

From: Jon Stanhope
Sent: Tuesday, 7 April 2015 1:45 PM
To: Committee, NCET (REPS)
Subject: Submission to Inquiry into IOT Governance

Dear Sara

As previously indicated I have prepared a supplementary submission to the Committees inquiry into the Indian Ocean Territories.

I have attached some papers which are relevant to the matters I wish to raise with the Committee. The attachments are self explanatory and reflect issues I raised with relevant authorities in my time as Administrator. I would be grateful if you would accept them as a part of this submission. (The attachments are being sent separately > I am sorry for any inconvenience.)

I believe all the issues raised in the papers I have attached relate to governance and administration and go to the Committees Terms of Reference. I am hopeful that each of the issues will be given due consideration by the Committee in its deliberations.

The main paper attached is a copy of a letter I wrote to the Commonwealth Auditor-General in September 2014 while I was Administrator. I asked the Auditor to audit a number of issues, involving the governance and administration of the IOT's, that had caused me concern as Administrator. The Auditor has responded to the

letter and advised that consideration will be given to a performance audit by his Office into the matters I raised in the letter to him in the new financial year. The Committee may wish to either support an independent audit of these matters by the Auditor and make a recommendation to that effect or to respond on its own behalf or preferably do both.

The first of the issues I raised with the Auditor is directly relevant to the Terms of Reference, namely the role of the Administrator. Despite having been Administrator of the IOT's for two years I never knew explicitly what my powers were or what the role involved. As you will see I sought advice on this fundamental issue. I asked for legal advice which was commissioned from the Australian Government Solicitor but the Department and then the Minister separately advised me that the advice would not be provided to me. A short and effectively meaningless summary was provided. I was asked, I am not sure why, to regard the summary as confidential.

The Department of Infrastructure insisted that the role of Administrator is titular or ceremonial only and that the Administrator has no executive power or administrative role. I believe that this is an absurd interpretation of the statutory power invested in the Administrator. The Department maintained its position by refusing to provide me with a list of any delegations held by the Administrator or involving me in any decision making or consulting me on matters of administration. In furtherance of this policy of exclusion at no time was I ever involved in the detail of budget discussions or provided

any opportunity to provide input into major budget decisions. I was not consulted about policy and the majority of my letters and representations on behalf of residents were ignored. As you would also be aware the Department does not publish a forward budget or provide any information to residents in advance of the financial year of the budget for the year. As you will also see from the attachments the Department has not as a rule, for the last ten years meaningfully consulted with residents about the Service Delivery Agreements it has with the West Australian Government or provided information or annual reports to residents about the services delivered under the SDA's.

It seems to me that the Committee will have difficulty in its hearings on its Terms of Reference relating to the role of the Administrator in the absence of clear advice on what the powers of Administrator are, as a matter of law. The Department has such advice from the Government Solicitor. I would submit that the Inquiry is essentially meaningless in the absence of that advice. How can anybody say if the powers of the Administrator should be changed or increased if no one, including the Administrator, knows what those powers are.

I have also attached a number of letters I wrote on behalf of organisations such as the Islamic Council , The Women's Associations and the Seniors Associations of both Cocos and Christmas Island. (I may have to send these separately as a consequence of limitations within my computer). At the time of my departure from the IOT's none of these letters, some of which were a year old, had been answered. I believe it would be appropriate for the Committee to inquire into

every one of the issues raised in the attachments and both seek explanations from the Commonwealth on why it refused to respond to representations from residents and perhaps make its own recommendations on each of the matters of substance raised in the correspondence. To this end I would hope that the Committee is able to meet with all of the organisations responsible for generating the attached correspondence.

As the Committee will notice the major issue of concern to the respective Women's Associations of the Cocos Islands and Christmas Island is aged care. It would be instructive for members of the Committee to seek an inspection of housing available in the IOT's for seniors. In this regard I am sure Ms Nora Koh and Ms Regine Andersen would be happy to facilitate inspections of accommodation for seniors on Christmas Island at the Bahai Centre, the Poon Saan Flats and in the public housing unit 403 in the Kampong. The Committee may wish to compare how these arrangements compare with those on Norfolk Island and on the mainland.

In respect to Cocos Island I am sure Ms Darling Elat would be happy to arrange for the Committee to visit the homes of those members of the Cocos community who are currently caring in their homes for fully dependent and possibly bed bound family members and to discuss with them the aged care support which they have received and how it compares with aged care provided on the mainland. A report into aged care was commissioned by the Commonwealth about one year ago. The report was due in August 2014 but has yet to be made public. The

report will, when it is finally released, reveal the enormous hardship that residents of the IOT's have experienced in being forced to care for elderly family members with effectively no government support .

On the subject of inspections the Committee may wish to arrange for an inspection of Commonwealth owned and managed roads on Christmas Island. I am aware from the Committees recent report on Norfolk Island of its interest in the state of roads. I would recommend that the Committee arrange an inspection of the Commonwealth roads to Dolly Beach , the Blowholes, The Dales and to Winifred Beach.

The Committee would also benefit from a detailed inspection of all heritage listed sites in the IOT's. It will require an inspection for members of the Committee to fully appreciate the extent to which any responsibility for the unique and invaluable heritage of the IOT's has been almost completely abrogated by the Commonwealth. A significant and I think the only exception is the Point Smith naval gun and artillery base which was restored by asylum seekers under the guidance of SERCO.

The Committee should also be aware of the high level of cynicism within the IOT's about Parliamentary Inquiries and reports and of the myriad reports commissioned over the years the majority of which are simply ignored. It would be instructive if the Committee undertook an audit of the recommendations in all reports commissioned by the Commonwealth or undertaken by the Parliament over the last twenty years or so with a view to determining how many have been accepted or

implemented. There are reports into just about everything eg economic development , land management, tourism, housing, ageing, insurance, governance, social capital, heritage preservation etc etc but regrettably almost none of them has been actioned.

I understand the Commonwealth has only just in the last couple of months formally responded to the last report of the JSCNTET, two and a half years after the Committee's visit to the IOT's and that the report was to all intents and purposes rejected. An assessment of the cost of all of the reports commissioned, undertaken and written in the last twenty years and subsequently ignored would be quite revealing. A case study could be done on just one or two subjects, eg the preservation of the Christmas Island Club and say Tourism or Economic Development. A report which I would particularly recommend members of the Committee seek to obtain and study is the Report into the Social and Economic Impacts of the Detention Center on Christmas Island. The report provides invaluable insight into the Christmas Island economy and the Islands social capital. The findings in relation to the very low social capital on Christmas Island deserve particular attention and it is a matter of particular regret that the Report has been ignored by the Commonwealth. The Committee may also wish to have regard to the latest (2012) cost price index in order to gain an understanding of the cost of living. The cost of housing and the absence of any first home buyer arrangements are particularly revealing. An issue of major importance is also, needless to say, the quality of education and the Committee should in this regard obtain the NAPLAN results for the Cocos Island School.

Another issue which the Committee may wish to reflect on and which is also a cause of great cynicism among Islanders is the Federal Electorate arrangements and the relationship that the senior Commonwealth officers who are ultimately responsible for the administration and all decision making in the IOT's have with the Territories.

The overwhelming majority of residents, from my observation and discussions with them, have serious reservations about the Federal electoral arrangements. A primary issue is the obvious absence of any connection or community of interest between the IOT's and the Northern Territory let alone Alice Springs and the electorate of Lingiari. The sheer remoteness of the IOT's means too that there is very little chance for the respective federal members to visit the Territories or to understand and respond to residents concerns. It would be worth while the Committee undertaking a review of the number of days which each of the three Northern Territory representatives, the member for Lingiari and the two Senators have spent in the IOT's, the number of letters they have received and responded to and the number of questions they have asked in the Federal Parliament, on notice and without notice, including in Estimates hearings. From memory, for instance, I believe, though I do not have records to confirm my impression, that in the Territories in the last three years there has been a single visit by one Senator and no visits by the second Senator and that the Member for Lingiari has spent about six days a year in each of the Territories.

It would be similarly valuable to review the time spent in the Territories by senior officers of the Administering Commonwealth Department. For instance in the two years that I was Administrator the IOT's were not visited by the Minister, the Departmental Secretary or Deputy Secretary . There was a single visit of less than one week by the relevant Division Head and most remarkably the officer from time to time designated as the General Manager, Indian Ocean Territories, that is the officer with day to day responsibility for the administration of Christmas Island and the Cocos Islands did not once visit Cocos Island while I was Administrator. I think it is remarkable that the Canberra based public servant, the General Manager Indian Ocean Territories, who prepares the budget, determines policy and expenditure priorities and who is the responsible officer for all administrative actions in Cocos Island had in all that time not arranged to visit the territory or talk to a single resident.

An issue which is raised obliquely in the attached letter to the Auditor is the responsiveness of regulatory and oversight agencies. I think this is an issue that requires detailed attention. I am aware for instance of matters which residents sought to raise with the Ombudsman and of the level of frustration and dissatisfaction many experienced in their interactions with the Ombudsman's Office. Perhaps it would be possible for a designated officer to be appointed the IOT Ombudsman. Other regulatory offices such as work safe (reference the decision not to inquire into the jetty extension disaster) health and hospital management and complaints (reference the decision not to

have an external inquiry into the attempt by a teenage asylum seeker to kill himself in the hospital), environment officer, food inspection, have a very low profile and a review of the effectiveness of these arrangements is warranted.

Central to the Inquiry is the question of an appropriate model of government for Christmas Island and the Cocos (Keeling) Islands. This is a complex issue requiring serious consideration, extensive consultation and expert advice. The two Territories have a unique history and culture. They each, prior to becoming Australian territory, in just the last sixty years, had a history of having been reported on to the United Nations as non self governing Territories, ie as colonies and an argument can still be maintained that they retain that status.

It is not clear to me from the Committees Terms of Reference if the Committee is proposing to look at a completely new governance arrangement for the IOT's . If in fact it is proposing to do this then I submit it would be appropriate that this be made explicit and that the Committee commission a detailed discussion paper outlining all the possible options for a new model of governance that could be the basis for consultation with residents. As previously advised to you I am currently proposing, in collaboration with Emeritus Professor Roger Wettenhall, to provide a submission on this specific issue but have indicated to you that we would require an extension of time in which to lodge the submission.

I would of course be pleased to expand on any of the above issues or on any aspect of the administration of the IOT's if that would assist the Committee.

Kind regards

Jon Stanhope