

## PILON 38<sup>th</sup> ANNUAL MEETING

### COUNTRY REPORT – PITCAIRN ISLANDS

9 October 2019

*This report focuses primarily on the year ending October 2019, however, as Pitcairn was not able to attend last year's annual meeting, the report also includes some of the key achievements from the previous 12 month period, should it be of interest.*

#### 1. Major law and justice sector achievements

- (a) The majority of Pitcairn's judiciary and court infrastructure exists outside of Pitcairn, in New Zealand. In March 2019, an amendment to key court procedure legislation was passed to increase the availability and efficiency of court proceedings held on Pitcairn. There were two key amendments: the first allows judges to participate remotely (by video link) in proceedings held on Pitcairn, allowing more proceedings to be held on Pitcairn, and reducing delay; and the second gives the Island Magistrate (a lay Magistrate on Pitcairn) a wider ambit to seek advice from a Senior Magistrate (professional Magistrate, currently based in New Zealand) at any time during a proceeding or potential proceeding, while retaining decision-making responsibility and power. Following this amendment, the Pitcairn Magistrate's Court held an on-island proceeding entirely before the Island Magistrate, for the first time in more than 40 years.
- (b) An eight year long proceeding, involving a constitutional challenge to Pitcairn's legal and judicial system, was brought to an end with a Privy Council hearing in May 2018. In July 2018, the Privy Council upheld the decision of the courts below, and dismissed all challenges (discussed further below).
- (c) Pitcairn's child safeguarding practices, structures, and community attitudes were reviewed by external consultants in a Child Safety Review, and received a positive report in 2018. External reviews of child safety have been carried out on a regular basis since 2009, following the prosecutions for extensive child sex offending that was uncovered in the early 2000s. The review that was carried out at the end of 2017 interviewed 80% of Pitcairn residents. They noted significant change in the Pitcairn community and described the attitude of Pitcairners to child safety as positive, open and transparent, and a "distinct feeling of acknowledging the wrongdoings of the past and a focus on working collaboratively...to establish a culture of child protection." They found that Pitcairn children were safe, healthy, achieving and participating. Of significantly, the reviewers recommended increased involvement and responsibility of the Pitcairn community in Child safeguarding. Over the last year, Pitcairn has had families with children migrate to Pitcairn for the first time in almost 2 decades.
- (d) The Pitcairn Island Council passed legislation controlling the use of outdoor lighting, to support the creation of an internationally recognised Dark Sky Sanctuary. Pitcairn's Dark Sky Sanctuary – *Mata Ki Te Rangi* – has since been recognised in the [Time Magazine's Greatest Places to visit](#). This work builds on other recent legislative and policy work in protecting Pitcairn's natural resources, including the creation of a Marine Protected Area across Pitcairn's entire EEZ.

## **2. Significant court decisions**

*Warren v The Queen* [2018] UKPC 20 was an appeal from a prosecution of Mr Warren for possession of a large amount of child pornography. Mr Warren brought a large number of pre- and post-trial constitutional challenges to many aspects of Pitcairn's legal system and legal institutions, including allegations that there had been a range of failures in administration, deficiencies and impropriety in the appointments of judges, judicial bias and lack of independence; a lack of independence of police officers, and unlawful search warrants and handling of evidence; and that the institutions of government set out in the Pitcairn Constitution were undemocratic and unlawful. The Privy Council upheld the decision of the courts below and dismissed all the challenges.

The case put government action in a range of areas under significant scrutiny, and highlighted the importance of good records of appointments, including records of appointment notices, oaths, decision making processes, and the legal basis on which appointments are made.

There have been no decisions of the higher courts in 2019.

## **3. PILON strategic priorities**

### **(a) Cybercrime**

*Warren v The Queen*, discussed above, involved the prosecution of Mr Warren for possession of child pornography, and is Pitcairn's only instance of cybercrime thus far. The investigation and prosecution highlighted the challenges for Pitcairn in this area, as Pitcairn does not have the forensic capability to analyse computer drives. In the investigation, the police officer obtained an order from the court to send the exhibits to New Zealand for analysis. The lawfulness of that process was challenged in the subsequent proceedings, but the challenge was not successful.

This case also led to the use of a further tool for dealing with offending involving child pornography specifically. Upon conviction, the judge made a Sexual Offences Prevention Order (SOPO), which will apply to Mr Warren for 7 years. This is the first such order made in Pitcairn since the legislation was introduced in 2010. The SOPO is able to place conditions on the offender to prevent future offending, and in this case conditions were developed that require the offender to have monitoring software installed on any devices that access the internet.

### **(b) Corruption**

There have been no allegations or prosecutions for corruption offences in Pitcairn over the relevant period.

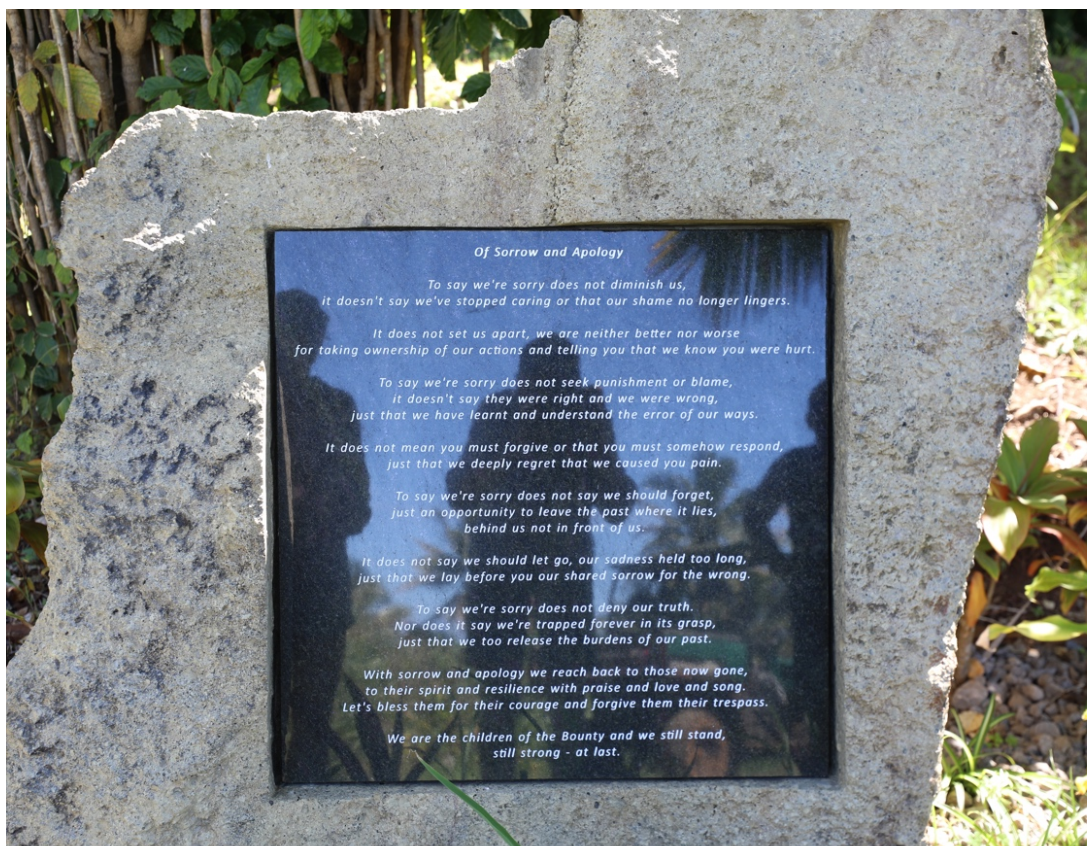
In 2018, the Sanctions and Anti-Money Laundering Act 2018 was passed by the UK Parliament, which requires all OTs, including Pitcairn, to develop publicly accessible registers of beneficial ownership of companies within its jurisdiction. Pitcairn is now working towards that goal. Current UK Government policy is that this will be required by 2023, but it is possible that this date will be brought forward.

### (c) Sexual and Gender based violence

Since the historic “Operation Unique” prosecutions which concluded in 2006, there have been no prosecutions for sexual or gender based violence on Pitcairn.

Work continues to ensure that remains the case. The recommendations from the 2018 Child Safety Review (discussed above) are being worked through, and Pitcairn has since completed a National Response Plan for Child Safety.

A particularly significant event for Pitcairn was a facilitated programme to reconcile past wrongs, carried out in 2017. One output from that programme was the creation of a plaque to recognise and mark with apology the historic abuses that occurred. All but one of the Island residents attended the ceremony to unveil the plaque (photographed below) at the end of 2018, almost a decade after the release of the last Operation Unique offender.



In the area of family violence, police have been working with the Attorney General’s office to ensure that there is effective legislation and practical arrangements to effectively limit any family violence situations. Developments include:

- A proposal to introduce legislation creating/clarifying powers of police to take immediate steps to intervene in suspected family violence situations, without necessarily requiring the involvement of a court. This includes the power of police to issue temporary orders requiring parties to separate where it is believed to be necessary to protect a person from family violence. This would ensure an immediate, temporary, response is possible, even

if there is difficulty in gaining timely access to a court, or where parties are unwilling to escalate a situation to a court.

- Police and Government have provided accommodation options should a person be required by police to separate from their family due to any risk of family violence.
- Trialling the delivery of a rehabilitative/therapeutic programme directed at family violence by a NZ-based practitioner via video link in co-ordination with the on-Island social worker, as part of an out-of-court resolution of alleged offending.

Pitcairn has requested the extension of CEDAW and is awaiting confirmation from the appropriate UK Minister.

#### **(d) PILON activities and resources**

Pitcairn's criminal law and procedure is partly contained in local Ordinances and partly by importation of English statutes and common law under s 42 of Pitcairn's Constitution. At various times, including recently, proposals have been made and work done towards developing a local Pitcairn Crimes Ordinance, and reviewing Pitcairn's criminal procedure laws to ensure they are fit for purpose in current circumstances (see discussion below). Many of the PILON resources will be of use to Pitcairn if / when these proposals are taken forward, including.

- 2017 Cybercrime Workshop on Electronic Evidence
- 2018 Cybercrime Workshop on Combatting Online Child Abuse
- 2019 Cybercrime Workshop on International Cooperation
- Legislative overview of Cybercrime laws in the Pacific
- Legislative overview of child abuse offences in the Pacific

#### **4. Significant issues affecting the law and justice sector, and options to address these issues**

Pitcairn's law and justice sector is very small, and has limited capacity. A number of other issues affecting the law and justice sector for Pitcairn also arise from its very small population (less than 50) and the need to receive expertise from outside the jurisdiction, in conjunction with its remoteness and difficulty of access (Pitcairn can only be accessed by boat, with a restricted number of sailings per year).

We are currently interested in ways to improve the following areas:

- (a) Access to the courts for civil matters – working with New Zealand to clarify the ability of civil courts to sit in New Zealand, to avoid delays in hearing civil claims that can't be heard by the Island Magistrate (current NZ legislation specifically allows for criminal courts to sit in NZ with permission from NZ government ministers)
- (b) Off-shore detention of prisoners and/or solutions for short term detention or community-based detention where necessary in the absence of an operational prison

(c) Effective access to justice, including looking at different models for publicly funded community legal assistance (primarily looking at provision from off-shore); and reviewing legal aid

(d) Mutual assistance measures, particularly in the context of enforcing Marine Protection laws.

## 5. Significant initiatives/projects involving the member country and its law and justice sector

(a) A Review of Pitcairn’s Criminal Law and Procedure was undertaken in early 2019, to identify and prioritise areas for reform. Recommendations included a proposal for a Pitcairn Crimes Ordinance, as well as several other proposals reforms including the development of an infringement offence procedure for “on-the-spot” penalties for minor infringements, and improvements to the process for selection of assessors. Work taking the recommendations of this review forward is ongoing.

(b) Pitcairn is working with the New Zealand Department of Corrections to look at future options for short and long term custody requirements, and ways of better providing for community based sentences.

(c) Pitcairn is working with the UK-based NGO RSPB, as well as the UK government to strengthen biosecurity legislation, policies, and practices to protect Pitcairn from new invasive species. This work supports recent projects to protect Pitcairn’s natural resources, while increasing tourism, including the development of the Dark Sky Sanctuary and Marine Protected Area, and associated protective legislation. There are particular challenges for Pitcairn in terms of enforcement of potential biosecurity legislation, particularly with the potential for an increase in tourism to the uninhabited outer islands. The project also supports ongoing work with the PROTÉGÉ / SPREP to manage invasive species on Pitcairn.

## 6. Technical legal assistance

Many of Pitcairn’s law and justice sector roles are filled by professionals from New Zealand or the UK, allowing Pitcairn to benefit from training provided within those jurisdictions. It has also been fortunate to receive technical assistance from a range of UK Government and non-government organisations.

Pitcairn has also received technical assistance from the New Zealand Department of Corrections in relation to offender management; and from New Zealand police in relation to assistance with regard to reviewing policing powers.

## 7. Contact information for key law and justice agencies

| Agency                    | Key responsibilities   | Contact person and position               | Phone number and email   |
|---------------------------|--|---|--|
| Attorney General’s Office | Principal legal adviser to the Government of Pitcairn, including | Simon Mount QC<br><i>Attorney General</i> | <a href="mailto:Simon.mount@bankside.co.nz">Simon.mount@bankside.co.nz</a><br>+64 9 379 1519 |

|                     |   |  |  |
|---------------------|---|--|--|
|                     | legislative drafting,<br>and supervision of<br>prosecutions | Danielle Kelly<br><i>Assistant AG</i>                    | <a href="mailto:Danielle.kelly@bankside.co.nz">Danielle.kelly@bankside.co.nz</a><br>+64 9 308 0515 |
| Public Prosecutions | Prosecutions and<br>advice to police                        | Kieran Raftery QC<br><i>Deputy Public<br/>Prosecutor</i> | (contact through the AG Office)  |
| Courts              |   | Maureen Dawson<br><i>Deputy Court<br/>Registrar</i>      | <a href="mailto:registrar@pitcairn.gov.pn">registrar@pitcairn.gov.pn</a>                           |