

Governance in the Indian Ocean Territories

The Existing Situation

The Enabling Legislation

- 2.1 The Minister for Territories, Local Government and Roads exercises ministerial powers and responsibilities in the Indian Ocean Territories in accordance with the *Christmas Island Act 1955* (Cth) and the *Cocos (Keeling) Islands Act 1955* (Cth). The Acts provide the legislative basis for the Territories' administrative, legislative and judicial systems.
- 2.2 In 1992, a contemporary body of Commonwealth and Western Australian law was applied to the Territories, with a view to extending to residents the same rights, responsibilities and obligations enjoyed by Australians on the mainland. This was implemented by way of the *Territories Law Reform Act 1992* (Cth) which amended the *Christmas Island Act 1955* (Cth) and the *Cocos (Keeling) Islands Act 1955* (Cth).

Local Government Arrangements

- 2.3 An Administrator, appointed by the Governor-General, under the *Administration Ordinance 1975*, is responsible for the law, order and good governance of the two territories. The Administrator acts in accordance with any instructions provided by the Federal Minister and reports to the Minister.¹ One Administrator is appointed for both Territories. The Administrator resides on Christmas Island and has, in the past, been assisted by two Official Secretaries, one on Christmas Island and the other

1 Department of Transport and Regional Services, Submissions, p. 19.

on Cocos (Keeling) Islands.² The Administration is funded and supported by Department of Transport and Regional Services through its offices in Canberra and Perth.

- 2.4 Local government in the Indian Ocean Territories was established through the *Local Government Act 1995* (WA).³ The Shire of Christmas Island Council is comprised of a President, Deputy President and eight councillors. The Shire of Cocos (Keeling) Islands Council consists of seven members. The role of the Shire Councils is similar to that of local government councils on the mainland.

Federal Parliamentary Representation

- 2.5 Electors in the Indian Ocean Territories are enrolled in the Federal electoral division of Lingiari in the Northern Territory and are represented in the House of Representatives by the Hon. Warren Snowdon MP. The two senators for the Northern Territory, Senators Trish Crossin and Nigel Scullion, provide representation for the Christmas and Cocos (Keeling) Islands communities in the Senate.

Federal Government Policy

- 2.6 In August 2000, the Federal Government determined that:
- the Commonwealth's preferred long-term solution for the Territories is the incorporation of the Indian Ocean Territories (IOTs) into an existing State or Territory, with Western Australia (WA) as the preferred option;
 - the Commonwealth should progressively withdraw from the direct delivery of State type services in the IOTs (as non-core functions);
 - legislative, administrative and institutional frameworks in the IOTs should be aligned with those of remote communities on the mainland (with WA as the model).⁴

The Committee notes that there was no consultation with Island communities by the Government in reaching this policy position. In its 1999 report on the Indian Ocean Territories, the Commonwealth Grants

2 The Official Secretary on Cocos (Keeling) Islands has been relocated to Christmas Island – there is to be one Official Secretary for both Territories.

3 The *Christmas Island Assembly Ordinance 1995* established an elected Christmas Island Assembly which was empowered to control municipal services on the Island via the Christmas Island Services Corporation. The Assembly was dissolved, by the Federal Government, in November 1987.

4 Department of Transport and Regional Services, Submissions, p. 691.

Commission recommended the consultation processes be strengthened, noting:

That dissatisfaction over consultation remains widespread suggests to us that the consultation mechanisms are not sufficiently effective. A comprehensive approach to consultation is needed, and it must provide for both formal and informal processes.⁵

2.7 The Department of Transport and Regional Services noted that, as a result of the Government's decision, it was "in the midst of a major reform process in relation to service delivery, administrative and management arrangements for the Indian Ocean Territories".⁶ The territories were experiencing the "same types of economic and service delivery reforms as have occurred on the mainland".⁷ The impetus for these reforms was to ensure the efficient delivery of government services and align the administrative, legislative and institutional frameworks in the territories with those of remote communities on the mainland.⁸ This 'normalisation process' involved replicating the governance arrangements and responsibilities which would apply to the territories were they part of Western Australia.⁹ The Department noted that while the formal incorporation of the Indian Ocean Territories is "many years away", the Federal Government's current policies are:

consistent with the aim of incorporation and 'normalisation' aimed at making the border between the mainland and the Indian Ocean Territories as 'seamless' as possible.¹⁰

2.8 The Department stated that it intended to implement these aims by:

- expanding current service delivery through the Service Delivery Arrangements with Western Australian state agencies;
- adopting mainland service models such as outsourcing and privatisation; and
- limiting Commonwealth service delivery and encouraging local government service delivery (including the transfer of freehold land

5 Commonwealth Grants Commission, 1999, *Report on the Indian Ocean Territories*, Canprint, Canberra, p. 37.

6 Mr Mike Mrdak, Transcript, 28 March 2003, p. 190.

7 Department of Transport and Regional Services, Submissions, p. 513.

8 Department of Transport and Regional Services, Submissions, p. 513.

9 Department of Transport and Regional Services, Submissions, p. 5.

10 Department of Transport and Regional Services, Submissions, p. 691.

and assets where appropriate and identifying opportunities for an increased role for local government).¹¹

- 2.9 The Department also pointed out that its intention is to significantly reduce Administration staffing on both Christmas and Cocos (Keeling) Islands.¹² The Cocos (Keeling) Islands Administration office has been closed and the staffing level on Christmas Island is being significantly reduced.¹³ The Department's rationale for this was that the present number of staff and level of Commonwealth activity encouraged Territories' residents "to look to the Commonwealth to solve any problems and this attitude stifles community initiative".¹⁴
- 2.10 However, many residents on both Christmas and Cocos (Keeling) Islands expressed their concern with the future direction of the Indian Ocean Territories under the Federal Government's 'incorporation' and 'normalisation' policy process.¹⁵ Of particular concern to these residents was the Department's policy of 'market testing' a range of Government provided services and the outsourcing and/or possible privatisation of these services.

Future governance arrangements

- 2.11 A number of Territories' residents also pointed to some uncertainty in the Island communities as to the Federal Government's policy regarding the future status of the Indian Ocean Territories. Mr Ron Grant was concerned that, because of the non self-governing status of the Indian Ocean Territories, the local communities have no say at the territorial level in the Federal Government's policy changes:

They do have a say at local government level through local government councils and also at the federal level through elected members of parliament, but specifically in relation to territorial affairs the communities have no say at all.¹⁶

- 2.12 Mr Grant proposed that the territories of Christmas and Cocos (Keeling) Island be merged into one new territory with limited self-government

11 Department of Transport and Regional Services, Submissions, pp. 683-684.

12 Department of Transport and Regional Services, Submissions, p. 513.

13 See above with respect to the relocation of the Official Secretary on Cocos (Keeling) Islands to Christmas Island.

14 Department of Transport and Regional Services, Submissions, p. 513.

15 Mr Gordon Thomson, Transcript, 11 March 2003, pp. 45-47.

16 Mr Ron Grant, Transcript, 13 March 2003, p. 92.

called the Indian Ocean Territory.¹⁷ This territory should have an elected legislative assembly, which would complement the current arrangements of the shire councils and Federal parliamentary representation. Mr Grant described how such a system would work:

Just the one assembly for two islands, with representatives from both islands being elected to that assembly. That assembly should have its own bureaucracy based within the islands and that assembly should assume responsibility for state type functions like health, education, law enforcement, justice, economic development. I believe the residents of the territory have that right. We are the only community, to the best of my knowledge, in Australia, that does not have the right of elected representatives at territorial level. I believe also that it is absolutely essential that the residents of the territory have the right to be heard on how funding is allocated to state territorial services such as education and health.¹⁸

2.13 Mr John Clunies-Ross concurred with Mr Grant on the issue of the lack of territorial or state level representation in the Indian Ocean Territories:

The administration of legislation by a non-representative body is still a colonial administration and you will continue to have problems with both territories until such time as there is a representative legislation.

My feeling is that it should happen sooner rather than later...whilst we try and duplicate the state level facilities, there is no proactive component in either council, admin or the department of territories. If you have a state government, it is proactive in the economics of the state and on the social side, sports side and everything else. Here, we are sadly lacking that level of proactiveness.¹⁹

2.14 Having considered the evidence and the current governance arrangements for the territories, the Committee believes there is clear need for an inquiry into governance of the Indian Ocean Territories. Such an inquiry, to be conducted by the Committee as the most suitable body, should examine measures to improve the role and structure of government in the territories, ensuring that it is both accountable and representative. The inquiry should consider proposals for future governance arrangements.

17 Mr Ron Grant, Transcript, 13 March 2003, p. 93.

18 Mr Ron Grant, Transcript, 13 March 2003, p. 93.

19 Mr John Clunies-Ross, Transcript, 13 March 2003, p. 144.

This proposed inquiry would examine issues such as the legal framework for the territories, the role of the Shires, consultation with the Island communities, accountability and transparency in government processes, whether an elected legislative assembly should be established, and the current and future relationship of the territories with Western Australia and the Commonwealth. Accordingly, the Committee seeks a reference from the Minister for such an inquiry.

Recommendation 1

- 2.15 **That the Federal Minister with responsibility for the external territories refer for inquiry and report the governance arrangements of the Indian Ocean Territories to the Joint Standing Committee on the National Capital and External Territories.**