CHAPTER ELEVEN

Cocos (Keeling) Islands

> I am glad we have visited these Islands; such formations surely rank high amongst the wonderful objects of this world … every single atom, … from the least particle to the largest fragment of rock, … bears the stamp of having been subjected to organic arrangement.
>
> —Charles Darwin, April 1836 note in *Journal of researches*, Ward, Lock and Co., London, p. 439

> If the Galapagos in appearance had been a kind of hell, then the Cocos were heaven.
>
> —Alan Moorehead, *Darwin and the Beagle*, p. 234

The transfer of the Cocos (Keeling) Islands from the United Kingdom to Australia was announced in June 1951. A long period of to-ing and fro-ing over the precise legal mechanism for the transfer ensued, complicated by political sensitivities about Australian citizenship for the residents. Formal transfer finally occurred in November 1955.

PRELUDE

The Cocos group of islands consists of 27 small coral islands in two atolls some 2950 kilometres north-west of Perth.

The islands were discovered by Europeans in 1609 by Captain William Keeling, who was in the service of the East India Company. Two centuries later, the uninhabited islands were occupied in 1826 and 1827 by adventurers Alexander Hare and John Clunies-Ross. Clunies-Ross was the master and part owner of the *Borneo*, described as a trading vessel, which dropped anchor at Horsburgh Island in the Cocos group. He decided to make his home there after his marriage, returning in 1827 with a party of some 20 men to establish a copra plantation.

Alexander Hare (in the service of the East India Company and a former Governor of Banjarmesin in Borneo), was described as bringing with him 'a sort of oriental

harem, together with a retinue of semi-slaves numbering about 200'.[1] From time to time, the island's population was added to by Malay people from almost every country in and bordering the Indian Ocean. Hare left the islands some years later, and Clunies-Ross remained in de facto ownership.

The islands were proclaimed part of the British dominions in 1857 by Captain Fremantle of HMS *Juno* (apparently wrongly, as they were mistaken for similarly named islands in the Bay of Bengal). In 1878, the islands were placed under the administration of the Governor of Ceylon (now Sri Lanka), subsequently transferring to that of the Straits Settlements in 1886. From that time, the earlier de facto authority over Cocos was formally vested in the Clunies-Ross family by way of an indenture in 1886. Under the indenture, the Crown granted to George Clunies-Ross and his heirs the land above high-water mark within the Cocos Islands.[2] The 1886 indenture provided that the Crown could at any time resume possession of the lands granted to the Clunies-Ross family for 'public purposes without making any compensation.'[3] The family developed its copra estate on suitable land on the islands.

In 1903, the islands were formally incorporated in the Settlement of Singapore, and the Supreme Court of the Straits Settlements was given jurisdiction in all legal matters. The governmental arrangements changed slightly in 1946, when legislation in the United Kingdom repealed the existence of the Straits Settlements as a single colony. An order-in-council decreed that the island of Singapore and the dependencies of Cocos and Christmas Islands, which had been attached to Singapore for administrative convenience, were to be governed and administered as the separate colony of Singapore. From that time, a resident Administrator responsible to the Governor of Singapore was appointed to the islands.[4]

Australia had two connections with the Cocos Islands from early in the twentieth century. A cable station was established on Direction Island in 1901, linking Perth through Mauritius with Africa, Europe and Asia. In November 1914, HMAS *Sydney* chased down the German raider *Emden* and forced it to beach on North Keeling Island, after the raider had earlier tried to destroy the cable link.

WORLD WAR II PROMPTS AUSTRALIAN INTEREST

In World War II, the islands were bombarded from the air by the Japanese, but not occupied. By the end of the war, a force of several thousand British troops was stationed in the Cocos, and in 1945 a 2500-yard (2250m) airstrip was constructed for use by heavy bombers of the Royal Air Force. However, it was used by the RAF only for a short time in 1946.

In late 1948, the Australian Department of Civil Aviation was considering developing air services between Australia and South Africa using the airstrip on Cocos as one of the refuelling stops en route.[5]

Within the Department of External Affairs, this prompted an assessment that Cocos (and Christmas Island, because of a phosphate lease) had:

> suddenly assumed an importance for Australia which was never clearly apparent before, and this should tend to underline and emphasise their wider strategical value, arising from geographical position, which even the recent war does not seem to have brought out.[6]

The possibility of transferring the sovereignty of both places to Australia was floated for the first time. Australia had been advised that there seemed to be little interest in Singapore in either Cocos or Christmas Island: 'These Islands are dependencies, by accident, of Singapore. They have no real connection with this Colony and any question of allocating funds for them is bitterly resented [in Singapore], outside purely Government circles.'[7]

Early in 1949, the Netherlands had asked the British administration in Singapore for the use of the Cocos airstrip, and Singapore had sought Australia's views.[8]

Australia's interest in using the airstrip and meeting the costs of repairing and maintaining it had also been raised with the authorities in the United Kingdom, including by Prime Minister Chifley during a visit to London in mid-1949. In June 1949, the British High Commissioner in Canberra conveyed the formal response to Australia's request. Whitehall considered that improvements to the airstrip at Cocos to a standard required for a scheduled international service were of no interest to it in the foreseeable future. It saw no objection in principle to the use of the airstrip by Qantas Empire Airways, should the Australian Government be willing to make the necessary improvements. The British Government was prepared to agree to:

> an arrangement which would concede to the Australian Government for an agreed period the entire operation and administration of the airfield in time of peace, and would be glad to learn whether this accords with what the Australian authorities have in mind. Details of the implementation of the arrangement will depend on the outcome of discussions now proceeding with the Government of Singapore as to the method of making the area in question available.[9]

The British response also noted that the airstrip and the whole of the Cocos Islands would remain British territory for all purposes, and subject to existing and future British legislation.

It was not until September that the United Kingdom set out a proposed method of making the airstrip available. A memorandum noted that the fee simple of the Cocos Islands was vested in the Clunies-Ross family under royal indenture; that the airstrip land was resumed during the war for a public purpose in terms of the indenture; but that the proposed Australian use would not constitute a 'public purpose'.

> The Clunies-Ross family is therefore legally entitled to restoration of possession, and the United Kingdom authorities would prefer that the land required for the airfield be leased from the Clunies-Ross trustees. They, therefore, suggest that the Australian Government should negotiate the lease directly with the trustees, though they would wish the Singapore Government to be associated with the negotiations.[10]

Negotiations with the Clunies-Ross interests did not make much headway during 1950. The Department of Civil Aviation had estimated the airfield costs involved to be a capital outlay of around £5 million plus an annual expenditure of over £50,000. This led to the Acting Australian Prime Minister again raising the question with the British Prime Minister, this time flagging the possibility of transfer of sovereignty.

> I feel that the limited nature of Australian control which you would be willing to concede should we decide to proceed with the investment required to re-establish the airstrip scarcely corresponds with the substantial nature of this investment. In the circumstances it would be appreciated if the statement of your Government's position as conveyed by your High Commissioner on 21 June 1949, might be reconsidered. The Australian Government is prepared to contemplate assuming a wider measure of responsibility for a group of islands which are of considerable strategic importance to our country. In fact the most satisfactory solution from our point of view might well be the transfer of sovereignty over these islands to Australia.
>
> I should be glad if you could reconsider this question from the widest aspects of British Commonwealth defence and development and inform us whether the United Kingdom Government would be prepared to enter discussions with a view to a possible change in the status of the group.[11]

It took several months before a response came. Meanwhile, in September 1950 there was some press reporting about the Australian and British interest in the airstrip. The *Daily Telegraph* of 18 September 1950 ran a large article headlined 'Cocos is valuable airport in peace and war'. It claimed that the Korean War had made the British see the necessity of getting the island base in the Indian Ocean into use again: 'In World War III, Cocos could become a giant aircraft carrier in the Indian Ocean—as Malta was in the Mediterranean in the last war.' It reported on Australia's interest in using the island to help establish an air route between Australia and South Africa, and that Clunies-Ross had said he supported Australia's efforts to re-establish the airstrip but had 'made certain conditions'. The same newspaper on 19 October 1950 reported a statement from the Australian Minister for Air in which he said that the Clunies-Ross family had refused permission because 'it wished to keep the island isolated from the rest of the world'. The *Sydney Morning Herald* and *Evening News* in London carried similar reports.[12]

In late 1950, there were some indications that a transfer of sovereignty over Cocos might be received unfavourably in the South Asian dominions (India, Pakistan and Ceylon) because it would be 'represented as a deal in colonial peoples'.[13]

A briefing note to Arthur Tange, Secretary of the Department of External Affairs, in early January 1951 recorded that negotiations with the Clunies-Ross interests for a lease in relation to the airstrip had been deferred pending a decision on the question of sovereignty.[14]

AGREEMENT TO TRANSFER

The formal response from the United Kingdom to the transfer request came in mid-February 1951, an outline of the decision having previously been conveyed to Australian Prime Minister Robert Menzies in a meeting in London in January.*

In its response, the British Government had agreed that 'administrative responsibility' for the Cocos Islands might be transferred to the Australian Government, subject to several conditions:

> a. the transfer to North Borneo of those of the Malay population as wished could continue and be facilitated
>
> b. the interests of the Clunies-Ross family be safeguarded—the point specified here was negotiation of a fair rent to be paid for land which would otherwise be cultivated
>
> c. the control and operation of the British naval wireless station could continue undisturbed
>
> d. the Australian Government would give assurances that British airlines would be accorded full operating rights on the Cocos airstrip; and would consult London and Singapore before granting any landing rights to foreign airlines
>
> e. satisfactory arrangements would be made for the status, in particular the citizenship of the inhabitants of the Islands. On this point the United Kingdom elaborated on what they would regard as satisfactory, viz. that residents at the time of handing over would become Australian citizens or at least be given the option of so becoming, and that persons born on the Islands after the date of transfer would be Australian citizens.

The British authorities also noted in the response their assumption that Australia's Overseas Telecommunications Commission would acquire Cable and Wireless's interests in the cable relay station on Direction Island.

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* Sir Robert Menzies, a towering figure in federal politics, served as Prime Minister for a total of 18 years and was by far the longest serving Prime Minister to date. The most significant period of his prime ministership was from December 1949 to January 1966. Cocos and Christmas islands were acquired by Australia during that period.

They also suggested that an announcement in agreed terms should be made simultaneously in London, Canberra and Singapore as soon as possible.[15]

The Australian Government quickly sought clarification of the meaning of 'transfer of administrative responsibility'—in particular, whether it was intended to be a more limited arrangement than a territory in the full sense like Papua or Heard and McDonald Islands. The response from the Commonwealth Relations Office on 6 March 1951 was that 'transfer of administrative responsibility' should be interpreted to mean that the islands would become a territory of Australia in the full sense, with sovereignty being exercised by His Majesty's Government in the Commonwealth of Australia. It noted that the use of the term 'sovereignty' had been avoided because the proposed transfer would not in a strict legal sense involve any change of sovereignty, the islands remaining under the Crown.[16]

Singapore Legislative Council members and a representative of the Clunies-Ross interests were briefed in confidence on the negotiations for transfer to Australia. The *Daily Telegraph* on 28 April 1951 reported on secret negotiations for Australia to take over the Cocos Islands, which it thought would be an achievement of the highest strategic importance.[17]

Prime Minister Menzies responded on 11 May that the conditions sought by the United Kingdom were generally acceptable, but that some required further clarification. On point 'a.' (population transfers), more information was sought about the numbers wishing to move to North Borneo, and whether any assistance beyond arrangements for their transport were envisaged. Point 'c.' (the naval wireless station) was agreed, although it was flagged that investigation would be needed to check whether the station would be able to operate without interference from airport installations. In relation to condition 'e.' (islanders' citizenship), it was noted that legislation would be required to confer Australian citizenship on the residents, and that the details required further study.[18]

On 5 June there was a response from the United Kingdom, dealing mainly with the emigration of Cocos Malays to North Borneo. Of the approximately 1700 Malays on Cocos in 1949, about 900 who wanted to leave were still there (it was thought that between 200 and 300 wanted to stay). Emigration had been proceeding gradually for economic reasons since 1948, with costs for small shipments borne by the Clunies-Ross estate. The United Kingdom expressed the view, which it understood Australia shared, that the move of those who wished to go should be complete before transfer of administrative responsibility, and it hoped that Australia might meet the cost.[19]

The terms of an announcement of the transfer were worked on during June 1951, and departments in Canberra began identifying the issues to be dealt with at, and following, transfer. The public announcement was made simultaneously in London in the House of Commons on 22 June 1951 and by press release in morning

newspapers on 23 June in Australia. The main points were summarised in a cable to Singapore and London as:

> (a) Australian Government wishes to develop Cocos Islands airstrip for civil aviation purposes.
>
> (b) In view of strategic advantages to British Commonwealth as a whole from development of airstrip, the United Kingdom Government after consultation with the Government of Singapore, has accepted the Australian proposal that the Islands should be 'transferred to Australia'.
>
> (c) Transfer will not impair title of leaseholder.
>
> (d) Since 1948 numbers of the inhabitants have been migrating to North Borneo, and it is intended that all who wish to migrate should be given the opportunity of doing so before the transfer is effected.
>
> (e) The Australian Government has agreed to enact legislation giving Australian citizenship or the option of acquiring it to those who elect to remain on the islands after the transfer.
>
> Both Governments are agreed that the announcement should be made with as little publicity as possible.[20]

The metropolitan newspapers in Sydney and Melbourne reported the transfer in their editions of 23 June. Most reports included the fact that, although the islanders would have Australian citizenship, they would not have the right of residence in Australia. The *Argus* reported:

> A senior Immigration Department official said the Malays on Cocos Island who became Australian citizens would not have the right of residence in Australia.
>
> They would be subject to the restrictions of the White Australia policy.
>
> They would be offered Australian citizenship because this would overcome certain legal difficulties. They would be in the same position as New Guinea natives.[21]

This was to prove the most politically sensitive issue in the transfer, and it influenced much of the ensuing legal discussion about whether transfer could be effected by prerogative order (a type of order-in-council), rather than legislation, in order to avoid publicity.

POLITICAL SENSITIVITIES AND LEGAL NICETIES

The press reporting of the Immigration Department's position on citizenship prompted an immediate phone call to its Secretary from an officer of the Department of External Affairs. The file note records the dilemma starkly:

> According to Mr Heyes [Secretary, Department of Immigration] the Department of Immigration had never had in mind the possibility of permitting these people to reside in Australia. They had sought advice of the Attorney-General's Department as to whether the grant of Australian citizenship would have this result and, on being advised that this was not the case, had informed this Department that they had no objection to the five United Kingdom conditions.
>
> Mr McIntyre [External Affairs] pointed out that we had given an unqualified acceptance of the United Kingdom conditions, including the grant [of] 'Australian citizenship' to the Cocos inhabitants, and had given no indication that there would be limitations on the rights of the 'citizens'. He felt that there might be repercussions in London and, more particularly, Singapore, when the true position became known and that Australia's good faith might be called into question.
>
> In answer to an inquiry by the Secretary, [Solicitor-General] Professor Bailey said that his Department had been concerned only with the legal aspects of the Department of Immigration's enquiry, and had advised on this basis.[22]

A subsequent note explained the interplay of two laws. Australian citizenship was granted under the *Nationality and Citizenship Act 1948*, which imposed no restrictions on rights of residence for Australian citizens. However, the *Immigration Restriction Act 1901* prohibited 'the immigration into the Commonwealth' of various categories of people, and for the purposes of that Act 'the Commonwealth' had been interpreted as including only the continental area of Australia and excluding the external territories of the Commonwealth. 'Therefore anyone from Papua or Cocos Islands, who had not previously lived in Australia, would be regarded as "immigrating" to Australia, and so liable to the dictation test, even though Australian "citizens" under the Nationality and Citizenship Act.'[23] The 'dictation test'—a key tool of the White Australia policy—could be given in any living language. Those who failed it could be denied entry.

In Singapore, there was some press comment during July 1951 about the failure of the British Government to consult the islanders or to adequately consult the Singapore Legislative Council about the transfer, and about the future status of the islanders if they wanted to enter Australia.[24] This raised concerns in London. In August, the Commonwealth Relations Office referred to a statement, attributed to External Affairs Minister Casey during a visit to Singapore, that the Cocos Islanders would not be granted full Australian citizenship. The office asked whether the statement meant that the islanders would be in a disadvantageous position, compared to their current status as British citizens, and stated its opinion that this would have unfortunate repercussions on public opinion in Singapore.[25]

The Governor of Singapore, accompanied by the Australian Commissioner in Singapore, Tom Critchley†, and others, visited Cocos on 25 and 26 August 1951. The Governor's party met with headmen from the Clunies-Ross estate on Home Island to make sure that they understood the reason for the transfer to Australia and to discuss the emigration of those who wanted to go to North Borneo. He explained that the King of England was also the sovereign of Australia, so that, while the government would be different, the King would be the same. The headmen thought that the King could do whatever he wished and that they would go along with his wishes.[26]

August also brought approval for the Department of Civil Aviation's proposals to rehabilitate the airstrip and establish an air service to South Africa. Cabinet authorised the recommencement of negotiations with the Clunies-Ross interests for the lease of the requisite land. Subject to completion of the negotiations and of the grant of an interim right of entry, work on the airstrip by the Royal Australian Air Force was to start in October.[27]

Meanwhile, Canberra was agonising over the citizenship/residence difficulties. Minister Casey had been having second thoughts about the transfer on the basis that the grant to Cocos Islanders of rights greater than those enjoyed by Australian citizens in Papua and New Guinea would be discriminatory and would create an undesirable precedent. He also wondered about seeking transfer of only uninhabited West Island, on which the airstrip was being developed (at that stage, all the inhabitants of the Cocos group, including the Clunies-Ross family, lived on Home Island). However, the Minister for Civil Aviation thought that the question of full citizenship for Cocos Islanders might not be of much practical importance, and that the issue should not be allowed to upset transfer of administrative control. It seemed best that the matter be put to Cabinet.[28]

Cabinet decided on the transfer of Cocos (Keeling)‡ Islands on 15 October 1951. It considered that 'no assurance could be given … that Cocos Islanders would not be prevented from entering Australia,' and therefore in the circumstances 'the Minister for External Affairs should negotiate with the United Kingdom Government for sovereignty over the Island containing the airfield, leaving sovereignty over the

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† Tom Critchley's roles as Acting and then Australian High Commissioner in Singapore and Malaya during the 1950s made him ideally placed to play a key advising role in Australia's acquisition of Cocos and Christmas islands. Later, Critchley was the first Australian High Commissioner to the emerging nation of Papua New Guinea. He was appointed before independence and held the dual role of Administrator/High Commissioner until independence in 1975.

‡ In July 1951, the Commonwealth Relations Office had recommended to the Commonwealth Government '… the use in future of the title "Cocos" (Keeling) Islands. This has the advantage of avoiding the possible confusion with the other group of "Cocos" Islands in the Bay of Bengal. It would also do something to relieve the anxiety of Mr E.H. Keeling, M.P., who is anxious to perpetuate the memory of that ancestor of his who, as you are doubtless aware, first discovered these Islands.' Memo from External Affairs Officer, London, to Department of External Affairs, 30 July 1951, NAA: A1838, 410/1/5/3/2 PART 3.

other islands as at present.' It was also concerned with delay emphasising that … 'negotiations with the Clunies-Ross family on the subject of titles and compensation should be completed as soon as possible and that airstrip operations should not outrun these negotiations in any way …'.[29]

On 2 November 1951, the Commonwealth Government and Clunies-Ross signed an agreement for the purchase of the airstrip. The next month, a Royal Australian Air Force working party started work on the strip.

By early 1952, Minister Casey had further thoughts about the Cabinet position adopted in the previous September, and wrote to the Secretary of State for the Colonies, Oliver Lyttleton. While Casey had once believed that some sort of partition of the islands involving the transfer to Australia of only the island containing the airstrip might have been practicable, he had subsequently concluded that it would create too many continuing difficulties. Therefore, he thought that the transfer should be all or nothing:

> The only thing standing in the way of a full transfer, so far as we can ascertain, is the possible outcry that could arise in Singapore … over the allegedly inferior status that the Cocos Islanders would inherit under Australian sovereignty … The stage may have been reached when the proper course is to indicate frankly to the Singapore people that it is our firm intention to go ahead with the transfer, at the same time explaining carefully what it will involve … [W]hatever criticisms we might bring upon ourselves by completing the transfer, we might equally well invite embarrassment at having to explain why we are not now intending to proceed with the transfer plan announced on 23 June of last year.[30]

There was indeed criticism in the Australian press, but it was about the delay. In March 1952, the Melbourne *Sun* ran an article titled 'Has Canberra cold feet over Cocos?': 'Frightened of its own White Australia policy, Canberra seems to be letting slip its chance to plant the Australian flag on Cocos.'[31] In May, Casey was asked in parliament why the government was hesitating to accept the generous British offer to transfer complete possession of Cocos Island to Australia. He responded that the transfer of sovereignty was not an entirely easy matter and that two sets of negotiations were under way: one on the lease of land for the airfield and the other 'in respect of the conditions of nationality and otherwise under which sovereignty will pass in due course from Great Britain to Australia'.[32]

In Canberra, great bureaucratic effort was directed to developing a formula for restricting the entry of Cocos Islanders, but giving some assurances of sympathetic consideration should any seek residence.[33] In July, the Australian Government advised the Australian High Commissioner in London of the position reached on the citizenship and residence matters.

After consultation with the Governor of Singapore and the Colonial Office, agreement had been reached that although the Cocos Islanders would lose their United Kingdom and Colonies citizenship, their existing rights of entry to Singapore could be preserved by administrative action by the Singapore Government (an order-in-council). This course was seen as avoiding the publicity that legislation would entail. The citizenship arrangements were also acceptable to the 'non-official members' of the Singapore Legislative Council, provided a private assurance was given by the Australian Government that applications from Cocos Islanders for entry to Australia would receive 'the most sympathetic consideration'.

The Australian High Commissioner was asked to advise the British authorities formally that such assurance had been given by the Minister for External Affairs to the Governor of Singapore, and that the Australian Government wished to proceed with the transfer of Cocos Islands as soon as possible. The government hoped to have necessary legislation (probably an Act of acceptance) prepared for the next session of parliament, in August. It assumed that the United Kingdom would be able to complete legal arrangements for the transfer (presumably by order-in-council) in the same timeframe.[34]

But things moved slowly in London. In September, it was reported that the thinking in the Colonial Office was now that legislation rather than an order-in-council might be required, which would entail some delay. Meanwhile, the inaugural Qantas flight to South Africa stopped en route in Cocos on 3 September 1952.

On 8 October 1952, Cabinet agreed to the preparation of a Bill for an Act providing for the acceptance of the Cocos Islands as a territory of the Commonwealth under the name of Cocos (Keeling) Islands. The Cabinet submission was silent on the steps needed at the British end and on possible timing of the transfer.[35]

There then ensued a year of detailed, protracted examination by senior legal officers of the United Kingdom and Australia of the means by which the Cocos Islands should be transferred, and debate among them about those means. The issue of Cocos Islanders' citizenship and the absence of a clear right of residence in Australia influenced the effort put into finding a method that did not entail legislation (and thus public debate) in the United Kingdom, although legislation was the most certain method to prevent the transfer being legally challenged.

As well as the legality of the method used and the legal instruments required for transfer, the 1931 Statute of Westminster had a bearing on the matter, which was also dogged by timing problems. In July 1953, the Australian Solicitor-General, Kenneth Bailey, noted that:

> it is desired equally in London, in Singapore and in Canberra to effect the transfer as expeditiously as possible; the legislative program in the United Kingdom appears likely to exclude the possibility of an Act in 1953 unless special priority were given; and the very appearance of 'rushed' legislation is to be avoided.[36]

A month later, reporting the reaction in the United Kingdom to an apparent change of position at the Australian end to favour British legislation, Bailey cabled from London:

> Intimation yesterday of Australian desire to effect transfer by Act of Parliament greatly disturbed senior administrative ranks of Commonwealth Relations Office and Colonial Office, though they emphasized that they had had no recent contact with ministers and were expressing only official views.
>
> Underlying official attitudes here are I think—
>
> (a) awareness that dealings with colonial territories are very sensitive point in Parliament just now. Government had to use its small majority ruthlessly in much tension to carry through Central African Federation last month.
>
> (b) Some courteously suppressed resentment at possibility of having to defend against opposition back benchers an Australian immigration policy which, though accepted, is felt as illiberal.

Bailey also noted, 'Merit of initial Act of Parliament here would be to grasp the nettle at the outset. British view rather ruefully expressed yesterday was that British Ministers would thus have to grasp an Australian nettle.'[37]

The legal questions were summed up in a note from the Legal and Treaty Division of the Department of External Affairs to its minister, Richard Casey, in August 1953.[38] This referred to one possibility suggested by the United Kingdom—that by order-in-council under the Colonial Boundaries Act, Cocos could be incorporated into the Commonwealth of Australia—but also noted that it had been accepted that this option was undesirable because such incorporation 'would raise serious problems in connection with our immigration policy'. The note explained that an order-in-council had been proposed, and that, in the case of other territories such as Papua, the Ashmore and Cartier Islands and the Australian Antarctic Territory, transfers to the Commonwealth had been 'effected by the Sovereign without statutory authority …' However, the note went on to say that the procedure was 'of doubtful legal validity' (because the Cocos Islands were already regulated by British legislation), and 'the Law Officers have not been convinced that the need to avoid special legislation would justify the making of an order which might be successfully challenged.'

The note concluded with:

> [M]y own view is that there is not much to be gained by adoption of a doubtful procedure … Legislation would be necessary in any event in Singapore and … it will not be possible to avoid legislation in some form in Australia. In both cases we may expect publicity, and the advantage of proceeding by way of Order in Council seems to lie only in the avoidance of a debate in the House of Commons.[39]

The difficulties about the mode of formal transfer and the lengthy delay led to the departments of External Territories, External Affairs and the Attorney-General putting the issue to Cabinet again in a submission dated 1 September 1953, under the name of the Minister for External Affairs, Casey. The submission identified the three options:

- action by the Queen under the Colonial Boundaries Act—which was unsatisfactory
- a transfer by the Queen by prerogative order (a type of order-in-council)—which carried certain legal risks)
- transfer in pursuance of a British statute—which might result in a controversial debate in the House of Commons and a demand for public disclosure of the terms of the private assurance Casey had given to the Governor of Singapore on sympathetic consideration of applications by islanders for residence in Australia.

The submission crystallised the matters for decision as:

> (a) whether, in view of the difficulties encountered, the proposal to assume full sovereignty over the Cocos Islands should still be pursued
>
> (b) whether, if the answer to that question is yes, the United Kingdom Government should be asked, notwithstanding the objections described above, to proceed with the United Kingdom legislation necessary to effect the transfer of sovereignty, after which suitable legislation would be prepared for submission to the Australian Parliament.[40]

The matter was not considered until a Cabinet meeting on 18 and 19 December 1953. The decision was as follows:

> Cabinet agreed that Australia should press for a transfer of sovereignty by means of a prerogative Order in Council subject to a clear understanding that if such an Order is challenged and its legality is doubtful, the United Kingdom Government will introduce legislation to put the transfer beyond doubt.[41]

In January 1954, there was some press reporting on the long delay. 'Singapore still controls the "lonely" isles' said the *Straits Times* on 7 January. The story quoted the Colonial Under-Secretary as blaming 'technical difficulties' for the delay. The Sydney *Daily Telegraph* said on 8 January that Singapore sources had said that the problem of who owned the islands might lead to confusion, should Queen Elizabeth visit on her way from Perth to Ceylon.[42]

Casey conveyed the Cabinet's decision of December 1953 to Lord Swinton, Secretary of State for Commonwealth Relations, in early February. He asked that, before the transfer was effected by prerogative order, an assurance be given that the

British Government would introduce validating legislation at Australia's request, if such a measure became necessary. He concluded his letter:

> Our two Governments have been in agreement for a long time now that the Islands should be transferred to Australia, but have not been able to find a mutually satisfactory procedure for effecting the transfer. If agreement can now be reached, I imagine that you, like ourselves, will be glad to see the matter disposed of as soon as possible.[43]

Seven months passed before a response—a longish gap in this convoluted dialogue on legal process. Why the delay? Surprise, surprise. On 15 September, Lord Swinton wrote:

> The truth is that we have had second thoughts. As you know, the main difficulty that was foreseen about an Act of Parliament during earlier discussions was the risk that it would provoke undesirable controversy. But it has since been pointed out that we cannot escape this risk even if we proceed by a prerogative Order. The Opposition could always ask for a debate on the Order. On reconsideration we feel too that it would hardly be possible for us to make an Order transferring United Kingdom territory before giving Parliament a chance of discussion; we should probably at least have to announce in advance our intention to make an Order. So there is not much difference from this point of view between a short Bill and a debate on an Order … But I think the point that clinches it in favour of a Bill is that this is the only procedure which we can be sure is legally effective … We have therefore decided that, as your Solicitor-General was authorised to propose during his visit to the United Kingdom in July and August last year, we ought after all to proceed by way of an enabling Bill of the United Kingdom Parliament.

The letter went on to enquire whether the formal request and consent of the Australian Parliament and Government would be forthcoming, should it prove essential. The Secretary of State also asked whether, if there were questions in debate about the status of the Cocos Islanders, the British Government could make public the assurances that had been given in private to the 'unofficial members' of the Legislative Council in Singapore.[44]

The possible transfer of Cocos was sensitive, as Australia's immigration policy needed to be taken into account, and Singapore was moving towards independence. Publicity was not to be encouraged, and legal certainty was also a concern.

Australia's legal advisers felt that all that was required to transfer Cocos was a prerogative order, but they agreed that the matter was not beyond doubt. Legal advisers (and ministers) of both governments finally agreed that, because of the specific provisions made by the United Kingdom law for the government of Cocos by the *Straits Settlements (Repeal) Act 1946*, the only method of transfer that would be altogether beyond the possibility of legal challenge was a special Act of the British

Parliament authorising an order transferring the islands to Australia. They noted that a prerogative order on its own would have attracted debate in the British Parliament in any event, so nothing would be lost, and a lot gained, by legislating.

In either case (prerogative order, or order-in-council following legislation), Australia would subsequently need to enact a Cocos 'acceptance' Act to meet the requirements of s. 122 (placement by the Queen and acceptance by the Commonwealth). But a further step was proposed. The British legal advisers felt that, as the United Kingdom was to legislate, an intermediate step was necessary. In their view, the Statute of Westminster would require a 'request and consent' Act of the Australian Parliament. The Australian legal advisers believed that such an Act was not necessary.[45] The Solicitor-General set out his view:

> Roberts-Wray [Sir Kenneth Roberts-Wray, United Kingdom Colonial Office Legal Adviser] also said he thought that, if a validating Act did become necessary, it would require 'request and consent' under Section 4 of the Statute of Westminster because it would be clear that it would have to operate in Australia. I said that this was in my view not necessarily so at all. The Act would no doubt have to be applied by Australian Courts, but possibly as part of the law of the United Kingdom, and not as part of the law of Australia … I added however that I appreciated the political desirability of making clear in any United Kingdom legislation in the circumstances imagined that the Act was passed with Australia's consent, or even at Australia's request. To say this however was, I thought, not at all the same thing as saying that the requirements of section 4 of the Statute of Westminster applied as a matter of law.[46]

RESOLUTION OF THE TRANSFER

Notwithstanding the doubts at the Australian end that Australian request and consent legislation was strictly necessary, Prime Minister Menzies decided on 21 October that the parliament should be asked to enact such legislation in its current sitting, and that Australia should then aim to pass an acceptance Act by mid-February 1955. The urgency arose from the wish to achieve the transfer of Cocos to Australia before the elections in Singapore, which were scheduled for March 1955.[47]

It had now been agreed between all parties that the process would entail:

- request and consent legislation in the Australian Parliament
- legislation in the British Parliament enabling the Crown to transfer authority over Cocos to Australia
- legislation in the Australian Parliament to accept the transfer and provide for the administration of the territory
- an order-in-council in the United Kingdom pursuant to the enabling legislation to detach Cocos from the colony of Singapore and to transfer authority from a specified date—that date would also be the date on which the Australian

acceptance and administration legislation came into effect.

The Cocos (Keeling) Islands (Request and Consent) Bill was drafted in short order and introduced in the House of Representatives on 2 November 1954. The explanatory notes set out that the request and consent of the Commonwealth Parliament was being sought because:

> The Statute of Westminster, 1931, provides that 'no Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend or be deemed to extend to a Dominion as part of the law of that Dominion unless it is expressly declared in that Act that that Dominion has requested and consented to the enactment thereof' …
>
> Section 122 of the Australian Constitution empowers the Commonwealth to legislate for the government of any territory, inter alia, 'placed by the Queen under the Authority of and accepted by the Commonwealth' … An Acceptance and Administration Act will be passed by the Commonwealth in due course to conclude the transfer.[48]

In his second reading speech on 2 November, Minister Casey referred to the strategic importance of the islands:

> Honorable members will be aware that the Cocos airstrip is a vital link in the air service operated across the Indian Ocean between Australia and South Africa. The islands could also assume, in time of war, great importance as an aircraft staging point, and as a link in air services between Australia and Asia and Europe. Therefore, it must be a matter of gratification to all honorable members that the United Kingdom and Australian Governments have been able to agree on this transfer to Australia. The Cocos Islands first sprang into world prominence shortly after the outbreak of war in 1914, when the cable station established on the group was attacked by the German raider *Emden*, subsequently destroyed by *Sydney* in the Royal Australian Navy's first major engagement. With the development of wireless communications, the importance of Cocos Island as a cable station has diminished, and it was not until the latter stages of World War II that its new role as an important air link emerged.

Casey informed the House that the Clunies-Ross family had been the acknowledged landlords of Cocos since 1886 and 'The House may be assured—as the United Kingdom Government has been assured—that the legitimate interests of the Clunies-Ross family will not be prejudiced in the forthcoming transfer of sovereignty.' The minister then covered the recent history of negotiations to reach agreement with the United Kingdom and Singapore, alluding to discussions about the future of the islanders, but without giving specific detail.[49]

There was a brief debate on 9 November. Dr Evatt, the Leader of the Opposition, expressed support because of defence and 'other' reasons. One other speaker,

Hugh Roberton (Member for Riverina), made some observations, including the fact that he had recently visited the islands:

> I should like to tell the House that the Cocos Islands group can only be described as an earthly paradise. There is no want or crime, and none of the hates and envies that are in evidence even in this place this afternoon. It is a splendid thing for the people of this country that we should pass this bill …[50]

The Bill passed the House of Representatives without amendment the same day, moving on to the Senate the following day, 10 November. Again there was little debate—one speaker noted that it was almost exactly 40 years after the sinking of the *Emden*—and the Bill was passed without amendment and returned to the House on the same day. It was assented to the following week, on 18 November 1954.

In informing the Australian High Commission in London of the passage of the legislation, the Department of External Affairs explained that it was suggesting mid-February 1955 as the date for transfer because of the political situation in Singapore: 'Not only do we wish to anticipate electoral campaign but we also think it desirable that the present Singapore Legislative Council (to unofficial members of which Mr Casey gave assurances) should still be in office when transfer takes place.'[51]

The Melbourne *Herald* reported on 15 November that:

> Australians can thank their good luck rather than astute diplomacy for the acquisition of an island that, whatever the fate of South-east Asia, will ensure maintenance of their west-bound link with Africa and Europe … The transfer of Cocos—actually a group of islands—from Singapore to Australia now appears certain and awaits only ratification by the Parliaments in London and Canberra.
>
> But in six months Singapore will be governed by a locally-elected Cabinet, which it goes without saying would never have approved the transfer.[52]

Australian officials pressed ministers to tidy up the loose ends, and in particular to reply to Lord Swinton's letter of 15 September. Casey did so on 16 December, saying that he and his Australian colleagues assumed that references to Australian Government assurances about the status of the islanders would not be made unless the question were raised. The form of words that might be used was: 'It is not expected that any substantial number of Cocos Islanders will desire to go to Australia but the Australian Government has indicated … that should any such applications be received they would be most sympathetically considered.' The message went on, 'Should the question of permanent residence in Australia be raised and pursued then it might be said that the statements made on behalf of the Australian Government cover the matter i.e. that the Australian Government will consider each case on its merits.'[53]

In the transfer negotiations, Solicitor-General Bailey had suggested that the understandings reached between the British and Australian governments in 1951 on such matters as the operation of the naval radio station by the Admiralty and the right of British civil aircraft to use the airstrip should be 'gathered together and expressed compendiously in a fresh exchange of letters'. Lord Swinton wrote on 9 December 1954 to that effect, dealing with the status of the inhabitants, the protection of the interests of the Clunies-Ross family, the tenure of the naval wireless station, operating rights for British airlines and arrangements for the Overseas Telecommunications Commission to acquire Cable and Wireless's interest in the cable relay station. The migration of Cocos Islanders to North Borneo was not mentioned, as it was complete by that stage.[54]

The British authorities gave Australian officials the opportunity to comment on their draft legislation and order-in-council, and the Australians did so during late December 1954 and January 1955. Australia also agreed to proposed public statements about the status of Cocos Islanders, should the question be raised.

At the end of December, attention seems to have turned to the possibility that transfer might not take place before the constitutional changes in Singapore. Bailey wrote to Allen Brown, Secretary of the Prime Minister's Department:

> Strictly from a legal point of view, so long as the United Kingdom Order-in-Council does not take effect until later, when the Australian Act [that is, the acceptance Act] has been passed and we are ready to take over the administration of the new Territory, it would not matter whether or not our Act was approximately simultaneous with the United Kingdom Act. In the case of Papua, indeed, a period of no less than 4½ years elapsed between the issue of the United Kingdom Letters Patent and the day appointed for the actual transfer; the Australian Act likewise had been passed some ten months before the appointed day.
>
> The Papuan transfer exhibits another feature which may be of interest for present purposes. The United Kingdom Letters Patent (18 March 1902) fixed as the 'appointed day' for the transfer the day upon which the Governor-General of the Commonwealth issued a Proclamation signifying that the Parliament of the Commonwealth had made laws for the government of the new Territory.
>
> If a similar procedure is adopted in the present instance, it would not seem to matter whether the Australian legislation is passed before or after the constitutional changes take place in Singapore.[55]

In January, as foreshadowed in the Melbourne *Herald* article a couple of months earlier, the press reported moves in Singapore to delay the transfer so that the government, to be elected in April, could consider the question.[56]

At the end of January, the United Kingdom's Cocos Island Bill was introduced into the House of Commons and had its second reading. Henry Hopkinson, the Minister of State for Colonial Affairs, traced the history of settlement on the island and the debate on the appropriate legal method of transfer. He described the Bill as 'an enabling Bill which, after reciting the request and consent of the Australian Government to the transfer, gives power to her Majesty to put it into effect by Order in Council'. In contrast to the November proceedings in the Australian Parliament for the request and consent legislation, the minister set out the arrangements that would apply to Cocos Islanders—that is, that they would retain their United Kingdom citizenship and in addition be able to opt to acquire Australian citizenship, and that those born after the transfer would automatically become Australian citizens.[57]

Again in contrast to proceedings in Australia, there were two hours of debate, almost all of it concentrating on the question of the status of the islanders and their right of entry into Australia. A cabled report of the debate said that Douglas Dodds-Parker, the Parliamentary Under-Secretary for Commonwealth Relations, 'emphasised that the Government here and Legislative Councillors in Singapore were satisfied with the Australian Government's assurance which he quoted … Matter was not pressed and bill passed second reading on voices and was referred to Committee.'[58] In an article titled 'Newest Australians in the Cocos' on 3 February, the *Sydney Morning Herald* drew attention to the remarkable difference between the debate in London and that in Canberra.

There was further debate in the House of Commons on 7 February, again primarily about citizenship rights. The Opposition attempted unsuccessfully to make an amendment to preserve the status of the islanders with all the current rights of British citizenship. The Bill was passed, the Minister of State for Colonial Affairs recording:

> We have received assurances from the Australian Government about the entry of the Cocos Islanders into the Commonwealth territory which are an advance on Australian policy in many respects. We believe that the Australians will give the Cocos Islanders all the facilities that they require … The assurances will be embodied in the exchange of letters which will accompany the transfer …[59]

Later in February, the Bill moved on to the House of Lords, where there was little debate—the one point dealt with was the rights of the Cocos Islanders. The Bill was enacted and came into force in March 1955.

Meanwhile, on 6 February, the *Singapore Sunday Standard* published an article under the heading 'Has the Govt. pulled a fast one?—the sad story of the Cocos-Keelings', claiming that the transfer had been completed without reference to the Malays and to the people of Singapore. The *Sydney Morning Herald* of 7 February 1955 noted that Australia was to take control of a 'paradise on earth'.[60]

On 10 March 1955, the Department of External Affairs sent a note to the minister about the timetable for transfer. It noted that the British Bill had been passed and the British authorities had advised that it would not be possible for them to make an order-in-council for the transfer of administration until the Australian acceptance legislation had been passed and a date for handover mutually agreed. As the Australian Parliament would not meet again before the end of April, the previous aim for Australia to take over the administration of Cocos before the Singapore elections would no longer be possible. The note went on to recommend against the suggestion that Australia request an interim transfer of administration pending its own legislation. The minister agreed with this.[61]

Meanwhile, the content of the exchange of letters and the issue of tabling them was referred to Cabinet in early March. Cabinet sought only minor amendments to the drafts provided by the United Kingdom. Unsurprisingly, one of those amendments related to residence in Australia; whereas the British wording was that the Australian Government 'will give sympathetic consideration to any requests from the islanders to enter and settle in Australia', Cabinet decided that the words 'and settle in' should be deleted.[62] Once officials in the Department of Immigration became aware of the statements made by Dodds-Parker in the British Parliament during debate on the United Kingdom's legislation, they felt that the British had gone too far, in that no distinction had been made between applications for temporary and permanent residence. This created a dilemma—if Australia sought restatement of the position, the British minister could be accused of having misled parliament.

Again the matter went to Cabinet, which on 10 May agreed that 'sympathetic consideration' would apply to applications both for temporary and for permanent residence.[63] This issue having been settled, letters were exchanged on 23 May 1955 and Cabinet approved the drafting of a Bill with 'minimum provisions enabling Australia to accept the islands as a Territory, to continue in force the laws at present in operation and to have power to make Ordinances'.[64]

On 8 June, the Cocos (Keeling) Islands Bill was introduced into the Australian Parliament. Paul Hasluck[§], the Minister for Territories, explained that its purpose was to provide for the acceptance of the islands as a territory under the authority of the Commonwealth, and to provide for the government of that territory. He informed the House that the United Kingdom had passed an Act providing for Her Majesty, by order-in-council, 'to direct that the Cocos or Keeling Islands shall, on such date as may be specified in the Order, cease to form part of the Colony of Singapore and be placed under the authority of the Commonwealth'. The passing of the Australian Bill would clear the way for the United Kingdom to seek royal approval for an order-

§ Hasluck was a dominant figure in Australian federal politics between 1949 and 1969, occupying the Territories ministry for a decade in the 1950s and 1960s, during a very important era in the territories' postwar development. He was appointed Governor-General in 1969.

in-council under British enabling legislation, after which the Australian Government would take over the administration of the islands.

Hasluck outlined the main parts of the Bill, which included provision for the property, rights and liabilities of the United Kingdom and Singapore in respect of the islands to be transferred to the Commonwealth. Also to be transferred were the rights and powers vested in the Queen under the indenture of 1886 to the Clunies-Ross family, to be exercised by the Governor-General on behalf of the Queen. The existing body of Singapore law and the Malay institutions and customs that governed the daily life of the islanders continued in force, and the application of Australian citizenship to the residents of the islands 'just as residents of the Australian possession of Papua are Australian citizens' was specified.

Hasluck said that the transfer paid careful regard to the future wellbeing of the small population resident on the islands. Cocos (Keeling) Island had been listed as a non-self-governing territory under Chapter XI of the United Nations Charter in 1947, so when the island became a Commonwealth external territory Australia assumed responsibilities under the chapter to ensure the advancement of the population, the development of self-government and periodic reporting to the Secretary-General. By mid-1955, the number of Cocos Malays resident on the islands was estimated to be only some 300, the numbers having been reduced substantially by several years of emigration to North Borneo.

Hasluck also said he was sure that all members were aware of the strategic importance of the islands to Australia.[65]

There was little debate, and the Bill passed the House and moved on to the Senate on 9 June, where it was also passed with little comment.[66] The Bill was returned to the House without amendment on 10 June 1955 and was assented to on 16 June 1955.

In July, word was received from the United Kingdom that a draft order-in-council was complete, with only the agreed date of transfer to be inserted. At this point, the Australian Government was not able to advise the date of transfer and thus to have the order-in-council signed at an intended meeting of the Privy Council on 21 July. The next possible date would be in October.[67] In mid-October, word was received of a meeting scheduled for 28 October. Australia suggested the date of 23 November 1955 for transfer. The order-in-council was duly made on 28 October, fixing the agreed date.[68]

Concerns about minimising publicity influenced the process of transfer to the last. A short press release issued by Hasluck on 10 November 1955 brought the saga of transfer to its formal conclusion. He announced that Her Majesty, by order-in-council, had specified 23 November 1955 as the date of transfer of the Cocos (Keeling) Islands to the authority of the Commonwealth of Australia. He noted that the proclamation fixing 23 November 1955 as the date on which the *Cocos (Keeling) Islands Act 1955* would

come into force was being gazetted that same day (Commonwealth of Australia Gazette No. 58 of 10 November 1955).[69]

The transfer formalities were extremely low key. The new Australian-appointed Administrator, HJ Hull, was sworn in by an authorised officer of the Department of Territories and the Australian flag was hoisted. No officials from Singapore were present and there were no formal addresses or special publicity.[70]

Australia had acquired its eighth external territory.

It is interesting to note that the 'property, rights or powers in, or in connection with, that part of the Islands known as Direction Island, or liabilities or obligations in respect of property in that part of the Islands' was excluded from the 1955 United Kingdom order-in-council transferring the islands. A similar exclusion also occurred in the 1955 Australian Cocos (Keeling) Islands Act and the agreement set out in the May 1955 exchange of letters in relation to the transfer. This exclusion was to allow the control, operation and tenure of the naval wireless station on Direction Island to remain undisturbed by the transfer. The exchange of letters noted that such exclusion did not 'preclude the operation of the station being handed over to the Australian Government should it be mutually agreed at some time in the future that this was desirable'. The wireless station on Direction Island ceased operations in 1966–67, but it appears that no formal handover of those operations occurred; nor were amendments made to the order-in-council or to the Australian Act.¶

POSTSCRIPT

For the first 15 years or so after the Australian acquisition of Cocos (Keeling) Islands, the Clunies-Ross estate continued in operation and the involvement of the Australian administration was minimal. Over time economic conditions altered and alternative industries, such as tourism and an offshore quarantine station, were developed. Gradually, the Australian administration began to have a greater involvement in the life of the community.

By 1967, passenger aircraft were able to fly non-stop from Australia to South Africa, and transit passenger services through the islands ceased that year. The very large airstrip continued to be used for military aircraft and for destination passenger services.

In 1984, the inhabitants of Cocos (Keeling) Islands voted in favour of integration with Australia in an act of self-determination supervised by the United Nations. At that time, Australia gave a commitment to the people of Cocos to respect their religious

¶ It has been suggested that the exclusions, which remain extant, mean that the 'property' in Direction Island is not part of the Australian territory and remains in limbo. I consider that if this proposition were tested judicially it would be found that the 'property' in Direction Island should be read down to mean the property in the wireless station, which ceased to exist when the station ceased operations.

beliefs, tradition and culture. The *Territories Law Reform Act 1992* amended the *Cocos (Keeling) Islands Act 1955* to apply various Commonwealth Acts and the law of the state of Western Australia to the territory, which is part of a federal electoral district in the Northern Territory.

Local government legislation based on that of Western Australia was introduced in 1992, giving the first Shire Council similar powers to Australian mainland councils.

In September 2001, the Cocos (Keeling) Islands were excised from Australia's migration zone.

NOTES

1 United Kingdom House of Commons Hansard (Commons), 31 January 1955, column 697.

2 Indenture, 7 July 1886, between the Queen's Most Excellent Majesty, the Governor of the Straits Settlement and George Clunies-Ross, NAA: A1838, 410/1/5/3/1.

3 ibid.

4 For history, see Commons Second Reading Speech, Cocos Islands Bill, 31 January 1955, column 698, and *Report on Examination of Cocos Island Airstrip by the RAF*, 23 August 1948, NAA: A1838, 410/1/5/3/2 PART 1.

5 Cable O.13495 from Department of External Affairs to Secretary of State for Commonwealth Relations, 21 September 1948, NAA: A1838, 410/1/5/3/2 PART 1.

6 Department of External Affairs internal briefing note *Christmas and Cocos Islands*, 14 October 1948, NAA: A1838, 410/1/5/3/2 PART 1.

7 Cable I.15917 from Australian Commission, Singapore, to Department of External Affairs, 2 October 1948, NAA: A1838, 410/1/5/3/2 PART 1.

8 Cable I. 1067 from Australian Commission Singapore to Department of External Affairs, 20 January 1949, and letter, United Kingdom High Commissioner in Canberra to Prime Minister's Department, 9 March 1949, NAA: A1838, 410/1/5/3/1.

9 Memorandum from United Kingdom High Commissioner in Canberra to Prime Minister, 21 June 1949, NAA: A1838, 410/1/5/3/2 PART 1.

10 Memorandum from United Kingdom High Commissioner in Canberra to Prime Minister, 20 September 1949, NAA: A1838, 410/1/5/3/2 PART 1.

11 Cable O.12055, Acting Prime Minister to United Kingdom Prime Minister, 24 August 1950, NAA: A1838, 410/1/5/3/1.

12 Press clippings, NAA: A1838, 410/1/5/3/1.

13 Department of External Affairs briefing note, 26 October 1950, NAA: A1838, 410/1/5/3/1.

14 Department of External Affairs minute to Secretary with attached paper, 4 January 1951, NAA: A1838, 410/1/5/3/1.

15 Record of meeting between United Kingdom Parliamentary Under-Secretary of State and Prime Minister, 23 January 1951, NAA: A1838, 410/1/5/3/2 PART 1; memorandum from United Kingdom High Commissioner in Canberra to Prime Minister, 14 February 1951, NAA: A1838, 410/1/5/3/2 PART 2.

16 Cable O.2760 from Prime Minister to United Kingdom Resident Minister, 20 February 1951; Cable I.4346 from Australian High Commissioner's Office London to Department of External Affairs, 6 March 1951, NAA: A1838, 410/1/5/3/2 PART 1.

17 Department of External Affairs brief, 23 February 1951; copy of press report, 28 April 1951, NAA: A1838, 410/1/5/3/1.

18 Letter from Prime Minister to the United Kingdom High Commissioner in Canberra, 11 May 1951, NAA: A1838, 410/1/5/3/2 PART 2.

19 Letter from United Kingdom High Commissioner in Canberra to Prime Minister, 5 June 1951, NAA: A1838, 410/1/5/3/2 PART 2.

20 Cable O.10134/35 from Department of External Affairs to Australian High Commissioner's Office London and Australian Commissioner Singapore, 22 June 1951; press release, 22 June 1951, NAA: A1838, 410/1/5/3/2 PART 2; Commons Hansard, 22 June 1951, columns 92/3/4.

21 NAA: A1838, 410/1/5/3/2 PART 2.

22 Department of External Affairs note for file, 25 June 1951, NAA: A1838, 410/1/5/3/2 PART 2.

23 Department of External Affairs minute, 26 June 1951, NAA: A1838, 410/1/5/3/2 PART 2.

24 Memorandum from Official Secretary, Australian Commissioner, Singapore, to Department of External Affairs, 12 July 1951, and Department of External Affairs note to Minister, 19 July 1951, NAA: A1838, 410/1/5/3/2 PART 3.

25 Cable I.14337 from Australian High Commissioner London to Department of External Affairs, 10 August 1951, NAA: A1838, 410/1/5/3/2 PART 3.

26 Report of meeting, 25–26 August 1951, NAA: A1838, 410/1/5/3/2 PART 3.

27 Cable O.13910/11 from Department of External Affairs to Australian Commissioner, Singapore, and High Commissioner, London, 23 August 1951; *The Age*, 22 August 1951, NAA: A1838, 410/1/5/3/2 PART 3.

28 Department of External Affairs note, 11 September 1951, NAA: A1838, 410/1/5/3/2 PART 3.

29 Cabinet Decision No. 205, 15 October 1951, NAA: A1838, 3042/2 PART 1.

30 Letter from Minister for External Affairs to Secretary of State for the Colonies, 7 February 1952, NAA: A1838, 3042/2 PART 1.

31 Extract from Melbourne *Sun*, 17 March 1952, NAA: A1838, 3042/2 PART 1.

32 CPD, HR. Vol. 217, 28 May 1952, p. 945.

33 File note, 'Formula for restricting entry of Cocos Islanders', April 1952, NAA: A1838, 3042/2 PART 1.

34 Cable O.10240 from Department of External Affairs to Australian High Commissioner, London, 11 July 1952, NAA: A1838, 3042/2 PART 2.

35 Cabinet agendum GA/33, Transfer of Cocos(Keeling) Islands to Australia, 29 September 1952; minutes of Cabinet meeting, 8 October 1952, NAA: A1838, 3042/2 PART 2.

36 Note from Bailey, Solicitor-General, London, 17 July 1953, NAA: A1838, 3042/2 PART 3.

37 Cable I.11257/55 from Bailey, Solicitor-General, to Ewens, Attorney-General's Department, Canberra, 21 August 1953, NAA: A1838, 3042/2 PART 3.

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39 ibid.

40 Cabinet Submission No. 561 of 1 September 1953, NAA: A1838, 3042/2 PART 4.

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42 Press articles: 'Singapore still controls the "lonely" isles', *Straits Times*, 7 January 1954; 'Delay on transfer of Cocos', *Daily Telegraph*, 8 January 1954, NAA: A1838, 3042/2 PART 4.

43 Letter from Minister for External Affairs to Secretary of State for Commonwealth Relations, 4 February 1954, NAA: A1838, 3042/2 PART 4.

44 Letter from Secretary of State for Commonwealth Relations to Minister for External Affairs, 15 September 1954, NAA: A1838, 3042/2 PART 4.

45 Memorandum from Attorney-General's Department to Department of Territories, 11 August 1953, NAA: A1838, 3042/2 PART 3.

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47 Memorandum from Secretary, Prime Minister's Department, to Secretary, Attorney-General's Department, 21 October 1954; memorandum from Department of External Affairs to Secretary of Territories, 25 October 1954, NAA: A1838, 3042/2 PART 4.

48 Committee notes, *Cocos (Keeling) Islands Request and Consent Act 1954*, NAA: A1838, 3042/2 PART 4.

49 CPD, HR, Vol. 5, 2 November 1954, pp. 2512–14.

50 ibid., 9 November 1954, p. 2716–17.

51 Cable O.10806 from Department of External Affairs to Australian High Commission, London, 10 November 1954, NAA: A1838, 3042/2 PART 5.

52 Press article, Melbourne *Herald*, 15 November 1954, NAA: A1838, 3042/2 PART 5.

53 Department of External Affairs minute, 1 December 1954; cable from Minister for External Affairs to Secretary of State for Commonwealth Relations, 16 December 1954, NAA: A1838, 3042/2/PART 5.

54 Cable O.10136/37 from Solicitor-General to Department of External Affairs, 23 October 1954; letter from Secretary of State for Commonwealth Relations to Minister for External Affairs, 9 December 1954, NAA: A1838, 3042/2 PART 4 and PART 5.

55 Letter from Solicitor-General to Prime Minister's Department, 31 December 1954, NAA: A1838, 3042/2 PART 5.

56 *Sydney Morning Herald*, 10 January 1955; Cable I.464 from Australian Commissioner, Singapore, reporting *Straits Times* leader of 11 January 1955; *The Straits Budget*, 13 January 1955, NAA: A1838, 3042/2 PART 5.

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59 Commons, 7 February 1955, column 1578.

60 Press reports, NAA: A1838, 3042/2 PART 5.

61 Minute to Minister for External Affairs, 10 March 1955, NAA: A1838, 3042/2 PART 6.

62 Cabinet Submission No. 285, 2 March 1955, and Cabinet Decision No. 325, 2 March 1955, NAA: A1838, 3042/2 PART 6.

63 Cabinet Decision No. 406, 10 May 1955, NAA: A1838, 3042/2 PART 7.

64 Cabinet Decision No. LEG(D)60, 31 May 1955, NAA: A1838, 3042/2 PART 7.

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66 CPD, Senate, Vol. 5, 9 June 1955, p. 776.

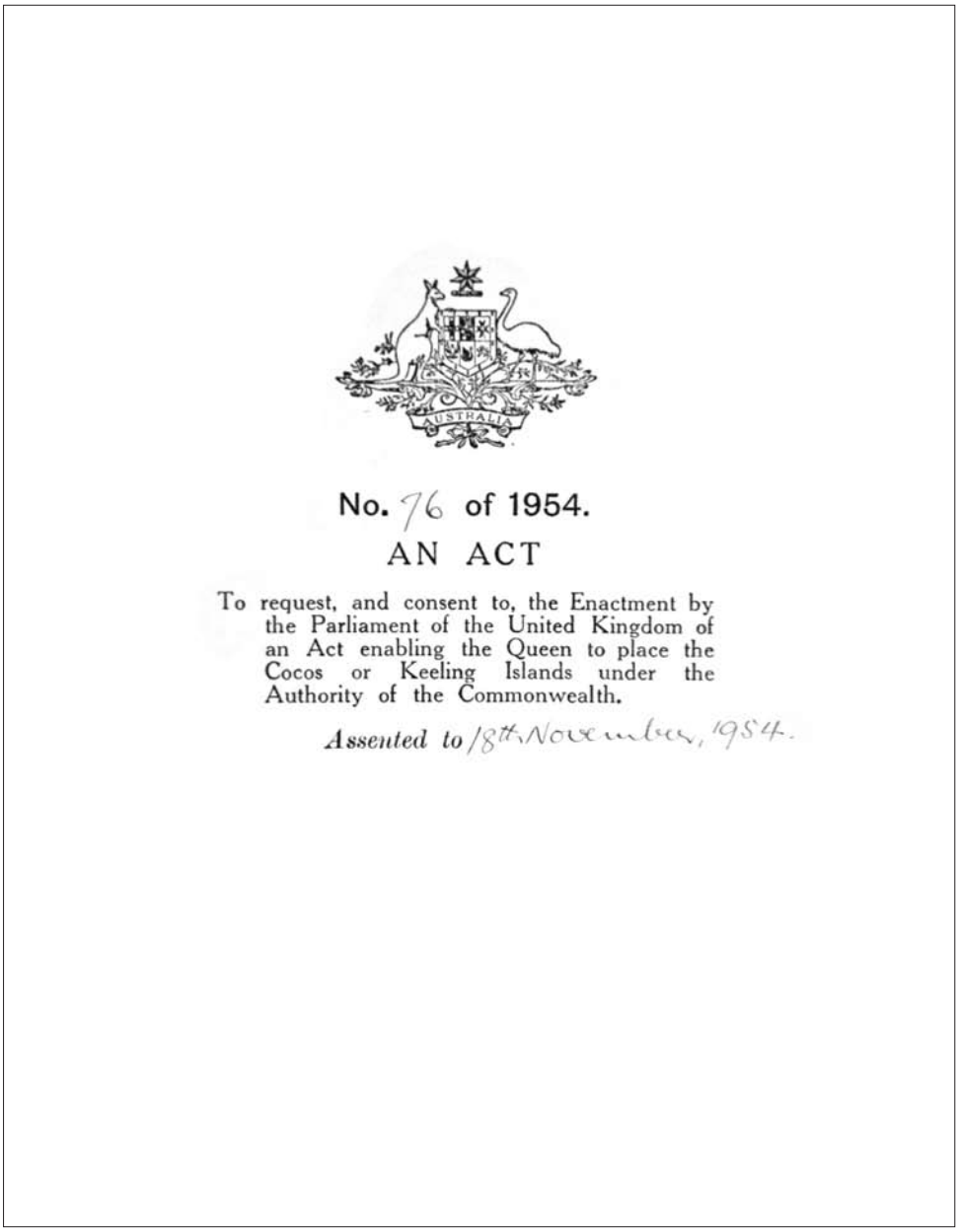
67 Memorandum from Chief Secretary, Singapore, to Australian Commission, Singapore, 11 July 1955; memorandum from Secretary, Department of Territories, to Department of External Affairs, 19 July 1955, NAA: A1838, 3042/2 PART 7.

68 Cable I.14149 from Australian High Commission, London, to Department of External Affairs, 28 October 1955; Statutory Instruments 1955 No. 1642 Order in Council 28 October 1955, NAA: A1838, 3042/2 PART 8.

69 Press release, 10 November 1955, NAA: A518, BK800/1/9.

70 Cable from Department of External Territories to the Australian Commission, Singapore, 17 November 1955, NAA: A1838, 3042/2 PART 8.

END PAPERS



No. 76 of 1954.

AN ACT

To request, and consent to, the Enactment by the Parliament of the United Kingdom of an Act enabling the Queen to place the Cocos or Keeling Islands under the Authority of the Commonwealth.

Assented to 18th November, 1954.

pp. 292–293 Cocos (Keeling) Islands (Request and Consent) Act, No. 76 of 1954.
NAA: A1559, 1954/76

AN ACT

To request, and consent to, the Enactment by the Parliament of the United Kingdom of an Act enabling the Queen to place the Cocos or Keeling Islands under the Authority of the Commonwealth.

BE it 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 *Cocos (Keeling) Islands (Request and Consent) Act* 1954. Short title.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

3. The Parliament requests, and consents to, the enactment by the Parliament of the United Kingdom of an Act enabling the Queen to place the Cocos or Keeling Islands under the authority of the Commonwealth and making provision for matters incidental to the placing of those Islands under that authority. Request and consent to enactment of United Kingdom Act.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to request, and consent to, the Enactment by the Parliament of the United Kingdom of an Act enabling the Queen to place the Cocos or Keeling Islands under the Authority of the Commonwealth", 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.

18th November, 1954.

Printed for the GOVERNMENT of the COMMONWEALTH by A. J. ARTHUR at the Government Printing Office, Canberra.

COMMONWEALTH OF AUSTRALIA.

Department of External Affairs.

54. 1st December 1954

Minute Paper for the Executive Council

Executive Council No. 46

SUBJECT.

Transfer of Sovereignty of Cocos (Keeling) Islands to Australia:

Recommended for the Approval of His Excellency the Governor-General in Council that the Government of the Commonwealth of Australia do request and consent to the enactment by the Parliament of the United Kindgom of an Act enabling the Queen to place the Cocos or Keeling Islands under the authority of the Commonwealth and making provision for matters incidental to the placing of those Islands under that authority.

R G Casey

For Prime Minister.

Approved in Council.

Governor-General.

8 DEC 1954 19

Filed in the Records of the Council.

Secretary to the Executive Council.

Executive Council Minute No. 46 of 1 December, 1954.
NAA: A1573, 1954/8

Copied from United Kingdom Statutes 1955 pp 3-4

1955 *Cocos Islands Act*, 1955 CH.5

CHAPTER 5

An Act to enable Her Majesty to place the Cocos or Keeling Islands under the authority of the Commonwealth of Australia, and for purposes connected therewith. [29th March, 1955]

WHEREAS the islands named the Cocos or Keeling Islands, comprising all the islands situated in the Indian Ocean in or about the 5th minute of the 12th degree of South Latitude and the 53rd minute of the 96th degree of East Longitude, and including the northern island otherwise known as North Keeling Island, are part of the Colony of Singapore as constituted by Order in Council under the Straits Settlements (Repeal) Act, 1946: 9 & 10 Geo. 6. c. 37.

And whereas the Parliament and Government of the Commonwealth of Australia have requested and consented to the enactment of this Act:

And whereas by section one hundred and twenty two of the constitution of the Commonwealth of Australia it is provided that the Parliament of the said Commonwealth may make laws for the government of any territory placed by the Queen under the authority of and accepted by the Commonwealth :

Be it therefore enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :-

1.—(1) Her Majesty may by Order in Council direct that the Cocos or Keeling Islands shall, on such date as may be specified in the Order, cease to form part of the Colony of Singapore and be placed under the authority of the Commonwealth of Australia. Transfer of the Islands to Australia.

(2) As from the date specified as aforesaid, the Straits Settlements (Repeal) Act, 1946, and any Order in Council in force in respect of the said Colony under that Act and the British Settlements Acts, 1887 and 1945, as applied by that Act, shall have effect as if references therein to the said Islands were omitted.

(3) Her Majesty may by Order in Council make provision –

pp. 295–296 United Kingdom Cocos Islands Act, 1955. (copytype)
United Kingdom Statutes 1955, pp. 3-4

(*a*) for the transfer or retention of property, rights, powers, obligations or liabilities held, enjoyed or incurred by or on behalf of Her majesty in right of Her Government in the United Kingdom or of the Government of the Colony of Singapore in or in connection with the said Islands and subsisting on the date specified as aforesaid;

(*b*) for continuing in relation to proceedings pending on that date the jurisdiction in the said Islands of any court not situated therein ;

(*c*) for such other purposes, if any, not being purposes of the government of the said Islands, as appear to Her Majesty to be expedient in consequence of their ceasing to form part of the said Colony and being placed under the authority of the said Commonwealth.

Short title.

2. This Act may be cited as the Cocos Islands Act, 1955.

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OFFICE OF THE HIGH COMMISSIONER
FOR THE UNITED KINGDOM
CANBERRA

Ref: L.110/1.

19th May, 1955.

506/4
24 MAY 1955
PRIME MINISTER'S DEPARTMENT

My dear Prime Minister,

I am writing in response to Professor Bailey's suggestion that the various assurances given by the Australian Government during the course of earlier correspondence regarding the transfer of the Cocos Islands to the Commonwealth of Australia should be expressed compendiously in a fresh exchange of letters. The United Kingdom Government agrees that such a record would be convenient for future reference and I have therefore set out in the following paragraphs the United Kingdom Government's understanding of the position on various matters connected with the transfer.

(i) The Australian Government will make satisfactory arrangements for the status, and particularly the citizenship, of the inhabitants of the Cocos Islands at the time of the transfer. To give effect to this, residents on the Islands at the time of handing over will be given the option of becoming Australian citizens; it is of course understood that persons born on the Islands after that date would be Australian citizens by operation of law. It is not expected that any substantial number of Cocos Islanders will desire to go to Australia but should any such applications be received they will be sympathetically considered by the Australian Government.

(ii) The legitimate interests of the Clunies-Ross family will not be prejudiced by the transfer. In particular the rights accorded to the Clunies-Ross family under

The Rt. Hon. R.G. Menzies, C.H., Q.C., M.P.,
Prime Minister of the Commonwealth of Australia,
Parliament House,
CANBERRA. A.C.T.

COPY: A.G.'s:(Lyons)

COPY - Territories

pp. 297–299 Letter of 19 May, 1955 from G.W. Tory, Acting High Commissioner for the United Kingdom, to Australian Prime Minister, Robert Menzies.
NAA: A1209, 1957/5525 PART 1

E. R.

293

(7)

the Indenture of July, 1886, will not be prejudiced.

(iii) The control and operation and tenure of the Naval Wireless Station on Direction Island will remain undisturbed. This does not, of course, preclude the operation of the Station being handed over to the Australian Government should it be mutually agreed at some time in the future that this was desirable.

(iv) The Australian Government will accord without question full operating rights on the airstrip on the Islands to the British Overseas Airways Corporation and Colonial airlines if required and will consult the Governments of the United Kingdom and Singapore before any such rights are accorded to foreign airlines.

(v) Arrangements will be made in accordance with the terms of the Commonwealth Telegraphs Agreement of the 11th May, 1948, for Overseas Telecommunications Commission (Australia) to acquire Cable and Wireless Limited's interests in the Cable Relay Station on Direction Island, at an agreed price, if the Australian Government so desire. Pending such acquisition the Australian Government will extend to Messrs Cable and Wireless Limited the same facilities for the operation of their services in the Cocos Islands as have been accorded to them by the Singapore Government.

I should be grateful if you would confirm that paragraphs (i) to (v) above correctly express the understanding and intentions of the Australian Government.

Yours sincerely,

G. W. Tory

COPY: External Affairs, Immigration,
Civil Aviation, Defence, P.M.G.'s
A.G.'s

295

EJBF:YL

23-5-55

506/4

Dear Mr. Tory,

I acknowledge receipt of your letter of 19th May regarding the transfer to the Commonwealth of Australia of the Cocos Islands.

I confirm that paragraphs I to V in your letter correctly express the understanding and intentions of the Australian Government.

Yours sincerely,

R G M

Prime Minister.

Mr. G.W. Tory,
Acting High Commissioner
for the United Kingdom,
CANBERRA.

COPY: Defence, Civil Aviation,
Immigration, P.M.G.'s

Letter of 23 May, 1955 from Prime Minister Menzies, to G.W. Tory, Acting High Commissioner for the United Kingdom.
NAA: A1209, 1957/5525 PART 1

No. 34 of 1955.

AN ACT

To provide for the acceptance of the Cocos or Keeling Islands as a Territory under the Authority of the Commonwealth and to provide for the Government of that Territory.

Assented to 16th June 1955

pp. 300–307 Cocos (Keeling) Islands Act, No. 34 of 1955.
NAA: A1559, 1955/34

AN ACT

To provide for the acceptance of the Cocos or Keeling Islands as a Territory under the Authority of the Commonwealth and to provide for the Government of that Territory.

WHEREAS the islands named the Cocos or Keeling Islands (being the islands referred to in section four of this Act) are governed and administered as part of the Colony of Singapore, in pursuance of the Singapore Colony Order in Council, 1955, being an Order in Council dated the first day of February, One thousand nine hundred and fifty-five, made by Her Majesty by virtue and in exercise of the powers vested in Her Majesty by the Imperial Acts entitled the British Settlements Acts, 1887 and 1945, and the Straits Settlements (Repeal) Act, 1946: Preamble.

AND WHEREAS by the *Cocos (Keeling) Islands (Request and Consent) Act* 1954 the Parliament of the Commonwealth requested, and consented to, the enactment by the Parliament of the United Kingdom of an Act enabling the Queen to place the Cocos or Keeling Islands under the authority of the Commonwealth and making provision for matters incidental to the placing of those Islands under that authority:

AND

AND WHEREAS the Government of the Commonwealth has also requested, and consented to, the enactment by the Parliament of the United Kingdom of such an Act:

AND WHEREAS by the Imperial Act entitled the Cocos Islands Act, 1955, it is provided that Her Majesty may, by Order in Council, direct that the Cocos or Keeling Islands shall, on such date as may be specified in the Order, cease to form part of the Colony of Singapore and be placed under the authority of 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 Queen under the authority of and accepted by 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:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Cocos (Keeling) Islands Act* 1955.

Commencement.

2.—(1.) This Act shall come into operation on a date to be fixed by Proclamation.

(2.) The date so fixed shall be the date on which the Cocos or Keeling Islands cease to form part of the Colony of Singapore and are placed under the authority of the Commonwealth.

Parts.

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

Part I.—Preliminary (Sections 1–4).
Part II.—Acceptance of the Islands (Sections 5–7).
Part III.—Legislation.
Division 1.—Laws (Sections 8–11).
Division 2.—Legislative Powers of the Governor-General (Sections 12–13).
Part IV.—Application of Australian Citizenship to Certain Residents of the Territory (Sections 14–15).
Part V.—Miscellaneous (Sections 16–20).

Definitions.

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

"Ordinance" means an Ordinance made under this Act;

"the Islands" means the Cocos or Keeling Islands situated in the Indian Ocean in or about latitude twelve degrees five minutes south and longitude ninety-six degrees fifty-three minutes east, including the Northern Island otherwise called North Keeling Island;

"the proclaimed date" means the date fixed by Proclamation under section two of this Act;

"the Territory" means the Territory of Cocos (Keeling) Islands.

PART

PART II.—ACCEPTANCE OF THE ISLANDS.

5. The Islands are declared to be accepted by the Commonwealth as a Territory under the authority of the Commonwealth and shall be known as the Territory of Cocos (Keeling) Islands.

Acceptance of Cocos or Keeling Islands.

6.—(1.) Subject to sub-section (3.) of this section, all property, rights and powers in or in connexion with the Islands, being property, rights and powers which, immediately before the proclaimed date, were held or enjoyed by or on behalf of the Queen in right of the United Kingdom or of the Colony of Singapore, or by or on behalf of the Government of the United Kingdom or of the Colony of Singapore, shall, from and including that date, be deemed to be held or enjoyed by or on behalf of the Commonwealth.

Transfer of rights, liabilities, &c., to Commonwealth.

(2.) Subject to the next succeeding sub-section, all liabilities and obligations incurred before the proclaimed date by or on behalf of the Government of the United Kingdom or the Government of the Colony of Singapore, in or in connexion with the Islands and subsisting immediately before that date shall, from and including that date, be deemed to have been incurred by or on behalf of the Commonwealth.

(3.) The preceding provisions of this section do not apply to or in relation to—

(*a*) property, rights or powers in, or in connexion with, that part of the Islands known as Direction Island, or liabilities or obligations in respect of property in that part of the Islands;

(*b*) liabilities of the Colony of Singapore in respect of the payment of pensions or retiring allowances; or

(*c*) liabilities relating to public loans.

(4.) In this section, "property" includes immovable property.

7. All rights and powers vested in the Queen, or in the Governor of the Colony of Singapore, as successor to the Governor of the Straits Settlements, on behalf of the Queen, under the Indenture dated the seventh day of July, One thousand eight hundred and eighty-six, and made between Her late Majesty Queen Victoria, the Governor of the Straits Settlements and George Clunies Ross are, from and including the proclaimed date, exercisable on behalf of the Queen by the Governor-General of the Commonwealth or by such authority or person as the Governor-General appoints.

Exercise of rights and powers under Indenture of 7th July, 1886.

PART III.—LEGISLATION.

Division 1.—*Laws.*

8.—(1.) Subject to this Act and to any other Act extending to the Territory (whether passed before or after the proclaimed date), all laws in force immediately before the proclaimed date in the Islands shall continue in force in the Territory by virtue of this Act and not otherwise.

Continuance of existing laws.

(2.) Subject

(2.) Subject to this Act and to Ordinances made under this Act, where, by a law continued in force by this section, a power or function is conferred on—

(*a*) the Governor of the Colony of Singapore;

(*b*) the Governor of that Colony in Council; or

(*c*) any other person or authority,

that power or function may be exercised or performed by—

(*d*) the Minister;

(*e*) the Governor-General; or

(*f*) such person or authority as the Minister directs,

respectively.

(3.) The Minister may, by instrument in writing, delegate to a person or authority, in relation to a matter or class of matters or to a part of the Territory, a power or function conferred on him by the last preceding sub-section, so that the delegated power or function may be exercised by the delegate with respect to the matter or class of matters, or with respect to the part of the Territory, specified in the instrument of delegation.

(4.) A delegation under the last preceding sub-section is revocable at will and does not prevent the exercise of a power or function by the Minister.

Amendment and repeal of existing laws.

9. A law continued in force by the last preceding section may be amended or repealed by an Ordinance or by a law made under an Ordinance.

Application of Commonwealth Acts.

10.—(1.) Subject to the next succeeding section, an Act or a provision of an Act (whether passed before or after the proclaimed date) 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.

Application of Post and Telegraph Acts.

11.—(1.) Subject to this section—

(*a*) the *Post and Telegraph Act* 1901–1950, the *Post and Telegraph Rates Act* 1902–1951 and the *Post and Telegraph Rates (Defence Forces) Act* 1939–1940 extend to the Territory; and

(*b*) for the purposes of those Acts, the Territory shall be deemed to be within the Commonwealth and to be part of the State of Western Australia.

(2.) Notwithstanding

(2.) Notwithstanding anything contained in the last preceding sub-section, the Overseas Telecommunications Commission (Australia) may exercise and perform, in and in relation to the Territory, the powers, functions and duties conferred on it by the *Overseas Telecommunications Act* 1946–1952 in respect of the establishment, maintenance and operation of overseas telecommunication services, as if the Acts specified in the last preceding sub-section did not extend to the Territory.

(3.) In this section, "overseas telecommunication services" has the same meaning as in the *Overseas Telecommunications Act* 1946–1952.

Division 2.—Legislative Powers of the Governor-General.

Legislative powers of Governor-General.

12.—(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 *Gazette*, and an Ordinance shall, unless the contrary intention appears in the Ordinance, come into operation on the date of publication of the notice.

Tabling of Ordinances in Parliament.

13.—(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.

(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 thereupon ceases 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

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 of the resolution 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.

Part IV.—Application of Australian Citizenship to Certain Residents of the Territory.

Right of certain residents to elect to become Australian citizens.

14.—(1.) A person (not being an Australian citizen) who, immediately before the proclaimed date, was a British subject ordinarily resident in the Islands may make, in the prescribed manner and within the prescribed time, a declaration that he wishes to become an Australian citizen.

(2.) Upon the registration, as prescribed, of a declaration made by a person under the last preceding sub-section, that person shall be deemed to have become an Australian citizen upon the proclaimed date.

(3.) The registration of a declaration made by a person under sub-section (1.) of this section does not operate so as to render unlawful anything done before the date of the registration that would have been lawful if the declaration had not been made and registered.

Meaning of "ordinarily resident".

15. For the purposes of the last preceding section, a person shall be deemed to have been ordinarily resident in the Islands immediately before the proclaimed date if, immediately before that date—

(*a*) he had his home in the Islands; or

(*b*) the Islands were the place of his permanent abode notwithstanding that he was temporarily absent from them,

but a person shall be deemed not to have been so resident if, immediately before that date, he was resident in the Islands for a special or temporary purpose only.

Part V.—Miscellaneous.

Ordinances may provide for appeal to High Court.

16. It may be provided by Ordinance—

(*a*) that the High Court has jurisdiction, with such exceptions and subject to such conditions (if any) as are provided by Ordinance, to hear and determine appeals from judgments, decrees, orders and sentences of courts having jurisdiction in the Territory; and

(*b*) that

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

17. The Governor-General 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.

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

18. The institutions, customs and usages of the Malay residents of the Territory shall, subject to any law in force in the Territory from time to time, be permitted to continue in existence.

Continuation of Malay customs.

19. The accounts of the Territory are subject to inspection and audit by the Auditor-General for the Commonwealth.

Audit.

20. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for prescribing penalties, not exceeding a fine of Fifty pounds or imprisonment for three months, for offences against the regulations.

Regulations.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to provide for the acceptance of the Cocos or Keeling Islands as a Territory under the Authority of the Commonwealth and to provide for the Government of that Territory", 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.
16th June, 1955.

Printed for the GOVERNMENT of the COMMONWEALTH by A. J. ARTHUR at the Government Printing Office, Canberra.

Copied from United Kingdom Statutory Instruments 1955 Part II pp 2435-2437

SINGAPORE

1955 No. 1642

The Cocos Islands Order in Council, 1955

Made - - - - 28*th October*, 1955
Coming into Operation 23*rd November*, 1955

At the Court at Buckingham Palace, the 28th day of October, 1955.

Present,

The Queen's Most Excellent Majesty in Council

Whereas by the Cocos Islands Act, 1955(**a**), it is provided that Her Majesty may by Order in Council direct that the Cocos or Keeling Islands (in this Order referred to as "the Islands") shall, on such date as may be specified in the Order, cease to form part of the Colony of Singapore and be placed under the authority of the Commonwealth of Australia and that Her Majesty may by Order in Council make provision for purposes connected therewith and specified in the said Act:

And Whereas it is provided by section one hundred and twenty-two of the Constitution of the Commonwealth of Australia that the Parliament of the Commonwealth of Australia may make laws for the government of any territory placed by the Queen under the authority of and accepted by the Commonwealth:

And Whereas by the Cocos (Keeling) Islands Act, 1955(**b**), the Parliament of the Commonwealth of Australia has provided for the acceptance of the Islands as a Territory under the authority of the Commonwealth and for the government of that Territory:

And Whereas it is expedient that a date should now be specified on which the Islands shall cease to form part of the Colony of Singapore and be placed under the authority of the Commonwealth of Australia and that provision should be made for purposes connected therewith as aforesaid:

Now, therefore, Her Majesty, by virtue and in exercise of the power in this behalf by the Cocos Islands Act, 1955, or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Citation and Commencement

1.—(1) This Order may be cited as the Cocos Islands Order in Council, 1955.

(2) This Order shall come into operation on the 23rd day of November, 1955 (hereinafter referred to as "the appointed day").

(**a**) 3 & 4 Eliz. 2. c. 5. (**b**) Act No. 34 of 1955.

pp. 308–310 United Kingdom Order in Council, No. 1642, 28 October, 1955. (copytype)
United Kingdom Statutory Instruments 1955, Part II, pp. 2435 – 2437

Placing the Islands under the authority of the Commonwealth of Australia.

2. Upon the appointed day the Islands shall cease to form part of the Colony of Singapore and be placed under the authority of the Commonwealth of Australia.

Transfer of rights, liabilities, etc., to Commonwealth

3.---(1) Subject to paragraph (4) of this Article, all property, rights and powers in or in connection with the Islands, being property, rights and powers which, immediately before the appointed day, were held or enjoyed by or on behalf of Her Majesty in right of the United Kingdom or of the Colony of Singapore, or by or on behalf of the Government of the United Kingdom or of the Colony of Singapore, shall, from and including that date, be deemed to be held or enjoyed by or on behalf of the Commonwealth of Australia.

(2) It is hereby declared that the rights and powers referred to in paragraph (1) of this Article, include among other things, all rights and powers vested in Her Majesty or in the Governor of Singapore (as successor to the Governor of the Straits Settlements) on Her Majesty's behalf under the Indenture dated the seventh day of July, 1886, made between Her Majesty Queen Victoria, the Governor of the Straits Settlements and George Clunies Ross.

(3) Subject to paragraph (4) of this Article, all liabilities and obligations incurred before the appointed day by or on behalf of the Government of the United Kingdom or the Government of the Colony of Singapore in or in connection with the Islands and subsisting immediately before that day shall, from and including that day, be deemed to have been incurred by or on behalf of the Commonwealth of Australia.

(4) The preceding provisions of this section do not apply to or in relation to ---
(*a*) property, rights or powers in, or in connection with, that part of the Islands known as Direction Island, or liabilities or obligations in respect of property in that part of the Islands;
(*b*) liabilities of the Colony of Singapore in respect of the payment of pensions or retiring allowances; or
(*c*) liabilities relating to public loans.

(5) In this Article, "property" includes movable and immovable property.

Pending proceedings

4. Any criminal or civil proceedings, including appeals, pending on the appointed day in the Supreme Court of Singapore or in the Court of Criminal Appeal of Singapore by virtue of any jurisdiction of the said Courts within the Islands shall be carried on and concluded in like manner as nearly as may be as if this Order had not been made.

Appeals to the Privy Council

5. Nothing in this Order shall affect or prejudice any appeal or petition to Her Majesty in Council in relation to any proceedings commenced prior to the appointed day in the Supreme Court of Singapore or in the Court of Criminal Appeal of Singapore by virtue of any jurisdiction of the said Courts within the Islands.

Validity of previous acts

6. Nothing in this Order shall affect the validity or future operation of any lawful act done by any person or authority in or in connection with the Islands prior to the appointed day.

Amendment of Singapore laws

7. The amendments to the laws of Singapore specified in the Schedule hereto shall take effect on the appointed day.

Interpretation

8. The Interpretation Act, 1889(**a**), shall apply for the purposes of interpreting this Order as it applies for the purpose of interpreting an Act of Parliament.

Publication

9. This Order shall be published in the Official Gazette of the Colony of Singapore.

W. G. Agnew.

SCHEDULE

1. The definition of "Colony" or "Colony of Singapore" appearing in subsection (1) of Section 2 of the Interpretation and General Clauses Ordinance, 1951(**b**) is amended by the deletion therefrom of the words "the Cocos or Keeling Islands" .

2. The Cocos Islands Ordinance(**c**) is repealed.

EXPLANATORY NOTE

(*This note is not part of the Order, but is intended to indicate its general purport.*)

The main purpose of this Order is to fix the 23rd day of November, 1955, as the date on which the Cocos Islands shall cease to form part of the Colony of Singapore and be placed under the authority of the Commonwealth of Australia. As from this date, in accordance with Section 1 (2) of the Cocos Islands Act, 1955, the Straits Settlements (Repeal) Act, 1946, and any Order in Council in force in respect of the said Colony under that Act and the British Settlements Acts, 1887 and 1945, as applied by that Act, will have effect as if references therein to the said Islands were omitted. The transfer of authority over the Islands from the Singapore Government to the Government of the Commonwealth of Australia necessitates the enactment of certain consequential provisions which are contained in Articles 3 to 9 and the Schedule.

(**a**) 52 & 53 Vict. c. 63. (**b**) Ord. 4 of 1951.
(**c**) Cap. 8 Laws of Singapore (Revd. Ed. 1936)

COMMONWEALTH OF AUSTRALIA.

Department of Territories.

Departmental No. 198

-1 NOV 1955 195

MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

Executive Council No. 45

SUBJECT.

COCOS (KEELING) ISLANDS ACT 1955

COMMENCEMENT OF ACT.

Recommended for the approval of His Excellency the Governor-General in Council that he be pleased to sign a Proclamation in the within form fixing the 23rd November 1955 as the date of commencement of the Cocos (Keeling) Islands Act 1955.

Paul Hasluck.

Minister of State for Territories.

Approved in Council.

W. J. Slim

Governor-General.

3 NOV 1955 19

Filed in the Records of the Council.

Secretary to the Executive Council.

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

Executive Council Minute No. 45 1 November, 1955.
NAA: A1573,1955/25

PROCLAMATION

Commonwealth of Australia
to wit.

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

Governor-General.

WHEREAS it is provided by sub-section (1.) of section two of the Cocos (Keeling) Islands Act 1955 that that Act shall come into operation on a date to be fixed by Proclamation:

AND WHEREAS by sub-section (2.) of that section it is provided that the date so fixed shall be the date on which the Cocos or Keeling Islands cease to form part of the Colony of Singapore and are placed under the authority of the Commonwealth:

AND WHEREAS the Cocos or Keeling Islands will cease to form part of the Colony of Singapore and be placed under the authority of the Commonwealth on the twenty-third day of November, One thousand nine hundred and fifty-five:

NOW THEREFORE I, Sir William Joseph Slim, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, hereby fix the twenty-third day of November, One thousand nine hundred and fifty-five, as the date on which the

pp. 312–313 Cocos (Keeling) Islands Act Proclamation, 3 November, 1955.
NAA: A1573, 1955/25

2.

Cocos (Keeling) Islands Act 1955 shall come into operation.

GIVEN under my Hand and the Great Seal of the Commonwealth this third day of November, in the year of our Lord One thousand nine hundred and fifty-five, and in the fourth year of Her Majesty's reign.

By His Excellency's Command,

Paul Hasluck

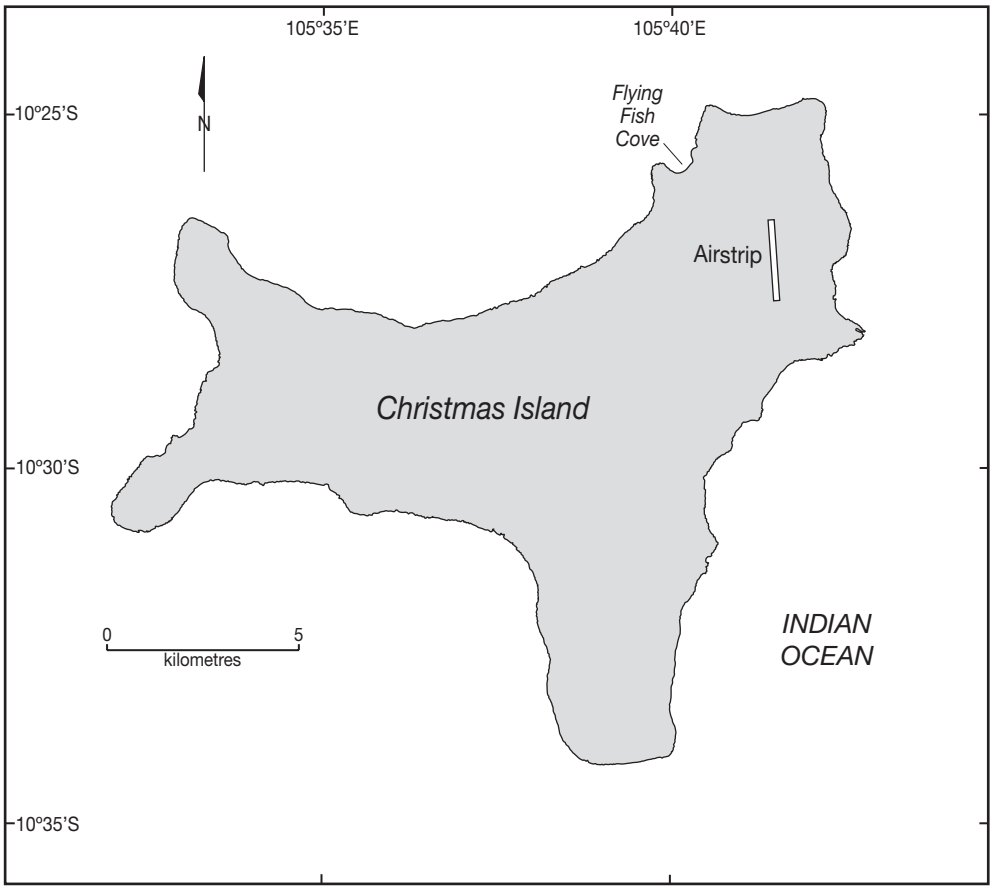
Minister of State for Territories.

GOD SAVE THE QUEEN!

MORE PHOSPHATE

Despite the sensitivities and convoluted steps associated with Australia's acquisition of the Cocos (Keeling) Islands, Australia was at the same time looking at an adjacent island—Christmas Island—with a view to further securing the nation's phosphate supplies. Australia had been attempting to utilise Christmas Island phosphate since those from Nauru had been threatened with disruption during the First World War.

Australia saw an opportunity to secure these supplies by seeking territorial authority over Christmas Island.



Christmas Island. *Map drawn by Karina Pelling.*

CHAPTER TWELVE

Christmas Island

> Man has never lived on Christmas Island, nor would it be a pleasant residence, apart from the fact that there is no water … [T]he extreme discomfort of locomotion and the absence of any harbour … will deter any settlers from seeking a home there until other more favourable spots are occupied.
>
> —Rear Admiral Sir W Wharton, 1888[1]

> … a dozen huts have been built at the head of Flying Fish Cove.
>
> —Lieutenant Commander W Maitland Dougall, 1889*

Christmas Island, an island of 135 square kilometres in the Indian Ocean 2650 kilometres north-west of Perth, was annexed by Britain in 1888. Britain administered it as part of the colony of Singapore for 70 years, before transferring its sovereignty to Australia in 1958.

PRELUDE

British and Dutch navigators first included Christmas Island on their charts from the early seventeenth century. On Christmas Day, 25 December 1643, Captain William Mynors of the East India Company vessel *Royal Mary* arrived there and named the island for the day. The earliest landing was recorded in March 1688 by William Dampier, then the mate on the British ship *Cygnet*, who found it uninhabited. An account of this visit can be found in Dampier's *Voyages*. He describes how, when trying to reach Cocos from New Holland (as Australia was then known), the ship was pulled off course in an easterly direction, arriving at Christmas Island. Two of the crewmen were the first recorded people to set foot on the island.

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* Thus, while Rear Admiral Wharton was pessimistic about likely settlement, within a year Christmas Island had been settled. The reason: phosphate.

During his 1872–76 expedition to Indonesia, naturalist Dr John Murray carried out extensive surveys, and predicted that phosphate would be found on the island. This proved to be correct, and it was at his urging that Britain annexed the island. In June 1888, Captain WH May of HMS *Imperieuse* landed at Flying Fish Cove on the north side of the island and formally declared it to be part of the British dominions, under the immediate jurisdiction of the Government of the Straits Settlements (which comprised Singapore and Malacca and Penang, the two British settlements on the Malay Peninsula). Soon afterwards, George Clunies-Ross of the Cocos (Keeling) Islands, some 980 kilometres to the south-west, established a small settlement at Flying Fish Cove.

The story of Christmas Island from 1888 until transfer to Australia has multiple strands. It is linked to wider issues of British colonial administration through the island's incorporation with Singapore; it is dominated by commercial interests in phosphate, through which it has a connection with Nauru; it is also connected with the Cocos (Keeling) Islands, the main base for the Clunies-Ross family, which held a major interest in the company formed to mine phosphate on Christmas Island. Its story is affected by two world wars, which prompted Australian and New Zealand anxiety about interruptions to supplies of phosphate and led to the island being seen in a strategic light; and its history reveals an interesting dimension of the relationship between Australia and New Zealand.

THE DOMINANCE OF COMMERCIAL INTERESTS

Little time had elapsed after annexation by Britain in 1888 before the Clunies-Ross interests established a settlement. Then, in February 1891, George Clunies-Ross and John (by now Sir John) Murray were granted a 99-year lease over the island, giving them full authority to cut timber and extract all phosphates and other minerals.[2] In 1897 they transferred the lease to the Christmas Island Phosphate Company (CIPCO), of which the Clunies-Ross family, John Murray and friends were founding members, following the discovery of large deposits of phosphate of lime.[3] Phosphate mining operations began, using indentured workers from Singapore, China and Malaya.

In 1900, Christmas Island was incorporated with the Straits Settlements of Singapore and the laws of Singapore applied to it. The colony of Singapore maintained a district officer on the island with a few police attached to his staff for the maintenance of law and order.

Australian interest in Christmas Island was sparked during World War I by the likely disruption of phosphate supplies from Nauru (until then a German protectorate) to Australia and New Zealand. During the 1920s, demand for superphosphate increased and was predicted to outstrip the capacity of Nauru and Ocean Island. In 1926, a committee of Australian phosphate manufacturers suggested that it might be advisable

to purchase Christmas Island phosphate rights from CIPCO, and for the British Phosphate Commission (BPC) to work it in conjunction with Nauru and Ocean Island.[4] The BPC was made up of Australian, British and New Zealand representatives.

In November 1926, during the Imperial Conference in London, Sir Alwin Dickinson, the British Commissioner of the BPC, submitted a proposal in favour of purchase at about £1,600,000. The Australian and New Zealand governments agreed to this course of action in September 1927, but the British Government decided not to join them in the proposed purchase of rights. After considerable delay, negotiations were conducted in 1929 but were aborted because CIPCO was not willing to sell for less than £4,000,000.[5] The BPC continued to manage production from Nauru and Ocean Island.

The question of purchase lapsed until after World War II. After Nauru was attacked by German raiders in December 1940, the BPC arranged phosphate supplies from Christmas Island, from which 94,000 tons was obtained up to early 1942.

Christmas Island was occupied by the Japanese in 1942, but Japan abandoned attempts to export phosphate after one of its ships was torpedoed by allied submarines. Japanese occupation ended in 1945, and CIPCO resumed operations.[6]

AUSTRALIA AND NEW ZEALAND TAKE OVER COMMERCIAL RIGHTS

The governmental arrangements for Christmas Island changed slightly in 1946, when legislation in the United Kingdom repealed the existence of the Straits Settlements as a single colony. An order-in-council decreed that the island of Singapore, with the dependencies of Cocos and Christmas islands, which had been attached to it for administrative convenience, was to be governed and administered as the separate colony of Singapore.[7]

By then, commercial discussions between the BPC and CIPCO about ways to assure future supplies of phosphate to Australia and New Zealand had been underway since the middle of 1945. In June 1947, governments became closely involved.[8] Prime Ministers Ben Chifley of Australia and Peter Fraser of New Zealand agreed to propose to the British Government that, on expiry of CIPCO's lease in 42 years time (1990), the lease not be renewed, but that rights to mine the phosphates should then be granted to the BPC on behalf of the three governments. Late in 1947, the United Kingdom rejected the proposal on the grounds that 'it would be impossible to bind whatever government might be in power here some time forty years hence not to renew the Company's concession on its expiry.'[9] The British Government suggested instead the resumption of negotiations for Australia and New Zealand to purchase the rights. It also flagged that it would be necessary to inform the Governor of Singapore before any final arrangement was made with the company.

In the same year, the Minister for External Territories, EJ (Eddie) Ward†, also made an informal approach to the Secretary of State for Commonwealth Relations, suggesting that the Commonwealth Government might take over the administration of Christmas Island. The matter was not favourably received and was not pursued.[10]

In May 1948, the Australian and New Zealand governments reopened negotiations to purchase CIPCO's assets and rights for the unexpired period of the mining concession for a lump sum. On 16 July, a price of £2.75 million was settled with CIPCO.[11] The British-administered Singapore Government required the continuation of royalty payments under the lease, the continuing application of Singapore labour laws, and the continuing provision by the company or its successors of essential services for government officers stationed on Christmas Island.

The sale was publicly announced on 1 October 1948.[12] Soon afterwards, the possibility of Australia taking over control of Christmas Island from the British was again raised in Canberra. Notes from an interdepartmental conference held at the Department of External Territories on 24 October record:

> The question of the future sovereignty of Christmas Island was then considered and it was agreed that the possibility of transferring the Administration of the Island from the jurisdiction of the Singapore Government to that of the Australian Government might be explored in the near future, but that such action could follow the completion of the purchase from the Christmas Island Phosphate Company and the establishment of the Christmas Island Phosphate Commission.[13]

The New Zealand and Australian governments concluded the mining concession sale with CIPCO on 31 December 1948. They then turned to the detail of an agreement between them for sharing the rights to the phosphate and the control and working of the deposits. The two governments were to share equally the purchase price and costs of working. The Christmas Island Phosphate Commission, comprising three commissioners, was to be established to manage and control the undertaking on behalf of the governments. One commissioner was to be appointed by the Australian Government, one by the New Zealand Government and one by the two governments jointly. The British Phosphate Commissioners were to be appointed as managing agents of the Christmas Island undertaking. Rent and royalty payments would continue to be paid to the Government of Singapore.

The *Christmas Island Agreement Act 1949*, authorising the execution of the agreement, was passed in Australia in October 1949. Ward indicated in his second reading speech that the sole object of the purchase of rights and ongoing agreement was to ensure continuity of supplies of high-grade phosphate to meet the needs of Australia's

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† EJ (Eddie) Ward was the colourful and feisty Labor MP for East Sydney. He sat in the Commonwealth Parliament from 1931 to 1963 and was notable for his radical views. He became Minister for External Territories in 1943, and carried that portfolio until 1949.

agricultural industry.[14] However, during the year there had been press speculation that the island would also be used as an observation post for experimental rockets fired from the Woomera rocket range in central Australia.[15]

With the authorising legislation passed, the agreement between the two governments was concluded on 26 November 1949.

Several years were to pass before the issue of transfer of sovereignty was formally pursued again, although during 1950 the Department of External Territories raised with its minister the possibility of his reopening the matter.[16]

In the meantime, the possible use of Christmas Island to house political detainees was raised by the British Government, with eerie echoes down the years to the recent use of the island to detain asylum seekers. In July 1950, the United Kingdom's Commissioner General for South-east Asia asked the Australian Prime Minister for assistance in obtaining the use of Christmas Island as a place of confinement for political detainees from Malaya, noting the difficulties that their retention in Malaya was causing for the Malayan authorities. The Australian and New Zealand governments both consulted the BPC (managing agents for the Christmas Island operations), which expressed grave concern that the effect of establishing a settlement of upwards of 7000 political detainees would probably cause their staff of 1700, of all races, to leave the island. They also pointed out the inadequacy of domestic and other facilities. The two governments shared these concerns and rejected the proposal.[17]

In March 1952, there was further press speculation about the use of Christmas Island as an observation post for the United Kingdom's atomic weapons tests at Woomera.[18]

TRANSFER OF SOVEREIGNTY

In August 1953, a Department of External Affairs minute noted that the Department of Territories‡ had inquired whether the idea of a transfer of sovereignty was still in prospect or had been abandoned.[19] No immediate action took place.

In September 1954, representatives from the departments of the Attorney-General, Commerce and Agriculture, External Affairs, the Prime Minister, Territories and Treasury met to review the outlook for demand and supply of phosphates in Australia. By this stage, supply to Australia and New Zealand had been rationalised to minimise shipping costs. Australia was now taking the whole output from Christmas Island, and New Zealand was drawing a larger tonnage from Nauru and Ocean Island, which were nearer to it, to compensate.

The interdepartmental committee[20] noted that Australia had two particular interests in Christmas Island: as a source of phosphate, and as a strategically located island. The committee recorded its concern about the potential for Singapore (the

‡ The title of the department had changed in May 1951, when the word 'External' was dropped.

island being administratively a part of the colony of Singapore) to force up the price of phosphate by imposing export taxes and taking other action to get more and more revenue from the island. It also noted constitutional changes, expected in 1955, affecting the Government of Singapore.

Defence's assessment of strategic importance was flagged, and the committee noted the desirability of being able to use Christmas Island for an airfield while denying it to any potentially unfriendly power.[21] The island's defence value had been raised in 1952 by a joint planning committee, which had reached the view that the island had no strategic value at that time because it had no airfield and its harbour was unsuitable.[22]

The interdepartmental committee expressed the view that, there being no indigenous inhabitants, any revenue derived by the Singapore Government from the phosphate undertaking was an accidental result of the island having been attached to that government in 1888, and that there appeared to be no geographical or political reason for its attachment. The committee considered it in the interests of Australia and New Zealand that sovereignty over Christmas Island be transferred to Australia before constitutional changes occurred in Singapore.

The committee agreed that legislation for such a transfer would need to be on the same pattern as for Cocos Island, but with compensation to Singapore for lost revenue, and that the matter should be put before the Commonwealth Government in a submission to Cabinet.[23]

Cabinet decided on 24 November 1954 that it was in Australia's interests to have sovereignty over Christmas Island transferred to it, and authorised Prime Minister Robert Menzies to open the question by informal discussions in London.[24] It was felt that the issue of sovereignty over Christmas Island should not be linked with the proposed transfer of Cocos Island, negotiations for which were at a delicate stage. The Prime Minister was not prepared to risk delay to the Cocos legislation.[25]

Menzies apparently raised the question of transfer only in passing in February 1955, and the Secretaries of State for Colonies and Commonwealth Relations took his comments at the time only as an indication of the lines along which Australia was thinking.[26]

The sovereignty transfer issue remained closely linked with constitutional development towards self-government in Singapore. The Minister for External Affairs, Richard Casey, raised it with the Governor of Singapore in London in October 1955. The Governor commented that there would be strong opposition in Singapore to the transfer of Christmas Island to Australia because of loss of revenue and natural dislike of losing territory, but also:

> an interpretation placed on Australia's desire to have this base would be related to Empire building by Australia, and in publicity this would be related to Australian troops in Malaya and the transfer of Cocos Islands. The Malayan Communist Party would develop this, and suggest that as the United Kingdom was moving out Australia was moving in.

Casey agreed to let the matter 'lie fallow for a year before raising it again'.[27]

Early in 1956, however, Casey suggested an alternative method to assure Australia's interests. He wrote to Menzies, reiterating the concern that once Singapore ceased to be under the direct control of the United Kingdom it could come under a government that was either communist or subject to communist pressure. He suggested that, for the benefit of defence and to assure phosphate supplies, it would satisfy Australia if the United Kingdom were to detach Christmas Island from Singapore and retain it under British control. He proposed that the Prime Minister take up the matter again with the British Government.[28]

In a minute to the Prime Minister dated 13 March 1956, his department was ambivalent about the transfer of Christmas Island to Australia. It felt that:

> … it would be inconceivable that the United Kingdom would detach Christmas Island from Singapore and retain it under United Kingdom control in present circumstances. Singapore would have to be consulted. This would … invoke strong criticism of both the United Kingdom and Australia.

The minute went on:

> We are becoming rather colonial minded. Apart from our old territories, Cocos Island has recently been transferred and proposals have now been advanced covering Christmas Island, New Hebrides and Solomon Islands. Are we not putting too much of a strain on our resources? What will be the attitude of Asian countries towards this expansion? … The balance between the pros and cons is a very delicate one.[29]

Other departmental advice had also raised likely difficulties in detaching Christmas Island from Singapore.[30]

The Prime Minister nevertheless duly raised the matter in London in March 1956 at the Commonwealth Prime Ministers' Conference, receiving an interim reply from British Prime Minister Sir Anthony Eden in April 1956 saying that it was not a simple matter and that it would take some time to reach conclusions.[31]

A report on 18 May 1956 in the Melbourne *Herald* noted that Australia was understood to be seeking sovereignty over Christmas Island.

On 22 October 1956, a substantive reply came to Menzies from the Secretary of State for Commonwealth Relations. The United Kingdom was agreeable in principle to the detachment of the island from Singapore and its administration as a separate dependency of the United Kingdom. The reply flagged the question of Singapore's

phosphate royalties as an important one to resolve, noting that it would not be possible in the current political circumstances to deprive Singapore of that revenue, or for any expense to fall on the United Kingdom.[32]

Discussions ensued over the next few months about how best to make the financial arrangements with Singapore, both Australia and New Zealand having accepted that this would be necessary. The United Kingdom was also concerned about how and when to raise the issue of detachment with the new Chief Minister of Singapore, Lim Yew Hock. By February 1957 the Commonwealth Relations Office had expressed a tentative view supporting a lump sum payment to Singapore rather than ongoing annual payments; and, because it saw some difficulties in detachment with later transfer to Australia, it wanted to know whether Australia had any objection to immediate transfer.[33]

Cabinet decided on 5 February 1957 that Australia would accept an immediate transfer of the territory of Christmas Island if it could be arranged, but 'was of the opinion that negotiations for the detachment of the territory from Singapore should not be imperilled by this suggestion'.[34] It also appointed an Australian delegation to participate in a meeting with British and New Zealand officials in London to discuss compensation to Singapore for the loss of phosphate revenues, authorising negotiations on the basis of a lump sum.

POLITICAL DELAYS

Following the officials' discussions in London, the British Government reached a firm decision that Christmas Island would transfer to the administration of Australia at the time that internal self-government came into force in Singapore, which was expected to be late in 1957.[35] The United Kingdom was also concerned to clarify citizenship for Christmas Island residents. Australia and the United Kingdom agreed that the same arrangements as for Cocos Islanders would apply; that is, permanent residents on the island at the time of handing over who were citizens of the United Kingdom because of birth or residence on the island would be given the option of becoming Australian citizens, and those born on the island after that date would be Australian citizens by operation of law.[36] During March, the amount of the payment to Singapore was agreed at £2.33 million.[37]

On 6 March 1957, the Crown Solicitor raised with the Department of External Affairs the question of New Zealand's interest in the joint lease when the Commonwealth became the owner of the whole island, in which case New Zealand would cease to have any legal interest. He suggested that it would be necessary for some new agreement on the future of the lease to be made between the Australian and New Zealand governments.[38]

On 12 March, the Colonial Secretary broached the topic of transfer and financial payment with Singapore's Chief Minister, Lim Yew Hock, who reacted positively but

asked for time to consult his colleagues. He also seemed satisfied that Christmas Island inhabitants would be treated similarly to Cocos Islanders in the area of citizenship rights. On the same day, the Australian Commission in Singapore cabled the Department of External Affairs raising matters that might need to be considered in any statement about separation.[39]

Difficulties with Lim's colleagues delayed any public announcement for several months. Those difficulties were not eased by press misreporting of remarks by Professor Mark Oliphant, who was interviewed when passing through Singapore late in March. He was asked about possible British atomic tests on Christmas Island (meaning the British territory of Christmas Island in the Pacific Ocean) and said that radioactive fallout would certainly scatter over many neighbouring regions. This was reported in the Singapore press as threatening Singapore, after the reporter assumed that it was Christmas Island in the Indian Ocean which was involved.[40] The External Affairs Department sent a cable to the Australian High Commission in London, suggesting a sentence for inclusion in Minister Casey's proposed statement to make it clear that Christmas Island, Indian Ocean, should not be confused with Christmas Island, Pacific Ocean.[41§]

The delay also raised again the question of detachment from Singapore before transfer, and Lim had to persuade his Singapore colleagues on this aspect.

BREAKTHROUGH

The public announcement of the transfer to Australia was made in the British Parliament on the afternoon of 6 June, with a simultaneous press release in Australia and Singapore (where it was 7 June). The United States had been told informally of the transfer before the press release was issued.[42]

The rationale for the transfer was given in the House of Commons:

> In the light of the new constitutional arrangements now agreed upon for Singapore, Her Majesty's Government do not consider that they can ask the Singapore Government to continue to administer Christmas Island … on their behalf. Christmas Island has since 1900 been associated for administrative purposes with Singapore. The sole activity on the Island is the extraction of phosphates by the Christmas Island Phosphate Commission, which is wholly owned by the Australian and New Zealand Governments. Arrangements are accordingly being made to transfer the administration of the island to the Government of Australia, which draws about one third of its phosphate requirements from the Island and is the government most clearly concerned with its administration.[43]

§ The first high-altitude British nuclear test took place over the Pacific Ocean Christmas Island on 28 April 1958.

The statement also set out assurances about atomic bombs and citizenship (the same option as applying to Cocos Islanders; that is, permanent entry to Australia), and referred to the ex gratia payment of 20 million Malayan dollars to be made to Singapore by the United Kingdom, to be reimbursed by the Australian and New Zealand governments.

Despite earlier concerns, there was relatively little press interest in Singapore. Lee Kuan Yew was quoted in the *Straits Times* of 8 June 1957 as saying, 'To give away all the appurtenances of Singapore before we take over is a downright swindle. A few years ago they gave away the Cocos Islands, now it's Christmas Island. They might as well give away St John's Island, Pulau Bukom and the other neighbouring islands.' However, the *Straits Times* leader of 19 June 1957 said: 'There seems no very good reason why Singapore should resent losing Christmas Island for 20 millions … Singapore has no claim to the island which has been administered since 1946 simply as a matter of convenience …'[44]

Between April and June 1957, the British and Australian governments exchanged views about all the steps necessary to achieve transfer and, with Singapore involved as well, the administrative arrangements that might be needed after detachment and until transfer of sovereignty (for example, for police, education and postal services). The United Kingdom would administer the island as a separate colony in the period between detachment from Singapore and transfer to Australia, which was envisaged to be less than a year. Australia and New Zealand also discussed amendments that might be needed to the bilateral phosphate agreement, and the means of repaying to the United Kingdom the ex gratia payment to Singapore.[45]

On 1 August 1957 in the House of Commons, John Profumo, Secretary of State for the Colonies, was asked to what extent the inhabitants of Christmas Island had been consulted on the transfer. Profumo replied that there was no indigenous population; that the inhabitants' citizenship rights would remain unaffected; that they would be free to continue to return to their own territories; and that those remaining on the island would be eligible to acquire Australian citizenship. For those reasons, the government had not considered it necessary to consult before deciding on transfer.[46]

The Australian Government agreed that the same process as had taken place in the transfer of Cocos Island should apply, and in early August approved the five legislative steps involved and their timings:

- July–August 1957: United Kingdom order-in-council to effect detachment of Christmas Island from Singapore
- September–November 1957: passage through Australian Parliament of 'request and consent' legislation
- January–February 1958: passage of British legislation authorising transfer of the island to Australia
- March–April 1958: passage of Australian 'acceptance and administration' Act

- May–June 1958: promulgation of British order-in-council placing Christmas Island under the authority of the Australian Government.

The government also authorised the preparation of the request and consent legislation and its introduction into parliament when parliament reassembled.[47] An authorising Act was considered necessary because the United Kingdom had governed Christmas Island under legislation. Also, the British view was that the 1931 Statute of Westminster was applicable. The statute had made it necessary to include in an Act of the British Parliament that was to extend to a dominion as part of the law of the dominion, a declaration that the dominion had requested and consented to the enactment of the Act. The Statute of Westminster had also been relevant in the case of Cocos (Keeling) Islands.

In the meantime, New Zealand pressed for a new phosphate agreement in the light of the proposed transfer.[48]

There was some slippage in timings, and by November 1957 the British view was that it did not matter whether the United Kingdom's order-in-council or the Australian request and consent legislation came first.[49]

In the event, the Australian legislation was introduced into the House of Representatives on 3 December 1957 and passed on 4 December, with passage in the Senate on the following day, 5 December. There was little debate in either house. Dr Evatt, Leader of the Opposition, commented in the House of Representatives that:

> This bill illustrates the present trend in British Commonwealth relationships. That trend is for territories administered by the Crown in right of the United Kingdom gradually to be placed under the administration of self-governing dominions, or nations as they are today, in both their internal and external authority. In this instance, Australia takes over Christmas Island. It is quite obvious that that trend has not yet by any means finished and that other possessions in the Pacific will come under Australian administration as the years go on. It is right that Australia should assume responsibility and authority in this way.[50]

On 13 December 1957, Christmas Island was detached from Singapore by an order-in-council made by Her Majesty in Council. The order was laid before the British Parliament on 19 December, when the Colonial Secretary, Alan Lennox-Boyd, made a statement noting that Christmas Island would be transferred to Australia, but that the transfer would take some time to effect, and in the meantime as an interim measure the island would be administered as a separate dependency of Her Majesty's Government. He also stated that the order would come into effect on 1 January 1958 when the proposed sum of 20 million Malayan dollars would be paid over ex gratia to the Government of Singapore.[51]

In Australia, the *Christmas Island (Request and Consent) Act 1957* was assented to on 13 December 1957.

Thus, 1958 began with the first two steps of the process completed. However, there was to be a gestation period of nine months before the transfer to Australia was complete.

Cabinet considered the matter again in March 1958, agreeing to preparation of a bill to provide for the acceptance of Christmas Island as a territory under the authority of the Commonwealth, and for the government of that territory. Cabinet also observed that, although Singapore currency would have to be used during the early stages of Australian administration, it would be preferable for Australian currency to eventually become the sole medium of exchange.[52]

In late March 1958, the Australian Government formally informed the British Government of the enactment of its request and consent legislation. The drafting of the British Act to authorise transfer—the third of the five necessary steps—proceeded in March and April with opportunities for Australia and Singapore to comment.[53]

Before the introduction of the British Act, the British and Australian governments had agreed on the terms of letters to be exchanged between prime ministers covering certain understandings: satisfactory arrangements for the status and citizenship of the inhabitants of the island; permission for residents to return to Singapore from time to time; and the willingness of Australia to give British airlines operating rights at any airfield on the island. These arrangements were closely akin to those agreed in relation to the Cocos (Keeling) Islands.

The United Kingdom's Christmas Island Bill was introduced into the House of Lords on 24 April 1958 by John Drummond, Earl of Perth and Minister of State for Colonial Affairs. He noted in the second reading speech that:

> This Bill, which is an Enabling Bill, allows the transfer by Order in Council to the Commonwealth of Australia. The Bill closely follows the pattern set when the Cocos Islands were similarly transferred. At the time of that transfer the necessity for such an elaborate procedure, which entailed Acts of Parliament in both the United Kingdom and Australia, was questioned. The noble Earl, Lord Swinton, who was at that time piloting that Bill through your Lordships' House, said:
>
> > 'Finally all the lawyers agreed—so it must be right—that the only safe way of doing this' —
>
> that was effecting the transfer —
>
> > 'was by an Act of Parliament in this Parliament, and a series of Acts of Parliament, of which one has already been passed, in the Australian Parliament.'
>
> The lawyers took 3 years to reach that decision, and I think that, the precedent having been set, we should be foolhardy to try any other method.[54]

Having proceeded through the House of Lords, the Bill was introduced in the House of Commons on 12 May. There was some debate and commentary on both 12 and 13 May. Cuthbert Alport, the Under-Secretary of State for Commonwealth Relations, commented that 'This, as the House will realise, is one of those rather strange responsibilities that have come to us in the past as a result of the spirit of adventure of men and women of this country.'[55] Some members expressed concern that the citizenship rights of those resident on the island were properly dealt with. Others raised questions about the rights that might remain with the United Kingdom in relation to defence and air facilities. They were assured by Alport, who was shepherding the legislation through the House, that 'The Australian Government have made clear that they would cooperate fully with the United Kingdom Government to ensure that the facilities which might be available on the island were made available to us, if the necessity arose.'[56]

The Bill was passed on 13 May 1958.

There remained several more steps to be taken, including an Australian acceptance and administration Act; negotiation with New Zealand on a new phosphate agreement (which would need authorising legislation); and a Deed of Surrender to revoke the Singapore agreement of 1955 and surrender the existing lease from the United Kingdom, which governed the property rights of the British Phosphate Commissioners.

In addition to the proposed exchange of letters on citizenship and air rights, a separate exchange was proposed on defence matters.[57] The Melbourne *Herald*, reporting on 10 June 1958 on the impending transfer, noted the potential of the island as a research station for the Woomera rocket range.[58]

Legislation was in preparation by early July and was planned for passage early in the parliamentary sitting due to start on 5 August, with handover timed for the end of September. At the same time, Australia was positioning itself for further negotiations with New Zealand on the arrangements for phosphate mining (there was one point of difference between the two sides regarding funding aspects). At the United Kingdom end, drafting of the order-in-council for the transfer was also underway.

The Bill to provide for the acceptance of Christmas Island as a territory under the authority of the Commonwealth and for its government was introduced and had its second reading in the House of Representatives on 21 August. Paul Hasluck, the Minister for Territories, set out the history of the movement towards transfer, in which he saw the legislation as being 'another step in a rather long and involved procedure for the transfer of sovereignty of Christmas Island'. He outlined the main provisions in the Bill:

- Part I provided for the Act to come into operation on a date to be specified in the United Kingdom's order-in-council as the date on which Christmas Island would cease to be a colony of the United Kingdom and would be placed under the authority of the Commonwealth.
- Part II provided for the island to be accepted by the Commonwealth and for the transfer to Australia of property, rights and liabilities of the United Kingdom, the colony of Christmas Island and the colony of Singapore.
- Part 111 dealt with legislation of the territory, including the continuation of selected Singapore laws.
- Part IV dealt with the judicial system, with the Supreme Court of Singapore continuing to exercise jurisdiction until other provisions could be made.
- Part V dealt with citizenship.
- Part VI provided for employment of persons in the administration of the island, for prisoners to serve sentences outside the territory, and for the continued circulation in the territory of the currency in use immediately before the date of transfer.[59]

There was virtually no debate and the Bill passed on 27 August, moving to the Senate the following day. Members sought assurance that parliament would receive an annual report; and Senator Justin O'Byrne (Tasmania) expressed the view that the ordinances proclaimed there should adequately safeguard the interests of the people who were to be employed there, as well as 'those who are to have the opportunity to avail themselves of the great honour of Australian citizenship … Christmas Island is an important meeting place of east and west.' In debate, Senator Nicholas McKenna (Tasmania) made the point that 'from the constitutional viewpoint, the bill is of great interest in that it very clearly establishes Australia as a self-governing nation under the Crown.'[60]¶ The Bill passed the Senate on 28 August and was returned to the House.

A flurry of activity ensued in September. The *Christmas Island Act 1958* was assented to on 2 September, and Part I came into effect at that time. On 11 September, the order-in-council was made at a meeting of the Privy Council, specifying 1 October 1958 as the transfer day. (Some weeks earlier, the United Kingdom had accepted Australia's suggestion that 1 October rather than 30 September would be more convenient for accounting purposes.) Once the order-in-council had been made, a proclamation was made by the Governor-General on 18 September 1958, bringing the remaining provisions of the *Christmas Island Act 1958* into effect from 1 October

¶ McKenna was referring to the steps necessary for the transfer to take place. It was felt that Australian request and consent legislation was necessary to meet the terms of the 1931 Statute of Westminster, which defined the independence of the dominions. As well, British authorising legislation had to be passed to permit the Queen to transfer Christmas Island as its status had been regulated by previous British legislation. This also applied in the case of the Cocos (Keeling) Islands.

1958. The proclamation was published in Commonwealth of Australia Gazette No. 54 on 19 September 1958.

Sailing close to the wind, on 24 September the Australian Cabinet agreed to New Zealand's preferred wording in the new phosphate agreement for Christmas Island.[61] This cleared the way for settling the agreement, without which New Zealand had not been happy to sign the Deed of Surrender of the lease. That deed was to be signed in London by the Colonial Secretary and representatives of the New Zealand and Australian governments before the date of transfer. It was duly signed on 30 September.[62]

An exchange of letters reflecting understandings on defence and on the status of the residents of Christmas Island and air rights was signed by the United Kingdom on 26 September, and by Australia on 30 September.[63] The Christmas Island Agreement Bill to approve the execution of an agreement between the governments of Australia and New Zealand in relation to phosphate was introduced into the Commonwealth Parliament and passed on 30 September.[64] On the same day, Minister Hasluck signed the agreement on behalf of the Australian Government.

The order-in-council had been made and the Governor-General's proclamation followed on 1 October 1958. Australia had its ninth external territory.

There had been some discussion in Canberra about the form of ceremony to mark the occasion, and who should play a role. It had been suggested that Minister for Territories Hasluck might host a function and lead a ceremony. Hasluck pointed out that from the moment the Official Representative (as the territory's administrator was to be known) took over, 'it would be inappropriate for anyone, even a Minister, to assume the role of host at the Residency.' Not even the Governor-General could take over the Official Representative's role at a ceremony on the island.[65]

A quiet ceremony to mark the transfer of sovereignty took place on Christmas Island on 1 October 1958. At the close of business on 30 September, the Union Jack had been lowered outside the residency and the administration offices. The Australian flag was raised on the morning of 1 October, followed by the swearing in of the Official Representative, DE Nickels. Messages of goodwill from the United Kingdom's Secretary of State for Colonies and the Australian Minister for Territories were read out.

POSTSCRIPT

In late 1960, the United States Department of State wished to include Christmas Island in a chapter on territorial acquisition and loss in its *Digest of international law*. It noted the language used in the order-in-council—that the island be 'placed under the authority of the Commonwealth of Australia'—and queried whether this should be classified as a transfer of sovereignty.

The Secretary of the Attorney-General's Department, Sir Kenneth Bailey, warned that the position of sovereignty in relation to dependencies of parts of the

British Commonwealth other than the United Kingdom 'requires great nicety in expression'.[66] Bailey later provided an authoritative text for the State Department, with minor refinements in wording suggested by the United Kingdom. He referred to the order-in-council whereby Her Majesty directed that Christmas Island be placed under the authority of the Commonwealth of Australia as from 1 October 1958; to s. 5 of the Commonwealth's *Christmas Island Act 1958*, whereby Christmas Island was declared to be accepted by the Commonwealth of Australia as a territory under the authority of the Commonwealth from 1 October 1958; and to s. 122 of the Australian Constitution. He then explained that:

> Since the Queen is the Sovereign of both the United Kingdom and of Australia, the foregoing is not, in one sense, a change of sovereignty, but, in reality, for every purpose of international law, there has been a transfer of sovereign authority over Christmas Island from the United Kingdom to Australia by a procedure akin to, although not in the strict sense constituting, cession.[67]

Australia's administration of Christmas Island after acquisition was fairly uneventful. Mining gradually reduced the grade and amount of phosphate available, and the possible resettlement of the mine workers became an important issue. The position of Official Representative was replaced by that of Administrator in 1968, and in 1970 Ordinances were made to modify those Singapore laws that had been continued at acquisition.

The *Territories Law Reform Act 1992* amended the *Christmas Island Act 1958* to apply certain Commonwealth laws and such law of Western Australia as are capable of application. Local government legislation based on that of Western Australia was enacted in 1992. The first Shire Council was elected in 1993, with similar responsibilities to those of Australian mainland councils. Christmas Island is within a federal electoral district in the Northern Territory.

In September 2001, Christmas Island was excised from Australia's migration zone.

NOTES

1 Quoted in Jan Adams and Marg. Neale, *Christmas Island—the early years*, 1993 p. 14.

2 British Phosphate Commissioners memorandum and attached indenture, 4 April 1944, NAA: A518, B112/6/5 PART 1.

3 Minute from Department of External Affairs to Minister, 29 January 1957, NAA: A1838, 3022/2/1 PART 2.

4 British Phosphate Commissioners memorandum and attached indenture, 4 April 1944, NAA: A518, B112/6/5 PART 1.

5 ibid.

6 ibid.

7 Copy of Order in Council, 1946, No. 464, NAA: A621, S911.

8 Cable I.11427 from Prime Minister, New Zealand, to Secretary of State for Dominion Affairs, 8 June 1947, NAA: A1838, 3044/1 PART 1.

9 Cable I.23748 from Secretary of State for Commonwealth Relations to Department and Minister for External Affairs, 4 December 1947, NAA: A1838, 3044/1 PART 1.

10 Department of External Territories note to file, 12 September 1950, NAA: A518, K112/6/5 PART 1; Department of External Affairs note to the Secretary, 17 November 1954, NAA: A1838, 3044/2 PART 8.

11 Memorandum from Prime Minister's Department to Minister for External Territories, 5 May 1948; Cable I.11408 from Australian High Commission, London, to Department of External Affairs, 16 July 1948, NAA: A518, B112/6/5 PART 2.

12 Press notices: Melbourne *Argus* and *Age*, 2 October 1948, NAA: A1838, 3044/1 PART 1.

13 Extract from conference notes, 24 October 1948, NAA: A518, K112/6/5 PART 1; Cable O.14779 from Department of External Territories to Australian High Commission, London, 14 October 1948, NAA: A1838, 3044/1 PART 1.

14 CPD, HR, Vol. 205, 26 October 1949, pp. 2097–99.

15 Melbourne *Herald*, 31 January 1949, NAA: A518, K112/6/5 PART 1.

16 Department of External Territories memorandum, 16 August 1950; minute to Minister, 24 August 1950, NAA: A518, K112/6/5 PART 1.

17 Department of External Affairs note to Minister, 3 August 1950, NAA: A1838, 3044/1 PART 1.

18 *Daily Telegraph*, 20 March 1952, NAA: A1838, 3044/1 PART 2.

19 Department of External Affairs note to Secretary, 14 August 1953, NAA: A1838, 3044/1 PART 2.

20 Record of interdepartmental committee meeting, undated, NAA: A621, S911.

21 Memorandum from Department of Defence to Department of Territories, 24 October 1954, NAA: A518, K112/6/5 PART 1.

22 See NAA: A816, 14/301/513; NAA: A518, HW16/2/1, memorandums of 21 and 28 August 1952 and 21 January 1953.

23 Record of interdepartmental committee meeting, undated, NAA: A621, S911.

24 Cabinet Submission No. 202, 19 November 1954, and Cabinet Decision No. 219, 24 November 1954, NAA: A1838, 3044/2 PART 1.

25 Cable I.11453 from Australian Commission Singapore to Department of External Affairs, 13 October 1954, NAA: A571, 1955/402 PART 1; memorandum from Department of External Affairs to Department of Territories, 25 October 1954, NAA: A518, K112/6/5 PART 1; memorandum from Department of Territories to Department of External Affairs, 8 November 1954, NAA: A1838, 3044/2/1 PART 1; departmental note to Minister for Territories, November 1954, NAA: A1838, 3044/2 PART 1.

26 Cable I.1951 from Australian High Commission, London, to Department of External Affairs, 11 February 1955, NAA: A518, K112/6/5 PART 1; memorandum from External Affairs, London, to Department of External Affairs, Canberra, 7 September 1955, NAA: A518, K112/6/5 PART 1.

27 Record of conversation between Assistant Secretary Plimsoll, Department of External Affairs, and Deputy United Kingdom High Commissioner, 16 January 1956; Department of External Affairs note, undated, NAA: A1838, 3044/2 PART 1.

28 Letter from Minister for External Affairs to Prime Minister, 26 February 1956, NAA: A1838, 3044/2 PART 8.

29 Minute from Prime Minister's Department to Prime Minister, 13 March 1956, NAA: A1209, 1957/4137 PART 3.

30 Cable I.2817 of 1 March 1956 from Australian Commission, Singapore, to Department of External Affairs; Department of External Affairs internal memorandum dated 23 March 1956 (in which the United Kingdom High Commissioner suggested that Australia might have to 'buy' the island from Singapore); Memorandum 1161 from Australian Commission, Singapore, to Department of External Affairs, 8 June 1956, saying that the action of making Christmas Island administratively separate from Singapore would be almost bound to revive memories of the transfer of Cocos Island. NAA: A1838, 3044/2 PART 1.

31 Letter from United Kingdom High Commissioner to Australian Prime Minister, 12 April 1956, and Cable I. 9505, 18 July 1956, NAA: A1838, 3044/2 PART 1.

32 Message from Secretary of State for Commonwealth Relations to Prime Minister, 22 October 1956, NAA: A518, K112/6/5 PART 1.

33 Cable I.1794 from Australian High Commission, London, to Minister for Department of External Affairs, 1 February 1957, NAA: A1838, 3022/2/1 PART 2.

34 Cabinet Decision No. 622, 5 February 1957, NAA: A4910, VOLUME 5.

35 Cable I.3170/3 from Australian High Commission, London, to Department of External Affairs, 25 February 1957, NAA: A518, K 112/6/5 PART 3; Cabinet Decision No.665, 26 February 1957, NAA: A4910, VOLUME 5; Cable I.3599, Australian High Commission, London, to Department of External Affairs, 4 March 1957, NAA: A1838, 3044/2 PART 2.

36 Cable O.3029 from Department of External Affairs to Australian High Commission, London, 27 February 1957, NAA: A1838, 383/9/1.

37 Letter from British High Commission in Canberra to Secretary, Prime Minister's Department, 6 March 1957, NAA: A1209, 1957/4137 PART 2.

38 Memorandum, 6 March 1957, NAA: A1838, 3044/2 PART 2.

39 Cable I.3984, 12 March 1957, NAA: A1838, 3044/2 PART 2; Cable I. 4161, 14 March 1957, NAA: A432, 1954/3769 PART 1; Letter from United Kingdom High Commissioner, Canberra, to Secretary, Prime Minister's Department, 18 March 1957, NAA: A1209, 1957/4137 PART 2.

40 *Singapore Standard*, 25 March 1957, *Nanyang Siang Pau*, 25 March 1957, NAA: A1838, 3044/2 PART 3.

41 Cable O.4737.39 from Department of External Affairs to Australian High Commission, London, 4 April 1957, NAA: A518, K112/6/5 PART 3.

42 Cable I.7687 from Australian High Commission, London, to Department of External Affairs, 1 June 1957, NAA: A1838, 679/2/3 PART 1.

43 House of Commons Hansard (Commons), 6 June 1957, column 148.

44 Cable I. 8180 from Australian Commission, Singapore, to Department of External Affairs, 11 June 1957, NAA: A1838, 679/2/3 PART 1; Press report, NAA: A518, K112/6/5 PART 4.

45 Cable O.5401 from Department of External Affairs, Canberra, to Australian High Commission, London, 18 April 1957, NAA: A1838, 3044/2 PART 1; Cable I.6289 from Australian High Commission, London, to Department of External Affairs, Canberra, 1 May 1957 and undated file note, NAA: A518, K112/6/5 PART 3; Cable I.7633 from Australian High Commission, London, to Department of External Affairs, 30 May 1957, NAA: A1838, 679/2/3 PART 1; record of Commonwealth Relations Office meeting, 30 May 1957, NAA: A1838, 3044/5; memorandum from External Affairs, London, to Department of External Affairs, Canberra, 31 May 1957, NAA: A1838, 3044/2 PART 4; Cable O.7105–07 from Department of External Affairs, Canberra, to Australian High Commission, London, 3 June 1957, NAA: A1838, 3044/2 PART 3;

minute from Prime Minister's Department to Acting Prime Minister, 3 June 1957, NAA: A1209, 1957/4137 PART 2; letter, Casey to Fadden, Acting Prime Minister, 5 June 1957, NAA: A1209, 1957/4137 PART 2; letter from Acting Prime Minister to United Kingdom High Commissioner, 11 June 1957, NAA: A571, 1955/402 PART 3.

46 Commons Hansard, 1 August 1957, column 242.

47 Cabinet Decision No.885, 6 August 1957, NAA: A1838, 3044/2 PART 8.

48 Department of External Affairs file note, 14 August 1957, NAA: A1838, 3044/1 PART 4.

49 Memorandum from Parliamentary Draftsman to Department of External Affairs, 7 September 1957, NAA: A1838, 3044/2 PART 4.; Attorney-General's Department minute, 28 October 1957, NAA: A432, 1954/3769 PART 3; Cable O.14091/93 from Department of External Affairs to Australian High Commission, London, 8 November 1957 and Cable I.7042 from Australian High Commission, London, to Department of External Affairs, 15 November 1957, NAA: A1209, 1957/4137 PART 3.

50 CPD, HR, Vol. 17, 3/4 December 1957, pp. 2739 and 2485–86; CPD, Senate, Vol. 11, 4 December 1957, p. 1725.

51 Commons Hansard, 19 December 1957, column 95.

52 Cabinet Decision No. 1257 (GA), 19 March 1958, and Submission No. 1060, 11 March 1958, NAA: A452, 1964/8134.

53 Memorandum from Parliamentary Draftsman to Secretary, Department of External Affairs, 18 March 1958, NAA: A1838, 3044/2 PART 5; Commonwealth Relations Office minutes of meeting, 27 March 1958 and memorandum from Department of Territories to Department of External Affairs, 11 April 1958, NAA: A1838, 3044/2 PART 6; Department of Territories file note, 18 April 1958, NAA: A518, K112/6/5 PART 5.

54 House of Lords Hansard, 24 April 1958, columns 996 and 997.

55 Commons Hansard, 12 May 1958, column 164.

56 ibid., column 176.

57 Department of External Affairs minute, 10 June 1958, NAA: A1838, 3044/2 PART 6.

58 NAA: A1838, 3044/2 PART 6.

59 CPD, HR, Vol. 20, 21 August 1958, pp. 617–620.

60 CPD, Senate, VOLUME 13, 28 August 1958, pp. 306, 309.

61 Cabinet Decision, 24 September 1958, without memorandum, NAA: A4910, Vol. 7 1301–1685.

62 Press statement, 30 September 1958, NAA: A518, K112/6/5 PART 5.

63 NAA: A1209, 1957/4137 PART 4 and NAA: A1838, 3044/2 PART 8.

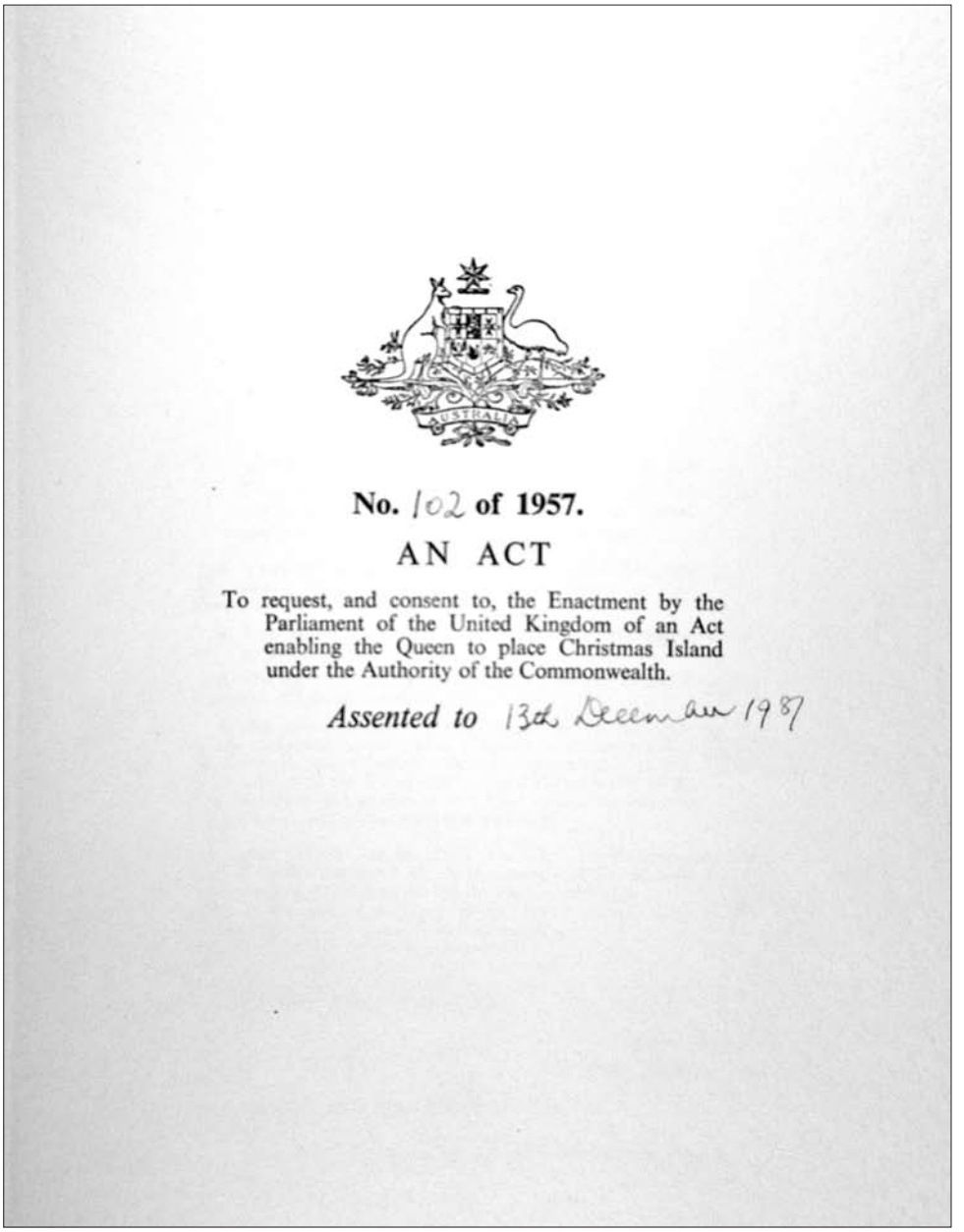
64 CPD, HR, Vol. 21, 30 September 1958, p. 1753; press statement by Minister for Territories, 30 September 1958, NAA: A1838, 3044/2 PART 8.

65 Annotated Department of Territories minute, 16 September 1958; NAA: A518, K112/6/5 PART 5.

66 Memorandum from Bailey, Secretary, Attorney-General's Department, to Department of External Affairs, 14 October 1960, NAA: A1838, 3044/2/1.

67 Cable O.17934 from Department of External Affairs to Australian Embassy, Washington, 22 November 1960 and Savingram I.29341 from External Affairs, London, to Department of External Affairs, Canberra, 5 December 1960, NAA: A1838, 3044/2/1.

END PAPERS



No. 102 of 1957.

AN ACT

To request, and consent to, the Enactment by the Parliament of the United Kingdom of an Act enabling the Queen to place Christmas Island under the Authority of the Commonwealth.

Assented to 13th December 1957

pp. 335–336 Christmas Island (Request and Consent) Act, No. 102 of 1957.
NAA: A1559,1957/102

AN ACT

To request, and consent to, the Enactment by the Parliament of the United Kingdom of an Act enabling the Queen to place Christmas Island under the Authority of the Commonwealth.

BE it 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 *Christmas Island (Request and Consent) Act* 1957. Short title.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

3. The Parliament requests, and consents to, the enactment by the Parliament of the United Kingdom of an Act enabling the Queen to place Christmas Island (being the Island of that name situated in the Indian Ocean) under the authority of the Commonwealth and making provision for matters incidental to the placing of that Island under that authority. Request and consent to enactment of United Kingdom Act.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act to request, and consent to, the Enactment by the Parliament of the United Kingdom of an Act enabling the Queen to place Christmas Island under the Authority of the Commonwealth", which has been passed by the Senate and the House of Representatives, and that the said Bill originated in the House of Representatives.

Acting Clerk of the House of Representatives.

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

Governor-General.

13th December, 1957.

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.

United Kingdom Christmas Island Act 1958

Copied from NAA: A1838, 3044/2 PART 6.

7 Eliz. 2 *Christmas Island Act, 1958* CH. **25**

CHAPTER 25

An Act to enable Her Majesty to place Christmas Island under the Authority of the Commonwealth of Australia, and for purposes connected therewith.

[14th May, 1958]

WHEREAS by the Christmas Island Order in Council, 1957, made under the Straits Settlements (Repeal) Act, 1946, the island named Christmas Island, situated in the Indian Ocean in or about the thirtieth minute of the tenth degree of South Latitude and the fortieth minute of the one hundred and fifth degree of East Longitude, was constituted as a separate colony under the name of the Colony of Christmas Island: 9 & 10 Geo. 6. c. 37.

And whereas the Parliament and Government of the Commonwealth of Australia have requested and consented to the enactment of this Act:

And whereas by section one hundred and twenty-two of the Constitution of the Commonwealth of Australia it is provided that the Parliament of the said Commonwealth may make laws for the government of any territory placed by the Queen under the authority of and accepted by the Commonwealth.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

Transfer of Christmas Island to Australia.

1.--- (1) Her Majesty may by Order in Council direct that Christmas Island shall, on such date as may be specified in the Order, be placed under the authority of the Commonwealth of Australia.

(2) As from the date specified as aforesaid, the Straits Settlements (Repeal) Act, 1946, and the British Settlements Acts, 1887 and 1945, as applied by that Act, shall have effect as if references in the said Act of 1946 to Christmas Island were omitted, and (subject to such provision as may be made in pursuance of subsection (3) of this section) the Christmas Island Order in Council, 1957, shall cease to have effect.

pp. 337–338 United Kingdom Christmas Island Act, 1958.
NAA: A1838, 3044/2 PART 6

(3) Her Majesty may by Order in Council make provision---

(*a*) for the transfer, subject to such exceptions as may be specified in the Order, of property, rights, powers, obligations or liabilities held, enjoyed or incurred by or on behalf of Her Majesty in right of Her Government in the United Kingdom or of the Government of the Colony of Singapore or of Christmas Island, or by or on behalf of any of those Governments, being property, rights, powers, obligations or liabilities held, enjoyed or incurred in or in connection with Christmas Island and subsisting on the date specified as aforesaid;

(*b*) for the exercise on and after the date so specified of ---

(i) the jurisdiction in Christmas Island of any court outside that Island in relation to proceedings pending on that date;

(ii) any powers of Her Majesty in respect of sentences imposed before that date by any court having jurisdiction in Christmas Island;

(iii) any powers or duties conferred or imposed by or under the law of Singapore in relation to persons lawfully removed from Christmas Island to Singapore before that date,

and for the continuance, with any necessary modification, of any provisions of the said Order of 1957 relating to such jurisdiction, powers or duties;

(*c*) for such other purposes, if any, not being purposes of the government of Christmas Island, as appear to Her Majesty to be expedient in consequence of its being placed under the authority of the said Commonwealth.

Short title. **2.** This Act may be cited as the Christmas Island Act, 1958.

No. 41 of 1958.

AN ACT

To provide for the Acceptance of Christmas Island as a Territory under the Authority of the Commonwealth and to provide for the Government of that Territory.

Assented to 2nd September 1958

pp. 339–348 Christmas Island Act No. 41 of 1958.
NAA: A1559,1958/41

AN ACT

To provide for the Acceptance of Christmas Island as a Territory under the Authority of the Commonwealth and to provide for the Government of that Territory.

WHEREAS Christmas Island (being the island referred to in section four of this Act) is governed and administered as a separate colony in pursuance of the Christmas Island Order in Council, 1957, made by the Queen by virtue and in exercise of the powers conferred upon Her by the Imperial Acts entitled the Straits Settlements (Repeal) Act, 1946, and the British Settlements Acts, 1887 and 1945 : Preamble.

AND WHEREAS by the *Christmas Island* (*Request and Consent*) *Act* 1957 the Parliament of the Commonwealth requested, and consented to, the enactment by the Parliament of the United Kingdom of an Act enabling the Queen to place Christmas Island under the authority of the Commonwealth and making provision for matters incidental to the placing of that Island under that authority :

AND WHEREAS the Government of the Commonwealth has also requested, and consented to, the enactment by the Parliament of the United Kingdom of such an Act :

AND

AND WHEREAS by the Imperial Act entitled the Christmas Island Act, 1958, it is provided that Her Majesty may, by Order in Council, direct that Christmas Island shall, on such date as may be specified in the Order, be placed under the authority of 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 Queen under the authority of and accepted by 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:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Christmas Island Act* 1958.

Commencement.

2.—(1.) Part I. of this Act shall come into operation on the day on which this Act receives the Royal Assent.

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

(3.) The date so fixed shall be the date on which Christmas Island is placed under the authority of the Commonwealth in pursuance of the Imperial Act entitled the Christmas Island Act, 1958.

(4.) Notwithstanding the preceding provisions of this section, Ordinances may be made under Division 2 of Part III. of this Act, and regulations may be made for the purposes of Part V. of this Act, at any time after the day on which this Act receives the Royal Assent as if the whole of this Act had come into operation on that day, but any Ordinance or regulations made before the date fixed under sub-section (2.) of this section shall not, except as provided by the next succeeding sub-section, have any force or effect until the date so fixed.

(5.) Where an Ordinance made before the date fixed under sub-section (2.) of this section provides for the making of an appointment to an office—

(*a*) an appointment to that office, to take effect on the date so fixed, may be made at any time after notice of the making of the Ordinance is published in the *Gazette* and shall take effect accordingly; and

(*b*) an oath or affirmation in relation to the appointment may be made and subscribed before the date so fixed and shall, from and including that date, have effect as if it had been made and subscribed on that date.

3. This

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

Part I.—Preliminary (Sections 1–4).
Part II.—Acceptance of Christmas Island (Sections 5–6).
Part III.—Legislation.
Division 1.—Laws (Sections 7–8).
Division 2.—Legislative Powers of the Governor-General (Sections 9–10).
Part IV.—The Judicial System (Sections 11–14).
Part V.—Application of Australian Citizenship to certain Residents of the Territory (Sections 15–16).
Part VI.—Miscellaneous (Sections 17–23).

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

" Christmas Island " means the Island of that name situated in the Indian Ocean in or about latitude ten degrees thirty minutes south and longitude one hundred and five degrees forty minutes east ;

" Ordinance " means an Ordinance made under this Act ;

" the proclaimed date " means the date fixed by Proclamation under sub-section (2.) of section two of this Act ;

" the Supreme Court " means the Supreme Court of the Territory ;

" the Territory " means the Territory of Christmas Island.

PART II.—ACCEPTANCE OF CHRISTMAS ISLAND.

5. Christmas Island is declared to be accepted by the Commonwealth as a Territory under the authority of the Commonwealth and shall be known as the Territory of Christmas Island. Acceptance of Christmas Island.

6.—(1.) All property, rights and powers in or in connexion with Christmas Island which, immediately before the proclaimed date, were held or enjoyed by or on behalf of the Queen in right of the United Kingdom or of the Colony of Christmas Island, or by or on behalf of the Government of the United Kingdom or of the Colony of Christmas Island, shall, from and including that date, be deemed to be held or enjoyed by or on behalf of the Commonwealth. Transfer of rights, liabilities, &c., to Commonwealth.

(2.) Subject to the next succeeding sub-section, all liabilities and obligations incurred before the proclaimed date by or on behalf of the Government of the United Kingdom, the Government of the Colony of Singapore or the Government of the Colony of Christmas Island in or in connexion with Christmas Island and subsisting immediately before that date shall, from and including that date, be deemed to have been incurred by or on behalf of the Commonwealth.

(3.) The

(3.) The last preceding sub-section does not apply to or in relation to liabilities or obligations of the Government of the United Kingdom or of the Colony of Singapore for or in respect of—

(*a*) the servicing or repayment of public loans raised by the Government of the Colony of Singapore ;

(*b*) the payment of pensions or retiring allowances in respect of service in Christmas Island ;

(*c*) the repayment of deposits with the Christmas Island branch of the Post Office Savings Bank of the Colony of Singapore or interest on those deposits ; or

(*d*) the meeting of deficiencies in assets of the Central Provident Fund of the Colony of Singapore required by the Central Provident Fund Ordinance of that Colony to be met out of the general revenues of that Colony.

(4.) In this section, "property" includes movable and immovable property.

PART III.—LEGISLATION.

Division 1.—*Laws.*

Continuance of existing laws.

7.—(1.) Subject to this Act and to any other Act extending to the Territory (whether enacted before, on or after the proclaimed date), the laws in force in the Colony of Christmas Island immediately before the proclaimed date shall continue in force in the Territory by virtue of this Act and not otherwise.

(2.) The laws continued in force by virtue of the last preceding sub-section may be altered, amended or repealed by Ordinances or laws made under Ordinances.

Application of Commonwealth Acts.

8.—(1.) An Act or a provision of an Act (whether enacted before, on or after the proclaimed date) 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.) Except as provided by this Act, 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.

Division 2.—*Legislative Powers of the Governor-General.*

Legislative powers of the Governor-General.

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

(2.) Notice

(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.

(3.) This section does not authorize the making of an Ordinance imposing a penalty in respect of an act or an omission occurring before the date of publication in the *Gazette* of notice of the making of the Ordinance.

Tabling of Ordinances in Parliament.

10.—(1.) Every Ordinance shall be laid before each House of the Parliament within fifteen sitting days of that House after the day on which the Ordinance is made and, if it is not so laid before each House of the Parliament, is, and shall be deemed to have been, void and of no effect.

(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 day on which the Ordinance was laid before that House) disallowing an Ordinance or a part of an Ordinance, the Ordinance or part so disallowed thereupon ceases to have effect.

(3.) If, at the expiration of fifteen sitting days after the day on which notice of a resolution to disallow an Ordinance or a 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 the part of the Ordinance, as the case may be, shall thereupon be deemed to have been disallowed.

(4.) Where an Ordinance or a 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 the part of the Ordinance, as the case may be, except that, if a provision of the Ordinance or of the 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 a 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 a part of an Ordinance, disallowed by resolution—the resolution has been rescinded by the House of the Parliament by which it was passed ; or

(*b*) in

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

PART IV.—THE JUDICIAL SYSTEM.

Supreme Court.

11.—(1.) There shall be a Supreme Court of the Territory, which shall be known as the Supreme Court of Christmas Island.

(2.) The Supreme Court shall be constituted as provided by Ordinance.

(3.) The Supreme Court is a superior court of record.

Jurisdiction, &c., of the Supreme Court.

12. The jurisdiction, practice and procedure of the Supreme Court shall be as provided by or under Ordinance.

Establishment of other courts.

13. Courts and tribunals for the Territory, in addition to the Supreme Court, may be established by Ordinance.

Appeals to the High Court.

14.—(1.) The High Court has jurisdiction, with such exceptions and subject to such conditions as are provided by Ordinance, to hear and determine appeals from all judgments, decrees, orders and sentences of the Supreme Court.

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

PART V.—APPLICATION OF AUSTRALIAN CITIZENSHIP TO CERTAIN RESIDENTS OF THE TERRITORY.

Right of certain residents to elect to become Australian citizens.

15.—(1.) A person (not being an Australian citizen) who, immediately before the proclaimed date, was a British subject ordinarily resident in Christmas Island, may make a declaration, in the prescribed manner and within the prescribed time, that he wishes to become an Australian citizen.

(2.) Upon the registration, as prescribed, of a declaration made by a person under the last preceding sub-section, that person shall be deemed to have become an Australian citizen upon the proclaimed date.

(3.) The

(3.) The registration of a declaration made by a person under sub-section (1.) of this section does not operate so as to render unlawful anything done before the date of the registration that would have been lawful if the declaration had not been made and registered.

(4.) For the purpose of sub-section (1.) of this section, the prescribed time is—

(*a*) in the case of a person who is under the age of twenty-one years at the proclaimed date—two years after the date on which he attains that age ; and

(*b*) in any other case—two years after the proclaimed date.

Meaning of "ordinarily resident".

16. For the purposes of the last preceding section, a person shall be deemed to have been ordinarily resident in Christmas Island immediately before the proclaimed date if, immediately before that date—

(*a*) he had his home in Christmas Island ; or

(*b*) Christmas Island was the place of his permanent abode notwithstanding that he was temporarily absent from it,

but a person shall be deemed not to have been so resident if, immediately before that date, he was resident in Christmas Island for a special or temporary purpose only.

PART VI.—MISCELLANEOUS.

Appointment of officers.

17.—(1.) Notwithstanding the *Public Service Act* 1922–1958, provision may be made by Ordinance for and in relation to the appointment and employment of persons for the purposes of the government of the Territory.

(2.) Where a person appointed or employed under an Ordinance was, immediately before his appointment or employment, an officer of the Public Service of the Commonwealth—

(*a*) he retains his existing and accruing rights;

(*b*) for the purpose of determining those rights, his service under the Ordinance shall be taken into account as if it were service in the Public Service of the Commonwealth; and

(*c*) the *Officers' Rights Declaration Act* 1928–1953 applies as if this Act and this section had been specified in the Schedule to that Act and he were an officer employed by an authority created by this Act.

(3.) Nothing in this section shall be deemed to prevent the appointment or employment of persons under the *Public Service Act* 1922–1958 in its application to the Territory.

18.—(1.) Provision

Arrangements in relation to prisoners, mental patients, &c.

18.—(1.) Provision may be made by Ordinance—

(*a*) for authorizing the making of arrangements by the Minister with the Government or an authority of a place outside the Territory (including a State or Territory of the Commonwealth) for or in relation to—

(i) the removal from the Territory to that place of persons who have been sentenced to imprisonment by a court having jurisdiction in respect of the Territory, for the purpose of serving their sentences in that place; or

(ii) the removal from the Territory to that place of persons suffering from leprosy, or persons found to be of unsound mind, for the purpose of detention and treatment in that place; and

(*b*) for or in relation to the carrying out of any such arrangements and the custody and detention of persons during their removal in pursuance of the arrangements.

(2.) For the purposes of the last preceding sub-section, where the Governor-General has commuted to a term of imprisonment the sentence of a person who has been sentenced to death by a court having jurisdiction in respect of the Territory, that person shall be deemed to have been sentenced to imprisonment for that term by a court having jurisdiction in respect of the Territory.

(3.) Nothing in this section affects the application, in respect of the Territory, of the *Removal of Prisoners* (*Territories*) *Act* 1923–1957.

Currency and legal tender.

19.—(1.) Until otherwise provided by Ordinance and notwithstanding anything contained in any other law of the Commonwealth, currency notes and coins that were legal tender in Christmas Island immediately before the proclaimed date may continue to be used, and shall continue to be legal tender, in the Territory.

(2.) A tender of payment of money in coins, being a tender which, if the Territory were part of the Commonwealth, would be a legal tender by virtue of the *Coinage Act* 1909–1947, is a legal tender in the Territory.

(3.) Nothing in this section shall be taken—

(*a*) to prevent the use of Australian notes in the Territory or affect the operation of section forty of the *Commonwealth Bank Act* 1945–1953 in the Territory; or

(*b*) to

(*b*) to authorize the taking or sending out of the Territory of Australian currency or foreign currency otherwise than in accordance with the *Banking Act* 1945–1953 and the regulations under that Act.

Grant of pardon, remission, &c.

20.—(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 of the Territory exercising criminal jurisdiction a pardon, either free or conditional, or a remission or commutation of sentence, or a respite, for such period as he thinks fit, of the execution of sentence, and may remit fines, penalties and forfeitures imposed or incurred under a law in force in the Territory.

(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 an accomplice who gives evidence that leads to the conviction of the principal offender, or of any of the principal offenders.

Exemption from Customs duties of goods produced in the Territory.

21. Duties of Customs are not chargeable on goods imported into Australia from the Territory if the goods—

(*a*) are the produce or manufacture of the Territory ;

(*b*) have been shipped in the Territory for export to Australia; and

(*c*) are not goods which, if manufactured or produced in Australia, would be subject to a Duty of Excise.

Audit.

22. The accounts of the Territory shall be subject to inspection and audit by the Auditor-General for the Commonwealth.

Regulations.

23. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular—

(*a*) making provision for and in relation to sittings of the Supreme Court in a State or Territory of the Commonwealth other than the Territory of Christmas Island for the purpose of hearing and determining a matter, otherwise than in the exercise of its criminal jurisdiction, if the Court is satisfied that the hearing of the matter outside the Territory is not contrary to the interests of justice; and

(*b*) prescribing penalties, not exceeding a fine of Fifty pounds or imprisonment for three months, for offences against the regulations.

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

A. A. Dregan

Clerk of the House of Representatives.

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

W. S. Allan

Governor-General.

2nd September, 1958.

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.

Copied from United Kingdom Statutory Instruments 1958 Part II pp 2216-2219

SINGAPORE
1958 No. 1515

The Christmas Island (Transfer to Australia)
Order in Council, 1958

Made - - - -	11*th September*, 1958
Laid before Parliament	12*th September*, 1958
Coming into Operation,	
Section 11 - -	13*th September*, 1958
Remainder - -	1*st October*, 1958

At the Court at Balmoral, the 11th day of September, 1958

Present,

The Queen's Most Excellent Majesty in Council

Whereas by the Christmas Island Act, 1958(**a**), it is provided that Her Majesty may by Order in Council direct that Christmas Island (hereinafter referred to as "the Island") shall on such date as may be specified in the Order be placed under the authority of the Commonwealth of Australia and that Her Majesty may by Order in Council make provision for purposes connected therewith and specified in the said Act:

And Whereas it is provided by section one hundred and twenty-two of the Constitution of the Commonwealth of Australia that the Parliament of the Commonwealth of Australia may make laws for the government of any territory placed by the Queen under the authority of and accepted by the Commonwealth:

And Whereas by the Christmas Island Act 1958(**b**), the Parliament of the Commonwealth of Australia has provided for the acceptance of Christmas Island as a Territory under the authority of the Commonwealth and for the government of that Territory:

And Whereas it is expedient that the Island should be placed under the authority of the Commonwealth of Australia with effect from a specified date and that provision should be made for purposes connected therewith as aforesaid:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred upon Her by the Christmas Island Act, 1958(**a**), the Straits Settlements (Repeal) Act, 1946 (**c**), and the British Settlements Acts, 1887 and 1945(**d**), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

(**a**) 6 & 7 Eliz. 2. c. 25. (**b**) No. 41 of 1958.
(**c**) 9 & 10 Geo. 6. c. 37. (**d**) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7.

pp. 349–353 United Kingdom Christmas Island (Transfer to Australia) Order in Council, No. 1515, 11 September, 1958. (copytype)
United Kingdom Statutory Instruments 1958, Part II, pp. 2216 – 2219

Citation and Commencement

1.---(1) This Order may be cited as the Christmas Island (Transfer to Australia) Order in Council, 1958.

(2) Save as otherwise herein provided, this Order shall come into operation on the first day of October, 1958 (hereinafter referred to as "the appointed day").

Interpretation

2. The Interpretation Act, 1889(**a**), shall apply for the purposes of interpreting this Order as it applies for the purpose of interpreting an Act of Parliament.

Placing the Island under the authority of the Commonwealth of Australia.

3. With effect from the appointed day the Island shall be placed under the authority of the Commonwealth of Australia.

Transfer of rights and liabilities

4. ---(1) All property, rights and powers in or in connection with the Island, being property, rights and powers which immediately before the appointed day were held or enjoyed by or on behalf of Her Majesty in right of the United Kingdom or of the Colony of Christmas Island, or by or on behalf of the Government of the United Kingdom or the Government of Christmas Island shall, from and including that day, be deemed to be held or enjoyed by or on behalf of the Commonwealth of Australia.

(2) All liabilities and obligations incurred before the appointed day by or on behalf of the Government of the United Kingdom or of the Colony of Singapore or of the Colony of Christmas Island in or in connection with the Island and subsisting immediately before that day shall, from and including that day, be deemed to have been incurred by or on behalf of the Commonwealth of Australia:

Provided that this subsection shall not apply to any liabilities or obligations of the Government of the United Kingdom or of the Colony of Singapore for or in respect of--

(*a*) The servicing or repayment of any public loans raised by the Government of the Colony of Singapore; and

(*b*) the payment of any pensions or retiring allowances in respect of service in Christmas Island; and

(*c*) the repayment of any deposits with the Christmas Island branch of the Singapore Post Office Savings Bank and any interest on such deposits; and

(*d*) the meeting of deficiencies in the assets of the Central Provident Fund of the Colony of Singapore required by the Central Provident Fund Ordinance(**b**) of that Colony to be met out of the general revenues of that Colony.

(**a**) 52 & 53 Vict. c. 63. (**b**) Laws of Singapore (Rev. Ed. 1955), Cap. 150.

(3) In this section, "property" includes movable and immovable property.

Pending proceedings

5. Any criminal or civil proceedings, including appeals, pending on the appointed day in the Supreme Court of Singapore or in the Court of Criminal Appeal of Singapore by virtue of any jurisdiction of the said Courts within the Island shall be carried on and concluded in like manner as nearly as may be as if this Order had not been made.

Appeals to the Privy Council

6. Nothing in this Order shall affect or prejudice any appeal or petition to Her Majesty in Council in relation to any proceedings commenced prior to the appointed day in the Supreme Court of Singapore or in the Court of Criminal Appeal of Singapore by virtue of any jurisdiction of the said Courts within the Island.

Validity of previous acts

7. Nothing in this Order shall affect the validity or future operation of any lawful act done by any person or authority in or in connection with the Island prior to the appointed day.

Operation of section 13 *of the Christmas Island Order*, 1957

8. If any offender shall have been condemned to suffer death by the sentence of a court having jurisdiction in respect of the Island and immediately prior to the appointed day either the Judge who presided at the trial shall not have submitted his report of the case of such offender to the Secretary of State or, if such a report has been submitted, Her Majesty's pleasure in regard to such sentence shall not have been communicated to the Administrator, the provisions of subsection (2) of section 13 of the Christmas Island Order in Council, 1957 (**a**), shall continue to apply to the case of such offender on and after the appointed day as if this Order had not been made. In such case, Her Majesty's pleasure shall be communicated as soon as may be to the appropriate authorities through a Secretary of State.

Operation of section 14 *of the Christmas Island Order,* 1957

9. Where, by reason of a warrant under the hand of the Administrator issued under section 14 of the Christmas Island Order in Council, 1957, any person has been removed to, and on the appointed day is detained in, the Island of Singapore, such person shall continue to be accommodated or dealt with under the law of Singapore in force for the time being according to the tenor of the warrant.

(**a**) S.I. 1957/2166 (1957 II, p. 2281).

Amendments to the laws of Singapore

10. The amendments to the laws of the Colony of Singapore specified in the Schedule hereto shall take effect in the Colony of Singapore on the appointed day.

Publication

11.---(1) This Order shall be published in the Official Gazettes of the Colony of Singapore and of the Colony of Christmas Island.

(2) This section shall come into operation on the day after the day on which this Order shall have been laid before both Houses of Parliament in the United Kingdom.

W. G. Agnew.

SCHEDULE Section 10.

1. The proviso to section 67 of the Courts Ordinance(**b**) is repealed.

2. The Adjacent Territories Prisoners Ordinance (**c**), as amended by the First Schedule to the Christmas Island Order in Council, 1957, is further amended by:-

(*a*) the substitution in the Long Title of the words "the Colonies of North Borneo and Sarawak and in the Territory of Christmas Island" for the words "the Colonies of North Borneo, Sarawak and Christmas Island";

(*b*) the substitution of the words "the Territory of Christmas Island" for the words "the Colony of Christmas Island" in the definition of "Adjacent Territory" in section 2;

(*c*) the addition in section 2 of the following new definition:-

" ' The Government of an Adjacent Territory' includes, in relation to to the Territory of Christmas Island, the appropriate competent authority in respect of that Territory."; and

(*d*) the deletion from subsection (2) of section 6 of the words " or of the Administrator of Christmas Island" and the insertion therein of the words " or of the appropriate competent authority in respect of the Territory of Christmas Island" after the words "the State of Brunei".

(**b**) Laws of Singapore (Rev. Ed. 1955), Cap. 3. (**c**) Laws of Singapore (Rev. Ed. 1955), Cap. 91.

3. The Leprosy Ordinance(**a**) as amended by the First Schedule to the Christmas Island Order in Council, 1957, is further amended by:-

(*a*) the deletion in subsection (1) of section 12 of the words "or of the Colony of Christmas Island" and the substitution therefore of the words "or the appropriate competent authority in respect of the Territory of Christmas Island" ; and

(*b*) the deletion in the proviso to section 13 of the word "Colony" and the substitution therefor of the word "Territory".

3. The Mental Disorders and Treatment Ordinance(**b**), as amended by the First Schedule to the Christmas Island Order in Council, 1957, is further amended by:-

(*a*) the deletion in subsection (1) of section 49 of the words "the Colony of Christmas Island" and the insertion of the words "or the appropriate competent authority in respect of the Territory of Christmas Island" after the words "the State of Brunei";

(*b*) the addition at the end of subsection (3) of section 49 of the following words:-

" In the case of a person from the Territory of Christmas Island the certificate in Form K may be signed by any duly qualified medical practitioner and the reference to the 'said Government' in paragraph (*b*) of this subsection shall be construed as a reference to 'the appropriate competent authority in respect of the Territory of Christmas Island' "; and

(*c*) the repeal of section 67 and the marginal note thereto.

5. The Labour Ordinance(**c**) is amended by:-

(*a*) the deletion from section 12 of the words "or to Christmas Island from any other part of the Colony"; and

(*b*) the repeal of subsection (2) of section 129.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

The purpose of this Order is to place Christmas Island under the authority of the Commonwealth of Australia with effect from 1st October, 1958. This transfer of authority from the United Kingdom Government necessitates the enactment of certain transitional and consequential provisions contained in sections 4 to 11 and the Schedule.

(**a**) Laws of Singapore (Rev. Ed. 1955), Cap. 144.
(**b**) Laws of Singapore (Rev. Ed. 1955), Cap. 145. (**c**) Ord. 40 of 1955.

COMMONWEALTH OF AUSTRALIA.

Department of Territories.

Departmental No. 214.

16 SEP 1958 195

MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

Executive Council No. 36

SUBJECT.

CHRISTMAS ISLAND ACT 1958

COMMENCEMENT OF ACT (OTHER THAN PART I).

Recommended for the approval of His Excellency the Governor-General in Council that he be pleased to sign a Proclamation in the within form fixing the 1st October, 1958, as the date of commencement of the provisions (other than Part I) of the Christmas Island Act 1958.

Paul Hasluck

Minister of State for Territories.

Approved in Council.

W. J. Slim

Governor-General.

18 SEP 1958 19

Filed in the Records of the Council.

J. W. Rucker

Secretary to the Executive Council.

L.M.

By Authority: A. J. Arthur, C'wealth Govt. Printer, Canberra.

Executive Council Minute No. 36 of 16 September, 1958.
NAA: A1573, 1958/29

PROCLAMATION

Commonwealth of Australia to wit.

Governor-General.

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

WHEREAS by sub-section (1.) of section two of the Christmas Island Act 1958 it is provided that Part I. of that Act shall come into operation on the day on which that Act receives the Royal Assent :

AND WHEREAS that Act received the Royal Assent on the second day of September, One thousand nine hundred and fifty-eight :

AND WHEREAS by sub-section (2.) of section two of that Act it is provided that the remaining provisions of that Act shall come into operation on a date to be fixed by Proclamation :

AND WHEREAS by sub-section (3.) of section two of that Act it is provided that the date so fixed shall be the date on which Christmas Island is placed under the authority of the Commonwealth in pursuance of the Imperial Act entitled the Christmas Island Act, 1958 :

AND WHEREAS by an Order in Council made in pursuance of that Imperial Act on the eleventh day of September, One thousand nine hundred and fifty-eight, the Queen has directed that Christmas Island shall be placed under the authority of the Commonwealth on the first day of October, One thousand nine hundred and fifty-eight :

pp. 355–356 Christmas Island Act Proclamation, 18 September, 1958.
NAA: A1573, 1958/29

2.

NOW THEREFORE I, Sir William Joseph Slim, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, hereby fix the first day of October, One thousand nine hundred and fifty-eight, as the date on which the remaining provisions of the Christmas Island Act 1958 shall come into operation.

GIVEN under my Hand and the Great Seal of the Commonwealth this eighteenth day of September, in the year of our Lord One thousand nine hundred and fifty-eight, and in the seventh year of Her Majesty's reign.

By His Excellency's Command,

Paul Hasluck

Minister of State for Territories.

GOD SAVE THE QUEEN!

CONFIDENTIAL

B7/4137
26 SEP 1958
PRIME MINISTER'S OFFICE

OFFICE OF THE HIGH COMMISSIONER
FOR THE UNITED KINGDOM
CANBERRA

26th September, 1958.

My dear Prime Minister,

In the letter which I am writing to you today to put on record certain understandings reached between our two Governments arising from the decision that the administration of Christmas Island in the Indian Ocean should be transferred from the authority of the United Kingdom to that of the Commonwealth of Australia, no mention was made of possible defence requirements. This was because it was not thought desirable to touch on such matters in a letter which might in due course require to be published.

I now write to seek your confirmation that it is the intention of the Australian Government that:-

(a) If the United Kingdom Government so request, the Australian Government will accord to the United Kingdom the right to use or to provide any military facilities on the Island which may in future be mutually agreed as being needed in support of the Commonwealth, ANZAM or SEATO;

Defence
E A
Territories mpmn
~~Supply~~

(b) The Australian Government agrees that if the United Kingdom Government so request, the Island might be used for weapon testing on a basis to be agreed between the two Governments, having due regard for safety and any special considerations which may arise.

/(c)

The Rt. Honble R. G. Menzies, C.H., Q.C.
Prime Minister of the Commonwealth of Australia,
Parliament House,
Canberra, A.C.T.

Yours sincerely
Carrington
26/9.

Seen by Secretary
26/9

CONFIDENTIAL

pp. 357–358 Letter of 26 September, 1958 from the United Kingdom High Commissioner, Lord Carrington, to the Prime Minister of Australia, Robert Menzies.
NAA: A1209, 1957/4137 PART 4

CONFIDENTIAL

26 SEP 1958

(c) If the United Kingdom Government so request, the Government of Australia will consult with them should a proposal be put forward at any time for the establishment on the Island of a United Nations Control Post. This proposal might be made if Christmas Island were to become an essential adjunct of the Woomera Range.

Yours sincerely

Cunningham

CONFIDENTIAL

CONFIDENTIAL

57/4137.

PRIME MINISTER,
CANBERRA.

30 SEP 1958

My dear High Commissioner,

I have received your letter of the 26th September, 1958 in which you outlined certain understandings reached between our two Governments arising from the decision that the administration of Christmas Island in the Indian Ocean should be transferred from the authority of the United Kingdom to that of the Commonwealth of Australia.

I write now to confirm that it is the intention of the Australian Government in relation to the defence requirements of the United Kingdom that:

(a) If the United Kingdom Government so request, the Australian Government will accord to the United Kingdom the right to use or to provide any military facilities on the Island which may in future be mutually agreed as being needed in support of the Commonwealth, ANZAM or SEATO;

(b) The Australian Government agrees that if the United Kingdom Government so request, the Island might be used for weapon testing on a basis to be agreed between the two Governments, having due regard for safety and any special considerations which may arise;

(c) If the United Kingdom Government so request, the Government of Australia will consult with them should a proposal be put forward at any time for the establishment on the Island of a United Nations Control Post. This proposal might be made if Christmas Island were to become an essential adjunct of the Woomera Range.

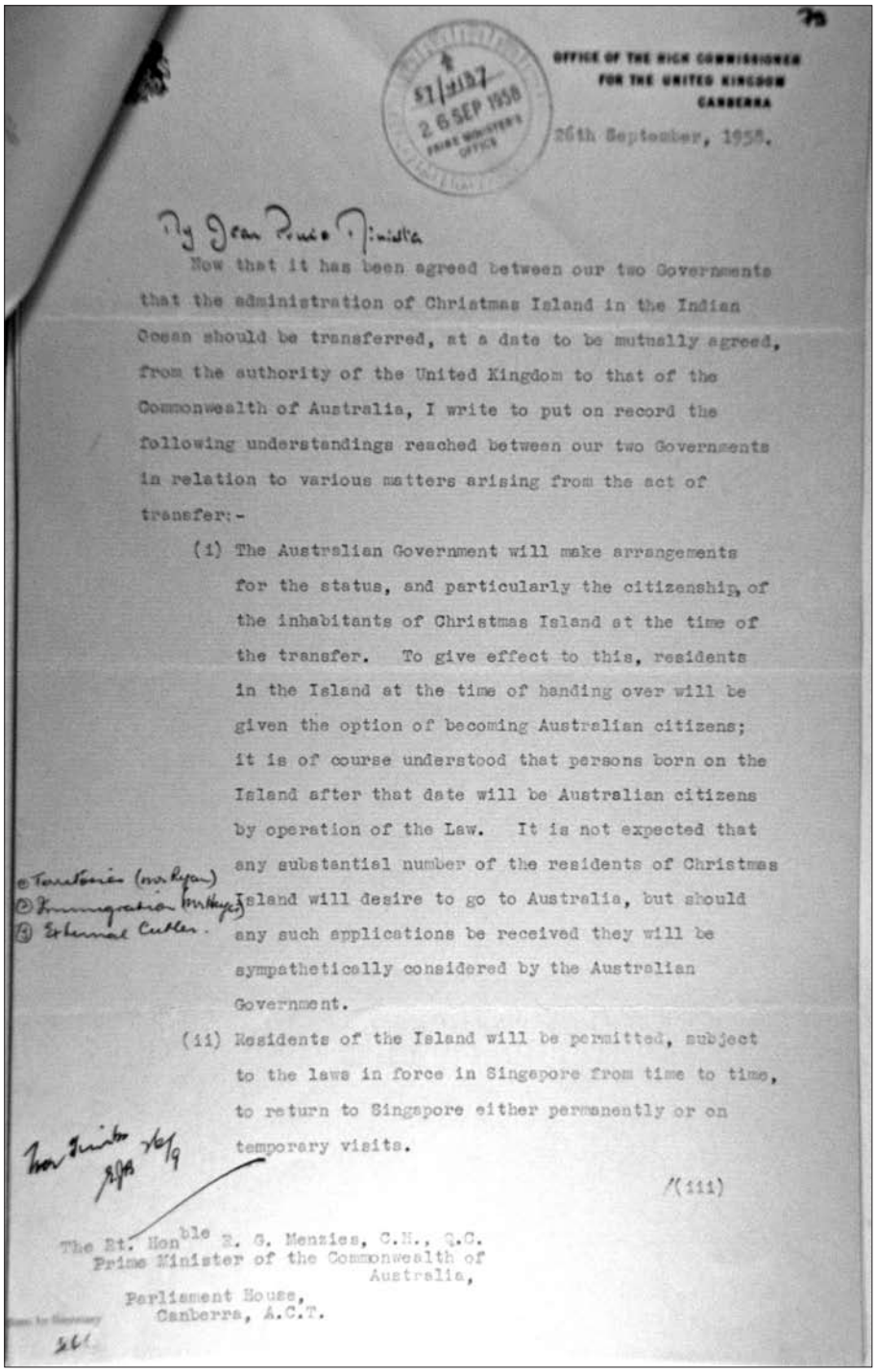
Yours sincerely,

ROBERT G. MENZIES

Prime Minister.

His Excellency the Right Honourable
the Lord Carrington, M.C.,
High Commissioner for the United Kingdom,
Commonwealth Avenue,
CANBERRA.

Letter of 30 September, 1958 from the Prime Minister of Australia, Robert Menzies, to the United Kingdom High Commissioner, Lord Carrington.
NAA: A1209, 1957/4137 PART 4



OFFICE OF THE HIGH COMMISSIONER
FOR THE UNITED KINGDOM
CANBERRA

26th September, 1958.

57/4137
26 SEP 1958
PRIME MINISTER'S OFFICE

My Dear Prime Minister

Now that it has been agreed between our two Governments that the administration of Christmas Island in the Indian Ocean should be transferred, at a date to be mutually agreed, from the authority of the United Kingdom to that of the Commonwealth of Australia, I write to put on record the following understandings reached between our two Governments in relation to various matters arising from the act of transfer:-

(i) The Australian Government will make arrangements for the status, and particularly the citizenship, of the inhabitants of Christmas Island at the time of the transfer. To give effect to this, residents in the Island at the time of handing over will be given the option of becoming Australian citizens; it is of course understood that persons born on the Island after that date will be Australian citizens by operation of the Law. It is not expected that any substantial number of the residents of Christmas Island will desire to go to Australia, but should any such applications be received they will be sympathetically considered by the Australian Government.

(ii) Residents of the Island will be permitted, subject to the laws in force in Singapore from time to time, to return to Singapore either permanently or on temporary visits.

/(iii)

The Rt. Honble R. G. Menzies, C.H., Q.C.
Prime Minister of the Commonwealth of Australia,
Parliament House,
Canberra, A.C.T.

pp. 360–361 Letter of 26 September, 1958 from the United Kingdom High Commissioner, Lord Carrington, to the Prime Minister of Australia, Robert Menzies.
NAA: A1209, 1957/4137 PART 4

(iii) The Australian Government will if requested accord to B.O.A.C. and Colonial airlines full operating rights at any airfield on the Island.

2. I should be grateful if you would confirm that sub-paragraphs (i) to (iii) above correctly represent the understandings and intentions of the Australian Government.

Yours sincerely

Lancaster

57/4137.

PRIME MINISTER,
CANBERRA.

30 SEP 1958

My dear High Commissioner,

I have received your letter of the 26th September, 1958 about the understandings reached between our two Governments following the transfer of the administration of Christmas Island in the Indian Ocean to the Commonwealth of Australia.

I confirm that the following correctly represents the understandings and intentions of the Australian Government:-

(i) The Australian Government will make arrangements for the status, and particularly the citizenship, of the inhabitants of Christmas Island at the time of the transfer. To give effect to this, residents in the Island at the time of handing over will be given the option of becoming Australian citizens; it is of course understood that persons born on the Island after that date will be Australian citizens by operation of the Law. It is not expected that any substantial number of the residents of Christmas Island will desire to go to Australia, but should any such applications be received they will be sympathetically considered by the Australian Government.

(ii) Residents of the Island will be permitted, subject to the laws in force in Singapore from time to time, to return to Singapore either permanently or on temporary visits.

(iii) The Australian Government will if requested accord to B.O.A.C. and Colonial airlines full operating rights at any airfield on the Island.

Yours sincerely,

Prime Minister.

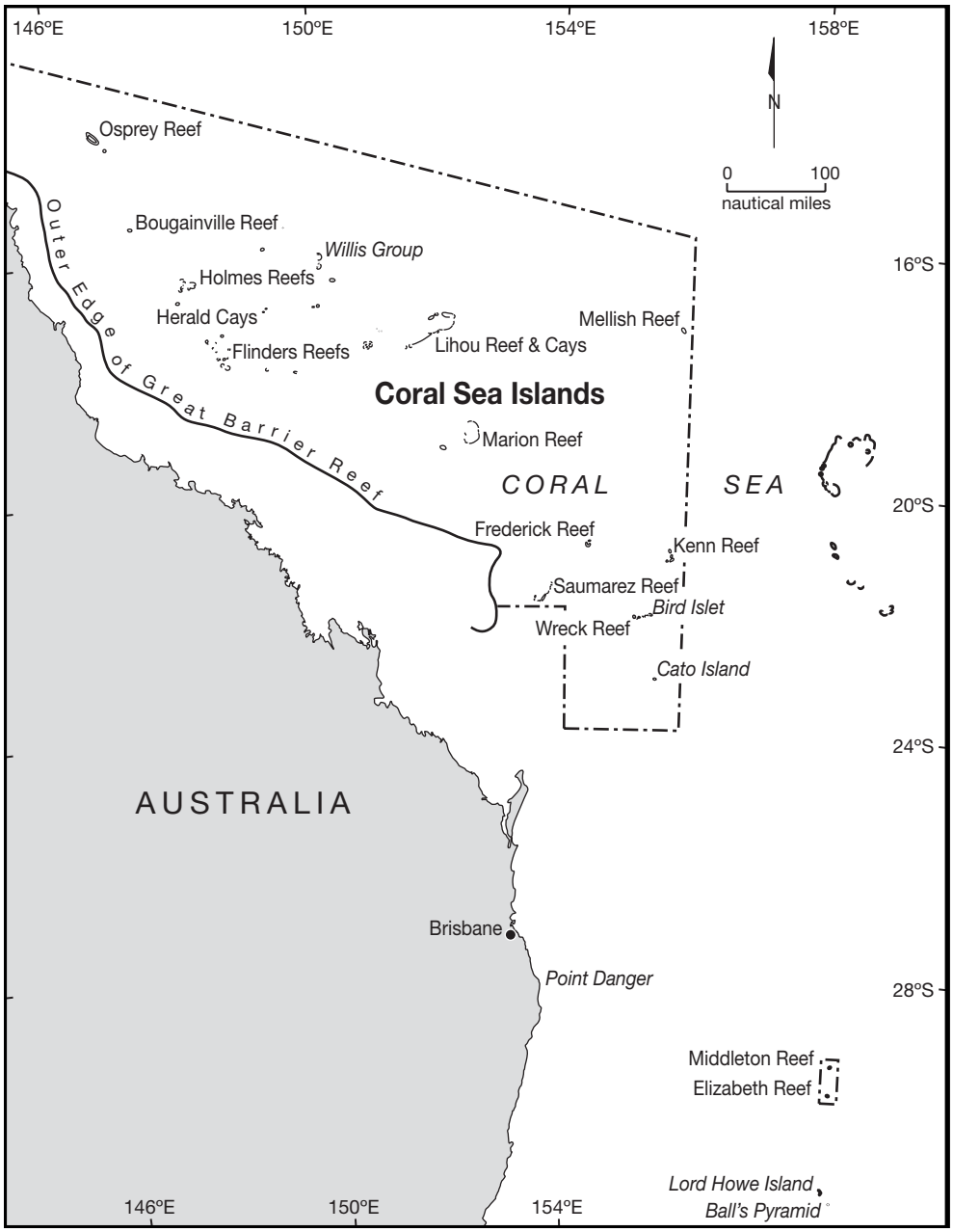
His Excellency the Right Honourable
the Lord Carrington, M.C.,
High Commissioner for the United Kingdom,
Commonwealth Avenue,
CANBERRA.

Letter of 30 September, 1958 from the Prime Minister of Australia, Robert Menzies, to the United Kingdom High Commissioner, Lord Carrington.
NAA: A1209, 1957/4137 PART 4

THE FINAL ACT

For the most part, Australia's territorial claims to its north, south, east and west had been satisfied by the end of the 1950s. Australia apparently continued nonetheless to yearn for the New Hebrides and the Solomon Islands, and in 1958 there was a lone parliamentary voice for the possible purchase by Australia of Dutch New Guinea.

For some time, however, Australian officials had been wondering what might be done about some places much closer to home, lying just to the east of the Great Barrier Reef and known as the Coral Sea Islands.



Coral Sea Islands. *Map drawn by Karina Pelling.*

CHAPTER THIRTEEN

Coral Sea Islands

The deeps have music soft and low
When winds awake the airy spry
It lures me, lures me on to go
And see the land where corals lie …

—Richard Garnett, *Where corals lie*

On 6 February 1936 a departmental minute to the Minister for External Affairs, George Pearce*, began with:

> Until recently the question of the ownership of the small islands lying off the coast of Australia has not been of any great significance to the Commonwealth.[1]

While for the next 20 years consideration of these islands was mainly at bureaucratic level, the 1936 statement nonetheless heralded a series of steps that culminated in 1969, when Australia acquired a scattered group of islands (with reefs and sand cays) within two areas of sea. Inner islands in the area which stretched from the eastern edge of the Great Barrier Reef towards New Caledonia to longitude 154° East, from latitude 12° South (the Papua New Guinea border) to 22° South, and an outer group of islands in the area from the 12° South / 154° East intersection eastward to longitude 157° 10' East and thence south to latitude 24° South. The combined area was about 780,000 square kilometres.

The territory thus acquired is titled the Coral Sea Islands Territory. A manned weather station has been in operation on Willis Island in the Willis Group since 1921, but the territory is otherwise uninhabited.

The Coral Sea Islands Territory was the last territory to be acquired by the Commonwealth in the twentieth century. It is the only external territory that was neither transferred to Australia by the United Kingdom nor administered by Australia under a mandate or trusteeship agreement.

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* George Pearce was a Labor senator who had been sworn in at the first sitting of the Commonwealth Parliament in 1901. For 25 of his 37 years as a senator, he held ministerial office. He was Minister for Defence during World War I.

EARLY CONSIDERATION

The story of the acquisition of the Coral Sea Islands really started at Federation in 1901, when their status was in doubt.

Letters Patent of 29 October 1900 purported to include within the boundaries of New South Wales all islands off the eastern coast of Australia that were not within the boundaries of Queensland and were within the area bounded by the mainland's east coast, latitude 40° South (the latitude of Bass Strait), longitude 154° East and latitude 12° South (the southern boundary of Papua).[2]

The 1936 minute to the minister raised a number of factors that the department thought important in considering whether Australia should move to put the islands' status beyond doubt. The islands and reefs lay 'at a distance of about 300 miles from the Queensland coast [and] are virtually not annexed, or at least, might be subject to disputed ownership.' Other important factors were increased Japanese fishing activities, reawakened French and German territorial interests, and developing transoceanic air services. Furthermore, Australia's growing naval effectiveness gave the islands a 'distinct potential value'.

The minute pointed out that when a wireless station was erected in 1922 on Willis Island the department had noted at the time:

> According to a telegram dated 19.10.21 from the Secretary of State … there does not seem to have been a quite satisfactory act of annexation of all these islets and reefs. They are deemed to be British possessions in virtue of Captain Cook's annexation of the east coast of Australia and the off-lying islands on 22 August, 1770; and on one or two of them the British flag has since been hoisted. Some of them, according to the Australian Directory, Vol I, have been in occasional occupation, and Willis Island has recently been occupied by the Commonwealth Government; others have not been occupied; but it is to be presumed that no other country is likely to lay claim to any of them …

The minute indicated that in the 1920s it had been suggested that it would be well to bring these islets and reefs under the control of the Commonwealth but nothing of substance was done. In 1929, some islands in the general area were considered by the Defence Department as possible emergency landing grounds on the Sydney – Norfolk Island – Fiji air route, which was being developed. Again, in 1933, the Defence Department reported that there were certain islets and reefs in the Coral Sea that were British possessions but not part of the Commonwealth, and some were shown not to be in the possession of any nation. In 1934, the External Affairs Officer in London was asked to take up the matter with the Admiralty to determine whether it would be advisable to take any further action in regard to the unclaimed islands and reefs, but no response was received.

The External Affairs Department had therefore decided to bite the bullet and put the matter before the government for its consideration.

The department said that an examination showed:

> … that the boundary of the State of Queensland is the outer edge of the Barrier Reef, or 60 miles from the mainland, whichever is the further, while the jurisdiction of New South Wales over the area to the eastward of that line appears to have been removed in 1859. The only other authority with power to take steps to exercise British jurisdiction over this area is the High Commissioner for the Western Pacific, by virtue of the Order-in-Council of 1893, which defined the limits of his jurisdiction, but no steps have ever been taken by the High Commissioner to render the British Sovereignty over those islands effective, nor is there any present indication that he will do so. The sovereignty of these islands is a matter which is of primary importance to Australia, and consequently it is felt that action should be initiated by the Commonwealth Government to ensure that they become clearly recognised as British territory.

The islands could be brought under Australian control, said the department:

> with little difficulty. As all but three of the islands can legitimately be claimed as British, all that is required to bring them under Australian control would be for action to be taken to have an Order-in-Council made under the Colonial Boundaries Act, to come into operation when the necessary legislation accepting the islands had been passed. To ensure that no islands are overlooked in this extension of the boundary, the Order-in-Council and the resultant Act should be so worded to include all the islands and territories not already under the jurisdiction of Papua lying between the East Coast of Australia and the longitude of 158° east of Greenwich, (which is the Western limit of New Caledonia), as far North as 10° of south latitude and as far South as the latitude of Point Danger. Middleton Reef and Elizabeth Reef could at the same time be brought within the jurisdiction by specific reference. They could subsequently be placed under the control of New South Wales if that State so desired.

The department suggested that before any action was taken it would be necessary to consult the governments of New South Wales and Queensland to obtain their views on sovereignty and future jurisdiction. In making this suggestion the department noted that the Queensland Government 'seem loth [*sic*], however, to accept jurisdiction over outlying islands, even within 60 miles of their coast, and, upon various reports, regard the responsibility as a Commonwealth rather than as a State matter.' The department said that after consultation with the state governments the matter could then be taken up with the Dominions Office. Minister Pearce annotated the minute 'Action along lines indicated above to be taken G.F.P. 7/2/36'.[3]

Before the outbreak of World War II, New South Wales agreed for defence reasons to transfer the islands in question, but nothing eventuated. Likewise, the British

Government was approached to annex and transfer to the Commonwealth those islands lying between 154° and 158° East (the western line of French influence around New Caledonia) and 12° and 40° South. However, the war broke out and the British Government agreed with the Commonwealth not to proceed with the transfer until the end of hostilities, as any move to acquire territory might excite undue interest on the part of other powers.

POST WORLD WAR II CONSIDERATION

As we have seen in the acquisition of most of Australia's external territories, time did not appear to be of the essence. It was not until nearly a decade after the war that the Department of External Affairs was moved to try again to reactivate serious consideration of the matter.

In a January 1955 minute, the tone of which was, however, rather discouraging, it noted that:

> most of the Islands strictly so-called … have already been formally claimed as British in one way or another. The position of reefs and shoals is more obscure … The question of whether reefs and shoals are capable of annexation is one for consideration and the International Law Commission has recently been considering questions relating to reefs and shoals in its study of matters connected with the high seas.
>
> This general question of the Islands off the coast of Australia, has been under consideration now for over thirty years. Shortly before the out-break of the Second World War it looked as though the matter might be brought to some finality … the objective was to arrange for the State of New South Wales to transfer to the Commonwealth such Islands in the Coral Sea as were within its jurisdiction, while the United Kingdom was to be asked to transfer to the Commonwealth those Islands and reefs between 154° and 158° E which were under its jurisdiction. For various reasons, however, the matter was not pursued following the outbreak of the war.

The minute indicated that after the war the Department of Defence advised that it was desirable on defence grounds that the Commonwealth secure control of the islands and reefs, as well as Middleton and Elizabeth reefs, which lay just further south and beyond 158° east.

The 1955 minute concluded:

> The problems raised in this question are difficult ones involving questions not only of international law but of domestic constitutional law, inter-Commonwealth relations and international relations, and it has not up to the present been possible to proceed very far towards the finalization of the question … It would, however, … be optimistic

> (in view of past history) to expect that the matter will be tidied up without long drawn out negotiations, not only with the States, but with the United Kingdom and possibly other countries.[4]

Despite the pessimistic comments in the minute, a draft Cabinet submission was prepared, dealing with the islands and reefs in the Coral Sea but also proposing amendments to the boundaries of Western Australia and Queensland to include references to their offshore reefs. A copy was sent to the Attorney-General's Department for comment.

The secretary of the department, Sir Kenneth Bailey, noted in his advice that the proposals raised for consideration 'substantial questions of international law. In particular, it has been necessary to consider the rules of international law relating to the acquisition of territory, the continental shelf and the seabed beyond the limits of the continental shelf.' Bailey noted that the proposal related to the acquisition by the Commonwealth not only of 'islands' but also of 'reefs', which, he pointed out, were not 'islands', the latter being permanently above high-water mark. While the transfer of the islands did not present any difficulty (except for the need, in his view, for the Commonwealth to confirm by independent action that those islands transferred from New South Wales were under the Commonwealth's occupation, as he had some doubt about New South Wales' title to them), the transfer of the reefs raised issues involving the continental shelf doctrine.†

Under that doctrine—then in the early stages of being established—the definition of the continental shelf of a coastal nation-state extended to adjacent submarine areas to a depth of 200 metres or, beyond that limit, to where the depth allowed the exploitation of natural resources. Bailey pointed out that Australia had not annexed the continental shelf as territory (as some other countries had) but, in conformity with the proposals of the International Law Commission, had asserted sovereign rights over the seabed and subsoil of the continental shelf. Because a number of the reefs in question lay within Australia's continental shelf, Australia could therefore already exercise certain, perhaps limited, rights over them. If at any time in the future Australia wished to exercise more extensive rights, it could do so by annexing the continental shelf as territory.

Of those reefs to which the doctrine was not applicable (that is, because they lay outside the area of the continental shelf), they 'are subject to the general regime of the high seas [and] cannot be brought under the sovereign authority of any one country'.

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† Earlier Letters Patent giving the Governor of New South Wales jurisdiction over a defined land area and "islands adjacent" in the Pacific had been interpreted widely, but in the mid-nineteenth century the phrase had been interpreted more restrictively to apply only to those islands within the three-mile limit. That interpretation was thought to be the better one. See Interdepartmental Committee consideration of Coral Sea Islands Territory, 28 June 1968, NAA: A432, 1968/3400.

However, the erection by a state of non-hostile installations, such as lighthouses, seemed to confer on the state 'something in the nature of a possessory title'.

In summing up, the Secretary advised that it was not necessary to amend the boundaries of Western Australia or Queensland, as reefs within the continental shelf were already under Australia's authority. Those that were outside the shelf could not be effectively acquired but could have non-hostile installations erected on them. On the eastern seaboard, the New South Wales islands could be legally transferred as long as the Commonwealth confirmed its title. The United Kingdom's islands, but not its reefs, could also be transferred. As a matter of acquisition of territory, the Cabinet submission should, in Bailey's view, be confined to the proposals to transfer the New South Wales and British islands.[5]

After a considerable period of uncertainty about the status of the islands, the matter was finally being put to ministers.

DECISION TO ACQUIRE

On 20 February 1957, federal Cabinet decided to complete the transfer of the New South Wales islands in question and seek from the British Government the annexation and transfer to the Commonwealth of islands lying between longitudes 154° and 158° East and possibly Pocklington Reef (which was then attached administratively to the Solomon Islands). Cabinet also agreed that periodic defence force visits should be made to the islands and that an examination should be undertaken of the practicability of establishing navigation aids on reefs within the area, thus providing some basis for a claim of some possessory title to them.[6]

Following this decision, almost a decade was to pass with no record of any developments or any substantive action to transfer. Again, it appears that time was not of the essence.[‡]

On 10 March 1967, in a letter to New South Wales Premier Bob (later Sir Robert) Askin, Prime Minister Harold Holt[§] referred to a letter from the Premier dated 5 October 1966 and was pleased to note that the New South Wales Government agreed in principle to the transfer to the Commonwealth of 'certain islands in the Coral Sea'. Holt suggested that 'a draft surrender agreement … sent to the State some time ago could be taken as the basis for discussion.'

The Prime Minister's letter then turned to offshore petroleum matters. He noted that the Premier had indicated that New South Wales wished to reserve the right to consider its position should any substantial discovery of petroleum be made in the

‡ There do not seem to be any records of this period in the National Archives of Australia or in the relevant department.

§ Harold Holt followed on the heels of Sir Robert Menzies. Among other things, Holt's government dismantled the White Australia policy. The landmark referendum that resulted in Aboriginal people being counted in the national census was passed in his time.

area concerned. Holt said that he did not read the Premier's comment as suggesting that the surrender should be held in abeyance. Nevertheless, he indicated that the Commonwealth's view was that any revenues derived from the submarine areas adjacent to the Coral Sea islands should be distributed in precisely the same way as revenue derived from submarine areas adjacent to a state under the proposed joint Commonwealth–state legislation covering offshore petroleum. That is, Queensland would be the relevant state for administrative and revenue purposes.[7]

In the Commonwealth's discussions with Queensland about offshore mineral resources in 1966, the potential problems of Queensland's border with the Territory of Papua and New Guinea in the Torres Strait and the Gulf of Papua were raised. The Australian Government felt that the general principle of the median line, following the International Convention on the Continental Shelf, should determine the boundary. However, the median line crossed and recrossed the territorial boundary line. The Commonwealth considered that a strict adherence to the median line would upset the Territory of Papua and New Guinea, which had already issued petroleum exploration permits within its territorial boundary, and invite United Nations criticism.

Therefore, the Commonwealth's proposition was that the existing territorial boundary should govern the seabed division where the permits had already been granted, but the median line principle should apply elsewhere. As part of the Queensland – Territory of Papua and New Guinea seabed division arrangements for offshore petroleum, it was agreed that Pocklington Reef, when transferred from the United Kingdom, would be placed under the jurisdiction of Papua and New Guinea.¶

In seeking Queensland's agreement, the Commonwealth pointed out that its intention was that, once the Coral Sea Islands Territory was acquired, the islands in it would be part of the continental shelf of Queensland for offshore petroleum purposes.[8]

In the course of 'protracted negotiations' with New South Wales about the transfer of its islands in the Coral Sea area, pursuant to s. 111 of the Constitution, Commonwealth Attorney-General Nigel Bowen said in advice to the Prime Minister that, if New South Wales were required formally to transfer them, it would be politically embarrassed if it were not able to receive a share of the potential revenue from offshore oil exploitation in the area. In these circumstances, Bowen felt it unlikely that an acceptable Commonwealth – Queensland – New South Wales agreement could be reached.

¶ Pocklington Reef lies some 10°50' South and became part of the Territory of Papua New Guinea.

Therefore, Bowen broached the idea of the Commonwealth:

> acting independently of any surrender from New South Wales and proceeding to legislate for the islands on the basis that they have already become Commonwealth territory as a result of the Commonwealth's own previous and sufficient exercise of authority in relation to them.

He felt that New South Wales saw this possible solution as one it could live with, as it did not believe it really had a 'valid claim' to the islands and it would be happy to see the 'whole matter disposed of without being called upon to be a participant'.

The Attorney-General agreed with the Commonwealth Solicitor-General's view that the islands were not part of New South Wales and that the Commonwealth had performed sufficient acts of a sovereign nature to justify legislating directly for them as Commonwealth territory. Moreover, he pointed out, apart from the United Kingdom in the days before Federation, no country other than Australia had displayed any interest in the islands. These considerations led him to be 'disposed to think that we have hitherto perhaps been unduly cautious about the possibility of international reaction'.

Bowen noted that 'negotiations were well advanced with the United Kingdom' for the acquisition of the islands in the Coral Sea between longitudes 154° and 158° East. He also noted that the government was 'endeavouring to complete matters in time for both groups of islands to be taken into account in the [soon to be introduced] offshore petroleum legislation'.[9]

Prime Minister Holt wrote again to New South Wales Premier Askin, informing him:

> that the Commonwealth Government is firmly of the opinion that the Commonwealth has acquired the islands in the Coral Sea area between the Great Barrier Reef and 154° east longitude by reason of its own acts of sovereignty and proposes in due course to enact legislation for the government of the Territory comprising the islands … I have thought that I would let you know in advance of what the Commonwealth will be doing by way of legislation with respect to the islands. We are also giving Queensland certain assurances on the lines previously discussed with respect to the administrative arrangements for the granting of permits and licences in respect of the submarine areas adjacent to the islands, as well as the islands themselves, and the distribution of petroleum revenues derived from these areas and islands.[10]

In introducing the Petroleum (Submerged Lands) Bill on 18 October 1967, the Minister for National Development, David Fairbairn, indicated that it would:

> provide a legislative framework to govern the exploration for, and the exploitation of, the petroleum resources of submerged lands adjacent to Australia and certain of the Territories of the Commonwealth … [and would] at a later stage … be extended to islands in the Coral Sea west of 158° east longitude and to their adjacent submerged lands.[11]

Thus, for the purposes of the offshore petroleum legislation, the New South Wales islands in question were already within the ambit of the Bill because they were adjacent to Australia, regardless of which government might have sovereignty over them.

The New South Wales Premier responded to Holt's letter of 19 September as follows:

> I wish to inform you that this State considers that the Coral Sea islands concerned are part of New South Wales and that it does not accept that the Commonwealth can legislate directly for them as Commonwealth territories acquired by its own acts of sovereignty. In the circumstances this State will, on the enactment of any Commonwealth legislation dealing with the islands, take immediate court action to test the validity of such legislation.[12]

This letter was probably written more with an eye to any possible political embarrassment, which the Attorney-General had earlier alluded to, rather than to serious litigation. In any event, a prime ministerial rejoinder on 16 May 1968 (from John Gorton, Harold Holt having been lost at sea in the interim) pointed out that, insofar as the offshore petroleum legislation was concerned, the control of the islands (other than those between 154° and 158°) was 'a matter over which the Commonwealth maintains that it has authority regardless of the status of the islands themselves'.[13]

On 13 June 1968, the Minister for External Affairs, Paul Hasluck, answered a question on notice in the federal parliament about American claims to the Phoenix Islands in the Pacific Ocean. The questioner, Manfred Cross (Member for Brisbane) asked whether Australia claimed sovereignty over any territories that it did not administer. Hasluck responded:

> No. The degree of administration varies, of course, according to the circumstances of the territory in question—for example, very little in the way of administration has hitherto been needed in respect of a number of small uninhabited islands in the Coral Sea over which Australia claims sovereignty.[14]

Meanwhile, as we have seen, negotiations had been progressing with the United Kingdom about the transfer of the 'outer' islands in the Coral Sea lying within the easternmost border of 157° 10' East, which had been delineated with the French Government in relation to New Caledonia. Originally, Australia proposed an exchange of notes similar in form to those dealing with the transfer of Heard and McDonald Islands (see Chapter Ten), but the United Kingdom expressed doubt about using that

form because it felt that there was some possibility of the islands being *terrae nullius*. The United Kingdom suggested a form of note with which Australia agreed,[15] and a note dated 16 August 1968 was sent from the British High Commissioner in Canberra to the Secretary of the Prime Minister's Department.

The note indicated that, in relation to a number of specified islands [**] in the Coral Sea between longitudes 154° and 158° East:

> The United Kingdom Government do not claim any right or interest in [them] which is inconsistent with the exercise over them by the Australian Government of effective government, administration and control. The United Kingdom Government accordingly recognise that Her Majesty's Sovereignty over the islands, and effective government, administration and control over them, is exercised by the Australian Government.[16]

In contrast, the notes in relation to Heard Island and McDonald Islands indicated that His Majesty's sovereign rights over them were transferred, and that Australia had established effective administration and control.

On 8 November 1968, the Secretary of Prime Minister's Department replied to the British note, noting the British Government's view. The status of the 'outer' islands was settled.[17]

Australia had continued to carry out 'acts of sovereignty' in the area, such as visits by naval ships and the placement of meteorological stations on some of the islands. There was still some nervousness about whether New South Wales might make good its threat to take legal action, but the federal government began to move to legislate to create the territory.[18]

ACQUISITION

Prime Minister Gorton advised the New South Wales Premier on 23 May 1969 of the Commonwealth's intention to introduce legislation into the parliament towards the end of that month to constitute the Territory of the Coral Sea Islands.[19]

On 29 May 1969, the Coral Sea Islands Bill was presented to parliament and moved to the second reading. In his second reading speech, the Minister for External Territories, Charles Barnes[††], noted and outlined a number of acts of sovereignty in the intended territory by the Commonwealth 'over a number of years':

** The specified islands were Bird Islet, West Islet and other islands forming part of Wreck Reef; Cato Island; Herald Beacon Islet and other islands forming part of Mellish Reef; Observatory Cay and other islands forming part of Frederick Reef; Observatory Cay and other islands forming part of Kenn Reef; Pocklington Reef.

†† Charles EB Barnes followed Hasluck as Minister for Territories, holding the position until the McMahon Government appointed Andrew Peacock. Critics of Barnes saw constitutional development of the largest territory (Papua and New Guinea) as proceeding too slowly, and it became a partisan political issue during his term.

> A lighthouse has been erected on Bougainville Reef and beacons are operating on Frederick Reef and Lihou Reef. A meteorological station has operated in the Willis Group since 1921 and there is an unmanned weather station on Cato Island. They have been regularly visited by Royal Australian Navy vessels. Survey parties … have completed a survey of most of the islands.[20]

Barnes also noted that the offshore petroleum legislation would be extended to the territory. Although the legislation provided for the government of certain islands in the territory by way of Ordinances by the Governor-General for their peace, order and good government, the Bill, unlike the Heard Island and McDonald Islands Act, did not apply a set of Australian laws. No one set of current territory laws entirely met the requirements of the islands and therefore appropriate laws would be applied by an 'adoption of laws' Ordinance. However, the judicial system of Norfolk Island would be applied to the islands. No administration would be established on the islands, but the Bill would provide the means of controlling the activities of those who visited them.

In debate on 13 August 1969, the Leader of the Opposition, Edward Gough Whitlam (Member for Werriwa), made some interesting observations. He saw the islands as:

> distant outposts of Australia's empire. In both area and population, Australia now rules the largest empire in the world. It is true that the empire is declining and will decline further. Last year the Trust Territory of Nauru was granted independence. In a very few years the colony of Papua and the Trust Territory of New Guinea similarly will gain independence …

After briefly setting out the history of Australia's territorial acquisitions, and making some observations about them and the laws that were applied to them, Whitlam went on:

> The jurisdiction over the many islands surrounding the great Australian continental land mass is in a variety of hands … I have mentioned the various basic laws applying in the Territories because I note with approval the different procedure which has been adopted in the present Bill. One could scarcely imagine a greater variety of laws than those which, in the last generation, have applied to the Territories of the Commonwealth … There are no inhabitants in this new Territory, our imperial outposts in the Coral Sea … The Commonwealth is very properly asserting its rights over these islands and establishing a framework for laws relating to them.[21]

The debate concluded and the Bill was read a third time and passed to the Senate.

The Senate commenced its consideration of the Bill on 19 August 1969, debate resuming on 21 August. Speakers questioned the effect that the proposed territory's boundaries would have on the boundary with the Territory of Papua and New Guinea

and expressed concerns about its effects on fishing rights and the provisions of the offshore petroleum legislation. While it was pointed out that the Bill was about the islands, it was also noted that each of these had a continental shelf.

Senator Ivor Greenwood (Victoria) thought that 'a very real question arises of whether the Commonwealth Government has power or authority to pass this legislation with regard to these islands and to claim to assert in respect of them an authority which would entitle Commonwealth law to be imposed in them.'

Greenwood canvassed at some length the history of British involvement with the islands and the various jurisdictional limits described, by Letters Patent, for the colonies from time to time. He did this in order to indicate that different views could be reached about claims which might be made in relation to the islands. Nevertheless, he considered, particularly in view of petroleum exploration and fishing, that it was:

> … on occasions such as this [that] Australia should assert the control which must be made internationally. For that reason I believe that this is a significant measure. For the reasons I advanced earlier, it takes its place as the first clear and unequivocal claim by Australia, without reference to any other country at all, to territory over which it seeks to exercise authority.

In commenting on Greenwood's observations, the minister responsible for the Bill's passage, Senator Reginald Wright (Tasmania), noted that 'since the passing of the Statute of Westminister [*sic*] [the Commonwealth] is entitled to acquire, at least in its own right, whatever territory it thinks fit. This is recognised in section 122 of the Constitution.'[22]

The Bill was passed and assented to on 2 September 1969, coming into force 28 days later on 30 September 1969, in accordance with the normal procedure under the *Acts Interpretation Act 1901*.

Australia had acquired its tenth external territory.

POSTSCRIPT

Not long after the Coral Sea Islands Territory was established, pressure began to mount from industry and Queensland in relation to the federal government's stated intention to extend the Petroleum (Submerged Lands) Act to the territory. As more interest was shown in activities in the area (for example, by the registration of companies), a realisation grew of the need for laws to be applied to the islands. The government decided that the laws of the Australian Capital Territory, in so far as they were applicable, should be applied by the foreshadowed 'application of laws' Ordinance.

The Ordinance itself was unremarkable, but its making on 19 October 1973 is an important aspect of constitutional history. Queen Elizabeth was visiting Australia and the Ordinance joined the ranks of a small number of statutory instruments that have been made by Her Majesty the Queen acting with the advice of the Federal Executive

Council. Although the Ordinance was not an instrument of acquisition, a copy of the document is included in the end papers for its historical interest.

There was continuing consideration of the scope of the territory—which consisted of myriad islands, islets and sand cays around which a 'picture frame' boundary had been drawn. Should two large reef structures lying off the New South Wales coast well below the territory's southern boundary, Elizabeth Reef and Middleton Reefs be included?

First recorded in 1788 as 'a drying sand bank' and 'an island', respectively, these reefs were used as navigation points. They were surveyed in 1977, but no high tide elevations were observed. They were not included in the 1855 boundaries of New South Wales, and in the 1930s they were described as British dependencies of New South Wales. They may have been under the jurisdiction of the High Commissioner for the Western Pacific in the 1890s, but that authority apparently performed no acts of sovereignty in relation to them.

The mid-1950s draft Cabinet submission proposing the transfer to the Commonwealth of those islands that were to constitute the Coral Sea Island Territory also proposed the transfer of Elizabeth and Middleton Reefs. However, the advice from the Attorney-General's Department at the time was that the reefs were so situated that they could not reasonably be regarded as being included in the International Law Commission's definition of the continental shelf. Reefs of their character were described as subject to the general regime of the high seas and could not be brought under the sovereign authority of any one country.

A departmental note prepared in 1981 noted, among other things, that:

> Although existing evidence suggests that Elizabeth and Middleton Reefs would not be entitled to generate either an EEZ [Exclusive Economic Zone] or a continental shelf under the provisions of Article 121(3) of the Draft Convention of the Law of the Sea, these features were used in negotiations with the French for delineation purposes. The reefs fall within the New South Wales adjacent area boundary defined by the Petroleum (Submerged Lands) Act 1967.[23]

Consideration was being given to laying claim to the reefs and perhaps including them in the Coral Sea Island Territory 'picture frame'. This would not be easy, so the possibility of including them in a self-contained area for legislative incorporation in the territory was raised.

In 1986, the Attorney-General's Department was asked whether the reefs could be declared parks or reserves under the *National Parks and Wildlife Conservation Act 1975*. The department took the view that the reefs were either islands or fell within or were surrounded by Australia's continental shelf, or both. Moreover, the islands were 'territory otherwise acquired by the Commonwealth within the meaning of that term in s. 122 of the Constitution' and were owned by the Commonwealth. Therefore, the reefs could be declared parks or reserves. However, the department felt that it would

not be 'satisfactory to declare [them] thus and not to make any proper provision for their administration as an external Territory'.[24]

In December 1987, the reefs were declared a Marine National Nature Reserve under the National Parks and Wildlife Conservation Act.

In 1997, the boundaries of the Coral Sea Islands Territory were altered at the northern edge to lie south-east of 12° South to 16° South and were extended in a separately defined 'picture frame' to incorporate Elizabeth and Middleton Reefs in an omnibus Act titled the *Environment, Sport and Territories Legislation Amendment Act 1997*. Assent to that Act occured on 7 July 1997.

NOTES

1 Department of External Affairs minute, 6 February 1936, D1978/3774.
2 Cabinet Submission No. 511, 30 January 1957, NAA: A5619, C227.
3 Department of External Affairs minute, 6 February 1936, D1978/3774.
4 Department of External Affairs minute, 19 January 1955, D1978/3774.
5 Memorandum from Attorney-General's Department to Department of External Affairs, 5 October 1956, D1978/3774.
6 Cabinet Decision No. 640, 20 February 1957, NAA: A4910, VOLUME 5.
7 Letter from Prime Minister to Premier of New South Wales, 10 March 1967, D1978/3774.
8 Letter from Prime Minister to Premier of Queensland, 22 April 1966, NAA: A463, 1972/4225.
9 Letter from Attorney-General to Prime Minister, 12 July 1967, D1978/3774.
10 Letter from Prime Minister to Premier of New South Wales, 19 September 1967, D1978/3774.
11 CPD, HR, Vol. 57, 18 October 1967, pp. 1941, 1945.
12 Letter from Premier of New South Wales to Prime Minister, 31 October 1967, D1978/3774.
13 Letter from Prime Minister to Premier of New South Wales, 16 May 1968, D1978/3774.
14 CPD, HR, Vol. 59, 13 June 1968, p. 2291.
15 Interdepartmental committee notes, 28 June 1968, NAA: A432, 1968/3400.
16 Letter from British High Commissioner to Secretary of Prime Minister's Department, 16 August 1968, D1978/3774.
17 Letter from Secretary, Prime Minister's Department, to British High Commissioner, 8 November 1968, D1978/3774.
18 Letter from Minister for External Territories to Prime Minister, 30 August 1968, D1978/3774.
19 Letter from Prime Minister to Premier of New South Wales, 23 May 1969, NAA: A463, 1972/4225.
20 CPD, HR, Vol. 63, 29 May 1969, pp. 2471–72.
21 CPD, HR, Vol. 64, 13 August 1969, pp. 240–242.
22 CPD, Senate, Vol. 42, Hansard 21 August 1969, pp. 263–275.
23 Undated, D1978/3774.
24 Memorandum from Attorney-General's Department to National Parks and Wildlife Service, 29 January 1986, D1986/2469.

END PAPERS

BRITISH HIGH COMMISSION
CANBERRA

REC'D
19 AUG 1968

4/5

16 August, 1968.

Dear Mr. Hewitt

I refer to discussions between our two Governments relating to the undermentioned islands situated in the Coral Sea between longitudes 154° and 158° East:-

Bird Islet, West Islet and other islands forming part of Wreck Reef;

Cato Island;

Herald Beacon Islet and other islands forming part of Mellish Reef;

Observatory Cay and other islands forming part of Frederick Reef;

Observatory Cay and other islands forming part of Kenn Reef;

Pocklington Reef.

The United Kingdom Government do not claim any right or interest in the above-mentioned islands which is inconsistent with the exercise over them by the Australian Government of effective / government,

The Secretary,
Prime Minister's Department,
CANBERRA.

pp. 379–380 Letter of 26 August, 1968 from the British High Commissioner, Sir Charles Johnston, to the Secretary, Prime Minister's Department, C.L. Hewitt.
Attorney-General's Department File, D1978/3774

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- 2 -

government, administration and control. The United Kingdom Government accordingly recognise that Her Majesty's Sovereignty over the islands, and effective government, administration and control over them, is exercised by the Australian Government.

Yours sincerely,

Charles Johnston.

(Charles Johnston)

D78/37

S

PRIME MINISTER'S DEPARTMENT

SECRETARY

CANBERRA, A.C.T. 2600

8 November 1968

My dear High Commissioner,

I refer to your letter of 16 August relat to the undermentioned Islands situated in the Coral Sea between longitudes 154° and 158° east:-

Bird Islet, West Islet and other islands forming part of Wreck Reef;

Cato Island;

Herald Beacon Islet and other islands forming part of Mellish Reef;

Observatory Cay and other islands forming part of Frederick Reef;

Observatory Cay and other islands forming part of Kenn Reef;

Pocklington Reef.

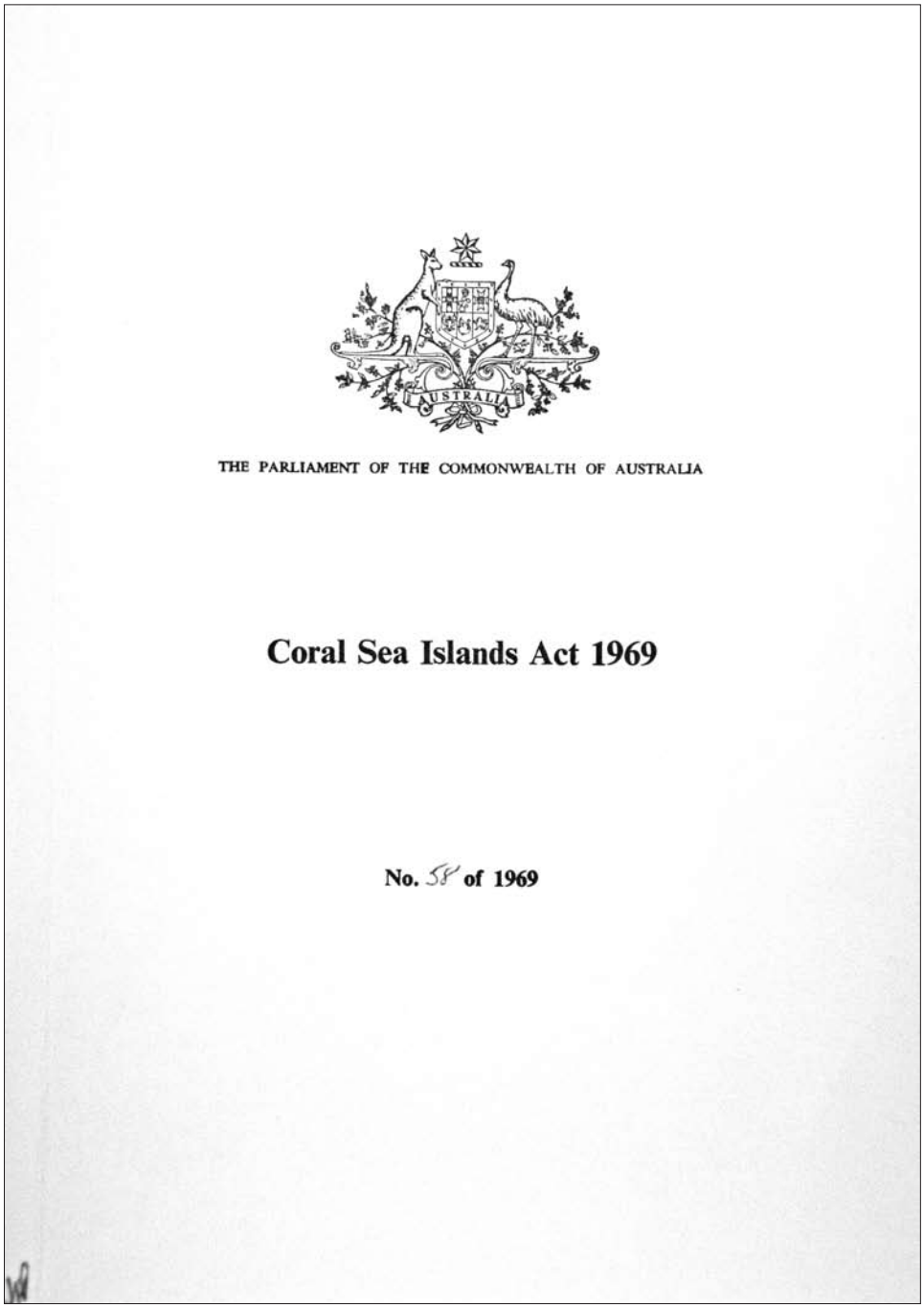
The Australian Government notes that the United Kingdom Government does not claim any right or interest in the abovementioned islands which is inconsistent with the exercise over them by the Australian Government of effective government, administration and control, and that the United Kingdom Government accordingly recognises that Her Majesty's Sovereignty over the islands and effective government, administration and control over them is exercised by the Australian Government.

Yours sincerely,

(C.L. HEWITT)

Sir Charles Johnston, K.C.M.G.,
High Commissioner,
British High Commission,
CANBERRA. A.C.T. 2600.

Letter of 8 November, 1968 from the Secretary, Prime Minister's Department, C.L. Hewitt, to the British High Commissioner, Sir Charles Johnston.
Attorney-General's Department File, D1978/3774



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Coral Sea Islands Act 1969

No. 58 of 1969

pp. 382–386 Coral Sea Islands Act No. 58 of 1969.
NAA: A1559, 1969/58

COMMONWEALTH OF AUSTRALIA

Coral Sea Islands Act 1969

No. 58 of 1969

AN ACT

To provide for the Government of certain Islands acquired by the Commonwealth.

Preamble.

WHEREAS all the islands within an area the boundary of which commences at a point that is the intersection of the eastern extremity of the Great Barrier Reef by the parallel 12 degrees South Latitude and runs thence easterly along that parallel to its intersection by the meridian 154 degrees East Longitude, thence southerly along that meridian to its intersection by the parallel 22 degrees South Latitude, thence westerly along that parallel to its intersection by the eastern extremity of the Great Barrier Reef, thence generally northerly along the eastern extremity of that Reef to the point of commencement are territories acquired by the Commonwealth:

AND WHEREAS all the islands within an area the boundary of which commences at a point that is the intersection of the meridian 154 degrees East Longitude by the parallel 12 degrees South Latitude and runs thence easterly along that parallel to its intersection by the meridian 157 degrees 10 minutes East Longitude, thence southerly along that meridian to its intersection by the parallel 24 degrees South Latitude, thence westerly

along that parallel to its intersection by the meridian 154 degrees East Latitude, thence northerly along that meridian to the point of commencement are also territories acquired by the Commonwealth:

AND WHEREAS it is desirable to make provision for the government of the islands referred to in the last two preceding paragraphs of this Preamble as one Territory of the Commonwealth: 5

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:—

Short title.

1. This Act may be cited as the *Coral Sea Islands Act* 1969. 10

Definitions.

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

" Ordinance " means an Ordinance made under this Act;

" the Territory " means the Coral Sea Islands Territory.

Coral Sea Islands Territory.

3. The Coral Sea Islands, that is to say, the islands described in the first paragraph of the Preamble to this Act and the islands described in the second paragraph of that Preamble, are declared to be a Territory of the Commonwealth by the name of Coral Sea Islands Territory. 15

Continuance of laws.

4. Subject to this Act, the laws in force in the Coral Sea Islands at the commencement of this Act continue in force, but may be altered or repealed by Ordinance made in pursuance of this Act. 20

Ordinances.

5.—(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 *Gazette*, and an Ordinance shall, unless the contrary intention appears in the Ordinance, come into operation on the date of publication of the notice. 25

Application of Commonwealth Acts.

6.—(1.) An Act or a provision of an Act (whether passed before or after the commencement of this Act) is not in force as such in the Territory unless it is 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. 30

Tabling of Ordinances.

7.—(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, is void and of no effect. 35

(2.) If either House of the Parliament, in pursuance of a motion of which notice has been given within fifteen 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.

(3.) If, at the expiration of fifteen 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 fifteen sitting days after the Ordinance has been laid before that House—

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

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

the Ordinance or part, as the case may be, specified in the motion shall thereupon be deemed to have been disallowed.

(4.) If, before the expiration of fifteen 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

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

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

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

the Ordinance shall, for the purposes of the last two preceding sub-sections, 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.

(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 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 has been so disallowed, or is to be 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, 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 same in substance as the provision that is to be deemed to have been disallowed. 5

Courts of Norfolk Island to have jurisdiction in the Territory.

8.—(1.) The courts of Norfolk Island have jurisdiction in and in relation to the Territory.

(2.) In the exercise of its jurisdiction under this section a court of Norfolk Island may sit in the Territory, in Norfolk Island or in Australia. 10

I HEREBY CERTIFY that the above is a fair print of the Coral Sea Islands Bill 1969 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

Clerk of the House of Representatives

IN THE NAME OF HER MAJESTY, I assent to this Act.

Paul Hasluck

Governor-General

2ND SEPTEMBER, 1969

Printed for the Government of the Commonwealth by W. G. MURRAY at the Government Printing Office, Canberra

AUSTRALIA

Departmental No. 59

Executive Council No. .....

DEPARTMENT OF THE CAPITAL TERRITORY

19 October 1973

Minute Paper for the Executive Council

SUBJECT

CORAL SEA ISLANDS TERRITORY
APPLICATION OF LAWS ORDINANCE 1973

Recommended for the approval of Her Majesty the Queen in Council that the within Ordinance be made under the *Coral Sea Islands Act* 1969.

Approved in Council

Elizabeth R

19 October 1973

Filed in the Records of the Council

Secretary to the Executive Council

Minister of State for the Capital Territory

F. D. ATKINSON, Government Printer, Canberra

Executive Council Minute, un-numbered, 19 October, 1973.
NAA: A1573, 1973/6

CORAL SEA ISLANDS TERRITORY

No. of 1973

AN ORDINANCE

Relating to the Application and Administration of Laws in the Coral Sea Islands Territory.

HER MAJESTY THE QUEEN, acting with the advice of the Executive Council, hereby makes the following Ordinance under the *Coral Sea Islands Act* 1969.

Dated this nineteenth day of October, 1973.

Elizabeth R

By Her Majesty's Command,

Minister of State for the Capital Territory.

APPLICATION OF LAWS ORDINANCE 1973

1. This Ordinance may be cited as the *Application of Laws Ordinance* 1973.* Short title and citation.

2. (1) In this Ordinance, unless the contrary intention appears— Interpretation.

" applied provision " means a provision of a law of the Australian Capital Territory that, in accordance with section 3, applies in and in relation to the Territory as a law of the Territory;

" the Act " means the *Coral Sea Islands Act* 1969;

" the laws of the Australian Capital Territory " means the laws in force in the Australian Capital Territory, whether written or unwritten, and " law of the Australian Capital Territory " has a corresponding meaning;

" the Minister " means the Minister for the time being administering the Act;

" the Territory " means the Coral Sea Islands Territory.

* Notified in the *Australian Government Gazette* on 19 October 1973.

18890/73—PRICE 5c 50/17.10.1973

pp. 388–389 Coral Sea Islands Application of Laws Ordinance 1973.
NAA: A1573, 1973/6

(2) Notwithstanding anything to the contrary in any applied provision, a reference in an applied provision to a Minister shall be read as a reference to the Minister.

Application of provisions of laws of the Australian Capital Territory.

3. (1) Subject to the Act and sub-section 2 (2), the provisions of the laws of the Australian Capital Territory for the time being in force in the Australian Capital Territory, so far as applicable to the Territory, apply in and in relation to the Territory as laws of the Territory.

(2) Sub-section (1) does not extend to a provision of a law of the Australian Capital Territory, being a provision of an Act.

Exercise of powers and performance of functions under applied provisions.

4. Where, by an applied provision, a power or function is, in relation to the Australian Capital Territory, vested in a person or authority (not being a court), that power or function is, in relation to the Territory, deemed to be vested in, and may be exercised or performed by, that person or authority, or such other person or authority as the Minister specifies, under and by virtue of the applied provision.

Delegation by Minister.

5. The Minister may, by writing under his hand, delegate to the Secretary to the Department of the Capital Territory all or any of his powers or functions under an applied provision.

Appointment of officers.

6. The Minister may appoint such officers as are necessary to execute the laws of the Territory.

Repeal of inconsistent laws.

7. All laws in force in the Territory immediately before the commencement of this Ordinance that are inconsistent with any applied provision are repealed.

Printed by Authority by the Government Printer of Australia

Environment, Sport and Territories Legislation Amendment Act 1997

No. 118, 1997

pp. 390–397 Environment, Sport and Territories Legislation Amendment Act, No. 118 of 1997. (extract) Office of the Parliamentary Counsel

AUSTRALIA

Environment, Sport and Territories Legislation Amendment Act 1997

No. 118, 1997

An Act to amend legislation relating to the environment, sport and Territories, and for related purposes

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AUSTRALIA

Environment, Sport and Territories Legislation Amendment Act 1997

No. 118, 1997

An Act to amend legislation relating to the environment, sport and Territories, and for related purposes

[*Assented to 7 July 1997*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Environment, Sport and Territories Legislation Amendment Act 1997*.

2 Commencement

(1) Subject to subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.

(2) Item 36 of Schedule 1 is taken to have commenced on the day on which the *Environment, Sport and Territories Legislation Amendment Act 1995* received the Royal Assent.

(3) Item 49 of Schedule 1 commences on the day on which this Act receives the Royal Assent only if Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* has not commenced before then.

(4) Item 60 of Schedule 1 is taken to have commenced immediately after the commencement of the *Wet Tropics of Queensland World Heritage Area Conservation Act 1994*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

18 Paragraphs 15AAE(c) and (d)

Repeal the paragraphs, substitute:

(c) a reference in this Act to the Registrar of an indictment court included a reference to:

(i) a person who has the powers and functions of the Registrar of the Supreme Court of Western Australia in the application of the *Supreme Court Act 1935* of Western Australia in the Territory; or

(ii) a person who has the powers and functions of a judge of the District Court of Western Australia in the application of the *District Court of Western Australia Act 1969* of Western Australia in the Territory; and

(d) a reference in this Act to the Sheriff of an indictment court included a reference to:

(i) a person who has the powers and functions of the sheriff of the Supreme Court of Western Australia in the application of the *Supreme Court Act 1935* of Western Australia in the Territory; or

(ii) a person who has the powers and functions of the sheriff of the District Court of Western Australia in the application of the *District Court of Western Australia Act 1969* of Western Australia in the Territory; and

19 Schedule

Omit "*Juries Ordinance 1989*".

Coral Sea Islands Act 1969

20 Preamble

Repeal the Preamble, substitute:

Preamble

All the islands in the following areas are territories acquired by the Commonwealth:

(a) the area the boundary of which commences at the point of the intersection of the line following the outer edge of the Great Barrier Reef by the parallel of Latitude 12° 00′ South and runs:

(i) then south-easterly along the geodesic to the point of Latitude 16° 00′ South, Longitude 156° 06′ East; and

(ii) then south along the meridian of Longitude 156° 06′ East to its intersection by the parallel of Latitude 24° 00′ South; and

(iii) then west along that parallel to its intersection by the meridian of Longitude 154° 00′ East; and

(iv) then north along that meridian to its intersection by the parallel of Latitude 22° 00′ South; and

(v) then west along that parallel to its intersection by the line following the outer edge of the Great Barrier Reef; and

(vi) then generally north-westerly along that line to the point of commencement; and

(b) the area the boundary of which commences at the point of Latitude 29° 21′ South, Longitude 158° 59′ East and runs:

(i) then east along the parallel of Latitude 29° 21′ South to its intersection by the meridian of Longitude 159° 14′ East; and

(ii) then south-westerly along the geodesic to the point of Latitude 30° 3′ South, Longitude 159° 10′ East; and

(iii) then west along the parallel of Latitude 30° 3′ South to its intersection by the meridian of Longitude 158° 55′ East; and

(iv) then north-easterly along the geodesic to the point of commencement.

It is desirable to make provision for the government of those islands as one Territory.

21 Subsections 2(2) and (3)

Repeal the subsections, substitute:

(2) Where, for the purposes of this Act, it is necessary to determine the position on the surface of the Earth of a point, line or area, that position must be determined by reference to the Geocentric Datum of Australia (GDA) as defined in the *Gazette* No. GN 35, 6 September 1995.

Customs Act 1901

22 After section 5C

Insert:

(2) Regulations may be made to extend the whole or a part of this Act (with or without modifications) to the Territory of Ashmore and Cartier Islands.

Wet Tropics of Queensland World Heritage Area Conservation Act 1994

60 Section 3

After "Act)", insert ", as amended from time to time,".

I HEREBY CERTIFY that this bill which originated in the Senate as the Environment, Sport and Territories Legislation Amendment Bill 1996 has been finally passed by the Senate and the House of Representatives.

Clerk of the Senate

IN THE NAME OF HER MAJESTY, I assent to this Act.

Governor-General
7 July 1997

(204/96)

CHAPTER FOURTEEN

Summary of legal steps in acquisition

Federation was a highly significant event in the story of the Australian territories. While in the nineteenth century individual colonies, and Queensland in particular, had pressed for British annexation and for territories to be transferred to them, it was only when it became clear that those colonies were preparing to federate that the United Kingdom was prepared to consider transfers.

CONSTITUTIONAL MACHINERY

Section 122 of the Australian Constitution provides that:

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

As we have seen, s. 122 has been central to the acquisition by Australia of its external territories. The territories were either acquired from the United Kingdom under s. 122 or were 'otherwise acquired' under, and pursuant to, that section (as in the case of Heard Island and McDonald Islands and the Coral Sea Islands), or were administered under that section by virtue of a mandate or trust conferred upon the United Kingdom. (There is a view that the mandated/trust territory of Nauru was administered under the external affairs power in s. 51 xxiv of the Constitution.)

Another mechanism that could have been used to enable Australia to acquire new territory was the United Kingdom's *Colonial Boundaries Act 1895*, which enabled the boundaries of colonies to be altered and which was extended to the newly formed Commonwealth at Federation. This piece of legislation became outdated fairly quickly as Australia started to develop its international identity.

While s. 122 was used as the means of acquisition from 1906 to 1969, during that time Australia gradually emerged as an international entity. As well, the legal steps associated with each acquisition varied.

INTERNATIONAL SOVEREIGNTY CONSIDERATIONS

The action of annexation by proclamation and occupation of unclaimed parts of the world only has an international legal basis if the international community is prepared to accept such annexation. The action is a display of effective control and authority by the state claiming sovereignty. If that sovereignty is accepted internationally, the state may deal as it sees fit with the place or transfer its sovereignty over the territory to another state.

In the nineteenth and early twentieth centuries, the United Kingdom and other powerful sovereign countries could confidently assert sovereignty over 'unclaimed' parts of the world. A possible exception was Antarctica, where all national claims to portions of that continent were challenged after World War II by the United States, which itself had made no claim, resulting in the establishment of an international treaty under which no claim of exclusivity was permitted (that is, no country may exclude another from access to its area).

Australia's international identity as a 'newborn' nation at Federation was as part of the British Empire with a Crown which was considered to be indissoluble. Because of this, and despite the 'otherwise acquired' wording of s. 122, Australia could not have acquired territory as an independent sovereign nation at that time. Nor could Australia have entered into treaties or international agreements on its own, or on behalf of its territories, without the authority of the British Government.

Notwithstanding this, during Australia's 'teenage' years at the 1919 Versailles peace talks, and later at the 1923, 1926 and 1930 Imperial Conferences, the United Kingdom was keen to promote Australia's (and other dominions') separate representation and burgeoning international status. Each dominion signed the Treaty of Versailles as a separate and independent entity. The Balfour Declaration issued after the 1926 Imperial Conference stated that the dominions were 'autonomous communities within the British Empire equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations'.

The Statute of Westminster, enacted in 1931, reflected provisions agreed at the Imperial Conferences of 1926 and 1930. The statute provided that no British Act of Parliament could apply to Australia unless Australia requested and consented that it should. The statute also provided that, once Australia had adopted it, Australia could legislate with extraterritorial effect.

However, Australia was reluctant to sever the apron strings to its mother country too decisively. So, too, was New Zealand: its representative to the 1926 conference put

the view that the Balfour Declaration would only weaken the ties of Empire, which New Zealand wanted to be intensified.

Although Australian nationalism was a powerful force in the early years of the Commonwealth, as Russel Ward has put it: 'To both [Deakin and Hughes] as to most of their fellow citizens up till the Second World War, positive and unquestioning loyalty to Throne and Empire was in no way inconsistent with an equally fervent loyalty to Australia: rather it was a condition of it.'[1]

It was only in 1942, during World War II, that Australia decided to legislate to adopt the Statute of Westminster to support its independent declarations of war and put beyond doubt its separate international status. The statute was applied on and from 3 September 1939. From that date, Australia was unarguably a sovereign nation.

Even in the 1950s and 1960s, Australia was diffident about claiming sovereignty in the acquisition of the Heard and McDonald Islands and the Coral Sea Islands. It was nevertheless confident that British claims of sovereignty over the other places transferred to Australia were unlikely to be challenged. Also, as we have seen in relation to the Cocos (Keeling) Islands, the British view was that the transfer was only from His Majesty's Government in the United Kingdom to His Majesty's Government in the Commonwealth of Australia—the islands remained under the Crown. The Cocos Islanders were told that, on transfer, the government would be different but the King would be the same.*

From Federation until only a few decades ago, Australia was maturing as an independent nation. It was against this background that Australia acquired its external territories.

ACQUISITION PROCESSES

The acquisition processes in relation to each of the territories was as follows.

The United Kingdom had either already asserted sovereignty over the place Australia was offered (Norfolk Island and Ashmore and Cartier Islands) or Australia had sought (Antarctica, Cocos Islands and Christmas Island), or it took action to assert sovereignty (Papua).

In all these cases, the United Kingdom then took steps, which varied from case to case, to have the Crown place the territory under the authority of the Commonwealth. In one case (Heard Island and McDonald Islands), the United Kingdom was less certain of its sovereignty but nevertheless exchanged notes with Australia recognising that any claim it had to the place was, because of Australian occupation and subsequent legislation, firmly within Australia's authority. In another case (the Coral Sea Islands), the United Kingdom stated that it did not claim any right or interest inconsistent with

* See also Solicitor-General Bailey's comments in relation to the transfer of Christmas Island in Chapter Twelve.

Australia's exercise of sovereign authority. The latter two territories were 'otherwise acquired' under s. 122.

Australia sought British annexation of **Papua**, which was achieved by proclamation and occupation in 1888. The Australian Parliament resolved in 1901 to accept transfer of the territory if the United Kingdom was willing to transfer it. The British Government agreed and Letters Patent to that end were issued in 1902, subject to Australia passing an acceptance Act. Such an Act was passed in 1905, and by Governor-General's proclamation the Letters Patent and the Act came into effect on 1 September 1906.

The Kingdom of Great Britain annexed **Norfolk Island** on 5 March 1788. In 1896, the United Kingdom offered to transfer the island to the colony of New South Wales or to the Federation of Australia, should the Australian colonies federate. Australia agreed in 1902, and in 1913 enacted an acceptance Act. A British order-in-council issued in 1914 under the *Australian Waste Lands Act 1855 (UK)*. The date of effect of the Act and the operation of the order-in-council were proclaimed by the Governor-General as 1 July 1914.

The United Kingdom asserted sovereignty over the **Ashmore and Cartier Islands** in 1878 and 1909 and offered to transfer its title to Australia in 1924. Australia agreed and a United Kingdom order-in-council issued in 1931. This was followed by an Australian acceptance Act and Governor-General's proclamations bringing both into effect in May 1934.

The United Kingdom asserted sovereignty over 'portions' of **Antarctica** in the nineteenth and early twentieth centuries by virtue of exploration. Proclamations were made in 1930 and 1931. Australia sought transfer of the 'Australian Sector'. A British order-in-council asserting sovereignty issued in 1933. Australia enacted an acceptance Act (which did not, however, recite the United Kingdom's prior claims) in 1933. A Governor-General's proclamation brought both into effect on 24 August 1936.

In the above cases (other than Norfolk Island) the British Government took action by prerogative order (that is, by Letters Patent—the Crown acting alone but with the advice of ministers, or by order-in-council—the Crown acting in the presence of ministers), rather than action by enabling legislation followed by an order. The dates of effect or commencement of the transfer actions (the British orders and the Australian acceptance Acts) were proclaimed by the Governor-General.

The transfer of Norfolk Island was authorised under British enabling legislation (the *Australian Waste Lands Act 1855 UK*), and British and Australian enabling legislation preceded the transfers of the Cocos (Keeling) Islands and Christmas Island.

The United Kingdom proclaimed sovereignty over the **Cocos (Keeling) Islands** in 1857, and by 1946 was administering them through the colony of Singapore. Australia sought a transfer of title in 1950, which was agreed by the United Kingdom. Because of the application to Australia in 1942 of the United Kingdom's 1931 Statute of

Westminster, which required the consent of dominion parliaments to the application to them of British laws, the United Kingdom felt that the enactment by Australia of a 'request and consent' Act was needed. Australia's legal advisers believed that this was unnecessary, but nevertheless Australia enacted such an Act in 1954. The United Kingdom then enacted the *Cocos Islands Act 1955* to authorise the Crown to transfer title by order-in-council. Australia enacted an acceptance Act in 1955, the order-in-council was signed with a date of effect of 23 November 1955, and the Governor-General proclaimed the acceptance Act to date from the same day.

The United Kingdom proclaimed sovereignty over **Christmas Island** in June 1888 and administered the island through Singapore from 1900. Australia sought transfer in 1956 through a two-stage process because of the imminent independence of Singapore, and the United Kingdom agreed. The two stages were to be the separation of the island from the colony of Singapore by order-in-council, and its subsequent transfer to Australia. As in the case of Cocos, and again in a step considered unnecessary by Australia's legal advisers, Australia enacted a request and consent Act and a British order-in-council separating the island from Singapore was issued in December 1957. The United Kingdom enacted the Christmas Island Act in May 1958, and Australia enacted an acceptance Act in September 1958. An order-in-council was then made to effect transfer, the date of effect being 1 October 1958. The Governor-General proclaimed 1 October 1958 as the date the Act came into operation.

In neither of the Cocos Island and Christmas Island cases did the Governor-General proclaim the dates of effect of the orders-in-council.†

The United Kingdom had assumed sovereignty of **Heard Island and McDonald Islands** in the 1920s and 1930s by earlier occupation and by the issue of leases with the requirement that the Union Jack be flown. Australia visited the then deserted islands in 1929–30 and then established occupation of them in 1947. Australia sought British agreement to transfer British rights to the group and the United Kingdom agreed. When push came to shove, however, the United Kingdom was uncertain of the strength of its claim to sovereignty, and transfer was effected by an exchange of notes. In those notes, the United Kingdom recognised that His Majesty's Government in the islands had been transferred to and acquired by Australia through the establishment of effective Australian government administration and control since 26 December 1947. Australia later enacted an Act to provide for the government of the territory, basing its authority to do so on the fact that the territory had been acquired by the Commonwealth (that is, not through transfer by the Queen). Australia had for the first time fully asserted its separate sovereignty over a place external to its boundaries. It seemed that it had 'come of age' in the international community.

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† Australian request and consent Acts for Cocos (Keeling) Islands and Christmas Island are the only two Commonwealth Acts that have been passed with reference to the provisions of the Statute of Westminster requiring consent to the application of British legislation.

The Commonwealth had taken a close interest the scattered **Coral Sea Islands** and reefs to the east of the Great Barrier Reef since the 1920s, occupying one island in 1921. It had assumed that those closer to its coastline were part of New South Wales and that those further out were British. When the Commonwealth began to look seriously at their possible acquisition in the 1950s and 1960s, it became clear that they were neither New South Wales islands nor ones in which the United Kingdom claimed any right or interest. The United Kingdom recognised, in an exchange of notes, that Her Majesty's sovereignty and effective government, administration and control over them were exercised by the Australian Government. Australia enacted the Coral Sea Islands Act in September 1969, 'otherwise acquiring' the territory on the grounds of its independent actions, including occupation, thereby asserting its sovereignty.

The **mandated territories—New Guinea** and **Nauru—**were different from the other territories, in that neither Australia nor the United Kingdom acquired sovereignty in them. Australia had occupied both places after the outbreak of World War I at the request of the British Government. It used the argument of military occupation of New Guinea and Nauru to try to strengthen its negotiating position at the Versailles Peace Conference. In both cases, the League of Nations granted a mandate. In the case of New Guinea, the mandate was to 'His Britannic Majesty to be exercised on his behalf by the Government of the Commonwealth of Australia'; in the case of Nauru, the mandate was only to 'His Britannic Majesty'. By separate tripartite agreement between the United Kingdom, New Zealand and Australia, it was agreed that Australia would administer Nauru under the mandate on behalf of the three governments. After World War II, when the United Nations granted trusteeships for both territories, Australia was given sole authority over New Guinea and, in accordance with the trusteeship agreement, administered Papua in union with it. In the case of Nauru, Australia remained responsible only for its administration, for and on behalf of the other governments.

NOTE

1 Russel Ward, *A nation for a continent*, Heineman Educational Australia, Victoria, 1977.

AFTERWORD

'A federation in these seas'

Australia acquired its ten external territories within the first 70 years of the twentieth century in a number of ways and for a variety of reasons. From time to time, it seriously contemplated the possibility of acquiring more.

Social and political changes, especially in the last half of the twentieth century, saw methods of territorial acquisition change. And justifications for acquiring territory became harder to find—the 'winds of change' had altered the world's attitude. Australia's interest in controlling other places, and bold predictions of possible further acquisitions, faded and eventually became unthinkable.

In the late 1960s, as Australia was acquiring its tenth external territory, it was farewelling the first of the ten into independent nationhood, and within a decade it saw two more unite to form one independent nation. Another became self-governing soon after, and the inhabitants of two more opted to be integrated into Australia. The remaining territories were not permanently inhabited, and remained that way. In the northern arc around Australia, former territories or possessions of other countries were also moving to separation, integration or other forms of relationship with their former imperial authorities.

Annexation and the lines on colonial maps drawn a century or so before usually paid little or no regard to the people inhabiting the places that were acquired. Often, people's ethnic links were severed, or ethnically disparate groups were thrown together by the requirements of colonial administration.

In the days of the United Kingdom's territorial acquisitions and transfers to Australia, there was little consultation with the people whose lands and ways of life were being altered and whose resource bases were being used up or depleted. Paternalism abounded—for the most part, the colonialists were sure that their intentions for the wellbeing of those affected were driven by the highest ideals of humanity. Inhabitants' views were either not sought or, when expressed, were either merely noted or seen as irrelevant and ignored. And yet, in each case, Australia's acquisition was to permanently alter their lives and the places where they lived.

When Australia was settled by Europeans, they brought with them a form of democratic government that had been in development in Britain for a millennium.

That form was, and is, in a state of flux. Citizens of former colonial powers often expect countries emerging from colonial rule to adopt immediately, or within a generation or two, forms of democratic political and social life similar to their own. That often turns out to be a fond hope, in the absence of patience, time and understanding.

Do Australia and Australians have obligations to the places we acquired as external territories? If so, what are they? Some territories are now independent: does Australia have continuing obligations to those as well? How might any obligations best be discharged?

Section 51 xxx of the Australian Constitution gives the federal government power to make laws concerning 'the relations of the Commonwealth with the islands of the Pacific'. That provision, inserted when acquisition was all the rage, is perhaps a useful head of power to complement Australia's foreign affairs powers to assist the people of the region in the twenty-first century.

Since World War II, Australia has been at the forefront of regional cooperation in the Pacific as an instigator of regional political, social and economic commissions and forums and in unilateral and multilateral aid programs. But is something more needed? And are we going about it the right way?

One commentator has suggested that recent Australian views of South Pacific countries have shifted from earlier depictions of either paradise or hell to a new 'doomsdayism'. That image has its provenance in:

> [the] heartland of western 'rational' thinking'… western social, political, cultural and economic values which influence Australian views of the South Pacific as being 'the eye of the Asia–Pacific cyclone'; a backwater in danger of falling off the map.[1]

Without question, the attempted application of western values to the islands has not been universally successful. It is heartening to see that Australia has recently begun to take steps to establish more considerate and understanding relationships with its island neighbours.

A century ago, Australia saw the great threats in the Pacific and Indian oceans in an essentially one-sided way: they affected our security, our trade and our communications. A hundred years later, the threats are to the islands themselves—economic globalisation, climate change and a global financial crisis. Australia is geographically well-placed to play an important role in helping island nations and communities deal with these problems.

As the title for this book, I have used a quote from one of the earliest expressions of federal aspirations for the islands of the Pacific. 'A federation in these seas' was a grand concept in 1901, driven by hopes for mutual protection and benefit for all. At about the same time as Australian Prime Minister Edmund Barton was imagining a federation in these seas, New Zealand was also contemplating a federation with Hawaii, Fiji, Tonga, Samoa and the Cook Islands. While that did not eventuate, New Zealand

annexed the Cook Islands in 1901 and Niue in 1905, with the approval of the United Kingdom. Western Samoa, held under mandate by New Zealand, became independent in 1962. The Cook Islands formed a free association with New Zealand in 1965.

However, despite a curious 1960s rumour of a possible Pacific Island federation that circulated at the United Nations Trusteeship Council meeting dealing with Nauru (see p. 176) and Hughes' 1920 annotation to the map copied at pp. 66 and 67, the oceanic federation was never more than a dream that faded in the face of political and social developments in the island nations and elsewhere.

With the growth of economic and political super powers, uncertain economic times, and with climate change and its implications for sea-level rise, is it possible that these former colonial outposts, standing on their own feet, might now need, and be able, and want, to work towards a common approach to face such challenges? Perhaps in closer association with New Zealand and Australia?

Perhaps in a federation in these seas?

NOTE

1 Greg Fry, Research School of Pacific and Asian Studies, Australian National University, 'Framing the islands: Knowledge and power in changing Australian images of "the South Pacific"', *The Contemporary Pacific*, 1997, vol. 9, quoted by Dr Regis Stella in *Building a nation in Papua New Guinea. Views of the post-independence generation—PNG in the new millennium: some troubled homecoming*, Pandanus Books, The Australian National University, 2003.

APPENDIX 1

The Federation Star

In October 1967, during an appropriation debate in the Australian Parliament, Sam Benson (Member for Batman), raised the subject of what was then the Territory of Papua and New Guinea.

He referred to current talk about the territory and to the various suggestions being put forward about its possible future status, and particularly about whether it should be granted independence. He noted that:

> Much effort has gone into Papua—in its founding and in naming it as part of Australia. We have altered the six pointed Commonwealth star on our flag to a seven pointed star to include the Territory of Papua.[1]

After Federation, the design for the Australian Flag was drawn up after a competition. The final design, which embodied ideas from a number of the prizewinners, was adopted by warrant signed by King Edward VII in 1902. The flag had seven points in each of the four large stars representing the Southern Cross, five in the small star in the cross, and a six-pointed star directly below the Union Jack. The six-pointed star, described as the 'Federation Star', symbolised the six states that had federated.

After the Commonwealth acquired the Territory of Papua in 1906 and had begun the process of assuming direct control of the Northern Territory from South Australia in 1907, a seventh point was added to the Federation Star to represent all the territories.

The new design for the flag was formally notified on 3 October 1908.[2]

NOTES

1 CPD, HR, Vol. 57, 4 October 1967 p. 1695.

2 Commonwealth of Australia Gazette No. 65 of 19 December 1908.

APPENDIX 2

Law of the Sea— an unexpected bounty

All Australia's external territories, with the exception of the Coral Sea Islands, were acquired before 1960. At that time, international law recognised that each nation-state had sovereignty over the sea and seabed adjacent to its shores to at least 3 nautical miles—which was sufficient to prevent cannonball damage from marauding navies. However, the view later emerged that a 12 nautical mile limit, or even greater, was justifiable, at least for the purpose of regulating fisheries, and that rights to seabed (continental shelf) resources extended much further.

In 1958, four international conventions on the law of the sea were adopted at Geneva. The conventions covered the territorial sea and the contiguous zone; the high seas; fishing and conservation of living resources of the high seas; and the continental shelf.

A decade or so later began a series of international conferences that were concerned with rights to offshore air space, sea, seabed and sub-soil. In January 1968, Australia proclaimed a 12 mile fishing zone round its external territories.

The conferences led to the Third United Nations Conference on the Law of the Sea, which met from 1973 to 1982. The conference produced the United Nations Convention on the Law of the Sea (UNCLOS), which was signed in 1982 and entered into force on 16 November 1994.

The question of whether it was the Australian states or the Commonwealth which had sovereignty over the seas adjacent to Australia had been the subject of some disputation since Federation. It gained momentum as offshore rights gained prominence.

Sir Percy Spender, one-time President of the International Court of Justice, was quoted in 1969 as being of the view that the territorial boundaries of the Australian states ended at the low-water mark and that sovereignty over the seas bordering Australia was vested exclusively in the Commonwealth.[1]

The then Leader of the Opposition, Gough Whitlam, expressed a different view in parliament:

> The States in fact with federation achieved no more status than they had last century when they were British colonies and their writ did not run on the sea, beneath the sea, on the continental shelf, on the sea bed or below the sea bed from any more than three miles from low water mark.[2]

This matter was settled in 1976 when the High Court confirmed in the *Seas and Submerged Lands Case* that areas beyond low-water mark were beyond state limits.[3] To sort out the subsequent jurisdictional tangle, the Fraser Government arrived at the 'Offshore Constitutional Settlement'. This vests title to the 3-mile zone in the states and confirms their power to legislate for that area. Beyond that limit, regulation of fisheries, seabed exploitation and other matters over which Australia has control fall under Commonwealth legislation. Arrangements have been adopted to ensure cooperation between the Commonwealth and the relevant adjacent state.

The following extracts of Articles from UNCLOS illustrate the potentially enormous economic bounty Australia gained from the application of this international law to its external territories:

> Article 121. All islands shall have the same entitlements to territorial sea, exclusive economic zones (EEZs) or continental shelf as other land territory.
>
> Article 2. The sovereignty of a coastal state extends to its territorial sea.
>
> Article 56. In the EEZ the coastal state has
>
> 1(a) Sovereign rights for the purpose of exploring, conserving and managing the natural resources, whether living or non-living, of the waters superadjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.
>
> 2 … with due regard to the rights and duties of other states.

Australia and other broad-shelf states had argued successfully that, if a state's continental shelf extended beyond its EEZ, the state's seabed rights would extend to the continental shelf limits.

Australia, like other countries, accepts the concept of delimitation where two EEZs of adjacent or opposite countries overlap. In such cases, a median or equidistant line is drawn to divide the limits of each state's sovereignty, unless 'special circumstances' require some other approach.

Thus the outposts of Australia's territorial acquisitions were enveloped in a 200 nautical mile EEZ 'bubble'—an economic windfall for Australia that was not remotely contemplated at the time of their acquisition.

NOTES

1 CPD, HR, Vol. 63, 22/23 May 1969, p. 2231

2 CPD, HR, Vol. 64, 13 August 1969, p. 242.

3 *New South Wales v Commonwealth* (1976) 135 CLR 337.

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This index covers names of persons, places and organisations, and the principal concepts discussed in the text. Acts, Bills and an Ordinance are listed under the heading **legislation.** The principal references to Australian Government Departments are listed under **Departments**. The index covers footnotes, but not endnotes. All individuals are indexed by name, not by position title. Thus the index does not record all the very numerous references throughout the book to titles of rank or position of politicians and public servants (for example, Governor-General, Prime Minister, Attorney-General, Minister, Premier), nor the names of parliaments and statutory instruments. Names of Governors-General, Governors and Prime Ministers are cross-referenced from the relevant title. Names starting with Mac and Mc are interfiled at 'Mac'.

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