NORFOLK ISLAND

ITS GOVERNMENT AND ADMINISTRATION

BY

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VOLUME 1

This work is a thesis submitted for the degree of Master of Arts of the Australian National University

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This thesis is wholly my own work
and all sources used have been
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R. Nixon Dalkin

NOTE: Because of the excessive
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were deleted before lodgement of
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APPENDICES - See Volume II
From mid 1968 the author of this thesis was for four years the Administrator of Norfolk Island and inevitably during that time developed a deep and abiding interest in the past history, present day lifestyle and future fortunes of the island. In particular, the many and varied facets of its government and administration have proved a fruitful field for research and the original concept was to compile a comprehensive history of those aspects, a study that has not hitherto been dealt with other than in a piecemeal fashion.

As the project developed, however, it became clear that the subject was a vast one and that the material available for research purposes, much of it unexplored, was very considerable indeed. Thus it has been necessary to be selective both in the subjects and areas examined and in the scope of the work as a whole. Examples of areas not covered are Education, Health, Communications and the Press.

The first and second colonial penal settlement periods, from 1788 to 1814 and from 1825 to 1855, form an entirely different part of the Norfolk story and these have been excluded from the present work.

By the time the thesis was nearing its final form, in January 1976, the findings of the very extensive Royal Commission into Norfolk Island Affairs, headed by Sir John Nimmo, had been completed. The Commission started work in May 1975; Sir John submitted his report to the Government in October 1976, and it became available to the public on 16th November. The present author has had access to some of the evidence of the Commission, which to date has been made available to the public of Norfolk Island under Crown copyright in the local Public Library, as well as to the final address of Senior Counsel to the Commission, Mr C. Hampson, Q.C.

The writer's collection of Norfolkiana in the form of books, papers, documents, periodicals, pamphlets, newspapers and maps is very extensive and the problem presented itself of how to incorporate relevant parts of certain material into the thesis. The solution adopted has been to provide a separate volume of Norfolk Island papers in the form of appendices which comprises Volume 11 to the thesis. These papers fall into the categories of:
- A selection of legal documents; some of these are available in various collections: some comprise departmental papers of various types and consequently have not previously been published.

- Certain of the Administrator's correspondence between the Canberra-based departments of government and the Norfolk Island Administration.

- Memoranda, briefs and papers prepared by the author for use by the Norfolk Island Council.

- Demi-official correspondence.

- Extracts of specialised reports on various island matters, and of press reports.

- Land and sub-divisional maps.

Chapter 12 discusses the 1975/76 Royal Commission Report into Norfolk Island Affairs and in his report Sir John Nimmo made 74 recommendations. For the sake of completeness these recommendations have been quoted in the text and are discussed briefly in the chapter.

There are some acknowledgements to be recorded. Ready assistance has been forthcoming from the staffs of the Mitchell and Dixson Libraries in Sydney, the Australian National Library, and the Auckland Institute and Museum. Research previously carried out through the State Archives Office of New South Wales and the Tasmanian State Archives has been utilised. The staff of the Australian Archives Office, Canberra, has been especially helpful. Dr E.C. Fry of the Australian National University has been consistently encouraging, accessible and helpfully critical.

Indirectly, individual members of the staff of the one time Department of External Territories, the Department of the Capital Territory and the Department of Administrative Services have contributed, as have members of the staff of the Norfolk Island Administration. Mr. R.F. Coldham of the Auckland firm of planning consultants, Harrison and Grierson and Partners provided information most willingly. Councillors W.M. Randall, O.B.E. and R.A. Bataille, A.M., the late Councillor A.S. Bathie and other past and present members of the Norfolk Island Council have all contributed in discussion in their various ways to the work, as have the involved people of Norfolk Island, especially the members of the Pitcairn community.

During the preparation of the work four visits were made to the island, in November 1975, April 1976, January 1977 and February 1977. Three of these visits were by courtesy of the Board of East-West Airlines Limited, to whom the author is indebted.
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INTRODUCTION

Only forty days after Governor Phillip's First Fleet entered Port Jackson on 26th January 1788 to found the first British settlement in the South Pacific, a second such settlement was established on Norfolk Island. The island lay 905 nautical miles to the east northeast, at 29 degrees south latitude, of what was to become the town of Sydney. From 6th March 1788 the island has been occupied continuously excepting for an eleven year period of abandonment from 1814 to 1825. In its early days it played an important part in the social, economic and administrative history of the colony of New South Wales. Later, from the mid nineteenth century to the period of World War II, it slumbered in comparative quiet under the occupancy of the "Pitcairners", the descendants of the mutineers of HMS Bounty and their Tahitian consorts. Since 1945 improved communications have brought the island more into the forefront of Australian and world events to the extent that now, in 1976, the many facets of the island, its constitutional future, the welfare of its people, its economy and the retention of its numerous and varied natural attributes, present problems to which there are no quick or easy solutions.

Throughout its history the governmental and administrative control of the island has posed special difficulties and there has been a marked tendency for it to be regarded as being "out of sight, out of mind". Remote, largely unknown, well outside the mainstream of Australian life and thought, it is a place to be quickly forgotten by politicians and the mainland populace when more pressing needs are so much more to the fore.

A good deal has been written about the history, the environment, the life style, the romance and the problems of the island. Much is also on record, although largely in a piecemeal fashion, concerning its government and its administration. There is a need, however, to consolidate these writings and bring together under a single head discussion on some of the more important aspects of the control of the island. It is the purpose of the present thesis to do this and so perhaps contribute to the future welfare of the island, its people, and its peace, order and good government: and contribute also to a better understanding of its role in Australia's future.
Uninhabited when Captain James Cook discovered it on 10th October 1774 during his second Pacific voyage in H.M.S. Resolution, Cook said, "We found it uninhabited and were undoubtedly the first who ever set foot upon it." It is questionable whether this is true. There is some botanical evidence, and some significant finds of stone artifacts, including adze blades and other ground edged stone implements, to suggest that man, either as accidental callers, deliberate transients or more permanent residents, had at one time been on the island. After its establishment in March 1788 by Lieutenant Philip Gidley King the First Penal Settlement on Norfolk Island was in existence for 26 years until February 1814. However, the first suggestion concerning its abandonment as a convict establishment came as early as 1803 and there are numerous subsequent references in the record relating to this possibility. In fact it took a decade to achieve.

The names of many of the officers in charge during this first period have a familiar colonial ring about them: in the order of their appointments they were King, Ross, again King, Townson, Rowley, Foveaux, Piper, Crane and Hutchinson. After Hutchinson and his small party finally left, the island remained tranquil and undisturbed but for the very occasional call of some itinerant vessels, mainly whalers, until 1825 when Norfolk was re-occupied in June by Captain Richard Turton and a small party of soldiers, families and male convicts. This phase saw the establishment of the Second Penal Settlement: in general a harsh and bitter regime which lasted for a further 31 years until June 1856. Again many of the names of those in charge during this second period are familiar to the colonial historian: Morisset, Anderson, Ryan, Maconochie, Childs and Price. There were others.

It was on 8th June 1856 that yet another distinct phase in the island's history commenced when the 194 descendants of the Bounty men from Pitcairn Island under the leadership of a remarkable man and a strong personality, George Hunn Nobbs, himself an English adventurer and seaman who had arrived at Pitcairn Island in 1828, were landed from H.M.S. Morayshire. Within a few weeks they were left to their own devices and a long period of comparative isolation ensued up to about the time of World War II.

It is subsequent to World War II that the full impact of 20th century life has been felt most markedly on Norfolk. The completion of the airstrip in late 1942 signalled the start of a new era which was to mark the end of the old established order of things. The revolution
in air communications resulted eventually in the onset of a way of life for which the island was socially, economically, politically and physically unprepared. Unprepared also in the sense of governmental and administrative thinking and legislative backing. It was during this period that numerous problems came to the fore which were to bedevil the island to the present time. To name some of the most troublesome: local government, the uncertain economy, land tenure, customs duties and taxation, the appearance of company activities, the rise of a "duty free business community, health and hygiene, education, social welfare, the place of the island's Administrator, agriculture and forestry, tourism, building regulations, development planning, immigration and many others. Overlying many of these areas was the attempted exploitation of the island for personal gain. These and related matters all appeared with startling suddenness to overwhelm a community unprepared for their impact.

A few, but only a few, far-seeing persons had raised their voices in the early post-war years in an attempt to slow or halt activities which were calculated to operate against the overall future interests of the island people: activities which were all too frequently associated with the inevitable self-interest and the urge for money.

The curious historical background to the island and the almost haphazard manner in which most of the laws had been derived, provide the key to the problems which exist today: and it is these historical aspects which make the island such a fascinating study in terms of its government and administration, and its overall sociology. The 1975/76 Royal Commissioner on Norfolk Island Affairs, Sir John Nimmo, who completed a lengthy and detailed study of the island's problems in late 1976, put the matter succinctly when he said, "This little island has more legal problems than continents. This is a real challenge. I'm fascinated by the situation here." 3

The events that took place during the periods of the First and Second Penal Settlements did not, perhaps, have a considerable impact on the Norfolk Island of today: but they are relevant. The events during the first half century or so of the Pitcairn period had a more significant effect, and these effects have filtered through to the Present day life-style. It is a combination of the two penal settlement periods, plus the Pitcairn era, together with the onset of
THE COLONIAL SETTLEMENT - KINGSTON
NORFOLK ISLAND. AFTER ABANDONMENT.
1860s.
Photographer unknown.
CHAPTER 1

THE CONSTITUTION AND THE LAW

The Basis of the Law to 1856.

From 1788, as part of the British penal settlement established in the colony of New South Wales, Norfolk Island was administered directly from Sydney by the Governor of New South Wales who, until 1897, excepting for the period 1844 to 1856, was also the Governor of Norfolk Island. In the 1790s Imperial Acts had been made to provide for a court of criminal judicature on the island, i.e., 34 Geo III Chapter 45 of 1794 and 35 Geo III C.18 of 1795. In 1842 the Act 5 & 6 Vic C. 76. "An Act for the Government of New South Wales and Van Diemen's Land" had created a Legislative Council in New South Wales, had defined the limits of the colony, and had made provision for future territories also to be made colonies.

By 1843 new plans for the administration of the convict system had been devised and the proposals included the separation of Norfolk Island from New South Wales and its annexation to Van Diemen's Land. This transfer required an Act of the British Parliament, 6 & 7 Vic C. 35, 28th June 1843, which was duly brought down. See Appendix A.

By 1855, the year before the community living on Pitcairn Island was re-located on Norfolk Island, provision had been made for the establishment of self-governing institutions in the Australian colonies and it became necessary to make arrangements for the disposition of unalienated Crown Lands in those colonies. This was achieved by the Imperial Act 18 & 19 Vic C.56 of 1855, the "Australian Waste Lands Act", which repealed the 1842 Act, regulated the alienation of waste lands and, by Section 5, provided that "It shall be lawful for Her Majesty at any Time by Order in Council to separate Norfolk Island from the Colony of Van Diemen's Land, and to make such provision for the Government of Norfolk Island as may seem expedient....".

On 24th June 1856, sixteen days after the arrival of the Pitcairn community on Norfolk, an Imperial Order in Council was duly made. The Order provided for Norfolk Island to be separated
from the colony of Van Diemen's Land and for it to be "... a distinct and separate settlement" under the jurisdiction of a Governor. The Governor of New South Wales thus again assumed the additional title and responsibilities of Governor of Norfolk Island. Provision was also made for the Governor to "...have full power and authority to make laws for the order, peace and good government of the said island...". See Appendix B.

The Order in Council was proclaimed in New South Wales on 31st October 1856 and published in the New South Wales Government Gazette on 1st November. Also on 24th June, 1856, Governor Denison was provided with instructions from London concerning the making of the Norfolk laws. On 14th October 1957, pursuant to the powers vested in him, Denison repealed and annulled all previous laws and enacted the new code, known from that date to the present time as "The Thirty Nine Laws". See Appendix D.

The Thirty Nine Laws. 1857-1897.

The 194 men, women and children who landed from H.M.S. Morayshire at Norfolk Island on 8th June 1856 were known generically as the "Pitcairners", and the expression remains in use on Norfolk today amongst their descendants. The Pitcairners were governed by the Thirty Nine Laws which were published in a Supplement to the New South Wales Government Gazette dated 30th October 1857. The laws were based on the rules and habits of the people when they lived on Pitcairn Island and covered electoral procedure (women on Pitcairn Island were enfranchised as early as 1838) the duties of the Chief Magistrate and councillors, the judicial system, school attendance, the importation of liquor, fines and the general oversight of the community.

These laws, with a few periodic additions to 1881 when they numbered 49, remained little changed for some 40 years but served well enough to regulate the activities of the small and somewhat primitive community. See Appendix E. The islanders had the right to alter or amend the laws subject to approval by the Governor. The public business of the island was conducted by "the House", a meeting of all
adult members of the community where decisions were made by majority rule. The charge on the N.S.W. Treasury for expenditure on island affairs during this period seems to have been remarkably low and was confined to occasional visits by the Governor and his staff, the appointment of a commission of enquiry, and so on. 

Although in the main the island was self-supporting from subsistence farming, whaling, the sale of produce to whaling vessels, and later the activities of the Melanesian Mission, the economy generally was stagnant. In 1885, when the population was 481 Pitcairners plus 181 persons at the Melanesian Mission, only 150 acres of 3657 acres held by the islanders were under cultivation. There was no taxation, and no local rates were levied. Public works were carried out by adult males who were required to give up to 15 days labour per year or pay a public works fee. This legal provision of the Public Works Ordinance persisted until 1974 when the requirement to perform work in lieu of payment of a small fee was deleted.

Administration by New South Wales. 1895-1913.

By 1895 the arrangement whereby the Governor of New South Wales was also the Governor of Norfolk Island had become unsatisfactory and at the instigation of the Governor, Viscount Hampden, the New South Wales Government sought to take over full control of the island. There were objections from the islanders and also from the New Zealand Government to this proposal.

As a preliminary to the assumption of control by New South Wales new laws, rules and regulations for the administration of the island were proclaimed by Governor Hampden. The document forwarded by the Governor under cover of his despatch to Joseph Chamberlain, Secretary of State to the Colonies, dated 28th November 1896, was later to become a source of controversy, which continues to the present day.

Apart from the doubt about the constitutional validity of Hampden's proposals, or rather his decisions, the new laws were sweeping in nature. The office of Chief
Magistrate, hitherto elective, became and remained a government appointed office. Hampden's covering despatch to London said that he had,

"...formally installed Colonel W. Warren Spalding as Resident Magistrate of the Island."\(^{3b}\) Thus for the first time an outsider was brought in to administer the affairs of the community. Hampden also permitted Colonel Spalding to appoint his son, Lieutenant Warner Spalding as Clerk of the Court. Colonel Spalding proved to be highly unpopular, his administration was subject to public investigation and he was eventually removed from office. The drastic step of appointing an outsider as Chief Magistrate marked an important change in island affairs. Although Governor Denison had been empowered in 1856 to appoint a non-islander to the post should he wish to do so no such appointment had hitherto been made.

Hampden also said that on his visit to the island in November he had "proclaimed the New Laws and Regulations for Norfolk Island, copies of which are enclosed for the assent of Her Majesty, if you approve and deem such assent necessary". (author's emphasis.)\(^{3c}\) In doing away with the existing "39 Laws" and proclaiming new ones, it has been argued that the Governor (of Norfolk Island) exceeded his authority.

Hampden's proclamation also made provision for a Council of Elders to be constituted, comprising 12 members elected annually. The Council had responsibility for roads and public reserves and, with the approval of the Chief Magistrate, the making of by-laws.

A subsequent Order in Council No. 83 dated 15th January, 1897, (Appendix G) and Government Notice of 19th March 1897, ratified Hampden's proposals and made provision for the affairs of Norfolk Island to be administered by "...the governor and commander-in-chief for the time being of the colony of New South Wales and its dependencies." The same Order revoked the Order in Council of 24th June 1856, "...but without prejudice to anything lawfully (author's emphasis) done thereunder." After 19th March 1897 there
ceased to be a Governor of Norfolk Island.

Assumption of Responsibility by the Commonwealth.

The Order in Council of 15th January 1897 had, in addition to revoking the Order of 24th June 1856, also made provision for the Governor to be obliged to act in Norfolk affairs with the advice of his Executive Council, and for the eventual annexation of Norfolk Island to the Colony of New South Wales or to any federal body of which it might subsequently form part. It was pointed out however that there could be no annexation of the island either by New South Wales or a Commonwealth Government except by an Act of the Imperial Parliament, but that the Island could, by Order in Council, be placed under the control of the Commonwealth. No such Imperial Act was brought down and thus the island was not "annexed" by New South Wales.

The islanders vigorously opposed the proposed change of administration. As early as 1888 a meeting of "the House" had resolved that the island should remain a Crown Colony. In 1896 a delegation was despatched to Sydney to opposed the annexation of Norfolk by New South Wales; a Memorial was also presented to Queen Victoria representing the same views. In the event, the island was "placed under the control" of New South Wales.

In August 1897 the Governor of New South Wales presented to the NSW Parliament the correspondence relating to the transfer of control of the island to the Government of N.S.W. These documents comprised 38 despatches dating from August 1895 to January 1897. Later, an Imperial Order in Council dated 18th October 1900 was made, effective 1st January 1901, which revoked the 1897 Order. This however was merely a "machinery" measure and was in almost identical terms to the 1897 version excepting that authority was vested in the "Governor of the State of New South Wales and its Dependencies" as distinct from the "Governor of the Colony of New South Wales," the wording of the earlier Order. Also, the Governor's earlier additional title of "Commander in Chief" was deleted. See Appendix H.
In 1903, Sir Harry Rawson, Governor of New South Wales, visited the island to discuss affairs with the islanders. A petition had been presented protesting against the possible annexation of the island to the Commonwealth. The Governor pointed out the possible advantages of such a change, e.g., no Australian tariffs, better postal services, the proposed establishment of a Pacific cable station on the island and the resulting defence importance of this facility, and improvements in the system of education. He reminded the islanders that the Federal Parliament possessed the power to make separate laws for various communities but that New South Wales had no such power and thus a dependency of that State would be subject to State laws. It might be noted here that this is the case on Lord Howe Island today, a situation that has existed since formal occupancy of the island in 1882.

The (Commonwealth of Australia) Norfolk Island Act, No 15 of 1913, was assented to on 19th December 1913. See Appendix J. On 23rd December 1913 Governor Strickland, pursuant to the powers vested in him by the 18th October 1900 Imperial Order in Council, had repealed all laws then in force relating to Norfolk Island and had promulgated a new set of 32 laws. These were published in Supplement No 205 to the New South Wales Government Gazette dated 24th December 1913.

The Norfolk Island Act was proclaimed by Order in Council dated 30th March 1914 to commence on 1st July 1914. The Act provided for all laws, rules and regulations in force at the time of the commencement of the Act to continue in force, subject to any changes or repeal by future Ordinances made under the Act. The Act made provision for the Governor-General of Australia to make Ordinances for Norfolk Island, and similar provisions exist in the Norfolk Island Act 1957- (1973) by which the 1913 Act was later repealed and replaced.

The Constitutional Argument

There are two aspects concerning the constitutional status of the island which have caused problems over the years. These are firstly the perennial claim that "Queen Victoria gave Norfolk Island to the Pitcairners," and secondly the viewpoint that the only legally valid laws relating to the
island are those 39 laws which were in force between 1856 and 1896.

The Claim of the Pitcairners

The matter of the claim of the Pitcairn community that the island was "given" to them by Queen Victoria came under examination by counsel in the presently uncompleted 1975/76 Royal Commission into the Affairs of Norfolk Island. One of the guidelines which the Commission was required to investigate was "The historical rights of the descendants of the Pitcairn settlers, arising from their settlement in 1856." These "rights" were said to include the ownership of land, self-government, freedom from taxation, the right to live on the island, the right to exclude others from living on the island, the maintenance of the inhabitants' own language and lifestyle, the right to graze cattle on common lands, and free burial.9

A thoughtful summary of these claims submitted to the Commission was that of ex-Councillor Mr B. Christian-Bailey.10 The documentation on the alleged ownership of Norfolk Island by the Pitcairners is fairly extensive but the claim appears to be based largely on hearsay and tradition. In 1854 Mr B. Toup Nicolas (or Nicholas) British Consul-General of the Society Islands, through whom the Pitcairn Islanders' representations for removal to a new location were submitted, wrote:

"To the Pitcairn Islanders. 

Raiatea, 5th July, 1854.

My dear Friends,

In accordance with your wishes, conveyed to me through your lamented Chief Magistrate Matthew McCoy, I addressed the Earl of Malmesbury on the subject of your removal either wholly or in part to Norfolk Island, provided the Government would consent to cede it to you.

...Norfolk Island will be available for the settlement of the Pitcairn Islanders or as many as will remove thither by the end of the year 1854. Her Majesty's Government will also take measures to provide a vessel which shall call off Pitcairn's Island towards the close of that year for the purpose of removing the people to Norfolk Island.
While communicating this intelligence to you I am at the same time to acquaint you that you will be pleased to understand that Norfolk Island cannot be "ceded" to the Pitcairn Islanders, but that grants will be made for allotments of land to the different families, and I am desired further to make known to you that it is not at present intended to allow any other class of settlers to reside or occupy land on the Island...

B. TOUP NICOLAS."

In 1896 two Commissioners, Messrs Carruthers and C.J. Oliver, stated in their report dated 10th March 1896:

"Of late, a desire to disregard the authority of the Governor has apparently arisen. Some even go so far as to assert complete ownership of the Island, to the exclusion of any but local authority, it being claimed that "the House"—which means majority at a public meeting—should rule. Mr Oliver, when on the Island, was careful to explain clearly the position of the Community, both as regards the framing and the administration of laws, and also as to the Island not having been, as claimed, ceded to the Islanders."}

In 1914 the Secretary of the Commonwealth Department of External Affairs, Mr Atlee Hunt, had visited Norfolk Island and he completed a detailed and comprehensive report. In it he concluded that the Pitcairners' tradition of ownership of the island had no validity. He said:

"Much controversy has been raised concerning the understanding as to the terms on which the Pitcairners were to occupy their new land. They seem to have acquired the idea that the whole of Norfolk was to be given to them as their exclusive property, but it is beyond doubt that the arrangement was not that Norfolk was to be ceded to them, but only that grants of land would be made to the different families, though the decision was expressed that it was "not at present intended to allow any other class of settlers to reside or occupy land on the island!"

In 1926 Royal Commissioner Whysall also concluded that:

"In September, 1857, Governor Denison visited the Island, drew up a code of laws, and left with the Chief Magistrate certain instructions dealing, inter alia, with the apportionment of land. He directed that the heads of families should each select an allotment, "not in any case exceeding 50 acres." In regard to property other than land, both Governors Denison and Young made it clear to the Islanders that the unalienated live stock,
stores, tools, and public buildings were the property of the Crown and not the community. In a communication to George H. Nobbs (clergyman, and leader of the community,) dated 19th June 1859 Governor Denison informed him that, unless allotments were surveyed and granted, they remained Crown lands.

5. Whatever was conveyed to the original Islanders by the officers who supervised their removal, and which might have given rise to the belief that the Island was to be their exclusive property, was without the sanction of the Government, and was certainly not binding on the Crown..."14

Similarly, the final address of counsel to the 1975/76 Royal Commission states:

"Denison's new laws of 1857 put public property in the hands of a Government Store Keeper and restricted the alienation of land. 'The Laws and Regulations of Norfolk Island as in force 5 December 1874' (New South Wales Government Printing Office) are inconsistent with ownership of the island by the settlers. The settlers owned the land granted to them and not the island. If one accepts the Toup Nicolas letter and the copy of the Fremantle letter then it is impossible to discover any rational basis for believing that the island was given to the Pitcairners. No doubt there may have developed in such a remote community a belief to the contrary which was responsible for the opposition to the Kingston evictions in 1908. Nowhere in the evidence does there appear any document emanating from the Queen, the Queen in Council, the Imperial Government or the Governor of Norfolk Island capable of being construed as a grant of Norfolk Island. Nowhere does there appear any acceptance on the part of the responsible authorities of a claim by the islanders to ownership of the island..."15

All of the above evidence would appear to settle the question. One final point however is worth mentioning. Rosalind Young was a young Pitcairn girl aged three when she landed at Norfolk in 1856 with her parents. In 1858 she left to return to Pitcairn with two families of Youngs who did not find Norfolk to their liking. Rosalind Young became a literate and educated Pitcairner and her book "The Mutiny on the Bounty and the Story of Pitcairn Island" is a classic early source. In it she said:

"When the Pitcairn Islanders first came into possession of Norfolk Island, they understood that the island belonged to them, or so they had interpreted a letter sent them before their removal, by Sir William Denison,
the Governor at that time of New South Wales..... Subsequently, when the Governor himself visited the island, his letter was shown as sufficient authority to justify the people in the course they had taken. This document he calmly got possession of, and remarked something to the effect that matters were somewhat changed since the letter was penned."16

If such a letter existed it is possible that the Governor realised that he had erred, or exceeded his authority, and took steps to recover the original. See Chapter 8 "Land Tenure" for further discussion on this point.

The Validity of the Laws

From the turn of the century, and especially from the early 1950s and continuing up to the present, there has existed a body of opinion which avers that the only valid laws relating to the island are those 39 laws which were in force between 1856 and 1896. This matter has caused considerable debate and confusion, and some litigation. From the early 1960's, when company operations became an issue in island politics, the constitutional problem has exacerbated local feeling and it has from time to time become a central and heated issue in the island's relations with the Commonwealth Government.

One of the primary terms of reference of the 1975/76 Royal Commission is to endeavour to arrive at a final conclusion in this matter.

Apart from the "Pitcairn controversy", the question of the constitutional relationship between Norfolk Island and the Commonwealth Government has manifested itself in various ways, but primarily in the area of companies law and taxation law. In the case of companies law both Commonwealth and State law, the New South Wales Companies Act 1899 as amended, as well as the local company law of Norfolk Island (the Norfolk Island Companies Ordinance 1926, as amended, and the Regulations) is relevant. It is true that the companies law relating to Norfolk Island is fragmented and that it has been described as "a mess" is probably an understatement. Indeed the law on companies activities can only be found by looking at twelve different sources of law.17
In the case of taxation law only the laws of the Commonwealth are relevant. One case involving aspects other than companies and taxation was that of The Crown v Newbery, heard before Mr Justice (now Sir John) Eggleston in the Supreme Court of Norfolk Island in March 1965. This case should theoretically have settled, once and for all time, at least one area of the constitutional issue of the relationship between the Commonwealth Government and Norfolk Island. However, this was not wholly the case and the lay and legal arguments continued. Mr Newbery had applied for leave to appeal against his conviction for failing to apply for enrolment on the electoral roll, contrary to the requirements of the Norfolk Island Council Ordinance 1960-1964. In doing so Newbery had challenged the constitutional validity of the Commonwealth's authority to administer Norfolk Island on the basis that the 39 Laws of 1857 granted a constitution and a legislature to the colony (or settlement) of Norfolk Island and that "the grant of these by the Crown had deprived the Crown thereafter of the power to amend or revoke that constitution or to legislate directly for the settlement".

This view was based largely on a proposition by the British constitutional authority Halsbury which states that:

"The Crown has, however, no power to amend the constitutions of settled colonies which had a Legislature before the British Settlements Act 1877, nor that of ceded or conquered colonies granted representative constitutions save in so far as the power of amendment was expressly reserved".

Mr Newbery had also asserted that despite the fact that Order in Council No. 83 of 1897 ratified Hampden's new laws, it is questionable whether he was within his legal rights when he overrode the provisions of the existing Order of 24th June 1856 without the prior approval of the Crown. It followed, according to the argument, that the Crown had no subsequent authority to place Norfolk Island under the control of the Commonwealth vide section 122 of the Australian constitution.

Eggleston J's judgement of March 1965, subsequently published in the Federal Law Reports, gives a comprehensive and detailed exposition of the matter. In effect the judgement confirmed the status quo and affirmed that no grounds had been disclosed whereby the validity of the existing island legislation
could be questioned. Eggleston based his judgement largely on the premise that the doctrine enunciated by Halsbury, although in itself valid, was inapplicable to the Norfolk Island case in that neither a constitution nor a legislature had been established by virtue of the 1857 Order.

The determinations of a single Supreme Court judge, however, have not always been accepted by some sections of the community and over the years there has been threats to challenge Eggleston's judgement in the High Court of Australia.

The solicitor and company entrepreneur on Norfolk Island who established the island as a company tax haven in the early 1960s, Mr N.H. McIntyre, briefed counsel in 1975 to present his views on the legal status of the island before the 1975/76 Royal Commission. Counsel was Mr R.J. Ellicott, QC (now The Hon. R.J. Ellicott, QC, MP, Attorney-General) and Mr. M.H. McLelland (now Mr. M.H. McLelland, QC).

Counsel's opinion was sought on the following questions:

1. What is the present constitutional status of Norfolk Island?

2. What, if any, limitations are there on Australia's powers to legislate effectively for Norfolk Island and, in particular, may Australia validly impose taxes or other imposts to be paid to Australian revenue and not separately retained for the exclusive benefit of Norfolk Island?

Counsel's conclusions on these questions were generally in accord with Eggleston's decision in the case of The Crown v Newbery, but disagreed with one important passage of Eggleston's judgement in that it was too widely expressed: viz.,

"It follows that each of the revocations of the successive Orders in Council made between 1856 and 1900 was effective to restore to the Crown the full power granted by the Act of 1855 to make such provision for the government of Norfolk Island as might seem expedient." 19

Ellicott & McLelland went on to say they considered that part of the 1856 Order in Council which established Norfolk Island as a distinct and separate settlement was not capable of revocation by any further Order in Council. Consequently, to
that extent the powers of the Crown under Section 5 of the 1855 Act were not fully restored. They summarised:

"(a) Norfolk Island is, by authority of an Imperial Act, 'a distinct and separate settlement', and its status cannot be altered except by or pursuant to an Imperial Act. The legislative power conferred on the Commonwealth Parliament by Section 122 of the Constitution is restricted to this extent.

(b) Subject to (a), sovereignty over Norfolk Island is vested in the Crown in right of the Commonwealth of Australia, and the Commonwealth Parliament has power to make laws for the government of Norfolk Island pursuant to Section 122 of the Constitution.

(c) Norfolk Island is, in effect, a Crown Colony of Australia. The Crown in right of the United Kingdom has no sovereign powers emanating from Section 5 of the 1955 Act."

and

"...the power of the Commonwealth Parliament to make laws for the government of Norfolk Island cannot be exercised inconsistently with the status of Norfolk Island as a distinct and separate settlement."20

On the question of taxing powers Ellicott and McLelland concluded that although the Commonwealth Parliament has power to tax residents of Norfolk Island to do so could be in breach of a well entrenched constitutional convention. This would seem to be an important point to bear in mind in Commonwealth/Norfolk relationships.

As early as 1963 Mr (later Sir Kenneth) Bailey, the Secretary of the Attorney-General's Department, had concluded in a paper that:

"...(there is no) cause for doubt as to the authority of the Commonwealth, including the authority of the Commonwealth Parliament, in relation to Norfolk Island." See Appendix L, para 2.

In October 1975 Mr C.W. Harders, the present Secretary of the same Department, in a much lengthier and more detailed treatise, also concluded that:

"....the present legal status of Norfolk Island is that it is a Territory coming under the sovereignty of Australia and, indeed, is part of the Commonwealth of Australia." See Appendix M.
Counsel to the 1975/76 Royal Commission, in his final address, said:

"The true position seems, in summary, to be that Norfolk Island is correctly described in law as a "territory under the authority of Australia" and that it is probably not unreasonable to refer to Norfolk Island as a "territory of Australia". The sole power to make laws for the government of Norfolk Island rests with the Parliament of the Commonwealth of Australia. This power is not restricted as to the subject matter..."

Finally, in March 1976, the full High Court of Australia had cause to consider the constitutional question in an appeal relating to Berwick Limited v R.R. Gray, Deputy Commission of Taxation: Berwick Limited being a company incorporated on Norfolk Island. The company's appeal against a conviction was dismissed, and the High Court judgement concluded:

"There are in any event powerful reasons for regarding Norfolk Island as part of the Commonwealth."

and

"...the history and the historical documents also support the conclusion that Norfolk Island forms part of the Commonwealth of Australia." See Appendix N, p 5.

Thus although the final report of the Royal Commissioner, Sir John Nimmo, is yet to become available, the weight of evidence bears down strongly on the side of Norfolk Island being, for all practical purposes, a part of the Commonwealth of Australia. In conversations with the author Sir John has strongly confirmed this viewpoint. The two reservations stated by Ellicott and McLelland, the one concerning the power of the Commonwealth Government to make laws generally, and the other relating to the power to tax residents of the island, being as they are the opinions of two independent counsel, probably do not carry sufficient legal weight to materially affect any future course of action concerning the making of laws for the island upon which the Government may embark. In any event, now that Mr Ellicott is Attorney-General of the Commonwealth it is possible that he may see the matter in a different light.
The Present Laws

In 1976, therefore, there remains a somewhat complicated body of laws at present in force on the island, all of which have derived from the following sources:

(a) The Norfolk Island Acts of the Commonwealth Government. The 1913^-1935) Act was repealed and replaced by the 1957(—1973) Act. Ordinances made under these Acts form the basis of most of the present day law.

(b) Certain laws proclaimed by the Governor of the State of New South Wales in December 1913 and still in force.

(c) Regulations, by-laws, rules and proclamations made under (a) and (b).

(d) Commonwealth Acts, and their Statutory Rules, having special application to Norfolk Island. There are approximately 100 of these Acts.

(e) Orders in Council applying the provisions of certain Imperial Acts of the British Parliament to the island. There are six of these.

The most important of the above are the Ordinances made by the Governor-General under Section 15 of the Norfolk Island Act, together with their Regulations. Apart from the Commonwealth Acts the making of Ordinances is the normal law-making procedure on the island and is the appropriate method of dealing with problems of local significance. The Ordinances which were brought into force in the first forty or so years since the adoption of the island as a Territory of the Commonwealth in 1914 continued to deal primarily with the types of subjects regulated under the 32 laws of 1913. Many of them merely updated that legislation; others introduced new measures conducive to more orderly administration; e.g., a Census Ordinance in 1920, a Coroner's Ordinance in 1927 and a Royal Commissions Ordinance in 1928. During this period the motivating factor behind most of the Ordinances was not social changes, although a few had social implications, e.g., the series of Motor Vehicle Ordinances from 1929 to the present: the Child Welfare Ordinance of 1937.

Under present arrangements, which have been in force since 1960, but with changes in 1964, the Norfolk Island Council
(previously the Advisory Council 1935-1960; the Executive Council 1903-1935; the Council of Elders 1896-1903; and the Council 1857-1896) may "consider, and tender advice to the Administrator concerning any matter affecting the peace, order and good government of the Territory." If the Administrator disagrees with this advice he is required to notify the Minister, whose directions he is obliged to seek, and he must refrain from taking any action in the matter, otherwise than when urgency is involved, until such directions are received.\textsuperscript{23}

New or amending legislation, primarily Ordinances, is considered by the eight man elective Council, of which the Administrator is Chairman. Legislation can be initiated either by Council, by the Administrator, or by the Minister and, in its draft form, must normally be submitted to the Norfolk Island Council for its advice; again provided that where it appears that an Ordinance should be made on account of urgency it may be so made and submitted to Council as a fait accompli. This procedure is certain to cause political problems.

Draft Ordinances are submitted to the Minister, through his Department, together with the recommendations of Council and the observations of the Administrator. The views of the elected members of Council are normally conveyed by medium of the Council minutes. See Chapter 3 for further discussion on the role of the Norfolk Island Council. This system, which follows from the Act and the Norfolk Island Council Ordinance, provides frequent cause for divisions, argument and sometimes bitter debate in Council and in the community at large. Any advisory body of this nature must feel frustrated if its advice is not always accepted: but where authority is divorced from responsibility such attitudes are inevitable; of the A.C.T. "Legislative" Assembly. Moreover, the Norfolk Island Council, in a sense a relatively low-level and amateurish body, is obliged to deal with complex legislation of a kind covering an extremely wide spectrum of modern law and the members cannot be expected to do full justice to this requirement. The 170 page 1971 amendments to the Norfolk Island Companies Ordinance provide an example of this problem. The Council is thus faced with attempting to deal with draft
legislation of a type which on the mainland of Australia is largely considered by Federal and State Parliaments, with all their panoply of on-the-spot advisers and expertise, in contrast to the, since 1969, solitary legal officer available to the Norfolk Island Administration.

Legislation.

The seeker after information on Norfolk Island Ordinances, i.e., the main body of the existing law, would go first to the "Green Book", the "Laws of Norfolk Island 1914-1964". This valuable consolidation also outlines the relevant history of the law of the island since 1913. The number of Ordinances made annually to September 1976 since publication of the Green Book is as follows:

<table>
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<tr>
<th>Year</th>
<th>Ordinances</th>
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<tr>
<td>1965</td>
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<td>5</td>
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<td>1976</td>
<td>8</td>
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(Total) 85

About half of these Ordinances could be categorised as being either minor or "machinery" measures, whilst the remainder would consist of legislation having varying degrees of substance ranging from the significant to the very important.

Since 1972 the following Ordinances have been made:

1973
No. 1 - Customs
No. 2 - Wills
No. 3 - Succession & Wills
No. 4 - Customs (No. 2)
No. 5 - Motor Vehicles
No. 6 - Liquor
No. 7 - Dangerous Drugs
No. 8 - Poisons & Dangerous Substances
Again, with isolated exceptions the above schedule contains few Ordinances which could be regarded as having an important impact on the future of the island. No.1/73 - Customs, increased the petrol tariff; some modifications to the liquor laws were made by No. 6/73 - Liquor; whilst No. 1/74 - Immigration, dispensed with the provision for permits to "enter and remain" on the island. No. 3/74 - Land Subdivision, closed a subdivision loophole known as the 'family clause'; No. 3/75 - Crown Lands, made provision for a Ministerial delegation to the Administrator; No. 5/75 - Administration, dealt only with gaols, gaolers and so on; No. 1/76 - Public Monies, concerned investment aspects; No. 2/76 - Absentee Landowners, introduced a useful fee; No. 4/76 - Public Works, extended the only local form of "taxation", a small levy, to working women; No. 5/76 - Visiting Fee, introduced a tourist arrival tax but the Senate Committee on Regulations and Ordinance has expressed doubts about the imposition of this measure; No. 6/76 - Norfolk Island Council, disenfranchised holders of Temporary Entry Permits after 1974; No. 7/76 related again to gaols; and No. 8/76 provided for minor delegations of authority.

The problems associated with certain of the above legislation, and its significance, is discussed in the appropriate following chapters.
The Norfolk Island Act requires all Ordinances (and Regulations) to be laid before each house of the Commonwealth Parliament within 16 sitting days of the House after an Ordinance is made. An Ordinance becomes ineffective if this procedure is not followed. Either House may move to disallow any part of an Ordinance, and if after debate the motion is successful then again it becomes ineffective.

The Senate Committee on Regulations & Ordinances

In June 1971 the Senate Standing Committee on Regulations and Ordinances, under the Chairmanship of Senator Ian Wood, visited Norfolk Island. The island has always been a popular place for Federal Parliamentarians to visit, despite the fact that there are virtually no Federal (or State) votes to be had there.

Over a period, the Committee had stated that it had been concerned that there were a number of Norfolk Island Ordinances "which to a degree have offended against the Committee's guiding principles". The Minister for External Territories the Hon. C.E. Barnes, had stressed the uniqueness of the island to the Committee: had drawn attention to the work of the elected Council and the statutory provisions requiring consultation with Council in the making of Ordinances, and to the fact that as Council represented the views of island residents it would only be in extreme cases that he would act against Council's advice.

The Senate Committee operates under a set of self-imposed rules, which are:

1. That it will not make comment on the policy contained in Regulations and Ordinances.

2. That in its examination of Regulations and Ordinances it has in mind four principles, which are that:

(a) they do not exceed the power which is granted by the Act under which they are made;

(b) they do not unduly intrude upon the personal rights and liberties of the citizen;
(c) they do not unduly make the rights and liberties of citizens dependent upon decisions by officials without making proper provision for a right of appeal against those decisions to a Court of Law; and

(d) that they contain matters of detail only and do not amount to matters of an important nature which should be enacted by the Parliament.24

During its three day visit the Committee consulted at length with the Administrator and took evidence from the Council and from a number of witnesses. Most of the sessions took place in public and the Committee's work tended to take on the mantle of a full scale public inquiry into island affairs. This was especially so in relation to Council and public reactions to the then recent 1971 introduction of an important local Companies Ordinance; see Chapter 10.

In its report dated 21st August 1971 the Senate Committee stated:

"7. During the taking of evidence, members of the Norfolk Island Council drew the Committee's attention to the position of Councillors who as the elected representatives of the people had, in their opinion, one channel only through which to voice their opinions, that is through their Chairman, the Administrator to the Minister for External Territories. It was pointed out that, as all communications between the Administrator and the Minister are privileged, the situation could lead to a feeling that Council views may not be presented in their true spirit and that appeals against Ministerial decisions could be dismissed without full consideration.

On an Island with only approximately 1,400 inhabitants, the position of the Administrator as servant of the Minister and Chairman of the elected Council is a very delicate one.

8. Senators did point out to Councillors and residents that, as they were governed by an Act of the Federal Parliament, they had a right to submit views to Senators and Members of the House of Representatives at any time. Islanders expressed surprise; they held the view that as they were not directly represented in the Federal Parliament they had no such right.

9. As a result of the visit to Norfolk Island a closer link has been forged between Senators and the Norfolk Island People which will be a lasting benefit to both the Norfolk Islanders and the Parliament." 26
Regarding paragraph 8 quoted above, whilst the right to communicate with Senators and Members generally probably exists, in practice for citizens to communicate at random with various parliamentarians would probably prove largely ineffective, although some members of the Opposition of the day may feel inclined to take up a particular issue on the islanders' behalf.

In the event the Senate Committee concluded:

"(1) That there is a need for closer relationship between the Federal Parliament and Norfolk Island. To achieve this, it is suggested that the appropriate Legislative and General Purpose Standing Committee of the Senate be given a responsibility in the matter of the Australian Territories.

(2) That there exists on Norfolk Island special circumstances which need to be taken into account by the Committee in its scrutiny of Ordinances. To this end, the following resolution has been agreed to:

That in its consideration of Norfolk Island Ordinances, the Committee will take into account the desire of the descendants of the Pitcairn Islanders to preserve their environment, history, culture and traditions." 27

Probably the visit of the Committee gave its members a better understanding of Norfolk's problems, although membership of such committees changes over the years. The Committee does raise issues with the Minister in charge of island affairs from time to time and in this regard it probably performs a useful function. Currently it is still questioning the need for the tourist Visiting Fee Ordinance No. 5 of 1976 on the basis that it may be repugnant for such a fee to be charged between Australian airports, and there may well be other more acceptable revenue-raising areas available for exploitation: which there is. On the other hand, Lord Howe Island, a part of New South Wales, imposes such a fee. The Committee did not, however, raise any objections to the amendment to the Norfolk Island Council Ordinance, No. 6/76, which disenfranchised certain voters. On most occasions when the Senate Committee has raised a Norfolk issue the matter has been settled by compromise.
Since the mid 1960s there has been, from time to time, tendencies to bring Norfolk Island more within the scope of the South Pacific Commission. The Commonwealth Government oversees Norfolk Island's representation on the SPC, but the link is a tenuous one, handled by a department in Canberra, and not really meaningful.

For some years, and especially since the early 1970s, the cry of "United Nations" has sometimes been raised on the island in relation to Chapter XI of the Charter. However, the Commonwealth Government has never regarded Norfolk Island as a territory coming within the scope of Chapter XI, nor has there ever been any suggestion of this in the U.N. Assembly or any of its committees. In 1975 a Senate Standing Committee reported:

"In the Committee's view a number of factors militate against even the possibility of United Nations involvement in Norfolk Island. If Norfolk Island were to be placed on the Committee of Twenty-Four's list of territories, then every small inhabited island in the world would also have to be placed on that list, irrespective of its constitutional status or social and cultural situation. Such a step is neither justified nor is it likely to occur." 28

Since Denison enacted his 39 Laws in 1857, therefore, Norfolk has seen a number of important changes in the basis of its code of laws. Assumption of administration by New South Wales in 1896 resulted in the first significant change in the code, although the relative simplicity of the social structure on the island enabled this change to be digested with minimal disturbance. Even so, there was some subsequent dissatisfaction and litigation about the manner of the change.

The major turning point came with the 1914 assumption of control by the Commonwealth, from which time some constitutional arguments have persisted. Also, the changes over the years have resulted in a body of laws, ordinances, rules, regulations and by-laws applying to the island which, whilst themselves to some extent confusing, nevertheless by today's standards possess some important gaps and omissions. The various piecemeal attempts to reform and update the laws have proved largely unsuccessful, and the results not always satisfactory.
NOTES


2. Legislative Assembly, New South Wales. *Correspondence Relating to the Transfer of Norfolk Island to the Government of New South Wales. 11th August 1897.* p. 3.


7. Despatches. Governor Rawson to Secretary of State. 7th August 1902.


11. B. Toup Nicolas. Quoted in the Whysall Royal Commission on Norfolk Island of 1926. p. 16.


14. Whysall. Ibid.

15. Final Address to the 1975/76 Royal Commission. Senior Counsel Sampson. p. 32.

16. Rosalind Amelia Toung. The Mutiny on the Bounty and the Story of Pitcairn Island. pp. 133/4

17. McIntyres, Solicitors, Norfolk Island. The Case to Disallow the Norfolk Island Companies Ordinance No. 4 of 1971. 30th July 1971. p. 6.


17B. Ibid.

17C. Ibid.


19. Ibid.

20. Ibid.


25. Proceedings of the Meeting of the Senate Committee on Regulations and Ordinances with the Norfolk Island Council. 6th June 1971.


27. Ibid.

CHAPTER 2
ADMINISTRATORS AND CHIEF MAGISTRATES

From the time of the arrival of the Pitcairners on Norfolk Island in 1856, until 1896, the Chief Magistrate of the island was always a Pitcairner who was elected annually by the islanders, subject to the approval of the Governor (of Norfolk Island) in Sydney. In effect, the Chief Magistrate governed the island with the assistance of a Council of Elders. H.M.S. Bounty and Pitcairn names are the only ones that appear on the list of 21 Chief Magistrates during this period. Allowing for those who served more than once, there were three Christians, two Quintals, one Young, one Adams, four Buffetts and two Nobbs. (See Appendix A.)

From 1896 the position of the Chief Magistrates and Administrators who have been appointed from outside the island community has always been an unusual and delicate one, and their relationships with the Council and the people have sometimes been strained or even stormy. Some of these officials, and their wives, have been held in high regard: others have been actively disliked. One early Chief Magistrate, Captain W. Drake, R.N., and his wife, were said to have been "greatly loved by the kindly islanders." ¹

Governor Hampden appointed the first outsider as Chief Magistrate in 1896 but Colonel Warner Warren Spalding proved to be something of a disaster and he was subsequently removed from office in 1898 after public inquiries had been held.² Spalding was followed by three other "imported" Chief Magistrates before, in 1913, the office became that of Administrator, who was also commissioned as Chief Magistrate (Appendix A.)

By Proclamation dated 23rd December 1913, and by virtue of the authority vested in him by the Imperial Order in Council dated 13th October 1900, the Governor of New South Wales, Sir Gerald Strickland, repealed all existing laws and declared a new set of laws for the island. The Administration Law No 2 of 1913 was one of these and this made provision, inter alia, for the "....administrator of Norfolk Island affairs,......" also to be "chief magistrate". (s.3(1)), and for him to "exercise a general supervision over the affairs of the island." (s.4(1)).³
Mr M.V. Murphy had been appointed Chief Magistrate by the Governor on 21st August 1913 and the Administration Law provided for his continuance in office in the dual appointments. This unsatisfactory marriage of the posts was maintained for over two decades until 1936 when the judicial duties of the Chief Magistrate were divorced from the executive functions of the Administrator. The persons occupying the positions of Chief Magistrate/Administrator have been a mixed lot with ex-military officers in the preponderance. The Royal Navy had a period in office from 1904 to 1913 (Captain W. Drake and Captain C.S. Elliott) but has not again appeared in the lists. The present Administrator in 1976 had World War II Royal Australian Navy service. The Army predominates and, since the early 1920s, those who had served at Gallipoli appear to have been favoured.

Mr M.V. Murphy (1913-1920) was a long serving public servant who had dealt with island matters for some years as New South Wales Government Surveyor. From 1906 to 1931 he had also been officer in charge of Norfolk Island affairs in the New South Wales Government.

Lieutenant-General J.W. Parnell (1920-1924) was a military engineer who had held a number of high Army posts, including that of Commandant of the Royal Military College, Duntroon.

Colonel E.T. Leane (1924-1926) had served on the staff of his successor as Administrator, Major-General Sellheim, in Cairo in support of the Gallipoli operations. He was apparently total unsuited to the Norfolk post and during his term of office the island populace was frequently in a state of considerable turmoil and disarray. So much so that in 1926 an extensive Royal Commission, headed by Commissioner Francis Whysall, recommended,

"(a) That in the interests of the Commonwealth and Norfolk Island, the present Administrator be recalled without delay."
(b) That in the appointment of future Administrators, where administrative capacity of those under consideration is equal, preference be given to a man of legal training or one possessing sound knowledge of procedure combined with proved ability in the assessment of evidence, without, if possible, departing from the policy of the Government in its relation to returned soldiers.

In future selections, due consideration to the psychology of the Norfolk Islanders should be given; the temperament of a prospective Administrator, if not compatible with, should be capable of ready adaptability to the social conditions of the island. This applies with equal force to the appointee's wife, who must necessarily at all times be in close association with the inhabitants, and whose moral influence upon the lives of the people is a factor to be seriously considered. 6

A study of the record shows that the above dictum, at least in relation to the Administrator himself, was by no means always adhered to in subsequent years. Leane was hurriedly and temporarily replaced by the Norfolk-oriented and apparently acceptable Mr Murphy.

Leane was followed by Major-General V.C.M. Sellheim who served for only one year before he died on the island. There is an interesting link with Sellheim and the earlier colonial period. Lieutenant-Colonel James T. Morisset was the first Commandant to re-occupy the island in 1829 when it was re-opened as the Second Penal Settlement. One of Morisset's six daughters married a Sellheim and thus became the mother of a future Administrator of the island. 7 The judiciary held the appointment on one occasion but Mr Justice Herbert also gave up the ghost early in 1929 after only six months in office and he lies in the Norfolk Island cemetery with his predecessor.

The Army again came to the fore with the appointments of Colonel A.J. Bennett (1929-1932) and Captain C.P. Pinney (1932-1937).
In December 1937 that redoubtable soldier, architect, musician and
State M.P. Major General Sir Charles Rosenthal was appointed to the post
as the first of the outright Administrators (1937 - 1945). The hackneyed
phrase "distinguished general" (admiral, air marshal) so frequently used
because a person happens to have attained that rank, in no way could be
applied to Sir Charles Rosenthal other than in the full sense of the term.
After his formative years, which were varied, active and reflected his great
tenacity (when he was 23 he rode his bicycle from Coolgardie to Melbourne
in about 40 days) Charles Rosenthal landed at Gallipoli on 25th April 1915
as a Lieutenant Colonel commanding the Australian artillery brigade.
"Rosenthal's Ridge" remains on the maps to this day on the Peninsular. He
was wounded in August 1915 and evacuated to Egypt but returned later to
Gallipoli. He was again wounded and this time was evacuated to England. In
1917 he commanded an infantry brigade on the Western Front and, from early
in 1918, the 2nd Australian Division. In July he was wounded for the fifth
time, but continued to command his Division from Morlancourt, to Hamel, to
Villers Brettoneux, to the Hindenberg Line and on to the capture of Mont
St.Quentin.

He was the right man for Norfolk Island during World War 11, even
though there had been some criticism of his appointment, for example the
Pacific Islands Monthly editorial of 23rd July 1937. The local community
hall on Norfolk Island, the Rawson Hall, was designed and supervised in the
building by Rosenthal. In October 1940, when he was 65, he wrote to his
Minister seeking a "war service" appointment. Rosenthal was never rewarded
financially for the work he did for his country and his papers reveal a
constant worry about financial matters. He complained in a letter to John
Curtin in 1944 that he had served under eight Ministers whilst he had been on
the island and not one of them had ever visited him.

His secret, cyphered signal of 2nd July 1943 probably reflected one
aspect of this remarkable man's character:

"Reference my telegram 171 and my letter to the Minister of
1st May. If the Minister has favourably considered entertainment
allowance could three cases of Dewars or other imported whisky
be shipped to me personally next sailing.
If allowances not approved, would still be glad if three cases
could be despatched charged to me personally."

The March 1945 eulogistic comments of the Pacific Islands Monthly
concerning Sir Charles' role on Norfolk Island
were in marked contrast to the tone of the July 1937 viewpoint.
Rosenthal was followed by a political appointee, the Hon. Alex. Wilson (1946-1952) who was given the post as the result of assisting in the downfall of the short-lived Fadden Government in 1941. Wilson and Mr A. Coles, both Independents, had crossed the floor to join the Opposition in defeating Fadden, who subsequently described both men as "vultures". Coles was later appointed by Labour as the first Chairman of the newly formed National Airlines Commission (TAA).

The next Administrator, Brigadier C.H.B. Norman (1953-1958) was able and popular and, apart from one or two local upheavals, he had a relatively trouble-free tour of duty. Mr R.S. Leydin (1958-1962) had been Administrator of Nauru, a post to which he subsequently returned. Major General R.H. Wordsworth (1962-1964) was a soldier-politician who had represented Tasmania as a Senator and whose relations with the Norfolk Island Council were generally good. The Hon. R.B. Nott (1964-1966) had been Minister for Lands and Agriculture in the NSW Parliament and later became Administrator of the Northern Territory. As a practical farmer he was acceptable to the community, but he faced a difficult and unco-operative Council.

Mr R. Marsh, a public servant (1966-1968) had been Assistant Administrator of the Northern Territory and was not successful in handling the Council. A career Air Force officer was appointed for the first time when the writer, Air Cdre R.H. Dalkin (1968-1972) took the post: and he was followed by another airman, Air Cdre E.T. Pickerd (1972-1975).
The Administrator's post has traditionally been a difficult one, and it is a curious one in a modern world, and one which must soon change its character. He is appointed by the Governor-General whose representative he is, and he does not directly represent the Queen. He is responsible to the particular minister who happens to have Norfolk Island included in his portfolio at any given time. Since June 1968 to June 1976 there has been five ministers responsible for island matters: Barnes, Peacock, Enderby, Bryant and Withers. In practice the Administrator works primarily through the Secretary of the Minister's department. More than most small communities, to be understood Norfolk Island must be lived in for a significant period. Almost inevitably, the longer an Administrator continues to serve on the island the more knowledgeable he becomes of local viewpoints, and the more attuned and sympathetic he becomes to local affairs and local problems. In turn, if he is doing his job, this is bound to bring him into some degree of conflict with departmental officers in the national capital. The cry of "bureaucratic rule from Canberra", strong in various parts of the Australian states and in the Northern Territory, is nowhere stronger than on Norfolk and there is not infrequently good cause for such cries of impatience and frustration.

In the post World War II circumstances of island administration there has existed an essential need for a strong voice and a firm viewpoint to be exercised on the spot against the encroachments and attitudes of distant public servants who, however well meaning, derive their knowledge of island problems and affairs largely from "the files" and perhaps from an occasional and brief visit to the island itself. There are grave difficulties in fully understanding the island problems at a distance.

An Administrator who is consistently prepared to receive directions from Government departments, or even from a minister who may be badly or indifferently advised, and comply with them without question, would be a bad Administrator. On the other hand he would as equally be a bad Administrator if he opted to be the unquestioning servant of the Norfolk Island Council and island factions.
The Administrator resides in somewhat grand style in a charming Georgian Government House, with modest but adequate staff assistance, transportation and an entertainment allowance. His official title continues to be "His Honour the Administrator", and although this honorific tends to fall into disuse, as it rightly should, there are still many of the older families on the island who respectfully and genuinely refer in conversation with the Administrator as "Your Honour". Under existing arrangements the Administrator lives rent free, and his salary, like the income of most of the local community, is free of Australian income tax.

He exists as a species of minor Governor; he is Chairman of the Norfolk Island Council; a chief executive having wide functions and responsibilities in the day to day running of island affairs; affairs covering the full span of any community, plus a few that would not normally be encountered elsewhere. He has future planning and policy functions and must possess, or develop if he does not already possess, a sense of political awareness calculated to ensure his survival in the hurly-burly of the small but intensely active local political scene. He acts also as a local Mayor, entertaining islanders and a constant stream of visitors, ranging in recent years from the Queen herself through the Governor-General, an occasional State Governor, the Prime Minister, numerous ministers, ambassadors and a variety of others.

In time, the Administrator is inevitably forced into impossible situations. This is largely the result of factions, groups and individuals taking up positions involving varying degrees of opposition to the Administrator's and/or the Government's policies, decisions, methods and general modus operandi.

The post of Administrator of Norfolk Island has never been regarded as a top level "plum" appointment. The Canberra Times has described it as "A minor post, but possibly one of the most attractive to be dispensed by the Australian Government." Administrators are appointed initially for two years* but where it has been mutually satisfactory annual extensions have been

* Or, more correctly, "at the Governor-General's pleasure." See Appendix D.
the norm. There would be many statutory and other appointments more attractive and more lucrative to the more ambitious in the community. The remoteness of the island from the centre of main events, especially before the establishment of the Overseas Telecommunications Commission radio telephone in 1972, is probably considered to be a disadvantage to those whose star shines brightest in the Australian mainland social, political, academic or Vice-Regal firmament. Nevertheless, depending upon the vagaries and turns of life's wheel of fortune at any particular time, the post might well have its attractions to a wide bracket of individuals.

For the status conscious the title "His Honour....", the occupancy of a Government House, albeit not of the State variety, the general aura of authority going with the position, and the placement in the Commonwealth Table of Procedence for both occupant and wife, undoubtedly has its attractions. As to the latter there might well be a degree of mortification in the minds of some very ambitious Administrators in the knowledge that their rating on such Table was a mere No 26, "The Administrators of the Territories, according to the populations of their respective Territories.", i.e., immediately above Chief Judges of Territories (and thereby hangs a tale) and immediately below "Members of the Federal Executive Council (not under summons)". On the other hand there has undoubtedly been Administrators who, apart from the fact that they in no way ever aspired to the heights of being included in a Table of Precedence, were probably delighted at the prospect of taking place at table, or queuing to be presented to Her Majesty, ahead of Members of State Legislative Councils and Assemblies, seven places ahead of Permanent Heads of Departments of the Commonwealth Public Service, the Auditor-General of the Commonwealth, and even that most distinguished if sometimes feared pundit the Commissioner of Taxation; to saying nothing of "Lord Mayors of Capital Cities, according to populations."

In general terms the selection of Administrators over the years appears to have fallen into the categories of:
reward for services rendered; firstly political, e.g. the Hon Alex Wilson: the Hon R.B. Nott. Secondly military, e.g., Sir Charles Rosenthal, Major General V.C. M. Sellheim;

- the military itself: e.g., Brigadier Norman and many others;
- both political and military: e.g., Major General Wordsworth;
- after World War I and into the 1930s the firm policy of employing returned servicemen where possible; e.g. Parnell, Leane, Pinney;
- public servants: e.g. Murphy, Marsh, Leydin.

The record does not disclose that always or even frequently the best man available for the post was appointed. Appointees almost never, except Murphy, had any significant local knowledge of the island. A few (Leydin, Nott, Marsh) had some knowledge of the administration of other territories. It is likely that sheer convenience, or almost chance, occasionally played a part, e.g. in the "sideways movement" of an otherwise unwanted personality, or even the bending to the pressures of an especially keen aspirant to the post when other sources of supply had, at least temporarily, proved abortive. Although over the years the various Norfolk Island Councils were frequently critical of Administrators for a variety of reasons, some real, some imagined, there seems to be no record of Councils being consulted by the Australian Government as to the individual who might be appointed to the post: that is until the events of 1975, when the Council did in fact participate to a degree in the selection process of the non-appointed Mr Kelly.

The method of selection in use up until 1975, other than in those cases where an outright nomination was made by the Government, seems to have devolved primarily around the 'inner Cabinet' of permanent heads of the Public Service departments seeking a relatively small number of nominations, unofficially, from likely sources throughout the departmental system. For example, the author, as a senior service officer within twelve months of retirement, was telephoned by an Assistant Commissioner of the Public Service Board who enquired whether he would be interested in the appointment. It is true that the particular Assistant Commissioner was a long time friend from World War II days. Initial contact was followed by interviews with the Secretary of the then Department of External Territories and
with Minister Barnes. At no time was there any suggestion of political affiliations being a factor, the assumption probably being that all senior service officers are true blue Liberals, which they probably are. Subsequent action involved processing of the nomination (in effect the selection) to the Cabinet and Executive Council (Appendices B and C) formal advice to the appointee, including advice of conditions of service (Appendix D) advice to the retiring Administrator (Appendix E) and a ministerial brief or directive dealing with the appointment generally (Appendix F). This latter is of particular interest as an instrument of policy in that it outlines the Government's view at the time in relation to political accountability, departmental procedure, the Norfolk Island Council, Ordinances, the Norfolk Island Administration, finance, public monies and the annual estimates, social welfare matters, and so on. In keeping with the theme of "ask and ye shall (might) receive" the then Administrator, in October 1970, minuted the Secretary of the Department in a plea for a more equitable salary (Appendix G). The salary of the Administrator is tied to the scale within the Public Service Third Division.

Salary from 1968 to 1976 was as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Administrator's Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>$8657</td>
</tr>
<tr>
<td>1969</td>
<td>$10298</td>
</tr>
<tr>
<td>1970</td>
<td>$10627</td>
</tr>
<tr>
<td>1971 Jan.</td>
<td>$11243</td>
</tr>
<tr>
<td>1971 Nov.</td>
<td>$12870</td>
</tr>
<tr>
<td>1972</td>
<td>$12870</td>
</tr>
<tr>
<td>1973</td>
<td>$12900+</td>
</tr>
<tr>
<td>1974</td>
<td>$12900+</td>
</tr>
<tr>
<td>1975</td>
<td>$15000 – 16000</td>
</tr>
<tr>
<td>1976</td>
<td>$19490 – 20000</td>
</tr>
</tbody>
</table>

In a not untypical "pecking order" dispute during the latter half of 1971 the then Administrator had cause to object to the proposal to increase the salary of the Government Medical Officer to a figure in excess of the Administrator's own salary (Appendix H). This matter was resolved to the Administrator's satisfaction in November 1971.

In September of 1971, and in anticipation of relinquishing the appointment at some time during 1972, the author had occasion to remind the then Secretary of the Department of External
Territories of his views concerning the appointment of a successor. This missive covered the timing of the arrival of a new appointee in relation to the Norfolk Island Council elections, the continuity in appointment of the Official Secretary, who is also the Deputy Administrator, some of the qualities which appeared to be required of an Administrator, the length of his term of office, and the desirability of his having some prior knowledge of island affairs (Appendix J).

In 1972 the inevitable rumours concerning the appointment of a new Administrator circulated. For example, the Sun-Herald 30th January 1972:

"Is Jeff Bate MP the New Boss of Norfolk Island?

........

Mr Jeff Bate, the controversial Federal MP, has been tipped as the next Administrator of Norfolk Island. But his wife, Dame Zara Bate, commented yesterday, 'It's the first I've heard of it. I think someone is flying a kite...I don't think either Jeff or I would want it.'"

Councillors, also held views about Administrators. Whilst being questioned by counsel at the 1975/76 Royal Commission about a 1960 legislative proposal, the President of Committees of the Norfolk Island Council, Councillor W.M. Randall, said

"It is like many other things that happened in the history of the Island. The outcome of it was the result of how it was handled. The reigning Administrator at the time (Mr R.S. Leydin) was a most intractable man. He was very hard to get on with. If you want to hear the truth, he told me at one time that he had no more sentiment than a concrete tank, and it was right. On Norfolk Island you need some sentiment."

Since the end of Major General Rosenthal's term of duty at the end of World War II, Administrators generally have tended to spend a decreasing length of time in office. This is almost certainly because of the rapidly increasing range of problems which have beset the island since that time, and the pressures the Administrator is called upon to face. The following list, which excludes the temporary appointments of acting or deputy administrators, shows this trend:
Terms of Office of Administrators

<table>
<thead>
<tr>
<th>Name</th>
<th>Start Year</th>
<th>End Year</th>
<th>Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rosenthal</td>
<td>1937-45</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>Wilson</td>
<td>1946-52</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Norman</td>
<td>1952-58</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Leydin</td>
<td>1958-62</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Wordsworth</td>
<td>1962-64</td>
<td></td>
<td>26 months</td>
</tr>
<tr>
<td>Nott</td>
<td>1964-66</td>
<td></td>
<td>20</td>
</tr>
<tr>
<td>Marsh</td>
<td>1966-68</td>
<td></td>
<td>23</td>
</tr>
<tr>
<td>Dalkin</td>
<td>1968-72</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Pickerd</td>
<td>1972-75</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>O'Leary</td>
<td>1976</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

As early as April 1975 the Council had given thought to the fact that Administrator Air Commodore E.T. Pickerd would probably relinquish his appointment later in that year. The Council could not be accused of not being far-sighted in its appreciation of this problem. At the Council meeting in April 1975 Councillor J. Ryves, in speaking to a question without notice said:

"As the Council and the island was entering a crucial period of development, it is wise for the Council to place the ball in the Minister's court."

Cr. Ryves had asked:

"That the Norfolk Island Council request the Minister to apply the following criteria in the selection of a new Administrator -

1. That he be unbiased politically in that he has no direct affiliation to any political party;

2. That he be experienced in inter-departmental negotiations particularly in regard to budgets and estimates."
3. That he have administrative experience in social and legal philosophies which may arise in populations similar to Norfolk Island and

4. That he have the manner, bearing and dignity to command the continued respect of the community as exists in the unique environment of Norfolk Island."

Cr Ryves went on to say "it would appear from the above criteria that a member of the Services or a quasi-government executive with rank or position commensurate with similar administrative responsibilities as apply to Norfolk Island would be the most desirable." He asked that the Administrator forward this advice to the Minister and that the Minister be requested to comment on these criteria prior to the selection or appointment of a new Administrator. 15

At the time of the departure of Administrator Pickerd in August 1975 the Labour Government was in the process of selecting a replacement for him. In the event, the Government finally decided to advertise the position, an unnecessarily arduous and time-consuming, if democratic, activity for this type of appointment. The post had not previously been publicly advertised excepting for one occasion in the 1920s.

The rather loosely worded 1975 advertisement resulted in over 180 applications being received from public servants, lawyers, servicemen and retired persons. Also for the first time the Government decided to involve the Norfolk Island Council to some extent in the selection process and the President of Committees of Council, Councillor Richard Bataille, took part in certain interviews. There were dangers in this procedure as inevitably it becomes Council's desire to be able to dominate and perhaps manipulate an Administrator. There was some publicity as a result of the 1975 advertisement and Administrator Pickerd was quick to point out that the appointment was not always the sinecure it might appear. 16 In the event, a Mr Athol Kelly, a former executive vice-president of the Victorian Automobile Chamber of Commerce was apparently selected, it being necessary for Cabinet to approve of his appointment before final Executive Council authorisation. The Government Gazette of 11th November 1975 revoked the appointment of Administrator Pickerd and the name of the new appointee was to have been gazetted the same day.
By a misfortune for Mr Kelly, Mr J. T. Lang had died in September and his funeral was held in Sydney on the 29th, the day on which a Cabinet meeting was to have been held. Constitutional events then postponed the Cabinet meeting until 11th November, and even then it was not held because of the subsequent dismissal of the Labour Government. Thus Kelly's appointment remained unratified. He made a solitary, private, and no doubt somewhat rueful visit to the island in November 1975 inspecting the venue of his "near-miss" appointment.  

In his book The Whitlam Venture, published in November 1976, journalist and author Alan Reid makes some comments about the Labour Government's attempts to appoint a replacement Administrator. According to Reid, Whitlam told Barnard in April 1974 that he proposed to appoint Mr A. W. (Bert) James, MHR, the member for the NSW seat of Hunter, as Administrator of Norfolk Island and that "Barnard was shaken" at the possible political consequences of this "jobs for the boys" proposal. Apparently Whitlam had in mind a new candidate for the Hunter seat, but he was dissuaded from the suggestion at that time. Later, towards the end of 1975 Minister Gordon Bryant again set about the task of finding a replacement for Administrator Pickerd (See page 10) and the selection of Mr A. Kelly had, according to Reid, resulted largely from Bryant's desire to find an Administrator with "a fairly solid grounding in commerce", a requirement that the present writer would not necessarily have placed high on the list of desirable qualities for the post. Whitlam, however, was said to have again applied pressure for James to be appointed so that the Hunter seat could be declared vacant and it took the intervention of Crean on this occasion either to change Whitlam's mind, or at least delay the matter. Subsequent events took care of the outcome.  

From August 1975, therefore, and through until May 1976, no new permanent appointment had been made and during that period the island was administered by the local Official Secretary, Mr C. I. Buffett, MBE, acting in his capacity as Deputy Administrator. The Minister in charge of Norfolk affairs under the new coalition government, the Minister for Administrative Services, Senator the Honourable R. G. Withers, had indicated that he did not intend to fill the post of what will almost certainly be the last of the Administrators of Norfolk Island until he has received the final report of the Royal Commissioner, Sir John Nimmo.
However, on 12th May 1976 the Minister was pre-empted by the Deputy Administrator who, in a lengthy and somewhat bitter statement, submitted his resignation to the Minister effective 27th May. Mr Buffett simultaneously released his statement to the Norfolk Island Council and to the public.

In it he said that he had been required to take over the powers, duties and functions of the Administrator from August 1975: that he was humiliated and embarrassed by the protracted discussions and the processing of a new appointee, that he had not been receiving the full benefits and entitlements of the appointment, and that a departmental recommendation that he be appointed Acting Administrator had been rejected by the Minister. See AppendixK.

In discussing this local crisis in its editorial the Norfolk Islander stated that after "months of peaceful and settled Administratorship" the community was shocked to learn that Buffett had relinquished his post. It was pointed out that with Sir John Nimmo's report pending it would have had a stabilising effect on the community to have Buffett as Administrator when the report was presented. It was also said that it would have been an inspiration for those of Pitcairn descent to have seen "one of their own have this honour bestowed on him."19

However, it appeared that Mr Buffett may have acted a little hastily as, according to the subsequent press report in the Canberra Times on 29th May, he was in fact about to be formally appointed to the position of Acting Administrator, and that the final delay was due only to the lack of a decision as to whether the matter could go direct to the Executive Council for approval without the necessity for Cabinet consideration. This point was subsequently confirmed, and Mr Buffett was to have been sworn in by the Governor-General on the island on 8th June.20

A further complication requiring the presence of an Administrator on the island was the bi-ennial Norfolk Island Council elections due to be held early in July 1976. To overcome all of these problems the Department and the Minister were compelled to move quickly to fill the gap. Accordingly, on 27th May ex-Administrator Pickerd, whose term of office had expired nine months previously, was sworn in as Acting Administrator in Canberra by the Governor-General and he departed Sydney on the 29th to resume his stewardship of the island for a limited term of three months.21 Not since Administrator Leane had been ousted forty years earlier, in 1926, and hurriedly replaced by

12.

19

20

21
former Administrator Murphy, had such a return been staged.

On 27th May the Minister released a press statement in the following terms:

"The Minister for Administrative Services, Senator R.G. Withers, announced today that the Governor-General has been pleased to appoint Air Commodore E. T. Pickerd, OBE, DFC, as Acting Administrator of Norfolk Island. Appointment of Air Commodore Pickerd follows a request from the Deputy Administrator, Mr C. I. Buffett, MBE, to be relieved of his Commission with effect from 1st June 1976.

Air Commodore Pickerd will arrive on Norfolk Island on Sunday, May 30th, to take up duty for a period of three months." 22

Senator Withers supplemented this statement by saying that because the Royal Commission into Norfolk Island affairs was expected to report at the end of August it was not appropriate to make a long term appointment to the position of Administrator until the Report had been considered. He also said it was fortunate that Air Commodore Pickerd, who had been Administrator of Norfolk Island between July 1972 and August 31st 1975, had been available and willing to accept the appointment. 23

The Norfolk Island Council objected strongly to the decision and despatched a lengthy cable to the Minister saying that councillors were disturbed at the action of the Department in not giving Council the opportunity of tendering its advice on the selection of an Acting Administrator when Mr Buffett was willing to accept the position. The Council felt that the appointment of Air Commodore Pickerd as Acting Administrator would be an embarrassment to him due to the public and Council reaction to the rejection of Mr Buffett's application. The Council requested the Minister to re-consider the appointment and fill the post with a person not having previous affiliations with Norfolk Island.

Council went on to say that its first knowledge of Mr Buffett's application for the post of Acting Administrator was on Monday, 17th May when the notice from Mr Buffett advising of his resignation was circulated to all Councillors.

Councillors met that day and asked Mr Buffett to withdraw his resignation, but he advised that his decision was irrevocable. Following this advice the President of Committees was authorised to inform the Department of Administrative Services that if an appointment of an Acting Administrator was to be made then no departmental officer be appointed to the position but there would be no objection to the appointment of someone from outside the Department. 24
Councillors thus made clear their attitude that they did not at all like the idea of an ex-Administrator returning to the fold; nor, in keeping with their long standing mistrust of "Canberra", did they relish the prospect of a "departmental officer" filling the post.

During the week 24th-30th May there was a good deal of unrest on the island at the trend of these events and there was some evidence of a "boycott Kerr and Pickerd" lobby becoming active, as well as some strong support locally for Mr Buffett. The Norfolk Island News also had something to say about the matter of Acting Administrator Pickerd's return to the island appointment.

The Editor felt that his return for three months as Acting Administrator to keep the wheels of Government turning was a little like "walking up to a beehive that someone else had just walloped with a cricket bat. Norfolk was zinging with outrage over the Buffett affair, and the stingers were out for anyone in sight."

The News also said that as a stop-gap Acting Administrator Pickerd would be quite different from the "super-active dynamo" Norfolk saw for three years. He would probably be the most competent and neutral man Canberra could have produced. One of his main objectives during his last year as Administrator had been to help Council get itself better prepared to handle a great deal more Government power. He had to leave that job unfinished, but if Council made use of him he could probably help them take another step or two towards executive authority.

The same issue of the Norfolk Island News wrote up the Buffett resignation in terms of the "irresistible force" of Buffett's "own character and self respect" versus "the immovable object (of) the Canberra bureaucracy."

It is probably worthwhile here to revert to the latter part of 1975 when Mr Buffett, the Official Secretary and Deputy Administrator, had been at the head of island affairs locally since Administrator Pickerd had departed in August 1975. It seems clear that Mr Buffett was more than a little diffident
at the prospect of being appointed even Acting Administrator. He appeared to be clearly aware that the probability of his being manipulated and subjected to strong pressures by the local community, especially the closely knit Pitcairn element of the community, was extremely high. Indeed, the period from that date until his resignation in May 1976 showed that even as Deputy Administrator (i.e., deputy to nobody) and without full acting authority, although among other things carrying the burden (some would say the Cross) of Chairman of the Norfolk Island Council, he faced tremendous problems.

When Mr Buffett resigned suddenly on 12th May 1976, therefore, it is interesting to speculate whether it was in the knowledge that he was in fact to be appointed Acting Administrator in the not too distant future, probably for a significant period. It is unlikely in these days of easy communications and "controlled leaks" that he did not have knowledge of the proposal through Departmental sources. If the proposal had been made, and if he did not have knowledge of it, then he could rightly be accused of not being possessed of that propensity towards the acquisition of important administrative and political intelligence which is an essential part, some would say the bread of life and survival, of the makeup of the successful senior government executive.

Moreover, Council's cable to the Minister dated 28th May had indicated clearly that Councillors had no knowledge of Mr Buffett's apparent enthusiasm to be elevated to Acting Administrator status. If Mr Buffett had really wanted the appointment it would seem that strong Council support of his candidacy could not only have been easily sought by him but would also have been readily forthcoming.

When the author returned to Canberra on 22nd November 1975 after a private visit to the island, campaigning for the 13th December Federal elections had commenced. In the knowledge that this problem of the appointment of an Administrator was likely to have a disturbing and deleterious effect on the island and its people the writer spoke on 1st December with Mr Andrew Peacock, the then Minister for Foreign Affairs and Minister for the Environment in the interim Government, and suggested that the writer (R.N.Dalkin) might return to the island as temporary Administrator.
In the light of subsequent events it is true that the Council would have been unlikely to give its support to the proposal put forward to Mr Peacock. It is also, of course, true that there are at times political aspects of problems which remain privy to the political mind. For example, in May 1976 the Government could well have had in mind a person, politician or other, to fill the appointment of Administrator: and such a person may not have been available until later in 1976.

When the Norfolk Island Council met on 2nd June for what was effectively the last meeting of the 7th Council, elections being due to be held on 7th July, Acting Administrator Pickerd was in the chair after an absence from the island of some nine months. There was a good deal of tension in the atmosphere due to the events associated with the "Buffett affair", and Councillors made some harsh statements concerning Australian Government administration. A cable dated 1st June 1976 from Mr Peter Lawler, Secretary of the Department of Administrative Services said that the Minister had noted the views conveyed by Council concerning the appointment of Air Commodore Pickerd and noted also that the Council was upset that Mr Buffett has not been appointed as Acting Administrator. The Minister pointed out that he had not at any stage refused to consider appointing Mr Buffett, who had based his decision to resign on incorrect information. Senator Withers decided that he must at once exercise his proper responsibilities and send an Acting Administrator to Norfolk so that continuity of Government would be preserved. He had therefore invited the immediate past Administrator to accept the assignment. He pointed out that he had met all recent requests by the Council but hoped that the Council would understand the circumstances which required his present decision. After the report of the Royal Commission on Norfolk Island had been received and considered he would take up with the Council the matter of a permanent appointment.

An enraged Mr Buffett, when shown the cable, wrote a lengthy refutation in which he made categorical denials of "the somewhat defamatory allegations made against me", referred to the incompetency of certain departmental officers, and was "insulted and amazed that the Minister had never contacted me".
Council went on to state in some detail their support of the position Mr Buffett had taken in the matter and complained of the Department having".... very little understanding of the real needs of Norfolk Island, especially at first hand."; and that "junior officers of a large department have been given all the authority necessary to change the course of history on Norfolk with very serious consequences...."

Acting Administrator Pickerd came in for some criticism, one Councillor asserting, "I feel that the re-appointment of you, Sir, as Administrator, was wrong, that no previous Administrator should have been appointed....I believe this Council has been insulted.... I am amazed at you, Sir, even considering or accepting this position as Acting Administrator. It would have saved a lot of embarrassment to you and to others if the Department had listened to Council's advice." However, the President of Committees of Council stated that "Under the circumstances, Mr Chairman, you were the obvious choice." i.e., to fill the position, and he was supported by others.

Early in June the Secretary of the Department of Administrative Services, Mr Peter Lawler, was despatched to the island by Minister Withers to confront the Council and the people in an effort to soothe the ruffled feelings. However, despite lengthy statements and discussions he appeared unable to convince his listeners that serious departmental maladministration had not occurred.

In the light of the disturbance, however, and despite the fact that the report of the Royal Commission on Norfolk Island was not yet available, Minister Withers moved with some speed to appoint a new full-time Administrator. On 22nd July he announced that a 62 year old ex-First Assistant Director-General of the Australian Security Intelligence Organisation, Mr D. V. O'Leary, had been appointed to the post.

"Desmond Vincent O'Leary, retired ASIO officer and newly-appointed Administrator of Norfolk Island, will pick up a salary of $19,490 for the job, which seems healthy enough. But on Norfolk Island the salary is tax free and will be the equivalent of about $40,000 a year on the mainland. Mr O'Leary also receives a $1,100 a year allowance."
On 4th September Acting Administrator Pickerd took his second departure from the island, and on the same day Administrator O'Leary, probably the last Administrator of Norfolk Island, arrived and assumed his new office.

Current events, as well as history, therefore, continue to show clearly that continuance of the present Administrator system in its existing form will be doomed to failure: and that separation of the Administrator from the executive functions he presently carries out is long overdue. He should no longer sit in Council, no longer be empowered to veto Council decisions or recommendations, and should - under some suitable new title - and administrative arrangements - monitor Commonwealth Government affairs on the island, effect liaison with the Council and act as local social figurehead.
NOTES


5. The sources of information on the Administrators are extensive. Primarily they are:

Norfolk Island Annual Reports 1915 - 1975

Australian Archives. Individual Administrators' files. CRS A518, 614 series.


Norfolk Island Government Gazettes.


24. Ibid.
25. Discussion with the late Councillor A.S. Bathie. 29th May 1976.
27. Ibid. p. 5.
28. Interview with the Deputy Administrator, Mr C.I. Buffett, on Norfolk Island. 13th November 1975.
30. Ibid. p. 2.
31. Ibid. pp. 2 - 5.

THE NORFOLK ISLAND COUNCIL
MAY 1972

G. Hitch
Official Secretary
Commonwealth
Public Servant

The late
A.S. Bathie
Australian
married to
Pitcairner

G. E. Anderson
B. C. Mackenzie
Australian

The late
C. L. Evans
Pitcairner

G. G. F. Quintal
Pitcairner

W. M. Randall, OBE
President of
Committees

The Administrator
Air Cdre R. N. Dalkin Australian

J. H. Ryves
R. G. Weslake
New Zealand
married to
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CHAPTER 3
NORFOLK ISLAND COUNCILS

Since the arrival of the Pitcairners on Norfolk Island in 1856 the local Council in its various forms has played an important part in the affairs of the community. From time to time over the years it has changed its title and its role, and its powers and authority have been modified. It has included in its membership a great variety of personalities ranging from the earnest and dedicated, the dour and the humourless, to the colourful and the almost avowedly self-interested.

However, if there has existed a single trait or thread running through the various bodies over the years it has undoubtedly been that of a marked anti-government bias and a firm resistance to authority and outside control. The Bounty and Pitcairn blood ran strong in this direction, especially during the 19th century. Even before the Bounty came to her final resting place at Pitcairn Island Fletcher Christian had remonstrated with mutineers Sumner and Quintal for taking unauthorised shore leave on the island of Tubuai. The answer he got was "the ship is moor'd and we are now our own masters", and the force of that expression still flowed strongly in the veins of the Pitcairn members of the Council and the Norfolk Island community in the 20th century.¹

As the same authority put it:
"As wood follows its appointed grain, the will to do things in one's own way attends mortal man. It is notoriously intransigent among islanders in general; in the case of the Pitcairn Islanders, it is authenticated not only by their human and island condition, but by direct descent from a breed of men so intent on their own way that they became outlaws to attain it."²

The writer again quoted the same author in giving evidence to the Royal Commission on Norfolk Island Affairs in October 1975:
"....Pitcairners clung tenaciously to their right to follow their own grain. Frequently they were ready to accept half a loaf of their own kind of bread rather than a full loaf of a superior but uncongenial product. It was not that Pitcairners were not as other men; rather it was that they were more so."³
The Councils fall into periods, each characterised by some change in composition, elective arrangements, or authority, i.e.:

<table>
<thead>
<tr>
<th>Council Name</th>
<th>Period</th>
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<tbody>
<tr>
<td>The Council of Elders</td>
<td>1856-1896</td>
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<tr>
<td>The Council of Elders</td>
<td>1897-1903</td>
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<tr>
<td>The Executive Council</td>
<td>1903-1935</td>
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<tr>
<td>The Advisory Council</td>
<td>1935-1957</td>
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<tr>
<td>The Norfolk Island Council</td>
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The Council of Elders 1856-1896

When Governor Denison went to Norfolk Island in 1857 he was intent on framing laws which would, so far as possible, continue to provide the same type of controls that had governed the community on Pitcairn. To this end in his 39 laws he created the office of Chief Magistrate and two "assistants or Councillors" the three comprising the Council of Elders who were to be elected annually and preside at meetings of "the House", i.e., public meetings of all adults following the Pitcairn model. Provision was made for the election of the Chief Magistrate to be approved by the Governor who, although retaining the right of veto, largely permitted the islanders to exercise their traditional form of self-government.\(^4\) The Council operated under the terms of the 39 Laws until 1896. Various amendments to the laws were effected and approved by the Governor in 1874 and 1885, but the whole of Denison's Laws were repealed by Governor Viscount Hampden in 1896.\(^5\)

The Council of Elders 1897-1903

The 15th January 1897 Order in Council vested the government of the island in the Governor of New South Wales, acting on the advice of his ministers. In the absence of the Governor, island affairs remained in the hands of the Chief Magistrate, now appointed from Sydney. Provision was made for a much enlarged Council of Elders comprising twelve elected males of over age 30. The President continued to be elected annually by the members.

As the Chief Magistrate from this time onwards was an outsider, and in effect stood above the Council of Elders, a fundamental change had occurred in the mode of government of the
community. There were only three Presidents of the Council of Elders during this period: Oliver Masey Quintal 1896-1899, John Buffett 1899-1900 and John Forester Young 1900-1903.

The Executive Council 1903-1935

In 1903, as a result of a visit to the island by the then Governor, Sir Harry Rawson, changes were again made to the constitution of the Council. The Council of Elders was replaced by an Executive Council consisting of six members. Two of these were elected by all males over 25 years of age and four, including the President, were appointed by the Governor of New South Wales. The actual functions of this new Council were similar to those of the earlier Councils of Elders but there were occasions when it could tender advice to the Chief Magistrate.

Governor Strickland's laws of 1913 prepared the community for the Federal takeover and Law No 13, the Executive Council Law, continued most of the 1903 arrangements. However, the law governing the functions of the Executive Council was much amended every few years (on 16 occasions after the assumption of authority by the Commonwealth) and from 1925 the Executive Council Ordinance 1925 provided again for a twelve man Council, and the Ordinance was amended on five occasions from 1926.

The Advisory Council 1935-1960

The Advisory Council Ordinance of 1935 again made changes to the constitution of Council. All of the 1925 to 1934 Ordinances were repealed: the island was divided into four wards for electoral purposes: two members were to be elected for each ward, one of whom held office for two years and the other for one year, thus elections were held annually: an elected President (and not the Administrator) headed the Council: the Council was purely advisory in nature: voting at Council elections was compulsory.

Thus yet a further attempt was made to introduce a satisfactory system for an elective Council on the island, a system which with six further amendments to the legislation
to 1948, sufficed for the twenty year period through World War II but failed to meet the requirements of the pressures of the 1950s.

Norfolk Island Council from 1960

Up to 1957 the Norfolk Island Act 1913 - 1935 remained the legislation under which the island was governed. In May 1957 two new Acts, the Norfolk Island Act 1957 and the Norfolk Island Ordinances Act 1957, were made. The Ordinances Act made provision for its immediate commencement and operation on the same day on which it received the Royal Assent, i.e., the 30th May 1957. The Act contained new and improved provisions for the promulgation of Ordinances in that the notice of the making of ordinances must be published in the Norfolk Island Government Gazette and that in general, ordinances came into operation on the date of such publication. This was an improvement over the old arrangements.

The new Norfolk Island Act of 1957, however, although also assented to on the same day 30th May 1957, was to come into operation on a date to be fixed by Proclamation. It was to be three years before this came about. This new Act made provision for a Norfolk Island Council, instead of an Advisory Council which, in addition to continuing the advisory role of the old Council, was to be given by ordinance certain powers and functions in a defined field of government. The new Act also provided for ordinances to be tabled in the Commonwealth Parliament within fifteen sitting days of their being made, instead of thirty days as required under the 1913 Act.

The commencement of the new Act of 1957 was delayed pending agreement on a new Norfolk Island Council Ordinance which would provide for greater local powers, and on other legislation. The delays in achieving this objective became considerable. The annual elections for the year 1958 under the old legislation, the Advisory Council Ordinance 1935, were held as normal. As the 1959 elections approached, the Advisory Council and the Minister agreed that the elections be delayed one year until 1960 so that they may be conducted in accordance with the new and long-awaited Norfolk Island Council Ordinance. In the event the new Act commenced on 7th April 1960 and the new ordinance a week later on 14th April.
In June 1960, after a period of intense dissatisfaction and unrest on the island, a new and radical Council was elected, and at a special meeting called shortly after the elections Council rejected and refused to accept the provisions of the new ordinance, even though it had the force of law.

Since World War II increasingly complex community, social and commercial pressures had placed new responsibilities on councillors and it became apparent that the traditional Pitcairn predominance in Council was threatened. The pattern of change in the membership of the Advisory Council from 1953, and the Norfolk Island Council subsequently, is shown below:

The Composition of Council

<table>
<thead>
<tr>
<th></th>
<th>Pitcairners</th>
<th>Island Born and married to Pitcairners</th>
<th>Outsiders married to Pitcairners</th>
<th>Other Outsiders</th>
</tr>
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<tbody>
<tr>
<td>(i)</td>
<td>(ii)</td>
<td>(iii)</td>
<td>(iv)</td>
<td></td>
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<tr>
<td>1952/53</td>
<td>7</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>1953/54</td>
<td>7</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1954/55</td>
<td>6</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1955/56</td>
<td>6</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>1956/57</td>
<td>6</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>1957/58</td>
<td>6</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>1958/59 Council's term extended</td>
<td>6</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>1959/60</td>
<td></td>
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Norfolk Island Council of 8. Two year term of office with elections annually for half the Council.

<table>
<thead>
<tr>
<th></th>
<th>Pitcairners</th>
<th>Island Born and married to Pitcairners</th>
<th>Outsiders married to Pitcairners</th>
<th>Other Outsiders</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960/61</td>
<td>5</td>
<td>-</td>
<td>-(1)</td>
<td>3 (2)</td>
</tr>
<tr>
<td>1961/62</td>
<td>Norfolk</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>1962/63</td>
<td>Island</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>1963/64</td>
<td>Council</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>
Norfolk Island Council of 8.
Two year term of office, all elected bi-ennially.
Administrator becomes Chairman.

The 2nd N.I.C. 1964/66  5 -  2  1
  " 3rd "  1966/68  5  1  1  1
  " 4th "  1968/70  6  1  1  -
  " 5th "  1970/72  4  1  1  2
  " 6th "  1972/74  4  1  1  2
  " 7th "  1974/76  4 -  1  2
  " 8th "  1976/78  4 -  -  4

Until 1959 the strong Pitcairn element in Council had tended to remain stable, especially bearing in mind that those persons shown in column (ii) tended to be extremely pro-Pitcairn in their attitudes, as also to a lesser extent did those shown in column (iii). Thus the 1960 elections proved to be a turning point as, apart from the fact that no less than three complete outsiders were elected (1 Australian, 1 New Zealander, 1 Englishman), one of the Pitcairners was a woman, the first and only one to be elected to Council. A total of six councillors had stood on a "party" basis in 1960 and were known as "the Bloc", in that they all sought radical reforms and looser ties with the Commonwealth Government. Party politics as such in terms of Liberal, Labour and so on were almost, with one notable and vocal exception, non-existent in island politics. Neither is there any formal unionism on the island. The influence of the Bloc remained a strong factor until the elections of 1964 when the Administrator became Chairman of Council under a (second) new Norfolk Island Council Ordinance.

By the time of the July 1968 elections the outside influence had been virtually eliminated and Administrator Dalkin arrived in that month to face a re-vitalised Pitcairn dominated Council. From 1970, however, other factors, notably the rise of company operations and the discussion about the need for new company legislation, plus the increase in tourism, were operating and a marked element of outside influence again started to appear in Council. The elections of 1972 and 1974
re-inforced the trend until finally the most recent elections of 7th July 1976, for the first time in the history of the island, saw the election of a balance of four Pitcairners and four complete outsiders, (3 Australians, 1 New Zealander). In July 1976 two further factors were evident in the minds of electors which resulted in two long-established and well supported councillors, one being the President of Committees, suffering surprise defeats at the poll. These two factors probably were, in one case the public evidence taken at the 1975/76 Royal Commission/involvement in company activities, although this was not in a major way; and in the other a councillor's behind-the-scenes partisan activities in relation to the resignation of the island born Deputy Administrator and the appointment of an ex-Administrator as a temporary successor. (See Chapter 2.)

Since the island entered the modern period subsequent to World War II there had been moves in the community to secure a greater degree of local autonomy in political affairs. It is true that there were many who sought greater authority but shied away from the concept of accepting the concomitant responsibility. One important element of the problem has been Council's relationships with the Administrator as the representative of the Commonwealth Government through the Minister, and various solutions have been attempted over the years in an effort to secure a satisfactory and workable arrangement. The commencement of the new Norfolk Island Act, together with a new ordinance, in 1960 was hailed as being a major step forward but it took only until 1963 for a move to be initiated for the Administrator to assume the Chairmanship of Council, which he did in 1964, with an amended ordinance and a President of Committees as the senior elected council member.

From the early 1950s the Government in Canberra, with the Hon. Paul Hasluck as Minister for Territories, had urged the islanders to accept greater responsibility in running their own affairs. Minister Hasluck was in charge of Norfolk affairs for twelve years. He visited the island frequently and was known and respected by the local populace because of his deep personal interest in island matters. In the two years prior to the Council elections of July 1960 the moderate Pitcairn-oriented Council, with the encouragement of Minister Hasluck and supported by the Department and the Administrator, had worked towards securing a Norfolk Island Council Ordinance which would give the Council greater local authority and responsibility.
Still fresh in the minds of Council and community alike, however, were the events of late 1954 and 1955 concerning the imposition, without reference to the Advisory Council, of a new Customs Ordinance. The Customs Law No 11 of 1913, and its successor the Customs Ordinance No 5 of 1929, amended progressively but mildly in 1932, 1933 and 1934, and finally promulgated as the Customs Ordinance 1913-1934, made modest provision for a minimal schedule of import duties. Apart from spirits 30/- per gallon; ale, etc 2/6 per gallon; wines 5/- to 25/- per gallon; and cigarettes and tobacco ranging from 2/- to 6/- per pound, the remaining few items were in the one penny to threepenny category. The new Ordinance, which commenced on 30th November 1954, was in fact far from being an unreasonable measure. Many items, including spirits and ale, remained unchanged; the duty on some items was even reduced, but the duty on tobacco, watches, jewelry and motor vehicles was increased. A 5% duty however was imposed on "all other goods" which had hitherto been free of imposts and it was this imposition, plus the fact that the Advisory Council had not been given the opportunity to put forward its views to the Minister, that incensed the community.

Letters were despatched to the Prime Minister (4th December); a letter followed to the Minister (10th December); and the Council passed resolutions condemning the legislation, seeking its revision, and seeking also to "give the people some measure of control over their own affairs." On 20th December a public meeting attracted 251 people and a petition to the Queen was organised. An appeal to the United Nations was also mooted: this latter being an aspect which crops up on the island from time to time when feelings run high. On Christmas Eve the Administrator despatched a further lengthy missive to the Department. Whatever the 1954 Customs Ordinance did or did not achieve it certainly ruined Christmas on the island: and the Secretary of the Department, Mr C. R. Lambert, was despatched post haste in an attempt to bring some degree of calm to the situation. Compare the similar reaction in June 1976 over the sudden resignation of an island born Deputy Administrator. Mr Lambert attended both a second public meeting and a Council meeting, and throughout the crisis the Administrator came in for both blame and some praise. The documentation on this matter is an interesting example of a typical Norfolk community upheaval. See Appendix AA.
By February 1955, when tempers had cooled, the Minister minuted the Secretary expressing his concern at the social and administrative upheaval which the incident had caused. See Appendix A. Some amelioration of the Ordinance was agreed and a few concessional amendments were made in 1955. All of these events however provided an important catalyst in island affairs and stimulated the notion of the need for the Council to accept greater local powers. Minister Hasluck circulated a statement to Members of Parliament concerning a pamphlet which had originated on the island. Appendix B.

The "problem of administration" referred to by Hasluck in his memorandum of February 1955 led to a lengthy period, some six years, of examination of ways and means of giving the island Council and the people a greater say in the running of their own affairs. To this end the new Norfolk Island Council Ordinance desired by the 1958/59 Council was approved, printed, signed by the Minister, promulgated by the Governor-General and made on 7th April 1960. By the time it was tabled in the new Council of July 1960, however, that new and radical body literally tore it to shreds and threw it on the floor of the Council Chamber. Not satisfied with the prospect of securing significant new powers and functions (S.63) the Council took the view that they could not accept the provision that the Administrator, who was not to sit in Council, should have a power of veto (S.65). Council also felt strongly that the financial provisions of the Ordinance would require the Council to impose rates or taxes on the residents. These provisions were felt to be unacceptable. Led by the President of the Council, a New Zealander, there was a move to seek independence from Australia. 12

Council's resolution read:

"That this Council cannot accept the Powers and Functions as set out in the Norfolk Island Council Ordinance 1960 whilst it contains the Power of Veto by the Administrator and involving pressure on the Council to raise more taxes. Furthermore this Council considers that the Ordinance cannot function satisfactorily unless it gives control over the Public Revenue of Norfolk Island to its citizens."

The rejection of this measure was a retrograde step for the island. With the passage of time it is likely that it would have proved to be the first successful and important move along the road to a greater degree of local autonomy and would have assisted in minimising the bitter feuds, recriminations and
frustrations which, with the Administrator as Chairman of an unhappy advisory body, became a feature of the 1960s and has largely continued to the present day. In referring to this rejection of the proposed powers in his address to the newly elected Council in July 1961 Administrator Leydin said:

"...I am naturally disappointed that no progress has been made in the use by the Council of the powers granted to it. The arrangements I have described were very carefully prepared.... We all know that the Council has so far found the proposals made by the Government unacceptable... The proposals made by the Council (subsequently) have not been approved by the Minister because.... the proposals do not take into account one of the most important principles in our understanding of Government that the exercise of power or authority must go hand in hand with the acceptance of responsibility." 14

In August 1961 Minister Hasluck visited the island in an attempt to resolve the problem of the Council's powers and to examine the form of Council best suited to the island's needs. He promised to arrange for a referendum on the issue. A lengthy pamphlet had been prepared for the Minister by the Department and this was distributed on the island during his visit. See Appendix C. This was to be one of the continuing offers made over the succeeding years by various ministers in attempts to have the Council assume more authority. In 1961 and subsequently, however, much publicity was given to the island's problems, some of it not always accurate, 15 and even when by 1964 the Pitcairn balance in the Council had been largely restored the Council was an angry and frustrated body: angry and frustrated because of the opportunity, lost in 1960, to take a sensible step forward in local affairs. Council's feelings were, almost inevitably, taken out on the Administrator who, as the Government's representative, now chaired the Council, possessed a casting as well as a deliberative vote, and suffered the wrath of councillors in his attempts to maintain the precarious political balance between the desires of the Minister in distant Canberra on the one hand and the attitudes of the local Council and populace on the other. This situation pertained right through until the late 1960s and into the 1970s.

Administrator Marsh had a particularly bad time from his arrival in 1966 to his departure just under two years later. He soon reached the stage in his relations with Council where he was reluctant to vote on any issue, let alone make any attempt to exercise his casting vote. In October 1967 the elected members of
Council saw fit to complain about this situation and passed the following resolution:

"In order that the Council may have a clearer understanding of the Administrator's acceptance or rejection of resolutions of this Council, it is respectfully requested that the Chairman exercise his vote in accordance with the provisions of Section 55 sub-section (4) of the Norfolk Island Council Ordinance and the voting be recorded in accordance with Rule No 22 of Council's Rules of Order. Should the Chairman accede to this request. Council is of the opinion that it would be in the best interests for the carrying out of its function."

The outcome of this effort to have the Administrator show his hand was advice from the Department that there was clearly no statutory requirement that the Administrator or any other member must vote on a particular issue.

In April 1968 a delegation of four Councillors proceeded to Canberra where they discussed a variety of problem areas with the Department and the Minister. Matters covered included immigration, the Norfolk Island Council Ordinance, elections, legislative drafting, the Crown Lands Ordinance, tourism, and many other aspects of island government and administration. See the report of this delegation at Appendix D.

Although there were and are wide and fundamental differences between the then A.C.T. Advisory Council and the Norfolk Island Council the work which had proceeded in the A.C.T. towards seeking a solution to the A.C.T.'s local government problem was felt to have some relevancy to the Norfolk situation. A Department of the Interior study "Self-Government for the Australian Capital Territory" was forwarded to the island for examination and consideration as having possible implications to the Norfolk problem. Sound and detailed though that report was, however, and containing much that was relevant to the Norfolk situation, it went no further towards solving the island's perennial problems than it has done towards solving those of the A.C.T.

When Administrator Dalkin arrived to take up his appointment in July 1968 he was aware from his background reading and departmental briefings that he was not embarking upon any sinecure. He was not, however, fully prepared,
nor in the circumstances could any new incumbent be, to encounter the local political and sociological hornets nest that fell to his lot. His speech at the July 1968 inaugural meeting of the new 4th Norfolk Island Council probably reflected rather typical attitudes of an incoming Administrator of the time. See Appendix E.

By 1968 a number of the members of Council were politically aware individuals who were well versed in the background, machinery, and history of island government and of the various Norfolk Island Councils. The Government in Canberra remained fair game for their political ploys, and as the Government was represented by the Administrator then the latter would be expected to be on the receiving end of the barbs of any Council member who cared to "try on the new boy", usually with a vicarious community listening to the broadcast proceedings on the local radio station VL 2NI. However, two can play such games.

Council meetings were and are conducted in a formalised way as to calling of meetings, agenda and Rules of Order. The Norfolk Island Council Ordinance makes certain provisions in this regard and revised Council Rules of Order were adopted in 1964; see Appendix F. Dealing with Councillors in the matter of procedures could sometimes be time-consuming. That most valuable treatise for chairmen, The Law and Procedure at Meetings, by Judge P. E. Joske, himself a judge of the Supreme Court of Norfolk Island, came in for a good deal of use.

The question of Council's overall authority, and the chairmanship of Council by the Administrator, came up for discussion on most occasions when any matter of a contentious nature erupted into a confrontation between Chairman and councillors. At the Council meeting held on 4th November 1969 a councillor tabled the following notice of motion:

"Section 55(i) of the Norfolk Island Council Ordinance be amended so that provision be made for an elected member of Council to be Chairman of Council."

The Councillor tabling the motion said that this matter had been raised on several occasions and he felt it was time that the status of the Council was raised. He felt there was "a lack of co-operation somewhere along the line"
and a feeling of frustration at times that Council's deliberations were not receiving the attention they deserved. He said that if Council had its own Chairman then these frustrations would be avoided and the Minister for External Territories would have to deal directly with the Norfolk Island Council as the representatives of the people. 17

The matter was discussed in more detail at subsequent meetings but it was a subject on which the elected members of Council, and the populace, had difficulty in arriving at firm conclusions. Typical Council comments of the period were:

"Councillor Bathie said he had never supported the idea of the Administrator being chairman. He referred to the resolution of 18th June 1963 which related to proposed amendments to the Act and the Ordinance. He felt that the fact that the Administrator was chairman was not in itself the main problem. It was the system as a whole that was at fault. The Council should accept more authority and responsibility and either a referendum or Council elections fought on this issue would give the people a chance to decide the questions. Because it was a question for the people." 18

In January the Administrator (the author) prepared and circulated a memorandum outlining the problem. At a Council meeting in the same month Cr Bataille said:

"... the Chairman was to be complimented on the lengthy memorandum and he said it was appreciated that the Administrator was co-operating with Council in the matter of the chairmanship of Council and related issues. He said although he differed with the Chairman on several points and felt it reflected views of the Department to some extent he asked that it be published so that as many sections of the public as possible could read it." 19

It was felt at the time that the question of the acceptance of some degree of authority and responsibility required draft suggestions or criteria around which discussion could range. The following guidelines, therefore, were prepared by the Administrator purely to serve as a basis for discussion. They were not to be taken by councillors as expressing official policy.

Summary of Administrator's 1970 Proposals for Council
Prior to 1964 Council was chaired by an elected member but as the result of a previous 1963 Council resolution the Administrator became the Chairman in 1964. Thus, prior to 1964 the Administrator did not normally attend Council meetings. Even then, Council did not feel that the system was satisfactory. After a lengthy period of consideration and discussion Council had resolved at a special meeting on 8th June 1960 that it would not accept the then
proposed powers and functions which it had sought and which were about to be handed over to it. The reason advanced for this was that Council was not to have full control over its public revenue and because the proposed new Ordinance contained a power of veto by the Administrator. This latter was interpreted by councillors at the time to suggest that pressure might be brought on the Council to raise taxes or rates. Again, at the time, concern was expressed by more than one Minister of State that the Council would not accept the powers offered to it unless it had yet further powers conferred. Council then pressed for the Administrator to become Chairman of Council.

In 1961, when pursuing this aim, Council had said "the Council's proposals are the only ones that will work in harmony with the Administrator and avoid the feeling that he is not representing the wishes of the people." Much more was said about the desirability of the Administrator acting as Chairman to a Council of six or eight elected members. This aspect of the Council's proceedings, that is to say the Administrator's present position in relation to Council, was covered in Part IV of the Norfolk Island Council Ordinance 1960-1969; the Ordinance deriving its authority from Sections 11 and 11A of the Norfolk Island Act 1957-1969.

An examination of the contemporary records shows that the change in chairmanship was made after due deliberation and was aimed at providing closer links between the Administrator and the elected members of Council and to make for better co-ordination of administration generally. Amongst other things it was necessary for a considerable amount of correspondence and papers to flow between the Council and the Administrator.

The late 1969 motion that the Administrator cease to be the Chairman of Council was an important one involving the possibility of a significant change in the government of the Island. It was one which would not derive solely from the views of some or indeed all councillors but from the views of the majority of the people themselves. There were two methods of ascertaining these views; firstly by a referendum, or secondly by a Council election fought primarily on this and related issues.
The Council motion however was part, and only part, of a much wider problem; that is, how much authority and responsibility the Council desired. There seemed little advantage in discussing the chairmanship of Council in isolation without also considering the wider implications of the problem. If these wider implications could be resolved then the question of the chairmanship would probably settle itself. Before Council could do this however, it needed to have some reasonably clear idea of what degree of authority and responsibility it desired: and what that responsibility would mean both to Council as a whole, to individual councillors and the people, and what it felt the future pattern of Island government should be.

The removal of the Administrator from the chairmanship would remove him completely from the Council. A Council in which an elected member sat as Chairman and the Administrator sat as a member would probably be unworkable. At the time of moving the original motion Cr. Bataille had said he felt "there was a lack of co-operation along the line" and "a feeling of frustration" and that "deliberations were not receiving the right attention". Also that "the Minister will then have to deal with the Norfolk Island Council as the representatives of the people".

It was true that there were feelings of frustration among councillors, but deliberations were receiving proper attention within the limits of the capacity of the Administration and the existing system.

The further point made by the mover of the motion was that if the Administrator was not the Chairman of Council then the Minister would have to deal with the Norfolk Island Council directly as the representatives of the people. This, of course, would have been impracticable. The basic processes of government and administration require essential links in the administrative machinery and it would have been impossible for councillors to deal direct with the Minister of State for the Commonwealth. If the Administrator were not in attendance at Council meetings presumably it would have been the wish of elected members that some representative, that is to say the Official Secretary or the Legal Adviser, or occasionally both, would attend some or all council meetings. This procedure in isolation would not have resulted in any better means of communication between the Administrator and elected members of Council than was the case at the time. It would simply have meant that instead of the Administrator being in a position to obtain at first hand
the views and the feelings of councillors in the various matters these would have to be relayed through the Administrator's representative and through the minutes of the meetings.

The feelings of frustration experienced by councillors undoubtedly originated from the advisory nature of the Council and not from the occupancy of the chair. Any advisory body is bound to feel frustration if it cannot see that its advice is always being accepted.

It followed that the Administrator did not favour the motion in its existing form. It had not been fully thought through to its conclusions and it dealt only with one facet of the problem. To consider the chairmanship of the Council and deal with it in isolation was not advancing the cause of government on the Island. Nor would it have solved Council's apparent problems. It certainly would not have provided them with any greater executive authority and responsibility under the existing Act and Ordinance and would probably have widened the gap between Administrator and Council.

What was needed was a Council decision in principle on the wider issues of whether it wanted to seek executive authority and responsibility and, if so, to what degree.

Under the Norfolk Island Council Ordinance there was no control over the composition of the Council as between descendants of Pitcairners and other residents and the composition of Council was likely to and indeed has changed significantly over the years. The Administrator's proposals involved the following.

(a) The Council could take over some of the basic functions of local government - roads and bridges, building control; refuse disposal, sanitation, jetties, public places, tourism, fire services, electricity, special social services allowances, public buildings (probably initially other than convict era buildings), pasturage, lighterage, and the Liquor Bond Store.

(b) All staff could remain Administration employees, at least until any new system was well established, but those employees needed to service Council functions would be seconded full-time to the Council's control.
(c) An Administrative Officer could be seconded to the Council as Executive Officer and could carry out functions akin to those of a town clerk. He could attend Council meetings, report on activities and receive Council's instructions.

(d) The Accounts Branch staff could remain under the direct control of the Administration and could receive money and make payments for the Council upon payment to the Administration by the Council of an agreed annual sum.

(e) The Council could be given control of the following items of revenue - Liquor Profits, Public Works, Car Registrations and Licences, Pasturage Fees, Revenue from the Electricity Undertaking and from the Lighterage Undertaking. Should revenue from these sources be inadequate for the Council's expenditure consideration could be given to making a grant from the remaining Administration funds to balance the budget.

(f) There could be two sets of Estimates of Revenue and Expenditure; one for the Council's activities and one for the Administration. The Council would have complete control over its own Estimates. The Council would continue to advise on the Administration's Estimates but would have no direct executive control over them.

(g) The Works Department could be under control of the Council as most of its functions would be Council functions. The Works Department could carry out work for the Administration, including certain restoration work, on repayment to the Administration. These payments would be revenue for the Council additional to those items listed in paragraph (e) above.

(h) The Administration could remain responsible for general administration, (including land matters, company matters, immigration, customs), Government House, Police, Courts, Prisons, Education, Health, Forestry and Agriculture, Post Office and Telephones, and Broadcasting.

(i) The Chairman of Council could be appointed from among the elected members of the Council. The Administrator would not be a member of Council. Neither the Administrator nor the Official Secretary would normally attend meetings of Council but the latter could attend upon invitation to discuss specific items on the agenda. It would be necessary for some arrangement to be entered into whereby the Administrator and at least the Chairman of Council would consult regularly together.
(j) The Council could take executive action on all matters under its control. It could also consider and give such advice as it chose on other matters. When acting in this latter capacity it would remain an advisory body.

(k) The Council's Executive Officer would have a Secretary who would also be the Secretary of the Council. Further secretarial assistance could be provided as required. The cost of the Executive Officer's salary and the salaries of his staff would be a charge on the Council's funds.

Arrangements such as the above would give the Council considerable authority and responsibility for certain local government functions and was likely to be a workable proposition. As time went on, and as it became clear that the system was working satisfactorily, further functions might be transferred to the Council such as Forestry and Agriculture and possibly Health. Any changes in the Council's status as discussed would inevitably increase the burden of work on councillors very considerably. In particular the Chairman would find it necessary to spend a significant amount of time in normal working hours on the business of Council.

The initiation of more detailed investigation into such a scheme would require recommendations by Council to the effect that:

(a) It was council's desire to work towards a greater degree of executive authority and responsibility.

(b) Further and more detailed processing of the proposals discussed above would be necessary, without any commitment to final action.

(c) Ministerial approval to progression of the proposals would be necessary.

(d) Adequate publicity would need to be given to Council thinking in the matter.

(e) The 1970 Council elections could have been the testing ground for the public's acceptance or otherwise of the proposals.20

(End Administrator's Proposals)

Despite the suggestions concerning the assumption of greater authority and responsibility by Council, councillors and populace in general were reluctant to make any firm move. Immediately prior to the July 1970 biennial Council elections a sampling of councillors' opinions by the Administrator produced the following results: 21
Do you feel that the Administrator should continue to be Chairman of Council?  
Yes  No  Uncertain  
4  3  1  

Do you feel that Council should accept a greater degree of authority and responsibility?  
2  4  2  

In the light of this apathy, and in the absence of renewed public interest, the question again lapsed and assumed a low priority. It received a mention in the Administrator's inaugural speech to the newly elected 5th Norfolk Island Council in July 1970 (See Appendix G) but in his summary of the results of the elections sent to the Department on 3rd July the Administrator did not feel that the issue was a live one. Appendix H.

Apart from day to day correspondence to the Department, Secretary and Minister on specific matters, together with Council matters in closed committee, "Canberra" was always keen to have summarised "reports" of a more general nature relating to Council matters. Two examples of such reports to Secretary Hay are at Appendices J & K.

From time to time, usually annually or sometimes more frequently, the reigning Minister would visit the Island. This was usually an occasion for Council and populace to air grievances, real or imagined and to assert their perennial attitudes against governmental control. One or two councillors sometimes boycotted these meetings as a protest against the Minister refusing to attend a formal meeting of Council, a procedure for which the Norfolk Island Council Ordinance made no provisions, and thus not have the proceedings broadcast over the local radio station in the normal manner. Such meetings were, therefore, held informally and in private. The record of the meeting attended by Minister C. E. Barnes on 24th May 1971 illustrates the typical range of topics covered at such a gathering; Appendix L.

At the Council Meeting held on 6th July 1971 five councillors had resigned in protest at the haste with which a lengthy and complicated amendment to the Norfolk Island Companies Ordinance was apparently being rushed through Council. In
forwarding his comments on this incident to the Department and the Minister, the Administrator had said that there had been much unfavourable local comment against the councillors who resigned and this had emanated from both Pitcairn and non-Pitcairn residents. In particular, Mr R.H.H. Nobbs, OBE, an ex-President of Council, for many years involved in community affairs, had indicated that a significant sector of the Island community were appalled at the lack of common sense displayed by the resigning councillors.

The activity of Mr McIntyre and his associates since 6th July had been intense. Various private meetings were held and these had been directed at ascertaining who was to stand for the five vacant Council seats. A "bloc" had been formed along the lines of that operating some years ago.

In a cable dated 8th July the Administrator advocated that the Minister should, in conjunction with the election, direct that a referendum be held on the question of a measure of local government being accepted by Council. Unquestionably this problem was at the root of Administrator/Council relationships. The Administrator felt that the time had come to concede a carefully considered programme of limited local government activities to the Council. It would be important to ensure, however, that any such powers did not in any way impinge on the overall Commonwealth aspects of the Island's constitutional position.

Nevertheless it seemed that the various issues raised in recent years, i.e., the chairmanship of Council, the Chairman's casting vote, the quorum, pecuniary interests, seats for Pitcairners, and so on should now be taken fully into consideration in any contemplated changes to the Norfolk Island Council Ordinance or the Act. The wording of questions to be asked at a referendum would need to be short and simple. In the statement the Administrator released to the press on the implications of the councillors' resignations he mentioned the possibility of a referendum. It would be better for this to be directed (by the Minister) under section 4(1) of the Referendum Ordinance rather than permit a sector of the public to take the initiative under section 6.22

The Administrator's press statement is at Appendix M.

Much publicity followed on these events; a public meeting was held and a petition organised.23 In the event, the September by-election resulted in three of the resigning councillors being re-elected and the Companies Ordinance remained unchanged.
In the meanwhile the Senate Standing Committee on Regulations and Ordinances had visited the Island and had interested itself in the workings of the Norfolk Island Council. See also Chapter 1. A member of this Committee, Senator D.M. Devitt, had written to Minister C. E. Barnes in June 1971 seeking some clarification of Council's functions. Mr Barnes' reply dated 13th July 1971 summarised in a useful manner some of the problems being encountered. See Appendix N.

The Chairman of the Senate Committee, Senator Ian Wood, had expressed his concern that the Administrator's views and advice as forwarded to the Minister in his capacity as Administrator might be at variance with his views as Chairman of the Norfolk Island Council, and that the views of the elected members of Council might not receive their proper emphasis in being forwarded to the Minister.

In an endeavour to satisfy the Senate Committee the Department proposed the following procedure.

On the basis that Senator Wood would be aware of the channel of communication between the Administrator and the Minister he appeared to be concerned that communications from the Administrator in his capacity as Chairman of the Norfolk Island Council should be included in Council records for the information of Councillors. Communication from the Administrator to the Minister would remain privileged.

In most practical situations there would appear to be no difficulty in the Chairman forwarding Council's resolutions to the Minister or Department with appropriate comment while the Administrator continued his privileged communication of advice, including advice on Council matters, to the Minister. Such a procedure, and the inclusion of the Chairman's correspondence with the Minister in Council records, would have the advantage of satisfying Councillors as to the presentation of their views, whereas under the then existing arrangement they may entertain doubts about the style of the presentation.

The Department was happy to try to achieve the alleged advantage contained in Senator Wood's suggestion if satisfied that the proposed arrangement did not interfere with the confidential nature of correspondence between Administrator and Department.
The Administrator, whose task it was to make the administration of the Council and the Island work, was not enthused with this dubious proposal. He felt that in most practical situations there was no difficulty in the Chairman forwarding Council's resolutions to the Minister or the Department. This was already done through the medium of the Council minutes. The difficulty/in what additional "appropriate comment" could be made by the Administrator acting in his capacity as Chairman of the Council. Any recommendations from the Chairman could only be made in conformity with recommendations as Administrator. The Norfolk Island Council had no channel of communication with the Department/Minister other than through the Administrator. If it desired such a channel then presumably the President of Committees would be the person to initiate views on behalf of the elected members of Council.

In his letter Senator Wood had said:

"Norfolk Island Council members pointed out to Senators the problems faced by the Administrator in his dual role as Servant of the Minister and Chairman of the Council. They commented on the situation where, in this role as Chairman of the Council, his correspondence to the Minister conveying Council's resolutions was privileged. This, in their opinion, could lead to a feeling amongst councillors that their views were not being forcibly placed before the Minister or that appeals against Ministerial decisions may not be given sympathetic consideration."

In the Administrator's role as Chairman of the Council he did not correspond with the Department or the Minister. The only documents signed by him as Chairman were the Council convening notices and the minutes themselves when confirmed. All informative Council Memoranda were signed as Administrator.

In his letter of appointment to the Administrator dated 28th June 1968 the Minister had said:

"The normal channel of communication between the Administrator and the Government is by memorandum or message between the Administrator and the Secretary to the Department."

Whilst the same direction goes on to discuss the formal relationship of the Administrator to the Council it did not provide for the Chairman to correspond with the Minister or the Department as Chairman of the Council. The directive does say that:
"The Council may make representations to the Minister on the proposed legislation which the Administrator forwards together with his own comments."

These representations appeared in the minutes of the Council meetings and, as Chairman, the Administrator would have no comment to make on them other than the comment appearing under his name in the minutes. Indeed the minutes are the medium by which councillors relay their views to the Minister. If councillors felt that these views were not being forcibly placed before the Minister then they were at liberty to make these views known or to emphasise them to whatever extent they felt was desirable through the minutes. An inspection of the minutes of recent years would seem to indicate that they did just this. The Administrator concluded that the procedure suggested had serious and inherent difficulties and was unworkable.

However, in an effort to assist both Senate Committee and Department the Administrator subsequently agreed to adopt a modified form of this procedure which was, however, unsuccessful and was abandoned.

Administrator Pickerd (later aptly described by the Norfolk Island News as a "super-active dynamo") subsequently found that the Administrator's working life was sufficiently busy, difficult and complex without attempting to make the unworkable work. He also scrapped the procedure.

Subsequent immediate events on the island affecting Council was the formation of an active Citizens' Association and a special Council meeting at which the subject of more local authority and responsibility for Council devolved into a consensus for the status quo. See Appendix 0. When the Administrator gave his address at the inaugural meeting of the 6th Council in July 1972, in the knowledge that he was shortly to leave the island, the question of greater Council authority received little more than passing comment. See Appendix P.

A petition to Her Majesty the Queen, promoted largely by the Citizens' Association in September 1972, and seeking to clarify the constitutional status of the island, makes fascinating reading, but the proposal to forward this was dropped in the ensuing months. In a lengthy and historically-oriented letter to the press – December 1972, the late Councillor A.S. Bathie, a long-time advocate of greater authority for Council, strong ties with Australia, and taxation, castigated those who over the years had opposed or been apathetic towards the concept.
By 1974, when the Department of the Capital Territory was overseeing the Canberra end of the Norfolk pipeline, the senior echelons of that Department were heavily involved in the problems of Norfolk. Early in that year Council was again probing on the matter of authority, preferably without responsibility and the Departmental letters at Appendix Q are relevant.

A further local furore was sparked off in July 1974 by a letter to Council from Minister Gordon Bryant. The Pacific Islands Monthly in an editorial said:

".... it is fitting that there should be another political controversy on Norfolk Island. It's fitting because this is Norfolk's year.... the 200th anniversary of its discovery by Captain Cook. - and the island is only 14 years short of the 200th anniversary of its first settlement by Britain. In almost 200 years of settlement one would have expected that its political fate would have been firmly settled, but the islanders don't think so." 26

The Minister said that there would be significant advantages to the island if the populace adopted a "closer relationship with the mainstream of Australian life... the island is disadvantaged by isolating itself from the varied and highly desirable social welfare benefits which membership of the Australian taxation system makes possible."27

The Minister was in effect saying that the island was for all practical and constitutional purposes a part of the Australian mainland, which it probably is, but the implications of personal income tax for the islanders resulted in the normal reaction of angry outbursts from Council and the islanders. One Councillor said that the Minister was proposing to act against the advice of Council: was defying the elected representatives of the people and exceeding his powers: that the island was entitled to the last word over the Minister: and that the United Nations Covenant on Human Rights permitted the island to choose its own political future. 28

The Minister promptly reacted by reminding Council that all Australian Government offers for the island to assume more responsibility had to date been rejected. As usual, the Council only had itself to blame in not grasping the nettle of a greater degree of authority and autonomy. It was to be 1975 before the establishment of the Royal Commission of that year again brought the matter into focus.
In July of 1976 the retiring Administrator, Air Commodore Pickerd, had
good cause to state that during the two year history of the 7th Council:

"....on the threshold of the eighth Norfolk Island Council,
history has recorded three separate Australian Governments,
two different Ministers, a change of Department and three
Statutory appointees; also (three) Chairmen of Council....
in the lifespan of the Seventh Norfolk Island Council." 29

To summarise, the numerous changes in the constitution, composition,
and authority, elective arrangements of the Norfolk Island Council from 1896
to the early 1960s have exemplified the unsatisfactory nature of the
local Council. The main problems in recent decades, from 1935, have been
the frustrations arising from its advisory role: and later the appoint­
ment of the Administrator as Chairman. These factors, together with the
changes in the ratio of the Pitcairner/mainlander membership of Council
from the mid 1950s - and especially from the mid 1960s - have all operated
against the probability of the Council working as a successful local body.
The suggestions put forward by the 1971 Senate Standing Committee on
Regulations and Ordinances similarly did not succeed in solving the
problems: nor did pressures from the Minister and the Department from
1974. The only solution is for the Council to accept a substantial
measure of authority and responsibility.

Over the past 120 years Norfolk Island Councils have faced many
problems and in the past 30 years or so these problems have multiplied
in number and complexity. Whether the report of the forthcoming
Royal Commission will assist in solving these problems, and on what
time scale, remains to be seen.
CHAPTER 3

NORFOLK ISLAND COUNCILS

NOTES

2. Ibid. p.235.
4. See Appendix D to Chapter 1.
5. See Appendices E and F to Chapter 1.
11. The sources for this tabulation are primarily the Annual Reports, the Minutes of the Norfolk Island Council, the *Norfolk Islander*, and the Administrator's personal notes.
17. Ibid. 4th November, 1969. pp. 7/8
18. Ibid. 2nd December 1969. p.13
19. Ibid. 13th January 1970. p.9
20. Ibid. Appendix B.
CHAPTER 4

THE NORFOLK ISLAND ADMINISTRATION

From 1856 to almost the turn of the century most of the administration involving Norfolk was handled primarily by the office of the Governor in Sydney. Nevertheless, on the island itself the elected Chief Magistrate and his two assisting councillors were involved in Court and community matters all of which necessitated the exercise of a degree of local administrative control. Meetings of the adult people, the "House", provided the formal inputs into the Chief Magisterial system. Law No 10 of Denison's 39 Laws had made the Chief Magistrate responsible as head of the community and Law No 11 provided him with the assistance of two councillors in the running of island affairs. These executive provisions were carried over into Hampden's laws of 1896 but were amplified and expanded.

Although the community was small the records indicate that there was a significant amount of administrative effort required to keep abreast of court, school, imports and exports, shipping, public works and accounts, land records: births, deaths and marriages: whaling and so on. The records of the period relating to the island, mostly held in the Australian Archives Office, Canberra and in the State Archives of New South Wales, are considerable: and there was a fairly constant flow of manuscript material passing between the community and the Chief Magistrate, between the latter and the Governor's office in Sydney, and on to London. In those days the seat of administration on the island, such as it was, was the Court House, the whole of the building still forming part of the Administration complex today.

In 1896 one Dwight Allen won a tender - 84 pounds, 18 shillings and 6 pence - for the internal alteration of this room into the configuration still in use today. The Chief Magistrates seem to have divided their time spent on administrative matters between their homes and either the Courthouse or one of the nearby rooms. The provision of "office" space did not pose any problems in the large and rambling colonial buildings. The Chief Magistrate and his two councillors received no emoluments but some fees were paid to others. The Rev. George Hunn Nobbs who had been leader of the community on Pitcairn, a task for which he received a stipend of 50 pounds per year, continued to receive 25 pounds on Norfolk as leader, and sometimes also an additional fee as schoolteacher. Thomas Rossiter, an early imported English schoolmaster also received a fee, as did a few others. Later, a doctor, postmaster and others were also paid.

1

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Hampden's laws of 1896 made provision for the Chief Magistrate, with the approval of the Governor, to appoint a "Registrar, gaolers, constables, bailiffs and other officers..." From 1896 the Chief Magistrate was also appointed from outside the island, initially in the person of Colonel Warner Warren Spalding when he was installed by Hampden during the latter's visit to the island in November of that year. Hampden also approved the appointment of a Clerk of the Court (Spalding Junior) a Sergeant of Police (John Knuckey) and confirmed Mr F. Nobbs as Postmaster and Captain Bates as Registrar of Lands. Throughout the second half of the nineteenth century, therefore, and more particularly from 1896, all of these people on the public payroll were in a sense the forerunners of what was to become known in later years as the Norfolk Island Administration, and in the early 1900s this embryo staff and their successors became the administrative base on which the Norfolk Island Public Service was eventually formed. The Colonial Office List of 1912, referring to the situation in about 1909 under the heading of "Norfolk Island", stated:

"There was formerly but little regular administration, the community being presided over by two of the leading inhabitants as unpaid magistrates, with a simple code of laws. The Island has now been placed under the government of New South Wales. The office of the Administration is at the Chief Secretary's Department, Sydney - Deputy Administrator W. Houston, C.M.G., J.P., Officer-in-Charge M. V. Murphy." With a Chief Magistrate on the island having local powers and responsibilities, and with a "Deputy Administrator" and an "Officer-in-Charge" based in Sydney, there may well have been some problems of division of authority and responsibility, although the record does not reveal any such conflict.

The Norfolk Island Act of 1913 and the Administration Law of the same year later provided the legislative basis for the local administration, the Act stated:

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

The Administration Law 1913 also provided for an "... administrator of Norfolk Island affairs,.... who may also be chief magistrate." A further important administrative landmark about this time was the production by Mr Atlee Hunt, Secretary of the Commonwealth Department of External Affairs, of his detailed and lengthy report of 1914, Memorandum Relating to Norfolk Island. In listing the 18 officers, comprising almost 30 posts, of the public service at that time he recommended only the addition of one secretary to the staff. See Appendix AA.
Mr Hunt also said in his report:

"The Public Service. - With regard to the Administrator, the utmost care will naturally be exercised in his selection, and he should then be left as far as possible to manage affairs on the spot......... As the Administrator, to render the most effective service, should spend a good deal of time out of his office, it will be desirable to afford him some clerical assistance." 9

Successive Administration Ordinances of 1922, 1923, 1935 (2) and 1936 strengthened and updated various provisions for staffing of the Public Service, and the 1936 version also made separate provision for an "Administrator of Norfolk Island".10 However, the "Norfolk Island Administration" is not in itself a legal entity. The organisation is known generically and conveniently as "the Administration": the buildings are referred to as the "Administration buildings", and the staff as "Administration employees." In legal terms, however, the staff comprise the "Public Service of the Territory of Norfolk Island".

A Judiciary Ordinance of August 1936 codified the appointment of judges and the Chief Magistrate. It was 1941, however, before a short Public Service Ordinance and associated Regulations made provision for a more up-to-date structure for the Public Service of the Territory but as in the 1970s this Ordinance still remains the only legislation under which the Public Service operates it is a quite unsuitable, outdated and restrictive code. 11

A few minor amendments to the Regulations were made in 1945, 1949, 1963 and 1974. Some of the outmoded conditions which applied until 1974 were that all appointments to the Public Service were made by the Governor-General: the Minister could declare that the provisions of the Ordinance did not apply to certain officers or employees; and only the schedule of inadequate positions shown in the Regulations could theoretically be filled. These and many other provisions of the 35 year old legislation in effect render the Ordinance and Regulations almost unworkable.

Reports on Public Service staffing had been prepared by Departmental officers in 1964 and 1970. In 1970 and 1971 the Administrator initiated action to have a new Public Service Ordinance and Regulations made and eventually drafts were produced by the Attorney-General's Department. Some of the proposals, however, were unacceptable and the Administrator withheld the draft from Council and employees and requested the Department
to re-examine the matter. Even by 1975 this legislation had not
progressed to any significant extent. The Norfolk Island Annual Report
for 1974/75 stated:

"... The ordinance is now inadequate for and inapplicable
to certain aspects of present-day staffing requirements
and conditions. Accordingly approval has been given for
the drafting of a new Ordinance and Regulations to meet
present-day needs." 12

Until late 1972 the Norfolk Island Act 1957-1969 was administered
by the Department of Territories (later External Territories) which was
responsible for all aspects of the Canberra end of the affairs of the
island as well as for inter-departmental co-ordination. The Hon. C.E.
Barnes, M.P., was Minister from 1963 until February 1972 and the Hon.
Andrew Peacock, M.P. from that date until the change of Government in
December 1972.

Under the provisions of the Administrative Arrangements Order of
19th December 1972 the new Labour Government disbanded the Department
of External Territories and placed primary responsibility for the
administrative functions of the Norfolk Island Act with the Minister
for the Capital Territory. Responsibility for matters of education was
placed with the Minister for Education, for Health with the Minister for
Health, and for police matters with the Attorney-General's Department.13
From December 1972 the Hon. Kep Enderby, M.P. was Minister and later the
Hon. Gordon Bryant, M.P.

This rather unfortunate fragmentation of responsibilities, part
of the new Government's policy of bringing Norfolk Island more into
the "... mainstream of Australian life.." - probably an administratively
desirable goal but nevertheless an extremely difficult one to achieve -
and the frequent and rapid changes in Ministerial control, had
deleterious effects both on the island and in Canberra. The problem
was exacerbated in November 1975 when yet another change of responsibilities
took place and the Liberal coalition Government Minister for Administrative
Services, Senator the Hon. R.G. Withers, the present Minister, assumed
control. At least Senator Withers had some knowledge of Norfolk's
problems as he had participated in extensive public hearings on the
island in 1971 whilst visiting as a member of the Senate Committee on
Regulations and Ordinances.

Probably nowhere within the Australian system does there exist a
government authority which, whilst having a reasonably tidy looking
organisation (see Appendix A) operates in a looser, casual and more
informal manner and yet still performs its functions with an adequate
degree of efficiency. There are numerous additional functions that do not fit conveniently into any one branch or section; for example, shipping, lighterage arrangements, the airfield (Department of Transport), meteorology and ionospheric (Department of Science) tourism, community and business arrangements, and liaison with the innumerable associations, societies, boards, chambers and councils which have proliferated on the island since World War II.

In late 1969 a departmental officer had been despatched to the island to carry out an organisational review of the Administration. Such reviews were sometimes helpful but were extremely "Canberra Public Service" oriented in approach. By January 1971 the Administration staff totalled approximately 95 full time and 15 part time employees. These figures included the school - 12 - but excluded the hospital - about 12 - whose employees, apart from the Government Medical Officer, were controlled by a Hospital Board. By 1976 the Administration staff was not appreciably larger than the 1971 figure.

Quality of staff in a small island environment poses constant problems in that local personnel, rather than outsiders, must necessarily be given reasonable priority of employment. There was a marked tendency up to the early 1970s for aged employees to be permitted to work beyond the age of 65: see Appendix B. This was largely a problem exacerbated by the lack of tax-supported social service benefits as, with a few exceptions, the only benefit of this kind available was and is the small "special allowance", an ex gratia Administration payment.

The levels of salaries and wages also pose a perennial problem. There are no unions on the island but the tight local community is capable of exerting a good deal of pressure in support of higher wages and better conditions of employment. However, in fairness one must say that the staff generally had very much in mind the fact that rapidly increasing Administration salaries and wages could quickly add to local community costs of living. Attempts to align these with Commonwealth mainland rates have proved difficult, both in terms of standards of skills and availability of funds, but satisfactory compromises were usually achieved. See Appendix C.

Early in 1973 the Minister approved that wages and salaries should be aligned to 90% of the Commonwealth Public Service rates, the intention being that eventually 100% parity would be achieved. Since 1973 increases...
granted to the CPS have resulted in Administration staff receiving salaries and wages at about 93% of the CPS rates. Bearing in mind that these local earnings are income tax free then the Administration employees are certainly doing well: usually significantly better than the local private enterprise employees, e.g. in hotels, shops, service industries and so on.

The problem of securing suitable expatriate seconded staff from or through the Department was not infrequently a matter for the Administrator's concern. The Medical Officer, the Legal Adviser and the Official Secretary posts were all filled from outside the island. In 1972 the Administrator had cause to record his views on the post of Official Secretary, who is also Deputy Administrator: see Appendix D: and sometimes the Administrator found the day-to-day control of his widely diversified and usually undermanned organisation could easily slip, a prime example being the Liquor Bond Store where management and supervision posed problems - Appendix E. Similarly the amorphous lighterage organisation was an almost constant source of concern - Appendix F. The rising costs of the panoply of the Supreme Court also raised its head: Appendices G and H.
NOTES

4. Correspondence Relating to the transfer of Norfolk Island to the Government of New South Wales. 1897. Governor Hampden's letter to Secretary of State Chamberlain. p. 27.
6. The Norfolk Island Act 1913. S. 9(1).
7. Administration Law No. 2. 1913. S. 3(1).
13. Ibid. 1972/73. p. 3.
14. 
CHAPTER 5

POPULATION AND IMMIGRATION

Immigration, the admission of "strangers" or "outsiders", and the total composition of the population generally have always been subjects of discussion and controversy on Norfolk Island; moreso in the 1960s and 1970s. It is useful therefore to look back over the years and note how the matter of immigration has been handled, how the population has varied in numbers and categories, and how the problem has affected the history, the politics and the government of the island.

During the period of the first colonial penal settlement from 1788 to 1814 the peak population is recorded as being 1188 in November 1797. From then until early 1805 it remained at about 1000 and then declined steadily until the settlement closed in 1814.¹

The second penal settlement operated from 1825 to 1856 and by 1833 the population totalled about 730: in 1839 about 1380: in 1842 about 2100. In 1845 there were about 1400 convicts plus supervisory staff. During the 1840s it had been proposed that the island could sustain up to 3000 persons but this figure was never achieved. When the second penal settlement was in its final stages only a handful of people remained on the island at the date of arrival of the settlers from Pitcairn Island, and these left almost immediately.²

As a free settlement the island started its history in 1856 with the arrival of the 194 Pitcairners. The surnames of all these persons were those of five of the H.M.S. Bounty mutineers: Christian, Adams (or Smith), McCoy, Quintal and Young: and three of the four earliest immigrants into Pitcairn Island in the early 1800s: Buffett and Evans (1823) and Nobbs (1828). The given names of the 194 were sprinkled with the influences of the Bible (Isaac, Abraham, Absolom, Esther), officers of the Royal Navy (Moresby, Fremantle), United States sailors (Coffin, Driver) and events (Thursday October). Also amongst the number were six ageing daughters (3 Adams, 1 Christian, 1 Mills and 1 Young) and two ageing sons (1 Adams and 1 Quintal) of the original mutineers. These 8 persons were the surviving first generation of the 24 children (13 boys and 11 girls) sired by the Bounty mutineers on Pitcairn.³
One of the women, Elizabeth Young, nee Mills, was to return to Pitcairn subsequently, aged about 71, and live until 1885 to the ripe old age of about 93. The remaining 7 lived out their lives on Norfolk and are buried there. Buffett, Evans and Nobbs also remained on Norfolk and died there.

A number of the community never settled to the life on Norfolk and they longed for their own Pitcairn homeland, their "Lone Rock of the Sea." There were many aspects of the Norfolk environment which were foreign to their knowledge and their nature. The leader of the community, the Reverend George Hunn Nobbs, tried hard to still any dissatisfaction or unrest but he could not prevent two families of Youngs, comprising 16 persons, including 6 young McCoy children, sailing back to Pitcairn in December 1858. A second group totalling 27 persons (Christians, Buffets and Youngs) followed in December 1863.

These two departures reduced the Norfolk population and again formed the basis of a Pitcairn community in the 19th century, a community which has maintained a precarious existence into the 20th century to the present day.

Governor Denison had arranged for three qualified persons, a schoolteacher, a miller and a stonemason, to be sent from England to assist the islanders and provide expertise in their particular fields. They arrived in 1859 and two of them eventually moved away but the third, Thomas Rossiter the school­teacher, was accepted by the islanders and lived out the remainder of his life on Norfolk. These were the first examples of outsiders being accepted into the hitherto closed community on other than a visiting basis.

Bishop George Augustus Selwyn, the Anglican Bishop of New Zealand, with his headquarters in Auckland, had long felt that he needed to establish a further training college for his Melanesian students in a more equable climate. As early as 1853, together with the Governor of New Zealand, Sir George Grey, Selwyn had visited Norfolk in the knowledge that it would eventually be closed down as a penal settlement. It appeared to be an ideal site for his purpose and Grey recommended to the British Government that some of the land and buildings be granted for the establishment of a Mission. This proposal, however, ran contrary to the idea of allowing the Pitcairners sole residential rights on Norfolk.
In May of 1856, a month before the Pitcairners arrived, Selwyn, accompanied by Patteson (later Bishop Patteson the "Martyr of the Islands") called at Norfolk in the Mission vessel Southern Cross and then proceeded to Sydney to have talks with Denison who, however, would have none of the proposal. He felt that the fewer outside influences that were brought to bear on the simple Pitcairn community the better. On leaving Sydney Selwyn returned to Norfolk Island where in the meanwhile the settlers from Pitcairn had arrived. Mrs Selwyn remained on Norfolk to assist the new arrivals whilst the Bishop sailed for the islands to the North.7

It was to be over a decade, however, before Selwyn's dream of a Mission College on Norfolk Island became a reality, and it was eventually a change in mood on the part of the Norfolk Islanders themselves that was in the event largely responsible for this. A grant of 100 acres was made to the Mission, an advance party arrived in 1866, and a further 900 acres was purchased later. By 1868 the addition of the Mission population plus natural growth had brought the total island population to 300. The population of the Mission itself peaked at 288 in 1896. The legacies left by the Mission on Norfolk Island are the magnificent stone Chapel of St Barnabas, with its fine Burne Jones stained glass rose window: the Bishop's house and original small chapel, now much altered but sympathetically restored, the small and remote cemetery, and a beautiful valley, now run wild, still showing pleasing traces of the trees, shrubs and gardens planted in earlier years. The Mission College finally closed down in 1921.

Into the 1880s the admission of "strangers" remained a touchy problem: for example, a Chief Magistrate's 1883 entry:

"Strangers. On the proposition of John Adams to disfranchise all strangers who had settled in the community by marriage and not in accordance with the terms of Law 6, a discussion ensued, when it was decided that all those who have married into the community up to the present time shall be enrolled and considered as members of the community but that in future marriage contracts the law should be strictly enforced."8
A second establishment which had a marked effect on the life of the island was the Pacific Cable Board Station, opened in 1902 and closed in 1962. This linked Norfolk with Vancouver via Fiji and Fanning Island, with Auckland, and with Southport, Queensland. The Station personnel intermarried to some extent with the Pitcairn community and the Station itself had a beneficial effect on the island economy.

The changes in total population from 1856 to the present, insofar as figures are available, are shown below; the figures to 1921 include those persons at the Melanesian Mission and, from 1902 until 1962, at the Cable Station.

<table>
<thead>
<tr>
<th>Year, to June</th>
<th>Total Persons Residing</th>
<th>No. of Pitcairners</th>
<th>No. of Tourists/Visitors During the Year</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1856</td>
<td>194</td>
<td>194</td>
<td></td>
<td>Pitcairners, plus the Melanesian Mission, plus a few others.</td>
</tr>
<tr>
<td>1868</td>
<td>300</td>
<td></td>
<td></td>
<td>do</td>
</tr>
<tr>
<td>1884</td>
<td>470</td>
<td></td>
<td></td>
<td>181 at the Melanesian Mission, &quot;Pitcairners&quot; hereafter includes those married into the group.</td>
</tr>
<tr>
<td>1885</td>
<td>662</td>
<td>481</td>
<td></td>
<td>do</td>
</tr>
<tr>
<td>1896</td>
<td>882</td>
<td>594</td>
<td></td>
<td>288 at the Melanesian Mission.</td>
</tr>
<tr>
<td>1911</td>
<td>939</td>
<td>596</td>
<td></td>
<td>193 at the Melanesian Mission. Plus 150 others.</td>
</tr>
<tr>
<td>1921</td>
<td>717</td>
<td>588</td>
<td></td>
<td>Census year. Plus 129 others. No Melanesian Mission persons remaining 24 of the original Pitcairners are still alive.</td>
</tr>
<tr>
<td>1933</td>
<td>1231</td>
<td></td>
<td></td>
<td>Census year</td>
</tr>
<tr>
<td>1939</td>
<td>983</td>
<td></td>
<td></td>
<td>The last of the original Pitcairn settlers died.</td>
</tr>
<tr>
<td>1943</td>
<td>770</td>
<td></td>
<td></td>
<td>Census year</td>
</tr>
<tr>
<td>Year, to June</td>
<td>Total Persons Residing</td>
<td>No. of Pitcairners</td>
<td>No. of Tourists/Visitors During the Year</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------</td>
<td>-------------------</td>
<td>----------------------------------------</td>
<td></td>
</tr>
<tr>
<td>1954</td>
<td>942</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1955</td>
<td>880</td>
<td>634</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1956</td>
<td>1039</td>
<td>703</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1957</td>
<td>1062</td>
<td>632</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1958</td>
<td>1033</td>
<td>602</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1959</td>
<td>1048</td>
<td>642</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1960</td>
<td>1035</td>
<td>978</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1961</td>
<td>800</td>
<td>1356</td>
<td>Census year</td>
<td></td>
</tr>
<tr>
<td>1962</td>
<td>827</td>
<td>2679</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1963</td>
<td>853</td>
<td>2707</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1964</td>
<td>896</td>
<td>3577</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1965</td>
<td>980</td>
<td>4610</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1966</td>
<td>1002</td>
<td>7116</td>
<td>Census year</td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td>1259</td>
<td>7503</td>
<td>Numbers on the Electoral Roll</td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td>1300</td>
<td>7902</td>
<td>666</td>
<td></td>
</tr>
<tr>
<td>1969</td>
<td>1232</td>
<td>8462</td>
<td>741</td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td>1240</td>
<td>12178</td>
<td>775</td>
<td></td>
</tr>
<tr>
<td>1971</td>
<td>1420</td>
<td>509</td>
<td>12438</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>894</td>
<td></td>
</tr>
<tr>
<td>1972</td>
<td>1500 (est.)</td>
<td>12837</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1973</td>
<td>1546 (est.)</td>
<td>13472</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1974</td>
<td>1550 (est.)</td>
<td>17068</td>
<td>969</td>
<td></td>
</tr>
<tr>
<td>1975</td>
<td>1506</td>
<td>18960</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1976</td>
<td>*1592</td>
<td>456</td>
<td>19425</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>859</td>
<td></td>
</tr>
</tbody>
</table>

* Comprising 1014 with residential status under the Immigration Ordinance.

512 on temporary entry permits - Immigration Ordinance.

66 on permits to enter and remain - Immigration Ordinance.
1971 was the first year that a census specifically sought information on the number of direct descendants of Pitcairn blood remaining on the island, although this information from 1885 to 1921 has also been derived from other sources, including the 1921 census lists. It is true that many of the non-Pitcairn males and females living on the island and married into the Pitcairn group can themselves almost be regarded as "Pitcairn". An interesting example of the dissection of a census list is that of the year 1921; of the 717 persons residing on the island in that year the following original Pitcairn names, and Pitcairn descendants having other names, were recorded:

1921 - NUMBER OF PERSONS

<table>
<thead>
<tr>
<th>Original Pitcairn Names</th>
<th>Other Pitcairn Descendants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quintal</td>
<td>120</td>
</tr>
<tr>
<td>Buffett</td>
<td>83</td>
</tr>
<tr>
<td>Christian</td>
<td>78</td>
</tr>
<tr>
<td>Adams</td>
<td>56</td>
</tr>
<tr>
<td>Nobbs</td>
<td>44</td>
</tr>
<tr>
<td>Evans</td>
<td>32</td>
</tr>
<tr>
<td>McCoy</td>
<td>16</td>
</tr>
<tr>
<td>Young</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Total Pitcairn Community</td>
</tr>
<tr>
<td></td>
<td>588</td>
</tr>
<tr>
<td></td>
<td>Total other Community</td>
</tr>
<tr>
<td></td>
<td>437</td>
</tr>
<tr>
<td></td>
<td>129</td>
</tr>
<tr>
<td></td>
<td>Grand Total 717</td>
</tr>
</tbody>
</table>

None of Denison's 39 laws of 1857, nor any of the small number of new laws which were brought into force between that year and 1896, dealt specifically with the subject of immigration into the island. However, the Governor's permission was required before any person could take up residence and in 1859 a new law, No 44, had related the matter of the sale of land to that of residence on the island. This is a question which even in the late 1970s remains largely unresolved. The 1859 law stated:
44. It shall not be lawful for any inhabitant of Norfolk Island to sell or alienate in any way the land of which he may have become possessed to a person or persons who have not received permission from the Governor to reside on the said Island. 10

In 1885 some amendments to the laws brought into force by the then Governor, Lord Augustus Loftus, clarified this matter to some extent, as follows:

7. - When at any time hereafter the Governor of Norfolk Island shall make a Grant of Land in favour of any person who is not at the time of the making of such grant a member of the community, the grantee shall by virtue of such grant become a member of the community.

8. - No sale or conveyance of land in the island shall be made to any person or persons not being a member or members of the community without the sanction in writing of the Governor of Norfolk Island first obtained, and any person desiring to purchase land must also previously to such purchase being made be elected to be a member of the community, as provided in the Laws, Ordinances, and Regulations regulating the election of members of the community in force for the time being, and all deeds, documents, matters and things done or attempted to be made, executed or done in contravention of this Regulation are hereby declared to be void and of no effect. 11

By the turn of the century only a few outsiders had been granted permission to live on the island. The 882 persons living there in 1896 comprised 288 at the Melanesian Mission and 594 Pitcairners; the latter figure including those who had married into the Pitcairn community and probably a few other outsiders. In 1902 the establishment of the Cable Station added a small number to the community and again some intermarriage occurred. By 1911, a census year, the 939 inhabitants comprised 596 Pitcairners, plus 193 at the Melanesian Mission and 150 others. Only a small increase in population took place from 1911 to the outbreak of World War II in 1939. The Melanesian Mission had finally closed in 1921 and by 1939 the island population was 983; of these, between 300 and 350 would have been outsiders.

In July 1934 the dictation test was used against one James MacArthur-Onslow and a prosecution followed in the Magistrate's Court; the defendant was charged with being a prohibited immigrant under the Immigration Restriction Ordinance 1922. MacArthur-Onslow was an officer of the
8.

Australian Light Horse said to be on leave on N.I. with his wife and family. He had arrived on 24th April 1933 and had thus been eight months, but had not acquired any property, on the island.

He was given a dictation test in German which he failed, was convicted of being a prohibited immigrant, and sentenced to be imprisoned "till the rising of the Court." Nothing appears to have been said about his departure but no doubt he left, probably in some chagrin.11A

The period of the Depression had seen a population high of 1231 persons in 1933 but, after some variations above and below the 1000 mark between the 1940s and the early 1960s, the late 1960s saw the start of something of an influx which caused problems.

The Immigration Restriction Ordinance No. 4 of 1922 was the first of the measures which attempted to control the population of the island in some formal manner. It was based heavily on the Australian Commonwealth legislation of the time and it served as the only immigration law in force for forty-five years until the introduction of new legislation in 1967 and 1968. The 1922 law contained many of the usual provisions of the period relating to disease, crime, deportation, the "dictation test" and restrictions on "any person who in the opinion of an officer is of German, Austro-German, Bulgarian or Hungarian parentage and nationality or is a Turk of Ottoman race;". No special provision was made for persons born on the island. The Ordinance placed a good deal of responsibility on the Administrator in the matter of certification and exemptions but in those days of relatively restricted communications the provisions of the Ordinance were not too difficult to administer. Two "machinery" amendments to the 1922 Ordinance were made in 1964 (No. 6) and 1965 (No. 1). Neither affected the actual immigration provisions of the Ordinance.12

By the early 1960s the numbers of new settlers arriving on the island, and the increasing numbers of tourists and visitors, caused the then Advisory Council to become concerned at the lack of legislative control of persons entering the island. By the mid 1960s community pressures had also become strong to make better provision for immigration control and during 1965 a number of references to this problem appear in the Council minutes.13 In September 1965 the Council resolved
to amend the 1922 Ordinance extensively by abolishing the outmoded dictation test and making provision for more stringent entry provisions more suited to the times. In passing these recommendations to the Department of Territories, whose Minister at that time administered the Norfolk Island Act, Administrator Marsh said:

"I am aware of the pressures of legislation on the parliamentary draughtsmen but I am of the opinion that this is the most important single piece of legislation requiring his attention. You will be aware that the present Ordinance is unworkable and that with the present boom in tourism and consequent influx of people wishing to take advantage of conditions here to start new businesses, the stage has been reached where controls are vitally necessary in order that the character of Norfolk Island may not be irrevocably altered." 14

The amendments recommended by the Council were so far-reaching that in November 1966 the Department advised that the only practicable solution would be a new Ordinance and the Administrator and the Council agreed to this proposal. However, most of 1967 was taken up with drafting, correspondence, argument and counter-argument, irritation and frustration in Council, and even in September of that year it became necessary to make urgently a short Ordinance, the Immigration (Temporary Provisions) Ordinance No 5 of 1967, which was designed to complement the 1922 legislation as an interim measure, rather than replace it. In effect this interim measure required all persons (with the usual Service, diplomatic, Government, etc., exemptions) who entered Norfolk Island and wished to remain there for more than 30 days to possess a valid permit issued by the Administrator. It became necessary to extend the provisions of this temporary Ordinance, by No 3 of 1968, to 31st October 1968.15

By the late 1960s a strong business and commercial lobby had arisen which was chafing at the likelihood of more restrictive immigration laws: laws calculated to retard the growth of the relatively new "duty free" commercial interests and the associated tourist industry. It was true that by about 1966 the people were beginning to realise that tourism was developing to the stage where it was rapidly becoming the primary, if not almost the sole, worthwhile mainstay of the economy, and this conflict between the growth of tourism and the need to maintain a sensible balance with the island environment and ecology, and its sheer physical capacity, had become and has remained a prime cause of
community division and conflict. A population census had been taken in June 1966, but it was 1968 before the statistics became available.

From the mid 1960s, and during the period leading up to the introduction of the 1968 Immigration Ordinance, the debate on the immigration problem was intense. The draft Ordinance, despite some shortcomings, was finally recommended by the Council and the recommendation was endorsed by the Administrator on 1st October 1968, the Ordinance commencing on 1st November. However, Council's resolution at the time sounded the warning that the Pitcairn community had some reservations about the ultimate outcome. The resolution read:

"Council approves of the adoption of the draft Immigration Ordinance 1968 as presented and requests its immediate promulgation but asks that the rights of the descendants of the Pitcairn community who settled Norfolk Island in 1856 be written into the criteria for entry." 16

Thus just over two years had elapsed from the time of the Council's and Administrator's recommendations to the date of the actual making of the Ordinance. Some of the original premises on which the Ordinance had been based had been almost forgotten by the populace and much unrest was caused by unfounded rumours of restrictions, deportations and disenfranchisement which circulated during the last half of 1967 and throughout 1968. These misconceptions were such that Administrator Marsh found it necessary in March 1968 to issue a statement on the matter in Council. He said that the proposed new Immigration Ordinance had not been discussed in secret in Committee of Council and would not be at any stage. The public therefore had the same opportunity as the councillors to learn all the facts on the new Ordinance. The controversy and speculation had probably arisen from the unfortunate fact that the new Ordinance had been more than a year in the hands of the draftsmen and recollection of the scope of the Ordinance had become hazy and uncertain. The Council would again consider the Ordinance in detail when the final draft was received from Canberra.

Mr Marsh went on to say that Council would agree with him when he said that a mainlander who came to Norfolk with goodwill, a love of the Island and a determination to give as well as to receive had
nothing to fear and could live on the island in friendship as long as he wished. The new Immigration Ordinance and the amendment to the Council Ordinance were designed to protect the inhabitants of the Island from those who came for purely selfish ends.\textsuperscript{17}

Subsequent events proved this latter to be something of a pious hope. The new 1968 Ordinance repealed all earlier immigration legislation. Along with it came approved policy guidelines and criteria which were recommended by Council and the Administrator and were finally approved by the Minister. See Appendix A. The Ordinance itself, apart from what might be described as the usual and normal aspects relating to the control of immigration into a small island community, made provision for two categories of entry permits and for residential status.

The first was for the issue of temporary entry permits (T.E.Ps) for up to a period of six months but these were renewable. These permits were (a) "deemed to be granted" to visitors to the island for up to 30 days, extensible to 60 days: (b) granted for persons to enter the island and undertake periods of temporary employment: or (c) issued to those who came with the intention of settling on the island but who were required to serve an initial probationary and exploratory period. T.E.Ps could be issued subject to conditions e.g. "whilst gainfully employed", "whilst employed at ....": and holders were required to possess either a return or onward air ticket from the island.\textsuperscript{18} The numbers of T.E.Ps issued from November 1968 to 1975 were as follows; children under the age of 16 were included in the permits of their parents:

<table>
<thead>
<tr>
<th>Year</th>
<th>Granted during 12 month period</th>
<th>Current</th>
<th>Total Adults</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969 (from 1/1/68)</td>
<td>129</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1970</td>
<td>211</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1971</td>
<td>374</td>
<td>116</td>
<td>153</td>
</tr>
<tr>
<td>1972</td>
<td>333</td>
<td>177</td>
<td>231</td>
</tr>
<tr>
<td>1973</td>
<td>471</td>
<td>211</td>
<td>270</td>
</tr>
<tr>
<td>1974</td>
<td>564</td>
<td>243</td>
<td>333</td>
</tr>
<tr>
<td>1975</td>
<td>598</td>
<td>266</td>
<td>364</td>
</tr>
</tbody>
</table>

\textsuperscript{19} Temporary Entry Permits Issued.

(Page 12 deleted)
Permits to Enter and Remain.

The second category of permit was the "entry permit, not being a temporary entry permit." This category was commonly known as a permit "to enter and remain." These were issued firstly to persons who had the intention of settling on the island and, if they held a TEP, had completed a satisfactory introductory period; and secondly to persons entering for a fixed tour of duty on the island, e.g., schoolteachers, bank employees.

From the commencement of the Ordinance it was the practice to endorse enter and remain permits with conditions,

The Minister approved that enter and remain permits would be issued subject to the following criteria.

(i) Character
(ii) Health
(iii) Capacity for self support
(iv) Value to the Norfolk Island community
(v) Inclusion within an annual quota. This quota was initially fixed at 90 persons per annum but was amended in November 1971 to 15 permits per annum.
(vi) Special conditions, such as Norfolk Island affinity, or business entry. Appendix A, para. 6.

The following permits to enter and remain were issued:

<table>
<thead>
<tr>
<th>Permits to Enter and Remain</th>
<th>to 30th June</th>
<th>Granted During 12 month Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>On introduction to bring</td>
<td>110</td>
<td>45 - quota of 90 persons</td>
</tr>
<tr>
<td>some persons within the</td>
<td></td>
<td>32 - do</td>
</tr>
<tr>
<td>scope of the Ordinance</td>
<td></td>
<td>33 - do</td>
</tr>
<tr>
<td>1/11/68 - 1969</td>
<td></td>
<td>52 - do</td>
</tr>
<tr>
<td>1970</td>
<td></td>
<td>15 - quota of 15 permits</td>
</tr>
<tr>
<td>1971</td>
<td></td>
<td>7 - issue suspended 3/5/74</td>
</tr>
<tr>
<td>1972</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>1973</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>1974</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>1975</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>1976</td>
<td></td>
<td>-</td>
</tr>
</tbody>
</table>
As at 30th June 1975 the number of current enter and remain permits valid totalled 48, comprising 41 men, 40 women and 25 children. As explained below, the issue of this type of permit was suspended on 3rd May 1974 by ministerial direction.

In August 1971 a revised list of valid enter and remain permits had been issued. The total number of permits at that time was 245.

**Residential Status.**

The question of residency has proved over the years to be a most contentious subject. The 1968 Ordinance, sections 16 and 17, provided that an application for residency may be made providing the applicant held other than a temporary entry permit. It was mandatory for the Administrator, however, to declare as residents and issue a certificate of residency, to persons born on Norfolk Island and to those having special relationships to such persons.

When the Ordinance commenced on 1st November 1968 the Administrator despatched letters to these persons who appeared to be qualified for residency. A similar letter was also despatched to those persons who appeared to be entitled to apply for residency under a discretionary power allowed to the Administrator under s.17(2) of the Ordinance. The two letters resulted in some 400 persons being declared residents.

The Ordinance provided that new entrants arriving on the island had to progress through a T.E.P. and then an enter and remain permit to a qualification to receive a certificate of residency. To qualify for the latter it was necessary for applicants to:

(a) have lived on the island for five years out of the preceding seven years;
(b) be residing on the island at the time of making the application;
(c) be of good character;
(d) have an adequate knowledge of the English language;
(e) intend to reside permanently on the island; and,
(f) to be assimilated into the Norfolk Island community.

The difficulties of administering the above provisions, especially (f), in a small, conservative and tradition-bound community will be readily apparent. The names of new applicants for residency had to appear in the Norfolk Island Government
Gazette and no determination of the application by the Adminis-
trator could be made within 30 days of such publication.
This was to enable the Council and the community to raise
objections to the Administrator, if they wished, concerning
any applicant. There were many bitter and unreasonable
demands in closed Committee of Council on this issue. The
number of certificates of residency granted since the introduc-
tion of the Ordnance are as follows:

Certificates of Residency

<table>
<thead>
<tr>
<th>To 30th June</th>
<th>Certificates issued Annually</th>
</tr>
</thead>
<tbody>
<tr>
<td>On introduction of Ordinance</td>
<td>347</td>
</tr>
<tr>
<td>1969</td>
<td>-</td>
</tr>
<tr>
<td>1970</td>
<td>3</td>
</tr>
<tr>
<td>1971</td>
<td>10</td>
</tr>
<tr>
<td>1972</td>
<td>14</td>
</tr>
<tr>
<td>1973</td>
<td>15</td>
</tr>
<tr>
<td>1974</td>
<td>39 Cessation of quota of 15 certificates</td>
</tr>
<tr>
<td>1975</td>
<td>13</td>
</tr>
</tbody>
</table>

The Ordinance provided that persons dissatisfied over the
decision of the Administrator not to grant residency may appeal
to the Minister, who could appoint a Commissioner to investigate
the matter. In other cases there was provision for appeals to
the Court. Since the introduction of the Ordinance one person
has been refused residency on the grounds of non-assimilability
into the community, and another (a lawyer, now a Councillor)
appealed to the Minister over the particular section of the
Ordinance under which he was granted residency. In this case
a Commissioner was appointed but the Administrator's decision
was upheld.* Many applicants for resident status over the years
have been subjected to excessive administrative delays in the
granting of residency, despite the provisions of the Ordinance,
by virtue of Council and community resistance to the acceptance
of new residents. This has manifested itself primarily through
pressures being exerted on the Administrator.

On immigration matters generally from November 1968 to
August 1972, the Administrator, (the author) disagreed frequently

* Two other applications for residency have been rejected on the grounds
that the five year "ordinarily resident" qualifying period had not
been complied with.
with Council over the interpretation and administration of the Ordinance. On the one hand the liberty of the individual and the upholding of a law which the community had desired clashed with the traditional conservatism, emotionalism, and sometimes personal prejudices of Council members.

In a note on island development prepared for the Council in September 1968 the Administrator sought Council's advice on the acceptance of a total resident population of 2000 by 1975. This proposal was recommended by Council in October. See Appendix B. In May of 1968 a public petition for a referendum on the subject of immigration had been initiated. The matter was the subject of advice by the Attorney-General's Department before approval for the referendum to be held in December was finally given in September 1968. The two questions contained in the submission for the referendum were aimed at ascertaining:

"1. That the laws of Norfolk Island should permit British Subjects being Australians to:
   - visit Norfolk Island
   - make their homes on Norfolk Island
   - be enrolled as electors of Norfolk Island
   - be eligible for election to the Norfolk Island Council.

   on the same conditions as persons born on Norfolk Island are permitted to visit Australia, enrol as electors of the Commonwealth of Australia and be eligible for election to the House of Representatives of Australia.

2. That the laws of Norfolk Island should apply to all other British Subjects and aliens as regards Norfolk Island on similar conditions as apply to them under the laws of Australia in respect of:
   - visiting Australia
   - making their homes in Australia
   - being enrolled as electors of the Commonwealth of Australia
   - being eligible for election to the House of Representatives of Australia."

See Appendix C.

The referendum was finally held on 4th December 1968 and the result showed a substantial majority of voters being in favour of continuing to restrict immigration into the island. The results were:
<table>
<thead>
<tr>
<th>Question 1</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No of votes in favour of proposed law (i.e. YES)</td>
<td>214</td>
<td></td>
</tr>
<tr>
<td>No of votes not in favour of proposed law (i.e. NO)</td>
<td>440</td>
<td></td>
</tr>
<tr>
<td>No of informal votes</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>667</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Question 2</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No of votes in favour of proposed law (i.e. YES)</td>
<td>165</td>
<td></td>
</tr>
<tr>
<td>No of votes not in favour of proposed law (i.e. NO)</td>
<td>482</td>
<td></td>
</tr>
<tr>
<td>No of informal votes</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>667</strong></td>
<td></td>
</tr>
</tbody>
</table>

The number of electors enrolled was 741, of whom 74 failed to vote.

The matter of criteria, policy principles, administrative practices and guidelines to be applied in the administration of the 1968 Ordinance had been the subject of much debate and correspondence involving Council, the Administrator, the Department and the Minister. Final Council and Administrator's agreement was reached in October 1968 and these wide-ranging matters were then submitted for Ministerial approval. These policy aspects were approved and circulated for information in January 1969. See Appendix A. Also in January 1969 an initial list of certificates of resident status in respect of a number of persons already living on the island was promulgated.

At this stage, in the Commonwealth Parliament, the Norfolk Island Immigration Ordinance 1968 had come under scrutiny by the Senate Standing Committee on Regulations and Ordinances; Chairman Senator Ian Wood. The Committee had threatened to move to disallow the Ordinance because it was concerned that a number of aspects of the legislation offended the principles by which the Senate Committee was guided. After the years of debate, and the considerable delays involved, the Minister realised that any action by the Senate Committee would have a most deleterious effect on the politics of the Island; there was a good deal of "horse trading" therefore between the Department and the Senate Committee in an effort to stave off any Parliamentary motion of disallowance. The points raised by the
Committee were those which were felt to be retrospective and discretionary, potentially productive of inconsistencies, lacking any appeal other than to the Minister and potentially restrictive on the "liberty of the subject." Appendix D. As a workable piece of legislation the 1968 Immigration Ordinance proved to have many deficiencies and there was constant pressure on the Administrator to adopt more restrictive policies than were provided for in the Ordinance itself.

In September 1970 the Administrator provided a paper to the Department summarising the action then outstanding on various aspects of the Ordinance and the related policy criteria. See Appendix E. However despite much further discussion in Council during 1971 no amending legislation resulted. This was largely due to the attempts by the elected members of Council to incorporate in the Ordinance difficult conditions, or conditions impossible to administer. By March 1971 there still remained some outstanding queries to be answered and these were submitted for processing by the Department. See Appendix F.

Undoubtedly in latter years the matter of immigration has been one of the most, if not the most, difficult of the Administrator's duties. Between 1969 and 1972, at various times, there had been suggestions that a sub-Committee of Council be formed to advise on immigration matters. This proposal was resisted by the Administrator on the basis that he already had available to him the advice of full Council on the subject, either openly or in committee. However, in April 1972 such a committee was formed. Later, in December 1972, it became the Immigration Review Board, a non-statutory body, and by that date there were other factors operating which influenced the way in which the Ordinance was to be administered; eg., the change in Government and changed Ministerial attitudes. The Board continues to the present day.

In late 1970 and early 1971 Council had objected to certain persons who held temporary permits being permitted subsequently to count time on those permits towards residency qualification. An Attorney-General's Department ruling in April confirmed that an amendment to the Ordinance would be necessary to achieve this. See Appendix G.
In preparation for the June 1971 census steps were taken to design a census form more in keeping with the needs of the island. This was done, and preliminary tabulations of the population and housing statistics were received in August. Meanwhile, work continued in an attempt to reach a compromise in the matter of work permits, qualifying time for residency, financial criteria, an annual residency quota, and related aspects. See Appendix H. In July of 1972 the bi-ennial Council elections took place with some changes ensuing. In August there was a change of Administrators, Administrator Dalkin being replaced by Administrator Pickerd. These events temporarily took the heat out of the controversial subject of immigration but the matter raised its head again during the first half of 1973. In July 1973 Council and Administrator recommended that island born persons need not be declared residents by the Administrator before actual becoming legal residents within the meaning of the Ordinance. This provision was approved by the Minister and passed for action to the Parliamentary drafting section, but to mid-1976 no new legislation has emerged.

In September 1973 the Minister approved of the engagement of a consultant to advise on the future population capacity of the island. It was felt that such an investigation would provide a sound basis for future immigration planning. The study was undertaken by Professor G.J. Butland, Pro Vice-Chancellor of the University of New England, who visited the island from 19th January to 4th February 1974. Like many visitors to the island, especially academics, Professor Butland became intensely interested not only in the population problem per se but also in the social, sociological, historical, economic, financial, political and related aspects of the island, and this is reflected in his lengthy report of March 1974. Many residents of the island, as well as the present writer, would agree with much that Professor Butland said in his report; equally a number, again including the writer, would disagree with or qualify a proportion of what the report contains. Insofar as the report directly relates to immigration it recommended that:
(a) the resident population should be limited to a maximum of 2000 by 1983;
(b) the tourist population should be limited to an annual maximum of 20,000 by 1983. 26

These principles of immigration control, slightly modified as to date of achievement of the figures, were accepted by resolution of Council in October 1974 in the following terms:

"Council recommends a resident population of 2000 by 1980 and a tourist figure of 20,000 per annum or 1,200 beds by 1980". 27

Legislation to give effect to these recommendations is still awaited. It has already been noted that in late 1968 the Administrator recommended and the Council agreed that the total resident population should be limited to 2000 by 1975. The actual resident population by that year, however, was only 1506. In 1976 the annual tourist figure had peaked at 19,425.

Professor Butland concluded the Preface to his report by saying:

"While, as has been stressed, the social and economic considerations are vital components of such a survey, it is quite obvious that any recommendations based on them will be confronted by a variety of political opposition. If there is one common characteristic of the reactions to all the numerous reports that have been made on several aspects of the Norfolk Island situation within the last decade, it is that an unnatural alliance of those mainly interested in the island for financial gain and of some traditionally-minded descendants of the original settlers who fear regulatory controls has succeeded in deferring and diluting planning changes to the ultimate detriment of the island's future.

Thus, while the terms of reference and the report itself do not specifically deal with political considerations, there is no doubt that the implementation of this report's recommendations, emanating from an objective assessment of social and economic conditions and trends, will require a major political adjustment. It is difficult to see how that adjustment can be other than radical government reform if the island is to be saved for posterity and for the welfare and happiness of a community that could be an internationally respected model of intelligently planned use and conservation of resources." 28
The first paragraph of the above statement is a concise and accurate assessment of the grave difficulties that exist in any attempt to rationalise the overall Norfolk situation. Whilst, as stated in the second paragraph, "a major political adjustment" would certainly be essential if all of Professor Butland's detailed recommendations were to be implemented, hope of "radical governmental reform" to achieve this cannot necessarily be counted on. Such radical reform can cause political and social upheavals almost anywhere, but the imposition of such reforms on tiny Norfolk against the general will of the people would be difficult.

In May 1974 the Administrator, the Council, the Department and the Minister finally reached accord on an outline of desirable amendments to the Immigration Ordinance. In effect, this became an agreed consolidation of outstanding immigration matters since mid-1970, the main proposals being as follows:

(a) The total number of residents, and persons holding enter and remain permits, to be within the figures contained in the Butland Report.

(b) Any quotas instituted were to have regard to both natural increase and to persons having hereditary entitlement who wished to return to the island.

(c) The advisory immigration committee to have statutory backing.

(d) The "enter & remain" status to be removed from the legislation.

(e) Only two immigration categories to be established: residency, and those holding entry permits of up to one year.

(f) Existing arrangements for 30 day entry of tourists to be retained.

As at July 1976 no draft legislation has resulted from these recommendations.

In June 1974 the Minister was asked to consider in the proposed legislative amendments provision for the granting of residency to certain sons and daughters of residents who were born off the island but who were not eligible to be automatically declared residents. See also Appendix J for a 1972 summary of this problem.
In October 1974 Council resolved that the Ordinance also be amended to provide that time spent on permits other than enter and remain permits (i.e., temporary entry permits) should not be taken into account when counting time towards residency qualification. Note here that it had already previously been agreed that enter and remain permits should be abolished. Thus the latest resolution, if it were to be approved by the Minister, would in effect deprive all persons other than "special affinity" cases and those born on the island from ever attaining resident status. Perhaps, in fact, the time has come when such a policy should be implemented.

As at 30th June 1975 the population of the island, including children, was as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holders of temporary entry permits</td>
<td>464 persons</td>
</tr>
<tr>
<td>Holders of enter and remain permits</td>
<td>77 persons</td>
</tr>
<tr>
<td>Holders of resident status</td>
<td>965 persons</td>
</tr>
<tr>
<td>Total population</td>
<td>1506 persons</td>
</tr>
<tr>
<td>Tourists and visitors</td>
<td>443 persons</td>
</tr>
<tr>
<td>Grand total</td>
<td>1949 persons</td>
</tr>
</tbody>
</table>

One could be forgiven for imagining that all that the populace of Norfolk Island now had to do concerning the subject of immigration would be to await the new and updated Ordinance. But this would not be so. The new Council elected in July 1976 launched itself into a round of legislative reviews and immigration was accorded a high priority. The immigration Committee had some new ideas and these were to be aired at subsequent meetings.
CHAPTER 5

POPULATION AND IMMIGRATION

NOTES


9. Sources for the compilation of this table are as follows:

(i) Norfolk Island Annual Reports: including Appendix 11 to the 1970 - 71 Report prepared by the author and subsequently corrected.


(iii) Evidence to the 1975/76 Royal Commission.

(iv) The 1976 Census.

10. Governor Denison's 39 Laws of 1857, as subsequently amended. Law No. 44.
11. Governor Loftus' amendments to Governor Denison's 59 Laws. 1885.


12. The Norfolk Island Immigration Restriction Ordinance 1922.


14. Ibid.

15. The Immigration (Temporary Provisions) Ordinance No.5 of 1967, and No.7 of 1968.


17. Minutes of the Norfolk Island Council. 5th March 1968.

18. The Immigration Ordinance 1968. S. 6(3).


22. The Immigration Ordinance 1968. S. 17(2)


31. Ibid. 2nd October 1974.


CHAPTER 6
PUBLIC FINANCE

Governor Denison's 39 Laws of 1837 made mention of certain expenses being paid out of the "Public Funds" (Law 25) and provision was made for fines to be paid into the "Public Chest" (Laws 26 and 31). Law 10 provided for the Chief Magistrate to "...receive and account for all fines...", and "All purchases on account of the public will be made by him; and he will keep an accurate account of the receipts and expenditure of the Public Funds." There was also a fee of ten shillings per year payable for every child receiving school education but this was paid to the schoolmaster as his emolument (Law 33). There was no provision for taxes but the Pitcairn system of "public work" could be substituted by a payment of four shillings per day (By-law 1).

When the Pitcairners arrived on Norfolk, and for many years afterwards, a system of barter operated, both between the islanders themselves and between the islanders and visiting vessels; a little money, however, did circulate. The public accounts were subject to the authority of the Governor in Sydney and he in turn was accountable to the Secretary of State for the Colonies. In 1853 a surplus of 500 pounds was invested in London "for the benefit of the Islanders".

The main account of the island in 1856 was the "Trust Fund". This consisted of the balance of sums contributed in the early 1850s by the public in England for the benefit of the Pitcairn Islanders. It was supplemented later by the addition of certain sums received from the sale of Government cattle and property on Norfolk. By 1869 this fund was known as the Norfolk Island Trust Fund and in that year three trustees were appointed to administer the fund; the appointments were approved by the Secretary of State for the Colonies and one of the three was the Governor. A trust deed existed and in 1869 investments totalled 2,000 pounds. The islanders had no control over the Trust Fund but its administration has been something of a local emotional and political issue right through to the post World War II period. Commissioner Whysall in 1926 reported that the terms of the Trust Deed had been adhered to and that the balances of the Fund varied from 1,237 pounds in 1915/16 to over 10,000 pounds in 1916 to 1919, and decreased to 3,766 pounds in 1926.

A Norfolk Island Penny Savings Bank was established in 1881 but it was 1935 before an Ordinance covering its operations was made.
ordinance remained valid in 1976 but the bank is defunct. The Governor in Sydney forwarded copies of the accounts to London annually, for example Lord Augustus Loftus' letter of 17th January 1884 to the Rt. Hon. the Earl of Derby:

"Sydney 17th January 1884

My Lord,

I have the honour to forward herewith, the Capital & Current Accounts of Norfolk Island for the year ended 31st December 1883.

2. The balance of the Current Account now standing to the credit of Norfolk Island L191-16-7 out of which I intend to purchase another New South Wales Government Debenture.

3. In addition to the Capital Account, after the 1st July when the interest of the above Debenture, namely L170 will be paid in. There is still a small amount to be paid in for medical supplies.

I have the honour to be

Sir

Your obedient Servant

Loftus"

The figure of L191-16-7 in the above letter was later corrected to L101-16-7, but there seems to be some discrepancy in the figures as when the Governor wrote to the City Bank, Sydney, later in the year he refers to Norfolk "debentures of L6,900 attracting interest of L170". Loftus signed this letter as "Governor of Norfolk Island". In May of 1884 Loftus had sought approval from London for the expenditure of L74-19-0 for the visit of himself, his private secretary and his ADC to Norfolk in HMS Miranda.

When Governor Hampden repealed Denison's 39 Laws in 1896 Hampden's new 32 laws essentially provided for the continuance of the system of public accounting which had been in force for the preceding 40 years. The Chief Magistrate remained responsible for the local executive government of the island, including the public finance, but the Magistrate was now an "outsider" appointed from Sydney. None of the Acts of the State of New South Wales then applicable to Norfolk related to the matter of local public monies. It is a curious omission that during the period of the change of the constitutional arrangements for the island through the turn of the century, followed by the Federation of the Commonwealth and the assumption of the control of Norfolk by the Commonwealth in 1914, and the subsequent years into the 1960s, no ordinance was made dealing with the subject of public finance until the Public Moneys Ordinance of 1964. The Norfolk Island Act 1913 simply stated:

"14. The revenue of Norfolk Island shall be available for defraying the expenditure thereof."
The Act is silent on the subject of expenditure, although the "laws, rules, and regulations in force in Norfolk Island at the commencement of the Act shall continue in force ......." 8 In 1936 a short two paragraph Audit Ordinance was made giving the Auditor-General of the Commonwealth responsibility for the inspection and audit of the public accounts of the island.

The island annual reports throughout the 1920s, 1930s and 1940s show the balances of the Norfolk Island Trust Fund Account. From the early 1950s the reports discuss public finance briefly and list revenue and expenditure without, however, making any reference to the Trust Fund. A petition from the people to the Queen in 1955 included a statement to the effect that they had been deprived of the Norfolk Island Trust Fund without their consent or consultation and they sought its restoration. The use of the Fund however lapsed and in practice it appears to have become part of the normal island accounts. 9
Some representative annual revenue and expenditure figures from 1918 are shown below. Surpluses and deficits are carried forward to succeeding years but are not included in the annual totals. Up to 1951 the accounts were titled the "Norfolk Island Trust Fund."

### Revenue and Expenditure

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue</th>
<th>Commonwealth Grant</th>
<th>Total Revenue</th>
<th>Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1918</td>
<td>3300</td>
<td>6000</td>
<td>9300</td>
<td>9400</td>
</tr>
<tr>
<td>1919</td>
<td>2920</td>
<td>6000</td>
<td>8900</td>
<td>9400</td>
</tr>
<tr>
<td>1920</td>
<td>3900</td>
<td>6000</td>
<td>9900</td>
<td>12700</td>
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<td>1931</td>
<td>18400</td>
<td>8000</td>
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<td>20000</td>
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<td>22000</td>
<td>21600</td>
</tr>
<tr>
<td>1934</td>
<td>16600</td>
<td>6000</td>
<td>22600</td>
<td>23200</td>
</tr>
<tr>
<td>1939</td>
<td>15600</td>
<td>8000</td>
<td>23600</td>
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<td>1940</td>
<td>18000</td>
<td>8000</td>
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<td>80000</td>
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<td>1961</td>
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<td>1962</td>
<td>153000</td>
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<td>1965</td>
<td>178000</td>
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<td>245000</td>
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<td>1966</td>
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<td>1967</td>
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<td>1282000</td>
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<tr>
<td>1976</td>
<td>1250000</td>
<td>120000</td>
<td>1379000</td>
<td>1619000</td>
</tr>
</tbody>
</table>

1976 figures provisional

There are some points of interest in the above figures and these are discussed below.

The Commonwealth Grant

From the year of the assumption of control by the Commonwealth in 1914 the Commonwealth Government has made a grant to the Norfolk Island Administration to supplement the revenue derived from other sources. Generally the grant appears to have been made to bridge the gap between revenue and expenditure, but by the 1950s the purpose of the grant seems to have become rationalized towards meeting the costs of the actual
administration of the island. By 1958 the amount of the grant had stabilized at around $66,000 per annum and it remained at approximately that figure until 1973 when the grant was doubled to $120,000.

Whilst the general purpose for which the grant was made has been stated from time to time, there was never any specific and definite list of items on which the grant was intended to be spent. In the 1930s there was some mention in reports and correspondence of assistance towards "administrative expenses", "rural rehabilitation", "flood damage relief", "distress relief" and aid to the "Passionfruit Industry". In practice the grant was paid into the Norfolk general revenue fund together with all other items of revenue. From time to time there were pressures from the Commonwealth, usually at departmental level, to reduce or dispense with the grant, whilst there were also pressures from the island to increase it.

Basically there were two reasons why the Commonwealth continued to make an annual grant to the island. Firstly, from the political standpoint it was of importance that the Commonwealth should be seen to be maintaining a financial interest in the island. Had it not done so it would be justifiable for the residents to take the view that the Commonwealth had little or no right to dictate financial policy and that the island should thus follow its own financial path. This would tend to loosen the ties between the island and the Commonwealth, a situation that the Commonwealth could hardly desire. Secondly, there were and are certain expenses incurred directly by the Norfolk Island Administration because of Commonwealth requirements. It has always been recognised by the Commonwealth that it should meet these costs which included the Administrator's salary and allowances, the cost of running Government House, and the proportion of the time the Administration staff devoted to rendering returns and information required by the Commonwealth. From the 1960s further charges were seen to be properly the responsibility of the Commonwealth: e.g. the Official Secretary was usually appointed by the Commonwealth from the staff of the Department. The cost of providing secondary education on the island rose rapidly and the Administration received no direct subsidy for this from the Commonwealth. Education is one of the areas in which the Commonwealth is most concerned and it gives very considerable assistance to all states. It seemed logical that it should extend the same help to the island, more particularly as many of the children who undertake their secondary education on Norfolk actually spend their working lives in Australia and thus Australia receives the benefit of that education. A final point is that there are a number of Commonwealth employees on Norfolk Island having children attending the local school; the full cost of the education of these children should certainly
be met by the Commonwealth. On the other hand, no income tax is payable on the island.

In addition to the grant it was always felt that the Commonwealth should contribute to the cost of maintenance and restoration of the early colonial buildings on the island. Since 1954 the Commonwealth has made a separate grant of $10,000 each year for specified maintenance, but in latter years this sum has been substantially increased under a revised restoration programme.

By the 1970s it was felt that it would be of assistance to the island if the Commonwealth would agree to lend money to the Administration at relatively low interest rates to finance the expansion of capital works business undertakings. Prior to 1972 this expansion was financed solely from the Administration's recurrent revenue and this severely limited expenditure on other requirements. Loans were needed to finance such projects as the installation of an automatic telephone system, the purchase of further electrical generating plant, the improvement of jetty facilities and so on.

There were therefore sound historical precedents for the continued payment of an annual grant. Politically the suspension of the grant would be likely to create a most unfavourable reaction on the island which could result in a marked loosening of ties with the Commonwealth.

From 1969 there was much Council and local discussion concerning a possible decrease in the revenue derived from company fees resulting from proposed Commonwealth legislation. It was argued that any such legislation which diminished local revenue should be offset by an increase in the annual grant. In May 1969 the Administrator had reacted strongly to a departmental submission which sought to dispense completely with the grant. See Appendices A and B. It was the policy of the Administrator during the 1968-1972 period to expend available funds on urgent and needed projects. If the island budget appeared to be heading for an annual surplus the Department and the Treasury quickly sought to reduce the amount of the grant.

In July 1970 the Minister submitted a Cabinet paper which sought to maintain the grant at its then existing level of $66,000 and approval to do so was given. See Appendix C. By August 1970 the concept of loans to the island for capital works projects had been accepted; Appendix D; but by early 1972 the battle for an increased grant was again being waged with vigour; Appendix E; and the Treasury was apparently easily persuaded that a grant of $120,000 per annum was justified; Appendix F. The Labour Government accordingly increased the grant to that figure in 1973.
From the turn of the century until the early 1960s the island's pattern of revenue and expenditure showed no dramatic variations. Both rose slowly but steadily to a figure approaching $250,000 by 1965. The factor that turned the tide, in 1966, was the upsurge in philatelic revenue, although useful sums from this source had been derived prior to that year: for example, $7,600 in 1959; $16,000 in 1960; $43,000 in 1961; $38,000 in 1962; $23,000 in 1963; $27,000 in both 1964 and 1965. A summary history of Norfolk philately had been published in 1961 by the then Official Secretary, and a further survey appeared in 1968. In 1923 some suggestions had been made that Norfolk might issue its own stamps, but it was Administrator Major General Sir Charles Rosenthal in 1937 who finally brought the matter to the fore. By April 1939 it had been decided to create a Norfolk Island postal administration but the war intervened and it was 1947 before this was finally done and the first Norfolk stamp issue was made.

By 1968 complete administration of the philatelic programme, i.e., concept, design, contracts, overseas printing and finance, was handled by the Island Administration. In 1969 all distribution, including international distribution, was also taken over by the island, as was the case at the same time in Papua New Guinea. By 1970 the operations of the Norfolk Philatelic Bureau were comparatively big business and much publicity was given to the programme. Annual philatelic revenue from 1966 was as follows:

<table>
<thead>
<tr>
<th>Year to 30 June</th>
<th>$ rounded</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>172,000</td>
</tr>
<tr>
<td>1967</td>
<td>123,000</td>
</tr>
<tr>
<td>1968</td>
<td>120,000</td>
</tr>
<tr>
<td>1969</td>
<td>225,000</td>
</tr>
<tr>
<td>1970</td>
<td>219,000</td>
</tr>
<tr>
<td>1971</td>
<td>234,000</td>
</tr>
<tr>
<td>1972</td>
<td>226,000</td>
</tr>
<tr>
<td>1973</td>
<td>107,000</td>
</tr>
<tr>
<td>1974</td>
<td>175,000</td>
</tr>
<tr>
<td>1975</td>
<td>347,000</td>
</tr>
<tr>
<td>1976</td>
<td>297,000 (provisional)</td>
</tr>
</tbody>
</table>

During the 1970s it was decided as a matter of policy to restrict stamp issues to a revenue of about $225,000 to $250,000 per annum. This was to avoid flooding the international and Australian market and thus derogate the philatelic value of the issues. The 1973 downturn in revenue was caused by an earlier phase of bad forward planning, and the 1975 upturn to a marked reversal of that situation.

The Norfolk Island Administration now makes considerable profit from the sale of liquor, on which it has an import monopoly. The history of the importation of liquor into the island is an interesting one. Denison, in his Laws of 1857, had given some consideration to the question
of the demon drink:

"No beer, wine, or spirituous liquor of any kind shall be landed upon the island except such as may be wanted for medical purposes, and this will be placed among the medical stores in charge of the Chaplain, to be issued by him at his discretion,—all issues to be noted in the register. Should any beer, wine, or spirits be landed, or found in possession of any person on the Island (whether such person be an inhabitant of the Island or a visitor,) the vessel containing the same will be immediately destroyed, and the contents thrown away; the person in whose possession these articles are found will be liable to a fine of forty shillings." 14

However, the "medical purposes" clause appears to have been stretched as the records of the last century contain numerous detailed folios in which sales of a variety of spirituous and other liquor to a wide cross-section of the community, including personnel of the Melanesian Mission, are shown. 15

Hampden's new laws of 1896 continued the implicit prohibition but the earlier law was widened to allow for a system of permits and for the search of persons and premises. "The Chaplain" was written out of the control of liquor and the "Chief Magistrate" written in. 16

Following the introduction of the Norfolk Island Act 1913 a Liquor Prohibition Law was made. This provided for the Administrator to be the sole importer of liquor, gave him the authority to issue permits to hold liquor, and the right to have the care and control of liquor storage places. 17 An amendment by Ordinance of 1931 gave authority to stop and search vehicles for liquor: and the Liquor Prohibition Ordinance of 1946 consolidated and updated the liquor laws generally. 18

Thus from the early days the Administrator possessed important sole import and controlling powers, a privilege which over the decades has redounded to the advantage of the local public purse. After some years of wrangling a more up-to-date and suitable law, the Liquor Ordinance 1960, was brought down, although it possessed many weaknesses and was, and is, in some respects most difficult to administer. For example, although the few hotels on the island have "bars", these were theoretically only for the use of house guests. On into the 1970s Administrators have had the unenviable task of attempting to administer some almost impossible aspects of the liquor laws. Again after some years of wrangling the Liquor Ordinance 1969 only went so far in regularising the somewhat confused situation. The Ordinance of 1973, however, provided some relief. Nevertheless, the important provision remains regarding import to the Administration only, and from its Bond Store liquor is
sold in bulk or by the bottle at the same standard price to hotels, guest houses, restaurants, tourists, residents and the Administrator alike, a most democratic arrangement.

The sale of liquor on the island has for many years therefore been an important source of revenue. In 1939 sales totalled $3780; by 1956 $53,000. In 1957 the statistics were changed to the recording of profits on sales, as distinct from turnover, and the figure was $7107. Subsequent annual profits increased to $17,087 in 1965, after which the sharp rise in both tourist and resident population resulted in liquor profits as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>40,784</td>
</tr>
<tr>
<td>1967</td>
<td>53,136</td>
</tr>
<tr>
<td>1968</td>
<td>56,495</td>
</tr>
<tr>
<td>1969</td>
<td>61,077</td>
</tr>
<tr>
<td>1970</td>
<td>68,442</td>
</tr>
<tr>
<td>1971</td>
<td>68,914</td>
</tr>
<tr>
<td>1972</td>
<td>81,580</td>
</tr>
<tr>
<td>1973</td>
<td>106,807</td>
</tr>
<tr>
<td>1974</td>
<td>121,239</td>
</tr>
<tr>
<td>1975</td>
<td>149,453</td>
</tr>
<tr>
<td>1976</td>
<td>184,000</td>
</tr>
</tbody>
</table>

Thus liquor sales remain among the top four revenue earners for the island. The two remaining highest sources of revenue to 1976 have been Customs Duty and, despite the progressive tightening of legislation in recent years, company fees. Prior to 1969 company fees were a small item and were included in "Court Fees and Fines" - total $7,776 in 1968. Both of these items from 1964 netted revenue as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Customs Duties</th>
<th>Company Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1964</td>
<td>45,332</td>
<td>-</td>
</tr>
<tr>
<td>1965</td>
<td>55,352</td>
<td>-</td>
</tr>
<tr>
<td>1966</td>
<td>85,054</td>
<td>-</td>
</tr>
<tr>
<td>1967</td>
<td>90,333</td>
<td>-</td>
</tr>
<tr>
<td>1968</td>
<td>109,535</td>
<td>-</td>
</tr>
<tr>
<td>1969</td>
<td>104,932</td>
<td>22,455</td>
</tr>
<tr>
<td>1970</td>
<td>116,312</td>
<td>43,401</td>
</tr>
<tr>
<td>1971</td>
<td>145,749</td>
<td>51,403</td>
</tr>
<tr>
<td>1972</td>
<td>158,466</td>
<td>88,643</td>
</tr>
<tr>
<td>1973</td>
<td>181,151</td>
<td>163,813</td>
</tr>
<tr>
<td>1974</td>
<td>318,999</td>
<td>145,491</td>
</tr>
<tr>
<td>1975</td>
<td>409,735</td>
<td>197,961</td>
</tr>
<tr>
<td>1976</td>
<td>387,000</td>
<td>178,000</td>
</tr>
</tbody>
</table>

Prior to World War II Customs duties were relatively small and were shown in the annual reports under the heads of "Collected in Sydney" and "Collections at Norfolk Island". The respective figures in 1939 for these two heads were $3,950 and $830. From the mid 1950s the total figure increased to $25,768 by 1960.

Company fees from 1969 reflected the small fees payable by the
the increasing number of companies registered on the island, but the amendment of the local Norfolk Island Companies Ordinance in 1971 resulted in a higher annual amount being received in fees. Although company fee revenue had increased to $43,401 by 1970 the annual report of that year made no comment on the amount received or the prospect for the future. The 1971 report commented that 1551 companies were then registered, that greater company activity was evident, and that the new Companies Ordinance had been the subject of divided opinion and controversy. In 1972, when company revenue was $88,643, the annual report stated:

"The introduction of the Companies Ordinance 1971, making a number of important amendments including an increase in the company registration fee from $10 to $250, gave rise to the winding up of many non-productive or unprofitable companies registered on the Island, but did not result in a noticeable increase in the number of new companies being registered. At 30 June 1972 1556 companies were registered compared with 1,551 companies registered at 30 June 1971."

The 1973 report said:

"There was a noticeable decrease in company activity on the Island after the announcement by the Australian Federal Treasurer on 19 July, 1972, of the intention to introduce legislation to amend the Taxation Assessment Act to remove the Island's "tax haven" status. At 30 June 1973, 1420 companies were registered compared with 1556 companies registered at the 30 June 1972. It is estimated that of the 1420 companies registered, 450 are defunct while another 195 are in the process of voluntary liquidation."

Despite this statement, however, company revenue for the year increased markedly to $163,813.

The amendments to the *Australian Income Tax Assessment Act*, No 4 of 1973, theoretically put an end to the use of Norfolk Island for tax haven purposes and there was a reduction of company fee revenue in the 1974 financial year to $145,491. Nevertheless, the figures for 1975 and 1976 remained high and company entrepreneurs on the island were said to be devising an "improved" method of company tax avoidance, within the law, involving a structure of up to some 20 companies for any one scheme.

There are additional sources of revenue of a lesser nature, for example, vehicle registration, forest products, telephones, lighterage, a new (1976) absentee landowners tax, a tourist departure tax, and so on. The heads of revenue for the full 1975 financial year were as follows:
Expenditure

As with revenue, expenditure in the 19th century was relatively small and it was the period of World War I1 before a modest growth pattern set in. Expenditure was $5,350 in 1913 and still only $27,130 by 1939. The main annual outgoings were wages and salaries, repairs and maintenance, administrative costs, roads, liquor for re-sale, education, health, some social welfare and agriculture. By 1956-57 when total outgoings had reached $124,000 the major heads of expenditure were much the same as in earlier years, although increased with the addition of items such as surveys, tourism, electricity, motor transport and postal. By 1975 capital works had assumed an important place in the list of expenditures; other expenses had increased to very significant figures: for example, Administration $308,000; Education $146,000; Health $81,000; Repairs, Maintenance and Restoration $211,000; Postal and Philatelic $150,000; Welfare and Subsidies $21,000. Total expenditure for 1974/75 was $1,077,753.

Public Finance Generally

Along with the local island constitutional and political problems of the early 1960s, together with the rise of tourism and the increase in population, there grew a new awareness of matters of public finance and fiscal policy. The 1963 amendments to the Norfolk Island Act raised
questions as to how the Council would tender its advice and exert its influence on fiscal policy. This resulted in a memorandum of understanding on the subject approved by Minister Hasluck. See Appendix G. Paragraph 6 of this document read:

"Apart from Ordinances and Regulations, the draft estimates and certain referendum proposals which are required to be submitted to the Council, practice will determine what classes of matters the Council will expect the Administrator to refer to the Council for its advice in advance of action being taken. The Council recognizes however, that the Administrator must have full authority to control and manage the internal affairs of the Administration and does not intend that it should be consulted on matters which are essentially ones of machinery in the operation of the Administration."

However, some aspects of the memorandum were easier to draft than to put into effect and Councillors frequently clashed with Administrators over their authority and their advisory role.

Estimates and Returns

The consideration of annual financial estimates of revenue and expenditure in an organisation having only limited administrative and staff capacity placed something of a strain on the resources of the Norfolk Island Administration, especially on those occasions when a difficult or recalcitrant Council chose to delay a procedure, or query the Administrator's recommendations or methods beyond what could normally be regarded as reasonable.

The normal annual sequence for the consideration of these submissions appears straightforward enough but bearing in mind that these procedures represent but one facet of a complex but limited administrative system then the work schedule is a full one.

Estimates of Revenue and Expenditure
Annual Sequence - Typical Calendar Year
- 1971 -

January - Draft revised estimates for 1970/71. Staff preparation, and to Administrator.

February - do To Council Finance Committee.

March - do To full Committee of Council.

do To Department for Ministerial approval.

Draft estimates for 1971/72 To Administrator

do To Council Finance Committee
April - Draft estimates for 1971/72
do

To full Committee of Council.

do

To Department for Ministerial approval.

June - Revised estimates for 1970/71 approved by Minister.

Estimates for 1971/72 approved by Minister.

July to September - Preparation of annual financial returns and publication of these in the Norfolk Island Government Gazette.

The above sequence requires a good deal of correspondence and discussion with the Department and final estimates are necessarily a compromise of the views of the Administrator, the Council and the Department. Apart from supervision by the Administrator, actual expenditure is also monitored in a general way by the Department, whose officers are understandably nervous of having to justify to the Minister (after the Administrator has justified to the Department) any possible shortfalls in revenue, or excesses or misapplications of expenditure, or the financial whims of the on-the-spot Administrator.

Limited examples of the type of financial work involved with Council and the Department between 1969 and 1972 are shown at Appendices H to N.

Audit

An audit Ordinance of 1936 made provision for the Auditor-General to have full powers of audit over the public accounts of Norfolk Island. The Commonwealth Audit Act 1901-1964 now makes provision for Section 2A of that Act to extend to the island: thus the 1936 Ordinance was repealed and replaced by the Norfolk Island Public Monies Ordinance 1964-1970. Section 6(5) of the Ordinance states:

"As soon as practicable after the expiration of each financial year the Administrator shall -
(a) forward to the Minister and to the Auditor-General a statement in detail of the balances and transactions in the Public Account for that financial year; and
(b) cause a summary of the statement, in a form determined by him after consulting with the Norfolk Island Council, to be published in the (Norfolk Island) Gazette."

Effectively, therefore, the Auditor-General has identical responsibilities in relation to the island as to any other Commonwealth
The problem does arise, however, of the accountancy and related sections of the Administration not being manned either to the staff levels or the qualification levels of the Commonwealth Public Service. This results in some pressures from the office of the Auditor-General which are difficult at times to satisfy. However, that office is usually helpful in considering Norfolk's problems and a First Assistant Auditor-General who visited the island in March 1970 completed a detailed study of problem areas. Most of the points raised in that report related to deficiencies in the levels of staff expertise and to manning problems. The Administrator's letter to the Department in September 1970 emphasised this aspect. See Appendices O and P.

There exists a strong body of opinion on Norfolk which asserts that the island could be "self-supporting" in terms of public finance. This view, however, overlooks the very large sums expended annually by the Commonwealth on services such as the airfield (Department of Transport) and related facilities. Evidence given before the 1975/76 Royal Commission indicated that direct financial assistance to the island exceeded two million dollars annually. There is however much argument on what is the precise figure. Indirect financial support in the areas of foreign affairs, defence and overall Commonwealth Public Service support must also be taken into account. None of these extraneous figures are reflected in the expenditure as shown annually by the Norfolk Island Administration.

A further factor is that the island residents consistently refer to "our revenue" - meaning revenue derived locally from Customs duties, liquor profits, philately, company fees, registrations, and so on. Again this view overlooks the legal fact of the Norfolk Island Administration being an instrumentality of the Commonwealth. There is no Crown in the right of Norfolk Island or the Norfolk Island Administration; there exists only the Crown in the right of Australia. Therefore the expression "our (local) revenue" has no force. The public finance sector, as well as the local economy generally, continues to be bolstered only by the vagaries of a somewhat uncertain tourist industry.
CHAPTER 6
PUBLIC FINANCE

NOTES


2. Ibid. pp. 29,74,76.

3. Ibid. pp. 29,69.


10. Figures of annual revenue and expenditure are derived mainly from the Norfolk Island Annual Reports; some are from the 1926 Royal Commission.


13. Philatelic revenue figures from the Norfolk Island Annual Reports.


18. Ibid. The Liquor Prohibition Ordinance 1946.

19. Figures of Liquor Profits, Customs Duties and Company Fees are derived from the Annual Reports.


CHAPTER 7
THE ECONOMY

The private sector economy of Norfolk Island has been conditioned over the years by a number of special factors. In the main these have been the limited size and population of the island: difficulties of communications and transport, and isolation from markets: the climate, soil and topography: land subdivision policy and, from about the period of World War I, Commonwealth Government policy.

Comparisons of land usage between the early decades of the post-1856 Pitcairn period and the earlier colonial convict era are unreal as during most of the latter years a large labour force was available and was utilized in support of the agricultural, horticultural, building and maintenance, and fishing projects associated with the penal settlement. In that era the food grown was largely consumed locally, but some exports of grain and salt pork took place.

Even so, excepting for a certain range of foodstuffs, the island was never fully self-supporting. By the 1840s sheep were numerous (over 5000 in 1846) and there were many cattle and horses. Given water (the average annual rainfall is 53 inches) the rich, volcanic Norfolk soil has always been capable of growing almost any crop, although there were and are a number of pests, and a wide variety of produce including grains, sweet potatoes, vegetables, coffee, tobacco, arrowroot, some cotton and a considerable range of fruits, was a feature of life on the island.¹

The island comprises some 8528 acres (3455 hectares) and at the end of the penal settlement period in 1855 some 3000 acres of this area had been cleared and was being utilized.² It was not to be expected that the small Pitcairn workforce would have the capacity or the desire to cultivate anything like the acreage utilized during the convict period; indeed it was the Pitcairners' habit to work only the minimum amount of ground to meet their immediate needs and there were many complaints during the 19th century as to their indolence.³
Nevertheless, in 1858 and 1859 each head of a Pitcairn family was given a grant of 50 acres. The years from 1856 to the end of the century were essentially decades of isolation from outside influences.

The opening of the Melanesian Mission station provided a minor market for produce and the advent of open boat "bay" whaling, derived from the many mainly American whaling vessels that visited Norfolk, was an early feature of island life. Both gave some small stimulus to the local economy. Over thirty young male islanders formed the first whaling consortium on the island, an industry that was to survive sporadically through to the early 1960s. In 1867 140 barrels of oil were produced, and in 1868 300 barrels. Some of the community spent long periods as crew members of larger whaling vessels: for example, George Henry Parkin Christian, aged three when he came to Norfolk from Pitcairn, spent 25 years as a member of the crew of a New Bedford whaler and survived until 1940; he was the second last of the original Pitcairners to die on Norfolk. By the late 1870s, however, two local whaling companies were in operation, and this enterprise, plus limited agriculture and a modest number of cattle and sheep, formed the mainstay of the economy.

By 1900, apart from whale oil, there were very modest exports of bananas, kumeras, a little wool, fruit and onions. At this time Government was involved only to a very limited extent in the commerce and trade of the island, mainly in connection with the continuity and regularity of shipping services.

In 1914, following the control of the island being vested in the Commonwealth Government and the cessation of customs duties on Norfolk products being imported into Australia, exports increased significantly in value. A freezing chamber had been installed and there were exports of wool, potatoes, onions, fruit products and coffee. Some fish was being processed. Communications by sea, however, were tenuous and the export trade devolved around the very limited shipping links with Sydney and New Zealand.
By the mid 1920s the islanders had built and put into operation their own sixty foot trading vessel, the Resolution, but this proved to be an uneconomic and abortive venture.

From the mid 1920s there was a very successful export trade in bananas which came to an end in 1933. At the height of the "banana boom" in 1931, of some 1000 acres of cultivated land, 700 acres was being utilized for banana production. The total acreage of cultivation was almost as great as during the convict period.

The depression of the 1930s, as elsewhere, was a bad period economically on Norfolk and a number of island families returned to their homeland from the mainland of Australia and from New Zealand in the hope of living a decent life in a simple rural environment. During the next decade to 1940 exports of oranges, a little butter, bean seeds, pulped fruit, frozen fish, tung oil and some whale oil were the mainstays, but again these were in very limited quantities.

The construction of an airfield in 1942 altered the whole economic pattern and future of Norfolk and this event had a profound effect on commerce and trade. Food grown locally all went towards feeding the numbers of servicemen stationed on the island. There was no export trade whatsoever during World War II but in the late 1940s exports, primarily of bean seed, recommenced. In 1947 the Producers' Co-operative Company was formed and, in 1949 whaling was resumed until its demise in 1963.

The aeroplane, however, eventually brought with it the rise of a tourist industry, one which was, whilst a good deal more viable than the limited sea-borne tourism of the 1920s and 1930s, brought with it all the problems that go with tourism and tourist development.

Insofar as imports were concerned these ranged from about $50,000 to $60,000 annually in the decade 1930 to 1940; foodstuffs, apparel, fuel, hardware, films, some machinery, and so on being the main items. By the 1950s imports had risen from $250,000 in 1952, to $578,000 in 1960, to $3,186,000 by 1970, and to $6,172,000 in 1975.
The increase in imports from about 1960 can be attributed almost solely to the rise of tourism and, to some extent, to the stimulus provided by company operations. In the main, these two activities accounted for the deficiency between imports and exports.

The following table shows some representative figures of annual imports and exports between 1934 and 1975.

Total Annual Imports and Exports to June
Selected Years 1934 to 1975
($ rounded)

<table>
<thead>
<tr>
<th>Year</th>
<th>Imports</th>
<th>Exports</th>
</tr>
</thead>
<tbody>
<tr>
<td>1934</td>
<td>58,000</td>
<td>32,000</td>
</tr>
<tr>
<td>1939</td>
<td>56,000</td>
<td>34,000</td>
</tr>
<tr>
<td>1952</td>
<td>250,000</td>
<td>94,000</td>
</tr>
<tr>
<td>1956</td>
<td>528,000</td>
<td>76,000</td>
</tr>
<tr>
<td>1960</td>
<td>578,000</td>
<td>374,000</td>
</tr>
<tr>
<td>1961</td>
<td>562,000</td>
<td>420,000</td>
</tr>
<tr>
<td>1962</td>
<td>720,000</td>
<td>420,000</td>
</tr>
<tr>
<td>1963</td>
<td>968,000</td>
<td>396,000</td>
</tr>
<tr>
<td>1964</td>
<td>1,204,000</td>
<td>160,000</td>
</tr>
<tr>
<td>1965</td>
<td>1,714,000</td>
<td>308,000</td>
</tr>
<tr>
<td>1966</td>
<td>2,142,000</td>
<td>308,000</td>
</tr>
<tr>
<td>1967</td>
<td>2,822,000</td>
<td>267,000</td>
</tr>
<tr>
<td>1968</td>
<td>2,221,000</td>
<td>235,000</td>
</tr>
<tr>
<td>1969</td>
<td>2,606,000</td>
<td>294,000</td>
</tr>
<tr>
<td>1970</td>
<td>3,186,000</td>
<td>279,000</td>
</tr>
<tr>
<td>1971</td>
<td>3,678,000</td>
<td>279,000</td>
</tr>
<tr>
<td>1972</td>
<td>3,905,000</td>
<td>386,000</td>
</tr>
<tr>
<td>1973</td>
<td>4,718,000</td>
<td>475,000</td>
</tr>
<tr>
<td>1974</td>
<td>6,108,000</td>
<td>543,000</td>
</tr>
<tr>
<td>1975</td>
<td>6,172,000</td>
<td>621,000</td>
</tr>
</tbody>
</table>

Up to the time of World War II exports consisted almost entirely of true income-producing items in the nature of agricultural and whaling produce. However, the late 1950s saw the beginning of the end of two relatively major income producing export industries, i.e., bean seeds and whale products. The former had been exported in small quantities prior to World War II and the industry was
revived in the late 1940s when Norfolk became noted for its disease-free crops. The bean seed industry later declined in the face of improved mainland competition and the rise of tourism. Whaling re-commenced in 1957 but ceased again in 1963. The rise of the relatively high annual export figures co-inciding with the cessation of whaling in 1963 was due to the inclusion in the statistics of a high element of "items returned", i.e., empty containers, household and personal effects, films, electrical and electronic equipment, and so on.

The figures for the period in respect of the two main income-producing exports are as follows.

**Annual Exports of Whale Products and Bean Seed to June 1954-1965**

<table>
<thead>
<tr>
<th>Year</th>
<th>Bean Seed ($ rounded)</th>
<th>Whale Products ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1954</td>
<td>28,000</td>
<td>-</td>
</tr>
<tr>
<td>1955</td>
<td>26,000</td>
<td>-</td>
</tr>
<tr>
<td>1956</td>
<td>14,000</td>
<td>-</td>
</tr>
<tr>
<td>1957</td>
<td>39,000</td>
<td>198,000</td>
</tr>
<tr>
<td>1958</td>
<td>30,000</td>
<td>260,000</td>
</tr>
<tr>
<td>1959</td>
<td>60,000</td>
<td>222,000</td>
</tr>
<tr>
<td>1960</td>
<td>34,000</td>
<td>262,000</td>
</tr>
<tr>
<td>1961</td>
<td>17,000</td>
<td>293,000</td>
</tr>
<tr>
<td>1962</td>
<td>21,000</td>
<td>302,000</td>
</tr>
<tr>
<td>1963</td>
<td>28,000</td>
<td>6,600</td>
</tr>
<tr>
<td>1964</td>
<td>16,000</td>
<td>-</td>
</tr>
<tr>
<td>1965</td>
<td>7,200</td>
<td>-</td>
</tr>
</tbody>
</table>

Since World War II there has developed an international demand for the seed of the palm *Kentia fosteriana*, highly popular as an indoor decorative plant. This can be highly profitable, if long-term, cash crop and for many years there has been small quantities of these seeds produced. From the 1950s and early 1960s more Kentia palms came into production and some exports took place. In more recent years, however, the demand for this product has risen and the quantity exported annually increased rapidly from a value of less than $2000 in 1957 to $76,000 in 1975 making the crop now almost the sole agricultural export of any value.
One of the perennial problems affecting the agricultural economy has been that of land sub-division. Since 1956 the original grants of 40 to 50 acres have been sub-divided ad nauseam and bequeathed to successive family members. The result now is a series of elongated holdings a few acres in extent which are uneconomic and inefficient to operate.

Fish are prolific in the seas around Norfolk and they have always been a staple item of the local diet. However, fishing by small boat needs a professional approach and a cautious attitude towards the sometimes dangerous conditions. The cliff-girt coast has no harbour and boats must be winched into the water by crane at either of the two jetties.

There have been many attempts over the years to place fishing on a commercial footing. A fish freezing plant established in the 1930s proved uneconomic. In the 1950s whaling overshadowed efforts at fishing but a company was formed and erected a fish processing plant with a freezer of 20 tons capacity. After a subsequent change of ownership the venture succeeded in exporting 26,000 lb of frozen fish fillets during the 1957-58 year. Despite this, however, the export of fish remained uneconomic. The project lapsed in 1958, was revived in 1963 (exports 10,500 lb of fillets), closed in 1965 and further modest attempts were made to export fillets by air from 1967 through to the 1970s. The fish processing plant was finally destroyed by fire in 1975.

In recent years the Council has been vocal in objecting to the activities of Japanese and Korean fishing vessels which were said to be poaching in Norfolk waters and a number of protests were despatched to Canberra via the Administrator. Despite the placatory Japanese reply of September 1971 the problem continues. See Appendix A.

After the commencement of company operations, and from about 1968, mainland entrepreneurs were active in attempting to establish bases on the island which would be seen by the taxation authorities as genuine Norfolk-based enterprises. Examples were a high-pressure international lottery organisation, a casino, various proposals for "hotels of international standard", small subsidiary factories,
The various types of subsistence economy having virtually failed over the years, the onset of tourism was grasped at eagerly as a means of sustaining the private sector and by the 1960s had become the staple industry. The economic dependence on tourism and tourist development has increased rapidly to the present date. In the late 1960s many on the island, including a number in the business community, felt that 14,000 to 15,000 tourists per year was as many as the island could handle. The 1975/76 figure was almost 20,000 and commercial and accommodation development has posed very real problems for some years.

Some of the constraints on tourist development, apart from the purely over-population and conservationist aspects, are the lack of a permanent reticulated water supply, the associated sewerage/pollution problem, the availability of a labour force to service the industry and the import and storage of supplies and foodstuffs occasioned by the sometimes irregular shipping services. The limited quantities of vegetables and fruit grown on the island are insufficient to supply a large-scale tourist operation, and local laws prevent the import of fresh vegetables (excepting sometimes potatoes and onions) and fruit.

The involvement of the Norfolk Island Administration and the Council in the tourist industry has been profound. Legislation and planning ranging from developmental through building, imports, liquor, hotels and boarding houses, transport, customs duties, shopping facilities, public reserves, flora and fauna, water, shipping, aviation, immigration, agriculture and a host of others, has been involved.

Since the early 1960s a Tourist Bureau, an active Chamber of Commerce and an Accommodation Proprietors' Association have existed on the island. Efforts have been made over the years to rationalise the operations of tourism and the Tourist Bureau by means of an appropriate Ordinance but these attempts have proved abortive to the present. A Norfolk Island Council Tourism
and Other Industries Committee has been in existence for some years. By the mid 1960s the island business interests involved in tourism were pressing for a tourist subsidy towards promotion of the industry. The Administration and Council view was that a subsidy might well be justified but that the business community should also contribute directly to the costs of promoting island tourism. A dollar for dollar subsidy arrangement was finally introduced. See Appendix C.

As could be expected, accommodation proprietors felt that any future tourist accommodation expansion should benefit only existing hotel, motel, guest house and flat operators. See Appendix D. In 1969 Council and Administrator had recommended that tourist bed accommodation be limited to 1000 by 1975, and that an annual total of 20,000 tourists be set as the upper limit. However, the maximum number of tourists per annum is not in itself the most important criterion; the number of tourists on the island at any one time is much more significant. Whereas a quick turnover of short-term tourists is preferred by airline operators and low-duty shopowners, accommodation proprietors not unnaturally prefer to see a longer term occupancy. However, tourism is likely to remain the major industry, and problem, facing both populace and government.

On Norfolk Island today, as a result of development in support of the tourist industry, there are 3 hotels, some 24 "duty free" shops ranging from a few large and prosperous business concerns to small, non-viable enterprises: a handful of guest houses, 4 reasonable restaurants, and a large number of flats ranging in size from the four-complex variety up to clusters of 20 or so: and in style from the disastrous to the near-elegant. There are also some half dozen self-drive hire car and motor cycle businesses. Here as in other areas the local Council has been more than reluctant to agree to an import quota of motor vehicles, the result being that for its size Norfolk regrettably has a higher proportion of vehicles to population than most other comparable areas in the world. For the 70km or so of driveable road there were, in 1975:
Cars, trucks and utilities
Motor cycles and motor scooters
Buses
Trucks, plus
Administration vehicles of various types.

Efforts by a succession of Administrators to have the Council agree to some sensible method of limiting the number of vehicles on the island have been consistently unsuccessful.

It is an unfortunate fact that the apparent economic saviour of the people of Norfolk Island, - tourism - is a self-destroying force that will in time probably be the ruination of what is essentially a very lovely natural and historical environment. Limited area, population and local resources have forced tourism upon the populace as the only means of economic development. Tourism is labour intensive and therefore appears as a desirable alternative means of employment to the small and largely unskilled Norfolk community. Tourism has brought not only change to the island, but rapid and frequently undesirable change, social, physical and environmental. It is not insignificant that in 1971 the Greek Orthodox Church in Athens adopted a new prayer which could well be equally applicable to the Norfolk case, - "For those endangered by the Tourist Wave."

In the mid 1970s the Administrator endeavoured to control the problems of tourism primarily through the legislation contained in the following Ordinances. Some of this legislation has been amended over the years since its initial introduction but the only modern and useful provisions are those introduced since about 1960:

- Boarding Houses: 1955
- Building: 1967
- Health: 1913
- Immigration: 1968
- Liquor: 1961
- Motor Vehicles: 1929
- Sale of Food: 1950
Despite the resistance to those forms of industry clearly unsuited to the island environment there has been occasional examples of proposals which might well have operated to the long-term benefit of the island economy and which at the same time might have been eminently suited to the local life style. The best and one of the most hotly debated examples of this was a Commonwealth Government proposal in 1972 to establish a high security animal quarantine station on Norfolk.

Traditionally the islanders have been familiar with livestock and with the handling of animals, albeit in a typically haphazard and unscientific fashion. The growing of crops for fodder was also a desirable island activity. An animal quarantine station would have been likely to provide continuity of employment for a small number of local persons and would have established some scientific and technical personnel and their families on the island.

In brief, here was a proposal which had all the hallmarks of being a viable and acceptable minor industry. When it comes to the point, however, any proposal for change on the island which requires a decision, - as against the "creeping progress" of, say, tourism, - meets with a good deal of inbuilt resistance.

The Pitcairners, still cling to their traditional "right" to graze cattle on the common lands. Even today, despite their stated desire to improve the strain of the cattle, the right to graze in common, with its resultant in-breeding and lack of animal health and a proclivity to disease, appears to be more important than the improvement of the breed.

In his lengthy report on An Animal Survey of Norfolk Island in 1966 Mr Cameron-Stephens, a senior veterinary officer of the Commonwealth Department of Health, made a number of perceptive, well-considered and sensible recommendations concerning livestock on the island. Most were embarked upon at the initiative and expense of the Norfolk Island Administration but, in the longer term, not pursued to their logical conclusion because of local apathy.
Other similar and related surveys were carried out in subsequent years.

In February 1972 the proposal for an animal quarantine station was initiated in Canberra and a working party of Commonwealth officers visited Norfolk in March to assess the suitability of the island for the station and to gauge the official and public reactions to the proposal. So here was a proposition where government both in Canberra and on the island would necessarily be deeply involved from the start. Public meetings on important, and sometimes unimportant, issues have always been a feature of island life for well over a century, and such a meeting on the quarantine station issue was duly convened. This was only the first step in a lengthy and tortuous debate on the issue. The Norfolk Island Council met with the working party on 1st March 1972 and the resultant 30 page transcript was informative but inconclusive. The advantages and disadvantages of the proposal, as he saw them at the time, were outlined by the Administrator in a memorandum for Council and the local populace.

Summarised, they were stated as:-

Advantages:

. The provision of permanent veterinary services on the island.
. The free movement of animals into the mainland of Australia.
. A resurgence of farming for grazing purposes.
. Improved quarantine measures against the introduction of animal diseases.
. An additional market for local cattle, for testing purposes.
. Local employment.
. Additional income to the island.
. An additional important capital investment to the island.
. A sizeable private sale of a Crown lease – tentatively selected, by an island resident.

Disadvantages:

. The risk of exotic animal diseases entering the island, and the resulting serious effects on the local animal industry.
. Pollution in the form of sewage, liquid wastes and effluents.
. The erection of a sizeable complex of buildings in a rural sector of the island.
A possible deleterious effect on the island's main industry - tourism.

No direct input to Administration revenue other than land rental, and possibly a small annual premium.\footnote{11}

In April the Working Party submitted its report to the Director-General of Health and concluded that:

(a) the degree of security for a station of this type must be such as to ensure every reasonable precaution against the introduction and dissemination of disease with imported livestock and to ensure that there is no risk of exotic disease transmission to the Australian livestock pool.

(b) an off shore island location presents the most satisfactory solution to the interacting requirements of security, maintenance of normal trade, safety and convenience. In addition, an island location permits enormous capital cost savings, in that the animal accommodation need be vector-proof but not virus proof.

(c) the quarantine station should be designed to allow an import of 200 head of adult cattle or equivalent numbers of sheep, pigs or goats; accommodation should be available for poultry derived from egg imports; no provision need be made for dogs and cats or zoo animals.

(d) the facility should be administered by the Animal Quarantine Branch of the Department of Health; personnel requirements for overseas testing and quarantine supervision have been delineated. Operating costs of overseas testing and quarantine should be totally recouped from importers.

(e) transport of livestock to the island location should be by sea initially; later consideration could be given to import by air; at the conclusion of quarantine, livestock could leave by sea or air.

(f) the facilities of the station should be predominantly at the disposal of private importers under a system of space allocation by priorities determined on grounds of maximum national benefit.

\* In the sense of a "carrier of disease".
The report recommended:

(a) that approval in principle be sought from the Minister for the establishment of a high security animal quarantine station on Norfolk Island,

(b) that the Minister approve the preparation of a Cabinet Submission seeking the Government's concurrence to the proposal and the authority for referral to the Parliamentary Works Committee,

(c) that the Minister approve the early purchase of the 70 acres of land, suitable for the quarantine station, at a cost of approximately $101,000.

In May the Minister for Health wrote a lengthy letter to the Minister for External Territories pressing for the establishment of the station on Norfolk. The letter reflected the common Government view that anything which appeared to be good for the Commonwealth Government was also good for Norfolk Island. The Minister for Health said:

"....I feel it would be most desirable that the Administrator and the Council be informed of the decisions and of my firm view that a high security animal quarantine station should be established on Norfolk Island and that I will be seeking a Government decision on this matter at an early date."

".....I consider that early action should be taken to purchase these three parcels, (of land) in anticipation of an early decision by the Government to proceed with the establishment of the station. I shall be glad if you could put in hand measures for this acquisition without delay."

The tone of this letter was calculated to antagonize the local Council and populace and the Administrator, which it did. Local pressures therefore caused Minister Peacock to put a brake on the enthusiasm of the Department of Health and the immediately subsequent exchange of correspondence displayed a markedly softer line. See Appendices F & G.

In July the Administrator summarised the factors pertaining to the proposal and submitted the matter to Council for its advice. Appendix H. The Council took no firm position at that time. By August an active correspondence in the local and mainland press was in progress: and a petition was organised seeking a referendum on the proposal. The Administrator, with his air passage booked for
for early August at the conclusion of a four years tour of duty, nevertheless felt he should take a position on the matter prior to his departure and in a letter to the Secretary of the Department he said:

August 3rd, 1972.

Mr D.O. Hay, C.B.E., D.S.O.,
Secretary,
Department of External Territories,
CANBERRA, A.C.T.

My dear Secretary,

Animal Quarantine Station

I refer to our telephone conversations on the 1st and 2nd August concerning the quarantine station. I enclose herewith a copy of the latest petition on this subject received by me on the 31st July. The petition contains 357 names and all of these appear on the electoral roll dated the 6th June, 1972, which was brought up to date for the purpose of the recent Council elections. The roll contained 951 names. Thus, as discussed, it will be necessary to conduct a referendum vide Section 6 of the Referendum Ordinance and I have initiated the requisite preliminary internal action to achieve this.

In order to meet the requirements of the Ordinance the earliest practicable date on which a referendum could be conducted, bearing in mind that for local reasons a Wednesday is normally selected for polling, would be 6th September. However, it would be advisable to allow more than the minimum time to complete the necessary processes and it would be appropriate for my successor to fix the date of the referendum after his arrival here on 16th August. Late September or the first half of October, therefore, would seem to be the most suitable period.

Bearing in mind the heavy work loads which have been experienced here recently, especially in connection with the Council elections, and the pressures on our small staff, it might be necessary to request from the Department the services of an experienced Returning Officer. Further advice will follow on this subject.

As I said to you during our telephone conversation my impression is that since the visit of Mr Gee and his working group there appears to have been a marked move within the community to oppose the establishment of the quarantine station and this has culminated in the petition. Of the newly elected Council, one, Councillor Smith, has stated his firm opposition to the proposal from the start. A second, Councillor Evans, whilst stating he remains basically in favour of the establishment of the station, now says that he is not disposed to favour its establishment if this is contrary to the wish of a significant sector of the community.
At the meeting on the 1st August, Councillor Quintal being absent, (and this absence in itself probably has significance) councillors clearly realised that some meaningful public opposition now existed. Councillor Ryves spoke strongly against the concept of the petition for a referendum stating that, as the Council consisted of the newly elected representatives of the people, then the people should be satisfied to accept Council's advice on this and other subjects. He felt that the petition revealed a lack of confidence towards Council on the part of some members of the public. Councillor Randall said that the previous motion recommending the establishment of the station had been heavily qualified and for his part he would need to see those qualifications given firm expression before he would finally vote in favour of the station. The remaining councillors tended to be reticent and the discussion was not lengthy.

Council was informed that a referendum would take place and that time would be necessary to conduct the preliminary processes. Councillors were also asked if they wished to modify in any way their advice given at the meeting on 25th July. They declined, however, to do so.

For my own part you will know that I have not so far taken a firm position on this subject. I feel, however, that the Minister would wish to know my views in the matter prior to my leaving the Island. The subject is one possessing a very delicate balance and in the list of advantages and disadvantages which I forwarded with my letter dated 24th March, 1972 there is little to weigh the outcome significantly one way or the other. In the longer term the establishment of such a station would probably bring some economic benefits to the Island. The benefits to the Commonwealth Government and to the veterinary aspects of the Island are obvious. On the other hand the possible dangers to animal health, however slight, and to the important industry of tourism, must be borne in mind. I feel that to proceed with the establishment of the station against the wishes of what at this stage seems to be a significant sector of community opinion would be politically unwise. There is always a delicate political balance on the Island; there are also many physical problems to be resolved, for example the subject of planning is current and the consultant's report on this important subject has only just been injected into the Council system. It would be unfortunate if any local political upheaval at this stage were to retard the possibility of progress in this and other areas. My advice to the Minister, therefore, is that for local political reasons, rather than for physical reasons, the station should not be established on the Island.

Yours sincerely,

(R.N. DALKIN)
Administrator
By October the Department of Health had printed a brochure in support of its case, and in the same month new Administrator Air Commodre E.T. Pickerd was confronted with the administration of a referendum on the issue under the provisions of the Referendum Ordinance. At the referendum 845 persons voted and the result was a negative to the proposal: No, 452 votes; Yes, 384 votes. However, this was by no means the end of the matter. Commonwealth interest swung towards both Christmas and Cocos (Keeling) Islands, but the Government finally decided that the Parliamentary Standing Committee on Public Works would investigate the proposal. In evidence to that Committee the Department of the Capital Territory (which was by this time overseeing and co-ordinating Norfolk affairs continued its strong support of Norfolk Island for the station, claiming that the use of the Referendum Ordinance was "a wrong use" of the legislation, that there were shortcomings in the conduct of the referendum, and that the Parliamentary Committee should visit Norfolk Island to determine the feeling of the people in the matter. See Appendix J.

The Committee duly visited Norfolk in July and the subsequent hearings very soon developed into discussions concerning the constitutional relationship of Norfolk Island to the Commonwealth.

For example, part of the evidence of Mr J. O. Ballard, previously a First Assistant Secretary of the Department of External Territories but in July 1973 the Deputy Secretary of the Department of the Capital Territory: See Appendix K.

In October 1973 the report of the Parliamentary Committee was issued. In spelling out the matter in considerable detail the Committee concluded that of all Australia's island possessions and territories only Norfolk Island, Christmas Island and Cocos Island warranted detailed consideration. Norfolk Island was rejected because of the "known disadvantages of Norfolk Island when taken with the strong objections expressed by witnesses and others, admittedly mainly emotional in character..." A final preference for Christmas Island was expressed, but the location was
rejected because of New Zealand Governmental aspects concerning phosphate agreements. With a number of reservations, including the (unknown) views of the "Cocos Malay community" and doubts about the attitude of Mr Clunies-Ross, the Committee recommended (West) Cocos Island: a recommendation that the Committee probably well knew might never be implemented.¹⁴ The years since 1973 have seen various views expressed for and against Norfolk Island possibly fulfilling the requirement for the establishment of the quarantine station, but the solution appears as far away as when first postulated; vide the Canberra Times 18th August 1976:

"Quarantine post

The establishment of an off-shore animal quarantine station was currently under consideration, the Minister for Health, Mr Hunt, told Mr Lloyd (NCP, Vic).

Cattle, sheep, goats and horses, if necessary, would be accommodated at the station which could be sited on the Cocos Island or some other island."

An animal quarantine station on Norfolk would be likely to provide some long term and desirable, if modest, boost to the local economy as a partial alternative to tourism. The history of the attempt to establish such a station since 1972, however, again confirms that changes calculated to affect the economy and lifestyle of the island are unlikely to be embarked upon as the result of considered policy decision. Apparently the Council and the people are too divided in their opinions to arrive at any consensus on this and similar issues.

The economy of the island therefore is a tenuous one. Whaling, fishing, dairying and cattle, and a wide variety of agricultural enterprises have all come & gone over the years. Attempts to establish minor secondary industries have been rebuffed. Tourism has become the mainstay of the economy in the 1960s and 1970s and tourist accommodation, tourist services, liquor sales and low-duty shops now dominate the economic scene. Tourism itself, however, can be an uncertain and delicately balanced industry, especially on remote Norfolk.

2. Ibid. pp. 103/4


5. W.J. Dakin, Whalesmen Adventurers. p. 3.


The sources for the remainder of this section are primarily the Annual Reports.


11. Memorandum to the Norfolk Island Council by the Administrator. Ref. 37/7/6 dated 27th March 1972.


NORFOLK ISLAND - OCTOBER 1968

From 6000 m. Scale about 1:50,000
2 cm. = 1 km.

(N.Z. Air Ministry)
CHAPTER 8

LAND TENURE

After Phillip Gidley King landed at Norfolk with his first small band of supervisors, marines and convicts in March 1788 it was not many years before land settlement of a "private" nature was permitted. As early as 1789 King had installed the first settler at Cascade on the northern part of the island. Various sketches of the island had been made during Cook's brief visit in 1774; later the Voyage of Governor Phillip to Botany Bay included a map of the island attributed to William Bradley, the First Lieutenant of the Sirius, "delin. 1788", and published by Stockdale on 10th August 1789. This map of the island is distorted and Bradley must either have had the information provided to him for its compilation after the second visit of Supply to Norfolk in July 1788, or he took part in that visit, as he shows the first few buildings in situ. Bradley was on the Sirius when that vessel was wrecked at Norfolk on 19th March 1790 and for eleven months the whole of the crew totalling 80 were stranded there. Bradley continued his work on the mapping and charting of the area and various versions of his work exist. That shown in Hunter's Journal is also distorted to some extent and displays some errors.

Some early attempts at delineation of agricultural blocks were made as by October 1791 48 settlers had been granted blocks of land from 10 to 60 acres in area. These settlers were marines, seamen and emancipated convicts. The earliest survey to show portions of land seems to have been that of Charles Grimes, who had been appointed from England to be deputy surveyor of roads in the new colony of New South Wales but to be employed on Norfolk Island. He was aged only 19 when he arrived in 1791. The record states that he corrected "the other surveys which had been made without proper instruments." He was also head constable on the island until 1794. His survey plan dated the same year shows 98 numbered portions. See Appendix Map 1.

Also dated 1794 is an almost identical copy of Grimes' survey prepared by Philip Gidley King's protege and secretary,
William Neate Chapman. Chapman has added two blocks to Grimes' 98; No. 99 is annotated "Granted to the first born Male child on the Island."

This would be Norfolk King, first son of P.G. King, born on 8th January 1789. Block No 100 is marked "Lt. Townson." The General Survey and General Muster of 1811 records that 137 persons held 153 grants and leases on the island in that year. These blocks ranged from 3 acres (John Barnes) to 234 acres (Stanfield Senr.) and comprised 2441 acres of cleared land, i.e., nearly one third of the island, plus 1703 acres of bush. Some of these landholders were part of Philip Gidley King's original 1788 landing party of 23 persons, e.g., John and Noah Mortimore, and Edward Garth, all emancipated convicts. The Survey is generous in its assessment that "By allowing for the Elevation of the Hills and Depression of the Valleys Norfolk Island contains 14,000 acres."

During the period of the second penal settlement from 1825 to 1855 the need for survey plans of the island probably did not exist and none have been located, other than the various plans showing the government buildings and some agricultural plots. No private settlement was permitted at this time and an Agricultural Superintendent directed the convict labour on the lands, which were all government lands. The nearest approach to a survey during this period is a map published by John Arrowsmith, London, in 1842. This was prepared by Major George Barney of the Royal Engineers from information collated in 1840 but the map in fact only depicted the use of land in various areas of the island, i.e., farms, sheep "stations" and so on. The total land area is shown as being 8960 acres. See Appendix Map 2.

In 1852 Sir William Denison was still Lieutenant-Governor of Van Diemen's Land, but he was later to assume the post of Governor of New South Wales.

In December 1852 the Colonial Secretary in London had written to Denison saying that a proposal had been made to remove the Pitcairners to Norfolk Island. He asked Denison "what arrangements he would suggest as most likely to conduce to its successful execution." In his reply dated 8th June 1853 Denison said:
"...I would suggest that the Grant of Land to each family should first be limited to an amount sufficient to maintain the individuals composing it;... Facilities and inducements should then be held out to them to acquire more land for which a fair sum per acre should be charged; but looking to the confined area of the Island, which does not contain more than 10,000 or 12,000 acres, I would submit that the whole should be reserved for the native population and be disposed of under such regulations as would effectually prevent any jobbing on the part of speculators or capitalists who might be disposed to take advantage of the ignorance of the natives." 9

In fact the island is only some 8500 acres in extent.

On 5th July 1854 the British Consul-General at Raiatea in the Society Islands, Mr B. Toup Nicolas (or Nicholas) had written to the Pitcairn islanders (still on Pitcairn) and had indicated the Imperial Government's approval for their transfer to Norfolk Island. In this letter Nicolas said:

"...While communicating this intelligence to you, I am at the same time to acquaint you that you will be pleased to understand that Norfolk Island cannot 'be ceded' to the Pitcairn Islanders, but that grants will be made of allotments of land to the different families, and I am desired further to make known to you that it is not at present intended to allow any other class of settlers to reside or occupy land on the island." 10

In a further letter to London dated 3rd September 1855, in discussing the removal of the Pitcairners, Denison made the suggestion that "...some authority should be established upon the island to regulate the allotment of land to the families of the new colonists.....It would, in my opinion, be advisable at all events for the present, to prohibit all grants or sales of land to others than the race now about to inhabit this small island....." 11 In his reply to Denison dated 21st January 1856 the Colonial Secretary, Labouchere, agreed with the general line that the Governor had proposed concerning land and amplified some other aspects of the proposals. See Appendix A. Later correspondence with London also stressed the need to have proper documentation concerning boundaries and titles for the Pitcairners' land on Norfolk.12

Following from the authority of the 24th June 1856 Imperial Order in Council, proclaimed in October 1856, instructions had been issued to Denison by the Imperial Government and these "Rules and Regulations" included authorisation to make grants of waste land on Norfolk:
"...And whereas we are further authorised by the said Order in Council to make grants of Waste Lands in the said island in our name and in our behalf, subject nevertheless to such Rules and Regulations as aforesaid: Now we do hereby further enjoin you to exercise the authority so vested in you, as far as you may find it practicable in conformity with such laws and usages as aforesaid which you may find established among the inhabitants in question, in relation to the possession, use, and enjoyments of land." 13

In February 1956 Denison wrote to Lieutenant Gregorie, the young officer from H.M.S. Juno who had been selected as Agent to supervise the removal of the Pitcairn community to Norfolk in an emigrant ship, the Morayshire. Denison said:

"...you will proceed to divide among the different families the land, which, having already been cleared, will probably be easier brought into cultivation than the bush land; and you will impress upon each and all the absolute necessity of proceeding to clear and cultivate it without delay. You will mark off a portion of the churchland as a reserve for church and school purposes, that is, as a glebe for the clergyman which will be sufficient for his support, for that of a schoolmaster, say 150 or 200 acres.

You will also mark off as a reserve for public purposes a portion of land along the margin of the sea at both landing places, and it will probably be as well that the land now occupied by the gaol and some other of the public buildings should be included in this public reserve, unless they are absolutely required for private occupation.

Of the uncleared land, a portion say 500 acres more or less, may be reserved for public purposes."13A

Denison realised that there was a technical flaw in the proceedings concerning the various instructions he had given, in that Norfolk still lay within the jurisdiction of the Lieutenant-Governor of Van Diemen's Land: Denison to the Colonial Secretary on 27th February 1956:

"In taking upon myself to give directions for the distribution of land among the Islanders, I am aware that I have, to a certain extent, overstepped the precise limits of my authority, for, as Norfolk Island is attached to the government of Van Diemen's Land, it would of course rest with the Governor and Legislature of that Colony to make such rules for the disposal of the land as might seem best to them. As, however, all the arrangements for the transfer of the island to its new inhabitants have been entrusted to me by Her Majesty's Government, I have not hesitated to take the responsibility upon myself, as I conceived it absolutely essential to the success of the experiment which is about to be made that the land should be transferred to the newcomers in such a manner as to give them a right to deal with it as their own and that some record should exist in the shape of plans or
written documents to which they might hereafter appeal, should any question arise among them as to the boundary of property." 14

On the subject of allocation of land Denison also wrote in February to Sir George Grey:

"In paragraph 7 and in those that follow I have given general instructions for the guidance of Mr Gregorie in settling the newcomers up on the land. You will see that I have directed him to make but few reserves for public purposes and with these exceptions to divide the \textit{whole island between the newcomers} (author's emphasis)\ldots" 15

Despite Denison's care, however, his despatch to Grey referred to dividing the "whole island" whilst in his May reply to London and in his instructions to Gregorie he refers to dividing "the land up". There is of course an important difference. The Governor did, however, retain the right to revise and amend the "arrangement of the land."

Denison seems to have been most punctilious in ensuring that each and every last detail of the instructions he received from London concerning the land were passed on to those responsible for implementation, and were acted upon. For example, in acknowledging receipt of Labouchere's despatch dated 21st January 1856 Denison, in his reply dated 26th May, said:

"You will have seen my despatch dated 27th February last that previous to the receipt of your despatch I had already carried into effect all your instructions and suggestions with the single exception of that which relates to the mode in which the land was to be divided among the new settlers. I have since sent down by Her Majesty's ship Herald commanded by Captain Denham, two sappers to assist Lieutenant Gregorie in apportioning the land among the emigrants; but I have at the same time so modified my former instructions as will be seen by the enclosed letter addressed to Lieutenant Gregorie, as to require any such apportionment to be made subject to my approval."

The enclosure read:

"With reference to that paragraph in your instructions by which you were directed to divide the land at Norfolk Island among the families of the Pitcairn Islanders, reserving only certain portions as specified for public purposes, I have now to direct you to do this, with a distinct provision that the arrangement of the land is subject to be revised and amended if necessary by the Governor of New South Wales, to whom all the arrangements connected with the settlement of the island have been entrusted by Her Majesty." 16
Thus it is clear that the apportionment of the land, and all the
details pertaining thereto, were firmly in the hands of the
Governor. The "two sappers", were instructed to divide the
land into approximately 50 acre blocks for the settlement of
one family on each block, and they were landed from the Herald
in early June 1856. 17

On the arrival of the Pitcairners however it became
apparent that they intended to continue their group existence
and cultivate their land in common in a similar manner to their
mode of life on Pitcairn Island, and thus they chose not to
follow Denison's intention to settle the community on relatively
scattered family blocks around the island. Denison's surveyors
therefore returned to Sydney with their task undone, or at least
incomplete, and the new arrivals settled into the vacant convict
era buildings at Kingston on the southern shore of the island.

Lieutenant Gregorie to Captain Fremantle:

"Our proceedings hitherto have been attended with great
success. We have brought the whole community away and
landed them all in safety on this island. With regard
to the division of land the heads of families unanimously
say they will not want the land allotted out for many
years yet, but think that it would be much better to
cultivate in common while there are such a few of them
compared to the size of the island."

18

Captain S.G. Fremantle of H.M.S. Juno, the senior officer
in charge of the Royal Naval Station in Australia, arrived at
Norfolk two weeks after the Pitcairners had landed to settle.
He handed to the new Chief Magistrate, Frederick Young, a letter,
the much-debated "Fremantle letter", - a document which was
lost for over a century before it was discovered again in New
Zealand in 1963. The letter related mainly to land and by it
Fremantle ensured that the latest instruction concerning the
Governor's over-riding authority to approve or change land
grants was conveyed to the islanders.

In September 1857, when the Pitcairners had been resident
on Norfolk for fifteen months, Governor Denison visited to see
for himself how the newcomers were handling their new situation;
he was not impressed. Two surveyors ("sappers") returned to the
island in H.M.S. Iris on 3rd June 1858 to continue the work of
survey. 19 Denison's Law No 44 of 1959 had prohibited the sale of
land to outsiders but when he made a second visit to the island in June 1859 he was upset to find that, contrary to his directions, some land had changed hands to outsiders.\textsuperscript{20} No sub-divisional survey appears to have been published by this time but presumably Denison's two surveyors who visited in 1859 had completed sufficient work to enable these "transfers" to take place. Stone corner markers of the colonial era, some of which still exist on the island today with their distinctive \(\uparrow\) mark, would have been used to delineate certain portions. Moreover, on 5th May 1858 the islanders had apparently "This day divided the land by lot." so that sufficient information must have been available from the earlier survey to enable them to do this.\textsuperscript{21} For these reasons therefore, plus the fact that Denison saw the improvement of the system of land cultivation as an absolute necessity, he insisted that the settlers would be made to live and work on individual family blocks of land. On his return to Sydney Denison again despatched his surveyors, 2nd Corporal Thomas Kennedy, R.E., and Sapper George Jamieson, to the island to complete their task of surveying the blocks and the resultant survey plan of 1860 formed the basis of most of the land boundaries for future decades and down to the present day. See Appendix Map 3. Denison also re-affirmed that the remaining land and the Government buildings were to remain the property of the Crown.

On 24th November 1857 Denison is recorded as having given a lecture in Sydney concerning the removal of the Pitcairners to Norfolk Island. The record says:

"...The whole of the island has been surveyed, and divided into allotments, averaging about fifty acres to each allotment; and it has been decided by Sir William Denison, that one allotment shall be assigned to each of the families now resident on the Island. The island being the property of the Crown, the right of ownership, in every instance, will be held on a grant from the Crown. A document will be issued to each head of a family, conveying to him in fee the absolute property in one of the portions or allotments. The deeds of conveyance have been sent to the island, but are not to be handed over to those concerned until 1861. The Governor, after the symptoms of indecision manifested by some members of the community, deemed it undesirable to place property in the hands of persons who might be disposed to part with it for the purpose of procuring means to return to Pitcairn's Island."
8.

Should a deed of grant be lost, the defect may be repaired by a simple numerical system of registration, such as is adopted in New Zealand." 22

On 20th October 1859 George Hunn Nobbs wrote to the Rev. T.B. Murray in London:

"...But Norfolk Island contains 8,607 acres, which will give a fifty acre lot to 172 families (there are now forty); so that there is plenty of room for increase; though I am not at all anxious there should be any influx of strangers...." 22A

In theory Nobbs' total acreage arithmetic was about right, but if one considers only the potential arable land then about 6000 acres would be nearer the mark, allowing only 120 family blocks of fifty acres each.

From 1859 there was a slow movement from the settlement at Kingston as families took up their blocks and eventually built residences "up country". For the remainder of the century land use was directed to subsistence farming, rarely more than 1½ to 2 acres per family being cultivated. By 1885 only about 150 to 200 acres were under cultivation, representing about 1.6 acres for each male over the age of 14 years. The remainder of the island was unenclosed and useless for pasturage.23

By 1870 new grants of land being made to the Pitcairners had been reduced from the 50 acre blocks of 1856 down to 25 acres. By 1888 Governor Carrington's system of conditional grants of 25 acres involving a minimum scale of improvements within a period of five years and inspection by a local land board, had made some inroads into the traditional Pitcairn system. By 1896, a system of Crown leasehold for 25 acre blocks of up to 28 years, at nominal rentals, was the norm. By 1914 443 acres of land were said to be under cultivation: and in 1916 about 900 acres of Crown land was available for leasing purposes. In that year freehold was worth 3 pounds to 10 pounds per acre.24

As stated in Chapter 1, however, during the past century the Pitcairners have clung tenaciously to the belief, and still do, that somehow, somewhere, since 1856 they had been deprived of certain rights to "their island".
When Colonel Spalding, the first outside Magistrate appointed from Sydney, arrived in 1896 no doubt the community felt that here for the first time was an on-the-spot resident official rather than a transient Governor, or visiting Naval Officer, to whom they could air their grievance over a lengthy period. This they apparently did, and probably Spalding initially lent a sympathetic ear to their cause until later he fell out of favour with the community. On this subject, there are some unpublished manuscripts in the Australian Archives which have some relevance. The papers consist of four separate statements sworn before Chief Magistrate Spalding on 16th May 1898 by Pitcairners.

Three of the statements are by Arthur Quintal, Senr., born about 1915 and aged about 83 in 1898; George Martin Frederick Young - born 1822 and aged 76; and Thomas Buffett - born 1825 and aged 73. The remaining statement is sworn and signed by sixteen "Elders", including the abovenamed three.

Arthur Quintal concludes his statement by saying:

"On our arrival (at Norfolk) the houses were ballotted for ...........and I swear that the Island and all it contained could have been divided amongst the Pitcairn Islanders at the first division if they had thought it advisable and would have been sanctioned and approved of by the Government Agent of the time on the Island."

The phrase "could have been divided" emphasises that the whole of the land excepting the few hundred acres reserved for government was apparently available to the Pitcairners had they chosen immediately to secure it under the arrangements contemplated by Governor Denison. Similarly, Thomas Buffett's sworn statement:

"....That Lieutenant Gergorie under his instructions ordered the whole of Norfolk Island 700 acres excepted to be divided into 32 or 33 shares so that each family may receive one share but at a public meeting held about the division of land, Lieutenant Gergorie being present it was decided that the island was to be surveyed into 50 acre allotments and each family to have one allotment and as each couple got married they were to have a grant of 50 acres."
Martin Young's statement relates a like story and so also, in a slightly different vein, does that sworn and signed by the sixteen Elders; See Appendices B, C, D & E.

Lady Belcher, the step-daughter of mutineer Peter Heywood, later Captain Heywood, RN, in the 1870 edition of her valuable source book the *Mutineers of the Bounty and their Descendants on Pitcairn and Norfolk Islands*, discusses at considerable length the question of the rights or otherwise of the Pitcairners to the whole of Norfolk Island, and quotes extensively from relevant correspondence. On the question of whether the "fee simple" of the whole of the island was ever guaranteed to the Pitcairn community Lady Belcher says:

"It seems to have been their own fault that they had not the fee simple. Sir William Denison directed Lieutenant Gregorie to divide among them all the land except 500 acres required for public purposes, and 200 acres for church and school. They preferred to keep the land in common, and have only 50 acre grants made to them individually. On Sir William's visit to the island, he confirmed in fee simple those desired 50 acre allotments." 25

Thus it appears that it was the intention for the unallocated blocks of land, which were subsequently shown as being vacant on the 1860 sub-divisional survey, to become available for future Pitcairn usage. The tardiness and conservatism of the Pitcairners, their desire to work the land in common, and their not being prepared to move with reasonable promptitude "up country" to claim these blocks, plus the later alienation of some 1000 acres to the Melanesian Mission, eventually operated against the interests of the settlers. By 1885 25 newcomers from outside the island, non-Pitcairners, had settled and purchased blocks of land.26

In 1903 "alienated lands" totalled 5,249 acres, reserves 967 acres, leased lands 492 acres, Crown lands available for lease 1511 acres, and "escarpments on coast, roads and foreshores" 309 acres. (Total 8528 acres).27

The story of how a large slice of the most fertile land on Norfolk, some 1000 acres came into the possession of the Melanesian Mission is a lengthy and somewhat complicated one. It may however be summarised as follows.28
Before the Pitcairners arrived on Norfolk Bishop Selwyn, the first Bishop of New Zealand, had approached Sir William Denison in Sydney in an attempt to have land allocated on the island for the establishment of a Melanesian Mission. He was accompanied by John Coleridge Patteson, later himself the first Bishop of Melanesia and later still known, after his murder, as the "Martyr of the Islands." Selwyn however was rebuffed by Denison (and the Archdeacon, Denison's brother) on the grounds that the Pitcairners were to have the island to themselves. It is worth noting that Selwyn's and Patteson's relations with the Pitcairn community from 1856 were extremely good. They had both inspected the island prior to the arrival of the new settlers and there began long and involved discussion and argument as to whether the Mission should be established on the island, discussion which included church approaches to London. Selwyn regarded the island as forming part of his diocese under his Letters Patent. However, by the time Denison visited Norfolk in 1857 it seemed that the Bishop's proposals regarding the island had been abandoned.

By 1861 however the mood on Norfolk had changed somewhat and there were some close Pitcairn church links in the work of the Mission in the islands to the north. Thus a letter finally went from Norfolk to the Governor supporting the concept of a site on the island for a Mission college. By 1865 Patteson had taken up the Norfolk proposals through correspondence and personal representations to Sir John Young, by then Governor of New South Wales. Sir John finally offered a small grant of 100 acres for the establishment of the Mission, with later a further offer to purchase 900 acres. The deal was concluded, and an advance Mission party arrived on the island in October 1866; progress thereafter was rapid. These events, however, produced a strong reaction from the Pitcairn community, and whilst they felt that alienation of a small area of land to the church was one thing: 1100 acres was another. The Rev. George Hunn Nobbs on Norfolk had put the matter very strongly as early as 1858 in a letter to Admiral Moresby:
"I trust yourself and influential friends will countenance my opposing so very undesirable an addition to our social circle as a hundred or two of heathens, strong with the odour of unmitigated depravity." 29

and the same correspondents eight years later:

"I have received the startling intelligence that Bishop Patteson is to have 1000 acres of land (by purchase) for the formation of a Melanesian college. We are all astounded at this somewhat arbitrary proceeding, but have concluded it is better to succumb to this innovation rather than have a dozen or two adventurers with their families inflicted upon us; shrewd, grasping men and women, who will strive to get the upper hand.----"

The sale of land to the church was the rate of three pounds per acre.

On 14th June 1866 Nobbs had complained in similar vein to the Governor and Sir John Young's reply of 23rd August was conciliatory, including the information that the sum raised by the sale would add to the island investments and produce, inter alia, 50 pounds per annum stipend for Nobbs himself.

Nobbs' later letters of October to the Governor and to Admiral Moresby were even more conciliatory.

John Buffett, an Elder of the Pitcairn community, took a much stronger line to the Secretary of State in London, as did John Adams II to Admiral Moresby. Buffett to the Secretary of State:

"I wish your lordship to notice that the chief cause of our removing from Pitcairn Island was the scarcity of land. The community have no objections to offer against the establishment of the head-quarters of the Melanesian Mission on this island, with 300 or 400 acres of land, but would wish respectfully to protest against the sale of 1000 acres, or one-tenth of the island. I would also solicit your lordship's attention to the fact, that several of our newly-married people have applied for grants at various times within the last three or four years, and have not yet received them; while strangers with money have stepped in and bought lands, and our people still left in doubt whether they will get a grant or not."

In fact, the 1000 acres represented about one-fifth of the arable island land.
And finally Nobbs to Moresby again in mid-1867:

"....I have just heard that Sir John Young is to be relieved by the Marquis of Normanby; for personal kindnesses and favours, I owe Sir John a fund of gratitude, but his Excellency's plans for the welfare of the community in a general sense were sadly Utopian, of which eleven hundred acres to the Melanesian mission is the climax.----"

Admiral Moresby's daughter probably had the last say when she wrote to her father and commented on the subject of land and the "Articles of Cession":

"You are indeed dealing unjustly with yourself in self-accusations. What we understood and what Government really meant are two widely differing points....."

In the event, history has proved that, of itself, the establishment of the Melanesian Mission on Norfolk Island was beneficial in many ways to the Pitcairners. In respect of the alienated land, however, one cannot but feel that the Pitcairners were deprived by government of some 1,000 acres.

When the Governor, Lord Augustus Loftus, visited Norfolk in 1884 the Chief Magistrate recorded that Loftus had directed no more free grants of land were to be made without the approval of the Magistrate. In 1887-88 there was a survey by "Messrs Harpers" which consolidated some of the earlier work done, but seems to have concentrated on the road system. Later, in 1896, when Colonel Warner Warren Spalding was appointed the first outside Chief Magistrate by Governor Hampden, he was soon confronted with requests to clarify the new land laws brought down in that year; for example, the letter from the Registrar of Lands on the island, Franklin Bates, in November:

"Dear Sir,

Being unable to call upon you Officially as Registrar of Lands for Norfolk Island would you kindly instruct me as to the Laws. I have the old laws but as they have been abolished I am somewhat at a loss how to act without your instructions. If instead of issuing them in writing which you may not be prepared to do until you have fully considered the matter could you depute some one, or would you kindly do me the honor to call upon me at your convenience. I look forward to giving you the old laws to look at not knowing whether you have seen them before, and should like to retain them in this office as all former transactions in Land have been made under them.

Franklin Bates
Registrar of Lands"
Land Legislation

None of Denison’s original 39 Laws of October 1857 said anything about land or land tenure but a new law of September 1858 prohibited the sale of land to non-residents. Some simple regulations relating to land transactions were introduced in 1859. Governor Loftus’ amended laws of 1885 specified that a grant of land to a non-member of the community must have the Governor’s sanction and would have the effect of making the grantee a member of the community. Governor Hampden’s new laws of 1896 retained the provision that "the power of alienating, leasing or authorising the occupation or use of the waste lands of the Crown shall be exercised by the Governor alone." and paragraph 5 of the Order in Council of January 1897 ratified this provision. In his covering letter to London Hampden said "...I have every reason to believe that the security given to property by recent changes will operate to encourage inhabitants to cultivate the land more systematically than they have in the past." At Federation of the colonies on 1st January 1901 the land provisions were carried over and became the prerogative of the Governor of the State of New South Wales and, in due course, in 1914 to the Governor-General of the Commonwealth vide the Norfolk Island Act 1913.

Also in 1913 the following body of laws affecting land were brought into force: thus for the first time making fuller and more adequate provision for the control of land. All were effective from 24th December 1914:

Law No. 5 Commons and Public Reserves
Law No. 8 Conveyancing
Law No. 10 Crown Lands
Law No. 29 Surveys
Law No. 31 Titles to Land

Over the years Laws No 5, 8, 10 and 29 became Ordinances as numerous amendments were made from the early 1920s. After the closure of the Melanesian Mission in 1922 a Melanesian Mission Land Ordinance of 1923 vested certain areas of the Mission lands in the Commonwealth, for which the Mission was compensated. Further Mission lands were vested in the Common-
wealth in 1937 and 1942, whilst other significant portions were retained by the Church of England. The relevant legislation from 1937 is the Church of England Land Ordinance 1937-1970.  

Crown Lands

In 1976, of the total island area of about 8,500 acres, some 4300 acres is Crown land in the proportions of 2500 leasehold and 1800 reserves, commons, roads, airfield, public buildings and jetties. The power to acquire and control land is vested in the Crown in the right of the Commonwealth Government, and the Minister for the time being in charge of Norfolk affairs is the authority who exercises this power. As there is no legal municipal-type corporate elected executive body the island community cannot "own" its Crown land. The "Administrator of Norfolk Island" is a post provided for legally under Ordinance; the Norfolk Island Council as presently constituted is advisory in nature and not executive (although in recent years it has become the practice for the Administrator and the Australian Government to have more regard to the views of the Council) and the Norfolk Island Public Service is the "Public Service of the Territory of Norfolk Island." Thus, although the island executive is referred to generically as the "Administration", or the "Norfolk Island Administration": and the buildings are referred to as "Administration buildings", no such identity as the Norfolk Island Administration legally exists. Similarly the local community constantly refers to "our revenue" but, like the Crown lands, the revenue is vested in the Crown in the right of the Commonwealth Government.

The Crown Lands Ordinance 1913-1969 is the instrument by which the Minister alienates and grants leases of Crown lands. The Ordinance was amended in 1969 to provide for leases to be granted for business purposes for up to 50 years and for private purposes for up to 99 years. A period of 20 years was fixed for the re-appraisal of unimproved capital value (UCV).
Since World War II the whole question of Crown lease types, categories, UCV, rentals, occupancy and transfers has been controversial. The Administrator's submission to the Norfolk Island Council on these issues in April 1971 reflects the problems associated with this subject. See Appendix F. Whilst in the early post-War years small residential leases were to be had almost for the asking, the matter of who should or should not be granted a lease, and sub-letting, has in recent years, with the increase in land values, been a much-discussed problem in Council.

Some of the issues which are perennially discussed are whether a person holding a Crown lease should be permitted to trade that lease as if it were freehold and secure to himself the total increment in value: or whether the community or the public purse should share in that increment.

The problems put to the Council in April 1971 were considered at the June meeting and deferred. In July a number of councillors resigned over company matters and, after a by-election, meetings resumed in late September. In October the matter was again deferred for certain points to be put to the Minister.42

Clearly councillors had decided that procrastination was the best policy from their point of view. Administration of Crown leases however had necessarily to proceed and the Administrator's submission to the Department of June 1972 was aimed at securing decisions on at least the urgent aspects associated with the renewal of those leases which were due to expire. See Appendix G.

At present the UCV, and thus the rental on residential leases, is re-appraised each 20 years. Council has agreed that business lease rentals should be revised each 4 years but not unnaturally still resists such a short term for other leases.43

Since late 1974, in the light of the lack of an agreed long-range developmental planning policy, for which the elected members of the Norfolk Island Council must bear the responsibility, it has been the policy of the Minister to grant leases only up to
a maximum term of 28 years. This is done against the strong opposition of the elected members of Council. Under existing policy rentals for Crown leases are based on a percentage of the UCV of the land as determined by Commonwealth Government taxation valuers. Some lease rentals are nominal figures determined many years ago but as these leases are renewed or transferred the rental is re-assessed. The 1975 rental policy provides for the following rates:

<table>
<thead>
<tr>
<th>Rental % of UCV.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special purpose leases</td>
</tr>
<tr>
<td>Business leases</td>
</tr>
<tr>
<td>Residential leases</td>
</tr>
<tr>
<td>Rural residential leases</td>
</tr>
<tr>
<td>Rural leases</td>
</tr>
</tbody>
</table>

"Ownership" of the Crown land on which the airfield is located has been a sore point with the islanders since the early World War II years when the land was acquired for defence purposes. See Appendix H. Even in the 1970s councillors still complain that compensation paid in these cases was grossly inadequate. By the yardstick of present day values it no doubt was.

Freehold Land

Even by the turn of the century the island freehold land had been much fragmented through the traditional policy of "parent-to-children" sub-division on the death of a landowner. Thus many small holdings became uneconomic. From before the turn of the century some land was being sold to outsiders who came to visit and decided to settle. By the end of World War II this practice was causing some problems and by the 1960s and 1970s was a major and controversial issue in local affairs. In 1938 there were 4500 acres of freehold; subsequent acquisitions have reduced this to some 4200 in 1976. In recent years there has been much speculative interest in the purchase of both freehold and leasehold land. The availability of outside capital, sometimes in very considerable quantities, has pushed the value of land well above that local residents could be expected to pay.
However, purchase of land and property by outsiders in the 1970s is one thing: occupancy of such land by virtue of the immigration restrictions is another. The tax haven status of the island, certainly up to 1973, made the purchase of desirable land by outside interests attractive.

It was 1967 before a Land Sub-division Ordinance was introduced and this legislation retained the unconditional right for residents to continue sub-dividing their freehold land for the benefit of certain specified relatives. This provision became known as the "family clause". Although this was intended to keep in being a traditional Pitcairn "right" inevitably both Pitcairners and others used the clause for speculative sub-dividing; i.e., by sub-division and conveyance to a relative (or a number of sub-divisions to a number of relatives) and the subsequent freedom to sell, usually at an inflated price, by the relative. This practice did not require the permission of either the Minister, the Administrator or the Registrar but the Pitcairners, whilst of the opinion that this was a legitimate practice in their own cases, usually objected to its use by non-Pitcairn landowners. In May 1969 the Administrator had sent a memorandum to Council in which he advocated a more rational rural land policy. Appendix J. Council, and Council/Administrator, discussions on land matters were protracted and mostly inconclusive. For example, on 5th August 1969 the Land Subdivision Ordinance was listed on the Council agenda and the Administrator had circulated the following memorandum resulting from a special meeting in Committee. The Administrator did not necessarily agree with these resolutions.

"MEMORANDUM FOR COUNCIL

RURAL FREEHOLD LAND POLICY

1. Memorandum 1/3/88 dated 12th May 1969 outlined some factors affecting rural freehold land policy. The subject had been discussed at a special meeting on 15th April and it was again considered at a special meeting of the Committee of the Whole on 15th July.

2. The meeting on 15th July resulted in the following resolutions:

Resolution 1 - S.3(c)(ii) the 'family clause'

"Council approves of the submission of draft legislation along the lines as suggested in paragraph 9 (of memorandum 1/3/88 dated 12th May) for further consideration."
Resolution 2 - Notice of Motion

"Council rescinds its previous motion which read: 'Council agrees that in relation to the subdivision of rural areas the general minimum area will be not less than 5 acres but recognises that in certain areas and in particular circumstances it may be desirable to permit areas of less than 5 acres. However, 2 acres should be regarded as the absolute minimum.'"

Resolution 3 - Rural Freehold land

"In general approval will not be given to a subdivision of freehold land outside an urban area if the subdivision will result in portions of land having areas of less than 2 acre. Each case will, however, be looked at on its merits."

Resolution 4 - Definition of a Public Road

"The definition of 'public road' be included in the Land (Sub-division) Ordinance."

3. The Committee of the Whole Council now reports to open Council.

4. In discussing the above resolutions Council may also wish to include provision in the Land Sub-division Ordinance for the following fees:

   (a) On application to subdivide - $10.00

   (b) On inspection of the Index and Register $0.50 cents

5. The views of Council on paragraphs 2 and 4 is now sought.

28th July, 1969.  (R.N. DALKIN)  Chairman

On Resolution 1 Council recommended no change to the family clause.

On Resolutions 2 and 3 Council confirmed its view that a previous decision to allow rural subdivisions be permitted down to a minimum of 2 acres, should be rescinded and that a half acre minimum be established.

Council agreed to Resolution 4 but recommended a lower fee of $5 instead of $10.

The Chairman was unable to persuade councillors that their advice, if accepted, could well result in ruination of the island environment and its amenity.
Up to 1972 Council persistently refused to advise the Administrator and the Minister to modify the law relating to family subdivisions. Finally, however, the Ordinance was amended in 1974 to prevent the re-sale of freehold land sub-divided under the family clause for five years from the date of sub-division: to require the owner who was sub-dividing to be a resident under the terms of the Immigration Ordinance, and to require that the proposed use of the sub-divided land be approved by Administrator and Council. The island would be a better place had Council recommended this course even a decade earlier.

However, as the original family clause provision related only to sub-divisions resulting in portions smaller than 10 acres many larger holdings were and are sub-divided and sold at attractive prices without restriction.

It became evident at times that it would be sensible for government to purchase or acquire certain freehold land which had over the years been sold to outsiders and which would be likely in the future to be required for public purposes. One such 16 acre block in the centre of the village of Burnt Pine (the only "village" in the true sense on the island) was purchased in 1971 by the Norfolk Island Administration, on the advice of Council, for $70,000. Over the years this land had been sold by its original Pitcairn owner for a few hundred pounds and subsequently conveyed to other owners at inflated prices.

As part of a programme to rationalise sub-divisions an important cadastral map project was initiated in 1968.

In a letter to the Department in April 1971 the Administrator said:

".....JB(a Departmental officer) has raised the issue of land sub-division. Admittedly the present legislation is unsatisfactory in some respects but I feel one should be careful not to over-react in this matter. Again longer-term solutions should probably be sought. An examination of the latest and excellent cadastral map of the Island which shows the land sub-divisional situation in 1968 emphasises a point I have previously made that the Island was already heavily sub-divided even by the 1940s and 1950s, or for that matter before then, although the
results of this sub-division were not, and in many cases are not, self-evident."

In 1974 yet another report was commissioned in an attempt to develop acceptable criteria to assist in considering requests for the sub-division of freehold land. This was prepared by Mr P. Funda of D.J. Dwyer and Associates Pty. Ltd at the request of the Department of the Capital Territory. Mr Funda had been an Assistant Commissioner with the National Capital Development Commission. The terms of reference for this investigation, apart from the need to preserve the rural character and the flora and fauna of the island, were to inquire into and report on:

(a) The sizes and shapes into which land is to be subdivided and the purpose for which the parcels are to be used.
(b) The means of access proposed to be provided to the separate parcels of land.
(c) The extent of the increase in the use of the existing public roads which provide access to the land.
(d) The size of other parcels of land in the part of Norfolk Island in which the land is situated.
(e) The nature of the terrain of the land proposed to be sub-divided.
(f) The ecology of that land and adjacent land and the general character of Norfolk Island.
(g) The provision for sewage disposal from the sub-divided land taking into account existing sewerage outlets.
(h) The restrictions (if any) in the types of improvements that may or may not be erected on the land and the minimum value of improvements that may be erected on the land.
(j) Existing legislation.

Mr Funda's subsequent report was useful in that it detailed the problem since the 1850s and recorded the following subdivisional pattern.

Survey dated 1860 - Kennedy and Jamieson (Appendix Map 3.) Portions No 1 to 157, each of approximately 50 acres, plus Governments reserves of over 200 acres. Records the names of the 78 grantees and later amendments show the Melanesian Mission lands.
Survey dated 1904 - Government Surveyor M.V. Murphy  
Shows the division of the land between the families of the original grantees. 324 lots varying from 1 acre to 50 acres. Additional Reserves established. Subdivisions are long, narrow parallels.

Compiled Plan dated 1934 (Appendix Map 4)  
A Commonwealth Department of Interior compilation showing 954 separate parcels of land. Only one of the original Pitcairn grants remains intact.

Compiled Plan dated 1968 (Appendix Map 5)  
This cadastral map is the most recent version and was compiled by the Survey Branch of the Commonwealth Department of the Interior from aerial photography. Further extensive subdivision is apparent down to two, one half and one quarter acre. Despite the establishment of the airfield and the extension of Reserves, the plan shows 1846 separate parcels. A further 165 parcels, have been added between 1968 and 1974.51

In many of the problem areas Mr Funda reiterated and emphasised what was already known to Government, Administration, Council and populace. He did broadly agree with the land zoning proposals of the 1972 Coldham Report. Mr Funda based his conclusions on the previously recommended tourist and permanent resident population criteria. He also, however, said:

"It is desired ultimately to establish a viable rural economy."

It is the author's belief that his stated wish, however desirable the concept in itself may be, cannot now be achieved on the island. Nor, however much "amalgamation of parcels (of land) into larger and more economically viable holdings should be encouraged and fostered," will any serious attempts be made to establish a meaningful rural economy. Sporadic cattle-raising, vegetable growing and production of poultry and eggs might well be occasionally successful, but the dream of producing most or all of the island's beef requirements locally, and supplying the tourist industry with a regular and acceptable supply of foodstuffs, is unattainable. Islanders are well versed in the polite technique of telling visitors and researchers what the latter want to hear.
Of Mr Funda's eleven general recommendations it is doubtful whether even one has not been stated at least once before in reports, planning documents and Administration recommendations.\textsuperscript{52}

The original 50 acre Pitcairners’ blocks of land were unconditional grants and thus were freehold. In 1859, arrangements were made in cases of intestacy affecting heads of families for the title of the land to be transferred to the surviving spouse and on the spouse's death the property was divided equally between the surviving children. This rule was also largely followed in dispositions made by will. It is primarily because of this policy that over the years many of the original grants have been sub-divided into areas suitable only for residential purposes, and sometimes barely even for that.

The land titles system has posed many problems, and still does. There is no system of guaranteed titles for freehold land and titles are still held under common law.

In 1896 Commissioners J.H. Carruthers and Charles Oliver had dealt with the question of land titles in the following terms:

"Registration of Land Titles. - So far as we have been able to ascertain, no records of grants issued, or of subsequent transactions in connection therewith, exists outside of the Island. It would seem very desirable that copies of all documents dealing with land, and especially deeds of grant, should be retained........

The descriptions in deeds of grant issued prior to a survey of the Island made in 1887 were based on a survey by the sappers and miners about 1859. These descriptions do not accord with the boundaries determined by the survey of 1887, and it was then found necessary to apportion the areas embraced therein as could be best arranged by the surveyor. This, no doubt, was a desirable course to follow, but it is a matter for regret that no steps were taken to amend the original grants to accord with the more recent survey. The differences in the areas granted and those available are generally not great, and as regards the cases where the areas available are in excess of those specified in the description, there would be apparently no difficulty in obtaining a surrender of the original grants, and issuing fresh grants; but objections may be taken by the holders of original grants, who would suffer some loss of specified area by correction....

The question of titles to land under private sales, bequests by will, and what is known as "partition," will be much more difficult to deal with, owing, in many instances, to the absence of definite information as to the particular portions of land referred to, and in others the want of evidence of the right of persons signing the documents to deal with the land. It is not easy to suggest a course of action to meet these difficulties......"\textsuperscript{53}
In 1904 Commissioner Alexander Oliver had dealt with some appeals under the Carrington System introduced by that Governor in the late 1880s and Royal Commissioner Whysall was faced with some similar problems in 1926. The short Titles to Land Law of 1913 had attempted to provide some guarantee in respect of doubtful land deals.

Moves to introduce more up-to-date arrangements e.g. Torrens Title, have traditionally been resisted by the local community and a vigorous effort in 1969 had little immediate result. A lengthy and detailed paper on Torrens Title had been prepared by the Administration and was presented to Council by a pro-Torrens councillor. Although on this occasion a weak resolution was carried to the effect that more information be obtained the reluctant mood of Council in the matter was clear.

In June 1972 Council finally resolved to support the introduction of legislation covering guaranteed land titles. However, it was two years later before Mr D.F. Collins, a retired Registrar-General of Lands in South Australia, visited the island to carry out a study and analysis of the proposal. A subsequent preliminary report setting out the manner in which a guaranteed land title system might operate, together with an outline of the required legislation, was submitted to the Department early in 1975 but it was 1976 before Council finally recommended a Torrens Title system. By September 1976 the matter was in the hands of the Department of Administrative Services and the Attorney-General's Department. The subject is a complex one and the drafting of and passage of legislation might well take years to complete, involving as it does not only a lengthy Titles Ordinance but also significant re-drafting of some dozen related Ordinances: for example, Crown Lands, Conveyancing, Married Women's Property.

This legislative drafting problem, together with the eventual administration of the system and the consequent costs involved, highlights the difficulties of legislating for small-population communities.
At his inaugural speech to the newly elected 8th Norfolk Island Council in July 1976 the Administrator was able to say:

"As a pre-requisite to the introduction of the Land Titles Ordinance, a survey of the island is about half completed. I mention this legislation briefly, only because there still seems some misunderstanding in the community over the purpose of this particular Ordinance. I would thus emphasise that it deals with land titles only, and should not be confused with the subject of land use...." 57

The survey referred to, being undertaken by the staff of the Commonwealth Surveyor-General, will be the first full-scale governmental survey to be completed since 1904, subsequent survey maps of 1934 and 1968 having resulted from compilations.

In 1942 it was decided to transfer the title of the Melanesian Mission lands from the Melanesian Mission Board, Auckland, to the Archbishop of Sydney and the resulting Church of England Land Ordinance 1942 gave effect to this decision.58 The question of certain residual Mission lands was again the subject of correspondence in the early 1970s when the Administrator sought to interest the Church of England in Sydney, the present owners, in releasing unused Church lands for public purposes; in this case as a natural botanical gardens area as suggested by Mr. R. Westerman in his 1968 NCDC report. Detailed searches of land records were made in order to define the lands which might be the subject of negotiation, and tentative proposals were made to the Archbishop of Sydney. See Appendix K. In the ensuing years, however, no further progress has been made in this matter.

To conclude; historically the island has suffered over the years from the lack of a stable and intelligent land policy, particularly in the areas of sub-division, Crown lease conditions and rentals, and in the overall control of land use. As a modern type economy emerged and the desirability of land ownership made itself evident to newcomers, it became inevitable that the control of comparatively large areas of land would pass to the non-Pitcairn element of the populace. Land prices were consequently forced upwards to unreal levels and it took the associated immigration restrictions of the 1970s to bring a slowing down of the increasing land values and land conveyancing. The indications are that this may only be a temporary phase in the island's development.

It took until 1976 before the local people could be convinced that a Torrens type system would operate to their long-term advantage. The subsequent delays occasioned by land surveys and the need for legislation have been significant and completion of the new land titles project is still awaited. Above all, it has been shown that a lack of proper control over the sub-division of land has operated against the public interest.
NOTES


2. The Voyage of Governor Phillip to Botany Bay. Facing p. 86.


5. New Holland Morning Post, 18th October 1791. p.4.


13. Ibid. p.3.


17. Australian Archives. Ibid. p.4.

18. Ibid. pp.4 & 5.


22. Australian Archives.

22A Rev. T.B. Murray. Pitcairn, the Island, the People and the Pastor. p.411.


28. There are a number of sources on the early allocation of Norfolk lands to the Melanesian Mission. The main sources used have been:


   Australian Archives. Chief Magistrate's Correspondence.

   Letters of George Hunn Hobbs. Quoted in Murray and Belcher.


31. Norfolk Island Annual Reports for the years 1 July 1953 to 30 June 1956. Consolidated issue, p. 10, - "Surveys".


34. Lord Augustus Loftus' Land Law of 1885.

35. Correspondence Relating to the Transfer of Norfolk Island to the Government of New South Wales. 12th August 1897. p.25.

36. See Appendix M to Chapter 1.


38. Territory of Norfolk Island. Consolidated Laws. 31st December 1934.

39. Ibid.


42. Minutes of the Norfolk Island Council. 19th October 1971. p.5.


44. Ibid. p.15.


46. Minutes of the Norfolk Island Council. 5th Aug.1969 Appendix A.

47. Ibid. pp.7-10.


53. Correspondence.....12th August 1897. p.22.


The rise of tourism and the increase in the population of Norfolk Island in the 1960s finally made a number of thinking persons realise that some degree of controlled planning and development, enforced by suitable legislation, was overdue. Local conservatism and the dislike of governmental restrictions, however, were significant barriers to be overcome in achieving this but if the physical attractions of the island were not to be destroyed forever then some action seemed to be inevitable. It was, however, to be a long, hard road extending over many years before even a modicum of success was achieved.

Late in 1967 the Norfolk Island Council had resolved to seek professional advice on this contentious question. At its meeting on 21st November the following resolution was passed:

"The Administrator request the Minister to procure the services of an expert from the National Capital Development Commission to advise on town planning and associated problems of sewerage." The Department of External Territories duly sought the assistance of the NCDC and Mr H.L. Westerman, First Assistant Commissioner (Planning) was assigned in February 1968 the task of reporting on the planning requirements of the island. Mr Westerman's subsequent report has been a highlight and landmark in island development but it suffered from a major shortcoming which was none of his doing. He said:

"The request to the Commission did not contain specific terms of reference and it was evident that the Commission's representative would have to write his own brief. . . ."

Thus in embarking upon this important investigation it seems incredible that neither the members of the Norfolk Island Council, nor the Administrator of the day, nor the Department of External Territories saw fit to produce and record criteria, principles or guidelines for an enquiry of this nature. Serious though this omission was, however, it did not deter a person of Mr Westerman's professional calibre. When he visited the island his task, as he said, "became clear" and he eventually defined his own terms of reference as follows:

"1. To assess the probabilities of future growth,
2. To formulate policies to guide the growth in an orderly manner having regard to the particular historical, economic, and recreational assets of the Island, the social and cultural characteristics of its people, and its administrative framework as a Territory.

3. To suggest means of implementing those policies.

4. To identify a programme of action with special emphasis on needs in the immediate future."

Mr Westerman visited the island from 31st March to 6th April 1968 and his subsequent report became available in May. Although the report could be regarded in some respects as being too all-embracing, too clear-cut, and too precise and sophisticated for digestion by the island community it was nevertheless an erudite and valuable document. Some of the main conclusions and recommendations can be summarised as follows:

(a) Subject to certain qualifications, a resident population of 4,000 to 6,000 by 1980 was a possibility.

(b) Provided adequate planning measures were taken, a tourist trade and a tourist population three times the 1968 level would provide a "better range and depth of facilities without detriment to the character of the Island..."

(c) It would be prudent to assume for the purposes of long term planning that the population would be 10,000 by the turn of the century.

(d) Zones for town and for rural and public reserves and lands should be established, and the environment should be preserved.

(e) A Conservation Trust should define areas of historical significance.

(f) Residential sub-divisions in rural zones should not be permitted. Only rural development should be permitted in these zones.

(g) Tourist development outside a town area should be grouped in tourist centres.

(h) A system of scenic roads, bridle paths and walkways should be established.

(i) A distinctive island architectural style for buildings should be prescribed.
(k) Crown leasehold land should not be converted to freehold.

(l) A Developmental Trust should be established immediately, with responsibility for planning in a town area only. Plans of the Trust would be approved by the Norfolk Island Administration, which would have responsibility for all other island planning.

(m) Legislation should be enacted to establish the Development Trust, making residential buildings the subject of approval, extend the terms of Crown leases, control land sub-division and land use, and control all other buildings.

(n) There should be three types of plans for the island, and a consultant should be engaged to prepare them. (i) A long term policy plan (ii) a master plan extending for a period of up to 20 years, and (iii) a series of shorter term action plans.

(o) Until a Master Plan was prepared no further land sub-division should be approved, and building approvals should be limited.

(p) Land for a town centre should be acquired.

Mr Westerman included in his report valuable Notes for a Draft Brief and Suggestions for Regulations. See Appendix A. At a Council meeting held on 1st October 1968 the Administrator (the author) presented for Council’s consideration a memorandum summarising his views on the various Westerman recommendations and suggesting courses of action—Appendix B. Councillors initially had clearly taken fright at the size and scope of the problem, as some of their comments show:

".... he would be in favour of deferring a final decision on the matter.... Mr Westerman's report was ideology and that if it were implemented the identity of the people of the island would be lost.... Mr Westerman's report was out of all proportion to what Council had envisaged."

"Cr Evans said that he felt the ideas contained in the Report would have been successful if the planning had begun in the 1880s..... he felt that the finance needed to implement the ideas contained in the report was just not available. He said he was not in favour of the Land being controlled by a Land Board."

"Cr Randall felt that, like other reports presented to the Council, this one too should be filed away until the particular points it covered were under review."
"Cr Bataille said he felt the island could not support with its limited resources more than 2000 .... he could see no reason why the Report should be adopted." 5

These and other comments indicated that a rocky time was ahead for the reformers. A resolution to defer the matter to a special meeting was carried, the Chairman voting against the deferment. By the time the special meeting had taken place on 15th October much local discussion on the issues had taken place and the resulting resolution indicated that councillors, on the surface at least, appeared to have modified their stand on some aspects of the report. Subject to certain modifications the Administrator's memorandum, i.e., his proposals, was accepted. Councillors saw fit to plan for a resident population of 2000 by 1975 (instead of 6000 - 8000 by 1980), an annual maximum tourist figure of 15000 by 1975 (instead of 35000 by 1980) and a ceiling of schoolchildren at the local school of 350 by 1975 (instead of 450). These Council proposals were in fact reasonable. Council also felt that Westerman's concept of a total resident population of 10000 by the turn of the century could not be accepted as planning data. Council also rejected a proposal to acquire certain cliff areas and foreshores for public purposes, and the proposal to establish the Development Trust. They modified other suggestions. Council concluded that the report contained some very good points, that it had selected the most important aspects as policy, and "discarded those sections which were obnoxious." On the face of even these qualified acceptances the future of the Westerman proposals seemed reasonably assured: but this was not to be the case.

The Administrator forwarded a complete summary of Council's and his own views on the subject to the Department in Canberra on 22nd October 1968. It was March 1969, however, before a lengthy reply was received and it became even clearer that significant delays in achieving progress could be expected. This departmental letter is a good example of the type of planning and associated problems which appeared on the Administrator's desk and which, bearing in mind his small and not always well-trained staff, were to require much time for processing. See Appendix C.

Subsequent to a visit to Canberra in May 1969 the Administrator reported to Council on his return:

"I had discussions at length on Island planning policy. A draft consultant's brief has been under consideration by myself and the Department. It is a more moderate approach to the problem of defining an urban area, and a National Park ..... the Minister and the Department are awaiting the outcome of Council's consideration of freehold land sub-division policy and the
family clause' in the Ordinance.... Mr Hans Westerman especially asked me to again remind Council that no planner ever wishes his plans to be accepted against the wishes of the people."  

Some idea of the frustrations encountered by the Administrator in his dealings with Council on planning, development and associated land sub-division matters can be derived from his August 1969 letter to the Department in which he outlined the problems he was encountering in having Council accept even limited aspects of the overall developmental proposals. See Appendix D. An effort in November 1969 to have even a limited consultant's brief approved, which would delineate a rural area, at a modest cost of $3000 to $4000, was rejected by Council. See Appendix E & E. In February the Administrator had used his casting vote in Committee of Council to force through a resolution to appoint a planning consultant. In March 1970 he again raised the issue and again used his casting vote to secure a resolution on the matter. See Appendix F. Progress in gaining agreement from the Department to a consultant's brief was tortuous and in June 1970 the Administrator had cause to complain to the Department about the time-wasting and over-regulatory controls it was proposed to place on the processing of a draft consultant's brief. Thus the Administrator had his problems not only on the island but also in Canberra:

"To: Territories, Canberra.

095 16 Jun 70 your 69/2917 26 May planning consultant.
I am not in agreement with the approach to urban planning advocated in your memorandum and there are many aspects of your letter which concern me. I will reply fully in due course.

Administrator 16 June 1970"

In July the Administrator gave instructions to a firm of consultants to proceed with the required work, and in August 1970 a reluctant Council recorded a lukewarm blessing to have the work proceed. However, the Council subsequently proposed modifications to the briefing document and the alleged high cost involved enabled Council to retard action until the second half of 1971. In the meanwhile Departmental problems persisted. Appendix G.

Also in July a number of Councillors had resigned in protest at a new Companies Ordinance being introduced. There were no Council meetings, therefore, between July and late September. Thus, together with a good deal of other island business, the subject of planning virtually lapsed for a period, only to be revived during the first half of 1972.

The consultants retained to carry out the first phase of the work proposed by Mr Westerman in 1968 were Messrs Harrison and Grierson and Partners of Auckland, whose surveyor and planning consultant, Mr R.F.
Coldham, had worked on Norfolk Island for various periods over many years and was familiar with the local land, planning, development, population and sociological problems. Mr Coldham's draft Scheme Statement, Code of Ordinances and Planning Map (See Appendix K), the "Coldham Plan", became available in April 1972. In the knowledge that he would be relinquishing his post in August after four years it was almost with a sense of relief that the Administrator despatched a letter to the consultants, as the next stages of the difficult problem would almost certainly be dealt with by his successor. The Administrator said that after further work had been done on the draft Scheme the Plan would be distributed for councillors' initial consideration. There would be a considerable degree of public interest in the Plan and it would be necessary at an appropriate stage to make the Plan available to the public.

The Administrator further pointed out that the then Norfolk Island Council was in its final two months of office and it was unlikely that meaningful consideration of the Plan would be given to it prior to the biennial Norfolk Island Council elections due to be held on 5th July 1972. The Administrator had some firm views on how he felt the Coldham Plan should be presented and processed: Appendix H. On 19th September 1972 the new Administrator and new Council met with Mr Coldham for an initial discussion. At the October meeting Council resolved to make the draft Plan available to the public and this was done. In its editorial on 7th October the Norfolk Islander said:

"The members of the Norfolk Island Council are to be commended on their decision to make available for public inspection and comment, the Coldham Plan. As was pointed out by the Administrator, what the public is receiving for study is 'purely a recommendation by a consultant....... When the plan is passed to the public it will not have a status - it is a recommendation only and Council and Administration have not passed judgement on it.' ...... If we don't hurry up and do something positive there will no longer be any 'Norfolk Island way of life' and as was so aptly stated during Council, 'future generations on Norfolk Island will look at this Council (and the community generally) and either praise them for their foresight or condemn them for their lack thereof.' "

One might infer from these sentiments that the Norfolk Islander stood strongly in favour of some sensible plan but this was not necessarily so. The Norfolk Island Chamber of Commerce and the local Citizens' Association came out strongly in apparent favour of an intelligent and objective assessment of the Plan to be made by the people; but the Chamber's advertisement of 18th November tended to oppose some aspects of the proposals (Appendix J) and the Citizens' Association was decidedly lukewarm.

Local solicitor and entrepreneur Mr N.H. McIntyre remained strongly opposed to planning and left no doubts about his stand in the matter. By February 1973 a "select steering committee" of members of various local associations, plus two councillors, was formed to "consider and refine
the comments and proposals of the Coldham Plan." In March Mr Coldham was requested to clarify certain aspects of his Plan and this he did in a comprehensive statement released through the Administrator. Mr McIntyre's further letter of January 1973 was again strongly opposed to any part of the Plan; he said:

".... the general feeling appears to be that it should be rejected completely. Some people feel that we should have some sort of a plan, presumably to cope with obvious problems which drift along unsolved. The Coldham Plan barely touches on these essential problems......... Community Development Planning has recently been defined as a device of timid people to conceal their inadequacy to dispose of their own problems. ......."

The matter of developmental planning came almost to a halt during the greater part of 1973, partly due to the proliferation of other Council, Administration and community business, especially the ramifications of the Australian Parliament's amendments to the Income Tax Assessment Act as it affected Norfolk Island, and partly because excuses to delay or defer the matter were eagerly sought after by some. For example, the Norfolk Islander in November:

"The question of development planning was also on the agenda for the last council meeting - the same subject had been discussed at the September and October meetings - and it had been moved that the matter would not be dealt with until after the November Council meeting. One of the reasons for deferring the subject was to study the final implications and ramifications of the Income Tax Assessment Act No. 4 of 1973. Councillors agreed that it would be wiser for council to have more time to discuss the Coldham Plan and it was decided to have a special meeting on Tuesday, 20th November to discuss the development plan and the Steering Committee's report on it."

The special meeting of Council was duly held and, after years of investigation, debate and argument the Coldham Plan, or an amended Coldham Plan, and with it the concept of the Westerman Report of 1968, was turned down by Council. At the meeting the Council also considered the report of the Steering Committee which had recommended some modifications to the Coldham Plan. The Norfolk Island Younger Residents Movement submitted a letter to the meeting which urged Council to:

"... give urgent consideration to the final report of the Steering Committee on the 'Coldham Plan' with a view to adopting a development plan for Norfolk Island in the immediate future."

A final letter from Mr Coldham made the points that the Steering Committee had dealt only with the 'scheme statement' of his plan and had ignored the 'inextricably connected' draft code of ordinances;
that the proposed removal of commercial zones from the plan cut right across its whole concept: — "... In other words if Norfolk Island is to develop in an orderly fashion a town centre is a must."; that the proposal to permit 50 foot frontages on blocks in certain residential areas of the island was unsound; and that agricultural zoning should be retained.16

A submission from Minister Gordon Bryant in Canberra was also tabled, this being a final attempt on the part of Minister and Department to make the Council adopt some form of planning:

Canberra
November 1973

"My dear Administrator,

During my recent visit to Norfolk Island it became clear to me that there is a pressing need for a development plan for the Island. I am aware that a Development Planning Steering Committee which has been set up to consider the development plan proposed by Mr Coldham has reported and a special meeting of Council will be held on 20th November to further consider the recommendations of the Committee.

Any plan for the island will need to be supported by legislation and accordingly I have given consideration to the form it should take. My purpose in writing to you at this point of time is to request you to put before the Council for consideration at the special meeting, the broad outlines which I would like to see introduced.

An Ordinance entitled Town Planning Ordinance would set up a Town Planning Board which would comprise of -

A Councillor nominated by the Norfolk Island Council;
The Administrator as Chairman;
Two residents - immigration status at least enter and remain;
a suitably qualified person appointed by the Minister;
an officer, Department of the Capital Territory.

The functions of the Board would be to make recommendations to the Minister in relation to -

.. a broad development plan for the Island which would break up the Island into zones (e.g. rural, industrial, commercial, etc) - the Coldham Plan for example may be acceptable.
.. For each zone a development plan would be prepared which would specify, inter alia, the type of buildings to be erected, e.g. 1 storey residential, 2 storey flats, duplex, etc;
.. uses in respect of particular blocks which would be incompatible with the town plan;
.. the materials which may be used for building construction from an aesthetics point of view;
.. standards of external design and siting which are compatible with the particular zone.

The Board would also be empowered to recommend, in specific circumstances, the use of land for a purpose other than the predominant purpose of a zone, e.g. it could recommend the construction of a hotel in a rural zone if it saw justification
for this use of the land.

All plans proposed by the Board and all policy proposals will be referred to the Minister for approval, but before such submission, interested residents should be afforded the opportunity to offer comments and criticisms which the Minister would have regard to in considering the Board's proposals. The Board would also have power to make recommendations for the review or alteration of a development plan or related policies. Approved development plans and policies would be gazetted, and it would, of course, be necessary to provide penalties for infringement of the plans and/or policies.

Amendment will also be necessary to the Building Ordinance to require the Building Board to comply with the plan and policies under the Town Planning Ordinance before granting approval for building. An appeal against the Minister's decision to the Supreme Court will be provided for in the Ordinance.

This need for orderly development has been long recognised and I consider that the valuable reports by Mr Westerman and Mr Coldham will be of great assistance in the development of a plan along the lines discussed above. However, the need for the introduction of legislation is the starting point and accordingly I would appreciate the views of the Council as soon as possible.

... Gordon Bryant"

The Minister's letter put forward proposals which, whilst at variance with some of the main provisions of the Coldham Plan, would appear to be also aimed at strengthening the authority and responsibility of himself and his Department in Norfolk planning matters. In commenting on the Minister's letter the Pacific Islands Monthly said:

"... Over the meeting was the shadow of the legislators in Canberra in the shape of a letter from Minister Gordon M. Bryant who suggested - maybe 'threatened' was a better word - legislation setting up a Town Planning Ordinance to govern a Town Planning Board on which would sit the Administrator as chairman, an island councillor, two residents, a 'suitably qualified person appointed by the Minister' and an officer of the Department of the Capital Territory.

The board's function would be to make recommendations to the minister regarding a broad development plan breaking the island up into zones. All approvals would have to come from the minister. This was a federal foot in Norfolk's door with a vengeance!

Although divided over the merits of the Coldham Plan, the council was united in its opposition to Minister Bryant's proposals. 'I think we are quite capable of handling our own planning problems,' said Cr Anderson. 'I feel it best for any plan to come from Norfolk Island and not from Canberra as it looks as though it might,' echoed Cr Mackenzie.

With Canberra looking over the islanders' shoulders, all eager to plan for their future, maybe the council will now take the advice of Administrator Air Commodore Pickerd who told the councillors to stop talking about its advisory role and accept more responsibility. If they didn't, warned the Norfolk Islander's editor Tom Lloyd, 'we will be Norfolk in name only'. "
At the November meeting a motion that: "This Council adopt the original Coldham Plan" was debated at length but defeated by 5 votes to 3: the Administrator abstaining. The final resolution recommended the establishment of a purely local Planning Control Authority incorporating the existing island Building Board; the Authority would work "... within a broad policy as defined by Council in matters of development planning, health, immigration and permanent population objectives, using the Coldham Plan as a reference." The resolution was passed: 5 votes to 3. Thus the Council appeared determined to keep the control of all land matters a strictly local affair, and not be bound by any formal plan. One disappointed and far-seeing councillor said that in 50 years time future island residents would be unable to reverse the damage and would ask why the Norfolk Island Council of 50 years ago did not have the foresight to plan for the future.

The whole planning story covering the past decade is a dismal one. The Department in Canberra continues to develop its own proposals: whilst the Council is also said to be devoting time to its own ideas of how planning should be conducted. The Administration has very sensibly accepted the Coldham plan unofficially as a basis for considering development proposals. Nevertheless, in the absence of approved legislation and sound guidelines the problem remains a difficult one to administer. The Norfolk Island Council must bear the responsibility for failing to adopt positive and acceptable planning policies calculated to prevent further ruination of the island environment.
CHAPTER 9

DEVELOPMENT PLANNING

NOTES

1. Minutes of the Norfolk Island Council.  
   21st November 1967.

   Norfolk Island Planning Report. H.L. Westerman,  
   April 1968, p.2.

3. Ibid.


5. Minutes of the Norfolk Island Council.  
   1st October 1968, pp.9-11.


   pp.2/3.

   Letters to the Editor.


15. Minutes of Special Meeting of the Norfolk  


17. Ibid.

18. The Norfolk Islander.  
   24th November 1973, p.4.

19. Ibid. p.5.
Since the early 1960s probably no other aspect of island life has caused more discussion, disturbance, recriminations and bitter controversy than the question of Norfolk Island as a "tax haven" and as an "offshore" base for companies and their operations.

It must be emphasised at the outset that legal avoidance of taxation, as distinct from illegal evasion, whether involving personal income tax or company tax, is almost an age old pastime: and any citizen or organisation is presumably entitled, either on the mainland of Australia or on Norfolk Island or elsewhere for that matter, to ensure that he or his organisation is not paying more in taxation than is absolutely necessary and is required by law. There will, of course, always exist a "shadow area" in taxation legislation whereby an individual holds the honest belief that he is in the right over a particular aspect of taxation affecting him personally. In respect of the same shadow area, however, the Commissioner of Taxation may validly hold the view that he, the Commissioner, is in the right and the individual or company concerned is in the wrong. Tribunal arrangements, and the courts, are available to the citizen to ensure that tax laws are properly and fairly interpreted. Few would quarrel with this basic thesis, although most would grumble at the Commissioner's renowned ability to tax first and argue afterwards, and at the delays and expense occasioned by tribunal and court proceedings.

The history of taxation shows that governments wage an almost constant battle to close loopholes in taxation legislation whilst the people, usually represented by taxation consultants and the accountancy and legal professions, put up an equally as strong fight to convince government that any amending legislation contemplated should favour the citizen rather than the Commissioner. Again, this principle is part of the administrative hurly-burly of any modern state.
Clearly, however, where a government can show that it, and other involved citizens, is being seriously, or even marginally, disadvantaged at the expense of a few, then it is presumably entitled to take remedial action. Such action may involve lengthy investigations, searching enquiries, the machinations of active pressure groups, both within and outside Parliament, and the delays, frequently protracted, inherent in the drafting and passage of complicated legislation.

In the Norfolk Island case the Commonwealth of Australia Income Tax Assessment Act 1936 provided that:

"This Act shall extend to the Territories of Papua and New Guinea, Norfolk Island, Cocos (Keeling) Islands and Christmas Island, but shall not apply to any income derived by a resident of those Territories from sources within those Territories."

Thus effectively, there was no income tax or company tax payable by residents of the island up to 1974; and now, in 1976, except for isolated cases, there is still virtually no personal income tax payable. Nor for that matter are there any rates or appreciable land taxes, local taxes or death duties. To add to the aura of unreality even burial for all by the Norfolk Island Administration is well organised, dignified, — and free. There is a Customs Ordinance which derives some revenue for the island but its provisions could only be described as mild. There are also the usual but extremely modest charges such as motor vehicle registration, grazing licence fees and so on; also a Public Works Ordinance which required most male adults to pay a nominal annual levy of between $10 and $20 per annum, or alternatively perform a given amount of annual public work in lieu. This law was a direct descendant of a similar Pitcairn Island requirement of the 19th century. In 1976, largely as the result of International Labour Organisation agreements to which Australia is a party, the traditional if archaic requirement to perform labour was expunged from the legislation, leaving only the financial provision, and the legislation was also extended to working women.

It was then an overall situation of historically inadequate taxation and company laws that, almost by chance, attracted an initial and solitary legal entrepreneur to the Norfolk scene. This was followed in time by the incorporation and registration of over 1500 companies on the island registry.
and, with the passage of time, the two banks on the island were in the position where tens of millions of dollars were passing through their books as part of the various offshore tax avoidance schemes.

For many years, and as part of the island's own code of laws, a Companies Ordinance had been in force. The report of the Royal Commission for Norfolk Island Affairs of August 1926, the Whysall Report, stated that witnesses had stressed the necessity for a Companies Act for Norfolk Island. Commissioner Whysall pointed out, however, that Ordinance No 4 of that same year, 1926, had been promulgated on 24th March and had made the various Companies Acts of New South Wales applicable to Norfolk Island. In fact, however, parts of the main New South Wales Act, i.e., the Companies Act of 1899, and related acts, were excluded by the 1926 Ordinance in their application to Norfolk Island.²

Be that as it may, the companies law of New South Wales in its much amended form, itself dating from 1899, was in many respects far from being suitable even for that State, a situation which exists to a considerable extent to the present day. The suitability of the legislation for Norfolk Island was even more questionable by the 1950s and 1960s. Nevertheless, the New South Wales legislation, given force by the ten times amended Norfolk Island Companies Ordinance 1926-1971, remains the basic companies law for the island today.

The first company to appear on the island registry in 1932, was a foreign company incorporated in Fiji. Only seven companies were incorporated by 1962 and in the main these were either local trading companies or co-operatives.

Of the 16 new companies incorporated in 1964 all except one were mainland based. By 1964 there were 40 companies registered: by 1966, when 70 companies were incorporated, the total had reached 133.³

Until the 1960s the requirements of the Companies Ordinance of Norfolk Island had been minimal. The company registration fees, annual charges, and associated charges were miniscule and by virtue of insufficient staff, who were themselves untrained, the policing of the Ordinance was grossly inefficient. It was not until late 1968, when the Administrator was provided with a qualified legal adviser who was also the Registrar of Companies, that some semblence of modern control of company activities started to become effective. Thus when the curtain rose on the first act of
Norfolk's serious company operations in the mid 1960s both the Commonwealth Income Tax Assessment Act, and the Norfolk Island Companies Ordinance, the latter deriving most of its force from the New South Wales legislation, and despite their inadequacies, were the statutes by which companies operated and by which both companies and individuals were necessarily guided.

Fully to understand the genesis of the companies on the island it is worthwhile recapitulating the concepts and viewpoints of the first, and almost the only, Norfolk Island company entrepreneur, solicitor Mr Neil Halley McIntyre. In doing so it is necessary also to say something about how he came to be attracted to the island: how he came to view the business opportunities that existed: how he commenced operations: and how his version of the Australian Government's attitude in the matter of company operations conflicted with that of government. Mr. McIntyre's activities were to result in litigation, eventually in extensive and significant amendments being made to the Norfolk Island Companies Ordinance, and important amendments being made to the Commonwealth Income Tax Assessment Act. His activities also, for good or ill, were to have far-reaching political, economic, commercial and social effects on the island.

In 1914, when Mr. Atlee Hunt made the following comment in his Report on Norfolk Island, he probably did not precisely have Mr. McIntyre's type of operations in mind:

"...but the Island does want a limited number of men: with a little money and sufficient enterprise and energy to seize the advantage that this rich island offers." 4

In his evidence to the 1975/76 Royal Commission into Norfolk Island Affairs Mr. McIntyre stated at length how he came to the island, how the tax haven concept was first conceived and put into effect, and how in general he regards the future of the island. Senior counsel to the 1975/76 Royal Commission on Norfolk Island concluded that "The driving force in the efforts to make Norfolk Island a tax haven was Mr. N.H. McIntyre." 5
Mr McIntyre had commenced law practice in Murwullumbah in northern New South Wales and later became a senior partner in a commercial law practice in Sydney (Patience, Parrish and McIntyre). He was thus well acquainted with the intricacies of company law and taxation.

In the development of company operations in Australia subsequent to World War II Mr McIntyre's firm had acted for many overseas companies, primarily from Britain and the United States, which were extending their activities to Australia. In the early 1960s he had spent some time in Nassau in the Bahamas. Nassau possessed tourist attractions, a native-born island culture, and a cheerful population having a religious turn of mind but no great worldly possessions. There were many retired and other settlers, mainly English, and the tax haven status of the Bahamas formed the basis of the economy.

Early in 1963 Mr McIntyre visited Norfolk Island and was immediately struck by the parallels in the features of its life style and economy which he had observed in Nassau. There were, of course, also some significant differences. He has emphasised in his writings that Norfolk possessed a backward economy, a pleasing and quiet environment, a general lack of interest from outsiders, poor communications, a small population, and a general air of laissez faire. He felt that the "only hope for the island" lay in what he had interpreted as the then Australian Government's official policy of encouraging people from overseas to come to tax free living on Norfolk in pleasant enough isolated surroundings. One of his first queries, or objections, and a not unreasonable one, was why residents on Norfolk Island were apparently obliged to pay New South Wales stamp duty on their cheques.
Mr McIntyre made two further visits to Norfolk in 1963 and subsequently had a number of interviews with the Minister for External Territories, the Hon. C.E. Barnes, and the Secretary of the Department, Mr G. Warwick Smith. His main theme was to suggest that Norfolk should develop on what he termed the "Nassau Plan", - a tax haven - including a hotel of "international standard" to provide for "limited tourism."\(^6\)

As a result of these discussions Mr McIntyre states he was informed that no government could bind successive governments in matters of policy, but no change in the then policy towards the island was expected for at least ten years. The idea was said to have been received with apparent enthusiasm by the Norfolk Island Administration and by the Department.\(^7\)

At the end of 1963 Mr McIntyre suffered a stroke (an event which apparently had anything but a deleterious effect on the strength of his personality, his astuteness, his drive and determination, and his capacity to undertake strenuous international and other business activities). He subsequently formed an initial Norfolk Island company and a trustee company, negotiated the lease of a Georgian "ruin" on the island, initiated legal and accounting services, and won a mandamus case in the Supreme Court of Norfolk Island, Mr Justice Eggleston presiding.

Mr McIntyre finally "retired" from his mainland interests and settled permanently on Norfolk Island in 1965. Subsequently he became a consistent and vocal critic of the policies, methods and decisions of the Australian Government, the Norfolk Island Council and the Norfolk Island Administration over numerous aspects of island policy. He was highly critical of the thwarting of his plans to arrange the building of a $750,000 hotel of "international standard", the alleged equivocation of the Australian Government in not confirming to the world the status of the island as a tax haven, and the attitudes of the Australian Treasury and Taxation Office towards his activities.
The schemes of arrangement whereby Norfolk Island was used for tax haven purposes were many and varied. The basic requirement for any programme involving the use of the island was for an individual or company to desire to reduce his immediate liability to income tax or his family's future liability to pay estate or probate duty. As stated, the Income Tax Assessment Act provided that the Act should extend to Norfolk Island, but should not apply to any income derived by a resident of the island from sources within the island. Under the provisions of the Act the definition of a resident also included a resident company, and it was by use of these resident companies that income which would otherwise have been subject to income tax in the hands of a recipient Australian resident, could be channelled into the tax free Norfolk area. There were many adaptations of this basic concept and gradually the schemes, originally utilised by Australians, became known to and used by overseas concerns moving funds into Australia.

In the case both of Australian tax avoidance schemes, and international companies formed to take advantage of Norfolk's fax-free status, the companies used the names of local persons which could not be linked with the company entrepreneurs. Thus local persons appeared as nominee shareholders and officers of the companies. It was normal practice for seven resident persons to receive a small fee, usually $10, to allow their names to be used in company memoranda and articles of association. At the same time, they signed blank share transfer forms; thus the names on the public register did not reflect the true ownership of companies.

It was important to ensure, however, that companies were not only properly incorporated on the island but also that they did not carry on business in Australia, or have their central management and control in Australia, or have their voting power controlled by shareholders who were resident in Australia. As to the minimization of estate and probate duties residents of the island were not subject to these duties on their island.
assets and no island legislation covering these matters existed. An Australian resident, therefore, or for that matter any overseas resident, by organising his affairs so that his estate consisted solely of an investment in an island resident company, and by creating a will on the island appointing a resident executor, could legally avoid the incidence of estate duties. This type of programme was usually combined with a gifting arrangement: the classic gifting arrangement used as a tax avoidance device being the "Gorton model," (nothing to do with Prime Minister Gorton) and this type of scheme, even in Australia, was only brought to an end in March of 1974 by virtue of a Full High Court judgement.9

In the case of avoidance of company tax the classic Norfolk situation involved the use of two associated companies. By this means it was possible to obtain a legal island source for the relevant income. The following example will clarify this. A resident of Australia, X, wishing to purchase as an investment a block of flats on the mainland for $200,000; from this investment he hoped to receive a return of 10% per annum, i.e. $20,000, before tax. If he set up a single Norfolk Island company to own the flats then the company would have an Australian, and not a Norfolk Island, source and the rents received would thus be subject to Australian income tax. However, if our Australian resident formed two Norfolk Island companies then the taxation exemption worked as follows:

(a) X formed a private company A and incorporated it on Norfolk Island. He lends $200,000 to this company A.

(b) X forms a second private company B and also incorporates it on Norfolk Island. Company A lends company B $200,000 at 10% interest.

(c) Company B buys the block of flats in Australia.

(d) Company B received $20,000 "profit" in the form of rentals from Australia on which it would normally be clearly assessable, but company B claims that total as a deduction for the interest it has to pay to company A on its loan. Company B therefore had an Australian income of nil.
(e) Company A was clearly not taxable in Australia because the source of the interest received by it was solely from Norfolk Island.

(f) The tax free funds accumulated by company A were then available to X to meet his requirements.

There were many variations of this scheme. The actual arrangements used in a given case depended on the particular circumstances, the applicable State laws, the personal preferences of individuals, and the astuteness of accountants and lawyers. Other schemes took advantage of the fact that S. 128A(1) of the Act specifically excluded residents of Norfolk Island (and some other Territories) from the provisions requiring the payment of withholding tax.

One important scheme involving very large sums of money concerned the flow of investment capital from overseas into Australia. Such funds entering the country in the normal manner would be subject to an overseas withholding tax at source, and also to Australian income tax payable on the interest from the investment funds. However, by channelling such funds through Norfolk Island it was possible, by the use of island incorporated intermediary companies, to avoid payment of Australian income tax on the interest derived from these investments. This withholding tax scheme, involving as it did very considerable sums, inevitably became the cause of frequent and sometimes bitter exchanges between the company entrepreneurs, the Government in Canberra, the Norfolk Island Administration, the Norfolk Island Council, and the local populace.

Norfolk Island is part of the Australian currency system. Banks on the island stand in precisely the same relationship to their head offices in terms of control, area management and inspection, and so on, as do any mainland branches. Thus there is an entirely free flow of funds between the island and the mainland: there is a free flow in both directions between the island and overseas countries for sums up to $A50,000, and above that sum Reserve Bank Exchange Control approval must be obtained in the same manner as mainland bank branches.
Very large sums of money, up to $M10, have been involved in single transactions between overseas countries and a Norfolk Island bank. 10.

In giving evidence to the Royal Commission Mr McIntrye said that in 1963 he visited the Department of External Territories in Canberra. He said:

"I discussed the position and prospects of the Norfolk Island economy and suggested that it might develop on what was referred to for a time as "the Nassau plan" - as a tax haven and with a hotel of international standard to provide for limited tourism. This would depend on their being no change in Australia's fiscal (i.e. Taxation and other imposts) policy. I was informed that no government would bind successive governments. However, no change in the then policy was expected for at least ten years or in the foreseeable future beyond ten years." 11

No confirmation was ever forthcoming either from the Department or the Minister concerning the above viewpoint. On the contrary, there is much correspondence from government expressing the opposite view. In his final address senior counsel to the Royal Commission said:

"Mr N.H. McIntrye was unable to provide any documentary proof that the Minister charged with the administration of Norfolk Island or the Commonwealth Treasury had ever said that it was Government policy to allow Norfolk Island to develop as a tax haven. The documentary material is indeed the other way. Mr McIntrye made available much correspondence he had over the years on the subject with Australian Ministers or officials, (Exhibit ). However, we submit that a dispassionate reading of all the material on the point does not justify a belief in official Australian backing for the use of Norfolk Island of a haven from taxes otherwise payable in Australia. To establish such a policy it is necessary
to show more than that a particular Minister or a named public servant had been told that Norfolk Island was being used as a tax haven. It is not enough to say "they knew". No doubt the Australian authorities did know in a general way that Norfolk Island was being used as a tax haven and one expects that the knowledge was accompanied with a resolve to keep its continued use as such under review. This creates no policy favouring tax minimisation activities.12

All of these activities resulted in many pressures and tensions on an Administration, a Council and a population ill fitted or prepared for involvement in such machinations. Inevitably the Courts became involved, the island found it necessary to look closely at its own position and its own legislation to protect its financial and other interests: and, primarily, the Australian Government realised that action must be taken to control the tax avoidance activities.

By mid 1966 Councillors had begun asking occasional questions in Council concerning the number of companies registered on the island, and the number of genuine local companies involved.13 In August 1966 the then Administrator told Council that all Territories except Norfolk Island had adopted the "Uniform Company Law" and although he felt some subsequent action would be necessary he said the matter could be left in abeyance for the moment.14

By 1967 the Norfolk Island Council and the Administration were becoming aware that company operations on the island were looming as a real problem. In July of that year a Council resolution was passed in the following terms:

"The Administrator write to the Minister expressing Council's concern at the number of companies registering on Norfolk Island, apparently for the purpose of tax evasion and that the Minister express his views on the subject."
In speaking to the motion the mover said that if the situation continued without some concern being expressed then the Minister would assume that Council condoned the practice and the Government may see fit to bring in tax laws, thereby penalising the island residents. The fear of "tax laws" was ever present in the minds of islanders: Pitcairners and mainlanders alike.

Up until 1967 company incorporations, and registrations of "foreign" (i.e., outside, mainland, inter-State and international) companies had been as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>No of Companies Incorporated (i.e., companies formed on the island)</th>
<th>No of Companies Registered (i.e., incorporated elsewhere but registered on N.I.)</th>
<th>No of Companies Remaining on the Register(Dec)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1932-63</td>
<td>22</td>
<td>2</td>
<td>24</td>
</tr>
<tr>
<td>1964</td>
<td>16</td>
<td>-</td>
<td>16</td>
</tr>
<tr>
<td>1965</td>
<td>23</td>
<td>-</td>
<td>23</td>
</tr>
<tr>
<td>1966</td>
<td>58</td>
<td>12</td>
<td>70</td>
</tr>
<tr>
<td>1967</td>
<td>156</td>
<td>32</td>
<td>188</td>
</tr>
</tbody>
</table>

In August 1967 Councillors expressed the view that they were not sufficiently experienced to discuss and attempt to bring the local company laws up to a standard sufficiently high to protect the community. They felt that a qualified person from the Companies Office in Canberra should be made available to advise them. As a Council delegation was shortly to proceed to Canberra it was resolved that the delegation also discuss company laws for the island.

In October 1967, during this visit, Councillors told the Minister that companies were continuing to be registered and incorporated on the island, presumably for the purpose of tax evasion, and they did not condone this practice. The Minister said he was discussing the matter with the Treasurer. At that time the fee for registration of a company was only $7 and there was Council discussion concerning the desirability of raising this to $250, or even $500, with associated fees being increased in proportion. It is relevant to note here that
some of the eight Councillors, notably one or two, were subsequently themselves to become involved in company operations and to oppose strongly the concept of controlling legislation.

At the inaugural meeting of the Fourth Norfolk Island Council on 3rd July 1968 the new Administrator said:

"There has been considerable activity and interest in the matter of registration of companies on the island, notably during the first half of this year. This is a development in which the Government, the Administration and the Council are likely to be deeply involved in the future. Business development on the island, I'm sure, is welcome if its acceptable to the Council and the Government, and if it's genuine". 19

During the second half of 1968 stronger moves were being made to at least gain more revenue for the island by increasing the charges under the local Companies Ordinance and to provide more information in Company annual returns. In February 1969 this amendment was made as a matter of urgency: i.e., it was referred to the Norfolk Island Council after, rather than before, being made: a practice which is provided for in the Norfolk Island Act, although used infrequently. As expected the amendment did not diminish the number of companies seeking incorporation or registration.

Pressures from company operators also started to increase in attempts to oppose these or any other moves, See Appendix A. In late 1969 Mr McIntyre wrote to the Commissioner of Taxation claiming that the latter was exceeding his authority. The subsequent exchanges between the Treasurer, the Prime Minister, the Minister for External Territories, the Leader of the Opposition and Mr McIntyre made clear the Government's position that it did not consider the island as "a place of financial resort", that the Commissioner of Taxation had not exceeded his authority, and that the Commissioner was preparing proposals regarding the use of the island as a tax haven. See Appendices B - B4.

Proposals by company entrepreneurs early in 1970 for the establishment of a local "Mutual Fund" and a "Stock Exchange" were resisted by the Norfolk Island Administration. Appendix C. By April 1970 the Treasurer held the strong view that "Norfolk Island needs to be taxed much more", a not unlikely Treasury viewpoint. The Taxation Office, whilst agreeing, felt that
they could do little under the then existing laws. See Appendix D.

Mr McIntyre maintained his pressure on the Norfolk Island Administration in an endeavour to meet his requirements (Appendix E) and the Administration pursued the question of introducing the provisions of the so-called States Uniform Companies Legislation into the Territory. Appendix F.

During most of 1970 there was a good deal of discussion on the island and within departments as to how a more reasonable level of revenue could be derived from the company activities, and how those activities could be properly controlled. Appendices G and G1.

In July of 1970 a new Council was chosen at the bi-ennial elections. In his inaugural speech to the Council on that occasion the Administrator, in referring to companies, and clearly taking a cautious and soft line of approach, said:

"...and the policy of supporting the continuance of company activities on the island, without at the same time over-encouraging or permitting an avalanche of this type of development, is sound." 20

By November 1970 the question of some Councillors' "pecuniary interest" had become an issue, especially in relation to their voting rights within Council. Section 56 of the Norfolk Island Council Ordinance relating to the disclosure of interests in contracts in respect of which Council proposed to tender advice to the Administrator had been invoked by the Chairman, i.e., the Administrator. As a result, at the meeting on 3rd November, four (of the eight) Councillors who had declared their interest in company matters withdrew from the meeting when the Chairman denied them the right to vote on a company issue. The meeting was thus necessarily adjourned for want of a quorum. See Appendix H. The Administrator's Legal Adviser subsequently prepared an advising on this subject which tended, probably not unnaturally, to support the Chairman's action. However, at the re-convened meeting held on 10th November, for which the Chairman had prepared a memorandum, it was resolved that the matter should be referred for advice to the Attorney-General's Department and this was accordingly done. See Appendices J and K.
15.

The Attorney-General's ruling became available in January 1971 and, unfortunately for the Administrator, the advice favoured the four objecting Councillors rather than the Chairman. However, on such matters where much heat is generated in Council over important issues affecting the island, where radio-telephone communications were then non-existent, and where a Chairman must make on-the-spot judgements to the best of his knowledge and local advice, he can probably be forgiven for not being right 100% of the time. The Chairman's subsequent memorandum to Council on this and two other issues is at Appendix L.

During late 1970 and into 1971 the two related aspects of changes to the Norfolk Island Companies Ordinance and changes to the Commonwealth Government Income Tax Assessment Act proceeded in parallel.

Resulting from the local upheaval over companies, taxation and Commonwealth taxation investigations, there were outcries against the Government's alleged powers to legislate in island affairs. These reactions resulted in much publicity in mainland and local press. In 1971, when new and voluminous amendments to the Companies Ordinance were brought down, five (of eight) Councillors resigned over the use by the Administrator of his casting vote, as well as his deliberative vote, in securing the passage of the new Ordinance: three Councillors being absent from the meeting.

The new Ordinance brought a number of new provisions to the antiquated NSW legislation: e.g., investigation and prosecution, prospectuses, allotment of shares, audit, and an annual filing fee of $250 per non-local company.
Influences outside the island, where financial interests were concerned, made considerable play at times on the proposal to bring down the much enlarged local Companies Ordinance of 1971. A Mr Graeme Skinner, a Melbourne solicitor and accountant having extensive company interests on Norfolk wrote a series of lengthy letters to the Norfolk Island press. An example is his letter in which he advocated measures which could only be regarded as extreme:

"...Under the circumstances in which the proposed Companies Ordinance was forced through the Council by the Administrator (the author) he no longer merits the trust of the community.... Let me tell you that those within the pay of the Government who draft such documents are often incompetent and so impelled by their misguided desire to achieve control over the ordinary citizen that many Acts and Ordinances reflect the nature of their authors.....

There is one legal remedy and that is to issue a Writ of Prohibition seeking an order to prevent the Governor-in-Council recommending the making of the ordinance.... To do this you would have to have a strong council resolution or a referendum rejecting the ordinance... The alternative is to commit some legal offence under the ordinance when it becomes law and raise this issue as a defence if prosecution should follow....

There is another remedy and one which I am sure will be avoided by the government at all costs and that is to challenge the total legal status of Norfolk Island for preference not in the High Court of Australia but through an English Court. There are strong reasons for believing that such an action may succeed...

There is still another way and that is to literally take the Administrator and pack him off back to Australia on the next aircraft and announce or threaten secession from the Commonwealth.... The whole future of the Island may be at stake on this one Ordinance."  

One series of some 12 Norfolk companies were controlled by Mr Skinner for tax minimisation purposes. The directors of these 12 companies were an island councillor and his relatives. The financial operations of these companies ranged in scale from about $A250,000 to $A1,250,000 annually.  

The same councillor was associated in various ways with some 120 companies on the island.
By 1971 the figures for the number of companies on the island register had risen as shown:

**Number of Companies on the Norfolk Island Register**

<table>
<thead>
<tr>
<th>Year</th>
<th>New Incorporations and Registrations</th>
<th>No. Remaining on the Register (Dec.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>480</td>
<td>774</td>
</tr>
<tr>
<td>1969</td>
<td>296</td>
<td>972</td>
</tr>
<tr>
<td>1970</td>
<td>382</td>
<td>1354</td>
</tr>
<tr>
<td>1971</td>
<td>296</td>
<td>1571</td>
</tr>
<tr>
<td>1972</td>
<td>166</td>
<td>1452</td>
</tr>
<tr>
<td>1973</td>
<td>118</td>
<td>1328</td>
</tr>
<tr>
<td>1974</td>
<td>102</td>
<td>1294</td>
</tr>
<tr>
<td>1975</td>
<td>21</td>
<td>1032 24</td>
</tr>
</tbody>
</table>

The revenue from registration fees over the years showed a marked rise as more companies registered and the various fees were increased. Prior to the end of the 1969 financial year company registration fees were not shown in the annual revenue returns as a separate item but were included with "Court Fees and Fines." They were however comparatively small until 1965 and increased slowly to 1968. Subsequent company revenue figures for the financial years shown, to 30th June, are as follows:

**Annual Revenue from Company Fees**

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenue ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>22,455</td>
</tr>
<tr>
<td>1970</td>
<td>43,401</td>
</tr>
<tr>
<td>1971</td>
<td>51,403</td>
</tr>
<tr>
<td>1972</td>
<td>88,653</td>
</tr>
<tr>
<td>1973</td>
<td>163,814</td>
</tr>
<tr>
<td>1974</td>
<td>145,491</td>
</tr>
<tr>
<td>1975</td>
<td>197,000</td>
</tr>
<tr>
<td>1976</td>
<td>145,000</td>
</tr>
</tbody>
</table>

An increase in fees was introduced in 1969.
A second increase in company fees was introduced in July 1971.

These figures reflect the fact that, as expected, the increase in the fees brought about by the amendments to the Norfolk Island Companies Ordinance in 1969 and 1971 did little
to deter the company operators from continuing to use the facilities of the island to their best advantage. However, the large increase in revenue in 1974/75 was due to the outcome of extensive Court actions against defaulting companies (155 cases between October 1974 and June 1975) resulting in over $100,000 in deferred payments being made.\(^{26}\) The gains to the local revenue were significant but, paradoxically, as work in Canberra on the amendments to the Income Tax Assessment Act continued, the prospect of an eventual decline in the local revenue bonanza loomed large.

The introduction of the amendments to the Commonwealth Income Tax Assessment Act, No 4 of 1973, retarded the growth in company revenue to some extent, but the 1976 figure was still sizeable. The effect was not so immediately apparent insofar as the number of new companies registering was concerned, but after 1973 an increasing number of companies on the register became defunct or moribund and the legal processes to strike these off had to be put in train. 280 companies were struck off in 1974/75.\(^{27}\)

In June 1972 the Treasurer, Mr Snedden had announced that action was proceeding to close Norfolk Island taxation loopholes. It was August 1973, however, with a new Government in power, before Mr Crean as Treasurer made his second reading speech on the Bill. For once there appeared to be accord between the Government and Opposition benches on the course to be pursued. See Appendix M.

Mr Crean made it clear that the Government proposed through the Bill to put an end to Norfolk as a tax haven, as well as pre-empting the use of Cocos Islands and Christmas Island for these purposes. He said that the Bill aimed at a fair balance between the interests of Islanders and the interests of the Australian tax-paying community. He commented on "how the unscrupulous can wreak damage upon the innocent."\(^{28}\)

The legislation was important and far-reaching in its effect on Norfolk Island but, despite the subsequent amendments to the Act, interest in the island for certain types of company operations continues, especially in the area of probate and stamp duty. The
time-honoured practice of seeking loopholes in legislation will continue in the future and loopholes will probably be found.

Taken altogether, it is almost certainly a fact that company operations on Norfolk Island whilst undoubtedly providing substantial financial benefits for some Australian mainland citizens, some overseas entrepreneurs, and some Norfolk-based incomers, as well as providing more modest rewards for a sector of the resident island community, have in the longer term resulted in social, economic, commercial and sociological results which the island would have been better without.
CHAPTER 10
A TAX HAVEN AND COMPANIES

NOTES


5. (i) 1975/76 Royal Commission. Evidence of Mr N.H. McIntyre. pp. 2274 et. seq.
    (ii) Ibid. Senior Counsel's Final Address. p. 97.


7. Ibid.

8. The sources used for the section on Taxation Avoidance Schemes have in the main been derived from Departmental and Administration papers and studies, and from the financial press: e.g., Rydge's Journal, the Financial Review.


NOTES TO CHAPTER 10 - Contd.

19. Administrator's Speech to the inaugural session of the 4th Norfolk Island Council. 3rd June 1968. Minutes of the N.I.C.
24. Ibid. Evidence of Mr D.J.Rodgers. p.113.
27. Ibid. p.131.
PHILIP AND NEPEAN ISLANDS
FROM NORFOLK ISLAND - 1970
(N.I.Administration)

THE ERODED MOON-LIKE SURFACE
OF PHILIP ISLAND - 1970
(N.I.Administration)
Government and the populace have inevitably been involved over the years in the conservation of the natural and man-made environment of Norfolk Island. Most islands possess in varying degrees some unique characteristics of flora, fauna, climate, natural amenity, landscape, architecture and so on which go to make up the whole of the environment of living. Norfolk is indeed well endowed in this regard and the conservation of its natural and other beauties has been the subject of debate and discussion, individual dedication, a significant slice of outside expert and sometimes not so expert advice, and local political wrangling.

The natural charm of the island lies largely in its development as a small but uninhabited and isolated land mass from its geological genesis in the lower Miocene to 1788, together with its unique landscape and its possession of a fine collection of Georgian era buildings, relics of the second penal settlement. The difficulties of sea communications with the island, which has no harbour, and the lack of an airfield until 1942, has also enhanced its isolation and thus tended to preserve its character. In October 1774 Cook found the island to be covered by an almost impenetrable mass of trees, vines, shrubs and undergrowth. Particularly in evidence was the huge Araucaria excelsa (or A. heterophyla) the Norfolk Island Pine. In 1788 Philip Gidley King and his small party of marines and male and female convicts, only 23 in all, had made a start on clearing trees and undergrowth to establish agriculture in their new settlement.

Geologically Norfolk, and nearby uninhabited Philip and Nepean Islands, form part of the eastern escarpment of "Tasmantis", the great New Zealand geanticline which extends from north of New Caledonia to the south island of New Zealand and out to the eastward of Chatham Island. Lord Howe Island forms a western outrider of that same geanticline. Thus Norfolk has developed geologically in isolation for some two to three million years in a similar manner to Hawaii and some other Pacific volcanic islands; but, typically, it has taken man less than two hundred years to invoke many changes. Nevertheless, in recent years, notably since World War II and especially since the early 1950s, it has been realised that significant efforts would need to be made in order to preserve what remains, and many individuals and organisations have contributed to this objective.

A number of specialised studies have been made of various environmental aspects, some of them quite early. The botanist Alan Cunningham
visited Norfolk in 1830, leaving a valuable account of its flora; for his
trouble he was robbed by convicts on Philip Island. The reforming Commandant
of the second penal settlement, Captain Alexander Maconochie, wrote an
important 1844 note on the geology and physical character of the island. Geologist J.E.Carne published a report in 1885. In more recent years
numerous reports have contributed much to the knowledge of the island's
ecology and environment; to name some of the more important:

Geology: Laing; Speight; McDougall; Stephens & Hutton;
Coleman & Veivers.

Botany: Laing; Green; Turner, Smithers and Hoogland.

Forestry: Lane-Poole; Slinn; Benson.

Ornithology: Hull; Mathews; Disney & Smithers.

Entymology: Smithers; Turner.

Ichthyology: Waite.

Mollusca: Iredale; Fleming.

Conservation Generally: The Australian Conservation Foundation.

Historic Buildings: The Australian Council of National Trusts;
Clifton; Lucas; Limburg; Cox.

In more recent years the spate of visiting experts has sometimes
seemed self-perpetuating, and the resulting action negligible; e.g.,

"Mr J.J.Huston, Director, Conservation and Agriculture Branch,
Department of the Capital Territory, visited the Island in
July/August 1973 to advise on soil erosion generally, offer
advice about the way in which rabbits might be eliminated
from Philip Island, and comment on erosion on Philip Island..."

"Mr G.A.O'Meara, an experienced conservation officer from the
Department of the Capital Territory, visited the Island in
June 1974 to offer practical advice on, and give assistance
with, conservation and soil conservation matters raised in
the report by Mr Huston, mentioned earlier."  

Clearly therefore the island has not been short of investigation
and advice, expertise in the matter of its preservation, and interest to
scientists and others. How or whether government has been able to utilise
this advice and, where appropriate, put it to future practical use, is
another matter.
Subsequent to World War II it was realised by a few thinking persons on the island that a new approach to the overall subject of conservation was necessary. The increase in tourism, the building development and potential development, population increase, land sub-division and so on, all highlighted the need for more activity and legislation in the field of conservation if the natural amenity and beauty of the island was not to be despoiled. Even as early as a hundred or so years ago this had been raised as an issue. In 1878 there had been objections to the application of a Sydney firm which was seeking a lease to secure the rights to recover guano from Nepean Island and other islets adjacent to Norfolk. Governor Sir Hercules Robinson had sought the views of the Island "House" on this matter and that body refused the application.

In the annual reports for the 1920s, 1930s and 1940s agriculture, livestock, forestry and plantings in public reserves came in for discussion, but the reports are largely silent on the subject of flora, fauna and conservation. Small sums were spent on the "maintenance of government buildings" from time to time but this expenditure was aimed more at the essential repairs of buildings in day to day use rather than on maintenance, much less restoration, of the colonial Georgian structures.

During 1956 a start had been made on some erosion control, especially overlooking the historic Kingston area; and a soil survey was carried out in 1954 by the CSIRO. Some work over the years was also undertaken in the area of plant diseases and three ordinances on this subject were introduced between 1915 and the mid 1950s. It was 1967 however before a local Flora and Fauna Society was formed and this body has been most active in stimulating interest in the field of conservation, preservation of sanctuaries and reserves, and pressing the Norfolk Island Council, the Administration and the Australian Government to legislate for meaningful conservation measures. In late 1967 the Society was responsible for gaining the interest of the Australian Conservation Foundation in the problems of the island. In September of that year the Foundation sent an expert team to report on the problems and, headed by the highly qualified Professor John S. Turner, Professor of Botany at Melbourne University and supported by Mr Courtenay Smithers, an entymologist and Deputy Director of the Australian Museum in Sydney; and by Mr R. Hoogland, a plant taxonomist of the CSIRO, the team produced a classic and most valuable report "The Conservation of Norfolk Island", which remains the definitive work on the overall need for an island conservation policy. The report concluded that there was an overwhelming scientific, ethical and economic case for a vigorous programme of conservation to be set in train and pursued by the Commonwealth Government,
the Norfolk Island Administration and Council, and the populace generally. The Foundation report, known generally as the "Turner Report", became available on the island in mid 1968. An earlier report on island planning and development, the "Norfolk Island Planning Report" compiled by Mr H.L. Westerman of the National Capital Development Commission (the "Westerman Report") had been received a short time earlier and was considered initially about the same time as the Turner Report. The Westerman Report is dealt with in Chapter 9.

The processing of the Turner Report posed a major task for the Norfolk Island Council and for the Administrator. Not the least of the problems to be faced was the local political aspects of a report which, whilst in itself highly commendable, tended in parts to run counter to the traditional "rights" of the Pitcairn community and was thus in some respects seen by some as a threat to those rights. Furthermore, even resolutions by Council supporting a particular course of action, such resolutions themselves sometimes difficult to force through, did not necessarily mean that full support, either within or outside the Council, would in fact be given to such a course. Councillors, and sometimes sectors of the populace, were not infrequently seen overtly to support a particular activity but privately to have reservations as to how such an activity might or might not be furthered.

In September 1968 the Minister, through the Department of External Territories, sought Council's and the Administrator's views on the Turner Report. In submitting the proposals to Council Administrator Dalkin said he felt that (i) Council's advice in the matter would need to be consistent with that given in the case of the Westerman Report; (ii) some of the comments and observations of the Turner Report might be open to question; for example, the statement that "The whole economic future of the island is bound up with an overall policy of conservation..." might be slightly overstating the case; (iii) many tourists would regard motor vehicles as a necessity on the island; and that (iv) despite the natural attractions available to the visitor, "duty free" shops would continue to be patronised. The Administrator then submitted a Notice of Motion to Council in which he suggested the action that should be taken on the Turner recommendations. See Appendix A. On 15th October, at a special meeting, Council considered the matter and, although to some extent modifying the Administrator's suggestions and recommendations, substantially accepted the major conclusions. Implementation was to be another matter.
Council's resolution read:

"Council approves in principle the adoption of the recommendations number A1, 2, 3, 4, and 5 of the Turner Report subject to the following conditions:

that appropriate action be taken to implement those recommendations;

that priorities for such action, including costs and financial implications where applicable, be submitted to Council by the Administrator for Council's approval; that Council be empowered to modify such aspects of the Recommendations as it considers necessary;

that appropriate consultation take place between the Administrator and Council on the various stages of the proposals;

that Council be kept informed of progress in the implementation of the Recommendations;

and that the remaining recommendations numbered B1 and 2 of the Report be deferred for further appropriate action by Council."

See Appendix B.

Recommendation B1 referred to the need for a senior officer of "Canberra's Planning Authority" to visit the island and report on development. This action had in fact been completed by the time the Turner Report was printed: i.e. the Westerman Report. Recommendation B2 referred to the need for the National Trust of Australia to provide advice on the preservation and reconstruction of second penal settlement buildings. This action was also later undertaken to great advantage.

The inclusion of the words "in principle" had the usual modifying effect on the force of the resolution. One main recommendation was the intention to establish by Ordinance a nature reserve or "National Park" in the scenic and scientifically fascinating Mount Pitt area. Although already theoretically a reserve by virtue of the Regulations proclaimed under the existing Commons and Public Reserves Ordinance 1936 the Mount Pitt Reserve was inadequately fenced and was thus available to the depredations of the freely grazing cattle - a "Pitcairn right" - and accessible to some logging of the Norfolk Island Pine. The provisions for the protection of the flora and fauna were also quite inadequate. Some sectors of the community strongly supported the concept of a National Park, small though such a proposed area may be; others, especially sections of the Pitcairn community, saw it as a further government encroachment on traditional local rights. Council felt that the Turner Report recommendation to establish a "National Park Authority", to include outside experts, should be "subject to Council review."

Progress was painfully slow. Even Canberra forestry interests felt that the Park may interfere with "forestry" land programmes, and discussions and correspondence on this and related issues continued on into late 1970. See Appendix C.
The remaining recommendations of the Turner Report, although modified to some degree by Council, were nevertheless acceptable. All, however, required the Minister's approval. These recommendations related to the updating of legislation concerning fauna protection, the retention and improvement of seven existing areas of scenic and recreation reserves; and the declaration as flora and fauna reserves of the "cliffs where not privately owned" and the rocky stacks and islets. Additionally, subject to the "retention of certain rights" - which related to the Pitcairners having an annual open season on the collection of the eggs of the Sooty Tern, or Whale Bird (*Sterna fuscata*) for human consumption, Philip Island be declared a sanctuary.

In forwarding Council's and his own recommendations to the Department and the Minister, the Administrator said:

".... I feel that Council has made some significant policy recommendations. A great deal of further processing of the individual recommendations of the two reports will now require attention. The task is a very considerable one and it cannot be expected that progress will be made quickly. The factors likely to retard such progress are the limited organisation, staffing and facilities of the Administration, and finance."

See Appendix B, page 6.

This was a very true forecast; even by 1976 only limited progress has been made. The boundaries of a Park were finally agreed and delineated after some years of argument; funds for a suitable fence were provided in 1975 and the contract for fencing let.

Some visitors to the island were, sometimes with justification, not enthused by local conservation policies or progress. An earth sciences professor in charge of a geology group in 1969 was, in his letter to the local island press, highly critical of Norfolk conservation policies. This drew a sharp retort from a slightly sensitive Administrator. Appendix D.

The preservation of the plant life on Norfolk Island is of great importance; firstly because of the very significant contribution it makes to the landscape and scenery, and secondly because of the unique biota of the island. One characteristic which the island possesses is a number of plants which are found nowhere else in the world. There are in total about 175 vascular plants, including some 45 ferns. Of this 175 about 50 are endemic and, of this 50, 13 ferns and 5 orchids are of special importance as some of them are reduced down to a mere handful, or even to couples or individuals. Should these plants disappear then they go from the face of the earth in the
same manner that some of the early plants and birds have already gone.

Clearly, government has an important responsibility to support any moves to preserve this most unusual heritage. The significance of a National Park on the island lies much in the concept of a community of inter-dependent plants in a type of symbiotic relationship; the whole gathering of plants, soil and even the small creatures of the bush go together and depend on each other for their existence as a total biological community. Attempts to conserve only one type in isolation are usually unsuccessful.

Not the least of the problems during the past century or so has been the spread of introduced weeds, usually by cattle once a weed has become established, and the task of educating a community to take preventive measures is a difficult one, especially where a rapidly spreading introduced weed such as the red guava, *Rhodomyrtus psidioides*, produces fruit which is attractive to housewife and visitor alike. The island's most important attribute is the Norfolk Island Pine, strictly not a pine but an araucaria. Although now widespread throughout the world this Norfolk variety of the class *Coniferae* evolved only on that island. In latter years diseases of the tree have caused much concern and whereas its life can be as long as 150 to 180 years a number of the trees have been dying at a much younger age. Lichen was sometimes blamed for this state but in recent years experienced forest pathologists have devoted their expertise to the problem without significant success.

Probably the biggest problem relating to the protection of the island flora is the over-grazing of cattle and horses on the common lands. Attempts over the years by a succession of Administrators to bring to bear the provisions of the *Pasturage and Enclosure Ordinance* 1949-1964 covering the matter have been only partially successful. It is a Pitcairn right to which the people cling tenaciously, albeit that it brings destruction to plant life, erosion on the steeper slopes and the spread of weeds. Thus all attempts at re-afforestation and plant preservation on these common grounds must be accompanied by expensive cattle-proof fencing projects requiring continued maintenance. A further problem is the increase in resident and tourist population resulting in the greater use of domestic water with its resultant wastes and pollution. On an island having no reticulated water supply or sewerage system these wastes can be extremely harmful to plant life.

One authority who has visited the island on two occasions, with a gap of eight years between visits, and who has been instrumental in furthering the cause of botany and conservation on the island is Mr P.S. Green of
Kew Gardens, London. Mr Green's concise exposition of the problems in his specialist field were summarised admirably in his talk on the island in February 1972. See Appendix E. This and similar support proved to be a valuable stimulus to the local Flora and Fauna Society, to the Administration, and to the cause of conservation generally.

There are no reptiles on Norfolk excepting one gecko, and no poisonous insects. There are rats aplenty and these pests are reported to have been present in large numbers even as early as when P.G.King landed with his first party of settlers. Now the feral cat is also a problem, and on Philip Island, but not on Norfolk, there remains a few of the pests introduced in the colonial days - the rabbit. In general however the fauna is confined to the small creatures of the forest areas and the terrestrial, freshwater and sea birds with which the island abounds.

When the Pitcairners arrived on Norfolk they were amazed at the number, size, design and general configuration of the stone buildings at Kingston on the southern shores of the island, together with a few elsewhere. Few if any traces of the first penal settlement remained, as most of these buildings were constructed of wood. There are less than a handful of isolated headstones in the cemetery relating to the first period, the two remaining cannon from the wreck of the Sirius in 1790, and a second huge 18 foot anchor also from the Sirius, held fast in the reef from the date of the wreck until 1975 when, as the result of some persistent work over some three years initiated by the writer, the anchor was raised, restored and mounted. An earlier anchor, more accessible, was rescued from the reef in 1920 and is displayed in Macquarie Place, Sydney.

All the extant historic buildings therefore, excepting some early Pitcairn type homes, are of the second penal settlement period, i.e. 1825 to 1855: they are essentially Georgian in character and have been designed and in the main built under the supervision of that redoubtable breed of Empire road, bridge and building constructors, officers of the Royal Engineers of the British Army. The delightful plans of these buildings remain today in the Tasmanian State Archives and the names associated with them are well recorded: for example, Lt. R.G.Hamilton, Lt. N.W.Lugard, Major G.Barney, the latter also being the designer of Victoria Barracks in Sydney. See Appendix F. In recent years copies of these plans have been obtained for the island and some formed the basis of one of Norfolk's most successful definitive issues of stamps.
In 1855 when the penal settlement was abandoned it was at the peak of its architectural development; See Appendix G. However, the huge prisons, barracks, residences, the crank mill, together with the cells, massive doors, locks, chains and leg-irons inspired a sense of fear in the simple peace-loving and God-fearing Pitcairners. Although they occupied many of the buildings, therefore, it was not surprising that when the newcomers extended their modest agricultural and related activities "up country" to the other parts of the island, demolition of certain buildings to recover the solid and well shaped stone became commonplace. Later in the 19th century masons used some of this material for the construction of the Melanesian Mission Chapel of St Barnabas located in the south west of the island: truly an unusual and beautiful monument to their skills. In later years islanders were permitted to remove stone from the Kingston area for use in other parts of the island. For example, in 1862 -

"Sold to James Quintal 200 government bricks at the rate of 4 shillings per hundred."

and in 1883 - "Notice was given by the magistrate that all the flagstones about Government House and those adjoining the Court Room are reserved. F.M.Nobbs. C.M."

"..... A.B.Quintall again asked permission to buy the Step Stones at the water mill, - was granted. F.M.Nobbs. C.M."

In the late 1960s and in the 1970s it has been a rewarding experience to sometimes arrange for the return of certain of this material to Kingston for use in the expert restoration now taking place. Some islanders have co-operated in this programme. Shortly after the arrival of the Pitcairners an occupational allotment of the available colonial buildings was made. This general and rent free arrangement pertained until after the end of the century when a governmental, and apparently badly mishandled, policy resulted in the appointment of special constables in 1908 and the forcible eviction of long-standing residents from some of the buildings. In 1903 Commissioner Alexander Oliver had recommended the issuing of fourteen year leases to the occupants of these buildings, renewable at the pleasure of the Governor (of New South Wales) and subject to conditions. The bitterness arising from the 1908 evictions is still evident in the community today and was even recalled during the evidence presented to the 1975/76 Royal Commission when a Councillor reminded the Commission that his own mother had been one of the persons physically evicted from the very building in which the Commission was conducting its hearings.
It was the early 1950s before an awareness of the restoration problem on Norfolk became a live issue. Again, the credit for this new approach must go largely to Minister Paul Hasluck. In 1952 he appreciated that action must be taken urgently if the buildings were not to be lost forever from the Australian scene. The Clifton Report of 1952, the Lucas Report of 1953, and the Limburg Report of 1959 all flowed from Hasluck's interest. It is true that some of the work which resulted from these early reports was of questionable technique and quality; nevertheless, something had been done and a start made. Indeed some of the recommendations in themselves would by present standards have constituted minor disasters if they had been implemented. Administrator Brigadier C.H.B. Norman, in office from 1953 to 1958, was also especially instrumental in furthering the progress of the restoration programme within the limits of the small sums then available for this work.

From the later 1950s the Commonwealth Government, at the urging of Hasluck, had provided a reluctant $10,000 annually towards the restoration and maintenance of the buildings. The close Treasury control of these funds however posed a constant problem to Administrators. Middle ranking public servants in Canberra saw it as their duty to try to prevent or minimise the expenditure by the Administrator of each few dollars which could not be justified to the nth degree. Some Administrators fortunately became adept at frustrating the wiles of these minions and the practice of committing the funds to sensible restoration expenditure and answering Canberra's querulous letters after some useful bureaucratic procrastination, proved especially before the days of the radio-telephone in 1972, a useful technique.

In 1969 and 1970 a special committee of the National Trust of Australia (NSW) carried out a detailed study of the buildings on behalf of the Australian Council of National Trusts. The members of the committee were highly qualified and dedicated in their task and the resulting report was an important landmark in the island's restoration programme. The Norfolk Administration played no small part in assisting in the work of the committee and in making suggestions about the general approach to be followed. On final publication of the National Trust report in 1971, although much work had proceeded in the meanwhile, the Administration updated its information and in February 1972 made a detailed submission to the Minister concerning the restoration programme. See Appendix H. Apart from skilled manpower, the problem was largely one of funding, especially in relation to other important island capital projects, for example electricity generation and reticulation, roads, health and social
welfare. The Treasury in Canberra was disinclined to be sympathetic towards the national heritage, especially for remote Norfolk.

In December 1972, however, a new era of greater awareness became evident when the new Labour Government came to power. The Administrative Arrangements Order of December made the Minister for the Capital Territory through his department, together with certain other departments and Ministers, responsible for Norfolk Affairs. The mood towards restoration changed dramatically. Large sums became available to the extent that funds tended to outrun manpower and expertise on the island; importation of materials was necessary but importation of labour except in a very minor fashion was not in accord with local desires. By March of 1973 a figure of $500,000 for the work was being suggested; meetings were hurriedly convened in Canberra; lengthy studies were initiated, and the island Restoration Team was boosted in numbers. See Appendix J. Although later, subsequent to November 1975, there was some slowing down of the financial support and physical effort, much work was completed and a number of important new projects initiated.

Important work had been done earlier on the colonial era cemetery at Kingston and this historic area is now restored to some semblence of interest and decency. The restoration as a whole in recent years has achieved much, to the credit of many involved persons and to Australia's lasting advantage.

The visits of the National Trust groups over the years, and there were several of these, could not be expected to result in the pure, dedicated conservationist viewpoint on a particular issue always being accepted by the populace, or even by government. Indeed this clash between the two viewpoints is at times almost insoluble. The stated view of the National Trust and similar bodies is "no compromise", the view being that any such softness of attitude provides a "foot in the door" for those who would undermine the conservationists' stand. This is an understandable viewpoint. On the other hand it is the task of government to legislate for particular issues and this legislation in itself is invariably a compromise. This was well exemplified on Norfolk by the Travelodge Hotel case.

Before tourism became a major issue on the island some entrepreneurs had foreseen that more modern and acceptable tourist and visitor accommodation, along the hotel/motel model, would probably be required. Some had acted to meet this requirement in an acceptable and reasonable manner.
However, at Kingston, on a magnificent Crown leasehold site overlooking the colonial settlement, there had grown over the years since the 1920s first a guest house, then "holiday lodges", then a hotel, aptly named the "Paradise". As early as 1927 the Administrator had received a proposal from New Zealand requesting leases at Kingston for a hotel, bowling greens, tennis courts, etc etc. By the mid 1960s the Paradise Hotel had developed to be a rambling and unlovely wooden and fibro-cement structure which, although a tribute to the hard work of successive owners over the years, was nevertheless low standard accommodation and something of an architectural eyesore and fire hazard. Thus when in the mid 1960s a proposal was put to Minister Barnes to lease the area to overseas interests which had been attracted to the island by the concept of Norfolk as a "place of financial resort", approval for a lease was given, on Council's and the Administrator's advice, and with the tacit approval of a sizeable segment of the local populace. By 1968 this approval had been modified to exclude an adjoining area on which was located a colonial era ruin. Eventually negotiations broke down and the project was abandoned.

The incident, however, had given rise to the re-thinking of the future of the Paradise Hotel site, a Crown lease having some fifteen years still to run. Pressure was brought to bear for the Minister to issue a new 50 year lease for the site which would include the construction of a new hotel. In due course Travelodge Australia Limited purchased the existing business was granted a lease for 50 years. The old hotel was to be demolished and a new two-story 'colonial' type structure, so far as possible in keeping with the existing surroundings, was to be built.

After considerable delay the plans for the new hotel were accepted in principle whilst the Travelodge company continued to operate the old hotel. The conservationists however, at this stage enlisted the aid of the National Trust and its Chairman, Mr Justice J.C.Moore, was despatched to Norfolk to advise the Minister on the future action to be taken. There appeared to be three possible courses of action:

(i) To allow the new construction to proceed on the basis that Council, the Administrator and a sizeable section of the community desired the replacement of the old hotel by a more acceptable structure, which would also assist the economy of the island.

(ii) The old hotel to remain more or less in its existing form on the site to the end of the fifteen year lease.

(iii) As advocated by the National Trust, that the hotel be resumed by the government, the owners compensated, the
the hotel demolished and the site cleared, and the area left in as near a natural condition as possible.

Mr Justice Moore recommended course (iii). The Council and the Administrator advocated course (i) as a means of disposing of the unsightly Paradise Hotel, replacing it with what would hopefully have been an architecturally acceptable structure, and assisting the local economy. Council and Administrator felt that to propose course (iii) was impracticable.

Professor J.S. Turner, main author of the December 1971 Australian Conservation Foundation report was, with some cautious reservations, also generally in favour of course (i). This produced a firm retort from the National Trust against the proposal. Mr Cedric Flower, a member of the National Trust committee which produced the excellent report on the island historic buildings, waded in with a letter to the Bulletin on March 4th 1972 denouncing the Council and Administrator. Feelings ran high and the Administrator reacted in a reply in the Bulletin on 1st April 1972. Inevitably he received a mild rap over the knuckles for his trouble in writing to the press as Administrator, but as the resulting Departmental letter was unsigned, undated, unreferenced and delivered by hand of an officer then honour appeared to be satisfied. See Appendices K, L and M.

As time progressed, however, attitudes modified; the hotel industry suffered a downturn; funds for new projects became harder to secure, the prospects for money being found for improvements to the airfield on Norfolk waned, and the Travelodge company was obliged to accept the Minister's decision to "reverse course". The matter dragged on and by mid 1973 Council was becoming agitated at the prospect of the project failing. At the June Council meeting the President of Committees said:

"The Norfolk Island Council is most concerned that the National Trust, a group who are uninformed on local affairs, is being allowed to illogically interfere in the peace, order and good government of Norfolk Island, especially as the avowed policy of the Labour Government is to respect the wishes of the elected representatives of the Norfolk Island people. By its performance the Norfolk Island Council has always shown its respect and support for the restoration of the historical aspects of Norfolk Island and has a firm policy restricting the growth of tourist accommodation to protect the unique character of the island. In accordance with this policy we approved the Travelodge project to ensure the tourist industry would be brought to the high standard adopted by Travelodge. It is a matter of fact that the Kingston area is the focal point of tourist activity of all types and that for the economic situation to remain in balance it is necessary to blend the old with the new in preserving its historical assets."
The community of Norfolk Island is a sound economic unit representative of all age groups and, to remain so, the economics of the tourist industry must be placed in their proper perspective. It is our opinion that the frustration of both Travelodge and our local contractors in not knowing where they stand in this matter could have the effect of possibly preventing this project from continuing. It is now nearly 3 years since the initial negotiations were started and we consider that the continued opposition by the National Trust is totally unjustified as their case was given a fair hearing previously.

We therefore request the Minister to adopt the unanimous motion of Council, supported by the last Administrator who was fully aware of the historical significance of the Kingston area, and process the building of a 100 room hotel as per the plans submitted to Council, the Administrator and Building Board and approved by them and the previous Minister."

At the same meeting Councillor Quintal asked who in fact owned the historical buildings of Norfolk Island. He said he was of the opinion that these buildings were "held in trust by the Commonwealth Government on behalf of Her Majesty the Queen and the community of Norfolk Island, and not the Australian Government. These are our national buildings, not Australia's." The Administrator replied that his understanding was that all assets on Norfolk Island were Crown assets:

"...There is no Crown in the right of Norfolk Island but there is a Crown in the right of the Commonwealth."

Whereupon Councillor Evans pointed out that "Council" had recently bought certain properties out of the island's "own local revenue". He went on to ask whether "these properties that we have bought do not belong to Norfolk Island, but to the Commonwealth?" All of these exchanges being part of the old question of "ownership" of the island.

The outcome of the Travelodge matter was the formal acquisition of the property by the Crown, payment of compensation to the Travelodge company, and an agreement whereby the company continued to operate the old hotel until the end of the fifteen year period. Time will show whether government will finally dismantle the existing structure and rehabilitate the area or whether, in the event, public opinion will resist this course.

Although bound up with the economics of the island to a certain extent, the subject of forestry can fairly be treated as an environmental subject. Headed by a small Administration work force of five or so workers, forestry has always played an important part in the island's economic and environmental history. In latter years there has been some clash of interests between forestry and the conservationists. The island annual
reports from their commencement in 1915 to the present day have always contained a section on the subject. A number of specialised reports have been presented over the years by visiting experts in the forestry field. The Commonwealth Forestry and Timber Bureau has provided much assistance and, since 1954, five-year Working Plans have been regularly prepared and updated. Although the Norfolk Island Pine has been the prime timber product, eucalypts and cypress varieties have also been planted. There has normally been up to three sawmills in operation on the island over the years and, for a short period in the mid-1960s, a very small export market existed. Legislation permits the export of either the timber or the seed of the pine, but not the small, growing trees.

The various Crown reserves from which timber is taken are, in total, relatively small:

- Mount Pitt Reserve - 630 acres; i.e., 1130 acres less about 500 acres now a "National Park".
- Rocky Point Reserve - 55 acres
- Headstone Reserve - 24 acres
- Cascade " - 59 "
- Quarantine " - 27 "
- Ball Bay " - 59 "
- Anson Bay " - 11 "
- Bumboras " - 14 "
- Selwyn " - 27 "

Since the early 1950s the successive Forestry Working Plans have directed policy towards:

(a) The production in perpetuity of the requirements of the island in timber for all purposes.
(b) The production of Norfolk Pine in sufficient quantity and quality to enable an export trade to be developed.
(c) The establishment and preservation of forest cover on all areas where it is necessary for the control of soil erosion.
(d) The permanent reservation for forestry purposes of those areas not suited to agriculture or pasture, and not needed for public purposes.

The following figures for the decade 1965 to 1975 illustrate the pattern of the output of local sawn timber. In recent years however the local industry has never met the full local demand; export has proved impracticable, and the annual rate of imports of sawn timber, mainly from New Zealand, has ranged from 100,000 to 200,000 super feet annually. The sizing, quality and variety of sawn timber are factors which have caused problems in comparing the local with the imported product.
Norfolk Pine Timber
Local Production - Sawn

<table>
<thead>
<tr>
<th>Year</th>
<th>Super Feet (Rounded)</th>
<th>Annual Royalty to N.I. Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1964/65</td>
<td>300,000</td>
<td>1528</td>
</tr>
<tr>
<td>1965/66</td>
<td>290,000</td>
<td>1570</td>
</tr>
<tr>
<td>1966/67</td>
<td>260,000</td>
<td>416</td>
</tr>
<tr>
<td>1967/68</td>
<td>271,000</td>
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<td>1968/69</td>
<td>271,000</td>
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<td>1969/70</td>
<td>459,700</td>
<td>1633</td>
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<tr>
<td>1970/71</td>
<td>241,200</td>
<td>581</td>
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<tr>
<td>1971/72</td>
<td>302,000</td>
<td>1637</td>
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<tr>
<td>1972/73</td>
<td>265,000</td>
<td>663</td>
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<tr>
<td>1973/74</td>
<td>253,000</td>
<td>1029</td>
</tr>
<tr>
<td>1974/75</td>
<td>241,500</td>
<td>514</td>
</tr>
</tbody>
</table>

The unevenness of the annual royalty figures is due to the time-lag in payments from one financial year to another. It will be noted that royalties are comparatively small,—another Pitcairn "right".

Again, the striking of a sensible balance between logging and sawmilling activities on the one hand and preservation of the natural scenery on the other come into conflict. Too many trees are taken each year, involving too much damage to the native bush during logging operations, to the detriment of the scenic beauty of the island.

If there exists in the world a near ideal climate it is probably on Norfolk. No frosts occur, and maximum temperatures are seldom unpleasant. Temperatures between mid-1970 and mid-1975 recorded the minimum as 9.4 degrees Celsius and the maximum as 28 degrees. The mean annual rainfall between 1891 and 1968 was 53.41 inches; the maximum during that period being 77.26 inches in 1893 and the minimum 32.14 inches in 1965.

There are a few private dams on the island and one on Administration land, the water in the latter being suitable only for cattle and for emergency fire-fighting and associated purposes; water storage systems therefore are of limited capacity. From the early years of the colonial era numerous wells have been dug and some of these are extremely carefully constructed and stone-lined, and they remain today in regular use. Of the 69 wells, 9 are over 200 feet in depth, the deepest being 354 feet. A good deal of deep boring for water has taken place to depths of up to 3000 feet but no more than half a dozen successful bores exist.
One factor which causes concern is the future development of the airfield. Although physical limitations prevent the extension of the airfield beyond a given size, this potential would, with extensive and expensive works, be sufficient to allow the acceptance of comparatively large jet-powered aircraft. This is not desirable. Excessive noise pollution, air pollution, and an over-supply of tourists would be calculated rapidly to erode the very amenity and environment which the island seeks to preserve. A suitable small to medium sized modern aircraft will be capable of servicing the island's requirements for the foreseeable future.

Overall, therefore, there exists the strongest of reasons why the natural charm and environment of the island should, so far as is possible, be preserved. Aided by a reasonably strong local conservation movement, and with continued Commonwealth support, government has a prime responsibility to ensure the preservation of the island's natural and architectural heritage.
CHAPTER 11

CONSERVATION AND THE ENVIRONMENT

NOTES


7. See Bibliography for details of these references.


14. Letter from Associate Professor J.J. Veevers, the Norfolk Islander 9th January 1970.


19. See Bibliography.


22. Deleted.


27. Deleted.


29. See Bibliography for details of Forestry Reports.


31. Timber statistics compiled from Annual Reports and from the author's notes.


33. From a paper prepared by Mr Gordon Duvall of Norfolk Island, 1972.
Probably no part of the Commonwealth of Australia has been subjected to so many investigations, reports, commissions and specialised studies as has the small geographic speck of Norfolk Island. Throughout the years from 1856 the Governors of Norfolk Island based in Sydney saw it as their duty, and possibly their pleasure, to visit remote Norfolk at least once during their period of office and most of them have left interesting records of their visits. Governor Denison in the late 1850s, and Governor Loftus in the 1880s, are especially interesting to read in this regard. The original lengthy manuscript of the latter's visit in 1884 is located in the Australian Archives, Canberra, and extracts were published in J.J. Spruson, Norfolk Island: Outline of its History from 1788 to 1884.  

Loftus was not satisfied that he had covered the ground in sufficient detail and on his return to Sydney he commissioned Mr Henry Wilkinson, a visiting magistrate to Lord Howe Island, to make a thorough investigation of affairs on Norfolk. Wilkinson made two visits to the island, one of no less than five months duration, and his two part report was published in January and August of 1885. Wilkinson's report was the first of a long series over the years of what might be termed full scale and wide ranging governmental surveys. These reports are as follows:

1885  Henry Wilkinson: 1st January and 1st August.
1900  Governor Beauchamp and Attorney-General Wise.
1904  Alexander Oliver: Royal Commission: 25th March.
      Supplementary to 1904 Royal Commission. Did not visit the island.
1914  Atlee Hunt: Secretary, Department of External Affairs: March.
1926  Francis Whysall: Royal Commission: 14th July.
When one adds to the above the numerous more specialised reports, many of which have been referred to earlier in this work, then it becomes clear that a steady stream of expert advice has descended on the island with some regularity. It is certain, however, that none of these writings so far to have seen the light of day approach in scope, detail, erudition, staff support, expense and impact the work of the 1975/76 Royal Commission into Matters relating to Norfolk Island, the fifth Royal Commission to be held into island affairs.

As stated in the Introduction to this thesis the main portions of this present work were in final form, a number of them in type, in late November 1976 when Sir John Nimmo's final report on the Royal Commission became available. Since late 1975 certain of the evidence of the Commission had been available for perusal by the writer. Similarly, the final address of Senior Counsel was submitted in April 1976 but was not published. This present chapter, however, has been compiled subsequent to a reading of Sir John Nimmo's final report.

On 31st January 1975 Mr Gordon Bryant, the Labour Minister for the Australian Capital Territory and the Minister at that time in charge of Norfolk, announced that the Government had approved the setting up of an inquiry to look into the affairs of the island. The inquiry was to be conducted by Sir John Nimmo, CBE, O.St.J., QC, a Judge of the Australian Industrial Court and one time Chief Justice of Fiji. Mr Bryant also said that certain matters had been exercising the minds of the people of Norfolk Island; there were various views on the different courses that could be followed; the Government considered that it was timely and appropriate for open discussions in relation to the island, and it would be in the interests of the island for the enquiry to be conducted by such an eminent jurist as Sir John Nimmo. Terms of reference for the enquiry were made public and various guidelines were to be taken into account in considering these terms of reference. The Minister said:

"Having regard to the view of the Australian Government that the form of administration of the Territory as set out in the Norfolk Island Act 1957-1973 is now outmoded and inappropriate, the committee of enquiry is asked to report and make recommendations on -

1. The future status of Norfolk Island and its constitutional relationship to Australia;

and

2. The most appropriate form of administration for Norfolk Island if its constitutional position were changed.

The inquiry and recommendations are to extend to and take into account:--

(a) the interests of Norfolk Island residents;

(b) the historical rights of the descendants of the Pitcairn community.
Norfolk Island's legal position as a Territory of Australia;
(d) the present and probable development of the economy of Norfolk Island;
(e) whether Social Security, health, educational, compensation and other benefits should be provided at levels similar to those which other Australian citizens enjoy;
(f) the capacity and willingness of the Island to pay through taxation or other imposts for the provision of these benefits;
(g) the extent to which Norfolk Island has been and is now being used to provide a base for activities (e.g., income tax, gift duty and death duty avoidance or evasion) which are harmful to the interests of Australia or of other countries;
(h) conditions for permanent entry into the Island community;
(i) the need for adequate communications between the Island and Australia, and the rest of the world; and
(j) the need for adequate law enforcement and judicial machinery.

Sir John lost no time in making a visit to the island. Indeed he arrived on a preliminary visit on 1st February 1975, the day after Mr Bryant's announcement, and remained for ten days. During this first visit Sir John told the island population that he was entirely a free agent; he was in subjection to no one; he would not tolerate interference from anyone in the way the enquiry was to be conducted; and he would, if he concluded that Norfolk Island was a unique country with unique problems, recommend a unique constitution. Prior to leaving he said, "I feel like the Queen of Sheba after she visited Solomon - 'the half hath not been told me." Prophetic words indeed.

It was June 1975, however, before Sir John again visited the island, and by this time, in May, the inquiry had been given the status of a full scale Royal Commission. Sir John was to have the facilities of assisting counsel, secretaries and associated staff. Warrants for the Commission were issued under the provisions of the Commonwealth Royal Commissions Act 1902-1973 and the Norfolk Island Royal Commissions Ordinance 1928-1964.

One reason why the inquiry was extended to become a Royal Commission was that the only solicitor and company entrepreneur on the island, Mr N.H. McIntyre, had pressed the Government in Canberra to take this course. He felt that the issue concerning the island's constitutional status was one which a Royal Commission, rather than a lower level inquiry, could more readily solve. He was likely, however, to have rued the day when the Royal Commission, with its wide powers under the Act, investigated company activities and Mr McIntyre's affairs on the island in a most detailed and public manner.
As early as September 1973 Mr McIntyre had gone on record to the Prime Minister, primarily to complain about the provisions of the then new Income Tax Assessment Bill No 4 of that year, but also to urge a full inquiry into island affairs:

"The Honourable E. Gough Whitlam, Q.C. 17th September 1973
Prime Minister
Parliament House
CANBERRA A.C.T.

Dear Prime Minister,

This letter is to invite your personal intervention as a matter of urgency in the affairs of Norfolk Island - firstly, to suppress the Bill for the Income Tax Assessment Act (No 4) 1973, secondly, to establish an independent public inquiry on Norfolk Island into all aspects between Norfolk Island and Australia - constitutionally, politically, sociologically, economically and otherwise, thirdly, from this enquiry, to amend the Norfolk Island Act, 1957-1963 and to effect administrative reform.

There exists a deep frustration on many aspects of government here. I believe this could become explosive. For instance, the recent Referendum on the locating here of the proposed High Security Quarantine Station for Australia demonstrated that the people want ultimate control over their own affairs. Your colleague Mr Enderby did not help matters by recommending to the Parliamentary Standing Committee on Public Works that the station be located here and that in its deliberations the Committee disregard the result of the Referendum.

The majority of the Island residents do not regard themselves as Australians nor do they envy the Australian way of life. They feel that Australia should not seek to impose its views here any more than Norfolk Island should seek to tell Australia how to govern itself. Remote control from Canberra means that there is a shocking lack of mutual understanding between the Australian Government and the Norfolk Island people.....

At a time when the Government proposes a Bill of Rights for Australia, a declaration of the rights of the Norfolk Islanders and a programme towards self-government are appropriate. A full enquiry is the first necessity......

Copies of this letter are being sent to your colleagues the Treasurer, the Attorney-General and the Minister for the Australian Capital Territory..... etc (Neil Halley McIntyre)

There were other voices raised in favour of a complete investigation into island affairs. One Labour-oriented, pro-island and anti-company councillor, the late A.S. Bathie, wrote to the writer in February 1974 in the following terms:

"I would agree that the next session of Parliament... gives every indication of being a hectic time for the Govt. If the Opposition use the undoubted advantage they at present hold over many current issues, combined with good political common sense in the Senate, then
Labour has had its chips in the event of an all out election. My sympathies are for Gough Whitlam, he has lived up to all my expectations and some of his Ministers are doing a wonderful job. Any feelings of let down I may have come from a handful of ratbags in Caucus and I don't think Bob Hawke has done anything to bring credit to the team he is supposed to be batting for.

On the local scene things are certainly in a mess and while I place a certain amount of the blame on Ted Pickerd, to be fair at the same time, he gets very little assistance if any from the Dept. Lou Engledow does not impress any and perhaps Gordon Bryant a lot less.

I have been making a few noises wherever possible for a complete look into Norfolk's affairs with a view to establishing a policy for the future. This is a must at the present time, especially with the attitude of residents and Council against contributing towards what are essentially our own responsibilities. I have an idea that something is going to be done in this direction.

It took another year, however, before definite action for an enquiry was taken.

It may subsequently have seemed curious to an observer that the Government, having decided on a Royal Commission in February 1975, took until May before the Letters Patent setting out the terms of reference were signed, by two Ministers of State, apart from the acting Governor-General. Two because on the one hand the relatively newly appointed Special Minister for State, Mr Lionel Bowen, and the Minister for the Capital Territory, Mr Gordon Bryant, could not agree as to where the responsibility in the matter lay. The announcement of Sir John's appointment to the inquiry on 31st January 1975 soon created correspondence and discussion from and within the various factions and interest groups on the island. For example, a letter in the Norfolk Islander on 15th February 1975 from a Melbourne-based but Norfolk oriented solicitor; Appendix A. This was quickly followed by a local Norfolk viewpoint, one not necessarily representative of the island populace as a whole; Appendix B; and in giving more space to the Melbourne solicitor the Norfolk Islander probably showed more than a streak of bias towards a non-island resident: Appendix C.

These examples of the pros and cons of at least the 'financial' reaction to the establishment of the Commission were forerunners of the extensive debates and discussions which were to be a feature of the remainder of 1975 and throughout 1976. However, where very large sums of money are involved, and subsequent events showed that scores of millions of dollars were handled, it was to be expected that the forces behind these transactions would produce every available argument, both valid and invalid, to hinder or attempt to influence the progress of the inquiry.
The Royal Commission was assisted throughout by senior counsel Mr C.E.K. Hampson, QC: junior counsel Mr J.F. Gallop (later QC): and was instructed by Mr B.F.L. Crommelin of the Deputy Crown Solicitor's office. The Commission was also provided with a Secretary and extensive administrative support. As the work of the Commission progressed it became apparent that, whatever else, it was to be an expensive exercise, to cost well in excess of one million dollars, with counsel's fees alone on a scale of $250 per day for the junior and $450 per day for the senior.

A number of visits to the island were made by the Commission, totalling nine weeks in all, and its main work extended from June 1975 to October 1976. Over 4000 pages of evidence were recorded from 144 witnesses, plus 46 written submissions from organisations and persons: and 291 exhibits were tendered. Senior counsel's final address occupied 146 pages and Sir John's final report 418 pages. Sir John made a very high personal impression on the overwhelming majority of members of the Norfolk community. It was clear that he was determined to seek every scrap of evidence available in relation to all aspects of the island's life and history: and this he did most successfully. A visit was made to New Zealand, and the Secretary also visited London in connection with the constitutional issue.

The scope and quality of the evidence presented to the Commission varied greatly and ranged from sound and thoughtful submissions through to the self-interested (of which there were many) the bizarre, and to conscious and unconscious humour. A few witnesses were subpoenaed; some, where appropriate, were submitted to the full weight of senior counsel's penetrating and sometimes acid probing. In discussing the evidence given before the Commission Sir John said:

"... A feature of this modern society is the number of factions which exist. Pitcairn descendants, traders, operators of tax avoidance schemes, retired people and new farmers all constitute divergent groups. A superficial friendliness and conviviality masks a deal of resentment and dislike among some of the groups.

(d) Many Pitcairn residents bitterly resent what they regard as the misuse of their Island by many newcomers whose predominant reason for being in the Island is to amass or retain wealth by avoiding revenue imposts and in some cases to help others to do likewise. They equally resent the presence of commercialism arising from the growth of tourism, notwithstanding their ready acceptance of the benefits which flow from it. These two factors have caused them to fear that before long they will lose control over their own destiny and that of their island."

..........(f) It was obvious that the groups who were most critical of Australia's government of the Island, and who were
most clamorous in urging complete or near independence from Australia, were those who had moved to the island in recent years predominantly to amass or retain wealth by avoiding revenue imposts, and by exploiting the Island's commercial opportunities to the full. They went to considerable lengths, including the use of small numbers of Pitcairn descendants as willing accomplices, to propound their point of view.

One gathered from the evidence of some of the Pitcairn descendants that they had been moved to support these groups because of exploitation of their fear of what the Commonwealth Government might do in the spheres of taxation and land control if it continued to govern the Island. Their evidence followed a clearly identifiable pattern.

Members of these groups made it abundantly clear that they not only wished to be independent of Australia and to be free from revenue imposts, but that they expected Australia to continue to provide existing benefits and to make even greater monetary grants without cost to them.

One was not impressed by the repeated assertions of some of them that the predominant reason for their remaining in the Island was its natural charms.

(g) It would be exceedingly difficult for this small faction-riddled and confined community to evolve for the Island policies that are likely to receive general acceptance in respect of major matters."

The Berwick Case, which has been dealt with in Chapter 1 of this work, and in which the Full High Court of Australia made an important determination about the constitutional position of Norfolk Island, necessarily influenced Sir John's thinking markedly. The High Court had ruled in March 1976 that Norfolk Island is part of the Commonwealth of Australia; that the Commonwealth Parliament possessed plenary and unrestricted powers to make laws for the island; and that taxation could be imposed upon residents of the island in the same manner as it is on the mainland of Australia. Thus this judgement became in effect an essential starting point in Sir John's considerations.

Similarly, in the matter of the Pitcairners' claim that the island had been ceded to them in the last century, Sir John concluded that:

"It is clearly demonstrable in respect of the claim that the entire Island 'belonged to' the Pitcairners that the opposite is the truth and that Norfolk Island was never ceded to them."

Sir John also expressed the view that if the Commonwealth of Australia wished to divest itself of the full responsibility for the island then it had the power to do this, but if it did not want to follow this course then Norfolk could remain as a Territory of the Commonwealth.
He said that whereas the people on the island agreed that there should be "at least some sort of domestic autonomy" they were otherwise "hopelessly divided" in their views about future political status. He went on to say that there seemed to be three courses of action open to the Government: to maintain the status quo, to grant independence: or grant a measure of self-government and review the situation in about five years time.

Sir John castigated the Government for its past administration of Norfolk over the years, and referred to the "Two basic and damaging defects in this administration (which) became obvious during the hearing,"

"The main blame for the Island's problems does not rest in the Island. Most of the long-standing ones have had their genesis and perpetuation in slothful and inept mainland administration, which has proved itself unable to activate the seemingly clogged processes of government and to achieve successful solutions to the Island's obvious difficulties. It deserves to be stated that in spite of the sterling and most conscientious work by some individual Administrators in the Island, Australia's administration of Norfolk Island has been singularly unimpressive at the policy level."

"The lamentable lack of efficient communication between Canberra and the Island's representatives. There have been many occasions when the Island was either not consulted or inadequately consulted regarding legislation and other matters affecting the Island, e.g. presentation of the Island's views at meetings of the South Pacific Commission.

The complete absence of any written, agreed, long-term policies for the Island, to which successive Governments and Administrations alike could have adhered and progressed over the years. Norfolk Island has been allowed to stumble along since 1914 without any clear idea of government intentions in vital areas. Year by year ad hoc decisions have resulted in forces other than government gradually usurping the influence and lead which Australia itself should have provided. ....."

Earlier in this work the present writer has referred to these and similar difficulties in various contexts, especially in the Administrator's relations with the Department in Canberra and in dealings with individual members of the Public Service concerned with island matters.

On the question of public finance Sir John has emphasised the strong evidence which points to Norfolk Island being "... an economic liability to Australia and a costly one at that." All in all he estimates the annual cost to Australia, in terms of deficit, as being in the order of "at least three million dollars per annum..." He goes on to emphasise that carefully controlled tourism would appear to be the only viable industry for the island in the foreseeable future.
One of the Royal Commission's important guidelines was to assess 'The extent to which Norfolk Island has been and is being used to provide a base for activities (e.g. income tax, gift duty and death duty avoidance or evasion) which are harmful to the interests of Australia or of other countries.' The evidence introduced to the Commission on this subject was extensive and by virtue of the powers possessed by the Commission Sir John was able to secure information from solicitors, accountants and banks which had hitherto been privy to a portion of the business community. For example, as a measure of the extent to which the island had been used as a tax haven the Commission quotes figures from the records of the only two banks since the start of the company activities. The Bank of New South Wales was established on Norfolk only as late as 1969; the following figures relate only to company accounts.

Company Accounts and Volume of Money Transactions
Norfolk Island

### Commonwealth Trading Bank

<table>
<thead>
<tr>
<th>Year ended 30 June</th>
<th>Total No. of Accounts</th>
<th>Total volume of Funds in transactions over $100,000</th>
<th>Total funds involved per Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1964</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1965</td>
<td>5</td>
<td>160,000</td>
<td>842,400</td>
</tr>
<tr>
<td>1966</td>
<td>32</td>
<td>3,378,300</td>
<td>4,273,900</td>
</tr>
<tr>
<td>1967</td>
<td>79</td>
<td>62,004,900</td>
<td>71,365,400</td>
</tr>
<tr>
<td>1968</td>
<td>417</td>
<td>62,741,300</td>
<td>77,260,100</td>
</tr>
<tr>
<td>1969</td>
<td>624</td>
<td>44,755,200</td>
<td>57,405,800</td>
</tr>
<tr>
<td>1970</td>
<td>661</td>
<td>45,637,300</td>
<td>57,797,600</td>
</tr>
<tr>
<td>1971</td>
<td>646</td>
<td>109,158,100</td>
<td>122,975,700</td>
</tr>
<tr>
<td>1972</td>
<td>619</td>
<td>115,957,900</td>
<td>127,562,600</td>
</tr>
<tr>
<td>1973</td>
<td>573</td>
<td>67,375,000</td>
<td>78,405,400</td>
</tr>
<tr>
<td>1974</td>
<td>503</td>
<td>11,497,700</td>
<td>15,581,400</td>
</tr>
<tr>
<td>1975</td>
<td>409</td>
<td>11,497,700</td>
<td>15,581,400</td>
</tr>
</tbody>
</table>

**Total**

613,652,300

### Bank of New South Wales

<table>
<thead>
<tr>
<th>Year ended 30 Sep</th>
<th>Total No. of Accounts</th>
<th>Total volume of Funds in transactions over $100,000</th>
<th>Total funds involved per Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>102</td>
<td>5,988,000</td>
<td>7,523,000</td>
</tr>
<tr>
<td>1970</td>
<td>232</td>
<td>20,795,000</td>
<td>23,096,000</td>
</tr>
<tr>
<td>1971</td>
<td>403</td>
<td>201,295,000</td>
<td>204,865,000</td>
</tr>
<tr>
<td>1972</td>
<td>553</td>
<td>142,012,000</td>
<td>146,751,000</td>
</tr>
<tr>
<td>1973</td>
<td>391</td>
<td>86,687,000</td>
<td>91,929,000</td>
</tr>
<tr>
<td>1974</td>
<td>332</td>
<td>101,595,000</td>
<td>104,049,000</td>
</tr>
<tr>
<td>1975</td>
<td>203</td>
<td>62,934,000</td>
<td>65,559,000</td>
</tr>
</tbody>
</table>

**Total**

643,772,000
Thus, over the period shown, over 1257 million dollars passed through the books of the two banks in connection with tax avoidance schemes. It was little wonder that the Commonwealth Government finally moved in mid 1972, but with legislation being brought down as late as December 1973 and having retrospective effect, to stop the gap. The danger signals had been given in the early years of the schemes, from the Norfolk Island Administration and the Norfolk Island Council, but Norfolk was far away, there were no political votes to be had, and the Commonwealth was slow to react to the situation.
On 2nd November, in anticipation of Sir John's report becoming available within a very short time, Senator Withers had written to the Administrator and asked him to table a letter in the Norfolk Island Council. This letter said:

"At a meeting with the Norfolk Island Council last March I undertook to provide an opportunity to Council to express its views on the Report of the Royal Commission on Norfolk Island before any decisions were taken by the Government. Sir John Nimmo has now completed his report. When printed copies are available, probably in the first half of November, it will be tabled in Parliament. Copies of the Report will be forwarded to you by my Department immediately after tabling has been effected. An Inter-departmental Committee will be examining the report and advising the Government on the implications of Sir John's recommendations. I am hopeful that this advice will be available to the Government early in 1977 so that decisions on the major recommendations can be made before the middle of the year.

Accordingly, I would ask that Council make every effort to furnish its views to my Department within two months of receipt of copies of the Report so that those views can be fully considered by the Inter-departmental Committee. I realise that this is a fairly tight time-table but feel sure that the Council will recognise the desirability of now reaching early decisions on the many major issues which have been under discussions for years."

An initial 200 copies of the Commission report (66-20 per copy) were despatched quickly to the island and all were sold within the hour. More copies were demanded. The initial reactions to the report displayed all the signs of a typical Norfolk Island social upheaval to come:

"The Nimmo Report arrived this week. Its effect has been electrifying. The Judge talks of the divisiveness of the people of Norfolk Island. We feel that the Report will aggravate and further this divisiveness. We were warned, on the Judge's departure, that this Report would not meet with everyone's approval. At this stage it would be hard to gauge just how many people favour it or otherwise.............

It is a blueprint for the future and one that will change the nature and character of Norfolk Island altogether, if adopted. One point that puzzles us, is– how can Council make a decision on the recommendations when the first question asked is whether "the Commonwealth proposes to abandon Norfolk Island completely or to continue to accept responsibility for maintaining it as a viable community".

The Administrator promptly convened a special and open meeting of the Council to give preliminary consideration to the implications of the report; a public meeting was called prior to the Council meeting, and the local press commenced a series summarising the recommendations.

Similarly, the mainland press, as always sporadically interested in the island of the Bounty tradition, was quick to pick up the main points
of the Commission's report. For example:

"The Bounty Mutineers are ready to Mutiny Again.

No one stays long on Norfolk Island without hearing about the fish they call the dream-maker. Local legend has it that this fish, caught during the day and cooked, has as delicate a flavour an anything in the piscine culinary world. Caught at dusk it induces hallucinations of the wildest kind. And the islanders will tell you Sir John Nimmo must have cooked and eaten a dream-maker at dusk just before he left Norfolk to finalise his report on the island's future. Nothing else they say can account for the recommendations of the report he handed down in Canberra last week - that Australia either abandon the island or that it brings it under Australian taxation conditions with its control vested in the A.C.T." 20

"Norfolk Not Pining for Us.

'We would rather be abandoned than become a suburb of Australia.... we've always been different and we want to remain different.' This was the angry reaction from the President of Committees of the Norfolk Island Council, Cr Bill Blucher, to the Nimmo Royal Commission report on the future of the island.

The 419 page report has only just filtered through to the isolated island 1600 km north east of Sydney. But it has the islanders - both the descendants of the Bounty mutineers and the mainland settlers - boiling. Cr. Blucher said, after talking to residents from both "sides", that he had found a reaction of "shock, anger and disappointment that the Royal Commissioner, Sir John Nimmo, could so completely misread the island".

He intends to move at the next meeting of the council - an advisory body to the Administrator, recently appointed former ASIO man, Mr Desmond O'Leary - that a referendum be held on the island's future.

He said he was certain that a referendum would result in a 90 per cent vote for independence - along the lines of Nauru, or the tiny Pacific island of Niue, recently granted independence by New Zealand. 'If the Australian Government refuses to act on the results of the referendum, we will take our case to the United Nations,' he said. "21

In discussing the report in the Canberra Times Bruce Juddery referred to the fact that the islanders had no representation in the Commonwealth Parliament and that Sir John Nimmo had recommended that Norfolk become a part of the electorate of Canberra. He quoted the Member for Canberra, Mr Haslam, as saying "I would be excited to represent the people of Norfolk Island. Canberra is such a new city and Norfolk Island has so much history. Both my wife, Caryl, and I enjoy electorate work enormously and the challenge of helping the people of such an interesting and remote island, (people who would find) Australia really cares for them, would be tremendous". 22

These typically politically naive ravings would seem to confirm that it would take a politician of much higher calibre than the Canberra-oriented Mr Haslam to solve the problems of Norfolk Island.

After discussing the report in an editorial the Sydney Morning Herald concluded, - "The Nimmo Report is a sound document, and the Government should act on it as quickly as possible." 23
The mild-mannered and deceptively retiring Sir John Nimmo made 74 recommendations, the first two of which were of prime importance in relation to the first principal matter of the enquiry:

"The future status of Norfolk Island and its constitutional relationship to Australia."

He recommended:

"1. That the Commonwealth Government decide as soon as practicable and announce its decision on whether it proposes to abandon Norfolk Island completely or to continue to accept responsibility for maintaining it as a viable community.

2. That if the Commonwealth Government decides not to abandon Norfolk Island completely then for at least five years the status of the Island and its constitutional relationship to Australia remain that of a Territory of the Commonwealth of Australia." 24

In the body of his report Sir John came out strongly in favour of the Commonwealth retaining control of the island in terms of the second of the above propositions. Many of the Commission's recommendations will clearly take a good deal of time to process and it is likely to be some months before most of them are the subject of final Government decision. Nevertheless, for once the Government moved smartly. At a Cabinet meeting held on 17th December 1976 the Government decided to retain control of the island as a Territory of Australia (or, more properly, it will remain as an external territory) and announced accordingly the following day. 25

In making the announcement Senator Withers said that the Government had made the statement at this stage because of speculation about its intentions and to facilitate consideration of the Commission's other recommendations, especially those relating to the most appropriate form of administration for the Territory.

Regarding the second principal matter of the enquiry:

"The most appropriate form of administration for Norfolk Island if its constitutional position were changed."

Sir John recommended as follows:

"3. That residents of Norfolk Island be included in the electorate of Canberra in the Australian Capital Territory for the purpose of giving them representation in the Commonwealth Parliament.

4. That the present Norfolk Island Council be abolished and replaced by an incorporated body to be known as the Norfolk Island Territory Assembly.

(a) That the Assembly consist of nine elected members holding office for three years.

(b) That a President and Deputy President be elected by the Assembly from among its members."
(c) That each Assembly member exercise a deliberative vote and that the President or Deputy President exercise a casting vote when necessary.

(d) That a quorum for a meeting of the Assembly be five members.

(e) That the Assembly's Chief Executive Officer be Secretary and head of the Assembly's staff and be appointed by the Assembly from outside its members.

(f) That members of the Assembly be paid such remuneration for their services as the Assembly determines.

5. That there be no wards for electoral purposes in the island and that no seats be reserved on the Assembly for any particular group of the island residents based on blood ties or country of origin or otherwise.

6. That voting be compulsory and by secret ballot.

7. That legislative and executive powers be granted to the Assembly in respect of the following matters:

   (Here follows a list of fifty two local governmental functions)

8. That for the purpose of raising monies for its budget the Assembly take over those operations at present yielding revenue to the Administration other than those relating to hospital and medical services.

9. That the Assembly not be given the power to borrow money but be given the right to apply to the Commonwealth Grants Commission for financial assistance.

10. That the Administrator possess no power of veto over the Assembly's legislative and executive responsibilities nor hold any membership of office of the Assembly.

11. That the Commonwealth continue to exercise all governmental powers not shown above as being specifically conferred upon the Assembly and, in particular, retain all powers over all land in the Island.

12. That the exercise of the legislative and executive powers of the Assembly be allied with power in the Assembly to advise the Administrator on any matter relating to Norfolk Island over which the Commonwealth Government has power.

13. That at all times the Assembly and the Administration maintain close liaison and keep each other thoroughly informed of each other's work.

14. That the performance of the Assembly be reviewed by the Commonwealth after five years and consideration be then given to the question of increasing the powers of the Assembly.
15. That the Commonwealth Government in the light of this Report lay down a clear set of policies to be followed in the administration of Norfolk Island particularly in respect of the following:

(a) land development and ownership
(b) the airport
(c) taxation
(d) health services
(e) law
(f) social security
(g) education
(h) transport to and from the mainland
(i) government buildings and historical sites
(j) tourism generally

16. That the Commonwealth at its own expense provide and maintain an Administrator and his staff in the Island to represent the Government and conduct the business of the Commonwealth in the Island.

17. That the division of the present Administrator's existing staff between the Assembly and the Commonwealth be determined by the Secretary of the Department of Administrative Services in consultation with the Secretary of the Assembly.

18. That Commonwealth assets in the Island be divided as outlined in this report.

19. That the Commonwealth consult the Assembly on all matters which hold particular relevance to Norfolk Island and where practicable give the Island the opportunity of sending representatives to meetings of international bodies whose deliberations may specifically affect the Island.

20. That when the supply of legal draftsmen permits, a particular draftsman in the Legislative Drafting Division of the Attorney-General's Department be appointed and instructed to give priority to the drafting of ordinances relating to the Island.

21. That the Commonwealth sight the annual estimates of the Assembly and that external auditing of the Assembly's annual accounts be carried out by the Commonwealth Auditor-General who should deliver copies of his report to the Secretary of the Department of Administrative Services, the President of the Assembly and the Administrator.

22. That Australian manufactures destined for sale in Norfolk Island continue to be exempt from sales tax."

Sir John has concluded, as has the present writer in other parts of this thesis, albeit working from a different background and with a different degree of emphasis in certain areas, that the present system whereby residents of the island do not have direct representation in the Commonwealth Parliament, and possess only advisory and consultative rights through their own Council, is inadequate and outmoded. In addition, revenue raised on the island, whilst it forms a most useful contribution to the overall costs of running the island, does not, despite a strong
local viewpoint to the contrary, go anywhere near covering the total cost of maintaining the local services and administration. The argument flowing from all of this is that representation in the Parliament is essential and that the locally elected Council must assume responsibility for a large number of the powers at present exercised by the Administrator on behalf of the Government. Sir John does not underestimate the difficulties of achieving either of these objectives, especially in the light of the fact that local experience in the performance of executive functions takes time to acquire and must be gained gradually.

Whether the residents of Norfolk Island should be included within the electorate of Canberra will be a much-debated point and this is an extremely difficult question to solve. Clearly some 2000 people (probably by 1985) cannot be expected to have their own exclusive Federal representative. Probably few would argue with recommendation No 4 above relating to a Territory Assembly; nor to the next succeeding and associated recommendations Nos 5 to 8. An amendment to the Norfolk Island Council Ordinance, No 6 of 1976, has already provided that voting for the local Council will be placed in the hands of residents only, as distinct from the inclusion also of persons on shorter term entry permits.

Recommendations Nos 9 to 22 are similarly essential reforms which fall logically from experience over recent decades on the island and from the evidence presented to the Commission. Indeed some, for example that relating to the functions of the Auditor-General as they affect the Administrator and the Department, are already written into local legislation. The controversial recommendation No 3 will cause problems. See Chapter 13, Conclusions.

In discussing Guideline (b):

"The historical rights of descendants of the Pitcairn settlers arising from their settlement in 1856."

Sir John made the following recommendations:

"23. That commons grazing on steep slopes in Norfolk Island be prohibited and that other commons grazing areas be fenced and grazed in rotation.

24. That the Commonwealth Government complete the reservation of a coastal strip (not less than 100 metres from the edge of any cliff or 150 metres from the high water mark or the shore, whichever is the greater) around the entire island.

25. That some section within the Norfolk Island Public Service be made responsible for the preservation of the Islanders' traditional interests and culture."

Recommendation No 23 has been the bete noir of Administrators for decades; No 24 is commonsense and was a major recommendation of the Coldham Report.
but there is likely to be vigorous opposition to this measure from both the Pitcairners and other sectors of the community. Recommendation No.25 seems to have only marginal advantage.

Regarding Guideline (d):

"The present and probable development of the economy of Norfolk Island."

the Commission recommended:

" 26. That the number of tourists visiting the Island should not exceed 20,000 in any one year.
27. That the plan for the restoration and maintenance of historic building sites be maintained.
28. That the practice of fouling the coastline by emptying untreated garbage into the sea be terminated and replaced by a proper garbage disposal system.
29. That cattle grazing in Government-owned pine forested areas be prohibited and that such areas be reafforested.
30. That constant care be exercised in the setting of customs duties in the Island to ensure that low-duty shopping remains available.
31. That higher standards of town planning and building control be introduced and implemented." 28

Recommendations Nos 26 and 27 are already established and agreed policy; No 28, another bete noir of successive Administrators, leaves unanswered the problem of what is "a proper garbage disposal system" on a small and isolated island. A stream of visiting experts over the years have not solved this. Again, recommendation No29 has been pursued for many years with only limited results by a succession of exasperated Administrators. Recommendation No 30 is agreed: and see Chapters 9 and 13 regarding No 31.

Concerning Guidelines (e) and (f):

"Whether social security, health, educational, compensation and other benefits should be provided at levels similar to those which other Australian citizens enjoy: and the capacity and willingness of the Island to pay through taxation or other imposts for the provision of those benefits."

Sir John recommended:

"32. That control of importation of therapeutic substances not meeting standards required in Australia be introduced to safeguard the public.
33. That all social security, all pension and all medical, hospital and other health benefits dispensed by the Commonwealth Government be extended to residents of Norfolk Island."
34. That the present Lunacy Ordinance 1932-1964 be amended to accord with current certification practices in the Australian Capital Territory, and that the Pharmacy Ordinance 1956-1964 be brought up to date.

35. That advantage be taken in the Island of the opportunity to receive Commonwealth assistance under the Aged Persons Homes Act 1954-1974 for the purpose of constructing a home for elderly citizens.

36. That with respect to education the onus be on the Commonwealth Government to ensure that the educational facilities available in Norfolk Island are of the same standard as those obtaining in mainland Territories, and that the present close and developed association with the New South Wales Department of Education be allowed to continue.

37. That Commonwealth legislation with regard to workers compensation be extended immediately to Norfolk Island.

38. That where failure to date by Australia to extend International Labour Conventions to Norfolk Island has resulted in disadvantaging workers in the Island, such Conventions be made applicable to Norfolk Island immediately.

39. That citizens in Norfolk Island be made liable to the same levels of income taxation and other imposts as apply to the Australian Capital Territory.

40. That recommendations put forward by the Australian Department of Health and by the New South Wales Red Cross Blood Transfusion Service not already adopted be implemented as soon as possible.  

Recommendations Nos. 32, 34, 36, 38 and 40 are unlikely to cause any significant controversy. Recommendations Nos. 33, 35, 37 and 39, however, are all bound up with the question of local income tax and Parliamentary representation. This is discussed further in Chapter 13, Conclusions.

Regarding Guideline (g):

"The extent to which Norfolk Island has been and is now being used to provide a base for activities (e.g. income tax, gift duty and death duty avoidance or evasion) which are harmful to the interests of Australia or of other countries."

Sir John examined this aspect in considerable detail and concluded that although "..... the overwhelming body of abuses has now been stopped .......... If taxation abuses based in the Island are to be totally eliminated in so far as Australia is concerned ........... then there must be a conscious and quite deliberate adoption of measures to bring the Island wholly within the Australian taxation system."
The abuses which do not appear to have been dealt with are primarily in the areas of Federal estate duty, and State death and stamp duties.

Regarding Guideline (h):

"Conditions for permanent entry into the Island community."

the background to the problem of immigration into the island has been discussed at Chapter 5. Sir John's recommendations read:

"41. That the figure approved by the Council for the permanent population and tourist intake be adhered to with one proviso, viz. that the population limit of 2000 (set by the Council to be reached by 1980) be not regarded as a base upon which natural increases may be loaded, but as the absolute upper limit to be maintained unless clear evidence justifying a change is adduced; i.e. for population increases other than natural increases to be adjusted to maintain this upper limit of 2000.

42. That the principle of selectivity in immigration matters be retained.

43. That steps be taken immediately to expedite the making of amendments to the Immigration Ordinance which were approved by the Norfolk Island Council and the Minister in 1974.

44. That, in connection with land sales to persons not resident in the Island:

(a) if it can be established that the intending purchaser is a bona fide prospective settler in the Island;
(b) if no person in the Island is ready willing and able to purchase the property at the sale price;
(c) if the intending vendor renounces his residency after the sale; and
(d) if the number of people entering the Island as a result of the sale will not exceed the number leaving;

then such land sales should be permitted.

45. That the notion that formal priority should be granted to Pitcairn descendants and their spouses, when considering residency applications, be abandoned as being incompatible with the Racial Discrimination Act 1975."

Recommendations Nos. 41 to 44 are logical and desirable, although No. 44 is likely to be administratively cumbersome, as well as difficult to steer through the island Council. Recommendation No. 45 is unlikely to be accepted by the Pitcairn community. A likely course is for moves from the island to amend the Racial Discrimination Act to take account of the unique Pitcairner situation.
Regarding Guideline (i):
"The need for adequate communications between the Island and Australia, and the rest of the world."

This is a subject that space has not allowed for discussion within the present thesis. Sir John's recommendations Nos. 46 and 47 related to Qantas being relieved of its uneconomic air route licence with old DC4 aircraft between Sydney and Norfolk. The Government has already accepted this and has awarded the licence to East-West Airlines Limited. Nine of the eleven remaining recommendations in this section are, primarily, either simple or non-controversial. The remaining two are:

"48. That the airport be upgraded by Commonwealth Army and Air Force engineers to enable it to cater for both the immediate and foreseeable demands, and to yield maximum flexibility in the use of both passenger and freight-carrying aircraft, i.e. to enable heavier jet aircraft to be employed if and when necessary."

"52. That upgrading work on the airport be commenced as soon as practicable in view of the age and obsolescence of the DC4 aircraft."

In recommending that the island have the capacity to accept "heavier jet aircraft" Sir John is implying that large DC9 or 737 types would eventually be acceptable on the island. Environmentally and for tourist and population reasons this is not the case. The East-West Airlines Fokker F-500 turbo-prop aircraft which are to commence the Norfolk run on 1st March 1977 are essentially an interim aircraft type. However, the next, and probably the ultimate, stage of air communications to the island, certainly for regular passenger transport, is unlikely to be larger than say the medium Fokker F28 pure jet type. No very large scale airfield improvements would be required for such a type.

In any event, since the Government disbanded the RAAF Airfield Construction Squadron (which constructed the large airfields at Darwin, Cocos, Butterworth, Learmonth, etc) neither the RAAF nor the Army has the capacity to build large, modern heavy load-bearing pavements.

Regarding Guideline (j):
"The need for adequate law enforcement and judicial machinery."

Sir John made sixteen recommendations, almost wholly of a legal technical nature. One however deserves comment:

"71. That in order to give effect to the implications of the decision in the Berwick Case (See Chapter 1) S.14 of the Norfolk Island Act 1957-1963 be amended to
provide for all Commonwealth legislation, past or future, affecting Australia generally to be henceforth applicable to Norfolk Island unless the contrary is expressly stated."

This rather sweeping recommendation could well have some unfortunate effects on Norfolk Island. At the present time Acts of the Australian Parliament operate in the opposite sense, i.e. they are not applicable to the island unless the recital makes such special provision. Acceptance of the above recommendation could well result in a massive body of subsidiary legislation quite unsuited to island conditions and needs.

In toto, Sir John's recommendations mean virtual complete integration into the mainland Australian social and political system: if they were to be accepted. Certainly the Government, and the bureaucrats, would like to see this simple and convenient solution adopted. There are also a few on the island, but probably only a relatively small minority, who would for reasons mainly of economics in terms of social services, also prefer to opt for integration. The bulk of the island community, however, are against this concept. Most have always been highly suspicious of Commonwealth Government intentions towards the island. In the present case they see income tax, other imposts, a resulting higher cost of living and all the panoply of closer outside control looming large.

In late November the Prime Minister announced that an Inter-Departmental Committee was being formed to study the Nimmo Report and advise the Government on the course of action it should adopt. The departments represented on the Committee, apart from Senator Withers' co-ordinating Department of Administrative Services, were Treasury (including Taxation), Attorney-General's, Defence, Prime Minister and Cabinet, Foreign Affairs, Health, Social Security, Transport and Education. Initially the Committee was to visit the island to discuss with Council the main recommendations of the Report: the Government finally decided against this, however, no doubt on the assumption that a further "mini-Royal Commission" was not desirable. In a series of meetings into December and January the Administrator pressed the Council to record its views on what it felt about the Nimmo Report, although Council was more inclined to complain in general terms rather than to be specific.

The President of Committees of Council made a lengthy statement against the provisions of the report, and this received a wide circulation, on the mainland as well as on the island. See Appendix D. The feeling was strongly expressed that decisions about the future of the island had already been taken in Canberra, without regard to island opinion.
The Minister wanted Council's views on the Nimmo Report by 17th January 1977, and he was unwilling to extend this date. The island countered by quoting Sir John Nimmo himself:

"Most of the matters treated in this Report as requiring attention could and should have received that attention a decade ago at least and probably earlier. That they were not attended to and that a Royal Commission was necessary to focus attention upon them is a regrettable commentary on the failure of successive Australian governments to lay down clear policies for the Island." 35

Council claimed that after all this procrastination on the part of the Government the latest "hurry up" policy was unreal. The Editor of the Norfolk Island News sought the support of the people of Canberra on this and related issues in a letter to the Canberra Times:

"... the proposal (to attach Norfolk Island to the electorate of Canberra) is ridiculous from Norfolk Island's point of view .... including island residents in the Canberra electorate 'would not give us representation except in a meaningless, legal way. Among other things it would be an intrusion on our part into Canberra affairs, which could not be welcomed and which we do not want.'...... The Norfolk Island Council has done everything in its power to ask that adequate time be allowed for considering the implications of the report's recommendations before they are put into effect.........

In the considered view of the Norfolk Island Council, the main recommendations made by Sir John Nimmo will lead to massive changes in a way of life that is treasured on the island and that the great majority of residents do not want to be changed.

... Residents of Canberra who are concerned about their own rights may wish to join the residents of Norfolk Island in asking that there be no further implementation of Sir John Nimmo's formal or informal recommendations until there has been adequate time for the implications of those recommendations to be understood clearly." 36

There appeared to be no public response to this plea. Norfolk is remote, and its problems largely unknown to the average Canberran.

The same Editor, in a letter to the author in December, had made a plaintive cry for help:

"... Can you do anything to help?
The Island is as close to being really united as I ever saw it -- including all Council, Islanders, Younger Residents and so on. We are suddenly bound together by a horrible fear that Norfolk is very quickly going to be ground up in the public service meatgrinder, and there isn't anybody sane who has enough power or interest to prevent it.

Copies of a special supplement enclosed. Can you do anything with them? Blucher (the Pitcairner President of Committees of Council) has to everyone's pleasure been getting steadier and sounder and stronger by the month, showing some of the strength of character that I've heard about in the Pitcairners 50 years back. ......" 37
CHAPTER 12

THE 1975/76 ROYAL COMMISSION

NOTES


12. Ibid. p.85.

13. Ibid. pp.332/3.


15. Ibid. pp.345/6


17. Ibid. Adapted from Table on p.232.


27. Ibid. pp. 10 - 11.

28. Ibid. pp. 11.


33. Ibid. p. 18.


37. Letter. The Editor, Norfolk Island News, to the author. 16th December 1976.


CONCLUSIONS

The constitutional development of Norfolk Island over the years has been characterised by important, far-reaching and sometimes abrupt changes. The arrival of the Pitcairners in 1856 and Governor Denison's new code of laws of the following year was in itself the first of a series of local changes. Governor Hampden's new laws of 1897 and the assumption of control by the State of New South Wales was the next step, before the Commonwealth finally took control in 1914. All of these moves, together with the proliferation of legislation over the years, especially since 1945, have left the island with a fragmented and untidy body of laws, a situation which demands a serious effort for reform. Whether or not the main Nimmo proposals are accepted, many years of work lie ahead in this area if reforms are to be accomplished.

The archaic system whereby the Administrator exercises such extraordinary authority and responsibility on the island must not be permitted to continue, and in parallel with changes in this area the Norfolk Island Council should assume a significant measure of executive authority and responsibility.

Probably the most contentious area of island politics concerns the question of immigration into the community and the matter of permanent residency. It is indicative of the uncertainties and changing concepts that have beset the community that proposed legislation covering these matters still remains incomplete within the Public Service system of the Commonwealth Government. A high priority should be given to this matter.

Concerning the economy of the island, the people have no alternative but to rely on tourism as almost their sole mainstay. In doing this they are faced with the almost irreconcilable rationales of attempting to conserve the island environment on the one hand and combating the materialism and the physical and social problems that go with tourism on the other. The present-day consumer society, unfortunately, places the seeking after material gain before the preservation of the national heritage; a keen local and Governmental awareness of these problems is essential, therefore, and a strong and active movement to achieve an acceptable balance must be sustained.

Progress on new legislation dealing with land titles and land
It might be remarked here that the Editor (and publisher) of the Norfolk Island News is American born, Australian naturalised, and as yet possesses no long term residential status on the island under the Immigration Ordinance.

This, then, remains the situation with regard to the Sir John Nimmo 1975/76 Royal Commission as at late January 1977. After a close examination of reactions and events subsequent to the release of his Report, Sir John himself can see no reason to change or modify any of his recommendations. What the present author feels the Government should do in the circumstances is discussed in Chapter 13.

The author visited Norfolk Island again from 31st January to 4th February 1977. A reasonably extensive oral survey of representative island opinion showed that a minority of the people, probably 25% of the voters, including a sizeable proportion of the Pitcairn community, favoured the adoption of the main recommendations of the Nimmo Report. A petition from this group has been organised to be forwarded to the Minister. The Editor of the Norfolk Island News again expressed strong anti-Nimmo views, both orally and in an article in the National Times. The anti-Nimmo lobby seeks a referendum, but a referendum would only be likely to confirm the approximate 75%/25% ratio in opposition to the Nimmo recommendations.

The eight elected members of the Norfolk Island Council are apparently solidly against the Nimmo concepts. The document summarising Councillors' views was forwarded to the Department and the Minister on 4th February 1977. An advanced draft of this paper, but not necessarily the final version, is at Appendix E. It is not a strong document in terms of the arguments it puts forward, and it remains to be seen whether the Council's reference to a possible appeal to the United Nations (p.2) is to be taken seriously.
sub-division should also be made. Allied to this is the subject of overall development planning. Any plan adopted should make provision for the more valuable surviving elements of island and colonial tradition to be retained and encompassed within the aims of further social development. Certainly the best and most appropriate proposals for Norfolk to use as a basis for its future development are those arising from the Coldham Plan of 1972. Even an intelligent selection and acceptance of some of the major features of that Plan would aid tremendously in ensuring some much needed controls over land sub-division and usage, buildings, water and sewerage, vehicle parking areas, reserves and so on. It is almost tragic that the Norfolk Island Council has not seen fit to provide meaningful advice in this area in order to secure the island's future. Local groups and factions have displayed lamentable lack of understanding of the problems involved and of the effects a laissez-faire attitude are having on the island's future.

The history of company operations on the island since the mid 1960s has been a dramatic one. Dramatic in the sense that over a relatively short period of years the impact of the use of the island as a tax haven has resulted in social, commercial and physical changes of a permanent nature being brought about to the island life style and attitudes. Company and "tax haven" operations should be closely monitored by government in the future, and although much has been done to minimise these activities it will be essential to continue control by means of amending legislation.

Since World War II the questions of constitutional relationship, governmental control, a measure of local government, and changing administrative functions have posed continuing problems. By the late 1950s it had become patently clear that the sooner or later the Council must exercise greater local executive authority and accept a greater measure of responsibility. The Ordinance of 1960, engineered by Minister Hasluck, was designed to achieve this and in retrospect two mistakes were made. Firstly, the Council of the day, radical as it was, and bringing organised "incomer" concepts to island politics and life style for the first time, made a disastrous mistake in not accepting the Ordinance, despite any apparent deficiencies in its provisions. The acceptance of the powers offered by the Government of the day would have enabled the Council progressively to gain valuable experience in local administration and to have pressed for a yet higher measure of local government. In the event, seventeen years have been lost and still
no agreement is forthcoming and new legislation remains unwritten.

Secondly it can be argued that Hasluck did not display a sufficient sense of political ruthlessness by allowing the Council to reject the main provisions of the Ordinance and insist on changes to it. He and his advisers appeared to be too keen to ensure that the views of the local advisory Council were not over-rulled, albeit that a sizeable proportion of the population had for some years previously advocated the acceptance of greater local powers. Hasluck never believed in any degree of hard-handedness in his dealings with the island people and, when he had gone, his immediate successor, Barnes, was also too prone to accept the advice of his departmental advisers and refrain from insisting on greater local autonomy being assumed. Barnes and the Government did, however, rightly support the Administrator and oppose some of the people, and the majority of councillors, in backing the provisions of an amended local Companies Ordinance in 1971: and later in supporting the amendments to the Commonwealth Income Tax Assessment Act which was aimed at limiting the operations of tax-free companies on the island.

Now, in February 1977, the Government is faced with the difficult decision of whether to impose on the island community full scale income taxation, representation in the Australian Parliament, the acceptance of mainland scales of social services, and the acceptance of an almost total measure of Australian Parliamentary legislation. In addition, the question of the acceptance by the Council of local government authority, and the diminution of the powers and authority of the Administrator, is contemplated: although both of these provisions appear to be no longer controversial, unless the Council decides to use them as a lever to oppose the other important issues.

If the island population was composed almost wholly of Pitcairners, or almost wholly of newcomers, business people and company operators, then decisions concerning its future government and administration would be a good deal easier to make. As it is, if the Government wishes to impose income tax on one sector of the community then it must also tax the Pitcairners, the retired persons, and the low income earners. In general it is within this lower income group that the social welfare aspects of the Nimmo proposals would be most welcome, especially when taken with the concept of a taxation zone allowance.

Taxation, and all that goes with it, is likely to have some
deleterious effects on the island's finely-balanced sole industry,- tourism. The major problem, however, concerning the sweeping Nimmo recommendations is that the traditional "life style" of the island people, although altered to a significant extent since World War II, would undoubtedly undergo yet greater, more rapid and more fundamental changes.

The present thesis, and also that of the Nimmo Royal Commission, has demonstrated that an updated constitutional relationship with the Australian Government is necessary and overdue, and that the system of government and administration of the island, however traditionally pleasing in a number of respects, is drastically outmoded and is long overdue for change. There are however at least two reasons why such changes, vide the Nimmo Report, should be softened by some sensible degree of timing and gradualism. The first is that the sheer size of the problem of the administration required to implement the bulk of the reforms is enormous in terms of discussion, compromise, agreement, drafting at various levels, and the final passage of legislation. Even in 1974 the Administrator was complaining that some 91 pieces of legislation, some well over a year since leaving the island Council, remained in the "Canberra pipeline": and even with the essential Commonwealth backing and expertise, and bearing in mind the relatively tiny island administrative and Council machinery, years of work, probably up to a decade, lie ahead. This in itself may be no bad thing, as time will also be needed to absorb the shock of administering, implementing and policing such a body of laws.

The second reason is that the sheer impact of such political, economic, financial, commercial, social and related changes on a small and isolated community must have time to be absorbed. For example, concerning income tax, the effects on the financial planning of, say, a modestly well-to-do small local businessman, who has a growing family, would be very significant. The questions of death duties, land taxes and other imposts are also important.

Accordingly, and in the light of the controversy already engendered, the Commonwealth Government should:

(i) Direct that the Norfolk Island Council is to assume the local powers recommended in the Nimmo Report as soon as possible.
(ii) Whilst deferring for the present the final decision on the remaining key recommendations of the Nimmo Report, state clearly that the imposition of Australian income taxation, the introduction of Parliamentary representation, and associated matters, is intended (with the exception of the complete acceptance of all Acts of the Australian Parliament being made applicable to the island - a matter which should be re-examined).

(iii) State that the provisions at (ii) above will become effective in four years from 1st July 1977, with the first income tax returns due twelve months after that date, and that the period of grace thus allowed is for the purpose of gradual personal, commercial, economic and financial management and adjustment being made.

Whether the main recommendations of the Nimmo Report, or for that matter of this thesis, when they are synthesised, examined and discussed within the Public Service forum and subsequently in the political arena, will be faced up to and followed through by implementation of policy remains to be seen. If it does, the intervening years between decision and finality, as always, still leaves much room for manoeuvre and compromise.
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B - Order in Council Declaring Norfolk Island to be a Separate British Settlement. 24th June 1856.

C - Instructions to our Governor for the time being of the Island called Norfolk Island. 24th June 1856.

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E - Laws Amending Governor Denison's Laws of 1857; to 1881.

F - Deleted.

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