the Prime Minister.

2 - MAY 1934  
19

Filed in the Records of the Council.


*W. J. Whitlam*  
Secretary to the Executive Council.

Executive Council Minute No. 22, 30 April, 1934.  
NAA: A1573, 1934/1



Ashmore and Cartier Islands Acceptance Act Proclamation, 2 May, 1934.

NAA: A1573, 1934/1

  
**COMMONWEALTH OF AUSTRALIA.**

Department of External Affairs.  
~~Prime Minister's Department.~~

Departmental No. 9 30 APR 1934

Executive Council No. 24

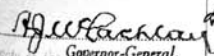
**Minute Paper for the Executive Council.**

SUBJECT.


PROCLAMATION FIXING A DATE FOR THE COMING INTO  
OPERATION OF THE ORDER IN COUNCIL DATED 23rd JULY, 1931  
MADE BY HIS MAJESTY, PLACING THE ASHMORE ISLANDS AND  
CARTIER ISLAND UNDER THE AUTHORITY OF THE COMMONWEALTH  
OF AUSTRALIA.

Recommended for the Approval of His Excellency the Governor-General in Council that a Proclamation in the within terms be issued fixing the 10th May, 1934, as the date for the coming into operation of the Order in Council of 23rd July, 1931, made by His Majesty, placing the Ashmore Islands and Cartier Island under the authority of the Commonwealth of Australia.


Approved in Council.

  
Governor-General.

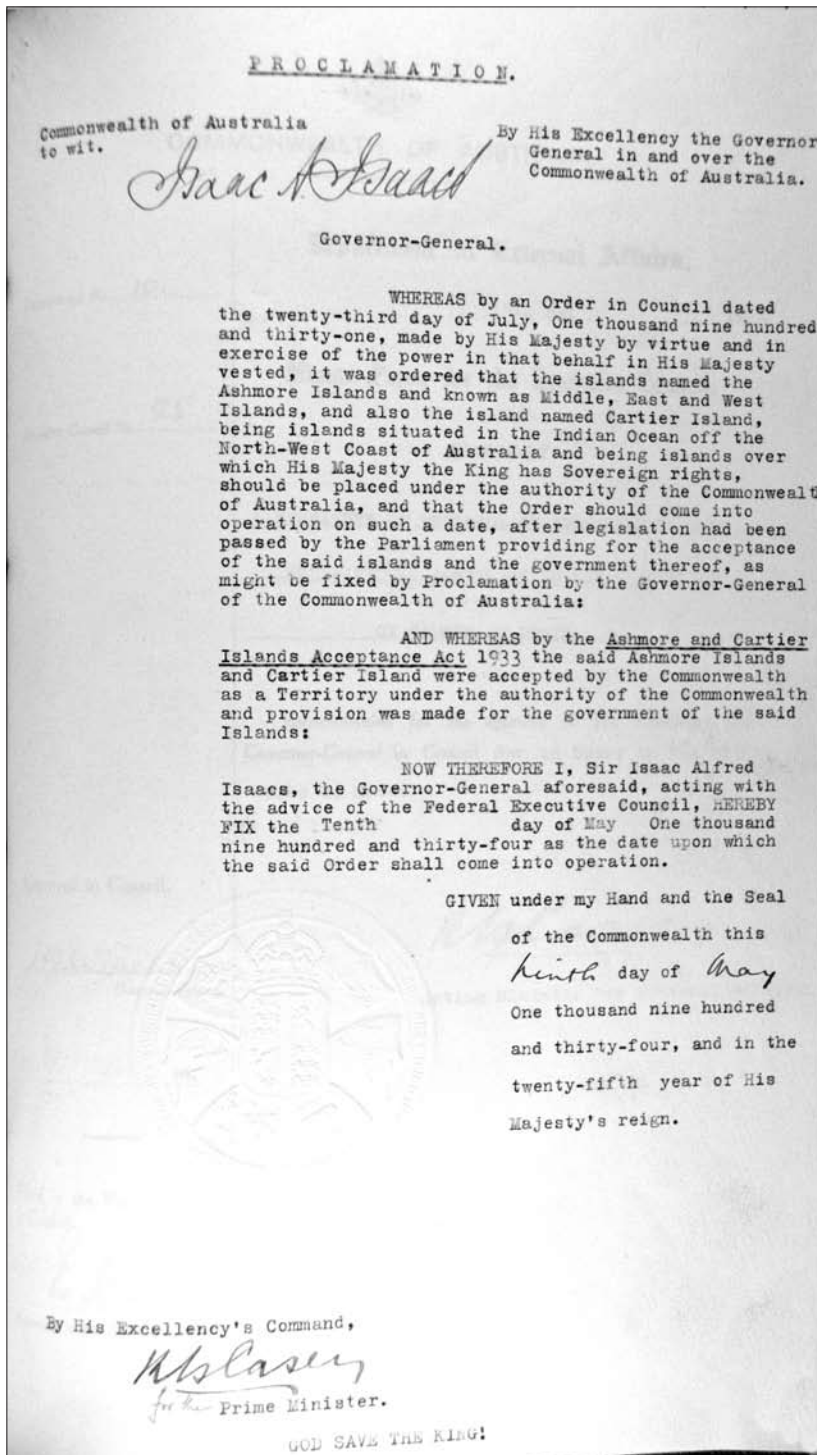
9 MAY 1934 19

  
for the Prime Minister.

Filed in the Records of the Council.

  
Secretary to the Executive Council.

Executive Council Minute No. 24, 30 April, 1934.  
NAA: A1573, 1934/1



Ashmore and Cartier Islands Acceptance Act Proclamation, 9 May, 1934.  
NAA: A1573, 1934/1



**Ashmore and Cartier Islands Acceptance  
Amendment Act 1978**

**No. 59 of 1978**

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*pp. 216–220 Ashmore and Cartier Islands Acceptance Amendment Act No. 59 of 1978.  
Office of the Parliamentary Counsel.*



## Ashmore and Cartier Islands Acceptance Amendment Act 1978

No. 59 of 1978

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### AN ACT

To amend the *Ashmore and Cartier Islands Acceptance Act* 1933 for purposes related to the self-government of the Northern Territory.

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

1. (1) This Act may be cited as the *Ashmore and Cartier Islands Acceptance Amendment Act* 1978. Short title,  
&c.

5 (2) The *Ashmore and Cartier Islands Acceptance Act* 1933\* is in this Act referred to as the Principal Act.

2. This Act shall come into operation on 1 July 1978.

Commence-  
ment

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\* Act No. 60, 1933, as amended. For previous amendments see Act No. 11, 1938; and No. 216, 1973.



2	No.	<i>Ashmore and Cartier Islands Acceptance Amendment</i>	1978
Interpretation	3.	Section 3 of the Principal Act is amended by inserting before the definition of "the Islands" the following definitions: " ' Commonwealth law ' means an Act, or regulations made directly under an Act; ' Ordinance ' means an Ordinance made under this Act;".	5
	4.	Section 6 of the Principal Act is repealed and the following sections are substituted:	
Continuance of laws	" 6. (1)	Subject to this Act, the laws in force in the Territory immediately before 1 July 1978 (including the principles and rules of common law and equity so in force) continue in force on and after that date.	10
	" (2)	In sub-section (1), 'law' does not include the <i>Northern Territory (Administration) Act</i> 1910, but includes a law made under that Act.	
Ordinance may amend or repeal adopted laws	" 7.	A law in force in the Territory by virtue of section 6 (other than a Commonwealth law) may be amended or repealed by an Ordinance or by a law made under an Ordinance.	15
Application of Commonwealth Acts	" 8. (1)	A Commonwealth law (including a law in force immediately before the commencement of this Act) has effect in and in relation to the Territory, except so far as the context otherwise requires, as if the Territory were an internal Territory.	
	" (2)	An Ordinance shall not be made so as to affect the application of a Commonwealth law of its own force in, or in relation to, the Territory.	20
Ordinances	" 9. (1)	The Governor-General may make Ordinances for the peace, order and good government of the Territory.	
	" (2)	Notice of the making of an Ordinance shall be published in the <i>Gazette</i> , and an Ordinance shall, unless the contrary intention appears in the Ordinance, come into operation on the date of publication of the notice.	25
Tabling of Ordinances	" 10. (1)	An Ordinance shall be laid before each House of the Parliament within 15 sitting days of that House after the making of the Ordinance and, if it is not so laid before each House of the Parliament, is void and of no effect.	30
	" (2)	If either House of the Parliament, in pursuance of a motion of which notice has been given within 15 sitting days after an Ordinance has been laid before that House, passes a resolution disallowing the Ordinance or a part of the Ordinance, the Ordinance or part so disallowed thereupon ceases to have effect.	35
	" (3)	If, at the expiration of 15 sitting days after notice of a motion to disallow an Ordinance or part of an Ordinance has been given in a House of the Parliament, being notice given within 15 sitting days after the Ordinance has been laid before that House—	40
	(a)	the notice has not been withdrawn and the motion has not been called on; or	

1978 *Ashmore and Cartier Islands Acceptance Amendment* No.

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

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

(a) that House is dissolved or, being the House of Representatives, expires, or the Parliament is prorogued; and

10 (b) at the time of the dissolution, expiry or prorogation, as the case may be—

(i) the notice has not been withdrawn and the motion has not been called on; or

15 (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the Ordinance shall, for the purposes of sub-sections (3) and (4), be deemed to have been laid before that House on the first sitting day of that House after the dissolution, expiry or prorogation, as the case may be.

20 “ (5) Where an Ordinance or part of an Ordinance is disallowed, or is to be deemed to have been disallowed, under this section, the disallowance has the same effect as a repeal of the Ordinance or part of the Ordinance, as the case may be, except that, if a provision of the Ordinance or part of the Ordinance amended or repealed a law in force immediately before that provision came into operation, the disallowance revives the previous  
25 law from and including the date of the disallowance as if the disallowed provision had not been made.

“ (6) If an Ordinance or part of an Ordinance is disallowed, or is to be deemed to have been disallowed, under this section, and an Ordinance containing a provision being the same in substance as a provision that  
30 has been so disallowed, or is to be deemed to have been disallowed, is made within 6 months after the date of the disallowance, that provision is void and of no effect, unless—

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

(b) in the case of an Ordinance, or part of an Ordinance, that is to be deemed to have been disallowed—the House of the Parliament in which notice of the motion to disallow that Ordinance or part was given approves, by resolution, the making of a provision the  
40 same in substance as the provision that is to be deemed to have been disallowed.

4	No.	<i>Ashmore and Cartier Islands Acceptance Amendment</i>	1978
Powers and functions under Northern Territory law		<p>" 11. (1) Subject to sub-section (2), where, by any law in force in the Territory by virtue of section 6, a power or function is vested in a person or authority (not being a court), that power or function is, in relation to the Territory, vested in, and may be exercised or performed by, the Minister.</p> <p>" (2) The Governor-General may direct that a power or function vested in a person or authority (not being a court) by a law in force in the Territory by virtue of section 6 shall, in relation to the Territory, be vested in, and may be exercised or performed by, such other person or authority as the Governor-General specifies.</p>	5
Courts of Northern Territory to have jurisdiction in Territory		<p>" 12. (1) The courts of the Northern Territory have jurisdiction in and in relation to the Territory.</p> <p>" (2) In the exercise of its jurisdiction under this section a court of the Northern Territory may sit in the Territory or in the Northern Territory.</p> <p>" (3) The practice and procedure of a court exercising jurisdiction under this section shall be the practice and procedure in force from time to time in relation to that court in the Northern Territory.</p>	10 15
Grant of pardon, remission, &c.		<p>" 13. (1) The Governor-General, acting with the advice of the Minister, may, by warrant under his hand, grant to a person convicted by a court exercising criminal jurisdiction in the Territory a pardon, either free or conditional, or a remission or commutation of sentence, or a respite, for such period as he thinks fit, of the execution of sentence, and may remit any fine, penalty or forfeiture imposed or incurred under a law in force in the Territory.</p> <p>" (2) Where an offence has been committed in the Territory, or where an offence has been committed outside the Territory for which the offender may be tried in the Territory, the Governor-General, acting with the advice of the Minister, may, by warrant under his hand, grant a pardon to any accomplice who gives evidence that leads to the conviction of the principal offender or any of the principal offenders."</p>	20 25 30
<p>I HEREBY CERTIFY that the above is a fair print of the Ashmore and Cartier Islands Acceptance Amendment Bill 1978 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.</p> <p style="text-align: right;"><i>[Signature]</i> Deputy Clerk of the House of Representatives</p> <p>IN THE NAME OF HER MAJESTY, I assent to this Act.</p> <p style="text-align: right;"><i>[Signature]</i> Governor-General 22 June 1978</p>			
Printed by Authority by the Commonwealth Government Printer			

## FROM NORTH TO SOUTH

**D**uring the protracted discussions between the Commonwealth and Western Australian governments about the administration of the Ashmore and Cartier Islands, Australia's interests in Antarctica were growing apace.

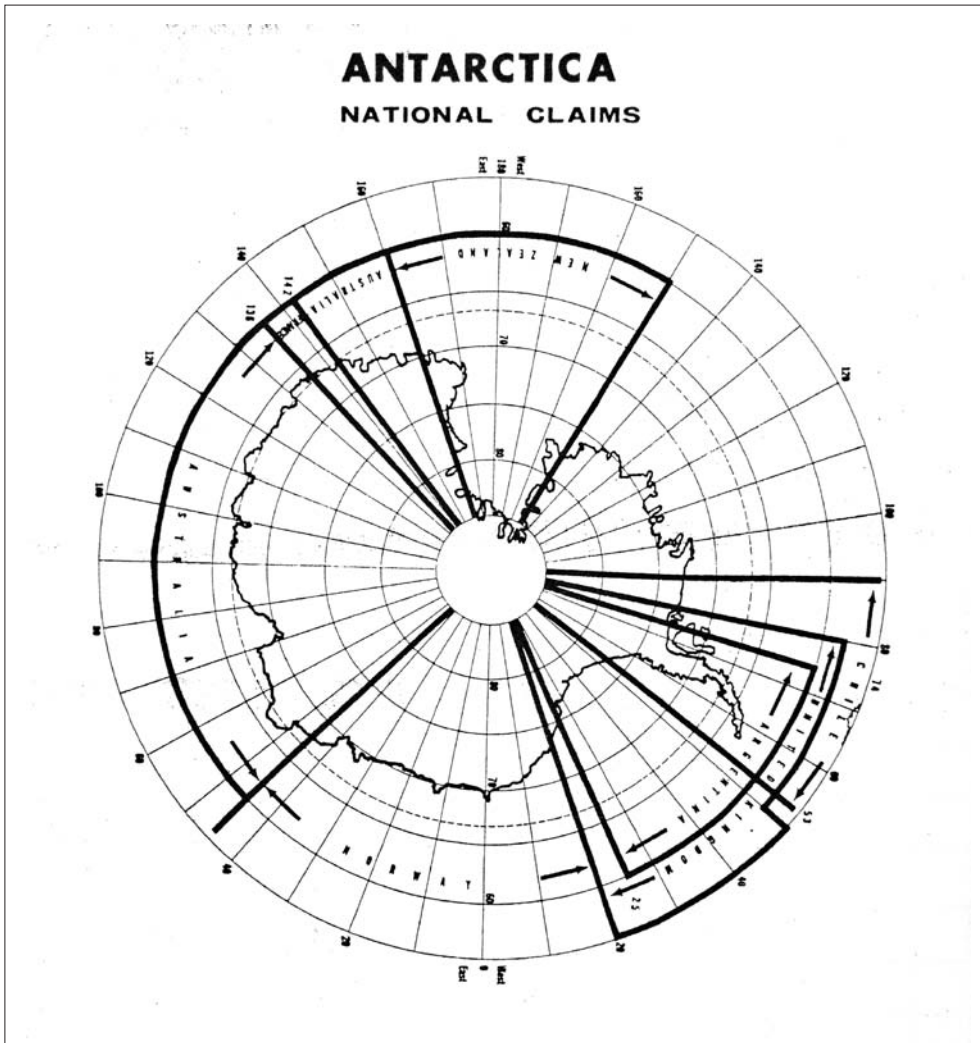
Sir Douglas Mawson had been involved in British exploration in Antarctica and its adjacent waters for more than two decades since 1907.

Mawson had made two proclamations on behalf of Britain, and Australia's attention was gradually focusing on that part of the United Kingdom's Antarctic claims known as the 'Australian Sector'.



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*Antarctic Sector Map. NAA: A432, 1953/3228 Part 1.*



## CHAPTER NINE

# Antarctica

... I can be bold to say that no man will ever venture farther than I have done, and that the lands which may lie to the south will never be explored.

—Extract from Captain Cook's Journal, 2nd voyage, 1772–1775

### THE HEROIC ERA

The Antarctic ocean was first systematically explored and virtually circumnavigated by Captain James Cook in 1772 in his search for the Great South Land. In the nineteenth century, British (in particular James Ross in the 1840s, claiming and naming Cape Adare and Victoria Land for Britain), Russian, United States and Norwegian explorers found and began to open up the landmass of the Antarctic continent.

Australian interest in the forbidding area to its south began in the 'heroic era' of Antarctic exploration.

Distinguished Australian scientists were involved in Antarctic exploration and scientific work from 1898. Louis Charles Bernacchi, a Tasmanian scientist specialising in astronomy and terrestrial magnetism, was a member of the 1898–1900 *Southern Cross* expedition. This British-funded, Norwegian-led expedition was the first to overwinter on the Antarctic continent. Bernacchi was also a member of Robert Falcon Scott's first (*Discovery*) expedition of 1901–04.

Sir Douglas Mawson was a member of Shackleton's 1907–08 *Nimrod* expedition, ascending Mount Erebus and reaching the South Magnetic Pole in the sector later proclaimed as British (the Geographical South Pole was not reached until 1912). Mawson was a dominant figure in Australia's interests in Antarctica. He was a geologist, and aside from his Antarctic exploits had reported in 1903 on the geology of the New Hebrides in one of the first major works on the geology of Melanesia. His Antarctic expedition of 1911–14 led to a knighthood in 1914, and he became Professor of Geology at the University of Adelaide in 1921. He was called on again to lead Antarctic

expeditions in 1929–30 and 1930–31. Mawson continued his interest in Antarctica throughout his life, being a member of the Australian Antarctic Planning Committee until his death at the age of 76.

On 2 September 1910, Prime Minister Andrew Fisher was asked whether, in view of Australia's nearness to the Antarctic and its connection with the Shackleton expedition, it might provide some financial assistance to the second Scott expedition. Fisher replied that ministers had considered the matter and had made up their minds, and he would not promise to reopen the subject.<sup>1</sup>

Just over a month later, however, the Acting Prime Minister, William Morris Hughes, announced that the government had decided to donate £2,500 to the Scott expedition: 'We hope that it may be of some assistance to the furtherance of scientific research, and the eminently desirable objects of the expedition.' In response, Alfred Deakin, the Leader of the Opposition, congratulated the government, saying that the problem with the climatology of the South Polar regions was of the deepest interest to Australia.<sup>2</sup>

In 1911, the Commonwealth also contributed to Mawson's 1911–14 Australasian Antarctic Expedition.<sup>3</sup> In an estimates debate Deakin noted that this was the:

first occasion on which a party of research will devote itself from first to last to an investigation of the circumstances and opportunities in the south polar regions and under which further observations in relation to climatic conditions, of first importance to Australia, will be made. The expedition will make a careful study of the whole of the conditions of this most interesting region, which has a direct and close relation to Australia. From there, probably, we may derive data that will enable forecasts to be made of weather conditions, and possibly of rainfall, that will be of the highest value to Australia, as well as, possibly, to other countries, such as South America, that are in the neighbourhood of the South Pole. The investigations proposed to be pursued have not only theoretical, but many practical, bearings, and though the expedition is purely scientific, every one of those included in it will again and again stake his life in the hope of serving his country. This should appeal to the country from which they proceed—most of the members of the expedition are Australians—and this continent must expect to reap the chief benefits from their inquiries.<sup>4</sup>

Rainfall forecasts for Australia were as important then as they are now.

For a few years after Mawson's expedition to Antarctica, Australia showed little interest in the Great South Land. World War I had intervened, and Australia had other priorities.

#### ESTABLISHMENT OF CLAIMS

In 1926, the Imperial Conference in London recommended certain actions to reinforce British claims to portions of Antarctica (in the light of possible American

claims). Some of the recommended actions were later to be carried out by Mawson in proclamations in 1930 and 1931.

In 1927, a New Zealand press report headed 'Antarctic Wealth' brought the matter into local prominence again. Mawson was reported as accusing the Commonwealth Government of apathy in neglecting to take any action to secure control of the Antarctic Ocean. There was great danger, he said, of the whale fisheries being depleted, while the possibilities of Adélie Land were 'enormous'. Although asked by the Dominions Office to express their views on the matter, the report went on, Australian leaders had done nothing. Mawson said that he was prepared to lead another expedition to the Antarctic if funds were available.

When the press report was brought to the attention of Australian Prime Minister Stanley Bruce in parliament on 16 March 1927, Bruce said that there had been no requests from the Dominions Office to which a reply had not been made. He further stated that:

The rights of various countries in the Antarctic were fully considered at the Imperial Conference, and the steps believed by the conference to be most effective to protect British interests generally, and those of Australia, were determined, and are now being taken.<sup>5</sup>

Other Australians were to feature in British efforts to support its Antarctic interests. Richard Casey\*, Australia's representative in London, urged Australian explorer and photographer Sir Hubert Wilkins to fly over the Antarctic landmass south of the Falkland Islands and drop a British flag as a claim to sovereignty. Wilkins did so on 20 December 1928.

But it was to be another two years before the Prime Minister announced that the time was ripe for an Australian expedition to that part of the Antarctic which lay immediately to the south of Australia.

In a statement to parliament on 21 February 1929, Bruce said that the special interest of the Commonwealth extended from the Ross Sea in the east to Enderby Land in the west. This area to the south of Australia was generally known as the 'Australian Sector' to which recognition, he said, had been often affirmed in the past. Of the various expeditions to this region, the richest so far in scientific and other achievement was Mawson's in 1911–14. It was hoped that the proposed expedition would complete and crown that previous Australian effort. Britain had lent a ship and, with New Zealand, was expected to cooperate in the expedition.

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\* Richard Gardiner Casey was a major figure in twentieth-century Australian public life. He carried out a number of Australian and British diplomatic and political roles in the period up to and during World War II. As Minister for External Affairs, he oversaw the transfers of Cocos and Christmas islands to Australia, and played a leading part in the Antarctic Treaty negotiations, Antarctica being of long-standing interest to him. He became Governor-General in September 1965.

Science was at the forefront, but other interests were not far behind. The expedition would seek to achieve various aims, mostly scientific but including exploration, mapping, meteorological work and investigations into the economic resources of the region. Hydrographic survey work would locate and chart coasts, islands, rocks and shoals. Meteorological studies would more adequately determine the relationship between Antarctic and Australian weather conditions. Investigations of the fauna, particularly whales, would determine the economic and commercial value of the waters of the Australian sector—and the government wanted to be in a position to determine what control measures might be needed to conserve them as a permanent source of wealth.

In his concluding remarks, Prime Minister Bruce said that the government had been fully conscious that the expedition would further Australian interests in a region that was so close to its shores.<sup>6</sup>

In debate on the statement, James Henry Scullin (Member for Yarra), saw it as desirable that the Commonwealth Parliament and not just the government should stand behind those who were being asked to take the risks that were inseparable from such an expedition. This, he said, was a matter ‘that should be handled by us as a nation. Nobody knows what lies ahead in the Antarctic. These expeditions of exploration may enable us to plant the Australian flag on new soil; but what developments may be only the future can reveal.’ He noted, too, that ‘Mention has been made of the financial results which may accrue from the planting of our flag in certain portions of Antarctica.’

So, while a wide range of scientific and particularly meteorological aims would be served by the expedition, territorial possibilities and the resource benefits flowing from them were also kept in mind.<sup>7</sup> The expedition was to be led by Sir Douglas Mawson.

Other countries were also eyeing Antarctica with interest. In answer to a question in the parliament on 6 December 1929, Scullin (who had succeeded Bruce as Prime Minister) was asked whether, in view of international claims then being made for territorial rights in Antarctica, he would see that Australian claims were adequately represented and maintained in the proper quarters. Scullin replied that the matter was ‘engaging the close attention of the Government’.<sup>8</sup>

Mawson’s expedition reached Antarctica on the British ship *Discovery* in early 1930. His first proclamation of British sovereignty, on 13 January 1930, was for ‘... the territory of Enderby Land, Kemp Land, MacRobertson Land together with off-lying Islands as located in our charts constituting a sector of the Antarctic Regions lying between Longitudes 47 degrees East and 73 degrees east of Greenwich and South of Latitude 65 degrees south ...’. It constituted a large area of Antarctica.

The report of the *Discovery* expedition was laid on the table of the House of Representatives on 21 May 1930.<sup>9</sup> On 22 May, Scullin announced in parliament that the government had decided that the work in the Australian sector of the Antarctic,

which was of considerable national interest and importance to the Commonwealth from 'economic, scientific, and other points of view', would be continued during the coming Antarctic summer from November 1930 to March 1931.<sup>10</sup>

Fifteen years had elapsed between the first Mawson expedition and the second. The third was to set off again in six months. Clearly, interest was growing and time was becoming of the essence.

On 4 July 1930, Scullin was asked in parliament whether he was aware of a motion in the United States Senate 'authorising the Secretary of State to claim for America Antarctic lands ... American explorers have discovered? Are any steps being made to claim on behalf of Australia those portions of Antarctica, and the valuable whaling grounds adjacent to them, discovered by the Mawson expedition?'

In response, Scullin said that the United States' claim was intended only to be to the area to the east of and outside the Ross Dependency, which was administered by New Zealand. Therefore, it had no significance for any claim by Australia or Great Britain. Scullin indicated that no Antarctic areas were under the administration of the Governor-General, but that the Imperial Conference of 1926 emphasised that a British title to certain areas in the Antarctic regions south of Australia already existed by virtue of discovery.<sup>11</sup>

Mawson's second proclamation, on 18 February 1931, was for '... Territory ... extending continuously from Adelie Land, westwards to MacRobertson Land being that part of the Antarctic Mainland and offlying Islands [described] situate between meridia 138° and 60° East of Greenwich and south of Latitude 64° as far as the South Pole ...'.

#### ASSERTING SOVEREIGNTY

As well as its other claims in Antarctica (supported by the efforts of Wilkins), by dint of Mawson's exploratory work and earlier discoveries, Britain was now well placed to assert its sovereignty over an area of Antarctica (other than Adélie Land, claimed by the French) and offshore islands in Antarctic waters stretching from south of Madagascar to south of the Tasman Sea. This constituted what was called the Australian Sector.

A memorandum from the Department of External Affairs to the Attorney-General's Department dated 28 January 1932 spelled out the steps that had been recommended by the 1926 Imperial Conference and taken towards asserting British sovereignty in the sector. The memorandum also advised that Australia would consult with the United Kingdom as to the best form the establishment of British sovereignty over the Australian Sector might take, and sought advice on the question of legal form to achieve this.

The steps were as follows.

- First, British claims in the Antarctic were published to the world at large to reinforce that there was a special British interest in certain areas (lying between the westward boundary of the Ross Dependency and the eastward boundary of the Falkland Island Dependencies) to which a British title existed by virtue of discovery.
- Second, an expedition was despatched to take formal possession of those areas in the name of His Majesty.
- Third, Letters Patent should issue, annexing the territory of which possession had been taken and making provision for its government.

It was judged that the second step had been completed in relation to the Australian Sector by the BANZAR (British Australian New Zealand Antarctic Research) expeditions led by Sir Douglas Mawson in 1929–30 and 1930–31, which traversed the Antarctic coast from 160° E to 45° E and, in the course of those voyages, made discoveries and proclaimed sovereignty over certain areas. It is interesting to note that the occupation of Heard Island by Mawson (from 26 November to 2 December 1929—‘Flag flown over hut.’) was also considered to be an act of sovereignty.<sup>†</sup>

In July 1931, an Australian despatch to the Secretary of State for the Dominions had suggested that the whole of the Australian Sector was now sufficiently British by both discovery and assertion of sovereignty to justify the third and final step: the issue of Letters Patent formally annexing the territory.<sup>12</sup>

### TRANSFER TO AUSTRALIA

On 6 December 1932, the Minister for External Affairs, John Latham, lodged a Cabinet paper titled ‘Antarctic—Control of Australian Sector’. The paper canvassed the recent exploratory activity and the recommendations of the 1926 Imperial Conference and the actions flowing from them.

The paper noted that ‘On 8 December 1929 the Commonwealth Government informed the British Government that they would be prepared to recommend to Parliament the acceptance of control and jurisdiction over the Australian Sector.’ This was described as between longitude 45° E and 160° E, excepting the French territory of Adélie Land (between 136½° E and 142° E).

Cabinet was advised that discussions with the British Government in June 1932 had identified two alternative means by which British sovereignty might be asserted. The first was by the Commonwealth assuming control after action under s. 122 of the Constitution, which, in turn, would require the approval of parliament and the making of laws for the area. The second required the British Government to annex the

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† In contrast, see Chapter Ten, where the ‘flag flown over the hut’ on Heard Island was considered later as not having constituted a formal claim to the island.



area under the *British Settlements Act 1887*, following which the Australian Government might or might not take subsequent action under s. 122. Latham indicated that he had informed the British Government on 16 June 1932 that the Commonwealth Government was prepared to accept control under s. 122.

The submission also noted that the French claim was excluded by name but not defined, that unfavourable reactions from foreign countries were unlikely, and that 'whilst Norway for reasons of policy, cannot be expected to explicitly recognise the British claim, it may acquiesce provided it is not formally approached and the use of the term "sector" is avoided.' The submission recommended that the Commonwealth Government concur in the issue of the proposed order-in-council, the timing of which was to be left to the British.<sup>†13</sup>

Cabinet approved the recommendations, and on 8 December 1932 the Attorney-General's Department was asked to advise as to the Australian legislation that would be necessary.<sup>14</sup>

On 7 February 1933, King George V at the Court in Sandringham made an order-in-council that the Antarctic territory over which His Majesty had sovereign rights be placed under the authority of the Commonwealth of Australia. The order was specified as coming into operation on a date to be fixed by the Governor-General by proclamation following the necessary Australian legislation accepting the territory.<sup>15</sup> The proclamation was published in Commonwealth of Australia Gazette No. 15 on 16 March 1933.

Three months later, the federal government sought leave in parliament to bring in and take to first reading 'a bill for an act to provide for the acceptance of certain territory in the Antarctic seas as a territory under the authority of the Commonwealth and for the government thereof.' Leave was granted.<sup>16</sup>

The second reading debate on the Bill began on 26 May 1933. After detailing the geographical scope of the territory in question, John Latham, now Attorney-General, outlined the history of Antarctic exploration from the discovery by Biscoe, a British sealer, of Enderby Land to the expeditions by Mawson in 1911 and the late 1920s and early 1930s. He then turned to the question of whaling activities, pointing out that some form of regulation was necessary lest the stock be, conceivably, totally destroyed. He also said that other Antarctic fauna needed to be protected against indiscriminate killing. In describing recent events, the Attorney-General said that the annexation by France of Adélie Land in 1924 called attention to the unsatisfactory situation involving the Antarctic regions to Australia's south, and stated that the matter had been discussed at the 1926 Imperial Conference.

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† Because of doubts about Norway's recognition, the preamble to the Australian legislation accepting Antarctica as a territory did not recite the United Kingdom's prior claims.

The Attorney-General felt that:

From the Australian point of view, there are good reasons for accepting the administration of this area. It has considerable actual and potential economic importance. It is near to Australia, and is it quite possible that embarrassing circumstances would arise if any other power assumed the control and administration of the area.<sup>17</sup>

Latham returned to the economic potential that the area offered: whales, bird life and possibly coal and other minerals. He also noted that some believed ‘that, in regard to Australia and New Zealand, reliable inferences could be drawn as to the character of the coming season ... and the amount of rain that we are likely to get, from a study of the melting of the ice in the Ross Sea. These may be dreams of the future, but many realities have first been in dreamland.’ In closing, the Attorney-General invited members to support the action of the government in assuming responsibility in the southern seas.<sup>18</sup>

AE Green (Member for Kalgoorlie) supported the Bill, stressing the economic potential of Antarctica but saying that, in his opinion, Australia was not taking possession of the area from a vainglorious desire to enlarge her possessions.<sup>19</sup> Richard Casey (Member for Corio)—who, as Australia’s representative in London, had taken an active interest in Britain pursuing its claims—also spoke of the area’s potential wealth. He recalled that when the Mawson expedition was being considered the editor of the London *Times* had said to him, ‘I hope that one of these days we shall be able to write a leading article that we may call “Australia, from the tropics to the pole”.’ Casey added, ‘It is, I think, something to be proud of that this day has now arrived.’<sup>20</sup>

W Maloney (Member for Melbourne) was worried about giving any ‘justification to the people of eastern countries to charge Australia with greed for additional territory’ and asked for some consideration of the possibility of setting up a committee of the League of Nations to supervise the area, but if this could not be done he hoped that the government would make a success of its activities in the Antarctic.<sup>21</sup>

The Bill passed the House on 26 May 1933 and went to the Senate, where it was debated and agreed to on 1 June.<sup>22</sup> The history of Antarctic exploration and the proposed area under consideration were outlined again, with emphasis on its likely natural resources, especially whales, and the need to regulate their exploitation.

But some senators expressed concerns, for example that the Bill was another case of the executive government usurping the role of parliament by legislating by ordinance. Who should own Antarctica? What were Australia’s liabilities? What would her administrative function be? Would it not be a costly venture? Would Australia be in conflict with other interests? Would it be able to achieve and maintain sovereignty in the light of other claims? Senator Arthur Rae concluded his speech by saying:

Our mere acceptance of sovereignty over a portion of the Antarctic regions will do nothing except, possibly, cause complicated relations with other nations in the future. With the addition of its Antarctic dependency, Australia's territory will extend practically from the equator to the South Pole, and will be one of the largest areas under the control of any power.<sup>23</sup>

The Bill was read a third time on 2 June 1933<sup>24</sup>, and the resulting *Australian Antarctic Territory Acceptance Act 1933* was assented to on 13 June 1933. However, Australia's jurisdiction over its Antarctic Territory could not come into force until the Governor-General had proclaimed the date for the operation of the British 1933 order-in-council. The Antarctic territory in question would remain under British authority until the proclamation.<sup>25</sup>

The possible role of the League of Nations arose again. In December 1933, Prime Minister Joseph Lyons was asked in parliament whether Australia might consider resigning its control over the territory in the sub-Antarctic regions, which almost equalled Australia in extent, and placing the area in the hands of the League of Nations for the benefit of humanity. Lyons felt that neither of the courses suggested was necessary or desirable.<sup>26</sup>

Some two and a half years later, on 30 April 1936, Lyons was asked by the same questioner if he had seen press articles mentioning that Australia's mandate in the Antarctic region was in danger of being exploited by Norway and Japan, and whether it would not be expedient to hand back the mandate to the League of Nations? The Prime Minister pointed out that the territory was not being held under mandate. He went on to say that 'The Commonwealth of Australia has not yet formally taken over the Antarctic territory from the United Kingdom Government, and no consideration has been given to the matter mentioned by the honourable member.'<sup>27</sup>

A proclamation by the Governor-General fixing 24 August 1936 as the date for the operation of the 1933 order-in-council bringing into effect the Australian Antarctic Acceptance Act was made on that date. It was published in Commonwealth of Australia Gazette No. 70 on 24 August 1936.

To its stable of five external territories, Australia thus added another, which in area was not much less than its own size, albeit with no permanent inhabitants.

#### POSTSCRIPT: ANTARCTIC TREATY

Existing territorial claims are, to use an apt term, frozen.

—Senator Kenneth Anderson, Minister for Supply<sup>28</sup>

By the time the 1936 proclamation was made and Australia had a constitutional basis for its activities in Antarctica, other nations were showing much more interest

in Antarctica. This international interest was to lead to a re-examination of the legal basis for Britain's and Australia's territorial claims.

A parliamentary question on 24 September 1936 suggested that Norway was unhappy with Australia's territorial claims, but the minister replied that no formal communications from the Government of Norway protesting against the assumption of Australian sovereignty in Antarctica had been received.<sup>29</sup>

In November 1936, following representations from Sir Douglas Mawson about the extent of French claims in Antarctica (he suggested that it should be limited to the coastal area), the Prime Minister's Department advised Mawson that the British Government had been in discussions and dispute with the French Government in 1934 about the longitudinal delineation of the French claim to Adélie Land. However, it was agreed that the Adélie Land claim consisted of a sector, not just a narrow coastal strip.<sup>30</sup>

Because of general interest in Antarctica, a Polar Committee was set up at the Imperial Conference of 1937. Richard Casey, then Australian Treasurer, chaired the committee, which recommended that the dominions cooperate in establishing permanent weather stations in the Antarctic. Casey's interest carried through to the Antarctic Treaty negotiations. In January 1938, Sir Hubert Wilkins raised the Australian flag on Antarctic islands and land previously claimed by Mawson.

A report in the *Sydney Morning Herald* of 21 April 1938 suggested that France had made claim to a 'huge tract' of Antarctica between 136° and 142° East and south of 60° latitude to the pole, in which air bases might be established in the future.<sup>31</sup> The United States advised Australia in 1939 that it reserved its position regarding all Antarctic claims.<sup>32</sup> In 1940, Chile made a claim that apparently included part of the area claimed by Australia (although this was later shown to be a mistaken translation of Chile's claim).<sup>33</sup> Clearly, Australia's territorial claims were by no means secure.

Little Antarctic territorial claim activity took place during World War II, but soon after hostilities ceased it started again. The United Kingdom, the United States, Chile, Argentina and the Soviet Union were busy. British–Australian discussions (the Polar Committee) took place to settle attitudes. Legal advice was that discovery, followed by annexation, was insufficient to sustain sovereignty; there must be a subsequent continuity of effective occupation. Although Australia felt it could demonstrate some activity, it was clear that it had to do more if it was to withstand threats to the title of its territory. The question of a permanent base site was raised.<sup>34</sup>

Interestingly, at a meeting of the Polar Committee in early 1946, a question was asked about how Britain might strengthen its title to Macquarie Island. The Premier of Tasmania felt that the enquiry was rather surprising. He advised the Prime Minister that there was surely no doubt that Macquarie Island was a British possession, and that it was comprised in the state of Tasmania.<sup>35</sup>

In April 1947, the Minister for External Affairs, Dr Herbert Vere Evatt, advised parliament that the government was considering a number of questions in relation to Australia's interests and responsibilities in the Antarctic and was in close touch with certain other governments interested in Antarctica.<sup>36</sup> In May, Evatt advised the House that an Australian expedition would go to the Antarctic towards the end of the year, its general purpose being 'to maintain Australian and British interests in the Antarctic, interests based not only on the expedition led by Mawson, but also on the share taken by Australians in the great expeditions of Scott and Shackleton'.<sup>37</sup>

The intention of the expedition was also to carry out 'a reconnaissance of the Australian sector with a view to determining a permanent base for subsequent Expeditions'.<sup>38</sup> Eventually, permanent bases were set up at Heard Island (1947—permanent operations ceased in 1955); Mawson (1954) and Davis (1956) on the Antarctic continent; and on Macquarie Island in 1948.

In 1948, the United States Government proposed a United Nations trust territory arrangement for the Antarctic. As we have seen, earlier domestic Australian suggestions for League of Nations oversight of Antarctica had fallen on deaf ears. So did the American proposal. The United States then proposed a 'special regime' involving a joint administration of Antarctica by the seven countries that had made territorial claims. The Australian Government favoured an international arrangement but felt the objective could be better achieved by some other type of organisation.<sup>39</sup>

In 1954, the Australian Parliament passed the *Australian Antarctic Territory Act 1954*, which provided a system of law (that of the Australian Capital Territory) for the territory. The Bill repealed the 1933 acceptance Act, which had achieved its purpose of playing Australia's part in transferring sovereignty over the territory described in that Act from Britain to Australia.<sup>40</sup> In parliament, however, the government accepted an amendment to limit any repeal to s. 3 only (the ordinance-making power) of the 1933 Act, thus retaining the declaration of Australia's acceptance of the territory. This was done not from any doubt of the legal position, but because it might remove any misunderstandings overseas about the result of the new Act.<sup>41</sup>

In 1956, the 18 months from 1 July 1957 to 31 December 1958 was declared the International Geophysical Year. Some countries, the Soviet Union in particular, wanted to make a contribution to the year by carrying out scientific research in Antarctica. The Soviets set up a base in Australia's sector and raised the Red Flag.<sup>42</sup> This action produced a flurry of activity as Australia examined the basis for its title and the title's status internationally, and whether International Geophysical Year activities constituted a valid territorial claim. The government noted that it was clear that, while the United States did not recognise the sovereignty of any state in any portion of the Antarctic, no country other than Argentina had expressly refused recognition of Australia's title.<sup>43</sup>

In 1958, Britain and the United States both proposed forms of international control and non-militarisation of Antarctica, with any such control to protect prior claims. These moves led to the signing of the Antarctic Treaty on 1 December 1959. Richard Casey, as Minister for External Affairs, played a key role in its development, and Australia was a signatory.

The Antarctic Treaty 'put into cold storage the troublesome question of territorial sovereignty' but did not diminish Australia's rights; it was designed to promote cooperation in scientific investigation in the Antarctic and to ensure that the continent was reserved solely for peaceful pursuits.<sup>44</sup> The treaty entered into force on 23 June 1961.<sup>45</sup>

Australia's Antarctic Territory is administered by the Antarctic Division of the Department of the Environment, Water, Heritage and the Arts.

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- 43 CPD, HR, Vol. 14, 9 April 1957, p. 678.
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## END PAPERS

Proclamation

In the name of His Majesty  
King George the Fifth, King of Great  
Britain, Ireland and the British  
Dominions beyond the Seas, Emperor  
of India.

Whereas I have it in command from  
His Majesty King George the Fifth to  
assert the sovereign rights of His  
Majesty over British land discoveries  
met with in Antarctica.

Now, therefore, I Sir Douglas Mawson  
do hereby proclaim and declare to  
all men that, from and after the  
date of these presents, the full  
sovereignty of the territory of Enderby  
Land, Kemp Land, MacRobertson  
Land together with off-lying Islands  
as located in our charts constituting  
a sector of the Antarctic Regions  
lying between Longitudes 47 degrees East and  
73 degrees East of Greenwich and South of Latitude 65  
degrees South vests in His Majesty King George V his heirs  
and Successors for ever.

Given under my Hand, <sup>at this spot</sup> ~~on board the exploring vessel~~

*Ph. Atkins  
Master of the  
Exploring Vessel  
Discovery*

*Douglas Mawson (Commanding Expedition)  
13th January 1930*

## Proclamation

In the name of His Majesty, King George the Fifth, King of Great Britain, Ireland and the British Dominions across the Seas, Emperor of India.

By Sir Douglas Mawson.

Whereas I have it in command from His Majesty King George the Fifth, to assert the Sovereign rights of His Majesty over British land discoveries met with in Antarctica. Now, therefore, I, Sir Douglas Mawson, do hereby proclaim and declare to all men that, from and after the date of these presents, the full sovereignty of the Territory which we have discovered and explored extending continuously from Adelie Land, westwards to MacRobertson Land being that part of the Antarctic Mainland and offlying Islands (including amongst others, Drygalski Island, Nordern Island, David Island, Masson Island, Henderson Island, Maxwell Idls and an Island in Longitude  $103^{\circ} 15'$  East shown on our charts) situate between meridia  $138^{\circ}$  and  $60^{\circ}$  East of Greenwich and south of Latitude  $64^{\circ}$  as far as the South Pole, vest in His Majesty King George the Fifth, His Heirs and Successors forever.

Given under my hand at this spot in MacRobertson Land on the eighteenth day of February 1931

Douglas Mawson  
B.A.N.Z.A.R.E.

also the numerous small islands lying off the coast of MacRobertson Land as shown in our charts.

Copy from United Kingdom Statutory Rules And Orders 1933 pp 2089-2090

**1. Australia**

**(i) Antarctic Territory.**

**ORDER IN COUNCIL PLACING CERTAIN TERRITORY IN THE ANTARCTIC SEAS UNDER THE AUTHORITY OF THE COMMONWEALTH OF AUSTRALIA.**

At the Court at Sandringham, the 7th day of February, 1933.

PRESENT,  
The King's Most Excellent Majesty.

Lord President.  
Earl Stanhope.

Mr. Chancellor of the  
Duchy of Lancaster.

Whereas that part of the territory in the Antarctic Seas which comprises all the islands and territories other than Adélie Land situated south of the 60th degree of South Latitude and lying between the 160th degree of East Longitude and the 45th degree of East Longitude is territory over which His Majesty has sovereign rights:

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

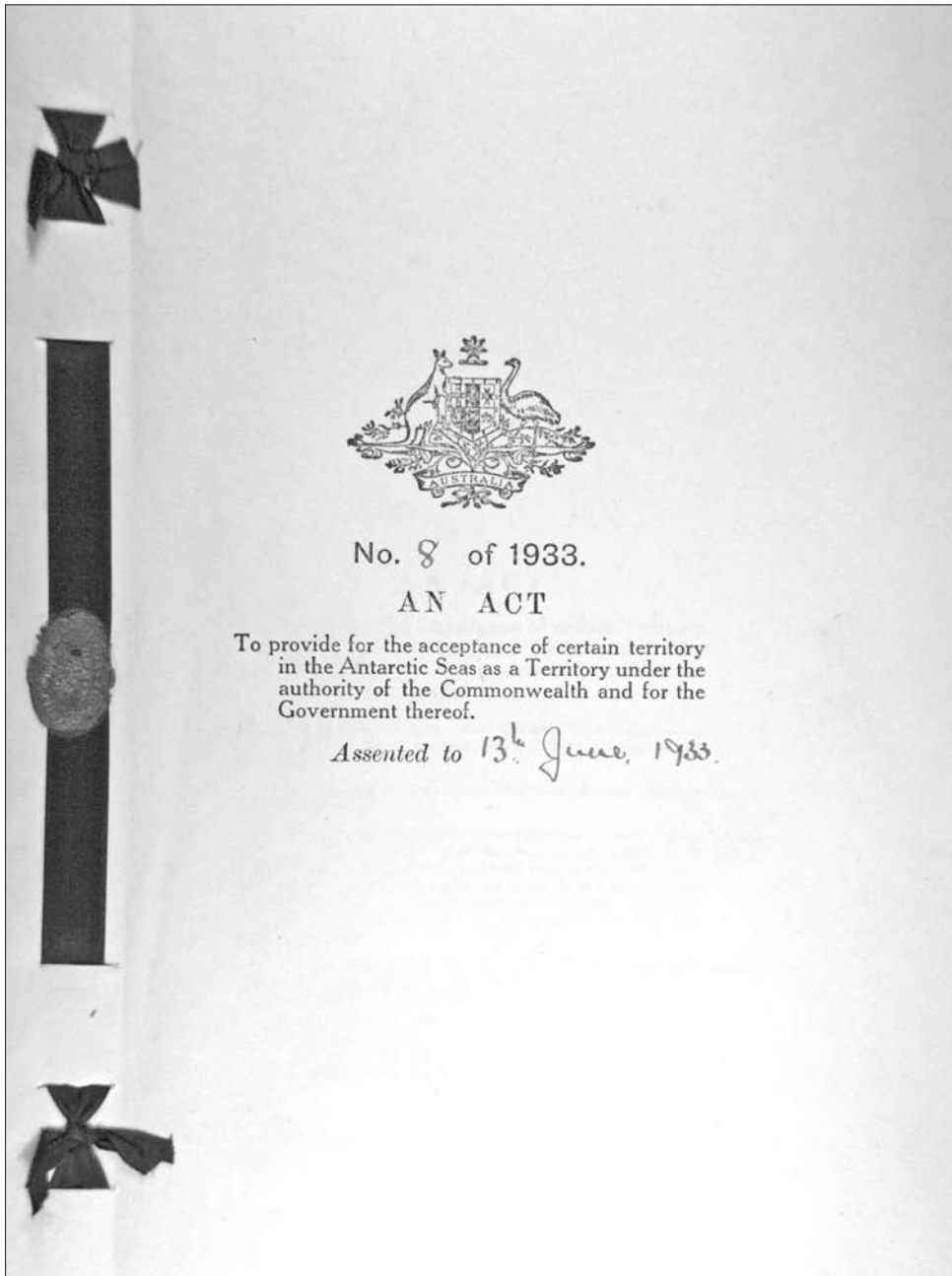
And whereas it is expedient that the said territory in the Antarctic Seas should be placed under the authority of the Commonwealth of Australia:

Now, therefore, His Majesty, by virtue and in exercise of the power in that behalf in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:-

**1.** That part of His Majesty's dominions in the Antarctic Seas which comprises all the islands and territories other than Adélie Land which are situated south of the 60th degree of South Latitude and lying between the 160th degree of East Longitude and the 45th degree of East Longitude is hereby placed under the authority of the Commonwealth of Australia.

**2.** This Order shall come into operation on such date, after legislation shall have been passed by the Parliament of the Commonwealth of Australia providing for the acceptance of the said territory and the government thereof, as may be fixed by Proclamation by the Governor-General of the Commonwealth of Australia.

*M. P. A. Hankey*



*pp. 240–242 Australian Antarctic Acceptance Act No. 8 of 1933.*  
*NAA: A1559, 1933/8*



1933.

No. .



## AN ACT

To provide for the acceptance of certain territory in the Antarctic Seas as a Territory under the authority of the Commonwealth and for the Government thereof.

**B**E 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 *Australian Antarctic Territory* Short title.  
*Acceptance Act 1933.*

2. That part of the territory in the Antarctic seas which comprises all the islands and territories, other than Adelie Land, situated south of the 60th degree south latitude and lying between the 160th degree east longitude and the 45th degree east longitude, is hereby declared to be accepted by the Commonwealth as a Territory under the authority of the Commonwealth, by the name of the Australian Antarctic Territory. Acceptance of the Territory.

3.—(1.) The Governor-General may make Ordinances having the force of law in and in relation to the Territory. Ordinances.

(2.) Every such Ordinance shall—

(a) be notified in the *Gazette* ;

(b) take effect from the date of notification, or from such date, whether before or after such date of notification, as is specified in the Ordinance ; and

(c) be



No. *Australian Antarctic Territory Acceptance.* 1933.

(c) be laid before both Houses of the Parliament within thirty days of the making thereof, or, if the Parliament is not then sitting, within thirty 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 such Ordinance has been laid before the House, disallowing the Ordinance, the Ordinance shall thereupon cease to have effect.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to provide for the acceptance of certain territory in the Antarctic Seas 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.

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

*E. J. Parkes*


Clerk of the House of Representatives.

*Isaac A. Isaacs*

Governor-General.

13<sup>th</sup> June 1933

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

  
**COMMONWEALTH OF AUSTRALIA.**

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**Department of External Affairs.**

19 AUG 1936 193

**Minute Paper for the Executive Council.**

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**SUBJECT.**

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AUSTRALIAN ANTARCTIC TERRITORY ACCEPTANCE.

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P R O C L A M A T I O N .

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Recommended for the approval of His Excellency the Governor-General in Council that a Proclamation in the within terms be issued fixing the date for the coming into operation of the Imperial Order-in-Council dated 7th February, 1933, placing territory in the Antarctic seas under the authority of the Commonwealth of Australia.

Approved in Council.

*W. H. H. H.*  
Agent of the Governor-General.

19 AUG 1936 193

for Minister for External Affairs.

*E. J. H. H.*  
Secretary to the Executive Council.

Filed in the Records of the Council.

Executive Council Minute No. 47, 19 August, 1936.  
NAA: A1573, 1936/1

PROCLAMATION.

Commonwealth of Australia  
to wit.

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

*Gowrie*  
Governor-General.

WHEREAS by an Order in Council dated the seventh day of February, 1933, His late Majesty King George the Fifth was pleased to order, and it was thereby ordered as follows :-

- "1. That part of His Majesty's Dominions in the Antarctic seas which comprises all the islands and territories other than Adelie Land which are situated south of the 60th degree of south latitude and lying between the 160th degree of east longitude and the 45th degree of east longitude is hereby placed under the authority of the Commonwealth of Australia.
- "2. This order shall come into operation on such date, after legislation shall have been passed by the Parliament of the Commonwealth of Australia providing for the acceptance of the said territory and the government thereof as may be fixed by proclamation by the Governor-General of the Commonwealth of Australia."

AND WHEREAS by the Australian Antarctic Territory Acceptance Act 1933 of the Parliament of the Commonwealth of Australia it is enacted that that part of the Territory in the Antarctic seas which comprises all the islands and territories, other than Adelie Land, situated south of the 60th degree south latitude and lying between the 160th degree east longitude and the 45th degree east longitude, is declared to be accepted by the Commonwealth as a Territory under the authority of the Commonwealth, by the name of the Australian Antarctic Territory:

NOW THEREFORE I, Alexander Gore Arkwright, Baron Gowrie, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, do hereby fix the twenty-fourth day of August, One thousand nine hundred and thirty-six, as the date on which the said Order in Council shall come into operation.

GIVEN under my Hand and the Seal of  
the Commonwealth, this *Twenty-fourth*  
day of *August* in the year of  
Our Lord One thousand nine hundred  
and thirty-six and in the first  
year of His Majesty's reign.

By His Excellency's Command,

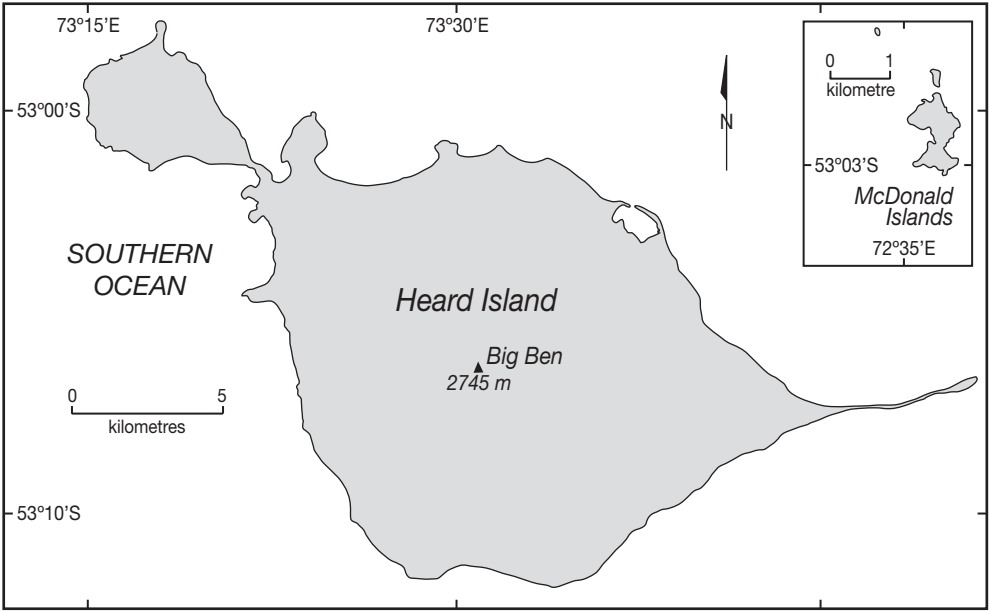
*M. Lacey*  
for Minister of State for External Affairs.

GOD SAVE THE KING!

## STILL IN THE SOUTH

**S**ir Douglas Mawson's Antarctic exploration and proclamation work was to include a visit to a remote island group outside Antarctic waters in the southern Indian Ocean. The group, known as Heard Island and McDonald Islands, was claimed by the United Kingdom.

These were formidable, inhospitable islands, but they were possibly of great scientific and meteorological importance to Australia. Was Australia interested in acquiring the islands?



*Heard Island and McDonald Islands.*

*Map drawn by Karina Pelling.*

## CHAPTER TEN

# *Heard Island and McDonald Islands*

This is a very exciting island ... If some of the nearby island scenery were in Europe it would be visited by thousands of travellers.

—Diary of John Bechervaise, Officer in Charge, Heard Island, 1953<sup>1</sup>

**H**heard Island and its neighbouring McDonald Islands lie some 4000 kilometres south-west of Perth and 1500 kilometres north of Antarctica in the Indian Ocean. Heard Island has a 2745 metre high mountain (an active volcano—Big Ben), which is higher than Mount Kosciuszko, mainland Australia's highest peak. The McDonald Islands are a group of small precipitous islands about 40 kilometres west of Heard Island.

In December 1947, on Heard Island, the Chief Executive Officer of the Australian National Antarctic Research Expedition (Stuart Campbell) read out a declaration of Australia's intention to occupy and administer the islands. Three years later, in an exchange of notes, the British Government agreed that its sovereignty and rights in the islands had been transferred to Australia from that time. The islands would become Australia's seventh external territory.

### EARLY VISITS

These remote islands had been discovered in the mid-nineteenth century. According to a 1947 Cabinet document, 'Although the discovery of Heard Island is usually credited to Captain Heard of the US Barque *Oriental* in 1853, the Foreign Office are of the opinion that satisfactory evidence exists to show that Heard Island was first sighted by the British sealer Peter Kemp, Master of the Brig *Magnet* in 1833.'<sup>2</sup>

Captain McDonald of the British ship *Samarang* discovered the McDonald Islands in 1854, but the first recorded landing there took place by helicopter in 1971.



Heard Island was explored, mapped and used for sealing operations by Americans for nearly two decades from 1857. A British ship, HMS *Challenger*, visited in 1874, landing a party for less than a day and conducting a perfunctory survey. A German ship, the *Gauss*, visited in 1902.

Despite the British visit, no formal claim to sovereignty appears to have been made by the United Kingdom, but such sovereignty was assumed in three instances:

- In 1908, the British Government agreed to consider a Norwegian application to lease the islands.
- In 1910, Britain granted an option (which was not exercised) to a private individual to occupy the islands for three years; in the same year, a British ship visited, a beacon was erected, the Union Jack was hoisted and the ceremony was reported in the South African press.
- In 1926, a British company in South Africa was given a 10-year lease over the islands, the lease permitting the British flag to be displayed in proof of occupation. The company ceased to exercise its rights in 1930, and the lease was terminated in 1934.

In each of these three instances, the McDonald Islands were treated administratively as a unit with Heard Island.

The 1947 Cabinet document recorded that:

When Sir Douglas Mawson enquired whether he should re-assert British sovereignty during the Discovery expedition of 1929 he was advised that no further action was required as British sovereignty was already evidenced by the 1926 lease and any formal taking possession would tend to throw doubt on the existing British title. Accordingly, during this visit to Heard Island in 1929 a sealer's hut was occupied for several days and the Union Jack flown, but no formal claim was made.\*<sup>3</sup>

Sir Douglas Mawson recorded his first visit to Heard Island as part of his 1929–30 Antarctic expedition:

It was not until 24 November that the weather became suitable for departure from Kerguelen. A course was set to Heard Island, which was reached on 26th November. A party was landed on the Island and surveying and other scientific work continued until 3rd December, when the journey south was resumed.<sup>4</sup>

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\* But see Chapter Nine, where a Department of External Affairs memorandum of 28 January 1932 indicates that Mawson's visit to Heard Island in November–December 1929, when the 'flag was flown over the hut', constituted an act of 'proclaimed sovereignty'.

The scene facing Mawson's party was spectacular, even for an intrepid group of explorers:

The Heard and McDonald Islands group can be described as the wildest place on earth—a smoking volcano under a burden of snow and glacial ice rising above the world's stormiest waters. On the horizon to the west, smaller volcanic fragments rise precipitously and defiantly out of huge Southern Ocean swells. From a distance the land is a striking monochrome—black rock and sand, white snow and ice, leaden grey seas and skies. When the sun does appear the islands light up in the clear air to a rare brilliance—verdant vegetation and multi-coloured bird colonies in sharp relief against the dazzling white of snow and ice and the grey-black of volcanic rock. The elements—hurricane-force winds, driving rain, vast amounts of snow, dense clouds and fogs—conspire with the land forms to create a world of high drama and savage beauty. The driving westerly winds above the Southern Ocean in these latitudes create unique weather patterns when they come up against the enormous bulk of Big Ben, including spectacular cloud formations around the summit and unbelievably rapid changes in winds, cloud cover and precipitation.<sup>†</sup>

Mawson's first proclamation in relation to the Antarctic regions, in January 1930, was for specified land areas and offshore islands south of 65° South. The Heard and McDonald Islands lie at 53° South, well above that northern boundary, so they were not included; nor were they in his February 1931 proclamation, which was for areas south of latitude 64° South. The British order-in-council of 7 February 1933 signifying the United Kingdom's claim to sovereignty over parts of Antarctica and placing them under the authority of the Commonwealth of Australia was for territories south of latitude 60° South.

#### COMMONWEALTH INTEREST

Following the transfer to Australia by Britain of parts of its Antarctic interests, it seemed likely that a similar transfer of authority would take place for Heard and McDonald Islands.

In preparation for a transfer, the Australian Government decided that a proposed Antarctic expedition program planned for the 1947–48 summer should include a visit to Heard Island. It also decided that the leader of the expedition would be authorised to assert His Majesty's sovereign rights over Heard and McDonald Islands, to occupy the islands on behalf of Australia, and to initiate a program of activity that 'will evidence continuous and effective Australian occupation of the Islands'. Cabinet agreed that no formal annexation of the territory should take place at that stage, but

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<sup>†</sup> From the Department of the Environment, Water, Heritage and the Arts website, <http://www.environment.gov.au/heritage/places/world/heard-mcdonald/information.html> (accessed 10 January 2009).

that the Australian flag should be flown over Heard Island for the duration of the expedition.

The Cabinet agendum proposing the visit described the 'Present Legal position regarding Heard and McDonald Islands' in the following way:

In the light of events ... the United Kingdom probably has a legal claim to Heard Island although that Government is not satisfied that it would succeed in establishing its claim, should other nations dispute the claim. This doubt arises in part from the fact that the Island does not appear to have been occupied by British units for nearly twenty years. If the United Kingdom doubt be well founded, it would be open to any other country to establish a legally valid claim, by open, peaceful and continuous occupation. The proposed Australian occupation has the full concurrence of the United Kingdom Government which is prepared to transfer any rights it has in respect of the Island to the Commonwealth. The wise course for Australia appears to be to take no steps which would reflect on the United Kingdom's claim.

The McDonald Islands have been regarded as being in the same administrative unit as Heard Island. So far as is known, neither the United States nor any other country has openly asserted any claim in respect of these Islands.

The subsequent procedure by which Australia will legislatively and administratively complete her title to Heard and McDonald Islands is at present under careful consideration.<sup>5</sup>

An Australian landing on Heard Island occurred on 11 December 1947. On 26 December, the Chief Executive Officer of the Australian National Antarctic Research Expedition formally declared Australia's intention to continue the occupation of the islands, and to administer them as Australian territories.

A scientific program was initiated, a meteorological station was set up and a post office was established—all significant evidence of an occupying authority. Federal Cabinet was informed of these developments and also that:

Consultation between the Australian and United Kingdom Governments has continued regarding the occupation and perfecting of the Australian title ... A communication dated 23 December 1947 [the date was actually 21 December], addressed to the Australian Government ... formally confirmed the willingness of the United Kingdom Government to transfer to His Majesty's Government in the Commonwealth of Australia their rights in Heard and McDonald Islands.

In order to avoid undesirable publicity or criticism in overseas countries, possibly precipitating other claims to the Islands, it has, so far, been considered inadvisable for the Australian Government to make any public announcement regarding its negotiations with the United Kingdom Government. Meanwhile the scientific party on Heard Island is consolidating Australian claims.

It was also recommended to Cabinet that Heard Island be declared a sanctuary but, in principle, that sea elephants could be exploited if that proved commercially profitable.<sup>6</sup>

## TRANSFER METHODS

The British Government was willing to transfer its rights in Heard and McDonald Islands to Australia and Australia was willing to accept them. The question remained as to how this agreed transfer might best be effected.

A minute to the Minister for External Affairs, Sir Percy Spender, from his department on 24 January 1950 indicated that ‘considerable complexity has arisen on this matter’. The minute set out the provisions of s. 122 of the Constitution (the territories power) and went on to say that early on in the transfer negotiations it was felt that the most satisfactory course was to ask the British Government to issue an appropriate order-in-council. The minute noted that in May 1948 the Australian Government had agreed with this approach. Australia’s view at that time, however, was that no publicity should be given to the proposed action or to the order-in-council when issued, in order to prevent ‘the undue precipitation of claims to Antarctic territory by other powers’.

Spender was informed that the British authorities had advised Australia in August 1948 that they had difficulties with the proposal for an order-in-council. They doubted that it was an appropriate medium for transfer: an order-in-council could not be retrospective and, if an order were issued, it could not be kept secret. They therefore proposed a simple exchange of notes, which could be kept secret. The United Kingdom pointed out that such an exchange had taken place in the transfer from the United Kingdom to South Africa of certain islands of interest to it; at the request of South Africa, that transfer remained secret.

The minute recorded that the Attorney-General’s Department then advised that Australia’s occupation of the Heard and McDonald Islands probably constituted a sufficient basis in law for the exercise of legislative powers under s. 122 (as a ‘territory otherwise acquired’), but that it would still be desirable for the United Kingdom to transfer whatever rights it had—whether by order-in-council or exchange of notes. On the question of secrecy, Australian officials now felt that an exchange of notes was an agreement which would be required to be registered with the United Nations under Article 102 of the United Nations Charter, so neither an order-in-council nor an exchange of notes could be kept secret. What did it matter, anyway? The question of secrecy was not so important, particularly as full publicity had been given to Australia’s activities on Heard Island.

The department advised Spender that Australia had pressed again for a declaratory form of order-in-council, including a reference to Australia’s acceptance of the transfer. The United Kingdom again disagreed. It advised that an order-in-council could not

be declaratory. It must purport to effect an action and it was not an instrument of transfer executed by two parties, so it would not be possible to include anything in the nature of an acceptance by Australia.<sup>7</sup>

On 7 February 1950, the Secretary of Attorney-General's Department, Kenneth Bailey<sup>‡</sup>, pointed out that by whatever means sovereignty was transferred:

the maintenance of secrecy seems to me to be completely impossible. It will be necessary for an Act to be passed by the Commonwealth Parliament, under Section 122 of the Constitution, to provide for the law to be in force in the new Territory ... and it will be highly desirable, if not necessary, to set forth in that Act the circumstances out of which the Commonwealth's title to the Islands has arisen.<sup>§</sup>

Bailey also pointed out that an exchange of notes would satisfy the requirements of s. 122 whether or not the United Kingdom had valid rights before transfer. If it did, then by the transfer Australia would 'otherwise acquire' the territory; if it did not, then the transfer would be 'a nullity'. In any event, Australia's claim internationally would and could rest on effective occupation alone. He felt that an exchange of notes could be so expressed as to make the transfer operative as from the date of Australia's effective occupation (that is, 26 December 1947). He also believed that Australia would need to register the notes with the United Nations.<sup>8</sup>

The British Government's view was that, subject to the agreement of South Africa (because it had concluded a secret arrangement with Britain and might not want that deal to be made public by the publishing of Australia's agreement), it would have no objection to the publication or registration of the exchange of notes. Australia sought the views of the South African authorities, and on 9 May 1950 was advised that the South African Government would have no objection to publication or registration of the United Kingdom – Australia exchange.<sup>9</sup>

All hurdles were now cleared. After a to-ing and fro-ing of drafting suggestions between London and Canberra, the form of the notes was agreed and they were exchanged in London on 19 December 1950.<sup>10</sup>

The name for the McDonald Islands was wrongly spelled 'MacDonald' in the minutes and letters and in the notes. Despite the incorrect spelling, Australia had acquired its seventh external territory.

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‡ Knighted in 1958, Sir Kenneth Bailey was an adviser to the Australian delegation at the 1937 Imperial Conference and to the Australian delegation to the 1945 United Nations Conference with HV Evatt. In 1946, he became Secretary to the Attorney-General's Department and Solicitor-General. Bailey was also to play a pivotal role in setting up the modes of acquisition of Cocos (Keeling) Islands and Christmas Island in the mid- to late 1950s (see Chapters Eleven and Twelve).

§ There was no mention of these circumstances in the eventual Act's preamble.

## POSTSCRIPT

The British claim of sovereignty over certain areas in Antarctica (the title to which, as we have seen, was passed to Australia in 1933) extended south from latitude 60° South. The Heard and McDonald Islands lie north of that parallel. However, despite being outside Antarctica, the islands and Australia's sovereignty over them continued to be of great strategic significance for Australia's Antarctic claims (as did Macquarie Island, which is part of Tasmania):

The Commonwealth Government feels that the Australian title to her Antarctic territory can most appropriately be maintained at present by continuing with the programmes now under way on Heard and Macquarie Islands and with the plans for procuring a ship especially designed for Antarctic use so that an expedition can be organised to establish a permanent station in the Australian Antarctic Territory.<sup>11</sup>

Having acquired the Territory of Heard Island and McDonald Islands (on which the Australian Government relied to bolster its Antarctic profile), Australia needed to establish a system of law to apply to activities and events on the islands.

Although the Commonwealth viewed its title to the territory as being based on the transfer from the United Kingdom, it felt that if there were possible doubts about whether the United Kingdom had in fact acquired sovereign rights, then Australia could base its title on the alternative ground of its independent occupation of the islands since 1947.<sup>12</sup>

Despite the exchange of notes the British were not sure about their sovereignty. The islands had never been formally annexed, although British sovereignty was never disputed by another power. Also, the United Kingdom did not want Australia to be too precise about a date of British occupation. The only clear date seemed to be 1926—the date for the granting of the lease to the South African-based British company.<sup>13</sup>

Because of the uncertainty about the means by which the territory was acquired, the draft Bill establishing a system of law in the territory simply recited the fact of acquisition without stating the means.<sup>14</sup> In the first draft, the spelling of 'McDonald Islands' was corrected in manuscript from the 'MacDonald' spelling earlier used.

The Heard Island and McDonald Islands Bill was introduced into the parliament on 12 March 1953.<sup>15</sup> The Bill applied the laws of the Australian Capital Territory, insofar as they might be applicable to the islands. Dr Herbert Evatt, Leader of the Opposition, felt that the Bill should receive unanimous support. He noted that the government at the time of the transfer of the islands to Australia (the Chifley Government):



... realised at that time that those islands could become of great strategic importance. They are in a position having significance not only for Australia but also for South Africa and for important portions of the British Commonwealth of Nations. The islands also possess a scientific importance as an outpost from which valuable information could be derived by Australia for its weather and scientific purposes.

Evatt went on to make the following point:

But the Chifley Government had an even broader conception of the matter, namely the relationship of Heard Island and the McDonald Islands to what might broadly be called the Antarctic Continent and Australia's undoubted rights in it ... Some future development—some defence development—may make Heard Island of great importance ... [The proposed application of ACT laws to the territory was] a most important stage in the expansion of Australia—not expansion in any aggressive or imperialist sense. The proposal is not open to criticism. It is essential for the welfare of the Commonwealth of Australia, and the British Commonwealth of Nations, and the interests of all the people concerned.<sup>16</sup>

The Leader of the Opposition in the Senate, Senator Nicholas McKenna, gave the 'measure ... the cordial support of the Opposition', noting that s. 122 of the Constitution 'confers upon this Parliament a very clear authority to legislate in untrammelled fashion for any of our territories of this type'.<sup>17</sup>

The Minister for External Affairs, Richard Casey, who had carriage of the Bill, had earlier spoken of the relationship of the territory with Antarctica generally:

Australia has a large stake in the Antarctic, being approximately one-third of the whole continent ... In passing this Bill ... I have no doubt ... that we shall do something not only for the Australia of the present, but also for the Australia of the future. We are casting our minds and our efforts forward into the next 100 years. No one can say what the potential value of the Antarctic continent is.<sup>18</sup>

The Act passed both houses on 18 March 1953, was assented to on 27 March 1953 and came into operation on and from 24 April 1953.<sup>1</sup>

The Territory of Heard Island and McDonald Islands (like that of Antarctica) is administered as a separate territory by the Antarctic Division of the Department of the Environment, Water, Heritage and the Arts.

Heard Island station operations ceased in 1955, and the island is now visited only infrequently. Although the United States in 1968 had reservations about Australia's rights in the territory<sup>19</sup>, it now recognises Australia's sovereignty by its actions in seeking Australian permits for activities in the region, and by not objecting to Australia's assertion of rights to the continental shelf around the territory.

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<sup>1</sup> Section 5 (1A) of the *Acts Interpretation Act 1901* provides that an Act shall come into operation 28 days after Royal Assent unless the contrary intention is provided in the Act.

Heard Island and McDonald Islands were entered on the World Heritage List in 1997 for their outstanding universal natural values. Inscription of the territory on the World Heritage List demonstrates universal recognition of Australia's sovereignty, as World Heritage properties can only be nominated if they are within the territory of the nominating state.

## NOTES

- 1 National Library of Australia.
- 2 Annex B to Cabinet agenda, November 1947, NAA: A2700, 1275E.
- 3 *ibid.*
- 4 Mawson's British Australian New Zealand Antarctic Research Expedition. Report, 1929–1930, p. 1, Parliamentary Papers, 21 May 1930.
- 5 Cabinet agenda, November 1947, NAA: A2700, 1275E.
- 6 Cabinet agenda, 1948, NAA: A2700, 1275F.
- 7 Minute from Department of External Affairs to Minister, 24 January 1950, NAA: A1838, 1495/3/2/3 PART 2.
- 8 Attorney-General's Department memorandum to Department of External Affairs, 7 February 1950, NAA: A1838, 1495/3/2/3 PART 2.
- 9 Department of External Affairs Cables 0.3523, 13 March 1950; I. 6790, 9 May 1950, NAA: A1838, 1495/3/2/3 PART 2.
- 10 Notes and Treaty Series, NAA: A1838, 1495/3/2/3 PART 2.
- 11 Department of External Affairs paper, 2 September 1952, NAA: A1838, 1495/3/2/3 PART 2.
- 12 Cabinet Submission 310, 14 July 1952, NAA: A1838, 1495/3/2/3 PART 2.
- 13 See Commonwealth Relations Office memo, 21 November 1951, NAA: A1838, 1495/3/2/3 PART 2.
- 14 Memorandum from Parliamentary Draftsman to Department of External Affairs, 1 September 1952, NAA: A1838, 1495/3/2/3 PART 2.
- 15 CPD, HR, Vol. 221, 12 March 1953, p. 951.
- 16 *ibid.*, 17 March 1953, pp. 1160–62.
- 17 CPD, Senate, Vol. 221, 18 March 1953, p. 1201.
- 18 CPD, HR, Vol. 221, 17 March 1953, p. 1162.
- 19 Department of External Affairs memorandum to Department of Supply and file note, 11 November 1968, NAA: A1838, 1495/3/2/3 PART 5.

END PAPERS

Whereas in time past the sovereign rights of His Majesty in respect of Heard Island (lat 53 10'S., long 73 35'E.) and the McDonald Islands (lat 53 05'S., long 72 32'E.) have in divers manners been asserted and exercised:

AND WHEREAS His Majesty's Government in the Commonwealth of Australia has authorised me to organise on behalf of His Majesty's Government in the Commonwealth of Australia the effective occupation of these Islands:

NOW therefore I, Stuart Alexander Caird Campbell declare that His Majesty's Government in the Commonwealth of Australia intends forthwith to continue the occupation of these Islands and to administer them as Australian territories.

Given under my hand at Heard Island where this record is deposited.

(Signed).....Stuart Campbell.....

Date.....26/12/47

Witnesses.....G.M. Dixon Lt.Commander D.S.C. R.A.N.V.R.

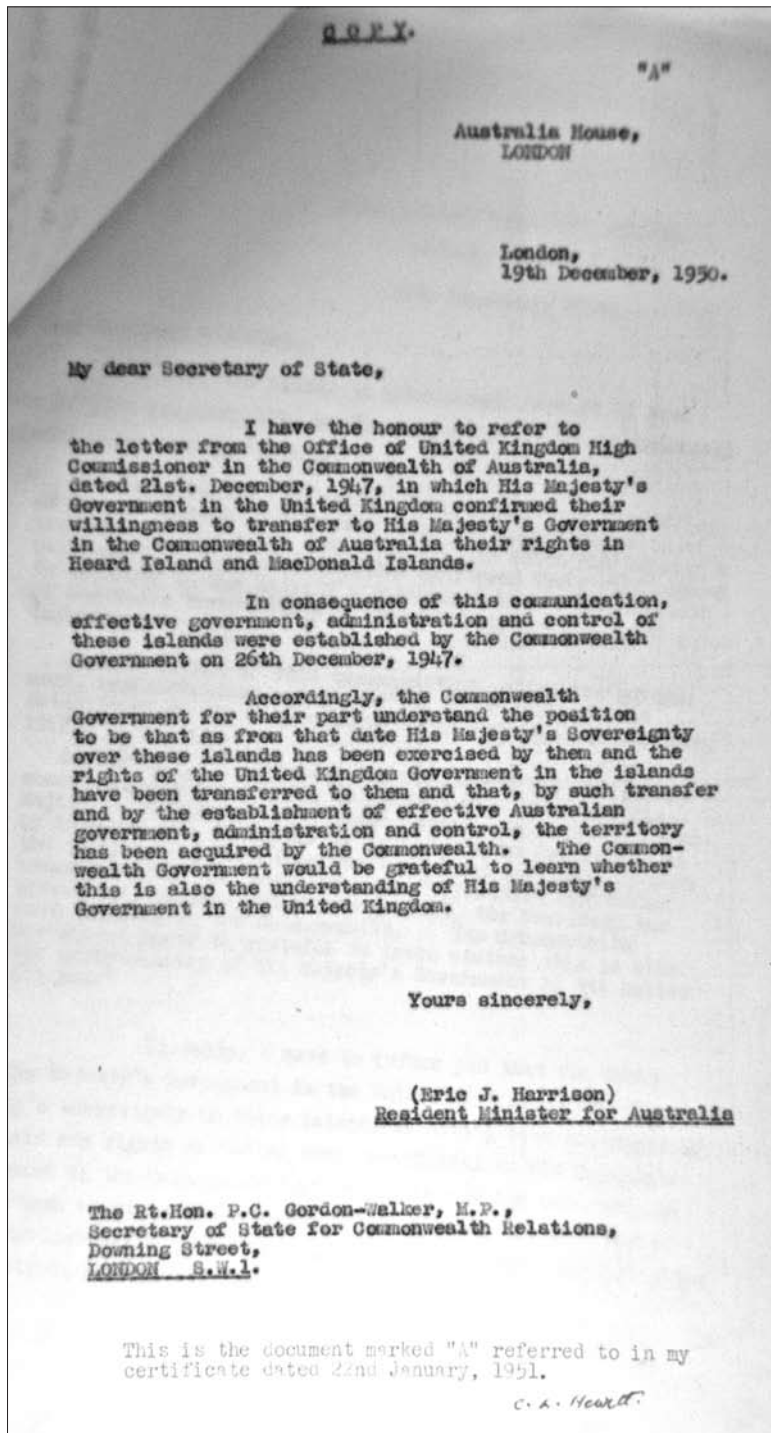
John H. Burgess Lt.Commander V.D., R.A.N.R.

J. Abbottsmith

I certify that this is a true copy of the original document.

*JWB*  
(John W. Burton),  
Secretary,  
Department of External Affairs  
3.5.48.

*Proclamation, Stuart Campbell, 26 December, 1947.*  
NAA: A1838, 1495/3/2/3 PART 1



Letter of 19 December, 1950 from Eric Harrison, Resident Minister for Australia in London, to the United Kingdom Secretary of State for Commonwealth Relations.  
NAA: A1838, 1495/3/2/3 PART 2

"B".

COMMONWEALTH RELATIONS OFFICE,  
DOWNING STREET, S.W.1.  
19th December, 1950.

My dear Resident Minister,

I have the honour to acknowledge receipt of your Note of 19th December, 1950 on the subject of Heard and MacDonald Islands which reads as follows :-

" I have the honour to refer to the letter from the Office of United Kingdom High Commissioner in the Commonwealth of Australia, dated 21st. December, 1947, in which His Majesty's Government in the United Kingdom confirmed their willingness to transfer to His Majesty's Government in the Commonwealth of Australia their rights in Heard Island and MacDonald Islands.

In consequence of this communication, effective government, administration and control of these islands were established by the Commonwealth Government on 26th December, 1947.

Accordingly, the Commonwealth Government for their part understand the position to be that as from that date His Majesty's Sovereignty over these islands has been exercised by them and the rights of the United Kingdom Government in the islands have been transferred to them and that, by such transfer and by the establishment of effective Australian government, administration and control, the territory has been acquired by the Commonwealth. The Commonwealth Government would be grateful to learn whether this is also the understanding of His Majesty's Government in the United Kingdom."

In reply, I have to inform you that for their part His Majesty's Government in the United Kingdom regard His Majesty's sovereignty in these islands as having been exercised by and their own rights as having been transferred to His Majesty's Government in the Commonwealth of Australia and the territory as having been acquired by the Commonwealth by such transfer and by the establishment of effective Australian government administration and control, as from 26th December, 1947.

Yours sincerely,

(Sgd) P.C. Gordon-Walker.

His Excellency the Hon. E.J. Harrison, M.H.R.

This is the document marked "B" referred to in my certificate dated 22nd January, 1951. C. L. Hewitt.

Letter of 19 December, 1950 from P.C. Gordon-Walker, United Kingdom Secretary of State for Commonwealth Relations, to the Australian Resident Minister for Australia, London.  
NAA: A1838, 1495/3/2/3 PART 2



No. 7 of 1953.

AN ACT

To provide for the Government of Heard  
Island and McDonald Islands.

*Assented to 27<sup>th</sup> March, 1953*

*pp. 259–263 Heard Island and McDonald Islands Act, No. 7 of 1953.*  
*NAA: A1559, 1953/7*





## AN ACT

### To provide for the Government of Heard Island and McDonald Islands.

**W**HEREAS Heard Island and McDonald Islands (being the islands described in the Schedule to this Act) are territories acquired by the Commonwealth : Preamble.

AND WHEREAS it is desirable to make provision for the government of those territories as one Territory of the Commonwealth :

Be it therefore enacted by the Queen'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 *Heard Island and McDonald Islands Act 1953*. Short title.

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

“Ordinance” means an Ordinance made under this Act ;

“the Territory” means the Territory of Heard Island and McDonald Islands. Definitions.

3. Heard Island and McDonald Islands (being the islands described in the Schedule to this Act) are declared to be a Territory of the Commonwealth by the name of the Territory of Heard Island and McDonald Islands. Territory of Heard Island and McDonald Islands.

4. The

Existing laws  
to cease to  
be in force.

4. The laws in force in the Territory immediately before the commencement of this Act (not being laws of the Commonwealth in force in the Territory) shall, upon the commencement of this Act, cease to be in force.

Laws of  
Australian  
Capital  
Territory to  
be in force.

5.—(1.) Subject to this Act, the laws in force from time to time in the Australian Capital Territory (including the principles and rules of common law and equity so in force) are, by virtue of this section, so far as applicable to the Territory, in force in the Territory as if the Territory formed part of the Australian Capital Territory.

(2.) The last preceding sub-section does not extend to a law in force in the Australian Capital Territory, being an Act or a provision of an Act so in force, other than—

(a) sections six and nine of the *Seat of Government Acceptance Act* 1909–1938; and

(b) sections three, four and twelve c of the *Seat of Government (Administration) Act* 1910–1947 and the Schedule to that Act.

Exercise of  
powers and  
performance of  
functions under  
adopted laws.

6.—(1.) Subject to the next succeeding sub-section, where, by a law of the Australian Capital Territory in force in the Territory by virtue of the last preceding section, a power or function is vested in a person or authority (not being a court), that power or function is, in relation to the Territory, vested in, and may be exercised or performed by, that person or authority.

(2.) The Governor-General may direct that a power or function vested in a person or authority (not being a court) by a law of the Australian Capital Territory in force in the Territory by virtue of the last preceding section shall, in relation to the Territory, be vested in, and may be exercised or performed by, such other person or authority as the Governor-General specifies.

Application of  
Commonwealth  
Acts.

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

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

Ordinance may  
amend or repeal  
adopted laws.

8. A law in force in the Territory by virtue of section five of this Act may be amended or repealed by an Ordinance or by a law made under an Ordinance.

Supreme Court  
of Australian  
Capital  
Territory to  
have  
jurisdiction in  
Territory.

9. The Supreme Court of the Australian Capital Territory has jurisdiction in and in relation to the Territory, and the *Australian Capital Territory Supreme Court Act* 1933–1950 and the rules of court for the time being in force under that Act apply in the Territory as if the Territory formed part of the Australian Capital Territory.

10.—(1.) The

1953.

*Heard Island and McDonald Islands.*

No.

3

**10.**—(1.) The Governor-General may make Ordinances for the peace, order and good government of the Territory. Ordinances.

(2.) Notice of the making of an Ordinance shall be published in the *Gazette*, and an Ordinance shall, unless the contrary intention appears in the Ordinance, come into operation on the date of publication of the notice.

**11.**—(1.) An Ordinance shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the Ordinance, and, if it is not so laid before each House of the Parliament, shall be void and of no effect. Tabling of Ordinances in Parliament.

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

(3.) If, at the expiration of fifteen sitting days after notice of a resolution to disallow an Ordinance or part of an Ordinance has been given in either House of the Parliament in accordance with the last preceding sub-section, the resolution has not been withdrawn or otherwise disposed of, the Ordinance or part, as the case may be, shall thereupon be deemed to have been disallowed.

(4.) Where an Ordinance or part of an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance has the same effect as a repeal of the Ordinance or part of the Ordinance, as the case may be, except that, if a provision of the Ordinance or part of the Ordinance amended or repealed a law in force immediately before that provision came into operation, the disallowance revives the previous law from and including the date of the disallowance as if the disallowed provision had not been made.

(5.) If an Ordinance or part of an Ordinance is disallowed, or is deemed to have been disallowed, under this section, and an Ordinance containing a provision being the same in substance as a provision so disallowed, or deemed to have been disallowed, is made within six months after the date of the disallowance, that provision is void and of no effect, unless—

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

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

THE

4

No.

*Heard Island and McDonald Islands.*

1953.

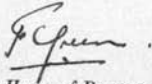
Section 3.

THE SCHEDULE.

HEARD ISLAND AND McDONALD ISLANDS.

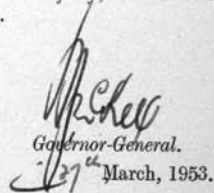
The islands known as Heard Island and McDonald Islands, comprising all the islands and rocks lying within the area bounded by the parallels 52 degrees 30 minutes and 53 degrees 30 minutes south latitude and the meridians 72 degrees and 74 degrees 30 minutes east longitude.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to provide for the Government of Heard Island and McDonald Islands", 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 Her Majesty, I assent to this Act.

  
Governor-General.  
27<sup>th</sup> March, 1953.

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

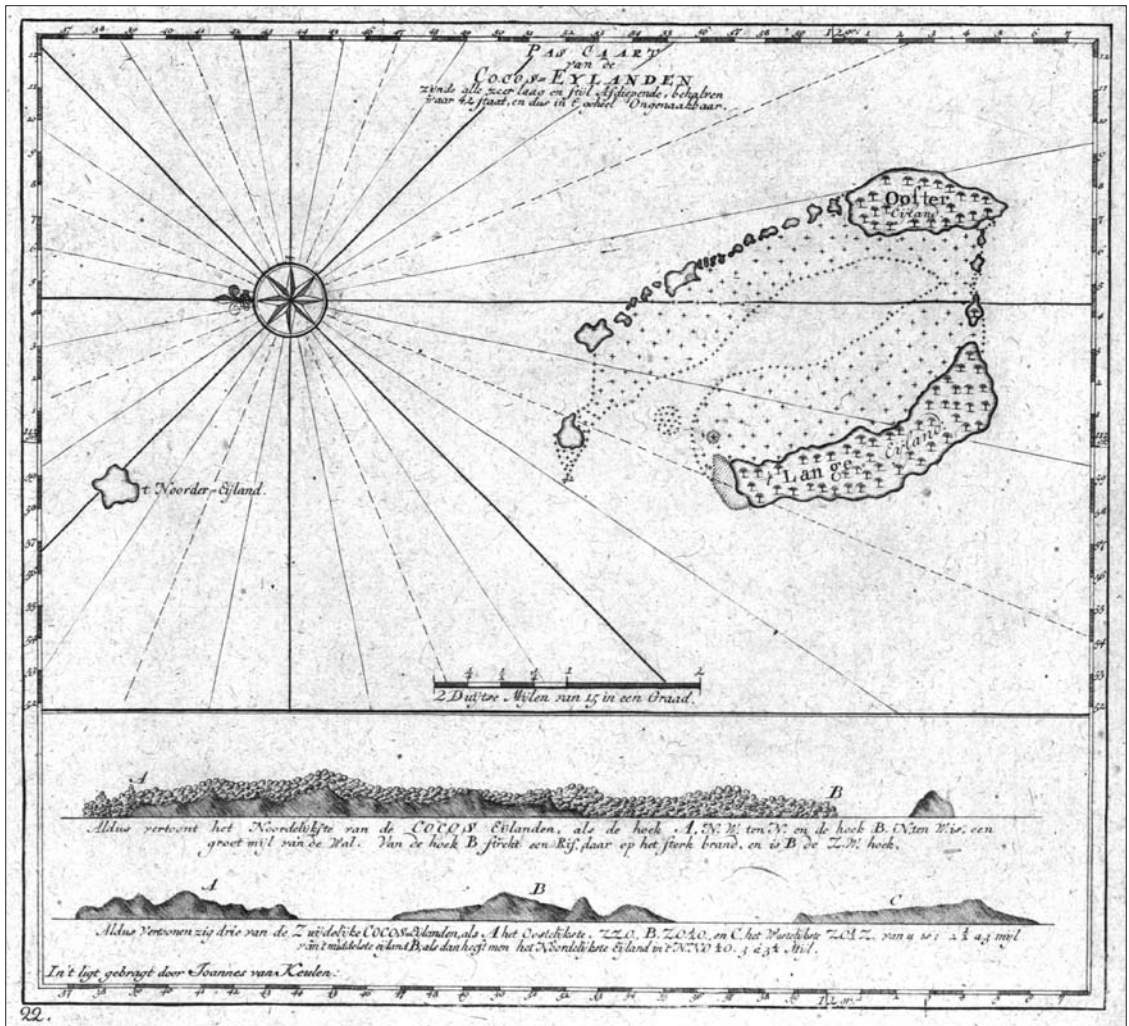
#### NORTH WEST AGAIN

**T**he outbreak of the World War II turned Australia's focus towards Europe, but before long it was squarely back in the region. Japan invaded Nauru, New Guinea and Papua. Norfolk Island became of great strategic interest to Australia and New Zealand.

Until then, apart from Heard Island and McDonald Islands Australia had little interest in British islands in the Indian Ocean, although they had provided a backdrop to naval engagements in World War I and important communication links. From 1941, Japan was threatening all around Australia's northern perimeter. The Indian Ocean islands became strategically important in the struggle.

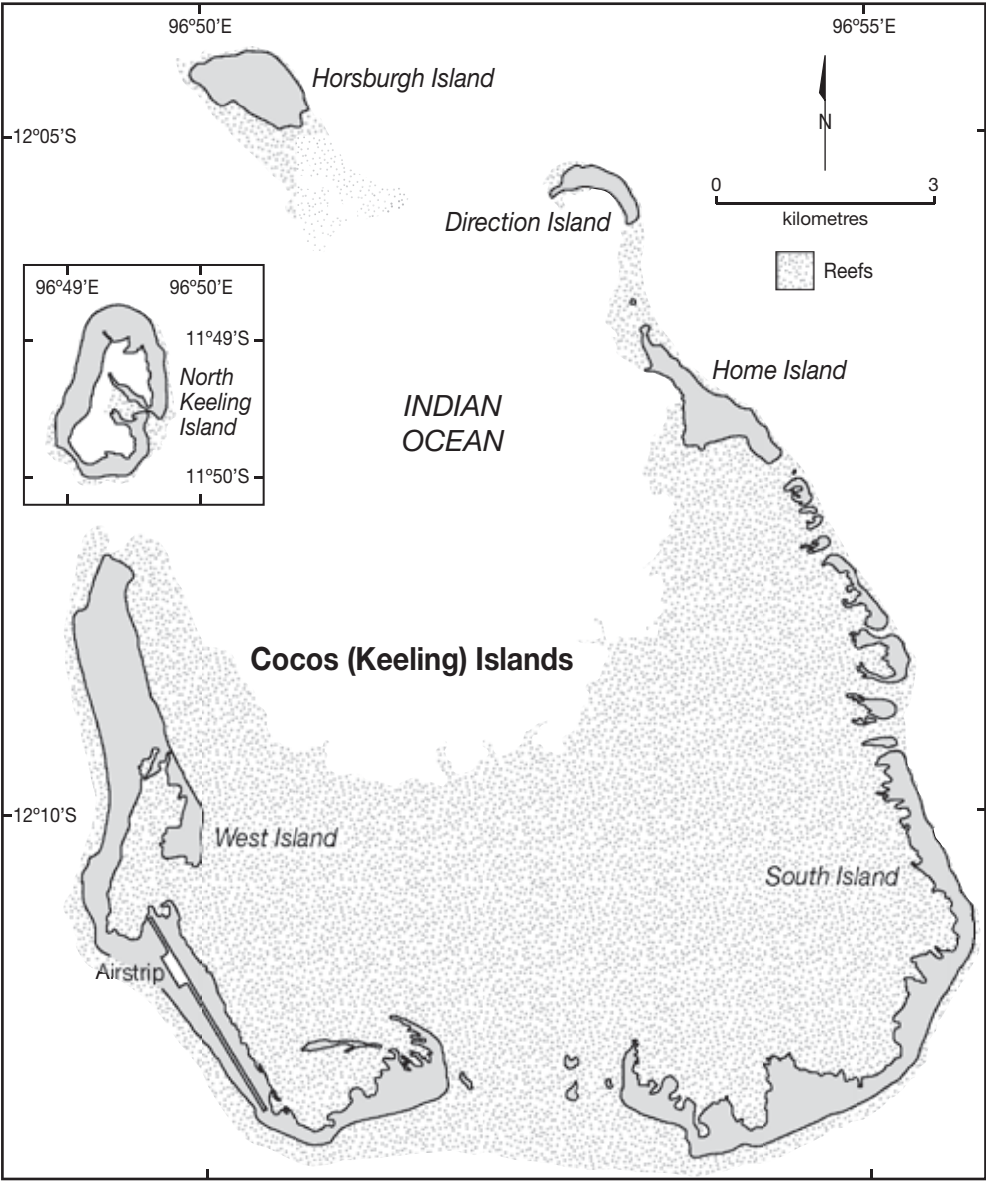
After World War II, the development of civil air services created a need for convenient landing spots. What could be better than the Cocos (Keeling) Islands, as a stopover between Australia and South Africa?





*Keulen, J. Van 1704 – 1775, Pas Caart Van De Cocos-Eylanden. Pl: NLA. Map. RM 3771. Reproduced with the kind permission of the National Library of Australia.*





*Cocos (Keeling) Islands.*

*Map drawn by Karina Pelling.*