



LORD HOWE ISLAND BOARD

PLAIN LANGUAGE GUIDE TO THE LORD HOWE ISLAND ACT

Information Sheet 1: History of the Lord Howe Island Act 1953

A brief history of the island

Lord Howe Island is part of NSW. It was included as part of the Colony of NSW in 1855 and the laws of NSW continue to apply on the Island today. It was discovered in 1788 by Lieutenant Ball, commander of H.M. tender Supply, on a voyage from Sydney to Norfolk Island.

The Island is now home for some 350 people, many of whom have roots going back to its early settlement in the 19th century. Unlike the rest of NSW, the law has never allowed freehold title to be created on the Island. All land on the Island continues to be owned by the Crown. While it has never been possible to acquire freehold title, it has been possible to lease Island land from the Crown since 1954.

The earliest settlers of the Island engaged in fishing and market gardening. They exchanged their produce and mutton bird flesh for trade goods carried by ships involved in the Pacific Island trade. Marketing of the seeds of the *Howea* palms became an important source of income. However, in 1911 a need for greater regulation of seed marketing operations led to two Royal Commission inquiries into Island affairs.

The year 1913 brings the first Lord Howe Island Board

As a result of these inquiries, the first Lord Howe Island Board was appointed in 1913 to take charge of the Island's affairs. The Board consisted of three senior public servants based in Sydney. A local committee of residents was appointed to act as advisers to the Board.

The powers and duties of the Board were not set out in any law but were implied from the terms of its appointment by the Governor. The Board was given a

single permissive occupancy over the whole of the Island, enabling it to grant smaller permissive occupancies to settlers on the Island and their descendants.

The Board operated in this manner for 40 years until 1954. Funding to provide for the needs of Islanders largely came from bonus payments from the proceeds of the sale of palm seeds. Whilst the palm seed trade boomed between the two world wars, the market almost disappeared during the Second World War, presenting the Board with economic difficulties in providing local services. The introduction of air travel to the Island after the war signalled an increase in tourism placing greater demands on local services.

1953 brings the first version of the Lord Howe Island Act

By 1953, the NSW Government considered that a special Act of Parliament was required to better provide for the care control and management of the Island. The Government recognised the Island as a unique State tourist asset whose beauty should be preserved.

It believed that the Island's affairs should be managed in the interests of the State and the growing tourist population as well as in the interests of the small group of citizens living on the Island.

To achieve this, the Government proposed the creation of a statutory authority to take charge of the Island with express powers and obligations set out in legislation.

The Government also recognised that legislation was necessary to protect residents permitted to build homes on the Island. Up until 1953, the only security

the Board could grant to a resident was a permissive occupancy.

Understandably, the residents desired better security for their homes. They were also concerned to ensure that future generations of Islanders would not be priced out of the home ownership market. To achieve this, residents wanted a restriction on the future transfer of land so that homes could only be transferred to other Islanders.

The Government recognised the desires of the Islanders and included provisions in the 1953 Act to achieve these twin objectives. These provisions are mentioned below.

Governance under the 1953 version of the Act

The *Lord Howe Island Act 1953* provided for a new 5 member, mainland-based Board appointed by the Governor and for a 4 member Island Committee elected by residents on the Island.

The function of the Board was to manage the Island's affairs subject to the control and direction of the NSW Minister for Lands. The Board was given powers similar to a local council and also powers to deal with problems unique to the Island, for example the administration of Crown Land and the trade of the island.

The role of the elected Island Committee was to make recommendations to the Board and to exercise any functions that the Board delegated to it.

Islanders and ownership of land under the 1953 version of the Act

The 1953 Act made it clear that all land on the Island was vested in the Crown. It provided for land to be set aside for public purposes and for the leasing of land to the Commonwealth.

For residents, the Act provided for the creation of leases in perpetuity, up to 5 acres in area, for the purposes of giving them more secure title to their homes.

Again in accordance with their wishes, these leases could only be created for Islanders and could not be transferred or sublet to a non-Islander unless no Islander was willing and able to take it up.

Again for residents, the Act provided for the creation of special leases for agricultural or other approved purposes for up to 10 years. A special lease could only

be granted to a perpetual lease holder and could be renewed with approval.

Original definition of Islander under the 1953 version of the Act

A key definition in the new Act was the definition of an "Islander". This was defined as a person who held a permissive occupancy before the Act came into force. It also included that person's spouse, the lineal descendants of that person (children, grandchildren, great grandchildren and so on) and the spouses of those descendants.

As mentioned above, the Act imposed limits on the transfer and subletting of leases. Board approval was required and a non-Islander could only take up a lease or a sublease if the Board was satisfied that no Islander residing on the Island was available to take it up.

The Governor's approval was required for a transfer or sublease to a non-Islander.

The Act imposed a limit on the price that could be paid for the lease or sublease. It could not exceed the value of the improvements on the land, as determined by the Board.

1967 & 1968 brought changes to the 1953 Act

Significant changes to the 1953 Act were commenced in 1968, including provisions:

- To make it clear that the Minister had power to grant permission to occupy vacant Crown land or land the subject of a reservation under the Act for an purpose (referred to as permissive occupancies);
- To allow part only of a lease to be transferred;
- To allow the surrender of the whole or part of a lease.

1981 & 1982 further changes to the 1953 Act

Significant amendments to the Act commenced in 1982. The purpose of these amendments was to:

- Restructure the Board to make it more representative so that the island community would have a greater say in the management of the Island - (3 Islanders to be elected to the restructured 5 member Board);
- Abolish the Island Committee as it was no longer necessary;
- Broaden the definition of Islander to include people who had resided on the Island for the previous 10 years and who had made it their home;

- Omit from the definition of Islander, the automatic inclusion of descendants of Islanders, and the spouses of those descendants, recognising that they may never have lived on the Island;
- Insert the current provisions dealing with the inheritance of leases;
- Increase the maximum price that could be paid for the transfer of a lease to include the fair market value of the interest of the transferor in the unimproved value of the land;
- Dedicate the northern and southern ends of the main island, and the adjacent small islands, including Ball's Pyramid, as a permanent park reserve to protect native flora and fauna.

2003 & 2004 further changes to the 1953 Act

The next significant amendments to the Act commenced in 2004. The purpose of these amendments was to:

- Improve the Board's governance by requiring Board members to comply with standards of governance similar to those that apply to other local government in NSW;
- Expand and enhance the Board charter (guiding its activities and service delivery) along the lines of a local government council's charter under the *Local Government Act 1993*;
- To remove the Board's monopoly on the gathering, collection and sale of Kentia palms, seeds and seedlings;
- Promote environmental protection consistent with the principles of ecologically sustainable development;
- Increase Board membership from 5 to 7, broadening its range of expertise, and

retaining a majority of elected islanders (4 elected island members);

- Provide for compensation to be paid where special leases are withdrawn or not renewed because the land is required for home sites or other public purposes;
- Insert new provisions for the setting of the annual rent for perpetual and special leases.

Lord Howe Island Regulation 2014

The most recent set of regulations made under the Lord Howe Island Act are contained in the *Lord Howe Island Regulation 2014*. It came into effect on 1 September 2014 and contains detailed provisions concerning:

- The election of Board members;
- The transfer and subletting of perpetual leases;
- The maximum annual rent for leases;
- The protection of the environment;
- Anchoring of vessels;
- Sale and consumption of alcohol.

Review of the Act

The Minister must regularly review the Act and regulations to determine if they remain relevant and appropriate.

The Act required that a review of its provisions must be carried out as soon as possible after 24 March 2009 and a report of the review tabled in Parliament within 12 months of that date. A report on the review of the LHI Act was tabled in the legislative assembly on 20 April 2010.

Other legal fact sheets forming part of this series include the following titles:

- Information Sheet 2: NSW and Commonwealth Laws on Lord Howe Island
- Information Sheet 3: Owning and Inheriting Land on Lord Howe Island
- Information Sheet 4: Who is a Lord Howe Islander?
- Information Sheet 5: Perpetual Leases on Lord Howe Island
- Information Sheet 6: Special Leases on Lord Howe Island
- Information Sheet 7: Permissive Occupancies on Lord Howe Island