

The Case for Controlled Immigration to Norfolk Island 2020

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1. Introduction

The subject of immigration to Norfolk Island can be a difficult one to discuss because of the strongly emotional overtones related in particular to the matter of Pitcairn-derived identity. However in any democracy worthy of the name such subjects need to be open for examination with informed discussion and consequent sensible decision-making. I propose to open such a discussion by saying that all people who are currently living on Norfolk Island constitute the "community of Norfolk Island", and to ask: What do we – the whole community – think about re-introducing control on the flow of immigrants to Norfolk Island? Here I will put the case in support of this proposal.

In June 2016 the *Norfolk Island Legislation (Migration) Transitional Rule 2016*, made under item 357 of Schedule 2 of the Commonwealth's *Norfolk Island Legislation Amendment Act 2015*, the Australian Government declared:

From 1 July 2016, Norfolk Island will be integrated into the Australian migration zone and the Immigration Act 1980 (Norfolk Island) will no longer apply. Therefore, anyone living on Norfolk Island will need to be an Australian citizen or hold a visa under the Migration Act (Cth)

Although little discussed in public, this abandonment of immigration controls (and the enforcement of visa requirements on New Zealanders), were perhaps the most significant of all the changes imposed on Norfolk Island in the 2016 takeover by the Australian Government.

2. Control of immigration to Norfolk Island (1979 – 2016)

Let us see what exactly Norfolk Island's *Immigration Act 1980 (NI)* provided for. Under this Act all people coming to the island needed to be in possession of a valid passport or identity document. Foreign nationals (excepting New Zealanders) were also required to have a current Australian visa. Visitors wishing to remain on the island for more than 30 days needed to obtain an entry permit issued by the Norfolk Island Government; and visitor permits could also be issued to bona fide holiday makers for up to 120 days in a year. Temporary entry permits (TEPs) available for people coming to the island for employment or other activities, were issued for up to 12 months, and could be renewed. These TEPs were limited to allowed stays not exceeding three years in a continuous period of four years. Private employers could sponsor TEPs to the island if no local person was available to fill the position; the Administration and the Norfolk Island Hospital commonly advertised off-island for specialised staff. General entry permits (GEPs) were determined on application, for a period of five years and six months, and commonly on the understanding that the incoming person would be purchasing a business on the island. Applicants were subject to checks on finance, health and character. The number of GEPs was subject to an annual quota established by resolution by the Norfolk Island Legislative Assembly. The grant of a GEP to a citizen of a country other than Australia or New Zealand was subject to Australian Government approval. The holder of a GEP could after five years apply to be declared a Norfolk Island (permanent) resident.

As an example, in 1986-87 821 TEPs and 39 GEPs (28 of which GEPs were on the basis of a "special relationship" with Norfolk Island) were granted, and 33 persons were declared to be residents during that year. (1)

Thus, in general terms we can characterise the structure of policy and process for arrivals into Norfolk Island over 1979-2016 as involving: (a) a visitor stream; (b) a short-term resident stream, mainly work-related; (c) a longer-term residence stream: including a staged process providing transition from temporary to permanent residence based upon: (i) an economic requisite both for the island and for the immigrant; (ii) a confirmation to health and good character; and (possibly) (iii) a familial, cultural or other previous attachment to the island. Each stage in this process required a greater commitment from

the would-be migrant, and more stringent conditions as to health, finance and good character. This is summarised for reference in the following Box.

Box. Immigration to Norfolk Island (1979 - 2016):
policy and process structure

- o very short-term visitor stream, for tourism, family visits etc.
- o short-term residence stream, mainly employment-related
- o longer-term residence stream: including a staged process providing transition from temporary to permanent residence based upon:
 - (i) an economic requisite both for the island and for the immigrant;
 - (ii) a confirmation as to health and good character; and (possibly)
 - (iii) a familial, cultural or other previous attachment to the island.

One observation that is worth making here is that over the years under this scheme Norfolk Islanders maintained a tradition of welcoming migrants from Australia and beyond to come and share their life on the island. Long-time residents of the island can currently, and to my knowledge, write down the names of over 30 different countries which, over the years, have provided immigrants to Norfolk Island (and some of whom later became Members of the Legislative Assembly).

How is it that this reasoned process was wiped out by the Australian Government on 1 July 2016, to be replaced with a system under which anyone can live on Norfolk Island howsoever they may wish, provided only that they are Australian citizens (or appropriate Australian visa holders)? Let us first examine the reasons for Norfolk Island's pre-2016 policy.

3. Norfolk Island's pre-1 July 2016 immigration policy had good reason

There are very good reasons, many of which have been expressed in various documents over the years, for Norfolk Island to have in place a staged immigration control process. Here are some of these reasons.

Small isolated island economies in particular are exposed to swings of fortune as a result of regional and global fluctuations which can be almost completely outside their control. There is a need therefore for islands to take whatever steps they can to control their economies as best they can. Economic need on the island may be short term (e.g. for seasonal tourist work, or in response to the multi-year economic cycle), or more long term (such as in terms of the island's long-term requirement for basic and advanced skills). A staged process of immigration control provides a flexible means of response to these changing needs. It also tries to ensure that those coming to the island have the means of supporting themselves after their arrival so that they do not become a burden on the community. It also recognises the difficulties of resettlement if jobs in the island were to dry up. Stable long-term residency also tends to keep profits on the island for reinvestment.

And there is a second set of reasons for immigration control – that is to say island population control – namely that physical resources on the island are limited. Rainfall patterns on Norfolk Island have been changing over the last half-century with declining total rainfall and changed seasonal patterns becoming established in the wake of climate change, which have already led to water shortages. More broadly it is important to keep a viable agricultural industry on the island in order to provide a modicum of food security, keep the cost of food down (and local employment up), and to maintain environmental quality in order to provide an attractive destination for tourism.

A third set of reasons relate to the criterion of "special relationship" to Norfolk Island (referring to above in the pre-2016 immigration process) which might also be weighed in the balance by the Norfolk Island Minister in deciding on residence for an applicant. This relationship could be an attachment to the island by heritage or birth, by family association, or by cultural identity, for example. It provides a means of ensuring continuity and stability for a small island population, and helps to maintain the glue for its community life, an element of major importance in a situation of isolation and fewer conveniences. It also provides a check on potential criminality.

So immigration control has not only an economic function, but also environmental and social functions as well, in maintaining the integrity of the community and what is "special and unique" about the island as the basis for its life and its tourism industry. Control makes a substantial contribution to the island's collective well-being.

4. What do other isolated islands do regarding immigration control?

Let us look at the immigration control exercised on some other small isolated islands to which Norfolk Island might reasonably be compared.

The Falkland Islands is a self-governing British Overseas Territory in the South Atlantic Ocean, with a vigorous and prospering economy based on fishing, wool exports and tourism. The population is mainly British, with some migrants from elsewhere. All Falklanders are British citizens. Its form of government has similarities to that enjoyed by Norfolk Island prior to 2016, with a broad variety of powers, but with matters of foreign affairs and defence retained by the Governor. Elections for a Legislative Assembly of eight members are held every four years, chaired by the Speaker (chosen from the community by the Assembly members) and including two ex officio members, the Chief Executive Officer and the Financial Secretary. An Executive Council consists of three members of the Legislative Assembly elected annually, the two ex officio members of the Assembly, and is chaired by the Governor. The Falklands has its own taxation regime.

Non-exempt people wishing to enter the Falkland Islands can do so by means of: a visitor's permit (issued for one month, with extension to 12 months); or a work permit (for a maximum of four years, after which the holder must apply for an extension or permanent residence permit); or a residence permit (maximum of three years but renewable, and not permitting work). The annual number of permanent residence permits is controlled by the Falkland Island's Government under a quota system. The quota for 2018 stood at 44 persons. Immigration to the Falklands is "controlled rather than encouraged" it is said. (2)

St Helena. The island of St Helena in the mid-Atlantic Ocean is a British Overseas Territory, in population and in area about three times the size of Norfolk Island. Public sector employment is important in the economy, and with the recent construction of an airport, tourism is set to expand. Islanders have full British citizenship. The government consists of a Legislative Council of 15 members, 12 being elected every four years, with three ex officio (non-voting) members, and an Executive Council consisting of five members of the Legislative Council and three ex officio officers (one non-voting), presided over by the Governor. There is no elected Chief Minister, and the Governor acts as the head of government. The governance system appears to have similarities to that on Norfolk Island pre-1979.

Short-term entry permits are issued for stays up to six months (for tourist visits or work), and long-term entry permits for periods in excess of that (but for a period not exceeding five years). A work permit is required for work on a self-employed basis for any period exceeding six months i.e. a work permit requires in addition a long-term entry permit. Long termers must show adequate means to provide for themselves and their dependents while on the island. St Helenian Immigration Policy includes in its objectives: to attract persons of "St Helenian status" to return to St Helena to live and work (St Helenian status can be acquired by right or by grant); to attract investors and residents who would contribute

positively to the island's future development; and to address local labour market shortages (for which the Government maintains a shortage occupation list) (3)

Niue. The island of Niue in the South Pacific Ocean has a population of around 1,600 and a land area of about 261km². It is a self-governing state in free association with New Zealand. Niue is not a member state of United Nations, but can attend some of its meetings. All Niueans are New Zealand citizens. Niue is fully responsible for its own internal affairs, with external affairs exercised mainly by the Governor General of New Zealand (as the British Sovereign's representative in New Zealand and titular head of New Zealand). Niue is a bilingual country with around 30 per cent of the population speaking both English and Niuean. The Legislative Assembly consists of 20 members, 14 elected by electors of each village constituency, and six by all registered voters combined. In April 2019 the Governments of New Zealand and Niue signed a Statement of Partnership setting out the principles and priorities under which they will cooperate, coordinate and partner into the future. The focus of New Zealand's engagement prioritises the empowerment of the Government of Niue. Currently Niue receives annual aid from New Zealand of around \$11m, and around \$3m from Australia.

Unalloyed rights to residence in Niue are for those born in Niue, or have a parent who is a New Zealand citizen born in Niue, or who is declared a permanent resident of – or is ordinarily resident in – Niue. Others arriving into Niue must hold a visa: tourist visa, work visa, student visa, or transit visa. Temporary permits entitle the holder to remain lawfully in Niue for the period stated on the permit. These are issued as work permits or student permits and all applicants must be of good character and good health. Temporary permits can be renewed. Temporary permit holders may be required to have a sponsor, responsible as required for the holder's accommodation, maintenance and costs of deportation (if required). Permanent residence certificates may be granted by the Niuean Cabinet in accordance with Residence Criteria published from time to time, provided the applicant has held a temporary permit for a period of not less than 10 years. (4)

What the foregoing demonstrates is that the policy and process used by Norfolk Island for immigration control under the pre-1 July 2016 arrangements is structurally the same as those currently in use across other small isolated islands; and furthermore these policies and processes are the same in principle, irrespective of the island's governance method. (Compare Box)

5. What does Australia do regarding immigration control?

Australia is a large and complex country, and has over 70 different classes of visas for people wishing to enter Australia. These are organised under six general categories: Visitor, Studying and training, Family and partner, Working and skilled, Refugee and humanitarian, and Other (transit, medical treatment etc.). Almost all require a valid passport, adequate health status and lack of serious criminality on the part of the applicant. (5) The main threads in the pattern of visa issuance include:

Visitor visas. The Visitor visa program is divided into two streams - Tourism and Business - and does not permit visa holders to engage in work in Australia. The Tourism visa stream allows holiday or recreation, or visiting family and friends, and are issued for up to 12 months; the Business stream allows business people to carry out activities such as attending meetings, conferences, site visits and exploring business opportunities, and are issued for up to three months. (There is also the Working Holiday visa program which fosters links between Australia and partner countries, with particular emphasis on young adults. Holders can stay in Australia for up to one year, with possible renewals after that time.)

Working and skilled visas. A number of classes of visa allow skilled people to work and live in Australia, under the General Skilled Migration program. The Department of Home Affairs (DoHA) maintains a list of professions and occupations eligible for skilled migration visas. The program is points-based, and there are a number of categories:

(a) short stay work visa e.g. Working Holiday Maker visa, Pacific and Seasonal Work visa.

(b) temporary work visa e.g. the Temporary Skills Shortage visa allows an employer to sponsor a suitably skilled worker to fill a position they can't find a suitably skilled Australian to fill; the visa is granted for up to two years, or four in some circumstances. A Business Innovation and Investment (Provisional) visa allows holders to manage a business or conduct entrepreneurial activity in Australia, for a period of up to four years and three months.

(c) permanent work visa. Under the SkillSelect visa pathway, skilled workers of select occupations and professions can apply for an Australian permanent work visa provided they have the requisite qualifications, work experience and language ability. The Regional Sponsored Migration Scheme visa emphasises nomination of migrants by employers in regional Australia. The holding of a permanent work visa means that holders are permanent residents and can remain in Australia indefinitely.

Permanent residence and citizenship. The holding of a permanent work visa goes with it permanent resident status in Australia. The most commonly issued permanent visas include skilled work visas, and family visas:

(a) skilled work visa. Some permanent visas are issued directly, although there are other pathways to achieve permanence on the basis of an initial temporary work visa. Holders of a 485 Graduate visa can become resident if sponsored by an employer, or if they accumulate a sufficient number of points independently.

(b) family and partner visa. Australian citizens and permanent residents (and eligible NZ citizens) can sponsor family members to live in Australia, arriving as temporary residents and after meeting certain criteria may be granted permanent residency. Coverage extends to partners, parents, dependent children, orphan relatives, aged dependent relatives and carers. There is no skills test or language requirement for family migration as there is for skilled migrants, however applicants must meet the necessary health and character requirements.

These cover the main categories of exercised Australian visas (i.e. arrivals) apart from Higher education and student visas. (6)

In summary we may say that despite the complexities and different terminology, Australia follows very similar structural characteristics in controlling immigration as do the Falkland Islands, St Helena, and Niue – and as did Norfolk Island prior to 1 July 2016. (Compare Box)

6. Australia's immigration policy for Norfolk Island: An Assessment

We recall the quotation from Commonwealth legislation with which we opened this article, that specified that any Australian can come and live on Norfolk Island howsoever they may wish (and that anyone else must have an appropriate visa). This stands in stark contrast to the immigration controls exercised by all the other islands surveyed here: the Falkland Islands, St Helena Island, and Niue, and indeed by Australia itself. If it is reasonable to assume that their policies are rational and securely based on the objectives of economic and social wellbeing, we must conclude that the Australian Government's immigration policy currently enforced on Norfolk Island is uniquely bad. It is antithetical to good reason, as has been laid out in the foregoing.

Unrestrained immigration from Australia:

- ◆ Is damaging economically because it increases the island's incapacity to adjust to its economic needs;

- ◆ Is damaging environmentally because of effects of population increase on the island's environmental quality, and on natural resources such as water and rural land, with consequent damage to the island's agriculture and long-term food security, and tourism;
- ◆ Is damaging socially and culturally because of the unrestrained pressure being put on what is unique about the island in terms of culture, language and tradition. And this within the context of the Norfolk language having been identified by UNESCO as one of the world's endangered languages. (7) It is not just a matter of "being a Pitcairner" or not, but of participating in a certain gentle view of human nature which is island-based, often remarked upon, and which draws many visitors to return regularly and gladly to the island over the years.

In recognising these three aspects of economy, environment, and culture, it needs to be recognised in addition that Norfolk Island – being an isolated island – is an ecological system, involving systemically humans and the natural environment as an integral whole, and that to ensure its future integrity and success it must be conceived of and planned for as a unit and as a whole: an approach strongly emphasised globally by Pope Francis in his 2015 encyclical letter "Laudato Si". (8)

Two further things should also be emphasised immediately. First, the argument presented here is not an argument against all immigration to Norfolk Island, but in favour of a policy of common-sense controlled immigration in relation to the needs and limitations of a small isolated island community. And it goes without saying that that community itself needs to have substantive input into any such policy. Second, the issue of immigration control is unrelated to the funding that the Australian Government may or may not at any time deem appropriate to Norfolk Island: they are conceptually separate matters.

In brief, the immigration policy currently enforced on Norfolk Island by the Australian Government (if no control can be considered a policy) is, from the perspective of the needs of those living on the island, without visible merit. It appears as the worst of all worlds (it is certainly the worst of those islands surveyed here, including Australia). The Australian Government's "let 'er rip" approach is ugly and potentially brutal economically, and gives little or no consideration to the integrity of the island's community, culture, or environment.

There is an urgent need to review and change this imposed immigration policy to one more tailored to the specific needs of the small isolated island that Norfolk Island is. One such first step would be the return of Norfolk Island to its status as being outside Australia's migration zone (the territory to which Australia's visa policy applies), as it was deemed to be prior to 1 July 2016. This is not difficult to accomplish. We may recall the "Tampa" affair of 2001 which concerned the potential arrival in Australia of shipwrecked asylum-seekers on board the Norwegian cargo ship that had rescued them. In the wake of these events the Australian Government overnight passed legislation excising several islands around Australia from its migration zone, including Christmas Island, Ashmore and Cartier Islands and Cocos (Keeling) Islands. (*Migration Amendment (Excision from Migration Zone) Act 2001*). The Australian Government could do the same for Norfolk Island as a first step to developing, with Norfolk Island representatives, an acceptable immigration policy for the island.

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Notes

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If anyone would like to discuss matters raised in this article, they are invited to do so by contacting me at: nobbs298@gmail.com.

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