7

Governance reform

Overview

7.1 While not a specific term of reference for the Committee's inquiry, governance reform is key to achieving significant change:

> These territories are neither fish nor fowl and the majority of problems are caused because of that condition. There is total confusion as to the appropriateness of laws.[1]

> Little has changed in the last decade…all the evidence that [the Joint Standing Committee on the National Capital and External Territories] has been hearing over time virtually amounts to the same story. What we really need is a process that creates action… There is a need for change and the change has to be significant and has to come from the very foundations.[2]

7.2 The Committee's interim report and first three chapters of this report indicate that there are prospects for economic development in the Indian Ocean Territories (IOT) within the current governance system, especially if land management reform takes place. However, there may be better prospects for economic development if governance and administrative arrangements are normalised and brought in line with those on mainland Australia. Maintaining the status quo in the IOT is not likely to fundamentally improve its prospects for a sustainable future.

7.3 Since the IOT have been under Australian jurisdiction, successive Australian Governments have endeavoured to provide service delivery

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1 Mr Barry Haase, Administrator, *Committee Hansard*, Cocos (Keeling) Islands, 8 April 2015, p. 8.
2 Mr Barry Haase, private capacity, *Committee Hansard*, Canberra, 3 December 2015, p. 8.

comparable to other remote parts of Australia. However, ad-hoc reforms seeking to improve governance and administrative arrangements have only resulted in a system that is unwieldy and unlike any other in Australia.

Chapter outline

7.4   This chapter outlines the strategic importance of the IOT to Australia's national interest.

7.5   The key features of the governance and administrative arrangements in the IOT are set out before recapping the various criticisms of the governance system that have been mentioned in the preceding chapters of this report. Two significant issues have been the cost and efficiency of the Service Delivery Arrangements and concerns about the adequacy of consultation and community input. This chapter picks up from Chapters Five and Six and considers the costs of governance as a whole, and whether there is a fundamental 'democracy-deficit' in the IOT.

7.6   The chapter then examines different improvements and alternatives to the current system. These include:

- better channels of communication between all levels of government;

- assessing the role of local government; and

- incorporating the IOT into an existing Australian state or territory.

7.7   Each of the above will be considered in turn. The main focus will be on the proposal to incorporate the IOT into Western Australia (WA) - a suggestion raised in previous committee inquiries and reports - or, as an alternative, the Northern Territory (NT). This would introduce the missing second tier of government and in the case of the latter, realign federal and state/territory representation given the IOT's federal representation is in the NT.

Strategic importance of the Indian Ocean Territories

7.8   Christmas Island and the Cocos (Keeling) Islands are considered strategically important to Australia.

7.9   Former public servant, Mr Julian Yates noted their significance during
       World Wars One and Two, when their proximity to South-East Asia
       enabled better defence of Australia's northern approaches.[3] In the 1950s
       Christmas Island was an important source of phosphate for fertiliser and
       Australia was keen to ensure supply security for the agricultural
       industry.[4]

7.10   Mr Yates emphasised that the strategic interests of the IOT endure, for
       diverse reasons, including its geographical position in the region, and
       access to Asian markets. He elaborated:

           Major sea lanes of communications and air routes pass in
           relatively close proximity, including those that connect Australia
           to its major trading partners, and… connect China to its market
           and energy supplies;

           Many nations bordering the Indian Ocean, notably India,
           Malaysia, and Indonesia have growing economies, increasing
           levels of wealth and education and more capable militaries; and

           Unresolved border disputes exist throughout the region to the
           north and west of Australia… the South China Sea dispute
           between China and most of the region is the most prominent, but
           there are numerous other points of contention between most
           nations of the region.[5]

7.11   The Cocos (Keeling) Islands are still sometimes used as a refuelling point
       and phosphate mining remains an important industry on Christmas
       Island.

7.12   Mr Herve Calmy, Calmy Planning and Design also referred to diverse and
       ongoing interests that Australia has had in the territories. He cited two
       other examples: the proposal to establish a space centre project to launch
       rockets from Christmas Island; and more recently, construction of the
       Christmas Island immigration detention centre.[6]

7.13   Mr Calmy observed that sovereignty of the territories involves
       commensurate responsibilities and costs:

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3   Mr Julian Yates, *Submission 4*, p. 2.
4   Mr Julian Yates, *Submission 4*, p. 2.
5   Mr Julian Yates, *Submission 4*, p. 3.
6   Mr Herve Calmy, Calmy Planning and Design, *Committee Hansard*, Canberra, 10 September 2-
     15, p. 1.

> Sovereignty is never free. What makes sovereignty real is the price any government is prepared to pay to establish it and then is prepared to maintain it…
>
> …in other words, actions of strategic significance to improve governance and economic development in the IOT, if they are to be effective, will need to be resourced in the context of national interest, and thus with a budget separate than the one currently used by the Department from year to year to run the show.[7]

Committee comment

7.14   The Committee recognises the ongoing significance of keeping the IOT in the Australian jurisdiction, and that maintaining a presence in the region is important.

7.15   More will be said below on the costs to the Commonwealth of maintaining the IOT, including the budget and adequacy of resources available to the Department of Infrastructure and Regional Development (DIRD) to manage them.

7.16   Beyond responsibilities associated with service delivery to IOT residents, the Australian Government has a responsibility to IOT residents and Australian taxpayers alike to ensure that the territories have some strategic direction.

Current governance arrangements

7.17   As external territories, Christmas Island and the Cocos (Keeling) Islands are administered by the Commonwealth through the DIRD with the Minister responsible for the territories bearing overall responsibility. An Administrator appointed by the Governor-General represents the Minister in the region. IOT residents are represented at the federal level by the Member for Lingiari and the two NT Senators.

7.18   In the absence of a state government, DIRD manages the provision of state-type services in the IOT through:

- Service Delivery Arrangements (SDA) or an exchange of letters with Western Australian (WA) Government agencies;

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7   Mr Herve Calmy, Calmy Planning and Design, *Committee Hansard*, Canberra, 10 September 2015, p. 1.

- contracts with private entities; and

- directly, where services cannot be provided via an SDA or privately.

7.19   More information on state-type service arrangements supported by DIRD can be found at Appendix C.

7.20   At local level two shires, the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands, provide local government representation and are responsible for supporting a range of municipal services in the IOT.

Summary of criticisms of governance arrangements

7.21   A multitude of criticisms has been levelled against the current governance and administrative system in the IOT. The main ones, already referred to in the preceding chapters of this report, include:

- that the territories unique governance arrangements are a barrier to developing tourism, because of exclusion from mainland structures like state and regional tourism bodies (Chapter Two);

- that the IOT Regional Development Organisation is not a fully resourced or functional regional development organisation (Chapter Three);

- that there is a lack of strategic vision and commitment on the part of the Australian Government for land management and development in the IOT (Chapter Four);

- that the community is not adequately consulted as part of the SDA process; SDA do not address IOT residents' needs; they are not transparent and accountable; and they do not necessarily represent good value for money (Chapter Five); and

- that the delegations of the Administrator are not clear (Chapter Six).

7.22   Two additional criticisms identified below are considered next in more detail:

- the overall cost of public administration in the territories is high yet residents' satisfaction levels are low. At the same time, DIRD is under-resourced and strained by trying to do too much; and

- there is a 'democracy deficit' because IOT residents do not have state-level representation in WA Parliament although WA laws are

applicable. There is a further disconnect because the IOT federal
representatives are located not in WA, but the NT.

Costs of public administration

7.23   The 2014-2015 total budget allocation for the IOT was nearly
        $149.5 million. This comprised an operational component of $126.2 million
        and capital works of $23.3 million. See Table 7.1 below for a breakdown.[8]

Table   7.1 IOT Budget Summary at 31 May 2015 (Inclusive of Approved Additional Estimates,
Movements of Funds, Revenue Adjustments and Parameter Adjustments)

2014-15 Operational Budget		2014-15 Capital Budget	
WA Service Delivery Arrangements (includes 2013-14 offset funding)	$32,120,922	Administered Capital Budget	$12,297,084
Other Service Delivery Arrangements and Expenses	$1,947,230		
Private Sector Contracts	$30,343,958		
Australian Government Managed Services		**Major Capital Projects**	
Policing	$4,345,000	Fuel Consolidation Storage	$3,000,000
Health Services	$16,004,000	Flying Fish Cove Jetty Extension	$8,000,000
Power Authority	$18,765,354		
Support to the Community	$3,520,200		
Support to Local Government	$7,234,970		
Administration, Operations and Corporate Services	$11,902,366		
Total Operational Budget	**$126,184,000**	**Total Capital Budget**	**$23,297,084**
2014-15 Total IOT Budget			**$149,481,084**

*Source   Department of Infrastructure and Regional Development, Indian Ocean Territories, 2015-16 Budget Overview
            and 2014-15 Budget Outcomes, p. 3.*

7.24   Table 7.1 shows that the vast majority of the budget is allocated towards
        services.

7.25   Chapter Five catalogued various concerns witnesses had about the high
        cost of the Service Delivery Arrangements (SDA), perceived wastage, and
        outcomes which are unsatisfactory and do not represent value for money.

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8   Department of Infrastructure and Regional Development, *Indian Ocean Territories, 2015-2016
     Budget Overview and 2014-2015 Budget Outcomes,* p. 3.

7.26   Dr Martin Drum, an academic with an interest in politics and international relations, appearing in a private capacity noted that the current IOT governance model is costly per capita:

> …Christmas Island, with a similar population to Norfolk, receives almost 2.5 times the amount of Commonwealth funding. The discrepancy for the Cocos (Keeling) Islands is even greater when it is considered that its population it about one third of Norfolk yet it receives more funding. When the funding is broken down to key services, the costs of education, health and water and sewerage in the IOT are much higher…[9]

7.27   Dr Drum elaborated on the high costs of administering the IOT, owing to their remoteness from Canberra where DIRD, which is responsible for managing the territories is located; the fact that the WA Government is the 'middle man' providing the services out of Perth; and that WA has the monopoly on service provision:

> …Given the obvious similarities in remoteness between Norfolk and the IOT, the [data] demonstrate that centralisation of decision-making in Canberra, comes at a considerable cost to the Commonwealth.[10]

> …it is very 'top down'; very little Commonwealth funding is delivered in accordance with the wishes of locals. Most of the funding is tied and much of it is double-handled in that is handed to the state of [WA], who then deliver the service.[11]

> …There are no alternative providers considered, which disadvantages the Commonwealth during negotiations. [12]

Resources of the Department of Infrastructure and Regional Development

7.28   Advice from DIRD at 8 February 2016 indicates that it has 124 staff in its IOT division. This comprises 17 staff in Canberra working on executive, policy, capital and major projects, 11 staff working in Perth on SDA, contracts and travel schemes for students and pensioners, 100 staff on

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9   Dr Martin Drum, *Submission 22*, p. 5.
10   Dr Martin Drum, *Submission 22*, p. 7.
11   Dr Martin Drum, *Submission 22*, p. 7.
12   Dr Martin Drum, *Submission 22*, p. 3.

Christmas Island and 13 on the Cocos (Keeling) Islands working to deliver services.[13]

7.29   Ms Robyn Fleming, Executive Director, Local Government and Territories Division, DIRD outlined the wide range of topics her team of approximately 30 officers in Canberra and Perth were expected to be across, ranging from policy to contract and asset management through to human resources, finance and auditing:

> …I have a policy team…which includes some legal policy officers, but we draw on the Department's broader legal advice around legislation… We have a contract management, asset management, framework team, which has done all of the construction of the major initiatives that we have been taking forward, and manages contract renegotiations including the big contacts that have to be renegotiated like the fuel supplies, the airports, the air services, the ports. We then have a team in Perth, which manages our contracts that are managed out of Perth commercially, like Patricks [Ports] as well as the mine, as well as our Service Delivery Arrangements with the [WA] state. Then we also engage with our human resources team to manage our enterprise agreements, and then my finance unit works with the on-island team to do all the fiscal reporting and responding to various audits that we have over years around revenue collection. It is a large body of work.[14]

7.30   A former public servant with extensive experience in the territories, Mr Stephen Clay expressed his view that Departmental resources were stretched, resulting from a steady decline in staff numbers:

> In my experience [DIRD] suffers, like many other areas of Government, from a lack of adequate resources to cover the complexities of the IOT. In my 12 years in Territories this situation has gradually worsened, with reductions in staff numbers. This is exacerbated by a lack of government 'vision' for the IOT. Without adequate resourcing and coordination across Government, the IOT will continue to suffer from short-term decision making.[15]

7.31   Mr Yates observed that, during his tenure in the Department, there was more local staff working on island:

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13   Department of Infrastructure and Regional Development, *Submission 36.6*, p. 1.

14   Ms Robyn Fleming, Executive Director, Local Government and Territories Division, Department of Infrastructure and Regional Development, *Committee Hansard*, Canberra, 14 May 2015, p. 10.

15   Mr Stephen Clay, *Submission 41,* p. 1.

…with the specific intent of getting more people out there to do things.[16]

7.32   Mr Gordon Thomson, General Secretary of the Union of Christmas Island Workers commented that, at the same time as cuts had been made to the public service, demands on public servants increased. He emphasised that public servants have the additional burden of working in a system that is separate to, and different to the regular public service.[17] He added that:

> The problem is not the individuals who work within the system; it is that the system of governance is deeply flawed…[18]

Committee comment

7.33   In Chapter Five the Committee recommended that the Australian National Audit Office (ANAO) undertake an audit of the SDA given the level of dissatisfaction that residents had with them.

7.34   While the Committee recognises the IOT is remote and service delivery will always incur a premium, there are only about 2,000 people in total who live in the Indian Ocean Territories. The per capita cost of delivering services appears high. It is hard to know whether they demonstrate value for money in the absence of a comprehensive audit, and given that the arrangements are unique and cannot be compared to any other part of Australia.

7.35   In its interim report, the Committee was critical that information provided by DIRD was not always comprehensive and responses to questions that were less than direct. That may be partially attributable to the issue of resource availability.

7.36   The Committee appreciates that DIRD is trying to do something that is not usually expected of Commonwealth government departments, namely administer islands and take on a role usually supported by state government and state government agencies, including managing everything from its strategic and policy direction through to the running of schools, hospital and utilities. It is challenging to do this with a relatively small number of staff, spread across four locations and time zones.

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16   Mr Julian Yates, private capacity, *Committee Hansard*, Canberra, 3 December 2015, p. 4.

17   Mr Gordon Thomson, General Secretary, Union of Christmas Island Workers, *Committee Hansard,* 9 April 2015, p. 11.

18   Mr Gordon Thomson, General Secretary, Union of Christmas Island Workers, *Committee Hansard,* Christmas Island, 9 April 2015, p. 11.

7.37   The next section looks at the second major criticism of the current
        governance arrangements: that the IOT has no state level representation
        and this equates to a democracy deficit.

A 'democracy deficit'?

7.38   The IOT effectively has no state level representation. The IOT federal
        member and senators are located in the NT but the territories do not have
        an NT Legislative Assembly representative. IOT residents are subject to
        applied legislation from WA, yet they have no representative in the WA
        Parliament either.

7.39   Mr Peter Griggs, a long-time resident of Christmas Island voiced his
        frustration:

> As you know, the IOT is missing the tier of government that state
> governments provide to communities. The SDA arrangements
> currently in place with [WA] are the support mechanism to
> provide state-type services to the IOT…
>
> The difficulty that most residents are unable to reconcile is that,
> decisions are made in Canberra/WA regarding which
> services/projects are to be implemented in the IOT with very little
> input requested from the local communities. The problem is
> further exacerbated in the fact we are unable to voice our
> frustration through the ballot box, as there is no state type election
> for the residents.[19]

7.40   Another Christmas Island resident, Ms Lisa Preston said something
        similar:

> With no state representation, but with our Service Delivery
> Arrangements arranged with state departments the islands are
> caught in a conundrum. The state delivering our services is not
> one that we can vote for our representatives in.[20]

7.41   Christmas Island resident Mr Kelvin Matthews summarised:

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19   Mr Peter Griggs, *Submission 19*, p. 1.
20   Ms Lisa Preston, *Submission 28*, p. 2.

> We believe this fails the basic test of representative democracy in that Christmas Islanders are not giving their consent to laws which bind them.[21]

7.42   Dr Drum expanded on the perceived lack of representation at state level:

> The right to directly elect representatives who make laws which apply to you is one of the few rights which are explicit in the Australian Constitution, the right to vote (sections 7 and 24)… Whilst there is some representation available to islanders in the Commonwealth Parliament through the federal electorate of Lingiari in the Northern Territory, this does not resolve the issue of the lack of representation at state level, where most legislation applies.[22]

7.43   Dr Drum emphasised the important principle of being able to vote for an elected representative at all levels of government:

> When I teach Australian politics that is one of the first things I talk about – that is, we have a right to say yes or no to the things that govern us through our elected representatives. This is not just an abstract point, because it actually flows through to things like accountability and the responsiveness of governments. A lot of responsiveness of government is undertaken in parliamentary estimates and through committees like this, where officials have to account for the spending, the management and the administration of public funds.[23]

7.44   While acknowledging there is representation through the electorate of Lingiari in the NT, Mr Matthews questioned the extent to which 'community interest' could be represented through this means, noting:

> Christmas Island has its own unique history and a collective majority of non-English speaking communities from South-East Asia who retain their own sense of cultural identity.[24]

7.45   Mr Yates expressed doubt whether there is in fact a democracy deficit in the IOT. He maintained that the IOT has universal adult suffrage for local and federal elections and that the current arrangements means IOT residents are:

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21   Mr Kelvin Matthews, private capacity, *Committee Hansard*, Christmas Island, 9 April 2015, p. 39.

22   Dr Martin Drum, *Submission 22*, p. 2.

23   Dr Martin Drum, *Committee Hansard,* Perth, 8 May 2015, p. 6.

24   Mr Kelvin Matthews, private capacity, *Committee Hansard*, Christmas Island, 9 April 2015, p. 39.

> …placed much closer to the seat of Commonwealth power than any comparable mainland community:
>
> ■ the islands have local government that operates under the same model that applies in [WA]…;
>
> ■ the islands are part of the federal state of Lingiari and represented in the Senate and House of Representatives…; [and]
>
> ■ the islands have their own Joint Standing Committee of the Federal Parliament, and receive substantially more attention by this committee than any other comparable mainland community…[25]

7.46   Mr Yates elaborated noting that the applied law regime that operates in the IOT is not well understood. He explained that it is not WA law applying directly to the IOT but in fact Commonwealth law which draws on WA state legislation to provide a governance framework:

> …it is not Western Australian state law that is being imposed: it is Commonwealth law that uses their state law as the basis. The rationale for that is… the Commonwealth does not have a body of state law, so it needs to, when it is running territories, where it provides the state equivalent services have a body of law from somewhere. The choice was made, Western Australia-reason: because Western Australian state agencies are contracted to deliver the services, they are best placed to deliver them under the applied WA law regime.
>
> It is the Commonwealth Parliament that makes applied law work and the Commonwealth Parliament that removes it… It is not actually the Western Australian Parliament that makes the applied law; it is the Commonwealth law.[26]

7.47   Ms Fleming of DIRD confirmed that it is the Commonwealth's role, through the Commonwealth Minister responsible for the territories, to determine whether an applied law needs to be modified or adapted for IOT residents. She alluded to the resource implications involved in changing applied laws:

> There is just an enormous body of state law, some of which is applicable to the territories in full, some of which is applicable in part, and some of which is probably not applicable but you do not know. It might not be applicable so you apply it anyway. Can you modify, through ordinance, each and every one of those pieces of

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25   Mr Julian Yates, *Submission 4*, p. 4.

26   Mr Julian Yates, *Committee Hansard,* Canberra, 3 December 2015, p. 2.

legislation to adapt to a territory? You probably could but would you want to? What would be the resourcing that is required to write an ordinance which has to go through Office of Parliamentary Counsel and then has to be assessed with every other piece of Commonwealth and state legislation…

…We will [provide that resourcing] where it is absolutely necessary- the examples is the fire regs in Jervis Bay- but we do not do that where it is not necessary. …the subsequent question is: what resourcing is needed and what resourcing is appropriate for 2,000 people as well that live in two different communities. There is a balancing.[27]

7.48   Mr Yates said that during his time with DIRD approaches were made to the Minister 'reasonably regularly' that a particular WA law not apply or be modified to suit the needs of the IOT community.[28]

7.49   According to Mr Clay, the Christmas Island Community Consultative Committee (CCC) run by the Shire of Christmas Island was originally established in 1992 to be informed by DIRD and then inform the community of new laws being enacted in the territory.[29] However, as outlined in Chapter Five, the defunding by DIRD would appear to indicate the CCC's role has diminished.

7.50   Former IOT Administrator, Mr Jon Stanhope said there is a 'massive void in relation to consultation or advice on state-type matters.'

7.51   Mr Thomson said he wants to see a mechanism established for the Shire to review all applied laws and to advise the Minister or Commonwealth Government on their views.[30]

Committee comment

7.52   The fact that there is no state representation lead some witnesses to the question: what are the implications and how effectively do the current arrangements address this void?

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27   Ms Robyn Fleming, Executive Director, Local Government and Territories Division, Department of Infrastructure and Regional Development, *Committee Hansard,* Canberra, 14 May 2015, p. 9.

28   Mr Julian Yates, private capacity, *Committee Hansard, Canberra,* 3 December 2015, p. 2.

29   Mr Stephen Clay, *Submission 41,* p. 3.

30   Mr Gordon Thomson, General Secretary, Union of Christmas Island Workers, *Committee Hansard,* Christmas Island, 9 April 2015, p. 11.

7.53   Since 1992 the use of WA applied law has provided a framework. This makes the Commonwealth Minister for the territories responsible for the application of Commonwealth and WA laws.

7.54   The Committee notes that applied law is not unique to the IOT. It exists elsewhere in Australia, namely in the Jervis Bay Territory (ACT law applies)[31] and on Lord Howe Island (NSW law applies). Jervis Bay residents have neither local nor state level representation, but, according to DIRD, 'access the decision-making process through community organisations.'[32] Lord Howe Island residents have local representation through the Lord Howe Island Board and a state representative in the NSW Parliament via the Member for Port Macquarie.[33]

7.55   The Committee acknowledges that changing WA applied law to suit IOT conditions is possible, albeit a somewhat cumbersome process, involving the Commonwealth Minister responsible for the territories.

7.56   In Chapter Five, the Committee noted that DIRD has sought to reengage with the CCC in recent times. However, the Committee is not confident that the CCC functions as a sufficient avenue anymore for residents to raise concerns about WA applied law, let alone access the decision making process. And, as previously mentioned, the CCC does not appear to have an equivalent on the Cocos (Keeling) Islands.

7.57   The Committee acknowledges how frustrating it is for those in positions of public office, let alone residents, to try and get definitive answers to questions on the applicability of state laws and regulations in the IOT.

7.58   The next section looks at alternatives to the current governance arrangements.

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31   See DIRD website for details of governance arrangements, http://regional.gov.au/territories/jervis_bay/governanceadministration.aspx

32   See Department of Infrastructure and Regional Development website, http://regional.gov.au/territories/jervis_bay/governanceadministration.aspx

33   Parliament of NSW, NSW Members https://www.parliament.nsw.gov.au/prod/parlment/members.nsf/0/47961F2852CB6983CA2578690019182C?Open&refnavid=ME4_1

Improvements and alternatives to the governance model

Communication channels

7.59   Mr Clay proposed various changes to the current governance model. He suggested that 'at the very least there should be a genuine attempt to improve communication at all levels between the Administrator, DIRD, local government and the IOT Administration. On the CCC specifically he said:

> It is perhaps time for the CCC to be reconstituted across the IOT to provide for better two-way communication.[34]

7.60   Mr Clay endorsed utilising various other forms of communication too, such as the Administrator's conversations and the Interdepartmental Consultative Committee.[35]

7.61   Dr Drum agreed on the need to improve communication and argued that deficits in representation can be redressed through extensive consultation:

> That would be some kind of remedy. In other words, if you go out frequently to those areas that are not represented in ways that we take for granted and you consistently and frequently ask their opinions on their issues and the policies and the services that are being delivered to them, that is some remedy for that lack of representation.[36]

7.62   Mr Thomson expressed his view that 'consultation is used by the Department as a substitute for democracy and ineffective,' noting:

> …consultation…is not determinative of government action: community views can be ignored or dismissed.[37]

7.63   Mr Clay and Mr Haase emphasised that true consultation goes beyond information sharing.[38] Mr Haase said:

> There is so much talk locally and between here and Canberra about effective consultation. Consultation rarely takes place.

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34   Mr Stephen Clay, *Submission 41*, p. 3-4.
35   Mr Stephen Clay, *Submission 41*, p. 4.
36   Dr Martin Drum, private capacity, *Committee Hansard*, Perth, 8 May 2015, p. 6.
37   Mr Gordon Thomson, General Secretary, Union of Christmas Island Workers, *Committee Hansard*, Christmas Island, 9 April 2015, p. 11.
38   Mr Stephen Clay and Mr Barry Haase, private capacity, *Committee Hansard,* Canberra, 3 December 2015, p. 5 and 9.

> There is a lot of information collected and a lot of information delivered, but I do not see a clear process of consultation.[39]

7.64   Mr Clay and Mr Bowman added how important it is to make available translation and interpretation services, to encourage community participation by the Chinese, Malay and Cocos-Malay communities.[40]

Committee comment

7.65   In Chapter Five the Committee recommended that a formal consultation protocol be developed to improve communication best practice in the IOT.

7.66   The Committee agrees that genuine community consultation is very important in all governance matters including the SDA and adding, amending or removing applied WA law.

7.67   However, even with the best communication protocol, processes associated with SDA and applied law are always going to be challenging in the IOT because such governance arrangements stand outside the norm.

7.68   It would be less confusing and more straightforward if WA law applied directly (i.e. not in an applied manner) and IOT residents had a representative in the WA Parliament with whom they could raise their concerns with directly. Or, alternatively, NT law applied directly with a NT Parliament representative. This could be achieved with incorporation of the IOT into WA or the NT (see later in this chapter). Similarly, it would be less confusing and more straightforward if WA or NT agencies provided state/territory services directly rather than through SDA.

Role of local government

7.69   The Shire of Christmas Island has an overall revenue budget of $12 million, with 650 ratepayers (resident and commercial) generating approximately $1.1 million of that total. The Commonwealth provides the majority of funds.[41]

7.70   The Shire of Cocos (Keeling) Islands' operating revenue in 2014/15 was nearly $4 million, with 216 rateable properties (resident and commercial) generating about 10 per cent of the operating revenue. The

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39   Mr Barry Haase, private capacity, *Committee Hansard,* Canberra, 3 December 2015, p. 9.

40   Mr Stephen Clay, *Committee Hansard,* Canberra, 3 December 2015, p. 6. and Mr Aaron Bowman, Chief Executive Officer, Shire of Cocos (Keeling) Islands, *Committee Hansard*, Cocos (Keeling) Islands, 8 April 2015, p. 14.

41   Councillor Gordon Thomson, President, Shire of Christmas Island, *Committee Hansard,* Christmas Island , 9 April 2015, p. 7.

Commonwealth funded $2.6 million, with the remainder primarily made up of rental income.[42]

7.71   Evidence to the inquiry indicated that local government is a key component of governance in the IOT.[43] Former Administrator Mr Brian Lacy said:

> The local governments play an important role in the governance of the IOT and in the representation of their constituents. As such the IOT local governments are an important and tangible symbol of the democratic process for the people of the IOT.[44]

7.72   Submissions from the Chinese Literary Association and Malay Association on Christmas Island (MACI) endorsed the local government on Christmas Island.[45] MACI said:

> [We] are very supportive of local government and see it as the sole democratic body available to residents on Christmas and Cocos Islands to put forward a community position on issues to the Commonwealth.[46]

7.73   The Australian Centre of Excellence for Local Government and Mr Matthews both noted that the importance of local government is heightened amongst small communities which are located away from main centres of government. Mr Matthews said:

> …primarily because of their community of interest and because they have their own local sense of character or identity.[47]

7.74   He added:

> Local government is constantly underestimated, we believe, by many of the state and federal government bodies.[48]

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42   Mr Aaron Bowman, Chief Executive Officer, Shire of Cocos (Keeling) Islands, *Submission 46.1*, p. 1.

43   Chinese Literary Association*, Submission 3,* p. 3, Mr Stephen Clay, *Committee Hansard*, Canberra, 3 December 2015, p. 6 and Mr Kelvin Matthews, private capacity, *Committee Hansard,* Christmas Island, 9 April 2015, p. 40, Mr Brian Lacy, *Submission 39,* p. 15; Western Australian Local Government Association, *Submission 31*, p. 1.

44   Mr Brian Lacy, *Submission 39,* p. 15.

45   Chinese Literary Association, *Submission 3,* p. 3; Malay Association of Christmas Island, *Submission 24,* p. 2.

46   Malay Association of Christmas Island, *Submission 24,* p. 2.

47   Mr Kelvin Matthews, private capacity, *Committee Hansard,* Christmas Island, 9 April 2015, p. 40; Australian Centre of Excellence for Local Government, *Submission 13*, p. 2.

48   Mr Kelvin Matthews, private capacity, *Committee Hansard,* Christmas Island, 9 April 2015, p. 40.

7.75   In Chapter Five mention was made of the Shires on Christmas Island and
         Cocos (Keeling) Islands possibly taking on additional responsibilities,
         including having an advisory role in the development of the SDA and
         delivering some state-level services.

7.76   Mr Yates stated in his submission that both shires' 'task maturity had
         increased over time and that needs to be actively pursued and supported:'

> Over the years of my involvement the capacities of both local
> governments improved and we were able to fund them to do
> larger projects and more activities.[49]

7.77   At a Canberra hearing he added:

> It may be appropriate to look at the greater roles that local
> governments play in other parts of Australia, and if necessary,
> change the applied WA Local Government Act to enable the shires
> to have more responsibilities.[50]

7.78   Mr Clay agreed there is scope to redefine how local government should be
         structured and deliver services in the IOT. He said their functions could be
         enhanced, in a range of ways:

> …through genuine capacity building, adequate funding with KPIs
> and mentoring by established local governments on the
> mainland.[51]

7.79   Mr Clay suggested additional services that might be transferred to local
         government, including, economic development, tourism, utilities
         management, emergency management and road responsibility.[52]

7.80   Dr Drum said:

> Where you would give some extra powers to decision-making
> bodies and they would be carefully audited [by the
> Commonwealth].[53]

7.81   Mr Clay noted that there is some duplication of services between the IOT
         Administration and the shires, including management of public spaces
         such as reserves or parks, and inferred these could be streamlined.[54]

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49   Mr Julian Yates, *Submission 4*, pp. 4-5.
50   Mr Julian Yates, *Committee Hansard*, Canberra, 3 December 2015, p. 3.
51   Mr Stephen Clay, *Submission 41.1*, p. 2.
52   Mr Stephen Clay, *Submission 41.1*, p. 2.
53   Dr Martin Drum, *Committee Hansard*, Perth, 8 May 2015, p. 8.
54   Mr Stephen Clay, *Submission 41.1*, p. 3.

7.82   Mr Yates said the notion of a regional council (where some functions are amalgamated) might be an idea worth investigating. However, he had reservations about having a single combined shire. He was concerned about dominance that Christmas Island might have:

> …let's stick with the existing structure… but actively increase the capacity of both shires to do more by supporting them with funding, training and staffing, and giving them the authority to do things.[55]

7.83   Mr Clay agreed, saying that the two territories are very different:

> …having one local authority with say a branch office on Cocos will not work as they suffer from a lack of representation.[56]

7.84   Dr Drum advocated expanded powers for local government, ranging from having direct oversight of the SDA process and giving local consent to new legislation applied from WA, through to establishing a self-governing legislative assembly similar to that which until recently existed on Norfolk Island.[57]

7.85   Former Christmas Island resident, Mr Russell Payne also argued for a form of self-determination.[58]

7.86   Dr Drum said he believes the way forward is a 'mixed-model' where extra powers are given to decision-making bodies on island which would be carefully audited.[59]

7.87   Others were more cautious about giving the shires additional responsibilities. Some Christmas Island residents indicated that the Shire did not represent them, and a number expressed concerns, in particular, about the proper conduct of local Christmas Island Shire elections.[60]

7.88   Mr Clay suggested that a thorough review of local government in the IOT was timely. He suggested that review be undertaken by the

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55   Mr Julian Yates, *Committee Hansard,* Canberra, 3 December 2015, p. 3.

56   Mr Stephen Clay, *Submission 41.1*, p. 2.

57   Dr Martin Drum, *Submission 22*, p. 11.

58   Mr Russell Payne, *Submission 17.* p.1.

59   Dr Martin Drum. *Committee Hansard*, Perth, 8 May 2015, p. 8.

60   Ms Bobbi Robertson, *Submission 27*, p. 2, Ms Lisa Preston, *Submission 28,* p. 3, Ms Trish O'Donnell, private capacity, *Committee Hansard,* Christmas Island, 9 April 2015, pp. 43-44, Mr Noel Thornton, private capacity, *Committee Hansard,* Christmas Island, 9 April 2015, p. 24, Mr Barry Haase, Administrator, *Committee Hansard*, Christmas Island, 9 April 2015, p. 29 and Mr Peter Griggs, *Submission 19,* p.1.

Commonwealth Grants Commission, 'to ensure services are commensurate with what is expected in such a remote part of Australia.'[61]

7.89   An alternative model of governance proposed for the IOT by Mr Clay was to establish an entity similar to the Lord Howe Island Board in NSW, or the Rottnest Island Authority in WA.[62]

7.90   The Lord Howe Island Board is a statutory authority established under the provisions of the *Lord Howe Island Act 1953*. Responsible to the NSW Minister for the Environment, the Board comprises four Islanders elected by the community and three members appointed by the Minister. The Board is charged with the control and management of the Island and Islanders' welfare.[63]

7.91   Similarly, the *Rottnest Island Authority Act 1987* gives that Authority the power to control and manage the island, reporting to the WA Minister for Tourism. The Board of the Rottnest Island Authority consists of a Chair, appointed by the Governor on the nomination of the Minister for Tourism, and five other appointed members.[64]

7.92   Mr Clay's model along these lines for the IOT would constitute a formal IOT Administration with an elected advisory board, probably chaired by the Administrator.[65] It would require its own enabling legislation and be subject to the *Public Governance, Performance and Accountability Act 2013.*[66]

7.93   Mr Clay was the only witness to propose the establishment of a statutory authority although, Mr Jon Stanhope, appearing in a private capacity, also advocated for an elected advisory body.[67]

7.94   Mr Clay appeared to suggest that the statutory authority would see the SDA and shire functions come together and become part of one board or authority.[68]

7.95   Mr Clay further suggested that the board could be supported by DIRD and assisted by Departmental advice, capacity building and government liaison support.[69]

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61   Mr Stephen Clay*, Submission 41*, p. 5.

62   Mr Stephen Clay, *Submission 41,* pp. 2-3 and Mr Stephen Clay, *Committee Hansard,* Canberra, 3 December 2015, p. 6.

63   See Lord Howe Island Board website, http://www.lhib.nsw.gov.au/ , viewed 9 February 2016.

64   See Rottnest Island Authority website, http://ria.wa.gov.au/ , viewed 9 February 2016

65   Mr Stephen Clay, *Submission 41,* pp. 2-3.

66   Mr Stephen Clay, *Submission 41*, p. 3.

67   Mr Jon Stanhope, private capacity, *Committee Hansard*, Canberra, 12 November 2015, p. 2.

68   Mr Stephen Clay, *Committee Hansard*, Canberra, 3 December 2015, p. 6.

7.96   Mr Clay said that he did not underestimate the difficulty of establishing
         such an authority, and that it is 'less desirable than incorporation.'[70]

Committee comment

7.97   The Committee recognises the vital functions that local government
         perform in small remote communities, providing municipal services and
         serving the communities in a range of ways.

7.98   In Chapter Four the Committee recommended that the Commonwealth
         transfer responsibility of certain Commonwealth assets on West Island to
         the Shire of Cocos (Keeling) Islands to enable it to develop these sites. The
         Committee believes the Shire of Cocos (Keeling) Islands has the capacity
         to manage the assets effectively.

7.99   However, in Chapter Five the Committee noted that certain
         responsibilities (namely, motor vehicle registration and the Recreation
         Centre) had been transferred to the Shire of Christmas Island and resumed
         by the Commonwealth because services had not been adequately
         supported.

7.100   The Committee agrees that there is sometimes scope for local governments
         to do more. Equally, sometimes local governments do not have the
         resources, capacity or expertise to be able to do the work. The Committee
         notes that the populations in the IOT are small and the shires have a low
         resource base via rates. They are reliant on the Commonwealth for most
         funding.

7.101   The Committee does not support a self-governance model operating in
         any external territory, including the IOT.

7.102   The statutory authority may be a proposal worth exploring further.
         However, the Committee cannot tell from the information provided to it
         whether the proposed model for the IOT along the lines of the Lord Howe
         Island Board and Rottnest Island Authority can be applied to the IOT.
         Establishing another expensive bespoke governance model will not
         redress the underlying problem: that there is no state level of government
         and representation.

7.103   The Committee agrees that a review of the functions of the local
         governments in the IOT is opportune. There may be scope to streamline
         and amalgamate some functions if that were to improve performance and

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69   Mr Stephen Clay, *Submission 41*, p. 3.
70   Mr Stephen Clay, *Submission 41*, p.p. 2-3.

strengthen the system of local government. Any review should be done in consultation with the local shires. Consideration might also be given to the statutory authority model for the IOT as part of the review.

Recommendation 18

> **The Committee recommends that the Australian Government, in consultation with the shires, undertake a review of local government in the Indian Ocean Territories to determine if there is scope to streamline and amalgamate some functions.**

7.104   In the Committee's view, the only option to fully address the issue of state representation is incorporation. This is examined in the next section.

Incorporation into a state (Western Australia) or territory (the Northern Territory)

7.105   Mr Haase pointed out why incorporation is the only solution:

> Until such time as these territories are part of a state or territory, so that there is local involvement in state or territory-like government, as well as federal, then we are going to have anomalies that continue to create frustration, we are going to continue to put resources into papering over the cracks of administration and we are still not going to have a final solution that gives satisfaction to those responsible for funding the location and community that lives here.[71]

Not a new idea

7.106   Previous parliamentary committee reports have discussed the notion of incorporating the IOT into a state. As far back as 1991 the *Islands in the Sun* parliamentary committee report recommended that the Commonwealth initiate discussions with the Government of Western Australia regarding the long term futures of Christmas Island and the Cocos (Keeling) Islands,

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71   Mr Barry Haase, private capacity, *Committee Hansard,* Canberra, 3 December 2015, p. 8.

including their possible incorporation into the State of Western Australia.[72]

7.107   Ten years ago, the Joint Standing Committee on the National Capital and External Territories' 2006 report, *Current and future governance arrangements for the Indian Ocean Territories,* made a similar recommendation. Namely, that the Australian Government develops options for future governance for the IOT, in conjunction with the communities on Christmas and Cocos (Keeling) Islands, and that possible options could include incorporation into the State of WA.[73]

7.108   However, it appears that no progress has been made. DIRD advised the current inquiry that issues of representation or governance structures for the IOT had not been seriously investigated for a number of years.[74]

7.109   Witnesses maintained that incorporation goes to the crux of the governance issues in the IOT, namely that the Australian Government is trying to fulfil state-type roles in the IOT.

7.110   Mr Clay identified incorporation as his preferred governance option because it would allow for smoother roll-out of state services and put IOT residents on the same footing as citizens in other states and territories when it comes to representation.[75]

7.111   Chapter Six of this report referred to the myriad frustrations experienced by former and current Administrators, regarding their perceived and actual executive powers. Mr Haase summed it up:

> When it comes to problem solving, for major visions or day-to-day issues, there is a local expectation that the Administrator has the authority to make decisions that change outcomes, when the reality is that is not the case and the Administrator relies on good cooperation between Administrator and departments and Administrator and Minister…
>
> I cannot instruct any of the administration staff to do anything. I can simply request that the Department in Canberra might make those requests for change, and therefore, change an outcome.[76]

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72   House of Representatives Standing Committee on Legal and Constitutional Affairs, *Islands in the Sun, The Legal Regimes of Australia's External Territories and the Jervis Bay Territory,* March 1991, see paragraphs 3.10 and 4.11 Options for Reform, pp. 53 and 87.

73   Joint Standing Committee on the National Capital and External Territories, *Current and future governance arrangements for the Indian Ocean Territories,* May 2006, p. 104.

74   Department of Infrastructure and Regional Development, *Submission 36.2,* p. 7.

75   Mr Stephen Clay, *Submission 41,* p. 2.

76   Mr Barry Haase, private capacity, *Committee Hansard,* Canberra, 3 December 2015, p. 8.

7.112   Mr Haase advocated for normalising the arrangements so that the IOT is eventually the same as any other small island in Australia, that is, part of either a state or territory:

> A long-term solution is for the IOT to have exactly the same status as… Melville Island or Bathurst Island. You have a clear view of governance in those places. There is no ambiguity.[77]

Western Australia preferred option for some

7.113   WA has long been considered the logical choice for incorporation because the laws of WA apply as state-type laws and there are well-established links, including accessing health and education services. Critically, the air service operates out of Perth. Many IOT residents have ties in WA, with family members seeking work opportunities there, and property and business interests.

7.114   Mr Clay summarised:

> The communities of interest that exist between WA and IOT are powerful arguments in favour of this option.[78]

7.115   Mr Haase agreed that the best possible outcome would be for WA to take responsibility for the IOT, and for the IOT to be part of WA in the long-term.[79]

7.116   Mr Tony and Mrs Roxanne Wilson said 'no other solution to consolidate makes sense' and they would like to see local government align with the WA system:

> We would like to see the Shire of Christmas Island with a Mayor under Western Australia.'[80]

Incorporation into a state requires a referendum

7.117   A referendum would be required to incorporate the IOT into a state. Under section 123 of the Australian Constitution, altering the boundary of a state requires consent of the parliament of that state and the approval of the majority of electors.[81]

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77   Mr Barry Haase, private capacity, *Committee Hansard,* Canberra, 3 December 2015, p. 8.

78   Mr Stephen Clay, *Submission 41.1*, p. 1.

79   Mr Barry Haase, private capacity, *Committee Hansard,* Canberra, 3 December 2015, p. 9.

80   Mr Tony and Mrs Roxanne Wilson, *Submission 10,* p. 1.

81   Mr Stephen Clay, Submission 41.1, p. 1 and Parliamentary Library, Client Advice, *Constitutional and other Barriers to incorporating an External Territory into another Existing State or Territory,* 3 August 2015, p. 2.

7.118   DIRD said, in late 2014, it had considered similar issues in relation to representation for the Jervis Bay Territory, namely reincorporation into NSW. DIRD explained that a referendum would be required in the State of NSW for that to occur. DIRD confirmed similar constitutional issues apply in relation to the IOT:

> The IOT cannot be represented by a state unless that state government agrees to include it as part of its jurisdiction, and, under the Constitution, a state cannot change its borders unless the majority of its voters also agree.[82]

7.119   DIRD noted that the majority of WA state referendums have been defeated.[83] Mr Yates observed that transferring the IOT to WA was possible but, in his view, the requirement for a referendum has a limited chance of being accepted.[84]

Western Australia not interested

7.120   Others alluded to a lack of interest on the part of WA to even countenance incorporation of the IOT. Mr Haase said that the WA Government has little appetite to take on the IOT:

> …[the] No. 1 practical hurdle is that Western Australia is not fundamentally interested in taking over responsibility for the IOT, and, at this point in time, makes a great deal of money out of the Commonwealth Government by providing Service Delivery Arrangements on the territories.[85]

7.121   The Committee noted in its interim report that it approached the WA Government to make a written submission to the inquiry and appear before it at a hearing in Perth. Both invitations were declined.

Committee comment

7.122   The option to incorporate the IOT into WA might appear to be the obvious solution but the need for a referendum and a lack of interest mean this is likely not viable. Therefore an alternative is to incorporate the IOT into the NT.

7.123   If the NT is to be considered as a viable option, the pros and cons need to be considered.

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82   Department of Infrastructure and Regional Development, *Submission 36.2*, p. 7.
83   Department of Infrastructure and Regional Development, *Submission 36.2*, p. 7.
84   Mr Julian Yates, *Submission 4*, p. 5
85   Mr Barry Haase, private capacity, *Committee Hansard*, Canberra, 3 December 2015, p. 9.

Territory alternative

7.124   It was presented to the Committee that another alternative is for a territory
         to take on the IOT. Whilst the Australian Capital Territory (ACT) was once
         deemed a possibility, the NT would be preferable because the federal
         representatives of the IOT are situated there.

Does not require a referendum

7.125   Incorporation into a territory, be it the ACT or the NT, does not fall within
         the parameters of section 123 of the Australian Constitution. That is to say,
         it does not require a territory referendum.[86]

7.126   However, as a matter of sound policy practice it would seem desirable to
         consult with, and have regards to, the views of the people both in the IOT
         and the potential recipient territory.[87]

Potential difficulties

7.127   Mr Clay said that incorporation into the NT or ACT would be less
         desirable for legislative, administrative and social reasons.[88]

7.128   Mr Yates and Mr Clay suggested that changing the airline service from
         Perth to Darwin could prove costly.[89] Mr Yates explained:

> Whilst Christmas Island's distance from Darwin is close to the
> same as Perth's, the flights are out of Perth for reasonably good
> operational reasons. If you change the flights to go from Darwin, I
> would suggest it would be considerably more expensive, if only
> because Cocos is a lot further from Darwin that it is from Perth.[90]

7.129   Mr Yates noted other practical problems including the cost of change
         associated with incorporation, the question of the ability of the NT
         Government to deliver the services, and disruption to the reasonably
         significant expatriate IOT communities that exist in WA:

> First of all, the islands are used to running under the applied WA
> law scheme… changing it would not be a simple task. There are a

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86   Parliamentary Library, Client Advice, *Constitutional and other Barriers to incorporating an
      External Territory into another Existing State or Territory,* 3 August 2015, p. 2.

87   Parliamentary Library, Client Advice, *Constitutional and other Barriers to incorporating an
      External Territory into another Existing State or Territory,* 3 August 2015, p. 2.

88   Mr Stephen Clay, *Submission 41,* p. 2.

89   Mr Stephen Clay, *Submission 41.1*, p. 1 and Mr Julian Yates, *Committee Hansard,* Canberra, 3
      December 2015, p. 1.

90   Mr Julian Yates, *Committee Hansard,* Canberra, 3 December 2015, p. 1.

very wide range of delegations that would need to be changed.
The local government acts are not the same. The people of the
communities would need to understand how NT law worked,
because it is not identical to the WA one.

…While [the NT] is able to [deliver services] in its own remote
communities, that has not been without some challenges. …there
is also a much smaller public sector than in WA… There are
simple things like the WA Water Authority having an enormous
depth of expertise in running water systems in remote
communities…

Should services and flights come from the NT, those people – both
on the islands and [expatriates] in WA – would find maintaining
links in fact very difficult.[91]

Potential positives

7.130   Both Mr Yates and Mr Clay noted the advantage inherent in having the
state services and federal representatives aligned in the same territory.[92]

7.131   Mr Yates suggested that options for closer alignment with the NT could
constitute full incorporation, or be achieved through a SDA with the NT
Government and NT law being applied.[93]

7.132   Both appeared to be of the view that incorporation into the NT would be
more challenging than WA. However, Mr Clay said, 'it would not be
impossible.'[94] He noted the experience the NT has managing remote
territories, such as the Tiwi Islands.[95]

Moving toward a decision making process

7.133   Mr Clay emphasised the importance of carrying out full consultation in
the IOT before any decision is taken. He said this should be a structured
and adequately resourced process:

…the Commonwealth should be upfront with the WA and NT
Governments as well as the IOT community about this being an

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91   Mr Julian Yates, *Committee Hansard,* Canberra, 3 December 2015, p. 1.

92   Mr Stephen Clay, *Submission 41.1*, p. 1 and Mr Julian Yates, *Committee Hansard,* Canberra, 3
December 2015, p. 1.

93   Mr Julian Yates, *Committee Hansard,* Canberra, 3 December 2015, p. 1.

94   Mr Stephen Clay, *Submission 41.1*, p. 1.

95   Mr Stephen Clay, *Submission 41.1*, p. 1.

information gathering exercise, prior to a joint decision by the Commonwealth and preferred jurisdiction.

…It should canvass options and opinions before any serious consideration is given to relinquishing the IOT.[96]

7.134   Mr Clay proposed the following model process, and factors for consideration:

- Formally write to both WA and NT to ascertain if they would be interested in incorporating the IOT into their state/territory boundaries. Obviously the issue of guaranteed funding to manage the IOT will be high on either jurisdiction's agenda…;

- Once it is known whether one or both jurisdictions are interested in principle, the consultation process can begin. The IOT communities will need to know what it means in a practical sense to be part of WA or NT. Possible consultative mechanisms post incorporation would need to be canvassed such as the Advisory Board model in the Tiwi Islands;

- Once you have a body of opinion from the IOT this should be reflected back;

- A model can then be developed upon which the IOT community can comment and a similar process could run in the preferred state or territory by that jurisdiction. A Commonwealth/state or territory partnership would need to be developed to go forward in a coordinated manner; and

- Once the jurisdiction is settled and the comments of the IOT have been taken into account, a decision by the Commonwealth can be made. This should then be communicated to the IOT community and the chosen state or territory. The formal state/territory can then proceed.[97]

Other factors for consideration

7.135   The Parliamentary Library itemised a number of constitutional and legislative matters that would likely require consideration in the context of proposals to incorporate an Australian external territory into a state or territory, including:

- the extent and nature of inter-governmental agreement and legislation, including legislation to repeal the existing legislative framework for the IOTs, that would be required to achieve the proposed incorporation, given the existing legislative framework and administrative structure;

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96   Mr Stephen Clay, *Submission 41.1*, p. 1.
97   Mr Stephen Clay, *Submission 41.1,* p. 2.

- if the incorporation were with a state, the cost implications of the required referendum under section 123, and the likelihood that the Commonwealth would bear this cost;

- the implications (including cost implications) for existing service and other agreements between governments, and between governments and private service providers;

- the implications for Commonwealth infrastructure within the IOTs, particularly on Christmas Island;

- the voting rights of those who would be eligible to vote in Commonwealth and state or territory elections;

- with reference to the IOTs status as 'excised offshore Territories', necessary amendments to the *Migration Act 1958* (Cth); and

- the need for other legislative amendments to statutes containing references to the IOTs in other Commonwealth (and state) legislation.[98]

Committee comment

7.136   The potential benefit of incorporating the IOT into a state or territory is that it offers a way forward for better service delivery and addressing the democracy deficit.

7.137   The Committee recognises that discussion of incorporation into a state or territory only appeared towards the end of the current inquiry.

7.138   As a result, the Committee acknowledges that it is drawing on a small pool of evidence, and that evidence does not offer detailed commentary on the WA or NT options.

7.139   In the absence of other information on the feasibility of either option from DIRD and others, the Committee is grateful to the witnesses it heard from, for talking to options not hitherto fully investigated, but that merit further discussion and investigation.

7.140   Clearly the WA and NT Governments would need to be formally approached in the first instance, by the Australian Government to determine whether they are receptive to the incorporation option.

7.141   To the Committee's mind, if WA remains uninterested, there appears a distinct advantage in seriously considering aligning the federal and state representation in the NT, if the NT Government were to express interest in exploring such a proposal.

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98   Parliamentary Library, Client Advice, *Constitutional and other Barriers to incorporating an External Territory into another Existing State or Territory*, 3 August 2015, p. 2.

7.142   The Committee notes the NT Government's extensive experience in
        remote service delivery. Some of the challenges similar to those
        experienced in the IOT, include, isolation, high cost of living, access to
        essential services and infrastructure, social disadvantage, less developed
        (or narrow) market economies and limited employment opportunities.

7.143   The Committee also notes that the NT is strategically placed to take
        advantage of growth in Asia. The NT has strong political and economic
        ties to the region and these ties could be used to promote economic
        investment in the IOT.

7.144   The combination of the NT Government's extensive experience in remote
        service delivery and promoting economic activity in remote areas means it
        could be an attractive option for the governance and administration of the
        IOT.

7.145   Given its experience in remote service delivery, the NT Government might
        even be able to offer a more cost-effective service than exists at present. If
        the costs are the same or less than the current arrangements that the
        Commonwealth has with WA, that offers a financial benefit to the IOT
        residents and Commonwealth taxpayers alike.

7.146   There are of course substantial issues for consideration. As mentioned
        above, changing SDA and flight/freight routes from WA to NT would be
        significant undertakings.

7.147   The Committee fully recognises IOT residents have long standing family,
        education, work and investment links with WA, that have arisen because
        of the governance and administration arrangements that have been in
        place for the last three decades. Fundamentally altering that relationship
        will be challenging, but not insurmountable. If the long term prospects of
        the IOT prove better by pursuing more ambitious reform, and reform is
        something residents have said they want, then residents should be open to
        the possibilities contained within the proposal.

7.148   There would need to be extensive work and public consultation on the
        implications of incorporating the IOT into the NT for all parties to make
        an informed decision on whether incorporation is in their best interests
        long-term. The NT option would need to be formally supported by the
        residents of the IOT and the NT Government (and its people).

7.149   The cost of providing services to the IOT is high. Without financial
        transfers from the Commonwealth, it is hard to see how the NT
        Government would have the budget capacity to absorb the additional
        costs of taking on the IOT. Total expenditure in the IOT is likely to far
        exceed the 'own-source revenue' that could be generated by the NT from

the IOT. The NT would need to be fully compensated for all additional costs by the Commonwealth.

7.150   Clarity would need to be provided on the level of autonomy that the NT would have in approving major economic development projects in the IOT such as reopening the Christmas Island casino, developing the tourism industry, cultivating medicinal cannabis, expanding the phosphate mine, and encouraging international fee-paying students. Land tenure would also be a key consideration.

7.151   Regarding the democracy deficit that nearly everyone agrees exists in the IOT, there needs to be state representation in the IOT. The Committee recognises that there are only about 2,000 people presently living in the IOT and notes that the recent review of the redistribution of the NT Legislative Assembly electoral boundaries determined that the quota of electors for each division in the NT is 5,140 people.[99] Consideration of IOT representation in the NT Legislative Assembly would need to be subject to a review by the NT Electoral Commission.

7.152   The Committee notes that the Jervis Bay Territory is represented by the Port Macquarie state MP in the NSW Legislative Assembly because it does not have enough electors to warrant having its own representative. The IOT may need to similarly be added to an existing NT state division in the first instance. Should the IOT experience population growth in the future it could result in the IOT having sufficient numbers for its own dedicated representative in time.

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99   Augmented Redistribution Committee, *Report on the Redistribution of Northern Territory into Divisions*, 2015, p.5, http://www.ntec.nt.gov.au/Redistribution2015/Documents/ Web_Redistribution%20Boundaries%20Report.pdf, viewed 15 February 2016.

Recommendation 19

> **The Committee recommends that the Australian Government seek formal advice from the Governments of Western Australia and the Northern Territory to determine whether they are receptive to the proposal for incorporation of the Indian Ocean Territories into their State or Territory.**
>
> **Based upon a positive response to this proposal, the Australian Government should develop an incorporation model for consultation and review.**

Transitional arrangements

7.153   There would be a transitional period to develop and implement any new governance arrangements, including the transfer of the provision of state and local government services and potential amendments and/or new Commonwealth and NT legislation to authorise new governance arrangements.

7.154   Sufficient lead time should be given to ensure appropriate consultation with the NT Government, residents of the IOT and the NT, and to work through the complex issues surrounding this proposal.

7.155   The Committee does not underestimate the enormity of incorporation. It does however note that reform is underway on Norfolk Island to reset the governance foundation there. This is reform that for many years was hitherto thought impossible.

7.156   Political will and determination, devoting adequate resources, having a clear mandate, good leadership and sound execution, together with providing for full community engagement have proved integral to the timely progress of the reforms on Norfolk Island. The same principles would be critical to any successful governance change in the IOT.

7.157   The Committee notes the swift establishment of a shopfront presence on Norfolk Island with trained personnel deployed from the Commonwealth on ground to answer residents' questions face-to-face, about the intended reform process, following the repeal of self-government.

7.158   The DIRD website also provided information during the transition, including user-friendly downloadable fact sheets and newsletters to keep residents informed of developments.

7.159   The DIRD website also has information on the Norfolk Island Advisory Council, which is comprised of five local residents appointed to ensure community views are represented throughout the transition process.[100]

7.160   The Committee supports establishing a similar advisory council in the IOT, comprised of a suitable number and combination of members from the Christmas Island and Cocos (Keeling) Islands communities. The IOT Advisory Council would be a forum for the IOT community to raise issues and provide feedback to the Administrator and the Commonwealth Minister throughout any review and reform process. Having an elected Council would rightfully elevate the importance of community consultation and demonstrate that the Commonwealth values the input of the community throughout the journey, from the inception of the idea, and transitional arrangements right though to full incorporation.

7.161   The Committee recognises that the Administrator position will become redundant if incorporation proceeds. However, it is of the view that the Administrator needs to remain on island, and assist lead, throughout any transition.

Mr Luke Simpkins MP

Chair

1 March 2016

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100   Department of Infrastructure and Regional Development, *Norfolk Island Reforms*, http://regional.gov.au/territories/norfolk_island/reforms/, viewed 15 February 2016 and Norfolk Island Advisory Council, *About Us*, http://www.norfolkislandadvisorycouncil.nf/, viewed 15 February 2016.