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The Secretary  
Joint Standing Committee on the National Capital  
and External Territories  
Parliament House  
Canberra ACT 2600

Dear Sir or Madam

### **INQUIRY INTO GOVERNANCE IN THE INDIAN OCEAN TERRITORIES**

As a former Australian Public Service officer with responsibilities for the Indian Ocean Territories for some years, I thought I would make a submission to this important inquiry. The issues raised in the Inquiry's terms of reference are not new, have been reviewed before but have proven robust in resisting improvement!

Before going to each of the specific items in the terms of reference, I would like to make some observations about Christmas Island and Cocos (Keeling) Islands that I believe need to be considered as foundational matters.

The first relates to the origins of both islands as part of Australia (treating Cocos as a single entity for this point). Prior to World War II, neither island had any significant contact with Australia, apart from the brief naval engagement in 1914 between HMAS Sydney nor SMS Emden at Cocos and having an undersea cable pass through Cocos on its way from Asia to Australia. They were not part of Australia at Federation and hence not considered in the Constitution apart from Section 122 which allowed '*any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.*' The framers of the Constitution gave the Commonwealth wide powers to determine how it would deal with territories as an when they became part of Australia.

The consequence of this is that over time the arrangements for individual territories have evolved and changed such that there are very significant differences in how they participate in the Australian Commonwealth. The Australian Capital Territory and the Northern Territory are, for most practical purposes, little different to the States in their governance. At the other extreme are the Coral Sea Territory and Ashmore and Cartier Islands Territory: with no resident populations or local governments, these territories are totally controlled by the Commonwealth. In the middle are the populated island territories of Norfolk Island, Christmas Island and Cocos (Keeling) Islands. Norfolk Island's experiment with self-government and financial independence has not succeeded and the Commonwealth has announced plans to wind back self-government towards the model used in the Indian Ocean Territories. The key point I wish to make here is that there is no 'one size fits all'. The current constitutional powers of the Commonwealth allow for wide variation in governance for its territories. The Commonwealth can, and does, therefore adjust the arrangements to

meet changing circumstances in the individual territories. This is a good foundation and should be retained (noting that taking a change to Section 122 to a national referendum is a most unlikely event in any case!).

The second foundational matter relates to why the Commonwealth has an interest in the Indian Ocean Territories. Given their considerable distance from mainland Australia, their original placement in other parts of the then British Empire and the resident population links to South East Asia, the question can arise why they are even part of Australia? Indeed, this question is asked from time to time in opinion articles or letters to the editor in newspapers in Singapore where it is well known that Christmas Island was a part of the former Colony of Singapore prior to Singapore's independence. The answer for both islands comes down to an assessment of the strategic importance to Australia's national interests.

For Christmas Island, the assessment in the 1950s was twofold: firstly, the island was an important source of phosphate for fertilizer and Australia was keen to ensure supply security for the agricultural industry; and secondly because its proximity to South East Asia would enable better defence of Australia's northern approaches. It must be recalled that at the time, the region was one of significant change and disruption as former colonies became independent (both peacefully and otherwise) and concerns about the rise of Communism. Christmas Island was transferred to Australian sovereignty on 1 October 1958 by the British Government. No consultation took place with island residents on the grounds that there was no indigenous population and all the people living there had citizenship in some other place.

The strategic importance of Cocos (Keeling) Islands had been significant to Australia since World War I; the placement of a cable repeater station on Direction Island attracted German naval attention early in the war, resulting in the Sydney-Emden action. During World War II, Cocos hosted allied air forces and was subject to Japanese air attack, although unlike Christmas Island, was never occupied by Japan. After World War II, the growth of air transport saw Australian interest in Cocos as a refuelling point for civilian and military aircraft. Unlike Christmas Island, Cocos did have a resident indigenous population who had made the island group home since being brought to it by the Clunes-Ross family in the early 1800s. Formal transfer to Australian sovereignty from the Colony of Singapore took place on 23 November 1955. An 'Act of Self-Determination' was held somewhat later in 1984 where the Cocos Malay people on Cocos voted in favour of integration with Australia. The Commonwealth agreed to respect the rights and traditions of the Cocos Malay people.

The strategic importance of both Christmas Island and Cocos (Keeling) Islands to Australia remains enduring, although the details have changed over time. Christmas Island is no longer a critical source of phosphate for Australian agriculture and Cocos only occasionally sees a civilian aircraft refuelling there (usually enroute to Africa). Their location in the Indian Ocean however means they remain critically important to Australia:

- The Indian Ocean is a region of great potential economic growth over coming decades.
- India is on a path for being a great power: whilst it has many internal challenges, unlike China it is a democracy, has rule of law (perhaps not to Australian standards as yet), has an increasingly highly educated and affluent middle-class and, again unlike China, has a population trajectory of continuing growth (whereas China has or is about to reach peak working age population).

- Major sea lanes of communication and air routes pass in relatively close proximity, including those that connect Australia to its major trading partners and, critically connect China to its markets 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.
- Unresolved border disputes exist throughout the region to the north and west of Australia and mechanisms to resolve them are fragile or ineffective. 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.

It is for these reasons that Australia acted after World War II to acquire the Indian Ocean Territories and I, for one, argue that Australia has enduring national strategic interests in these territories and is it vital that it continues to invest in them to demonstrate on-going sovereignty. In this respect, the Indian Ocean Territories have much greater strategic importance to Australia than, for example, Norfolk Island or the Coral Seas Territory.

I would now like to turn to the terms of reference and make some comments against each of them.

### **The Role of the Administrator**

The Administrator's role is a most challenging one. The title of the position suggests that the occupant administers, but much as the Governor-General does little actual governing, Administrators in the Indian Ocean Territories do little actual administering.

I believe the question of the Administrator's role goes to the heart of the question of governance.

In the current model, the Administrator has several key functions (as I saw them over some years and with several incumbents):

- Represent the communities to the Australian Government and in particular the responsible Minister. An effective Administrator understands the issues and concerns of the community, noting that like most communities, there will be divergent views, and is able to articulate those to the Minister and influence policy.
- Represent the Australian Government to the communities. An effective Administrator is able to articulate the rationale for policy decisions by Government to the communities in ways that are meaningful to them. This can be an iterative process during policy development, although Cabinet confidentiality during policy development can inhibit full discussion.
- Provide local leadership during times of crisis and emergency. Mr Brian Lacy demonstrated this function to the highest degree during the SIEV 221 tragedy.
- Provide local leadership to build stronger communities. An effective Administrator will choose issues that need local drive or action to address and build coalitions to deliver local solutions.

In years past, Administrators have had much greater control of the administration of the islands, and indeed, administered! This role changed following the 'Islands in the Sun' report by this Committee, which saw the introduction of local government on the islands, use of

applied Western Australian state law and the effective removal of the Administrator's ability to administer.

Before moving to whether the Administrator might take back some of the decision-making, I would like to cover briefly whether the islands suffer from a 'democracy deficit' as is sometimes asserted. The basis for the assertion appears to be that the islands are governed arbitrarily from Canberra and local people have no say in their governance. The argument then extends to seek some form of self-government. The problems with this line of argument are:

- The islands have an elected local government that operates under the same model that applies in Western Australia. There is universal adult suffrage for local government elections.
- The islands are part of the Federal seat of Lingiari and are represented in the Senate and the House of Representatives. There is universal adult suffrage for federal government elections.
- The islands have their own Joint Standing Committee of the Federal Parliament and receive substantially more attention by this Committee than any comparable mainland community does by any committee of the Federal Parliament!

It is true that the islands do not have a 'state' government equivalent interposed between the Federal Parliament and the local government. I do not see this as a deficit; it places the islands much closer to the seat of Commonwealth power than any comparable mainland community.

This then takes us to the question 'so what is to be done' with the Administrator? Options may include:

- No change to the current formal arrangements. This system has delivered operational government at the state/federal level and resulted in the islands enjoying a high standard of infrastructure and services compared to comparable mainland communities. Having seen and lived in remote mainland communities, the Indian Ocean Territories are better than most in terms of the standard of the infrastructure and services provided. A 2007 Commonwealth Grant Commission review confirms this position. On the other hand, there is clear evidence that the residents desire a stronger say in what happens on the islands. Given the flexibility the Commonwealth has to change the arrangements, consideration of change is appropriate.
- Self-government along the lines of Norfolk Island. This is unlikely to succeed. The Indian Ocean Territories, like Norfolk Island have small populations and very limited own source financial capacity. Given the Government's announcements about change to Norfolk Island, this option seems to have limited value in considering further.
- Enhanced local government. The Indian Ocean Territories use the WA model for local government which is somewhat more constrained than other local government models used in Australia. The focus is on the classic 'rates, roads and rubbish', albeit with an important role in the Indian Ocean Territories as the locally elected representative body. Consideration should be given to enhancing the services and capabilities of the two local governments. 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 activities. The aim should be to continue this, and as local government capability improves, so certain services should be transferred to them. The critical proviso is that they must have both the technical and financial capacity to cope with the services or functions. Simply transferring a major capital asset to them, for example, when they have no financial capacity to maintain or replace the asset is certain to end in tears. This may see them move away from the WA model and need additional regulatory frameworks to provide a sound basis for actions. This change, however, does not change the role of the Administrator.

- Transfer Departmental accountability and funds for service delivery to the Administrator. Most of the Administered funds provided to the Department are managed by departmental APS officers who operate under the Australian Government's financial framework and rules and are, at senior levels, accountable to Senate Estimates Committees for the expenses. The question of accountability is probably the major impediment to simply transferring some or all of the funds to the Administrator. In practice, over the last few years, the non-APS officers of the Indian Ocean Territories Administration have been given increasing responsibility for delivering services on-island. Their reporting line remains to departmental officers. This could change to the Administrator, which raises the question of whether the Administrator (who is not an APS officer and not subordinate to the Department's Secretary) could be questioned at Estimates. I do not know the answer to this; it might be possible to create a locally employed non-APS officer in the Administration who is accountable to Estimates. The approach of transferring departmental accountability to the Administrator is, in my view, worthy of further consideration and could be done in conjunction with enhancing local government.
- Transferring the Territories to Western Australia is technically possible, although a referendum in Western Australia would be required and one suspects the WA Government would seek substantial financial compensation. This model is used at Lord Howe Island, which is a part of New South Wales. It is hard to see the Administrator's role surviving in this model, nor is it easy to justify the transfer given the national strategic interests the Australian Government has in the islands. I do not think this model is worth further consideration because of the very limited chance of it being accepted.

### **Existing Consultation Mechanisms/Best Practice for Similar Remote Communities**

The existing consultation mechanisms with the island communities have not proven to be highly effective or delivered significant change in the eyes of many in the community. The Commonwealth, when a national strategic issue arises, such as needing to deal with boat arrivals, can and does act without consultation with the community and there is no Constitutional limit on it so doing; noting that the Act of Self Determination commitments by the Commonwealth do provide some limits on the Cocos (Keeling) Islands with respect to the Cocos Malay community.

The Joint Standing Committee on the National Capital and External Territories has a long history of effective engagement with both islands over very many years, and its reports have delivered real change to the arrangements governing the islands. While Governments may

not accept or implement every recommendation by the Committee, it has proven to be an effective consultation mechanism and must be retained!

Administrators have been effective in advising Governments through the responsible Minister on attitudes and issues on the islands, although Governments may not have been as responsive to the advice as everyone would have liked.

Departmental staff regularly visit the islands and meet with members of the communities. In this they gain better understanding of the issues and where community concerns are, but as servants of the government of the day, their ability to finalise consultation is constrained as they are there to implement policy.

Various iterations of the regional development organisations have operated in the islands over the years. The results have been mixed: there have been successes in improvements in local capability to build new business, but there has also been activity without result.

The most effective action appears to occur when motivated and enthusiastic local residents or businesses are assisted to articulate an idea or innovation and encouraged to persist against obstacles. I believe this is an area that Administrators, under the current model, could work with the regional development organisations to assist or enable local people or groups to press for a change or for an innovation. This would require Governments to accept that from time to time an Administrator will be supporting a change to a policy position, but in my view this is encompassed in the Administrator's responsibility to represent the communities to Government.

Very closely related to this is the need for the responsible Minister to visit the islands regularly and consult with the communities in person. Notwithstanding the distance and time issues, I found that a Ministerial visit was probably the single most effective means of consultation. It changed theoretical paper descriptions of the issue or concern to be made real and be seen and understood – the islands are sufficiently unique that in-person visits by decision-makers are essential.

### **Local Government's Role**

I have covered above my view on the need to enhance the capabilities of the local governments to take on greater roles in service delivery. As mentioned, this must be matched by better technical and financial capabilities and will be a progressive process over time. The island's electors must also take a greater interest in the operations of their local governments and ensure they hold the local government to account. Those elected to local government must accept they represent a diversity of views and not a single narrow constituency.

While consideration could be given to using a different model for local government to the current one that uses the WA version, this would mean moving away from the applied WA *Local Government Act 1995*, and applying suitable legislation from another state or enacting new Commonwealth legislation. This would limit or prevent the WA Department of Local Government and Communities from providing support and advice as this is done in the context of using the same WA legislation; it would have a similar effect on the provision of planning advice by the WA Department of Planning. There would have to be a substantial benefit from a new model to justify the cost of moving away from the WA model and I doubt that this would be the case.

I also note that Western Australia is undertaking a program to reform local government in the state. The aim appears to be to amalgamate smaller councils into larger more efficient units. This process could lead to questions about whether it would be better to have a single local government for the Indian Ocean Territories.

In my view this is not the way to go. While some theoretical savings might eventuate, which I doubt would be realised, the two island territories need to have an immediate association with their local government and elected representatives. This is best achieved through each having its own local government that can focus on the differing needs of each. The distance between the two island territories means that they will require staff and facilities on each that cannot be practically shared, which would largely remove any efficiency gains. While efforts should be made to continue to build the capabilities of both local governments, amalgamation should be avoided.

### **Strengthening and Diversify the Economy Whilst Protecting the Unique Culture**

Economic development for the Indian Ocean Territories has long been the goal of successive Australian Governments; not only would it reduce the burden on the taxpayer, but would provide real benefits to the communities.

The reality of the islands economy, particularly Christmas Island, has been a boom then bust cycle, generally driven by externalities beyond the control of the islanders. Examples include the construction of the detention centre (boom) followed by it being on care and maintenance (bust) followed by the rapid growth in people detained on the island (boom). The earlier construction and operation of the Casino (boom) followed by its closure (bust).

Phosphate mining (on Christmas Island) and government services have provided the enduring economic base for the islands, with a contribution from tourism (more Cocos than Christmas Island). Various attempts to develop alternatives including bottled water and agriculture have generally not succeeded, although the recent Hidden Garden initiative on Christmas Island is a great result.

There is substantial untapped tourism potential, particularly on Christmas Island. It has an utterly unique offer to visitors seeking a special experience that cannot be achieved anywhere else in the world: a tropical rainforest environment that is disease free, with unique natural experiences in a first world community that is itself a unique cultural experience. What limits this potential:

- The need to access the island through Australia, making it a difficult and expensive choice for visitors from most of the world.
- Limited accommodation options.
- Limited transport options once on-island.
- Limited facilities to access the island's features – there is still no public toilet in the National Park as I understand it; there are few walks and most are not connected in a coherent way and much of the history is hidden in the jungle.
- Limited entertainment and eating options: what is there can be fantastic, but it is also possible to find everything closed.

The major enabler of better tourism is air access to and from the north. The air service to and from Perth is vital to maintain the links with mainland Australia, but will never deliver the number of visitors that will enable tourism to thrive. It is unlikely that any serious tourism investor will make the investment needed so long as air access is via Perth. There have been valiant local efforts to have a regular service from the north, particularly from Kuala Lumpur, but these have struggled in the absence of support from Government. Aviation policy settings in Australia recognise the need to support air services on low traffic routes where no other access option exists: for this reason the Australian Government underwrites the air services to the Indian Ocean Territories to ensure access is available. Unfortunately the policy does not allow the service to be extended to the north and hence the operators quite reasonably won't continue the service to Singapore or Kuala Lumpur because they think it unlikely to be viable.

Yet without the northern service, tourism will not develop. It is my understanding that an air service could be operated Perth-Christmas Island-Cocos-Singapore/Kuala Lumpur and return with the type of aircraft currently used on the route. Extending the air service to a hub such as Singapore or Kuala Lumpur immediately opens the tourist market on both islands to a much larger pool of potential visitors. Two examples: Christmas Island is well known for its bird life, rain forest and crabs. It has outstanding 'brag' value. With easy access from the north, it will be much easier for tourism operators to sell packages to visit the islands.

In addition, China has a growing middle class able and willing to travel: Christmas Island has a distinctive Chinese culture that could be sold as being a special place to visit for Chinese tourists and it is relatively close to China compared to other destinations.

More needs to be done to develop access in the National Park; there have been proposals to use the old rail line to South Point as the baseline for a series of walking or mountain biking trails. South Point's old railway station could have picnic facilities and information on the scale of the old town of over 3 000 people. Progress on this has been extremely slow, despite the capital cost being low as only signage, track clearing, South Point works and brochures are needed. The rail trail to South Point alone would provide an attractive walking and cycling route through rainforest, cleared pinnacles, rehabilitated land and historic sites.

The former Casino also has significant unmet potential. While a new Casino licence would assist with the facility's viability, of itself it is unlikely to be sufficient to attract many people to Christmas Island. It does however have a large number of rooms and restaurant facilities. This provides the essential accommodation infrastructure for larger numbers of tourists. Some changes may be appropriate to meet the tourist as opposed to the gaming market. Tourists often bring families and want family friendly facilities, not single rooms.

The Cocos (Keeling) Islands would also benefit from having a high quality resort to broaden the accommodation and experience offered to tourists; this would complement the existing range of accommodation and would increase direct and in-direct employment. Unfortunately, my understanding is that without a reliable air service to the north, none of the serious resort operators are likely to make the investment needed to build such a resort.

I think it is also important to highlight some of the innovations that are taking place on Cocos to develop more unique activities for tourists: the windsurfing school, the lagoon canoe tours, the Home Island tours, and the Atoll walk experiences are all outstanding examples of effective small scale ventures ideally suited to Cocos. The people providing them are to be



commended for their work. Many are also examples of where targeted grant funding can deliver enduring returns for the businesses and the community.

Thank you for the opportunity to make this submission and I wish you well in your deliberations.

Yours sincerely