



**Norfolk Island
People for Democracy**

**Seeking Justice and Democracy: Norfolk Island's Right
to Self Determination and International Law –
An Historical Political Timeline**

Norfolk Island People for Democracy (NIPD)

Norfolk Island
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Foreword:

The political history of Norfolk Island is troubled by more than one and a half centuries of sustained injustice. This small and peaceful community has been at the mercy of foreign bureaucracy for the entirety of its settlement on Norfolk Island. Despite universal mandates to end colonisation, Norfolk Islanders have been denied the protections and processes that these principles provide.

Today, Australia continues to forego its legal obligation to decolonise the Norfolk Island People and denies the people genuine democracy. This resistance may be due to an unfounded concern on Australia's part that Decolonisation (the process of allowing the Norfolk Island People to choose how they want to be governed) will prejudice the Commonwealth of Australia's national interest. No evidence supports the perception that Norfolk Island is unwilling to enter into cooperative and mutually beneficial arrangements.

However, Australia's national interests cannot continue to be used to usurp the civil, political and human rights of the Norfolk Island People. Community subjugation and submission to injustice and deceit cannot and will not be sustained. Local tolerance has reached capacity.

The carefully collated summary in the following pages outlines the injustices Norfolk Island has suffered. The 2015 unlawful abolishment of the Norfolk Island Legislative Assembly, replaced in 2016 by an imposed Australian regional council, has been an expensive failure for both Norfolk Island and the Australian Government. The subsequent Joint Standing Committee Inquiry and Findings contained within their Report *Restoring Democracy in Norfolk Island* (November 2023) speak of these failings. The Norfolk Island Governance Committee and its proposed new local government model look certain to follow the same fate.

Both the Commonwealth of Australia's interests and the interests of the Norfolk Island People can be accommodated on Norfolk Island to the ultimate benefit of both places. Achieving this outcome remains at the heart of our Association's goals and objectives, and our efforts in this regard continue in 2024.

This paper is developed to end any further attempts to annex, integrate, assimilate, occupy, and/or misrepresent Norfolk Island. The time has come for Norfolk Island to be supported by honesty, transparency, truth and justice.

This paper demonstrates the solution to achieving genuine cooperation and justice in line with UN principles and international law.



Ric Robinson,
President Norfolk Island People for Democracy,
09 October 2024

Introduction

On 19 March 2015, the Commonwealth of Australia announced its unilateral and undemocratic decision to abolish the Island's Legislative Assembly, signalling the removal of democracy on Norfolk Island.

On 8 May 2015, through a lawful referendum, the People of Norfolk Island voted overwhelmingly in support of their "right to freely determine their political status, their economic, social and cultural development". Australia refuses to recognise the outcome of that referendum and by doing so continues to disregard the rights of the Norfolk Island People under international law.

This is a summary of our situation today:

- 1 Self-government removed.
- 2 Norfolk Island is a Non-Self-Governing Territory.
- 3 Since 8th May 2015, Norfolk Island became eligible to be inscribed on the United Nations List of Non-Self-Governing Territories.
- 4 The protective rights accorded to United Nations listed Non-Self-Governing Territories, which allow them to freely determine their political status and freely pursue their economic, social and cultural development, are yet to be extended to Norfolk Island.

On 18 May 2015, Norfolk Island People came together to set in motion an action plan to ensure our rights are restored and protected thereafter. The Association 'Norfolk Island People for Democracy' (NIPD) was formed.

The Australian Commonwealth Government, whilst ostensibly committed to the democratic rule of law, continues to avoid its legal obligation to decolonise Norfolk Island and as a result, denies genuine democracy for the Norfolk Island People. This reluctance to decolonise may be due to concern on Australia's part that decolonisation of Norfolk Island (the process of allowing the Norfolk people to freely choose how they wish to be governed) may adversely prejudice the Commonwealth of Australia's national interest in some form.

Achieving an outcome mutually beneficial to both the Commonwealth of Australia Government and the people of Norfolk Island remains at the heart of NIPD's goals and objectives, and our efforts in this regard continue in 2024.

This paper intends to outline an understanding of the nature of the relationship between the Commonwealth of Australia and Norfolk Island. It seeks to give a perspective of the relationship as viewed by the people of Norfolk Island and it seeks to clarify such understandings as may help to facilitate a pathway toward mutually beneficial resolutions concerning democratic processes and governance on Norfolk Island. Such outcomes in relation to processes and structures must address the previous abolition-by-decree of Norfolk Island self-government. Additionally, they must provide self-government for Norfolk Island sufficient that the physically separate and culturally distinct status of the Island settlement is protected and enshrined.

Background: International Resolutions:

On 14 December 1960, the United Nations passed resolution 1514 which proclaimed the necessity of 'bringing a speedy and unconditional end to colonialism in all its forms and manifestations' and declared:

"All peoples have the right to self-determination and by virtue of that right can freely determine their political status and freely pursue their economic, social and cultural development".

(United Nations General Assembly Resolution 1514)

On 15 December 1960, the United Nations passed *Resolution 1541*, which had the effect of requiring Australia, under international law, to list Norfolk Island onto the United Nations list of 'non-self-governing territories'. This would enable Norfolk Island to enjoy a United Nations assisted transition towards a legally protected governance model designed in accordance with the wishes of the Norfolk Island People.

A 1978 report by the United Nations Association of Australia (U.N.A.A.) confirmed Australia's obligation to list Norfolk Island. However Australia has always strongly resisted listing Norfolk Island.

"...the reason that Norfolk Island was, in 1972, attached to the Department of Capital Territory instead of Science and External Territories with Cocos and Christmas Islands, was deliberately to avoid U.N. scrutiny."
(Report of the Royal Commission into Matters Relating to Norfolk Island Nimmo.J.A. October 1976)

To further avoid listing Norfolk Island as a Non-Self-Governing Territory with the United Nations, in 1979 the Australian government conferred to the Norfolk Island People a limited form of self-government through the Commonwealth of Australia with the Norfolk Island Act 1979.

What Australia failed to explain to the Norfolk Island People in 1979 was that the success of the 1979 Norfolk Island Act was 1. contingent upon the ongoing goodwill of the responsible Commonwealth Department and Federal Minister. 2. that Australia would retain control of most of the law-making powers and economic freedoms the Island needed to govern effectively, and 3. Australia would retain total control over the 200 nautical miles E.E.Z. and the natural resources contained therein. Additionally, the Australian governmental departmental bureaucracy retained overarching and final power in all decision-making through the office of the Norfolk Island Administrator.

In light of the amendments made to the 1979 Norfolk Island Act on 26 May 2015, and the subsequent absolute removal of any governance decision-making power from the Norfolk Island People, in any form whatsoever, Australia can no longer sustain the argument that Norfolk Island is a 'self-governing territory'. As a result, the Australian Government must, as a matter of International law, and following established ethical and moral principles of democracy, **now list Norfolk Island on the United Nations list of 'non-self-governing territories' and abide by the processes and obligations which such a listing imposes.**

"NIPD is committed to ensuring the Norfolk Island People can enjoy their democratic rights by having Norfolk Island listed on the United Nations list of 'non-self-governing territories". (NIPD)

The United Nations and Norfolk Island

It is anticipated by NIPD that, after inscription onto the United Nations register of non-self-governing territories, the United Nations through their information and outreach programs, will build the capacity of Norfolk Island People on rights at law, and assist to achieve the democratic structures and processes required through a United Nations sponsored referendum. This process is commonly referred to as an “act of self-determination”.

A United Nations sponsored referendum would give the Norfolk Island People the following three options:

- Self-Government in Free Association (models for which can vary);
- Independence; or
- Integration.

“NIPD supports Self-Government in Free Association with Australia.

NIPD does not support Independence. NIPD does not support Integration with Australia.

However, we recognise that self-determination means that the Norfolk Island People have the democratic right to choose which option they wish to pursue.” (NIPD)

As a part of NIPD’s due diligence process we explored the different Free Association models already in existence around the world. What became clear to NIPD is that self-government in Free Association addresses most of the fundamental inequities associated with government exercised from afar. It addresses the weaknesses of our previous governance arrangements with regards to financial sustainability. It ensures Norfolk Island has the necessary powers required to govern effectively. And it guarantees the fundamental right of the Norfolk Island People to determine their own future.

Despite Commonwealth of Australia’s historical unwillingness to uphold the democratic rights of the Norfolk Island People, especially when compared to the demonstrated willingness of other Nations who have the same legal responsibilities to their dependent Territories, NIPD is committed to have Norfolk Island listed with the United Nations as a non-self-governing territory and to create a pathway to achieving, for the Norfolk Island People, the opportunity to determine their own future.

In 1895, in the Australian parliamentary discussions prior to federation, William Crick (the NSW member for West Macquarie) in reference to Norfolk Island stated: “...*the Government wish to deny to this handful of people those rights they would not dare to deny this colony.*” It is this issue NIPD seeks to address.

Norfolk Island citizens have voiced concern and active resistance to remote and undemocratic rule over Norfolk Island on many occasions throughout their history through representations, correspondence, petitions, declarations and Norfolk Island referendums. The total rejection of the *Norfolk Island Ordinance 1960*, which detailed a power of veto for an Administrator, is an example of this unwavering resistance to colonial occupation.

In his 1975/76 Nimmo Report Sir John Nimmo lamented that in the absence of democratic government or representation for Norfolk Island: “*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...*”

(Report of the Royal Commission into Matters Relating to Norfolk Island Nimmo. J.A. Oct 1976 pp345-6)

International Law of Occupation

By the joint action of the *Norfolk Island Act 1913*, an Act of the parliament of the Commonwealth of Australia and an *Imperial order in Council 1914*, Norfolk Island was placed “*under the authority of the Commonwealth of Australia*” for administration, three weeks before the outbreak of WW1. This occurred without the consent of the people of Norfolk Island who were not consulted and were not a contracting party.

Thus, Norfolk Island was placed under occupation according to the definition provided in the 1907 Hague Convention. Control of Norfolk Island was vested in the Governor General, Commander in Chief of the armed forces according to the 1913 Act.

Article 42 of The Hague Regulations is the accepted definition of what amounts to an occupation for the purposes of international law. Occupation exists as soon as a territory is under the effective control of a State that is not the recognized sovereign of the territory.

For the purposes of International Humanitarian Law (IHL) occupation is a type of international armed conflict. The laws of occupation are contained primarily in **the Hague Regulations of 1907, the Fourth Geneva Convention of 1949 and its Additional Protocol I and in customary IHL.**

The existence of an occupation is determined solely based on the prevailing facts. The term ‘occupation’ has no political connotation whatsoever and is derived exclusively from Article 42 of the Hague Regulations of 1907. Under IHL, three conditions must be met in order to determine the existence of an occupation: the presence of foreign forces without consent; the foreign forces’ ability to exercise authority over the territory concerned in lieu of the local sovereign; and the related inability of the latter to exert its authority over the territory.

All together, these elements constitute the ‘effective-control test’ to determine whether a situation qualifies as an occupation for the purposes of IHL. The notion of “*effective control*” of foreign territory is at the heart of the notion of occupation. The Commonwealth of Australia maintains control over Norfolk for defence.

International law of occupation codified in the Hague Convention 1907:

- 1 **Sovereignty and Legal title:** Under the law of occupation sovereignty cannot be transferred to the occupying power. Additionally, land ownership and legal title of the land cannot be transferred. Occupying powers do not acquire legal title to occupied territory. Instead, they assume obligations as administrator of the territory during the period of occupation. Consequently, sovereignty over occupied territory does not pass to the occupying power.
- 2 **Annexation:** Under International law annexation is illegal and a violation of international law. Annexation requires a mutual agreement and a treaty to take effect. Annexation refers to both the unlawful and the lawful incorporation of a territory and its people into another state. In contemporary international law, unilateral annexation of a territory is unlawful.
- 3 **Human rights in situations of Occupation:** Human rights law is also of importance in situations of occupation and often a relevant, while not exclusive, legal framework. Its application to occupied territory has been affirmed in many instances, including by the International Court of Justice and United Nations Treaty Bodies.
- 4 **Prohibition against occupying power transferring their own population into the occupied territory:** An occupant is prohibited from transferring their own population into the occupied

territory. An occupant is to administer the occupied territory for the benefit of the local population, rather than in its own self-interest.

- 5 **Existing laws and institutions to be respected:** When a territory is considered occupied under international law, the occupying power is required to respect the existing laws and institutions of the occupied territory as far as possible. The presumption is that Occupation will be temporary, and the occupying power should maintain the status quo ante.

End of occupation, transfer of authority to a de jure local government, with free exercise of sovereignty:

The transfer of authority to a local government, re-establishing the full and free exercise of sovereignty, can normally end the state of occupation. So, while the occupying power cannot unilaterally change existing laws in the occupied territory, cooperation with local authorities can lead to the establishment of a local government within the occupied territory. However the people must consent to the continued control with regards to defence.

“Creeping annexation or Belligerent Occupation?” Research paper by Giulia Pinzauti July 2023, provides indicators which denote a creeping annexation:

- De facto assertion of title over the occupied territory
- Application of the occupying power’s domestic legislation to the occupied territory
- Extension of the occupying power’s territorial and/or personal jurisdiction to the occupied territory
- Remodelling borders
- Measures aimed at altering the demographic composition of the occupied territory
- Incorporation of the occupied territory’s economy
- Restriction or repression of civil and political rights (freedom of expression, assembly and association and freedom of movement) beyond the limits of IHL
- Effacing the national identity of the occupied people
- Public works for the benefit of the occupier
- Prolonged military occupation

The relationship between the occupying power and that of the occupied Territory is a trusteeship relationship. This principle has been likened to a trust or fiduciary relationship in domestic and international law, where the dominant authority is required to act in the interests of the people under occupation. (The writing on the Wall, 2017, A. Gross, pp.26-29).

An occupying power that tries to turn an occupation into an annexation becomes an illegal occupant. In the modern world, an occupying power cannot acquire the right to conquer, annex or gain sovereign title over any part of the territory under its occupation. This is one of the most well-established principles of modern international law and has received universal endorsement. According to Oppenheim, belligerent occupation does not yield so much as an atom of sovereignty in the authority of the occupant (The writing on the Wall 2017 A. Gross pp8)

Historical Political Timeline of Norfolk Island – Key Points

Polynesia/ Oceania & Norfolk Island

Norfolk Island is a Pacific Island, situated in the Pacific Ocean. Historically before colonialism the island was inhabited and its resources utilized by the Polynesian People. Evidence of Polynesian settlement exists and has been documented by archaeologists. Māori and wider Polynesian oral history hold knowledge of Norfolk Island and the Polynesian People's relationship to the island. Norfolk Island is known to be part of the Kingdom of Polynesia. Evidence of this can be found in Te Papa Tongarewa (container of Treasures) Museum, Wellington, New Zealand. Colonial discourse overlooks this in convenient historical evidence.

The Pitcairn people as a distinct race of people evolved within the Pacific, first on Pitcairn Island before their removal to Norfolk Island. They have ancestral ties to Polynesia, as well as having British ancestry. In a sense they represent a continued Polynesian presence on Norfolk Island which they consider their homeland. There are many references to the Pitcairn Islanders as a “race of people,” a “distinct people” and as free settlers from Pitcairn in historical documents.

Pitcairn Islanders' Historical Timeline

1789 - 1808 Pitcairn Island and the birth of a new Society, the Pitcairn Islanders:

Her Majesty's British ship the *Bounty* arrived in Tahiti in 1788, to collect breadfruit for Britain's slave colonies. Five months later they resumed the onward journey, but only three weeks into the return voyage, mutiny struck, and the *Bounty* was overtaken by mutineers. Desperate to find an Island safe from the reach of the British Navy, the mutineers attempted and failed at settlement on Tubuai twice, and Tahiti a second time.

23 Sept 1789 Fletcher Christian with eight mutineers, and nineteen Polynesian men, women and a baby, sailed from Tahiti westward in search of safe haven.

12 January 1790 After sailing over 7,800 miles the mutineers found their future home on Hitiarevareva - Pitcairn Island.

1808 American Whaler 'Topaz' discovered the surviving community of 35 on Pitcairn, with only one of the original males, the mutineer John Adams, surviving.

1814 Two British naval vessels discover and report the existence of the Pitcairn Island community, now deeply religious.

1814 - 1831 New non-Polynesian people, from visiting merchant and whaling vessels, joined the community and strengthened the population. With the exception of the three Englishmen who had subsequently arrived, all of the Pitcairn Islanders had Polynesian/Tahitian ancestry.

1831 The British Government made arrangements to relocate the Pitcairn Island community. The government barque *Lucy Ann* subsequently removed the community, against their will, to Tahiti. The community, weakened from sixteen deaths, returned to Pitcairn just thirty-one weeks later.

30 November 1838 Russell Elliott, Commander of HMS *Fly* reported that the 99 inhabitants were anxious to have someone in charge of the island for their internal regulation and government, especially to give them the authority to deal with lawless strangers that frequented the Island. Elliott drafted 'The Pitcairn Constitution' to assist Pitcairners in legitimising the election and appointment of the Island's Chief Magistrate, answerable for their proceedings to Her Majesty's

Government. He assisted with the development of the first ten Laws of the new British Crown Colony - Pitcairn Island.

1844- 1850 The next time emigration of the Pitcairners was discussed was concerning generous offers from the Queen of Huahine of the Society Islands, and King Kamehameha III of Hawaii for transport to the royal estates in Hawaii. These offers were eventually declined because the Islanders sought to live independently, as they did on Pitcairn.

1853 George Hunn Nobbs travelled to and returned from England having been ordained as a minister in the Church of England. Whilst in the UK Nobbs advocated to the crown on behalf of the Pitcairners, who were seeking a homeland more capable of providing for their expanding community.

1852-1856 The Pitcairn community, suffering from famine and disease, were resigned to leaving Pitcairn. Their final choice – conveyed to the British Government through the British Consul in the Society Islands – lay between Norfolk Island and Sunday Island in the Kermadec Group. The decision to accept Norfolk Island received official recognition by the British Government when Secretary of State for the Colonies Sir John Pakington was informed Norfolk Island should be reserved for the Pitcairn Islanders.

A report on the island was requested from the Lieutenant-General of Van Diemen's Land who responded favourably, and the British Government in turn gave its approval to the transfer to Norfolk Island *"in accordance with your wishes"*.

3 April 1856 The Pitcairn Islanders decided to accept the Crown's offer of Norfolk Island in their new homeland.

"...all those... ..who were so disposed to accept Her Majesty's most gracious offer of Norfolk Island, and all that appertains thereto, for the sole use of themselves and their families"
(Pitcairn Island Register - Page 96, Apr 21-22, 1856)

On the 8th of June 1856 the entire Pitcairn Island community of 194 disembarked at their new home, Norfolk Island.

The *"Morayshire"* transported the 194 inhabitants of Pitcairn to Norfolk Island *as a whole and entire people*.

Shortly after their arrival, the last of the convicts would depart Norfolk Island on the *Morayshire* along with Lieutenant Gregorie, Captain Denham, and Mr. and Mrs. Stewart, leaving the Islanders alone on their new Island.

Wasteland Act 1855 UK

In 1855 the British Parliament created an Act to repeal the *Acts* of Parliament now in force respecting the disposal of the waste lands of the Crown in Her Majesty's Australian Colonies, and to make other provision in lieu thereof. *"The separation of Norfolk Island from Van Diemen's land could only be effected once"*: (Ellicott, R.J. 1975)

24 June 1856, An Imperial Order-in-Council decreed that Norfolk Island be severed from the colony of Van Diemen's Land. Norfolk Island was henceforth to be a *"separate and distinct settlement"* for the former inhabitants of Pitcairn Island. As a Crown dependency Norfolk Island was not part of the United Kingdom, nor was it ever represented in the UK parliament. Norfolk Island's establishment was made directly by the British Crown.

The Governor of New South Wales was appointed Governor of Norfolk Island, the two positions held by the Governor as separate offices.

Legal Status and Crown in Right:

In the Imperial Order in Council of June 24, 1856, her Majesty, in her wisdom, did not reserve the right to alter or change the “distinct and separate settlement” status of Norfolk Island. Norfolk Island’s legal status, the Crown in Right of Norfolk Island, provided for the Government of Norfolk Island from 1856. It should be noted “*the Imperial Orders in Council under Imperial legislation cannot be overridden by a Commonwealth Act*” as stated in section 195 of Part II of – The Constitutions, etc., of the Dominions.

5 Dec 1856 A Royal Warrant issued by Queen Victoria, granting Norfolk Island seal to the Island.

“Victoria R,

To Our trusty and Well-beloved the Governor of Our Island called Norfolk Island Greeting.

With this you will receive a Seal prepared by Our Order for the use of Our Island called Norfolk Island. Our Will and Warrant authorizing the use of the Public Seal for the Colony of Norfolk Island. Our pleasure is, and We do hereby authorize and direct, that the Said Seal be used in Sealing all public Instruments which shall be made and passed in Our name and for Our Service, in Our said Island. And so, We bid you farewell. Given at Our Court at Osborne House, Isle of Wight, this Fifth Day of December in the Twentieth year of Our Reign.

By her Majesty’s Command, Labouchere.”- Tom

(Royal Warrant, is archived at Dixson Library, National Archives).

1857 Governor Denison, the Governor of Norfolk Island, rewrote the laws and regulations of Norfolk Island in keeping with Royal Instructions. This act constituted a legislative system of Government for the Island. Norfolk Island was left to govern itself according to these laws.

1872 and 1875 Pacific Islander Protection Acts: Her Majesty makes no claim or title to dominion or sovereignty over Pacific islands which derogates from the rights of the people inhabiting those islands.

Chapter 7 of the Pacific Islander Protection Acts: Saving the rights of the tribes. – “*Nothing herein or in any such Order in Council contained shall extend or be construed to extend to invest Her Majesty, with any claim or title whatsoever to dominion or sovereignty over any such islands or places as aforesaid, or to derogate from the rights of the tribes or people inhabiting such islands or places, or of chief or rules thereof, to such sovereignty or dominion, and a copy of every such Order in Council shall be laid before such House of Parliament within thirty days after the issue thereof, unless Parliament shall not then be in session, in which case a copy shall be laid before each House of Parliament within thirty days after the commencement of the next ensuing session.*”

1887 The British Government enacted the "British Settlement Act 1887".

To quote Halsbury's Laws of England 3rd Edition at 1202: Limitations on the power of the Crown:

“The Crown has, however, no power to amend the constitutions of settled colonies which had a legislature before the British Settlements Act 1887...”

Even though the Pitcairners of Norfolk Island had their own legislature, the British Government was to change their constitutional arrangements in 1897. Various enquiries into the affairs of the island were being undertaken, and concerns (unfounded) were expressed about the small amount of land being cleared for agricultural purposes, and the adequacy of the justice administered by local magistrates. Reference was also made to a lapse in the morals of the formerly very religious people. This was

perhaps the first time the colonial powers started to exercise a culturally biased and racist approach to dealing with the island.

Norfolk Island now came directly under the authority of the Governor of NSW. This meant that the management of the island and the costs involved fell to the NSW Parliament. There was resentment at this situation both on the island and within the NSW Government, particularly as that state of affairs would remain in place until 1913.

At this time too, the system of local elected magistrates was abolished, and replaced by a Magistrate appointed from outside. **It would be many decades before the island once again had a head of government elected from among its own people, and that right would once again be removed in 2015.**

In ensuing decades, various forms of Councils and Councils of Elders were instituted. They did not always have full quota of elected members and were for the most part only advisory.

1896 Viscount Hampden governor of New South Wales visits Norfolk Island

In November 1896 Governor Hampden visited Norfolk Island on instructions from the British government. He arrived on a man-of-war with armed guards with bayonets ready to use. The Norfolk Islanders gave them no reason to use them, but the action was hostile. They expected trouble and knew deep down they were doing the wrong thing. The following year, 1897, government of the island was vested in the NSW Governor under advice from his ministry, without the express consent of the Norfolk Island People,

18 Oct 1900 The consolidated laws of Norfolk Island: Imperial order-in-council for the government of Norfolk Island

1901 Federation of the Commonwealth of Australia: The Colonies, comprising the six States of Australia, formed a federation "in one indissoluble Commonwealth". When the Commonwealth of Australia Constitution Act (UK) commenced on 1 January 1901 it established the Commonwealth of Australian Government, as a self-governing British colony and gave the Australian Parliament the power to make laws on certain matters (as listed in sections 51 and 52).

Norfolk Island was not mentioned in the Constitution, nor made a part of the new Commonwealth. Norfolk Island remained a distinct and separate settlement in 1901 as its constitutional status as established in 1856 cannot be abrogated. (Ellicott and McLelland opinion 1975)

6 Nov 1901 Hansard, House of Representatives, 1st Parliament 1st Session page 6887

Question on Norfolk Island:

Mr KINGSTON: Minister for Trade and Customs, South Australia:

"... No instructions have been given, but, as a matter of fact, Norfolk Island is not part of the Commonwealth, and therefore imports from Norfolk Island must be regarded as imports from a foreign country.

Mr Hughes: – *Is not Norfolk Island part of New South Wales?*

Mr KINGSTON: – *No.*

Mr Barton: – *Lord Howe Island has been made part of New South Wales, but Norfolk Island has not."*

7 Nov 1901 Hansard House of Representatives, 1st Parliament 1st Session, page 6989

Question on Norfolk Island:

Mr HUGHES, WEST SYDNEY, NEW SOUTH WALES –*I desire to ask the Minister for Trade and Customs a question with regard to a matter I brought under his notice yesterday. I am at a loss to know how it is that the right honourable gentleman classifies Norfolk Island as he does. This is becoming a burning*

question. I understood the right honourable gentleman to say that Norfolk Island was not a part of the Commonwealth. I understand that it is not a part of the State of New South Wales, but I do not understand how it is not a part of the Commonwealth.

Mr Barton: – It is not placed under our jurisdiction.

Mr HUGHES: – Does the right honourable gentleman contemplate the possibility of there being territory, which is not a part of the Commonwealth, and yet is under the control of one of the States, which control may be exercised in any direction that the State please? I have looked through the Annotated Constitution of the Australian Commonwealth and I find that whilst provision has been made that territory may not belong to any State-

Mr SPEAKER: – Order; the honourable member can only ask a question.

Mr HUGHES: – What I wish to know is this - I thoroughly understand that Norfolk Island is not a part of New South Wales, but I do not understand how it is that it is not considered to be part of the Commonwealth.

Mr KINGSTON (Protectionist): – The States are federated, and as a result of that federation everything that is included in the States is in the Commonwealth, whilst that which is not included in the States is not in the Commonwealth.”

25 Aug 1902 Annexation of Norfolk Island, by the new Commonwealth of Australia was already being bruited, for the entry in Norfolk Island’s Isaac Robinson’s diary on this date reports “*a large and influential public meeting tonight to discuss annexation to Commonwealth*”. The meeting voted (59 to 6) against annexation “*in any form*”.

1903-1908 NSW Governor Harry Rawson decided to force the occupants of the former penal settlement houses at Kingston to sign and pay for a licence that stated that these houses did not belong to them, but to the Crown. Their families had lived in these homes for over 50 years, and they believed they belonged to them. Many refused to accept or sign the lease documents, and as a result they were evicted in 1908. Local constables were enlisted to carry it out, and in protest many homes were burned. Those who chose to comply included many who had nowhere else to go. They were only allowed to stay for another generation.

Possible transfer to New Zealand. At various times during this period, the possibility of placing Norfolk Island under New Zealand was mooted, with varied reactions. The New Zealand Government believed such a transfer would be appropriate because of the closer links with the Melanesian Mission, and also the fact that that the Pacific Cable would branch off from Norfolk Island to that country. That this never took place is a source of regret among Norfolk Islanders to this day, because it is observed that New Zealand enjoys a far fairer relationship with its former colonial possessions than Australia does.

18 March 1902 the British parts of Papua were effectively transferred to the authority of the new Commonwealth of Australia. With the passage of the Papua Act 1905 the area was officially renamed the Territory of Papua and was “*placed under the authority of the Commonwealth of Australia.*” The Australian administration formally began in 1906. The nation of Papua New Guinea achieved independence from Australia on 16 September 1975.

Despite Papua being placed *under the authority* of the Commonwealth of Australia, both Papua and Norfolk Island remained possessions of the British Crown.

Norfolk Island has still not been decolonised or been granted self-government.

1905 Sir Robert Garran opinion:

The constitutional position of Norfolk Island anent the Commonwealth of Australia was debated/discussed in Melbourne, then the seat of the Federal Government. Sir Robert Garran, Secretary to the Attorney-General, wrote an opinion for the Attorney-General:

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

This opinion was endorsed by the Attorney-General, Sir Isaac Isaacs, probably Australia's greatest constitutional lawyer:

"I agree. Forward to the Honourable Prime Minister."

The constitutional position of Norfolk Island has never since been so thoroughly explored.

1908 The Norfolk Islanders were evicted from their Kingston homes of 52 years by Governor Harry Rawson of New South Wales after they refused to accept lease documents saying that the houses belonged to the Crown, not to them. Bearing in mind that in Sir William Denison's proclamation of June 25th, 1856, the houses were *not* reserved for the Crown. Nor did the document specify that the "500 acres of land elsewhere" were located anywhere near Kingston.

1910 Section 122 of The Interpretations Act 1901 (referred to in Ellicott and McLelland's legal opinion 1975):

*"When Chap. VI is reached, and it is found that s.122 gives the Parliament a general power to make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or **of any territory placed under the authority of the Commonwealth** or otherwise acquired by it, a change to a fundamentally different topic is perceived. The change is from provisions for the self-government of the new federal polity to a provision for the government by that polity of any community which comes **under its authority** while not being a part of the Commonwealth": of Harrison Moore, The Commonwealth of Australia, 2nd ed. (1910) p. 589).*

1913 Debate on second reading of Norfolk Island Bill 1913.

Mr Glynn (Minister for External Affairs): "In 1897, the question was raised as to what should be done with the Island, and it was pointed out that there could be no annexation by New South Wales or the Commonwealth except by an Act of the Imperial Parliament. But, by an Order-in-Council, the island can be placed under the control of the Commonwealth... Mr Laird Smith: Have the people of the Island been consulted? Mr Glynn: They know what is going on; but they have not been consulted by the Government. Mr Laird Smith: They strongly resented it being taken over by New South Wales".

1913 Commonwealth of Australia asked that Norfolk Island be ceded. Great Britain declined.

In 1913, the Commonwealth of Australia had asked Great Britain that Norfolk Island be ceded to the Commonwealth. In 1914, Norfolk Islanders sent a petition to the King of England strenuously objecting to the Island being annexed or ceded and the Crown declined such a transfer.

The Islanders held an historic personal respect for the British Monarch. However, they were perhaps unaware that the Monarch had not held absolute rights beyond the powers of parliament since 1689.

Thus, contrary to the Commonwealth of Australia request, Norfolk Island was not annexed. Rather it was made a dependency.

"A dependency is a geopolitical term meaning a territory under the jurisdiction of but not formally annexed by a nation". The Oxford Dictionary of Modern Legal Usage Garner B.A.

1913 Norfolk Island Act passed by Commonwealth of Australia, assented to December 1913. And 1914 Imperial Order in Council:

The 1900 Imperial Order in Council was revoked.

By the joint action of the 1913 Norfolk Island Act and an 1914 Imperial Order in Council Norfolk Island was placed "*under the authority of*" the Commonwealth of Australia for administration three weeks before the outbreak of WW1. **Norfolk Island was not consulted.**

War was imminent with Germany, which held several territories in the Pacific. Control of Norfolk Island was vested in the Australian Governor-General, the Commander in Chief of the Australian Armed forces.

Jurisdiction

Norfolk Islanders have repeatedly questioned the Commonwealth of Australia's legal jurisdiction over Norfolk Island in 1913. They further question the authority used by the Commonwealth of Australia to pass the Norfolk Island Act which received royal assent in Dec 1913. The Act was passed and assented **prior to** the 1914 Imperial Order in Council which was the authorising document for that 1913 Act. At the time the Commonwealth of Australia was under the Crown in Right of the United Kingdom of Great Britain and Ireland, whereas Norfolk Island had its own Crown in Right of Norfolk Island, a separate jurisdiction.

In 1913 when Australia introduced the Norfolk Island Act, it had been drafted on the basis that Norfolk Island was to be annexed to the Commonwealth. When the Order in Council by the Privy Council was passed in 1914 there was no mention of the annexation being granted. Thus, Norfolk Island remained a possession of the British Crown. Australia was not granted sovereignty over Norfolk Island.

1914 The Commonwealth of Australia established its administration over Norfolk Island by appointing an Administrator. The Administrator's role was to represent the interests of the Norfolk Island community to the Commonwealth of Australia. The relationship was akin to that of a trusteeship.

1914-1936 UK legislation and Orders-in-Council continued to be enacted:

Legislation from the UK Parliament, and Orders-in-Council covering matters pertaining to Norfolk Island were still being enacted as late as 1936, despite the Commonwealth's assertions that the absolute power to legislate rested with them from 1914 onwards.

Indicia of Recognition of Norfolk Island's Separate Status after 1914

"Now, therefore, His Majesty, by virtue of the powers in this behalf by the Fugitive Offenders Act 1881, or otherwise in His Majesty vested, is pleased, by and with the advice of the Privy Council, to order, and it is hereby ordered, as follows :-

1. As from the first day of November 1925, the hereinbefore recited Order in Council of the 23rd day of August 1883, shall be revoked, without prejudice to anything lawfully done thereunder, or to any proceedings commenced before the said 1st day of November 1925.

2. On and after the 1st day of November 1925, Part II of the Fugitive Offenders Act 1881, shall apply to the group of British Possessions and Territories hereunder mentioned, that is to say" :-

Commonwealth of Australia;
Papua;
New Guinea;

Norfolk Island;

Nauru;

New Zealand;

Western Samoa;

Fiji;

Gilbert & Ellice Islands;

British Solomon Islands

1925 Papua and Norfolk Island remained British Possessions

Both Papua and Norfolk Island remained British Possessions, despite both having been “*placed under the authority of the Commonwealth of Australia*”.

The *Imperial Order in Council 12th Oct 1925 no. 1031*, concerning the Fugitive Offenders Act 1881 states inter alia: “*And whereas Papua and Norfolk Island are British possessions which have been placed under the authority of the said commonwealth*”.

1926 An Australian Royal Commission received representations from 12 of the then 19 surviving original settlers from Pitcairn Island to the effect that the British Government’s promises to the Pitcairners on their arrival at Norfolk Island had not been honoured.

1935 Norfolk Island Printers and Newspapers Ordinance enacted by the Commonwealth of Australia imposed press censorship:

Commonwealth of Australia imposed total press censorship on Norfolk newspapers and printers, to prevent criticism of its administration. The ordinance made it unlawful to publish any newspaper, newsletter or pamphlet in Norfolk Island if the Australian Administrator disapproved of it. The ban was lifted in 1964.

1936 Norfolk Island language banned:

Norfolk Island language (“Norf’k”) was banned by the Commonwealth of Australia Government from the Central School, Norfolk Island.

1945 Commonwealth of Australia signed the U.N. Charter:

Commonwealth of Australia signed the UN Charter as a founding member on 1st November 1945. The Australian Act to adopt the UN charter in 1945 stated the act was binding on the Crown in Right of the Commonwealth of Australia and binding on the Crown in Right of Norfolk Island (i.e. separately applied).

1946 Norfolk Island not listed by Commonwealth of Australia as non-self-governing Territory.

Commonwealth of Australia failed to list Norfolk as a non-self-governing territory in 1946, when Nauru, Papua and Cocos-Keeling Islands were so listed.

- **Repeated failure to list** Norfolk Island as a non-self-governing territory with the United Nations (UN) occurred again in 1960, again in the 1970’s and again in 2015.
- Deliberate action by Commonwealth of Australia “**to avoid UN scrutiny**” – is a direct quote from a Senior Departmental Officer to the 1975-76 Royal Commission.

1944 - 1947 The dawn of the new Pacific

In 1944, Australia and New Zealand signed the ANZAC Agreement, formally proposing establishment of a regional organisation to advance the well-being of the indigenous peoples of the Pacific. Then on **6 February 1947**, the governments of Australia, France, Great Britain, the Netherlands, New Zealand

and the United States of America – the countries administering non-self-governing territories in the Pacific region - signed the 'Canberra Agreement' establishing the South Pacific Commission (SPC) with the intention to facilitate cooperation by the colonial governments in administering their dependent territories. SPC was to operate for the benefit of the region's non self-governing peoples, as a non-political and bilingual organisation.

The two cornerstones were Trusteeship and Regionalism that would lead to island countries gaining ownership of their own future through decolonisation. The area served by the Commission included all dependent territories of the six founding member countries including: Papua, New Guinea, Nauru and Norfolk Island, French establishments in Oceania (consisting of the Society, Tuamotu, Austral and Marquesas groups), New Caledonia and Dependencies, Wallis and Futuna, Netherlands (or Western) New Guinea, Western Samoa (former German part of Samoa), Cook Islands, Niue and Tokelau Islands, Fiji, British Solomon Islands Protectorate, Gilbert and Ellice Islands, Pitcairn, American Samoa and the French/ British condominium of the New Hebrides.

1951 the Canberra Agreement was amended to include Guam and Micronesia. The scope of the SPC changed little after with the exception of **Norfolk Island being removed in 1979** and Dutch New Guinea in 1962 as it became part of Indonesia.

Each nation within the scope of the SPC enjoyed participation of their own representation **with the exception of Norfolk Island** who were denied any involvement by Australia.

When Norfolk Island finally achieved limited self-government in 1979, Australia moved swiftly to have Norfolk Island removed from membership of the SPC before Norfolk Island could attend the forum in their own right. The reasons for denying Norfolk Island its place within the SPC is political only. Of the Australian dependent territories within the scope of the SPC, Papua and Nauru would gain their independence in 1975 and 1968 respectively. Only Norfolk Island remains colonised by Australia.

1948 The British Nationality and Australian Citizenship Act:

The British Nationality and Australian Citizenship Act introduced Australian citizenship whereas before there had only been British subject status. It provided for citizenship by birth, by descent and by grant and set out a system to regulate the gaining of such citizenship. This Act was extended "*to the Territories under the authority of the Commonwealth*" (section 6), which included Norfolk Island.

The passage of the Act marked the first time the term 'Australian citizen' had been used in any legislation. Until this act, native-born Norfolk Islanders had been entitled to British passports. The Norfolk Islanders were not consulted about this change.

In this Act the definition of Australia is given as: "*..'Australia' includes Norfolk Island and Papua*" (Both British possessions, under the authority of the Commonwealth of Australia).

In 1948 many Norfolk Islanders had never set foot in Australia yet by the stroke of a pen were now Australian citizens, despite the fact Norfolk Island was not part of the Commonwealth.

14 December 1960 the United Nations (UN) passed resolution 1514 which proclaimed the necessity of 'bringing a speedy and unconditional end to colonialism in all its forms and manifestations' and declared "*All peoples have the right to self-determination and by virtue of that right can freely determine their political status and freely pursue their economic, social and cultural development.*"

15 December 1960 the UN passed resolution 1541 which had the effect of requiring Australia under international law to list Norfolk Island on the UN list of 'non-self-governing territories' so that Norfolk Island can enjoy a UN assisted transition towards a legally protected governance model designed in accordance with the aspirations of the Norfolk Island People.

1968 SECRET: PROJECT 440L – USAF Experiment – Over the Horizon Radar Tracking Station

Released Secret documents record the meeting held in Canberra 4th November 1968 between United States representatives (clearance at Top Secret and Secret classification) and Australian Department of Defence and Foreign Affairs officials, to finalise the intention to install a super-sensitive Tracking Station on Norfolk Island. The Commonwealth appointed Administrator on island was the conduit to local participation in the covert dialogue, completely circumventing local elected Councillors from consultation. Concern was expressed by the project proponents as to how NOT to disclose the USAF Experiment to the Council and people of Norfolk. It was agreed that the real truth be hidden!

Extracts: *"Provided that the source of signals is not disclosed, the project is "unclassified". A suitable cover story would be released before any equipment was installed. No detailed information is to be given out publicly during the site survey (at Collins Head)*

'Cover story could be developed which describes operations as Australian communication experiment with assistance of American contractors or any other story Australia prefer, which we would agree to. U.S. contract personnel will be carefully selected and would be able to maintain essential security, particularly if Australian Government willing to serve as cover. In order foster this, U.S. Air Force would assume costs associated with assigning small number personnel to project who, if properly cleared, can assist with operation and give credence to the story'

'It was agreed that a limited statement of the purpose of the survey may be necessary to answer inquiries'

'..it is intended that the cover story should be: an experiment conducted by the Barry Research Corporation, Palo Alto, California, USA, under the sponsorship of the United States Air Force in co-operation with the Australian Department of Supply. It is part of a continuing United States Air Force research program which involves the study of ionospheric propagation in relation to long range radio paths. The installation at Norfolk Island will be a passive receiving station, to be code-named "Big Pine".'

*'...The first three months or so of operations would indicate whether the experiment would be successful. The site on Norfolk Island might therefore be required for a few months only if the project were unsuccessful. However, if it were successful, **the USAF might wish to extend the period of occupation and may even seek to proceed to an operational stage. The later possibility would remain in abeyance for the present.**'*

From the Minutes of two subsequent Norfolk Island Council Meetings, Councillors valiantly endeavoured to extract the truth about the project from the Administrator, all to no avail.

1972 International Covenant on Economic, Social and Cultural Rights:

The Commonwealth of Australia ratified the International Covenant on Economic, Social and Cultural rights. It has still not applied the Covenant to Norfolk Island, as in Part 1, Article 1:

1. All peoples have the right of self-determination. By virtue of that Right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

1973 The Government of the Commonwealth of Australia enacted the Statue Law Revision Act 1973:

This Act amended various Acts of the Commonwealth Government that extended to the dependent territories.

It omitted phrases such as “*Territories not forming part of the Commonwealth*” and inserted “*external Territories*” instead. (Federal Jurisdiction in Australia. Cowen and Zines 1978, Oxford University Press, Melbourne page 146)

1970s Geological Reports fossil fuel deposits Norfolk Island territorial waters:

In the early 1970s several geological reports concluded that there was a strong possibility of fossil fuel deposits located within Norfolk Island’s territorial waters. One such report, early in 1975, spoke of a 95% chance of natural gas at about 100 metres depth on the Wanganella Bank, 190 miles to the south of the island. Other reports spoke of a high chance of petroleum deposits to the north. That part of Norfolk Island’s shoreline known as Black Bank consists of oil shale.

1975 May: Royal Commission Report, The Australian Federal Government (Labour) commissioned Sir John Nimmo to commence enquiring into the future constitutional status of Norfolk Island.

1975 Joint Legal opinion by R J Ellicott QC and M H McLelland QC, In Report of the Royal Commission into Matters Relating to Norfolk Island.

The opinion holds that the implementation of the 1979 Norfolk Island Act could not alter the constitutional basis of Norfolk Island a "distinct and separate settlement" as established in 1856.

“Norfolk Island was placed under the authority of the Commonwealth and was accepted by the Commonwealth under section 122 as a distinct and separate settlement” page 6.

and Tau v. Commonwealth, supra). The fact that Norfolk Island has been placed under the authority of the Commonwealth as a distinct and separate settlement might nevertheless result in some Constitutional limitations. For instance, it could lead to the conclusion where relevant to the Constitution that it was not "a part of the Commonwealth" (see e.g. Spratt v. Hermes, 114 C.L.R. 226, per Kitto, J. at p. 250:

"When Chap. VI is reached, and it is found that s.122 gives the Parliament a general power to make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed under the authority of the Commonwealth or otherwise acquire by it, a change to a fundamentally different topic is perceived. The change is from provisions for the self-government of the new federal polity to a provision for the government by that polity of any community which comes under its authority while not being "a part of the Commonwealth": of. Harrison Moore, *The Commonwealth of Australia*, 2nd ed. (1910) p.589)".

The fact that it was accepted as a distinct and separate settlement is, however, relevant in a political sense to an inquiry as to the Constitutional status of Norfolk Island. It recognises that the Commonwealth Parliament's relationship to it is not that of a sovereign exercising power over part of its own territory, but that of a sovereign exercising power over territory committed to its government but not as part of its territory. This may not in itself express any limitation on the legal power which the sovereign can exercise over the territory but it does emphasise that the sovereign's exercise of power is more akin to that of a trustee than it would otherwise be. It at least anticipates that the sovereign's exercise of power through plenary in quality will be directed solely to the benefit of the committed territory and its inhabitants.

The legal opinion states Australia is not exercising power over Norfolk Island as a sovereign exercising power over part of its own territory, but akin to a trustee exercising power over a territory committed to its government but not part of its territory.

With regard to Australia applying Commonwealth laws to Norfolk Island. Ellicott highlights a legal limitation:

"One other legal limitation of the power which we should mention is that any legislation thereunder must have a connection with Norfolk Island sufficient to entitle it to the description of a law for the government of Norfolk Island (*Johnson v. Commissioner of Stamp Duties* (1956) A.C. 331 at 353).

1976 Report of the Royal Commission into matters relating to Norfolk Island by John A Nimmo

The Nimmo Report was released. It recommended that Norfolk Island be integrated (i.e. annexed) into the Commonwealth of Australia as part of the Federal electorate of Canberra in the A.C.T. not as part of any state and with all Australian laws extended to Norfolk Island. Nimmo specifically stated that no referendum in Norfolk Island should be allowed.

The report also stated in relation to the first principal matter (Chapter 17) "The future status of Norfolk Island and its constitutional relationship to Australia"

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."

A decision to abandon Norfolk Island implies that Norfolk Island was not at this time an integral part of Australia and that Australia could choose whether to continue its responsibilities towards Norfolk or end them. There is as well the clear implication that Norfolk Islands constitutional relationship to Australia would be reviewed after 5 years.

1977 Appeal to the United Nations

Informed that the Australian Federal Government (Liberal) intended to implement the Nimmo Report, the Norfolk Island Council appealed to the United Nations for protection against Australia's design. Australia successfully lobbied other U.N. Members and prevented the appeal from being heard.

1977 Solemn Declarations

Australia refused to allow the Norfolk Islanders to conduct a referendum about the Nimmo recommendations. Instead, 774 Norfolk Islanders signed "Solemn Declarations" of which 94% declared that they did not wish to be integrated into Australia. The Australian Minister responsible for Norfolk Island, Senator, R.G. Withers, said that the solemn declarations were "totally completely and utterly valueless".

5 April 1979 HOUSE OF REPRESENTATIVES NORFOLK ISLAND BILL 1979 Second Reading HANSARD

Mr INNES (—) – *The Opposition is pleased to see that the laws to be made by the Legislative Assembly are to be enactments rather than ordinances. This is more in keeping with the idea of self-government for Norfolk Island. The slight changes in the definition of the 'Territory of Norfolk Island' are also welcome.*

One of the benefits of adjourning the debate on this Bill until this evening is that people 1,000 miles away are able to listen to some of the debate on this Bill which will affect their future. There is a misconception on the other side of the House that the Opposition would have Norfolk Island integrated into the structure of the mainland society. When one rationally compares Labor's proposals for Norfolk Island with those of the Government, there is no basis whatsoever for this misconception. It is not the Opposition but the Government which would clutch Norfolk Island closer to its bosom. This can be seen when the ledger of proposals is examined, and I propose to do that in speaking to the clauses of this Bill. The clauses with which we are now dealing refer to the structure of the island's administration and it cannot be read into any aspect of the Opposition's attitude to this matter that it has a pro-integration

stance. It must be acknowledged by all that Sir John Nimmo 's proposition that all Australian legislation should apply on Norfolk Island is a pro-integration stance. The Opposition does not adopt that position, and it does not support that recommendation. The Opposition is calling only for general Australian legislation to apply- this was probably the major point made by the Minister- in the areas of taxation, social security, and conciliation and arbitration. The main body of Australian law would not apply. Norfolk Island would be free to make its own laws in a far more democratic way under the Opposition 's proposal.

*Under a Labor government, Norfolk Island would have a Bill of Rights and the Administrator's powers would be curbed. Some might say that a plan for Australian social security, taxation and industrial laws to apply on the island would mean the integration of Norfolk Island into Australia. I strongly deny this. The right of Norfolk Island to be free and yet for its people to have an entitlement to Australian social security benefits is a rather clouded issue. To understand that issue requires **the question relating to fundamental freedoms to be resolved.** That is the situation on Norfolk Island.*

I turn my attention to the mode of government this disreputable Liberal Government is foisting on the Norfolk Islanders. Let there be no mistake about the fact that the Norfolk Island Bill is being foisted on the island. There has been sustained and widespread criticism of the Bill on Norfolk Island since it was published. The Island Council unanimously rejected it at one point in time. The United Nations Association of Australia has rejected it. The island's people have rejected it.

This Bill does not provide self-government, or anything like it, for Norfolk Island. I have no need to remind the Norfolk people of that. They are united in their summation of the Bill as providing an insufficient measure of self-determination for the island. Really the Bill is a sham.

The Minister offers Norfolk Island control over a large number of mostly minor and uninspiring matters. He eve tells the islanders that the Administrator must assent to all ordinances that they make on these matters. However, this false dawn for self-government is exposed by government veto. Democracy is not forthcoming. Clause 23 is just as repressive as that. It gives the Governor General – which in reality is the Australian Government – power to disallow any ordinance the Administrator may have assented in the previous six months. That is right. The new Legislative Assembly can pass a law, the Administrator can assent to the law, even the Minister may assent to it, but for up to six months later it can be nullified with the stroke of a pen. First you give then you take away.

1979 Norfolk Island self-government, the Commonwealth of Australia Norfolk Island Act:

The *Commonwealth of Australia, Norfolk Island Act, 1979*, (An Act to provide for the government of Norfolk Island) was enacted and provided a degree of self-government to the people of Norfolk Island.

Australia maintained many powers which it promised to review within 5 years. This undertaking to review in concert with Norfolk Islanders was not honoured by the Australian Commonwealth government nor by its legislative drafting team.

Bill Blucher, head of the Norfolk Island Council, said:

“We will work with this for the best interests of the people. However, it contains inbuilt injustices which will cause further difficulties until they are removed”

The Commonwealth failed to release to Norfolk Island the promised and fundamentally important Economic Feasibility Study conducted by Professor Gates prior to the commencement of the Norfolk Island Act, denying the island's parliament key information that expressed favourable outcomes for Norfolk Island.

November 1979 The Commonwealth of Australia claimed the 200 nautical mile EEZ Norfolk Island

The Commonwealth of Australia claimed the 200 nautical mile EEZ of Norfolk Island as “*a part of the Australian fishing zone*”, a direct contradiction of Mr. Ellicott’s speech of May 1978 when he spoke of the island supporting itself “*from its own resources*”, and in contravention of the Covenant on Economic, Social and Cultural Rights.

Australia still profits from the money obtained from selling Norfolk Island’s fishing rights from the EEZ, while Norfolk Island derives no benefit.

1986 Australia Act UK and 1986 Australia Act Australia

The acts came into effect simultaneously, on 3 March 1986. According to the Australian Act, its purpose was “*to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation*”. Contrary to the Commonwealth Constitution Act 1900. No referendum was held in this regard. Norfolk Island was not included or mentioned in this Act, however in the Australia Act UK, the United Kingdom renounced legislative power over any ‘Territory’, within the meaning of section 122 of the Constitution:

section 1 of the UK’s Australia Act 1986 states that:

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

1. Termination of power of Parliament of United Kingdom to legislate for Australia

“*No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the Commonwealth, to a State or to a Territory as part of the law of the Commonwealth, of the State or of the Territory.*”

It’s likely that the High Court would not recognise any future UK legislation which purported to legislate for a Territory. The High Court would instead recognise and give effect to the Commonwealth’s version of the Australia Act.

The Australia Act 1986 (Cth.) was designed “to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation” thereby changing the constitutional status of Australia without taking it to the people in a referendum.

1992 Australian High Court case, *Capital Duplicators v. The Australian Capital Territory* (177 CLR0274), Justices Brennan, Deane and Toohey were of the opinion that: “... *The Commonwealth of Australia Act ensured that the territory of the Commonwealth was coterminous with the aggregate of the territories of the Original States.*

A colony or territory which was not then a part of a State did not become a part of the Commonwealth”.

1993 United Nations Year of Indigenous Peoples. The president of the Society of Pitcairn Descendants wrote to several United Nations organizations, declaring that the Pitcairners of Norfolk Island were the indigenous people of Norfolk Island, the first People as a ‘whole People’ ever to settle Norfolk Island as a permanent homeland. His activities resulted in an invitation to attend the International Working Group on Indigenous Peoples in Geneva in July of 1994: the Working Group offered to help finance his trip. Norfolk Island notified, among others, Her Majesty Queen Elizabeth II, the Prime Ministers of Australia, New Zealand and the United Kingdom, and President William Clinton of the United States of

American. Bodies like the United Nations General Assembly and the United Nations Association of Australia were also informed.

1994 Pitcairners are a separate and distinct people

The contention of the Pitcairners that they are a quite separate and distinct People having their own language, culture, customs and traditions was proven when the need of a person of Pitcairner descent for an organ transplant donation resulted in the discovery that the Pitcairn People are genetically different from all other people. In 1994 a Pitcairner could only receive a donor organ from among his or her own kind. While that is no longer the case due to medical advances, the point remains relevant.

Australia has repeatedly refused to recognise the Pitcairners as a separate and distinct People which calls into serious question Australia's behaviour in not extending the two International Covenants it has ratified on indigenous people to the Pitcairners of Norfolk Island.

1993 - 1996

The Commonwealth Government directories of these years list the Territories Office, Function: – *“Enhance Australia's sovereignty in the external Territories”*.

If the claim, that the external territories were a part of the Commonwealth of Australia, were true, then this would not be necessary.

1995

Through its officers, the Society of Pitcairn Descendants kept pursuing its contention that the Pitcairners are a separate and distinct People indigenous to Norfolk Island. The Society seeks self-determination for Norfolk Island, the homeland since 1856. This is not the same as seeking independence. What the Society wants is for all of the people of Norfolk Island to be offered a (i.e. by the United Nations) referendum to decide their own political and social destiny.

1996 Commonwealth of Australia maintained control

March 1st: Almost 17 years after the introduction of so-called self-government in Norfolk Island, Australia still retained full powers over foreign affairs, defence, mineral and fishing rights in the 200-mile Economic Zone, coinage, airspace, public (Crown) land and banking - among others.

While there was an agreement with the Government of Norfolk Island to jointly administer the Island's national parks, reserves and Philip Island, Australia retained full powers over these areas. And though the Norfolk Island Government has never indicated a wish to borrow money to fund the Island's infrastructure, it could not so borrow without Australia's permission. Matters like education, immigration, social services and customs duties could be legislated locally, but Australia retains the power of veto.

1996 Minute of the Australian Fisheries Management Authority

April: An internal minute of the Australian Fisheries Management Authority (AFMA) dated April 3, 1996, states:

“At present AFMA does not grant Fishing Permits to Norfolk Island operators, with the result that they are fishing illegally under the Act”.

Nowhere in the Australian Constitution does it give the Commonwealth of Australia the authority to usurp the Norfolk Island 200 – mile Economic Zone.

1996 June: The President of the Society of Pitcairn Descendants received a letter from the British Foreign and Commonwealth Office stating the British Government view on the constitutional status of Norfolk Island; *“Norfolk Island is legally a dependent territory of the Commonwealth of Australia”*.

Halsbury’s Laws of England defines Dependencies/ Dependent Territory thus;
“It refers to a country or province which is subject to the control of another of which it is not an integral part”.

“2 (b) A geographically separate territorial unit under the jurisdiction of but not formally annexed by a nation”.

Websters New International Dictionary

1997 The Commonwealth Government Directory

The Commonwealth Government Directory 1997 (at page 345) lists the Territories Office Function: - *“Administer Australia’s Indian Ocean Territories and the Jervis Bay Territory and protect and enhance the Commonwealth’s interests in Norfolk Island...”* This is inconsistent with the promise given to the people of Norfolk Island issued by the Federal Minister in 1979 when he wrote to a member of our community stating that Norfolk Island would obtain full internal self-government.

1997 Commonwealth Grants Commission, Report on Norfolk Island

“Norfolk Island is politically and financially more self-sufficient than Australia’s other Territories or, for that matter, the States.

“A number of options exist for modest steps in ‘import replacement’ which would reduce the Island’s reliance on overseas markets (tourists)”.

“Development of an Offshore Finance Centre may be a longer-term prospect for economic diversification.”

The Norfolk Island Government could broaden its tax base by increasing its taxation of income and/or wealth.

“Norfolk has considerable untapped revenue sources that the Government could access, if it wished, to provide better services and infrastructure to its constituency”.

“taking over the powers shown below, should be within the financial capacity of the Norfolk Island Government, provided it increased its revenue raising effort. In fact, the figures suggest that the Norfolk Island Government could provide mainland standards of service in all areas where it currently has statutory responsibility, meet all the associated infrastructure costs and take over the extra responsibilities, if it increased its revenue raising effort to mainland levels”.

- (i) Land management
- (ii) Control of the seas within the 200 nautical mile limit
- (iii) The activities of KAVHA
- (iv) The National Park
- (v) Offshore finance activities

Opportunities for Norfolk Island to strengthen the local economy were denied of the local parliament despite expert recommendations including those of the Commonwealth Grants Commission. As well the Norfolk Island government was denied the capacity provided to Australian State and local governments to borrow money via Treasury to enable infrastructure development in particular.

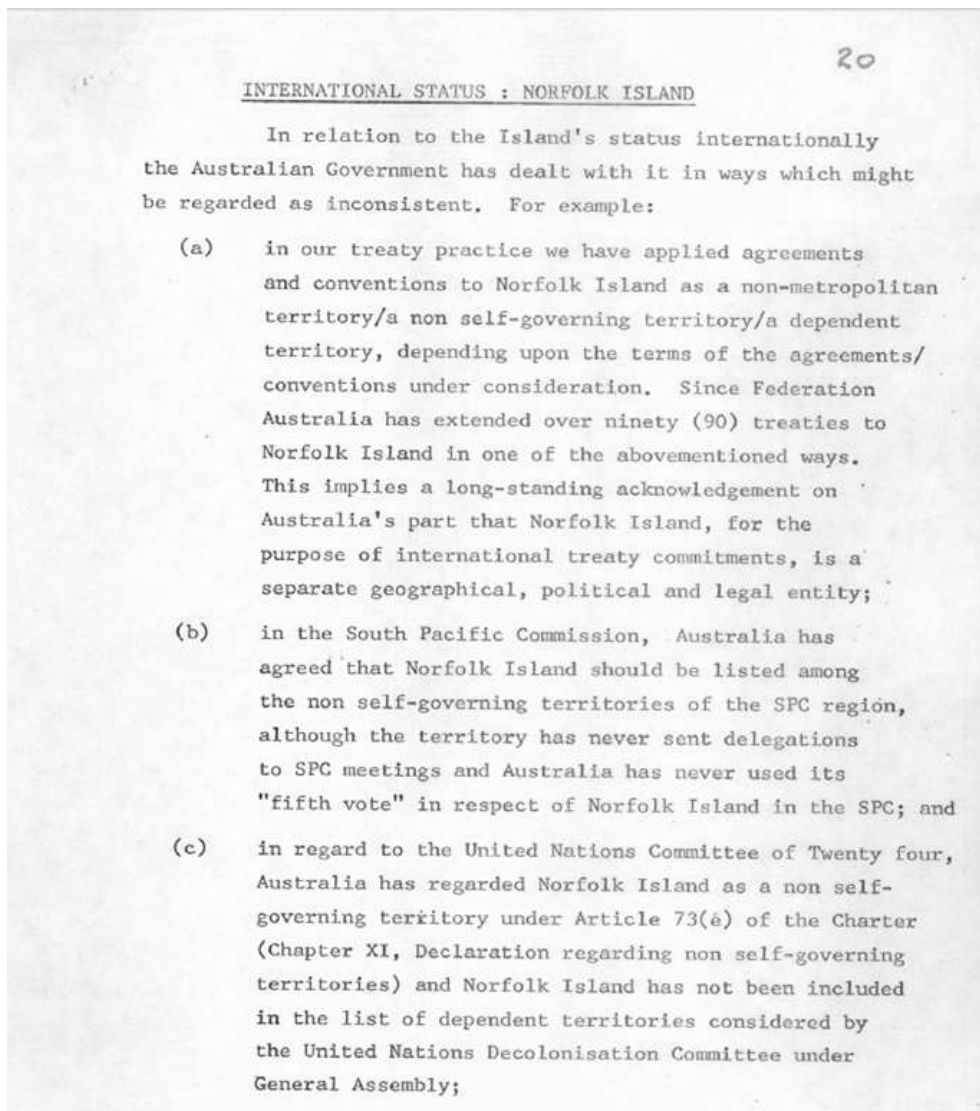
1998 Federal Government Cabinet papers revealed that the Australian Government’s plan to take over the Island was initiated more than 20 years earlier. The Cabinet papers also confirm Australia’s official reasoning for taking over our Island, including:

- 1 Norfolk's strategic importance to Australia's sphere of influence in the Pacific,
- 2 For Australia's national security and defence purposes,
- 3 To access our EEZ, our fishery and any potential oil/mineral resources contained therein, and
- 4 The importance of the Island's convict history to Australia's national heritage and culture.

Official Australian Government advice as to the true international status of Norfolk Island.

A cabinet document provides three examples of how the Australian Government has dealt with the international status of Norfolk Island entirely inconsistently.

Most disturbing is verification that the Australian Government has known of its legal obligations to decolonise Norfolk Island for more than 70 years and deliberately chose to deceive both the United Nations and the Norfolk Island People, to further their own interests.



Cabinet briefing document C.1975

11 May 1999 Letter from the Royal Australian Mint:

"We have looked into your inquiry regarding the State Series produced by the Mint. You asked why this series did not include the Norfolk Island coat of arms.

In our State Series, we included Australia's every state and territory: Victoria, South Australia, New South Wales, Queensland, Western Australia, Tasmania, Northern Territory and the Australia Capital Territory.

According to our research, Norfolk Island itself was not incorporated into the Commonwealth and has never been ceded or annexed to Australia.

Constitutionally, it remains today a distinct and separate colony of the British Crown, supervised by Australia – not owned by Australia. Hence, it was not consistent with our criteria for inclusion in the State Series"

2006 Bennett & Ors v Commonwealth

Bennett v Commonwealth 2006, effectively overturned Berwick v Gray 1976 (Commissioner of Taxation) in the High Court of Australia.

From this latter case, the Commonwealth plucked out the phrase, "*Norfolk Island is part of Australia*" from a portion of the *Berwick* judgement, and continue to hold steadfastly to this view, despite 6 of 7 High Court Justices in *Bennett* espousing that, "*as to the question - Is Norfolk Island part of Australia, or not part of Australia, it depends on the question being asked. It is part of Australia for some things, but not part of Australia for others*", they opined.

Further reliance by the Commonwealth upon *Berwick* in their Policy settings, is considered somewhat mischievous.

The purpose of *Bennett & Ors v Commonwealth* and the application to the High Court in 2006 was to (hopefully) have the Constitutional position of Norfolk Island clarified and corrected, once and for all. The first question on the writ was, "*Is Norfolk Island part of the Commonwealth of Australia?*".

Curiously (and regrettably) before the Full Bench hearing, the Federal Solicitor-General appealed to the High Court to have this question struck out, convincing a single Judge (Justice Kirby) that the Constitutional matter would be covered when the 2nd and 3rd questions (re the validity of the Electoral Amendment Act 2004) were argued.

Thus, and perhaps by design (?) any opinions raised by Justices could not be considered definitive or binding. A clever move to avoid the otherwise obvious outcome re the Constitutional reality of Norfolk Island being exposed!

2010 Letter signed by Attorney General, The Hon Robert McClelland MP, Constitution doesn't recognise Local Government as third tier of Commonwealth of Australian Government.

*"Dear Mr ******

I refer to your letter received on 10 June 2010 regarding the 1988 referendum.

In 1988, four proposals to amend the Constitution were put to voters in accordance with section 128 of the Constitution. One of those proposals sought to give constitutional recognition to local government but the proposal was not carried.

The Constitution does not currently recognise local government.

Any change to the Constitution to recognise local government would need to be approved by voters at a referendum.

The Government will continue to explore reform, including constitutional recognition, to facilitate cooperation with local government.

Yours sincerely.

Robert McClelland. Parliament House, Canberra ACT.”

In the Constitution there is a provision for Municipal Councils, but that is a State Power and not a Federal power. Since the Federal Parliament is not a state parliament there is no head of power from which the Federal Parliament derives its authority to create local government on Norfolk Island.

2007 – 2009 Global Financial Crisis

From the Reserve Bank of Australia, “The global financial crisis (GFC) refers to the period of extreme stress in global financial markets and banking systems between mid-2007 and early 2009. During the GFC, a downturn in the US housing market was a catalyst for a financial crisis that spread from the United States to the rest of the world through linkages in the global financial system. Many banks around the world incurred large losses and relied on government support to avoid bankruptcy. Millions of people lost their jobs as the major advanced economies experienced their deepest recessions since the Great Depression in the 1930s. Recovery from the crisis was also much slower than past recessions that were not associated with a financial crisis”.

For Norfolk Island, dependent on tourism as its primary source of income, the GFC would bring the island’s economy to heightened levels of stress that naturally flowed on to the Islands’ government.

Such were the conditions placed upon Norfolk Island that any attempts to source external revenue were to be made only to the Australian Government. Norfolk Island formally sought financial assistance to get through this catastrophic period, against a global backdrop of governments actively advancing investments in local economies and communities to maintain stability.

What followed was an unjust, incremental choking of Norfolk Island whereby the island’s financial situation was used by the Commonwealth of Australia to leverage the Legislative Assembly to forfeit control of Immigration, Customs and ownership of Government Business Enterprises.

2010 Norfolk Island Roadmap

The Norfolk Island Government signed an Intergovernmental Agreement with the Australian Labor Government which agreed to the inclusion of Norfolk Island within the Australian Taxation system in exchange for access to services needed by the Island community. Nowhere in the bilateral agreement was there any provision or intention that these changes were in exchange for surrendering the Islands’ parliament and government.

Coupled with leadership problems within the Australian Labor Government, the “Roadmap” failed to deliver any meaningful progress or economic traction, and was sabotaged by the Federal bureaucracy who would replace it with funding agreements to force changes that would strip the island of its authority and ability to uphold the wishes of its people, in exchange for Australia’s funding support. **The Territories Law Reform Bill 2010**, which effectively ended any vestige of self-government, was forced upon the island for a mere \$3.8m of financial assistance.

The ill-fated Norfolk Island “Roadmap”, a supposed ‘blueprint’ for economic recovery, did not have wide community support.

2014 Centre for Independent Economics

A study commissioned in 2006 by the Commonwealth to ‘measure’ the impact of the extension of Australian legislation to Norfolk Island, **was and remained withheld from NIG and the people**. Despite Freedom of Information Commissioner ruling it should be released, the Department of Prime Minister

and Cabinet and Department of Infrastructure Regional Development and Communications lodged an appeal against the FOI decision. A 4-year challenge would result in the Report into the economic impacts of extending Commonwealth legislation and programs to Norfolk Island would be finally released. Among the impacts identified within the report include;

- *A fall in GDP for at least 5 years*
- *Substantial falls in household incomes for up to 8 years*
- *Heavy regulatory and compliance costs for small businesses and individuals*
- *Higher input costs for employers, especially in wages and superannuation contributions*
- *Rises in unemployment and loss of on-island jobs*
- *Much higher taxes on Norfolk Island residents than their mainland counterparts.*
- *Funding for some services and programs becoming dependent on agreement from other states and territories to admit Norfolk Island into the GST scheme.*
- *The need for NIG to impose substantial new taxes such as a much higher consumption tax or a payroll tax.*

2015 Norfolk Island's legislative Assembly abolished:

19 March 2015 The Commonwealth of Australia announced its unwarranted, illegal and undemocratic decision to remove and abolish the Norfolk Island Legislative Assembly.

There is no provision in the 1979 Norfolk Act for the abolishment of the Norfolk Island Legislative Assembly, and no provision in the Australian Constitution for the abolishment of a Territory Government.

26 March 2015 The Australian Parliament passed the *Norfolk Island Legislation Amendment Act 2015* No.59, 2015. An Act to amend the *Norfolk Island Act 1979* and effectively removed the right of self-determination for the people of Norfolk Island.

08 May 2015 Norfolk Island Referendum: the Norfolk Island People voted overwhelmingly in support of their "*right to freely determine their political status, their economic, social and cultural development*". Sixty eight percent of the people voted in favour.

Australia chose to ignore the outcome of this lawfully constituted and gazetted referendum, and in so doing disregarded the rights of the Norfolk Island People. The right to hold any future referendums was removed.

The United Nations Committee on Human Rights has followed customary international law in requiring that the people of a dependent territory must be consulted when any change in their sovereignty is contemplated. Norfolk Island is listed under 'Dependencies' in Halsbury's Laws of Australia.

25 May 2015 Remonstrance Motion

The Speaker and Chief Minister of the Norfolk Island Legislative Assembly delivered the Remonstrance Motion passed by Norfolk Island on 20 May 2015, to the Speaker of the Australian House of Representatives. The Grievances and Petition tabled include:

GRIEVANCES *The Legislative Assembly of Norfolk Island presents its grievances to the Commonwealth Parliament. These are that: (1) The people of Norfolk Island having been granted self-governing powers, the duly elected representatives of the people of Norfolk Island are aggrieved that self-*

government should be removed without genuine consultation and negotiation. (2) The removal of self-government in Norfolk Island breaches one of the conventions of self-government in the Westminster tradition that once self-government is granted to a political entity, it should not thereafter be taken away except in the most extreme circumstances, for example, war or civil disturbance. See submission of the Commonwealth Attorney-General's Department to the Joint Parliamentary Committee on the Northern Territory, page 8 of Parliamentary Paper No. 281 of 1974 where it also states that it would be politically unthinkable to take away such powers after they had been granted.

PETITION *The Legislative Assembly of Norfolk Island and its democratically elected Members respectfully request that the Commonwealth Parliament affirm the rights of the people of Norfolk Island to self-government by re-examining those aspects of the Norfolk Island Legislation Amendment Bill 2015 that result in the removal of the Norfolk Island Legislative Assembly and call on the Prime Minister to confer on the people of Norfolk Island the right to freely determine their political status, their economic, social and cultural development and be consulted at referendum or plebiscite on the future model of governance for Norfolk Island before such changes are acted on by the Australian Parliament. On 20 May 2015 the above Remonstrance was introduced by the Hon Robin E Adams MLA into the Fourteenth Legislative Assembly of Norfolk Island and was passed on the same day. The Legislative Assembly requested the Remonstrance be delivered by the Speaker of the Legislative Assembly to the Speaker of the House of Representatives and to the President of the Senate.*

Mr David Buffett MLA who had presented the remonstrance on behalf of the Norfolk Island Legislative Assembly, soon after was removed from an Advisory Panel that had been set up to seek and give advice during the Transition.

17 June 2015 The Legislative Assembly ceased to exist, ending self-government on Norfolk Island. Authority was transferred to the Federal Minister. A mild demonstration which involved the lowering of the Australian flags at Government House was described as “threatening” by the Administrator at the time.

Norfolk Island’s public instrumentalities and Government Business Enterprises as well as funding held in the Island’s Public Account were swiftly brought under the operational authority of the Commonwealth appointed Administrator.

The local radio station was first to be overtaken and censored to contain only public broadcast and messaging, and then a sequence of overpowering actions was implemented including the dismissal of all Advisory Boards: Planning, Tourism, Immigration, Public Service etc.

The Philatelic Service was shut down, with the Commonwealth Administrator taking personal advantage of purchasing large quantities of the last ever Norfolk Island stamps. The Post Office and Customs services were closed and outsourced. The Public Service went into total chaos as the island’s largest workplace was forced to transition into a new structure that hadn’t been considered in the plans to overthrow Norfolk Island’s government. The paper/document shredder was put into overdrive.

2015 Removal of the Preamble to the Norfolk Island Act

Commonwealth of Australia, in 2015, removed the important Preamble to the Norfolk Island Act that had previously acknowledged the distinct and close cultural connection of the Pitcairn descendants to Norfolk Island, thus removing all acknowledgement of Norfolk’s distinct culture by a stroke of a legislative pen. The Commonwealth argues that disengaging the impact of the Pitcairn culture will

enable the cultural inclusion of Australians living on Norfolk Island. This view is flawed as it disregards the identity and cultural heritage of Norfolk Islanders of Pitcairn descent.

2015 Kingston and Arthur's Vale Historic Area (KAVHA) Management Board terminated.

KAVHA too would bear the brunt of the government overthrow.

First the long-established office of the KAVHA Secretary (and former Site Manager) at No.11 Quality Row was the subject of an eviction notice from the Administrator. Once relocated from the heritage building the Administrator would then dismiss the Intergovernmental KAVHA Management Board – the very Board that had operated under an Intergovernmental Memorandum of Understanding for the 40 years previous, responsible for bringing KAVHA from a decrepit state of ruins to the key site that would allow Australia's inscription of the Convict Sites Serial Listing to the UNESCO World Heritage Register in 2010.

The Administrator instructed local contractors to remove all furniture and fittings from within the buildings of the Old Military Barracks that had been the seat of government for Norfolk Island for the 36 years of local parliament. Not only was this action cold to a deeply traumatised community, but it was also in direct contravention of the heritage protections and protocols for inscribed sites of universal and national significance, as KAVHA is. KAVHA's heritage significance and values include Norfolk Island's.

KAVHA too has been colonised by the federal bureaucracy.

Acts Interpretations Act 1901 - Sect 2B

In 2015 the Acts Interpretations Act 1901 - Sect 2B was amended. The amendment changed the definition of Australia to now include Norfolk Island:

"Australia" means the Commonwealth of Australia and, when used in a geographical sense, includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory.

"external Territory" means a Territory, other than an internal Territory, where an Act makes provision for the government of the Territory as a Territory.

In the previous Acts Interpretation Acts the definition of "Australia" did not include Norfolk Island.

In 1973 the Acts Interpretation Act was amended and the following was substituted:

4. (1) Section 17 of the Principal Act is amended -

by omitting paragraphs (a) and (b) and substituting the following paragraph:-

"(a) 'Australia' or 'the Commonwealth' means the Commonwealth of Australia and, when used in a geographical sense, does not include an external Territory;": and

(b) by inserting after paragraph (p) the following paragraphs:-

"(pa) 'Territory' or 'Territory of Australia' means a Territory referred to in section 122 of the Constitution, and includes a Territory administered by Australia under a Trusteeship agreement

1974 Ellicott's legal opinion refers to the Trusteeship agreement, he states Norfolk Island's constitutional status as of 1856, as a distinct and separate settlement cannot be revoked, and that it can be argued that Norfolk Island is administered not as part of the Territory of the Commonwealth of Australia, but as a Territory under a Trusteeship relationship. Ellicott states:

"In this sense the distinction we have drawn is very relevant to any enquiry into what should be the Constitutional relationship between the Commonwealth and Norfolk Island. It is also of considerable relevance in considering the application of Article 73 of the United Nations Charter which is the subject of a separate Opinion by Mr McLelland"

April 2016 Geoffrey Robertson QC wrote:

"Abolishing Norfolk Island as an autonomous territory may not seem to matter much in the grand scheme of things, but for an international order that cherishes self-government and proclaims the right of self-determination of people, it is a regressive and unimaginable action, an example of the inability to tolerate democracy and difference".

05 April 2016 Petition lodged with the United Nations in New York:

Mr Geoffrey Robertson QC, in the company of Mr Albert Buffett, President of the Norfolk Island Council of Elders (the Council) and Mr Ken Christian, Vice President of the Council, lodged a Petition with the United Nations in New York on behalf of the people of Norfolk Island.

The Petition, which is addressed to the United Nations Special Committee on Decolonisation, requests that Norfolk Island be recognised and listed as a non-self-governing territory.

NIPD sought legal advice on the following questions –

- Is Norfolk Island a Non-Self-Governing territory within the meaning of Article 73 of the Charter of the United Nations?
- Is United Nations General Assembly Resolution 1514 of 14 December 1960 applicable to Norfolk Island having regard to the Principles expressed in Resolution 1541?
- What, if any, mechanisms are available to 'inscribe' the Island under Article 73(e) of the Charter?

6 May 2016 'In the Matter of the Status of Norfolk Island as a Non-self-governing Territory' joint legal opinion was provided to NIPD on questions posed to the UN in the Norfolk Island Petition.

Dr Christopher Ward SC (St. James Hall Chambers, Sydney) and Professor Vaughan Lowe QC (Essex Court Chambers, London) issued a joint opinion:

"IN THE MATTER OF THE STATUS OF NORFOLK ISLAND AS A NON-SELF-GOVERNING TERRITORY"; which determined that: "Norfolk Island is properly regarded as a non-self-governing territory within the meaning of Article 73 of the UN Charter.... we are in no doubt that UN General Assembly Resolution 1514 of 14 December 1960 is applicable to Norfolk Island".

May 2016 Land Transfer Ordinance 2016 (Cth) passed by Commonwealth of Australia, allows for Unlawful Land acquisitions:

Commonwealth passed the *Land Transfer Ordinance 2016 (Cth)* to effect the acquisition by the Commonwealth of Australia of the Norfolk Island Hospital, outbuildings and carpark, the Norfolk Island Central School, and the Police Station.

As well as the serious doubts raised around the terms of these transfers, it is neither ethical nor acceptable conduct for the Commonwealth to appropriate or otherwise acquire any Norfolk Island assets without the absolute and unqualified prior consent of duly elected representatives of the Norfolk Island People.

July 2016 Norfolk Island Regional Council (NIRC) imposed by Federal Government

According to the Commonwealth of Australia the legislative Assembly was “replaced” by the Norfolk Island Regional Council, a body-corporate, a completely different type of entity from the legislative Assembly, a body politic. Norfolk Island was designated a ‘Municipal Area’ for the purposes of local government; a third tier of Australian government.

Norfolk Island Regional Council was established under an applied Local Government Act (NSW) (NI). The NSW Constitution states where its laws can be applied, within its own state boundaries and Norfolk Island is not listed as within the boundaries of NSW.

Under the Commonwealth Constitution 1900 (UK) Municipal Councils are a state power, not a federal power. In the Australian Constitution there are two tiers of government: Federal and State. There is no provision for a third tier of Government (see 2010 Letter from Attorney General).

NSW laws are applied to Norfolk Island, but the NSW State and Minister have no jurisdiction over Norfolk Island.

15 May 2018, University of Wollongong Law Professor Dan Howard weighed in on the matter of the dissolution of elected government, arguing that:

"In complete disregard of these obligations, Australia in 2015 amended the Norfolk Island Act so as to abolish Norfolk's Legislative Assembly and to take away Norfolk's significant degree of self-governance. This is not only unconstitutional under Australian law, but in clear breach of Article 73 (of the U.N. Charter). Alarming, the amendments to the Norfolk Island Act (1979) also deleted all of the important Preamble to the Act that had acknowledged the distinct and close cultural connection of the Pitcairn descendants to Norfolk Island. This was a most serious development, purporting to obliterate all acknowledgement of Norfolk's distinct culture by stroke of legislative pen."

May 2018 Expert Report on the Distinctiveness of Norfolk Islander Ethnicity, Culture and Norfolk Language (Norfolk Island - South Pacific) Prof. Peter Mühlhäusler, M.A (Oxon); MPhil., Ph.D. FASSA

Norfolk Island is Ethnically, Culturally and Linguistically Distinct from Australia.

Ethnicity, culture and language of the Anglo--Polynesian--West--Indian Pitcairn descendants came into being on Pitcairn Island in 1790 and were taken by the Pitcairners to Norfolk Island in 1856 where it continued to develop, without Australian input, until the 20th century. Intermarriages with mainland Australians and Australian assimilation policies have not significantly weakened the distinctiveness of the Norfolk Islanders of Pitcairn descent. The literature surveyed as well as field--notes, taken over 21 years, confirm:

- The Norfolk Islanders of Pitcairn ancestry remain a genetic isolate;
- Anthropometric research suggests significant physiological differences between Norfolk Islanders and Anglo--Australians;
- The Norfolk Islanders are distinct from Australians with regard to all parameters that define Ethnicity: homeland, shared ancestry, cultural narrative and cultural core values;
- Norfolk Islanders subscribe to a separate Anglo--Polynesian rather than Australian identity. This was strengthened after the Great Depression when Norfolk Islander migrants joined the Polynesian Club in Sydney. Norfolk Island has been a member of a number of Pacific cultural organizations. The Pitcairn homeland and the Pitkern--Norf'k language play a central role in defining the identity of Norfolk Islanders;
- The material culture of the Norfolk Islanders combines Tahitian, West Indian and British influences with a large amount of adaptation as well as later influences from American whalers and

the High Anglican Melanesian Mission. Importantly, cultural forms that bear resemblance to Australian cultural forms (kites, surfing, pie cooking) can be shown to have come from other sources.

- The intangible culture of the Norfolk Islanders exhibits numerous differences with that of the Australian mainland, particularly in their musical styles, Traditional Ecological Knowledge and spirituality;
- The Norfolk language is neither directly related to English nor mutually intelligible. It is technically characterized as an Anglo--Polynesian--St. Kitts Creole language. Its core grammar is typologically different from English.
- The semantic and pragmatic properties of the Norfolk language are more Polynesian than English. Polynesian pragmatics is carried over into the variety of English used by Norfolk Islanders.

The culture of the Pitcairner descendants has remained distinct, viable and dynamic and is passed on to future generations in a number of ways:

- Preservation of material culture in collections and museums
- Preservation of intangible culture through written or visual records
- Maintenance by consciously living the culture
- Revival by devising strategic means of enhancing transmission
- Adaptation of older culture to new conditions

11 June 2018 Complaint to the United Nations Human Rights Committee

By letter dated 10 December 2018, Geoffrey Robertson KC, representing Mr. Albert Fletcher Buffett of Norfolk Island, and President of the Norfolk Island Council of Elders: received confirmation the Human Rights Committee (UNHRC) had designated a case number to the complaint filed against Australia under the Optional Protocol to the International Covenant on Civil and Political Rights. In accordance with the Committee's rules of procedure, a copy of the communication was sent the same day to the State party (Australia) with an invitation to respond within six months.

The State party duly responded to the Secretariat of the UNHRC on 31 July 2019, which was transmitted to Mr. Buffett, 01 November 2019. Mr Buffett filed his response, 02 January 2020. The decision of the UNHRC is yet to be delivered (2024) and most regrettably, not before Mr Buffett passed away in 2023. Mr Brian Buffett succeeds his father as Signatory to the UNHRC Case.

1 Sept 2018, The Dependency Studies Project, Study and Analysis on Dependency Governance Assessment of Self-governance Sufficiency in Conformity with Internationally Recognised Standards Country: Norfolk Island, Dr. Carlyle Corbin.

Dr Carlyle Corbin, former Executive Secretary of the Council of Presidents of the UN General Assembly and expert advisor to the U.N. Decolonization Committee completed his 'Assessment of self-governance sufficiency in conformity with internationally recognised standards' for Norfolk Island. Dr Corbin concluded: *'The prevailing arrangement which has been unilaterally imposed represents a denial of the right to self-determination of the peoples of Norfolk Island'*.

Excerpt:

For much of its period of administration, Australia has accorded separate taxation and immigration treatment of Norfolk Island citizens and has permitted largely independent governance on Norfolk Island. Australia has not provided the full range of Australian services (in particular: Social Security

services) to the citizens of Norfolk Island even though Australia was required to ensure the well-being of the citizens of the territory under its administration. This is a further indication that Australia treated Norfolk Island as a *separate and distinct settlement*; a territory separate to and distinct from Australia; a territory physically separated and with a distinct culture.

Significant attention was paid to the elements of *the 1979 Act* as the framework for Elected Dependency Governance (EDG) and the instrument which governed the territory until the enactment of the *Norfolk Island Legislation Amendment Act 2015*. This latter Act unilaterally set aside elected government in favour of Appointed Dependency Governance (ADG) in contravention of the democratically expressed will of the people of Norfolk Island. Note is taken of interest expressed in returning to the provisions of *the 1979 Act*, including its Preamble, as it is may have been perceived, by a large number of Norfolk Island residents, as an acceptable, albeit limited, form of democratic governance.

Whilst self-government under *the 1979 Act* (and prior Acts) may have had a semblance of democratic self-government, in truth the overriding powers operated from a position of delegated authority, and indeed the very governmental structures created pursuant to *the 1979 Act* and its antecedents were subject to continuation or abolition at the whims of the plenary authority of the Commonwealth Government. This was a cause of much concern within Norfolk Island society.

The application of the relevant self-governance Indicators (SGIs) revealed that within the context of the operation of delegated governance, unilateral authority prevailed in most of the important areas. Hence, a future return to the same form of EDG governance that earlier prevailed would place the territory in a similar position of political vulnerability experienced under *the 1979 Act* which led to the destruction of Elected Dependency Governance in the territory in the first instance.

Executive Summary:

The sequence of events concerning the initial governance of Norfolk Island originating with the settlement in 1856, and the Order declaring that Norfolk Island be kept as a "separate and distinct" territory from Australia's politically integrated states, served to establish the initial differentiation between the British colony of Australia and Norfolk Island as an individual territory.

As the initial use of Norfolk by the British was for the establishment of two successive penal colonies (1788-1814 and 1824-1856) - comprising "involuntary" settlement - the first voluntary "settlement" of Norfolk in 1856 by those who migrated from Pitcairn constituted the first native inhabitants of the territory. Accordingly, the application of relevant international instruments including the United Nations Declaration on the Rights of Indigenous Peoples (UN-DRIP) is determined to be in good order, particularly in relation to issues of the right to individual and collective self-determination, collective land ownership, right to cultural expression, et al.

The successive transfers of governance of Norfolk Island constituted an historical record of treatment of the territory as a separate entity under the unilateral authority and sovereignty of the United Kingdom (1897) preceding the transfer to Australian jurisdiction(1913-14). The maintenance of Norfolk Island as a British territory for over a decade following Australian independence in 1901 is further evidence of Norfolk Island being regarded as a separate political entity. It is further noted that the 1913 transfer to Australia via the Norfolk Island Act 1913constituted an action which was undertaken without the formal consent of the inhabitants. This unilateral act came prior to the accession by Australia to the 1919 adoption of the Covenant of the League of Nations, with particular reference to the relevant Covenant provisions related to the "well-being and development of such peoples (that) form a sacred trust of civilisation."

With the adoption of the United Nations (U.N.) Charter in 1945, Norfolk Island was not voluntarily inscribed by Australia on the original U.N. list of Non-Self-Governing Territories (1946) with only Papua so listed as a dependency administered by Australia. Relevant U.N. resolutions and decisions taken between 1946 and 1960 did not precipitate the inscription of the territory by Australia on the U.N. list, nor did the adoption (1960) of the landmark Resolution 1514 XV (Decolonisation Declaration) and Resolution 1541 XV (defining the minimum self-government standards). This was in the apparent perception/projection of Norfolk Island as an integrated part of Australia because of the consideration

of the territory under Section 122 of the Australian Constitution.

The review of governance under the Norfolk Island Act of 1979 revealed a significant degree of delegated - rather than devolved - authority exercised by the elected government with the objective reality of a retained unilateral power of the cosmopole. This rendered the territory below the threshold of full internal self-government, but yet not under the formal U.N. review process as a listed Non-Self-Governing Territory (NSGT). Accordingly, Norfolk Island was categorised as a Peripheral Dependency.

Pursuant to the relevance of Section 122 of the Australian Constitution and the historically delegated autonomy which characterised the political status of the territory, the present Assessment of the former governance arrangement under the Norfolk Island Act of 1979 applied the applicable combination of self-governance indicators concerning political autonomy with selected characteristic indicators of political integration.

The subsequent sequence of actions taken by the cosmopole in the run-up to the suspension of delegated governance in the territory **is indicative of the unilateral authority exercised by Australia as the de facto 'administering power,'** and emblematic of a distinct and inherent democratic deficit in the political status arrangement under the 1979 Act that permitted such a draconian, unilateral intervention as occurred with the adoption of the Norfolk Island Legislation Amendment Bill in 2015 and its entrance into force.

The subsequent administrative governance procedures put in place pursuant to the Norfolk Island Administration Act 2016 have significantly compromised the level of self-government as previously exercised under the delegation of authority from the cosmopole. The resultant appointed dependency governance (APD) currently in effect represents a significant lowering of the minimum standard for democratic governance when assessed through the relevant Self-Governance Indicators (SGIs)

6 December 2021 Norfolk Island's elected Mayor and Councillors were sacked by Assistant Minister for Regional Development Nola Marino and replaced by an Administrator, who has remained in this position for almost three years. New Council elections were underway, with candidates nominated. However, these elections were cancelled by the Australian Government.

July 2023 Talisman Sabre Military Exercise

Mid July-August 2023 Norfolk Island was host to Talisman Sabre Military Exercises for the very first time. Talisman Sabre is the largest bilateral military training exercise between Australia and the US, with military personnel from 13 nations taking part in 2023. Around 150 Australian and US military personnel were on Norfolk Island conducting field training exercises, including preparation activities, amphibious landings, ground force manoeuvres, and air combat and maritime operations. Exercise Talisman Sabre stretched from northern WA to Norfolk Island in 2023, the largest-ever geographical footprint for the high-end war fighting exercise.

Norfolk Island had no government to consult or to give consent to military exercises taking place on Norfolk Island. The people were not consulted.

August 2023 The Joint Standing Committee, and the Norfolk Island Governance Committee

August 2023 The Australian Government established the Norfolk Island Governance Committee (NIGC), which commenced meeting 2 months later.

The Governance Committee includes three elected Norfolk Island community representatives, and three representatives nominated by the Australian Commonwealth Government.

The Minister responsible for Territories, Kristy McBain, had previously instigated a Joint Standing Committee (JSC) inquiry in February 2023, to examine appropriate local government models for Norfolk Island, including examination of and recommendation for equitable revenue sources. The creation of the NIGC was an outcome of that inquiry.

Whilst the Joint Standing Committee recommended the urgent re-instatement of democracy on Norfolk Island, the NIGC has departed from the agreed terms of reference and limitations on its scope have been imposed by the Minister. (Minister McBain's letter to Administrator George Plant May 24).

As a result of these limitations of scope and access to external advice, the NIGC has been powerless to address the reality of the democratic deficit on island, and has been unable, or possibly unwilling, to present and deal with a wide range of key community concerns.

The original NIGC Terms of Reference have not been followed, and a number of key JSC enquiry recommendations have been ignored. This includes the JSC recommendation:

" Norfolk Island's final governance model be endorsed through a compulsory vote of locally registered voters".

Policy recommendations as well as details of the model will not come back to the community for scrutiny before it is sent to cabinet.

This is not democracy.

Aug 2024 Proposed Military Presence on Norfolk Island

Reports appear in the media in relation to AUKUS proposing a permanent military presence and infrastructure on Norfolk Island. Norfolk Island has no governmental body to respond to these military propositions and there is no announcement in this regard from the Norfolk Island Administrator and no consultation with the people of Norfolk Island.

Article: The Defence of Australia: A Blueprint for The Next Government – Paper 1: National Security and Australia's Northern Defence, written by: Peter Jennings and Scott Hargreaves Aug 2024

"RECOMMENDATION 6: *"Establish permanent links, a stronger ADF presence and supporting infrastructure in the top end, the Cocos and Christmas Islands and Norfolk Island."*

It would seem that Australia wants its own Diego Garcia in the Pacific.

Conclusion:

The overview of Norfolk Island's historical political timeline contained within this document, factually demonstrates the systemic injustices imposed upon the Norfolk Island People by perpetual denial of their civil, political, and human rights under international law. Sadly, this inventory is not by any means exhaustive. Compounding these injustices is the full awareness of those responsible within the colonial authorities, categorically evidenced in Cabinet papers: no less than deceit at the highest levels of government.

Australia's interests in Norfolk Island, described in the Cabinet papers released from 1998, confirm Australia's official reasoning for taking over our Island are;

1. Norfolk's strategic importance to Australia's sphere of influence in the Pacific,
2. For Australia's national security and defence purposes,
3. To access our EEZ; our fishery, and any potential oil/mineral resources contained therein, and
4. The importance of the Island's convict history to Australia's national heritage and culture.

In addition, Australia has documented its awareness of its obligations to list Norfolk Island with the UN for decolonisation.

Evidently, the 2015, abolition of the Norfolk Island Legislative Assembly was the last step in a long-standing strategic agenda against Norfolk Island that commenced as early as 1913, if not before, when changes were made for Norfolk Island's governance, just weeks before the outbreak of WW1, without Norfolk Island's participation or consent to those arrangements. The significance of this event may not have been sufficiently understood by Norfolk Island previously but revisited 111 years later, and with the benefit of extensive documentary evidence of the actions of governments as well as regional and global development, a clearer picture of when and how Norfolk Island's sovereignty and authority has been gradually and incrementally usurped, becomes both visible and understood.

Had Australia chosen the route New Zealand chose for its non-self-governing territories (Cook Islands, Niue and Tokelau) and advanced the Treaty objectives of the 1947 Canberra Agreement fairly to Norfolk Island as it should have - as it did for Papua and Nauru - today Norfolk Island and Australia would be a lot further down the path of mutual social and economic development and progress. Instead, the relationship between our jurisdictions remains locked in retrograde fruitless cycles of colonial oppression, injustice and denial of fundamental human rights.

Australia's repeated avoidance of listing Norfolk Island as a non-self-governing territory on at least three separate occasions when it should have, and then establishing 'another' form of government in Norfolk Island to put 'listing' to bed, has achieved nothing, nor mitigated their obligations. Nor has it weakened our resolve to assert and regain our historical and constitutional rights.

The latest failure of the Territories Minister's Norfolk Island Governance Committee to stay within the parameters of the Terms of Reference and use this process to remedy the ill-conceived actions of 2015 and its consequential impacts, and the findings contained within the JSC recommendations of *Restoring Democracy* in Norfolk Island, highlights Norfolk Island continues to be obfuscated despite public posturing of Australia's commitment. That Norfolk Island's elected NIGC representatives have had no visibility of the policy recommendation the Minister will put to Cabinet to inform a decision about Norfolk Island's 'next' model of government, which will replace the current one 'imposed' in 2016. The community being locked out until a decision is taken is fraught with the same ignorance that placed Norfolk Island in the multi-layered disaster experienced today with impacts extending to

breaches of all modern principles and standards of democracy, economic cultural and social wellbeing and community - to name a few.

Norfolk Island and its People are entitled to self-determination. The unilateral imposition of a new local government authority, as a third tier of the Australian Government, with powers to make local type laws (i.e., by-laws) seeks to formalize by stealth, Norfolk Island's integration into Australia, without allowing the people a democratic vote through a referendum. Norfolk Island is entitled to Territory Self Government with legislating powers. Norfolk Island's constitutional status as a distinct and separate settlement, established by an Imperial Order in Council in 1856, cannot be abrogated. Annexation is a flagrant violation of International Law and cannot be unilaterally imposed. It can only be achieved through a treaty, a mutual agreement between the parties.

A colonial occupying power that attempts to transition its occupation into an annexation becomes an illegal occupant. The occupying power cannot acquire the right to annex or gain sovereign title over any part of the territory under its occupation. This is one of the most well-established principles of modern international law and has received universal endorsement.

How can Norfolk Island be administered under a constitution which Norfolk Island wasn't party to? Norfolk has never had a referendum to adopt the 1901 Commonwealth of Australia constitution as its own. There was no referendum in 1979 to adopt self-government and the 2015 Norfolk Island referendum to freely determine its political future was ignored. Now, in 2024, there will be no community vote to consent to the new governance model, which means it is being imposed unilaterally and not democratically.

The relationship between the Commonwealth of Australia and Norfolk is a trusteeship relationship. (Ellicott and McLelland legal opinion 1975). This principle has been likened to a trust or fiduciary relationship in domestic and international law, where the dominant authority is required to act in the interests of the people under the authority of another power. This obligation was not in evidence during the period of partial self-government 1979 – 2015 and is certainly not in evidence now. This lack of enabling support for Norfolk Island is the key failing.

While the actions of the Australian Government towards the Norfolk Island People have clearly been immoral and objectionable, (as outlined in the historical political timeline) what is most disappointing is that the Norfolk Island People have always demonstrated a willingness to accommodate Australia's interests in the design of our preferred governance arrangements.

Now is the time for genuine democracy to be established on Norfolk Island through the full and free exercise of our civil and political rights to determine our own future in accordance with the UN resolutions and international law. This is the right of the People of Norfolk.

The Norfolk Island People for Democracy support Self-Government in Free Association with Australia. In the spirit of truth, justice, and cooperation, NIPD has developed and adopted the Free Association Policy (2024) to promote a way forward in partnership and free of colonial oppression.

We encourage all who care for Norfolk Island to help end the injustices of our past and drive a new trajectory for this island community. Let our collective integrity and determination bring us together in unity to shape a new, just and empowered future for Norfolk Island.

Our Solution: Norfolk Island Self Government in Free Association.

OUR EMBLEMS



Seal of Norfolk Island

BY AN ORDER IN COUNCIL in 1856, made by Her Majesty Queen Victoria, Norfolk Island was made a distinct and separate settlement, the affairs of which were to be administered by the Governor, for the time being, of New South Wales. This Order in Council appointed a Great Seal to be kept and issued by the Governor. The Seal was made in 1856 by Benjamin Wyon, who held the position of "Engraver of the Royal Seal of England," 1831 - 1858.



Coat of Arms

The Coat of Arms was assigned to Norfolk Island on 20 October 1980 when Her Majesty The Queen signed the Royal Warrant. The Arms has several elements, which represent aspects of the history of Norfolk Island.



Norfolk Island Flag

The "Norfolk Island Flag and Public Seal Act" 1979 (NI) legislatively created the Norfolk Island Flag and set out rules in relation to its use. The Flag became official as at the date of the commencement of the Act on 17 January 1980." The Governor-General of Australia assented to Norfolk Island's having its own flag.



**Norfolk Island
People for Democracy**

The Solution: Norfolk Island Self-Government in Free Association

Norfolk Island Self Government in Free Association

Statement of Intent

The Norfolk Island People are committed to Self-Government in Free Association with the Commonwealth of Australia in the spirit of peace, freedom and cooperation, democracy and human rights, and respect for the universal principles of international law mandated by the United Nations.

1. Self-Government in Free Association with Australia

- Norfolk Island returns to self-government in free association with the Commonwealth of Australia.
- **Norfolk Island exercises its right to self-government.**

2. Compact of Free Association

- Norfolk Island and the Commonwealth of Australia negotiate and form a compact of free association, which describes the nature of the relationship between Norfolk Island and the Commonwealth of Australia.
- **Norfolk Island's status as a non-self-governing territory ends.**
- **Norfolk Island comes under its own authority.**

3. Statement on Cultural Identity of Norfolk Islanders

- Norfolk Islanders of Pitcairn descent have the right to define their own identity, while fully respecting all other people living on Norfolk Island.
- Norfolk Islanders maintain a deep relationship with Norfolk Island's: land, air, waters, biodiversity and other gifts of nature; their shared history of suffering injustices, colonization and land dispossession; place-based relationships; language, knowledge, traditional and cultural practices that contribute to sustainable governance and management of the community and natural environment.
- The application of relevant international instruments including the Rights of Indigenous Peoples (UN-DRIP) is supported.
- **Racial prejudice and discrimination end.**
- **Recognition of Norfolk Islanders' unique cultural identity and heritage as the first native peoples and custodians of the land is formalised.**

4. Norfolk Island: Jurisdictional, Constitutional and Lawful Status

- Norfolk Island includes the land, air, waters and 200 nautical miles.
- The jurisdiction of Norfolk Island includes the land, air, waters and an exclusive economic zone of 230 miles beyond the Island's territorial sea.
- Norfolk Island's constitutional and legal status, as a distinct and separate settlement, was established in June 1856 by Order in Council, which cannot be revoked.
- A Royal Warrant issued by Queen Victoria 5th Dec 1856 authorized the use of a public seal prepared for Norfolk Island to seal all public instruments.
- The Crown in Right of Norfolk Island provides the lawful status and lawful capacity to govern within the jurisdiction of Norfolk Island and cannot be extinguished.
- **Norfolk Island's jurisdiction and constitutional status cannot be abrogated.**

Norfolk Island Self Government in Free Association

5. Constitution

- The Norfolk Island government will establish its own Norfolk Island Constitution, by referendum of the people. This includes all people of Norfolk Island.
- **Norfolk Island is governed by the people, for the people, under their own lawful Constitution.**

6. Legislative Power of Norfolk Island

- Norfolk Island legislates for the peace, order and good government of Norfolk Island, under the authority of the Crown in right of Norfolk Island.
- The de jure Norfolk Island Government makes all laws for Norfolk Island and its people in the interests of the community.
- Legislative power is plenary, Norfolk Island can legislate with respect to any matter.
- Commonwealth laws do not extend to Norfolk Island unless expressly requested to by the Norfolk Island government in accordance with the compact of association.
- **The Norfolk Island government administers the Norfolk Island Constitution.**

7. Responsible governance and administration

- Norfolk Island has independent oversight, accountability and review mechanisms embedded in the management of the Public Account and significant public decision making.
- **Norfolk Island's public instrumentalities are modernised and fit for purpose in Norfolk Island.**

8. Land, Airspace, Waters

- Norfolk Island has jurisdiction and control over its land, waters and airspace including any built community assets within this domain.
- Norfolk Island may freely enter into agreements with the Commonwealth of Australia over defence.
- **Australia's unconsented control over Norfolk Island's land, airspace and waters ends.**

9. Public Lands

- All public lands are held as "the commons" for the benefit and use of Norfolk Island.
- Norfolk Island recognises Australia's interest in the Kingston and Arthur's Vale Historic Area (KAVHA).
- **Administration of Norfolk Island's public lands in Norfolk Island ends.**

10. Norfolk Island Exclusive Economic Zone and Natural Resources

- Norfolk Island upholds the rights to its exclusive economic zone (NIEEZ) and natural resources, minerals and mining rights, including fishing.
- Norfolk Island enters into agreements freely regarding use of the NIEEZ and exploration of natural resources in line with its own rights and interests and on just terms.
- **Norfolk Islands rights to NIEEZ formalised.**

Norfolk Island Self Government in Free Association

11. Economic and Infrastructure Development Support

- Norfolk Island will reserve the right to receive untied financial support from non-government agencies and governments, for the maintenance and development of large-scale infrastructure.
- Norfolk Island will negotiate bilateral agreements for administrative, technical, and specialist support.
- **Norfolk Island government negotiates agreements on just terms.**

12. Foreign Administration of a Territory

- The foreign administration of Norfolk Island, as a non-self-governing territory 'under the authority of the Commonwealth of Australia' will end under the bilateral agreement – compact of free association.
- The trusteeship relationship will end, and therefore, the Office of the Administrator will cease.
- In accordance with Hague Convention 1907 and international law of occupation, authority is transferred to the Norfolk Island Government re-establishing the full and free exercise of sovereignty by the people of Norfolk Island.
- **A peace agreement is reached between Norfolk Island Government and Commonwealth of Australia. Occupation of Norfolk Island ends.**

13. Democracy is restored

- The people of Norfolk Island exercise their right to self-determination.
- By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- Norfolk Island's people are free from the constraints and burdens of almost two centuries of colonialism that has limited their progress and denied them their freedom.
- **Democracy is restored.**
- **Intergenerational trauma and injustice come to an end.**
- **The Norfolk Island community is empowered by modern and democratic governance and service arrangements in Norfolk Island.**

Norfolk Island Self Government in Free Association

Norfolk Island's Interests

- Norfolk Island's rights under international law are honoured and protected
- The will of the Norfolk Island people is respected
- Democracy is restored and secure
- Local capacity is restored and enhanced under modernised governance arrangements
- Economic sustainability is enhanced through Australia's interests being recognised in a Compact in return for funding assistance
- Decades of uncertainty ends, and a matured relationship based on respect and cooperation with Australia begins
- Norfolk Island is confident that its culture and traditions will be protected
- Norfolk Island freely represents the Island community in external forums without reservation or political interference by Australia
- Norfolk Island is free to determine decisions about their future and the future they wish to leave for the generations that follow.

Australia's interests

- Australia fulfils its obligations under international law
- Australia is positioned as a good regional partner that fulfils its obligations and respects the rule of law
- Regional stability is enhanced
- Australia's defence and security interests are enhanced under a Compact
- Australia's economic interests are enhanced and protected under a Compact
- Australia's cost to administer Norfolk Island is drastically reduced where services and spending is locally prioritised
- Australia's interests in the colonial settlement is recognised and enhanced under a Compact
- The relationship between Australia and Norfolk Island is a mutually mature partnership, with shared interests, and genuine commitment to peace and security.